Approved: 4-7-93
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on March 18, 1993 in room 313-S of the Statehouse.

All members were present.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Jamie Corkhill, SRS
John Peterson, on behalf of Cheryl Dillard, Kaiser Permanente
Kay Farley, Office of Judicial Administration
Ann McDonald, Court Trustee Wyandotte County
Audrey Magana, Court Trustee Geary County
Sue Lockett, Executive Director, CASA
Orville Johnson, Topeka, Kansas

Hearings on HB 2527 were opened dealing with child support enforcement, medical support orders, coverage under health benefit plans.

Jamie Corkhill, SRS, appeared before the committee in support of the bill. Kansas courts have been responsive in ordering parents to provide health insurance, but many children do not live with their insured parent and the residential parent cannot get affordable insurance. The State is lacking an effective/efficient way to make sure that children are enrolled in, and remain enrolled in health care programs. This proposed bill provides authority for the custodial parent or SRS to enroll the child in a group health benefit plan without depending upon the obligor's cooperation. It would also allow authority for the courts to include in an income withholding order instructions for the child's enrollment in a plan. It would allow the court to award a money judgement and modify the ongoing child support obligation if the existing cash obligation has been discounted in anticipation of health insurance premiums but insurance was not provided or was dropped without a good cause. Finally, there would be a ban on discrimination based on the child's residence or the parents' martial status. She stated that they are currently being audited by the Federal Government, where 75% of the IV-D cases looked at must be enrolled in health care. (Attachment #1)

Chairman O'Neal stated that he would like to see the information that proves the bill needs to be passed or there will be money lost. The committee needs to know what exactly needs to be done in order to comply with the Federal Government.

Corkhill stated that she would send a letter regarding what the Federal Government requires. She stated that the only thing that they can do if the judge orders health care and the parents fail to provide it is to bring a contempt order against them, but this is not enough to satisfy the Federal Government.

The Chairman stated that the committee had HB 2359 sent to them and a fiscal note the day after the dead line to consider bills that suggested that there needed to be a passage of the bill to keep the State from being disqualified. The bill would have mandated medical support orders in every case where there is a child involved. HB 2527 is different in that it does not mandate medical support orders and the committee has received the same fiscal note. Why should the committee believe that the bill needs to be passed as worded or is there something less that they can do in order to qualify.

Corkhill stated that the reason the fiscal notes on the bill are about the same is because the courts are effective in ordering health insurance be provided.

Representative Plummer stated that HB 2359 addressed the problem of children of divorced parents who were uninsured. The idea of an order for medical support has been around for quite some time. This bill makes it mandatory to provide health care and which parent would handle the medical cost when and if that time comes.

Representative Pauls questioned staff about page 2, new section 3 in which the insurance carriers discriminate because of parentage.

John Peterson, on behalf of Cheryl Dillard, Kaiser Permanente, appeared before the committee as a proponent of the bill. He stated that their concern is to have more children receiving health care. The concern with HB 2527, page 2, new section 3 (a), is that it would require HMO's to provide benefits for children living outside their service areas. Kaiser only provides benefits in designated geographic service areas. Because of this they would have difficulty ensuring the quality, appropriateness or cost-effectiveness of care rendered outside their control. They do not believe that new section 3 is in the best interest of the children. They prefer the language that is in HB 2359, page 2, section 4(c) which sets what type of coverage should be ordered. (Attachment #2)

Hearings on HB 2527 were closed.

Hearings on SB 338 were opened regarding court-appointed special advocates for juvenile offenders and SB 339 regarding court-appointed special advocates for children in divorce cases.

Sue Lockett, Executive Director, CASA, appeared before the committee in support of both bills. She stated that they requested these bills. CASA's have been requested to provide information to the court and to advocate for children who are juvenile offenders or who are the subject of contested custody cases. They are asking to define who a CASA is and what they do. The language is similar to that contained in the Children In Need of Care Code. (Attachment #3)

Representative Everhart requested information on how CASA gets involved in a domestic case.

Lockett stated that they can be requested by an attorney representing either one of the parents or by the judge, and some are requested by court services.

Representative Garner stated that his understanding of the CASA program is that they are a supportive person to a child in a Child In Need situation. This would change the role of CASA to become an objective third party, who doesn't reflect the wishes of the child.

