Approved: 1-26-06
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 17, 2006 in Room 313-S of the Capitol.

All members were present except:
Jim Ward- excused
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Jeff Bottenberg, Kansas Sheriff's Association
Don Moler, Kansas League of Municipalities
Marlee Carpenter, Kansas Chamber of Commerce
David Corbin, Kansas Department of Revenue
Ron Nelson, Kansas Bar Association, Family Law Section
Mark Gleeson, Office of Judicial Administration
Greg DeBacker, Individual
District Judge Tom Graber, 30th Judicial District, Sumner County

Chairman O'Neal asked for bill introductions.

Jeff Bottenberg, Kansas Sheriff's Association, requested a bill which would allow county jails to receive the medicaid rate for prisoners. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Don Moler, Kansas League of Municipalities, requested a bill that would allow the use of eminent domain for economic purposes. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Marlee Carpenter, Kansas Chamber of Commerce, requested a committee bill regarding medical criteria for asbestos and silica claims. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

David Corbin, Kansas Department of Revenue, requested a bill that would allow courts to electronically file compliance reports to the Department of Vehicles when a person has complied with the terms of their traffic citation. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Chairman O'Neal requested a bill be drafted that would fund the Kansas Law Enforcement Training Center through docket fees. He made the motion to have the request introduced as a committee bill. Representative Kinzer seconded the motion. The motion carried.

Chairman O'Neal opened the hearing on **HB 2571 - divorce/child custody; parenting plan**.

Staff gave the committee an overview of the bill.

Ron Nelson, Kansas Bar Association, Family Law Section, explained that in 2000, legislation was adopted to remove many of the labels in the child custody statutes so one parent would not be labeled as a winner and the other a looser. Upon further review of the statutes it was recommended that the term "residency" be stricken and that the court be directed to order an appropriate parenting plan that is either agreed to by the parents or, in the absence of an agreement, the court order a parenting plan that is in the best interest of the child. The proposal would allow the courts to assign a individual parenting plan for each family instead of trying to make one type of plan fit all families entering into the divorce arena.

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 17, 2006 in Room 313-S of the Capitol.

He went on to explain that the term "residency" doesn't really mean anything with regard to awarding child support because there are many cases where one parent is awarded primary residency and they pay child support because they have the child a lessor amount of time than the other parent. (Attachment 1)

Committee members were concerned with striking the word "residency" because it is tied to the Kansas Sex Offender Registration Act and would be in conflict. Chairman O'Neal explained that "residency" in the Act is talking about legal residency, while the term "residency" in the proposed bill is referring to the actual time spent with a parent.

Mark Gleeson, Office of Judicial Administration, offered an amendment which would allow Kansas to comply with the Federal Adoption & Safe Families Act by establishing custody and residency with a person other than a parent. This would be done by allowing on the first judicial order sanctioning the removal of a child from his home and requiring the court to make findings when the court orders the placement of the child. (Attachment 2)

Greg DeBacker, Individual, appeared in support of the bill. He saw it as continuing to improve the child support statutes by removing additional labels. (Attachment 3)

District Judge Tom Graber appeared as an opponent of the bill. He believes that the proposed bill would not add anything that would benefit the best interest of a child whose parents were involved in divorce proceedings. The language that is stricken is important to the sequence of determining which residential arrangement is in the best interest of a child. He was concerned that the language "a parenting plan shall be adopted based upon" would not limit controversy but would create more controversy and would interfere with parents ability to come up with an agreement regarding a parenting plan that is in the best interest of their child. The bill does not give any guidance to residency or what the parenting plan should include. (Attachment 4)

Judge Graber suggested an amendment to the bill which would reinstate the stricken language, add a subsection D stating "a parenting plan must meet the requirement of the temporary parenting plan as provided by K.S.A. 60-1624 or permanent parenting plans as provided for by K.S.A. 60-1625 shall be adopted by the court. The plan may be an agreed plan submitted by the parents, if there is no agreement, each party shall submit a plan and the court may designate one of those plans, or its own, as the parenting plan." (Attachment 5)

Charles Harris, Attorney at Law, did not appear before the committee but provided written testimony in opposition to the proposed bill. (Attachment 6)

The hearing on **HB 2571** was closed.

The committee meeting adjourned at 4:50 p.m. The next meeting was scheduled for 3:30 p.m. Wednesday, January 18, 2006 in room 313-S.

