Approved: March 2, 1999
Date

AMENDED MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:11 a.m. on February 16, 1999 in Room123-S of the Capitol.

All members were present except: Senator Feleciano (excused)

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Kyle Smith, Kansas Bureau of Investigation
Jim Clark, Kansas County and District Attorney's Association
Ken Smith, Attorney, Fire Marshals Office

Others attending: see attached list

The minutes of the February 11 meeting were approved on a motion by Senator Harrington and seconded by Senator Bond. Motion carried.

**SB 207–an act concerning the Kansas Bureau of Investigation; relating to background investigations; criminal history record information**

Conferee Kyle Smith testified in support of **SB 207.** He stated that the bill would mandate background investigations for all gubernatorial appointments subject to confirmation of the Senate and all judicial appointments thus allowing the KBI use of certain FBI criminal records databases for criminal investigations. (attachment 1) There was lengthy discussion regarding certain verbiage in the bill and the bill was amended for clarification. Senator Oleen moved to pass the bill out favorably as amended, Senator Bond seconded. Carried.

**SB 206–an act concerning crimes, criminal procedure and punishment; relating to searches incident to a lawful arrest**

Conferee Kyle Smith testified in support of **SB 206.** He stated that the bill "restores the status of search and seizure law in Kansas to what it was before a recent interpretation by the Kansas Supreme Court, and will help protect the law enforcement officers from the criminals they arrest". He discussed that recent interpretation and the consequences of it. (attachment 2) Discussion followed.

Conferee Clark testified in support of **SB 206** stating that the bill amends the statute allowing a search incident to arrest "by replacing the definite article "the" with the indefinite "a"." He summarized the purpose of the bill and the history behind it's inception. (attachment 3) Following discussion Senator Harrington made a motion that the bill be amended as a **repealer* and recommended for passage, Senator Donovan seconded. Carried.

**The committee notes that its intent in repealing K.S.A. 22-2501 is to accomplish both the original purpose of the bill in reversing the Anderson decision and to reestablish constitutional limits on such searches and seizures as well as avoiding the need for future amendments by the legislature to conform this statute to this area of the law as it is developed by the courts.*

**SB 220–an act concerning crimes and punishment; relating to criminal use of explosives and criminal use of weapons**

Conferee Ken Smith testified in support of **SB 220** stating that it is "clean-up" legislation which will address certain potential sentencing conflicts and clarify legislative intent with regard to criminal use of explosives. (attachment 4) Senator Bond moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

SUBCOMMITTEE REPORTS AND ACTION

**SB 5–an act concerning marriage; relating to marriage licenses; application and issuance by mail**
**SB 91–an act concerning courts; relating to jurisdiction of district magistrate judges; actions pursuant to protection from abuse act**
**SB 96–an act concerning modification of child custody or residential placement orders**
**SB118–an act concerning tort liability; relating to liability for natural events**
**SB 125–an act concerning domestic relations; relating to divorce; child placement investigator's report, dissemination**
**SB 150–an act concerning domestic relations; relating to divorce and maintenance; custody and residency**

Senator Vratil reported on his subcommittee's hearings and recommendations on the above bills.(attachments 5 & 6) After discussion the following action was taken: Senator Bond moved to pass **SB 5** out favorable, Senator Pugh seconded. Some opposition was voiced during discussion and the motion was defeated 7-3; Senator Pugh moved to pass **SB 91** out favorably, Senator Vratil seconded, carried; Senator Vratil moved to pass **SB 96** out favorably, Senator Goodwin seconded, carried; no action taken on **SB 118**; Senator Vratil moved to pass **SB 125** out favorably, Senator Goodwin seconded, carried 8 - 2 with Senators Pugh and Donovan voting nay; and Senator Oleen moved to amend **SB 150** as recommended by the subcommittee and pass it out favorably, Senator Vratil seconded, carried.

The meeting adjourned at 10:58 a.m. The next scheduled meeting is Wednesday, February 17, 1999.

Approved: February 17, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:11 a.m. on February 16, 1999 in Room123-S of the Capitol.

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Others attending: see attached list

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SUBCOMMITTEE REPORTS AND ACTION

**SB 5–an act concerning marriage; relating to marriage licenses; application and issuance by mail**
**SB 91–an act concerning courts; relating to jurisdiction of district magistrate judges; actions pursuant**

**to protection from abuse act**
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**SB 150–an act concerning domestic relations; relating to divorce and maintenance; custody and residency**

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The meeting adjourned at 10:58 a.m. The next scheduled meeting is Wednesday, February 17, 1999.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 16, 1999

| NAME | REPRESENTING |
|---|---|
| Mary Hamann | Div. of the Budget |
| Debby Hemmings | Federico Consulting |
| JAMES CLARK | KCDAA |
| KEN SMITH | KSFMO |
| Pat Lehman | KS Fire Service Alliance |
| Gale Haag | S.F.M.O. |
| Bill Harper | SFMO |
| Kevin A. Graham | KSC |
| Barbara Jones | KSC |
| Bill Kennedy | KS Governmental Consulting |
| Alane M. Woodruff | KTLA |
| Elpora Hazelrigg | LWVK |
| E. Marguerite Minton | LWVK |
| Ted Minton | LWVS |
| Beatriz Zsamar | K.U. |
| Kathy Porter | OJA |
| Randy M. Hearrell | Judicial Council |
| | |
| | |

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# Kansas Bureau of Investigation

Larry Welch
*Director*

Carla J. Stovall
*Attorney General*

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF SENATE BILL 207
FEBRUARY 16, 1999

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI), and appear today in support of SB 207. This legislation amends the Kansas statute designating the duties of the KBI in order to facilitate background investigations conducted on behalf of the Governor's Office.

The FBI operates numerous databases regarding criminal records which are primarily for use in criminal investigations. To keep the databases from being overtaxed by administrative inquiries the FBI allows such inquiries only when mandated by state law.

The proposed amendments to KSA 75-712 would mandate such background investigations for all gubernatorial appointments subject to confirmation of the Senate and all judicial appointments, thus allowing access to the Triple I (Interstate Identification Index) and other databases. This language has been reviewed by the Governor's Office and the FBI and is acceptable to all parties. Passage of this bill would expedite an improved quality of the background investigations the KBI is able to provide to the Governor's Office.

I would be happy to answer any questions.

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1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (785) 296-8200 FAX (785) 296-6781

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# Kansas Bureau of Investigation

Larry Welch
*Director*

Carla J. Stovall
*Attorney General*

TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF SENATE BILL 206
FEBRUARY 16, 1999

Mr. Chairman and Members of the Committee:

I am Kyle G. Smith, Assistant Attorney General, assigned to the Kansas Bureau of Investigation (KBI), and appear today in support of SB 206. SB 206 restores the status of search and seizure law in Kansas to what it was before a recent interpretation by the Kansas Supreme Court, and will help protect the law enforcement officers from the criminals they arrest.

Specifically, previous interpretations by both the Kansas Supreme Court and the U.S. Supreme Court held that when a criminal was arrested, in order to protect the officers and to preserve evidence, law enforcement officers were entitled to conduct a search of the immediate area around the arrested criminal, sometimes called a "wingspan" search.

