

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:35 a.m. on February 25, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

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

Others attending:

See attached list.

The Chairman called to continue final action on **SB 399 - Controlled substances; aggravated endangering a child; enhanced penalties for distributing on park property and distributing to a child or pregnant person.**

Senator Schmidt moved, Senator Bruce seconded, to adopt the balloon amendment distributed to the Committee at the February 24 meeting. Motion carried.

Senator Kelly moved, Senator Haley seconded, to strike all references to pregnant women. Motion failed.

Senator Schmidt moved, Senator Bruce seconded, to recommend SB 399, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 494 - Providing for the exercise of the functions of sheriff by the undersheriff of a county.**

Senator Vratil distributed a proposed balloon amendment and reviewed the changes. (Attachment 1)

Senator Vratil moved, Senator Schodorf seconded, to amend SB 494 with the proposed balloon, including a change to line 23 to make it gender neutral. Motion carried.

Senator Vratil moved, Senator Lynn seconded, to recommend SB 494, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 522 - Consent to adoption and termination of parental rights; factors to consider in weighing whether a parent must consent to a stepparent adoption; factors to consider when terminating a parent's right.** Jason Thompson, staff revisor, reviewed the bill and distributed a balloon amendment requested by the committee based on proposals by proponent Martin Bauer during the hearing on February 23. (Attachment 2)

Senator Bruce moved, Senator Pilcher-Cook seconded, to refer SB 522 to the Kansas Judicial Council for further review. Motion carried.

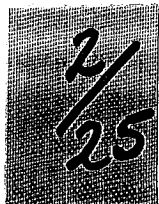
The Chairman called for final action on **SB 520 - Employment of county and city prisoners, credit on fines and costs earned.** Senator Vratil requested the bill be passed over until a requested amendment would be available. The bill was passed over.

The Chairman called for final action on **SB 521 - Amending qualifications for secretary of corrections.**

Senator Vratil moved, Senator Donovan seconded, to table SB 521. Motion carried.

The next meeting is scheduled for February 26, 2010.

The meeting was adjourned at 10:15 a.m.



PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 25, 2010

NAME	REPRESENTING
Loretta Severin	KS Alliance for Drug Endangered Children
DAVID HUTCHINGS	KBI
TRAVIS LOWE	LITTLE GOV'T RELATIONS
Jackson Lindsey	Hein Law
SEAN MILLER	CAPITOL STRATEGIES
Mark Stock	KDWP
Levi Henry	Sandstone Group LLC
Sam King	JTA
JEREMY BARCLAY	KDOC
Jennifer Crow	Children's Alliance
Sarah Gillock	PPKM
Mary Drake	Self
Janie Row	KCSL
Wendy Wick	Jud. Branch
Allison Veeder	Allison Veeder
AM - [Signature]	SKIL
Mike [Signature]	Open Independent Living

**SENATE BILL No. 494**

By Committee on Judiciary

SB494-Balloon-V1.pdf  
RS - JThompson - 02/24/10

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9 AN ACT concerning county officers; relating to undersheriffs; amending  
10 K.S.A. 19-804a and repealing the existing section.

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

12 Section 1. K.S.A. 19-804a is hereby amended to read as follows: 19-  
13 804a. ~~Except in those counties operating under the provisions of the con-~~  
14 ~~solidated law enforcement act, whenever a vacancy occurs in the office~~  
15 ~~of sheriff of any county, the undersheriff of such county shall in all things~~  
16 ~~execute the office of sheriff until a sheriff shall be appointed by the gov-~~  
17 ~~ernor in the manner provided by law for filling vacancies in the office of~~  
18 ~~member of house of representatives.~~ When there shall be no sheriff or  
19 undersheriff in an organized any county, it shall be the duty of the county  
20 clerk to exercise all the powers and duties of the sheriff of his such clerk's  
21 county until a sheriff be elected or qualified, and when the sheriff for any  
22 cause shall be committed to the jail of his county, the county clerk shall  
23 be keeper thereof during the time the sheriff shall remain a prisoner  
24 therein.

