Approved: March 6, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on January 12, 2006, in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:
Susan Kang, Policy Director, Kansas Department of Health and Environment
Hon. Thomas E. Foster, Judge of the District Court, 10th Judicial District
Ronald W. Nelson
Greg DeBacker
Hon. Thomas H. Graber, Judge of the District Court, 30th Judicial District
Charles F. Harris

Others attending:
See attached list.

Bill Introductions

Susan Kang, Policy Director, Kansas Department of Health and Environment, requested a bill covering environmental compliance audits concerning privilege and immunity from or lessening penalties for violations of environmental laws under certain circumstances. Senator Journey moved, Senator Umbarger seconded, to have the bill introduced as a committee bill. Motion carried.

The hearing on **SB 61-Divorce/child custody: shared residency, child reside with both parents on an equal/near equal basis** was opened.

Chairman Vratil briefed the committee on the history of the bill and handed out a preliminary report by the Judicial Council (Attachment 1). The chairman indicated the Interim Judiciary Committee recommended amendments and authorized the introduction of a new bill which is starting in the House of Representatives.

Judge Foster spoke as a proponent (Attachment 2).

Ronald Nelson appeared as a proponent (Attachment 3). He is in agreement with the recommended language changes proposed by the Interim Committee and that are included in **HB 2571** which focuses attention on the plan that is in the child's best interest rather than on the labels affixed to each parent.

Greg DeBacker spoke in favor of the bill stating that it is fair, equitable, and in the best interests of the children (Attachment 4).

Judge Graber, opponent, stated that the courts should determine residency based on the best interest of the child (Attachment 5). The definition of shared residency adds nothing to what the court may do under the existing statute but it unnecessarily raises issues that will result in controversy between parent both at the time on an initial divorce and in motions for change of the description of residency.

Charles Harris appeared as an opponent stating that **SB 61** would amend K.S.A. 60-1610 to insert a definition of shared residential custody where no definition has previously been included (Attachment 6). Shared residency has existed as an informal option for the district court judges for many years. The definition for shared residential custody contained in **SB 61** is in direct conflict with the definition contained in the Kansas Child Support Guidelines and the effect of the definition contained in **SB 61** is to create a shared residential situation based upon only a small portion of the child's time. **SB 61** would reward limited involvement with a substantial reduction in child support.

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 12, 2006, in Room 123-S of the Capitol.

The following conferees requested that their written testimony in opposition to **SB 61** be distributed and placed in the committee minutes.

Hon. Steve Leben, Judge of the District Court, 10th Judicial District, Proponent (Attachment 7)
Linda D. Elrod, Distinguished Professor of Law, Washburn University, Opponent (Attachment 8)

There being no further conferees to come before the committee, the Chairman closed the hearing on **SB 61**.

Final action on **SB 326–Concerning civil actions and civil penalties; relating to false and fraudulent claims**. Chairman Vratil opened committee discussion on a previously heard bill, **SB 326,** concerning civil action for false claims against the state. The bill was recommended by the Special Committee on Medicaid Reform and Senator Vratil reminded the committee that Rex Beasley, Assistant Attorney General, testified recommending several balloon amendments on behalf of the Attorney General. A copy of the balloon amendments had previously been distributed to the committee (Attachment 9).

The first proposed amendment dealt with substitution of the word "by" for the word "to" on page 1, line 16.

The second proposed amendment occurred on page 2, line 4, with the insertion of "pursuant to this act had commenced" so that the statement would make sense.

The third amendment, on page 3, at the end of Section 1, would insert a new Section 2 and renumber the existing Section 2 to Section 3. Mr. Beasley provided a brief overview of the new section which would define the knowing misuse of public funds and associated penalties.

The Chairman asked if there were further amendments to be considered. Representative Carlin submitted a proposed amendment and the committee was briefed by Robert Collins. The Chairman noted that it appeared to be an entirely new act with numerous changes and that the committee did not have the time to consider.

Senator Bruce moved, Senator Schmidt seconded, to adopt the amendments recommended in the Attorney General's balloon to **SB 326** bill including the authority of the Revisor to do any housekeeping amendments. Motion carried.

Senator Journey moved, Senator O'Connor seconded, to amend the new Section 2 amendment of the penalty provision so that they are consistent with existing law. Motion carried.

Senator Bruce moved to amend the last sentence of the new Section 2 to have it apply to officers, employees and contractors of state and local Kansas governments. Senator Goodwin seconded. Motion carried.

Senator O'Connor moved to amend New Section 2 to include employment restrictions on positions held by convicted persons and to limit those to officers, employees and contractors whose duties included the handling of money. Senator Bruce seconded. Motion carried.

Senator Schmidt moved, Senator Bruce seconded to recommend **SB 326,** as amended, favorably for passage. Motion carried.

