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January 25, 2018

WRITTEN TESTIMONY OF CHARLES F. HARRIS IN OPPOSITION OF SB 257

I am attorney who has practiced family law in Wichita for 39 years. I am the chairman of the Family Law Advisory Committee to the Kansas Judicial Council and a member of the Kansas Supreme Court Child Support Guideline Committee since 1990. I am testifying in opposition to Senate Bill 257 on behalf of myself.

I oppose this Senate Bill 257 because it will be harmful to parents and children of Kansas. This bill is a giant step backward in how we handle the important issue of child residency in Kansas.

As proposed, the bill would amend the existing language of KSA 23-3202 to retain the current language that parenting plans agreed to by the parents are presumptively in the best interest of the minor child but prevent our courts from modifying or deviating from the agreed plan unless there are findings that the agreed plan is not in the best interest of the child based on "clear and convincing evidence." In instances where there is no agreed parenting plan, the bill would **mandate** shared residential custody unless the court finds that it is not in the best interest of the child based on clear and convincing evidence. There is no empirical data that

Currently, when dealing with an agreed parenting plan, it is presumed to be in the best interest of the child unless the court after applying the 18 statutory factors in KSA 23-3203 (2016 Supp.) finds, that is not in the child's best interest. The current standard of proof is "by a preponderance of the evidence" which is the universal standard of proof in civil cases. This bill requires that in order to deviate, the court must find that the agreed or proposed residency arrangement is not in the best interest of the child by clear and convincing evidence based on the consideration of the 18 statutory factors. This is redundant because the consideration of the 18 statutory factors is already mandatory under KSA 23-3202 (2016 Supp).

This bill has two significant detrimental effects. It would have the effect of automatically reducing child support by between 66% and 75% by imposing shared residency which has a special shared child support formula contained in the Kansas Child Support Guidelines and it automatically places the child in suspended animation between two conflicted parents. How can this be in the best interest of the child?

The bill also takes a reverse approach to the application of the 18 statutory factors in KSA 23-3202 (2016 Supp.) that now must be considered by the Court before approving or making a residency order. Currently, the court applies the factors before making the order for residency in each case. Under SB 257, shared residency would be mandated and the court would be required to make a finding based on clear and convincing evidence to deviate from the presumptive standard the bill imposes.

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This bill would have an even more extreme effect if the Legislature adopts SB 280 which applies the provisions of Article 32 of the Family Law Code to paternity cases. That article is currently applicable only to divorce case but contains not only the 18 statutory factors but all of the procedures for determining legal custody and residency such as parenting plans. The parental roles and relationships in paternity cases are significantly different than those in divorce cases. Frequently, in paternity cases there is little or no relationship between the parents. This bill would also force the presumption of shared residency onto children in paternity cases no matter how limited the parental relationship is.

As I indicated, the "preponderance of evidence" standard of proof is almost universally applied in civil cases. That standard weighs the evidence to see if it is more probably true than not. By adopting the standard of "clear and convincing evidence," Senate bill 257 significantly increases the level of proof required to rebut the presumption that shared residency is automatically in the child's best interest. To meet that standard, "the truth of the facts asserted is highly probable." *In re BD*, 286 Kan. 686 (2008), Syllabi 1 and 3. In family cases the evidence is frequently the testimony of the parties about what has occurred within the walls of their home. There is no additional evidence besides the testimony of the parties. Under the standard imposed by the bill, it creates a situation when clear and convincing evidence is not possible to attain.

The real winners from this bill are not the children of Kansas but the lawyers who will get to litigate the facts to try to establish clear and convincing evidence to deviate. I do not think that is the intended purpose of the bill.

This is a bad bill that we cannot afford to adopt. Please join me in opposing Senate Bill 257.

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BY:


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