LAW OFFICES
NELSON & BOOTH
SUITE 160
10990 QUIVIRA ROAD
OVERLAND PARK, KANSAS 66210-2025

RONALD W. NELSON
JOSEPH W. BOOTH *

TRACIE PRESGROVE
PARALEGAL

TELEPHONE: (913) 469-5300
TELECOPIER: (913) 469-5310
WWW.KANSAS-DIVORCE.COM
EMAIL:RONELS@NELSONBOOTH.COM

TESTIMONY OF RONALD W. NELSON
Nelson & Booth, Overland Park, Kansas
January 17, 2006

Re: HB 2571

Members of the Committee:

Good morning. I practice domestic relations law in Overland Park. I worked closely with the Kansas Bar Association in 2000 working on compromises and language that was included in Substitute Senate Bill 150, which updated the Kansas custody statutes. I appeared at the August 2005 Interim Special Judiciary Committee hearing on SB 61 and I have testified to the Senate Judicary Committee on that bill. I've attached my testimony opposing SB 61 to this testimony, which relates directly to the changes proposed in HB 2571.

At the completion of testimony on SB61, the interim committee recommended amendments to SB 61 deleting the original proposed amending language (adding "shared residency" to the currently listed "residency" and "divided residency" to K.S.A. 60-1610). As pointed out in my testimony to the Interim Special Judiciary Committee, that language would inject needless conflict into child custody litigation, instead of helping resolve those conflicts. The intention of the 2000 amendments to the Kansas child custody statutes was to *remove* labels from the statutes and to encourage parents and judges to focus on what should be the most appropriate parenting schedule for that particular family rather than first determining the contentious issue of who "won" the child and then determine the schedule the "loser" had with the child. The interim committee saw the wisdom of that approach and removed the remaining vestiges of the previous "label-based" statute directing instead that the court determine an appropriate parenting plan that was either agreed by the parents or, in the absence of agreement, that fit the court's view of the child's best interests. These recommended changes are included in HB 2571. While I wholeheartedly support this bill, some other conferees have pointed out that the language in HB 2571 that directs the court "adopt" a parenting plan seems to imply that the court cannot exercise its own discretion to fashion an appropriate parenting schedule that is different from that proposed by either parent or combine aspects of both parenting plans. While I agree there is some concern about this wording, I think it clear that the language is intended to place in the courts' hands the power to determine an appropriate parent schedule *using* the parents' plans, but not binding the court to them.

The 2000 Amendments provided that the courts can order *any* appropriate parenting schedule after looking at the particular needs of the child and the family. The Amendments contained in HB 2571 further the recent trend in domestic relations law across the country, which is to generalize statutes so that the courts can make individual schedules for each family, rather than trying to fit a family into a labeled approach that doesn't help anyone.

* licensed in Kansas and Missouri

Other conferees have expressed their concerns that the changes proposed in HB 2571 may inject conflict into child custody cases by upsetting the traditional manner of determining child custody cases, which proposes to first determine where the child lives and then determine the schedule the child is to live with each parent. I don't believe the changes proposed in HB 2571 create those conflicts. Instead, I think it is the approach that some who are steeped in the traditional way of doing things take rather than the statutory change that may be responsible for that conflict. HB 2571 intentionally does not require the determination of where a child *usually* lives because that is the same as determining who is a primary or non-primary parent. HB 2571 proposes that instead of determining "residency" and then a schedule of parenting time, that the courts determine how to break up the time so that the child is with both parents on a schedule that is in the child's best interests. In doing so, the court need not use labels or relegate either parent to a lesser status – only determine what days and times is the child to be with each.

The statutes already require that parents file proposed parenting plans if they don't agree on a schedule. The fact is that most proposed plans are very similar and that by requiring both parents file their own plan, the court (and parents) can see where they disagree, if at all.

If you have any questions I am glad to address them.

Ronald W. Nelson

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LAW OFFICES
NELSON & BOOTH
SUITE 160
10990 QUIVIRA ROAD
OVERLAND PARK, KANSAS 66210-2025

RONALD W. NELSON
JOSEPH W. BOOTH *

TRACIE PRESGROVE
PARALEGAL

TELEPHONE: (913) 469-5300
TELECOPIER: (913) 469-5310
E-FAX (801) 697-8455
WWW.KANSAS-DIVORCE.COM
EMAIL:RONELS@NELSONBOOTH.COM