> In *Robinson*, we held that the authority to conduct a full field search as incident to an arrest was a "bright-line rule," which was based on the concern for officer safety and destruction or loss of evidence, but which did not depend in every case upon the existence of either concern.
>
> *Knowles v. Iowa*, U.S. Supreme Court 97-7597 (12/8/98)

However, in *State v. Anderson,* 259 Kan. 16 (1996), the Kansas Supreme Court narrowly interpreted the statutory language, not the constitutional language to limit the scope of searches when there has been an arrest. Since the current statute says that officers may search for evidence of "the" crime, the court determined that searches incident to arrest would be limited to only those cases where the officers were searching for evidence of the underlying offense for which the individual was arrested.

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In the *Anderson* case itself, the defendant was arrested for driving while suspended. This interpretation resulted in the suppression of a methamphetamine laboratory found as a result of the search, since the officer freely admitted he was not searching for evidence of the driving while suspended. While the search was constitutional, it was held to violate the statutory language.

The primary concern of this interpretation is that it puts officers at risk. It makes little difference to the safety of an officer that a hidden gun under the seat was found after a DUI arrest or a robbery arrest. Again, there is a substantial risk that the person or associate might be able to access a weapon that might otherwise have been found.

The *Knowles* case cited above, makes it clear that the search is not authorized for traffic infractions, but only for real arrests. This ruling should provide some reassurance that officers will not be able to abuse this power.

The other possible consequence is that officers will become "creative" in finding reasons for conducting wingspan searches to thus protect themselves. I strongly feel that any laws that reward the creation of legal fiction serve to undermine the trustworthiness and integrity of the entire criminal justice system. The changes in SB 206 would merely restore the law to what it was prior to the *Anderson* decision, and have the additional benefit of keeping Kansas consistent with the other states and federal law regarding search and seizure. Thus limiting the need to retrain approximately 6,000 law enforcement officers in the state of Kansas as to this unique, statutory quirk.

I would be happy to answer any questions.

# Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(785) 357-6351 • FAX (785) 357-6352 • e-mail kcdaa01@ink.org
EXECUTIVE DIRECTOR, JAMES W. CLARK

February 16, 1999

TO: Senate Judiciary Committee

FROM: Kansas County and District Attorneys Association

RE: Testimony in Support of **SB 206**

The Kansas County and District Attorneys Association is in support of Senate Bill No. 206, which amends the statute allowing a search incident to arrest, K.S.A. 21-2501(c) by replacing the definite article "the" with the indefinite "a".

The bill is identical to HB 2229, introduced at our request in 1997. The purpose of both bills is to allow search of areas incident to arrest for fruits of any crime, not just the crime for which the arrest was made. The bills are a result of a decision by the Kansas Supreme Court, State v. Anderson, 259 Kan. 16, in which the Supreme Court ruled that because of the wording in K.S.A. 22-2501, evidence of a meth lab operation seized from a vehicle must be suppressed. The Court's ruling created an interesting anomaly in the doctrine of independent state grounds (a state may place more restrictions on the government than required by U.S. Supreme Court decisions). This doctrine, which became much discussed in the 1970's with the swing toward a more conservative U.S. Supreme Court, generally emerges when a state's highest court finds its state constitution more restrictive than the federal one. The Kansas Supreme Court has resisted this constitutional trend and has repeatedly held that Section 10 of the Kansas Constitution is not more restrictive than the Fourth Amendment. However, the result in Anderson serves the same end. While the Kansas Court acknowledged that recent United States Supreme Court cases would allow such a search as reasonable within the Fourth Amendment, i.e. New York v. Belton, 453 U.S. 454 (1981); it nevertheless held that codification of the earlier U.S. Supreme Court decisions, i.e. Chimel v. California, into the statute resulted in greater restrictions on searches incident to arrest in Kansas. In so doing, the Court declined to allow the U.S. Supreme Court to modify the effects of a Kansas statute, placing that duty on the Legislature itself. Hence, our appearance before you today.

Caveat: Since HB 2229's introduction, and death in House Judiciary Committee, the U.S. Supreme Court has considered the issue of search incident to a traffic citation. In Knowles v. Iowa, 97-7597 (12/8/98) a unanimous Supreme Court held that the two rationales for the search incident to arrest doctrine: 1) officer safety, and 2) the need to discover and preserve evidence; are not present in a stop for a minor traffic offense. However, that decision specifically concerned Iowa's "search incident to citation" doctrine, and arguably only applies to routine stops for traffic infractions. In Anderson, however, the driver of the vehicle had an outstanding warrant, and was subsequently arrested; hence the Knowles decision would not preclude a search incident to arrest. Only the present statute has that prohibition.

## § 22-2502. Search Warrants; Issuance; Proceedings Authorized; Availability of Affidavits and Testimony in Support of Probable Cause Requirement

(a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by telefacsimile communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been or is being committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for the seizure of the following:

(1) Any things which have been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States. The term "fruits" as used in this act shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted.

(2) Any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

(3) Any human fetus or human corpse.

(4) Any person for whom a valid felony arrest warrant has been issued in this state or in another jurisdiction.

(b) Before ruling on a request for a search warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be taken down by a certified shorthand reporter or recording equipment and made part of the application for a search warrant.

(c) Affidavits or sworn testimony in support of the probable cause requirement of this section shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

(d) As used in this section, telefacsimile communication means the use of electronic equipment to send or transfer a copy of an original document via telephone lines. [L.1992, ch. 128, § 17; eff. July 1, 1992.]

### AUTHORS' COMMENTS

This section was amended in 1992 to make clear that an affidavit for a search warrant may be transmitted to the magistrate by telefacsimile communication (FAX).

While the 1976 amendment affects both parts (a) and (b), the significant addition is the second and third sentences of part (a) relative to oral statements.

Although these provisions indicate a requirement that oral statements be recorded, the third sentence of (a) obviously permits considerable flexibility in application.

The 1979 amendment to coverage is in apparent response to the holding in State v. Stauffer Communication, Inc., 1979, 225 Kan. 540, 592 P.2d 891.

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# TESTIMONY IN SUPPORT OF SB220

Senate Bill 220 is intended as a "clean-up" measure to address a potential sentencing conflict between provisions of two different criminal statutes and to clarify that the two most common type of "bombs" used to destroy property or to take life are prohibited as felony crimes under Kansas law. KSA 21-3731 as written does not expressly address molotov cocktails or pipe bombs. KSA 21-4201, which is a completely different section of the criminal code, deals with unlawful use of weapons. This statute does mention molotov's and pipe bombs at subsection (1) (9), and the penalty section provided makes this a non-person misdemeanor offense.

SB220 is drafted to clarify legislative intent that criminal use of explosives is a level 6 person felony, and that KSA 21-3731 does indeed apply to the possession, manufacture, or transportation of molotov cocktails and pipe bombs. The solution proposed is to repeal the conflicting sections of KSA 21-4201 and to add the terms molotov cocktail and pipe bomb to the operative section of KSA 21-3731.

Testimony presented the 16th day of February 1999, by Ken Smith A.A.G. assigned to the State Fire Marshal's Office.

## Senator Vratil's Judiciary Subcommittee

1. S.B. 5 would permit applications for marriage license to be applied for by mail and would allow an applicant to receive their marriage license by mail.

