Approved: May 3, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 2, 2006, in Room 123-S of the Capitol.

All members were present except:
Barbara Allen- excused
Greta Goodwin, arrived 10:12 a.m.

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

Conferees appearing before the committee:
Rachel Pirner, Attorney, Triplett, Woolf & Garretson, LLC
Jerrad Webb
Kyle Smith, Deputy Director, Kansas Bureau of Investigation
Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence
Bill Henry, Director of Governmental Affairs, Kansas Credit Union Association
Leslie Kaufman, Executive Director, Kansas Cooperative Council
Randy M. Hearrell, Kansas Judicial Council
Mark Knackendoffel
James W. Clark, Kansas Bar Association

Others attending:
See attached list.

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

Rachel Priner appeared as a proponent providing background on the bill and the differences between **HB 2665** and **SB 400** (Attachment 1).

Jerrad Webb spoke in support relating his family's personal experience and frustration in attempting adoption of his step-children (Attachment 2).

There being no further conferees, the hearing on **HB 2665** was closed.

The hearing on **HB 2626--Missing persons and unidentified persons and human remains, reporting and investigation of** was opened.

Kyle Smith spoke in support and provided background on the bill which would provide a revision of the missing persons statutes (Attachment 3).

Sandy Barnett, a proponent, reviewed the requested amendment that passed the House which concerned victims of domestic violence and sexual assault who may be fleeing for their safety (Attachment 4).

There being no further conferees, the hearing on **HB 2626** was closed.

The hearing on **HB 2704--Number of small claims procedures filings per year** was opened.

Bill Henry appeared as a proponent providing background on the bill (Attachment 5). He stated the Kansas Credit Union Association believes expanding access to the courts will be beneficial to the average citizen.

Leslie Kaufman spoke in support indicating that for several years members of the Kansas Cooperative Council have been interested in expanding the dollar amount and number of claims allowed per year for small claims (Attachment 6).

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 2, 2006, in Room 123-S of the Capitol.

Jim Clark appeared in opposition indicating plaintiffs with more than 10 claims are better served through the services of an attorney (Attachment 7). He went on to state that plaintiffs with more than 10 claims have a definite need for advice of counsel in managing accounts receivable, as well as collection of judgments awarded by the court.

There being no further conferees, the hearing on **HB 2704** was closed.

The hearing on **HB 2607--Amendments to the Kansas uniform trust code** was opened.

Randy Hearrell appeared in support and provided background on the bill (Attachment 8). Mr. Hearrell then deferred to Mark Knackendoffel to report on the study conducted by the Judicial Council (Attachment 9).

Jim Clark spoke in support of the bill (No written testimony).

There being no further conferees, the hearing on **HB 2607** was closed.

The Chairman indicated it was his intention to work all of the bills heard this week on next Monday with the possible exception of **SB 400** and **HB 2665** since he was waiting for additional information from an attorney specializing in adoption law.

Senator Journey indicated as the primary sponsor of **SB 400**, and in light of the testimony received regarding **HB 2665** he would being willing for the committee to pass over **SB 400** and deal only with **HB 2665**.

The meeting adjourned at 10:24 a.m. The next scheduled meeting is March 6, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-2-06

NAME	REPRESENTING
Tim Mcarrell	Judical Council
MARK KNACKENDOFFEL	JUDICIAL COUNCIL
JERRAD WEBB	Self
Kim Webb	Self
Rachael Brewer	Self
Doug Wareham	Kansas Bankers Assn.
Steve Prago	Kansas Bankers Assn Trust Division
JIM CLARK	KBA
Sandy Barnett	KCSDV
Jeff Bottom	American Investors Life
Elizabeth Feimer	OJA

TO: Senator Vratil

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

RE: Testimony of Rachael K. Pirner Before the Senate Judiciary Committee, March 2, 2006 at 9:30 a.m., HB 2665

- I have practiced law in Kansas for 16 years. I have practiced in the area of independent adoptions for 10 years.

- Adoption proceedings commenced in Kansas

    - 2003—1,990
    - 2004—1,946
    - 2005—2,016

- Independent Adoptions

    - Are those adoption placements made without the involvement of an agency

- Agency Adoptions

    - Usually conduct their own home studies, screen the parents and monitor placement

- An adoption requires either consent to the adoption or a relinquishment to a qualified agency.

- The vast majority of the time the sole source of the identification and whereabouts of the birthfather is based on information gathered from the birthmother. Thus, the information related to the whereabouts and

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

- Where a consent or relinquishment of the birthfather cannot be obtained due to his absence or a lack of knowledge of his identify his rights can be terminated upon the Court's finding based on clear and convincing evidence that:[1]

    - The father abandoned or neglected the child after having knowledge of the child's birth;

    - the father is unfit as a parent or incapable of giving consent;

    - the father had made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

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

    - the father abandoned the mother after having knowledge of the pregnancy;

    - the birth of the child was the result of rape of the mother; or

    - the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition.

