

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 124

As Amended by House Committee on Judiciary

Brief*

SB 124 would amend the law governing determination of legal custody, residency, and parenting time. The bill would replace the requirement for a court to consider, among other relevant factors, evidence of “spousal abuse,” either emotional or physical, with a requirement to consider evidence of domestic abuse, including, but not limited to, a pattern or history of physically or emotionally abusive behavior, or threat thereof, used by one person to gain or maintain domination and control over an intimate partner or household member or an act of domestic violence, stalking, or sexual assault. The bill would also amend the law to require courts to determine parenting time in accordance with the best interests of the child and specify “custody” in that statute refers to “legal custody.”

The bill would also amend the law governing Child in Need of Care (CINC) proceedings. The bill would allow reports concerning the results and analysis of a court-ordered test to determine the presence of alcohol or drugs to be admissible in evidence in a CINC proceeding if the report is prepared and attested to by the person conducting the test or an authorized employee of the facility that conducted the test. Such person would be required to prepare a certificate that includes an attestation as to the result and analysis of the test and sign the certificate under oath. The bill would state that this provision shall not prevent a party from calling such person as a witness.

*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>

Background

SB 124

SB 124 was introduced at the request of Senator Pilcher-Cook. As introduced, the bill contained the provisions related to child custody, residency, and parenting time.

In the Senate Committee on Judiciary hearing, Senator Pilcher-Cook appeared as a proponent of the bill and explained a similar version of the bill was considered last year (2016 SB 393) and was assigned to the Kansas Judicial Council for further study. This bill (SB 124) represents the recommendation of the Judicial Council's Family Law Advisory Committee. Representatives of the Jorabelus Foundation and the Kansas Coalition Against Sexual and Domestic Violence also appeared in support of the bill. A representative of the Judicial Council and a professor from Washburn University School of Law, who served on the Family Law Advisory Committee, provided written-only proponent testimony. No other testimony was provided.

In the House Committee on Judiciary hearing, Senator Pilcher-Cook, a citizen, and a representative of the Kansas Coalition Against Sexual and Domestic Violence appeared in support of the bill. Written-only proponent testimony was submitted by a representative of the Judicial Council, a professor from Washburn University School of Law, and a citizen.

The House Committee adopted an amendment adding a pattern or history of threat of physically or emotionally abusive behavior to the evidence that may be considered. The House Committee also added language modified from SB 114, regarding admissibility of test reports under the CINC Code. Further background information regarding SB 114 is provided below.

According to the fiscal note prepared by the Division of the Budget, enactment of SB 124, as introduced, would have no fiscal effect. Fiscal note information for SB 114 is provided below.

SB 114

SB 114 was introduced at the request of the Kansas County and District Attorneys Association (KCDAA). In the Senate Committee on Judiciary and House Committee on Judiciary hearings, a representative of the KCDAA appeared in support of the bill and explained the change would eliminate the need for drug testers to leave their work and make an in-court appearance to testify in person to the results of the testing. A representative of the Department for Children and Families provided written-only neutral testimony. No other testimony was provided.

The House Committee added the language of SB 114 to SB 124 after modifying the language to clarify that tests must be court-ordered and the amendment to the statute would not prevent a party from calling the drug tester as a witness.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates enactment of SB 114, as introduced, would have no fiscal effect on Judicial Branch operations.