Approved: February 3, 2009
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:30 a.m. on January 21, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:
Karen Clowers, Administrative Assistant
Athena Andaya, Kansas Legislative Research Department
Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the committee:
Senator Jim Barnett
Karey Sprowson
Ronald W. Nelson, Kansas Bar Association

Others attending:
See attached list.

Bill Introductions
Tim Madden, Kansas Department of Corrections, requested the introduction of a bill which would authorize the Secretary of Corrections to enter into contracts with private entities for the repair of rental property damaged by tenants who were under the release supervision of the department. The bill was introduced without objection.

Susan Kang, Kansas Department of Health and Environment, requested the introduction of two bills. The first bill pertains to background checks for the Center for Health and Environmental Statistics (CHES). The second bill addresses a conflict in the statutes regarding quarantine and isolation The bills were introduced without objection.

Chairman Owens opened the hearing on **SB 27 - Presumption of paternity; genetic testing.**

Senator Jim Barnett appeared in support as sponsor of the bill. (Attachment 1).

Karey Sprowson testified in support of **SB 27** relating her personal experience under the current law. Mrs. Sprowson stated her family faced a financial hardship due to the burden of supporting a child her husband did not father. (Attachment 2)

Ronald W. Nelson appeared in opposition, indicating that while the incident described by Mrs. Sprowson is regrettable, the bill would be bad for Kansas. The Kansas Supreme Court decided when faced with an assertion that a child is not the child of a "presumptive father," a trial court must first decide whether it is in the child's best interest to allow genetic testing. The rational behind this rule is the idea that at some point in time, it is not in the child's best interests to question the parental connection; that at some point, a connection has been established and should not be disturbed. **SB 27** seeks to undo the delicate balance crafted by the Court in *In re Marriage of Ross*. It does not consider the age of the child, the relationship between the child and father, or the effects of the request on the child by allowing a man to renounce his fatherhood merely because of biology. Mr. Nelson stated the bill prohibits the courts from protecting the child. (Attachment 3)

Neutral written testimony was submitted by:
Don Jordan, Secretary, Kansas Department of Social and Rehabilitative Services (Attachment 4)

There being no further conferees, the hearing on **SB 27** was closed.

The hearing on **SB 18 - The crime of deprivation of rights under color of law** was opened.

Senator David Haley spoke in support as sponsor of the bill. Senator Haley stated the bill was designed to root out and properly punish those who harm others under the protection of the law by abusing their authority.

This bill will provide the general public an increased level of trust that those in authority will not abuse their power. (Attachment 5).

There being no further conferees, the hearing on **SB 18** was closed.

Approval of Minutes

Senator Schodorf moved, Senator Lynn seconded, to approve the Judiciary Committee Minutes of January 13 and January 14. Motion carried.

The next meeting is scheduled for January 21, 2009.

The meeting was adjourned at 10:19 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-21-09

NAME	REPRESENTING
Joe Mosimann	Hein Law Firm
Karey Sprowson	Testimony
Larry Githerman	
Jamie Corkhill	SRS
Tim Madden	KDOC
Nancy Zogleman	Polsinelli
Jeremy S Barclay	KDOC
Susan Kang	KDHE
Ronald Nelson	Testimony
Whitney Damron	KS Bar Assn.
Joseph N. Molina	KS Bar Assn
Sean Miller	Capitol Strategies
Lane Welch	Jud. Branch
Andrew Holmes	Senator Bruce (Intern)
Franklin Dee Williams	SELF
Darian Dernovish	KHP
Bryan Dykman	Intern - Senator Hensley
Sister Therese Bangert	Ks. Cath. Conf.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-21-09

NAME	REPRESENTING
Tom Bruno	Bruno & Associates
April Holman	Kansas Action for Children
Andy Schlapp	WSU

STATE OF KANSAS

JIM BARNETT
SENATOR, 17TH DISTRICT
CHASE, COFFEY, GREENWOOD
LYON, MARION, MORRIS, AND OSAGE
COUNTIES

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIR: PUBLIC HEALTH AND WELFARE
CHAIR: KANSAS HEALTH POLICY OVERSIGHT COMMITTEE
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS AND INSURANCE
ORGANIZATION, CALENDAR AND RULES

TESTIMONY FOR SENATE JUDICIARY COMMITTEE
9:30AM - WEDNESDAY, JANUARY 21, 2009
SENATOR JIM BARNETT

SB 27 - Presumption of paternity; genetic testing.