Representative Everhart asked that if they can already do this by the Supreme Court rules then why change the statutes.

Lockett stated that they feel there should be a definition of what they are able to do in the statutes.

Kay Farley, Office of Judicial Administration, appeared before the committee as a proponent of both bills. She stated that the administrative judge determines the type of cases they referred to the CASA program. If domestic and/or juvenile offender cases are to be referred to a CASA program, specialized training is required before a volunteer can be assigned. They also assist in supervised visitation, if no one else is available. (Attachment #4)

Orville Johnson, Topeka, Kansas, appeared before the committee in opposition to SB 339. He requested an amendment to make reports available to any party in the proceedings. (Attachment #5)

Chairman O'Neal stated there is nothing in the current legislation that prohibits the report being made available to any parties.

Johnson stated that in his case in 1988 his report was stamped to be used only by the courts and the attorney's and a copy should not be given to the party.

The Chairman stated that there had to be a court order making this unavailable to parties involved in the case.

Johnson stated that there wasn't one.

Representative Garner stated that as an attorney it is his responsibility to inform his clients of any information that he might have that deals with the case.

Chairman O'Neal stated that there is no prohibition against parties having copies of these reports. There are only safe guards which must be brought to the courts attention. He questioned if Johnson is suggesting that the courts are telling counsel that they may look at the reports but may not divulge the information to their client.

Johnson stated that he is suggesting that.

Representative Adkins stated that as an attorney he has taken the position that if he can't share the information with his client then he doesn't want to see the information. He stated that in Johnson County the reports are shared with the attorneys with the understanding that they are not to be shared with the clients.

Chairman O'Neal commented to the Office of Judicial Administration that the decision to make the reports confidential is on a case by case basis, however, there is an accusation that the reports are being routinely made confidential. The statute requires that there be some showing to the court that the case, mental health of the child, justify the records being closed. If the case is that reports are going out without judicial oversight, and the stamp is being put on them that it is confidential and cannot be disclosed by the attorneys, then there is a problem. He requested that the Office of Judicial Administration check into this and report back.

Hearings on SB 338 & SB 339 were closed.

Hearings on SB 365 were opened regarding amendments to the revised uniform reciprocal enforcement of support act.

Kay Farley, Office of Judicial Administration, appeared before the committee as a proponent of the bill. She stated that this bill was requested on behalf of court trustees. It has three major purposes. The first would allow for district court trustees to retain jurisdiction for enforcing a support order under the act as long as the obligor is subject to a support order in the respective trustee's judicial district. Second, it would avoid multiplicity of actions and retention of all records of support payments in one district court. Finally it would clarify the role of the district court and clarify that there is not an attorney-client relationship between the district court trustee or other public prosecutor and the obligee. (Attachment #6)

Ann McDonald, Court Trustee Wyandotte County, appeared before the committee in support of the bill. She stated that there are two main changes addressed in the bill. The first expands jurisdiction and the second seeks to remove the appearance of a conflict of interest on the part of the court trustee, SRS or other prosecuting attorney. She gave examples in her handout. (Attachment #7)

Representative Carmody questioned that since this is a uniform act how many other states have gone with this provision. Will other states refuse to take reciprocal cases because Kansas retained jurisdiction.

McDonald stated that there are already about 50 versions of the uniform act, and so far that hasn't been a major problem.

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 18, 1993.

Audrey Magana, Court Trustee Geary County, appeared before the committee as a proponent of the bill. He stated that his testimony has a copy of the legal clearance attached to it from the IV-D program, which sets out an example of why attorney-client relationships should not exist between support prosecutors and support obligees or obligors. (Attachment #8)

Hearings on SB 365 were closed.

