

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairman Derek Schmidt at 9:35 a.m. on February 16, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Tim Owens- excused
Senator Jean Schodorf- excused

Committee staff present:

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

Conferees appearing before the committee:

Capt. Bob Keller, Johnson County Sheriff's Dept.
Midge Grinstead, Lawrence Humane Society
Sandy Barnett, Kansas Coalition Against Domestic and Sexual Violence

Others attending:

See attached list.

The Vice Chairman opened the hearing on **SB 238 - Cockfighting, unlawful acts, asset forfeiture.**

Capt. Bob Keller testified in support indicating thirty-seven states including those contiguous with Kansas have defined cockfighting as a felony. Due to the small risk of a jail sentence and relatively small fines Kansas is in danger of becoming a destination state for cockfighting. Capt. Keller provided the Committee with examples of razors and ice-pick style instruments used to augment the harm inflicted during fights and ultimately cause death of the game cock. ([Attachment 1](#))

Midge Grinstead spoke in favor stating the penalties for cockfighting in Kansas are particularly weak, and as a result there is an increase in the crime. Cockfighting is a lucrative business involving large amounts of cash and offenders go jurisdiction shopping looking for states with the weakest penalties. Ms. Grinstead encouraged the enactment of **SB 238** which would raise the penalty to a felony crime. ([Attachment 2](#))

There being no further conferees, the hearing on **SB 238** was closed.

The Vice Chairman re- opened the hearing on **SB 88 - Children; permanency and priority of orders.**

Sandy Barnett appeared in opposition indicating her concern that **SB 88** will have huge negative consequences for children living in a home where domestic violence is present. ([Attachment 3](#))

Judge Jean Shepherd was called upon to answer additional questions regarding the bill.

Comments and a proposed balloon amendment by Don Jordan, Secretary, Department of Social and Rehabilitation Services was submitted to the Committee. ([Attachment 4](#))

There being no further conferees, the hearing on **SB 88** was closed.

The Vice-Chairman called for final action on **SB 87 - Agencies; disclosure of certain records; administrative procedure; judicial review.** Jason Thompson, staff revisor, reviewed the bill and noted additional comments submitted by Judge Steven Leben regarding questions raised during the hearing on February 4. ([Attachment 5](#))

Senator Vratil distributed a balloon amendment regarding additional language clarifying Section 20 on page 19 to further narrow and elaborate on a summary procedure. This amendment will tighten up the qualifications for summary procedure and list specific categories which must occur to justify summary procedure. ([Attachment 6](#))

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on February 16, 2009, in Room 545-N of the Capitol.

Senator Vratil moved, Senator Kelly seconded, to amend **SB 87** as reflected the balloon amendment. Motion carried.

Senator Donovan moved, Senator Bruce seconded, to strike the language on page 7, line 24, “when the release” and all of lines 25 and 26. Motion carried.

Senator Bruce moved, Senator Vratil seconded, to amend **SB 87** on page 13, line 41, with new language “requiring confidentiality” to come before “expressly authorizing disclosure.” Motion carried.

Senator Bruce moved, Senator Vratil seconded, to recommend **SB 87** as amended, favorably for passage. Motion carried.

The next meeting is scheduled for February 17, 2009.

The meeting was adjourned at 10:35 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/16/09

NAME	REPRESENTING
Andrea Pearce	KU
Joe D' Bruen	KU
Alex Fischer	KU
J. Zlotnik	KU
Richard Gannon	KPA
Bob Keller	JCSO
Brett Wilson	JCSO
Mudie Grinstead	Lawrence Humane Society
Mark Grinstead	↓
Tracy Drel	Admin Hearings
Christy Molzen	Judicial Council
Steve Leben	Judicial Council
Natalie Adams	" "
Karin Dikman	KSBHA
Julia Mowers	KSBHA
Mike Reecht	Goches Brach
Rick Fleming	Securities Commissioner
Mack Smith	KS ST BO of Mortuary ARTS

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-16-09

NAME	REPRESENTING
Jean Shepherd	Judicial Council
Randy Neamee	Judicial Council
Jamie Dorkhill	SRS
Sandy Bennett	KCSOV
Melissa Wargemann	KAC
Cyre Greer	KCSOV
Stephanie Hradey	KU
Courtney Steele	KU
Alissa Ramsay	KU
Katie Ford	KU
Christian Larsen	XXXXXX KU
Brent Blazek	KU
Jason Marten	KU
Kathleen Snyder	KU
Margaret Allen	KU
Nick Mancini	KU
Chris Orlando	University of Kansas
Andrew Allington	Univ. of Kansas

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-16-09

NAME	REPRESENTING
Linda Witz	Judicial Branch
Richard Samaniego	Kenny & Assoc.
Bryan Dylman	intern - Senator Hensley
Juni Raa	KCSL

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DAVID A. BURGER
UNDERSHERIFF

KEVIN D. CAVANAUGH
UNDERSHERIFF

Date: February 16, 2009

To: Chairperson Owens, Vice-Chairperson Schmidt, and distinguished members of the Senate Judiciary Committee

Chairperson Owens,

My name is Bob Keller and I'm the Commander of the Investigations Division for the Johnson County Sheriff's Office. I appear before you today in support of Senate Bill 238. Thank you for allowing me the opportunity to testify before this committee.

In 2002 the Kansas Legislature defined cockfighting as illegal and established the crime as a class A nonperson misdemeanor. Senate Bill 238 would increase the penalty to a level 10 nonperson felony and make the assets of those convicted of the offense subject to forfeiture. Thirty-seven states including those contiguous with Kansas, have defined cockfighting as a felony.

In 2008 the Sheriff's Office concluded a cockfighting investigation that resulted in the arrest of two individuals, and the seizure of: 170 gamecocks, cockfighting paraphernalia, and nearly \$46,000.00 in cash. During the investigation it became obvious to me that Kansas was at risk of becoming a destination state for the wrong reasons. With little risk of a jail sentence and relatively small fines, cockfighting organizers will be drawn to Kansas for the chance to earn significant amounts of money.

Adding cockfighting to the list of crimes subject to asset forfeiture will serve as a strong deterrent to anyone who may want to relocate to Kansas for the purpose of hosting these events. If the lure of easy money brings these organizers to Kansas, then the possibility of losing their illegal proceeds will have the opposite impact.

In closing, I respectfully ask the committee to support Senate Bill 238 and vote favorably for the bill. Thank you for allowing me to testify and I'm happy to stand for your questions at the appropriate time.

Captain Bob Keller
Investigations Commander
Johnson County Sheriff's Office

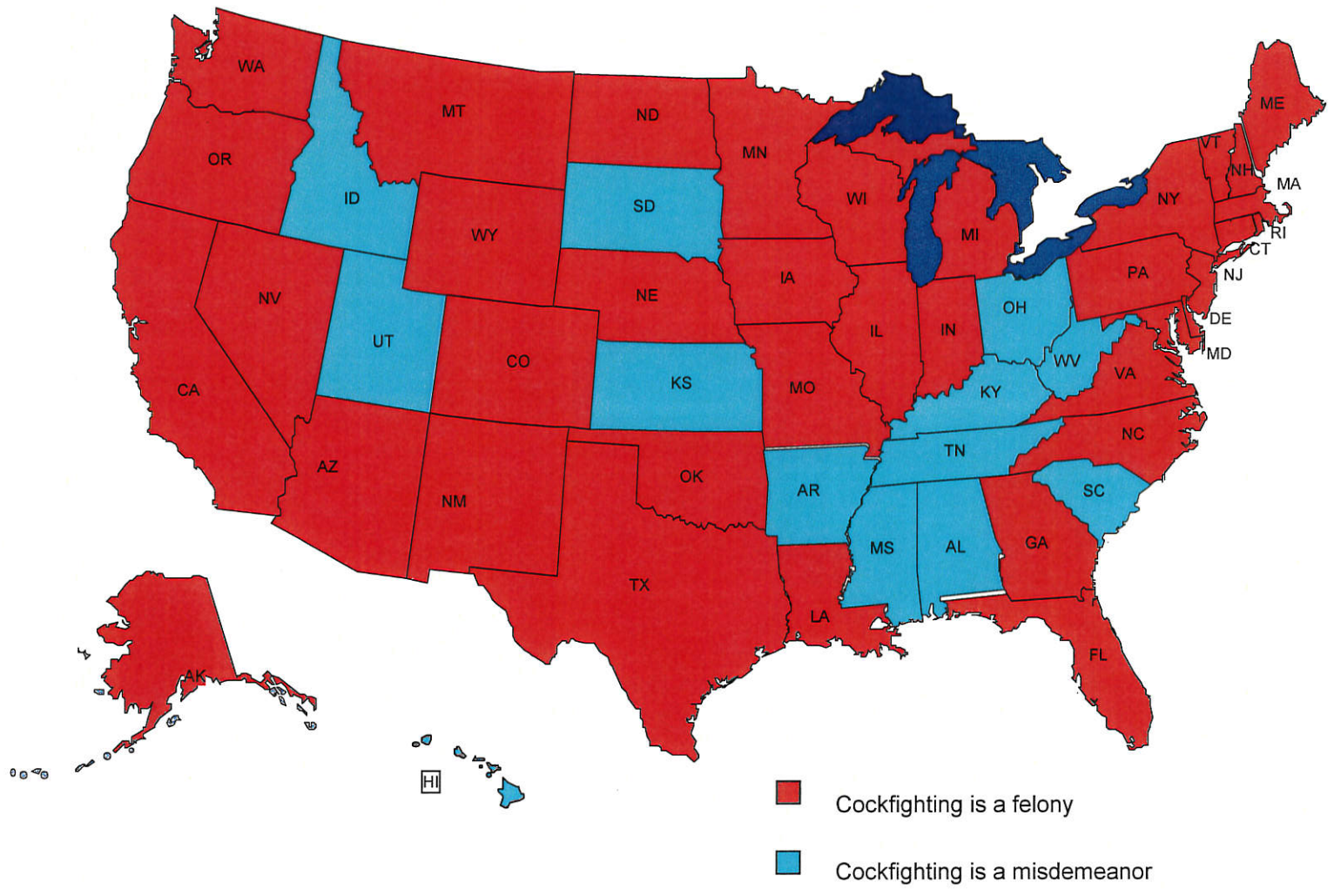
Senate Judiciary

2-16-09

Attachment 1

State Cockfighting Laws

March, 2008



**House Judiciary Committee
Testimony on S.B. 238
February 16, 2009**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee today on S.B. 238, regarding felony cockfighting legislation.