Senator Schmidt requested that the minutes reflect the intent of the committee is that the changes in **SB 326** are not intended to punish or establish the liability for innocent mistakes.

The meeting was adjourned at 10:35 a.m. The next meeting is scheduled for January 17, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/12/2006

NAME	REPRESENTING
Lindsey Douglas	Hein Law Firm
Greg DeBacker	Children & Parents
Tom Graber	District Court
Mark Gleeson	Judicial Branch
Charles Harris	Judicial Council
KEVIN GRAHAM	KSAG
REX BEASLEY	KSAG
JIM CLARK	KBA
P BIGGS	KS Sent Comm
B HARMON	KS Sent Comm
N GIBSON	KS Sent Comm
Lake Thompson	DHPF
Paul Johnson	KS Catholic Conf.
Chad Austin	KS Hosp Assoc
John Peterson	Cap. Tel Strategies
Jeff Bottenberg	Polsinelli, St. Honeyfield
Tom Bruno	Bruno & Assocs.
Stephen Timmes	Leg. intern

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-12-2004

NAME	REPRESENTING
DAVID KLEPPER	THE K.C. STAR
CHRIS SHEPARD	DAMRON & ASSOCIATES
Callie Tee Denton	KTLA
Richard Sommerop	Kennedy & Assoc.
Michael White	KCDAA
Nancy Strouse	KS Judicial Council
Jane Eldredge	Westgate Center
Dan Morin	Kansas Medical Society
Ronald W. Nelson	Legislative Liaison, Family Law Section, KBA

REPORT OF THE JUDICIAL COUNCIL
FAMILY LAW ADVISORY COMMITTEE ON
2005 SB 61

The Family Law Advisory Committee was asked to review 2005 SB 61, a copy of which is attached to this report. The Committee is strongly opposed to SB 61 as written. The bill's definition of "shared residency," which excludes both sleeping and school hours from its calculations of the child's time, conflicts with the Kansas child support guidelines, which do not exclude sleeping time. The Committee feels very strongly that the bill's focus on setting a specific number of hours as the baseline for "shared residency" would be a grave mistake. Successful shared residency requires far more than a set number of hours of parenting time.

True shared residency is a special and exceptional situation in which parents are ready, willing and able to communicate, cooperate, and equally share the expenses of supporting the child. The child support guidelines require that there be a detailed plan in place by which all direct expenses for the child are equally shared. That aspect of the guidelines is ignored by SB 61's formulaic approach. There can be a substantial difference in the amount of child support that must be paid if the residential arrangement can be changed to shared residency, and thus SB 61 provides great financial incentive for noncustodial parents to start adding up the hours to see if they can back into the definition and get a reduction in child support. Unfortunately, a parent who is maneuvering to get a reduction in child support is likely to be a parent for whom shared custody is not appropriate.

The Committee proposes an alternative amendment to K.S.A. 60-1610, as follows:

> **K.S.A. 60-1610(a)(5)(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. In an exceptional case and upon agreement of the parties, the court may order a shared custody arrangement as defined by the Kansas child support guidelines. If an order for shared residency is entered, the court shall enter in the record of the proceedings: (i) the specific facts upon which the court has found that the shared residency arrangement is in the best interests of the child; and (ii) a detailed expense sharing payment plan.

While SB 61 added a new subsection for shared residency, the Committee believes that the language of K.S.A. 60-1610(a)(5)(A) is already broad enough to include a shared residency arrangement. The Committee proposes adding language to the end of that subsection that refers to the child support guidelines for the definition of the term and also incorporates the guidelines' requirement of a detailed expense sharing payment plan. The Committee believes that placing stricter parameters on the concept will help ensure that shared residency will only be applied in appropriate cases.

Senate Judiciary
1-12-06
Attachment 1

TESTIMONY OF THOMAS E. FOSTER
District Court Judge-Tenth District
Olathe, Kansas

January 12, 2006
Re: SB 61 (and HB 2571)
Members of the Committee:

Good morning. I appreciate this opportunity to comment on HB 2571/SB 61. I am Thomas Foster, a District Judge from Olathe, Kansas. I have been as District Judge since my appointment in June of 1999. I am currently a member of the Executive Committee of the Kansas District Judges' Association (KDJA) and a member of the Kansas Child Support Guideline Committee (KCSGC).

I concur with the August 25, 2005 and January 12, 2006 written testimony of Judge Steve Leben and with the January 12, 2006 written testimony of Ronald Nelson. I whole heartedly agree with the legislature's wisdom in removing 'labels,' such as 'primary residential' parent in 2000. I believe it would be a huge step backwards to now put back in categories like 'shared residency' as well as language that would define when a parent would receive 'credit' for being a parent. The KDJA also opposes the language and definitions proposed in original SB61.