August 24, 2005

TESTIMONY OF RONALD W. NELSON
Nelson & Booth, Overland Park, Kansas

Members of the Committee: Good morning. My name is Ronald W. Nelson. I am a lawyer who exclusively practices domestic relations law in Overland Park. . I am also heavily involved in appellate advocacy in domestic cases, with decided cases in all areas of domestic practice. My clientele is fairly evenly split between representation of men and women. I am a member of the American Bar Association Family Law Section, serving as Vice Chair of the Child-Custody Committee, I served three terms as the President of the Kansas Bar Association Family Law Section, I am a Fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers, and I've served the Johnson County Bar Association Family Law Section as chair of the subcommittee considering revisions of the Johnson County Bar Association Parenting Guidelines. I often present seminars on high conflict child custody issues in Kansas and around the country for the ABA. I am the author of two chapters of the Kansas Bar Association's Practitioners Guide to Kansas Family Law, including a chapter on Child Custody and Parenting Time. I worked closely with the KBA and the Judiciary Committee in 2000 fashioning compromises that allowed the passage of Substitute Senate Bill 150, which updated the Kansas custody statutes. I am also the divorced father of two great teenagers. I've seen the way the courts deal with child custody cases from every direction. As such, I hope to provide this Committee some insights gained from that somewhat unique position.

Today I am testifying about Senate Bill 61, which seeks to amend K.S.A. 60-1610 to include language "allowing" "shared residency" and attempting to define that term. The proposed modification reads:

> (5) *Types of residential arrangements.* After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:
>
> (A) *Primary Residency.* The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

* licensed in Kansas and Missouri

> (B) *Shared residency. The court may order a residential arrangement in which the child resides with both parents on an equal or near equal basis. For the purposes of this paragraph, "equal or near equal" means at least 45% of the child's time, not including eight hours of overnight sleep every night, or time the child is in school or in extracurricular school activities.*

The proponents (and the SRS and Office of Judicial Administration as cited by the Fiscal Note) state this amendment "would offer another custody option to be considered..." The fact is, it would not have any effect on current Kansas law and may cause more fights between parents trying to resolve parenting arrangements after their separation and would create more problems in child custody disputes.

The current statute reads:

> (5) *Types of residential arrangements.* After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:
>
> (A) *Residency.* The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

I participated in the drafting of the amendments enacted to the domestic relations code in 2000 (found in Senate Bill 150 [conference committee amendments]). At that time, the different interest groups involved had strong disputes over the language that (or should not) be included in the Kansas Domestic Relations Code. Some sides wanted the statutes to specifically mandate a preference for "joint physcial custody." Others desired the statutes to say that the legislature should prefer "primary residency" with one parent designating the other as the "visiting parent."

The amendments the conference committee adopted in 2000 did away with any "preference," "mandate," or "cookie-cutter presumption" in child custody cases. In fact those changes had the effect of pleasing everyone. I wrote in explanation of the 2000 amendments in my chapter in the Practitioner's Guide to Kansas Family Law:

> "The overhaul of the Kansas custody statutes by the 2000 Legislature has made clear that there is no real difference between "custody" and "parenting time." Under the revised statutes, both parents have "physical custody" whenever the child is in that paerent's care. The revised Kansas custody statutes deemphasize the possessory nature of custody law and seek to focus parents and the court on determining a schedule of time that each parent is to be with the child, rather than which parent will have "custody." No "primary physical custodian" need be designated under the statutes." "Instead of setting out the various types of

> residential care that a court may grant the parents (e.g. primary residency or shared residency) the statutes direct the court to make decisions regarding residency of the child "on a basis consistent with the best interests of the child." By using this language, the drafters sought to avoid disputes as to what kind of residential situation may be implicitly "preferred" by the legislature, opting to leave those decisions to a case-by-case analysis by the court."
>
> "What constitutes the "best interests of the child" is generally a determination to be made by the trial judge in evaluation of numerous factors. A determination of custody is generally subject to reversal only where such determination is an "abuse of discretion" as the trial judge is "in the most advantageous position to judge how the interests of the children may best be served.""

The 2000 Amendments took well over a year to fashion after consulting various groups having interest in the subject matter including the bar, residential and non-residential parents, judges, mental health professionals and other dealing with child custody issues. This area of the law involves a great deal of emotion from all sides and everyone jealously guards their own position. In making the changes in 2000, we attempted to modify Kansas law so that it would consider all competing interests but while producing the best result for Kansas children and separating families.