- The "best interests" of the child is not a stated factor for the Court to consider in terminating the rights of a biological parent. *In re Adoption of S.E.B., 257 Kan. 266 (1995).*

- In granting a decree for an adoption the Court will determine the "suitability" of the prospective adoptive parents

[1] The birth father is appointed counsel in the event of termination of his rights.

- In reviewing statutes relating to the care and custody of minors, in civil proceedings, without exception this body has insisted that the "best interest" of the child be considered.

- Child in Need of Care proceedings.

    - In termination of parental rights in the context of a Child in Need of Care action the Court considers many legislatively mandated factors. Some of the factors are similar to those considered in the adoption code *but* the statute provides in part that, "[i]n considering any of the above factors for terminating the rights of a parent, the ***court shall give primary consideration to the physical, mental or emotional condition and needs of the child***." K.S.A. 38-1583(e) (emphasis added).

- Paternity

    - The Kansas Parentage Act provides that orders of custody, residency and parenting time should be ?in the best interest of the child"

- Divorce, Separation and Annulment

    - Require that the court determine custody or residency based in accordance with the "best interest of the child". K.S.A. 60-1610(a)(3).

cc: Judiciary Committee Members

LAW OFFICES OF

CRAIG & GAEDE, P.A.

617 N. Main

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JON R. CRAIG

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January 5, 2006

Honorable Gary K. Hayzlett
State Representative
Kansas State House
300 S.W. 10th Avenue
Topeka, Ks. 66612

RE: Kansas Stepparent Adoption Laws

Dear Mr. Hayzlett:

I have been asked by Jerrad Webb to write this letter concerning proposed changes to the Kansas Stepparent Adoption Law found at K.S.A. 59-2136(d). As I understand it Jerrad Webb has previously spoken with you regarding a decision in the District Court of Kearny County, Kansas where he was attempting to adopt two children which he is the stepparent of. The father of these two stepchildren is presently in prison and will be until 2010 and the District Magistrate Judge in Kearny County, Kansas, the Honorable Richard H. Hodson, denied his Petition for Adoption primarily because Kansas Case Law concerning stepparent adoptions makes it very difficult for a stepparent to adopt children when their parent is incarcerated. I will briefly restate the pertinent part of this statute and allude to the Kansas Supreme Court decisions which make stepparent adoptions extremely difficult in Kansas when the non-consenting parent is incarcerated. I will also suggest an amendment to K.S.A. 59-2136(d) which I believe will put stepparents attempting to adopt children with incarcerated parents on an even playing field with other persons attempting to adopt and make the welfare of the child of more importance than the parental rights of the incarcerated parent.

The Kansas Stepparent Adoption Statute in its present form is found in K.S.A. 59-2136(d), which states as follows:

"(d) In a stepparent adoption, if a mother consents to the adoption of a child who has a presumed father under subsection (a)(1), (2) or (3) of K.S.A. 38-1114 and amendments thereto, or who has a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the consent of such father must be given to the adoption unless such father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption or is incapable of giving such consent. In determining whether a father's consent is required under this subsection, the court may regard incidental visitations, contacts, communications or contributions. In determining whether the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption, there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support as required by judicial decree, when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent."

This language presents no problems when dealing with a parent whose consent has not been obtained and is not incarcerated. However, when the parent whose consent is not available is incarcerated the Kansas Supreme Court has determined that trial courts may not consider the failure to pay support as a failure to assume that duty of a parent. Further, the Kansas Supreme Court has construed this statute to mean that non-consenting parents must fail both the provision of support test and the parental care, love and contact test. Finally, the Kansas Supreme Court has determined in stepparent adoptions that the best interest of the child are not a factor and are subservient to the rights of the parent whose consent is not available. I will explain these statements by quoting from these various Kansas Supreme Court decisions.

The first of these cases is *In the Matter of the Adoption of S.E.B. and K.A.B., minors,* 257 Kan. 266, (1995). In that case our Supreme Court determined that:

"2. In making a determination under K.S.A. 59-2136(d) of whether consent of a parent to adoption is unnecessary for failure to assume parental duties,

neither the best interest of child nor the fitness of non-consenting parent are controlling factors in decision.

3. To apply the statutory presumption of K.S.A. 59-2136(d) the Courts are required to take into consideration the period of time that the father was incarcerated and unable to support the children."

In entering its decision the Kansas Supreme Court quoted a previous Kansas Supreme Court decision, *In re Adoption of F.A.R.*, 242 Kan. 231 (1987). In that case the father had been incarcerated during the whole two year period prior to the Petition for Adoption being filed. The Kansas Supreme Court summarized that case by stating the following:

"In determining whether the father had failed or refused to assume the duties of a parent for two consecutive years the *F.A.R.* Court observed that the best interests of the child, which is the paramount consideration in custody matters, was not controlling in determining the statutory issue of whether a natural parent has failed to assume parental duties. The Court had no doubt that the best interests of the children weighed heavily in favor of the adoption. The *F.A.R.* Court notes that it was unfortunate that the father had little concern for the children's welfare and had chosen to stand upon his legal rights, but that under our statutory scheme of adoption he had that choice. Citing *In re Adoption of Wilson*, 227, Kan. 803, 806, 610 P.2d 598 (1980). The Court observed that the fitness of the non-consenting parent was not a controlling factor under K.S.A. 1986 Sub. 59-2102(a)(3) as it would be in a proceeding to severe parental rights pursuant to K.S.A. 38-1581 *et seq.* 242 Kan. at 235, 747 P.2d 145.