Chairman Owens and other honorable members of the Senate Judiciary Committee, thank you for the opportunity to testify in support of Senate Bill 27. Last year, I was contacted by Karey Sprowson related to her concern about child support and paternity hearings that required payment by her husband, Master Sergeant Christopher Sprowson. Master Sergeant Sprowson has been in the Army approximately 19 years and currently serves outside Baghdad at Camp Liberty.

I would ask that his wife, Karey Sprowson, present the main testimony and story today to help you understand our concerns and why we are requesting this legislation.

I would also like to recognize Colonel Larry Githerman, retired from the US Army and Karey's father, who is here today in support of Karey.

Thank you for your consideration of this legislation.

Senator Jim Barnett

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Senate Judiciary
1-21-09
Attachment 1

TESTIMONY FOR SENATE JUDICIARY COMMITTEE
Wednesday, January 21, 2009
Karey Sprowson

I want to thank you, Mr. Chairman, and the committee for this opportunity to appear and speak today. I am here to address a significant issue for not only for my family, but for many families throughout Kansas.

I am here today representing my husband, a soldier from Fort Riley, currently on his third tour to Iraq. We have three young children, named Jordan , Joshua and Jadeyn. My husband has been in the Army for almost 19 years, and I am a stay-at-home mother. It is important to our family that I am able to stay at home and raise our children, especially because of my husband's career.

In 1995, my husband was married to a woman who had an affair. She became pregnant and had a son. Shortly after they divorced, DNA testing revealed my husband is not the child's father.

During my husband's second deployment to Iraq, he received a judgment against him for child support. I sent the SRS attorney copies of the DNA paperwork showing he was not the child's father. Shortly after he returned from Iraq, judgment was again sent to him. He was told that under the current Kansas law, he was the "presumed father," even though he had scientific evidence that showed he did not father the child. He was then ordered to pay child support. He was also ordered to pay back child support which has put him several thousand dollars in arrears.

This order adversely affects our ability to provide for our family and impacts upon our three children. Having the financial responsibility for a child who my husband did not father makes it difficult. For example, our family like many, live on one income. We don't have money left over to put aside for emergencies or save for our childrens' future. Our savings account has been depleted, and we depend on sources like our tax return to handle emergencies or pay bills. Recently, I have been informed that child support will be taking our tax return this year to pay for the arrears that were accrued while our case was ongoing in court.

I do believe that every child has the right to be supported. However, in all fairness, it should not come at the cost of victimizing another family. The current law only adds to the victims.

Other states have established new paternity laws, such as Ohio, Georgia, Colorado, Florida and many others. For example, Georgia's law HB369, Act 768 says that:

"In any action in which a male is required to pay child support as the father of a child, a motion to set aside a determination of paternity may be made at any time upon the grounds that the results from genetic testing find that the male ordered to pay child support is not the father of the child."

I ask that you consider amending the current Kansas paternity laws, so that no more families are victimized as we have been.

Again, thank you for this opportunity in allowing me to share my family's story with you and the impact that this has had on us.

KANSAS BAR ASSOCIATION

Testimony of Ronald W. Nelson
On behalf of the Kansas Bar Association
Before the Senate Judiciary Committee
SB 27
January 21, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear on behalf of the Kansas Bar Association in opposition to Senate Bill 27. My name is Ronald W. Nelson and I practice family law in Johnson County, Kansas and throughout the State of Kansas. I have practiced family law for over 25 years focusing my practice on complex issues in that area. My clientele is fairly split between men and women. Over those now many years, I've often had to wrestle with the difficult issues that arise when the family dynamics and existing practices of sharing a child's custody are disrupted.

Twenty years ago, the Kansas Supreme Court decided *In re Marriage of Ross*, 245 Kan. 591, 602, 783 P.2d 331 (1989). That case determined that when faced with an assertion that a child is not the child of a "presumptive father," the trial court must first decide whether it is in the child's best interests to allow genetic testing. The trial court is charged with determining what would serve the best interests of the child by analyzing all the various factors that may impact the ultimate determination of parentage to "ensure that the legal obligations, rights, privileges, duties and obligations incident to the mother/child relationship and the father/child relationship are carried out." *In re Marriage of Ross*, 245 Kan. 591, 595, 783 P.2d 331 (1989). The rationale behind this rule is the idea that at some point in time, it is not in the child's best interests to question the parental connection; that at some point, regardless whether a man is not biologically that child's

parent, a connection has been established that should not be disturbed – either by the court deciding that another man is the biological parent or that the possibility of making that question less uncertain is in the child's – or the parents' – best interests.

