

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On March 15, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Cindy O'Neal, Committee Secretary

HB 2508 - child support enforcement, Kansas Payment Center & income withholding

Chairman O'Neal provided the committee with a copy of the subcommittee report (Attachment 1) and a balloon draft of what the subcommittee recommended (Attachment 2).

Written responses to the subcommittee's recommendations were provided by SRS (Attachment 3) & Office of Judicial Administration (Attachment 4).

Representative Dillmore made the motion to adopt the balloon. Representative Swenson seconded the motion. The motion carried.

Representative Shriver made the motion to include that SRS has the authority to create a payment center and it shall be known as the Kansas Payment Center. Representative Pauls seconded the motion. The motion carried.

Representative O'Neal made the motion to have the Central Payment Center Oversight Commission monitor the quality of customer service performed by the payment center. Representative Loyd seconded the motion. The motion carried.

Representative Klein made the motion to adopt a standardized form that would accompany all payments into the center. Representative Swenson seconded the motion. The motion carried.

Representative DiVita made the motion to include a penalty for employers who fail to provide the required information, of an obligor, within the same business day with the fine not to exceed twice the amount of the recovery fee and such fee shall be paid by the employer. Representative Loyd seconded the motion. The motion carried.

Representative Pauls made the motion to report **HB 2508** favorably for passage as amended. Representative Long seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled for Monday, March 19, 2001.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT
HUTCHINSON/NORTHEAST RENO COUNTY

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KANSAS PAYMENT CENTER
Sub-committee recommendations

CHAIRMAN:
JUDICIARY COMMITTEE
REDISTRICTING COMMITTEE

MEMBER:
KANSAS FUTURES
FISCAL OVERSIGHT
UNIFORM LAW COMMISSION
KANSAS JUDICIAL COUNCIL

H.B. 2508

* Amend Section 2(a) to require response by payor within 5 days to written or electronic requests for information.

* Amend Section 2(b) to add requirement of certified copy of order of income withholding and amend current 14-day rule to next payment of income due which is not less than 5 days following service of the order. Add certified wherever “copy” appears throughout the bill.

* Amend Section 2(c) to require payment of amounts withheld within 5 days.

* Amend Section 2(i) to strike “intentionally”. The phrase “without just cause or excuse” is sufficient.

* If mandatory income withholding for non-IV-D after July 1, 1993 is not a federal mandate, amend K.S.A. 23-4,107(b) to make such withholding discretionary. If mandatory, amend 23-4,107(j)(1) to allow for oral application in non-IV-D cases where parties consent to make “opt-out” easier.

* Amend Section 7(a)(1) on page 10 to provide that an agreement by the parties to by-pass KPC constitutes “good cause”.

* Amend Section 7(b)(2) on page 14 to require payment to KPC of maintenance payments and by-pass for good cause shown or by agreement of the parties.

* Provide that SRS may contract with private vendor for establishment and operation, in whole or in part, of the central unit, subject to the following conditions

and limitations:

STATE CAPITOL BLDG., SUITE 170-W
TOPEKA, KS, 66612-1504
785-296-7679
FAX: 785-296-5805

HUTCHINSON ADDRESS

ROY 2077
HUTCHINSON, KS 67504
785-662-3532
House Judiciary
3-15-01
Attachment 1

+ The Supreme Court by court rule shall establish the procedure for creation and maintenance of official child support/maintenance records for use as official court records.

+ No contract with a private vendor shall include provisions allowing the vendor to be paid, in whole or in part, on the basis of an amount per phone call received by the center. No contract shall include provisions that would allow the vendor to be paid an amount per check issued for checks issued in error by the center.

+ Any contract with a private vendor shall include penalty provisions for noncompliance with federal regulations relating to timeliness of collections and disbursements and shall include minimum monetary penalties for each erroneous transaction, whether related to collection or disbursement. Penalties shall be collected as and when assessed and shall be placed in an account for use by SRS in assisting recipients who have incurred unnecessary expenses due to the fault of the center in handling their support payment.

+ Any contract with a private vendor shall provide for full access to all data by the Secretary's designee in the Central Receivables Unit, the designee of the Office of Judicial Administration and Chairman of the Oversight Commission. In addition, all district court clerks and court trustees shall have access to records of the center sufficient to allow them to assist in the process of matching support receipts to proper recipients and shall be provided dedicated phone line access to the center for the purpose of assisting the center in making accurate and timely disbursements.

+ Any contract with a private vendor shall require 24-hour access by obligors and obligees to payment files which will show status of receipts and disbursements, including, at a minimum, date of receipt by the center, date of processing by the center and date of mailing to the recipient.

+ Two-year sunset.

+ Provide that in the event SRS contracts with a private vendor that in those circumstances where the center is unable to match a payment with its recipient within 5 business days of receipt the funds will be transferred to the Central Receivables Unit of SRS for determination of proper disbursement. Where appropriate, SRS shall consult with OJA to determine proper disbursement. When a match cannot be made within 1 year after good faith efforts, the funds are to be transferred to the Kansas Treasurer's office for handling as unclaimed property.

H.B. 2361

- * Amend into H.B. 2508
- * Change name to Central Payment Center Oversight Commission.
- * Strike "county or district attorney" in Section 1(b)(2)
- * Replace "child support worker" in Section 1(b)(4) with "Child Support Enforcement Specialist 1 in SRS.
- * Add: "Central Receivables Unit Manager or designee".
- * Amend to provide for 4 legislative members, two from each house and each party, to serve ex officio.
- * Add Kansas Treasurer or his designee.
- * Add a representative from the Office of Judicial Administration.
- * Provide that members are eligible for reappointment.
- * Provide for issuance of report to legislature by Feb. 1 "each year".
- * Have effective on publication in Register so members can be appointed by effective date of underlying bill.
- * Two-year sunset to match underlying bill.
- * In addition to the duties in the original bill add the following:

+ Review the terms of any contract with a private vendor and provide suggestion/recommendations.

+ Consider whether issue of private vendor should be submitted to the Performance Review Board.

+ Monitor federal regulations relating to the central unit mandate and evaluate any and all opportunities for appropriate waivers and/ "opt-outs".

+ Monitor the status of all funds in "suspense" status and make recommendations regarding the handling of payments in suspense, whether by the state or private vendor.

+ Monitor penalty provisions in any private vendor contract and monitor the status of violations and collection of penalties therefore.

+ Authorized to conduct public hearings in order to fulfill oversight function.

HOUSE BILL No. 2508

By Committee on Appropriations

2-14

9 AN ACT concerning child support enforcement; establishing the Kansas
10 payment center; income withholding; amending K.S.A. 23-4,136, 38-
11 1121, 38-1123 and 60-2803 and K.S.A. 2000 Supp. 23-4,106, 23-4,108,
12 23-4,118, 60-1610 and 60-2308 and repealing the existing sections. 23-4, 107

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2000 Supp. 23-4,106 is hereby amended to read as
16 follows: 23-4,106. As used in the income withholding act:

17 (a) "Arrearage" means the total amount of unpaid support which is
18 due and unpaid under an order for support, based upon the due date
19 specified in the order for support or, if no specific date is stated in the
20 order, the last day of the month in which the payment is to be made. If
21 the order for support includes a judgment for reimbursement, an arrear-
22 age equal to or greater than the amount of support payable for one month
23 exists on the date the order for support is entered.

24 (b) "Business day" means a day on which state offices in Kansas are
25 open for regular business.

26 (c) "Health benefit plan" means any benefit plan, other than public
27 assistance, which is able to provide hospital, surgical, medical, dental or
28 any other health care or benefits for a child, whether through insurance
29 or otherwise, and which is available through a parent's employment or
30 other group plan.

