

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:40 a.m. on February 10, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Haley (E)
Senator Schmidt (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Roger Werholtz, Department of Corrections
Senator Jay Emler
Allan Hazlett, Past President of American Academy of Adoption Attorneys
Candice Shively, Deputy Secretary Integrated Service Delivery, SRS
Martin Bauer, Adoption Attorney, Wichita (written only)
Kyle Smith, Kansas Bureau of Investigation
Gordon Lansford, Kansas Criminal Justice Information System

Others attending: see attached list

Confirmation Hearing for Secretary of Corrections

Chairman Vratil opened the confirmation hearing for Roger Werholtz as Secretary of Corrections. Committee members asked questions and made comments on various aspects of the position and department. The Chair announced that final action on the confirmation would be completed at the next meeting, February 11. (Attachment 1)

SB 56 - Establishing putative father registry and prescribing certain requirements relating to notification of termination of parental rights

The Chairman reopened the hearing on **SB 56**. Senator Emler testified in support of this proposed bill, and stated that the bottom line is that putative fathers accept responsibility for their part in the act of procreation or forfeit their rights if the child should be put up for adoption. He furnished the Committee with copies of two studies done by individuals from the University of Kansas School of Law. He highly recommended the Committee read the one written by Diana Lee on "Putative Father Registry". (Attachment 2)

Conferee Hazlett testified that the Birth Father Registry is unnecessary, and that any competent adoption practitioner will continue to carefully question the biological mother with respect to who all possible biological fathers might be and notify all of those men, irrespective of whether or not they have registered. He said to do otherwise would place any adoption at risk, and he simply didn't believe this was in the best interests of adoption in general. He made several suggestions for amending the bill, including the repeal of K.S.A. 59-2123 which the Attorney General had determined to be unconstitutional. He offered a revision to K.S.A. 59-2136(h)(4) (Attachment 3)

General questions and discussion followed regarding whether the registry actually provides anything useful except adding another burdensome governmental function, possibly putting the biological fathers on notice that their rights could be forfeited, who actually tracks this function with the government, and whether there was any evidence that having a registry actually helps in the collection of child support.

Conferee Shively testified in support of **SB 56**. She explained that the creation of a putative fathers' registry was intended to assure putative fathers have a means to formally register so they may assert their rights in the event of efforts to terminate parental rights. She said that putative fathers may register with SRS for the purpose of child support collection, but that no fathers have registered so far for this purpose. Ms. Shively referred to the one-time start up costs to develop the registry data base, and that operation of the system would require staff to enter and distribute data pursuant to the bills requirements. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 10, 2003, in Room 123-S of the Capitol.

Written testimony was submitted by Mr. Martin Bauer, adoption attorney, Wichita. (Attachment 5)

Having no other conferees to appear before the Committee on this proposed bill, the Chair closed the hearing on **SB 56**.

SB 63 - Changing the law enforcement telecommunications committee to the criminal justice information system committee

Chairman Vratil opened the hearing on **SB 63**. Conferee Smith testified in support of this bill, and explained that the bill simply streamlines the governance of communications within the criminal justice system by merging the 25 member Kansas Criminal Justice Information System (KCJIS) advisory board and the statutory five member Law Enforcement Telecommunications Committee. Mr. Smith said that the system currently has over 7,000 users and supports approximately 160 state and local criminal justice agencies, and can instantly provide access to data bases maintained by courts, prosecutors, probation officers, and corrections. (Attachment 6)

Conferee Lansford testified in favor of **SB 63**, and explained that the proposed revisions were the culmination of a year-long joint governance initiative of the Kansas Law Enforcement Telecommunications Committee and the Kansas Criminal Justice Coordinating Council (KCJCC). He gave some background information on KCJIS, as well as what is currently being done in today's environment. He explained the proposed changes and the expected results. (Attachment 7)

There being no other conferees to testify on this bill, the Chair closed the hearing on **SB 63**.

SB 70 - Repeal SRS pass through assistance to family

Chairman Vratil opened the hearing on **SB 70**. Conferee Shively testified in support of this requested bill by SRS. She explained that the bill repeals the state statute requiring, entirely at state expense, SRS pass through to a family receiving cash assistance benefits (TAF), up to \$40 per month of current support collected by the Child Support Enforcement Program. (Attachment 8)

After brief questions and discussion, the Chairman closed the hearings on **SB 70**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 11, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

P.1

DATE: Mon., Feb 10, 2003

NAME	REPRESENTING
Candy Shively	SRS
Marilyn Jacobson	SRS
Jamie Corkhill	SRS
Amy Bertrand	Judicial Branch
Jane Nohr	KBI
Marilynn Auet	KCSOV
Alexandra Rice	KAC
Trista Curzydlo	Ks Bar Assn.
Lynaea South	JA
Barbara	KSC
Roger Werheltz	KDOC
Ally Lett	Adoption Auctions
BETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Ben C Hoffmann	Ks 9-1-1 Providers Assn.
GORDON LANSFORD	KCJIS
CHARLES SEXSON	KBJ
Eldon Rightmeier	DISC
John Balgar	SRS
Therese Deagle	

Senate Confirmation Information Summary
Prepared and Submitted by the Office of Governor Kathleen Sebelius

Appointee: Roger Werholtz

Position: Secretary of Corrections

Appointment Date: January 13, 2003

Expiration Date: N/A

Term Length: Pleasure of the Governor

Statutory Authority: K.S.A. 75-5203

Party Affiliation: Unaffiliated

⇒ Statutory geographic representation.
Requirements (*insert any that apply*)

Congressional District:

County:

Size requirement (*if any*):

Other, specify:

⇒ Statutory party affiliation requirement: No more than ___ members from the same political party

⇒ Statutory industry or occupation requirements: See attached

Salary: \$92,500

Predecessor: Charles Simmons

Board Composition Prior to Confirmation of New Appointee:

(SEE ATTACHED LIST) ~~██████████~~

N/A

Senate Judiciary

2-10-03

Attachment 1-1

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75-5203

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES Article 52.--DEPARTMENT OF CORRECTIONS

75-5203. Department of corrections; secretary; appointment and confirmation; salary and expenses; qualifications; oath; application of K-GOAL. (a) There is hereby established the department of corrections, the chief executive officer of which shall be the secretary of corrections. The secretary shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and shall serve at the pleasure of the governor. In case of a vacancy in the office of secretary, the governor shall appoint a successor in the manner that the original appointment was made. The secretary shall receive an annual salary fixed by the governor, which shall be payable in equal monthly installments. In addition, the secretary shall be entitled to receive actual and necessary traveling and subsistence expenses incurred in the performance of the secretary's official duties.

(b) Except as provided by subsection (c), no person shall be eligible for appointment to, or hold the position of, secretary of corrections unless such person:

(1) Has had at least five years' experience in the field of corrections or as an executive officer in the administration of federal or state penal or correctional institutions; or

(2) (A) has had at least three years' experience in the field of corrections or as an executive officer in the administration of federal or state penal or correctional institutions; and (B) has a degree from an accredited college or university, which degree is based on penology or a related field as a major of study; or

(3) (A) has had at least five years' experience as a federal, appellate or district judge or federal, district or county prosecutor, five years' experience in military administration or administration of a criminal justice agency or five years' administrative experience treating criminal offenders through programs involving penal custody, parole, probation and sentencing; (B) has a degree from an accredited college or university, which degree is in a social or behavioral science, penology, corrections, criminal justice, police science, criminology, public administration, local corrections programs or a related field; and (C) has demonstrated administrative ability and leadership.

(c) If the governor is unable to appoint a person as secretary who possesses the qualifications required by subsection (b), the governor may appoint a person without such qualifications as acting secretary, who shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and shall serve at the pleasure of the governor.

(d) Before entering upon the duties of the office, the secretary shall take and subscribe an oath to faithfully and honestly discharge the duties of the office to the best of the secretary's knowledge and ability.

(e) The provisions of the Kansas governmental operations accountability law apply to the department of corrections, and the department is subject to audit, review and evaluation under such law.

History: L. 1973, ch. 339, § 3; L. 1974, ch. 403, § 5; L. 1977, ch. 305, § 1; L. 1981, ch. 299, § 38; L. 1982, ch. 347, § 67; L. 1987, ch. 349, § 1; L. 1992, ch. 116, § 47; L. 2001, ch. 86, § 12; April 12.

Name: Roger Kent Werholtz
Address: 1008 Hartland Drive
Lawrence, Kansas 66049-3711
Telephone: 785-842-4829 (home)
785-296-3310 (work)
785-296-0250 (fax)

e-mail: turtleranch@sbcglobal.net (home)
RogerW@kdoc.dc.state.ks.us (work)

2002 to Present: Acting Secretary of Corrections, Kansas Department of Corrections

As Chief Executive Officer of a Cabinet Level Agency, provides leadership and direction to the Kansas Department of Corrections. This public safety agency has an annual budget of \$239.1 million and a workforce in excess of 3,100 people. The Department incarcerates a population in excess of 8,900, supervises more than 4,800 offenders on post release supervision, and provides funding and oversight to agencies and contractors providing community based supervision to an additional 4,000 felony offenders.

1987 to Present: Deputy Secretary of Corrections, Kansas Department of Corrections

As Deputy Secretary, supervises one of the three administrative divisions of the Department of Corrections. Currently supervises the Facilities Management Division, which is responsible for housing more than 8,800 felony offenders in eight correctional facilities at thirteen locations throughout the state. The division has an operating budget of more than \$173.7 million and staff of slightly more than 2,800. This division is responsible for all facility-based security, custody and classification functions, capital construction and maintenance, transportation, interstate corrections compact (facilities) and sexual predator screening.

Previously supervised the Programs and Staff Development Division. This division is responsible for all direct and contractual services for the Department. Included in this area are medical and dental services, mental health services, food service, educational and vocational programming, substance abuse treatment, sex offender treatment, staff development and training, policy and accreditation, evaluation and research, religious and faith based programming, as well as state and private correctional industries. Served as the primary negotiator for most of the Department's contractual services (approximately \$33.3 million annually).

Previously supervised the Community and Field Services Division. This division is responsible for the operation of parole and post release supervision of felony offenders and interstate corrections compact (community supervision). The division also provides funding and administrative oversight to the state's 31 locally operated community corrections programs, and the state's two contracted regimented discipline programs (boot camps).

1987: Graduate Instructor for the University of Kansas School of Social Welfare

Taught policy and program analysis with an emphasis on corrections to graduate students working toward MSW degrees.

1984 to 1987: Community Facilities and Services Administrator, Kansas Department of Corrections

This position served as the state administrator for all community based residential programs operated by the Department of Corrections. These included pre-release centers, work release centers, correctional work facilities and contract work release programs. This position also managed contracts for mental health services with three state universities.

1982 to 1984: Community Corrections Specialist, Kansas Department of Corrections

This position functioned as the state administrator for Community Corrections Programs and was responsible for the administration of all aspects of the Community Corrections Act (K.S.A. 75-5290).

1981 to 1982: Community Corrections of Wyandotte County

Served as director of this program, which provided a variety of probationary and social services to adult and juvenile felons, victim-oriented services, restitution and community service. The position was considered a department head of Wyandotte County Government.

1979 to 1981: Wyandot Mental Health Center – Family Focus

Served as the first coordinator of this program providing crisis intervention and family therapy services to juvenile offenders and their families.

1974 to 1979: Department of Social and Rehabilitation Services

While working in the Kansas City, Junction City and Topeka Area Offices, performed a variety of tasks including public assistance, location and support, licensing and regulation of day care facilities, protective services, the first Special Crisis Intervention Program (SCIP, a utility subsidy program for senior citizens), and purchase of service contracting.

1970 to 1974: Menninger Foundation Children's Hospital

As a childcare worker, worked with emotionally disturbed adolescents in an inpatient psychiatric setting delivering a therapeutic milieu treatment program.

FIELD PLACEMENTS:

Alcohol and Drug Abuse Section – SRS: As a second year administrative social work student, was responsible for the administration and monitoring of contracts held by the agency with the federal government, monitoring of sub-contractors and grantees, for federal reporting and other functions related to the distribution of resources controlled by the section.

Topeka-Shawnee County Health Center: During this first year field placement, became the first male in the history of the agency to act as a pregnancy/family planning counselor. Worked in the agency's Maternal and Infant Project. Additionally, worked in a court diversion program designed as an alternative to formal court action for first time juvenile offenders.

EDUCATIONAL BACKGROUND:

- Received MSW with emphasis in social service administration, management and evaluation from the University of Kansas in May 1978. G.P.A: 3.79.
- Received B.S. in English and Theater with minors in Russian and History from Washburn University in May 1971. Graduated cum laude with departmental honors.

SELECTED MEMBERSHIPS:

Member – Governor's Substance Abuse Prevention Council

Member – Governor's Mental Health Services Planning Council

Member – Governor's Coordinating Committee on Drug Abuse

Member and committee chair, Kansas Sentencing Commission Field Service Consolidation Task Force

Member of the Governor's Interagency Coordinating Committee on Substance Abuse

Appointed by the Governor of Kansas as the first chairperson of the State Community Corrections Board.

Member of the Governor's Interagency Work Group on AIDS

Vice Chair of the Advisory Board, University of Kansas, School of Social Welfare.

Wyandotte County Community Corrections Advisory Board; Juvenile Sub-committee Member.

Board of Directors, Douglas County Amateur Baseball Association

Cub master, Pack 3370, Boy Scouts of America.

SPECIAL ACCOMPLISHMENTS AND AWARDS:

University of Kansas School of Social Welfare, Alumnus of the Year, 1998.

Supervised the statewide implementation of Community Corrections programs in Kansas.

Was the subject of an editorial in the Kansas City, Kansan on outstanding leadership.

Received an educational stipend from the Department of Social and Rehabilitation Services to complete an MSW degree.

Received the Garvey Memorial Academic Scholarship to attend Washburn University from 1967 through 1971.

Received the Charlotte Leavitt Memorial Scholarship in 1970 as the outstanding senior in the Washburn University English Department.

SELECTED PROFESSIONAL and PERSONAL REFERENCES:

Tess Banion
Fred Braun
Sue Ellen Fried
Hon. Robert Gernon
Bill Kasper
Randy Roy
Marilyn Scafe
Dr. Ann Weick

KANSAS GOVERNOR-ELECT SEBELIUS APPOINTMENT QUESTIONNAIRE

Position for which you are applying: Secretary of Corrections, Deputy Sec. of Corrections

Full Name (please include middle name): Roger Kent Werholtz

Home Address: 1008 Hartland Dr. Lawrence, Ks. 66049-3711
(City, State, Zip) (County)

Business Address: 900 Jackson, 4th floor, Topeka, Ks. 66612-1284
(City, State, Zip) (County)

Business Name: Ks. Department of Corrections

Position Title: Acting Secretary of Corrections, Deputy Secretary / Facilities Mgmt.

Home Telephone: 785-842-4829 Business Telephone: 785-296-3310

Facsimile No: 785-296-0014 E-Mail Address: Roger.W@kdoc.dc.state.ks.us
turtle.ranch@sbcglobal.net

Driver's License No: K01-21-9065 Social Security No: 514 52 0364

Kansas resident? yes Registered Voter? yes

Do you have the legal right to live and work in the United States? yes

Education: MSW, University of Kansas ; BA, Washburn University

Employment Experience: 20+ years w/ Ks. Dept. of Corrections, 15 as Deputy Secretary
Resume is on file with transition office.

Do you hold any professional licenses? If so, please provide numbers: LMSW 0549

What special skills could you bring to this position? extensive experience as Deputy Secretary and
Acting Secretary of KDOC. First Director of Wyandotte Co. Community Corrections.

Previous government appointments: Acting Secretary of Corrections (Oct. 1, 2002); Deputy
(Please provide dates) Secretary of Corrections (1987 to present)

Note: All yes answers require a detailed response. Attach a separate sheet if necessary:

1. **Military Service:** List rank, date, and type of discharge from active service: None
2. **Government Experience:** List on a separate sheet any experience or association with local, state or federal government (exclusive of elective public office but including advisory, consulting, honorary, or other part-time service or positions), with dates of service: see attached resume

3. **Elective Public Office:** List on a separate sheet all elective public offices sought and/or held with dates of service: *None*
4. **Honors and Awards.** List on a separate sheet all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements: *See final page of attached resume*
5. **Organization Affiliations.** List on a separate sheet all local, state, and national civic, cultural, educational, charitable, or work-related organizations you have been associated with in the past ten years. Include any position held in the organization and the dates of service. *see attachment*
6. **Organization Restrictions:** To your knowledge, is any organization listed above restricted on the basis of race, color, religion, sex, national origin, disability, marital status, or veteran status? If yes, please describe: No Yes _____
7. **Issues.** Have you ever been publicly identified, in person or by organizational membership, with a particularly controversial national or local issue? If so, please describe. No Yes _____
8. **Submission of views.** Have you ever submitted oral or written views to any governmental authority, whether executive or legislative, or to the news media on any particular controversial issue other than in an official governmental capacity? If yes, please describe. No Yes _____
9. **Associations.** Have you ever had any association with any person, group, or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for the position to which you seek to be appointed? If yes, please describe. No Yes _____
10. **Opposition.** Do you know of any person or group who might take overt or covert steps to attack, even unfairly, your appointment? If yes, please identify and explain the basis for the potential attack on a separate sheet. No Yes _____
11. **Miscellaneous.** List on a separate sheet any factors, other than the information provided above, which particularly qualify you or are relevant to the position to which you are seeking appointment? Include any special skills. *see attachment*

CONFLICTS OF INTEREST: (Yes answers require a detailed response. Use a separate sheet.)