Senate Bill 27 seeks to undo the delicate balance crafted by the Court in *In re Marriage of Ross*. Instead of focusing on the child's best interests, Senate 27 seeks to gives to a man who wants to question his parentage the absolute right to have that issue addressed. This bill does not consider the age of the child; it does not consider the relationship between the child and the father; it does not consider the motivations behind the request; it does not consider the effects of the request on the child, the mother, or the father himself. This bill provides no option for a trial judge to disallow genetic testing when that request is selfish, hateful, manipulating, or suggested merely upon the possibility that the man requesting it is acting purely out of concern for money rather than anything else. This bill has no limitations – excepting reliance on the good graces of those given the power to demand genetic testing that the power won't be abused.

This bill allows a man to renounce his fatherhood merely because of biology. This bill allows a man to potentially relieve himself of any further (and presumably past) payments and obligations for the support of a child who is then without a father.

The proponents may say that this bill allows only that a man suspecting he is not the father of a child to have a court order genetic testing to see if he is the biological father of that child. But that is the very problem with this bill. What are the involved parties and the court to do when "the cat is out of the bag?" What are the effects on the child – and the family – when a child previously thought to be the child of this father and this mother is not? Who suffers? Is it the now *former* father? Is it the mother? Or is it the child?

The proponents of this bill assert that a man who has been lured into wrongly believing that he is the biological father of a child should have the absolute right to protect himself by having the

ability to demand that a court allow him to find out. And certainly, it seems unjust for anyone to have to pay money because of fraud and willful deceit.

The problem is, however, that this bill is not directed towards that situation and, for all its supposed "righting" of a bad situation, this bill instead, upsets a balance given to an independent arbiter and gives power only to one person – at the potential expense of so many others. This bill allows a man to strip his child of a father – whether actually or psychologically – perhaps only because that man hates the child's mother and wants to hurt her with claims that she "slept around"; perhaps only because there is bitter divorce battle in process between the mother and the father and the father believes that he can "win" something or another merely by "claiming" he is not the father; perhaps the father has problems or issues with the child and he wants to hurt the child – because this bill is not limited to any particular aged child or any particular situation; or, perhaps, this will be used by a man who knew that in continuing with his relationship with the mother, she was bearing another man's child, but now he has an opportunity to get out of his own self-assumed responsibilities. This bill does not provide the court any out in those situations. In fact, this bill prohibits the court from considering the appropriate result in those situations.

This bill prohibits the courts from protecting the child -- and gives all power to the man who, it is possible, is a victim but also possibly is using this to abuse, manipulate, and hurt the mother -- with dire consequences to the child(ren).

I don't have solutions for this committee to the problems in this area. The problems are complex and vexing. But the way in which they are solved is *not* by ignoring a child's best interests. While judges deciding these issues are certainly not infallible, the balancing test that the Kansas courts have imposed in these cases is a much better solution that giving anyone an absolute right to their own desires.

Thank you.

KANSAS
DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Kathleen Sebelius, Governor
Don Jordan, Secretary

www.srskansas.org

January 20, 2009

The Honorable Tim Owens
Chair, Senate Judiciary Committee
536-N
300 SW 10th Street
Topeka, KS 66612

RE: Senate Bill No. 27

Dear Chairman Owens,

I would like to offer a few comments concerning Senate Bill 27, which would amend the Kansas Parentage Act. If enacted, this legislation will affect the Child Support Enforcement program, administered under Title IV-D of the Social Security Act.

The historical presumption of parentage based on marriage is generally good for children, as are the other presumptions of parentage contained in K.S.A. 38-1114. Consequently, Kansas common law provides that, before pursuing the question of paternity where there is a presumed father, the court must first consider the best interests of the child if the child was born of a marriage or has emotional ties to the presumed father.

It is widely recognized that extramarital involvements strain and complicate the emotional relationships within families, and there is no longer one single definition of what is in a child's best interests. Children are not insulated from emotional upheavals between their parents; that is one factor in deciding where the child's best interests may lie. The ability to perform accurate and inexpensive genetic testing is also having an impact on the decisions we see when courts rule upon the child's best interests. Judges frequently do find that a paternity determination will be in the child's best interests, whether because the child is already aware of the dispute and is best served by a clear resolution or because the child is still very young and has not bonded deeply with the presumed father.