The most recent revisions to this statute de-emphasize the "definition" of parenting time as either "primary" or "non-primary" and direct that the court simply determine a residency arrangement that is in the best interests of the minor children. This direction and elimination of language in no way eliminates the ability of either parents or the courts from fashioning whatever residency arrangement they deem appropriate and it does not prohibit or limit the ability of either parents or the court to fashion of shared residency arrangement if the court believes that arrangement to be in the child's best interests. The added language would be surplusage without any effect or rationale. In fact, prior to the 2000 amendments, the statute "muddled" the concepts of decision-making (legal custody) and time spent with a parent by allowing either "Joint custody," "Sole custody," "Divided custody," or "Nonparental custody." The 2000 amendments were made just so there was no question that the courts could make whatever parenting time arrangement they deemed appropriate and that the legislature would not interfere in that determination – which is particularly fact sensitive and varies on a case-by-case basis. This Amendment may have the unintended consequence of encouraging parents to fight about the hours and minutes they spend with their children to gain a title rather than concentrating on their children's best interests.

The 2000 amendments attempted to de-emphasis the importance of the statutory language and increase the emphasis on allowing parents and the courts to make the best decision for children. In fact, the trend across the country is just what the 2000 Legislature accomplished: the elimination of out-dated concepts of parental "visitation" and defining a cookie-cutter view of parenting arrangements. For example, both Colorado and West Virginia have completely done away with all "defining words" and now simply provide the Courts are to set up an appropriate

parenting schedule. The statutes existing language provides all necessary flexibility and does not involve the legislature in the sensitive and political issues surrounding child custody.

With the 2000 Amendments the courts have the power to order *any* appropriate parenting schedule after looking at the peculiar needs of the family. These amendments granted the power to determine the children's best interests without any presumption whether mom or dad is better merely by reason of gender, and did not include language that could be used by either parent to advance their own agenda by pointing to any real or perceived preference in the statutes for primary or equal schedules. Injecting any preference – whether real or implied – into a good law would only serve to detrimentally affect the children of Kansas and bow to political expediency.

Unfortunately, one of the strongest fights in child-custody cases over the years has been for a parent to seek an upper hand against the other parent by *either* seeking a ruling from the court that that parent is the "primary" parent, or to force on the other parent a schedule by presumptions not beneficial to the particular family at bar. Although it may not be the intent of this Amendment, the inclusion of language "defining" a particular kind of residency or providing statutory examples of the residential arrangement plays into some parent's desires to use the statutes for their own good, rather than for the good of their children. The Amendment is ill-conceived and is bound to result in more fighting (rather than less), more positioning (rather than less), and less consideration of what is truly in the child's best interests (as opposed to a parent seeking to impose his or her own selfish will on the other -- which more than likely arises from that parent's desire to control rather than a real concern for the child or the child's welfare).

If you have any questions I am glad to address them.

Ronald W. Nelson

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State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

House Judiciary Committee
Testimony on HB 2571

January 17, 2006

Mark Gleeson
Family and Children Program Coordinator
Office of Judicial Administration

Thank you for the opportunity to offer the attached amendment to House Bill 2571. The amendment brings this process of establishing custody and possible residency with a person other than a parent into compliance with the federal Adoption and Safe Families Act (ASFA). The additional language proposed in the amendment is necessary on the very first judicial order sanctioning the removal of a child from his or her home. Failure to make these findings prevents the State from making a legitimate claim for reimbursement of federal foster funds for the life of the case. This is true even if the child is placed with a relative and only later, perhaps months later, is moved to a licensed foster home.

Kansas Supreme Court Administrative Order No. 155 has required the use of specific form orders in child in need of care, juvenile offender, and domestic relations cases since October 1, 2000 (see attached). The Child in Need of Care (CINC) and Juvenile Offender (JO) Codes both contain this language at the first removal of a child. Judges have been using the orders in all three types of cases (CINC, JO, and domestic); however, because removals in domestic cases are rare and orders are often prepared by attorneys who are not familiar with the ASFA requirements, there is a greater chance these orders will not include the "reasonable efforts" and "contrary to the welfare" language. This amendment simply brings K.S.A. 60-1610 up to date with current practice and federal requirements, helps reduce errors, and improves the State's ability to claim federal reimbursement for costly foster care expenses.

Thank you again for this opportunity.

Balloon Amendment to H.B. 2571

~~(C)~~ *(6) Nonparental residency.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-1502 and amendments thereto or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds ~~the award of custody to such person or agency is in the best interests of the child.~~ **by written order that: (1) reasonable efforts have been made and have failed to maintain the family and prevent the unnecessary removal of the child from the home; or reasonable efforts have not been made; or an emergency exists which threatens the safety of the child and it is reasonable to make no effort to maintain the child in the home; and (2) that remaining in the home is contrary to the welfare of the child, and or immediate placement is in the best interest of the child. The court shall list its reasons for its findings specific to each child involved.** In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 38-1531 and amendments thereto and may request termination of parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the Kansas code for care of children shall be binding and shall supersede any order under this section.

