Approved: 4-2-99
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 17, 1999 in Room 313-S of the Capitol.

All members were present except:
Representative David Haley - Excused
Representative Andrew Howell - Excused
Representative Clark Shultz - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Judge Jim Beasley, Wichita
Jim Johnston, Wichita
Sheila Floodman, Attorney with Alexander, Floodman & Casey
Bill Ebert, Kansas Bar Association
Representative Dave Gregory
Representative Brenda Landwehr
Tish Morrical, Attorney with Hampton & Royce, L.C.

Hearings on **HB 2224 - child & adults, abuse of, reporting requirements, exemptions**, were opened.

Tish Morrical, Attorney with Hampton & Royce, L.C., appeared before the committee as a proponent of the bill. The proposed bill would amend the child abuse & neglect reporting statutes to exclude attorneys who are also licensed in these areas. (Attachment 1)

Hearings on **HB 2224** were closed.

Hearings on **HB 2003 - civil procedure relating to reconciliation of a marriage**, were opened.

Judge Jim Beasley, Wichita, appeared before the committee as a proponent of the bill. This would allow those who have filed for a divorce and who are considering staying in their marriage the opportunity to file for a reconciliation. (Attachment 2)

Jim Johnston, Wichita, appeared before the committee as a proponent of the bill. He provided the committee with a suggested amendment that would mandate each parent submit a temporary residency parenting plan to the court, upon filing for a divorce. If the parents can't agree on the plan then the court could order mediation. (Attachment 3)

Sheila Floodman, Attorney with Alexander, Floodman & Casey, appeared before the committee in support of the bill. This proposed bill would work in favor of those marriages where one person wants a divorce and the other doesn't. It would give them more time to work on the marriage while the divorce is at a standstill. (Attachment 4)

Bill Ebert, Kansas Bar Association, appeared before the committee in opposition of the bill. The Bar was concerned that reconciliation could trigger an avalanche of filings for those who are experiencing temporary relationship difficulties, and the statute already allows for the courts to order mediation. (Attachment 5)

Hearings on **HB 2003** were closed.

Hearings on **HB 2248 - child support and child custody**, were opened.

Representative Dave Gregory appeared before the committee in support of the bill. He commented on some of the provisions of the bill. Courts already order mediation, but that the proposed bill would expand that to include property settlements. It would also exempt additional income or bonuses from child support

payments. Another section of the bill would use an income-shares approach so which would take into account that the non-custodial parent also needs money to provide for the child when it is with them. (Attachment 6)

Hearings on **HB 2248** were closed.

Hearings on **HB 2210 - childcare; appeal procedure**, were opened.

Representative Brenda Landwehr appeared before the committee as the sponsor of the bill. The purpose of the legislation is to eliminate a loophole in existing law that creates situations where children who are in foster care cannot be adopted because the parental rights of their biological parents have not been terminated.(Attachment 7)

Representative Lightner who was also in a sponsor of the bill did not appear before the committee but requested her testimony be included in the minutes. (Attachment 8)

Roberta Sue McKenna, Department of Social and Rehabilitation Services, did not appear before the committee but requested that her testimony be included in the minutes. (Attachment 9)

Hearings on **HB 2210** were closed.

Hearings on **HB 2433 - amendments to the family law case management statutes**, were opened.

Representative Brenda Landwehr appeared before the committee as the sponsor of the bill. She stated that this would clear-up existing law and changes terminology to include references to family law. (Attachment 10)

Hearing on **HB 2433** were closed.

The committee meeting adjourned at 6:10 p.m. The next meeting is scheduled for March 18, 1999.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

NAME	REPRESENTING
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
WESLEY MARSHALL	TG TERHAB
Jim Johnston	Citizen of Wichita
GREG DEBACKER	NCFC
Karen Barry	Washburn Law School
Patrick Henshall	OJA
Roberta Sue McKenna	SRS
Cleta Reniger	Right to Life of Ks.
Harry Joe Detter	Right to Life
[illegible]	Attorney General
[illegible]	KADC
[illegible]	Ks Bar Assoc
BILL EBERT	KBA
Stacey Soldan	Hein + Weir Chtd
Whitney Damron	KS Bar Assn.

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J. STAN SEXTON
DEBRA E. JAMES
JEFFREY E. KING
TERRY D. CRISS
JOHN A. O'LEARY
BRIAN W. WOOD
TISHA S. MORRICAL
TODD W. DAVIDSON

OF COUNSEL:
HOWARD ENGLEMAN
JACK N. STEWART

SPECIAL COUNSEL:
CLARENCE L. KING, JR.

E. S. HAMPTON (1905-1982)
TOM W. HAMPTON (1935-1984)
JOHN Q. ROYCE (1918-1991)

Testimony before the House on HB 2224

By: Tish Morrical

Date: February 17, 1999

I am here today to testify in support of HB 2224. HB 2224 proposed to amend the mandatory reporting statutes located at K.S.A. 38-1522, 39-1402, and 39-1431, for licensed professionals within the state of Kansas who are so-called dually licensed as attorneys.