Since being appointed to the bench in 1999 I have presided over more than 1500 cases involving divorce, paternity, custody and child support. Beginning January 1, 2006, I will be assigned exclusively cases involving divorce, custody and child support, along with Judge Allen Slater and Judge William Isenhour. The goal of this 'Family Court' section of our civil department will be to reduce at every opportunity the adversarial approach to domestic litigation. We hope to move a family to resolution without the necessity for extended litigation and without the costs – economic and emotional – of extended and hard fought litigation over children's issues.

In a May 1993 report by Kansas' Corporation for Change, a body created by the Kansas legislature to study the feasibility of a family court for the Kansas district courts as a means to improve the treatment of children and families, the authors noted:

"The most clearly articulated reasons for pursuing family court in Kansas have been the need to develop a less adversarial approach to family disputes and the need to develop an adequate level of services for children and families in need."

Our mediators worked with more than 500 families in 2005. Approximately 75% of them were able to resolve their disputes without court intervention. Mr. Gary Kretchmer, a Court Service Officer dedicated to making life better for the children of Kansas and easing the effects of divorce on children, reported to me:

"We continue to see and struggle with a large and a quickly growing group of parents where one parent demands shared (50\50) time while the other parent is opposed – this issue takes up a good percentage of our time and energy – many times the issues have nothing to do with bad or poor parenting, it is just a control and power issue between two good parents – much of it has to do with hurt, disappointment, and brokenness – further litigation only increases the pain."

An article from Scientific American (11\05) on child custody issues written by Dr. Robert Emery (University of Virginia), Dr. Randy Otto (University of South Florida) and Dr. William O"Donohue (University of Nevada) on the impact of divorce on children points out:

- fights in court are damaging to families no matter what and our only hope is to minimize conflict
- courts should do more to force parents to use mediation, education, counseling, attorney negotiation, and collaborative law to lower conflict
- post-divorce plans should be as similar as possible to parenting during the marriage.

I believe that the labels that were initially suggested were done so in order to include statutory language similar to language used in the Kansas Child Support Guidelines. The KCSGC has recently started a review of the guidelines. I am hopeful that the KCSGC will consider eliminating some of its language that might lead to unnecessary conflict.

I have one comment in regard to the proposed language in HB 2571. I believe it might be clearer if it required the court to make an affirmative 'determination' in regard implementing a parenting plan which is in the best interests of the child rather than the court 'adopting' a plan.

Including labels in the statute such as 'custodial parent,' 'residential parent' and 'shared custody' invites conflict. It is easy to understand how one or both parents would take a position that they have equal 'status' as a parent. It can lead to long, bitter, unnecessary arguments. It can lead to bitterness and resentment with both parents. It can take years to repair the damage caused by this unnecessary conflict. However, if from the moment they sit down with the other parent the goal is simply to work out a 'parenting plan' that works for their family, maybe some conflict can be avoided. Thank you.

Thomas E. Foster

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TESTIMONY OF RONALD W. NELSON
Nelson & Booth, Overland Park, Kansas
January 12, 2006

Re: SB 61 (and 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. I've attached my testimony opposing SB 61 to this testimony.

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 original testimony, that language would inject conflict into child custody litigation, instead of helping resolve that conflict. The intention of the 2000 amendments was to *remove* labels from the statutes and encourage parents and judges to focus more upon an appropriate schedule of parenting time rather than the label attached to that schedule. 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 approve a parenting plan agreed by the parents or, in the absence of agreement, enter a parenting plan determined in the child's best interests. These recommended changes are included in HB 2571 and I wholeheartedly support that bill.

As pointed out by other conferees, the Interim Committee's recommendations and HB 2571 focuses attention on what plan is in the child's "best interests" rather than on the label the parent's should have affixed.

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 trend across the country to generalize statutes to that the court can make individual assessments of each family to the betterment of that family rather than trying to fit a family into a labeled approach that doesn't help anyone. If you have any questions I am glad to address them.

Ronald W. Nelson

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* licensed in Kansas and Missouri

Senate Judiciary
1-12-06
Attachment 3

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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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Proponent of SB61

Child may reside with both parents on an equal or near equal basis

I support this legislation, and have introduced and supported similar legislation since 1994. The 2000 parenting plan legislation was very good for Kansas Children. At one point I had a data base of over 500 Kansas parents, Moms and Dads and grandparents. This "Bill" is fair and equitable and in the best interest of the children. Children deserve to have both parents available to them. Being a single parent is difficult. Sharing the parenting responsibility allows both parents quiet and free time.

Opponents will say the only reason this is being addressed is so that less child support will be paid. This is such a lame argument. When the child is with you, you are going to have to take care of them, provide housing, food and entertainment, which will cost money. I counter, the only reason some parents want primary residential custody is so they can get the child support, if they didn't get CS, they could care less about being with the children. I could argue both sides of this. Remove this from discussion.

Focus on what children really need, Parenting Time, with both parents.

