

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 15, 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

HB 2626 - missing person and unidentified persons and human remains, reporting and investigation of

Representative Loyd made the motion to add on page 3, new section 4 (c), line 36 "if identification efforts have otherwise failed." Representative Crow seconded the motion. The motion carried.

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) requested an amendment during the hearing on the bill that would require that any law enforcement agencies not give out information to a reporting party if they have reason to believe that the missing person is an adult or emancipated minor and staying at or has made contact with a domestic violence or sexual assault program.

Representative Watkins made the motion to amend in the KCSDV amendment. The motion was seconded. Committee members understood wanting to protect victims but expressed concern that police should confirm that a missing individual has been found and not necessarily give out the location of that person. With permission of the second, Representative Watkins amended his motion to prevent law enforcement from revealing the whereabouts of a missing person if an adult or emancipated minor is staying or has made contact with a domestic violence or sexual assault program, but law enforcement can confirm that the person has been found. The motion carried.

Representative Loyd made the motion to report HB 2626 favorably for passage, as amended. Representative Pilcher-Cook seconded the motion. The motion carried.

HB 2562 - adoption; waiver of home study upon request of a relative of the child

Representative Owens made the motion to report HB 2562 favorably for passage. Representative Pauls seconded the motion. The motion carried.

HB 2665 - in adoption proceedings, in termination of parental rights, court shall consider the best interest of the child

Representative Owens provided the committee with a balloon amendment which would change the "shall" to "may" and strike provisions that would made the consideration of the best interest of the child a procedural law. (Attachment 1) He made the motion to adopt the balloon. The motion was seconded and carried.

Chairman O'Neal asked the committee to consider amending the provisions of **HB 2914 - stepparent adoption; best interest of the child and fitness of non-consenting parent**, which would allow stepparents to adopt children of incarcerated parents when that incarcerated parent has either failed to provide support or failed in their duty to provide care and affection for the said child. The key would be that the court can determine what is in the best interest of the child with regard to the adoption.

Representative Pauls made the motion to amend in the language of HB 2914 on page 2, starting at the end of line 3 " the failure....adoption should be granted. Representative Colloton seconded the motion. Some committee members expressed that just because a person is incarcerated doesn't mean that one doesn't

CONTINUATION SHEET

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pay child support, granted that payment is not as much as one would be able to pay if they weren't incarcerated. Other members were disappointed that the committee did not have a hearing on the issue and would have liked to hear from individuals who do this type of adoption. The motion carried 7-6.

Representative Watkins made the motion to report HB 2665 favorably for passage, as amended. Representative Masterson seconded the motion. The motion carried.

HB 2610 - civil procedure; service outside the state; submitting to jurisdiction

Staff provided the committee with a balloon that would give Kansas the full benefit of the doubt when dealing with service outside the state and jurisdiction. (Attachment 2) Representative Loyd made the motion to adopt the proposed balloon. Representative Owens seconded the motion. The motion carried.

Representative Watkins made the motion to amend in the provision of HB 2942 - service by fax of a garnishment order. Representative Owens seconded the motion. Committee discussion centered on the issue that once a business designates a fax number to receive garnishment orders what determines that the fax was actually received by the correct person. It was stated that the fax confirmation is really the only evidence that shows a fax was sent, but that there was not necessarily a way to confirm if the correct person received it without a phone call. The committee suggested that if a business was having problems with receiving garnishment orders by fax they could undesignate their fax number. The motion failed.

Representative Loyd made the motion to report HB 2610 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m The next meeting was scheduled for 3:30 p.m., Thursday, February 16, 2006 in room 313-S.

HOUSE BILL No. 2665

By Representative Brunk

1-19

9 AN ACT concerning adoption; relating to the termination of parental
10 rights; amending K.S.A. 59-2136 and repealing the existing section.

11

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

13 Section 1. K.S.A. 59-2136 is hereby amended to read as follows: 59-
14 2136. (a) The provisions of this section shall apply where a relinquishment
15 or consent to an adoption has not been obtained from a parent and K.S.A.
16 59-2124 and 59-2129, and amendments thereto, state that the necessity
17 of a parent's relinquishment or consent can be determined under this
18 section.

19 (b) Insofar as practicable, the provisions of this section applicable to
20 the father also shall apply to the mother and those applicable to the
21 mother also shall apply to the father.

