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 March 9, 1999 in Room 313-S of the Capitol.

All members were present except:
Representative John Edmonds - Excused
Representative Candy Ruff - 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:
Kathy Porter, Office of Judicial Administration
Randy Hearrell, Judicial Council
Ardith Smith-Woertz, Family Law Advisory Committee, Judicial Council
Ron Smith, Kansas Bar Association
Joe Ledbetter, Topeka
Greg Debacker, National Congress for Fathers & Children
Orville Johnson, Topeka
Jim Johnston, Wichita
Mark Shephard, Valley Center
Tom O'Shea, Olathe
Tony Rieschick, Topeka
Jean Shepherd, Douglas County District Court Judge,
Dan Mitchell, Judge, 3rd Judicial District
Representative Phyllis Gilmore
Jill Bremyer-Archer, American Academy of Adoption Attorneys
Joel Rutledge, Adoption with Wisdom & Honesty
Dan Brooks, Kansas Adoption Network
Dick Peckham, Andover

Hearings on **SB 91 - expanding jurisdiction of district magistrate judges to hear protection from abuse actions**, were opened.

Kathy Porter, Office of Judicial Administration, appeared before the committee in support of the proposed bill. She explained that the bill would eliminate the provision which prevents district magistrate judges from hearing protection from abuse actions when a district judge is not available. (Attachment 1)

Hearings on **SB 91** were closed.

Hearings on **SB 96 - modification of child custody and residential placement orders**, were closed.

Randy Hearrell, Judicial Council, introduced Ardith Smith-Woertz, Family Law Advisory Committee, Judicial Council, as a proponent of the bill. She stated that this proposed bill would require the party filing a motion to modify a final order pertaining to child custody or residential placement to include with specificity all know factual allegations which constitute the basis for requesting the change. (Attachment 2)

Hearings on **SB 96** were closed.

Hearings on **SB 125 - distribution of child placement investigator's report in divorce proceedings**, were closed.

Ron Smith, Kansas Bar Association, appeared before the committee as the sponsor of the bill. He explained that current law allows access to child custody investigation reports by parties who appear *pro se* but only to the attorneys of parties represented by counsel. Some judges order that the report not be discussed with the

attorneys client. This bill would allow those report to be given to either party upon a motion and if the judge finds that it would not be harmful to the child. (Attachment 3)

Joe Ledbetter, & Greg Debacker, both of Topeka, appeared before the committee in opposition of the bill. They believe that courts should not be given discretion regarding the disclosure of the reports. (Attachment 4)

Orville Johnson, Topeka, appeared before the committee as an opponent of the bill. He believes that not allowing a parent to see the report is against the parents constitutional right. (Attachment 5)

Hearings on **SB 125** were closed.

Hearings on **SB 150 - legal custody and residency arrangements in divorce and separate maintenance**, were closed.

Ardith Smith-Woertz, Family Law Advisory Committee, Judicial Council, appeared before the committee as a proponent of the bill. She explained that the bill would make technical changes to the law by codifying the types of residential arrangements that exist today, but are not listed. The bill would also change "visitation" to "parenting time". (Attachment 6)

Jim Johnston, Wichita, appeared before the committee in support of the bill. He suggested several amendments; enforcement of parenting time, having the courts consider that both parents make contributions when determining child support, and requiring a parenting plan be submitted at the same time as temporary orders are filed. (Attachment 7)

Mark Shephard, Valley Center, appeared before the committee in support of Mr. Johnston's proposed amendments. (Attachment 8)

Tom O'Shea, Olathe, appeared before the committee as a proponent of the bill. He also supported the bill with Mr. Johnston's suggested amendments. (Attachment 9)

Tony Rieschick, Topeka, appeared before the committee in support of enacting move away provisions. So the parent with custody could not move the child out of town unless it was in the best interest of the child. (Attachment 10)

Joe Ledbetter, Topeka, & Greg Debacker, National Congress for Fathers & Children, both appeared in opposition of the proposed bill. They would prefer **HB 2002** which adequately addresses their concerns. (Attachments 11 & 12)

Hearings on **SB 150** were closed.

Hearings on **SB 119 - post-termination dispositional alternatives following voluntary relinquishment of parental rights,** were closed.

Jean Shepherd, Douglas County District Court Judge, explained that the bill would establish adoption procedures as a part of the Code for Care of Children to deal with situations when a parent voluntary or conditionally relinquishes their parental rights but wants to remain in contact with their child. (Attachment 13)

Dan Mitchell, Judge, 3rd Judicial District, appeared before the committee as a proponent of the bill. For the courts to have this as a dispositional opportunity would be a good tool, and it would not be mandatory but optional.

Representative Phyllis Gilmore appeared before the committee with a list of potential concerns. (Attachment 14)

Jill Bremyer-Archer, American Academy of Adoption Attorneys, appeared before the committee as an opponent to the bill. She stated that Kansas has adequate laws that provide for permanency of adoptions and allows adoptive parents the flexibility to have their adoptions as open as they feel is in the best interest of their child. (Attachment 15)

Joel Rutledge, Adoption with Wisdom & Honesty, appeared before the committee in opposition of the bill. He was concerned that the courts would have continuing jurisdiction over the child and that would not be

appropriate. Children need permanent homes without the threat of intrusion by outside interests. (Attachment 16)

Dan Brooks, Kansas Adoption Network & Dick Peckham, Andover, appeared in opposition to the bill. The believe that it would cause unnecessary costs to SRS in on-going supervision and for the courts. (Attachments 17 & 18)

Hearings on **SB 119** were closed.

The committee meeting adjourned at 6:45 p.m. The next meeting is scheduled for March 10, 1999.

March 9, 1999

House Judiciary Committee
Testimony in Support of SB 91

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to appear in support of 1999 SB 91. Under current law, district magistrate judges may grant any orders authorized by the Protection from Abuse Act "in the absence, disability, or disqualification of a district judge." Senate Bill 91 would allow district magistrate judges to issue protection from abuse orders without the qualifying language that a district judge be absent, disabled, or disqualified.

The bill was introduced at the recommendation of a district judge, and is supported by both the Kansas District Judges Association Executive Board and the Kansas District Magistrate Judges Association. Members of both associations are comfortable with having district magistrate judges issue protection from abuse orders, and both think that this would prevent any delay that could result in some instances.

Thank you again, and I would be glad to try to answer any questions that you might have.

House Judiciary
3-9-99
Attachment 1

DISTRICT COURT OF KANSAS
TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

CHAMBERS OF:
LARRY McCLAIN
DISTRICT JUDGE
COURT NO. 10

SANDRA KING
ADMINISTRATIVE ASSISTANT
(913) 764-8484 EXT. 5463
FAX (913) 791-8954

March 9, 1999

Representative Mike O'Neal
State Capitol Building
Topeka, Kansas

Re: District Magistrate Jurisdiction

Dear Representative O'Neal:

I understand you are considering S.B. 91 dealing with the jurisdiction of District Magistrate Judges to handle Protection From Abuse Cases (PFAs). The Executive Board of the Kansas District Judges Association has considered this issue and supports expanding magistrate jurisdiction over PFAs. I will also share with you that in Johnson County we presently have a full time permanent grant-funded judge handling Domestic Violence Cases. The law, as it presently exists, limits our ability to use this position effectively and efficiently.

For these reasons I would ask that your Sub-Committee, as well as the full Senate Judiciary Committee, support S.B. 91 to expand the jurisdiction of magistrates to enable them to handle PFAs.

If I can be of further assistance on this matter, please feel free to contact me. I can certainly come to Topeka if additional information is needed. Thanks for your support.

Respectfully,

Larry McClain
President - KDJA

LMc/s

1-2

LARRY D. MONTANDON
DISTRICT MAGISTRATE JUDGE

NORMA J. FINLEY
CLERK OF DISTRICT COURT
Debra J. David
Deputy Clerk

WALLACE COUNTY DISTRICT COURT
P.O. BOX 8
SHARON SPRINGS, KANSAS 67758
Phone (913) 852-4289
FAX (913) 852-4271
Judge (913) 852-4989

Representative Michael O'Neal
House Judiciary Committee

Honorable Representative O'Neal:

As chairman of the legislative committee for the District Magistrate Judges Association, I want the House Judiciary Committee to know that our legislative committee and our association supports Senate Bill 91 relating to the jurisdiction of District Magistrate Judges pursuant to Protection Form Abuse Act.

Under currant law, K.S.A. 20-302b, the District Magistrate Judge may in the absence of a District Judge grant any order authorized by the Protection From Abuse Act.

In multicounty judicial districts it is not common for a District Judge to be in a particular county on a particular day that a Protection From Abuse is filed. It is common for the Magistrate Judge to be in the county and handle the case immediately upon filing. The immediate availability of the Magistrate Judge speeds the process of protection and is much more convenient to the filer and law enforcement as well as avoiding delays in future hearings.