As introduced, new subsection (g) will prohibit judges from considering the best interests of the child when deciding whether a paternity case should proceed, no matter how the litigation will affect the child at the heart of the case. SRS believes that current law fairly addresses and balances the wide range of interests involved, while keeping the well-being of the innocent child in focus.

Should the committee decide to advance this bill, however, there are three technical issues we would ask to have corrected:

- First, the amendment in subsection (e) creates confusion concerning the finality of support orders based on a presumption. Unless paternity is raised as an affirmative defense, Title IV-D states that presumed parentage must be sufficient basis for establishing a child support order without further litigation concerning paternity; subsection (e) as it exists addresses that federal requirement. While the new language added to (e) clouds the meaning of that subsection, it is not essential in order to give effect to new subsection (g). In fact, it can only have meaning if the test results and the judge's subsequent ruling pursuant to (g) are in conflict with a support order under (e). We recommend that the amendment in (e) be omitted.

- Second, subsection (g) as introduced would apply to any presumption arising under K.S.A. 38-1114, including a voluntary acknowledgement under subsection (a)(4), and it would apply "Notwithstanding any other law to the contrary...." Title IV-D, however, specifies the limited conditions under which a written voluntary acknowledgement of paternity may be challenged; those specifications are covered by K.S.A. 38-1115(e). We are concerned that enactment of S.B. 27 as introduced would put Kansas out of compliance with Title IV-D state plan requirements. We believe the introductory clause in (g) is unnecessary to give full effect to the policy proposed, and recommend that, if the bill moves forward, "Notwithstanding any other law to the contrary" be replaced with "Subject to the provisions of K.S.A. 38-1115(e)" to assure continued compliance with Title IV-D requirements.

- Finally, we believe that the current wording of the final sentence of subsection (g) would have unintended consequences. It appears that the purpose of that sentence is to provide finality for orders where the child has already turned 18. However, the current wording would allow parentage to be challenged at any time, not just during minority, for all children who turn 18 on or after July 2, 2009. If it is the decision of the committee to move this bill forward, we urge you to replace the final sentence of subsection (g) with the following, "The provisions of this subsection shall apply only until the child attains 18 years of age."

Current Kansas law concerning children who were born of a marriage or have strong emotional ties to the presumed father, which places the best interests of the child in the forefront, is good public policy. If, however, this bill is moved forward, SRS requests your consideration of the three changes outlined above. CSE staff will attend the hearing on January 21, in case there are any questions.

Sincerely,

Don Jordan
Secretary

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SENATE CHAMBER

DAVID B. HALEY
SENATOR
DISTRICT 4
WYANDOTTE COUNTY

SENATE BILL 18 1/21/2009

DEPRIVATION OF RIGHTS UNDER COLOR OF LAW

TO : Hon. Tim Owens, Chair ; Hon. Derek Schmidt, Vice-Chair & Members

KANSAS SENATE JUDICIARY COMMITTEE

Mr. Chairman and Members of the Committee. Thank you for holding a hearing on SB 18.

Senate Bill 18 creates the crime of deprivation of rights under color of law.

As in the case of other measures that I have supported in the Legislature designed to root out and properly punish the "latent predators" that lurk in our and many societies, it is my strong belief that we need to protect the general public from these rare, but alarming, accounts of abuse by law enforcement officers, on duty or off-duty, who are sworn to "serve and to protect" not "flash a badge and harm." Intentionally depriving a citizen of his or her rights by acting or purporting to act under the color of any law, statute, ordinance, etc., though already a violation of both the US Constitution and Kansas state law, has no clear penalty and SB 18 defines, delineates and establishes penalties for the degree of crimes. Language in SB 18 is Model Bill language being considered in other States, as well.

According to the National Conference of State Legislatures, several States have enacted similar provisions to acknowledge that there are those we entrust to wear a shield who do hide behind it to commit an offense by inducing a party to waive a civil right of person or of property; mistakenly believing that a police officer should always be obeyed without resistance. And while our law enforcement is exemplary, I urge the Committee to act favorably on SB 18 in an attempt to underscore the trust in the general public. Hopefully upon its passage, this law would be used sparingly; its very existence and rare implementation serving as a sufficient deterrent.

Thank you again, Mr.Chairman; Members.

At the appropriate time, I would stand for questions.

COMMITTEE ASSIGNMENTS
ASSESSMENT & TAXATION
JUDICIARY REAPPORTIONMENT
PUBLIC HEALTH & WELFARE
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Attachment 5