The Committee adjourned at 5:15 p.m. The next Committee meeting is March 22, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE MARCH 18, 1993

NAME	ADDRESS	ORGANIZATION
Anne McDonald	WYANDOTTE CTY. CTHS. KANSAS CITY, KS.	COURT TRUSTEE (OJA)
Sue Lockett	715 W. 10th Topeka, KS 66612	CASA of Shawnee Cty
Kay Farley	Topeka	OJA
AUDREY (AUDIE) MAGANA	GEARY COUNTY COURTHOUSE P.O. BOX 1143, JUNCTION CITY, KS	GEARY CO. DIST. CT. TRUSTEE
Jamie Corkhill	Topeka	SRS/CSE
Orville Johnson	2401 BRADBURY TOPEKA, KS 66611	CONCERNED FATHER
Susan Somers	Topeka	KSCPA Concerned Procrastinator Assoc.
Ron Smith	"	Ks Bar Assn
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Doug Bowman	"	Corporation for Change
Jan Kluetrick	TOPEKA	WASHBURN U.
Janice Beattie	Lawrence	Washburn Univ.
Linda Gilbert	Topeka	Washburn Univ

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary
296-3271

House Bill 2527

Before the House Judiciary Committee
March 18, 1993

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

Mr. Chairman and members of the committee, I thank you for this opportunity to testify in support of House Bill 2527.

The primary role of the SRS Child Support Enforcement Program is to help children by establishing and enforcing regular and adequate support, including medical support. From that perspective, SRS strongly supports House Bill 2527.

Kansas is presently at risk of not meeting federal IV-D (CSE) performance standards for monitoring and enforcing enrollment of children whose parents have been ordered to provide health insurance. House Bill 2527 would significantly and quickly improve our compliance.

We also support this legislation as a general improvement in children's access to group health insurance coverage. Much attention has been given recently to the deterioration of children's medical care because of rising costs of treatment and lack of insurance. A key to protecting children's access to routine health care and major medical treatment is to enroll them in group health plans already available to them. #1

Some children face a special barrier to receiving group health coverage. These are children who do not live with the insured parent and whose residential parent cannot get affordable insurance. Many non-residential parents do enroll their children voluntarily in their group plans, but many children are not so lucky. A weak emotional connection between the parent and child, perhaps because the child was born out of wedlock, or a hostile relationship between the parents because of a painful divorce will reduce a child's hope of having group insurance. The result is a child at risk of inadequate medical care, or a child receiving medical assistance at taxpayer expense.

Kansas courts have been very responsive in ordering parents to provide health insurance, but the tasks required to be sure children are enrolled -- and remain enrolled -- are labor-intensive. Contempt proceedings are currently the only remedy available to enforce health insurance orders. A contempt hearing consumes a disproportionate amount of legal resources, keeps the obligor away from work, and is not always effective in producing the desired action. Even when successful, contempt does nothing to speed up initiation of coverage or streamline submission of claims.

HOUSE JUDICIARY
Attachment #1
03-18-93

Testimony of
Social and Rehabilitation Services
March 18, 1993

HB 2527 provides a new approach to enforcing medical support orders. Its elements are:

- o Authority for the custodial parent or SRS to enroll the child in a group health benefit plan without depending upon the obligor's cooperation. This is accomplished by granting the custodial parent (or SRS, in Medicaid cases) a limited power of attorney by operation of law to enroll the child, to submit claims, and to receive payments on the child's behalf.

- o Authority for the court to include in an income withholding order instructions for the child's enrollment in a group plan. Before issuance of the withholding order, the obligor has the opportunity to demonstrate that the child has been enrolled or that all necessary steps are completed for enrollment.

- o Authority for the court to award a money judgment and modify the ongoing child support obligation if the existing cash obligation has been discounted in anticipation of health insurance premiums but insurance was not provided or was dropped without good cause.

- o A ban on discrimination based on the child's residence or the parents' marital status.

From the obligor's perspective, once a medical support order has been imposed, it makes a great deal of sense to have the child enrolled in a group plan. It is important to note that, under the support guidelines, uninsured medical costs are to be pro-rated between the parents according to income shares -- by not providing insurance, the obligor may incur substantial, even astronomical, costs if the child is sick or injured.

As HB 2527 is structured, it specifically provides that involuntary insurance premiums fall under the Consumer Credit Protection Act limits on deductions from earnings. This alleviates the fear that a low-wage obligor's whole paycheck will be eaten up by premiums. Also, priority is given to cash support before insurance so that children's immediate needs will always be met first.

It should be noted that children, as a rule, do not substantially increase the underwriter's risk exposure for a group plan -- why else do plans allow any number of children to be added at no additional premium?