The *F.A.R.* Court noted that in considering whether a non-consenting parent has failed to assume his or her parental duties for two consecutive years, all the surrounding circumstances must be considered. It pointed out that when a non-consenting parent is incarcerated and unable to fulfill the customary parental duties of an unrestrained parent, the Court must determine whether such parent has pursued the opportunities and options which may be available to carry out such duties to the best of his or her ability. It noted that a parent in prison for a long term cannot provide the customary parental care and guidance ordinarily required. It observed that if an imprisoned

parent has made reasonable attempts to contact and maintain an ongoing relationship with his or her children, it is for the trial court to determine the sufficiency of such efforts in making a determination under K.S.A. 1986 Supp. 59-2102(a)(3). (citation omitted). The *F.A.R.* Court affirmed the decision of the trial court denying the stepfather's petition to adopt."

Our Supreme Court then goes on to determine that even though the parent in that case had paid only a tiny portion of his child support and had only been incarcerated for seven months of the two year period preceding the adoption and had not made reasonable attempts to contact and maintain an ongoing relationship with his children during the time of incarceration that the trial court's decision allowing the adoption was improperly granted. In the Court's words:

"Here, father was incarcerated for seven of the twenty-four months, approximately 30% of the two year period. It is obvious from the facts that while in prison the father was not financially able to support the children. Because the fitness of the non-consenting parent and the best interest of the children are not controlling factors under K.S.A. 59-2136(d), we must find that under the circumstances the Judge improperly granted the adoption."

In a more recent adoption case, *In the Matter of the Adoption of B.M.W.*, 268 Kan. 871, (2000), the Kansas Supreme Court expanded this ruling and stated the following:

"The stepfather asserts that when amending K.S.A. 59-2136, the legislature carefully considered the affect and implications of the lack of child support. He argues that the statute establishes that both support and visitation, contacts, communications, or contributions are aspects of parental duties and failure in either aspect in a stepparent adoption may result in termination of the natural parent's rights.

The stepfather's interpretation of K.S.A. 59-2136(d) is contrary to our holding in *K.J.B.* *K.J.B.* was decided in 1998, and the legislature has not amended K.S.A. 59-2136(d) to correct a misinterpretation of the statute. When the legislature fails to modify a statute to avoid a standing judicial construction of that statute, the legislature is presumed to agree with the Court's interpretation. (See *State v. Rawlins*, 246 Kan.

466, 474, 957 P.2d 438 (1998). If we have misconceived the legislature's intent, we invite a clear expression."

The *K.J.B.* decision referred to above is cited as *In re Adoption of K.J.B.*, 265 Kan. 90, 959, P.2d 853, (1998). In that case our Supreme Court determined that a father is required to fail both the financial and affection and care interests aspects of parenting before a Court may grant a stepparent adoption petition without the father's consent. I would invite you to review this *B.M.W.* decision because it contains a lengthy analysis of legislature intent and a comparison with the Indiana Statute for stepparent adoption which does not require a father to fail both the support and care tests.

In Kansas then, we are left with a statute which allows for a Court to consider the best interests of the children and a parent's fitness in non stepparent adoptions but not in stepparent adoptions. This statute has also been construed to treat incarcerated parents in such a way that it is more difficult for a stepparent to adopt children where the non-consenting parent is incarcerated than if that person has never been incarcerated. All of this seems completely backwards. Our adoption statutes should prefer stepparent adoptions over non stepparent adoptions because of the substantial bond of the children with the stepparent. Further, parents who have made decisions which cause them to become incarcerated should not be preferred over parents who have never broken the law. Rather than make it more difficult for stepparents to adopt children of incarcerated parents our statute should make it easier. This is simply not the case in Kansas by virtue of the Supreme Court decisions when they are read in concert. Non consenting parents must fail both the care and support tests. Non consenting parents who are in prison cannot be determined to have failed the support test since they are incarcerated. Thus, an incarcerated parent can never have his or her children adopted because they cannot fail both tests. I hope you will help our legislature do something about this.

I would propose that K.S.A. 59-2136(d) have the following language added. The statute should remain as it is written with a couple of sentences added at the bottom. These sentences should be something along the order of the following:

"The failure of a father to provide a substantial portion of the child support referred to above by virtue of his incarceration for an offense for which he was

convicted shall not be sufficient to rebut the rebuttable presumption stated above. Further, failure of the father to either provide a substantial portion of child support required by Judicial Decree or perform the other duties of a parent shall be sufficient to render that father's consent unnecessary for a stepparent adoption. The Court may consider the best interests of the child and the fitness of the non-consenting parent in determining whether a stepparent adoption should be granted."