Sure, arguments will arise between the two parties, but I have counseled many couples in Kansas and in other states and have received thanks from both parents. An article in the June 2002 APA journal confirms that studies show children and parents benefit from equal parenting. There are many other such articles and studies to be found. If needed I will provide them. My hard drive is full of them.

Equal parenting should be line (A) and first option, in my opinion, and if I were a judge. This change in legislation still gives judges the discretion for alternate types of parenting time.

This will also assist in so called grandparents rights, but will benefit the children, because grandparents are an important part of their grandchildren's lives.

Respectfully,

Greg DeBacker

Success by Six, Fatherhood Action Team Member

Senate Judiciary

1-12-06

Attachment 4

TESTIMONY IN REGARD TO SENATE BILL NO. 61
BEFORE THE SENATE JUDICIARY COMMITTEE
ON JANUARY 12TH, 2006
BY THOMAS H. GRABER, DISTRICT JUDGE

I am opposed to the proposed changes in K.S.A. 2004 Supp. 60-1610 as proposed in Senate Bill No. 61. As reflected beginning on line 21 on page 4 of the bill, a court is to determine the issue of residency based on the best interest of the child. I believe that any amendment to the existing statute should be weighed upon whether the change will promote the best interest of the child involved in a divorce proceeding. The proposed amendment will not promote the best interest children involved in divorce proceedings but will be contrary to their best interest because it will spark disputes between parents and lead to ongoing problems and contests.

The very best thing that can happen to a child whose parents are getting divorced is for the parents to be able to get along and to cooperate in parenting the child. The definition of "Shared Residency" adds nothing to what the court may do under the existing statute but it unnecessarily raises issues that will result in controversy between parents both at the time of an initial divorce and in motions for change of the description of residency. Everything should be done to limit controversy and nothing should be done to promote it.

All types of arrangements in regard to residency may now be adopted and ordered by the court and this amendment has no positive benefit that would promote the best interest of a child.

If the committee is considering the language in House Bill No. 2571, I would also like speak in opposition to that proposed amendment. Again it will not promote the best

interest of children involved in divorce. The amendment which begins on line 39 page 4 of the bill is unclear. However, it seems to make the "Parenting Plan" as something replacing "Types of residential arrangements". The first problem with this approach is that it ignores what is now the practical the practical use of parenting plans. In my court the plans are the nuts and bolts of how a residential arrangement that has been agreed upon by the parties or ordered by the court will work on a day to day basis. It may be proposed before the court rules if the parties are not in agreement but they are refined after the residency arrangement is established. The will be more conflict created in getting to the nuts and bolts if the new plan is adopted.

The second problem is the there is no uniform "Parenting Plan" in existence and many varieties exist. I attach to this testimony Ex. A which is one proposed plan submitted to me recently and Ex. B which is a copy of the "The Standard Temporary/Permanent Parenting plan " adopted in the 30th Judicial District to show you the consequences.

In short I would urge you that there is nothing broke with the current provisions and it does not need fixing.

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.

Exhibit B

Exhibit A

BY FAX

Attorney at Law

Wichita, Kansas 67202
316-2[illegible]

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[illegible]
	)	
]	)	
	)	

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.

[illegible]
Respondent

Testimony of Charles F. Harris
Before Senate Judiciary Committee in
Opposition to Senate Bill 61 on
January 12, 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.

Senate Judiciary
1-12-06
Attachment 6

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

6-4

Testimony of Steve Leben
District Judge, Johnson County
Senate Judiciary Committee
January 12, 2006

Regarding SB 61 (and HB 2571)

I will not be able to attend your meeting this week, but appreciate the opportunity to submit a written statement. I appeared at the August 2005 hearing of the interim Special Committee on Judiciary regarding SB 61. My August testimony opposing SB 61 is attached.

In response to the testimony of several conferees in August, the interim committee recommended a new drafting approach in place of the prior SB 61. The prior SB 61 had *added* to the statutory listing of potential parenting arrangements, adding "shared residency" to the currently listed "residency" and "divided residency." That would have caused unnecessary confusion since similar terms have different meanings in the Kansas Child Support Guidelines. The interim committee recommended that these terms not be included in the statute at all. The interim committee's recommendations are now contained in HB 2571.

I am in support of the interim committee's recommendations and HB 2571. This revision will focus parents and courts on the right issue—what parenting plan is in the child's "best interest," rather than on the wrong issue—what label we should apply to this parenting plan. It also will avoid the use of conflicting, but similar-sounding terms in the statutes and the child support guidelines. It will avoid a need for statutory revision when the child support guidelines are revised. And it will provide appropriate flexibility in meeting the needs of each child involved in litigated divorce cases in Kansas.

As always, thank you for your consideration of these comments and for your careful study of the laws of our state.