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE MATTER OF THE MARRIAGE OF:

_____

and Case No. _____

_____

CUSTODY ORDER FOR NON-PARENTAL RESIDENCY

Pursuant to K.S.A. 60-1607(a)(3) or 60-1610 (a)(4)(C)

On this _____ day of _____, _____ this matter comes before the court and the COURT HEREBY FINDS THAT:

☐ Reasonable efforts have been made and have failed to maintain the family and prevent the unnecessary removal of the child/children from his/her/their home, **or**

☐ Reasonable efforts have not been made, **or**

☐ An emergency exists which threatens the safety of the child/children and it is reasonable to make no effort to maintain the child/children in the home because:

(List reasons for each child specifically.) _____

_____

_____

THE COURT FURTHER FINDS THAT [☐ **remaining in the home is contrary to the welfare of the child/children]**, and/or [☐ **immediate placement is in the best interest of the child/children]** because: (List reasons for each child specifically.) _____

_____

_____

_____.

THE COURT FURTHER FINDS THERE is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-1502 and amendments thereto or that neither parent is fit to have residency.

IT IS THEREFORE CONSIDERED ORDERED AND DECREED THAT, pursuant to K.S.A. 60-1610 as amended, the following child/children of the petitioner and the respondent in the above captioned case: _____ shall be placed in the temporary custody of:

☐ The Secretary of Social and Rehabilitation Services, or

☐ _____.

THE COURT FURTHER FINDS THAT all providers of services, treatment or care of the child and family, even if not specifically referred to herein, are ordered to provide information to the secretary, any entity providing services to the child and family, counsel for the parties including the county or district attorney, appointed CASA, Citizen Review Board members, the court and each other to the extent needed to ensure the safety of the child and family, prevent further abuse or neglect, and to provide

appropriate treatment to the child and family. This order encompasses the provisions of the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. 164.512(e)(1).

THE COURT FURTHER FINDS THAT the Indian Child Welfare Act (ICWA) **[☐ may be] [☐ is] [☐ is not]** applicable. Petitioner shall give notice to the Tribe; the court has jurisdiction to proceed for the hearing.

IT IS FURTHER ORDERED that a copy of this order and a transcript of this proceeding be delivered to the county or district attorney within _____ days of this date and that the county or district attorney shall file a petition as provided in K.S.A. 38-1531 and amendments thereto.

BY ORDER OF THE COURT THIS _____ day of _____, _____.

_____
Judge of the District Court

HB 2571
and
SB 61

After testifying in favor of SB61 on Thursday, Jan. 12, I learned that Senator Vratil and the Senate Judiciary committee are going to let the House tackle proposed changes.

The term joint in a bank account has a entirely different meaning than joint custody does in divorce does. You can have joint custody, and never see your children. Attorneys still sell this to divorcing parents as equality. They are telling the truth to their client, "You will have joint custody." They just fail to explain to their client what judges in Kansas determine "Joint Custody" to be. Jim Johnston and Vonda Wilson both lost their children to joint custody. They both helped push for the parenting plan.

I have met many of the parents who helped push for the term "Joint Custody." Bob Wolfe, Woody Houseman, Jack Paradise, attorney William Davitt all have mentioned the legislative intent of legislation they backed in the 1970's. Joint was meant to be shared or equal. Someone along the way decided joint meant something completely different.

The 1999-2000 legislation that introduced parenting plans and parenting time was a good step forward to eliminating the discourse in divorce court. As Charlie Harris stated during the Senate hearing last week, divorcing parents were and are getting ahead of the law and opting for equal parenting.

Kansas should codify this practice, and it should be first choice of parents and judges. It amazes me that parents with an equal parenting plan will not have it granted by a judge.

There was testimony from 2 judges and an attorney last week that equal language would lead to more litigation between the two parents. It appears to me litigation is still at a very high level. Look at all of the advertising directed at custody disputes on the radio, in the yellow pages and in the newspapers.

I counter that insertion of equal will lessen litigation. I have assisted parents in Kansas and other states on equal parenting. Some of these same parents, after practicing equal parenting, have reconciled. Studies prove that equal parenting leads to a decrease in finalized divorces.