If you have any questions regarding this extended jurisdiction to the District Magistrate Judges or if you wish testimony please do not hesitate to contact me.

Thank you.

Larry D. Montandon

LARRY D. MONTANDON
Legislative Committee Chairman
District Magistrate Judges Association

DISTRICT COURT
THIRTEENTH JUDICIAL DISTRICT
STATE OF KANSAS

MARTINA M. HUBBELL
DISTRICT MAGISTRATE JUDGE
(316) 374-2370

ELK COUNTY COURTHOUSE
HOWARD, KS 67349

INREGARD TO KSA 20-302b

The issue of Magistrate Judges hearing Protection From Abuse cases was discussed at the 1998 June business meeting of the Kansas District Magistrate Judges Association. Under currant law KSA 20-302b a Magistrate Judge may in the absence of a District Judge (4) grant any order authorized by the Protection From Abuse Act. The KDMJ Association voted to support a bill extending the Magistrate Judges jurisdiction to hear Protection From Abuse cases.

Judge Martina M Hubbell - President
Kansas District Magistrate Association

March 9, 1999

TESTIMONY OF KANSAS JUDICIAL COUNCIL
IN SUPPORT OF 1999 SENATE BILL NO. 96

Senate Bill No. 96 was drafted by the Family Law Judicial Advisory Committee. The Bill was drafted to give the Courts a right to deny the motion when motions for change of custody are filed without sufficient reasons being given for the same in the motion. At times motions are filed which simply state that a change of residential placement or change of custody is requested. The Court and the other party do not know the basis for the motion without going to a hearing.

A motion to change child custody or residential placement is a very stressful event. It is costly both financially and emotionally. Senate Bill No. 96 is in line with current statutes regarding divorce and paternity. It would require more specificity in the pleading of the motion. It would also require the party filing the motion to swear to the contents of the motion by signing a verification or affidavit to accompany the motion. This would make the moving party more accountable for the allegations of the motion.

The Court would then, upon review of the motion, decide if an obvious case has been established in the motion to allow the same to proceed through the legal process. The standard for changes of child custody or residential placement is different depending on how the existing order was made. If the parties reached settlement regarding the residential custody or placement of the children, the standard for prima facie case would be the "best interest of the child" test. If the Court made a ruling after a trial on the issue of residential custody or placement, the moving party must allege a material change of circumstance has arisen since the order was entered. To establish a prima facie case in either situation, the moving party would need to allege sufficient facts to allow a change of custody.

The Court would either deny the motion at the outset without further hearing or allow the same to proceed. The Court, if the motion was not denied at the outset, would still have discretion to send the parties to whatever services the Court deems appropriate in the circumstances. The Court could refer the parties to mediation or conciliation. The Court could order a home study or that a custody evaluation be performed on both parties. If the case went to trial, the Court would still need to look at the best interest of the child when determining child custody or residential placement.

The Court when asked to issue an ex parte order in an emergency would require that the party requesting the emergency change to testify to the same. The Court should also contact the nonmoving party's attorney to be present before taking up the matter. The nonmoving party would have the opportunity for a review hearing after the motion and order along with notice of the review hearing was served personally upon the nonmoving party.

The main thrust of the Senate Bill No. 96 is to make moving party's and their attorneys more accountable in the change of custody or residential placement process. This will save families great emotional hardship and financial expense. It is designed to do away with some of the abuse of the system, which is now taking place. It also gives the Courts greater discretion in dealing with these motions.

Thank you for your attention.

Ardith R. Smith-Woertz, Attorney
Member of the Family Law Advisory Committee
of the Kansas Judicial Council

House Judiciary
3-9-99
Attachment 2

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

Legislative Testimony

TO: Members, House Judiciary Committee

FROM: Ron Smith

SUBJ: SB 125

DATE March 9, 1999

The bill discusses SRS Home Studies for placement of children. It tries to make a change to equalize party access to SRS home studies in child custody matters. Current law allows counsel for the parties to have access to such home studies, and if the other party appears *pro se*, without a lawyer, then that party has the opportunity to have access to the study. However, the other party with a lawyer may not have access to the report if the judge orders the lawyer to review the study but not discuss it with the client.

Current law puts lawyers and judges in awkward situations. Lawyers have a duty of candor with the clients. But judges sometimes do not want to have lawyers reveal the contents of a home study to the party because of concerns of retaliation for things said. Over the years we have recognized that sometimes parties appear *pro se* representing themselves. We have allowed represented parties access to these reports. For represented parties, however, lawyers being candid with their clients have to tell them that they cannot be candid with their clients because the judge has allowed the attorney access to the report but not the person paying the attorney. When the represented parties soon figure out that if the unrepresented party gets to see the home study but the represented party does not, they fire their attorney for the brief period of time necessary to access the information, then rehire the attorney.

The bill simply tries to give the judges the discretion to decide who gets access to the information, and under what circumstances. It is not intended to exclude unrepresented persons from seeing the home study. We change the language so that upon motion of either party, either party may seek access to the report regardless whether they are represented by counsel. The judge knows the litigants well enough to know the limits that ought to be set on access -- if any limits are needed at all. The court uses its discretion.

As for concern about the inability of a party contesting the conclusions in the report to cross examine the person who wrote the report, the law already provides for cross examination of the writer of the report. Thank you.

Senate Bill no. 125

Opposed to Current Proposed Change

(c) *Use of report and investigator's testimony.* The court shall make the investigator's report available prior to the hearing to counsel ~~or to any party not represented by counsel~~. *Upon motion of either party, the report may be made available to such party unless the court finds that such distribution would be harmful to either party, the child or other witnesses.*

Arguments for the bill are that a pro-se party has access to investigators reports, but a person represented by counsel does not.

Amend the bill to allow both parties access

(c) *Use of report and investigator's testimony.* The court shall make the investigator's report available prior to the hearing to counsel *and their client,* or to any party not represented by counsel.

Greg DeBacker
2907 NW Topeka Blvd
Topeka, KS 66617-1111
286-3029 286-0809
work 232-2916 e-mail DeBackerG@aol.com

Children Need Both Parents

National Congress for Fathers and Children, Topeka Chapter
PO Box 750361 Topeka, KS 66675-036

House Judiciary
3-9-99
Attachment 4

sas House Judic y Committee Hearing Mar 1999

Testimony: Orville Johnson, Senate Bill 125
2401 SW Bradbury
Topeka, Ks 66611

No Where in the Constitution of The United States does It say that a judge of law ean order that a citizens Constitutional Right be violated or Due Process ignored for the comfort and/or protection of another citizen, whether that citizen is a child or not. There are many more safeguards, but the Constitution is the closest thing to being written in stone that we have. May God bless you with wisdow!

In re Cooper

No. 51,276 (1)

In the Interest of JULIE COOPER, A Juvenile Under Age Eighteen.

(631 P.2d 632) — CITE

SYLLABUS BY THE COURT

1. CONSTITUTIONAL LAW—*Parents' Rights of Child Custody and Control.* The parents' rights of custody and control of their children are liberty interests protected by the Fourteenth Amendment Due Process Clause.
2. SAME—*Due Process—Determination of Necessary Safeguards.* A determination of the safeguards necessary to afford constitutional due process must be evaluated in the light of the nature of the proceeding and of the interests affected.

In *Danforth v. State Department of Health and Welfare*, 303 A.2d 794, the court held neglect proceedings to be akin to criminal proceedings in the impact upon the parent, noting that due process requires greater procedural protection as the action more nearly approximates a criminal prosecution. The *Danforth* court was also concerned about the imbalance of expertise, and required the appointment of counsel for indigent parents when the child was being temporarily removed from the home.

Amendment 14.—RIGHTS AND IMMUNITIES OF CITIZENS (3)

Note: Proclamation declaring fourteenth amendment ratified dated July 28, 1868. (Kansas ratified previous to date of said proclamation.)

SECTION 1. Citizenship; privileges or immunities; due process clause. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment 6.—FURTHER GUARANTIES IN CRIMINAL CASES (4)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Confrontation. (5) In criminal proceedings, the accused has a right to be "confronted with the witnesses against him." This Sixth Amendment right consists of the act of setting a witness face to face with the accused, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused; and, does not mean merely that witnesses are to be made visible to the accused, but imports the constitutional privilege to cross-examine them. In fact, the essence of the right of confrontation is the right to cross-examination. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347. A disruptive defendant may, however, lose his right to be present in the courtroom, and, as a result, lose his right to confront witnesses. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353.

Eastman v. Eastman

(626 P.2d 1238) (6)

No. 52,245

CAROL EASTMAN, *Appellee*, v. CHARLES EASTMAN, *Appellant*.