I am sure you will want to refine this language. I would refer you to the language of the Indiana Statute contained in the *B.M.W.* decision. The citation for this Indiana Statute is Section 31-3-1-6(g)(1)(1997). (Currently Ind. Code Section 31-19-9-8 [1998]).

Stepparents ought to be able 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 child. Both duties are important to children and it would seem to be impossible for an incarcerated parent to fulfill the duties of a parent and thus a stepparent adoption of a child of an incarcerated parent should be nearly automatic. This will almost always be in the best interest of the child because incarcerated parents should not be preferred. Kansas Law presently makes is nearly impossible for a stepparent to adopt the child of an incarcerated parent and this absolutely should be changed. Thank you for your attention to this and please contact me if I can answer any questions or be of any assistance.

Sincerely,

Jon R. Craig

rm
cc: Jerrad and Kimberly Webb
Ward Loyd

Senate Judiciary Committee

March 2, 2006

HB #2665

/259442

In the Matter of the Adoption of Ashton Alexander Tooley

Case No. 04-AD-230

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

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

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

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

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

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

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

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

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

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

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

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

Kansas Judiciary Committee
Re: Step-Parent Adoption

My name is Jerrad Webb and I have been happily married to my wife Kimberly for three years. In August of 2005 I filed a petition for adoption of Kim's two children conceived from a previous marriage. The children are ages seven and five and their biological father has been in jail or prison for the last 5+ years. Norman Roberts is the name of the biological father and he has fought us in the adoption of Stephen and Elizabeth. Norman has been incarcerated for numerous things a few of which are possession of methamphetamine, possession of drug paraphernalia, aggravated burglary, robbery, possession of untaxed marijuana, and criminal possession of a firearm.

Norman was ordered in the decree of divorce to pay child support. He had failed to pay any support whatsoever prior to the filing of my petition for adoption. My wife did receive a check for eight dollars after our attorney filed to sever his wages in prison. That is the only money she has ever received. Norman has sent a card to each child on their birthdays since his imprisonment and has sent one card on Christmas each year. In my opinion that is not showing very much interest in your children at all.

My petition was denied by the magistrate judge because of the Supreme Courts ruling saying that in step-parent adoptions the best interest of the children or the fitness of the parent is NOT to be taken into consideration. The only thing that is to determine whether to sever a parents rights in step-parent adoptions are whether or not they have performed the duties of a parent for two years preceding the filing of the petition. I believe that he has failed miserably to perform the duties of a parent but the Supreme Court went further to rule that since he is incarcerated he is incapable of paying support. With this ruling from my viewpoint it appears that the Supreme Court has chosen to give incarcerated parents a free pass.

It has been very frustrating for both my wife and myself that I cannot get my two step-children adopted. I am the only father that these two children know. I provide for them on every level and yet I can't give them an answer when they ask why our youngest daughter's last name is Webb and theirs isn't. It doesn't make any sense to me why the Supreme Court has chosen to give an incarcerated dead beat parent an advantage over one that is not in prison. I also do not understand why the best interest of the children is not to be taken into consideration. It is my belief that the best interest of the children should be the only concern. I love these two kids like they are my own and will continue to love them and provide for them regardless if anything changes. My biggest concern is that if something were to happen to my wife that I would have no control over what happens with them. To go a bit further it concerns me greatly that if something were to happen to both my wife and myself that their biological father that has been in prison for over five years and not seen them at all during that time would have the sole decision on where they go to live. These children have had no contact with his extended family since his incarceration and my wife's extended family is not capable of caring for them. The only logical choice would be for them to go and live with my extended family but due to the fact that I can't adopt them that is not going to be an option.

I greatly appreciate your time and consideration on this matter, not only for myself and our situation but for future step-parents that will be in the same situation.

Sincerely,

Jerrad Webb

Jerrad Webb

Senate Judiciary
3-2-06
Attachment 2

Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Senate Judiciary Committee

Testimony in Support of HB 2626

Kyle G. Smith, Deputy Director and
Vicky Harris, Missing Persons Clearinghouse Manager
Kansas Bureau of Investigation
March 2, 2006

Chairman Vratil and Members of the Committee,

We appreciate the chance to address you today in support of HB 2626, a needed revision of our missing person statutes. Rep. Morrison approached the KBI with the concerns that the department of homeland security had raised regarding the adequacy of the various states' legislation in identifying human remains. The department of justice had prepared some model legislation, which we looked at but then decided that we could incorporate the issues within the existing framework of the Kansas missing persons provisions. HB 2626 is the result or our collaboration.