K.S.A. 38-1522, 39-1402, and 39-1431 provide that certain licensed professionals are mandated to report any suspicion of abuse, neglect or exploitation of a child, a care facility resident, or a vulnerable adult. A violation of these statutes are punishable by a criminal sanction of a class B misdemeanor.

To give you some background on this bill, it has only been within the past several years that the University of Kansas has developed dual-degree programs between the Law School and several other branches of the university, including the School of Social Welfare. In the early 1990's, I was attending the School of Social Welfare working part-time on my Master's degree, when I was approached by professors of the School of Social Welfare regarding the new dual degree program with the law school. At that time, there had been no graduates of the program, they were looking for someone to start, and thought that I would be a good candidate. The dual degree program would stretch my 2 year Master's program into a 4 year dual degree with the Law School.

In 1993, myself and two other students entered the program. One student, Dawn Puterbaugh, started at the Law School and Gennie McElhaney and myself started in the School of Social Welfare. This first class of 3 graduated in 1996. Dawn went on to practice law in a juvenile court in South Carolina. Gennie went into private practice as an attorney in Colorado. I began in private practice here in Kansas. Of those three graduates, I was the only one to take the Master's licensing test as I was the only one who was planning to remain in Kansas. I passed both the MSW exam and the bar in the summer of 1996.

In my first year of private practice, I was working on a nursing home malpractice case with a senior attorney in my firm, Clancy King, when I came upon the text of the mandatory reporting laws. Under these statutes, as a licensed social worker, if I received any information regarding a

client of the firm regarding a potential of abuse, neglect or exploitation of specific types of individuals, I was mandated under the threat of a criminal conviction to make a report to the authorities. However, as an attorney, such a report would be malpractice and in some cases, a violation of my ethical duties, and would subject me and the firm to a potential ethics proceeding and/or a potential malpractice suit.

Clancy King and I immediately began writing to the Law School, School of Social Welfare, Behavioral Sciences Regulatory Board and the Kansas Bar Association regarding this problem. At first, little progress was made and I was forced to make a decision regarding my status. Because of the potential criminal and civil liability involved, I relinquished my Masters of Social Work license to the Behavioral Sciences Regulatory Board on April 14, 1998.

After I relinquished my license, I had the situation come up which would have thrown me into the middle of the conflict. The firm represented an elderly woman in her 90's who lived alone and whose health was beginning to fail. In the course of working with her, I visited her in her home. It became apparent that this woman was neglecting herself physically and medically and that she was losing the ability to care for herself. However, she made it very clear that she did not want anyone informed of her failing health due to her determination to remain in her own home as long as possible. As an attorney, this information and direction given to me by this woman was covered under the attorney-client privilege and we are able to work with her to meet her needs. However, if I would have still had my social work license, I would have been required to make a report to SRS regarding this woman's decreasing ability to care for herself and subjected myself and the firm to a potential ethics complaint and malpractice suit.

The benefits of the dual degree programs have yet to be realized. Attorneys with social work experience are a benefit to the legal and social service professions for their professional mediation, guardians ad litem abilities, and knowledge about social service agencies. They are more adept at representing families and juveniles and perhaps have an ability to provide services, other than just legal services to these clients.

I don't know how many dual degree graduates there have been since Dawn, Ginnie and I. We knew we were the gunnie pigs when we started this, but we were not aware of the peril that our dual licenses would create. I would commend the KBA for picking up the ball on this issue and running with it when perhaps it was dropped by the others. If anyone has any questions, I can take them now, or I can be reached at Hampton & Royce law firm in Salina.

TESTIMONY TO HOUSE JUDICIAL COMMITTEE
HB 2003 – FEBRUARY 17, 1999
JUDGE JAMES G. BEASLEY
18TH JUDICIAL DISTRICT

OBJECTIVE: Attempt to reduce the increasing number of divorces filed in Kansas and/or to reduce the conflict to Kansas families when divorce becomes unavoidable.

- Divorce in Kansas occurs in one of every two marriages. The negative social and financial impact on divorcing Kansans, and more so on the children of those divorcing families, has become overwhelming.

- Using Wichita as an example, there are nearly 500 divorces filed each month. Approximately one half of those divorces involve children. If there are two children in each of those families, then divorce will affect about 500 children per month or 6,000 per year.

- The grim statistics of children of divorce have been documented as follows:

    - 75 to 80% of all teen suicides are from split homes.

    - 70% of the children in state detention facilities come from fatherless homes.

    - Children in disrupted families are nearly twice as likely to drop out of school.

    - Daughters of disrupted families are:
        - 53% more likely to marry as teens,
        - 111% more likely to have children as teens,
        - 164% more likely to have premarital births,
        - 92% more likely to get divorced.

- These children's chances of having behavorial problems increases over the average child by 20 times, to be runaways by 32 times, to abuse drugs or alcohol by 10 times and to be fatally abused by 73 times.