31 (d) "Income" means any form of periodic payment to an individual,
32 regardless of source, including, but not limited to, wages, salary, trust,
33 royalty, commission, bonus, compensation as an independent contractor,
34 annuity and retirement benefits, workers compensation and any other
35 periodic payments made by any person, private entity or federal, state or
36 local government or any agency or instrumentality thereof. "Income"
37 does not include: (1) Any amounts required by law to be withheld, other
38 than creditor claims, including but not limited to federal and state taxes,
39 social security tax and other retirement and disability contributions; (2)
40 any amounts exempted by federal law; (3) public assistance payments;
41 and (4) unemployment insurance benefits except to the extent otherwise
42 provided by law. Any other state or local laws which limit or exempt
43 income or the amount or percentage of income that can be withheld shall

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1 not apply. Workers compensation shall be considered income only for the
2 purposes of child support and not for the purposes of maintenance.

3 (e) "Income withholding order" means an order issued under this act
4 which requires a payor to withhold income to satisfy an order for support
5 or to defray an arrearage.

6 (f) "Medical child support order" means an order requiring a parent
7 to provide coverage for a child under a health benefit plan and, where
8 the context requires, may include an order requiring a payor to enroll a
9 child in a health benefit plan.

10 (g) "Medical withholding order" means an income withholding order
11 which requires an employer, sponsor or other administrator of a health
12 benefit plan to enroll a child under the health coverage of a parent.

13 (h) "Nonparticipating parent" means, if one parent is a participating
14 parent as defined in this section, the other parent.

15 (i) "Obligee" means the person or entity to whom a duty of support
16 is owed.

17 (j) "Obligor" means any person who owes a duty to make payments
18 or provide health benefit coverage under an order for support.

19 (k) "Order for support" means any order of a court, or of an admin-
20 istrative agency authorized by law to issue such an order, which provides
21 for payment of funds for the support of a child, or for maintenance of a
22 spouse or ex-spouse, and includes an order which provides for modifi-
23 cation or resumption of a previously existing order; payment of uninsured
24 medical expenses; payment of an arrearage accrued under a previously
25 existing order; a reimbursement order, including but not limited to an
26 order established pursuant to K.S.A. 39-718a or 39-718b, and amend-
27 ments thereto; an order established pursuant to K.S.A. 23-451 *et seq.* and
28 amendments thereto; or a medical child support order.

29 (l) "Participating parent" means a parent who is eligible for single
30 coverage under a health benefit plan as defined in this section, regardless
31 of the type of coverage actually in effect, if any.

32 (m) "Payor" means any person or entity owing income to an obligor
33 or any self-employed obligor and includes, with respect to a medical child
34 support order, the sponsor or administrator of a health benefit plan.

35 (n) "Public office" means any elected or appointed official of the state
36 or any political subdivision or agency of the state, or any subcontractor
37 thereof, who is or may become responsible by law for enforcement of, or
38 who is or may become authorized to enforce, an order for support, in-
39 cluding but not limited to the department of social and rehabilitation
40 services, court trustees, county or district attorneys and other
41 subcontractors.

42 (o) "Title IV-D" means part D of title IV of the federal social security
43 act (42 U.S.C. § 651 *et seq.*) and amendments thereto, as in effect on

1 ~~May 1, 1997~~ December 31, 1999. "Title IV-D cases" means those cases
2 required by title IV-D to be processed by the department of social and
3 rehabilitation services under the state's plan for providing title IV-D
4 services.

5 Sec. 2. K.S.A. 2000 Supp. 23-4,108 is hereby amended to read as
6 follows: 23-4,108. (a) It shall be the affirmative duty of any payor to re-
7 spond within ~~10~~ days to written requests for information presented by
8 the public office concerning: (1) The full name of the obligor; (2) the
9 current address of the obligor; (3) the obligor's social security number;
10 (4) the obligor's work location; (5) the number of the obligor's claimed
11 dependents; (6) the obligor's gross income; (7) the obligor's net income;
12 (8) an itemized statement of deductions from the obligor's income; (9)
13 the obligor's pay schedule; (10) the obligor's health insurance coverage;
14 and (11) whether or not income owed the obligor is being withheld pur-
15 suant to this act. This is an exclusive list of the information that the payor
16 is required to provide under this section.

five
or electronic

17 (b) It shall be the duty of any payor who has been served ~~a copy of~~
18 an income withholding order for payment of an order for cash support to
19 deduct and pay over income as provided in this section. The payor shall
20 begin the required deductions no later than the next payment of income
21 due the obligor ~~after 14~~ days following service of the order on the payor.

certified
which is not less than five

22 (c) Within ~~seven~~ business days of the time the obligor is normally
23 paid, the payor shall pay the amount withheld as directed by the income
24 withholding agency pursuant to K.S.A. 23-4,109 and amendments
25 thereto, as directed by the income withholding order or by a rule of the
26 Kansas supreme court. The payor shall identify each payment with the
27 name of the obligor, the county and case number of the income with-
28 holding order, and the date the income was withheld from the obligor. A
29 payor subject to more than one income withholding order payable to the
30 same payee may combine the amounts withheld into a single payment,
31 but only if the amount attributable to each income withholding order is
32 clearly identified. Premiums required for a child's coverage under a health
33 benefit plan shall be remitted as provided in the health benefit plan and
34 shall not be combined with any other support payment required by the
35 income withholding order.

five

36 (d) The payor shall continue to withhold income as required by the
37 income withholding order until further order of the court or agency.

38 (e) From income due the obligor, the payor may withhold and retain
39 to defray the payor's costs a cost recovery fee of \$5 for each pay period
40 for which income is withheld or \$10 for each month for which income is
41 withheld, whichever is less. Such cost recovery fee shall be in addition to
42 the amount withheld as support.

43 (f) The entire sum withheld by the payor, including the cost recovery

1 fee and premiums due from the obligor which are incurred solely because
 2 of a medical withholding order, shall not exceed the limits provided for
 3 under section 303(b) of the consumer credit protection act (15 U.S.C. §
 4 1673(b)). If amounts of earnings required to be withheld exceed the max-
 5 imum amount of earnings which may be withheld according to the con-
 6 sumer credit protection act, priority shall be given to payment of current
 7 and past due support, and the payor shall promptly notify the holder of
 8 the limited power of attorney of any nonpayment of premium for a health
 9 benefit plan on the child's behalf. An income withholding order issued
 10 pursuant to this act shall not be considered a wage garnishment as defined
 11 in subsection (b) of K.S.A. 60-2310 and amendments thereto. If amounts
 12 of earnings required to be withheld in accordance with this act are less
 13 than the maximum amount of earnings which could be withheld according
 14 to the consumer credit protection act, the payor shall honor garnishments
 15 filed by other creditors to the extent that the total amount taken from
 16 earnings does not exceed consumer credit protection act limitations.

17 (g) The payor shall promptly notify the court or agency that issued
 18 the income withholding order of the termination of the obligor's em-
 19 ployment or other source of income, or the layoff of the obligor from
 20 employment, and provide the obligor's last known address and the name
 21 and address of the individual's current employer, if known.

22 (h) A payor who complies with a copy of an income withholding order
 23 that is regular on its face shall not be subject to civil liability to any person
 24 or agency for conduct in compliance with the income withholding order.

certified

25 (i) Except as provided further, if any payor violates the provisions of
 26 this act, the court may enter a judgment against the payor for the total
 27 amount which should have been withheld and paid over. If the payor,
 28 without just cause or excuse, intentionally fails to pay over income within
 29 the time established in subsection (c) and the obligee files a motion to
 30 have such income paid over, the court shall enter a judgment against the
 31 payor and in favor of the obligee for three times the amount of the income
 32 owed and reasonable attorney fees.

