

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~pm~~ on January 16, 1984 in room 514-S of the Capitol.

All members ~~were present~~ ~~except~~ were: Senators Pomeroy, Winter, Burke, Hein, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Brian Moline, Family Law Advisory Committee, Kansas Judicial Council
Kathleen Sebelius, Kansas Trial Lawyers Association
Jim Robertson, Social and Rehabilitation Services
Jim Clark, Kansas County and District Attorneys Association
Barbara Reinert, Kansas Women's Political Caucus

Senate Bill 484 - Kansas Parentage Act

The chairman presented background information concerning the Kansas Parentage Act.

Brian Moline, a member of the Family Law Advisory Committee of the Kansas Judicial Council, explained that committee did work very hard on this act. They attempted to modify the Uniform Parentage Act to comply with Kansas law to make it more appropriate. The act does away with the notion that there are illegitimate children; it attempts to codify in law the U.S. Supreme Court decisions affecting that; and it recognizes the father of a child not only has responsibilities that should be enforced where support of child is concerned, and the establishment of that sort of relationship should be recognized and rights enforced, if necessary. Mr. Moline explained the Uniform Parentage Act suggested a much more active role of the judge in settlement negotiations, but the committee felt the Kansas pretrial procedure was more workable and better for the parties. He hopes the committee will give the bill serious consideration.

Kathleen Sebelius reported her organization would like to go on record in support of the act. They felt the committee did a commendable job. The act speaks strongly to children's rights, and also clarifies the rights of the unwed father and goes to assuring the child a two-parent situation. She urged the committee to adopt the bill.

The chairman reported this summer the interim committee heard testimony in areas of mental health, that it is very important for a child to know both parents. The child's relationship with the father is important.

Jim Robertson testified his department is very supportive of the bill, and the committee did an excellent job of putting it together. He then explained the department's minor suggestions for modification to the bill (See Attachment No. 1). The chairman inquired in what way the court would take into account the ADC? Mr. Robertson replied, it is to make the child share in the assistance grant, and it should be given consideration. It is not their intent to lower the assistance.

Jim Clark testified this act is a very good thing, and he would applaud the committee on the work that went into it. He explained this act would reduce the stigma connected with illegitimate births in the state, and it recognizes the unwed father. He referred to Section 17 of the bill and stated he didn't think leaving that in would reduce the stigma of illegitimacy if the county prosecutor becomes involved. He recommended that county and district attorneys be eliminated from the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 16, 1984.

Barbara Reinert testified the Kansas Women's Political Caucus reviewed the bill again, and the consensus on the section on visitation rights is they feel the rights of the child would prevail over the concerns of the mother, grandparent, etc. She commended the committee on a tremendous effort.

Staff reviewed the bill section by section. The chairman explained Section 6 is where the surrogate motherhood bill will be inserted if the surrogate motherhood bill passes. Staff also explained why Section 30 that deals with hearsay evidence, should be deleted.

The chairman explained at the interim committee hearings, there was no opposition to this bill and further hearings on the bill will be held tomorrow.

Committee discussion concerning the bill continued until the meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
John Robertson	CSS - State Topeka, KS	CSE
Tom Futzler	Capitol	
Jim Johnson	1200 Harrison	KBI
Mr. Fisher	3111 With Lawrence	Sen Stearns
W. Julez		AP
Jim Clark	Topeka	KCOAA
William Sleser	Topeka	KTLA
Matt Lynch	"	Judicial Council
Byrd	"	KCC
Barb Kempert	"	KWPC
Charles Lamm	Topeka	KDHE
Melissa Ness	Topeka	NARAL

SENATE JUDICIARY

Re: S.B. 484 (Kansas Parentage Act)

RATIONALE FOR MODIFICATIONS SUGGESTED BY The Kansas Child Support Enforcement Unit (CSE)

- 1) line 0152: Since CSE initiates several hundred paternity cases each year pursuant to K.S.A. 39-755 and 39-756, it is important to grant SRS the status necessary to move for blood tests. Some courts are reluctant to find that SRS is a "party" in paternity actions, even though K.S.A. 39-755 allows the secretary to file such actions in his own name. The way the bill is currently worded only "parties" may move for blood tests. (This modification is crucial to continued CSE establishment efforts.)
- 2) line 0168: To simplify the paternity proceeding as much as possible and to insure that all relevant evidence is submitted to the court, the addition suggested on page 5 is recommended by CSE. The recommended sentence would also reduce the costs of paternity trials by eliminating the need to call expert witnesses to establish a chain of custody.
- 3) line 0233: It is suggested that one of the criteria for determining the amount of support ordered be the amount of ADC received by the child. Public assistance amounts are geared towards providing only the mere necessities for recipients. Yet often, the court's order for support is substantially less than the child's pro rata share of the grant.
- 4) lines 0257 and 0258: The bills' current language seems to suggest that a court could modify a judgment. Court orders concerning children can, and often should, be modified. However, judgments in Kansas are considered final unless vacated or set aside for good reason (such as jurisdictional defect). Judgments for child support, for example, come into being when a default in payment occurs. If the court can modify final judgments, it would limit the enforceability of such judgments. If changes occur, the court may always prospectively modify the on-going support order. Case law in Kansas does not permit modification of past due judgments.