In the typical divorce, one of the marital parties will seek out a lawyer who will file a petition for divorce and obtain a temporary ex parte order. That order

will give his client custody of the children, possession of the family residence, the household goods and furnishings, an order for support of the children, and alimony or spousal maintenance. The other spouse, not represented when the Court enters the temporary order, is given their clothing and 24 hours to vacate the house. They may or may not have an order giving them some "visitation" time with their children. While that disadvantaged spouse could file a motion to amend the temporary order, it typically will be left status quo until an evidentiary hearing, which could be months away.

Because of the above scenario, most lawyers understand that winning the "race to the courthouse" will give their client a definite advantage and will therefore advise them that even though they may not have given up yet on the relationship, to protect their financial interests, they should go ahead and file. Once the divorce begins in the above "ambush" manner, the likelihood of the parties being able to work out their problems diminishes and the relationship becomes hostile and conflicted. Unfortunately, the children become the principal victims of this scene.

While I do not believe that HB 2003 will be the answer to all the problems I have previously discussed, it will give a significant number of Kansas families the opportunity to try to keep their marriage and family together. The law would allow those persons the comfort to know that neither of them will be ambushed while they are honestly trying to save their marriage.

HB 2003 will require that if they are unable to work out their problems, they would both need to appear before a Judge, on a level playing field, and get orders regarding their children and finances. Such fairness would at least start the divorce process in a less hostile, one-sided manner.

I personally do not believe that there are <u>any</u> substantive rights of the individuals being compromised by HB 2003. At <u>any</u> time, either of the parties could seek a conversion to divorce which would, as a matter of right, be amended to divorce. No judge would have the authority to prevent it.

Property rights, likewise, would be protected. Reference to K.S.A. 23-201(b) would consider all property of the parties to be marital property and could not be alienated surreptiously by either spouse.

In closing I would like to thank the Chairman for allowing me to speak without written testimony and the Committee for their attention to what I believe could be very positive family law for Kansas.

HOUSE JUDICIARY TESTIMONY RE: HB 2003

Jim Johnston
7010 Woodbury Street
Wichita, KS 67226 (316) 828-8892 (day)
2/17/98 (316) 685-6297 (home)

Background: Besides my regular employment in Wichita, I am an appointed member of the Kansas Supreme Court's Child Support Guidelines Advisory Committee, the Chair of a children's advocacy group in the Wichita area called KIDSVIEW (www2.southwind.net/~kidsview), and the proud parent of two beautiful children of which I have shared physical custody.

I am a proponent of this bill as it creates a "hurdle" that a couple might have to go through in the event both aren't in agreement that the marriage should end. I believe that this is especially critical when children are involved. This also would reduce the ridiculous scenario of one of the parents being incentivized to "race to the courthouse" to establish an advantage as to the decisions regarding housing, custody, etc.

I do wish to add an **amendment** to the bill which is attached. **Beginning page 1, line 31**, this amendment would require the parents, upon the failure of marriage counseling, to develop a "parenting plan" for children involved that a judge would take into consideration when establishing temporary orders. These parents know their children better than any court would, and the onus should rest with them to address the issues they must now face upon the pending dissolution of their relationship. Judges would retain full discretion to approve a parent-developed temporary plan, or order one themselves. Parenting plans are important as they address issues that parents otherwise would not automatically think about at this terribly emotional time of their life. They address such issues as:

- A schedule of residency at each home
- Holiday arrangements
- Vacations
- Extended family
- Emergency decision-making
- Education
- Moral-values/Religion
- Social/Recreation activities and responsibilities
- Communications
- Methods for dealing with family problems that arise
- Moving
- Child support
- Other concerns appropriate to a particular parent

Please support this bill, but don't do so without adding this amendment. The gap between temporary orders and final orders is usually several months, and often exceeds a year. Establishing a parenting plan at the outset (currently not a requirement in any Kansas statutes) gets both parents focused on their children and what's in their best interests. Let's give them the tools to start this difficult journey right from the start.

Session of 1999

HOUSE BILL No. 2003

By Special Committee on Judiciary

12-15

AN ACT concerning civil procedure; relating to reconciliation of a marriage.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) If parties to a marriage undergoing difficulties desire the assistance of the court in obtaining an order for marriage counseling but do not wish to file a cause of action for divorce, annulment or separate maintenance, either party may file a petition for reconciliation. Such petition shall set forth the facts of the marriage, the facts pertaining to minor children of the marriage, the court's jurisdiction and a request for an order for marriage counseling. The court may order the parties into marriage counseling as provided by article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, within a temporary order filed with the petition. Neither party, however, shall be required to submit to marriage counseling provided by any religious organization of a particular denomination.

(b) The filing of a reconciliation action shall serve to stay the filing of any action for divorce, annulment or separate maintenance until the same is dismissed or converted into a divorce, annulment or separate maintenance action pursuant to subsection (c).