###

Attachment: August 25, 2005 testimony to the interim committee

Senate Judiciary
1-12-06
Attachment 7

Testimony of Steve Leben
District Judge, Johnson County
Special Committee on Judiciary
August 25, 2005

Regarding SB 61

I appreciate very much your taking time over the summer to review Senate Bill 61. I have been a district judge in Johnson County now for 12 years. For the first 10 years, one-half of my docket consisted of domestic cases; for the past 2 years, it has been one-third of my docket. In addition, in 1997, I undertook the task of putting out the Kansas Bar Association's *Practitioner's Guide to Kansas Family Law*, a two-volume set for which I'm the overall editor and a chapter author.

My short take on SB 61 is simple—we don't need it and it could be counterproductive to put this definition into the statute book. Before getting to that, though, I want to note that you will be hearing in opposition today not only from me, but also from Prof. Linda Elrod, author of the leading treatise on Kansas family law since 1983 and a true national leader in this area; the past president of the Kansas Bar Association's Family Law Section; and the chapter author of the *Practitioner's Guide*'s chapter on child custody. I would also note that this bill did not come through any organized group, like the KBA's Family Law Section or Legislative Committee, so that the bar might have vetted it before it came to you for consideration.

I do not criticize Judge Yost for bringing his suggestion directly to your attention. But I do believe that this suggestion did not have the benefit of a broader view of the history of the custody statutes and the Kansas Child Support Guidelines when it first came to your attention.

So, why don't we need this bill? Simply, we're dealing with two different things—child custody and child support. The bill would amend the child custody statute. That statute already gives the judge full authority to do *whatever* is in the best interests of children. K.S.A. 60-1610 authorizes the trial court "to 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." That provides ample

authority to order what Judge Yost has defined as shared custody or any other arrangement that might be good for children.

Child support is governed by the Kansas Child Support Guidelines. One of your members, Senator Goodwin, is also a member of the Child Support Guidelines Advisory Committee. Other legislators have also served—and continue to serve—on that group. It is required by federal law to review our child support guidelines every four years. It then recommends changes to the guidelines, which are ultimately issued by the Kansas Supreme Court.

The concept of "shared residency" is defined in the Child Support Guidelines and is only relevant there. There is a separate section entitled, "Shared Residency Situations." That section begins by defining the term:

> 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 nonprimary 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*. Direct expenses include, but are not limited to, clothing and education expenses, but do not include food, transportation, housing or utilities.

If shared residency as defined in the Child Support Guidelines exists, then a different child support amount will be called for than when it does not. SB 61 would not change that—and its definition of "shared residency" is different than the one in the Guidelines. SB 61's definition does not reference the sharing of direct expenses for the child (something that we wouldn't expect to find in the custody statute, anyway).

As I've already mentioned—and as Senator Goodwin no doubt would recall in much greater detail—the Child Support Guidelines Advisory Committee must meet every four years to review the Guidelines. If there's a need to change the definition of "shared residency," that's the group that should consider the

issue. This concept *only* affects child support calculations. And because the Child Support Guidelines are reviewed in detail—and amended—every four years, putting a specific definition that affects only calculation of child support into the statutes would mean that there might well be a conflict between the two when the next Guideline revision is made.

With respect to the custody statutes, the changes the Legislature made in 2000 to clean up the wording and de-emphasize terms like "primary" custodial parent and the counting of hours were carefully considered and fully commented on by all of the interested groups. While I know that Judge Yost is sincerely interested in making court orders as clear as possible to the families of Kansas, SB 61 is not going to achieve that goal.

Again, thank you for taking the time to review this.

###

Testimony of Professor Linda D. Elrod

Distinguished Professor of Law at Washburn University and Director of the Children and Family Law Center

Senate Judiciary Committee
January 12, 2006

Re: SB 61 & HB 25 71

I am unable to attend the committee hearing because I am attending an out-of-state national conference on"Representing Children in Families: Children's Advocacy and Justice." I did appear at the August 25th hearing of the interim Special Committee on Judiciary regarding SB 61. My August testimony opposing SB 61 is attached. I appreciate the opportunity to comment in writing on SB 61 and HB 2571..

I remain firm in my conviction that the original SB 61 which has a proposed definition of shared residency would directly contradict the Kansas Child Support Guidelines and result in mass confusion for judges, lawyers, and parents. A new, contradictory definition should not be added to K.S.A. 60-1610. The primary focus for the legislature should be on protecting the interests of children who cannot protect themselves. To enact such a definition would lead to more disputes over parenting time and would create more hardship for children.

I support the interim committee's recommendation and HB 2571. The court's focus should be on approving parenting plans that meet a child's best interests. Children should always be the focus - not the label attached.

As a side note, my preference would be to leave K.S.A. 60-1610 alone. Judges have discretion now and should only approve parenting plans that are in the best interests of the child. At some point, Kansas should have a unified family code and put the provisions for marriage from chapter 23, the UCCJEA, paternity, CINC and JO codes in chapter 38, the adoption code in chapter 59 and all of the divorce statutes in chapter 60 into a Kansas Family Code.

