

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 6, 2006 in Room 313-S of the Capitol.

All members were present except:  
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:  
Representative Bill Otto  
Leslie Kaufman, Kansas Cooperatives Council  
Jim Clark, Kansas Bar Association  
Representative Steve Brunk  
Racheal Priner, Triplett, Woolf & Garretson  
Jill Bremyer-Archer, American Academy of Adoption Attorneys  
Alex Jackson, Individual  
Rick Macias, Attorney  
Jamie Corkhill, Attorney for Department of Social & Rehabilitative Services  
Cindy D'Ercole, Kansas Action for Children

Chairman O'Neal opened the hearing on **HB 2704 - number of small claims procedures filing per year.**

Representative Bill Otto appeared as the sponsor of the proposed bill. The practice among some individuals and businesses is to wait till the end of the filing deadline and then pick the largest claims to file because they are limited to ten and want those ten to be profitable. Currently small claims are limited to ten per year and has been for some time. The number twenty is just a number that he suggested and would agree to eliminating the number of small claims one can file per year. (Attachment 1)

Leslie Kaufman, Kansas Cooperatives Council, reminded members that they supported an increase in the dollar amount one is allowed to file in small claims court. They also support the proposed bill and would not have a problem limiting the number of available filings to 20 or totally removing the cap all together. (Attachment 2)

Jim Clark, Kansas Bar Association, appeared in opposition to the expansion of the total number of claims one can file because it might increase the number of cases filed by 100 percent. (Attachment 3)

The hearing on **HB 2704** was closed.

The Chairman opened the hearing on **HB 2665 - in adoption proceedings, in termination of parental rights, court shall consider the best interest of the child.**

Representative Steve Brunk appeared as the sponsor of the bill which would protect children in adoption cases. (Attachment 4)

Racheal Priner, Triplett, Woolf & Garretson, would like the courts to consider what is in the best interest of the child in adoption cases as they do in other types of placements and divorce custody cases. The proposed bill would protect children's rights. Current adoption laws place the entire process upon the validity of the mother. Many times the mother will not be truthful and say that she doesn't know who the biological father is or gives a false name. Sometimes, after the adoption has been decreed the biological father finds out that the mother gave birth and wants custody of his child thereby disrupting the family it's been adopted into. (Attachment 5)

She cited *In re Adoption of S.E.B.*, 257 Kan.266 (1995) states that the "best interest" of a child is not a stated factor for the Court to consider with terminating the rights of a biological parent.

## CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 6, 2006 in Room 313-S of the Capitol.

Jill Bremyer-Archer, American Academy of Adoption Attorneys, has requested from other members of the Academy how their states handle adoptions and will forward that information on to the committee once it is received. She suggested that the committee take a look at the Uniform Adoption Act proposed by the National Conference of Commission on Uniform State Laws, who suggest that the best interest of the child should, at least, be considered. (Attachment 6)

Alex Jackson, Individual, relayed his story of adopting a new born in June of 2004 with the final decree being issued in August of 2004. When the child was one year old they received a call from an attorney representing someone who claimed to be the child's biological father. Paternity tests have been taken and if it's determined that the child is actually his, the biological father is planning to remove the child from his home in Kansas and move to New York City. This has happened because the birth mother gave false information to the adoption attorney regarding the biological father. By the time the tests are concluded the child will be 3 years of age, having spent those years being in a happy, healthy and loving home. He is concerned with the possibility of that child being taken from the only home he has ever known and sent to live in another state with a stranger. (Attachment 7)

Rick Macias, Attorney, stated that Kansas is an adoption friendly state and has super due processes in place to protect the adopting parents. He explained that the proposed bill would be retroactive because a decree could be entered and many years later the biological parent could step up and petition for custody. The proposed bill will not prevent the controversy from occurring but would at least require the court to factor in what the best interest of the child is. Sometimes the best interest isn't necessarily having the child stay with the adopted parents. (Attachment 8)

Staff suggested that on page 3, line 23 the "may" should be stricken.

The hearing on **HB 2665** was closed.

The hearing on **HB 2706 - person who is in arrearages on child support may have their drivers license suspended.**

Jamie Corkhill, Attorney for Department of Social & Rehabilitative Services, stated that the proposed bill would increase drivers license sanctions for non-payment of child support. Kansas currently ranks 37<sup>th</sup> in state performance for collecting child support. Currently, drivers licenses can be restricted during a contempt proceeding, but they are expensive to do and would like to be able to do it administratively.

The bill would notify drivers who are seriously delinquent in paying support that their license will be taken if they do not contact SRS and work out a payment schedule. The goal is to encourage individuals to pay their support not take driving privileges away. (Attachment 9)

Ms. Corkhill stated that the Division of Motor Vehicle requested that a change be made in the bill that would simplify the administrative review when a name is submitted to them. She would provide a balloon at a later date.

Cindy D'Ercole, Kansas Action for Children, appeared as a proponent of the proposed bill. Kansas does not do an adequate job in the collection and enforcement of child support. One reason is that we do not have the tools other states use to collect support arrearages. The proposed bill would apply to a very small portion of debtors. Studies show that those individuals who pay child support have more contact with their children than those who don't pay. (Attachment 10)

The hearing on **HB 2706** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on Wednesday, February 8, 2006 in room 313-S.