**Conferees**

Proponents of the bill included: None

Opponents of the bill included: Kathy Porter, Office of Judicial Administration, presented testimony in place of Louis Hentzen, Court Administrator for the 18th Judicial District. Ms. Porter testified that the clerks oppose this legislation because of the administrative problems that it creates. Most notably, there are problems with errors on applications, and oaths are not possible through mail and there is a timing problem with length of stay at address requested. Ms. Porter testified that alternatives exist under current law that people could use. Namely, a license is good for six months and a judge can waive the three day waiting period if requested.

Kay Falley, Court Administrator for the 18th Judicial District, presented testimony that the Office of Vital Statistics will not accept incomplete applications and would return those erroneous applications back to the clerks. This would put an undue burden on the clerk of the district court's office.

**Subcommittee Action**

The Subcommittee agreed to refer S.B. 5 back to the full Senate Judiciary Committee without a recommendation.

2. S.B. 91 would eliminate a prohibition which prevents a district magistrate judge from hearing actions under the protection from abuse act.

**Conferees**

Proponents of the bill included: Kathy Porter, Office of Judicial Administration, presented testimony on behalf of Judge Don Sallee, District Magistrate Judge. Ms. Porter testified that this legislation will save time and prevent delays in the process. Ms. Porter also testified that both the Kansas District Judges Association and the Kansas Magistrate District Judges Association approve this legislation. She then presented written testimony from Judge McClain, President of the Kansas District Judges' Association, Judge Montandon, and Judge Hubbell, President of the Kansas District Magistrate Association.

Opponents of the bill included: None

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**Subcommittee Action**

The Subcommittee recommended S.B. 91 be passed by the full Senate Judiciary Committee.

3. S.B. 96 would require a party filing a motion to modify a final order pertaining to child custody or residential placement to include with specificity all known factual allegations which constitute the basis for the change of custody or residential placement.

**Conferees**

Proponents of the bill included: Ardith Smith of the Kansas Judicial Council's Family Law Advisory Committee testified in support of S.B. 96. Ms. Smith testified that the concept of this bill was originally presented to the Kansas Supreme Court which recommended that it be made into legislation. Ms. Smith testified that frequently, a motion to change custody is filed as a one-page motion, without any rationale. S.B. 96 would require the attachment of rationale for such a motion. Ms. Smith testified that this would make the moving party more accountable and make the motion more descriptive and applicable. Ms. Smith testified that this information will not only be helpful to the non-moving parties, but would also help the judge hearing the case.

Senator Goodwin commented that this bill would decrease office and billing time and that she enjoyed seeing lawyers presenting a bill that decreases their billing time.

Senator Vratil clarified that this was a new statute and not an amendment to previous statutes.

Senator Harrington asked if the judges were in favor of this bill. Ms. Smith testified that the judges who sit on her advisory committee were in support of the bill.

Senator Harrington asked if the 15-day maximum period for a hearing would create a backlog. Ms. Smith responded that she has personally experienced a 15 day maximum while practicing law and found it to not be an inconvenience.

Opponents of the bill included: None

**Subcommittee Action**

The Subcommittee recommended S.B. 96 be passed by the full Senate Judiciary Committee.

**TESTIMONY OF THE KANSAS ASSOCIATION OF DISTRICT COURT CLERKS AND ADMINISTRATORS ON 1999 SENATE BILL 5**

January 20, 1999

Senate Judiciary Committee

Thank You, Chairman Emert, and members of the Committee. I am Louis Hentzen, Court Administrator for the 18th Judicial District in Sedgwick County. I am here today representing the Kansas Association of District Court Clerks and Administrators.

As you know, the clerks of the district court are, by statute, the persons authorized to issue marriage licenses. District Court Clerks and Administrators believe that the intent behind SB 5 is to provide a convenient, cost-effective way to obtain a marriage license, particularly for applicants who live out-of-state. However, we note below three concerns that we hope you will consider in your discussion of this bill:

- **The Oath Required by K.S.A. 1998 Supp. 23-106 and K.S.A. 23-114.** K.S.A. 1998 Supp. 23-106 states that "the judge or the clerk [of the district court] may issue a license *upon the affidavit of the party personally appearing and applying therefore*, to the effect that the parties to whom such license is to be issued are of lawful age, as required by this section, and the judge or clerk is hereby authorized to administer oaths for that purpose." (Emphasis added.) K.S.A. 23-114 provides as follows:

  "In all cases, before granting a marriage license the judge or clerk of the district court shall require the applicant for such license to take and subscribe to an oath to the effect that none of the reasons set forth in K.S.A. 23-102 exist why such applicant should not be granted a marriage license; and the judge or clerk may in his or her discretion examine witnesses under oath concerning matters referred to in K.S.A. 23-102, as applied to the applicant for such marriage license, and for the purpose of this act shall have power to administer oaths. If the judge or clerk fails to examine such applicant for license as provided in this section, he or she shall be liable to fine for granting license to parties not legally entitled thereto, in any sum not exceeding one thousand dollars ($1,000). . . ."

- **Errors in the Application Required by K.S.A. 1998 Supp. 23-106.** K.S.A. 1998 Supp. 23-106 requires the filing of an application for a marriage license three calendar days before the issuance of the license, except under certain circumstances. Information requested on the form includes such items as the names and ages of the applicants and the names of the parents of the applicants, including the maiden names of the applicants' mothers. Without sounding flippant, it is surprising to us how often, across the state, an

applicant for a license will not know even the full name of his or her intended spouse, much less the maiden name of his or her mother. Spaces on the application form are often left blank, or are completed with obviously inaccurate information. When the applicants return to pick up their license, there is an opportunity to correct this. There would be no such opportunity if the license were issued by mail.

- **Timing.** If people are allowed to apply for marriage licenses by mail, it would seem that there must be some mechanism in the law requiring the parties to apply for a license by mail far enough in advance for the parties to receive their license at the time and address they intend. Parties from other locations applying for a license by mail obviously intend to return to the district from which they are requesting a license for their wedding. However, we would have no idea of when they would return, and by what date we must mail the application to their out-of-district address so that they will receive it before traveling home for the wedding. Even with such a provision, the issue of errors or omissions on the application form exists. It could take weeks to months, depending upon the speed of the parties and the postal service, to return incomplete applications to the applicants and have them return them to the appropriate clerk's office. Allowing an application for a marriage license by mail, but requiring an applicant to pick up the license in person, would solve this concern in some but probably not all instances.

Rather than simply pointing out our concerns, we attempted to find out if other states have addressed the issue of marriage licenses by mail, and, if so, how they have dealt with the concerns noted above. Staff of the Office of Judicial Administration (OJA) did a Westlaw computer search using various forms and combinations of the terms "marriage," "license," "application," and "mail." The search located no states that allow persons to apply for marriage licenses by mail.

OJA staff also contacted Mr. George Gates, Special Assistant for Registration Methods, with the National Center for Health Statistics of the Department of Health and Human Services in Washington, D.C. Mr. Gates stated that he has worked with the states in the area of marriage licenses and vital statistics for more than 30 years. He is not aware of any states that allow persons to apply for marriage licenses by mail, precisely for the reasons we have cited above. In his experience, all states require some sort of oath stating that none of the impediments to marriage included in that state's laws exist. He also said that Kansans are not unique in including errors and omissions in their marriage license applications, and that correcting these would be difficult and time consuming by mail.

