

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. 460

As Amended by House Committee on
Judiciary

Brief*

SB 460, as amended, would amend several statutes to clarify the priority of certain orders concerning children. The bill would:

- Clarify that custody orders, parenting time orders, or orders related to the best interests of a child issued pursuant to a child in need of care (CINC) or juvenile offenders (JO) action take priority over any orders in an adoption or relinquishment proceeding, or a guardian and conservator proceeding, until the jurisdiction under the CINC or JO case has terminated;
- Clarify that custody orders, residency orders, or parenting time orders issued pursuant to a CINC or JO action take priority over any orders in a determination of parentage proceeding, until the jurisdiction under the CINC or JO case has terminated;
- Amend the law on determination of parentage to allow the transfer of the CINC orders back into the parentage case at the close of the CINC case and clarify that those orders would be binding on the parties, unless modified by the court based on a material change in circumstances;
- Amend the law on parentage to give the court the authority to place a child or children in nonparental residency if the court finds that there is probable cause to believe the child

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

is a child in need of care or that neither parent is fit to have residency;

- Clarify that orders issued pursuant to the Revised Kansas Code for Care of Children would take priority over any order under the parentage, adoption and relinquishment, guardians and conservators, divorce, and protection from abuse until jurisdiction under the CINC case is terminated;
- Add a definition of “civil custody case” to the Revised Kansas Code for Care of Children;
- Clarify that a court’s order affecting a child’s custody, residency, parenting time, and visitation that is issued in a CINC proceeding would take priority over any civil custody case, protection from abuse proceeding, or comparable case in another jurisdiction, except as provided in the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA);
- Require a court to conduct a hearing, at least once a year, in any case referred to a citizen review board;
- Provide that information confirming procedural details in confidential reports or records of a child alleged to be a child in need of care may be disclosed when the individuals involved give their express written consent or the investigation has become public knowledge;
- Require a final adjudication or dismissal on a CINC case be entered within 60 days from the date the petition was filed, unless good cause for a continuance is shown on the record;
- Delete language in current law that provided the Secretary of Social and Rehabilitation Services (SRS) may propose child custody with a parent if a safety plan has been approved by the court;

- Amend current law to expand the list of individuals who would be required to receive written notice of any change in placement of a child to include the petitioner; the attorney for the parents, if any; the child's court appointed special advocate; and any other party or interested party;
- Amend current law regarding a child who has been in the same placement for six months or longer, to expedite a change in placement if there is no request for a hearing within ten days after the notice is received;
- Amend current law to require a court to make a finding whether reasonable efforts have been made by appropriate public or private agencies to rehabilitate the family and achieve the permanency goal in place at the time of the hearing on permanency;
- Clarify that a court may enter child custody orders that the court determines to be in the best interest of the child, if permanency with one parent has been achieved without the termination of the other parent's rights;
- Require the court determining permanency to inquire whether a custody order has been entered by a court of competent jurisdiction in Kansas or is pending in a civil custody case;
- Authorize a court in the civil case to declare the custody order in the CINC case would be the custody order in the civil custody case;
- Authorize a court, on its own motion or motion of any party, to consolidate a CINC case with any open civil custody case involving the same parties and then require the court to dismiss the CINC case after a custody order in the consolidated case is ordered;
- Authorize a court to direct the parties to file a civil custody case if no case has been filed, and costs of the civil custody case may be assessed against the parties;

- Clarify that the confidentiality of information in the CINC case would be preserved in the consolidated case;
- Clarify that the parental consent to appointment of a permanent custodian would be required to be in writing and acknowledged before a judge or officer authorized to take acknowledgments;
- Clarify that when a case is on appeal, a district court or magistrate court would continue to have jurisdiction over all issues not specifically appealed;
- Authorize, at the direction of the judge in the CINC case, consolidation of the child support case and the CINC case and clarify that any motions to modify child support be filed in the CINC case. If the child support rights are assigned, the assignee would be treated as an interested party in the consolidated case;
- Clarify that a court's order affecting a child's custody, residency, parenting time, and visitation issued in a proceeding under the JO code would take priority over such orders issued pursuant to proceedings under the parentage, divorce, protection from abuse, adoption and relinquishment, guardians or conservators, or comparable laws in other jurisdictions, except as provided by the UCCJEA;
- Clarify the appropriate venue in cases involving a juvenile;
- Require the Commissioner of Juvenile Justice, or the Commissioner's designee, to notify the court of a juvenile offender's anticipated release 21 days before release, and require the court to hold a permanency hearing within seven days after the juvenile's release;
- Clarify that custody and parenting time orders issued in a CINC or JO proceeding take priority over those issued in a divorce proceeding. The bill would require the transfer of the CINC orders back into a divorce case and make

such orders binding on the parties, unless the court modifies the order based upon a material change in circumstances. The bill also would require closure of the CINC case; and

- Clarify that custody orders, parenting time orders, or orders relating to the best interest of the child issued in a CINC or JO proceeding would take priority over those issued in a protection from abuse proceeding. The bill provides that an inconsistent custody or parenting order would be required to be specific in its terms and the order would be required to reference any preexisting protection from abuse orders or custody modifications. A copy of such order would be required to be filed in the preexisting protection from abuse case.

Background

In June 2008, the Kansas Supreme Court issued its opinion in *In re L.M.*, 286 Kan. 460, 186 P.3d 164 (2008), and held that juveniles 14 years of age or older who are charged with a felony have a right to a jury trial under the *Constitution of the State of Kansas*. The Kansas Judicial Council's Juvenile Offender/Child in Need of Care (JO/CINC) Advisory Committee recommended 2009 SB 88 in response to the Court's opinion. 2009 SB 88 contained proposed legislation concerning the Juvenile Offender Code and Child in Need of Care. At the two Senate Committee on Judiciary hearings on 2009 SB 88, concerns were raised by SRS and the Kansas Coalition Against Sexual and Domestic Violence. In addressing the concerns of the parties, it was determined that the Juvenile Offender provisions and the Child in Need of Care provisions should be introduced in separate bills. SB 459 is the bill recommended by JO/CINC on the Juvenile Offender Code provisions. SB 460 is the bill recommended by JO/CINC on the CINC provisions.

The proponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were representatives of the Kansas Judicial Council (KJC) and the Juvenile Justice Authority.

The opponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was a representative of the Kansas Coalition Against Sexual and Domestic Violence (KCADSV). The representative indicated that the concerns the KCADSV had with the bill were worked out with the KJC and SRS, and that a proposed amendment would be provided to the Senate Committee prior to final action by the Committee.

The Senate Committee amended the bill, at the request of the KCADSV with the agreement of the KJC and SRS, to:

- Delete the statutory reference to the Protection from Stalking Act because it has no provisions that address custody of a child;
- Delete Section 22 of the bill since the amendatory language would be more appropriate in the Protection from Abuse Act;
- Add amendatory language in the Protection from Abuse Act with the clarification that the order reference any preexisting protection from abuse order and the custody being modified, and require that a copy of such order be filed in the preexisting protection from abuse case; and
- Make a technical amendment to correct a statutory reference.

According to the fiscal note on the bill, as introduced, SRS, the Juvenile Justice Authority, and the Judicial Branch all state that SB 460 clarifies current law and codifies current practices regarding children in need of care and juvenile offenders. Therefore, passage of the bill would cause no fiscal effect.

The proponent of the bill who presented testimony in the House Committee was a representative of the KJC.

The House Committee made a technical correction to the bill.