On behalf of the thousands of members and supporters of the Lawrence Humane Society and Humane Kansas Legislative Network, I offer the following testimony in support of S.B. 238, Senator Julia Lynn's legislation to make cockfighting a felony in Kansas. Cockfighting is illegal in all 50 states and a felony in 38 states, including every single state that borders Kansas.

With the penalties for cockfighting being particularly weak in Kansas, we are now seeing more cases of the crime here. The Johnson County Sheriff's Department is here to testify about a major case that took place in their county last year. Our Humane Society took part in that seizure and is currently investigating multiple cases of cockfighting in Douglas County. A criminal will weigh the penalties against a crime to see if it will be profitable. When a cockfighter can win \$5,000 on the fights, is he really going to be deterred by a misdemeanor slap on the wrist? Or is he going to view a misdemeanor fine or probation as the cost of doing business.

What it really comes down to is misdemeanor penalties are ineffective for this gambling crime that has the potential to be uniquely profitable. Illegal cockfighting is most prevalent in states where it is a misdemeanor, whereas the practice is in retreat in states that have imposed tough penalties. A perfect example is that of Oklahoma. Newspaper reports indicate that a large cockfighting organization lost 90% of their members after that state imposed a tough, felony law. In contrast, the problem appears to be growing in Kansas.

Cockfighting also provides a health risk for both humans and animals. According to former U.S. Agriculture Secretary, Ann Veneman, cockfighting led to the spread of exotic Newcastle disease in the United States in 2002-2003 which cost U.S. taxpayers nearly \$200 million to eradicate, and cost the U.S. poultry industry many millions more in lost export markets.

Cockfighting is gruesome and barbaric and should receive penalties consistent with other forms of animal fighting, like dog-fighting. In cockfights, two roosters, bred and drugged for aggression and fitted with razor-sharp knives or ice-pick like instruments called gaffs on their legs are placed in a pit to fight to the death for entertainment and gambling purposes. Hundreds of birds can die at a typical cockfighting derby.

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

SB88
Senate Judiciary Committee
February 16, 2009

OPPONENT

Chairman Owens and Members of the Committee:

I understand that Judge Shepherd, in her earlier testimony, indicated her belief that KCSDV and our member programs would likely have some problems with this Bill. She indicated correctly. SB88 is breathtaking in the negative consequences it will have on children living in a home where there is domestic violence. We are here to give voice to those children.

As I hope you know from seeing me before you all these years, KCSDV is both an advocate for adult victims of sexual and domestic violence as well as an advocate for child victims who are impacted directly by abuse or who are impacted by their exposure to the abuse of their mother. Separating the interests of children from that of their protective parent is short-sighted and flawed.

The issues of child maltreatment and adult domestic and sexual violence have long been examined separately with two distinct systems for intervening with children and adults. This bi-lateral approach has not been successful. Children are sometimes removed from homes where a protective parent, who is also abused, could be providing safety and care. Further, battered mothers in particular have become afraid to seek assistance, fearing loss of custody of their children to the state or to the abuser. Clearly, researchers, child advocates and advocates for adults are recognizing that new responses are required of

everyone if violence within families is to stop.¹ More recent policy statements now recognize: Child welfare agencies can best protect children by offering their abused mothers appropriate services and protection; being a victim of domestic violence does not equate with being a neglectful parent; separating battered mothers from their children should be the alternative of last resort; and intervention should focus on removing batterers from the households (not the children) and holding batterers accountable for their violence.²

Since 2001, KCSDV has worked closely with SRS to improve safety and response for children living in homes where domestic violence is occurring. For the last 3 years, KCSDV and SRS's Children and Family Services have collaborated under a federal grant administered by the Office on Violence Against Women. The aim of the project is to improve responses in child abuse cases so that children will not be further damaged by the domestic violence or by the response of the system. The fundamental tenants of this collaborative project are that a child's safety will be improved if the safety of the adult victim is also attended to; and, the focus on children should include a focus on those factors what will bolster their resiliency and help them become strong and healthy adults.

While child exposure to domestic and sexual violence may be a risk factor in determining future propensity to perpetuate domestic and sexual violence or to becoming a victim, exposure alone is not a predictor of adult behavior. Many children who experience trauma, neglect, poverty, domestic violence, sexual assault and other extreme stresses mature into well-functioning, adaptable adults. So, focusing our efforts when possible on the resiliency in children and providing safety to both the child and the mother is critical in moving us beyond the quagmire and debate that we find ourselves in on this issue. Bolstering and building resiliency, emotional recovery, and coping abilities are dependant on the quality of that child's relationship with the non-battering, protective parent.

¹ Schechter, S., & Edleson, J. (1999). *Effective Intervention In Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*. National Council of Juvenile and Family Court Judges.

² Goodmark, L., & Rosewater, A. (2008). *Bringing the Greenbook to Life: A Resource Guide for Communities*. National Council of Juvenile and Family Court Judges, 4.

Removing children from the home without attention to these factors is destructive to children. SB88, Section 26, eliminates that chance at recovery for children.

KCSDV knows that protection orders present an increasing challenge in the state due to their numbers (7,900 in 2007), the expedited nature of the proceedings, their physical and emotional volatility, and the amount of judicial and system resources required. In 1979, when the Kansas Protection from Abuse Act (PFAA) was first passed, protection orders were available in only a very few states. Since that time, the legislature should be commended in making them accessible, affordable, and useable for Kansas victims. We also know that as this protection becomes more accessible to victims, because of the dynamics of domestic violence, these orders also become more accessible as a tool for perpetrators to use against their victims. Each amendment to this act has, in some ways, been a response to perpetrators using the PFAA against the victim. Each time a perpetrator thinks of a creative way to use a protection order against a victim, he uses systems to participate in his "abuse by litigation."

Further, the PFA provisions in SB88 create an adversarial relationship between child and mother rather than protecting either of them. For the vast majority of battered mothers, their children are at the center of all of the decisions they make about the domestic violence. Society tells mothers that children need fathers in their lives. So, they stay in the violent relationship even at their own risk because "children need a father." On the other hand, mothers are also told if they expose their children to domestic violence, they are equally responsible for the damage done to them. So, they leave the relationship even at their own risk and the risk of the children because they are trying to protect their children. Domestic violence is most dangerous and possibly lethal at the time of separation. If they flee with their children, they are at risk not only of increased danger but also being charged criminally with interference with parental custody. Batterers lie in wait for women and children and they do so with the help of many systems who should be providing protection. Section 26 of SB88 creates another trap for kids and moms.

For many victims, protection orders are their last, best effort at moving the abuser out of their lives and the lives of their children. Unfortunately, our systems have not yet caught up with what we know about domestic violence: Batterers will continue to pursue moms and will use the children to do so. Batterers will call CPS to investigate non-existent "child abuse"; they will file for a protection order against the mother; they will fight for and get custody of children they have never had an interest in; they will use children to gather information about mom and her whereabouts; they will litigate the custody and divorce actions until mom and children are destitute; and they will get the system to help them in all of this. We believe the PFA provisions in SB88 will provide another tool, another weapon for batterers to use against children and against their mothers in order to maintain power and control. We believe SB88 harms children.

What children need is a system that provides swift and complete protection for them and for their mothers. The risk to children increases when batterers are successful in getting unfettered access to them. It is beyond heartbreaking when we talk to women agonizing over telephone calls from their children who are desperate and contemplating suicide because they are now alone with the abusive parent by order of the court. "Should I return to the abuser," they ask us? "At least I can protect them," they say. If we thought we'd be successful and that it would not be used by batterers, we would ask you to prohibit ANY joint custody orders or parenting time to the batterer in a protection order proceeding.

This is the set up for women and children seeking protection under the PFAA. Section 26 of SB88, does not protect children. It provides another tool for abusers to use to threaten and control. Here's how it will work:

- I am a battered woman with a child and I have decided it is time to leave my abuser.
- When I go to get a protection order I learn that the court can take my child at the PFA hearing if it believes I am unfit or my child is in danger. This is my worst nightmare and what I have been threatened with during the entire relationship.

- I know that both my child and I are in danger....that is why I'm getting a protection order.
- Will the court believe that I am unfit because I have not left sooner?
- My abuser has always said he will take the child or make sure someone else does. He already called SRS the last time I left to falsely report me as an abusive parent, even though I am not.
- If I file for a protection order, will he tell the court that I am unfit? Will the court believe him?
- Do I risk getting a protection order and having my children taken from me?
- I don't have money for an attorney, how will I argue against this?

Proponents may argue that removing children only protects children. We do not agree. Removing children causes its own level of trauma and grief for children. Removing children at a time when mom is making an effort to protect them is not the response any court should have when a battered mother reaches out for help. She is reaching out to a system she believes will help her and the children get to safety. Instead she may have the children ripped out of her arms in the courtroom. With all due respect to Judge Shepherd's understanding of domestic violence, we don't have confidence that the same level of understanding and judicial restraint is present across the state. The PFA provisions in SB88 will hurt children and we vehemently oppose it. We are in such opposition to it that we believe battered women would need to be discouraged from seeking the help of the courts for any kind of protection. How can THAT be helpful to children?

We also believe there may be some constitutional issues with lack of legal counsel for pro se litigants who are at risk of having their children removed. Since SB88 procedures are in lieu of the 72-hour hearing in the CINC case, all parents and children in PFAA hearings may need to have appointed counsel. We have attached a legal analysis of this and other issues that may arise if SB88 passes.