Because of the difficulties cited, we oppose the bill in its present form. We would, however, be glad to provide any additional information that would be helpful to you, or to comment on any amendments to SB 5 that might be offered.

# INTRODUCTION

## Purpose

This handbook is designed as an aid to court officials, clergy and others with responsibilities related to completing and filing marriage licenses. It includes background information on the importance of these documents for legal and statistical purposes as well as specific instructions for recording entries.

## Importance of Marriage Registration

The registration of a marriage provides documentary proof that a marriage has been performed. Individuals are frequently faced with the need to prove that a particular marriage has been performed. For example, the right to inheritance, pension, insurance, or other benefits may depend upon official documentation of a marriage.

The legal requirements for obtaining a marriage license and filing a certificate of marriage are set forth in each individual state's statutes. In most states the law requires that a record of each marriage be filed with the state office of vital statistics for statistical purposes and for issuance of certified copies. Proof of marital status is often required by a variety of governmental and private agencies.

Data from marriage records are used for many worthwhile statistical purposes. Data are used to analyze and interpret current levels and changes in marriage and divorce, to identify fertility and population changes, and to relate the results of those investigations to social and economic problems. Government agencies and legislative groups use marriage statistics to develop, implement, and evaluate public programs and policies. Scholars, researchers, writers, and journalists follow trends and differentials in family formation, dissolution, and reformation. Religious bodies and voluntary organizations study the quality and stability of family life. Many businesses use marriage data in forecasting markets for goods and services, and in developing new products.

## Confidentiality of Vital Records

The State Registrar protects the vital statistics data from unwarranted or indiscriminate disclosure by adhering to the laws and regulations that stipulate who may obtain copies of individual records, and for what purposes the files may be accessed. For example, it is unlawful for any officer or employee of the state to disclose data contained in vital records files unless the applicant has a direct interest in the information recorded and that information is needed for the determination of personal or property rights.

The format of the marriage record is designed to assure confidentiality of information. The upper part of the license contains information identifying the bride and groom. The lower portion of the record contains information for statistical use only.

The Marriage Registration System in Kansas and the United States

The registration of marriages in the United States is a state and local function. The civil laws of all states provide for a continuous and permanent marriage registration system. Marriages are registered and filed in centralized files in most states. Comprehensive, accurate registration depends upon the conscientious efforts of local officials, clergy, or other officiants in obtaining the information needed to complete the original record and in certifying to the information on the record.

Most states have local court districts with courts empowered to provide marriage licenses to applicants entitled to receive them. These districts may be townships, villages, towns, cities, counties, or other geographic areas.

In Kansas, the clerk of the district court is responsible for obtaining the personal data necessary to complete the marriage license. After a marriage ceremony, the marriage officiant returns the marriage license to the clerk of the district court who issued it. The clerk of the district court transmits the completed license to the Office of Vital Statistics.

The Office of Vital Statistics inspects each license for completeness and accuracy; queries for missing or inconsistent information; codes certain information for entry into the state computer system; assigns a state file number; microfilms the license for future issuance of certified copies; and then, stores the original license at an off-site facility for permanent preservation. From the information entered into the computer system, indexes are prepared for use by the Office of Vital Statistics in locating and retrieving records needed to produce certified copies. In addition, statistical information from the license is available.

The National Center for Health Statistics (NCHS) is vested with the authority for administering vital statistics functions at the national level. Data tapes of information derived from individual records registered in the state offices and microfilmed copies of the individual records are transmitted to NCHS by those states participating in the marriage registration area (MRA). The MRA, which includes Kansas, is comprised of those states that maintain central marriage registration files and meet certain minimum standards of record completeness and reporting accuracy. Monthly, annual, and special statistical reports are prepared from the data for the United States, MRA states, counties, and regions. Reports can be compiled and sorted to show age, race, sex, or other characteristics that may be needed. Statistics are essential to the fields of social welfare, public health, and demography. They are also used for business and government program planning and evaluation. NCHS serves as a focal point exercising leadership in establishing uniform practices through model laws, standard certificate forms, handbooks, and other instructional materials for the continued improvement of the marriage registration system in the United States and Kansas.



5-6

February 2, 1999

# Senate Judiciary Subcommittee
# Testimony in Support of SB 91

Senator Vratil's Subcommittee

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.

# The Kansas District Judges' Association

February 1, 1999

Senator John L. Vratil
State Capitol Building
Topeka, Kansas

Re: District Magistrate Jurisdiction

Dear Senator Vratil:

I understand your are chairing a sub-committee of the Senate Judiciary which is 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

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

Senator John Vratil
Senate Judiciary Subcommittee

Honorable Senator Vratil:

As chairman of the legislative committee for the District Magistrate Judges Association, I want the Senate Judiciary Subcommittee to know that our legislative committee and our association supports Senate Bill 91 relating to the jurisdiction of District Magistrate Judges pursuant to Protection From 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 of 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

# TESTIMONY ON SENATE BILL NO. 96

Ardith R. Smith-Woertz
Attorney from Topeka, Ks.
Member of the Family Law Advisory Committee
for the Judicial Council

Senate Bill No. 96 was drafted by Charles Harris, a Wichita attorney and member of the Family Law Judicial Advisory Committee. The Bill was drafted to give the Courts a right 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 preformed on both parties. If the case went to trial, the Court would still need to look to 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.

# TESTIMONY OF CHARLES F. HARRIS[1] IN SUPPORT OF SENATE BILL 96

Section A:

As an attorney who has practiced in the family law area for over twenty years, a growing problem that I have encountered is the practice of filing motions to change custody of children which state simply the allegation that there has been either a material change in circumstances, or that it's in the best interest of the minor children without setting forth any allegation as to the underlying reasons. For the convenience of the committee, I have attached several examples of actual motions that I have received in my practice that have actually been filed in the Sedgwick County District Court. Exhibits A, B, C, and D.

The effect of such motions is extremely traumatic for the recipient who most often has no idea that the motion is coming and has no ability to speculate upon what the motion is based. At the same time, the recipient is then forced to scramble around to try to find an attorney who will represent them on the motion. When they appear before the attorney for their interview, the first thing the attorney asks is, "Do you know why has this motion has been filed?" The motion itself offers no insight as to what the alleged problem is and the recipient is often forced to speculate. The attorney then must try to evaluate what the problem is and then how expensive it's going to be to defend the person who has received this groundless motion. The attorney is also forced to speculate and anticipate the worst, which generally results in a higher retainer being required from the recipient of the motion.

Because these motions effect the most precious of our possessions, why should anyone who believes strongly that a motion to change custody is warranted be afraid to state clearly the grounds upon which the motion is made. At the same time, by providing specific allegations upon which the motion is made, the recipient has the ability to understand the allegations and properly respond.

By requiring a detailed factual basis upon which these allegations are made, we can further reduce the level of litigation. Under the current system, recipients are forced to request a bill of particulars or engage in expensive discovery procedures, just to learn what the movant's allegations are. Setting forth at the very start of the case the allegations upon which the motion is made, gives the recipient of the motion the ability to ask the Court to dismiss the motion at that early stage, or to limit the motion in some way, which has the benefit of judicial economy. It would seem there could be no valid opposition to this request for basic fairness. I strongly urge your support for Senate Bill 96.