22 (c) In stepparent adoptions under subsection (d), the court may ap-
23 point an attorney to represent any father who is unknown or whose
24 whereabouts are unknown. In all other cases, the court shall appoint an
25 attorney to represent any father who is unknown or whose whereabouts
26 are unknown. If no person is identified as the father or a possible father,
27 the court shall order publication notice of the hearing in such manner as
28 the court deems appropriate.

29 (d) In a stepparent adoption, if a mother consents to the adoption of
30 a child who has a presumed father under subsection (a)(1), (2) or (3) of
31 K.S.A. 38-1114 and amendments thereto, or who has a father as to whom
32 the child is a legitimate child under prior law of this state or under the
33 law of another jurisdiction, the consent of such father must be given to
34 the adoption unless such father has failed or refused to assume the duties
35 of a parent for two consecutive years next preceding the filing of the
36 petition for adoption or is incapable of giving such consent. In determin-
37 ing whether a father's consent is required under this subsection, the court
38 may disregard incidental visitations, contacts, communications or contri-
39 butions. In determining whether the father has failed or refused to as-
40 sume the duties of a parent for two consecutive years next preceding the
41 filing of the petition for adoption, there shall be a rebuttable presumption
42 that if the father, after having knowledge of the child's birth, has know-
43 ingly failed to provide a substantial portion of the child support as re-

Representative Owens
February 7, 2006

House Judiciary

Date 2-15-06
Attachment # 1

1 quired by judicial decree, when financially able to do so, for a period of
2 two years next preceding the filing of the petition for adoption, then such
3 father has failed or refused to assume the duties of a parent.

4 (e) Except as provided in subsection (d), if a mother desires to relin-
5 quish or consents to the adoption of such mother's child, a petition shall
6 be filed in the district court to terminate the parental rights of the father,
7 unless the father's relationship to the child has been previously termi-
8 nated or determined not to exist by a court. The petition may be filed by
9 the mother, the petitioner for adoption, the person or agency having
10 custody of the child or the agency to which the child has been or is to be
11 relinquished. Where appropriate, the request to terminate parental rights
12 may be contained in a petition for adoption. If the request to terminate
13 parental rights is not filed in connection with an adoption proceeding,
14 venue shall be in the county in which the child, the mother or the pre-
15 sumed or alleged father resides or is found. In an effort to identify the
16 father, the court shall determine by deposition, affidavit or hearing, the
17 following:

18 (1) Whether there is a presumed father under K.S.A. 38-1114 and
19 amendments thereto;

20 (2) whether there is a father whose relationship to the child has been
21 determined by a court;

22 (3) whether there is a father as to whom the child is a legitimate child
23 under prior law of this state or under the law of another jurisdiction;

24 (4) whether the mother was cohabitating with a man at the time of
25 conception or birth of the child;

26 (5) whether the mother has received support payments or promises
27 of support with respect to the child or in connection with such mother's
28 pregnancy; and

29 (6) whether any man has formally or informally acknowledged or de-
30 clared such man's possible paternity of the child. If the father is identified
31 to the satisfaction of the court, or if more than one man is identified as
32 a possible father, each shall be given notice of the proceeding in accord-
33 ance with subsection (f).

34 (f) Notice of the proceeding shall be given to every person identified
35 as the father or a possible father by personal service, certified mail return
36 receipt requested or in any other manner the court may direct. Proof of
37 notice shall be filed with the court before the petition or request is heard.

38 (g) If, after the inquiry, the court is unable to identify the father or
39 any possible father and no person has appeared claiming to be the father
40 and claiming custodial rights, the court shall enter an order terminating
41 the unknown father's parental rights with reference to the child without
42 regard to subsection (h). If any person identified as the father or possible
43 father of the child fails to appear or, if appearing, fails to claim custodial

1 rights, such person's parental rights with reference to the child shall be
2 terminated without regard to subsection (h).

3 (h) (1) When a father or alleged father appears and asserts parental
4 rights, the court shall determine parentage, if necessary pursuant to the
5 Kansas parentage act. If a father desires but is financially unable to em-
6 ploy an attorney, the court shall appoint an attorney for the father. There-
7 after, the court may order that parental rights be terminated, upon a
8 finding by clear and convincing evidence, of any of the following:

9 ~~(1)~~ (A) The father abandoned or neglected the child after having
10 knowledge of the child's birth;

11 ~~(2)~~ (B) the father is unfit as a parent or incapable of giving consent;

12 ~~(3)~~ (C) the father has made no reasonable efforts to support or com-
13 municate with the child after having knowledge of the child's birth;

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

17 ~~(5)~~ (E) the father abandoned the mother after having knowledge of
18 the pregnancy;

19 ~~(6)~~ (F) the birth of the child was the result of rape of the mother; or

20 ~~(7)~~ (G) the father has failed or refused to assume the duties of a
21 parent for two consecutive years next preceding the filing of the petition.