Children & Domestic Violence: Impacts & Resiliency

Batterers' impact on children:

- The batterer, as the primary perpetrator of violence and of psychological aggression in the home, should be seen as responsible for the exposure of the children to violence and abuse.ⁱ
- The effects of battering on children are a reflection of the batterer's parenting capacity.ⁱⁱ
- Battering a child's parent ignores the needs of the child, sets a poor example of conflict resolution, reflects negative attitudes toward women, and emphasizes the use of power to forcefully get one's own needs met at the expense of someone else.ⁱⁱⁱ
- Battering behavior that is harmful to children falls into three categories:^{iv}
 - The abuse of their mother that they may see, hear, or become involved in;
 - The use of the children against their mother, including trying to get information, turning them against her, making her do things (i.e., stay in the relationship), undermining her parenting role and as a result, her relationship with the children;
 - The direct abuse of the children, including everything from physical and sexual abuse to poor parenting and being a negative role model.

Children and resiliency:

- Children are not uniformly affected by their exposure to domestic violence.^v
- The most important factor in determining a child's resiliency in the aftermath of exposure to battering behavior is the quality of the relationship with their non-abusive parent.^{vi}
- Several factors in the lives of children can affect their resilience, including their development of talents and interests, their access to close relationships with trustworthy adults, their ability to escape self-blame, and the strength of their peer relationships.^{vii}
- Women who are battered often do incredible jobs parenting their children in spite of the abuse that they face.^{viii}

- Connection to other loved ones
- Opportunities to talk about events and express and release distressing feelings
- Access to close relationships with trustworthy adults

Considerations for Judges:

- Being a victim of domestic violence does not equate to being a neglectful parent.¹¹
- Interventions should focus on removing batterers from their households and holding them accountable for their violence.¹²
- Separating battered mothers from their children should be the alternative of last resort.¹³

¹ Bancroft, L., & Silverman, J. (2002). *The batterer as parent*. Thousand Oaks, CA: Sage Publications.

² Bancroft, L., & Silverman, J. (2002). *The batterer as parent*. Thousand Oaks, CA: Sage Publications.

³ Jaffe, P., & Geffner, R. (1998). Child custody disputes and domestic violence: Critical issues for mental health, social service, and legal professionals. In G. Holden, R. Geffner, & E. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* (p. 384). Washington, DC: American Psychological Association.

⁴ Praxis International (2008). *Children, their mothers who are battered, and how we intervene*.

⁵ Jaffe, P., Wolfe, D.A. & Wilson, S. (1990). *Children of Battered Women*. Newbury Park, CA: Sage.

⁶ Bancroft, L., & Silverman, J. (2002). *The batterer as parent*. Thousand Oaks, CA: Sage Publications.

⁷ Roy, M. (1988). *Children in the crossfire: Violence in the home-how does it affect our children?* Deerfield Beach, FL: Health Communications, Inc.

⁸ Mandel, D. (2002). Working with batterers as parents. *Issues in Family Violence* 4(3).

⁹ Sullivan, C., Nguyen, H., Allen, N., Bybee, D., & Juras, J. (2000). Beyond searching for deficits: Evidence that physically and emotionally abused women are nurturing parents. *Journal of Emotional Abuse*, 2(1), 51-69.

¹⁰ Bancroft, L. (2004). *When dad hurts mom: Helping your children heal the wounds of witnessing abuse*. New York: G.P. Penguin Group.

¹¹ Goodmark, L., & Rosewater, A. (2008). *Bringing the Greenbook to Life: A Resource Guide for Communities*. National Council of Juvenile and Family Court Judges.

¹² Goodmark, L., & Rosewater, A. (2008). *Bringing the Greenbook to Life: A Resource Guide for Communities*. National Council of Juvenile and Family Court Judges.

¹³ Greenbook National Evaluation Team, *The Greenbook Demonstration Initiative: Interim Evaluation Report 8* (2004). Available at www.thegreenbook.info/documents/Greenbook_Interim_Evaluation_Report_2_05.pdf.

Senate Bill 88: Legal Concerns

- Senate Bill 88 eliminates the temporary orders hearing and notice requirement found under the revised Kansas code for care of children. (SB88, page 50, lines 33-37.)
 - The temporary order process allowed under the revised Kansas code for care of children, which allows for notice, is bypassed as the order entered at the PFA hearing remains in effect until the adjudicatory hearing or final hearing in the subsequent CINC case.
 - Parents are not provided with an opportunity to prepare for the possibility of a CINC case when they request a PFA.
 - If SB88 passes, courts may be required to appoint counsel for parents and children at PFA hearings.

- CINC statute requires certain information be given by the court to parents, which SB88 does not provide.
 - **K.S.A. 38-2205(b)** “At the first hearing in connection with proceedings under this code, the court shall distribute a pamphlet, designed by the court, for the parents of a child alleged or adjudged to be a child in need of care, to advise the parents of their rights in connection with all proceedings under this code.” 38-2205(b).
 - As the PFA hearing may be the first hearing in what is in effect a CINC case, parents should receive this pamphlet at the PFA hearing since it is the first hearing in connection with the CINC code.
 - If parents do not receive the pamphlet at the PFA hearing, since Senate Bill 88 bypasses the temporary CINC hearing, the first time that a parent receives this important information is at the final CINC hearing.
 - Receiving the information at the final hearing would be far too late for parents to adequately prepare for a CINC case.

- Parents are entitled to appointment of counsel under the revised Kansas code for care of children, but parents are not afforded this same right under Senate Bill 88.
 - **K.S.A. 38-2205 (b)(1)** “If at any stage of the proceedings a parent desires but is financially unable to employ and attorney, the court shall appoint an attorney for the parent.”
 - As the PFA hearing may be the first hearing in a CINC case, the appointment of counsel would need to occur at the PFA hearing.
 - As Senate Bill 88 bypasses the temporary CINC hearing, parents would not have an opportunity to have counsel appointed until the final hearing.
 - Since parents only have 30 days from the issuance of the temporary order to appeal the courts decision, it is essential that they have the advice of counsel, so they can exercise these rights in a timely manner.

- It is imperative that parents have the advantage of counsel throughout the CINC case as recognized under K.S.A. 38-2205, but Senate Bill 88 strips parents of this right.
- Many, if not most, of the PFA proceedings involve unrepresented parties. In 2007, there were 9,700 PFA's filed in Kansas.
- Section 26 of Senate Bill 88 does not provide for a final determination to be made as is provided in other sections of the bill.
 - Under Senate Bill 88 a court can remove a child from a parents home during a PFA proceeding, enter a temporary order, and refer the case to the county or district attorney for a CINC case. Whatever the final determination in the CINC case, the parents are left without a mechanism to receive a final PFA order regarding protection of child or self, or any custody or parenting orders.
 - Some have indicated that parents could file a divorce or parentage action to get a final order, but this is not a viable option for all parents.
 - Many parents will be left without any mechanism for a final determination regarding their children.

February 11, 2009

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

RE: Senate Bill No. 88

Dear Chairman Owens:

I would like to offer comments regarding Senate Bill 88, a bill proposed by Judicial Council concerning custody orders from child in need of care (CINC) cases and procedural matters in the juvenile justice code.

First, let me say that we support SB 88. Although we are requesting significant amendments, they are peripheral to the focus of this legislation. The concept of preserving custody orders to facilitate permanency for children has the unqualified support of the agency.

As introduced, the wording of SB 88 raised concerns for our Title IV-D Child Support Enforcement program (CSE), related to the handling of child support orders. Since 1992 Kansas law has provided a mechanism for preserving child support orders established by a juvenile court; it was felt that some of the new language in H.B. 88 would create confusion between that established process and the bill's proposal for preserving custody, residency, and parenting time orders beyond the life of the juvenile court case. We also discovered that wording in the original bill could undermine our compliance with federal CSE requirements of a technical nature concerning modifications and the resolution of jurisdictional issues in interstate cases. Those concerns led us to propose a balloon (enclosed) that alleviates our worries but preserves the original intent of H.B. 88.

Highlights of the SRS balloon are:

- More consistent references to the juvenile court's "custody, residency and parenting time orders," where those orders are intended to be preserved beyond the life of the juvenile case and to take priority over any similar order in an existing court case. (@@Attachment, p. 1, lines 39-40; p. 2, line 5; p. 4, lines 38-39; p. 5, lines 30-31; p. 27, lines 9-10, lines 19-20, line 28 and 36; and p. 44, line 14.)

Senate Judiciary

2-16-09

Attachment 4

- Language insuring consistency with K.S.A. 23-9,207, the Uniform Interstate Family Support Act section governing jurisdictional conflicts. (@@Attachment, p. 31, line 19 and p. 41, line 11.)
- Language addressing the federal IV-D requirement that a material change in circumstances is not required when more than three years have elapsed since the most recent child support order. (@@Attachment, p. 31, line 24.)
- Restoration of language consistent with the divorce code and parentage act, which is needed to conform to Title IV-D on the effective date of a support modification. (@@Attachment, p. 31, line 26.)
- Lastly, on page @@31 at line @@30 of the Attachment, language that specifically preserves the juvenile court's ongoing jurisdiction, when the juvenile court has established a child support order, over motions to modify child support until the juvenile case is closed.

We have consulted with Judge Jean Shepherd and Judge Tim Henderson concerning this balloon, and we believe there is consensus that the original thrust of S.B. 88 has been preserved.

We believe it is important for parents and their child support obligations to be treated consistently across SRS programs and across the State. We pursue our goal of consistency by having child support orders established pursuant to the Kansas Child Support Guidelines and based on the family's actual circumstances whenever that information is available. We are aware that, at times, juvenile courts must set support orders in the absence of key information about parents' incomes or the number and ages of all the family's children. For that reason, K.S.A. 38-2277 provides rules allowing certain facts to be presumed, facts that are essential when applying the Guidelines. K.S.A. 38-2279 (section 16 of H.B. 88) then provides the mechanism for modifying such an order, once real information becomes available. This should be distinguished from a situation where the juvenile judge has specifically deviated from the Guidelines' because the Guidelines amount would be unjust and not in the best interests of the child – modification of the latter order would require proof of a change in circumstances.

Studies have repeatedly shown that there is a link between payment of child support and other forms of parental involvement with the child. It is sad, but true, that some parents are not interested in engaging their difficult child until they realize that their financial obligation for the child will be enforced, regardless. We hope that by gaining their full attention and providing appropriate social supports, SRS can offer more positive possibilities for children and families struggling to cope in difficult times.

Thank you.