1111  
HB-2704

I had a call from a lady who runs a small business in my district. AAA cleaners cleans homes and business in Humboldt, Kansas and got a shock last year when she attempted to collect on the 11<sup>th</sup> person to not pay her. She found there was a limit of 10 actions in small claims court in a given year. For small business this is a problem, after filing the bill I have been contacted and find it is a problem for other areas as well. If we raise the limit to 20 I do not think it will clog the courts, but will help free the courts. Some business will hold action and then pick their worst offenders and take action against them. I ask for your support to help small business protect themselves against people who do not like to pay their bills.



House Judiciary

Date 2-6-06

Attachment # 1



KANSAS COOPERATIVE COUNCIL  
816 S.W. Tyler, Suite 300 — Topeka, Kansas 66612  
Phone: 785-233-4085 — Fax: 785-233-1038 — Toll Free: 888-603-COOP (2667)  
www.kansasco-op.coop — Email: council@kansasco-op.coop

## House Judiciary Committee

Feb. 6, 2006

### HB 2704 -- Increasing the number of times per year one can file in small claims court.

Chairman O'Neal and members of the House Committee on the Judiciary, thank you for the opportunity to appear on behalf of the Kansas Cooperative Council in support of HB 2704. I am Leslie Kaufman and I serve the Council as Executive Director. The Council represents all forms of cooperatively structured businesses across Kansas.

Over the past several years, there has been a growing interest within our membership in expanding the dollar amount for which remedy can be sought in small claims court and increasing the number of claims per year one can file in this court. We greatly appreciate legislative action in 2004 that raised the dollar amount for claims. At that time, there was a reluctance to make too many significant changes all at once and the number of claims allowed remained unchanged. We are extremely pleased to have the allowable number of claims per year be considered again in HB 2704.

Many of our agricultural cooperatives utilize small claims court regularly to collect delinquent accounts. We are told some can file their 10 claims by mid-January, after reviewing year-end balances. Some have to "pick-and-choose" among accounts when allotting their 10 claim per year. Increasing access to small claims court allows greater opportunity for our members to recover on accounts in a relatively cost-effective manner.

The Kansas Credit Union Association is also a member of the Cooperative Council. They have asked me to convey to you that they support any increase in the number of small claims that can be filed by a single entity.

This issue is important to our members and one we have worked on for many years. We respectfully request the committee act favorably on this measure. Thank you.

House Judiciary

Date 2-6-06  
Attachment # 2



KANSAS BAR  
ASSOCIATION

**Testimony in Opposition to  
House Bill No. 2704**

House Judiciary Committee

February 6, 2006

The Kansas Bar Association is a voluntary professional association with over 6,700 members, most of whom are licensed to practice law in Kansas. Its membership is as diverse as the spectrum of the practice of law, and also includes members of related professions, such as banking, insurance and real estate.

The Kansas Bar Association has a long-standing policy against the expansion of small claims court jurisdiction, both as to maximum jurisdictional amount and to the number of claims allowed. House Bill 2707 is contrary to KBA policy because it increases the number of claims that may be filed by 100%. This large increase in claims allowed is a significant departure from the original intent of a small claims court. The small claims procedure in Kansas is nicely summarized in Attorney General Opinion 1995-100:

The small claims procedure act was enacted in 1973 after two legislative interim committees concluded that there was no practicable forum in which a small claim could be adjudicated economically....it was not feasible for most people to retain attorneys for claims of less than \$300 nor was this the kind of litigation profitable for most attorneys.

The Kansas Bar Association submits that with the increase in jurisdictional amount to \$4000, attorneys are not only affordable, but that any person or business with more than 10 claims in such amount is much better served through the services of a competent attorney.

The Kansas Bar Association urges the Committee to take no action on this bill.

\* \* \*

House Judiciary

Date 2-6-06

Attachment # 3

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

STEVEN R. BRUNK  
MAJORITY WHIP  
REPRESENTATIVE, 85TH DISTRICT  
4430 JANESVILLE  
BEL AIRE, KANSAS 67220  
(316) 744-2409

STATE CAPITOL, ROOM 525-B  
TOPEKA, KANSAS 66612-1504  
(785) 296-7692  
brunk@house.state.ks.us



TOPEKA

COMMITTEE ASSIGNMENTS  
MEMBER: FEDERAL AND STATE AFFAIRS  
FINANCIAL INSTITUTIONS  
INSURANCE  
JOINT COMMITTEE ON  
STATE BUILDING CONSTRUCTION  
TAXATION

Thank you for considering this change to the law relating to the termination of parental rights and adoption.

This change simply weighs the best interest of the child ... as it should be.

Thank you again for discussing the merits of this change; I encourage you to adopt it and pass this bill out favorably.

Rep. Steven R. Brunk  
Dist. #85

House Judiciary

Date 2-6-06

Attachment # 4

TO: Chairperson O'Neal  
Vice-chairperson Kinzer

FROM: Rachael K. Pirner  
Triplett, Woolf & Garretson, LLC  
2959 North Rock Road, Suite 300  
Wichita, KS 67226  
(316) 630-8100  
rkpirner@twgfirm.com

RE: Testimony of Rachael K. Pirner Before the House Judiciary  
Committee, February 6, 2006 at 3:30 p.m., HB 2665

- I have practiced law in Kansas for 16 years. I have practiced in the area of independent adoptions for 10 years.
- Adoption proceedings commenced in Kansas
  - 2003—1,990
  - 2004—1,946
  - 2005—2,016
- Independent Adoptions
  - Are those adoption placements made without the involvement of an agency
- Agency Adoptions
  - Usually conduct their own home studies, screen the parents and monitor placement
- An adoption requires either consent to the adoption or a relinquishment to a qualified agency.
- The vast majority of the time the sole source of the identification and whereabouts of the birthfather is based on information gathered from the birthmother. Thus, the information related to the whereabouts and

House Judiciary

Date 2-6-06

Attachment # 5

identification of the birthfather is only as good as the veracity of the birthmother.