12. **Relationship to governmental employees.** Are you or your spouse or other close family members related to any state governmental official or employee? If yes, please provide details. No _____ Yes *I am a current employee of the Kansas Department of Corrections.*
13. **Compensation.** During the past five years have you or your spouse or other close family members received any compensation or been involved in any financial transaction with the State of Kansas? If yes, please explain. No _____ Yes *I am a current employee of the Kansas Department of Corrections.*
14. **Business relationships.** Describe on a separate sheet any business relationship, dealing, or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client, or acting as an agent, which you believe may constitute an appearance of impropriety or result in a potential conflict of interest in the position to which you want to be appointed. If none, please so state. *none*

15. **Transactions with officials.** During the past five years, have you or your spouse or other close family members received any compensation or been involved in any financial transaction with any state government official? If, yes, please explain on a separate sheet. No Yes
16. **Spouse or other family members.** If the nature of employment for your spouse or other close family member is related in any way to the position to which you want to be appointed, please indicate the employer, the position, and the length of time it has been held. If it is not, please so state. none
17. **Lobbying activities.** Describe briefly on a separate sheet any lobbying activity during the past ten years in which you have engaged for the purpose of influencing the passage, defeat, or modification of any legislative or administrative action. Describe briefly any lobbying activity during the last ten years in which your spouse has engaged for the purpose of influencing the passage, defeat, or modification of any legislative or administrative action that is related in any way to the position to which you are seeking appointment. (Lobbying activity includes any activity performed as an individual or agent of another individual, or of any organization that involves direct communication with an official in the executive branch of state government, or any official of the legislative branch.) If none, please so state. *As Deputy Secretary and Acting Secretary of Corrections I have had extensive contact with elected officials for 15 years. Outside of my official duties, I have not engaged in any lobbying activities.*
18. **Regulated activities.** Describe on a separate sheet any interest that you, your spouse, or other close family member may have (whether as an officer, owner, director, trustee, or partner) in any corporation, firm, partnership, or other business enterprise and any non-profit organization or other institution that is regulated by or receives direct financial benefits from any department or agency of the State of Kansas. If none, please so state. *I am an employee of the Dept. of Corrections, I am vice-chairperson of The University of Kansas School of Social Welfare Advisory Board (unpaid position).*
19. **Other.** Please describe on a separate sheet any other matter in which you are involved that is or may be incompatible or in conflict with the discharge of the duties of the position to which you seek to be appointed or which may impair or tend to impair your independence of judgment or action in the performance of the duties of that position. If none, please so state. none

ETHICAL MATTERS: (Yes answers require a detailed response. Use a separate sheet.)

20. **Citations.** Have you ever been cited for a breach of ethics for unprofessional conduct by, or been named in a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If yes, please provide details.
No Yes
21. **Convictions.** Have you ever been convicted of or entered a plea of guilty or nolo contendere or forfeited collateral for any criminal violation other than a minor traffic offense? (Minor traffic offenses do not include the Kansas offenses of driving under the influence, operating while impaired, reckless driving, or the equivalent offenses in other states.) If yes, please explain.
No Yes
22. **U.S. Military convictions.** Have you ever been convicted by any military court? If yes, please provide details. No Yes
23. **Imprisonment.** Have you ever been imprisoned, been on probation, or been on parole? If yes, please provide details. No Yes

24. **Agency proceedings:** Civil Litigation. Are you presently, or have you ever been, a party in interest in any administrative agency proceeding or civil litigation that is related in any way to the position to which you are seeking appointment? If yes, please provide details.
 No ___ Yes *I am frequently named in inmate initiated litigation. Attached is a listing (4 pgs.) of current cases.*
25. **Agency proceedings and civil litigation of affiliates and family.** Has any business in which you, your spouse, close family member or business associate are or were an officer, director or partner been a party to any administrative agency proceeding or civil litigation relevant to the position to which you are seeking appointment? If yes, please provide details. (With respect to this question, you need only consider proceedings and litigation that occurred while you, your spouse, close family member, or business associate were an officer of that business.)
 No Yes ___
26. **Other litigation.** Other than the litigation described above, have you or any business in which you are or were an officer, director, or partner been a plaintiff or a defendant in a civil lawsuit? If yes, please describe. Is anyone currently threatening to sue you or any business in which you are an officer, director, or partner? If yes, please describe. No Yes ___
27. **Drivers license.** Has your drivers license ever been suspended or revoked? If yes, please describe. No Yes ___
28. **Parking tickets.** Do you have outstanding parking tickets from any jurisdiction in Kansas that have remained unpaid for more than 60 days? If yes, please explain. No Yes ___
29. **Security clearance denial.** Have you ever been denied a military or other governmental clearance? If yes, please explain. No Yes ___
30. **Firings.** During the past ten years, have you been fired from a job for any reason? Did you quit after being told that you would be fired, or did you leave by mutual agreement because of specific problems? If yes, please provide details. No Yes ___
31. **Alimony and child support.** Are you now, or have you ever been delinquent in the payment of alimony or child support? If yes, please provide details. No Yes ___
32. **Consumption of alcohol.** Are you currently abusing alcohol? No Yes ___
33. **Controlled substances.** Are you currently engaged in the illegal use of a controlled substance or abusing the use of a prescribed controlled substance? If yes, please describe. No Yes ___
34. **Physical examination.** If you receive a conditional offer of appointment or employment, would you be willing to take a physical examination, which may include a drug test? No ___ Yes
35. **Other.** Please provide any additional information, favorable or unfavorable, which you feel should be considered in connection with your appointment.

FINANCIAL MATTERS: (Yes answers require a detailed response. Use a separate sheet.)

36. **Delinquencies.** Are you delinquent on any federal, state, or local debt? (Include delinquencies for income, property, or other taxes; governmental loans; overpayment of benefits; required

payments into or under governmental programs; and other debts or required payments to the government; plus any defaults on or under loans which are or were guaranteed, insured, or subsidized by any unit of government.) If yes, please provide details on a separate sheet of paper. No X Yes _____

REFERENCES/SIGNIFICANT SUPPORTERS (elected officials, community leaders, friends, etc.)

see attached page

Name: _____ Relationship to you: _____

Telephone: _____

Name: _____ Relationship to you: _____

Telephone: _____

Name: _____ Relationship to you: _____

Telephone: _____

AUTHORIZATION AND CERTIFICATION:

The facts set forth in my application are true and complete. False statements, answers, or omissions on this application shall be sufficient cause for nonconsideration or for dismissal after appointment or employment. I also recognize that my selection is based on receipt of satisfactory information from former employers and references, and upon my ability to perform the essential elements, with or without reasonable accommodations, for the position for which I am applying. I herein authorize investigation, without liability, of the information supplied by me in this application for employment or appointment including academic, occupational, health, law enforcement, and government records. I also authorize listed employers and references, without liability, to make full response to any inquiries in connection with this application for appointment or employment. I understand and agree that the terms, conditions, compensation, benefits, hours, schedule, and duration of my appointment or employment may be determined, changed, or modified from time to time at the will of the appointing authority or designee without limitation or condition. I FURTHER CERTIFY THAT I HAVE READ THE FOREGOING PARAGRAPH AND KNOWINGLY MAKE THIS AUTHORIZATION BY SETTING FORTH MY SIGNATURE.

I understand that if I am required to be registered, licensed, or certified by federal or state law or regulation for the position I seek, I will notify the appointing authority immediately if any investigation, limitation, or cancellation of my registration, licensure, or certification occurs. If any investigation, probation, limitation, or cancellation occurs, I understand that my failure to notify my appointing authority as described above will result in the termination of my appointment or employment.

Signature  Date 12/5/02

Please attach a copy of your resume if you have not previously provided one to the transition office.

Response to Question 5

Member – Governor's Substance Abuse Prevention Council – from inception of the council to present

Member – Governor's Mental Health Services Planning Council – from approximately 1992 to present

Member – Governor's Interagency Coordinating Committee on Drug Abuse – approximately 1992 - 1994

Member and committee chair, Kansas Sentencing Commission Field Service Consolidation Task Force -1992

Appointed by the Governor of Kansas as the first chairperson of the State Community Corrections Board – 1989 – 1992 (dates approximate)

Member of the Governor's Interagency Work Group on AIDS – approximately 1992-1993












Vice Chair of the Advisory Board, University of Kansas, School of Social Welfare approximately 1992- present

Response to Question 11

For the past 15 years and through the administrations of three Governors, I have served as Deputy Secretary of Corrections. I am currently also serving as Acting Secretary of Corrections. During that time I have supervised every division of the Department. I am in my 20th year as an employee of the Department. Prior to joining the Department of Corrections, I was the first Director of the Wyandotte County Community Corrections Program. I have worked extensively with the legislature, elected official at the state and local levels, federal agencies and the media. I have served as the chief negotiator of most of the agency's major contracts for services. I also have experience in the areas of community mental health and the juvenile justice and social service areas.

Question 24

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Roger (smc) Werholtz

Case Summary	
Case: 3:92cv03224 Title: Roberts et al v. Werholtz et al Judge: Dale E. Saffels Role: pre Magistrate: John C. Tillotson Role: ref	Updated: 04/18/97 Filed: 06/12/92 Termed: 09/15/93

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R. Werholtz

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Case Summary	
Case: 5:02cv03383 Title: Levy v. Johnson et al Judge: G. Thomas VanBebber Role: pre	Updated: 12/05/02 Filed: 11/12/02 Termed: **/**/**

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Roger Werholtz

1-15

Case Number:	Plaintiffs:	Inmate Number:
98C226	GEIS, RUSSELL L. #43643	43643

Defendants:
GOVERNOR BILL GRAVES, CHARLES SIMMONS, ROGER WERHOLTZ, DR. LAWRENCE PERRY, MICHAEL NELSON, DEBRA WHEAT, DR. CHOUNG PHAM

Date Opened:	Date Closed:	Plaintiff's Attorney:
7/27/1998	9/15/2000	PRO SE

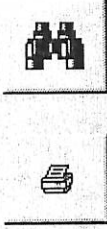
Court:	County:	Facility:
DIST CT	BUTLER	EDCF

Type of Case:	Martinez Attorney:	Date Acknowledged:
TORT CLAIMS ACT		

Brief Summary of Case:

MEDICAL - ALLEGES BEING DEPRIVED OF NEEDED AND DIAGNOSED MEDICAL CARE. ****
JOURNAL ENTRY OF DISMISSAL

Date Entered:	Attorney Assigned:	98:	99:	00:	01:	02:	Confirmed:	To Storage:	Archived:
7/30/1998	JULIE RIDDLE	x							



91-1

Reference/Significant Supporters (elected officials, community leaders, friends, etc.)

Name: Tess Banion
Relationship to you: personal friend
Telephone: 612-602-0609

Name: Fred Braun, CEO The Workmen's Fund
Relationship to you: professional
Telephone: 913-651-7949

Name: Sue Ellen Fried, Stop Violence Coalition
Relationship to you: professional
Telephone: 816-753-8002 (w); 913-362-2226 (h)

Name: Hon. Robert Gernon, State Court of Appeals
Relationship to you: professional
Telephone: 785-296-6290

Name: Bill Kasper
Relationship to you: personal friend
Telephone: 785-272-8484

Name: Randy Roy
Relationship to you: personal friend
Telephone: 785-272-8484

Name: Marilyn Scafe, Chair, Kansas Parole Board
Relationship to you: professional
Telephone: 785-296-3469

Name: Dr. Ann Weick, Dean, University of Kansas School of Social Welfare
Relationship to you: professional
Telephone: 785-864-4720

Additional references can be provided upon request for specific areas or backgrounds



KANSAS GOVERNMENTAL ETHICS COMMISSION

STATEMENT OF SUBSTANTIAL INTERESTS FORM

INSTRUCTIONS. This statement (pages 1 through 4) must be completed by individuals who are required to do so by law. Any individual who intentionally fails to file as required by law, or intentionally files a false statement, is subject to prosecution for a class B misdemeanor.

Please read the "Guide" and "Definition" section provided with this form for additional assistance in completing sections "C" through "G". If you have questions or wish assistance, please contact the Commission office at 109 West 9th, Topeka, KS or call 785-296-4219.

A. IDENTIFICATION:

PLEASE TYPE OR PRINT

Werheltz

Last Name

Roger

First Name

K.

MI

Werheltz

Spouse's Name

Shirley

J.

1008 Hartland Dr.

Number & Street Name, Apartment Number, Rural Route, or P.O. Box Number

Lawrence, Ks.

66049-3711

City, State, Zip Code

785-842-4829

Home Phone Number (include area code)

785-296-3310

Business Phone Number (include area code)

B. THIS FORM IS REQUIRED TO BE FILED BECAUSE YOU ARE:

(check one or more of the following)

1. State Elected Official (Governor, Lt. Governor, Attorney General, Commissioner of Insurance, State Treasurer, Secretary of State, State Senator, State Representative, Member of State Board of Education or District Attorney);
2. Appointed Member of a State Board, Council, Commission or Authority;
3. Appointed State Position is Subject to Senate Confirmation;
4. Employee of a State Agency or University;
5. General Counsel for a State Agency;
6. Candidate for State Office.

Kansas Department of Corrections

List Name of Agency, Board, University or Elected Position (You may use abbreviations but not acronyms)

Division if applicable (May use acronyms)

Secretary

Position

* The last four digits of your social security number will aid in identifying you from others with the same name on the computer list. This information is optional.

*

0364

- C. **OWNERSHIP INTERESTS:** List any corporation, partnership, proprietorship, trust, joint venture and every other business interest, including land used for income, and specific stocks, mutual funds or retirement accounts in which either you or your spouse has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5%, whichever is less. If you or your spouse own more than 5% of a business, you must disclose the percentage held. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "C", check here ____.

BUSINESS NAME AND ADDRESS	TYPE OF BUSINESS	DESCRIPTION OF INTERESTS HELD	PERCENT OF OWNERSHIP INTERESTS	HELD BY WHOM
1. ING VP Index Pl Large Cap Port	Mutual Fund, Deferred Compensation	Mutual Fund, Deferred Compensation	Over \$5,000	Roger
2. Ing VP Sm. Company Port	"	"	Under \$5,000	Roger
3. Janus Aspen Aggressive Growth	"	"	Over \$5,000	Roger
4. AT&T	Telecommunications	Stock	Over \$5,000	Rudy*
5. Comcast	"	"	"	Rudy*
6. Southwestern Bell	"	"	"	Rudy*
7. Bell South	"	"	"	Rudy*
8. Verizon	"	"	"	Rudy*
9. Vodafone	"	"	"	Rudy*
10. Lucent	"	"	"	Rudy*

* I am listed as a joint tenant with right of survivorship on all of my father's investments, his bank accounts, and his home. Father is Rudolph Werholtz

- D. **GIFTS OR HONORARIA:** List any person or business from whom you or your spouse either individually or collectively, have received gifts or honoraria having an aggregate value of \$500 or more in the preceding 12 months.
- If you have nothing to report in Section "D", check here ____.

NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED	ADDRESS	RECEIVED BY:
1. Rudolph Werholtz	1338 Prairie Park Lane, Emporia, Ks.	Roger
2. Rudolph Werholtz	1338 Prairie Park Lane Emporia, Ks.	Shirley
3.		

C. Olaya	Tel communications	Stock	over \$5,000	Rudy *
Algera	"	"	"	Rudy.
Western Resources	Utilities	"	"	Rudy *
Newman Memorial Hospital Bonds (Emporia, Ks.)	non-taxable bonds	bond	"	Rudy *

E. **RECEIPT OF COMPENSATION:** List all places of employment in the last calendar year, and any other businesses from which you or your spouse received \$2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.

1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE .
If you have nothing to report in Section "E"1, check here .

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.			
2.			

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR.
If you have nothing to report in Section "E"2, check here .

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.	Washburn Rural High School	5900 SW 61st Topeka, Ks.	public school
2.			

F. **OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS:** List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filing, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section.
If you have nothing to report in Section "F", check here .

	BUSINESS NAME AND ADDRESS	POSITION HELD	HELD BY WHOM
1.	KU School of Social Welfare Advisory Board	Vice President	Roger
2.	Governor's Mental Health Services Planning Council	member	Roger
3.	Governor's Substance Abuse Prevention Council	member	Roger
4.			
5.			
6.			
7.			
8.			

G. **RECEIPT OF FEES AND COMMISSIONS:** List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of \$2,000 or more in the preceding calendar year. The phrase "client or customer" relates only to businesses or combination of businesses. In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.

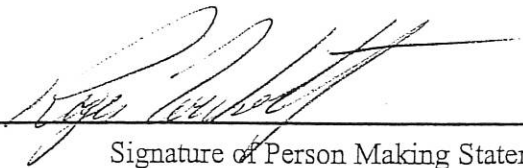
If you have nothing to report in Section "G", check here .

	NAME OF CLIENT / CUSTOMER	ADDRESS	RECEIVED BY
1.			
2.			
3.			
4.			
5.			
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9.			
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11.			
12.			
13.			

H. **DECLARATION:**

I, Roger Werholtz, declare that this statement of substantial interests (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

1/16/03
Date


Signature of Person Making Statement

NUMBER OF ADDITIONAL PAGES 1

Return your completed statement to the Secretary of State, Memorial Hall, First Floor, 120 SW 10th Ave., Topeka, Kansas 66612-1594.

1-22

**Testimony Before the
Senate Judiciary Committee**
February 6, 2003
Senate Bill 56

Presented by
Jay Scott Emler
Senator, District 35

Chairman Vratil, members of the committee, thank you for allowing me to testify this morning. Many of you have heard testimony on this issue last session and during the interim. It is not my desire to cover the same information.

The bottom line for this bill is that putative fathers accept responsibility for their part in the act of procreation. In recognition of accepting his responsibility, the putative father is protected whenever the natural mother decides to place the child for adoption.

If the putative father does not accept responsibility, he does not enjoy any protection if the birth mother decides to place the child for adoption. He has no standing to interfere with or set aside an adoption.

In either event, the child wins. Either the putative father becomes an active participant in the child's life, or the putative father cannot interfere with the placement of the child with an adoptive family.

I will be pleased to stand for questions.

Senate Judiciary
2-10-03
Attachment 2-1

NATURAL FATHER'S RIGHTS IN ADOPTIONS

BY

RYAN CORNELL

UNIVERSITY OF KANSAS SCHOOL OF LAW

PUBLIC POLICY CLINIC

PROFESSOR LEVY

DECEMBER 2, 2002

EXECUTIVE SUMMARY

This report explores the rights that a natural father has when his child is put up for adoption by the child's mother. For the purposes of this report a natural father is a father of a child that was born out of wedlock. Provided in the report is a basic summary of the current Kansas law pertaining to natural fathers in adoption proceedings along with the current Constitutional law pertaining to a natural fathers' rights.

A group of policy objectives are set out in this report to help evaluate the possible alternatives that are suggested in the report. The policy objectives this report will use to evaluate policy alternatives are to better facilitate adoptions, protect the rights of natural fathers, encourage parental responsibility, and avoid excessive costs for the state.