Sincerely,



Don Jordan, Secretary

Proposed Balloon Amendment for Section 2 of 2009 SB 88

1 Sec. 2. K.S.A. 38-1116 is hereby amended to read as follows: 38-

2 1116. (a) The district court has jurisdiction of an action brought under
3 the Kansas parentage act. The action may be joined with an action for
4 divorce, annulment, separate maintenance, support or adoption.

5 (b) If any determination is sought in any action under the Kansas
6 parentage act for custody, residency or parenting time, the initial pleading
7 seeking that determination shall include that information required by
8 K.S.A. 38-1356, and amendments thereto;

9 (c) The action may be brought in the county in which the child, the
10 mother or the presumed or alleged father resides or is found. If a parent
11 or an alleged or presumed parent is deceased, an action may be brought
12 in the county in which proceedings for probate of the estate of the parent
13 or alleged or presumed parent have been or could be commenced.

14 (d) Any custody, **residency** or parenting time order, ~~or order relating to the best~~
15 ~~interests of a child~~, issued pursuant to the revised Kansas code for care
16 of children or the revised Kansas juvenile justice code, shall take prece-
17 dence over any order under article 11 of chapter 38 of the Kansas Statutes
18 Annotated, and amendments thereto (determination of parentage), until
19 jurisdiction under the revised Kansas code for care of children or the
20 revised Kansas juvenile justice code is terminated.

21 (e) If a court of competent jurisdiction within this state has entered
22 an order pursuant to the revised Kansas code for care of children regard-
23 ing custody ~~or support~~ of a child or children who are involved in a pro-
24 ceeding filed pursuant to this section, and such court has determined
25 pursuant to subsection (i)(2) of K.S.A. 38-2264, and amendments thereto,
26 that the orders in that case shall become the custody orders in the par-
27 entage case, such court shall file, after consultation with the judge presid-
28 ing over any proceeding filed pursuant to this section, a certified copy of
29 the orders with the civil case number in the caption and then close the
30 case under the revised Kansas code for care of children. Such orders shall
31 be binding on the parties, unless modified based on a material change in
32 circumstances, even if such courts have different venues.

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1 Sec. 3. K.S.A. 2008 Supp. 38-1121 is hereby amended to read as
2 follows: 38-1121. (a) The judgment or order of the court determining the
3 existence or nonexistence of the parent and child relationship is deter-
4 minative for all purposes, but if any person necessary to determine the
5 existence of a father and child relationship for all purposes has not been
6 joined as a party, a determination of the paternity of the child shall have
7 only the force and effect of a finding of fact necessary to determine a
8 duty of support.

9 (b) If the judgment or order of the court is at variance with the child's
10 birth certificate, the court shall order that a new birth certificate be is-
11 sued, but only if any man named as the father on the birth certificate is
12 a party to the action.

13 (c) Upon adjudging that a party is the parent of a minor child, the
14 court shall make provision for support and education of the child includ-
15 ing the necessary medical expenses incident to the birth of the child. The
16 court may order the support and education expenses to be paid by either
17 or both parents for the minor child. When the child reaches 18 years of
18 age, the support shall terminate unless: (1) The parent or parents agree,
19 by written agreement approved by the court, to pay support beyond that
20 time; (2) the child reaches 18 years of age before completing the child's
21 high school education in which case the support shall not automatically
22 terminate, unless otherwise ordered by the court, until June 30 of the
23 school year during which the child became 18 years of age if the child is
24 still attending high school; or (3) the child is still a bona fide high school
25 student after June 30 of the school year during which the child became
26 18 years of age, in which case the court, on motion, may order support
27 to continue through the school year during which the child becomes 19
28 years of age so long as the child is a bona fide high school student and
29 the parents jointly participated or knowingly acquiesced in the decision
30 which delayed the child's completion of high school. The court, in ex-
31 tending support pursuant to subsection (c)(3), may impose such condi-
32 tions as are appropriate and shall set the child support utilizing the guide-
33 line table category for 16-year through 18-year old children. Provision for
34 payment of support and educational expenses of a child after reaching 18
35 years of age if still attending high school shall apply to any child subject
36 to the jurisdiction of the court, including those whose support was or-
37 dered prior to July 1, 1992. If an agreement approved by the court prior
38 to July 1, 1988, provides for termination of support before the date pro-
39 vided by subsection (c)(2), the court may review and modify such agree-
40 ment, and any order based on such agreement, to extend the date for
41 termination of support to the date provided by subsection (c)(2). If an
42 agreement approved by the court prior to July 1, 1992, provides for ter-
43 mination of support before the date provided by subsection (c)(3), the
44 court may review and modify such agreement, and any order based on
45 such agreement, to extend the date for termination of support to the date
46 provided by subsection (c)(3). For purposes of this section, "bona fide
47 high school student" means a student who is enrolled in full accordance
48 with the policy of the accredited high school in which the student is
49 pursuing a high school diploma or a graduate equivalency diploma
50 (GED). The judgment may require the party to provide a bond with
51 sureties to secure payment. The court may at any time during the minority
52 of the child modify or change the order of support, including any order
53 issued in a title IV-D case, within three years of the date of the original
54 order or a modification order, as required by the best interest of the child.
55 If more than three years has passed since the date of the original order
56 or modification order, a requirement that such order is in the best interest

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1 of the child need not be shown. The court may make a modification of
2 support retroactive to a date at least one month after the date that the
3 motion to modify was filed with the court. Any increase in support or-
4 dered effective prior to the date the court's judgment is filed shall not
5 become a lien on real property pursuant to K.S.A. 60-2202, and amend-
6 ments thereto.

7 (d) If both parents are parties to the action, the court shall enter such
8 orders regarding custody, residency and parenting time as the court con-
9 siders to be in the best interest of the child.

10 If the parties have an agreed parenting plan it shall be presumed the
11 agreed parenting plan is in the best interest of the child. This presumption
12 may be overcome and the court may make a different order if the court
13 makes specific findings of fact stating why the agreed parenting plan is
14 not in the best interest of the child. If the parties are not in agreement
15 on a parenting plan, each party shall submit a proposed parenting plan
16 to the court for consideration at such time before the final hearing as
17 may be directed by the court.

18 *(e) If during the proceedings the court determines that there is prob-*
19 *able cause to believe that the child is a child in need of care, as defined*
20 *by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2008 Supp. 38-*
21 *2202, and amendments thereto, or that neither parent is fit to have resi-*
22 *dency, the court may award temporary residency of the child to a grand-*
23 *parent, aunt, uncle or adult sibling, or another person or agency if the*
24 *court finds by written order that: (1)(A) The child is likely to sustain harm*
25 *if not immediately removed from the home; (B) allowing the child to re-*
26 *main in home is contrary to the welfare of the child; or (C) immediate*
27 *placement of the child is in the best interest of the child; and (2) reasonable*
28 *efforts have been made to maintain the family unit and prevent the un-*
29 *necessary removal of the child from the child's home or that an emergency*
30 *exists which threatens the safety of the child. In making such a residency*
31 *order, the court shall give preference, to the extent that the court finds it*
32 *is in the best interests of the child, first to awarding such residency to a*
33 *relative of the child by blood, marriage or adoption and second to award-*
34 *ing such residency to another person with whom the child has close emo-*
35 *tional ties. The court may make temporary orders for care, support, ed-*
36 *ucation and visitation that it considers appropriate. Temporary residency*
37 *orders are to be entered in lieu of temporary orders provided for in K.S.A.*
38 *2008 Supp. 38-2243 and 38-2244, and amendments thereto, and shall*
39 *remain in effect until there is a final determination under the revised*
40 *Kansas code for care of children. An award of temporary residency under*
41 *this paragraph shall not terminate parental rights nor give the court the*
42 *authority to consent to the adoption of the child. When the court enters*
43 *orders awarding temporary residency of the child to an agency or a person*
44 *other than the parent, the court shall refer a transcript of the proceedings*
45 *to the county or district attorney. The county or district attorney shall*
46 *file a petition as provided in K.S.A. 2008 Supp. 38-2234, and amendments*
47 *thereto, and may request termination of parental rights pursuant to K.S.A.*
48 *2008 Supp. 38- 2266, and amendments thereto. The costs of the proceed-*
49 *ings shall be paid from the general fund of the county. ~~When~~ If a final*
50 *determination is made that the child is not a child in need of care, the*
51 *county or district attorney shall notify the court in writing and the court,*
52 *after a hearing, shall enter appropriate custody orders pursuant to this*
53 *section. If the same judge presides over both proceedings, the notice is*
54 *not required. Any **custody, residency or parenting time** order pursuant*
55 *to the revised Kansas code for care of children shall take precedence*
56 *over any **custody, residency or parenting time** order under this section.*

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1 ~~(e)~~ (f) In entering an original order for support of a child under this
2 section, the court may award an additional judgment to reimburse the
3 expenses of support and education of the child from the date of birth to
4 the date the order is entered. If the determination of paternity is based
5 upon a presumption arising under K.S.A. 38-1114 and amendments
6 thereto, the court shall award an additional judgment to reimburse all or
7 part of the expenses of support and education of the child from at least
8 the date the presumption first arose to the date the order is entered,
9 except that no additional judgment need be awarded for amounts accrued
10 under a previous order for the child's support.

11 ~~(f)~~ (g) In determining the amount to be ordered in payment and
12 duration of such payments, a court enforcing the obligation of support
13 shall consider all relevant facts including, but not limited to, the following:

- 14 (1) The needs of the child.
- 15 (2) The standards of living and circumstances of the parents.
- 16 (3) The relative financial means of the parents.
- 17 (4) The earning ability of the parents.
- 18 (5) The need and capacity of the child for education.
- 19 (6) The age of the child.
- 20 (7) The financial resources and the earning ability of the child.
- 21 (8) The responsibility of the parents for the support of others.
- 22 (9) The value of services contributed by both parents.

23 ~~(g)~~ (h) The provisions of K.S.A. 23-4,107, and amendments thereto,
24 shall apply to all orders of support issued under this section.

25 ~~(h)~~ (i) An order granting parenting time pursuant to this section may
26 be enforced in accordance with K.S.A. 23-701, and amendments thereto,
27 or under the uniform child custody jurisdiction and enforcement act.