Incorporation of medical support remedies into the income withholding act offers a number of advantages to the employer. One of the most important, when the obligee's power of attorney is exercised, is the use of a familiar and standard set of forms to notify the employer to enroll the child in an available group plan. Employers will not complete a separate answer form, yet they will have a way to raise issues that need to be resolved. They will work within familiar timeframes and will have the option of charging a fee to offset costs. For several years now SRS has maintained a hotline dedicated to helping employers with income withholding questions. This service would be extended to include employers' medical support questions.

Testimony of
Social and Rehabilitation Services
March 18, 1993

Fiscal Impact

As noted earlier, Kansas is at risk of failing to meet federal performance standards with respect to medical support enforcement. A comprehensive federal audit is now under way, and the report is expected by midsummer.

Federal sanctions for failure to meet IV-D (CSE) program standards presently range from $680,000 per year (1% of AFDC federal funding) to $17.5 million per year (all IV-D federal funding plus 5% of AFDC funding), with an ultimate penalty of $83.3 million per year (all IV-D federal funding and all AFDC funding).

This measure would also free significant Medicaid funds for other needs. We estimate Medicaid savings as follows:

FY94 (phase-in year)	$1.3 million	gross savings
	$ 561,000	state share (41.82%)
FY95 (first full year)	$2.5 million	gross savings
	$1.0 million	state share.

Efficiently enrolling children in existing group health plans will not only save Medicaid funds and prevent serious IV-D sanctions, it will allow more Kansas households to become self-reliant and independent.

Thank you for this opportunity to testify in support of HB 2527 and for your continued interest in the well-being of children.

Donna L. Whiteman
Secretary

HISTORY AND PURPOSE OF SRS' CHILD SUPPORT ENFORCEMENT PROGRAM (CSE)

In 1975, the Congress enacted Title IV-D of the Social Security Act to counteract the ballooning tax burden of public assistance to children left unsupported by one or both parents, and to improve the lives of the one in four children living in poverty. Federal law requires each state to establish an effective statewide child support program to improve the quality of life for children; to reduce expenditures for Aid to Families with Dependent Children, foster care, and medical assistance; to help families become independent of public assistance; and to return the responsibility of supporting children to parents whenever possible.

The Kansas CSE Program is a joint federal, state, and county operation which must satisfy numerous specific federal requirements concerning all phases of operation. CSE must provide a full range of support services, from establishment of orders to modification and enforcement, in two types of cases:

1) AFDC - When a child's custodian applies for AFDC (Aid to Families with Dependent Children), that child's child support rights are assigned to the State. If CSE collects support in an AFDC case, the first $50 is passed through to the assistance family. The remainder, and any collection of past due support, is used to reimburse the state and federal governments for the public assistance provided to the child's family. Any support collections beyond the claim for reimbursement are passed on to the family. CSE's dual goals in an AFDC case are to insure a reliable support payment, so that children will not need public assistance, and to seek reimbursement of public assistance.

2) Non-AFDC - Federal law requires us to provide the same child support services to anyone, regardless of income, who applies for support enforcement services. The rationale is to prevent the need for public assistance by insuring reliable support payments, and to provide equal treatment under the law for all children.

   It is important to note that approximately 60% of Non-AFDC cases have received AFDC in the past.

FEDERAL FUNDING

By operating a program in compliance with federal requirements, Kansas qualifies for three types of federal IV-D funding:

1) Kansas retains a percentage (presently 41.82%) of support collections recovering assistance paid to AFDC families;

2) Kansas receives reimbursement, currently 66%, of the allowable administrative costs of the IV-D program; and

3) Kansas earns an incentive of 6 to 10%, each, for AFDC and Non-AFDC collections. The Non-AFDC incentive is limited to 115% of the AFDC incentive.

By using available funding mechanisms, the Kansas CSE Program has always been a cost effective, revenue producing program.

ADMINISTRATION OF CSE IN KANSAS

The Department of Social and Rehabilitation Services is the designated Title IV-D agency for the State of Kansas.

IV-D services are provided in all areas of the state by 354 full time and 23 part time SRS staff, by contracts with five county and district attorneys, and by a contract with the Office of Judicial Administration (OJA) for the services of court trustees in thirteen judicial districts.