- Where a consent or relinquishment of the birthfather cannot be obtained due to his absence or a lack of knowledge of his identify his rights can be terminated upon the Court's finding based on clear and convincing evidence that:<sup>1</sup>
  - The father abandoned or neglected the child after having knowledge of the child's birth;
  - the father is unfit as a parent or incapable of giving consent;
  - the father had made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;
  - 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;
  - the father abandoned the mother after having knowledge of the pregnancy;
  - the birth of the child was the result of rape of the mother; or
  - the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition.
- The "best interests" of the child is not a stated factor for the Court to consider in terminating the rights of a biological parent. *In re Adoption of S.E.B.*, 257 Kan. 266 (1995).
- In granting a decree for an adoption the Court will determine the "suitability" of the prospective adoptive parents

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<sup>1</sup> The birth father is appointed counsel in the event of termination of his rights.



- In reviewing statutes relating to the care and custody of minors, in civil proceedings, without exception this body has insisted that the “best interest” of the child be considered.
- Child in Need of Care proceedings.
  - In termination of parental rights in the context of a Child in Need of Care action the Court considers many legislatively mandated factors. Some of the factors are similar to those considered in the adoption code *but* the statute provides in part that, “[i]n considering any of the above factors for terminating the rights of a parent, the ***court shall give primary consideration to the physical, mental or emotional condition and needs of the child.***” K.S.A. 38-1583(e) (emphasis added).
- Paternity
  - The Kansas Parentage Act provides that orders of custody, residency and parenting time should be “in the best interest of the child”
- Divorce, Separation and Annulment
  - Require that the court determine custody or residency based in accordance with the “best interest of the child”. K.S.A. 60-1610(a)(3).

cc: Judiciary Committee Members

LAW OFFICES  
**BREMYER & WISE, L.L.C.**  
THE BREMYER BUILDING  
120 W. KANSAS AVE.  
P.O. BOX 1146  
MCPHERSON, KANSAS 67460

ROBERT W. WISE  
BRETT A. REBER  
CASEY R. LAW  
RANDEE KOGER  
JILL BREMYER-ARCHER

TELEPHONE (620) 241-0554  
TELEFAX (620) 241-7692

DAVID N. HARGER  
JEFFREY A. HOUSTON  
OF COUNSEL:  
JOHN K. BREMYER

February 6, 2006

RE: <sup>House</sup> ~~Health~~ Bill No. 2665  
Judiciary Committee  
February 6, 2006

My name is Jill Bremyer-Archer. I am a member of the American Academy of Adoption Attorneys, among other professional law-related organizations. Our firm has been handling adoptions for over fifty years. Most of my adoption practice involves independent adoptions, although I do work with agency and SRS adoptions occasionally. Prior to going to law school, I received my undergraduate and graduate degrees in the area of family and child development.

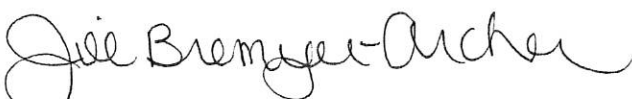
I am here in support of House Bill No. 2665 which would add language allowing the courts to consider and weigh the best interests of the child when terminating parental rights.

As the Kansas legislative coordinator for the AAAA, I have presented the following question through the AAAA list serve: "Does your state, either by statute or case law, consider the best interest of the child in terminating parental rights for the purpose of adoption?"

Because of the short notice as to this hearing, I was unable to collect the responses to this question. However, the proposed Uniform Adoption Act has as a ground for terminating relationships, "If the respondent responds and asserts parental rights, the court shall proceed with the hearing expeditiously. If the court finds, upon clear and convincing evidence, that one of the following grounds exists, and, by a preponderance of the evidence, that termination is in the best interest of the minor, the court shall terminate any relationship of parent and child between the respondent and the minor..."

I would be available at a later date to testify and/or provide a written report regarding the results of my search as to the adoption law in other states regarding consideration of the best interests of the child in relationship to termination of parental rights for purposes of adoption.

Very truly yours,



Jill Bremyer-Archer

House Judiciary

Date 2-6-06  
Attachment # 6

House Judiciary Committee

February 6, 2006

House Bill # 2665

House Judiciary

Date 2-6-06

Attachment # 7

*In the Matter of the Adoption of Ashton Alexander Tooley*

**Case No. 04-AD-230**

**(The story told by adoptive parents, Alex and Cynthia Jackson)**

We were married February 13, 1999, and like many couples we were filled with excitement and expectation. I had recently relocated to Lawrence, Kansas from Ft.Lauderdale, Florida with my job at Honeywell, and my wife from Jacksonville, Florida was eagerly anticipating our new start in Kansas. We considered ourselves extremely fortunate to be able to relocate to an area with strong communities, churches and family oriented activities. We immediately began to establish ourselves in the community by purchasing a home, finding a wonderful church (Ninth Street Baptist), and participating in community events. I also became a state certified high school football referee, often officiating games for the local recreational, Jr. High, and high school teams. Living in a great community with a strong school system, a capable library, along with a chance to be apart of the Jayhawk nation; we thought it would be great to start a family in this environment.