SYLLABUS BY THE COURT

1. PARENT AND CHILD—*Custody—Home Study Investigative Report—Availability of Results of Study to Parties.* A home study investigative report ordered by a trial court in a child custody dispute, pursuant to K.S.A. 1980 Supp. 60-1607(*a*)(5), is relevant evidence and parties to the action must be given access to the report in a discovery proceeding.
2. SAME—*Custody—Home Study Investigative Report—Discovery Proceedings—Error to Refuse Access of Results to Parties.* In a civil action, the record is examined and it is *held:* The trial court err arties access to the investigative report during a d

House Judiciary
3-9-99
Attachment 5

LETTERS

3-93

What happene due process?

Did you ever think that your liberty or liberty interests could be taken away without due process? Think again!

Well intentioned, I'm sure, lawmakers have set a dangerous precedent by enacting K.S.A. 60-1615 paragraph c. Let me explain what this law does. In a child visitation or custody battle, it allows the employees of at least two very controversial state bureaucracies, SRS and Court Services, to write reports containing unsworn-to, unverified, inaccurate, incomplete and out-of-context statements. These reports are apt to be filled with outright lies, as they are based almost solely on "he said" "she said" interviews, after telling the interviewees, "You can tell me anything you want, because only the court and I will know what you said."

Now comes the more frightening part! The power-grabbing court systems, in some districts, do not even allow the attorneys representing the parties to have a copy of this report or even discuss what "they saw in it at a glance" with their clients. I ask you, how can an attorney represent his clients if he cannot even discuss with them what ridiculous allegations have been made against him or her?

The minutes of the Kansas House Judiciary Committee hearing on March 18, 1993, will show that I testified before it about this rape of justice that involves a Supreme Court-defined "liberty interest" protected by full measures of "due process," which includes "right to confrontation" that has been ruled to include "right to cross examine" along with face-to-face confrontation.

At the hearing, Chairman Michael O'Neal could not believe that there was anything keeping the parties from getting copies of these reports, routinely. But there are three things: Judicial Department rules, K.S.A. 60-1615 paragraph c, and judges' orders.

Committee me[illegible]r and attorney David Adkins of Leawood ev[illegible]ported my contentions by stating that as [illegible]attorney he has taken the position that if he can't share the information with his client, he doesn't want to see the information. He stated that in Johnson County the reports are shared with the attorneys with the understanding they are not to be shared with the clients.

O'Neal replied that if reports are going out without judicial oversight, and the stamp is being put on them that it is confidential and cannot be disclosed by the attorney, then there is a problem. He requested that the Office of Judicial Administration (Kay Farley of that office was present) check into this and report back. I had confronted OJA earlier, and they are not going to voluntarily give up one ounce of power. We need a law! We need legislated laws, not adjudicated laws!

> Incompetent bureaucrats can ruin your life and leave you with no recourse. Do something now

Having the Office of Judicial Administration look into the problem is very much like having the fox watch the hen house.

The Office of Judicial Administration is a large part of the problem. They print a court service officers' manual which states that the reports are confidential. (And remember, the CSO interviewers state this unequivocally before the interviews begin.)

Don't wait until you, your children or your grandchildren are in such a devastating situation and at the mercy of some incompetent or unscrupulous state employee who believes that the state should have absolute power over you. Find out what you can do to rectify this atrocity, today. — ORVILLE E. JOHNSON, Topeka.

THE DAY THIS LETTER CAME OUT IN THE TOPEKA CAPITAL JOURNAL I WAS ON THE PHONE FROM 8:30 IN THE MORNING UNTIL AFTER 9:30 AT NIGHT WITH PEOPLE WHO HAD SUFFERED FROM SUCH NIGHTMARES THAT SRS & COURT SERVICES CAN CAUSE.

SEE HB 2225—

ADDED TO WRITTEN TESTIMONY OF 2-1296

5-2

House Jud Comm
3-18-93
3:30pm

3-15

...es of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 18, 1993.

Johnson stated that in his case in 1988 his report was stamped to be used only by the courts and the attorney's and a copy should not be given to the party.

The Chairman stated that there had to be a court order making this unavailable to parties involved in the case.

Johnson stated that there wasn't one.

Representative Garner stated that as an attorney it is his responsibility to inform his clients of any information that he might have that deals with the case.

Chairman O'Neal stated that there is no prohibition against parties having copies of these reports. There are only safe guards which must be brought to the courts attention. He ...tioned if Johnson is suggesting that the courts are telling counsel that they may look at the ...s but may not divulge the information to their client.

...nson stated that he is suggesting that.

Representative Adkins stated that as an attorney he has taken the position that if he can't share the information with his client then he doesn't want to see the information. He stated that in Johnson County the reports are shared with the attorneys with the understanding that they are not to be shared with the clients.

Chairman O'Neal commented to the Office of Judicial Administration that the decision to make the reports confidential is on a case by case basis, however, there is an accusation that the reports are being routinely made confidential. The statute requires that there be some showing to the court that the case, mental health of the child, justify the records being closed. If the case is that reports are going out without judicial oversight, and the stamp is being put on them that it is confidential and cannot be disclosed by the attorneys, then there is a problem. He requested that the Office of Judicial Administration check into this and report back.

Hearings on SB 338 & SB 339 were closed.

Hearings on SB 365 were opened regarding amendments to the revised uniform reciprocal enforcement of support act.

Kay Farley, Office of Judicial Administration, appeared before the committee as a proponent of the bill. She stated that this bill was requested on behalf of court trustees. It has three major purposes. The first would allow for district court trustees to retain jurisdiction for enforcing a ...rt order under the act as long as the obligor is subject to a support order in the respective ...'s judicial district. Second, it would avoid multiplicity of actions and retention of all ...s of support payments in one district court. Finally it would clarify the role of the district court and clarify that there is not an attorney-client relationship between the district court trustee or other public prosecutor and the obligee. (Attachment #6)

Ann McDonald, Court Trustee Wyandotte County, appeared before the committee in support of the bill. She stated that there are two main changes addressed in the bill. The first expands jurisdiction and the second seeks to remove the appearance of a conflict of interest on the part of the court trustee, SRS or other prosecuting attorney. She gave examples in her handout. (Attachment #7)

Representative Carmody questioned that since this is a uniform act how many other states have gone with this provision. Will other states refuse to take reciprocal cases because Kansas retained jurisdiction.

...ald stated that there are already about 50 versions of the uniform act, and so far that ...een a major problem.

March 9, 1999

TESTIMONY OF KANSAS JUDICIAL COUNCIL
IN SUPPORT OF 1999 SENATE BILL 150

My name is Ardith Smith-Woertz. I am an attorney in Topeka. My main area of practice is in family law, I serve as a member of the Judicial Council Family Law Advisory Committee, and I am here to support 1999 Senate Bill 150 on behalf of the Kansas Judicial Council.

As introduced in the Senate Judiciary Committee the bill consisted of ten sections including a repealer and an effective date. Sections 1 through 8 appear in the version of the bill you are considering as Sections 22 through 29. These sections are unchanged from the way they were proposed by the Judicial Council with the exception of the striking of the word "visitation" and the insertion in lieu thereof the phrase "parenting time" in several of the sections. We support this change. Other than that, the bill was passed by the Senate as recommended by the Judicial Council.

The Judicial Council Family Law Advisory Committee, which includes judges, lawyers, a law professor, a medical doctor, a child psychiatrist and a current and former legislator, became aware that the terminology currently used in the divorce code for legal and physical custodial arrangements is very confusing to the public.

Since 1982 the terminology used in the Kansas Divorce Code to designate the preferred legal parental relationship is "joint custody". Unfortunately the statue also refers to "shared custody". It is the experience of the Family Law Advisory Committee that the public is confused about the significant distinctions that exist between joint custody and shared custody. Senate Bill 150 is the work product of the Family Law Advisory Committee and has been approved by the Kansas Judicial Council. It is intended to clarify the existing terminology without significantly altering the current underlying divorce law. I would note, however, that I am aware that the Legislature is considering changes to Article 16 of Chapter 60, and if those changes are made and this bill is favorably considered they should be reconciled.

Senate Bill 150 creates two custodial arrangements, legal and physical. The legal custodial standards are "joint" where both parents retain their parental roles with the child and have a say in major life decisions affecting the child, and "sole" where the court has determined that is in the best interest of the child that one parent makes major decisions about the child. Under current law, joint legal custody remains the preferred arrangement. To minimize confusion caused by existing terminology, the bill amends into the law the term "residency" in connection with the physical placement of the child. There is no order of preference in the bill relating to residency as there is with legal custody.