(c) If marriage counseling proves unsuccessful in assisting the parties in reconciliation, either party may then file a motion to convert the reconciliation into a divorce, annulment or separate maintenance. If children are involved, both parties, acting individually or in concert, shall also submit a temporary residency parenting plan to the court. If they cannot agree on an appropriate parenting plan, the court, or upon request of one of the parties, may order mediation. In the event a mutually agreeable parenting plan cannot be agreed upon, the court will issue a temporary residency parenting plan appropriate to the parties' circumstances, and consistent with the best interest of the children. After notice to both parties and upon hearing the motion, such an action will be converted and the court, as part of its order, shall issue a temporary order pursuant to K.S.A. 60-1607, and amendments thereto, setting forth the parties' rights and responsibilities until completion of the divorce, annulment, separate maintenance, dismissal or modification by court order.

(d) If either party suffers abuse by the other party, the party suffering the abuse may circumvent the reconciliation action by seeking a divorce, annulment or separate maintenance action under the provisions set forth in article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, if that party does not wish to participate in the reconciliation process. The reconciliation process shall not bar the abused party from seeking any of the protections afforded by law. However, an affidavit

SUPERIOR COURT OF WASHINGTON
COUNTY OF

	)	
	)	
In re the Marriage of:	)	NO.
	)	
	)	PARENTING PLAN
	)	[ ] PROPOSED (PP)
Petitioner)		[ ] TEMPORARY (PPT)
and	)	[ ] FINAL ORDER (PP)
Respondent.)		

This parenting plan is:
[ ] the final parenting plan signed by the court pursuant to a decree of dissolution entered on (Date).
[ ] the final parenting plan signed by the court pursuant to an order entered on (Date) which modifies a previous parenting plan or custody decree.
[ ] a temporary parenting plan signed by the court.
[ ] proposed by (NAME)

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

Name	Birthdate

II. BASIS FOR RESTRICTIONS

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

[ ] Does not apply.
[ ] The [ ] father's [ ] mother's residential time with the children shall be limited, and mutual decision-making and designation of a dispute resolution process other than court action shall not be required because this parent has engaged in the conduct which follows.
[ ] Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.
[ ] Physical, sexual or a pattern of emotional abuse of a child.
[ ] A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

2.2 OTHER FACTORS (RCW 26.09.191(3)).

[ ] Does not apply.
[ ] The [ ] mother's [ ] father's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow.

[ ] Neglect or substantial nonperformance of parenting functions.
[ ] A long-term emotional or physical impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004.
[ ] A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.

[ ] The absence or substantial impairment of emotional ties between the parent and child.

[ ] The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

[ ] A parent has withheld from the other parent access to the child for a protracted period without good cause.

[ ] Other:

III. RESIDENTIAL SCHEDULE

These provisions set forth where the child(ren) shall reside each day of the year and what contact the child(ren) shall have with each parent.

3.1 PRE-SCHOOL SCHEDULE.

[ ] There are no children of preschool age.

[ ] Prior to enrollment in school, the child(ren) shall reside with the [ ] mother [ ] father, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (Day and Time) to (Day and Time)
[ ] every week [ ] every other week [ ] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

from (Day and Time) to (Day and Time)
[ ] every week [ ] every other week [ ] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

3.2 SCHOOL SCHEDULE.

Upon enrollment in school, the child(ren) shall reside with the [ ] mother [ ] father, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (Day and Time) to (Day and Time)
[ ] every week [ ] every other week [ ] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

from (Day and Time) to (Day and Time)
[ ] every week [ ] every other week [ ] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

[ ] The school schedule will start when each child begins [ ] kindergarten
[ ] first grade [ ] other:

3.3 SCHEDULE FOR WINTER VACATION.

The child(ren) shall reside with the [ ] mother [ ] father during winter vacation, except for the following days and times when the child(ren) will reside with or be with the other parent:

3.4 SCHEDULE FOR SPRING VACATION.

The child(ren) shall reside with the [ ] mother [ ] father during spring vacation, except for the following days and times when the child(ren) will reside with or be with the other parent:

3.5 SUMMER SCHEDULE.

Upon completion of the school year, the child(ren) shall reside with the
[ ] mother [ ] father, except for the following days and times when the child(ren) will reside with or be with the other parent:

[ ] Same as school year schedule.
[ ] Other:

3.6 VACATION WITH PARENTS.

[ ] Does not apply.
[ ] The schedule for vacation with parents is as follows:

3.7 SCHEDULE FOR HOLIDAYS.

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)
New Year's Day		
Martin Luther King Day		
Presidents Day		
Memorial Day		
July 4th		
Labor Day		
Veterans Day		
Thanksgiving Day		
Christmas Eve		
Christmas Day		

[ ] For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

[ ] Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.
[ ] Other:

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

The residential schedule for the child(ren) for the following special occasions (i.e., birthdays) is as follows:

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)

[ ] Other:

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

[ ] Does not apply.
[ ] For purposes of this parenting plan the following days shall have priority:

[ ] Parent's vacations have priority over holidays. Holidays have priority over other special occasions. Special occasions have priority over school vacations.
[ ] Other:

3.10 RESTRICTIONS.

[ ] Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.
[ ] The [ ] father's [ ] mother's residential time with the children shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when the children spend time with this parent:

[ ] There are limiting factors in paragraph 2.2, but there are no restrictions on the [ ]father's [ ] mother's residential time with the children for the following reasons:

3.11 TRANSPORTATION ARRANGEMENTS.

Transportation arrangements for the child(ren), other than costs, between parents shall be as follows:

3.12 DESIGNATION OF CUSTODIAN.

The children named in this parenting plan are scheduled to reside the majority of the time with the [ ] mother [ ] father. This parent is designated the custodian of the child(ren) solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER:

IV. DECISION MAKING

4.1 DAY TO DAY DECISIONS.

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

Education decisions	[ ]	mother	[ ]	father	[ ]	joint
Non-emergency health care	[ ]	mother	[ ]	father	[ ]	joint
Religious upbringing	[ ]	mother	[ ]	father	[ ]	joint
	[ ]	mother	[ ]	father	[ ]	joint
	[ ]	mother	[ ]	father	[ ]	joint
	[ ]	mother	[ ]	father	[ ]	joint

4.3 RESTRICTIONS IN DECISION MAKING.

[ ] Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.
[ ] Sole decision making shall be ordered to the [ ] mother [ ] father for the following reasons:

[ ] A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191 (See paragraph 2.1).
[ ] Both parents are opposed to mutual decision making.
[ ] One parent is opposed to mutual decision making, and such opposition is reasonably based on the following criteria:

(a) The existence of a limitation under RCW 26.09.191;
(b) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a);
(c) Whether the parents have demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a); and
(d) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

[ ] There are limiting factors in paragraph 2.2, but there are no restrictions on mutual decision making for the following reasons:

V. DISPUTE RESOLUTION

[ ] Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

[ ] counseling by , or

[ ] mediation by , or

[ ] arbitration by .

The cost of this process shall be allocated between the parties as follows:

[ ] % mother % father.
[ ] based on each party's proportional share of income from line 6 of the child support worksheets.
[ ] as determined in the dispute resolution process.

The counseling, mediation or arbitration process shall be commenced by notifying the other party by [ ] written request [ ] certified mail [ ] other:

In the dispute resolution process:
(a) Preference shall be given to carrying out this Parenting Plan.
(b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
(e) The parties have the right of review from the dispute resolution process to the superior court.

[ ] No dispute resolution process, except court action, shall be ordered, because [ ] a limiting factor under RCW 26.09.191 applies or [ ] one parent is unable to afford the cost of the proposed dispute resolution process.

VI. OTHER PROVISIONS

[ ] There are no other provisions.
[ ] There are the following other provisions:

VII. DECLARATION FOR PROPOSED PARENTING PLAN

[ ] Does not apply.
[ ] (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under the laws of the State of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

Mother Date and Place of Signature

Father Date and Place of Signature

VIII. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: Judge/Commissioner

Presented by: Approved for entry:

Signature Signature

Print or Type Name Print or Type Name

ALEXANDER, FLOODMAN & CASEY, Chartered
ATTORNEYS AT LAW

Ross D. Alexander
Sheila J. Floodman
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218 N. Mosley
P.O. Box 2955
Wichita, KS 67201-2955

316-269-1100
316-269-1443 (FAX)

February 4, 1999

By Facsimile-785-234-3813

Mr. Ronald Smith, General Counsel
Kansas Bar Association
P.O. Box 1037
Topeka, Ks 66601-1037

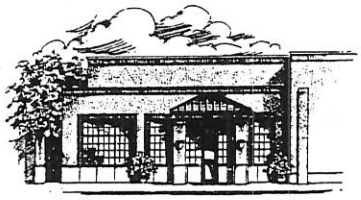
Dear Ron:

It has come to my attention that you have expressed concerns regarding House Bill No. 2003, an act relating to reconciliation of a marriage.

You might recall that I worked on this project last year. I recall that at that time, despite similar opposition, you thought support by the Kansas Bar Association of a bill that assisted marriage could enhance the public relations image of the bar.

I have worked on revisions that I hope address the concerns you recently raised with Judge Beasley. I believe he has forwarded those to you.

I would like to emphasize that I experience on a weekly basis advising people that they need to file either a divorce or separate maintenance despite the fact that they personally are very much opposed to a divorce. These examples concern instances where their spouse has indicated that they are considering a divorce and separate maintenance. Of course, if custody of the children, possession of the residence or spousal support are potential issues, then I have to advise them of the severe disadvantage in which they could find themselves in if their spouse filed first.



Practice emphasizing family law.

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I have tried the explanation that you can file a separate maintenance action and hold service of process, as I recall Judge Leban suggested in the legislative committee meeting I attended. Of course, it presents a very disingenuous explanation to suggest to the client that they ignore the language in the verified Petition they are signing stating that the parties must live separate and apart.

Most clients believe, as they should, that they should be literal and exact on a pleading they are signing under oath.

I had two clients yesterday in such a position. One was an unemployed woman with a one year old and a two year old who had fought with her husband during the Superbowl game and had gone to see a counselor that morning. While she was at the counselor, her husband had, probably after speaking to a lawyer and receiving the usual advice, arranged to borrow money from his mother so that he "could get the courthouse first."