After several years of trying to conceive, only to find out that our chances of succeeding were slim to none, we were devastated. After a few months of crying and counseling, with our faith, we regrouped and decided to continue our dream of a full life with children through adoption. Knowing that there were hundreds of children born and unborn that needed a good home in a safe environment with loving parents; we decided to share our love with a deserving child and receive love that only a child can give. Our new direction led us to the Kansas Children Service League, through which we completed our MAAP classes and Home Study. While we were looking and waiting for that special little person, we were asked to also consider adopting from a private agency. We were introduced to the Adoption Centre of Kansas, Inc through an adoptive couple who had used them in one of their adoptions. We were happy to work with the Adoption Centre of Kansas because of the experienced staff that had over twenty years of adoption service experience and being that they were well versed in Kansas comprehensive and compassionate adoption laws. The agency offered sound and binding legal adoptions by negotiating through all the proper legal channels, and the director Richard A. Macias was known as one of the state's best.

On Monday after mother's day 2004, the phone call we'd been waiting for finally arrived. There was a young lady in Wichita, Kansas that was nearly eight months pregnant, looking for an African American couple to adopt her unborn child! Wow! June 5<sup>th</sup> 2004, we met the case worker Roxane and the birth mother Natasha at the IHOP on North Rock Road in Wichita, for an informal introduction and getting to know you session. After about a two hour brunch we were elated to know that the birth mother was thrilled with us and decided to choose us as the parents of her unborn child. Life for us was about to change and change real fast. What took most parents nine months to prepare for was going to take place in about twenty days for us. We never dreamed that we would be adopting a newborn baby.

Ashton Alexander Tooley was born June 24, 2004, at 12:01pm; at Wesley Medical Center, in Wichita Kansas. It was one of the happiest days of our lives, a six pound eleven ounce baby boy was handed to us shortly after his birth and has been in our hearts, thoughts, site, and care, ever since. The next day, all of the necessary papers were signed off by the birth mother, the agency and the hospital, and we brought our babyboy Ashton back to Lawrence. To our surprise and delight, our home had been decorated by members of our church, and our neighbors came over with gifts to welcome the neighborhood's newest member. Family members flew in

from Florida to help celebrate and help us with the transition. The joy in our home was indescribable, our prayers had been answered in a way that we couldn't have imagined. All the pain and disappointment of not being able to conceive a child had now been dissipated by the presence of Ashton. Knowing the enormous challenge ahead of us, we decided for Cynthia not to return to work and to remain at home to nurture and care for our son. We can't express the joy we felt as our church family demanded that there be a post baby shower because the birth happen so fast that many people didn't have a chance to participate in the celebration. So many were the people that attended the shower, that they almost occupied one half of the restaurant. The celebration also extended to our jobs as well. We are very thankful of the love and the support of so many people on the adoption of our son.

All was going well as the petition of adoption was filed, termination of parental rights was filed, and the post-placement adoption report was satisfactory. On August 24<sup>th</sup>, 2004 the final decree was issued and we were elated to officially change his name to Ashton Alexander Jackson. On Christmas 2004 we took our son down to Florida to meet the rest of his family members, they were all so happy to see such a handsome, happy baby boy, and the joy he brought to us and our home. Ashton has been nick

named "Mr. Friendly" because of his infectious smile and his contagious personality; he fit right in with the other children.

In early 2005 we received a disturbing phone call from Richard A. Macias informing us that he'd been contacted by Mr. Bill Vickery, an attorney representing a Mr. Marcus Peterson who claimed to be our son's biological father. Once paternity has been proven he intends to pursue having the adoption set aside and removing our son from our home and relocating him to New York City. Our worst nightmare and deepest fears were upon us. How could this be? How can this happen? We'd followed every step of the law and met every requirement financially and administratively that was asked of the state of Kansas with joy during the adoption process, and now we're devastated. Apparently the birth mother lied on several affidavits by giving the wrong last name of the alleged birth father, she was in contact with him at some point and told him that she had not aborted the child but had placed in up for adoption.

Whether she's telling the truth or not, we don't know; however we are for certain that little Ashton is our son. From the time it took the nurse to clean him up from his mother's womb, to placing him in our arms, he's been our son. A family has been created and an unbreakable bond has been set, and Ashton is emotionally, psychologically, and physically tied to us and us to



him. He clearly distinguishes us as his parents. Regardless of the lies that fostered this case or the disenfranchised relationship between the birth mother and the alleged birth father, we feel that it is in the best interest of Ashton that he remains with us in a loving, nurturing and stable environment. Ashton continues to demonstrate his overall wellness by finding favor with our neighbors, having regular visits to the Lawrence public library for the kids reading program, and participating in the toddlers Sunday school class. Ashton is healthy, happy, and is at home with us.

We ask that you please consider House Bill # 2665, and consider the best interest of children placed in adoption. Thank you.

MEMO

TO: House Judiciary Committee

FROM: Richard A. Macias, Esq.