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[1] Charles F. Harris is a practicing attorney with the law firm of Kaplan, McMillan and Harris in Wichita. He is a 1978 graduate of Washburn Law School. He is a Fellow in the American Academy of Matrimonial Lawyers. He is a member of the Supreme Court Child Support Guidelines Advisory Committee and the Family Law Advisory Committee to the Kansas Judicial Council. He has been the Chairman of both the Kansas and Wichita Bar Family Law Sections

Section B:

The second portion of the Bill deals with the situation when there is already an existing custodial arrangement, and due to some type of emergency situation, one of the parties wishes to seek an emergency change of custody on what is called an *exparte* basis or without the other party present. What usually happens, is the moving attorney may call the attorney of record who was formerly in the case but due to passage of time, has lost contact with his client and indicate an intention to go to the Judge because of the emergency circumstances and address the request for an immediate change of custody. The problem that occurs for the responding attorney, is that they frequently do not have current information that allows them to quickly contact their client. These situations usually occur when the movant is seeking to quickly obtain an order so that they can pick a child up at school or remove the child from a home without alerting the other party.

There are currently no procedures in our statutes to deal with this situation. This portion of the Bill provides at least some procedure that will establish a minimal amount of due process for the non-moving party and their attorney and make sure the matter is set for a regular hearing within fifteen days.

It also requires that there is to be sworn testimony to support the showing of the alleged emergency. Frequently, the Judge is confronted with the situation that an attorney comes to them and simply tells the Court of the emergency. In almost every situation, the attorney has no personal information as to the facts and is simply relating facts that have been told to them by their client. If sworn testimony is required, this will at least afford the Court the opportunity to hear the information straight from the witness and at the same time, by requiring the testimony to be under oath, prevent abuses.

I believe both of these changes will bring fairness to our system in the interest of our children. I urge you to support Senate Bill 96.

CHARLES F. HARRIS

DAVIS & JACK, L.L.C.
Attorneys at Law
2121 West Maple
P.O. Box 12686
Wichita, KS 67277-2686
(316) 945-8251
lb\l\dra-corn

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
FAMILY LAW DEPARTMENT

| | |
|---|---|
| IN THE MATTER OF THE MARRIAGE OF<br><br>BRIAN L. SCHOENECKER<br>Petitioner,<br><br>and<br><br>CAROL D. CORNELL<br>Respondent. | Case No. 95 D 4554 |

Pursuant to Chapter 60 of
Kansas Statutes Annotated

## MOTION

COMES NOW the respondent by and through her attorney, F.C. "Rick" Davis II of Davis & Jack, L.L.C. and moves the court for an order changing the custody and/or visitation arrangement regarding the minor children of the parties.

WHEREFORE, respondent prays her motion be granted and for any such other and further relief as the Court deems just and proper.

DAVIS & JACK, L.L.C.

By _____
F.C. "RICK" DAVIS, II
Attorney for Respondent

EXHIBIT "A"

5-15

Wallace W. Underhill
Attorney

1333 N Broadway
Suite C
Wichita, KS
67214
(316) 265-1366

SUPREME COURT
#07064

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
FAMILY LAW DEPARTMENT

FILED
1998 DEC -1 A 10:26
CLERK OF DIST. COURT
18TH JUDICIAL DIST.

KAREN SHUNATONA,
Petitioner,

AND

CASE NO. 91 PA 87

BILL MCGLOTHLIN,
Respondent.

MOTION

COMES NOW the Respondent by and through his attorney, Wallace W. Underhill and moves the Court for the following orders:

1. Order to change custody;
2. Order clarifying holiday visitation;
3. Order directing parties not to discuss the other in the presence of the minor child;
4. Order continuing counseling for the minor child.

Respectfully Submitted,

Wallace W. Underhill
Attorney for Respondent

NOTICE OF HEARING

TAKE NOTE that the above and foregoing Motion will be heard on the 8th day of December, 1998 at 9:30 a.m. on the fourth floor, Family Law Department, Sedgwick County Courthouse, 525 N. Main, Wichita, Kansas or as soon thereafter as the Court may hear the same.

EXHIBIT "B"

LOIS A. LYNN, SCID#11549
Attorney at Law
202 Occidental Plaza
300 North Main
Wichita, Kansas 67202
Phone: (316) 262-2300



IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
FAMILY LAW DEPARTMENT

IN THE MATTER OF THE MARRIAGE OF
KATHLEEN MARIE WEIDNER,

and

CLAYTON HAL WEIDNER.

Case No. 89 D 1809

PURSUANT TO K.S.A. CHAPTER 60

**MOTION**

COMES NOW, the Respondent, by and through his attorney, Lois A. Lynn, and moves this Court for an Order Changing Custody of the minor children and for extended summer visitation.

WHEREFORE, Respondent prays for the Court for an Order Changing Custody and for extended summer visitation.

LOIS A. LYNN, SCID #11549
Attorney for Respondent

**NOTICE OF HEARING**

PLEASE TAKE NOTICE, that the above Motion will be heard on the 29th day of June, 1998 at 1:30 P.M. in the Domestic Department, 4th floor, Sedgwick County Courthouse, 525 North Main, Wichita, Kansas 67203.

EXHIBIT "C"

5-17

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
DOMESTIC DEPARTMENT

IN THE MATTER OF THE MARRIAGE OF

JEFFREY NEIL GILLIS,

AND

Case No. 94 D 914

SARA DARLENE LASSITER, F/N/A
SARA DARLENE GILLIS.

PURSUANT TO CHAPTER 60 OF
THE KANSAS STATUTES ANNOTATED

MOTION FOR CHANGE OF PRIMARY RESIDENCE

COMES NOW THE RESPONDENT SARA DARLENE LASSITER and moves the Court to change primary physical custody and primary residence of the parties minor child, to-wit: Veronica Ledawn Gillis from the Petitioner to the Respondent Sara Darlene Lassiter.

IN SUPPORT OF SAID MOTION, your movant alleges and states that since the entry of the Journal Entry of Judgment and Decree of Divorce there has been a change of circumstances sufficient so that the best interests and welfare of said minor child would be served by the Respondent being awarded primary physical custody and primary residence of said minor child.

EXHIBIT "D"

5-18

WHEREFORE, the Respondent Sara Darlene Lassiter prays that primary physical custody and primary residence of the said Veronica Ledawn Gillis be awarded to the Respondent, with reasonable rights of visitation being awarded to the Petitioner and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,

S.A. (Tim) Scimeca
Attorney for the Respondent

CERTIFICATE OF SERVICE

I, S.A.(Tim) Scimeca, do hereby certify that on the 16th day of December, 1997, I caused to be deposited in the United States mail, postage prepaid, a true and correct copy of the foregoing Motion for Change of Primary Residence, properly addressed to the following:

Charles F. Harris
Kaplan, McMillan and Harris
Law Building
430 North Market
Wichita, Kansas 67202

Jeffrey Neil Gillis
1302 S. Millwood Street
Wichita, Kansas

## Senator Vratil's Judiciary Subcommittee

1. S.B. 118 would exempt a person, association, corporation, or governmental entity from liability in any civil action for damages resulting from an act of God or the operation of equipment intended to detect or warm against these occurrences.