22 (2) In making a finding *whether parental rights shall be terminated*
23 *under this subsection, the court may:*

24 (A) ~~shall~~ *consider and weigh the best interest of the child; and*

25 (B) may disregard incidental visitations, contacts, communications or
26 contributions.

27 (3) In determining whether the father has failed or refused to assume
28 the duties of a parent for two consecutive years next preceding the filing
29 of the petition for adoption, there shall be a rebuttable presumption that
30 if the father, after having knowledge of the child's birth, has knowingly
31 failed to provide a substantial portion of the child support as required by
32 judicial decree, when financially able to do so, for a period of two years
33 next preceding the filing of the petition for adoption, then such father
34 has failed or refused to assume the duties of a parent.

35 ~~(4) The consideration of the best interest of the child shall be consid-~~
36 ~~ered a procedural and not substantive rule of law.~~

37 (i) A termination of parental rights under this section shall not ter-
38 minate the right of the child to inherit from or through the parent. Upon
39 such termination, all the rights of birth parents to such child, including
40 their right to inherit from or through such child, shall cease.

41 Sec. 2. K.S.A. 59-2136 is hereby repealed.

42 Sec. 3. This act shall take effect and be in force from and after its
43 publication in the Kansas register.

HOUSE BILL No. 2610

By Committee on Judiciary

1-12

9 AN ACT concerning civil procedure; relating to service outside the state;
10 jurisdiction; amending K.S.A. 60-308 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-308 is hereby amended to read as follows: 60-
15 308. (a) *Proof and effect.* (1) Service of process may be made upon any
16 party outside the state. If upon a person domiciled in this state or upon
17 a person who has submitted to the jurisdiction of the courts of this state,
18 ~~it shall have the force and effect of service of process within this state;~~
19 ~~otherwise it shall have the force and effect of service by publication such~~
20 ~~service shall provide personal jurisdiction over that party; otherwise it~~
21 ~~shall provide in rem jurisdiction over specifically identified property that~~
22 ~~party may have in the state.~~

23 (2) The service of process shall be made (A) in the same manner as
24 service within this state, by any officer authorized to make service of
25 process in this state or in the state where the defendant is served or (B)
26 by sending a copy of the process and of the petition or other document
27 to the person to be served in the manner provided in subsection ~~(c)~~ (d).
28 No order of a court is required. An affidavit, or any other competent
29 proofs, of the server shall be filed stating the time, manner and place of
30 service. The court may consider the affidavit, or any other competent
31 proofs, in determining whether service has been properly made.

32 (3) No default shall be entered until the expiration of at least 30 days
33 after service. A default judgment rendered on service outside this state
34 may be set aside only on a showing which would be timely and sufficient
35 to set aside a default judgment under subsection (b) of K.S.A. 60-260,
36 and amendments thereto.

37 (b) *Submitting to jurisdiction* ~~process~~. (1) Any person, whether or
38 not a citizen or resident of this state, who in person or through an agent
39 or instrumentality does any of the acts hereinafter enumerated, thereby
40 submits the person and, if an individual, the individual's personal repre-
41 sentative, to the jurisdiction of the courts of this state as to any cause of
42 action arising from the doing of any of these acts:

43 ~~(1)~~ (A) Transaction of any business within this state;