RE: House Bill 2665

DATE: February 6, 2006

Good afternoon to the honorable members of this committee. I thank you for allowing me the opportunity to testify regarding House Bill 2665.

My name is Richard A. Macias, I am an attorney in private practice from Wichita, Kansas specializing in adoption and adoptions of children related issues particularly those involved with the Kansas Care of Code Issues. I have been involved with adoptions; this is my twentieth year and I have handled thousands of adoption related cases. I am a member of the American Academy of Adoption Attorneys.

Adoptions are strictly statutorily created, can serve to allow the formation of a legally recognized family. Following the rules that the Legislature establishes, a Petition is filed along with all of the necessary supporting documents, whereby parties ask an authorized Judge to confer upon them the status of parenthood to an otherwise biologically unrelated child. Part of this process requires valid consents from the biological mother and the biological father. On occasion a consent from a biological father is unobtainable: the father refuses to sign a consent by denying paternity, or refuses to cooperate; a father objects to the proceedings; a father is either unknown or is known but his current whereabouts are unknown. The Kansas Adoption and Relinquishment Act anticipates all such possibilities and establishes guidelines and rules to follow so that a child does not unnecessarily flounder without a family. Due process is required and must be followed to ensure that a parent has the opportunity to assert parental rights. The most difficult of all described scenarios is that situation where the birth father is unknown or his current whereabouts are unknown. This information is solely supplied by the biological mother. Child placing agencies as well as adoptive parents are in a position where they must rely upon said information. In the vast majority of cases the birth mothers are honest, accurate and reliable. Unfortunately, on a few occasions a birth mother's information may be

House Judiciary

Date 2-6-06

Attachment # 8

incomplete, inaccurate and/or deceptive. The reasons for this are varied and include, fear of repercussions from the biological father or her family.

The Kansas Adoption and Relinquishment Act (K.A.R.A) has anticipated this scenario. The statute not only requires due process but what I would refer to as "Super Due Process". In addition to demonstrating due diligence, the Court is required to appoint an attorney to represent the interest of that father who is either unidentified or his whereabouts unknown. Said attorney serves not as an obstruction to the adoption but just to ensure that due process was attempted and all reasonable efforts were made to locate and give notice to a father or any possible fathers of the pending adoption (K.S.A. 59-2136(c)). Said attorney interviews with the birth mother, reviews the efforts put forth by the child placing agency, attorney for adoptive parents or adoptive parents who filed the Petition for adoption to determine due diligence. Notice of the proceedings in these cases are given via publication as the Court directs (K.S.A. 59-2133). If after review the Court determines that the identity of the father remains unknown or his whereabouts remain unknown and due diligence has been performed in an attempt to locate said individual that there was proper and reasonable publication that an attorney was appointed and appropriately represented the unknown father then the Court by statute must terminate that father's parental rights (K.S.A. 59-2136(g)).

Kansas Law recognizes that there must be a finality for an adopted child and is entitled to parents like anyone else. The rights of biological parents, which are superior to any third party, may be forfeited in cases of unfitness, abandonment, neglect, etc... current statutory procedures to strike a balance between the interest of the biological parents and the adoptive parents. The Bill before you would insert the best interest of the subject of the adoption procedures. While this is implied, it is not currently recognized. Thus while the best interest of a child is paramount under a procedure seeking to terminate parental rights under the CINC Code K.S.A. 38-1501 *et seq.* it is no where to be mentioned anywhere in the K.A. R.A. This House Bill 2665 would rectify this glaring omission. District Courts have expressed the willingness and desire to protect the child's best interest, yet they sight Kansas Appellate case law that omits the child's best interest as a factor in adoption cases. The omission of a best interest test to protect the child in adoption cases requires adoptive parents to either (1) opt not to proceed with the adoption and thereby leaving the biological mother with the child or perhaps the child going into the custody of the state; (2) or to seek termination by filing a separate private Child in Need of Care Petition to achieve the termination under a provision which utilizes the child's best interest all at a significant time and

expense. Once a termination is accomplished in a child in need of care case, they can then seek an adoption.

In the present case, a biological mother was deceptive about the biological father's identification. The child placing agency and the adoptive parents relying on her information strictly complied with all statutory requirements, and obtained a valid adoption. The Court reviewed all of the documents and determined that due diligence was performed; reviewed petitioners home study; determined suitability to adopt; and granted a decree of adoption. In due course a birth certificate was issued naming the adoptive parents as the parents and life is good for this newly formed family.

Approximately six months after the adoption was completed the birth mother, for whatever reason, reversed herself and called the alleged father to inform him that she placed his child for adoption. The father then obtained legal counsel and now seeks to upset this adoption. Whether the mother truly had an epiphany of truth or whether she now wants a return of her child is unclear. But what is clear is that this is the adoptive parents, adoption agency, adoption practitioner's worst night mare: an adoption was completed, a child has been fully integrated into this home and the adoption may be set aside due to actions through no fault of the agency, the attorney or the adoptive parents. It is unfortunate that this biological father was deceived by this biological mother. He may be entitled to a remedy but that remedy should be directed at the deceitful mother not at the innocent adoptive parents and especially not at the innocent child.