33 (j) In addition to any judgment authorized by subsection (i), a payor
 34 shall be subject to a civil penalty not exceeding \$500 and other equitable
 35 relief as the court considers proper if the payor: (1) Discharges, refuses
 36 to employ or takes disciplinary action against an obligor subject to an
 37 income withholding order because of such withholding and the obliga-
 38 tions or additional obligations which it imposes upon the payor; or (2)
 39 fails to withhold support from income or to pay such amounts in the
 40 manner required by this act.

41 Sec. 3. K.S.A. 2000 Supp. 23-4,118 is hereby amended to read as
 42 follows: 23-4,118. (a) ~~The department of social and rehabilitation services~~
 43 ~~is designated as the state income withholding agency in title IV-D cases.~~

1 For the purpose of keeping adequate records to document, track and
 2 monitor support payments in title IV-D cases and for the purpose of
 3 initiating the income withholding process in such cases, the department
 4 may contract for the performance of all or a portion of the withholding
 5 agency function with existing title IV-D contractors or any newly created
 6 entity capable of providing such services.

7 ~~—(b) In all other cases, except as otherwise provided in this subsection,
 8 the clerk of the district court is designated as the income withholding
 9 agency for the purpose of keeping adequate records to allow the obligor
 10 and obligee to track and monitor support payments. If a district court
 11 trustee has been designated by the chief judge to receive, process and
 12 maintain records for moneys received under support orders, the district
 13 court trustee is designated as the income withholding agency for non-IV-
 14 D cases in the judicial district. The department of social and rehabilitation
 15 services, the title IV-D agency for the state, shall establish a central unit
 16 for collection and disbursement of support payments to meet the require-
 17 ments of title IV-D. The department shall collaborate with the Kansas
 18 supreme court to establish the central unit for collection and disbursement
 19 of support payments, which shall include, but is not limited to, all support
 20 payments subject to the requirements of title IV-D. Upon designation by
 21 the Kansas supreme court, the central unit for collection and disbursement
 22 of support payments shall commence operations with respect to support
 23 orders entered in each county as provided in a schedule adopted or ap-
 24 proved by the supreme court or the supreme court's designee.~~

See attached subsection (b)

25 ~~[(b)] When the central unit for collection and disbursement of support
 26 payments commences operations with respect to a county, any provision
 27 in any child support order or income withholding order entered in that
 28 county which requires remittance of support payments to the clerk of the
 29 district court or district court trustee shall be deemed to require remit-
 30 tance of support payments to the central unit for collection and disburse-
 31 ment of support payments, regardless of the date the child support or
 32 income withholding order was entered.~~

(d)

33 ~~[(c)] As used in this section, "child support order" includes any order
 34 for maintenance of a spouse or ex-spouse issued in conjunction with a
 35 child support order.~~

(e)

See attached subsections (f), (g) and (h)

36 Sec. 4. K.S.A. 23-4,136 is hereby amended to read as follows: 23-
 37 4,136. Any person who is the obligor under a support order of another
 38 jurisdiction may obtain voluntary income withholding by filing with the
 39 court a request for an income withholding order and a certified copy of
 40 the support order of the other jurisdiction. The court shall issue an in-
 41 come withholding order, as provided in subsection (i) of K.S.A. 23-4,107
 42 and amendments thereto, which shall be honored by any payor regardless
 43 of whether there is an arrearage. In such a case, payments shall be made

(b) The department may contract with a private vendor for the establishment and operation, in whole or in part, of such central unit. Any contract currently in place shall be modified to take into account the provisions of this subsection. The following conditions and limitations shall apply to any such contract:

(1) Any contract shall provide that the Kansas supreme court, by court rule, establish the procedure for the creation, maintenance and correction of official child support and maintenance records for use as official court records.

(2) No contract shall include provisions allowing the vendor to be paid, in whole or in part, on the basis of an amount per phone call received by the center nor allowing the vendor to be paid an amount per check issued for checks that were issued in error by the center.

(3) Any contract with a private vendor shall include penalty provisions for noncompliance with federal regulations relating to the timeliness of collections and disbursements and shall include minimum monetary penalties for each erroneous transaction, whether related to collection or disbursement. Penalties shall be collected as and when assessed and shall be placed in the social and rehabilitation services central unit penalty fund pursuant to subsection (g).

(4) Any contract with a private vendor shall provide for full access to all data by the secretary's designee in the central receivables unit, the designee of the office of judicial administration and the chairperson of the central payment center oversight commission. Further, the contract shall provide that all district court clerks and court trustees have access to records of the vendors sufficient to allow them to assist in the process of matching support payments to the obligees and be provided dedicated telephone line access to the vendor for the purpose of assisting the vendor in making accurate and timely disbursements.

(5) Any contract with a private vendor, in addition to sufficient customer service staff during regular business hours, shall require 24-hour access by obligors and obligees to payment files which show status of receipts and disbursements, including, but not limited to, date of receipt by the vendor, date of processing by the vendor and date of mailing to the obligee.

(6) Any contract with a private vendor shall provide that if the vendor is unable to match a payment with the obligee within five business days of receipt of the funds, such unmatched funds shall be transferred to the central receivables unit of the department of social and rehabilitation services for determination of proper disbursement.

(c)

(f) Any unmatched funds transferred to the central receivables unit of the department of social and rehabilitation services which remain unmatched one year after the transfer and after a good faith effort has been made to find the obligee shall be deposited with the state treasurer in accordance with the unclaimed property act.

(g) (1) There is hereby created in the state treasury the social and rehabilitation services central unit penalty fund. Money credited to the fund pursuant to subsection (b) shall be used solely for the purpose of assisting obligees who have incurred expenses due to the fault of the vendor in handling the support payments.

(2) All expenditures from the social and rehabilitation services central unit penalty fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

(3) Upon receipt of any such penalty, the secretary shall remit the entire amount at least monthly to the state treasurer, who shall deposit it in the state treasury and credit it to the social and rehabilitation services central unit penalty fund.

(4) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the social and rehabilitation services central unit penalty fund interest earnings based on:

(A) The average daily balance of moneys in the social and rehabilitation services central unit penalty fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(h) The provisions of this section shall expire on July 1, 2003.

1 from the payor or the clerk of the court to the agency for distribution to
2 the obligee.

3 Sec. 5. K.S.A. 38-1121 is hereby amended to read as follows: 38-
4 1121. (a) The judgment or order of the court determining the existence
5 or nonexistence of the parent and child relationship is determinative for
6 all purposes, but if any person necessary to determine the existence of a
7 father and child relationship for all purposes has not been joined as a
8 party, a determination of the paternity of the child shall have only the
9 force and effect of a finding of fact necessary to determine a duty of
10 support.

11 (b) If the judgment or order of the court is at variance with the child's
12 birth certificate, the court shall order that a new birth certificate be is-
13 sued, but only if any man named as the father on the birth certificate is
14 a party to the action.