**Conferees**

Proponents of the bill included: Larry Barrett, Kansas Golf Association

Opponents of the bill included: Mike Helbert, Kansas Trial Lawyers Association

**Subcommittee Action**

Senator Goodwin made a motion that the bill not be recommended for passage by the Committee. Senator Harrington seconded the motion and it carried.

2. S.B. 125 involves cases of contested child custody and investigators' reports. The bill strikes language that these reports are to be available to parties not represented by counsel. S.B. 125 adds a provision that the report may be available to either party unless the court finds that such distribution would be harmful to either party, the child, or other witnesses.

**Conferees**

Proponents of the bill included: Ron Smith, Kansas Bar Association

Opponents of the bill included: Greg Debacker, National Conference of Fathers and Children and Joseph Ledbetter, Topeka, opposed giving judges discretion in regard to the disclosure of the report.

**Subcommittee Action**

Senator Goodwin made a motion the bill be recommended for passage by the full committee. Senator Harrington seconded the motion and it carried.

3. S.B. 150 would make terminology changes in regard to child custody and the child's residency to reflect the current practice, *e.g.*, primary residency, shared residency, and divided residency.

**Conferees**

Proponents of the bill included: Charles Harris, Kansas Judicial Council, Family Law Advisory Committee, Jim Johnson, Kansas Supreme Court Child Supplemental Guideline Commission, offered an amendment to add a 15-day period for both parties to agree to a parenting plan.

Opponents of the bill included: None

## Subcommittee Action

The Subcommittee recommends the bill be amended to substitute "parenting time" for visitation and that the bill be passed as amended by the full committee.

**Testimony in support of Senate Bill 118**
[By Senator Clark, Session of 1999]

Mr. Chairman, Senators:

My name is Larry Barrett. I am here today representing the Kansas Golf Association and its 180 public and private member clubs, and its over 19,000 individual members.

I am speaking in support of Senate Bill 118, introduced at our request by Senator Clark and Representative Morrison. The need for this bill arises from a situation that came to light in a New Jersey Appellate Court decision rendered in 1997, Van Maussner v. Atlantic City Country Club, 299 N.J.Super, 535 (App. Div.1997).

The essence of the case is:
A golfer was injured by lightning on the property of the club. The New Jersey Appellate Division ruled that while the country club had no obligation to establish procedures for warning golfers of impending lightning strikes, if the club established such procedures and those procedures were not followed properly the club could be held liable. In effect, the club would have been in a better position to not install any equipment or establish any warning system or procedures.

We believe that this decision, if followed in Kansas, could have a negative effect on any golf course attempting to protect its players. It is apparently better for a golf course to not undertake any warning and avoid the extra duty required if it undertakes some warning. If the technology is present to aid in the detection or early warning of lightning, which by its very nature is unpredictable, then no law should exists to impede the installation and use of those devices or warning procedures.

Senate Bill 118 addresses this situation by removing the extra liability imposed by attempting to warn people of danger. It covers an individual, association, corporation or governmental entity under these circumstances. This inclusion of various types of legal entity is important to us because of the broad range of golf course operations in Kansas, ranging from private to association to government and combinations of all three.

We appreciate your consideration of this legislation to help avert what we perceive as a potential problem in Kansas. Lightning is an "act of God". No liability is currently imposed for other weather-related events.

Testimony presented by Larry Barrett
645 Woofter Avenue
Colby, KS 67701
lbarrett@colby.ixks.com
Phone:
Office (785) 462-6215
Home (785) 462-2149
Fax (785) 462-2401

Law Offices of
Michael C. Helbert

Phone: (316) 343-6500 519 Commercial Fax: (316) 343-1734
P.O. Box 921
Emporia, KS 66801

**Senate Bill 118**
**Testimony Before the Senate Judiciary Committee**

Good Morning, my name is Michael Helbert and I am an attorney in Emporia, Kansas. I am also the Vice-president for legislation for the Kansas Trial Lawyers Association. I appreciate the opportunity to address you this morning on Senate Bill # 118. The Kansas Trial Lawyers Association and I have serious reservations about this proposed Senate Bill. This legislation would have a negative impact on the safety of the citizens of our State. Senate Bill 118 includes language that would provide immunity to any person, association, corporation, or governmental agency for damages caused by negligent acts or omissions in the implementation of procedures or the operation of equipment designed to detect or warn of the occurrence of an act of God or to mitigate the effects of an act of God. On the surface, this would seem to simply be a restatement of existing law. At the present time, no one can be held accountable for an act of God. Legally when we talk about acts of God we are referring to such things as lightning, hurricanes, tornadoes, ice storms, snow storms etc. However, this bill would substantially alter that existing law. It would allow individuals, corporations or other entities to avoid responsibility in such day to day activities as the following:

1. Common carriers would be allowed to ignore weather reports that indicated that tornadoes, ice storms, snow storms or similar occurrences were about to happen. For example, a bus carrying a group of passengers would be allowed to ignore the warnings of dangerous

weather and if they ignored that weather and it resulted in the death or injury of the passengers, they would be immune from liability;

2. Air lines would be allowed to ignore clear indications that it was not safe to fly in particular weather, or to even check on hazardous conditions;

3. In public accommodations there would be no incentive to provide storm shelters or to make sure that those storm shelters were safe;

4. Private facilities who hold themselves out to the public as providing safety procedures as an incentive for the public to use those facilities would be immune from liability if the safety procedures were not followed or were not used;

5. Road hazard warnings such as "slippery when wet", "flood area", and "ice on bridge", would no longer be needed;

6. Golf Courses, swimming pools, miniature golf courses, or even college, professional and high school athletic events would not be required to take steps to insure safety in the event of dangerous weather.

The existing State Tort Claims Act provides governmental entities with significant immunities which include the following.

1. Any claim based upon emergency management activities;

2. Snow or ice conditions or other temporary or natural conditions on any public way or public place due to weather conditions;

3. Any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes in the absence of gross and wanton negligence.

The main difference between the present law and Senate Bill 118 is that Senate Bill 118 would eliminate the need for common carriers, public accommodation, and other private entities taking any affirmative steps to provide for the safety of paying customers, who are often children, who have been placed in their care, and to take appropriate steps in the event of a warning of an occurrence of an act of God.

No one can be held liable for an act of God, but no one should be immune from liability for ignoring an act of God at the expense of the public or luring the public into a false sense of security by claiming safety procedures are in effect when they either do not exist or do not work. Senate Bill 118 will not provide immunity for acts of God. It will provide immunity for the acts of mankind.

We should encourage rather than discourage the implementation of safety procedures on common carriers and in public accommodations and other areas where the public has been invited. For that reason we are opposed to Senate Bill 118 and encourage you to vote against this legislation.

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: Senate Judiciary Committee

FROM: Ron Smith

SUBJ: SB 125

DATE February 3, 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.

This puts lawyers in awkward situations regarding their clients,especially when, by not hiring a lawyer, the other side gets access. The bill simply changes 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 court uses its discretion in whether and under what circumstances to allow the parties and lawyers access to the report.

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

As I recall, this bill, SB 95, passed the Senate 38-2 two years ago.