Neither party appears to really want a divorce, but they found themselves propelled forward. Unfortunately, the husband appears to be "restless" and the fact that he received advice to file may have relieved him from the psychological restraint he would have likely otherwise considered and this young family is well on it way to becoming another statistic.

The second example that day was a surgeon who had been married twenty years and had two adolescent children. His wife was going through a classic mid-life identity crisis and thought she wanted to separate. He was so opposed to divorce that he refused to fill out one of our forms because the intake form is entitled "Divorce Questionnaire." He ultimately decided to take the risk of not filing an action; he now has to hope that a special process service doesn't greet him as he leaves surgery telling him that he has forty-eight hours to vacate his residence.

I know some counties do not set temporary orders without a hearing. However, I have experienced long delays in those counties in obtaining orders. Clearly, the backlog in a county where approximately 500 family law actions are filed monthly would be staggering.

I am enclosing a copy of the latest revisions. Please do not hesitate to contact me with any observations or concerns. I am further enclosing an Eagle-Beacon editorial

observation on the proposal.

I hope you will reconsider your position on this bill. I know Judge Beasley will welcome constructive advice on changes and improvements.

Very truly yours,

Sheila J. Floodman

SJF/klo
cc: Mike O'Neal

HOUSE BILL NO. 2003

February 17, 1999

TESTIMONY OF WILLIAM F. EBERT, ATTORNEY, TOPEKA, KANSAS

1998-99 President, Kansas Bar Association Family Law Section
Adjunct Professor, Washburn University School of Law
Certified Kansas Mediator
Member, Shawnee County Family Law Advisory Committee
Divorced Father

My name is Bill Ebert. I am an attorney here in Topeka. Currently, I am the President of the Kansas Bar Association Family Law Section. In that position, I have had occasion to speak with a number of family law practitioners and judges regarding House Bill 2003.

With all due respect to Judge Beasley, I must report to you that the consensus is that creation of a separate cause of action for Reconciliation is unnecessary and may cause more problems than it eliminates. I also want to say that there is widespread respect for Judge Beasley statewide, and I am most uncomfortable speaking in opposition to a bill which he supports. I believe the KBA Family Law Section would be very interested in working with Judge Beasley to see if some compromise measure might address his concerns.

There is no question that the purpose of this bill is worthy, and in fact, admirable. Divorce cases which commence as "pre-emptive strikes" are rarely friendly, and it is possible for *ex parte* orders to be abused. No one with whom I've spoken is insensitive to the objectives which House Bill 2003 intends to accomplish. However, there are a number of concerns.

1. First, one central purpose of this bill is to afford an alternative remedy to anticipatory divorce filings; i.e., a person who does not necessarily want a divorce may feel compelled to file simply to avoid the result of harsh *ex parte* temporary orders. While this is certainly a serious problem, most practitioners with whom I have spoken feel that it occurs in only a small percentage of cases. Concern has also been expressed that creation of a new and distinct cause of action for "Reconciliation" could trigger an avalanche of filings by people who are experiencing temporary relationship difficulties and are not serious candidates for divorce. Most practitioners with whom I have spoken feel as if those kinds of problems need to be addressed through proper professional assistance, rather than through the courts.

2. There is widespread concern that passage of this bill would stimulate an increased resort to, and possible abuse of, Protection From Abuse filings. Any party seeking to avoid "Reconciliation" could utilize the procedure under the Protection From Abuse Act to obtain *ex parte* orders. There is concern that House Bill 2003 would encourage this practice, which would be a complete misuse of the Protection From Abuse procedure. It might also require that you consider amendments to the Protection From Abuse Act in order to prevent this practice.

3. I have been encouraged to remind you that K.S.A. 60-1608(c) already makes specific provision for the court to order the parties into marriage counseling. I think there is some rather widespread agreement that, unfortunately, district court judges do not take advantage of this statutory provision often enough. Whether or not the statute should be changed to make the counseling mandatory is another question, but it certainly is an option that would bring some level of professional intervention into a troubled marriage.

4. In Shawnee County, we have addressed the concerns which Judge Beasley has expressed with a relatively new procedure, which provides for a temporary order docket each Friday morning. A temporary restraining order can be obtained at the time of the original filing, but custody and support orders will be entered only after a hearing. This sends a clear message to parties contemplating divorce that there will be a hearing on the temporary orders within a matter of days after the filing. We are persuaded in Shawnee County that this new procedure, in turn, has discouraged the pre-emptive filings which are, as Judge Beasley has suggested, of great concern to all of us who practice in this area.

In summary, I have noted little support for this bill, and the general consensus is that it is unnecessary. It could be that K.S.A. 60-1610 needs to be amended to provide a statutory period within which a hearing will be held prior to the time that the court enters any temporary orders attendant to a divorce petition. When parties know that a hearing will occur very shortly after the filing, the incentive to take "pre-emptive" or anticipatory action is severely diminished, if not eliminated. I sincerely hope that the expression of these views which I have gathered from around the State are of value to this Committee as you study this bill.