15 (c) Upon adjudging that a party is the parent of a minor child, the
16 court shall make provision for support and education of the child includ-
17 ing the necessary medical expenses incident to the birth of the child. The
18 court may order the support and education expenses to be paid by either
19 or both parents for the minor child. When the child reaches 18 years of
20 age, the support shall terminate unless: (1) The parent or parents agree,
21 by written agreement approved by the court, to pay support beyond that
22 time; (2) the child reaches 18 years of age before completing the child's
23 high school education in which case the support shall not automatically
24 terminate, unless otherwise ordered by the court, until June 30 of the
25 school year during which the child became 18 years of age if the child is
26 still attending high school; or (3) the child is still a bona fide high school
27 student after June 30 of the school year during which the child became
28 18 years of age, in which case the court, on motion, may order support
29 to continue through the school year during which the child becomes 19
30 years of age so long as the child is a bona fide high school student and
31 the parents jointly participated or knowingly acquiesced in the decision
32 which delayed the child's completion of high school. The court, in ex-
33 tending support pursuant to subsection (c)(3), may impose such condi-
34 tions as are appropriate and shall set the child support utilizing the guide-
35 line table category for 16-year through 18-year old children. Provision for
36 payment of support and educational expenses of a child after reaching 18
37 years of age if still attending high school shall apply to any child subject
38 to the jurisdiction of the court, including those whose support was or-
39 dered prior to July 1, 1992. If an agreement approved by the court prior
40 to July 1, 1988, provides for termination of support before the date pro-
41 vided by subsection (c)(2), the court may review and modify such agree-
42 ment, and any order based on such agreement, to extend the date for
43 termination of support to the date provided by subsection (c)(2). If an

1 agreement approved by the court prior to July 1, 1992, provides for ter-
2 mination of support before the date provided by subsection (c)(3), the
3 court may review and modify such agreement, and any order based on
4 such agreement, to extend the date for termination of support to the date
5 provided by subsection (c)(3). For purposes of this section, "bona fide
6 high school student" means a student who is enrolled in full accordance
7 with the policy of the accredited high school in which the student is
8 pursuing a high school diploma or a graduate equivalency diploma
9 (GED). ~~The judgment shall specify the terms of payment and shall re-~~
10 ~~quire payment to be made through the clerk of the district court or the~~
11 ~~court trustee except for good cause shown.~~ The judgment may require
12 the party to provide a bond with sureties to secure payment. The court
13 may at any time during the minority of the child modify or change the
14 order of support, including any order issued in a title IV-D case, within
15 three years of the date of the original order or a modification order, as
16 required by the best interest of the child. If more than three years has
17 passed since the date of the original order or modification order, a re-
18 quirement that such order is in the best interest of the child need not be
19 shown. The court may make a modification of support retroactive to a
20 date at least one month after the date that the motion to modify was filed
21 with the court. Any increase in support ordered effective prior to the date
22 the court's judgment is filed shall not become a lien on real property
23 pursuant to K.S.A. 60-2202, and amendments thereto.

24 (d) If both parents are parties to the action, the court shall enter such
25 orders regarding custody, residency and parenting time as the court con-
26 siders to be in the best interest of the child.

27 If the parties have an agreed parenting plan it shall be presumed the
28 agreed parenting plan is in the best interest of the child. This presumption
29 may be overcome and the court may make a different order if the court
30 makes specific findings of fact stating why the agreed parenting plan is
31 not in the best interest of the child. If the parties are not in agreement
32 on a parenting plan, each party shall submit a proposed parenting plan
33 to the court for consideration at such time before the final hearing as may
34 be directed by the court.

35 (e) In entering an original order for support of a child under this
36 section, the court may award an additional judgment to reimburse the
37 expenses of support and education of the child from the date of birth to
38 the date the order is entered. If the determination of paternity is based
39 upon a presumption arising under K.S.A. 38-1114 and amendments
40 thereto, the court shall award an additional judgment to reimburse all or
41 part of the expenses of support and education of the child from at least
42 the date the presumption first arose to the date the order is entered,
43 except that no additional judgment need be awarded for amounts accrued

1 under a previous order for the child's support.

2 (f) In determining the amount to be ordered in payment and duration
3 of such payments, a court enforcing the obligation of support shall con-
4 sider all relevant facts including, but not limited to, the following:

5 (1) The needs of the child.

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

7 (3) The relative financial means of the parents.

8 (4) The earning ability of the parents.

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

10 (6) The age of the child.

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

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

13 (9) The value of services contributed by both parents.

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

16 (h) An order granting parenting time pursuant to this section may be
17 enforced in accordance with K.S.A. 23-701, and amendments thereto, or
18 under the uniform child custody jurisdiction and enforcement act.

19 Sec. 6. K.S.A. 38-1123 is hereby amended to read as follows: 38-
20 1123. (a) If existence of the father and child relationship has been deter-
21 mined and payment of support is ordered under prior law, the court may
22 order support and any related expenses to be paid through ~~the clerk of~~
23 ~~the court or district court trustee~~ *the central unit for collection and dis-*
24 *bursement of support payments designated pursuant to K.S.A. 23-4,118,*
25 *and amendments thereto.* If payment of support is ordered under this act,
26 the court shall require such support and any related expense to be paid
27 through the ~~clerk of the court or the court trustee~~ *central unit for collec-*
28 *tion and disbursement of support payments designated pursuant to K.S.A.*
29 *23-4,118, and amendments thereto.*

30 (b) The provisions of ~~K.S.A. 23-4,107~~ *the Kansas income withholding*
31 *act, K.S.A. 23-4,105 through K.S.A. 23-4,123, and amendments thereto,*
32 shall apply to orders of support issued under this act or under the pred-
33 ecessor to this act.

34 (c) Willful failure to obey the judgment or order of the court is a civil
35 contempt of the court. All remedies for the enforcement of judgments
36 apply.

37 Sec. 7. K.S.A. 2000 Supp. 60-1610 is hereby amended to read as
38 follows: 60-1610. A decree in an action under this article may include
39 orders on the following matters:

40 (a) *Minor children.* (1) *Child support and education.* The court shall
41 make provisions for the support and education of the minor children. The
42 court may modify or change any prior order, including any order issued
43 in a title IV-D case, within three years of the date of the original order

1 or a modification order, when a material change in circumstances is
2 shown, irrespective of the present domicile of the child or the parents. If
3 more than three years has passed since the date of the original order or
4 modification order, a material change in circumstance need not be shown.
5 The court may make a modification of child support retroactive to a date
6 at least one month after the date that the motion to modify was filed with
7 the court. Any increase in support ordered effective prior to the date the
8 court's judgment is filed shall not become a lien on real property pursuant
9 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
10 custodial arrangement ordered by the court, the court may order the child
11 support and education expenses to be paid by either or both parents for
12 any child less than 18 years of age, at which age the support shall ter-
13minate unless: (A) The parent or parents agree, by written agreement
14 approved by the court, to pay support beyond the time the child reaches
15 18 years of age; (B) the child reaches 18 years of age before completing
16 the child's high school education in which case the support shall not ter-
17minate automatically, unless otherwise ordered by the court, until June
18 30 of the school year during which the child became 18 years of age if
19 the child is still attending high school; or (C) the child is still a bona fide
20 high school student after June 30 of the school year during which the
21 child became 18 years of age, in which case the court, on motion, may
22 order support to continue through the school year during which the child
23 becomes 19 years of age so long as the child is a bona fide high school
24 student and the parents jointly participated or knowingly acquiesced in
25 the decision which delayed the child's completion of high school. The
26 court, in extending support pursuant to subsection (a)(1)(C), may impose
27 such conditions as are appropriate and shall set the child support utilizing
28 the guideline table category for 16-year through 18-year old children.
29 Provision for payment of support and educational expenses of a child after
30 reaching 18 years of age if still attending high school shall apply to any
31 child subject to the jurisdiction of the court, including those whose sup-
32port was ordered prior to July 1, 1992. If an agreement approved by the
33 court prior to July 1, 1988, provides for termination of support before the
34 date provided by subsection (a)(1)(B), the court may review and modify
35 such agreement, and any order based on such agreement, to extend the
36 date for termination of support to the date provided by subsection
37 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
38 provides for termination of support before the date provided by subsec-
39tion (a)(1)(C), the court may review and modify such agreement, and any
40 order based on such agreement, to extend the date for termination of
41 support to the date provided by subsection (a)(1)(C). For purposes of this
42 section, "bona fide high school student" means a student who is enrolled
43 in full accordance with the policy of the accredited high school in which