This child was placed with adoptive parents in July 2004, the matter is still pending and is under appeal. The biological father seeks to set aside the adoption based upon fraud, not by adoptive parents, by our agency, but solely by the mother. Rather than find full statutory compliance by adoptive parents the Court may set the adoption aside due to mother's fraud. This matter will not be concluded for approximately one year at which time the child would be two and a half years old. The pending hearing under current Statutes does not allow the District Court to consider the child's best interest. This could be devastating to this child, and is contrary to the provisions to the CINC Code, where best interest is paramount for any child not just in terminations but also in whether or not the State should remove a child from his parents home to begin with. Why? Because we know that removing a child from a bonded placement may cause more harm than the suspected harm. A disrupted placement can result in potential learning disabilities and/or emotional disabilities. The child may later suffer from RAD (Reactive Attachment

Disorder), which makes it a high risk for a number of things that I will list. Thus it is of vital importance to give the District Courts the direction and the power to consider the child's best interest, all while preserving a biological father's right to due process. If you do this, you will help Kansas remain as one of the most adoption friendly and thoughtful states in the entire Country.

Should you have further questions or comments, please do not hesitate to contact me.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Richard A. Macias".

Richard A. Macias, Esq.  
901 N. Broadway  
Wichita, Kansas 67214  
Phone: 316-265-5245  
Fax: 316-265-3953  
[maciaslaw@ack.kscoxmail.com](mailto:maciaslaw@ack.kscoxmail.com)

Kansas Department of

# Social and Rehabilitation Services

Gary Daniels, Secretary

## House Judiciary Committee

February 6, 2006

### HB 2706 - Drivers License Sanction

#### Integrated Services Delivery

Jamie Corkhill, Policy Attorney

785 - 296 - 3271

For additional information contact:

Public and Governmental Services Division  
Kyle Kessler, Director of Legislative and Media Affairs

Docking State Office Building  
915 SW Harrison, 6<sup>th</sup> Floor North  
Topeka, Kansas 66612-1570  
phone: 785.296.0141  
fax: 785.296.4685  
[www.srskansas.org](http://www.srskansas.org)

House Judiciary

Date 2-6-06

Attachment # 9

**Kansas Department of Social and Rehabilitation Services  
Gary Daniels, Secretary**

House Judiciary Committee  
February 6, 2006

**HB 2706 - Driver's License Sanctions**

Chair O'Neal and members of the Committee, I am Jamie Corkhill, Policy Attorney with SRS. Thank you for the opportunity to testify about HB 2706 - Driver's License Sanctions and the Kansas Child Support Enforcement Program (CSE).

Lack of child support income is an ongoing challenge for many families today. Of the 131,000 cases served by the CSE Program, 54 percent of children receive the financial support to which they are entitled. That performance, although meaningful to many Kansas families, places Kansas 37<sup>th</sup> in state rankings. Within our own federal region, Kansas lags far behind Nebraska (#7) and Iowa (#16).

HB 2706 is part of a package of changes intended to improve Kansas' efforts to efficiently and effectively enforce support orders whenever they go unpaid. This measure expands the existing Kansas driver's license sanction for nonpayment of support. Currently, driving privileges may only be restricted under a judge's order in contempt proceedings. Although this has given judges an additional remedy to apply in those difficult cases, it is clear from the experience of other states that Kansas could be using sanctions against driving privileges much more effectively.

Contempt proceedings are not a cost-efficient remedy for nonpayment of support. Because imprisonment is one possible result, they are invariably labor-intensive, always require the use of an attorney, and require case-by-case preparation for court. Contempt proceedings are best suited to debtors who avoid regular employment or who intentionally hide income to avoid paying support. Due to the relatively high cost, contempt proceedings are a remedy of last resort; as a consequence, the current driver's license sanction is also a remedy of last resort in Kansas.

Other states have taken a different approach to the use of driver's license sanctions. Rather than limiting driver license sanctions to those who are in contempt of court, other states treat the driving privilege as one which may be revoked if the driver does not fulfill fundamental responsibilities toward the driver's family. By expanding driver license sanctions beyond contempt of court proceedings, states are able to apply them to driver-debtors who are more sensitive to the status of their driving privileges and are, therefore, strongly motivated to voluntarily comply with their support orders. Their families benefit both financially and emotionally from their compliance, and scarce state resources can be

focused on more difficult cases.

This bill would authorize SRS to notify drivers who are seriously delinquent in paying support of the proposed sanction against their driving privileges, outlining the debtor-driver's options to prevent the sanction or protest the proposed action. After this notice and opportunity for relief have been provided, SRS would ask the Department of Revenue to impose license sanctions against the debtor-drivers using procedures in K.S.A. 8-255. Following imposition of the sanction, the individual would be able to regain his or her lost driving privileges by establishing and following a regular payment plan.

Our goal is not for child support debtors to lose their driving privileges, but to encourage them to avoid losing their license by paying their support obligations on time and in full. Outreach and voluntary compliance are what have made this measure successful in other states, and those states have found they actually impose the sanction in a relatively small number of cases. We believe that would be true in Kansas, too. We know parents value their children's financial well-being at least as much as they value their own driving privileges; we just want to ensure their actions are in line with those values.

Also included in this bill is language to provide the Child Support Program access to driver photos. Currently, access is limited to law enforcement agencies. In CSE cases, a photograph is often essential to ensure legal pleadings are served by law enforcement officers and process servers upon the correct person, especially when service occurs in another state. Many custodial parents are unable to furnish a usable photo of the noncustodial parent, so providing CSE with access to driver images will frequently facilitate accurate service of process.