Current Kansas statutes requires law enforcement officials in the state to immediately enter information on individuals reported missing, as well as information on located unidentified deceased persons, into NCIC, a national database maintained by the Federal Bureau of Investigation (FBI). This information is also electronically captured and maintained at the Kansas Bureau of Investigation (KBI), which serves as the state's central repository for missing and unidentified persons. Additional follow-up information such as dental characteristics, scars, marks, tattoos, jewelry, is expected to be entered in the NCIC database at the earliest possible time by law enforcement. In the near future, law enforcement officials will attempt to obtain additional comparison data, such as DNA samples from family members and/or from the missing person. The DNA samples will be submitted to the KBI for analysis, and information relevant to the FBI's Violent Criminal Apprehension Program (VICAP) will soon be entered into that database by the KBI.

All states currently provide missing and unidentified person information to NCIC. Each night, the FBI's system electronically compares the missing person files to the unidentified files. By comparing similar fields, such as height, weight, age, dental characteristics, etc., the FBI system generates possible matches and electronically notifies both law enforcement agencies that entered the missing person and the unidentified person, that there is a possible match between the two records, and additional communication between the two agencies may be warranted. While dental information

is very helpful, too few law enforcement agencies enter this information into the NCIC routinely. The addition of DNA analysis and comparison between missing persons and unidentified will greatly improve the matching of unidentified persons and individuals reported as missing.

As of January 26, 2006, there were 537 persons listed in NCIC/KBI's central repository as missing in Kansas. The majority of these, 426, are children under the age of 18, vulnerable and at a high risk of being harmed and exploited. Fifty of those 537 missing individuals, have been reported missing five years or longer. Kansas authorities have also located 21 unidentified deceased persons and entered their information into NCIC, dating as far back as 1973. Efforts to identify these individuals through cross matching of the NCIC missing person file have, to date, been unsuccessful. It is very possible that some of those individuals reported missing have been entered into NCIC as an unidentified person, however, there is not enough information to definitely identify the individual.

HB 2626 addresses these issues in several ways. Section one expands the mission of that KBI missing person system to clearly include unidentified persons and human remains. Section 2 updates the statute to remove references to this just being for missing kids so it would apply to all missing persons. It also sets out the duties of the law enforcement agencies, the KBI and sets out time frames to get the initial report, follow up reports and data entry done to ensure prompt handling of these cases. New section three is taken from the model act and creates a legal obligation on all legal guardians and custodians to report a missing person within 2 hours, and if located, let law enforcement know that within 24 hours. There are no sanctions to this obligation. Section 4 is also new and mandates the reception and entering of reports regarding unidentified persons or human remains. It also sets out the procedure and duties for handling remains and when (If not identified, after 30 days) DNA testing will be obtained and submitted. Again this is to clarify duties and procedures for tying together the missing and the unidentified. Section 5 broadens the KBI's duties in running the missing persons clearinghouse by including missing persons (not just children) and unidentified human remains.

The house amendments were to clarify that a person who is avoiding an abusive relationship would not be 'outed' by the abuser using the missing person system and a technical amendment suggested by the coroners to clarify simpler methods for identification should be tried before more expensive methods such as DNA are involved.

HB 2626 is not a pleasant topic, but it could be an important one. This bill will aid in the timely collection and sharing of relevant information on missing and unidentified persons. We'd appreciate your serious consideration.

Kansas Coalition Against Sexual and Domestic Violence

UNITED AGAINST VIOLENCE

634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

House Bill 2626
March 2, 2006

Chairman Vratil and Members of the Senate Judiciary Committee;

After reviewing HB 2626, KCSDV requested the amendment that passed from the House because of our concern for victims of domestic violence and sexual assault who may be fleeing for their safety.

Abusers are extremely adept at figuring out how to get the system to help them locate their victims. Even twenty-five years ago when I first became an advocate on behalf of victims at a domestic violence shelter, we received calls from the law enforcement agency looking for someone who an abuser had reported as missing. We had an arrangement with law enforcement that we would notify them if there were no longer any need to look for the reported person because we could verify they were safe. The law enforcement agency would report to the abuser only that they had reason to believe the missing person was safe but their location was unknown. Without the amendment, HB 2626 would compromise these arrangements between community sexual assault and domestic violence programs and their local law enforcement agencies. KCSDV believes the amendment does not alter the intent of HB 2626, but will allow an exception to information-sharing when it is in the safety interests of victims.

KCSDV continues to support HB 2626 as amended.

Submitted by,

Sandy Barnett
Executive Director

Senate Judiciary
3-2-06
Attachment 4

TESTIMONY
FOR THE
SENATE JUDICIARY COMMITTEE
March 2, 2006

Mr. Chairman, members of the committee, I am Bill Henry, Director of Governmental Affairs for the Kansas Credit Union Association. I appear before you today as a proponent of HB 2704.

In 2004 the legislature last amended the small claims act, increasing the maximum jurisdiction amount for this citizens court to $4,000. At that time there was discussion about increasing the number of claims that could be filed in a calendar year by a person in the small claims court. The current number, ten, has been the limit since the 1973 creation of the small claims court.