1 the student is pursuing a high school diploma or a graduate equivalency
 2 diploma (GED). In determining the amount to be paid for child support,
 3 the court shall consider all relevant factors, without regard to marital
 4 misconduct, including the financial resources and needs of both parents,
 5 the financial resources and needs of the child and the physical and emo-
 6 tional condition of the child. Until a child reaches 18 years of age, the
 7 court may set apart any portion of property of either the husband or wife,
 8 or both, that seems necessary and proper for the support of the child.
 9 ~~Every~~ *Except for good cause shown, every* order requiring payment of
 10 child support under this section shall require that the support be paid
 11 through the clerk of the district court or the court trustee ~~except for good~~
 12 ~~cause shown~~ *central unit for collection and disbursement of support pay-*
 13 *ments designated pursuant to K.S.A. 23-4,118, and amendments thereto.* **A**
 14 If the divorce decree of the parties provides for an abatement of child
 15 support during any period provided in such decree, the child support
 16 such nonresidential parent owes for such period shall abate during such
 17 period of time, except that if the residential parent shows that the criteria
 18 for the abatement has not been satisfied there shall not be an abatement
 19 of such child support.

20 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
 21 the provisions of the uniform child custody jurisdiction and enforcement
 22 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
 23 court may change or modify any prior order of custody, residency, visi-
 24 tation and parenting time, when a material change of circumstances is
 25 shown, but no ex parte order shall have the effect of changing residency
 26 of a minor child from the parent who has had the sole de facto residency
 27 of the child to the other parent unless there is sworn testimony to support
 28 a showing of extraordinary circumstances. If an interlocutory order is
 29 issued ex parte, the court shall hear a motion to vacate or modify the
 30 order within 15 days of the date that a party requests a hearing whether
 31 to vacate or modify the order.

32 (B) *Examination of parties.* The court may order physical or mental
 33 examinations of the parties if requested pursuant to K.S.A. 60-235 and
 34 amendments thereto.

35 (3) *Child custody or residency criteria.* The court shall determine
 36 custody or residency of a child in accordance with the best interests of
 37 the child.

38 (A) If the parties have entered into a parenting plan, it shall be pre-
 39 sumed that the agreement is in the best interests of the child. This pre-
 '0 sumption may be overcome and the court may make a different order if
 .1 the court makes specific findings of fact stating why the agreed parenting
 42 plan is not in the best interests of the child.

43 (B) In determining the issue of child custody, residency and parent-

A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause.

1 ing time, the court shall consider all relevant factors, including but not
2 limited to:

3 (i) The length of time that the child has been under the actual care
4 and control of any person other than a parent and the circumstances
5 relating thereto;

6 (ii) the desires of the child's parents as to custody or residency;

7 (iii) the desires of the child as to the child's custody or residency;

8 (iv) the interaction and interrelationship of the child with parents,
9 siblings and any other person who may significantly affect the child's best
10 interests;

11 (v) the child's adjustment to the child's home, school and community;

12 (vi) the willingness and ability of each parent to respect and appre-
13 ciate the bond between the child and the other parent and to allow for a
14 continuing relationship between the child and the other parent; and

15 (vii) evidence of spousal abuse.

16 Neither parent shall be considered to have a vested interest in the
17 custody or residency of any child as against the other parent, regardless
18 of the age of the child, and there shall be no presumption that it is in the
19 best interests of any infant or young child to give custody or residency to
20 the mother.

21 (4) *Types of legal custodial arrangements.* Subject to the provisions
22 of this article, the court may make any order relating to custodial arrange-
23 ments which is in the best interests of the child. The order shall provide
24 one of the following legal custody arrangements, in the order of
25 preference:

26 (A) *Joint legal custody.* The court may order the joint legal custody
27 of a child with both parties. In that event, the parties shall have equal
28 rights to make decisions in the best interests of the child.

29 (B) *Sole legal custody.* The court may order the sole legal custody of
30 a child with one of the parties when the court finds that it is not in the
31 best interests of the child that both of the parties have equal rights to
32 make decisions pertaining to the child. If the court does not order joint
33 legal custody, the court shall include on the record specific findings of
34 fact upon which the order for sole legal custody is based. The award of
35 sole legal custody to one parent shall not deprive the other parent of
36 access to information regarding the child unless the court shall so order,
37 stating the reasons for that determination.

38 (5) *Types of residential arrangements.* After making a determination
39 of the legal custodial arrangements, the court shall determine the resi-
40 dency of the child from the following options, which arrangement the
41 court must find to be in the best interest of the child. The parties shall
42 submit to the court either an agreed parenting plan or, in the case of
43 dispute, proposed parenting plans for the court's consideration. Such op-

1 tions are:

2 (A) *Residency*. The court may order a residential arrangement in
3 which the child resides with one or both parents on a basis consistent
4 with the best interests of the child.

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

8 (C) *Nonparental residency*. If during the proceedings the court de-
9 termines that there is probable cause to believe that the child is a child
10 in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-
11 1502 and amendments thereto or that neither parent is fit to have resi-
12 dency, the court may award temporary residency of the child to a grand-
13 parent, aunt, uncle or adult sibling, or, another person or agency if the
14 court finds the award of custody to such person or agency is in the best
15 interests of the child. In making such a residency order, the court shall
16 give preference, to the extent that the court finds it is in the best interests
17 of the child, first to awarding such residency to a relative of the child by
18 blood, marriage or adoption and second to awarding such residency to
19 another person with whom the child has close emotional ties. The court
20 may make temporary orders for care, support, education and visitation
21 that it considers appropriate. Temporary residency orders are to be en-
22 tered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-
23 1543, and amendments thereto, and shall remain in effect until there is
24 a final determination under the Kansas code for care of children. An
25 award of temporary residency under this paragraph shall not terminate
26 parental rights nor give the court the authority to consent to the adoption
27 of the child. When the court enters orders awarding temporary residency
28 of the child to an agency or a person other than the parent, the court
29 shall refer a transcript of the proceedings to the county or district attor-
30 ney. The county or district attorney shall file a petition as provided in
31 K.S.A. 38-1531 and amendments thereto and may request termination of
32 parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The
33 costs of the proceedings shall be paid from the general fund of the county.
34 When a final determination is made that the child is not a child in need
35 of care, the county or district attorney shall notify the court in writing
36 and the court, after a hearing, shall enter appropriate custody orders
37 pursuant to this section. If the same judge presides over both proceedings,
38 the notice is not required. Any disposition pursuant to the Kansas code
39 for care of children shall be binding and shall supersede any order under
40 this section.