Thank you all for consideration of these thoughts.

WILLIAM F. EBERT

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HOUSE OF
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HB2248

Testimony Before The House Judiciary Committee
February 17, 1999
Representative Dave Gregory

Thank you Chairman O'Neal and distinguished members of the Judiciary Committee. I am Representative Dave Gregory and I come before you today to talk with you about HB2248, which deals with Child Support and Child Custody issues.

This bill is actually the collaborative efforts of many people. HB2248 represents seven of the best bill ideas from twelve different bill drafts. Yet each concept is new for this year and a hopefully refreshing perspective from previous attempts.

Although this is not totally my bill I can personally relate to many of the points in HB2248 and would urge your favorable consideration.

Although I would seldom recommend divorce to anyone, I would recommend mediation for those that must end a marriage. A good mediator will reduce friction between the couple by setting reasonable expectations and remind both parents to consider how the children will be affected. Current law allows a Judge to order mediation for custody and visitation. HB2248 expands a judge's discretion to include property settlements to child custody and visitation.

The second point in the bill found in section three, page two, directs the courts to impute income for each parent at the federal minimum wage for 40 hours a week. It does allow a judges discretion if they find justification. This bill would generally affect only very low-income families. Medium and upper combined income would be feel negligible or zero effects of this portion of the bill. It is simply a fairness issue to extremely poor single non-custodial

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parents. If the custodial parent gets a job and has to put the children in day care the cost of the day care would actually probably increase the non-custodial parents bill.

The next change covers the topic of additional income or employment bonuses, which exceeds the rate of inflation from the time of the original order. As you may remember from the testimony heard earlier this year in HB2002, our system's current system determines child support payments based upon an income-shares approach which ignores the cost of raising children for the non-custodial parent.

The income-shares approach looks at the combined income of both parents as well as the cost of the custodial parent raising the child. In the vast majority of normal child support cases it assumes the non-custodial parent does not need any money to raise the child. The existing Kansas formula ignores the fiduciary needs of the non-custodial to raise the children during their parenting time. It ignores the need for children's bedrooms, beds, clothing, and even food. The larger and poorer the family the greater the unreasonable burden on the non-custodial parent.

I'm not asking that we tackle this massive problem, but rather a symptom of a single non-custodial parent's poverty. I have seen non-custodial parents who had to house their four children in a one-bedroom studio apartments during their parenting time while they sent enough money to the custodial parent that they were able to purchase recreational vehicles. If that non-custodial parent wanted to better their children's lifestyle they are trapped in our current formula. It is true that the custodial parent should be able to receive a cost of living adjustment, but if either parent wants to take on extraordinary work they should be able to do so without the an unfair percentage being extracted from their paycheck. A cost-of-living-adjustment is fair and just. But let the poor non-custodial parents keep the benefits of their extraordinary work that is in excess of the rate of inflation.

The fourth major change can be found at the bottom of page 3. The custodial parent is pushed to provide for the basic needs of the child. In some cases the non-custodial parent may be sending child support payments to the custodial parent. The non-custodial parent may spend the money frivolously while ignoring the children's health, housing, food, and medical care. If there is not an arrearage in child support payments the non-custodial parent would then be able to ask the court for equal parenting time. The burden of proof would rest with the non-custodial parent.

The fifth change can be found on line 2 of page 4. In many divorce agreements where there are multiple children involved, both parents agree in

the divorce order to split the personal exemptions or utilize alternating years by transferring the income tax exemption. However, the custodial parent can choose to ignore those court orders. The Internal Revenue Service does not care what the couple agreed to in a Kansas court. The non-custodial parent can drag the custodial parent back to court. However, most do not pursue court action because the attorney fees will basically wipe out the savings one might receive from a civil suit. This change allows the non-custodial parent to abate their child support payments until the custodial parent abides by the existing court order and only when there is no arrearage in payments.

If both parents have agreed to an abatement arrangement in their divorce during extended visits, the burden of proof is shifted to the residential parent to prove that the child did not stay with the non-residential parent. As it currently stands if the custodial parent states there was not any visitation the abatement is denied. You should remember that it is the non-custodial parent who must ask the court clerk for the abatement.

New section four found on page nine states that if there are no arrearages in child support payments the custodial parent or their attorney must notify in the non-custodial parent by writing. This should be a common courtesy. I can tell you from personal experience, it is not the current practice of many attorneys.

I would appreciate your consideration and attention to this bill.

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JOINT COMMITTEE ON CHILDREN AND FAMILIES

BRENDA K. LANDWEHR
Representative, Ninety-First District

TESTIMONY

HB 2210: An Act concerning Child Care Appeals Procedure

Judiciary Committee Hearing, February 17, 1999, 3:30 p.m.

Thank you Mr. Chairman and Members of the Committee for allowing me the opportunity to appear before you today in support of HB 2210.

During discussions with SRS regarding foster care in the state, a situation was brought to our attention that was leaving children stranded in foster care system.