Greg DeBacker
2907 NW Topeka Blvd.
Topeka, KS work 785-232-2916

House Judiciary
Date 1-17-06
Attachment # 3

Exhibit A

BY FAX

Attorney at Law

Wichita, Kansas 67202
316-2

IN THE THIRTIETH JUDICIAL DISTRICT
DISTRICT COURT, SUMNER COUNTY, KANSAS
FAMILY LAW DEPARTMENT

IN THE MATTER OF THE MARRIAGE OF)

and)

) Case No. SU 2005 DM

Pursuant to KSA Chapter 60

RESPONDENT'S PROPOSED PARENTING PLAN

1. The parties be granted joint legal custody of the parties' minor child;

2. Respondent be awarded primary residential custody of the parties minor child subject to reasonable parenting time with Petitioner as follows:

   A. Every other weekend, commencing Friday at 6:00 pm through Sunday at 6:00pm.

3. Holiday visitation as the parties can agree. In the event the parties cannot reach an agreement, the matter shall be referred to mediation prior to court involvement.

Respondent

House Judiciary
Date 1-17-06
Attachment # 4

Exhibit B

IN THE THIRTIETH JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS

STANDARD TEMPORARY/PERMANENT PARENTING PLAN

The parties hereto shall abide by the Temporary/Permanent Parenting Plan adopted by the Court, which plan is intended to:

- Maintain the child's emotional stability;
- Minimize the child's exposure to harmful, parental conflict; and
- Put the best interests of the child first.

To this end, the parties shall abide by the following:

1. The parties are granted joint legal custody. (Unless the Court orders a different legal custody arrangement.)

2. The Petitioner and the Respondent shall keep each other advised concerning the general health, welfare, education and development of the minor children.

3. The Petitioner and the Respondent shall promptly advise each other of any injury, illness, or other significant developments relating to the minor children.

4. The Petitioner and the Respondent shall consult together frequently by personal conference, and/or by telephone, and/or by correspondence in an effort to mutually agree with regard to the general health, welfare, education and development of the minor children, to the end that, so far as is possible, the Petitioner and the Respondent may adopt a mutually harmonious policy with regard to the upbringing of their minor children.

5. The Petitioner and the Respondent shall not attempt, condone, or encourage, directly or indirectly, by any means whatsoever, the alienation or estrangement of the minor children from the other party or to adversely affect in any way their mutual love and affection.

6. The Petitioner and the Respondent shall at all times encourage and foster in the minor children sincere respect, love and affection for both parties and shall not in any manner interfere with the natural development of respect, love and affection for the other party.

7. The Petitioner and the Respondent shall each be entitled to have immediate access from the other party or from others to records and information pertaining to the minor children, including, but not limited to, medical, dental, health, school or other educational records and information.

8. The Petitioner and the Respondent shall keep each other advised of their residence and business addresses and their residence and business telephone numbers, the telephone numbers of their baby-sitters, and their whereabouts when on vacations or extended trips with the minor children.

9. The Petitioner and the Respondent shall each be entitled to speak with the minor children by telephone at reasonable times and for reasonable intervals when such minor children are in the actual custody or subject to the control of the other party.

10. Neither of the parties shall move to another city or town without first giving thirty (30) days advance, written notice by certified mail to the other party, so that adequate adjustments can be made concerning the custody, visitation and support of the minor children of this marriage, and so that adequate arrangements can be made with regard to providing transportation for the purposes of such visitation and for payment of the costs and expenses of transportation for the purposes of such visitation, should the move actually take place. This provision also applies if the custodian plans to remove the children from the State of Kansas for more than ninety (90) days.

11. Notwithstanding the possible remarriage of either party, the minor children shall continue to be known legally and publicly by the surname _____; the minor children shall not, for any reason or purpose, use or assume the name of any subsequent spouse of either party or any other surname.

12. The minor children of the parties shall reside with _____, subject to reasonable and liberal parenting time with _____, which shall include, but shall not be limited to, the following:

a. Alternate weekends from Friday evening until Sunday evening. (List times, if appropriate.)

b. A minimum of ____ evenings per week to be coordinated between the parties;

c. Alternating holiday time to be coordinated between the parties. Additionally, the parties shall each have time with the minor children during the Christmas holidays of each year. (List times, if appropriate.)

d. Both the Petitioner and Respondent shall have the first right to provide child care for the minor children in the event the other party needs said care. Each party's right to provide child care is a priority over any other family members of either the Petitioner or the Respondent.

e. Extended summer time for a total of _____ week(s) during the summer, with the specific dates to be coordinated between the parties by June 1st of each year. (Optional in Temporary Plan, required in Permanent Plan.)

f. Such other time as is mutually coordinated between the parties.

g. Transportation as follows:

13. Any disputes between the parties regarding the interpretation, modification or expansion of this Parenting Plan shall be submitted to mediation by a court-approved mediator prior to the dispute being brought before the Court by formal motion.