41 (b) *Financial matters*. (1) *Division of property*. The decree shall di-
42 vide the real and personal property of the parties, including any retire-
43 ment and pension plans, whether owned by either spouse prior to mar-

1 riage, acquired by either spouse in the spouse's own right after marriage
2 or acquired by the spouses' joint efforts, by: (A) a division of the property
3 in kind; (B) awarding the property or part of the property to one of the
4 spouses and requiring the other to pay a just and proper sum; or (C)
5 ordering a sale of the property, under conditions prescribed by the court,
6 and dividing the proceeds of the sale. Upon request, the trial court shall
7 set a valuation date to be used for all assets at trial, which may be the
8 date of separation, filing or trial as the facts and circumstances of the case
9 may dictate. The trial court may consider evidence regarding changes in
10 value of various assets before and after the valuation date in making the
11 division of property. In dividing defined-contribution types of retirement
12 and pension plans, the court shall allocate profits and losses on the non-
13 participant's portion until date of distribution to that nonparticipant. In
14 making the division of property the court shall consider the age of the
15 parties; the duration of the marriage; the property owned by the parties;
16 their present and future earning capacities; the time, source and manner
17 of acquisition of property; family ties and obligations; the allowance of
18 maintenance or lack thereof; dissipation of assets; the tax consequences
19 of the property division upon the respective economic circumstances of
20 the parties; and such other factors as the court considers necessary to
21 make a just and reasonable division of property. The decree shall provide
22 for any changes in beneficiary designation on: (A) Any insurance or an-
23 nuity policy that is owned by the parties, or in the case of group life
24 insurance policies, under which either of the parties is a covered person;
25 (B) any trust instrument under which one party is the grantor or holds a
26 power of appointment over part or all of the trust assets, that may be
27 exercised in favor of either party; or (C) any transfer on death or payable
28 on death account under which one or both of the parties are owners or
29 beneficiaries. Nothing in this section shall relieve the parties of the ob-
30 ligation to effectuate any change in beneficiary designation by the filing
31 of such change with the insurer or issuer in accordance with the terms
32 of such policy.

33 (2) *Maintenance*. The decree may award to either party an allowance
34 for future support denominated as maintenance, in an amount the court
35 finds to be fair, just and equitable under all of the circumstances. The
36 decree may make the future payments modifiable or terminable under
37 circumstances prescribed in the decree. The court may make a modifi-
38 cation of maintenance retroactive to a date at least one month after the
39 date that the motion to modify was filed with the court. In any event, the
40 court may not award maintenance for a period of time in excess of 121
41 months. If the original court decree reserves the power of the court to
42 hear subsequent motions for reinstatement of maintenance and such a
43 motion is filed prior to the expiration of the stated period of time for

1 maintenance payments, the court shall have jurisdiction to hear a motion
 2 by the recipient of the maintenance to reinstate the maintenance pay-
 3 ments. Upon motion and hearing, the court may reinstate the payments
 4 in whole or in part for a period of time, conditioned upon any modifying
 5 or terminating circumstances prescribed by the court, but the reinstatement
 6 shall be limited to a period of time not exceeding 121 months. The
 7 recipient may file subsequent motions for reinstatement of maintenance
 8 prior to the expiration of subsequent periods of time for maintenance
 9 payments to be made, but no single period of reinstatement ordered by
 10 the court may exceed 121 months. Maintenance may be in a lump sum,
 11 in periodic payments, on a percentage of earnings or on any other basis.
 12 At any time, on a hearing with reasonable notice to the party affected,
 13 the court may modify the amounts or other conditions for the payment
 14 of any portion of the maintenance originally awarded that has not already
 15 become due, but no modification shall be made without the consent of
 16 the party liable for the maintenance, if it has the effect of increasing or
 17 accelerating the liability for the unpaid maintenance beyond what was
 18 prescribed in the original decree. ~~Every~~ order requiring payment of main-

Except for good cause shown, every

19 tenance under this section shall require that the maintenance be paid
 20 through the ~~clerk of the district court or the court trustee~~ except for good
 21 cause shown

central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause.

22 (3) *Separation agreement.* If the parties have entered into a separa-
 23 tion agreement which the court finds to be valid, just and equitable, the
 24 agreement shall be incorporated in the decree. A separation agreement
 25 may include provisions relating to a parenting plan. The provisions of the
 26 agreement on all matters settled by it shall be confirmed in the decree
 27 except that any provisions relating to the legal custody, residency, visita-
 28 tion parenting time, support or education of the minor children shall be
 29 subject to the control of the court in accordance with all other provisions
 30 of this article. Matters settled by an agreement incorporated in the de-
 31 cree, other than matters pertaining to the legal custody, residency, visi-
 32 tation, parenting time, support or education of the minor children, shall
 33 not be subject to subsequent modification by the court except: (A) As
 34 prescribed by the agreement or (B) as subsequently consented to by the
 35 parties.

36 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
 37 party as justice and equity require. The court may order that the amount
 38 be paid directly to the attorney, who may enforce the order in the attor-
 39 ney's name in the same case.

40 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
 41 of a spouse, the court shall order the restoration of that spouse's maiden
 42 or former name.

43 (2) *Effective date as to remarriage.* Any marriage contracted by a

1 party, within or outside this state, with any other person before a judg-
2 ment of divorce becomes final shall be voidable until the decree of divorce
3 becomes final. An agreement which waives the right of appeal from the
4 granting of the divorce and which is incorporated into the decree or
5 signed by the parties and filed in the case shall be effective to shorten
6 the period of time during which the remarriage is voidable.

7 Sec. 8. K.S.A. 2000 Supp. 60-2308 is hereby amended to read as
8 follows: 60-2308. (a) Money received by any debtor as pensioner of the
9 United States within three months next preceding the issuing of an exe-
10 cution, or attachment, or garnishment process, cannot be applied to the
11 payment of the debts of such pensioner when it appears by the affidavit
12 of the debtor or otherwise that such pension money is necessary for the
13 maintenance of the debtor's support or a family support wholly or in part
14 by the pension money. The filing of the affidavit by the debtor, or making
15 proof as provided in this section, shall be *prima facie* evidence of the
16 necessity of such pension money for such support. It shall be the duty of
17 the court in which such proceeding is pending to release all moneys held
18 by such attachment or garnishment process, immediately upon the filing
19 of such affidavit, or the making of such proof.

20 (b) Except as provided in subsection (c), any money or other assets
21 payable to a participant or beneficiary from, or any interest of any partic-
22 ipant or beneficiary in, a retirement plan which is qualified under sections
23 401(a), 403(a), 403(b), 408, 408A or 409 of the federal internal revenue
24 code of 1986 and amendments thereto shall be exempt from any and all
25 claims of creditors of the beneficiary or participant. Any such plan shall
26 be conclusively presumed to be a spendthrift trust under these statutes
27 and the common law of the state. All records of the debtor concerning
28 such plan or arrangement and of the plan concerning the debtor's partic-
29 ipation in the plan or arrangement shall be exempt from the subpoena
30 process.

31 (c) Any plan or arrangement described in subsection (b) shall not be
32 exempt from the claims of an alternate payee under a qualified domestic
33 relations order. However, the interest of any and all alternate payees
34 under a qualified domestic relations order shall be exempt from any and
35 all claims of any creditor, other than the state department of social and
36 rehabilitation services, of the alternate payee. As used in this subsection,
37 the terms "alternate payee" and "qualified domestic relations order" have
38 the meaning ascribed to them in section 414(p) of the federal internal
39 revenue code of 1986 and amendments thereto.

40 (d) The provisions of subsections (b) and (c) shall apply to any pro-
41 ceeding which: (1) Is filed on or after July 1, 1986; or (2) was filed on or
42 after January 1, 1986, and is pending or on appeal July 1, 1986.

43 (e) Money held by *the central unit for collection and disbursement of*

1 support payments designated pursuant to K.S.A. 23-4,118, and amend-
 2 ments thereto, the state department of social and rehabilitation services,
 3 any clerk of a district court or a any district court trustee in connection
 4 with a court order for the support of any person, whether it be the money
 5 is identified as child support, spousal support, alimony or maintenance,
 6 shall be exempt from execution, attachment or garnishment process.