Possible alternatives to current Kansas state law pertaining to natural father's rights are suggested in this report. By looking at procedures and statutes that other states use this report looks at alternatives in the categories of natural father's obligations needed in order to trigger rights, notice to the natural father, participation in the adoption proceedings, and father's ability to revoke his own consent to the adoption.

The report further analyzes these alternatives by applying the policy objectives set forth earlier in the report. After the analysis using the policy objectives the report focuses on the steps that would be needed in order to legally implement the alternatives. The report addresses possible constitutional due process violations that the alternatives might incur and other possibilities for legal preemption from federal law.

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I. INTRODUCTION

A. General Background

The public policy issue that will be addressed in the report deals with the rights of a natural father to either consent or not to consent to the adoption of his children. For the purposes of this report a natural father will be a father who has a child born out of wedlock. The major issues that need to be addressed are when a father has relinquished his right to consent to the adoption and whether proper notice has been given for him to challenge the relinquishment proceedings.

1. Current Kansas Law

In the state of Kansas a natural father's rights are set out primarily in K.S.A. 59-2136 dealing with the proceedings to terminate parental rights. In order for a child with parents to be adopted both the natural parents must consent to the adoption and a petition must be filed with the district court. However if a mother consents the natural father's consent is not needed if he "has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption or is incapable of giving such consent" K.S.A. 59-2136(d). The statute further declares that a father must be put on notice that the proceeding is taking place. A father is put on notice under K.S.A. 59-2136(f) when he receives "personal service, certified mail return receipt requested or in any other manner the court may direct. Proof of notice shall be filed with the court before the petition or request is heard."

Subsection (e) of K.S.A. 59-2136 outlines the six factors the court will use to identify the natural father and decide who will be put on notice for the relinquishment proceeding: (1) Whether there is a presumed father under K.S.A. 38-1114 and amendments thereto; (2) whether there is a father whose relationship to the child has been determined by a court; (3) whether there is a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction; (4) whether the mother was cohabitating with a man at the time of conception or birth of the child; (5) whether the mother has received support payments or promises of support with respect to the child or in connection with such mother's pregnancy; and (6) whether any man has formally or informally acknowledged or declared such man's possible paternity of the child.

Once a natural father is put on notice, he must assert his parental rights before the court or his rights will be terminated. If the father cannot be identified by the court, then the parental rights will be terminated and the adoption proceeding may continue. K.S.A. 59-2136(g). In the case that the father appears after receiving notice and asserts his parental rights the court will look at seven factors to determine if the natural father's parental rights should be terminated: (1) The father abandoned or neglected the child after having knowledge of the child's birth; (2) the father is unfit as a parent or incapable of giving consent; (3) the father has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth; (4) the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth; (5) the father abandoned the mother after having knowledge of the pregnancy; (6) the birth of the child was the result of rape of the mother; or (7) the father has failed or refused to assume duties of a parent for two consecutive years next preceding the filing of the petition. The father may be provided a court appointed attorney for a proceeding determining his parental rights to withhold consent if he requests to have an attorney. K.S.A. 59-2136(h).

The Kansas Supreme Court has dealt with the issue of natural father's rights in respect to the Kansas adoption and relinquishment act in the case of *In re Adoption of S.E.B. & K.A.B.* The court was favorable to the natural father even though adoption would be in the best interests of the children. The court further ruled that factors interfering with the opportunity to fulfill parental obligation during the preceding two years before adoption proceedings might allow the natural father a defense. They make clear in this decision that looking at the best interests of the child is not the appropriate criteria to determine to allow an adoption, but instead the court states it is only one of the factors to be considered. (Torline, Bib. A.6, at 525).

2. Current Constitutional Law

The U.S. Supreme Court has dealt with the issue of a natural father's right in adoption on a few occasions. The cases *Caban v. Mohammed* 99 S.Ct. 1760, *Lehr v. Robertson* 103 S.Ct. 2985, *Quilloin v. Walcott* 98 S.Ct. 549 address the due process rights that are violated when a father has not consented to the adoption and his parental rights are terminated. The court comes up with a basic rule in these decisions that in order for a natural father's constitutional rights to be protected he must grasp the opportunity to be involved in his child's life. If the father uses his opportunities to be involved in the child's life the highest amount of constitutional protection is given to him. (Torline, Bib. A.6, at FN98). In *Lehr* the court stated that if the father takes the opportunity to create a relationship with the child he may be protected, and must be given notice, an opportunity to be heard, and an opportunity to give or withhold consent. (Wehner, Bib. A.7, 699).

3. Problems With Current Law

Despite the current law legislating a natural father's rights in adoption proceedings there are a variety of problems that exist. One significant problem is that it can often be difficult to find a father and put him on notice of an adoption proceeding. Another existing problem is that there can be situations that arise which hinder a father's ability to maintain the proper contacts with his children needed in order for him to contest an adoption of his child. The biggest issue from a law and public policy standpoint is that there are situations that arise where a natural father's rights can deprive a child of a much better environment.

Changes to these legal problems have become necessary due to the increasing rise in out of wedlock births. In 1998 the country reached its all-time high for out of wedlock births when 33% of all child births in the US were to unwed mothers. The rise in out of wedlock births has been most dramatic with the younger mothers. The same 1998 figures show two thirds of all first births to women under 25 were out of wedlock and for women 18-19 74% of births were out of wedlock. (Beck, A5, at FN1, FN10).

B. Identification of Policy Objectives

This policy report will set out four major policy objectives. The first of these objectives will be to set forth how the state can best facilitate adoptions that are in the best interest of the child. With the growing rise in adoptions in the country and the state of Kansas it is an important interest to help facilitate these adoptions as easily as possible. A great majority of adoptions concern children born out of wedlock making a natural father's rights a major consideration in the facilitation of adoptions. The faster and easier that adoption is made will help children get into the best environment possible for their development.

Protecting the rights of a natural father is another major policy objective of this report. It has long been recognized that the presence of a father in a child's life is an important part of development. It is important that the state protect the parental rights of natural fathers in those situations where a father has developed or is trying to develop a significant relationship with his child.

Avoiding excessive cost in adoptions is a major policy objective of this report. Because there is a rise in the number of adoptions there is also a rise in expenses that the state must endure. The more adoption proceedings that take place increases the amount of money the state must spend on court costs and appointed representation.

The final objective this report will seek to meet is to encourage parental responsibility. The encouragement of parental responsibility can have profound affects on many of the states interests. By encouraging parental responsibility the interests of children will be given greater protection. Children will be put in the proper environments sooner and given the proper supervision needed.

C. Identification of Policy Options

This policy report will focus on four main areas where alternatives to current father's rights legislation might prove helpful. In all of these areas the state of Kansas will need to evaluate whether or not it should be more or less protective within each area when adopting changes to the current legislation.

The first area that the state could look into when deciding to give more or less protection would be in deciding what obligations a natural father must fulfill in order for his rights to trigger. The establishment of a putative father's registry is one way of making it more difficult for a natural father to meet the threshold to trigger his rights while at the same time a putative father's registry may in fact make it easier for a natural father to trigger his rights.

The type of notice that a natural father is afforded is another alternative area that the state could make more or less protective. The state could try to ensure proper notice by imposing penalties on people who interfere or hinder the process of giving notice making it easier for a father to be put on notice.

The state can decide to be more or less protective with the way in which notice is given to a natural father. Stricter standards can be adopted to make it more likely that a father will receive notice. At the same time standards may also be created that would require the father to be more responsible and make a conscious effort to attain notice.

Alternatives also may be applied to limit or expand the participation that a natural father may have at the adoption and relinquishment proceedings. One of the greatest ways that a father's participation can be limited or expanded at the proceeding is by deciding whether or not he will be supplied with legal counsel during the hearing.

Finally by granting more or less veto power to a natural father with respect to the child up for adoption is another alternative the state may consider. Once a father has met the requirements needed to trigger his rights as a parent, successfully receives notice of the adoption hearing, and successfully establishes his right to withhold or give consent to the adoption the state still may have the ability to regulate his consent power by making the criteria for revocation of consent more or less strict.

D. Identification of Affected Interests

Various interests would be affected if the legislature were to decide to be either more or less protective in adopting any of the possible alternatives. The children who are the subject of the adoption are the most obvious group whose interests will be affected. If the state chooses to make requirements stricter for the father to object it is certainly having a profound affect on a child's ability to know his natural father and develop a relationship with him. The stricter standard might make it difficult for the father to know the child but it may also may give him an added incentive to start a relationship with his child. In some situations stricter standards may also give a child an opportunity to live in a positive environment that might not be possible if the natural father can easily veto the adoption.

The interest of natural father's is the focus of this report and a very important affected interest. The determination by the state of Kansas to adopt one of these alternatives in a stricter or less protective fashion will greatly affect a natural father's interests. By adopting these alternatives in a stricter fashion the State will deprive a greater number of natural fathers the right to be a part of their child's upbringing and to have say who will raise them. A less protective approach may grant the father a better chance of being part of his child's life or at least a better opportunity to contest the adoption of his child.

A mother's interests are similarly affected in the way that a natural father's are affected by these alternatives. Her right to decide what the best living environment would be for her child is greatly affected if it is difficult for her to put her child up for adoption without the natural father's consent. With stricter protection she has more freedom to make that decision especially when a father has had little contact with the child to be put up for adoption. The interests of the mother can be even broader when put in the context of a stepparent adoption. Stricter standards for the natural father make it easier for the stepfather to adopt causing less stress on the mother's new marriage and life.

Adoptive parents are yet another group who would have significant interests affected by adoption of these alternatives. By adopting stricter alternatives for the natural father to meet, adoptive parents would be encouraged to adopt children because they will have less fear of a challenge by the natural father.

The final entity whose interest would be affected with the adoption of one of these alternatives would be the state of Kansas itself. The state has an interest that the adoptions which take place within its borders are carried out efficiently and in a manner that is legally consistent with the laws of the state and the nation.

II. ANALYSIS OF POLICY ALTERNATIVES

The first policy alternative the state of Kansas will have to deal with is what obligations must a father fulfill in order to trigger his rights to consent to the adoption of his child. The first obligation a natural father has in order to ensure his right to consent is to be recognized as the actual father. The most drastic alternative for the state to take would be to adopt the Mississippi approach which does not recognize an out of wedlock father as a parent and does not require any consent from him in an adoption proceeding. Mississippi '93-17-5. This policy would strongly go against the policy objective of protecting a father's rights and would also discourage parental responsibility.

A more policy minded alternative approach would be to adopt a system of father recognition similar to the system adopted by the state of California. California establishes two groups of unwed fathers: 1. Presumptive Fathers 2. Natural Fathers. A presumptive father has established ties with his child beyond simply biological ties by taking such actions as attempting to marry the mother or taking the child into his home. If an unwed father is found to be a presumptive father he has the right to withhold consent to the adoption of his child. A natural father is an unwed father who has not established the proper ties to the child and he does not have the automatic right to withhold consent, though he does still have the right to be heard. Adoption of Michael D., 209 Cal. App. 3d 122. (1989).

By making two distinct groups like this the state of Kansas could prescribe a set of obligations which would qualify a father for presumptive father status. The stricter the standards the state established to meet the presumptive father status would determine how. This approach would help the overall objective to more easily facilitate adoptions because only those father's who had met the threshold requirement could contest the adoption leading fewer proceedings to determine if the father could indeed consent. This would also help to meet the objective of encouraging parental responsibility because father's will know that unless they take proper parental responsibility and meet the state prescribed obligation that they will have no say in the adoption of their child.

Decreasing the time that a natural father can go without assuming the responsibilities that entitle him to parental rights would be a possible alternative that could limit a natural father's ability to trigger his paternal rights. Kansas along with many other states currently gives the father up to six months to neglect support of the child before termination of his parental rights. By decreasing this time the adoption of children, particularly newborn infants, could be accelerated. This would greatly help the interests of the newborn child, adoptive family and the state. (Wehner, Bib. B.1, at 719).

This alternative would meet the objective of better facilitating adoptions by making them quicker and easier and also it would encourage parental responsibility. This would cut against the objective of protecting father's rights because it gives him less time to petition. However by putting this constraint on natural father's rights the objective of promoting parental responsibility is met because it encourages the father to keep up his support payments. When a father is keeping up on his support payments the objective of eliminating excessive costs to the state is met due to the fact that a mother who receives adequate child support needs less state assistance and state resources needed to track down non-compliant fathers would be saved.

If a father has successfully met the threshold to trigger his rights the next area that the state of Kansas may be looking into changing is when a father must be put on notice. A variety of approaches are used by other states to determine when a father must be put on notice and what the time limitations for notice will be. Currently 21 states have established putative father's registries which require the putative father to register with the state in order to have the right to receive notice of an adoption proceeding. (Calib, Bib. B.10).

States with putative father's registries differ as to how they require a father to register. The state of Illinois allows fathers to register before the birth of the child and up to 30 days after the birth of the child. 750 ILCS 50/12.1(b). In the state of Illinois a father who does not register within these time constraints may not contest the adoption and is not entitled to notice of the adoption proceedings. In re A.S.B., 293 Ill. App. 3d 836. Similarly the state of Arkansas requires that a putative father register before a child's birth or he will not be entitled to notice regardless if he has met the test set forth in Lehr by the US Supreme Court. (Sampson, Bib. B.4, at 66).

This approach would meet the policy objective of encouraging parental responsibility and the objective of facilitating adoptions. By making a natural father register for the registry in order to maintain the ability to contest an adoption and be put on notice the state would be encouraging the father to take responsibility for the child and come forward and admit he is the father. The registry would help to facilitate adoptions in the state of Kansas because the natural father would be registered and easily found making any contentions against the adoption immediately known. In the case of father's who do not register adoptions would be easily facilitated because the natural father's consent would no longer be needed because he had forfeited his right to notice.

Because of the growing national trend toward creating putative father's registries it may be in the state's best interest economically to institute a putative father's registry. The Supreme Court has given congress the power to condition federal money on compliance with congressional mandates. By creating a registry Kansas would not risk losing federal money that could possibly be given conditionally on the basis of having a putative father's registry. (Beck, Bib. B.8, at 1075). This scenario could become possible if there is a continued push for a national putative father's registry.

The policy objective of maintaining a natural father's rights would not be met by penalizing a natural father who did not register. By adopting the Illinois or Arkansas approach the father would be denied both the right to have notice of the adoption proceeding and by not having notice of the proceeding he would be denied of the opportunity to contest the adoption and withhold his consent. This would however further the policy objective of encouraging parental responsibility because the natural father would be given incentive to come forward from the beginning and establish the proper ties with his child.

There may be situations that arise where a natural father had no knowledge that he was the father of a child. To address this problem the Utah Legislature has found that a natural father is put on notice of an adoption proceeding concerning his child simply by having engaged in a sexual relationship with a woman. (Mills, Bib. B.9, at 610). The New York Court of Appeals has held that even if a father shows proof he did not know of a child's birth did not change the fact that the window of opportunity had passed. (Beck, Bib. B.8, at 1050).

Another problem that needs to be addressed are the situations that arise when the natural mother attempts to keep the father from receiving notice of the adoption proceeding. A solution to this problem that would help to protect a natural father's rights would be for the Kansas Legislature to adopt the provisions of the Uniform Adoption Act. Under the provisions of this act a birth mother would be subject to civil penalties if she knowingly provides false information to a father's whereabouts that could prevent him from receiving the proper notice of an adoption proceeding. (Sampson, Bib. B.4, at 64).

Changing the type of notice that a father is entitled to would have a significant affect on the rights of a natural father. There are basically two types of notice that could be used one very protective and the other considerably less protective. The protective approach would be to require personal service to be served on the father which would require a messenger to deliver the notice of the proceeding and receive the father's signature on the document to be submitted to the court. The less protective approach would be to limit notice to a formulaic printing in a newspaper within the county in which the adoption petition is filed. (Parness, Bib. B.3, at 383-384).

Some states have adopted restraints on notice other than using a putative father's registry. The state of New Jersey requires a natural father must acknowledge paternity within 120 days after his child's birth or before the commencement of an adoption proceeding concerning his child whichever comes first. New Jersey " 9:3-45; 9:3-45.1 Similarly Massachusetts requires a father to file a parental responsibility claim in order to receive notice of an adoption proceeding. Mass. Ch. 210 ' 4A.

These alternatives achieve the same objectives as the putative father's registry by helping to facilitate adoptions and help to encourage parental responsibility. The difference is that in helping to facilitate adoptions the whereabouts of a father may not be recorded or as current as those that are required by a putative father's registry. There are similar conflicts with this alternative and the policy objective of ensuring a natural father's rights. Just as the putative father's registry can be used to deny a father notice and ability to withhold consent so can constraints like those of the states of Massachusetts and New Jersey.

Determining what participation a natural father may have in adoption proceeding is an alternative that the State of Kansas can also look at closely in restricting or expanding a natural father's rights. The main area where an indigent natural father's rights can be restricted is by not supplying him with counsel at a termination proceeding. The denial of a father the right to counsel in an adoption proceeding is obviously counter to the policy objective of protecting a natural father's rights in an adoption. The ability to have counsel for a legal proceeding would seem to be fundamental to ensuring a completely fair hearing on the father's behalf. Despite being in contrast to the policy objective of ensuring father's rights, denying an indigent father the right to an attorney would meet the policy objectives of better facilitating adoptions in the best interests of the child and avoiding excessive costs to the state would be met.

If an indigent father is denied the right to counsel in a relinquishment proceeding it will certainly help to facilitate adoption in the best interest of the child. An unrepresented person is much less likely to be able to raise the proper issues that would help him to gain the right to consent to an adoption. This will cause the proceeding to end in a more timely fashion and allow the child to be adopted earlier than if an attorney is present evidence to cross witnesses. If a person is unable to afford counsel for the relinquishment proceeding it is probably not in the best interests of the child to be adopted by someone in an indigent economic state.

The rising costs of legal representation and the rising amount of court expenses to the state makes the alternative of denying counsel to indigents in adoption proceedings an interesting possibility. Because the relinquishment proceeding will go faster when there is no appointed counsel the policy objective of avoiding excessive costs for the state will be avoided. Cost will also be avoided because there will be no legal counsel for the natural father who will need to be compensated.

If a natural father has met the threshold requirements necessary to trigger his rights as a father and he is entitled to notice and receives that notice than he may legally contest the adoption. If he is successful in gaining the ability to consent there is still one alternative the state can pursue to limit the natural father's veto power. This final alternative that the state of Kansas can look into expanding or limiting is the revocation power that a natural father has after giving his consent.