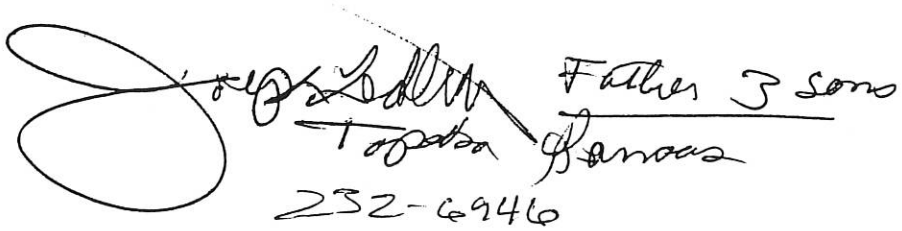
OPPOSITION TO SB-150 AND SB-125

2-2-99

Joseph Ledbetter

SB-125 is illegal and denies due process for pro se litigants who can't afford high cost lawyers.Everyone has the right to confront witnesses.

SB-150 was dealt with last fall and should be killed.HB-2002 is the bill of choice to take care of the problems in custody.SB-150 turns the clock back to fathers are not important in their kids lives.



THE TOPEKA CAPITAL-JOURNAL

Thursday, January 21, 1999

# Fathers shall overcome

Martin Luther King became an inspiration to me in 1993 when my civil rights as a divorced father were being repeatedly violated by the Kansas courts. His willingness to stand up to corrupt judges and wrongful societal actions through non-violence, and a self education of the U.S. Constitution truly grounded me in reading his biography.

This is the way fathers will win their freedom back to be equal with their children in spite of the odds and opinions of certain prejudiced judges. The "glass ceiling" of custody must be shattered by fathers who are separated from their children.

The false allegations being allowed into courts and easy divorces with marriage counseling being denied by judges are an affront to due process and equality demanded of the maligned 14th Amendment. Judges with prejudice in their darkened hearts against fathers have set this state up for a major multi-million dollar lawsuit for civil rights violations.

As blacks had to fight for full citizenship rights in the '50s, so divorced dads (20 million of us) will fight the same fight for our dignity and against the racketeering of divorce judges denying our rights. We shall overcome!

— **JOSEPH LEDBETTER, Topeka.**

# TESTIMONY OF CHARLES F. HARRIS[1]
# IN SUPPORT OF SENATE BILL 150

As the principal author of Senate Bill 150, I urge the Senate Judiciary Committee to support this bill.

As an attorney in Wichita, who, during the past twenty years has practiced primarily in the area of family law, I have become acutely aware that the current terminology 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 statute also refers to "shared custody." In my experience, the public is seriously confused about the significant distinctions that exist between "joint custody" and "shared custody."

Senate Bill 150 is the product of work done by the Family Law Advisory Committee to the Kansas Judicial Council. It is intended to be a clarification of existing terminology without significantly altering the underlying divorce law.

The bill 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 effecting the child, and "sole" where, because of the best interests of the child, one parent is not to be involved in making major decisions about the child. "Joint legal custody" is still the preferred arrangement.

To get away from the confusion caused by existing terminology, the bill uses the term "residency" in connection with the physical placement of the child. There is no order of preference as there is with legal custody.

The optional physical custodial arrangements contained in SB150 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

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[1] Charles F. Harris is a practicing attorney in the law firm of Kaplan, McMillan and Harris in Wichita. He is a 1978 graduate of Washburn Law School. He is a Fellow in the American Academy of Matrimonial Lawyers. He is a member of the Supreme Court Child Support Guidelines Advisory Committee and the Family Law Advisory Committee to the Kansas Judicial Council. He has been the Chairman of both the Kansas and Wichita Bar Family Law Sections.

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 where two or more children are divided between the parties so that each parent is a primary parent to one or more of the children. This arrangement usually occurs when there is a significant age difference between the children or where the person who has been the primary custodian is having significant problems with one child.

d. "Non-parental residency", is the situation where a child lives full time with a grandparent or other non parent. This situation is more 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 the law by the courts. Most of the changes in this bill simply involve substitution of the term "residency" for the term "custody." While seemingly insignificant, the changes accomplished by this bill will clarify the law and avoid confusion by the citizens of Kansas.

CHARLES F. HARRIS

**Testimony to the Senate Judiciary Subcommittee**

**RE: SB 150**

**Jim Johnston**
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**Personal Brief:** Besides my regular employment in Wichita, I am an appointed member of the Kansas Supreme Court's Child Support Guidelines Advisory Committee, Chair of a child's advocacy group out of the Wichita area promoting dual-parent involvement for children outside the intact family, and the proud parent of two children that I share physical custody with their mother.

**I am a Proponent.**

I believe this bill would go a long way towards adding greater clarity to the main issues addressed within regarding child custody decisions. The court must first decide the type of custody, then must decide the residency of the child. Current language is confusing, and by splitting the issues out as done within this bill, it would be easier for the consumer, the parents, to understand when he or she discusses it with an attorney, or happens to read it him or herself.

**TWO AMENDMENTS** (Attached)
I wish to offer up two amendments. Both deal with creating more of a requirement by the court to encourage the parents to establish a parenting plan of their own either together, or through the help of professional assistance. **Amendment one** would make the requirement at the "permissible orders" or temporary custody/residency decision point upon original filings, while **Amendment two** is for when final custody orders are rendered. At both steps, the court would retain the right to order a plan of their own in the event it is determined that agreement on a plan is futile or impossible.

These amendments would signal parents that although their marriage has ended, the responsibilities and privileges of being a parent go on forever, and that your child is ENTITLED to a frequent, meaningful, and continuing relationship with BOTH parents as their mother or father. At this point, parents are typically at their worst emotionally, and may make very emotionally based decisions on a reactive basis, rather than thinking them through. Virtually no parents in this scenario plans for a split, nor understand the dynamics of parenting out of two separate households. Parenting plan requirements would focus the parents themselves to face the issues involved, minimizing the surprises that occur later when the issues are faced for the first time after custody decisions are set in stone.

The reality is that custody plans that are put in place right after the separation are likely to set a precedent that cannot easily be changed. What can help during this time of family reorganization is to give parents the proper tools to help them focus on the most important decisions that need to be made.

If the parents are able develop a plan together or with professional assistance, they will be far more likely to carry out the plan than when a third party writes the plan for them. They will own it. Nobody else understands their child like they do, and nobody else can anticipate their child's needs like they can. Parents, during the confusing unplanned navigation through the family court system, remain empowered to continue their parenting appropriate to their circumstances through this process.

**The amendments still give discretion to the court to order a plan of its own, should it determine that cooperation is unlikely or impossible**,. They would be specifically directed to focus on the circumstances of the parties, and detail a plan based on "the best interest of the child" standard.

The clarity of this bill as written, along with the amendments I have proposed, will go a long way towards making the law better understood, while doing all that it can to encourage and protect a child's relationship with both parents.

Please support this bill along with the amendments.

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Session of 1999

SENATE BILL No. 150

Amendment One

By Committee on Judiciary

1-27

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AN ACT concerning domestic relations; relating to divorce and maintenance; custody and residency; amending K.S.A. 60-1612, 60-1614, 60-1615 and 60-1617 and K.S.A. 1998 Supp. 60-1607, 60-1610, 60-1616 and 60-1620 and repealing the existing sections.