MEMORANDUM

TO: **Representative Michael R. O'Neal**

DATE: **January 19, 2006**

FROM: **District Judge Thomas H. Graber**

RE: **Requested language Parenting Plan**

In response to your request after my testimony before House Judiciary Committee I would suggest the following language be used in amending K.S.A. 60-1610 (5). I would suggest that it be added to the existing statute, reflected in Chapter 154 of the 2005 session Laws, as new subsection (D) of section (5):

(D) *Parenting plan.* A parenting plan shall be adopted by the court that the court finds to be in the best interest of the child. The court may adopt an agreed plan submitted by both parents, a plan submitted by either parent or a plan which the court directs. If the plan is a temporary parenting plan it shall include the all of provisions of K.S.A. 60-1624 as amended. If the plan is a permanent plan it shall address all of the objectives and requirements of K.S.A. 60-1625 as amended.

To make the provisions mandatory K.S.A 2004 Supp. 60-1624 and 60-1625 must be amended by changing the permissive "may" to a mandatory shall. The first sentence of 60-1624 should be amended to read as follows substituting **shall** for may:

"(a)The court **shall** enter a temporary parenting plan in any case in which temporary orders relating to child custody is authorized."

The language of 60-1625(b) should be amended to read as follows substituting **shall** for may:

"(b) A permanent parenting plan **shall** consist of a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis; however, a permanent parenting plan must set forth the following minimum provisions:"

If you have any questions or I can be of any assistance please contact me.

Respectfully Submitted

Thomas H. Graber, District Judge

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Testimony of Charles F. Harris
Opposition to House Bill 2571 on
January 17, 2006

My name is Charles F. Harris and I am an attorney in Wichita, Kansas, practicing primarily in the Family Law area. I am a partner in the law firm of Kaplan, McMillan and Harris. I am also the Chairman of the Family Law Advisory Committee to the Kansas Judicial Council and a member of the Kansas Supreme Court Child Support Guideline Advisory Committee. Today, I am testifying on my own behalf.

Senate Bill 61 would amend K.S.A. 60-1610 to insert a definition of shared residential custody where no definition has previously been included. The history of shared residency is that it has existed as an informal option for the district court judges for many years. With the increase of women entering the work force and men becoming more involved with the care of their children, the request for shared residential custody increased to the point that the legal profession and the child support guidelines had failed to keep pace with the demands of Kansas citizens.

In 1994, the Kansas Child Support Guideline Committee recommended to the Supreme Court an inclusion of a specific formula to credit the increased amount of time that a formerly non-custodial parent would have in a shared situation. The idea was that child support could still flow from one house to the other but that there should be a significant reduction given from the conventional child support amount in recognition of the expenditure being incurred in each household. The committee included a definition of shared residency as having two required components as follows: "Shared residency is the regular sharing of residential custody on **an equal or nearly equal basis**. To qualify for shared residency treatment, two components must exist. First, the blocks of time must be regular and equal or nearly equal rather than equal based on a non-primary residency extended parenting time basis (i.e., summer visitation, holidays, etc.). Second, the parties must be sharing direct expenses of the child on an equal or nearly equal basis." Sup. Ct. A.O. 90, II, M (Emphasis added) The Supreme Court approved this amendment and included it in the Kansas Child Support Guidelines, where it remains.

The inclusion of the language in the Child Support Guidelines did not address the custodial situation but simply afforded a monetary credit where the custodial situation had already been established by the court. K.S.A. 60-1610 was not amended at that time to include a similar definition.

Following the adoption by the Supreme Court of this amendment to the Child Support Guidelines in 1994, shared residential custody has become a fairly common type of custodial arrangement with the parties sharing the time of their children on various equal schedules. These arrangements are commonly seven days at a time; two days followed by a three-day weekend, etc. However, these arrangements all involve an equal sharing of the children's time.

Up to the present, the only definition of shared residential custody has been contained in the Kansas Child Support Guidelines. (Sup. Ct., A..O. 180, III, B, 7) The current version of K.S.A . 60-1610 (a)(5)(2004 Supp.) allows the judge complete discretion as to the type of custodial arrangement to be adopted, as long as the court makes a finding that the arrangement is in the best interest of the minor child. The current version of K.S.A. 60-1610 only defines "**divided residency**" which is a situation where there are more than two children and at least one child lives in each household, and **"non-parental residency**" which involves situations of child-in-need of care, where the children are temporarily placed with a third party and the case is referred to Juvenile Court for further proceedings under the Kansas Code for Care of Children. Shared residency is not defined or even mentioned, but falls within the umbrella section which authorizes the court to "order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interest of the child." K.S.A. 60-1610 (a), (5), (A) 2004 Supp. This lack of definition has worked well because the courts retain considerable latitude to address the particular situation involved in the individual family.