There are a variety of different ways that states handle revocation of consent. Maryland and Wyoming offer two differing statutes that represent the two of the main approaches found in state statutes. Maryland's statute MD Code Ann. [Fam. Law]' 5-311 establishes a 30 day contemplation period where the natural father can choose to withdraw his consent within this time frame. The Wyoming approach set out in Wyo.Stat.Ann.'1-22-109(d) is very strict and does not recognize revocation unless fraud can be shown in the gathering of the information.

The adoption of a revocation clause similar to the Maryland clause specifying a time limit in which revocation of consent is allowed by the natural father would meet the policy objective of maintaining the rights of a natural father. By having the ability to revoke the consent that he has given to the adoption a father

has the opportunity to evaluate how his decision will affect his interests and allow him the opportunity to revoke the consent if he decides that his choice to give the child up for adoption was in bad judgment.

The adoption of a plan similar to Wyoming's that almost totally disallows revocation is at odds with the objective of maintaining a natural father's rights but it is supported by two other policy objectives. By making the consent irrevocable the facilitation of adoptions will be much easier and will take less time. The non revocation statute also supports the objective of avoiding excessive costs which would certainly come from court costs when the father attempts to revoke his consent.

III. LEGAL ANALYSIS

In order to adopt the alternatives set forth in the analysis the state legislature would have to take a variety of steps. The first step would be to change K.S.A 59-2136 which is the existing statute governing the termination of parental rights in an adoption proceeding. In order to make a stricter or looser requirement for a father to meet in order to give consent the language of K.S.A 59-2136 would need to be changed. A possible change to make the statute stricter would be to restrict the father's right to consent after failing to meet his parental requirements to a year, as opposed to the two years the statute currently gives.

For the state of Kansas to adopt the strict approach used by the state of Mississippi which doesn't recognize an unwed father as a parent. The main statute that would need to be changed is K.S.A 38-1114 which defines who is presumed to be a father in the state of Kansas. Along with K.S.A 38-1114 changes would need to be made to K.S.A. 59-2136 to reflect the changes made to the definition of paternity and also any other statutes that rely on a paternity definition.

The alternative of creating a putative father's registry to help keep track natural father's and make notice more easily served will take a variety of steps. The legislature currently has a bill SB 585 proposed which would set up a putative father's registry in the state of Kansas. This bill would need to be made law and then additions to current statutes regarding consent and notice would need to be amended. K.S.A. 59-2136 would need to be changed to add registration in the putative father's registry as a requirement for establishing the right to notice and consent.

It would be necessary to change the language in K.S.A. 59-2136(f) in order to make a stricter or more lenient delivery of notice standard. Currently the language gives the court the power to direct any manner of notice it pleases. The legislature would need to strike this language and either make it mandatory for personal service by messenger or make it acceptable for notice to be given by a formulaic publication.

Revocation of consent is covered by K.S.A. 59-2114 and allows for revocation of consent only when given prior to the execution of adoption if clear and convincing evidence can be shown that consent was not freely given. This statute would need to be changed to either deny any type of revocation or to set a different time limit on the period of revocation allowed.

If the Kansas state legislature were to decide to adopt any of these alternatives it is possible that external legal constraints could limit their authority to implement certain alternatives. The greatest obstacle that the legislature would have in implementing these alternatives is making sure that they do not violate the father's constitutional due process rights.

The Mississippi alternative of denying the paternity of any father who is not married to the mother of the child would almost certainly violate the natural father's constitutional rights and would be invalidated because it expressly excludes a natural father from being party to an adoption proceeding. (Wehner, Bib. C.2 at 691, 710). The United States Supreme Court has dealt with state statutes which restrict a father's consent and notice privileges. The major rule that has come out of these cases is that if a natural father has had substantial contact with a child and admitted paternity he should have the right to notice and absolute consent. *Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760; *Quilloin v. Walcott*, 244 U.S. 246, 98 S.Ct. 549; *Lehr v. Robertson*, 463 U.S. 248 (1983).

Though on its face depriving an indigent father the right to counsel may seem completely unconstitutional it has been ruled constitutional in at least some situations. This issue was addressed by the United States Supreme Court in *Lassiter v. Department of Social Services of Durham, N.C.*, 452 U.S. 18 (1981). The court found that indigent parents do not have a constitutional right to appointed counsel in every parental rights termination proceeding, the courts have taken a case-by-case approach in determining whether to appoint counsel. (Kussman, *Bib. C.1*, at 379). It is not entirely clear whether a relinquishment proceeding would be a situation where it is unconstitutional for a legislature to draft a statute denying an indigent legal representation.

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PUTATIVE FATHER REGISTRY

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EXECUTIVE SUMMARY

The rise in the number of unwed fathers has created a necessity for procedures for determining who is a child's father. The tragically notorious cases of Baby Richard and Baby Jessica, in which children who had been adopted into families were removed from those families when their putative fathers came forward to assert their rights, have made it clear that states' current procedures for adoption and establishment of paternity are antiquated and ineffective for a changed world. (Comment, Bib. A.3, at 1851). Within the context of these types of cases, two interrelated problems present themselves: challenges to the finality of adoptions and protection for the parental rights of unwed fathers. In addition to the interrelated problems of finality in adoptions and protection for the parental rights of unwed fathers, the rise in unwed fathers has led to problems in establishing paternity for the purpose of enforcing their child support obligations. One procedure that could be adopted and implemented to deal with the modern problems associated with adoption and unenforced child support obligations is a putative father registry. A putative father registry typically requires any man who believes he may be the father of a child (that will be or has been born to a woman he is not married to) to register with the state in order to receive notice of proceedings involving the child. Adoption of a putative father registry could enable the State of Kansas to make sure that child support obligations are met by unwed fathers, provide protection for the inchoate, Constitutional parental rights of unwed fathers, and create more certainty and finality in adoptions involving the children of unwed fathers.

As background information relevant to understanding the need to consider establishment of a putative father registry, this report sets forth the current Kansas law on adoption and establishment of paternity and provides a description of the societal problems related to the difficulties in establishing the paternity of unwed fathers that warrant consideration of establishing some form of putative father registry.

This report also identifies five objectives sought to be met through the establishment of a putative father registry. They are: (1) facilitation, simplification, and finalization of adoptions, (2) enforcement of support rights, (3) protection of the putative father's parental rights, and (4) maximization of the privacy interests of the putative father, the child's mother, and the child him or herself.

All state statutes that establish putative father registries set forth consistent rights and obligations that arise from an unwed father's choice to register with that state's putative father registry. This report identifies five additional components of a putative father registry that can vary from state to state and should be considered in determining how to best structure a putative father registry to meet the aforementioned objectives. The state should consider the time limit on a father's ability to register, the implications on the father's rights of his failure to register, what the father must show to be entitled to register, who may contest a father's registration, and who may have access to the information contained in the registry. In considering each of these components, it is necessary to bear in mind each of the possible options that could be adopted with respect to that component. Statutes set time limits in two main ways: either by fixing a time limit with reference to the time of the child's birth or by providing an open-ended deadline that ends when an adoption petition is filed. The implication of a father's failure to register ranges from lack of ability to contest termination of his parental rights to a lack of notice of hearings affecting his parental rights, though under some statutory schemes he may still receive notice of these proceedings through other statutory provisions. Currently existing statutes do not specifically state exactly what a man would be required to show in order to be entitled to register, but a number of them define the term "putative father" in a way that lends some guidance in answering this question. Additionally, other statutes provide for criminal penalties in order to discourage false registration. Currently existing statutes also do not specify who is entitled to contest a man's registration, but a statute could create a procedure that would allow interested parties to contest what they know to be a false registration. This report will consider each of these possible components of a putative father registry and the various options of each component that could be adopted.

Finally, this report sets forth the legal steps that it would be necessary for the legislature to take to establish a putative father registry and implement the various policy options. This report also provides an explanation of the relevant constitutional considerations that are related to a father's parental rights and must

be considered when selecting among the various policy options available for structuring a putative father registry.

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I. INTRODUCTION

In order to provide a general understanding of the issues related to the discussion of a putative father registry, this section of the report will discuss current Kansas laws on establishing paternity, adoption, and parents' rights, as well as the societal trends that arguably justify establishment and maintenance of a putative father registry. Additionally, this section will identify the policy objectives, policy options, and affected interests relevant to the consideration of a putative father registry.

A. General Background

1. Current Law

In the State of Kansas, the law currently does not provide for a putative father registry, but other procedures currently enable unwed fathers to assert their rights within the existing system. These procedures are contained within the statutory provisions that set forth the procedures for establishing paternity and adoptions. Additionally, Kansas law currently gives parents certain rights with respect to their ability to interact with their children and imposes certain obligations on them to provide support for their children.

In Kansas, the Parentage Act establishes the procedures for asserting and establishing paternity. According to Kansas Statutes Annotated '38-1113(b), the paternity of a child may be established by a father under the provisions of the Kansas Parentage Act or by voluntarily acknowledging paternity in accordance with KSA 38-1138. Even when a father does not come forward to voluntarily acknowledge paternity, there are some circumstances under which a man will be presumed to be the father of a child, which are set forth in KSA '38-1114. These circumstances include having been married to the child's mother when the child was born or within 300 days before the child was born, having attempted to be married to the child's mother, even though the marriage was void or voidable, having acknowledged paternity of the child in writing, having notoriously acknowledged paternity of the child, having been determined to be the father of the child to a probability of 97% or greater in a genetic paternity test, or having a duty to support the child under an order of support. According to KSA '38-1115, an action to determine the existence of a relationship between a father and a child may be brought at any time until three years after the child reaches the age of majority by the child or any person on behalf of the child. Finally, KSA '38-1115(e) allows the man named as father, the mother, or the child to bring an action revoking the acknowledgement of paternity at any time until the child reaches one year of age. While the law currently provides for some situations under which a man would be a presumed father without having to bear the economic burden of going to court to formally acknowledge his paternity of the child, these situations are limited to very factually-specific scenarios.

According to the Kansas Adoption and Relinquishment Act, K.S.A. '59-2129(1), both the mother and father of a child must generally consent to an adoption of a child. In a stepparent adoption where the mother consents to the adoption of the child and the child has a presumed father under KSA '38-1114, the father must also consent to the adoption unless the father has failed to assume parental duties for two consecutive years. Otherwise, if a mother consents to an adoption, "a petition shall be filed in the district court to terminate the parental rights of the father." The court is directed to consider certain situations in an effort to identify the child's father, including whether there is a presumed father under KSA '38-1114, the mother was cohabiting with a man at the time of the child's conception or birth, the mother has received support payments or promises of support from a man in connection with the pregnancy or child, or a man has formally or informally acknowledged being the father of the child. The court is required to give notice of the adoption proceeding to each person identified as a possible father to the child under KSA '59-2136(e). The court is then supposed to determine the parentage of an alleged father who appears and asserts parental rights, and may terminate the father's rights upon a finding that one of the listed situations in KSA '59-2136(h) applies to the father. These situations include, among others, a failure or refusal to assume the duties of a parent in the two years preceding the filing of the adoption petition, abandonment of the mother after having knowledge of the pregnancy, and failure to make reasonable efforts to support or communicate with the child after having knowledge of the child's birth.

Under current Kansas law, parents have certain rights and obligations with respect to their children. According to KSA ' 60-1616, a parent is entitled to parenting time (visitation) with his or her child unless such contact would seriously endanger the child's physical, mental, moral, or emotional health. The obligation of one party to provide payments for support or maintenance or to permit parenting time is not suspended when one party fails to comply with a provision of a decree. Withholding one order when the other parent has failed to comply with other orders is not permitted, according to KSA 60-1612(a).

Deficiencies in the law that currently determines the procedures for establishing paternity, adoptions, and the rights and responsibilities of parents could be improved through a putative father registry. A putative father registry could provide greater stability in adoptions, grant more protection for the rights of fathers, and compel fathers to meet their child support obligations.

2. Background

The rise in the number of unwed fathers has created a necessity for procedures for determining who is a child's father. While it is certainly desirable for the identity of a child's father to be established and known so that the father and child may have a parent/child relationship, there are other specific, protectable interests served when a procedure is in place that enable the state to identify a man as a child's father when he is not married to the child's mother. Such a procedure enables the state to make sure that child support obligations are met by that father, provides protection for the inchoate, Constitutional parental rights of that father, and creates more certainty and finality in adoptions involving the child of that father.


One of the social consequences of the non-participation of fathers in the lives of their children is the rise of single mothers and children who live in poverty. Single parent families do not ordinarily have the resources specifically, the income of more than one working adult combined toward common goals or contributions of household management and child care that two-parent families have for children. (Foundation, Bib. D.4.) Fifty-one percent of children living with single mothers, more than two-thirds of children under the age of six, are poor. (Johnson, Bib. D.2.) According to the Department of Health and Human Services, in 1990, only 35 percent of low-income non-custodial fathers paid any child support. (Responsible Fatherhood Programs, Bib. D.8.) It is estimated that in 1996, only 29 percent of poor children eligible for child support received any from their non-custodial parents. (Responsible Fatherhood Programs, Bib. D.8.) Determining the identity of a child's father is one problem that contributes to the difficulty in getting the support these women and their children are entitled to receive. In the United States, fewer than half of children born to parents who have never been married have had the identity of their fathers legally established in child support proceedings. (Child Support Enforcement, Bib. D.1, at 15-16.) Thus, there is a significant need to have effective procedures for identifying and locating fathers to hold them accountable for the support they are obligated to provide for their children.

Another consequence of the disconnectedness of fathers from the lives of their children is that unwed fathers often do not receive the notice of proceedings involving their children to which they are legally entitled. When a father's parental rights are terminated without a hearing as to his fitness, this usually happens because it is difficult to locate the father to give him the notice he is entitled to receive. It is impossible to respect and protect the parental rights of unwed fathers without a mechanism in place that is effective in identifying and locating these fathers so that they may be notified of judicial proceedings affecting their rights. When a man and a woman are not married or even intimately involved with one another, it may be difficult, if not impossible, for that man to know when a judicial proceeding, such as an adoption, has been undertaken that would affect his rights. Although courts are generally required to seek the man out to give him notice of such a proceeding, it may be very difficult to locate him. A woman who gives birth to a child may feel that it is in her child's best interest to be adopted by another person or couple, but she is not entitled to hide this decision from the child's father. A woman planning to place her child for adoption may conceal her pregnancy from the biological father, tell the court or other interested parties that the father has no interest in the child, or simply not have the information necessary to tell the court how to contact her child's father. (Fathers' Rights, Bib. C.6.) Unless the father learns of the pregnancy or the

adoption, it may proceed in his absence. While most unwed fathers ultimately do not contest termination of their parental rights, there are those who do choose to exercise their rights. Thus, it is essential that the state have adequate procedures in place to allow a father to assert his parental rights even when he is not involved with the child's mother.

Closely connected to the issue of protection for the rights of unwed fathers is the issue of finality in adoptions. When a father attempts to assert his parental rights after an adoption has supposedly been finalized, this creates uncertainty in the status of the relationship between the father and the child and between the adoptive parents and the child. It is necessary for the state to have procedures in place that make it easier to notify a father of an adoption proceeding involving his child so that the status of his parental rights may be adjudicated before the adoption is finalized. It is often very difficult, if not impossible, to provide the father with the notice necessary to do this when his whereabouts are unknown.

Creation of a putative father registry can address all of these concerns B identifying fathers who so that they may provide support for their children, protecting the rights of unwed fathers, and creating finality in adoptions.



B. Identification of Policy Objectives

Establishment of a putative father registry is intended to serve these main purposes: (1) facilitation, simplification, and finalization of adoptions, (2) enforcement of support rights, (3) protection of the putative father's rights, and (4) maximization of the privacy interests of the putative father, the child's mother, and the child him or herself.

The facilitation, simplification, and finalization of adoptions protects the best interests of adopted children and adoptive families from the possibility of a supposedly final adoption being revoked, while respecting the due process rights of unwed fathers in the context of termination of parental rights.

The identification of fathers to ensure that their child support obligations are met benefits single mothers and their children by giving them the resources they are entitled to and benefits the state by making the task of identifying the men who have these obligations less burdensome and allowing the state to receive the child support payments signed over by women who receive public assistance.

C. Identification of Policy Options

The basic notion of a putative father registry is to centrally collect the names and addresses of unwed fathers, but certain components vary among states that have established one. The main features of a putative father registry are the time limits on an unwed father's ability to register, the effect of registration, the effect of failure to register, exceptions for failure to register, and how the information contained in the registry can be accessed. (Note, Bib., B.4., at 703.) Some of these features vary from state to state, while others are relatively similar in every instance. The effect of filing is ordinarily treated in the same way from state to state. However, the time within which an unwed father must register, the effect of registration on inheritance rights, what the unwed father must show to be entitled to register, who may contest the father's registration, the effect of failure to register, and how the registry information can be accessed tend to vary from state to state vary among states to the extent that their statutes address these issues.

The consequences of an unwed father's registration with a state's putative father registry are uniform among all states that have established a putative father registry. First, the father will be entitled to receive notice of proceedings affecting his parental rights with respect to the child. Second, by choosing to register the putative father admits his paternity of the child and obligates himself to assume his financial responsibility of the child by providing the child support he is legally required to contribute to his child.

Statutes that create putative father registries generally mark the time within which an unwed father must register in one of two ways. The first approach is a fixed deadline that is measured from the birth of the child. The second approach is an open-ended deadline that allows an unwed father to register with the state until the time when an adoption petition is filed with respect to his child.

The consequences of failure to register with the putative father registry generally hold one of three possible consequences: either the unwed father does not receive notice of proceedings affecting his parental rights, the state still attempts to give him notice even though he did not register, or proceedings affecting his parental right can move forward without his consent or knowledge. Some states that have harsher consequences for an unwed father's failure to register have sometimes made exceptions to their strict rule under certain circumstances.

None of the statutes creating putative father registries expressly state what a man must show in order to be entitled to register with the state's putative father registry. However, some statutes provide guidance by reference to the provided definition of "putative father" and the provision of criminal penalties for men who falsely register. Additionally, although none of them currently do, it may be desirable for a putative father registry statute to expressly require the father to state why he believes he is entitled to register.