Proposed Balloon Amendment for Section 4 of 2009 SB 88

1 Sec. 4. K.S.A. 2008 Supp. 38-2201 is hereby amended to read as
2 follows: 38-2201. K.S.A. 2008 Supp. 38-2201 through 38-2283, and
3 amendments thereto, shall be known as and may be cited as the revised
4 Kansas code for care of children.

5 (a) Proceedings pursuant to this code shall be civil in nature and all
6 proceedings, orders, judgments and decrees shall be deemed to be pur-
7 suant to the parental power of the state. *Any **custody, residency or***
8 ***parenting time** orders pursuant to this code shall take precedence*
9 *over any **custody, residency or parenting time** order under article 11*
10 *of chapter 38 of the Kansas Statutes Annotated, and amendments thereto*
11 *(determination of parentage), article 21 of chapter 59 of the Kansas Statutes*
12 *Annotated, and amendments thereto (adoption and relinquishment act),*
13 *article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments*
14 *thereto (guardians and conservators), article 16 of chapter 60 of the Kansas*
15 *Statutes Annotated, and amendments thereto (divorce), article 31 of chapter*
16 *60 of the Kansas Statutes Annotated, and amendments thereto (protection*
17 *from abuse act), and article 31a of chapter 60 of the Kansas Statutes*
18 *Annotated, and amendments thereto (protection from stalking act), until*
19 *jurisdiction under this code is terminated.*

20 (b) The code shall be liberally construed to carry out the policies of
21 the state which are to:

- 22 (1) Consider the safety and welfare of a child to be paramount in all
23 proceedings under the code;
- 24 (2) provide that each child who comes within the provisions of the
25 code shall receive the care, custody, guidance control and discipline that
26 will best serve the child's welfare and the interests of the state, preferably
27 in the child's home and recognizing that the child's relationship with such
28 child's family is important to the child's well being;
- 29 (3) make the ongoing physical, mental and emotional needs of the
30 child decisive considerations in proceedings under this code;
- 31 (4) acknowledge that the time perception of a child differs from that
32 of an adult and to dispose of all proceedings under this code without
33 unnecessary delay;
- 34 (5) encourage the reporting of suspected child abuse and neglect;
- 35 (6) investigate reports of suspected child abuse and neglect thor-
36 oughly and promptly;
- 37 (7) provide for the protection of children who have been subject to
38 physical, mental or emotional abuse or neglect or sexual abuse;
- 39 (8) provide preventative and rehabilitative services, when appropri-
40 ate, to abused and neglected children and their families so, if possible,
41 the families can remain together without further threat to the children;
- 42 (9) provide stability in the life of a child who must be removed from
43 the home of a parent; and
- 44 (10) place children in permanent family settings, in absence of com-
45 pelling reasons to the contrary.

46 (c) Nothing in this code shall be construed to permit discrimination
47 on the basis of disability.

48 (1) The disability of a parent shall not constitute a basis for a deter-
49 mination that a child is in need of care, for the removal of custody
50 of a child from the parent, or for the termination of parental rights without
51 a specific showing that there is a causal relation between the disability
52 and harm to the child.

53 (2) In cases involving a parent with a disability, determinations made
54 under this code shall consider the availability and use of accommodations
55 for the disability, including adaptive equipment and support services.

Proposed Balloon Amendment for Section 14 of 2009 SB 88

1 Sec. 14. K.S.A. 2008 Supp. 38-2264 is hereby amended to read as
2 follows: 38-2264. (a) A permanency hearing is a proceeding conducted
3 by the court or by a citizen review board for the purpose of determining
4 progress toward accomplishment of a permanency plan as established by
5 K.S.A. 2008 Supp. 38-2263, and amendments thereto.

6 (b) The court or a citizen review board shall hear and the court shall
7 determine whether and, if applicable, when the child will be:

8 (1) Reintegrated with the child's parents;

9 (2) placed for adoption;

10 (3) placed with a permanent custodian; or

11 (4) if the secretary has documented compelling reasons why it would
12 not be in the child's best interests for a placement in one of the place-
13 ments pursuant to paragraphs (1), (2) or (3) placed in another planned
14 permanent arrangement.

15 (c) The court shall enter a finding as to whether the person or entity
16 having custody of the child has made reasonable efforts to accomplish the
17 permanency plan in place at the time of the hearing.

18 (d) A permanency hearing shall be held within 12 months of the date
19 the court authorized the child's removal from the home and not less
20 frequently than every 12 months thereafter.

21 (e) If the court determines at any time other than during a perma-
22 nency hearing that reintegration may not be a viable alternative for the
23 child, a permanency hearing shall be held no later than 30 days following
24 that determination.

25 (f) When the court finds that reintegration continues to be a viable
26 alternative, the court shall determine whether and, if applicable, when
27 the child will be returned to the parent. The court may rescind any of its
28 prior dispositional orders and enter any dispositional order authorized by
29 this code or may order that a new plan for the reintegration be prepared
30 and submitted to the court. If reintegration cannot be accomplished as
31 approved by the court, the court shall be informed and shall schedule a
32 hearing pursuant to this section. No such hearing is required when the
33 parents voluntarily relinquish parental rights or consent to appointment
34 of a permanent custodian.

35 (g) If the court finds reintegration is no longer a viable alternative,
36 the court shall consider whether: (1) The child is in a stable placement
37 with a relative; (2) services set out in the case plan necessary for the safe
38 return of the child have been made available to the parent with whom
39 reintegration is planned; or (3) compelling reasons are documented in
40 the case plan to support a finding that neither adoption nor appointment
41 of a permanent custodian are in the child's best interest. If reintegration
42 is not a viable alternative and either adoption or appointment of a per-
43 manent custodian might be in the best interests of the child, the county
44 or district attorney or the county or district attorney's designee shall file
45 a motion to terminate parental rights or a motion to appoint a permanent
46 custodian within 30 days and the court shall set a hearing on such motion
47 within 90 days of the filing of such motion.

48 (h) If the court enters an order terminating parental rights to a child,
49 or an agency has accepted a relinquishment pursuant to K.S.A. 59-2124,
50 and amendments thereto, the requirements for permanency hearings
51 shall continue until an adoption or appointment of a permanent custodian
52 has been accomplished. If the court determines that reasonable efforts
53 or progress have not been made toward finding an adoptive placement
54 or appointment of a permanent custodian or placement with a fit and
55 willing relative, the court may rescind its prior orders and make others
56 regarding custody and adoption that are appropriate under the circum-

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1 stances. Reports of a proposed adoptive placement need not contain the
2 identity of the proposed adoptive parents.

3 (i) *If permanency with one parent has been achieved without the ter-*
4 *mination of the other parent's rights, the court may, prior to dismissing*
5 *the case, enter child custody orders, including residency, **and parenting time***
6 ***and child support**, that the court determines to be in the best interests of*
7 *the child. The court shall complete a parenting plan pursuant to K.S.A.*
8 *60-1625, and amendments thereto. ~~Child support orders shall be consis-~~*
9 *~~istent with the requirements of K.S.A. 2008 Supp. 38-2277, and amend-~~*
10 *~~ments thereto.~~*

11 (1) *Before entering a custody order under this subsection, the court*
12 *shall inquire whether a custody order has been entered or is pending in*
13 *a civil custody case by a court of competent jurisdiction within the state*
14 *of Kansas.*

15 (2) *If a civil custody case has been filed or is pending, a certified copy*
16 *of the custody, residency, **and parenting time and child support** orders shall*
17 *be filed in the civil custody case. The court in the child in need of care*
18 *case may, after consultation with the court in the civil custody case, in-*
19 *clude in the order a declaration that the custody order in the child in*
20 *need of care case shall become the custody order in the civil custody case.*

21 (3) *A district court, on its own motion or upon the motion of any*
22 *party, may order the consolidation of the child in need of care case with*
23 *any open civil custody case involving the child and both of the child's*
24 *parents. **Orders Custody, residency and parenting time orders** entered*
25 *in consolidated child in need of care and civil custody cases take precedence*
26 *over any previous orders affecting both parents and the child that were*
27 *entered in the civil custody case regarding the same or related issues.*
28 *Following entry of a custody order in a consolidated case, the court shall*
29 *dismiss the child in need of care case and, if necessary, return the civil*
30 *custody case to the original court having jurisdiction over it.*

31 (4) *If no civil custody case has been filed, the court may direct the*
32 *parties to file a civil custody case and to file the custody **and child support***
33 *orders from the child in need of care case in that case. Costs of the civil*
34 *custody case may be assessed to the parties.*

35 (5) *Nothing in this subsection shall operate to expand access to infor-*
36 *mation that is confidential under K.S.A. 38-2209, and amendments*
37 *thereto, and the confidentiality of such information shall be preserved in*
38 *all filings in a civil custody case.*

39 (j) *When permanency has been achieved to the satisfaction of the*
40 *court, the court shall enter an order closing the case.*

Proposed Balloon Amendment for Section 16 of 2009 SB 88

1 Sec. 16. K.S.A. 2008 Supp. 38-2279 is hereby amended to read as
2 follows: 38-2279. (a) A person entitled to receive child support under an
3 order issued pursuant to the code may file with the clerk of the district
4 court in the county in which the judgment was rendered the original child
5 support order and the original income withholding order, if any. If the
6 original child support or income withholding order is unavailable for any
7 reason, a certified or authenticated copy of the order may be substituted.
8 The clerk of the district court shall number the child support order as a
9 case filed under chapter 60 of the Kansas Statutes Annotated, and amend-
10 ments thereto, and enter the numbering of the case on the appearance
11 docket of the case. Registration of a child support order under this section
12 shall be without cost or docket fee.

13 (b) If the number assigned to a case under the code appears in the
14 caption of a document filed pursuant to this section, the clerk of the
15 district court may obliterate that number and replace it with the new case
16 number assigned pursuant to this section.

17 (c) The filing of the child support order shall constitute registration
18 under this section. Upon registration of the child support order, all mat-
19 ters related to that order, including, but not limited to, modification of
20 the order, shall proceed under the new case number. Registration of a
21 child support order under this section does not confer jurisdiction in the
22 registration case for custody or visitation issues.