Kansas has a long history of enacting progressive laws to protect and provide for our children, reflecting the high value we as a people place on our most vulnerable citizens. This legislation builds upon that history and affirms that children continue to hold that priority today.

This concludes my prepared remarks. I will be glad to stand for questions.

Note: Attached is a CSE Fact Sheet that provides background information about the Child Support Enforcement Program and its recent achievements.



## 2005 CSE Fact Sheet

- The Kansas Child Support Enforcement Program, operated under Title IV-D of the federal social security act, has two purposes: (1) to ease the taxpayers' burden for public assistance to children not being supported by both parents, and (2) to promote financial stability for the appalling number of children living in or near poverty. By pursuing these goals CSE helps families become and remain independent of public assistance, which in turn allows the State to extend its finite resources to more families in need. CSE's work helps custodial parents expand their children's opportunities to grow, learn, and develop their abilities to the fullest.
- The Department of Social and Rehabilitation Services is the designated Title IV-D (CSE) agency for the State of Kansas. CSE operates within the Integrated Service Delivery Division of SRS. The CSE caseload consists of approximately 131,000 TAF and Non-TAF cases serving over a quarter million people.
- The Kansas CSE Program is a multifaceted operation that combines state, county, judicial, and private resources to meet detailed federal requirements concerning all phases of operation. CSE services include:
  - Locating absent parents and their assets;
  - Establishing parentage, as needed;
  - Establishing support orders, including medical coverage;
  - Ensuring regular payment of support through income withholding orders;
  - Enforcing past due support through administrative action, such as interception of federal and state tax refunds;
  - Enforcing past due support through court action, such as garnishment of bank accounts; and
  - Modifying ongoing support orders, as needed, to reflect the child's current needs and the parent's ability to provide support.
- CSE services are provided across Kansas by full and part-time SRS staff and by more than 20 contractors. CSE's enforcement contractors are selected through competitive procurement and presently include a county prosecutor, several district court trustees, and a variety of private sector vendors. Other private contractors include the vendor operating the Kansas Payment Center, a paternity testing laboratory, credit bureaus, and process servers.

- CSE cases fall into two broad categories:
  - Temporary Assistance to Families (TAF). When a child's custodian applies for TAF (Temporary Assistance to Families), that child's support rights are assigned to the State. If CSE collects support in a TAF case, it is used to reimburse the state and federal governments for public assistance provided to the child's family. Any collections beyond the claim for reimbursement are passed on to the family. If the TAF eligibility worker determines that monthly child support collections for a family are regularly exceeding the monthly TAF grant, the TAF cash grant may be ended. When that happens, appropriate transitional services and supports for the family continue, including CSE services.
  - Non-TAF. Federal law requires the CSE Program to provide services to any family, regardless of income, that applies for support enforcement services. CSE is also required to provide Non-TAF services when a family stops receiving cash TAF benefits, at the custodial parent's discretion. The idea is to prevent the need for TAF and other forms of public assistance by insuring reliable child support income, and to provide equal treatment under the law for all children. It is important to note that nearly 2 out of 3 Kansas Non-TAF families formerly received public assistance.

The CSE Non-TAF caseload also includes families receiving only Child Care Assistance from SRS. When CSE successfully collects support in such a case, current support (and any past due support that is not subject to an SRS claim for reimbursement) goes to the family. Child support income enables the family to make co-payments while eligible for Child Care Assistance and, after Child Care Assistance ends, to pay independently for child care services from the provider of their choice.

- Although SRS normally deducts a 4% cost recovery fee from Non-TAF collections, families receiving Child Care Assistance, Medicaid, or Food Assistance are all exempt from the fee. In addition, all CSE cases are automatically exempt from any district court trustee fee that might otherwise apply.
- In state fiscal year 2005, CSE's total support collections topped \$156 million, most of which was passed on to families. Altogether, more than 1.8 *billion* dollars of support have been collected for families and taxpayers since the Kansas IV-D program's inception in 1976.

- In state fiscal year 2005, CSE established over 9,800 child support obligations. The Child Support Guidelines, used to calculate all current support orders in Kansas, call for work-related child care expenses to be factored into the monthly support award, so that the parent who pays for child care will receive a fair contribution toward that expense from the other parent. Whenever appropriate, CSE also establishes a medical support order that requires the noncustodial parent to provide group health coverage for the child.
- Paternity establishment by the CSE Program also plays a vital role in SRS' mission. Children benefit from having their parentage established because it opens the avenue to cash and medical support from the second parent, assures them access to complete family medical information, and paves the way for potential inheritance and other rights. It also gives the child certainty about his or her family background, which is so important to the child's emotional development and confidence.
- Federal rules permit TAF cash assistance to be ended when current support payments regularly exceed the cash grant. Such closures provide significant advantages to the State, allowing scarce public assistance resources to be focused on the people most in need. CSE services to the former TAF family continue automatically, providing a safety net that reduces the risk of the family returning to dependence on public assistance. This is especially important for people affected by the five-year lifetime limit on TAF eligibility.

Whenever CSE secures regular child support income for a household receiving Child Care Assistance, the State also has the opportunity to stretch its limited resources to help more families -- including families who do not have the option of child support income from an absent parent. Regular, dependable child support income gives a working family greater assurance that, regardless of the ups and downs of public human services, they will be able to purchase the child care services that they need.