None of the statutes creating putative father registries expressly state who, if anyone, is entitled to contest a man's registration with a state's putative father registry. It may be desirable for procedures to be set out in the statute that enable the child's birth mother and other specified interested parties to contest a man's registration when there is reason to believe the man has intentionally registered false information or may be mistaken about his connection with the child.

All state statutes creating putative father registries place some limits on the accessibility of the information an unwed father files with the state. These restrictions on the circumstances under which a putative father's registration information can be revealed or divulged vary somewhat among the states that have putative father registries.

D. Identification of Affected Interests

Implementation of a putative father registry would affect unwed fathers, mothers, children of unwed fathers, adoptive parents and prospective adoptive parents, and the state.

Unwed fathers would be directly affected by exercising either the choice to register or the choice not to register. By choosing to register, the system would ensure they receive notice if their parental rights are going to be terminated because their children have been placed with an adoptive family or are part of a stepfather adoption. Choosing to register with the system also would make it impossible for fathers to escape their responsibility to provide support for their children because their name and address would be part of the database and could be accessed in order to collect due child support from them. By choosing not to register, a father jeopardizes his ability to exercise his rights in a hearing involving his child because his failure to register may either completely alleviate the need for his consent, relieve the state of the responsibility to notify the him of a proceeding involving his child, or make it more difficult for the state to locate him to provide him with notice even though it has an obligation to try to notify him even if he has not registered.

Mothers would be affected in their ability to collect child support from the father of their children. With a central place to access information about a father's whereabouts, getting the support due to them and their children would be more feasible for single mothers. Additionally, a woman who chooses to place her children for adoption or who marries and wants her new husband to be able to adopt her children in a stepfather adoption would know that if the child's father is registered, all procedures would have been complied with in a way that ensures finality.

Children would be affected in three main ways. First, a child whose father registers with the putative father registry would know the identity of his or her father and be able to find that father once he or she reaches the age of majority. Second, a child whose father has registered may have a better, healthier life because his or her mother will have access to the child support necessary to pay for all the expenses of raising a child. Third, a child who is placed for adoption and whose father has registered can freely develop a lasting, bonded relationship with his or her adoptive parents once the adoption is finalized with no worries that a father will turn up who is able to assert rights and disturb a secure family relationship. Conversely, under a

statute that alleviates the need for the court to obtain a father's consent for failure to register, a child whose father has not registered will also have certainty in the finality of that adoption.

Adoptive families and prospective adoptive families who participate in an adoption where a father was registered and received notice of the proceeding are assured that once the adoption is finalized there is no chance that the father will be able to assert any rights with respect to their child. The apparent lack of finality in supposedly final adoptions discourages some people from adopting children because they anticipate a great deal of heartache and pain if a child they have bonded with is taken from them when a father unexpectedly appears, sometimes years after the adoption. The registry will give more adoptive parents the opportunity to freely pursue this parenting option with none of these legitimate fears.

Finally, the state is affected by the implementation of a putative father registry in a number of ways. First, the Secretary of SRS and the entire department will bear the burden of putting the statutory requirements into action by establishing the registry, processing registration forms, providing information about the existence of the program, and complying with requests for information from the registry. Second, the state's ability to collect child support from fathers for its own use when mothers have signed over their rights to the state and for the use of single mothers will be greatly enhanced, as it is currently quite difficult to get information about fathers and their whereabouts for this purpose. Last, the state judicial system will not bear the burden of dealing with supposedly finalized adoptions that are called into question when a natural father appears after the proceedings are final.

II. POLICY ANALYSIS

The basic notion of a putative father registry is to centrally collect the names and addresses of unwed fathers. The rights and obligations that arise from a father's choice to register are the same in every putative father registry statute. However, certain components of these registries vary among each state that has established one. The main varying features of a putative father registry are the time constraints, the implications of failure to register, what the father must show to be entitled to register, who may contest a father's registration, and the accessibility of information contained in the registry. This report will discuss each of these features of a putative father registry, explain how the Senate Bill 585 proposes to treat each area, and determine the implications of the possible choices on the stated policy objectives.

A. Rights and Obligations of Registered Putative Father

Certain rights and obligations uniformly arise from a father's choice to register with a putative father registry. They include: (1) the right to receive notice of proceedings affecting parental rights, (2) acknowledgement by the registered man of his paternity of the child, and (3) a duty for the father to comply with requirements for support of the child.

The proposed Kansas statute holds the same implications for a father's choice to register as the statutes of other states do. First, once a father has registered, he is entitled to receive notice before his parental rights can be terminated. Generally speaking, a court may not issue an order that terminates a father's rights unless an affidavit from the SRS Secretary under Section 6(c) of the bill has been filed with the court. Additionally, in a stepparent adoption, notice must be given to any man who has registered as a putative father of the child or any presumed father. The court also must appoint an attorney to represent any father who has registered, and the court may appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. Second, by choosing to register by filing a paternity claim or notice of intent to seek paternity, the putative father is admitting paternity of the child. Third, choosing to file obligates the father to comply with requirements of support for the child.

B. Time Limits

There are two main ways in which putative father registries set a time limit within which an unwed father must register for rights and obligations to arise under the statutes. The statute provides a fixed deadline that is measured from the child's birth or an open-ended deadline.

The most common approach to setting a time limit for registry is a fixed deadline measured from the child's birth. (Note, Bib. B.4, at 703.) The actual time limit varies widely among states, but a deadline that is set 30 days from the birth of the child is most common. A number of states also expressly allow a father to register before the child is born. An explicit deadline is generally strictly construed against a father who has failed to register within the stated time frame.

In contrast with states that set a fixed time limit within which a father must register that is referenced to the child's birth, other states have an open-ended deadline that allows fathers the opportunity to register up until the point where an adoption petition is filed.

The proposed Kansas putative father registry provides a fixed deadline. Senate Bill 585 requires an unwed father to submit a form complying with the requirements of the Putative Father Registry Act (the Act), which must be received by the Secretary of the Department of Social and Rehabilitative Services (SRS) not later than 72 hours after the child's birth. The Act also gives prospective unwed fathers the opportunity to file all required information before a child's birth even if they have no actual knowledge that a pregnancy has occurred or continued through gestation.


The fixed time limit is generally favorable with reference to the needs of children, adoptive parents, and mothers who place a child for adoption, as it promotes finality in adoptions. This approach allows these parties to know that once the applicable time period within which a father may come forward and register has passed, he will no longer be allowed to do so. This is most true, however, in states in which failure to register with the putative father registry bars a father from any entitlement to assert rights as to the child, which will be discussed in more detail later. The fixed time limit is not as favorable for the father, particularly in those states where he is unable to assert his rights once the deadline has passed. This is because he will nearly always have less time to decide to register under this approach than he would have under the other approach.

The open-ended approach is generally more favorable to the interests of the father than the approach that fixes a deadline with reference to the child's birth, since it affords him the opportunity to register for an indefinite period of time. Even if he does not immediately come forward, it is more likely under this approach than the fixed time limit approach that he will still be entitled to assert his rights. The open-ended approach is not favorable with respect to the interests of the child or adoptive parents in going forward with adoption proceedings and achieving finality, however. Since the father can often come forward at the time the adoption petition is filed, a proceeding as to his fitness as a parent will generally be necessary if he does register. This approach also burdens the state more than the other approaches for the same reason. Instead of having the father's status settled when an adoption petition is filed, it may be necessary to deal with the father at this time, which slows down adoptions and requires the expenditure of resources to determine the father's status.

C. Implications of Father's Failure to Register

A father's choice not to register with a putative father registry can hold a range of implications. The two main issues are notice of proceedings involving the man's child and exceptions to the registry requirements. Generally speaking, statutes creating putative father registries provide for one of three possible outcomes with regard to the notice an unregistered father will receive. In some states, the putative father's failure to register alleviates the court of any responsibility to notify the man of proceedings affecting his child or obtain the man's consent to decisions affecting his child. In some other states, the man will not receive notice of proceedings regarding the child whose existence entitles the man to register with the putative father registry. Finally, in a third broad category of states, the result of failure to register is less harsh. If a man fails to register in those states, he will not receive notice as a result of being registered, but other statutory

provisions will require the court to take certain actions in an attempt to identify, locate, and notify the child's father. In some states with harsher consequences for failure to register exceptions have been made under certain circumstances for unwed fathers who did not register. For instance, in *Robert O. v. Russell K.*, a case decided by the New York Court of Appeals, an exception to the ordinarily harsh New York law that failure to register is a waiver of any right to notice of termination of parental rights was recognized. The court held that in cases where an adoption was procured by concealment, fraud, or deception on the part of a mother or adoptive parents, failure to register is not considered a waiver of right to notice of a proceeding terminating the father's parental rights. Other states, such as Arizona, provide exceptions within the statutes themselves. The Arizona statute provides a father with an opportunity to show that he was unable to file a claim of paternity before the deadline, but has filed a notice of claim of paternity within thirty days after it became possible for him to file, such that he is excused from the original deadline.

 If a father fails to register under the proposed Kansas Putative Father Registry, this does not entirely foreclose him from notice to a proceeding concerning his child or termination of his parental rights. In a stepparent adoption, the court is still supposed to give notice to any presumed father and may appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. In any other adoption, once a mother decides to relinquish her parental rights or consent to the adoption of her child, a petition is filed in district court to terminate the parental rights of the father. In such an adoption, in which the mother wants to relinquish her parental rights, to identify the father, the court must determine whether: there is a presumed father under KSA ' 38-1114, a father whose relationship to the child has been established by a court, a father as to whom the child was legitimate under the prior law of the state or the law of another jurisdiction, the mother was cohabiting with a man at the time of the child's conception or birth, the mother has received support payments, any man has formally or informally acknowledged possible paternity, or any person has registered with the putative father registry as the child's father. Notice is then to be given by personal service to every person who is identified as the father or possible father of the child. There are no delineated exceptions to the provisions of the putative father registry, but it also does not automatically foreclose assertion of parental rights to a father once the time for filing with the registry has passed.

It is possible, however, for the mother of the child to foreclose a father's rights if he fails to register within the time frame specified by the statute. New Sec. 11 of Senate Bill 585 says that if the father fails to register, the mother may request a certificate from the Secretary of SRS stating that no notice of intent to claim paternity has been filed with the registry. If this certificate is filed, it eliminates the need to obtain the father's consent for adoption. Hence, though the statute does not in itself automatically foreclose a non-registering father's rights in a harsh manner, it is possible for a pro-active mother to intensify the consequences of a father's failure to register.

Statutes that foreclose a father's right to receive notice if he fails to register with the putative father registry clearly impose a much harsher penalty for failure to register than other statutes do, thereby creating a stronger incentive for fathers to register. A strong incentive for fathers to register is essential for putative father registries to be able to meet their goals of identifying and locating fathers and protecting the rights of unwed fathers because if the registry is viewed as optional, it will not be as heavily utilized as it would be if it is considered mandatory. Conversely, statutes that do not completely foreclose a father's right to receive notice if he fails to register are arguably too lenient to accomplish the dual goals of putative father registries.

D. Who is Entitled to Register

Though most putative father registry statutes do not specify what a man must show in order to be entitled to register, most of them do provide some guideposts. In statutes that define the term "putative father," this definition can be used to ascertain an indication of the circumstances that should be present for a father to be entitled to register. Additionally, some statutes provide for criminal penalties for false registration. Even though these penalties do not create pre-requisites, they establish an incentive for a father to register only if he reasonably believes he is a child's father. Finally, although none of them currently do,

a putative father registry statute could expressly require the father to state why he believes he is entitled to register.

Some state statutes give absolutely no indication as to who is entitled to register with the putative father registry. For instance, Mo. Rev. Stat. 192.016, which establishes the Missouri putative father registry, gives no indication of what circumstances should be present for a man or potential unwed father to be entitled to register with the state.

Some other state statutes give an indication of the circumstances under which a man is entitled to register with the putative father registry by the way in which they define the term "putative father." For instance, Iowa Code ' 144.12A(1)(d), a putative father is a man alleged to be the biological father of a child born to a woman he is not married to at the time of the child's birth. The statute allows for a man meeting this definition to register with the state through the putative father registry.

A few state statutes that create putative father registries provide for criminal penalties for registrants who submit false information. For instance, Minn. Stat. ' 259.52, subd. 5, which established the state's adoption registry, provides for criminal penalties for registering false information with the state. This statute says that "a person who knowingly or intentionally register false information under this section is guilty of a misdemeanor." (Minn. Stat. ' 259.52, subd. 5.)

Although no current putative father registry statutes do, it would also be possible for a statute to require that a father attest on that registration form that he has reason to believe he is the father of a child who has been or will be born to a specific woman and the reasons why he believes this to be true. This would encourage men to register only truthful information and discourage any troublemakers from submitting knowingly false registrations because it requires the man to attest to the accuracy of his assertion. This requirement could be combined with an appropriate penalty for men knowingly submit false information.

The proposed Kansas statute defines "putative father" as "an individual who is or may be child's birth father." It tells such an individual what he must do to register with the putative father registry. Hence, any man who seems to fit the category of being an individual who may be a child's birth father is entitled to register with the putative father registry under the proposed Kansas statute.

Statutes that provide absolutely no guidance as to who may register with a state's putative father registry are completely undesirable with respect to the policy objectives of a registry because they provide absolutely no guidance for anyone who wants to know whether or not he should register with the state. This does not benefit unwed father, birth mothers, child, adoptive parents, or the state because it creates confusion among unwed fathers as to whether they should be registering with the state or not. It is important for a statute to make it clear to a man that he needs to register if he is or may be the unwed father of a child in order to facilitate the adoption process and protect the interests of unwed fathers.

Statutes that at least provide a definition of the term "putative father" are relatively desirable with respect to the policy objectives of a putative father registry. These statutes make it clear that a man who thinks he may be the father of a child who has been or will be born to a woman to whom he is not married should register with the statute. This relative clarity reflects the importance of a man knowing he should register as this factors into the likelihood that a putative father registry will be able to facilitate adoptions and protect the rights of unwed fathers.

Also relatively desirable are statutes that provide for a criminal penalty for registration of false information. Although it is unclear how often a situation would arise in which a man has intentionally falsely registered, if this situation ever did arise, a criminal penalty would discourage someone with bad intentions from creating problems by falsely registering. A criminal penalty for registering false information reflects the importance of accurate information to the ability of a putative father registry to facilitate adoptions and protect the rights of unwed fathers.


Arguably most desirable, however, is a statute that provides for both penalties for false registration and a definition of the term "putative father." This approach combines the best features of current statutes,

as it both informs unwed fathers that they should register with the state and encourages only truthful registration by unwed fathers. Thus, this approach maximizes the interests of unwed fathers, children, birth mothers, adoptive parents, and the state in men knowing they should register and in having an accurate putative father registry.

E. Who May Contest a Putative Father's Registration

Though none of the existing state statutes providing for a putative father registry do so, a statute could detail who can contest the father's registration. The statute could allow for the child's birth mother or some other interested party as defined by the statute to set a procedure in motion for contesting the registration of a putative father if that person has reason to believe that the man should not have registered or that the man intentionally or knowingly lied in his registration with the state.

The proposed Kansas statute does not include any procedure for a birth mother or other interested party to contest a putative father's registration with the state, but it does allow a father who has filed a paternity claim to revoke his notification. The effect of such a revocation is as though the father had never registered in the first place.



Allowing interested parties to contest the registration of a man when that party has reason to believe he is mistaken or is intentionally lying about his connection to the child would benefit the child, the child's birth mother, adoptive parents, and the state. It is in the interest of all these parties to have accurate information in the putative father registry. Inaccurate information could cause a great deal of emotional harm and strife to the child, the birth mother, or the adoptive parents, and would burden the state with the expense of attempting to ascertain the rights of a putative father who knows he has no connection to the child or who a birth mother knows does not have a connection to the child. Inaccurate information also imposes administrative costs on the state in the time wasted in adding information to the registry that has no need to be there. Additionally, when a putative father is mistaken about his connection with the child, it is in his best interest for there to be a statutory mechanism by which the child's birth mother or another interested party who has knowledge about whether that man is in fact the child's father can contest the putative father's registration.

F. Accessibility of Putative Father Registry Information

Statutes creating putative father registries dictate the accessibility of information contained in putative father registry. The information contained in putative father registry is basically treated as a confidential record and may only be disclosed under certain, specified situations or to certain, specified people. Additionally, some states impose criminal penalties for divulgence of this confidential information in violation of the statutorily permissible situations.

Statutes generally allow for registry information to be divulged to the child's birth mother, courts, the applicable state department that maintains the registry, the state department that handles child support enforcement, other state agencies that have a legitimate use for the information, an attorney of the child's parent or a prospective adoptive parent of the child, or any other person by order of a court for good cause. Some statutes, such as Minn. Stat. § 259.52, subd. 4, specifically state that the information obtained may only be used for a purpose authorized by other sections of the statute or other state law. Statutes generally do not allow a man who believes he is a child's father have access to the registration information of any other men who have also registered with the state in the belief that they could be the child's father.

In addition to expressly stating who is entitled to access to the information maintained in a putative father registry, some statutes also provide a criminal penalty for unlawful disclosure of registry information. The New Mexico Statutes Annotated § 32A-5-20(J), which established the state's putative father registry, provides for such a penalty for "[a]ny person who intentionally and unlawfully releases information from the putative father registry to the public or makes any other unlawful use of the information in violation of the provisions of this section." A person in violation of this provision would be guilty of a petty misdemeanor under New Mexico State law.

The proposed Kansas Putative Father Registry Act restricts the circumstances under which a putative father's registration information can be revealed or divulged. The Secretary of the SRS is forbidden to disclose registry information except as provided by law or upon an order of a court for good cause. Additionally, the putative father registry is exempted from the Kansas Open Records Act, codified at KSA 2001 Supp. 45-221(45). The proposed statute states that the following people are entitled to request that the Secretary of the SRS search the registry: a representative of the department, a representative of an agency arranging adoption, a prospective adoptive parent or attorney with the notarized consent of the birth mother, the mother of the child, or any party or attorney in action pursuant to uniform interstate family support act. The search and submission of an affidavit must be completed not later than five days after the Secretary receives the request. Finally, the Secretary shall furnish a certified copy of the putative father's registry upon written request from the following people: the putative father listed on the registry form, upon reaching majority, the person who is the subject of the registration, a prospective adoptive parent or that person's attorney, with the birth mother's notarized consent, a licensed child-placement agency, the court presiding over a pending adoption, or a representative of the child support enforcement services of SRS.