7 Sec. 9. K.S.A. 60-2803 is hereby amended to read as follows: 60-
 8 2803. (a) When a money judgment rendered in a civil action in a court
 9 of this state is satisfied, the judgment creditor or the assignee of the
 10 judgment creditor shall file satisfaction and release of the judgment within
 11 twenty days after receipt of written demand therefor, sent by restricted
 12 mail as defined by K.S.A. 60-103 and amendments thereto. Such satis-
 13 faction and release shall be filed with the clerk of the court in which the
 14 judgment was entered and with the clerk of any other court in which the
 15 judgment was filed.

16 (b) If a judgment creditor or the assignee of a judgment creditor
 17 refuses or neglects to enter satisfaction and release of a judgment when
 18 required by this section, such judgment creditor or assignee shall be liable
 19 to the judgment debtor, or other interested person demanding the satis-
 20 faction or release, in damages in the amount of one hundred dollars,
 21 together with a reasonable attorney's fee for preparing and prosecuting
 22 the action to recover such damages.

23 (c) The provisions of this section shall not apply if the judgment is
 24 satisfied by payment through the office of the clerk of the district court,
 25 the district court trustee or any central unit for collection and disburse-
 26 ment of support payments designated pursuant to K.S.A. 23-4,118, and
 27 amendments thereto.

Insert attached sections 10, 11 and 12

28 Sec. 10. K.S.A. 23-4,136, 38-1121, 38-1123 and 60-2803 and K.S.A. 23-497,
 29 2000 Supp. 23-4,106, 23-4,108, 23-4,118, 60-1610 and 60-2308 are hereby
 30 repealed. 23-4, 107

31 Sec. 11. This act shall take effect and be in force from and after its
 32 publication in the Kansas register.

New Sec 10. (a) There is hereby created the central payment center oversight commission.

(b) Commission members shall include:

- (1) A district court judge whose jurisdiction includes domestic relations;
- (2) a court trustee who works in child support enforcement;
- (3) a district court clerk;
- (4) a child support enforcement specialist 1 who is employed by the department of social and rehabilitation services;
- (5) an employer, with more than 75 employees, who provides income withholding;
- (6) an employer, with less than 25 employees, who provides income withholding;
- (7) a custodial parent who has a court order to receive child support;
- (8) a noncustodial parent who is under a support order to pay child support;
- (9) a representative appointed by the governor;
- (10) a representative of the office of judicial administration;
- (11) the state treasurer or the treasurer's designee;
- (12) the central receivables unit manager of the department of social and rehabilitation services or the manager's designee;
- (13) four members of the legislature as ex officio members. Of the four members, one representative shall be appointed by the speaker of the house of representatives, one representative shall be appointed by the minority leader of the house of representatives, one senator shall be appointed by the president of the senate and one senator shall be appointed by the minority leader of the senate;
- (14) the vendor operating the central unit for the collection and disbursement of support payments, pursuant to K.S.A. 23-4,118, and amendments thereto, or the vendor's designee as an ex officio member; and
- (15) the director of the title IV-D division or the director's designee as an ex officio member.

(c) The legislative coordinating council shall appoint the members of the commission under subsections (b)(1) through (b)(8).

(d) The initial members of the commission shall be appointed no later than July 1, 2001. Members shall serve terms of two years, except that the initial terms of members under subsections (b)(5) through (b)(8) shall be one year to provide for staggered terms for commission members. Vacancies shall be filled in the same manner as the original appointments and for the remainder of the unexpired term. Members whose terms have expired shall continue to serve until their successors have been appointed. Members shall be eligible for reappointment. The commission shall select a chairperson, annually, from its membership. A chairperson may serve more than one year.

(e) The commission shall meet on call of the chairperson as authorized by the legislative coordinating council.

(f) The staff of the legislative research department, the office of the revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the commission and to the extent authorized by the legislative coordinating council.

(g) Members of the commission attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the legislative coordinating council, shall be paid compensation, travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212 and amendments thereto.

(h) The central payment center oversight commission shall:

- (1) Recommend to the department of social and rehabilitation services, if appropriate, ways to improve or enhance the effectiveness of the central unit for the collection and disbursement of support payments;
- (2) recommend performance indicators for the central unit;

(3) recommend legislation which would clarify and improve state law regarding support for children as it relates to the central unit;

(4) present an annual report of its activities and recommendations to the legislative coordinating council by February 1;

(5) review the terms of any contract with a private vendor who is operating the central unit and provide suggestions and recommendations;

(6) consider whether the issue of a private vendor operating the central unit should be submitted to the Kansas performance review board, pursuant to K.S.A. 75-7104, and amendments thereto, for analysis;

(7) monitor federal regulations relating to the central unit mandate and evaluate any and all opportunities for appropriate waivers and options out of the mandate;

(8) monitor all funds in suspense status and make recommendations regarding the handling of payments in suspense, whether by the state or a private vendor;

(9) monitor the penalty provisions in any private vendor contract and monitor the status of violations and collection of penalties; and

(10) conduct public hearings in order to fulfill the oversight function, as authorized by the legislative coordinating council.

(i) The provisions of this section shall expire on July 1, 2003.

Sec. 11. K.S.A. 2000 Supp. 23-497 is hereby amended to read as follows:

23-497. (a) ~~To~~ Except as provided further, to defray the expenses of operation of the court trustee's office, the court trustee is authorized to charge an amount: (1) Whether fixed or sliding scale, based upon the scope of services provided or upon economic criteria, not to exceed 5% of the support collected from obligors through such office, as determined necessary by the chief judge as provided by this section; (2) based upon the hourly cost of office operations for the provision of services on an hourly or per service basis, with the written agreement of the obligee; or (3) from restitution collected, not to exceed the fee authorized by the attorney general under any contract entered into pursuant to K.S.A. 75-719, and amendments thereto.

(b) All such amounts shall be paid to the court trustee operations fund of the county where collected. There shall be created a court trustee operations fund in the county treasury of each county or district court of each county, in each judicial district that establishes the office of court trustee for the judicial district. The moneys budgeted to fund the operation of existing court trustee offices and to fund the start-up costs of new court trustee offices established on or after January 1, 1992, whether as a result of a rule adopted pursuant to K.S.A. 23-494, and amendments thereto, or because this act has created a court trustee operations fund, shall be transferred from the county general fund to the court trustee operations fund. The county commissioners of the county or group of counties, if the judicial district consists of more than one county, by a majority vote, shall decide whether the county or counties will have a court trustee operations fund in the county treasury or the district court of each county. All expenditures from the court trustee operations fund shall be made in accordance with the provisions of K.S.A. 23-492 et seq. and amendments thereto to enforce duties of support. Authorized expenditures from the court trustee operations fund may include repayment of start-up costs, expansions and operations of the court trustee's office to the county general fund. The court trustee shall be paid compensation as determined by the chief judge. The board of county commissioners of each county to which this act may apply shall provide suitable quarters for the office of court trustee, furnish stationery and supplies, and such furniture and equipment as shall, in the discretion of the chief judge, be necessary for the use of the court trustee. The chief judge shall fix and determine the annual budget of the office of the court trustee and shall review and determine on an annual basis the amount necessary to be charged to defray the expense of start-up costs, expansions and operations of the office

of court trustee. All payments made by the secretary of social and rehabilitation services pursuant to K.S.A. 23-4,117 and amendments thereto or any grants or other monies received which are intended to further child support enforcement goals or restitution goals shall be deposited in the court trustee operations fund.

(c) The court trustee shall not charge or collect a fee for any support payment that is not paid through the central unit for collection and disbursements of support payments pursuant to K.S.A. 23-4,118, and amendments thereto.