For now, I agree with the positions of Judge Leben, Charles Harris, and Ron Nelson on SB 61 and HB 2571. Thank you for your consideration.

SB 61 Testimony of Professor Linda Elrod

August 25, 2005

Members of the Committee: Good morning. My name is Linda Elrod, I am a Distinguished Professor of Law at Washburn University and Director of the Children and Family Law Center. I have attached a brief biography at the end of my testimony for those who do not know me. I am happy to supply additional information or lists of articles upon request.

Today I am coming to ask you to not enact the proposed definition of shared residency in SB 61 because it would directly contradict the Kansas Child Support Guidelines and result in mass confusion for judges, lawyers, and parents. The primary focus for the legislature should be on protecting the interests of children who cannot protect themselves. To enact such a definition would lead to more disputes over parenting time and would create more hardship for children. I agree with the positions of Judge Leben, Ron Nelson. and Keven O'Grady.

For my part, I want to stress what I consider to be one of the most important considerations - the child support guidelines of the State of Kansas. Over the years, the Child Support Advisory Committee has struggled to adjust the equities of parents who share more time with their children. The Kansas Child Support Guidelines have a long history starting with Administrative Order #59. For a history of the original guidelines, *see* Linda Henry Elrod, *Kansas Child Support Guidelines: The Elusive Search for Fairness in Child Support Orders*, 27 Washburn L. J. 104 (1987). Since that time there have been Administrative Order # 75, 83, 90, 100, 107, and 128. The most recent version, which became effective on January 1, 2004, is Administrative Order # 180.

SB 61 directly contradicts the current Kansas Child Support Guidelines by making shared residency 45% of the time instead of "equal or nearly equal." The Kansas Child Support Guidelines require a direct sharing of expenses and a plan for doing so. In addition the child support guidelines include overnights and school days (except for a visitation adjustment, see below). There were problems the guidelines tried to address.

1. First, studies have found that even "joint physical custody" or "shared residency" is ordered, within six months, the majority of cases found the arrangement results in one person having the child or children substantially more time, more similar to a primary residency situation. One parent receives a "break" on child support for the shared residency but is not actually expending those extra funds on the child. One parent is left with a disproportionate burden. *See* Eleanor Maccoby & Robert Mnookin, Dividing the Child: Social and Legal Dilemmas of Custody (1992).

2. While under prior guidelines there was a requirement to share the direct expenses, there was no mechanism for doing so. A parent who incurred the school expenses at the beginning of the year would send the other parent a bill but would get no response. If the parents are going to share residency and share expenses, there must be a way to ensure the expenses get shared fairly. Administrative Order #180 requires the parties to enter into a

shared parenting expense plan and agree on how to allocate expenses.

3. There were no sanctions written into prior versions of the guidelines. Now if one parent fails to keep up their end of the bargain, there is a provision allowing the judge to impose sanctions including, but not limited to, imposition of full child support and/or an order for payment of specific expenses.

SB 61 does nothing to help parents or children, conflicts with the Child Support Guidelines, and has the potential to create hardship and confusion.

Kansas Child Support Guidelines - Administrative Order #180

III. General Instructions

B. Applications

7. Shared Residency Situations

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 nonprimary 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.* Direct expenses include, but are not limited to, clothing and education expenses, but do not include food, transportation, housing or utilities. [Bold emphasis added].

No shared residency treatment shall be ordered without the court having approved a plan for paying and sharing expenses. The court shall require that a detailed expense sharing payment plan be submitted by the party or parties requesting the shared residency treatment. Failure to adhere to the expense sharing plan may result in sanctions including, but not limited to, imposition of full child support and/or an order for payment of specific expenses.

For Shared Residency, the support is calculated using one worksheet. The amount of the lower Net Parental Child Support Obligation (Line F.5) is subtracted from the higher amount and the difference is then multiplied by .50. The resulting amount is the child support the party having the higher obligation will pay to the party with the lower obligation.

IV. Specific Instructions for the Worksheet

E. Child Support Adjustments

Child support adjustments apply only when requested by a party. If no adjustment is requested, this section does not need to be completed. All requested adjustments are discretionary with the court. The party requesting the adjustment is responsible for proving the basis for the adjustment. The court shall determine if a requested adjustment should be granted in a particular case based upon the best interests of the child. If granted, the court has discretion to determine the amount to be allowed as either an addition or a subtraction. The amount granted for each requested Child Support Adjustment should be entered on the appropriate

line in Section E. All adjustments shall be totaled on Line E.7.