In the fall of 2004, the Honorable Eric Yost, District Court Judge from Sedgwick County, proposed an amendment to K.S.A. 60-1610 that is contained in Senate Bill 61. This bill seeks to define, in a statutory manner, shared residential custody. The problem that the bill presents is that the definition for shared residential custody contained in Senate Bill 61 is in direct conflict with the definition contained in the Kansas Child Support Guidelines.

As defined in Senate Bill 61, the parties still theoretically share the child's time on an equal or nearly equal basis, but the definition of child's time specifically **deletes** eight hours of over-night sleep, and the time that the child is in school or in extra-curricular school activities. This would presumably also include the time that the child is in day care. The effect of the definition contained in Senate Bill 61 is to create a shared residential situation based upon only a small portion of the child's time.

There are 168 hours in each week or 332 hours in each two-week cycle of a child's life.. Under Judge Yost's language, shared residency would exist if a parent has 45% of the child's time **after we delete** the approximately eight hours per weekday that the child is in school and eight hours per night that the child sleeps. I have attached to this paper as **Appendix A,** a chart showing the limited window of time Senate Bill 61 uses for consideration if a person to qualify for shared residential custody. The Bill only requires 45% of that limited window! What has traditionally been viewed as a visitation situation would very quickly qualify for shared residential custody status and presumably a significant reduction in child support using the shared residential custody formula pursuant to the Kansas Child Support Guidelines. The shared residential custody formula generally reduces the child support down to an amount from 25 to 33% of the regular child support figure. It can be presumed that a parent who has had visitation in an amount which meets the liberal definition set forth in Senate Bill 61, will immediately rush to the court house to try to obtain the significant monetary relief in child support available in the Kansas Child Support Guidelines.

One of the concerns of the Child Support Guidelines Committee in addressing shared residential custody has been that this type of arrangement conceptually involves a significant participation in the child's day-to-day life. By having shared custody on an equal or nearly equal basis, the parents each experience the responsibilities, burdens, and pleasures of being actively involved with the child on a day-to-day basis whether it involves feeding, clothing, sleeping, extra-curricular activities, transportation, etc. A parent who has traditionally had what was characterized as visitation /parenting time, but not primary or even shared residential custody, can certainly still be involved with the child but frequently does not have mid-week overnights, extended weekends, or other time responsibilities that require the level of care and expense associated with shared residential custody that has been recognized by the Child Support Guidelines.

The Special Committee on the Judiciary conducted hearings in the fall of 2005 and made a recommendation concerning the deletion of certain language from K.S.A. 60-1610. I do not believe that is necessary, as it would be a piecemeal change to an established statute, which is not confusing in its present state. I would encourage the Senate not to adopt any changes to the statute.

The House is considering HB 2571 which appears to be an attempt to implement the changes of the Special Committee. This bill is defective in that it removes the judge's initial determination of the type of custodial arrangement that is to be put in place. The parenting plan is intended to be the detailed implementation of the arrangement that the court has found to be in the best interest of the child. This bill puts the cart before the horse. The parenting plan will vary significantly depending on the residential arrangement specified by the court. This bill should not be adopted.

Senate Bill 61 would reward this limited involvement situation with a substantial reduction in child support because of the effect of the Kansas Child Support Guidelines and still require the other parent to shoulder the burden of sleeping time and school or day-care time. This is not in the best interest of our minor children.

When the Senate Bill 61 was first proposed, it met a firestorm of opposition from the family law community. The Senate Select Committee also suggested that Senate Bill 61 should not be adopted as proposed. There is no reason to inflict this artificial and contradictory language onto our children.

Charles F. Harris (09725)
430 N. Market
Wichita, KS 67202
316-262-7224

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
12:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
1:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
2:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
3:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
4:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
5:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
6:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
7:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
8:00	MEAL	MEAL	MEAL	MEAL	MEAL	MEAL	MEAL
9:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL		
10:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL		
11:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL		
12:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL	MEAL	MEAL
1:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL		
2:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL		
3:00	SCHOOL	SCHOOL	SCHOOL	SCHOOL	SCHOOL		
4:00							
5:00							
6:00	MEAL	MEAL	MEAL	MEAL	MEAL	MEAL	MEAL
7:00							
8:00							
9:00							
10:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP
11:00	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP	SLEEP

168 Total hours per week

91 Excluded

77 Remaining base for determining shared

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