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

Section 1. 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 and the support, if necessary, of either party and of the minor children during the pendency of the action. **Within 15 days of the of the order of custody during the pendency of the action, both parties, acting individually or in concert, shall submit a temporary custody implementation plan to the court. If they cannot agree on an appropriate temporary residency plan, the court, or upon request of one of the parties, may order mediation. In the event a mutually agreeable residency implementation plan cannot be agreed upon, the court will issue a temporary custody 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.

(b) *Ex parte orders.* Orders authorized by subsections (a)(1), (2) and (3) may be entered after *ex parte* hearing upon compliance with rules of the supreme court, but no *ex parte* order shall have the effect of changing the *residency* of a minor child from the parent who has had the sole *de facto residency* of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued *ex parte*, the court shall hear

Amendment two

*(5) Types of residential arrangements. After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options which arrangement the court must find to be in the best interests of the child. The court, ~~may in its discretion~~ **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 cannot agree on an appropriate custody residency plan, the court, or upon request of one of the parties, may order mediation. In the event a mutually agreeable residency implementation plan cannot be agreed upon, the court will issue a custody plan appropriate to the parties' circumstances, and consistent with the best interest of the children.**

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

*(**A**) 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 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 with the other.

(D) Nonparental custody residency. If during the proceedings the court determines that there is probable cause to believe that: (i) the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-1502 and amendments thereto; (ii) or that neither parent is fit to have custody; or (iii) the child is currently residing with such child's grandparent, grandparents, aunt or uncle and such relative has had actual physical custody of such child for a significant length of time residency, the court may award temporary custody residency of the child to such relative, another person or agency if the court finds the award of custody residency to such relative, another person or agency is in the best interests of the child. In making such a custody residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such custody residency to a relative of the child by blood, marriage or adoption and second to awarding such custody residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary custody residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for care of children. An award of temporary custody residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary custody residency of the child to an agency or a person other than the parent but not a relative as described in subpart (iii), the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided

**Creating a Successful Parenting Plan When Families Divide**
by **Dr. A. Jayne Major**

When parents separate, they must find a way to make sense of the flood of emotions caused by the breakup that can range from euphoria to sheer terror.

Decisions parents make at this time tend to be reactive and not in anyone's best interest. For example, a spouse may "decide" to never see the other spouse again. If there were no children, this could be accomplished without too much difficulty. However, when the spouse is a parent, this perceived need to be away from the other parent is in direct conflict with a child's need to have two parents who love and care for him or her. Countless children have lost a parent due to this very serious problem. What can be done about this?

Planning is the first priority. The custody plans that are put in place right after the separation are likely to set a precedent that cannot easily be changed. The difficulty is that we are expected to be our most logical at precisely the time that we are the most emotionally upset. The coolest, smartest, most accomplished among us can easily become blithering idiots with the enormity of the changes and when fear takes over.

It is rare that parents make formal plans for their children's future when the situation is normal. Plans evolve, day by day, month by month and year by year as the need arises. Now, when parents separate, the social, medical and educational needs have to be spelled out in great detail. Who is going to do what and when? Who will pay for the various expenses that come with child rearing? How will time be shared? How will parents communicate with each other or with the child when they are not together? What are the legal ramifications of the decisions that parents make? What used to be automatic can now be highly problematic.

What can help during this time of family reorganization is to give parents the proper tools to help them focus on the most important decisions that need to be made. The first and foremost tool is the parenting plan.

No matter how difficult the situation, there is tremendous value in a parent being prepared when meeting a mediator, lawyer, therapist, evaluator or a judge, and most of all when meeting with the other parent. Working on a parenting plan together helps the communications between the parents as they change from an intimate to a business relationship. If the parents are then able to jointly prepare a parenting plan, they are 80% more likely to carry out the plan than when a third party writes the plan for them. Nobody else understands their child like they do, and nobody else can anticipate their child's needs like they can.

No two families are alike, therefore it is impossible to use a cookie cutter to stamp out agreements that suit every family. However, all parents who separate must make several common decisions, and putting these decisions down in an easy to understand parenting plan for each child's life has the following advantages:

1. parents can articulate more clearly what they see is in the best interest of the child;
2. the best timeshare schedule for the time being can be determined;
3. parents can rest easier knowing that their child's social, medical and educational needs are being met;
4. the plan becomes a tie breaker when the parents disagree;
5. the chance of having both parents share in the love of and active care for the child is greatly enhanced;
6. the potential for reducing conflict with the other parent is substantial;
7. agreement can be reached on many details that can make a big difference in preventing future problems;
8. effective ways to communicate with the other parent are put in place;
9. a legally binding parenting plan becomes a living blueprint for a child's future;
10. it is cost efficient to have a basic plan figured out before reviewing with mediation or legal professionals.

Completing a parent plan helps greatly in overcoming the difficulties of the separation. Parents calm down their emotions, redefine their lives and move on. The family reorganization is unlikely to proceed in a satisfactory way unless this is done.

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Dr. A. Jayne Major is the founder of *The Parenting Connection, Inc.* and a recipient of numerous awards for educating over 12,000 parents in the last 16 years. She is also the author of *Creating a Successful Parenting Plan: A Step-by-Step Guide For the Care of Children of Divided Families.* These books are available directly from the publisher.

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*Last update of this page: 11/5/98.*
*Other pages on this site may have been updated more recently (pages are updated separately).*



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# The Shared Parenting Agreement

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THE SHARED PARENTING AGREEMENT

HOW TO MAKE SHARED PARENTING WORK FOR YOU:
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Making shared parenting (co-parenting) work for you is really not difficult.

Each family is unique in the way it functions. Since each parent is also unique in the way he/she functions, it is important to write down some rules that will best suit the needs of your particular situation. The less detailed your agreement, the more contact you will need with each other. This cooperation will allow each of you to more effectively meet the needs of your children AS PARENTS while maintaining your individuality.

A SHARED PARENTING AGREEMENT can be a useful tool in creating a plan for the co-parenting family situation. A carefully planned agreement allows family members to decide for themselves what will be best for their special needs. An effective plan clearly states the agreement of the parties about:

- Where the child lives
- When the child lives with each parent
- Contact and access with the child for the other parent
- Daily decision-making
- Emergency decision-making
- Financial contribution
- Health care
- Decisions about education, moral-values formation, medical and dental care, social, recreation, legal responsibilities, religious training, travel and transportation, removal of the child from the state, communication, the method to clear up family problems that arise, and other concerns that a particular family may need to agree upon.

It is important that the spirit of cooperation and flexibility between parents remain the center of attention, rather than the rules of the written agreement. However, the agreement defines the basic areas of responsibility and acts as a safety net if communication breaks down between parents.

THE MORE DECISIONS YOU MAKE REGARDING YOUR CHILDREN
THE BETTER IT IS FOR YOUR CHILDREN

Parents who allow appropriate flexibility in schedules help their chldren develop a sense of control over their lives and a sense of being important.

In the event you are not able to mutually agree on a co-parenting plan, you might want to consider consulting a family counselor/mediator.

Source: Children and Divorce - Parent Handbook
Broward Community College
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