* * *

2. Parenting Time Adjustment (Line E.2)

The court may allow a parenting time adjustment in favor of the parent not having primary residency using either subsection IV.E.2.a below or subsection IV.E.2.b below but not both. Likewise, the court may allow an adjustment in favor of the parent with primary residency pursuant to IV.E.2.c below. If the Shared Residency provision (Section III, subsection B.7) applies to a child, no adjustment may be made under this section for parenting time by either parent with that child. This adjustment, like all other adjustments, is subject to the 10% rule pursuant to Section V.A.

Because the adjustment is prospective and assumes that parenting time will occur, the court may consider the historical exercise or historical non-exercise of parenting time as a factor in denying, limiting, or granting an adjustment under this section. In making this determination, the court shall consider: 1) the fixed obligations of the parent having primary residency that are attributable to the child; and 2) the increased cost of additional parenting time to the parent having nonprimary residency. Any adjustment should be prorated over twelve months unless the parent having primary residency requests otherwise.

a. If the child spends 35% or more of the child's time with the parent not having primary residency and the court does not find that it is a shared residential situation as defined in III.B.7, the court shall determine whether an adjustment in child support is appropriate. In calculating the parenting time adjustment, the child's time at school or in day care shall not be considered. To assist the court, the following table may be used to calculate the amount of parenting time adjustment. The adjustment percentage should be averaged if there is more than one child and if the percentages are not the same for each child. The percentage adjustment should be applied to Line D.9 and then entered on Line E.2.

Nonresidential Parent's % of Child's Time	Parenting Time Adjustment
35%-39%	-5%
40%-44%	-10%
45%-49%	-15%

b. If a child spends fourteen (14) or more consecutive days with the

parent not having primary residency, the support amount of the parent not having primary residency from Line F.5 (calculated without a Parenting Time Adjustment) may be proportionately reduced by up to 50% of the monthly support from Line F.5. Brief parenting time with the parent having primary residency shall not be deemed to interrupt the consecutive nature of the time. The amount allowed should be entered on Line E.2.

c. The court may make an adjustment based on the historical non-exercise of parenting time as set forth in the parenting plan.

BRIEF BIOGRAPHY

Linda D. Elrod, a Distinguished Professor of Law at Washburn University School of Law, has been a law professor since 1974. She has taught courses in family law, children and the law, divorce practice, family law seminar, in addition to property, real estate, and creditors' rights. In 2002, she became the Director of the Children and Family Law Center.

Linda has been active nationally and internationally in the family law area. She is past chair of the American Bar Association Family Law Section (2000-2001); on the ABA Steering Committee on the Unmet Legal Needs of Children; co-chair of the ABA Child Custody Pro Bono Advisory Board; Editor of the *Family Law Quarterly* since 1992; Reporter for a uniform law on preventing child abduction and a member of the Joint Editorial Board on Family Law for the National Conference of Commissioners on Uniform State Laws. She was the chair of the committee which drafted the Standards for Lawyers Who Represent Children in Abuse and Neglect Cases which were adopted by the American Bar Association in 1996; and a member of the committee that drafted the Standards for Lawyers Representing Children in Custody Cases, adopted by the American Bar Association in 2003.

Linda is author of a national treatise entitled Child Custody Practice and Procedure; author of a two volume treatise, Kansas Family Law (West 1999 and annual supplements), and coauthor of a textbook, Family Law with Harry Krause, Tom Oldham and Marsha Garrison. In 2000 she coordinated an international, interdisciplinary think tank on "High Conflict Custody Cases – Reforming the System for Children" which resulted in a white paper with suggestions that are being incorporated into the laws of states around the country.

Linda was the founder and first chair of the Family Law Section of the Kansas Bar Association from 1984-86. She was first appointed to the Governor's Commission on Child Support in 1984. In 1987 the Governor's Commission was dissolved and the Kansas Supreme Court appointed an Advisory Committee on Child Support in 1987. Linda has served continuously for 21 years and written in the area of child support establishment and enforcement. She was named a "Pioneer for Children in Need" in 1990 and was one of the first inductees into the Kansas Child Support Hall of Fame in 1990. She was also the first woman president of the Topeka Bar Association in 1986-87.

BALLOON AMENDMENT TO S.B. 326
PROPOSED BY THE ATTORNEY GENERAL'S OFFICE, 1/10/2006

Session of 2006

SENATE BILL No. 326

By Special Committee on Medicaid Reform

1-5

AN ACT concerning civil actions and civil penalties; relating to false or fraudulent claims.

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

Section 1. (a) As used in this act: (1) "Claim" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, services, item, facility or accommodation as reimbursable ~~to~~ [by] the state of Kansas, or its fiscal agents, or which states income or expense and is or may be used to determine a rate of payment by the state of Kansas, or a fiscal agent of the state;

(2) "knowing" and "knowingly" means that a person, with respect to information has actual knowledge of this information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. The terms "knowing" and "knowingly" do not require proof of specific intent to defraud.