The purpose of this legislation is to eliminate a loophole in the existing law which creates situations where there are children in foster care and cannot be adopted into permanent family situations because the parental rights of their biological parents have neither been terminated nor enforced.

What is happening presently is that, after having having had their parental rights terminated, the biological parents have the opportunity to appeal the decision. In the heat of the moment, they agree to do so, but in some cases fail to follow through with the appeal.

Because of this, the child cannot be adopted. At the same time, the biological parents do not pursue the appeal nor a parental relationship with the child. Therefore, there are children who are basically left in limbo, with the rights of their biological parents not having been severed, with biological parents who are not pursuing the resolution of the appeal, leaving the child unable to be adopted into a permanent family setting.

What House Bill 2210 will do is ensure that the biological parent named in the appeal is actively pursuing the appeal of the the termination. HB 2210 requires that every court document be verified by a biological parent to insure that the pending case has merit. Those appeals without such documentation will be dismissed, thus freeing the child to be adopted into a permanent home.

By enacting this legislation, children will no longer be left in limbo, unable to pursue a stable home.

Thank you for the opportunity to speak to you on this bill. I stand for questions.

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HEALTH AND HUMAN SERVICES

February 17, 1999

Testimony
HB 2210: Childcare; appeal procedure.

Fellow Members of the Committee:

It is my pleasure to testify on behalf of HB2210, a bill which I co-sponsored with Brenda Landwehr. I come before you today as a fellow committee member, attorney and as a mother.

As an adoptive parent myself, I can empathize with those couples who have attempted to adopt a child only to be rebuffed by the legal process. There is nothing worse than the wait between filing for adoption and being approved.

It is a shame what is happening in some cases in Kansas. Because a biological parent has not pursued the resolution of the appeal of the termination of their parental rights, a family, eager to make this lost child a part of their home is unable to do so.

Both the prospective parents and the child in foster care are neglected under current law. It is my hope that we will give serious consideration to this bill and recommend that it be passed into law.

This will bring us one step closer to giving foster children a stable home. Please give serious consideration to the testimony that will be provided by SRS and vote in favor of House Bill 2210, ensuring that appeals to termination of parental rights are genuine and resolved quickly.

Thank you for your close attention to this matter. I welcome any questions you have for me.

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Kansas Department of Social and Rehabilitation Service
Rochelle Chronister, Secretary

House Judiciary
HB-2210

February 17, 1999

Members of the committee, I am Roberta Sue McKenna, attorney for the Children and Family Service Commission of the Kansas Department of Social and Rehabilitation Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today in support of House Bill 2210.

When a child cannot safely return home to be cared for by parents, we have an obligation to provide that child with another permanent home as quickly as possible. Some delay is inevitable. Our legal system is carefully constructed to balance the sometimes competing rights of children and their parents. Termination of parental rights is one of the most serious procedures required of our courts. Parents must have the right to appeal a decision to terminate their rights even though the appellate process will delay permanency for the child. However, when parental involvement is limited to a demand that the judge's order of termination be appealed, the child's need for permanence should not be sacrificed while attorneys churn out briefs and argue points of law.

HB 2210 would require minimal involvement by the parent demanding the appeal. It requires them to remain in contact with their attorney, to review and sign the papers required at each stage of the appeal. If a parent is unwilling or unable to review and sign the required documents, the appeal is over and the child is free to be placed in a permanent adoptive family. It is specifically intended to address situations where having issued the order, the parent disappears. It would enable attorneys to cease efforts on behalf of a client whose whereabouts are no longer known or who fail to respond to contacts from their attorney. It would save valuable court time but most of all it would benefit children in need of safe, permanent families.

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BRENDA K. LANDWEHR
Representative, Ninety-First District

TESTIMONY

HB 2433: An Act concerning Family Law Case Management

Judiciary Committee Hearing, February 17, 1999, 3:30 p.m.

Thank you Mr. Chairman and Members of the Committee for allowing me the opportunity to appear before you today in support of HB 2433. Being mindful of the number of bills to receive hearings today, I will limit my comments in scope and content.

I'd like to explain my reasons for bringing HB 2433. They are two-fold.

1. **To clarify existing law.** During the 1996 session, three pieces of legislation were passed (KSA 23-1001, 1002, 1003) that together provide the framework for our existing Domestic Case Management law. While the laws we passed three years ago were, for the most part, successful, over time suggestions have been made to make the existing law stronger and more effective. This basically closes any loopholes remaining in the 1996 legislation.

2. **To differentiate domestic case management from other forms of case management.** For this reason, the proposed legislation changes the terminology to include references to family law, so as not to confuse domestic case management with case management used in other situations (SRS for example). We want to be sure this framework exists only for application in the area of family law, or what is more commonly known as domestic relations.

In drafting HB 2433, a bill to amend current Domestic Case management law, legal professionals were consulted, and it is their ideas and suggestions which are reflected in what you have before you.

Thank you for the opportunity to bring this revised legislation to the attention of the committee. I stand for any questions you may have.

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