25 Sec. 2. K.S.A. 19-804a is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its  
27 publication in the statute book.  
28

Strike

. When

FYI only - Text of K.S.A. 19-804

Except in those counties operating under the provisions of consolidated law enforcement acts, whenever a vacancy occurs in the office of sheriff of any county, the undersheriff of such county shall in all things execute the office of sheriff until a sheriff shall be appointed by the governor in the manner provided by law for filling vacancies in the office of member of the house of representatives. If the vacancy occurs on or after May 1 of the second year of the term, the person so appointed shall serve for the remainder of the unexpired term and until a successor is elected and qualifies. If the vacancy occurs before May 1 of the second year of the term, the person appointed to fill the vacancy shall serve until a successor is elected and qualifies at the next general election to serve the remainder of the unexpired term. Nomination and election of such successor shall be in the same manner as nomination and election of a sheriff for a regular term. Any default or misfeasance in office of such undersheriff in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed the undersheriff, and also a breach of the condition of the bond executed by such undersheriff to the sheriff by whom the undersheriff was appointed.

**SENATE BILL No. 522**

By Committee on Judiciary

2-3

SB522-Balloon1.pdf  
RS - JThompson - 02/24/10

Senate Judiciary

2-25-10  
Attachment 2

9 AN ACT concerning stepparent adoptions; relating to consent of a par-  
10 ent; amending K.S.A. 2009 Supp. 59-2136 and repealing the existing  
11 section.  
12

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

14 Section 1. K.S.A. 2009 Supp. 59-2136 is hereby amended to read as  
15 follows: 59-2136. (a) The provisions of this section shall apply where a  
16 relinquishment or consent to an adoption has not been obtained from a  
17 parent and K.S.A. 59-2124 and 59-2129, and amendments thereto, state  
18 that the necessity of a parent's relinquishment or consent can be deter-  
19 mined under this section.

20 (b) Insofar as practicable, the provisions of this section applicable to  
21 the father also shall apply to the mother and those applicable to the  
22 mother also shall apply to the father.

23 (c) In stepparent adoptions under subsection (d), the court may ap-  
24 point an attorney to represent any father who is unknown or whose  
25 whereabouts are unknown. In all other cases, the court shall appoint an  
26 attorney to represent any father who is unknown or whose whereabouts  
27 are unknown. If no person is identified as the father or a possible father,  
28 the court shall order publication notice of the hearing in such manner as  
29 the court deems appropriate.

30 (d) In a stepparent adoption, if a mother consents to the adoption of  
31 a child who has a presumed father under subsection (a)(1), (2) or (3) of  
32 K.S.A. 38-1114 and amendments thereto, or who has a father as to whom  
33 the child is a legitimate child under prior law of this state or under the  
34 law of another jurisdiction, ~~the consent of such father must be given to~~  
35 ~~the adoption unless~~ (1) such father has failed or refused to assume the  
36 duties of a parent for two consecutive years next preceding the filing of  
37 the petition for adoption ~~or~~; (2) *the father is incapable of giving such*  
38 ~~consent; or~~ (3) *the father is unfit under subsection (h); and* (4) *it is in the*  
39 *best interests of the child.* In determining whether a father's consent is  
40 required under this subsection, the court may disregard incidental visi-  
41 tations, contacts, communications or contributions. In determining  
42 whether the father has failed or refused to assume the duties of a parent  
43 for two consecutive years next preceding the filing of the petition for

, under the totality of the circumstances:

or

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1 adoption, there shall be a rebuttable presumption that if the father, after  
2 having knowledge of the child's birth, has knowingly failed to provide a  
3 substantial portion of the child support as required by judicial decree,  
4 when financially able to do so, for a period of two years next preceding  
5 the filing of the petition for adoption, then such father has failed or re-  
6 fused to assume the duties of a parent. ~~The court may consider the best  
7 interests of the child and the fitness of the nonconsenting parent in de-  
8 termining whether a stepparent adoption should be granted.~~

9 (e) Except as provided in subsection (d), if a mother desires to relin-  
10 quish or consents to the adoption of such mother's child, a petition shall  
11 be filed in the district court to terminate the parental rights of the father,  
12 unless the father's relationship to the child has been previously termi-  
13 nated or determined not to exist by a court. The petition may be filed by  
14 the mother, the petitioner for adoption, the person or agency having  
15 custody of the child or the agency to which the child has been or is to be  
16 relinquished. Where appropriate, the request to terminate parental rights  
17 may be contained in a petition for adoption. If the request to terminate  
18 parental rights is not filed in connection with an adoption proceeding,  
19 venue shall be in the county in which the child, the mother or the pre-  
20 sumed or alleged father resides or is found. In an effort to identify the  
21 father, the court shall determine by deposition, affidavit or hearing, the  
22 following:

23 (1) Whether there is a presumed father under K.S.A. 38-1114 and  
24 amendments thereto;

25 (2) whether there is a father whose relationship to the child has been  
26 determined by a court;

27 (3) whether there is a father as to whom the child is a legitimate child  
28 under prior law of this state or under the law of another jurisdiction;

29 (4) whether the mother was cohabitating with a man at the time of  
30 conception or birth of the child;

31 (5) whether the mother has received support payments or promises  
32 of support with respect to the child or in connection with such mother's  
33 pregnancy; and

34 (6) whether any man has formally or informally acknowledged or de-  
35 clared such man's possible paternity of the child. If the father is identified  
36 to the satisfaction of the court, or if more than one man is identified as  
37 a possible father, each shall be given notice of the proceeding in accord-  
38 ance with subsection (f).

39 (f) Notice of the proceeding shall be given to every person identified  
40 as the father or a possible father by personal service, certified mail return  
41 receipt requested or in any other manner the court may direct. Proof of  
42 notice shall be filed with the court before the petition or request is heard.

43 (g) If, after the inquiry, the court is unable to identify the father or

1 any possible father and no person has appeared claiming to be the father  
 2 and claiming custodial rights, the court shall enter an order terminating  
 3 the unknown father's parental rights with reference to the child without  
 4 regard to subsection (h). If any person identified as the father or possible  
 5 father of the child fails to appear or, if appearing, fails to claim custodial  
 6 rights, such person's parental rights with reference to the child shall be  
 7 terminated without regard to subsection (h).

8 (h) (1) When a father or alleged father appears and asserts parental  
 9 rights, the court shall determine parentage, if necessary pursuant to the  
 10 Kansas parentage act. If a father desires but is financially unable to em-  
 11 ploy an attorney, the court shall appoint an attorney for the father. There-  
 12 after, the court may order that parental rights be terminated, upon a  
 13 finding by clear and convincing evidence, of any of the following:

14 (A) The father abandoned or neglected the child after having knowl-  
 15 edge of the child's birth;

16 (B) the father is unfit as a parent or incapable of giving consent;

17 (C) the father has made no reasonable efforts to support or com-  
 18 municate with the child after having knowledge of the child's birth;

19 (D) the father, after having knowledge of the pregnancy, failed with-  
 20 out reasonable cause to provide support for the mother during the six  
 21 months prior to the child's birth;

22 (E) the father abandoned the mother after having knowledge of the  
 23 pregnancy;

24 (F) the birth of the child was the result of rape of the mother; or

25 (G) the father has failed or refused to assume the duties of a parent  
 26 for two consecutive years next preceding the filing of the petition; *and*

27 (H) *it is in the best interest of the child.*

28 (2) In making a finding whether parental rights shall be terminated  
 29 under this subsection, the court may: ~~(A) Consider and weigh the best~~  
 30 ~~interest of the child, and (B) disregard incidental visitations, contacts,~~  
 31 communications or contributions.

32 (3) In determining whether the father has failed or refused to assume  
 33 the duties of a parent for two consecutive years next preceding the filing  
 34 of the petition for adoption, there shall be a rebuttable presumption that  
 35 if the father, after having knowledge of the child's birth, has knowingly  
 36 failed to provide a substantial portion of the child support as required by  
 37 judicial decree, when financially able to do so, for a period of two years  
 38 next preceding the filing of the petition for adoption, then such father  
 39 has failed or refused to assume the duties of a parent.

40 (i) A termination of parental rights under this section shall not ter-  
 41 minate the right of the child to inherit from or through the parent. Upon  
 42 such termination, all the rights of birth parents to such child, including  
 43 their right to inherit from or through such child, shall cease.

OR

under the totality of the circumstances,

interests

- 1 Sec. 2. K.S.A. 2009 Supp. 59-2136 is hereby repealed.
- 2 Sec. 3. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

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