Respectfully Submitted,



J.A. Robertson
CSE Senior Legal Counsel

0120 and the mother or child does not bar an action under this section.

0121 New Sec. 8. *Jurisdiction; venue.* (a) The district court has
0122 jurisdiction of an action brought under this act. The action may
0123 be joined with an action for divorce, annulment, separate main-
0124 tenance, support or adoption.

0125 (b) The action may be brought in the county in which the
0126 child, the mother or the presumed or alleged father resides or is
0127 found. If a parent or an alleged or presumed parent is deceased,
0128 an action may be brought in the county in which proceedings for
0129 probate of the estate of the parent or alleged or presumed parent
0130 have been or could be commenced.

0131 New Sec. 9. *Parties.* The child shall be made a party to an
0132 action brought under this act. The minor child shall be repre-
0133 sented by a guardian ad litem who shall be an attorney appointed
0134 by the court. The mother, each man presumed to be the father
0135 under section 5 and each man alleged to be the father shall be
0136 made parties or, if not subject to the jurisdiction of the court,
0137 shall be given notice of the action in a manner prescribed by the
0138 court and shall be afforded the opportunity to be heard. If a man
0139 alleged or presumed to be the father is a minor, the court shall
0140 cause notice of the pendency of the proceedings and copies of
0141 the pleadings on file to be served upon the parents or guardian of
0142 the minor and shall appoint a guardian ad litem who shall be an
0143 attorney to represent the minor in the proceedings. If the parents
0144 or guardian of the minor cannot be found, notice shall be served
0145 in the manner directed by the court.

0146 New Sec. 10. *Blood tests to determine paternity; order of*
0147 *court; refusal to submit to tests; expert witnesses.* Whenever the
0148 paternity of a child is in issue in any action or judicial proceeding
0149 in which the child, mother and alleged father are parties, the
0150 court, upon its own motion or upon motion of any party to the
0151 action or proceeding, shall order the mother, child and alleged
0152 father to submit to blood tests. If any party refuses to submit to
0153 the tests, the court may resolve the question of paternity against
0154 the party or enforce its order if the rights of others and the
0155 interests of justice so require. The tests shall be made by experts
0156 qualified as examiners of blood types who shall be appointed by

When a paternity action is filed by social and rehabilitation services pursuant to K.S.A. 39-755 or K.S.A. 39-756, the court shall order blood tests on the motion of social and rehabilitation services or any party to the action.

0157 the court. The verified written report of the court-appointed
0158 experts shall be considered to be stipulated to by all parties
0159 unless written notice of intent to challenge the validity of the
0160 report is given to all parties not less than 20 days before trial. If
0161 such notice is given, the experts shall be called by the court as
0162 witnesses to testify as to their findings and shall be subject to
0163 cross-examination by the parties. Any party or person at whose
0164 suggestion the tests have been ordered may demand that other
0165 experts, qualified as examiners of blood types, perform inde-
0166 pendent tests under order of the court, the results of which may
0167 be offered in evidence. The number and qualification of the
0168 other experts shall be determined by the court.

0169 New Sec. 11. *Evidence.* (a) Evidence relating to paternity
0170 may include any of the following:

0171 (1) Evidence of sexual intercourse between the mother and
0172 alleged father at any possible time of conception.

0173 (2) An expert's opinion concerning the statistical probability
0174 of the alleged father's paternity based upon the duration of the
0175 mother's pregnancy.

0176 (3) Blood test results, of the statistical probability of the
0177 alleged father's paternity.

0178 (4) Medical or anthropological evidence relating to the al-
0179 leged father's paternity of the child based on tests performed by
0180 experts. The court may, and upon request of a party shall, require
0181 the child, the mother and the alleged father to submit to appro-
0182 priate tests.

0183 (5) Testimony of a physician concerning the medical cir-
0184 cumstances of the pregnancy and the condition and characteris-
0185 tics of the child upon birth. Such testimony is not privileged.