In determining what level of accessibility is desirable with respect to information contained in a putative father registry, it is necessary to balance the privacy interests of the unwed father, child, and birth mother with the interest of the public in having open access to information maintained by the government. It is generally desirable to have access to information maintained by the government in order for citizens to be able to become informed about the workings of our representative government. However, in situations like this, where the information is of a nature that is highly personal to the putative father, birth mother, and child, the general interest in having access to information maintained by the government must yield, to a certain extent, to their interest in having such personal information remain as private as possible. It would create a disincentive for unwed fathers to register with the putative father registry if the personal information contained in the registry about them or their children was widely accessible to anyone who wanted access to it. Therefore, it is desirable for the child, putative father, and birth mother that the information maintained by a putative father registry be disclosed only under limited circumstances that involve a legitimate use for the information. This limitation balances the privacy interests of these people with the necessity of access to the information contained in the registry in order to satisfy the purposes for which the registry is maintained.

Through incorporation of the typical rights and obligations that arise as a result of an unwed father's decision to register with a putative father registry and consideration of the different policy options available as to each possible element of a putative father registry, the state legislature would be able to strategically combine options in a way that would maximize the identified policy objectives. Some aspects of Senate Bill 585 would be likely to achieve the policy objectives, while others could be re-examined in order to achieve a greater harmony between the effects of the statute and the identified policy objectives.

III. LEGAL ANALYSIS

This section of the report will discuss the steps that would need to be taken by the legislature if it wants to design and implement a putative father registry. It also describes possible constitutional constraints that would need to be considered by the legislature as it chooses between choice of policy options in structuring a putative father registry.

A. Steps necessary for Implementation

In order to establish a putative father registry, the Kansas Legislature would need to enact a statute that creates the registry and sets forth the policies and procedures that would underlie its operation. This would require the passage of a new statute, as there is no existing statute that it would make sense to amend in order to create the registry. This statute would need to set forth the time limit within which the father must register, the rights and obligations of the putative father, the information to be contained in the registry, any

desired effect of a father's registration on inheritance rights, who is allowed to contest a father's registration, the implications of failure to register, and the accessibility of the information contained in the putative father registry. It would also need to establish the state agency and actors that would bear the responsibility for the implementation and operation of the putative father registry. This statute would either need to vest the authority for setting up and maintaining the registry with Social and Rehabilitative Services or establish a new agency to perform these functions. Finally, it might set forth funding for establishment and continuation of the registry.

KSA 59-2136, which sets forth the guidelines for obtaining consent in adoptions should be amended to reflect the new protections for fathers who register and implications for fathers who do not register that is established through the creation of a putative father registry.

KSA 59-2133, which sets forth who the court must notify of a hearing on an adoption petition, should be amended to reflect the father's right to receive notice that arises when the father chooses to register with the putative father registry. This section also currently states that a termination of parental rights does not terminate the right of the child to inherit from or through the parent, but that a termination of parental rights includes the termination of the right of the parent to inherit from or through that child. This provision could be amended to reflect any desired change in inheritance rights between an unwed father and a child as a result of a father's choosing to register or failure to register with the putative father registry.

KSA 38-1121 deals with the support obligations of parents. It should be amended to reflect the connection between a father's registration with the putative father registry and his obligation to provide support for his child. This amendment would basically simply need to state that a father's choice to register with the putative father registry establishes a connection with the child that obligates him to provide support for that child.

KSA 45-221, the Kansas Open Records Act (KORA), should be amended to exempt the putative father registry from treatment as an open record in order to maximize the privacy interests of the putative father, the mother, and the child.

B. Possible Constitutional Constraints

In addition to the considerations relating to the statutes that Kansas would need to create and amend in order to establish a putative father registry, it is also necessary to take into account the Constitutional implications of the possible policy choices in the enactment and amendment of statutory provisions relating to a putative father registry.

The United States Supreme Court has recognized that unwed fathers have certain constitutionally protected rights with relation to their children, consisting of both substantive and procedural rights, which must be considered in the adoption of a putative father registry. Certain policy options are better suited to the protection of these rights, while other options seem to tread perilously close to violating established principles.

In *Stanley v. Illinois*, the United States Supreme Court held that due process entitles an unwed father to a hearing on his fitness as a parent before his parental rights are terminated. This is generally only the case if the father has established some relationship with his child. The Court dealt with the constitutionality of a putative father registry in *Lehr v. Robinson*. The Court said that a state statute that provides a method for putative fathers to sign a registry for purposes of being given notice of adoption is constitutional and that a biological father who does not register with it can have his child adopted against his wishes. The Court emphasized that the biological connection alone between a father and his child does not trigger full constitutional protection for the father's parental rights. He must demonstrate a substantial commitment to participate in his child's upbringing for substantive due process protection to be warranted. While this decision generally supports the notion that putative father registries can be set up in a manner that is constitutionally acceptable, previous decisions dealing with the rights of unwed fathers indicate that if a registry embodies certain characteristics, the registry's constitutionality would be questionable.

While many situations in which an unregistered father has his parental rights terminated will not deal with a father who has an established relationship with his child, this problem could arise under certain circumstances. For instance, if a registry imposes an open-ended time limit for a father to register that runs until a petition for adoption is filed, a father may have had ample opportunity to establish a relationship with his child and have done so. But if he does not meet the registry requirement and the statute forecloses his rights without providing him with an opportunity for a hearing on his fitness as a parent, this could be unconstitutional. Conversely, a statute that fixes a time limit for fathers to register within days or weeks of a child's birth might be constitutionally acceptable because the father would not have an established relationship with the child that would entitle him to a hearing on his fitness as a parent. Arguably, Lehr says that his rights could be foreclosed under this type of statutory scheme. However, it is likely that since the unwed father would have been denied any opportunity to have established a substantial relationship with his child, he would still be entitled to the protection of due process in proceedings involving his child and his parental rights with respect to that child.

In addition to the fairly definitive scenarios discussed above, it is easy to imagine a scenario involving a more middle of the road situation, which would become problematic when the child is older at the beginning of the adoption process. In this scenario, even though the child's father has been at least a somewhat active part of the child's life, he has not registered with the state's putative father registry. To say that he would not be entitled to notice of proceedings regarding his child and an opportunity to be heard in court, regardless of what the state statute provided for, would most likely violate clearly established Constitutional principles as long as the father's relationship with his child could be fairly characterized as substantial.

Whichever of the policy options as to each component of a putative father registry is selected in the formulation of a registry, it is essential that the father's inchoate constitutional parental rights be considered in the decision making process.

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26. 23 Pa. Cons. Stat. 5103(B) (2001).
27. Tenn. Code Ann. § 36-2-318 (2001).
28. Utah Code Ann. § 78-30-4.14 (2001).
29. Vt. Stat. Ann. tit. 15A, § 1-110 (2001).
30. Wis. Stat. § 48.025 (2001).
31. Wyo. Stat. Ann. § 1-22-117 (Michie 2001).

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Testimony of Allan A. Hazlett to the
Senate Judiciary Committee regarding
Senate Bill 56
February 6, 2003.

My name is Allan Hazlett. I have practiced law in Topeka since 1967. For the past fifteen years my practice has been devoted to the representation of clients with respect to adoption related proceedings. I am a Past- President of the American Academy of Adoption Attorneys and currently serve on the national Board of Governors of the Gift of Adoption Fund.

For the most part, I agree with Mr. Bauer's analysis of Senate Bill 56. A Birth Father Registry is indeed, "a cumbersome, expensive and unnecessary tool." All it actually accomplishes is creating an additional, unwarranted, governmental function. Any competent adoption practitioner will continue to carefully question the biological mother with respect to who all possible biological fathers might be and notify all of those men, irrespective of whether or not they have registered. To do otherwise would place any adoption at risk and leave open the possibility of extreme anguish for an indeterminate amount of time. Even though more birth fathers might come forward under the current system, it is far better to deal with those issues sooner rather than later.

As Mr. Bauer points out, attorneys in other states where there is a Birth Father Registry continue to follow the procedure of notification. Following the institution of a Birth Father Registry, there is an inevitable flurry of litigation. While I might personally benefit from a financial standpoint, I simply don't believe this is in the best interests of adoption in general.

The concept of constructive notice as reflected in Sec. 4(a) is quite useful and should be enacted. I have attached a copy of a proposal I prepared with respect to amending K.S.A. 59-2136. It speaks to this issue as well as several other issues that the Courts have interpreted in a way that I do not believe meets the original legislative intent.

The Kansas Adoption and Relinquishment Act is praised throughout the country. Adoption practitioners admire the way in which a simple, straightforward approach creates an adoption

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friendly atmosphere and at the same time appropriately balance the interests of the child, the biological parents, and the adoptive parents. Since the law was adopted 13 years ago, very few changes have been made or are needed. There are, however, some suggestions I would like to make.

K.S.A. 59-2123, with respect to advertising, should be repealed. The Attorney General has determined it to be unconstitutional. Throughout the country where laws of this type have existed in the past, most have been stricken from the books or have continued to be ignored.

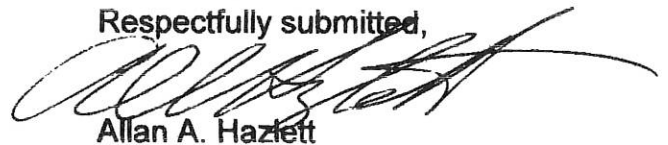
With respect to the other suggestions made by Mr. Bauer, I would submit the following:

1. Hospitals should, unequivocally, be required to release children to the adopting couple without the necessity of a Court Order.
2. Step-Parent adoptions should be completed on the basis of unfitness of the biological father.
3. Birth Fathers should be permitted to relinquish their parental rights prior to the birth of the child and this should be explicitly set forth by statute.
4. The suggested separate but simplified termination proceeding prior to the finalization of the adoption should also be established by statute.

If I had one other wish with respect to improving the adoption laws in Kansas, it would be to strengthen and clarify the statutes with respect to jurisdiction and venue. This is an instance where the legislature has previously attempted to make its wishes known to the judiciary. Unfortunately, some decisions have not followed what is clearly the law.

I appreciate this opportunity to address the Committee. If there are any further questions, I will attempt to answer them now or I can be contacted at 1-800-492-2011.

Respectfully submitted,



Allan A. Hazlett

CURRENT LAW

59-2136. Relinquishment and adoption proceedings to terminate parental rights.

(h) When a father or alleged father appears and asserts parental rights, the court shall determine parentage, if necessary pursuant to the Kansas parentage act. If a father desires but is financially unable to employ an attorney, the court shall appoint an attorney for the father. Thereafter, the court may order that parental rights be terminated, upon a finding by clear and convincing evidence, of any of the following:

(4) the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth.

PROPOSED REVISION

59-2136(h)(4) the father (,after having knowledge of the pregnancy,) failed without reasonable cause to provide *(reasonable) financial* support for the mother prior to the child's birth *continuously from six (6) weeks of gestational age to the time of the child's birth. The court shall presume that any person engaging in sexual intercourse has knowledge that a pregnancy may occur. Incarceration in a jail, prison, penal institution, etc., whether local, state or federal shall not constitute reasonable cause for failure to provide (reasonable) financial support.*

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Judiciary
February 6, 2003

SB 56 - Putative Father Registry

Integrated Service Delivery
Candy Shively, Deputy Secretary

For additional information contact:
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**Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary**

Senate Judiciary
February 6, 2003

SB 56 - Putative Father Registry

Senator Vratil and members of the Committee, I am Candy Shively, Deputy Secretary Social and Rehabilitation Services. I appear today because it is important to provide children with the stability of a permanent, adoptive family as quickly and securely as we are able to do so.

Creation of a putative fathers' registry is intended to assure putative fathers have a means to formally register so they may assure and assert their rights in the event of efforts to terminate parental rights. The right to notice is in addition to rights already established under KSA Chapters 38 and 59. By registering, the putative father submits to Kansas court jurisdiction for the purpose of this act.

Currently putative fathers may register with SRS for the purpose of child support collection. However, no fathers have registered for this purpose.

Implementation would require one time start up costs to develop the registry data base and operation of the system would require staff to enter and distribute data pursuant to the requirements set out in the bill.

Thank you and I will stand for questions.

TESTIMONY OF MARTIN W. BAUER TO THE SENATE
COMMITTEE OF THE JUDICIARY REGARDING SENATE
BILL NO. 56 PREVIOUSLY SENATE BILL NO. 585

My name is Martin W. Bauer, a partner with the firm of Martin, Pringle, Oliver, Wallace & Bauer, L.L.P. A major portion of my practice is devoted to the handling of adoption related proceedings and in particular contested adoptions. For the last five years, I have authored and updated the chapter on adoptions for the KBA's Family Law Handbook. I am a member of the American Academy of Adoption Attorneys and serve on their board of directors.

Senate Bill No. 585 is inconsistent with the current appropriate balance of the interests of the child and birth parents and would make adoption proceedings more difficult for adoptive parents. There are several alternatives that would not cost taxpayers any dollars that would reduce or avoid the uncertainty of a birth father appearing at finalization to oppose the termination of his parental rights.

The objective of the Adoption and Relinquishment Act should be to insure that a child has permanency with a birth parent if they can consistently and appropriately parent the child. New section 4, creating the presumption about a potential pregnancy, relieves the birth mother of the obligation of notifying the birth father of the pregnancy. If he knows of the pregnancy, he may responsibly and consistently demonstrate his desire and ability to parent the child even if the birth mother does not want to parent the child. If he knows of the pregnancy and fails in any one of the criteria established in K.S.A. 59-2136(h), his rights can easily be terminated. While I am referred an average of 15 contested adoptions a year, the issue of knowledge of the pregnancy is rarely an issue in the case. The presumption may also be challenged if the adoption is by a Kansas couple of a child

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conceived by birth parents who did not and do not live in the state of Kansas particularly if in a state where notice of the pregnancy is required. Proof of paternity prior to delivery is not required in Kansas to impose obligations on the birth father if he wants to parent the child. In re D.M.M., 24 Kan.App.2d 783, 955 P.2d 618 (1997).

The birth father registry is a cumbersome, expensive and unnecessary tool. While this version of the legislation is a vast improvement over the first draft, the creation of a birth father registry would delay the termination of parental rights in most counties in Kansas and would increase the cost of the adoption to adoptive parents. Under the current version, a request for a search of the birth father's registry would not be effective unless made after the birth of the child. The registry office has five days—it is not specified if this is calendar or business days—to respond. The birth father has 72 hours to register. If the birth father registers by mail and the registry search is requested by fax, the registry search could be completed before the birth father's registration is received. Thus, I would not make the request until 72 hours after the birth of the child, adding 5 business days, I would not have the registration results for at least 11 days counting the weekend. In addition, the registration is not conclusive as to birth fathers particularly for those who reside outside the state of Kansas. Thus a prudent attorney would have to request the search and also publish notice. This additional step will be at a greater cost to the adoptive parents.

I contacted attorneys in several states that have birth father registries. All indicated that the best practice is to also give notice. In New York, for example, the attorney was unaware of a birth father registering in the last 10 years of practice thus notice is still required.

The current Act does not and should not eliminate a birth parent's right to challenge

a consent or relinquishment on the basis that it is not freely or voluntarily given. K.S.A. 59-2114. The Act does not and should not prevent a birth mother from changing her mind about adoption prior to her signing her consent. Both create uncertainty for adoptive parents so enacting the proposed change seems focused on the adoptive parents. There are two easy and cost free ways to avoid the uncertainty of a birth father or birth mother appearing on the date for finalizing an adoption to surprise the adoptive parents with a challenge. Under K.S.A. 59-2136(e), a petition to terminate parental rights can be filed separately from the adoption proceeding. In most Kansas counties, the court recognizes that while a termination filed in conjunction with an adoption cannot be set for 30 to 60 days, if the termination is filed separately, all that needs to be shown is that the birth parent has received notice of the hearing prior to the hearing. K.S.A. 59-2136(f). Most courts have adopted the reference to 10 days in advance of the hearing in K.S.A. 59-2132(b) to require notice be received by the birth parent at least 10 days prior to the hearing with personal service, certified mail or after publication once each week for two or three weeks. Some Kansas courts still require the 30 day period. I would suggest amending K.S.A. 59-2136(e) to include the following language—"Notice of a separate termination proceeding may be set to allow for notice to be given to the birth parent as warranted by the circumstances at least 10 days prior to the hearing." This usually allows the hearing to be set 12 to 15 days after filing if the location of the birth father is known and 20 to 25 days if publication notice is required. This process (1) quickly enables the court and parties to determine whether there is going to be any challenge to the adoption, (2) can be filed by other than adoptive parents to protect their identify, if that is an issue, and (3) enables the parties to have no risk of a birth parent appearing at the finalization to challenge the

adoption. This amendment is also more consistent with due process being afforded the birth parents regardless of their state of residence. I have serious reservations about the constitutionality of the proposed amendments particularly if applied to a birth father who is not a resident of Kansas and where conception did not occur in Kansas.

Another change would be to amend K.S.A. 59-2116 to confirm that a birth father can sign his consent within the six months prior to delivery. This has been the finding of a least one state court in Miami County. The birth father is not experiencing the emotional issues of carrying the child during the pregnancy. A pre-delivery consent would relieve both the birth mother and adoptive parents of the anxiety about the birth father. In addition, consents are routinely modified to indicate that the consent is not an admission of paternity and cannot be used for any proceeding other than an adoption so that if the mother does not proceed with an adoption, the birth father as not made any binding admission against interest.

These two alternatives would create no cost to Kansas taxpayers, provide greater certainty about permanency for the child and still preserve the due process rights of the birth parents. For these reasons, I recommend that the proposed Act not be recommended to the Senate.

Although not related to the proposed Act, there are two areas that would make adoptions more focused on the child and insure greater continuity for the child's welfare. First, K.S.A. 59-2136(b) relating to stepparent adoptions only permits termination of parental rights based upon the birth parent's failure or refusal to communicate or support the child. I would suggest adding termination based upon unfitness. See K.S.A. 59-2136(h)(2). As currently written, a birth father could be abusive, alcoholic and in jail but

communicating with the child in an inappropriate manner and his parental rights could not be terminated.