23 (d) The person registering a child support order shall serve a copy of
24 the registered child support order and income withholding order, if any,
25 upon the party or interested parties by first-class mail. The person reg-
26 istering the child support order shall file, in the official file for each child
27 affected, either a copy of the registered order showing the new case num-
28 ber or a statement that includes the caption, new case number and date
29 of registration of the child support order. (e) If the secretary is entitled to
30 receive payment under an order

31 which may be registered under this section, the county or district attorney
32 shall take the actions permitted or required in subsections (a) and (d) on
33 behalf of the secretary, unless otherwise requested by the secretary.

34 (f) A child support order registered pursuant to this section shall have
35 the same force and effect as an original child support order entered under
36 chapter 60 of the Kansas Statutes Annotated, and amendments thereto,
37 including, but not limited to:

38 (1) The registered order shall become a lien on the real estate of the
39 judgment debtor in the county from the date of registration;

40 (2) execution or other action to enforce the registered order may be
41 had from the date of registration;

42 (3) the registered order may itself be registered pursuant to any law,
43 including, but not limited to, the uniform interstate family support act,
44 K.S.A. 23-9,101 et seq., and amendments thereto;

45 (4) if any installment of support due under the registered order be-
46 comes a dormant judgment, it may be revived pursuant to K.S.A. 60-
47 2404, and amendments thereto; and

48 (5) ***Subject to the provisions of K.S.A. 23-9,207, and amendments***
49 ***thereto***, the court shall have continuing jurisdiction over the child support
50 action and the parties thereto and subject matter and, except as otherwise
51 provided in subsection (g), may modify any prior support order ~~***when the***~~
52 ~~***child in need of care case has been closed and if***~~ a material change in cir-
53 cumstances is shown irrespective of the present domicile of the child or
54 parents. ***If more than three years have passed since the date of the***
55 ***original support order or the most recent modification order, a material***
56 ***change in circumstances need not be shown.*** The court may make a

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1 modification of child support retroactive to a date at least one month
2 after the date that the motion to modify was filed with the court ~~the~~
3 ~~closure of the child in need of care case the date the motion to~~
4 ~~modify was filed with the court.~~

5 (g) ~~If a motion to modify the child support order is filed~~ within three
6 months after the date of registration pursuant to this section ~~when the~~
7 ~~child in need of care case is closed, if no motion to modify the order has~~
8 ~~previously been heard and if~~ *Until the child in need of care case on*
9 *behalf of a child is closed, any motion to modify the current support*
10 *order registered under this section for that child shall be filed in the*
11 *child in need of care case, and a certified copy of any order modifying*
12 *current support shall be filed in the chapter 60 registration case. If*
13 *the child in need of care case is closed, any motion to modify the current*
14 *child support order registered under this section shall be filed in the*
15 *chapter 60 registration case. If the moving party shows that the support*
16 *order was based upon one or more of the presumptions provided in K.S.A.*
17 *2008 Supp. 38-2277, and amendments thereto, or upon a stipulation pur-*
18 *suant to subsection (c) of K.S.A. 2008 Supp. 38-2277, and amendments*
19 *thereto, the court shall apply the Kansas child support guidelines adopted*
20 *pursuant to K.S.A. 20-165, and amendments thereto, without requiring*
21 *a showing that a material change of circumstances has occurred, without*
22 *regard to any previous presumption or stipulation used to determine the*
23 *amount of the child support order and irrespective of the present domicile*
24 *of the child or parents. Nothing in this subsection shall prevent or limit*
25 *enforcement of the support order during the three months after the date*
26 *of registration.*

Proposed Balloon Amendment for Section 24 of 2009 SB 88

1 Sec. 24. K.S.A. 2008 Supp. 60-1610 is hereby amended to read as
2 follows: 60-1610. A decree in an action under this article may include
3 orders on the following matters:

4 (a) *Minor children.* (1) *Child support and education.* The court shall
5 make provisions for the support and education of the minor children. **The**
6 **Subject to the provisions of K.S.A. 23-9,207, and amendments thereto,**
7 **the** court may modify or change any prior order, including any order issued
8 in a title IV-D case, within three years of the date of the original order
9 or a modification order, when a material change in circumstances is
10 shown, irrespective of the present domicile of the child or the parents. If
11 more than three years has passed since the date of the original order or
12 modification order, a material change in circumstance need not be shown.
13 The court may make a modification of child support retroactive to a date
14 at least one month after the date that the motion to modify was filed with
15 the court. Any increase in support ordered effective prior to the date the
16 court's judgment is filed shall not become a lien on real property pursuant
17 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
18 custodial arrangement ordered by the court, the court may order the child
19 support and education expenses to be paid by either or both parents for
20 any child less than 18 years of age, at which age the support shall ter-
21minate unless: (A) The parent or parents agree, by written agreement
22 approved by the court, to pay support beyond the time the child reaches
23 18 years of age; (B) the child reaches 18 years of age before completing
24 the child's high school education in which case the support shall not ter-
25minate automatically, unless otherwise ordered by the court, until June
26 30 of the school year during which the child became 18 years of age if
27 the child is still attending high school; or (C) the child is still a bona fide
28 high school student after June 30 of the school year during which the
29 child became 18 years of age, in which case the court, on motion, may
30 order support to continue through the school year during which the child
31 becomes 19 years of age so long as the child is a bona fide high school
32 student and the parents jointly participated or knowingly acquiesced in
33 the decision which delayed the child's completion of high school. The
34 court, in extending support pursuant to subsection (a)(1)(C), may impose
35 such conditions as are appropriate and shall set the child support utilizing
36 the guideline table category for 12-year through 18-year old children.
37 Provision for payment of support and educational expenses of a child after
38 reaching 18 years of age if still attending high school shall apply to any
39 child subject to the jurisdiction of the court, including those whose sup-
40 port was ordered prior to July 1, 1992. If an agreement approved by the
41 court prior to July 1, 1992, provides for termination of support before the
42 date provided by subsection (a)(1)(C), the court may review and modify
43 such agreement, and any order based on such agreement, to extend the
44 date for termination of support to the date provided by subsection
45 (a)(1)(C). For purposes of this section, "bona fide high school student"
46 means a student who is enrolled in full accordance with the policy of the
47 accredited high school in which the student is pursuing a high school
48 diploma or a graduate equivalency diploma (GED). In determining the
49 amount to be paid for child support, the court shall consider all relevant
50 factors, without regard to marital misconduct, including the financial re-
51 sources and needs of both parents, the financial resources and needs of
52 the child and the physical and emotional condition of the child. Until a
53 child reaches 18 years of age, the court may set apart any portion of
54 property of either the husband or wife, or both, that seems necessary and
55 proper for the support of the child. Except for good cause shown, every
56 order requiring payment of child support under this section shall require
57 that the support be paid through the central unit for collection and dis-

Proposed Balloon Amendment for Section 24 of 2009 SB 88

1 bursement of support payments designated pursuant to K.S.A. 23-4,118,
2 and amendments thereto. A written agreement between the parties to
3 make direct child support payments to the obligee and not pay through
4 the central unit shall constitute good cause, unless the court finds the
5 agreement is not in the best interest of the child or children. The obligor
6 shall file such written agreement with the court. The obligor shall main-
7 tain written evidence of the payment of the support obligation and, at
8 least annually, shall provide such evidence to the court and the obligee.
9 If the divorce decree of the parties provides for an abatement of child
10 support during any period provided in such decree, the child support
11 such nonresidential parent owes for such period shall abate during such
12 period of time, except that if the residential parent shows that the criteria
13 for the abatement has not been satisfied there shall not be an abatement
14 of such child support.

15 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
16 the provisions of the uniform child custody jurisdiction and enforcement
17 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
18 court may change or modify any prior order of custody, residency, visi-
19 tation and parenting time, when a material change of circumstances is
20 shown, but no ex parte order shall have the effect of changing residency
21 of a minor child from the parent who has had the sole de facto residency
22 of the child to the other parent unless there is sworn testimony to support
23 a showing of extraordinary circumstances. If an interlocutory order is
24 issued ex parte, the court shall hear a motion to vacate or modify the
25 order within 15 days of the date that a party requests a hearing whether
26 to vacate or modify the order.

27 (B) *Examination of parties.* The court may order physical or mental
28 examinations of the parties if requested pursuant to K.S.A. 60-235 and
29 amendments thereto.

30 (3) *Child custody or residency criteria.* The court shall determine
31 custody or residency of a child in accordance with the best interests of
32 the child.

33 (A) If the parties have entered into a parenting plan, it shall be pre-
34 sumed that the agreement is in the best interests of the child. This pre-
35 sumption may be overcome and the court may make a different order if
36 the court makes specific findings of fact stating why the agreed parenting
37 plan is not in the best interests of the child.

38 (B) In determining the issue of child custody, residency and parent-
39 ing time, the court shall consider all relevant factors, including but not
40 limited to:

- 41 (i) The length of time that the child has been under the actual care
42 and control of any person other than a parent and the circumstances
43 relating thereto;
- 44 (ii) the desires of the child's parents as to custody or residency;
- 45 (iii) the desires of the child as to the child's custody or residency;
- 46 (iv) the interaction and interrelationship of the child with parents,
47 siblings and any other person who may significantly affect the child's best
48 interests;
- 49 (v) the child's adjustment to the child's home, school and community;
- 50 (vi) the willingness and ability of each parent to respect and appre-
51 ciate the bond between the child and the other parent and to allow for a
52 continuing relationship between the child and the other parent;
- 53 (vii) evidence of spousal abuse;
- 54 (viii) whether a parent is subject to the registration requirements of
55 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-
56 ments thereto, or any similar act in any other state, or under military or
57 federal law;

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1 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
2 21-3609, and amendments thereto;

3 (x) whether a parent is residing with an individual who is subject to
4 registration requirements of the Kansas offender registration act, K.S.A.
5 22-4901, et seq., and amendments thereto, or any similar act in any other
6 state, or under military or federal law; and

7 (xi) whether a parent is residing with an individual who has been
8 convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

9 (C) Neither parent shall be considered to have a vested interest in
10 the custody or residency of any child as against the other parent, regard-
11 less of the age of the child, and there shall be no presumption that it is
12 in the best interests of any infant or young child to give custody or resi-
13 dency to the mother.