(b) (1) Except as otherwise provided, any person who: (A) Knowingly presents, or causes to be presented, to the state of Kansas, or a fiscal agent of the state, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state of Kansas, or a fiscal agent of the state; (C) conspires to defraud the state of Kansas; (D) is a beneficiary of an inadvertent submission of a false claim to the state of Kansas, or a fiscal agent of the state, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state of Kansas, or a fiscal agent of the state; or (E) is the beneficiary of an inadvertent payment or overpayment by the state of Kansas of moneys not due and knowingly fails to repay the inadvertent payment or overpayment to the state of Kansas is liable to the state for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages which the state sustains because of the act of such person.

(2) If the court finds that: (A) The person committing the violation of this act furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first ob-

tained the information, (B) such person fully cooperated with any state investigation of such violation, and (C) at the time such person furnished the state with the information about the violation, no criminal prosecution, civil action or administrative action with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages which the state sustains because of the act of the person.

(3) A person violating this act shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

(c) The attorney general shall investigate violations under this act. If the attorney general finds a violation of this act, the attorney general may bring a civil action under this act. Nothing in this act shall be construed to create a private cause of action.

(d) The attorney general may simultaneously conduct criminal investigations and proceedings while conducting civil investigations and proceedings concerning the same subject matter for violations as described in this act.

(e) Upon a showing by the state that certain actions of discovery in a proceeding under this act may interfere with the state's investigation or court proceeding of a criminal matter arising out of the same facts, the court may stay all proceedings under this act. Such showing shall be conducted *in camera*.

(f) Any action pursuant to this act must be commenced within five years from the date when the falsity or fraud is discovered.

(g) In any action brought under this act, the state shall be required to prove all essential elements of the cause of action, including damages, by preponderance of the evidence.

(h) Any pleading filed claiming relief pursuant to this act is not subject to the requirements of subsection (b) of K.S.A. 60-209, and amendments thereto, except that such pleading shall set forth the period of time of the allegedly false or fraudulent claims and shall generally describe the false or fraudulent nature of the claims or scheme composed of several claims.

(i) Any action under this act may be brought in any district court where the defendant, or in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act prohibited by this act occurred, or in the district court of Shawnee county.

(j) Whenever the attorney general has reason to believe that any person may be in possession, custody or control of any documentary material or information relevant to an investigation under this act, the attorney general, before commencing a civil proceeding, may issue in writing and cause to be served upon such person, a civil investigative demand. Such

[pursuant to this act had commenced

demand shall require such person to: (1) Produce such documentary material for inspection and copying, (2) answer in writing written interrogatories with respect to such documentary material or information, (3) give oral testimony concerning such documentary material or information, or (4) furnish any combination of such material, answers or testimony.

(k) Whenever any person fails to comply with any civil investigative demand issued under subsection (j), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the attorney general may file a petition for an order of such court for the enforcement of the civil investigative demand in the district court.

(l) A final judgment rendered in favor of the state in any criminal proceeding, whether upon a verdict after a trial or upon a plea of guilty or *nolo contendere*, shall estop the defendant from denying the elements of the offense in any action brought under this act which involves the same facts or circumstances as in the criminal proceeding.

(m) Intent to repay or repayment of any amounts obtained by a person as a result of any acts prohibited in subsection (b) shall not be a defense to or grounds for dismissal of an action brought pursuant to this act. However, a court may consider any repayment in mitigation of the amount of any penalties assessed.

Sec. ~~2~~ 3. This act shall take effect and be in force from and after its publication in the statute book.

INSERT NEW SECTION 2.

[Section 2. K.S.A 21-3910 (a) Misuse of public funds is: ***(1) knowingly*** using, lending or permitting another to use, public money in a manner not authorized by law , by a custodian or other person having control of public money by virtue of such person's official position. ***; (2) Knowingly attempting to obtain, or knowingly authorizing, attempting to authorize, or allowing any payment for Medicaid services that exceed the limitations of federal laws, rules, or regulations, Kansas laws, rules, or regulations, or the terms of the Kansas Medicaid plan or the provider manual; (3) Knowingly by-passing or overriding an edit, attempting to by-pass or override an edit or allowing an edit to be by-passed or overridden, including but not limited to deactivation of any edit, in any claims submission or processing system used by the Kansas Medicaid program or any of its contractors, unless such conduct is consistent with existing written exceptions established by, or with the express written approval of, the head of the Kansas Single State Medicaid Agency.***

(b) As used in this section, "public money," means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof. ***including money provided to the state of Kansas by the federal government.***

(c) Misuse of public funds is a severity level 8, nonperson felony, ***except where the aggregate amount of money paid or claimed in violation of this section is $25,000 or more, in which case it is a severity level 7, nonperson felony.*** Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position ***and shall thereafter be prohibited from holding any position with the state of Kansas.***]