Currently many hospitals will not release a child to adoptive parents based upon the birth mother's power of attorney granting them custody of the child. Many hospitals require a temporary custody order. Particularly when the child is ready to be medically discharged on the weekend, the hospital has no legal right to require the child to stay in the hospital longer increasing the costs to the adoptive parents. However, it frequently occurs. K.S.A. 59-2131 should be amended to require hospitals to honor notarized powers of attorney signed by the birth mother directing custody to the adoptive parents. Hospitals honor powers of attorney in the event of health difficulties of the birth mother and honor them for agencies but not adoptive parents. This difference is not warranted.

I thank you for the opportunity to address this Committee and apologize that a termination proceeding required me to appear by my written testimony. If you have any further questions about the Adoption and Relinquishment Act and issues that are raised by legislators or citizens, do not hesitate to contact me at (316) 265-9311.

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February 5, 2003

FAX transmittal

TO:	Dee Woodson
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FAX NO.:	(785) 296-6718
FROM:	Martin W. Bauer
FILE NO.	N/A
NO. OF PAGES:	6 (including cover page)
MESSAGE:	John, please accept this statement as my testimony against SB 56. If you or the Committee have any questions, please contact me.

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Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Testimony in Support of SB 63

Before the Senate Judiciary Committee

Kyle G. Smith

Director of Public and Governmental Affairs

Kansas Bureau of Investigation

February 10, 2003

Chairman Vratil and Members of the Committee,

As I noted when requesting this legislation, I appear on behalf of the KBI but this legislation was really the culmination of a joint governance initiative of the Kansas Law Enforcement Telecommunications Committee (also known as the ASTRA Board) and the Kansas Criminal Justice Coordinating Council (KCJCC). This bill simply streamlines the governance of communications within the criminal justice system by merging the 25 member KCJIS advisory board and the statutory 5 member Law Enforcement Telecommunications committee.

Since 1997 the State of Kansas has been building an integrated criminal justice information system under the guidance of the coordinating council. The core components of the new system were completed in 2002 with the installation of the new criminal history database at the Kansas Bureau of Investigation and the state's connectivity to the Interstate Identification Index (III). Other system components include the message switch, web server, web portal, and the Automated Fingerprint Identification System. The integrated components are collectively known as the Kansas Criminal Justice Information System (KCJIS).

KCJIS is generally recognized as the best of its kind in the entire United States. Not just officers on the streets but courts, prosecutors, probation officers, and corrections can instantly access databases maintained by the each other and get information that is not only useful but sometimes a matter of life and death. The system currently has over 7000 users and supports approximately 160 state and local criminal justice agencies.

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To coordinate this incredibly complex system the legislature created the position of Director of KCJIS to oversee the design, development, and implementation of the integrated criminal justice system in Kansas. Currently we are fortunate to have Mr. Gordon Lansford. Mr. Lansford has a bachelor's degree in accounting and postgraduate education from the Harvard School of Business. After retiring from IBM in 1998 with 30 years as a systems engineer and in various management positions, Mr. Lansford was appointed Director of KCJIS in December 2000.

If I may, I would ask to defer to the much more qualified Mr. Lansford to let him explain the bill and answer any questions. Thank you.



Kansas Criminal Justice Information System

Gordon Lansford
KCJIS Director

Phill Kline
Attorney General



Testimony in Support of SB 63
Before the Senate Judiciary Committee
Gordon E. Lansford
Director

Kansas Criminal Justice Information System (KCJIS)
February 10, 2003

Chairman Vratil and Members of the Committee,

I appear in support of SB 63, which will improve and streamline the governance structure of the Kansas Criminal Justice Information System. The proposed revisions are the culmination of a yearlong joint governance initiative of the Kansas Law Enforcement Telecommunications Committee and the Kansas Criminal Justice Coordinating Council (KCJCC). It is presented to you with the full support of both organizations.

Background:

In 1968 the Kansas Legislature created the Kansas Law Enforcement Telecommunications Committee. Its purpose was to oversee and provide communications services among state and local law enforcement agencies in the state of Kansas. When it began operations the system was a network of law enforcement Teletype machines. Over the years the network has been modernized with the advancement of computer technology.

In the early 1990's it became apparent that criminal justice, per se, was much broader than just law enforcement. In 1994, to recognize the expanded scope, the Kansas legislature created the Kansas Criminal Justice Coordinating Council (KCJCC) to provide high-level direction and oversight in the areas of criminal justice information and processes. The ultimate goal was to create an all-encompassing integrated criminal justice system for the state of Kansas, which would provide access to all potential criminal justice users. Under the leadership of KCJCC the resulting system (KCJIS) began initial operations in 1998.

Today's environment:

KCJIS currently serves over 7,000 authorized criminal justice users in approximately 175 state and local agencies. The users include court service officers, community corrections, parole officers, prosecutors, county and district courts, correctional facilities and law enforcement agencies.

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KCJIS is a statewide-integrated criminal justice system, which is consistently ranked in the top five in the United States. Because it is an Internet based system it provides low cost access to all criminal justice users in Kansas no matter how small or remote their agency might be. It continues to be the only statewide criminal justice system in the United States approved by the FBI to access national criminal justice data over the Internet, and therefore provides access for all authorized users to both state and national databases.

(Attached please find a detailed history of KCJIS through the end of 2002.)

The proposal:

Changing the title of K.S.A. 74-5701 to the Kansas Criminal Justice Information System Committee, and adding committee members from the other criminal justice professions effectively updates the governance of the system and reflects the current criminal justice community. The new committee will maintain standards for the operation of KCJIS as well as provide operational guidance and direction for KCJIS. It will also serve as an advisory body to the Criminal Justice Coordinating Council.

The KCJIS Strategic Plan, published in 1997, lists ten initiatives necessary to insure the success of the system. The second initiative on the list addresses the "statutory, policy, and procedural foundation required to ensure the proper collection, maintenance, and dissemination of centralized criminal justice record information." The proposed statutory revisions are consistent with the KCJIS Strategic Plan and are necessary to maintain KCJIS as an integrated justice system.

The Criminal Justice Coordinating council approved the proposed changes during their meeting of November 25, 2002. Likewise, the Law Enforcement Telecommunications committee approved the changes on December 10, 2002.

The expected result:

The law enforcement telecommunications committee was satisfactory for the environment that existed when it was created in 1968. The proposed change in the name of the committee, and the expansion of the membership of the committee reflect the expanded role of the integrated criminal justice system. This proposed change would streamline jurisdiction of the KCJIS Committee and the Criminal Justice Coordinating Council and clarify the role of each entity. It will more adequately represent the interests of all members of the criminal justice community in Kansas.

Thank you in advance for your support and consideration.

KCJIS: Making Science Fiction Real

A study in turning adversity into opportunity

By Neil Woerman

November 27, 2002 (revised)

Note: See also attached summary lists of KCJIS accomplishments & tasks pending.

In 1992 representatives of Kansas' criminal justice agencies began to meet to develop a Kansas criminal history record improvement plan. At the time, stacks of documents at the KBI were growing daily representing offenses and arrests to be entered into the state's incident based reporting system. Preparation of annual compilations of the offense and arrest statistical data was getting further and further behind. It was recognized that the state's records of criminal offenses were incomplete, particularly with arrests reported but no disposition to the case appearing. Approximately 30 percent of adult records lacked dispositions, and juvenile records were worse, with only 32 percent of juvenile records containing accurate dispositions at all. Each year another requirement for licensing or employment record checks was becoming law, and this increase in workload was exacerbating the problem. In 1992 Sentencing Guidelines were adopted by the Kansas Legislature which made timely access to complete and accurate criminal history a prerequisite to criminal sentencing. In 1993 the federal Brady Handgun Violence Protection Act was enacted, which it was believed would place still further demands on the state to improve its criminal history records. While the public perception of law enforcement information systems envisioned instantaneous nationwide computer searches based on a single fingerprint or just fragments of information, in Kansas, as in most other states, such technology was science fiction.

The Kansas criminal justice information system was based much more on the World War II era teletype model than on modern computer technology. While law enforcement dispatchers' inquiries were relayed to the KBI, Division of Motor Vehicles or federal authorities by an automated computer switch, that switch was obsolete both in its hardware and software, and it was clear it would not be made Y2K compliant. The dedicated telephone lines linking terminals in each of Kansas' 105 counties with the switch located in Topeka were slow and used a computer mainframe protocol called SNA, rather than the emerging Internet Protocol (IP). This communication system was not well-suited for transmission of fingerprints or mug shots. Responses to Kansas records requests were not automatically answered by computer, but instead KBI staff working 24x7 shifts would read the teletype requests and manually search several different computer and paper files before typing responses to the requests.

Money was being set aside through the federal Byrne law enforcement grant program which required that 5% of funds available each year be spent on improvement of criminal justice information systems nationwide. Kansas agency representatives were frustrated by their inability to locate in tight state agency budgets even the necessary match funding to release the federal Byrne dollars for performance of a needs study. There was no umbrella organization which brought together state law enforcement interests to coordinate such a study or the projects which might result. Those meeting to devise a criminal history record improvement plan believed the first step had to be establishment of a governing body to coordinate and oversee the planning, development and implementation of a multi-agency criminal justice information system.

Creation of the Criminal Justice Coordinating Council

Finally, in 1994, through the persistent efforts of then Secretary of Corrections Gary Stotts, legislation was adopted to create the Criminal Justice Coordinating Council (See K.S.A. 2001 Supp. 74-9501). The Council was formed to study criminal justice issues and to oversee development and management of a criminal justice database. To assist in coordination of federal money available to Kansas for criminal justice, the Council was to oversee reporting of all criminal justice federal funding. Council membership included the Governor or designee, the Chief Justice of the Supreme Court or designee, the Attorney General or designee, the Secretary of Corrections, the Secretary of Social and Rehabilitation Services and the Director of the Kansas Bureau of Investigation. After creation of the Juvenile Justice Authority, in 1996 the Commissioner of Juvenile Justice was added to the Council's membership. The Sentencing Commission staff was made staff to the Council.

The Council adopted a document entitled Criminal Justice Information System Criminal History Record Improvement Plan, in April, 1995. While itself identifying many of the problems and proposed solutions, the plan called for a request for proposals to be issued for creation of a detailed Kansas Criminal Justice Information System Needs Analysis/Implementation Plan. This led to the state's contractual relationship with Steve Davis of ECG (later MTG) Management Consultants, Seattle, Washington, who became the architect for the Kansas Criminal Justice Information System (KCJIS). In 1997 the Council approved a strategic plan which included 25 tactical projects which were to comprise the KCJIS plan. The projected budget was \$10.1 million. This budget for the KCJIS core system was increased to just over \$12 million in 1999, when a strong security system was added to the plan, along with other enhancements. The core budget remains at \$12 million today.

The KCJIS Plan

Included in the plan was the replacement of the state's criminal justice information infrastructure from top to bottom, from the terminals in each county and the communication lines which support them to the state message switch in Topeka and many of the state computers with which it communicates. The plan called for replacing the state's Automated Fingerprint Identification System (AFIS) with updated hardware and software and connecting 10 live scan systems scattered throughout the state. At the KBI's central records repository the plan called for replacement of all hardware and software and the establishment of a new computerized criminal history (CCH) database using modern technology rather than the legacy systems then in use. Existing records would need to be entered and converted into the new system, with the majority of records existing in paper form only. New local case management applications would be built for many law enforcement agencies, prosecutors and court service officers to capture criminal history data as events occurred rather than later entering the data into the state repository and statistical database from paper months or years later. Grant assistance would be provided to large agencies in interfacing their records management systems with the new KBI databases. New interfaces would be built between the repository and Department of Corrections. The central repository and AFIS system would be integrated. A backup site would be established at the Highway Patrol Communication Center in Salina to which

communication could be switched in case of disaster in Topeka. As an immediate proof of concept and to satisfy the most immediate need, the Kansas Browser Access Record System (KBARS) would be built which would give court service officers completing pre-sentence reports, immediate access to a growing database of electronic criminal history records. While the plan would establish a dedicated, high-availability network for dispatch centers to access criminal history data, it also allowed local law enforcement agencies that never before could afford direct access to the state's law enforcement network to do so with a PC browser and an Internet connection. The system would integrate with federal criminal justice information systems and with other states and meet emerging standards for sharing criminal justice information. The system would form a criminal justice hub with which any number of additional state systems could be integrated in the future, including Juvenile Justice, the Judicial Branch and additional systems within the Department of Corrections. When completed the KCJIS plan would provide Kansas with an integrated information system approach, with each justice agency still being able to focus on its unique information system needs, while participating in an overall architecture that would allow information to be shared and accessed across multiple platforms. The plan was designed to focus on the Internet. The plan, when implemented, would conform the state's criminal justice information infrastructure with what had been no more than a science fiction public perception of its capabilities.

While KCJIS is often referred to as a project, it is better considered a vision or a process, which is comprised of at least 25 individual projects all linked with one another. While each of these projects either has been or will be completed, KCJIS itself will remain ongoing and will constantly change as systems within the law enforcement community evolve and technology allows for further innovation.

While the Criminal Justice Coordinating Council formed the cornerstone of KCJIS governance, the KCJIS implementation plan called for a governance structure that was inclusive of all KCJIS users. A KCJIS Advisory Board of some 20 members, equally divided between state and local agencies was formed to assist the high level Coordinating Council in managing KCJIS. This board continues to meet on a monthly basis. A number of task forces and subcommittees were formed to report to the Advisory Board, including one on AFIS, Standards and Technology, Incident Based Reporting, Juvenile Justice, and Local Applications. This cooperation among agencies at all levels erased much of the concern that KCJIS implementation would be plagued by infighting and turf protection. Instead it proved to be a model of cooperation.

KCJIS Budget to Rely on Federal Funds

The budget for KCJIS was designed to strategically apply most state funding as match for federal dollars such that federal grant programs supervised by the Coordinating Council would finance as much of KCJIS as possible. The Kansas Highway Patrol supplemented state general fund money by providing \$225,000 in state and federal forfeiture proceeds for KCJIS.

The initial principal contractors for KCJIS were Paradigm4, Inc., for the criminal justice communication switch, the new CCH database and related components; Printrak International, Inc.,

for AFIS; Business Software and Equipment, Inc., for local case management applications and gateways; FishNet, Inc., for the security system; and Datamaxx, Inc., for end user communication software principally used by dispatch centers. Contracts were entered into with each of these parties in 1997 and 1998. In addition, the state Division of Information Systems and Communications began in 1998 to replace the state's law enforcement communication network, successfully completing its transition a higher speed IP network by the middle of 1999.

A full-time KCJIS project manager was first hired in January 1998 to manage the several KCJIS contracts then in place. A long-time state employee, who had worked for the KBI, Division of Purchases and Division of Information Systems and Communications (DISC) was hired. He had a familiarity with KCJIS as a Department of Administration appointee to the negotiation committees which had approved several of the KCJIS contracts.

Initial KCJIS Features Delivered

Initial work by each vendor went well. In 1998 the KBARS system was up and running providing automated responses to court service officers' requests for criminal history information in pre-sentence investigations. This system further helped the KBI to prioritize the order in which older records would be automated. When requests were received for records of individuals which were not yet automated, KBI staff would be alerted and those records would be automated immediately, a message would be sent to the requester explaining the delay and as soon as the record was automated, the record would be sent. By concentrating on automating these requests, in addition to automating records on new arrests being submitted, and then moving backward through time to automate older cases, the automation process became a predictive one, automating first those records which were most likely to be needed. The automation process involved filling in many of the gaps in criminal history, seeking dispositions on many cases where none existed in KBI files.

Also installed in 1998 was the new AFIS system, which was compliant with federal Integrated Automated Fingerprint Identification System (IAFIS) standards designed to allow transparent transfer of fingerprint searches and data among compliant states and the federal government. Remote AFIS sites were installed in higher volume counties, allowing digital prints taken at arrest and booking to be run against the state fingerprint database to verify identification and then be filed electronically with the central repository.

The replacement of the SNA communication lines in all 105 counties with faster circuits supporting the IP protocol began in 1998, along with the replacement of hardware and software used by dispatchers throughout the state. This process, along with replacement of the hardware and software comprising the state law enforcement message switch was completed by July, 1999, so that the entire network could be switched by October to a law enforcement communication infrastructure new from top to bottom. This was on-time for participation in a new federal law enforcement communication initiative called NCIC 2000, and Y2K compliance could be certified before January 1, 2000.

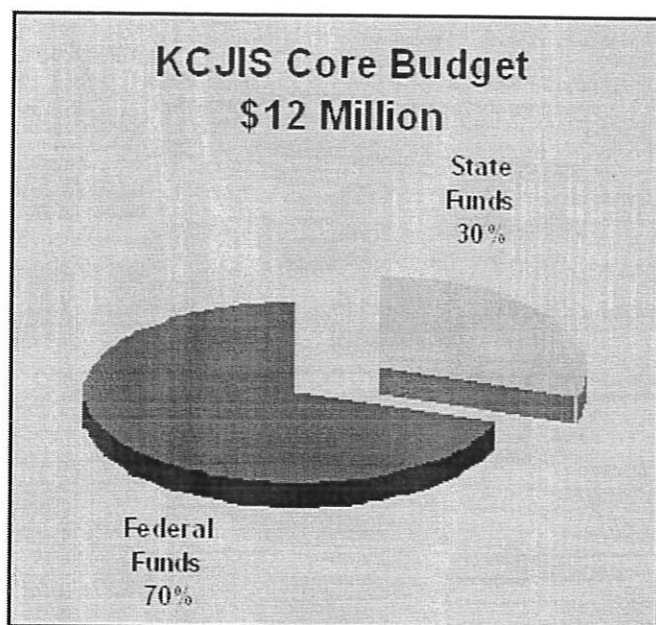
KCJIS's new IP communication protocol was designed to support more than proprietary hardware and software running in dispatch centers. It was designed to allow PCs using a common Internet browser to communicate over public communication lines using public Internet service providers. This would allow the smallest of Kansas' law enforcement agencies access, where they could not afford a dedicated line. It would allow detectives in larger departments to have direct access, where previously they had to rely on a dispatcher. To accomplish this, robust security needed to be added to the system. This was accomplished in 1999 as well, but being outside of the original design of the system, addition of this new security system accounted for more than half of a \$2 million budget increase for KCJIS which was declared in March, 1999.