14 (D) There shall be a rebuttable presumption that it is not in the best
15 interest of the child to have custody or residency granted to a parent who:

16 (i) Is residing with an individual who is subject to registration require-
17 ments of the Kansas offender registration act, K.S.A. 22-4901, et seq.,
18 and amendments thereto, or any similar act in any other state, or under
19 military or federal law; or

20 (ii) is residing with an individual who has been convicted of abuse of
21 a child, K.S.A. 21-3609, and amendments thereto.

22 (E) *If a court of competent jurisdiction within this state has entered*
23 *an order pursuant to the revised Kansas code for care of children regard-*
24 *ing custody ~~or support~~ of a child or children who are involved in a pro-*
25 *ceeding filed pursuant to this section, and such court has determined*
26 *pursuant to subsection (i)(2) of K.S.A. 38-226, and amendments thereto,*
27 *that the orders in that case shall become the custody orders in the divorce*
28 *case, such court shall file, after consultation with the judge presiding over*
29 *any proceeding filed pursuant to this section, a certified copy of the orders*
30 *with the civil case number in the caption and then close the case under*
31 *the revised Kansas code for care of children. Such orders shall be binding*
32 *on the parties, unless modified based on a material change in circum-*
33 *stances, even if such courts have different venues.*

34 (4) *Types of legal custodial arrangements.* Subject to the provisions
35 of this article, the court may make any order relating to custodial arrange-
36 ments which is in the best interests of the child. The order shall provide
37 one of the following legal custody arrangements, in the order of
38 preference:

39 (A) *Joint legal custody.* The court may order the joint legal custody
40 of a child with both parties. In that event, the parties shall have equal
41 rights to make decisions in the best interests of the child.

42 (B) *Sole legal custody.* The court may order the sole legal custody of
43 a child with one of the parties when the court finds that it is not in the
44 best interests of the child that both of the parties have equal rights to
45 make decisions pertaining to the child. If the court does not order joint
46 legal custody, the court shall include on the record specific findings of
47 fact upon which the order for sole legal custody is based. The award of
48 sole legal custody to one parent shall not deprive the other parent of
49 access to information regarding the child unless the court shall so order,
50 stating the reasons for that determination.

51 (5) *Types of residential arrangements.* After making a determination
52 of the legal custodial arrangements, the court shall determine the resi-
53 dency of the child from the following options, which arrangement the
54 court must find to be in the best interest of the child. The parties shall
55 submit to the court either an agreed parenting plan or, in the case of
56 dispute, proposed parenting plans for the court's consideration. Such op-
57 tions are:

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1 (A) *Residency*. The court may order a residential arrangement in
2 which the child resides with one or both parents on a basis consistent
3 with the best interests of the child.

4 (B) *Divided residency*. In an exceptional case, the court may order a
5 residential arrangement in which one or more children reside with each
6 parent and have parenting time with the other.

7 (C) *Nonparental residency*. If during the proceedings the court de-
8 termines that there is probable cause to believe that the child is a child
9 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
10 of K.S.A. 2008 Supp. 38-2202, and amendments thereto, or that neither
11 parent is fit to have residency, the court may award temporary residency
12 of the child to a grandparent, aunt, uncle or adult sibling, or, another
13 person or agency if the court finds by written order that: (i) (a) The child
14 is likely to sustain harm if not immediately removed from the home;
15 (b) allowing the child to remain in home is contrary to the welfare of
16 the child; or

17 (c) immediate placement of the child is in the best interest of the
18 child; and

19 (ii) reasonable efforts have been made to maintain the family unit
20 and prevent the unnecessary removal of the child from the child's home
21 or that an emergency exists which threatens the safety to the child. In
22 making such a residency order, the court shall give preference, to the
23 extent that the court finds it is in the best interests of the child, first to
24 awarding such residency to a relative of the child by blood, marriage or
25 adoption and second to awarding such residency to another person with
26 whom the child has close emotional ties. The court may make temporary
27 orders for care, support, education and visitation that it considers appro-
28 priate. Temporary residency orders are to be entered in lieu of temporary
29 orders provided for in K.S.A. 2008 Supp. 38-2243 and 38-2244, and
30 amendments thereto, and shall remain in effect until there is a final de-
31 termination under the revised Kansas code for care of children. An award
32 of temporary residency under this paragraph shall not terminate parental
33 rights nor give the court the authority to consent to the adoption of the
34 child. When the court enters orders awarding temporary residency of the
35 child to an agency or a person other than the parent, the court shall refer
36 a transcript of the proceedings to the county or district attorney. The
37 county or district attorney shall file a petition as provided in K.S.A. 2008
38 Supp. 38-2234, and amendments thereto, and may request termination
39 of parental rights pursuant to K.S.A. 2008 Supp. 38-2266, and amend-
40 ments thereto. The costs of the proceedings shall be paid from the general
41 fund of the county. When a final determination is made that the child is
42 not a child in need of care, the county or district attorney shall notify the
43 court in writing and the court, after a hearing, shall enter appropriate
44 custody orders pursuant to this section. If the same judge presides over
45 both proceedings, the notice is not required. Any disposition pursuant to
46 the revised Kansas code for care of children shall be binding and shall
47 supersede any order under this section.

48 (6) *Priority*. Any custody or parenting time order, or order relating
49 to the best interests of a child, issued pursuant to the revised Kansas code
50 for care of children or the revised Kansas juvenile justice code, shall be
51 binding and shall take precedence over any order under article 16 of
52 chapter 60 of the Kansas Statutes Annotated, and amendments thereto
53 (divorce), until jurisdiction under the revised Kansas code for care of
54 children or the revised Kansas juvenile justice code is terminated.

55 (7) *Child health insurance coverage*. The court may order that each
56 parent execute any and all documents, including any releases, necessary
57 so that both parents may obtain information from and to communicate

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1 with any health insurance provider regarding the health insurance cov-
2 erage provided by such health insurance provider to the child. The pro-
3 visions of this paragraph shall apply irrespective of which parent owns,
4 subscribes or pays for such health insurance coverage.

5 (b) *Financial matters.* (1) *Division of property.* The decree shall di-
6 vide the real and personal property of the parties, including any retire-
7 ment and pension plans, whether owned by either spouse prior to mar-
8 riage, acquired by either spouse in the spouse's own right after marriage
9 or acquired by the spouses' joint efforts, by: (A) A division of the property
10 in kind; (B) awarding the property or part of the property to one of the
11 spouses and requiring the other to pay a just and proper sum; or (C)
12 ordering a sale of the property, under conditions prescribed by the court,
13 and dividing the proceeds of the sale. Upon request, the trial court shall
14 set a valuation date to be used for all assets at trial, which may be the
15 date of separation, filing or trial as the facts and circumstances of the case
16 may dictate. The trial court may consider evidence regarding changes in
17 value of various assets before and after the valuation date in making the
18 division of property. In dividing defined-contribution types of retirement
19 and pension plans, the court shall allocate profits and losses on the non-
20 participant's portion until date of distribution to that nonparticipant. In
21 making the division of property the court shall consider the age of the
22 parties; the duration of the marriage; the property owned by the parties;
23 their present and future earning capacities; the time, source and manner
24 of acquisition of property; family ties and obligations; the allowance of
25 maintenance or lack thereof; dissipation of assets; the tax consequences
26 of the property division upon the respective economic circumstances of
27 the parties; and such other factors as the court considers necessary to
28 make a just and reasonable division of property. The decree shall provide
29 for any changes in beneficiary designation on: (A) Any insurance or an-
30 nuity policy that is owned by the parties, or in the case of group life
31 insurance policies, under which either of the parties is a covered person;
32 (B) any trust instrument under which one party is the grantor or holds a
33 power of appointment over part or all of the trust assets, that may be
34 exercised in favor of either party; or (C) any transfer on death or payable
35 on death account under which one or both of the parties are owners or
36 beneficiaries. Nothing in this section shall relieve the parties of the ob-
37 ligation to effectuate any change in beneficiary designation by the filing
38 of such change with the insurer or issuer in accordance with the terms
39 of such policy.

40 (2) *Maintenance.* The decree may award to either party an allowance
41 for future support denominated as maintenance, in an amount the court
42 finds to be fair, just and equitable under all of the circumstances. The
43 decree may make the future payments modifiable or terminable under
44 circumstances prescribed in the decree. The court may make a modifi-
45 cation of maintenance retroactive to a date at least one month after the
46 date that the motion to modify was filed with the court. In any event, the
47 court may not award maintenance for a period of time in excess of 121
48 months. If the original court decree reserves the power of the court to
49 hear subsequent motions for reinstatement of maintenance and such a
50 motion is filed prior to the expiration of the stated period of time for
51 maintenance payments, the court shall have jurisdiction to hear a motion
52 by the recipient of the maintenance to reinstate the maintenance pay-
53 ments. Upon motion and hearing, the court may reinstate the payments
54 in whole or in part for a period of time, conditioned upon any modifying
55 or terminating circumstances prescribed by the court, but the reinstate-
56 ment shall be limited to a period of time not exceeding 121 months. The
57 recipient may file subsequent motions for reinstatement of maintenance

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1 prior to the expiration of subsequent periods of time for maintenance
2 payments to be made, but no single period of reinstatement ordered by
3 the court may exceed 121 months. Maintenance may be in a lump sum,
4 in periodic payments, on a percentage of earnings or on any other basis.
5 At any time, on a hearing with reasonable notice to the party affected,
6 the court may modify the amounts or other conditions for the payment
7 of any portion of the maintenance originally awarded that has not already
8 become due, but no modification shall be made without the consent of
9 the party liable for the maintenance, if it has the effect of increasing or
10 accelerating the liability for the unpaid maintenance beyond what was
11 prescribed in the original decree. Except for good cause shown, every
12 order requiring payment of maintenance under this section shall require
13 that the maintenance be paid through the central unit for collection and
14 disbursement of support payments designated pursuant to K.S.A. 23-
15 4,118, and amendments thereto. A written agreement between the parties
16 to make direct maintenance payments to the obligee and not pay through
17 the central unit shall constitute good cause. If child support and main-
18 tenance payments are both made to an obligee by the same obligor, and
19 if the court has made a determination concerning the manner of payment
20 of child support, then maintenance payments shall be paid in the same
21 manner.

