



The Kansas District Judges' Association



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KDJA'S NEUTRAL TESTIMONY REGARDING SB 123

Thank you for the opportunity to present KDJA's neutral testimony regarding SB 123. I serve on the KDJA's Executive Board and as a member of its Legislative Committee. It has been an honor to serve Kansans as a district judge since 1990 and as the Fifth Judicial District's Chief Judge since 1997. I am happy to be joined in this testimony by our President, Daniel D. Creitz, Chief Judge of the 31st Judicial District and Legislative Committee members Thomas Kelly Ryan, Chief Judge of the 10th Judicial District, and Glenn Braun, Chief Judge of the 23rd Judicial District.

Our testimony concerning this bill should, under no circumstances, be construed as a position statement on the underlying objective of the bill which is to create a process for the termination of parental rights for children conceived as a result of sexual assault independent of the Revised Kansas Code for Care of Children. The decision to implement such a process is one of a policy nature that is reserved for the Kansas Legislature. Our intent in offering this testimony is not to interfere with the discretion of the Legislature, but rather to bring to your attention some provisions in the bill which would potentially interfere with the intent of the legislation and present problems for the Kansas Judicial Branch in carrying out its dictates.

Of special concern initially is New Section 2(a) of the bill which permits the action at any time during the child's minority. We suggest a much shorter limitation period on the filing of

such actions in order to prevent issues with staleness of evidence as well as potential harmful psychological effects on the child occasioned by a delay in filing.

Other issues we suggest be addressed include:

1. New Section 2(d) requires the court to ensure compliance with the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq. However, without a mandate that the Petition contain the ICWA information, the court cannot fulfill this obligation. We suggest that Section 2(e)(3) be modified to include a requirement that ICWA information be provided to the court in the Petition. We further suggest that the notice provisions of the bill be amended to require the Petitioner to give notice to any potential tribe.
2. New Section 4 of the bill includes an obligation to provide counsel to a Respondent unable to employ counsel and permits appointment of a Guardian *ad litem* (GAL) for the child. The bill is silent as to who pays the cost of the attorneys' services contemplated. It is expected that these financial obligations would fall upon the District Court budget or local County budget, neither of which has previously contemplated such obligation. We do not question the need for such services or the duty to provide them as a matter of due process, but suggest that provisions be made by the Legislature to fund these costs.
3. New Section 6(a)(1) requires hearing the petition within 60 days after service of the petition or first appearance date, whichever is later. While a court has the authority to extend this deadline upon the showing of good cause, this deadline will be difficult to comply with under normal circumstances, let alone pandemic conditions. We suggest a longer period of at least 120 days.
4. New Section 7(c)(3) is ambiguous as to the newly imposed duty on the clerk of the district court. We see two issues. First, the support judgment form is to be provided to the "...entity enforcing the child support..." Practically, unless that entity enters an appearance or provides notice of its interest in enforcement, the clerks have no information available in order to carry out this duty. Second, the language used is confusing as to whether the clerk is to originate the judgment form or merely forward it to the enforcing entity. We suggest modification of the first sentence of this section to read "If child support is ordered or terminated, a separate journal entry or judgment form shall be prepared by the party seeking establishment of or termination of support and submitted to the court for consideration. Upon approval and filing by the court, the clerk of the court shall transmit a copy of the judgment form or journal entry to any entity engaged in the enforcement of support designated by the party seeking establishment or termination of support."

Respectfully submitted,

Merlin G. Wheeler and members of the KDJA Legislative Committee