KCJIS Scrutinized; Implementation Languishes

It was now four years after the Criminal Justice Coordinating Council had approved its Criminal History Record Improvement Plan. The Division of Budget became nervous about KCJIS funding. It began to see ongoing costs for operation, maintenance and upgrade of KCJIS systems rolled into agency budgets, yet KCJIS was still being rolled out itself. In some budgets agencies requested money so they could participate in KCJIS because their aging agency computer facilities were below KCJIS minimum standards. KCJIS had been funded in large part through the Criminal Justice Coordinating Council and the Sentencing Commission's budget as grants and through a state general fund match pool also appropriated to the Sentencing Commission. Still other parts of KCJIS funding was through the KBI and Highway Patrol. No one was maintaining a complete picture of KCJIS costs.

In March, 1999, the Director of Budget asked the Attorney General to determine the costs of the KCJIS to date and what remained to be spent of the original \$10.1 million budget. This study concluded that to that date just over \$7 million had been spent on what was carefully labeled the KCJIS "core" budget. Of this, \$5 million had been federal money and \$2 million, or less than 30 percent, was state money. The term "core" was crafted when describing KCJIS, to attempt to find a way to distinguish the central costs of the initiative from virtually every computer and record related expenditure made by state and local law enforcement agencies, which arguably supported or benefitted the KCJIS vision.

The study also suggested it was appropriate to increase the KCJIS core budget to just over \$12 million, approximately \$1 million of the increase attributable to the KCJIS security system which had not been envisioned in the original plan, and the remaining \$900,000 related to a variety of other enhancements. Remaining expenditures were estimated to be 68 percent federal and 32 percent state. After remaining state funds and federal grant funds were structured to maximize federal funding, a request was made for an additional \$160,500 in state funding. The additional funding was received.



Later in 1999, KCJIS began to languish. There were further successes, including the piloting of a case management system for small to mid-size local law enforcement agencies that would support online submission of offense and arrest data. More remote AFIS sites became connected to the KBI for automated fingerprint checks at booking and automated submission of fingerprints to the central repository. Perhaps the greatest success was that in December, 1999, Kansas became the first state in the country to receive approval from the FBI Advisory Policy Board to access national law enforcement databases over the Internet, testimony to the solid, multi-layer security architecture the state employed.

Despite this progress, many aspects of KCJIS remained at a standstill waiting on the vendor Paradigm4 to deliver the new CCH database or even a detailed description of it to allow other parts of the plan to proceed. Paradigm4, a New Jersey venture capital company, had successfully installed the new state law enforcement switch and components supporting it, but did not seem to have the ability to deliver the CCH database. In the meantime, the KBI continued to interface the state's new communication infrastructure with its old legacy database. While many of the early KCJIS goals had been met, and indeed the state would not have had a law enforcement network it could have depended on January 1, 2000, without meeting those goals, many of the value-added features of a fully integrated KCJIS necessarily would have to wait for implementation of the new database.

Funding Lost; KCJIS Evaluated

State budgets were tight in 2000. A state general fund rescission bill was proposed by the Governor and adopted by the Legislature in January. Before the Sentencing Commission staff recognized the bill's impact, state general fund money for the KCJIS core was rescinded and even forfeiture proceeds remaining committed to KCJIS were appropriated to another purpose. Paradigm4 continued to postpone scheduled deliveries. Questions also were raised about KCJIS's timeliness by the Kansas Information Technology Office (KITO) and the Information Technology Executive Council (ITEC). The KCJIS project manager's position, which had been a temporary position with the occupant on loan from DISC, was terminated three months prior to expiration of the position's remaining federal funding and the occupant returned to his classified DISC position. A team consisting of Chuck Sexson and Ron Rohrer, KBI; Don Heiman and John Oliver, DISC/KITO; and Neil Woerman, Attorney General's Office, was asked by the Coordinating Council to monitor and manage KCJIS during an interim while KCJIS was re-evaluated. Consultants, including Steve Davis

of MTG who had been the architect for the original KCJIS plan, were hired to evaluate KCJIS. The consultants all questioned Paradigm4's ability to complete is remaining work.

Again, the Director of Budget asked the Attorney General to study the KCJIS budget. The Attorney General reported KCJIS core costs of \$9.1 million as of March 28, 2000, with \$6.5 million in federal expenditures and \$2.6 million, or 29 percent, in state expenditures. It was estimated the KCJIS core still could be completed for the \$12 million budget, but that the plan would need to be restructured. The required state funding to meet the budget was again appropriated. Apart from the KCJIS core budget, the Legislature appropriated state funding to hire a new KCJIS director, a position which was filled in January, 2001, with the selection of Gordon Lansford, a computer industry system engineer, salesman and manager who was retired from IBM.

Paradigm4 Files for Bankruptcy, Ceases Operations

Negotiations continued with Paradigm4, but it was not until February, 2001, that an amended contract was signed wherein Paradigm4 agreed to complete certain work and forgo other work, principally completion of the CCH database. The following month, Paradigm4 ceased operations and subsequently filed for bankruptcy.

With assistance from MTG's Davis, KCJIS Director Lansford and the interim management team proposed a "completion plan" to the Coordinating Council which included revising the KCJIS architecture from that planned by Paradigm4 to rely even more heavily on the Internet and web based programming. The plan included maintenance and additional development service from a former Paradigm4 employee who formed a new company named Balance Wheel Technologies located in Topeka. A new contract was established with a Utah Company named MEGG Associates which had developed a CCH database application which it was believed could be modified to fit Kansas' needs. Another contract was established with Analysts International, a Minnesota company, to develop a web portal and master search engine for KCJIS which would facilitate exploring multiple criminal justice databases across multiple platforms with a single search, similar to one it had recently established for Nebraska. Leawood-based BSE would continue to provide maintenance and development services for the local case management applications, including provision of the Kansas Disposition Report (KDR) gateway to automatically update records with dispositions upon electronic submission of the KDRs from the courts and prosecutors. Finally, under the completion plan, KBI staff, supplemented in part by an additional federal National Criminal History Improvement Project (NCHIP) grant, would assume many other tasks required to complete and maintain the KCJIS core.

BSE Closes Doors

With work toward implementation of the completion plan well underway, in October, 2001, still one more of the KCJIS vendors closed its doors. BSE of Leawood announced it was ceasing operations. With the KDR gateway nearly complete, the KBI and Balance Wheel Technologies assumed still greater responsibilities to shore up the completion plan in the wake of BSE's business

decision. The primary injury to the state coming out of BSE closing its doors was that, outside of the core budget, the KBI had paid BSE a discounted price in July for a year of maintenance and help desk support for local case management applications good through June 30, 2002. When BSE ceased operations over \$100,000 of this maintenance and support was yet to be provided. This issue is now the subject of litigation. BSE has not declared bankruptcy.

Completion Plan Scores Successes

Today, the completion plan is being accomplished. The KCJIS web portal and master search engine is in place and in use. The new CCH database is in place and in use through the web portal and through the state's message switch. It includes both adult and juvenile files. The KBI's legacy computer system has been disconnected from the state's criminal justice information network. A decade-old goal of the state of Kansas being designated by the U.S. Justice Department as fully compliant with its Interstate Identification Index (III) was accomplished November 3, 2002. Interfaces between the CCH and AFIS, IAFIS, and a public access system are now under development, having been delayed until the CCH itself was completed. Core expenditures have been approximately \$11.4 million to date, with approximately \$600,000 left to spend under the core budget. The KCJIS core will come in within budget.

Additional projects which are on-going, such as the new Juvenile Justice Information System and the Full Court case management system being implemented by the Judicial Branch, will be integrated with the KCJIS core in the future as separate projects. Systems being developed by the Department of Corrections to track inmates, probationers, parolees and persons in community corrections, as well as provide additional case management tools to parole and court services officers now provide daily transfers of replicated data to KCJIS, but plans are for these transfers to include data on more individuals as the systems are expanded. Each of these has its own separate project budget. When these applications are fully integrated with the core system, KCJIS will provide a single Internet portal through which current criminal justice information can be accessed no matter what agency owns and stores that data.

KCJIS Turns Adversity into Opportunity

Although KCJIS has endured a great deal of adversity and suffered many hardships, it has never lost the support of the law enforcement community it supports. Progress has been constant, with new features continuing to roll out by remaining vendors and the state even while other vendors were leaving their tasks uncompleted. KCJIS took advantage of adversity, turning it into opportunity to make its systems better. Members of the KCJIS interim management team all acknowledge that when its principal vendor, Paradigm4 ceased operations, it turned out to be a positive development. It allowed for a change of architecture to occur to take greater advantage of web-based technology, to truly provide Kansas with cutting-edge architecture. Still not fully developed, KCJIS was one of Kansas' initiatives pointed to when the state was awarded first place in the 2001 Digital States Award by the Center for Digital Government and Government Technology Magazine. KCJIS, itself, and particularly its security system, have been models to other states and

foreign governments who continue to visit the state in planning their own systems, call for details and request participants to speak at national and international conferences and meetings on criminal justice information.

KCJIS was an information technology vision, not just another information technology project, although frequently referred to as such, and should not be judged as a single project. KCJIS was a collection of as many as 25 different projects all having interrelationships with one another. Although work designated as part of the KCJIS core will come to an end, development of KCJIS will not end. KCJIS is a process which will continue indefinitely as interface after interface is integrated with the KCJIS core, and as business processes and applications are refined and improved. KCJIS also should be looked at as a vision for public protection where criminal justice information is available nationwide, indeed worldwide, anywhere and at anytime – where science fiction becomes reality.

KCJIS Important to Homeland Security

Finally, post September 11, 2001, and upon creation of a new federal Department of Homeland Security, KCJIS, and similar efforts in other states and nationally, take on a renewed importance in providing much of the data and information infrastructure necessary to homeland security. Without a web of state-of-the-art communication systems throughout the world interconnected and passing information held in diverse databases to one another, identification and eradication of a geographically dispersed, clandestine terrorist enemy cannot occur. Kansas is one of the nation's pioneers in the development of such a communication web to fight terrorism.

KCJIS – What has been done?

Just the highlights...

- The entire statewide telecommunication infrastructure, including lines into each county and all terminal equipment has been replaced. The state telecommunication message switch was replaced in advance of it reaching Y2K obsolescence. The new IP network runs 12 times faster than the old SNA switch and brought the state into compliance with FBI NCIC 2000 requirements. Supporting transmission of digital images including mug shots and fingerprints, the network was transformed from a dated teletype model to a modern Internet model. The Kansas network handles 80,000 law enforcement transactions a day and serves 6,200 law enforcement users statewide.
- The state Automated Fingerprint Identification System (AFIS) was replaced with technologically current equipment and software meeting new federal IAFIS standards necessary to allow transport of fingerprints among compliant states and the federal government. With advanced “expert” matching features, the new AFIS also allows for the connection of remote live scan sites around the state, now numbering more than 25. More than 20 percent of arrest fingerprints statewide are now being submitted to the KBI electronically through these remote sites.
- A secure web server was developed and a secure KCJIS web portal designed as a low cost alternative for smaller Kansas law enforcement agencies to maintaining an expensive dedicated circuit to the state law enforcement switch. Agencies can obtain full access to state and national criminal justice databases through a PC and a \$20 a month connection through a local Internet Service Provider.
- Kansas was the first state in the country to receive approval by the FBI Advisory Policy Board to access NCIC and other national criminal justice databases over the Internet. Approval came after the KCJIS security system was demonstrated to allow safe and efficient communication of confidential criminal justice information via the Internet. The system uses four layers of security: workstation certificates, secure ID tokens, redundant firewalls and encryption to the desktop. The system has become a national and international model.
- As an early proof of concept and to solve the immediate need for criminal history in sentencing required by sentencing guidelines, the KBARS system was established among the first KCJIS initiatives, providing browser-based access to criminal history for court service officers performing pre-sentence investigations around the state. The system also assisted the KBI in establishing a predictive system for automating criminal history records, so that those records which were needed most were automated first.
- Criminal history records on more than 325,000 persons have been automated by the KBI so that in seconds automated abstracts and rap sheets can be provided in response to computer inquiries by law enforcement, instead of hours or even weeks of delay.

- Data standards and a data dictionary have been established to define information and data storage requirements for all aspects of criminal justice and use by all Kansas criminal justice agencies, including Corrections, the Juvenile Justice authority and the courts. The KCJIS data dictionary contains over 1,550 different data elements.
- A document imaging system was installed and prosecution disposition reports were imaged, cross referencing them to corresponding arrest records. The OCR feature of the system makes it possible to electronically search, retrieve and match the disposition reports to prior arrest events. The system contains over 1.5 million documents.
- State provided case management applications were installed at 130 local Kansas law enforcement agencies. The software package allows each agency to manage their local crime data and at the same time transfer offense data electronically to the KBI instead of KBI staff re-keying the data from paper reports. The Kearney County Sheriff's office was the first agency to send electronic offense data to the KBI October 13, 2000.
- Large system interface grants provided assistance to other agencies to upgrade their existing case management systems to meet KCJIS requirements and allow for the electronic submission of offense data to the KBI. October 30, 2000, the Overland Park Police Department became the first large agency to successfully send offense data to the KBI through such an interface with the transmission of 10,000 records.
- Similarly, a new Kansas Incident Based Reporting System installed at the KBI not only receives the electronic submissions of offense data from local law enforcement agencies, but it also properly formats the data for submission to the FBI, in compliance with new National Incident Based Reporting Standards. Kansas was among the first four states to attain statewide NIBRS compatibility.
- The KBI and Highway Patrol have cooperatively installed a KCJIS backup site at the Highway Patrol Communications Center in Salina to support the statewide law enforcement telecommunications network in case of a disaster at the central site in Topeka. The backup site awaits testing. Additionally, the Highway Patrol established a 16-station KCJIS training lab at its training center in Salina and reassigned six communication positions to serve as regional auditors/trainers for KCJIS.
- The KBI transformed its former communication unit, which previously manually searched for criminal history records and typed responses to local agencies, into a KCJIS technical help desk to monitor the network and provide technical assistance to KCJIS end users 24x7. The help desk consists of up to nine Network Control Technicians. Computer tools allow for search and tracking of trouble tickets to resolve problems quickly and efficiently.
- Additional Kansas "Hot Files" have been implemented as part of KCJIS, including establishment of a registered offender file, misdemeanor warrant file and be on the lookout (BOLO) file, which are available to all law enforcement agencies to search. A missing

persons file nears completion. A new dispatcher car stop screen allows a single entry to access all available information through 13 state and national queries.

- The CCH database of adult records and juvenile records was redesigned and converted and is now up and running on a new PC-based hardware platform. The KCJIS web portal and the KCJIS network communication switch now access this new database. The KBI's legacy CCH system has been retired. Once this change was implemented in September, 2002, the KBI was able to complete its interface to the federal Interstate Identification Index (III), and November 3, 2002, Kansas was declared by the U.S. Justice Department as fully compliant with III.

What remains to be done?

As for the KCJIS core plan itself, the primary remaining tasks involve interfaces, which necessarily were delayed by late delivery of the CCH database, including those between CCH and the state's AFIS system and the FBI's IAFIS. Another KCJIS/CCH interface, the public access system, which for a fee will provide access to public criminal history data through the Information Network of Kansas, is yet to be implemented. Finally, the Kansas Disposition Report (KDR) gateway is near completion. All work should be completed before or during the first half of 2003.

Outside of the KCJIS core, several projects are moving ahead to interface with KCJIS and greatly expand the information available. Chief among those projects are the Full Court system, a statewide court accounting and case management system, and the possibility of extending the Full Court system to local prosecutors; projects within the Department of Corrections to more fully track persons convicted of crimes during and after incarceration, as well as probationers and persons assigned to community corrections; and the Juvenile Justice Information System which is currently being deployed by the Juvenile Justice Authority. These are all separate projects with separate budgets moving forward in conjunction with the KCJIS core. All systems are expected to communicate with one another and be available for global searches through the KCJIS web portal.

Neil Woerman, November 27, 2002

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Judiciary

February 10, 2003

Senate Bill 70: Repeal of child support pass through requirement

Integrated Service Delivery

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Senate Judiciary

2-10-03
Attachment 8-1

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Judiciary
February 10, 2003

Senate Bill 70: Repeal of child support pass through requirement

Mr. Chairman and members of the committee, I appear before you today to speak in support of Senate Bill 70.

This bill repeals the state statute requiring, entirely at state expense, SRS pass through to a family receiving cash assistance benefits (TAF), up to \$40 per month of current support collected by the Child Support Enforcement Program.

Prior to October 1996, all states were required to pass through at least a portion of monthly support collections made on behalf of TAF families. Without the pass-through requirement, those collections would have reimbursed the state and federal governments for public assistance benefits. The federal government participated in the cost of pass-through by waiving its 60% share of such collections. Effective October 1, 1996, the federal mandate for pass-through was abolished and federal financial participation in the cost of pass-through ended.

States are still authorized by federal law to make pass-through payments if they choose to do so. The current Kansas statute re-establishing pass-through payments was enacted in 1997.

The dilemma we face is that federal law requires the State to pay the U.S. Dept. of Health and Human Services (HHS) 60% of all child support collections in a TAF case, even if all or part of the collection has been passed through to the family. Consequently, \$40 of child support passed through to a cash assistance family costs the State \$64 — the \$40 paid to the family plus the \$24 paid to HHS. By eliminating the pass through provision, \$16 of the \$40 collected becomes revenue for the SRS Fee Fund.

Child support pass-through is also less helpful to families than might be expected. Families receiving food stamps, for example, would lose in food stamps benefits about one third of what they would gain from pass-through. A family receiving the maximum \$40 of child support would lose \$13 in food stamps, leaving a real gain of only \$27 for the month. Other income-based benefits the family receives, such

as subsidized housing, may also cause the real benefits of pass-through to dwindle away.

In recent years, the Legislature has recognized the disproportionate cost of pass-through relative to its impact upon families. *Provisos* have been enacted for each fiscal year from 2000 through 2003 to prohibit SRS from making any pass-through payments.

In anticipation that a similar *proviso* would be enacted for FY 2004, or that this state statute would be repealed, the SRS budget submitted for FY 2004 did not include the estimated cost of pass-through payments. If SRS were required to comply with the mandate of the state pass-through statute, the additional cost for FY 2004 is estimated to be over \$1.1 million (all state dollars).

Also, in recent years, federal legislation has been proposed that would renew and expand federal financial participation in pass-through payments. The variations and limitations of those proposals have rarely been compatible with our Kansas statute, and we believe that our state would be best served by enacting a new statute, should pass-through once again become financially feasible.

For these reasons, I ask you to support Senate Bill 70.