- 1 ~~(2)~~ (B) commission of a tortious act within this state;
- 2 ~~(3)~~ (C) ownership, use or possession of any real estate situated in this
3 state;
- 4 ~~(4)~~ (D) contracting to insure any person, property or risk located
5 within this state at the time of contracting;
- 6 ~~(5)~~ (E) entering into an express or implied contract, by mail or oth-
7 erwise, with a resident of this state to be performed in whole or in part
8 by either party in this state;
- 9 ~~(6)~~ (F) acting within this state as director, manager, trustee or other
10 officer of any corporation organized under the laws of or having a place
11 of business within this state or acting as executor or administrator of any
12 estate within this state;
- 13 ~~(7)~~ (G) causing to persons or property within this state any injury
14 arising out of an act or omission outside of this state by the defendant if,
15 at the time of the injury either ~~(A)~~ (i) the defendant was engaged in
16 solicitation or service activities within this state; or ~~(B)~~ (ii) products, ma-
17 terials or things processed, serviced or manufactured by the defendant
18 anywhere were used or consumed within this state in the ordinary course
19 of trade or use;
- 20 ~~(8)~~ (H) living in the marital relationship within the state notwithstand-
21 ing subsequent departure from the state, as to all obligations arising for
22 maintenance, child support or property settlement under article 16 of this
23 chapter, if the other party to the marital relationship continues to reside
24 in the state;
- 25 ~~(9)~~ (I) serving as the insurer of any person at the time of any act by
26 the person which is the subject of an action in a court of competent
27 jurisdiction within the state of Kansas which results in judgment being
28 taken against the person;
- 29 ~~(10)~~ (J) performing an act of sexual intercourse within the state, as to
30 an action against a person seeking to adjudge the person to be a parent
31 of a child and as to an action to require the person to provide support for
32 a child as provided by law, if ~~(A)~~ (i) the conception of the child results
33 from the act and ~~(B)~~ (ii) the other party to the act or the child continues
34 to reside in the state; or
- 35 ~~(11)~~ (K) entering into an express or implied arrangement, whether
36 by contract, tariff or otherwise, with a corporation or partnership, either
37 general or limited, residing or doing business in this state under which
38 such corporation or partnership has supplied transportation services, or
39 communication services or equipment, including, without limitation, tel-
40 ephonic communication services, for a business or commercial user where
41 the services supplied to such user are managed, operated or monitored
42 within the state of Kansas, provided that such person is put on reasonable
43 notice that arranging or continuing such transportation services or tele-

1 communication services may result in the extension of jurisdiction pur-
2 suant to this section.

3 (2) A person may be considered to have submitted to the jurisdiction
4 of the courts of this state for a cause of action which did not arise in this
5 state if ~~any other connection~~ with this state is established that would
6 support jurisdiction consistent with the constitutions of the United States
7 and of this state.

substantial, continuous and systematic contact

8 ~~(c) Service of process upon any person who is subject to the jurisdic-
9 tion of the courts of this state, as provided in subsection (b), may be made
10 by serving the process upon the defendant outside this state, as provided
11 in subsection (a)(2), with the same force and effect as though process had
12 been served within this state, but only causes of action arising from acts
13 enumerated in subsection (b) may be asserted against a defendant in an
14 action in which jurisdiction over the defendant is based upon this
15 subsection.~~

16 ~~(d) (c)~~ Nothing contained in this section limits or affects the right to
17 serve any process in any other manner provided by law, including, but
18 not limited to, K.S.A. 17-7301, 17-7307 and 40-218, and amendments
19 thereto.

20 ~~(e)~~ (d) Service by return receipt delivery. (1) Service of any out-of-
21 state process by return receipt delivery shall include service effected by
22 certified mail, priority mail, commercial courier service, overnight deliv-
23 ery service, or other reliable personal delivery service to the party ad-
24 dressed, in each instance evidenced by a written or electronic receipt
25 showing to whom delivered, date of delivery, address where delivered,
26 and person or entity effecting delivery. (2) The party or party's attorney
27 shall cause a copy of the process and petition or other document to be
28 placed in a sealed envelope addressed to the person to be served in ac-
29 cordance with K.S.A. 60-304, and amendments thereto, with postage or
30 other delivery fees prepaid, and the sealed envelope placed in the custody
31 of the person or entity effecting delivery. (3) Service of process shall be
32 considered obtained under K.S.A. 60-203, and amendments thereto,
33 upon the delivery of the sealed envelope. (4) After service and return of
34 the return receipt, the party or party's attorney shall execute a return on
35 service stating the nature of the process, to whom delivered, the date,
36 the address where delivered and the person or entity effecting delivery.
37 The original return of service shall be filed with the clerk, along with a
38 copy of the return receipt evidencing such delivery. (5) If the sealed
39 envelope is returned with an endorsement showing refusal to accept de-
40 livery, the party or the party's attorney may send a copy of the process
41 and petition or other document by first-class mail addressed to the party
42 to be served, or may elect other methods of service. If mailed, service
43 shall be considered obtained three days after the mailing by first-class

2-4

1 mail, postage prepaid, which shall be evidenced by a certificate of service
2 filed with the clerk. If the unopened envelope sent first-class mail is re-
3 turned as undelivered for any reason, the party or party's attorney shall
4 file an amended certificate of service with the clerk indicating nondeliv-
5 ery, and service by such mailing shall not be considered obtained. Mere
6 failure to claim return receipt delivery is not refusal of service within the
7 meaning of this subsection.
8 Sec. 2. K.S.A. 60-308 is hereby repealed.
9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.