22 (3) *Separation agreement.* If the parties have entered into a separa-
23 tion agreement which the court finds to be valid, just and equitable, the
24 agreement shall be incorporated in the decree. A separation agreement
25 may include provisions relating to a parenting plan. The provisions of the
26 agreement on all matters settled by it shall be confirmed in the decree
27 except that any provisions relating to the legal custody, residency, visita-
28 tion parenting time, support or education of the minor children shall be
29 subject to the control of the court in accordance with all other provisions
30 of this article. Matters settled by an agreement incorporated in the de-
31 cree, other than matters pertaining to the legal custody, residency, visi-
32 tation, parenting time, support or education of the minor children, shall
33 not be subject to subsequent modification by the court except: (A) As
34 prescribed by the agreement or (B) as subsequently consented to by the
35 parties.

36 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
37 party as justice and equity require. The court may order that the amount
38 be paid directly to the attorney, who may enforce the order in the attor-
39 ney's name in the same case.

40 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
41 of a spouse, the court shall order the restoration of that spouse's maiden
42 or former name. The court shall have jurisdiction to restore the spouse's
43 maiden or former name at or after the time the decree of divorce becomes
44 final. The judicial council shall develop a form which is simple, concise
45 and direct for use with this paragraph.

46 (2) *Effective date as to remarriage.* Any marriage contracted by a
47 party, within or outside this state, with any other person before a judg-
48 ment of divorce becomes final shall be voidable until the decree of divorce
49 becomes final. An agreement which waives the right of appeal from the
50 granting of the divorce and which is incorporated into the decree or
51 signed by the parties and filed in the case shall be effective to shorten
52 the period of time during which the remarriage is voidable.

TO: Senate Judiciary Committee
FROM: Steve Leben, on behalf of the Kansas Judicial Council
DATE: February 5, 2009
RE: Senate Bill 87

In the interest of time, presentations to the Committee were abbreviated. I would like to respond briefly to some of the concerns that were raised during the hearing.

Concern re Sections 2, 12: The provisions to protect victim addresses and contact information may be overly broad.

Response: State agencies have a great deal of information about us, and we did not find any specific authority in the Kansas Administrative Procedure Act (KAPA) or the Kansas Open Records Act (KORA) that would prevent government officials from being required to turn over personal information that might cause a threat to personal safety of crime victims. The language we used in Sections 2 and 12 is based in part on a section of the Uniform Child Custody Jurisdiction and Enforcement Act, K.S.A. 38-1356(e), which requires that a court seal identifying information when a party alleges under oath "that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information." Similar protections are provided in several other Kansas statutes, *e.g.*, K.S.A. 60-3104(e) [Kansas Protection from Abuse Act]; K.S.A. 60-31a04(e) [Kansas Protection from Stalking Act]; K.S.A. 75-451 *et seq.* [Kansas Address Confidentiality Program (Safe at Home)]. We were concerned in part because we could not find clear authority, either in KAPA or KORA, for either an agency records custodian or a hearing officer to refuse to provide a document, such as a denied request for food stamps, that contained identifying information. Such records can easily be obtained and used by a perpetrator of domestic violence to relocate a victim. Although there is certainly some discretion under the draft provision, records custodians already must interpret various KORA exceptions when applying them to specific cases and requests.

Concern re Section 8: The Kansas Board of Tax Appeals should be exempt from any requirement to use the central hearing panel.

Response: The Legislature has considered in past sessions which agencies should be required to use the central-panel hearing officers. The Judicial Council's proposals did not revisit that issue, and it is not necessary that the Legislature do so now to consider the Judicial Council proposals. The amendment to K.S.A. 77-514(a) shown in Section 8 was part of 2004 Senate Bill 141; pursuant to that enactment, this amendment already is scheduled to go into effect July 1, 2009. The Revisor's Office has apparently included it in this bill to make sure that this change, already adopted by a previous Legislature, is not inadvertently overridden. The Judicial Council's Administrative Law Advisory Committee has generally favored usage of the central-hearing panel, but we have not recently considered this specifically with respect to the Kansas Board of Tax Appeals.

Concern re Section 26: Providing an exception to the exhaustion requirement when "administrative remedies are inadequate or would result in irreparable harm" would harm the public and short-circuit the administrative process.

Response: Normally all administrative proceedings must be finished (i.e., “exhausted”) before any court appeal may be taken. In our fast-paced, technological society, there may be situations in which substantial delay in the administrative process would effectively result in irreparable harm to the party even if the party later wins in court. If harm *from the delay necessary to fully hear the matter administratively* would be irreparable, then the proposed statutory amendment provides that the court “*may*” waive the exhaustion requirement. The agency would still be able to argue to the court that the full administrative process should occur first. And even if the court disagrees, letting the matter move more quickly to court, the agency’s position on the merits will still be entitled to deference by the courts, which do not hear agency appeals “de novo.” In addition, as noted in our committee’s comment to Section 26 of the bill, the language of our amendment is generally consistent with Kansas caselaw; we have just used language from the draft Revised Model State Administrative Procedure Act to put this into the statute where it is easier to find.

The case cited by the Board of Healing Arts, *Friedman v. Kansas State Bd. of Healing Arts*, 2009 Westlaw 102962 (Kan. S. Ct. Jan. 16, 2009), recognizes that under K.S.A. 77-608, the Kansas Judicial Review Act allows an interlocutory appeal of a nonfinal agency action when “postponement of judicial review would result in an inadequate remedy or irreparable harm disproportionate to the public benefit derived from postponement.” That’s already in Kansas law, and that provision did not interfere with the agency’s ability to do its job. In *Friedman*, the district court found no irreparable harm from waiting for the Board of Healing Arts to finish its adjudication, and the Supreme Court agreed. The Judicial Council’s proposed amendment to K.S.A. 77-612 (the general provision in KJRA regarding exhaustion) is consistent with (a) the present Kansas statute for exhaustion on nonfinal agency orders as discussed in *Friedman*, (b) present Kansas caselaw [*see State ex rel. Slusher v. City of Leavenworth*, 285 Kan. 438, 172 P.3d 1154 (2007) (if no agency remedy is available or remedy is inadequate, exhaustion of administrative remedies is not required)], and (c) the draft Revised Model State Administrative Act, from which we borrowed the proposed language.

Concern re Section 27: Without strict pleading requirements for the initial petition filed in an appeal of an agency decision, the court appeal will turn into a “de novo” retrial of the agency decision.

Response: Several other provisions already make it clear that the court does not review cases de novo: (1) Section 29 of the bill (amending K.S.A. 77-621) clarifies that the court may not “reweigh the evidence or engage in de novo review”; (2) K.S.A. 77-617 (in portions not amended by Section 28 of the bill) already prevents new issues from being inserted on appeal, except in very limited circumstances; (3) K.S.A. 77-619 (not amended by the bill) provides that the appeal of an agency action is decided based on the evidence presented to the agency, not separately in court, with only very limited exceptions. Section 27 is designed to make sure that Kansans have a chance to have their appeal heard by the court, as many appeals have been tossed out because a portion of the information required by K.S.A. 77-614 (Section 27 in the bill) was not fully set out in the initial court pleading. Under our bill, if there is some technical error, it could be corrected under the same standard used to allow amendments in civil procedure. Any questions about the issues to be argued in court on appeal can be easily clarified at a prehearing conference.

Thank you for the opportunity to present our proposals to the Committee. Should there be any additional information we could provide, please let us know.

1 issuance and enforcement of subpoenas and discovery orders, but do ap-
2 ply to conference hearings insofar as those provisions authorize the pre-
3 siding officer to issue protective orders at the request of any party or
4 upon the presiding officer's motion.

5 (e) (b) Paragraphs (a), (b) and (c) of K.S.A. 77-523, and amendments
6 thereto, do not apply; but (1) the presiding officer shall regulate the
7 course of the proceedings; (2) only the parties may testify and present
8 written exhibits; and (3) the parties may offer comments on the issues.

9 Sec. 20. K.S.A. 77-537 is hereby amended to read as follows: 77-537.

10 (a) A state agency may use summary proceedings, subject to a party's
11 request for a hearing on the order, if:

12 (1) The use of those proceedings in the circumstances does not vio-
13 late any provision of law; and

14 (2) the protection of the public interest does not require the state
15 agency to give notice and an opportunity to participate to persons other
16 than the parties.

17 (b) The state agency shall serve each party with a copy of the order
18 in a summary proceeding in the manner prescribed by K.S.A. 77-531, and
19 amendments thereto. The order shall include at least:

20 (1) A statement of the state agency's action and, if unfavorable action
21 is taken, a brief statement of the reasons for the action;

22 (2) notice of the time and manner for requesting a hearing on the
23 order, as provided in K.S.A. 77-542; and

24 (3) notice that, if a hearing is not requested, the order shall become
25 effective upon the expiration of the time for requesting a hearing.

26 (c) *If a hearing is requested, the prior issuance of a summary order*
27 *shall not affect the burden of proof.*

28 Sec. 21. K.S.A. 2008 Supp. 77-549 is hereby amended to read as
29 follows: 77-549. (a) The filing of a return with the director of taxation
30 under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the
31 Kansas Statutes Annotated, and amendments thereto, shall not be
32 deemed an application for an order under the Kansas administrative pro-
33 cedure act.

34 (b) A determination by the division of taxation or the audit services
35 bureau of the department of revenue concerning tax liability under article
36 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes
37 Annotated, and amendments thereto, which is made prior to the oppor-
38 tunity for a hearing or prior to the opportunity for an informal conference
39 before the secretary or the secretary's designee on such tax liability, shall
40 not require an adjudicative proceeding under the Kansas administrative
41 procedure act.

42 (c) For purposes of *administrative proceedings of the division of tax-*
43 *ation under the Kansas administrative procedure act*, the secretary of

(3) the matter is entirely within one or more of the following categories:
(i) a monetary amount of not more than \$100;
(ii) the denial of an application after the applicant has abandoned the application;
(iii) the denial, in whole or in part, of an application if the applicant has an opportunity for
administrative review in accordance with K.S.A. 77-511.
(iv) a matter that is resolved on the sole basis of inspections, examinations, or tests; or
(v) any matter having only trivial potential impact upon the affected parties.