Each district court has its own way of handling small claims. In some counties magistrate judges deal with these matters and in other counties local lawyers are assigned on an adjunct basis to handle these citizen courts.

The Kansas Credit Union Association believes expanding the number of times a person may file a small claims case in a calendar year provides more access to the courts to the average citizen.

We hope the committee will agree with our view on expanding this access to our courts and recommend HB 2704 favorably.

Respectfully Submitted,

Bill Henry, KCUA Director of
Governmental Affairs

Senate Judiciary
3-2-06
Attachment 5

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

Senate Judiciary Committee

March 2, 2006

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

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

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

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

This issue is important to our members and one we have worked on for many years. We would certainly like to see our goal for increasing the limit become a reality this session. As such, we respectfully request the committee act favorably on this measure. Thank you.

KANSAS BAR
ASSOCIATION

Testimony in Opposition to

House Bill No. 2704

Senate Judiciary Committee March 2, 2006

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

The Kansas Bar Association has a long-standing policy against the expansion of small claims court jurisdiction, both as to maximum jurisdictional amount and to the number of claims allowed. **House Bill ~~2707~~** 2704 is contrary to KBA policy because it increases the number of claims that may be filed by 100%. This large increase in claims allowed is a significant departure from the original intent of a small claims court. The small claims procedure in Kansas is nicely summarized in Attorney General Opinion 1995-100:

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

The Kansas Bar Association submits that with the increase in jurisdictional amount to $4000, attorneys are not only affordable, but that any person or business with more than 10 claims in such amount is much better served through the services of a competent attorney. Our concerns are not the prospect of lost business for our members, but out of concerns for the parties to small claims litigation. For plaintiffs with the need to file 20 small claims actions a year, there is a definite need for advice of counsel in managing accounts receivable, as well as collecting on the judgment after it is awarded by the court. For defendants, especially small businesses that have an attorney on retainer, the bill increases the number of times owners must take from their business in order to appear in court, without the services of their attorney.

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

* * *

Senate Judiciary
3-2-06
Attachment 7

MEMORANDUM

TO: **Senate Judiciary Committee**

FROM: **Judicial Council - Randy M. Hearrell**

DATE: **March 2, 2006**

RE: **Judicial Council Testimony on 2006 HB 2607**

HB 2607 contains proposed amendments to the Kansas Uniform Trust Code. The primary reasons for adoption of the UTC were to:

- codify existing trust law,
- reduce the need to resort to court proceedings to resolve trust administration issues and conflicts, and
- enhance the rights of trust beneficiaries to protect their beneficial interests.

The UTC became effective in Kansas on January 1, 2003. After the 2005 legislative session, the Judicial Council was requested by the House Judiciary Committee to study HB 2435 which proposed several amendments to the Kansas Uniform Trust Code. During the study the Judicial Council Probate Law Advisory Committee also considered proposed amendments from the Trust Division of the Kansas Bankers Association. In addition, the Committee considered amendments to 15 sections of the UTC proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). These are official amendments that are now considered to be a part of the Uniform Trust Code.

Various professional groups dealing who have experience with the UTC have proposed improvements to the Code. These professionals included the PLAC, Kansas Bankers Association Trust Division, Kansas Bar Association, and the National Conference of Commissions on Uniform State Laws. These proposed improvements include technical corrections, clarifications and policy changes that have received broad support. The bill before you is the culmination of these efforts to improve the UTC in Kansas. A number of the provisions of HB 2607 are being proposed to conform Kansas law with the changes that have been adopted in the uniform act.

COMMENT TO SECTION 1

Both NCCUSL and the Bar recommend subsection (10), relating to the power of withdrawal, be revised to specifically exclude exercise by a trustee. This avoids the failure of a trustee to make a distribution from constituting a lapse of a "power of withdrawal" under K.S.A. 58-505(b)(2), thereby subjecting the assets subject to the lapsed power to the claims of the trustee's creditors.

The PLAC adopted the amendment proposed by the Uniform Law Commissioners. Because the amendment includes the phrase "ascertainable standard" the meaning of that phrase is included in the subsection, which is the only place in the code the phrase appears.

Both NCCUSL and the Bar recommended amendments to subsection (12), which defines "Qualified Beneficiary". The changes proposed by the Judicial Council Committee generally follow the recommendations of the Bar.

Currently subsection (12) defines "qualified beneficiary" to include not only current distributees but also a distributee of trust income or principal, if the trust terminated on that date. The current provision raises an issue as to the trustee's burden to determine whether such power has been exercised, thereby changing qualified beneficiaries.

The provision is amended to place the burden of informing the trustee of any exercise of a non general power of appointment on the power holder. The change also avoids the trustee having to notify a remainder beneficiary that such beneficiary has been disinherited by the exercise of a power of appointment, in circumstances where the power holder does not wish the remainder beneficiary notified.

In subsection (12)(a), the PLAC changed the word "distributee" to the phrase "entitled to receive distributions". The purpose of the change is to clarify that a person is a "qualified beneficiary" only if the trustee is required to make distributions to that person.