- In October 2000 the Kansas Payment Center (KPC), a joint venture of CSE and the Kansas Office of Judicial Administration, became Kansas' central unit for collection and disbursement of all support payments. The KPC offers a number of customer services statewide that were not feasible before 2000. Examples include 24-hour access to payment and disbursement information by phone or through the Internet, a toll-free customer service center, and direct deposit of support disbursements. Taken together, these elements enable families to monitor support payments independently and use up-to-date information for planning and managing their own household expenses.

■ Historic information about the Kansas CSE Program:

	State FY 2002	State FY 2003	State FY 2004	State FY 2005
CSE cases	150,204	144,544	134,115	131,616
Total collections	\$143.1 million	\$146.8 million	\$151.7 million	\$156.3 million
State's share	\$15.3 million	\$15.7 million	\$17.2 million	\$16.8 million

February 6, 2006



**KANSAS  
ACTION FOR  
CHILDREN**

*Making a difference for Kansas children.*

To: House Judiciary Committee  
From: Cindy D'Ercole  
Re: House Bill 2706 – Child Support

Kansas Action for Children Inc.  
720 SW Jackson | Suite 201  
Topeka, KS 66603

P 785-232-0550 | F 785-232-0699  
kac@kac.org | www.kac.org

Celebrating 25 years  
of child advocacy

### **Kansas Action for Children supports enactment of HB 2706.**

Kansas does not do a very good job at child support enforcement and establishment. One of the reasons that Kansas does not compare well to other states is that we have not implemented some of the administrative tools other states use to collect support arrearages. HB 2706 is part of a package of bills that will give Kansas the ability to effectively enforce unpaid support orders.

#### **HB 2706 is Not Punitive**

HB 2706 would improve the state's current ability to restrict driver's licenses by making it more effective and efficient. It is clear that the goal of this measure is not punitive; it is an administrative tool that encourages payment from individuals that owe child support through outreach and prevention. To restrict the ability of numerous debtors to drive would be counter-productive to the goal of increasing support payments.

#### **HB 2706 is Effective and Efficient**

Although it is unfortunate that we have not been able to use this mechanism in Kansas, we do know that it will be effective because of the successful experience of other states. The current process in Kansas is not only labor-intensive, but it also can only be used with a small population of debtors that have been found in contempt of court. The results in other states show that we could be much more successful in helping these families through this process.

#### **The Importance of Child Support**

Child support is a critical source of support for many low- and moderate-income families. As we look at ways to support vulnerable Kansans with limited state and federal dollars, it is clear that child support is an effective and efficient support. Not only does child support potentially save children and families from experiencing poverty, but it also benefits the state economically through a reduced need to provide cash assistance, food stamps, and Medicaid.

At the child development level, children whose noncustodial parents pay child support have more contact with them, potentially providing the children with emotional as well as financial support. Research also indicates that children with parental contact have better grades, better test scores, few behavior problems, and remain in school longer.

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House Judiciary

Date 2-6-06  
Attachment # 10

**Despite court orders, many Kansas families get sporadic or no child support.** From the experience in other states it is clear that Kansas can do a better job helping these families. Driver's license sanctions will be effective without being punitive and will decrease families' dependence on public assistance. I strongly encourage you to support HB 2706.

### *The Importance of Child Support*

If child support orders were established and followed for families needing support, the state could experience substantial savings.

Researchers have estimated that if all families who needed child support had orders in place, and those orders were fully enforced:

- cash assistance costs for families would drop 26%
- food stamp costs would drop 19%
- Medicaid costs would drop 5%

### Child Support Enforcement Improves Child Well-being

*There is increasing evidence that children in single-parent families who regularly receive child support do better in a variety of ways than children who do not receive such support. Research indicates that the receipt of child support appears to have a positive effect on children's achievement in school, reduces divorce rates, deters non-marital births, and that fathers who pay child support are more involved with their children.*

## Child Support in Kansas *A Critical Source of Support for Families*

### **Child support is a critical source of economic stability for families.**

Kansas can help families collect child support arrearages by expanding administrative remedies to collect unpaid child support such as liens on insurance proceeds, recreational license sanctions, administrative suspension of driving privileges, and a statewide Financial Institution Data Match.

### **Background**

Child support payments are a critical source of economic stability for low- and moderate-income families. As we look at ways to support vulnerable Kansans with limited state and federal dollars, it is clear that child support is an effective and efficient support. Not only does child support potentially save children and families from experiencing poverty, but it also benefits the state economically through a reduced need to provide cash assistance, food stamps, and Medicaid.

### **Child Support in Kansas**

Kansas does not do a very good job at child support establishment and enforcement. In fact, Kansas is falling behind the national average on nearly every category according to FFY 2003 Federal Performance Measures. One of the reasons that Kansas does not compare well to other states is that we do not have a lot of the tools other states use to collect support arrearages.

Although they do require an initial investment from the state, these processes and procedures will enable the Kansas Child Support Enforcement program to help families become independent of public assistance and reduce net state expenditures for public assistance. These administrative procedures include:

- Liens on insurance proceeds
- Recreational license sanctions
- Administrative suspension of driving privileges
- A statewide Financial Institution Data Match.