The optional physical custodial arrangements contained in Senate Bill 150 are:

a. "Primary residency", in which one parent is the primary physical custodian and the other parent has visitation or parenting time.

b. "Shared residency", by which the parties share the physical custody of the child on an equal or nearly equal basis. They must also share direct expenses on an equal or nearly equal basis. This conforms with the definition of shared custody found in the Kansas Child Support Guidelines.

c. "Divided residency", which is the situation in which the residency of two or more children is divided between the parents so that each parent is the primary parent to one or more of the children. The arrangement usually occurs when there is a significant age difference between the children or when the person who has been the primary custodian is having significant problems with one child.

d. "Non-parental custody", is the situation in which a child lives full time with a grandparent or other non-parent. This situation is common in very young parents or where both parents have significant drug or alcohol problems.

All four of these arrangements exist in the current divorce code, K.S.A. 60-1610, but are clarified by the bill.

Adoption of this bill will not require a complete reinterpretation of law by the courts. Most of the changes in the bill simply involve substitution of the term "residency" for the term "custody" where that is appropriate. While seemingly not major, the changes accomplished by this bill will clarify the law and avoid confusion by the citizens of the state.

Thank you for your attention.

ARDITH SMITH-WOERTZ, Attorney
Member of the Family Law Advisory Committee
of the Kansas Judicial Council

Testimony before the House Judiciary Committee on SB 150
March 9, 1999

Jim Johnston
7010 Woodbury Street
Wichita, KS 67226

Briefly, I'm for the concept behind this bill. The intention is to clarify that in custody decisions, the court in KS must first decide the type of custody to apply and then the type of residency. I believe any clarity added for the consumer of these laws is a plus. I also believe changing the word "visitation" to "parenting time" is a major step in the right direction of continuing dual-parent involvement with children of divorce. The bill as it is written has some problems and deficiencies however, that I wish to address with the attached suggested amendments. I understand that you as legislators can get so very frustrated with citizens and interest groups asking you and/or the courts to solve personal accountability problems. Through the following amendments, similar to what you heard in HB 2002, the laws would be putting more of the decision-making back in the parent's hands rather than a judges, and would in fact encourage, support, and yes, provide enforcement of dual-parent decision making. I offer up my support for the bill with the following amendments:

Attachment 1: Visitation Enforcement. When considering HB 2002, this Committee was concerned that the mediation language should remain in existing law, and my amendment keeps it in. Members of the Committee also said that these types of changes weren't necessary, as the judge already can order these things through their "contempt powers". I understand that to be true. But I ask this Committee to please read the "purpose" section of this statute that says: "*The purpose of this section is to enhance the enforcement of child visitation granted by court order by establishing an expedited procedure which is simplified enough to provide justice without necessitating the assistance of legal counsel*". Pro se litigants are not likely to understand what "contempt powers" are, and the changes in this statute allows them to specifically be able to seek justice on behalf of their child, expecting first some form of a problem "fix", and then to expect the court to take some action that will truly discourage future bad behavior. The judges wide latitude to rule remains, but specific actions, if a violation has indeed occurred, will now be expected. Now I ask you to please read page 6, beginning on line 23. This states that if the court finds a true violation, the court must order some remediation of the problem based on the options already in the statute. Secondly, on Page 7, line 6, I have placed language to specifically discourage future violations by adding consideration of civil penalties for the court to contemplate, as well as a requirement to consider a request for modification of custody should repeated violations occur. Illinois for instance, actually makes it a felony for repeated violations following a series of fines and a misdemeanor.

Attachment 2: This amendment would simply require the Court to specifically consider the contributions made by both parents when determining appropriate child support to be ordered.

Attachment 3: This amendment would require the parties to develop a "parenting plan" at the temporary orders point upon filing of initial divorce papers. This would minimize the automatic advantage of the "first to file", and would empower both parents to face the issues that will be new to them in "co-parenting" outside of the intact home. The court could still order a specific plan in the event the process did not work or one or both refuses to cooperate.

Attachment 4: This amendment has two parts to it. The first is an improvement over the existing bill dealing with the custody/residency clarification. As the bill currently reads, one could have a "sole legal custody" determination by the court, and a "shared residency" order as well, which doesn't seem to make sense, and is inconsistent with existing law. This amendment would break out the residency definitions in the existing bill, and place them as options immediately following the definition of "joint legal" custody. Immediately following the definition of "sole legal" custody, only a "primary residency" determination would be made in these cases. Due to the uniqueness of non-parental custody, it has been moved to be dealt with separately in the bill. The second part of this attachment would formalize the requirement of having a "parenting plan" developed prior to finalizing residency. It encourages mediation, but ultimately the court may order one directly in the event the process did not work or one or both refuses to cooperate. This would be consistent with having this requirement at the temporary orders point, and as final orders are determined *de novo*, should be done here as well. If parents and their attorneys know that they are to have such a plan before the court, they will have a much better opportunity of facing their realities and apply them in a plan appropriate to their circumstances, and have ownership of the final product, rather than having something forced upon them.

With these amendments, I urge passage of this bill.

ATTACHMENT 1

As Amended by Senate Committee

SB 150

Pages 5-7

Sec. 7. K.S.A. 23-701 is hereby amended to read as follows: 23-701. (a) The purpose of this section is to enhance the enforcement of child ~~visitation rights~~ *parenting time* ***granted by court order by establishing an expedited procedure which is simplified enough to provide justice without necessitating the assistance of legal counsel. (b) If a parent has been granted visitation rights pursuant to K.S.A. 38-1121 or 60-1616, and amendments thereto, and such rights are denied or interfered with by the other parent, the parent having*** ~~visitation rights~~ *parenting time* ***may file with the clerk of the district court a motion for enforcement of such rights. Such motion shall be filed on a form provided by the clerk of the court. Upon the filing of the motion, the administrative judge of the district court shall assign a judge of the district court or the court trustee as a hearing officer to hear the motion. The hearing officer*** ~~***shall***~~ may ***immediately:***

(1) Issue *ex parte* ***an order for mediation in accordance with K.S.A. 23-601*** *et seq.*, ***and amendments thereto;*** ~~***or***~~ but shall

(2) set a time and place for a hearing on the motion, which shall be not more than 21 days after the filing of the motion. (c) If mediation ordered pursuant to subsection (b) is completed, the mediator shall submit a summary of the parties' understanding to the hearing officer within five days after it is signed by the parties. Upon receipt of the summary, the hearing officer shall enter an order in accordance with the parties' agreement or set a time and place for a hearing on the matter, which shall be not more than 10 days after the summary is received by the hearing officer. (d) If mediation ordered pursuant to subsection (b) is terminated pursuant to K.S.A. 23-604 and amendments thereto, the mediator shall report the termination to the hearing officer within five days after the termination. Upon receipt of the report, if the hearing officer is a district judge, such judge shall set the matter for hearing. If the hearing officer is a district magistrate judge or a court trustee, the administrative judge shall assign the matter to a district judge who shall set the matter for hearing. Any such hearing shall be not more than 10 days after the mediator's report of termination is received by the hearing officer. (e) Notice of the hearing date set by the hearing officer shall be given to all interested parties by certified mail, return receipt requested, or as the court may order. (f) If, upon a hearing pursuant to subsection (b), (c) or (d), the hearing officer or judge finds that ~~visitation rights~~ *parenting time of* ***one parent*** ~~have~~ *has* ***been unreasonably denied or interfered with by the other parent, the hearing officer or judge*** ~~***may***~~ shall ***enter an order***

providing for one or more of the following:
(1) A specific ~~visitation~~ *parenting time* ***schedule;***
(2) compensating ~~visitation~~ *parenting* ***time for the*** ~~visitation~~ *par-enting time* ***denied or interfered with, which time shall be of the same type (e.g., holiday, weekday, weekend, summer) as that denied or interfered with and shall be at the convenience of the parent whose*** ~~visitation~~ *parenting time* ***was denied or interfered with;***
(3) the posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting ~~visitation rights~~ *parenting time*;
(4) assessment of reasonable attorney fees, mediation costs and costs of the proceedings to enforce ~~visitation rights~~ *parenting time* ***against the parent who unreasonably denied or interfered with the other parent's*** ~~visitation rights~~ *parenting time*;
(5) attendance of one or both parents at counseling or educa-tional sessions which focus on the impact of ~~visitation~~ *parenting time* ***disputes on children;***

(6) supervised ~~visitation~~ *parenting time; or*
(7) any other remedy which the hearing officer or judge consid-ers appropriate, except that, if a hearing officer is a district mag-istrate judge or court trustee, the hearing officer shall not enter any order which grants, or modifies a previous order granting, child support, child custody or maintenance.

(g) In addition to any other legal or equitable remedies, the court may assess progressive civil penalties against the party who denied or interfered with a parent's parenting time.

(h) The court shall also consider a request for a modification of custody as a result of continued denial or interference with a parent's parenting time.