COMMENT TO SECTION 2

Both NCCUSL and the Bankers proposed amendments to subsection (b)(2) to make it consistent with section 801 (K.S.A. 58a-801). The PLAC took the approach of amending the subsection to refer to K.S.A. 58a-801 to avoid repeating the same language at two places in the Code.

COMMENT TO SECTION 3

The new language in subsection (b) was proposed by the Bankers. The new language gives guidance to the duty stated in the first sentence of the subsection.

The Bankers proposed striking the first sentence of the subsection, but the PLAC did not agree. The PLAC did strike the word "continuing" in the first sentence because it is unnecessary.

COMMENT TO SECTION 4

NCCUSL, the Bar and the Bankers all proposed amendment to clarify the intent of subsection (a). The effect of all the proposals is to exclude charitable organizations, which hold only remote remainder interests, though they are named in the terms of the trust.

The amendment proposed was prepared by the Bankers, and the PLAC Committee is of the opinion it more clearly states the intent of the subsection. The language stricken in subsection (a) had a similar intent but could have been read more broadly.

COMMENT TO SECTION 5

Subsection (b) is amended as recommended by the Bankers. The language stricken ", any matter involving a trust" is inconsistent with subsection (d).

COMMENT TO SECTION 6

Changes were proposed to subsection (a) by both NCCUSL and the Bar. While the changes were different in their approaches, both dealt with the problem of the unintentional inclusion of the trust estate in the settlors taxable estate.

In the comments to the NCCUSL proposal several options are discussed to amend subsection (a). The PLAC has chosen language proposed by the Uniform Law Commissioners which makes the subsection prospective and applicable only to irrevocable trusts created on or after the effective date of the Code or to revocable trusts that become irrevocable on or after the effective date of the Code.

COMMENT TO SECTION 7

The proposed amendment to subsection (a) was suggested by the Bar. The amendment is intended to clarify that the provisions of trusts which can be merged or divided under this provision do not have to be identical, if the interests of each beneficiary is substantially unchanged by the division or merger. Similar language was included in Missouri's version of the UTC, which was enacted in 2004.

COMMENT TO SECTION 8

The amendment to this section was proposed by NCCUSL and is not intended to be substantive.

COMMENT TO SECTION 9

New subsection (a) adds a definition of "mandatory distribution". No change in substance is intended by the amendment. The amendment clarifies that a mandatory distribution is to be understood in its traditional sense, such as provisions requiring that the beneficiary receive an income or receive principal upon termination of the trust.

The Bankers suggested that if the amendment is adopted, the sections headnote should be changed from "Overdue distribution" to "Overdue mandatory distribution".

COMMENT TO SECTION 10

Amendments were proposed to this section by NCCUSL, the Bar and the Bankers. This section generally provides that while a trust is revocable, all rights that the trust's beneficiaries would otherwise possess are subject to control of the settlor. However, the settlors control is negated if the settlor is incapacitated. Concern has been expressed that the section prescribes a different rule for revocable trusts than for wills, and that the rules should be the same. In its 2004 amendments, NCCUSL made the language relating to the incapacity limitation optional.

The Bar proposed striking the phrase "and the settlor has the capacity to revoke the trust". The PLAC agreed that phrase should be stricken and further amended subsections (a) and (b) for simplicity and clarity.

In addition the Bar proposed a number of additional subsections which relate to procedures to be followed if the settlor of a revocable trust is, or becomes, disabled. The PLAC approved the Bar's proposals, with minor editing and reorganization.

In subsection (c)(1) the phrase "incapacitated person" is used, it is defined at K.S.A. 2004 Supp. 77-201(31).

While approving of the changes in subsections (b),(c) and (d), it is the position of the Bankers that subsection (a) should not be amended.

COMMENT TO SECTION 11

Both NCCUSL and the Bar recommend this section of the Code be amended. The PLAC approved the change proposed by the Uniform Law Commissioners.

Subsection (f) creates an exception to the prohibition on self-dealing for certain investments in mutual funds in which the trustee, or its affiliate, provides services in a capacity other than as trustee. As originally drafted, Section 802(f) provided that the exception applied only if the investment complied with the Uniform Prudent Investor Act and the trustee notified the qualified beneficiaries of the additional compensation received for providing the services. However, the

Uniform Prudent Investor Act itself contains its own duty of loyalty provision (Section 5), thereby arguable limiting or undoing this exception to the UTC's loyalty provision. The amendment, by providing that the investment does not violate the duty of loyalty under the UTC if it "otherwise" complies with the Uniform Prudent Investor Act, is intended to negate the implication that the investment must also comply with the Uniform Prudent Investor Act's own duty of loyalty provision.

COMMENT TO SECTION 12

Amendments to this section were proposed by NCCUSL, the Bar and the Bankers.