Sec. 12. K.S.A. 2000 Supp. 23-4,107 is hereby amended to read as follows: 23-4,107. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or (l), all new or modified orders for support shall provide for immediate issuance of an income withholding order. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) Except as otherwise provided in this subsection or subsections (j) or (l), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No

affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. 39-7,147, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, any income withholding order prepared in a standard format prescribed by the secretary of social and rehabilitation services shall be deemed to be in compliance with this act.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 23-4,108 and 23-4,109, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 23-4,121 and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 23-4,108, 23-4,109, 23-4,119 and 23-4,122 and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor only by personal service or registered mail, return receipt requested.

(2) Without the requirement of further notice to the obligor, the IV-D agency may cause a copy of any income withholding order to be served on the payor only by personal service or registered mail, return receipt requested or by any alternate method acceptable to the payor. No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, "copy of the income withholding order" means any document or notice, regardless of format, that advises the payor of the same general duties, requires the same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or (l), at any time following

entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor only by personal service or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a non-title IV-D case, upon presentation to the court of a written agreement between the parties, no income withholding order shall be issued pursuant to subsection (b). Before In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (B) a written agreement among all interested parties provides for an alternative arrangement. In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

- (A) The agreement was not in writing;
- (B) the agreement was not approved by all interested parties;
- (C) the terms of the agreement or alternative arrangement are not being met;
- (D) the agreement or alternative arrangement is not in the best interests of the child; or
- (E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 23-4,110 and amendments thereto apply to any motion pursuant to paragraph (3) or (4) of this subsection (j).

(k) (1) An ex parte interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

(2) An ex parte interlocutory order for support may be enforced pursuant to subsection (c) only if 10 or more days have elapsed since the order for support was served on the obligor.

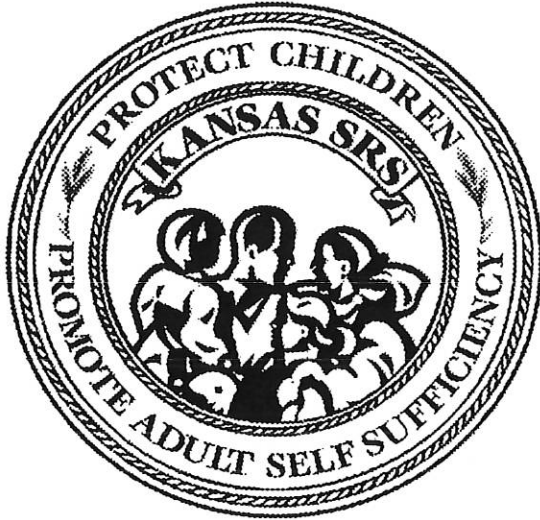
(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(1) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

Renumber remaining sections accordingly

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House Judiciary Committee, Room 313-S
March 14, 2001 at 3:30 p.m.

HB 2508 and HB 2361

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Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

House Judiciary Committee, Room 313-S
March 14, 2001 at 3:30 p.m.

HB 2508 and HB 2361

Mr. Chairman and members of the committee, thank you for this opportunity to provide you with our response to the subcommittee's proposed amendments to House Bill 2508 and House Bill 2361. We agree with the subcommittee that an in-depth study of the operation of the central unit for collection and disbursement of support payments is necessary and that an Oversight Commission is appropriate to be charged with this large undertaking. Although the KPC has shown progress in its operation during the past 5 ½ months, continued improvements must be made, particularly in the areas of customer service and the resolution of unidentified payments.

We welcome any opportunity for continued improvement in the central disbursement unit in order to better serve Kansas children. Input from the Commission would be helpful during the contracting process, any subsequent renegotiation, and in assisting the Department with public education on child support. The Department supports the amendment of HB 2361 into HB 2508.

We understand there are still aspects of the contract and operation of the KPC that are troubling, and we agree that those aspects require in-depth review. However, we believe that without that in-depth study it would be premature to prescribe specific changes in the Department's contract for the operation of the payment center, or in its operational processes. We are also concerned about the possible frustration that the Oversight Commission might encounter if its study leads it to endorse alternatives that it is unable to pursue because they have been prohibited in statute. In lieu of placing specific contract requirements within the statutes, we recommend that the Oversight Commission be charged, in its first year report, to specifically review, evaluate fiscal impact, and make recommendations on those specific provisions that the subcommittee identified.

To ensure that the Department can contribute the strongest possible staff representation, we would recommend the following changes to the Oversight Committee membership:

1. Replace "child support worker" in Section 1(b)(4) with an "SRS designee who has specific and current experience in child support collections."
2. Replace the subcommittee's recommendation to add the "Central Receivables Unit Manager or designee" with an "SRS designee who has specific and current experience in child support financial management and operations."

Concerning the subcommittee's remaining recommendations, the Department does not object to the five proposed amendments to HB 2508 which modify sections of law that were unaffected by the establishment of the centralized payment unit:

- Amend Section 2(a) to require a response by payor within 5 days to written or electronic information.
- Amend Section 2(b). The Department would suggest deleting the proposed word “certified” and inserting the following new subsection within K.S.A. 23-4,108: On and after July 1, 2001, and regardless of the date the income withholding order was issued, any copy of the income withholding order served on a payor shall be in the form of a notice in the standard format prescribed by the United States secretary of health and human services pursuant to 42 U.S.C. 666(b)(6)(A)(ii). By the person's signature on the notice, the person issuing the notice shall be deemed to have certified under penalty of perjury that the information provided in the notice accurately and completely reflects the terms of the income withholding order. We have no problem with the change from 14 days to 5 days.
- Amend Section 2(c) to require payment of amounts withheld within 5 days.
- Amend Section 2(i) to strike “intentionally.”
- Federal law requires income withholding in all cases after January 1, 1994. We do not object to amendment of K.S.A. 23-4,107(j)(1) to allow for oral application in non-IV-D cases where the parties consent.

We also do not object to the following amendments, which would clarify the meaning of “good cause.”

- Amend Section 7(a)(1) on page 10 to provide that an agreement by the parties to by-pass the central unit for collection and disbursement of support payments constitutes “good cause.” We would request limiting this provision to non-IV-D cases.
- Amend Section 7(b)(2) on page 14 to require payment to the central unit for collection and disbursement of support payments of maintenance payments and by-pass for good cause shown by agreement of the parties.

In summary, we support the establishment of an Oversight Commission to study the operation of the central unit for collection and disbursement of child support payments. If created, we pledge to work with the Commission aggressively to continue to improve the central unit's continued operation. We would hope that the Committee not complicate the Commission's task with additional statutory restrictions, and report H.B. 2508 out favorably for passage.



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March 14, 2001

**Testimony on House Judiciary Committee
Kansas Payment Center Subcommittee Recommendations**

Kathy Porter
Office of Judicial Administration

The recommendations of the Kansas Payment Center Subcommittee reflect careful consideration of the issues. Although SRS might have additional comments regarding the impact of federal IV-D requirements on some of the recommendations, from the perspective of the courts the recommendations are workable and should result in a more responsive and accountable central child support collection and disbursement system.

The recommendations require the Supreme Court to “establish the procedure for creation and maintenance of official child support/maintenance records for use as official court records.” The Office of Judicial Administration will work to create standards for the form and content of payment center records, and will submit those recommendations to the Supreme Court.

The Office of Judicial Administration does share SRS’s concern that those recommendations requiring certain provisions in any contract with a private vendor could place SRS in a position where either private vendors would not be interested in bidding on a contract, or the cost of the contract might increase significantly. Other options might be either adding language such as “to the extent possible, the contract shall. . .” or requiring the Central Payment Center Oversight Commission to consider whether these contractual provisions should be included in any contract entered into, after considering information about the cost and information about prospective vendors’ willingness and abilities to comply with each specific provision.