~~(g)~~ ***(i) Decisions of district magistrate judges or court trustees ap-pointed pursuant to this section shall be subject to review by a district judge on the motion of any party filed within 10 days after the order was entered.***

~~(h)~~ ***(j) In no case shall final disposition of a motion filed pursuant to this section take place more than 45 days after the filing of such motion.***

ATTACHMENT 2

As Amended by Senate Committee

SB 150

Page 11

(f) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

(1) The needs of the child.

(2) The standards of living and circumstances of the parents.

(3) The relative financial means of the parents.

(4) The earning ability of the parents.

(5) The need and capacity of the child for education.

(6) The age of the child.

(7) The financial resources and the earning ability of the child.

(8) The responsibility of the parents for the support of others.

(9) The value of services contributed by the ~~custodial~~ both parents.

(g) The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of support issued under this section.

(h) An order granting ~~visitation rights~~ *parenting time* ***pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto.***

ATTACHMENT 3

As Amended by Senate Committee

SB 150

Pages 26-27

~~Section 1.~~ ***Sec. 22.*** K.S.A. 1998 Supp. 60-1607 is hereby amended to read as follows: 60-1607. (a) *Permissible orders.* After a petition for divorce, annulment or separate maintenance has been filed, and during the pendency of the action prior to final judgment the judge assigned to hear the action may, without requiring bond, make and enforce by attachment, orders which:

(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the *legal* custody *and residency* of the minor children

SB 150--Am.

27

and the support, if necessary, of either party and of the minor children during the pendency of the action; **Within 15 days of an order of custody, both parties, acting individually or in concert, shall submit a temporary parenting plan to the court. If they cannot agree on an appropriate temporary 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 parenting plan appropriate to the parties' circumstances, and consistent with the best interest of the children;**

(4) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case; or

(5) require an investigation by court service officers into any issue arising in the action.

7-60

ATTACHMENT 4

As Amended by Senate Committee

SB 150

Pages 30-31

(4) *Types of legal* custodial arrangements. Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall ~~include, but not be limited to,~~ *provide* one of the following *legal custody arrangements*, in the order of preference:

(A) *Joint legal* custody. The court may ~~place~~ *order* the *joint legal* custody of a child with both parties ~~on a shared or joint custody basis~~. In that event, the parties shall have equal rights to make decisions in the best interests of the child When an order for joint legal custody is rendered, the court shall then further determine the residency of the child from the following options:

(i.) Shared residency. The court may order a shared residency arrangement in which the parties share the residency of a child on an equal or nearly equal amount of time and the parties share the direct expenses of the child on an equal or nearly equal basis.

(ii.) Primary residency. The court may order primary residency of a child with one party and with the other party having **parenting time**.

(iii.) Divided residency. In an exceptional case, the court may order a residential arrangement in which one or more children reside with each of the parties and have **parenting time** with the other.

~~. under their custody. When a child is placed in the joint custody of the child's parents, the court may further determine that the residency of the child shall be divided either in an equal manner with regard to time of residency or on the basis of a primary residency arrangement for the child. The court, in its discretion, may require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation plan to~~

~~the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.~~

(B) *Sole legal* custody. The court may ~~place~~ *order* the *sole legal* custody of a child with one ~~parent, and the other parent shall be the noncustodial parent. The custodial parent shall have the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent.~~ *of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include in the record specific findings of fact upon which the order for sole legal custody is based.* When an order for sole legal custody is rendered, the court shall further order primary residency of a child with one party and with the other party having **parenting time**.

~~*(5) Types of residential arrangements. After making a determination of the legal custodial arrangements, the court shall determine the resi-*~~

7-7

~~dency of the child from the following options which arrangement the court~~
~~must find to be in the best interests of the child.~~

(5) Parenting Plans. *The court,* ~~in its discretion~~,
~~may~~shall *require the parties to submit a plan for implementation of a residency order or the parties, acting individually or in concert, may submit a residency implementation plan to the court prior to issuance of a residency decree* If the parties do not agree on a parenting plan, the court, or upon request of one of the parties, may order mediation prior to establishing final orders.~~:~~
~~*(A) Primary residency. The court may order primary residency of a child with one party and with the other party having visitation parenting time.*~~
~~*(B) Shared residency. The court may order a shared residency arrangement in which the parties share the residency of a child on an equal or nearly equal amount of time and the parties share the direct expenses of the child on an equal or nearly equal basis.*~~
~~(C) *Divided* custody *residency.* In an exceptional case, the court may divide the custody of two or more children between the parties *order a residential arrangement in which one or more children reside with each of the parties and have visitation parenting time with the other.*~~
(6~~D~~) *Nonparental* ~~custody~~ *residency.* If during the proceedings the

Mark Shepherd
1815 W. 85th St. North
Vallley Center, Ks.
67147

Tuesday Mar. 9, 1999

SB 150

SB 150 as submitted clarifies the actions of the courts. It does well by defining the possible legal custody arrangements, which are determined first, and the residential arrangements, which are determined secondly. The change from "visitation" to "parenting time" is welcomed and appropriate. I applaud the Family Law Advisory Committee for their effort and support of SB 150.

I am a proponent of SB 150, but would ask the committee to consider additional amendments. This committee has heard previous testimony to support my view that our current family court system is dysfunctional. Our current system is filled with roadblocks and impediments that encourage and support parental deprivation of children. Working together to address the most relevant root causes, we can reduce the suffering.

I am aware of, and have reviewed the amendments offered by Mr. Jim Johnston of Wichita. I support all amendments except the K.S.A. 23-701 piece, and would encourage this committee to add the move away language from H.B. 2002.

I do not support Mr. Johnstons' visitation enforcement piece. 23-701 is clearly intended for non-custodial parents to use Pro-se in the event that they encounter visitation interference or denial. Clearly, someone before us thought a parent should not have to spend thousands of dollars to gain access to their own child. I believe this interference and denial, which usually goes without consequences, is a root cause of the unusually high rate of parents dropping out of a childs' life. We can no longer ignore the fact that non-custodial parents are giving up, because a custodial parent does not comply with valid court orders, nor does the court compel that custodial parent to comply. Mr. Johnstons' version of 23-701 allows mediation as an option for the court. I believe that when a valid order is violated, the court must take swift action. All parties have access to mediation at any time through K.S.A. 23-601. Enforcement of a visitation order should not require a loving, caring, nurturing parent to endure the additional costs and burden of mediation due to no wrongful action of their own. Many parents not aware of 23-701 or unable to represent themselves Pro-se are opting out of a childs' life due to costs, emotional stress, and the lack of action by our courts today. When visitation interference and denial are dealt with swiftly, and with consequences, this root cause of parental deprivation will subside.

I fully support the amendment adding changes to K.S.A. 38-1121. We must recognize that both parents have an obligation to support their children.

I also fully support Mr. Johnstons' amendment to add a parenting plan provision to K.S.A. 60-1607, and K.S.A. 60-1610. Our current system in which lawyers and judges

decide residency plans is need of improvement. I believe that two fit parents would be far better suited for this task, which can have profound effects on children, when dictated by courts. Let's work together to give parents a less adversarial system in which they can create the best residency plan for their unique situation. Insisting that parents submit parenting plans/ residency plans, and attend mediation in the event that they cannot agree, is the compassionate solution to the current problem.

The current system encourages a winner/ loser scenario. This is also a root cause of parental deprivation. A once, very involved parent reduced to a "visitor", and further treated as a second class citizen regarding visitation enforcement has effectively been sent the message that they are not important. We must avoid sending this message, which encourages withdrawal.

I would especially like for this committee to understand the current view prescribed by the Family Law Handbook. Know that this handbook is the manual for judges and family law practitioners across the state. This manual, strictly adhered to, is creating parental deprivation at a rate that we should all be ashamed of. Our dysfunctional system needs specific guidance from the legislature to subside the suffering of children of divorce. Please act to provide divorcing parents, and our family law system with the much needed, additional tools required to reduce the level of parental deprivation that is wreaking havoc on our children of divorce.

I would further ask that the committee add an amendment that would address the move away problem. HB 2002 has excellent language to deal with this problem. We must recognize that move away is another root cause of parental deprivation. Today our system generally puts the personal liberty and freedom of a custodial parent above the sanctity of child- non-custodial relationship. I realize that in some cases a parent must move, but for the vast majority of cases, we should expect parents to forego moving away, and encourage the involvement of both parents.

In closing, I would like to recognize the effort of this committee; I sincerely appreciate your concern and compassion. We must recognize the root causes of parental deprivation created by our dysfunctional family law system, and address them accordingly with positive solutions. I am very thankful to each and every one of you, and look forward to improvements in legislation due to your awareness and effort.