Subsection (b)(1) previously required a trustee to send a copy of the trust instrument to all qualified beneficiaries who requested it. The section was amended to limit this duty to permit the trustee to provide only those portions of the trust instrument that relate to the qualified beneficiary's interest in the trust. This provision allows the trustee to protect the privacy of other provisions of the trust instrument that are unrelated to the interests of the qualified beneficiary who requested a copy of the trust instrument. This change was primarily drafted to limit disclosure to legatees and devisees, who typically have no beneficial interest in distributions to other legatees or devisees or in the residue of the trust.

The PLAC restructured former subsection (c) by splitting it into a new subsection (b)(5) and a new subsection (e). Subsection (b)(5) defines a trustee's duties with respect to sending annual trust reports to qualified beneficiaries. New subsection (e) defines a trustee's duties with respect to sending trust reports upon the termination of a trust. The PLAC created a separate subsection because the types of information that should be sent to qualified beneficiaries in these two circumstances are quite different.

Subsection (b)(5) also changes which qualified beneficiaries must receive annual trust reports and the types of information that must be included in the trust reports. Qualified beneficiaries who have actually received a distribution will continue to automatically receive an annual trust report that covers the period in which the beneficiary received the distribution. In addition, any qualified beneficiary who would have been eligible to receive a distribution, but did not receive such a distribution (usually a discretionary distribution) could request a copy of the trust report. The PLAC believes that this provision will limit the mailing of trust reports to beneficiaries who have only remote interests in the trust, but still allows them the opportunity to obtain the information necessary to protect their interests.

As amended, subsection (b)(5) limits the trustee's duty to provide the trust's investment rate of return. Formerly, a trustee was obligated to provide a rate of return that complied with the standards established by the Association of Investment Management and Research (AIMR). This section now requires the trustee to disclose whether or not the reported return calculation complies with AIMR standards. The PLAC believes that mandating AIMR-compliant returns would be burdensome to trustees, particularly individual trustees.

New subsection (e) defines the requirements for sending trust reports upon termination of a trust. The only substantive change is to limit the transactions disclosed in the trust report to

receipts and disbursements that occurred after the event that caused the termination of the trust, typically the death of a settlor. The PLAC believes this enables the trustee to protect the privacy of the settlor regarding transactions prior to his or her death. In the event that a qualified beneficiary questions any transactions by a trustee prior to such termination event, the beneficiary may seek disclosure through a judicial proceeding.

References to "permissible current distributee" throughout Section 813 were removed because the PLAC believes it is redundant. Permissible current distributees is a class of beneficiaries that is included in the definition of "qualified beneficiaries" in Section 103(12). Subsection (f), which defined permissible current distributee is stricken.

A key issue considered by the PLAC is this section's retroactive application to pre-existing trust instruments. Despite proposals by NCCUSL the Bar and the Bankers to limit the section's retroactivity, the PLAC declined to adopt these proposals. The primary rationale is that, upon adoption of the UTC in Kansas as of January 1, 2003, the entire act was made retroactive, and to now apply a different set of rules after three years would create confusion in the law.

COMMENT TO SECTION 13

Both the Bar and the Bankers recommended modifying subsection (b) to provide that if a settlor was represented by an attorney not employed by the trustee, a provision exculpating the trustee from liability would not have to be determined "fair under the circumstances" and adequately communicated to the settlor to be given efficiency. The PLAC agreed.

Senate Judiciary Committee

Hearing on HB 2607

March 2, 2006

Testimony of Mark Knackendoffel

Representing the Probate Law Advisory Committee of the Kansas Judicial Council

I am testifying in support of HB 2607 on behalf of the Probate Law Advisory Committee (PLAC) of the Judicial Council, of which I am a member. I am also a member of the Kansas Bar and have worked as a Trust Officer for 23 years with my current position as President of The Trust Company of Manhattan.

This bill is an amendment to the Uniform Trust Code. The primary reasons for adoption of the UTC were to:

- codify existing trust law,
- reduce the need to resort to court proceedings to resolve trust administration issues and conflicts, and
- enhance the rights of trust beneficiaries to protect their beneficial interests.

The UTC became effective in Kansas on January 1, 2003. You may also recall that Kansas was the first state in the country to adopt the UTC.

Soon after its adoption in Kansas, various professional groups dealing with the UTC began to propose improvements to the Code. These professionals included the PLAC, Kansas Bankers Association Trust Division, Kansas Bar Association, and the National Conference of Commissions on Uniform State Laws (NCCUSL). These proposed improvements included technical corrections, clarifications and policy changes that would receive broad support. The bill before you is the culmination of these efforts to improve the UTC in Kansas.

Most of the provisions of the bill are being proposed to conform Kansas law with the changes that have been adopted in the uniform act. Incidentally, the uniform act already includes a number of other changes that were first instituted by Kansas in its original statute, which were then incorporated into the uniform act by the NCCUSL.

Following the introduction of the HB 2607, it was again reviewed by the Kansas Bankers Association Trust Division and they proposed some final edits. The version of HB 2607 before you today reflects those those edits, along with several edits inserted by the House Committee. These edits have also been reviewed by the PLAC and have its full support.