0186 (6) Any other evidence relevant to the issue of paternity of
0187 the child.

0188 (b) Testimony relating to sexual access to the mother by a
0189 man at a time other than the probable time of the conception of
0190 the child is inadmissible in evidence.

0191 New Sec. 12. *Civil action; trial to court.* (a) An action under
0192 this act is a civil action governed by the rules of civil procedure.

0193 (b) Trial of all issues in actions under this act shall be to the

Verified documentation of the chain of custody
of the blood specimens used for blood testing
is competent evidence to establish the chain of
custody.

0194 court.

0195 New Sec. 13. *Judgment or order.* (a) The judgment or order
0196 of the court determining the existence or nonexistence of the
0197 parent and child relationship is determinative for all purposes.

0198 (b) If the judgment or order of the court is at variance with
0199 the child's birth certificate, the court shall order that a new birth
0200 certificate be issued.

0201 (c) Upon adjudging that a party is the father of the child, the
0202 court shall order the party to provide for support and education of
0203 the child and the payment of the mother's necessary medical
0204 expenses incident to the birth of the child. The judgment shall
0205 specify the terms of payment and may require the party to
0206 provide a bond with sureties to secure payment. If the party fails
0207 or refuses to make the payment or to supply the bond required by
0208 the judgment, he may be adjudged in contempt of court and
0209 punished accordingly. The court may at any time during the
0210 minority of the child prospectively modify or change the order of
0211 support as required by the best interest of the child. The court
0212 shall enter such orders regarding custody and visitation as the
0213 court considers to be in the best interest of the child.

0214 (d) In entering an original order for support of a child under
0215 this section, the court may include a requirement that an addi-
0216 tional amount be paid to reimburse the expenses of support of
0217 the child from the date of birth to the date the order is entered.

0218 (e) In determining the amount to be paid by a parent for
0219 support of the child and the period during which the duty of
0220 support is owed, a court enforcing the obligation of support shall
0221 consider all relevant facts including, but not limited to, the
0222 following:

0223 (1) The needs of the child.

0224 (2) The standards of living and circumstances of the parents.

0225 (3) The relative financial means of the parents.

0226 (4) The earning ability of the parents.

0227 (5) The need and capacity of the child for education, includ-
0228 ing higher education.

0229 (6) The age of the child.

0230 (7) The financial resources and the earning ability of the

NO CHANGE

#

0231 child.

0232 (8) The responsibility of the parents for the support of others.

0233 (9) The value of services contributed by the custodial parent.

0234 ~~New Sec. 14. Costs.~~ The court may order reasonable fees of
0235 counsel and the child's guardian ad litem and other expenses of
0236 the action, including blood tests, to be paid by the parties in
0237 proportions and at times determined by the court. The court may
0238 order the proportion of any indigent party to be paid from the
0239 general fund of the county. After payment, the court may tax all,
0240 part or none of the expenses as costs in the action. No fee shall be
0241 allowed for representation of the petitioner by the county or
0242 district attorney. The fee of an expert witness qualified as an
0243 examiner of blood types, but not appointed by the court, shall be
0244 paid by the party calling the expert witness but shall not be taxed
0245 as costs in the action.

0246 New Sec. 15. *Enforcement of judgment or order.* (a) If exis-
0247 tence of the father and child relationship has been determined
0248 under this act or under prior law, the court may order support
0249 and related expenses payments to be made to the mother, clerk
0250 of the court or district court trustee or to a person, corporation or
0251 agency designated to administer them for the benefit of the child
0252 to the extent that the person, corporation or agency furnished or
0253 is furnishing these expenses.

0254 (b) Willful failure to obey the judgment or order of the court
0255 is a civil contempt of the court. All remedies for the enforcement
0256 of judgments apply.

0257 New Sec. 16. *Modification of judgment ~~or order.~~* The court
0258 has continuing jurisdiction to modify ~~or vacate a judgment or~~
0259 ~~order made under this act.~~

0260 New Sec. 17. *Counsel for parties; free transcript for indi-*
0261 *gent on appeal.* (a) If the petitioner is not represented by coun-
0262 sel, the county or district attorney of the county in which the
0263 action is brought shall represent the petitioner in an action to
0264 determine paternity. The court shall appoint counsel for any
0265 party to the action who is financially unable to obtain counsel.

0266 (b) If a party is financially unable to pay the costs of a
0267 transcript, the court shall furnish on request a transcript for

(10) The amount of aid to dependent children assistance received on behalf of the child, if any.

delete the words "judgment or"

any order made under this act.