Tom O'Shea
1113 West Cedar
Olathe, Kansas 66061

I am in support of certain provisions being added to Senate Bill 150:

1. Upon filing for divorce, the court will order both parents to submit a joint shared parenting plan.
2. Make "joint shared custody" the first in order of preference of custodial arrangements.
3. Add language that requires the court to record specific findings of fact if primary residency is ordered rather than equal or near equal parenting time with the children.
4. Add language that will discourage one parent from moving with the child, if it damages the relationship the child has with the other parent.
5. Language granting the judge authority to assess civil penalties against a parent if he or she denies the other parent access to the children.
6. In determining child support, changing the wording of "services provided by the custodial parent" to "services provided by both parents".

Kansas is a joint legal custody preference state by statute. The provisions outlined above, encourage our children to maintain relationships with both of their parents, not just the parent having residency. As our laws are now written, divorce too often results in deciding whom, between mom and dad, is going to be the winner and whom is going to be the loser, with the children ultimately losing. This results in long, protracted custody battles that clog our courts and cost both parents money that could be better spent on the health and welfare of the children.

Currently, child support guidelines are developed as if the child has only one home. In reality, the child has two and our guidelines should be changed to reflect this. The non-resident parent must provide expenses such as food, clothing, entertainment, toys, and transportation between homes, and child support guidelines should include these items.

I ask for your support in amending SB150 to include these additions.

S.B. 150

Might be considered amended from Joint and Sole Legal Custody to 50/50 Custody. If one parent decided to move away, that parent would sacrifice part of their parenting time by their own choice. Neither parent should not be allowed to remove a child from their home or school unless it is in the best interest of the child or upon the request of the child, depending on the child's age or level of maturity. There are only two ways I can think of that this could be different. Physical abuse by a spouse or child abuse by either parent. It would also help eliminate a lot of hardship and unfair child support laws we have now.

Tony Rieschick
Topeka, KS

House Judiciary
3-9-99
Attachment 10

OPPOSITION TO SB 150 3-9-99

BY; Joseph Ledbetter/ father/ taxpayer

Dear Legislator,

Do Not be fooled that these law changes are not very important ;
This bill destroys joint custody as the people of Kansas know it. Please read and understand this Before you act. The BAR ASSOC. divorce lawyers want you to believe this Trojan Horse against equal treatment of fathers is nothing but a minor change in terms. That is a lie!

Think of the innocent people you will be denying justice too,in the future;even a friend or relative or a constituent by getting rid of this language. Don't fall for the Judicial Council arguements ; there is a hidden motive behind this bill,and it's not for the benefit of our Kansas citizens.This language to Destroy Joint Custody is wretched and malicious in it's purpose,to wipe out the small gains of divored fathers in Kansas over past twenty years.I fear for the kids of Kansas that suicide will sky rocket among fathers(taxpayers) and children of divorce, if joint custody language is removed from statute ,and we are forced to give up all our small gains of the past twenty years of abuse by divorce judges in Kansas.Please kill SB 150!

The divorce Judges of Kansas have proven by their own surveys that 63% of them are prejudice in their determination of custody- which by the way in case law and common law is clearly a liberty right!We Don't need to give them license for their putred form of prejudice.Judge Buchele of Topeka is also for this language change. According to him all fathers who love their kids enough to want to raise them are LOSERS!Make this bill he wants,a LOSER!

Sincerely,

Joseph Ledbetter, MPA
305 Country Club Drive
Topeka ,Kansas 66611
232-6946 ph.

House Judiciary
3-9-99
Attachment 11

Senate Bill 150

In Opposition

1. The 1998 Judicial Interim Committee worked diligently on drafting legislation, and crafted a very fine bill in HB2002.

2. SB150 will take us back to the 1960's and 70's. The legislation passed in the early 1980's was due in part to non-custodial parents wanting to be involved in their childrens lives. This bill makes a mockery of all the work that made Kansas a leader in allowing children to have two parents after divorce. HB2002 perfects this process.

The Legislative Post Audit of 1987 and the Supreme Court's Kansas Citizen Justice Initiative Report by the Docking Institute of Fort Hays State, in 1997,which was Co-Chaired by Former Governor Bennett and Jill Docking, both point to the needed legislation in HB2002 and the flawed thinking of SB150 which permeates the current Judiciary.

3. The Judicial Council on Family Law had every opportunity to interject in the Judicial Interim hearings. They chose instead to circumvent the process and this bill is a veiled attempt to sabotage HB2002. Until this type of legislation was proposed last year, the Judicial Council was not working on legislation pertaining to "Parenting Time."

4. The term Joint means something different to the lay person than attorneys. I have asked my Representative, Vaughn Flora, what he thought Joint meant, and his definition was the same as mine, and contrary to what judges and attorneys definition is. I have spoken with people who are now grandparents, who helped legislate joint custody in the late 70's and they thought the term joint would enable both parents to remain active in their childrens lives, until the judicial branch changed the meaning of the word joint, thus the need for HB2002.

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Children Need Both Parents

National Congress for Fathers and Children, Topeka Chapter
PO Box 750361 Topeka, KS 66675-0361

Senate Bill 119
Testimony of: Jean F. Shepherd, District Judge
March 9, 1999

Purpose of bill: to allow for a formalized means for older children and their biological parents to exchange information and, if agreed, to have personal contact after an adoption.

Limitations:

1. This bill applies only to children who have been adjudicated as children in need of care. (Sec. 1)

2. This procedure is totally voluntary. If the adoptive parents do not want this contact, they do not have to agree to it.

3. This procedure applies only to parents who relinquish their rights to an agency, not to those whose parental rights are involuntarily terminated.

Type of Contact: can range from an annual letter from the adoptive parents, with or without a picture, all the way to a specific visitation schedule.

Finality of the adoption: later disagreement does not result in setting aside the adoption once the court has accepted the relinquishment. This is not a conditional adoption. (Sec. 3)

Proposed change: Sec. 5

The court hearing the action as filed pursuant to the Kansas Code for Care of Children shall exercise jurisdiction to consider entering a decree of adoption and if a decree of adoption is entered, the court shall retain jurisdiction for purposes of hearing motions brought to (a) enforce the agreement, which may be brought by either the biological parent or the adoptive parents, or (b) modify the agreement, which may only be brought by the adoptive parents. (underlined portion is change in wording)

Retention of jurisdiction: does not provide for constant oversight. This provision addresses Uniform Child Custody Jurisdiction issues. (Sec. 7)

Technical Assistance Bulletin

Volume III No. 1, February 1999

Judge's Guidebook on Adoption and Other Permanent Homes for Children

PERMANENCY PLANNING FOR CHILDREN DEPARTMENT

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

13-3

A. Barriers to Termination of Parental Rights

- Failure to locate absent parents
- No (or late) change in plan to adoption after reunification is excluded as a goal
- No relinquishment counseling or lack of active pursuit of relinquishments early in the case
- Lengthy delay in transfer from ongoing worker to adoption worker
- Delays in delivery of services or lack of adequate case documentation to sustain TPR grounds
- Insufficient attorney and caseworker time and motivation to prepare petition and push the case to trial; insufficient clerical support
- Lack of a schedule or protocol for timely case preparation
- Delay in processing adoption subsidies, or denial of subsidies
- Lack of appropriate post adoption services accessible to adoptive home
- A feeling that a child is unadoptable
- Waiting to file TPR until adoptive family is identified and approved

B. Open Adoption

Open adoption is a term used to describe a variety of arrangements between birth parents and adoptive parents prior to and after the adoption. In an open adoption, the adoptive parents are the legal parents of the child, but the biological parent retains rights to communication or contact as outlined in an agreement. Violation of an agreement for openness in an adoption does not constitute grounds to set aside the adoption.

As recently as the 1980s, open adoption implied the exchange of non-identifying information with perhaps some direct contact before or at the time of placement. Today, the range of contact between birth parents and adoptive parents extends to post-adoption visitation and cooperative parenting arrangements. Even in its most limited context, open adoption is a significant departure from traditional "closed" adoptions, protected by

confidentiality laws. Since larger numbers of children now being adopted out of foster care are past infancy, and significant numbers of them have relational ties with birth parents, siblings, and extended family, some form of continuing contact is likely to occur. By means of court-sanctioned open adoption, the contact can be clarified to serve the best interests of the child and modified or even curtailed as needed in the future.

Fewer than a third of the states have adoption statutes that permit contact between birth parent and child after adoption.[1] In the other states, contact arrangements between birth parents and adoptive parents are strictly voluntary and not enforceable in court.

For children being adopted out of the child protection system, there may be situations in which continued contact with the birth parent after adoption is in the child's best interests, including when:[2]

- a child has a good relationship with a developmentally, emotionally or physically disabled parent who is not able to care for the child;
- an older child wishes to continue a relationship with birth parents and the child will benefit from ongoing communication or visits;

---

[1] For examples, see Burns Ind.Code Ann. Sec 31-3-1-13 (1994); Neb.Rev.Stat. sec 43-162-165 (1993); N.M.Stat.Ann. Ch32A sec. 5-35 (1978, Supp.1994); N.Y. Soc.Serv. Law sec 383-c; Or.Rev.Stat. sec 109-305 (1993); and Wash.Rev.Stat. sec 26.33.295. The Washington statute permits an agreement for communication or contact after the adoption is finalized. The agreement is made part of the adoption decree, and is enforceable or modifiable by the court. Failure to comply with the terms of the contact agreement does not serve as grounds to set aside an adoption decree, however. Some state courts have recognized open adoption arrangements without any specific statutory provision. See *In re Adoption of Minor*, 291 N.E.2d 729 (Mass. 1973). Maryland and Rhode Island also have provisions for openness in adoption.

[2] Baker, D., and Vick, C., *The Child Advocate's Legal Guide*, 1995. North American Council on Adoptable Children, St. Paul, MN.

- the adopting foster parents have a cooperative relationship with the birth parent that is likely to continue after the adoption; or
- a child has siblings still living with the birth parents.

Each case must be evaluated upon the individual facts and circumstances of the parties, and must be based on an evaluation of the best interests of the child.

For the court, even small degrees of openness in adoptions may facilitate obtaining voluntary relinquishments of parental rights. These in turn can reduce delays in achieving permanency and curtail the potential for appeals.

In order to be effective, open adoptions must be:

- legally approved by case law or statute;
- negotiated based upon full disclosure to all parties;
- agreed to by a child of sufficient age and maturity to specify a position on the matter or the guardian ad litem for the child if of insufficient age;
- clearly set out in writing and incorporated into the adoption decree;
- modifiable based upon changes in circumstances and the best interests of the child; and
- enforceable, but *not* grounds for setting aside the adoption.

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State of Kansas
House of Representatives

TOPEKA

COMMITTEE ASSIGNMENTS
CHAIRMAN: JOINT COMMITTEE ON CHILDREN & FAMILIES
MEMBER: BUSINESS COMMERCE & LABOR
HEALTH & HUMAN SERVICES
JUDICIARY

PHYLLIS GILMORE
Representative, Twenty-Seventh District

Judiciary Committee
March 9, 1999

Testimony on SB119

Mr Chairman & Committee Members:

It is my experience as a social worker in the adoption field that causes me to come forth on this issue:

While I can see some rare instances where this bill might be beneficial, I can see many more times of potential concern.

Following are some of my concerns:

1. Could the adoption be set aside if visitation does not continue?
2. What impact would occur on the recruitment of foster/adoptive families?
3. What impact would occur to already over-loaded court dockets?
4. Do we want the court forever involved in a family's life if it can be avoided?
5. How does this plan differ from "permanent guardianship?"
6. What if adoptive and/or birth families want to move?
   Who pays for transportation back to Kansas for a court hearing if there is a dispute?
7. Can either family be ordered not to move away from the other family?
8. If an adoptive family moves, can they be ordered to pay for a birth family to visit the child? If so, which birth family members?
9. Does this bill continue unsettledness and tension in the life of the child? Does this bill create a co-parenting situation which many people feel is not in the best interest of a child?

10. Does this create an opportunity for a child to work one parent against the other as happens in some divorce situations?

11. Does this allow an opportunity for a child to experience further rejection in his/her life?

12. What if the child does not want to visit the biological family and miss sporting events, or slumber parties, or just a regularly scheduled church activity? Would these be considered "exceptional circumstances?"

It seems to me that if a parent is not qualified to parent, the State of Kansas should seek severance of parental rights. If they are qualified, the child should be with the biological parent. For those few rare exceptions when these rules do not work we have, in my opinion, the good option of permanent guardianship.

Thank you for allowing me to speak before the committee. I'll be happy to stand for questions.

Phyllis Gilmore

TESTIMONY REGARDING S. B. 119

March 9, 1999

My name is Jill Bremyer-Archer and I am an attorney with Bremyer & Wise in McPherson, Kansas. Our law firm has been involved with adoptions for over 40 years. My father, John K. Bremyer, handled adoptions when I was a little girl. The birth mothers used to live with us during their pregnancies and everything was very secretive. My brother, Jay Bremyer, also practiced law for 14 years. I have always been proud to say that he was one of the first attorneys in Central Kansas to "open" things up in the adoption area, sharing information between birth parents and adoptive parents, having meetings, etc. In fact, he took a sabbatical approximately 8 years ago to work on a book he was writing called "The Human Lawyer" which was about one of our adoptions involving a pregnant young woman who was in the custody of SRS. That was the end of our sabbatical program however, because he never returned to the practice of law!

Before I went to law school, I obtained my masters degree from Kansas State University in the school of home economics in Family and Child Development. Three years after finishing my masters, I returned to law school. I feel very privileged to be able to be "putting families together", i.e. handling adoptions, instead of the more traditional type family law practice of divorce and child custody issues. I am also the mother of 5 children. My husband is a clinical social worker specializing in family therapy.

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Today, I am speaking on behalf of the American Academy of Adoption Attorneys. For over 5 years, I have organized very informally an annual luncheon for Kansans who are interested in adoption law, plus I am the legislative coordinator for the American Academy of Adoption Attorneys.

I have also testified in the past before various legislative and judicial committees regarding adoption issues. I have served in numerous guardian ad litem cases, and have served on the Kansas Bar Association Committee on Children's Issues.

I am here to voice opposition to S.B. 119 in its current form.

I would like to say that I am not against open adoptions. We have all seen a very strong trend toward openness. I have personally handled numerous "open" adoptions. However, current Kansas law has been adequate in that it provides for permanency of adoption, but allows adoptive parents the flexibility to have their adoptions as open as they feel is in the best interest of their child.

I question whether we are truly serving the "Best Interest" of Children in S.B. 119 by providing that open adoption agreements are enforceable and that there is continuing court jurisdiction.

The reason behind this legislation is to have a way to deal with "exceptional" adoptions according to the Supplemental Note on S.B. 119. It is my understanding, although I don't see the term defined anywhere, that an "exceptional adoption" would be one where a parent is reluctant to voluntarily consent to an adoption, or voluntarily

relinquish their parental rights unless they can be assured of ongoing contact with the child.

Because this legislation is intended to apply only to Children in Need of Care Cases, we know that there is a definite problem with the parenting of these children; otherwise, they would not be "Children In Need of Care". In many situations, the family may be dysfunctional or abusive. In other words, in the situations that this legislation would apply to allowing a "conditional relinquishment," which would then require continued post-adoption contact with the birth parents, may be harmful to the child. Because "conditional" is not defined, it is unclear whether the parent could void the adoption if a satisfactory visitation agreement is not accomplished, or what the status of the adoption will be.

The legislation as drafted has many weaknesses. Put philosophically, of major concern are:

The autonomy of the adoptive family
The changing needs of the child
The invasiveness of on-going court jurisdiction
The lack of permanency for the child
The potential of ongoing litigation
The problem of recruiting families to enter into "open adoption" agreements

On behalf of the Academy of Adoption Attorneys, I ask you to refer to Joan H. Hollinger's letter to Representative Michael O'Neal. Professor Hollinger has gone through a very thorough analysis of the bill, pointing out the weaknesses and in many instances referring to the most current social science literature regarding the effects of openness in adoption.

For you who may not know how the present "open adoption" situations are currently handled in Kansas, I would like to explain. As a private attorney, I sometimes represent both the adoptive parents and the birth parents after a full disclosure of the possible conflict of interest. Sometimes there are separate attorneys for the adoptive parents and the birth parents. There are always separate attorneys if either of the birth parents are minors. I always discuss with all parties involved the wide range of possibilities in terms of openness. I also explain that no agreement as to openness is enforceable, and that it is based on trust and respect. The adoptive parents have the final say as to what is in the best interest of the child. However, I always urge the adoptive parents not to promise anything that they don't feel in their hearts they can follow through on.

I am concerned because, if the child is placed after a "conditional relinquishment" and the parents "bond" with this child and want desperately to adopt, they may make promises that are extremely difficult to keep as circumstances change. If the agreements were enforceable in court, wouldn't this potentially harm the family's autonomy, and ultimately, the bonding between the child and the adoptive parents? Also, I believe these agreements could pit adoptive parents and birth parents against each other, as in child custody battles. The adoptive children will often be older children, who are harder to place for adoption than infants and who often have serious psychological problems. The birth family will frequently be, by definition, dysfunctional or abusive. Given all these

factors, requiring post-adoption contact with the birth parents could destroy the chances of getting a permanent placement for the child.

Isn't the intent of the legislation to provide children with a permanent and loving home? Although in many instances it may be in the best interest of the child to have some contact with birth parents or extended family members, I object to the adoptive parents not having the final word as to what that contact is, and I object to the child not having the security of knowing that the adoption is permanent, and not "conditional".

I have a tremendous amount of respect and admiration for many birth parents, in addition to sympathy for their situation. On the other hand, although I am not an adoptive parent, I sometimes reflect on whether I could handle a special needs child and particularly if I could live with ongoing court jurisdiction and a court enforceable visitation agreement. We all surely understand the families that adopt these special needs children have to be extremely caring people. Shouldn't we trust them to be able to make the decisions as to what is in the best interest of their child? Haven't they been counseled and won't they have continuing resources to help them deal with these situations? These are very serious issues. In addition, the legislature recently amended K.S.A. 59-1962 to provide permanent guardianships. Perhaps permanent guardianships are a more realistic goal for these "exceptional" situations.

On behalf of the American Academy of Adoption Attorneys I respectfully recommend that S.B. 199 be rejected in its present form. We suggest that a subcommittee be formed to review the legislation and to evaluate whether the current, permanent

guardianship legislation concept wouldn't better fit the situation for an "open" relationship with relatives of the child.

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Testimony in opposition to SB119 March 9, 1999

Chairman O'Neal, members of the committee:
It has been a while since I have talked with many of you, about three years since I sat on this very committee. Many of you know that I resigned my seat in the House to spend more time with my then-two-year-old son, but most are probably not aware that I am also an adoptive parent; my youngest joined our family when he was just 9 days old.

As an adoptive parent, a board member for Adoption with Wisdom and Honesty, and as a former legislator, I stand before you to ask you to consider wisely, and then kill Senate Bill 119. The reasons this bill is not good for children are numerous, but I will outline just a few. There are a few key phrases you should keep in mind when considering this bill. Those phrases are Continuing jurisdiction, Conditional relinquishment, Continuing contact, and Civil contract.

The basic premise of the bill is that **continuing jurisdiction** of the court would be a positive thing in the child's life. While this may be true in some circumstances, in most it would be an unnecessary intrusion, and in many it would be a burden on the family and child. Consider the situation of a family formed by adoption that gets a job offer in another state. That family would be burdened by having to hire a Kansas lawyer from out of state, and return to Kansas for both mediation and litigation. This would result in much time, stress and financial expense on the part of the child's new family. This is certainly not in the best interest of the child.

As an adoptive parent through a semi-open adoption agreement, I am a supporter of open adoptions. However, I am also aware from the parents in my adoption support group that older children, which this bill would most apply to, could use the agreement and the courts as vehicles for pitting the birth parent against the adoptive parent. This serves to undermine the authority of the parent which is essential to the child's normal development, and could even cause the disruption (breakup) of the adoption and of the family.

It is not good policy to pass legislation containing new and undefined terms. SB119 uses but does not define a new term, "**conditional relinquishment**". Nowhere in Kansas law do we use the term "conditional" in reference to adoptions or relinquishments, so the use of this term without definition dangerously allows for any and all interpretations to be established by case law, instead of by the legislature and adoption proponents.

It should also be pointed out that "relinquishment" and "conditional" are mutually exclusive terms: if a person places conditions on an adoption, then they are not truly relinquishing their parental rights. Further, despite a belief in the value that continued contact with birth family members can have for a child, the concept of *conditions* being placed on adoptions by the child's former family is highly offensive. The adoption community is largely opposed to the placing of **conditions on a child's life**.

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I am sure you would agree that it is inappropriate (for legal, family, and emotional reasons) for the courts to usurp a parent's ability to make decisions for their family. Yet this bill makes the incorrect assumption that **continued contact** with birth family members, even if appropriate at the time of adoption, will *remain* appropriate in the future. *Biological* parents do not have to consult with the courts in deciding what is in their child's best interest, and this type of government intrusion should not be imposed on adoptive families, either. ONLY the adoptive family should be making this determination.

Additionally, this bill incorrectly assumes it is appropriate to grant rights to well-meaning but nonetheless abusive or neglectful birth parents whose children are the subject of Child In Need of Care proceedings! This is wholly inappropriate, because if the birth parents were able to exercise appropriate judgement, they would not be before the court to begin with.

Also, passage of this bill will establish a certain set of adoptive parents as second-class citizens, without the protections of law or the rights afforded birth parents.

SB119 not only would permit adoption outside the time-tested probate procedures, but in so doing would eliminate the protections afforded by the probate code. Currently, an adoption ends all rights and responsibilities of the birth parent. No-one can say for certain how passage of this bill would affect inheritance issues, child-support, or other parenting issues currently defined by probate code.

Looking at the key issues of the bill, SB119 is *unnecessary*, as a **civil contract** can already be drawn up between the parties and enforced as with any other civil contract. Doing so would avoid all of the many problems accompanying this bill, and is certainly more responsible than passing a bill for a specific, limited situation that can be handled under current law.

Another key issue, **continuing jurisdiction** by the court, is not appropriate and not in the best interest of children. A child needs and deserves a *permanent*, loving home, without threat of intrusion by outside interests. SB119 would hold the threat of disrupting the child's home *again*, and continue that threat until the child reaches 18 years of age. The resulting impermanence created by this portion of the bill would create undue stress on adoptive families and would harm the adopted child by increasing fears about losing their new family. This would result in heightened attachment difficulties, and would interfere with the child's bonding with their adoptive family.

In conclusion, SB119 is unnecessary, *and* there are numerous other reasons this bill should not be passed. Most important of these is **the right of a child to a PERMANENT, loving home**.

I invite the proponents to work with us to answer their concerns in legislation next year, and I ask you, the committee; please, do not pass SB119 in *any* form. Thank you.

-Joel R. Rutledge
Adoptive and birth parent
Board member, Adoption with Wisdom and Honesty
Former House Representative, 98th district ('93-'95)

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March 9, 1999

LSS/KAN STRONGLY OPPOSES S.B. 119

Lutheran Social Service/Kansas Adoption Network is the agency which contracts with SRS to do all special needs (CINC) adoptions in the state of Kansas. I am general counsel for LSS/KAN and a former district court judge.

Three things are crucial to sustaining adoption privatization in Kansas: (1) increased utilization of kinship resources, (2) more effective accessing of matching funds and (3) recruitment of adequate adoptive resource families.

S.B. 119 BARRIER TO RECRUITMENT

Adoption of a special needs child--one who may have been injured physically or emotionally, or both--is a very heavy responsibility and not every family is willing or able to serve as such a resource. Senate Bill 119 faces families who might otherwise consider adoption with a scenario in which they must not only accept the child, but his family and a judge who will determine what is in his best interest. This will be a significant barrier to recruitment.

MORE CROWDED DOCKETS

As a former district judge one sees many solutions which only magnify problems. In this case the plan is to reduce the need for trials by facilitating voluntary relinquishments, but at the same time provides for taking up the court's and the families time with what amounts to domestic visitation motions. It is a whole new area for litigation, that would lead to further crowding of the dockets.

A DISINCENTIVE TO MEDIATION

The court system in inherently adversarial and procedural. It is excellent for criminals and chattels, but very hard on kids and families who do not understand its agenda. The power of the legal system inherently distorts any relationship and makes mediation and the success of family agreements less likely. One or both sides feel they can count on the judge and therefore don't have to reach agreement. Figuring out what the judge or guardian ad litem wants becomes more important than workability.

Respectfully submitted,
Daniel T. Brooks

BEFORE THE HOUSE JUDICIARY COMMITTEE

RE: SB – Conditional Adoption – OPPOSED

I am Richard Peckham from Andover, a suburb of Wichita, where I serve as president and general counsel of a commercial real estate company. Former member of the Kansas State Board of Education, former staff attorney for the Social Security Administration.

In 22 years of law practice I have placed hundreds of children in adoptive homes. My wife, JoAnn, and I have seven children of our own, two of whom are adopted, and we have eight grandchildren. I have some experience with children, families and Kansas law.

SB119 would unwisely and unnecessarily damage the **privacy** and **permanence** of the **adoption** of a child in need of care. It also would provide a basis from which to threaten other classes of adoptive families.

1. In philosophy, the bill is a statist intrusion into the life of a **family qualified** to provide parental nurturing. Such a family neither needs nor wants ongoing arbitrary supervision by the district court.

2. The language of the bill is extremely **vague**, supplying **no defined basis** for potential court **intrusion**, leaving the question open for each judge to decide whether the emotional **whims** of a birth parent or child are sufficient to mandate control of the child, contacts between families, etc.

3. The bill would discourage families from adopting hard to place children.

4. Generates unnecessary **costs** of bureaucracy (SRS and other agencies) in on-going supervision and analysis.

5. The bill seeks control, ostensibly for a narrow class of cases. However, the control is unnecessary and would put the proverbial **"nose of the camel in the tent,"** suggesting the potential for intrusion and offensive inter-meddling in the family of any adoption case.

6. The bill was "fast-tracked" in the Senate to avoid exposure to the public and substantial opposition in public hearings.

SUMMARY

SB 199 is **unnecessary**, **offensive** and **statist**. I urge you to discard it.

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