To avoid duplication of efforts with court trustees, SRS and OJA have contractually allocated responsibilities as follows:

SRS is responsible for:
- o All skip tracing;
- o All paternity establishment, including interstate cases;
- o Establishment of all new support orders (cash and health insurance);
- o Establishment and enforcement of orders for reimbursement of public assistance, pursuant to K.S.A.39-718b;
- o All outgoing interstate cases, except non-paternity URESA's and interstate income withholding cases;
- o All establishment and enforcement in foster care cases;
- o All administrative attempts to collect support before legal referral;
- o All duties related to intercept of federal income tax refunds; and
- o All duties related to intercept of unemployment insurance benefits, state income tax refunds, and other state payments to people owing child support.

SRS has also assumed responsibility for collection of judgment interest when appropriate, appeals to the Kansas Court of Appeals and Supreme Court, contested bankruptcies, and cases in which court trustees have a conflict of interest.

Court trustees are responsible, within their 13 judicial districts, for:
- o Enforcement of child support and maintenance orders;
- o Modification of current support obligations;
- o Prevention of dormancy and revivor of dormant judgments;
- o Enforcement of judgments for SRS reimbursement, when combined with an order for on-going support;
- o Incoming and outgoing interstate cases under URESA (Uniform Reciprocal Enforcement of Support Act), except paternities; and
- o Incoming and outgoing interstate income withholding cases.

SRS is responsible for providing the full range of services in counties not served by court trustees. In some locations, SRS has contracted with the county or district attorney for legal services; the allocation of duties is similar to that between SRS and court trustees.

AUTOMATION: KAECSES and KESSEP

SRS is in the midst of modifying its IV-D case management system, KAECSES. (See "CSE STATISTICS" for information about the effects of KAECSES to date.) Federal law requires each state to have a certified automated system in operation by October 1995. Kansas' enhancement project, KESSEP, is currently in the design phase, with initial implementation scheduled for 1994. Federal law allows enhanced funding (90%) for certain costs of the automated system.

AUTOMATION: COURT INTERFACE

SRS and the Office of Judicial Administration have recognized that automation is the key to meeting federal IV-D regulations. Federal requirements have become increasingly stringent with respect to time standards and require simultaneous actions in thousands of cases.

Because these activities require accurate, up-to-date payment records, SRS and OJA have contracted for an automated exchange of payment information between the courts and SRS. Completion of the court interface with counties operating from microcomputers ("CMASS" counties) is scheduled for February, 1993. Interfaces are already in place with three of the five large counties operating from mainframe systems; only Douglas and Sedgwick counties remain.

CSE STATISTICS

The current CSE caseload consists of approximately 120,000 AFDC and Non-AFDC cases serving a quarter million Kansans.

The enactment of beneficial legislation, addition of staff, and implementation of the KAECSES computer system have dramatically improved the performance of the CSE Program over the past few years.

Over the past six years, collections increased 263%. Collections increased from $20,000,000 in FY-87 to almost $69,000,000 in FY92. Kansas has been recognized as one of the top ten states nationally in terms of percentage increases in collections (40% in FY-89, 30% in FY-90, 25% in FY-91, and 15% in FY-92). For FY-93, CSE hopes to elevate collections to $75,000,000.

The CSE contribution to the SRS Fee Fund has steadily increased since the inception of the program. In FY-92, the amount contributed was $10 million. In FY-93, CSE aims to contribute an additional $2,500,000 to the fee fund, or a total of $12.5 million.

The CSE Program, as a return on investment, is clearly cost-efficient with respect to state expenditures. While overall program costs for FY-92 were approximately $17 million, the state share of those costs were under $5 million, less than half the amount contributed to the SRS Fee Fund in the same year.

Another fiscal benefit results from closure of AFDC cases when IV-D support collections exceed the AFDC grant. CSE's services for those cases automatically continue, to reduce the chance of the family returning to AFDC-dependence, but the State benefits greatly from the AFDC cost avoidance. IV-D collection efforts in FY-90 resulted in the closure of 2,588 AFDC cases, for an estimated cost avoidance of $10.2 million.

The Title IV-D program also establishes thousands of medical support (health insurance) orders each year and shares health insurance information on AFDC cases with SRS' Income Maintenance Program. In this way, medical costs can be billed to the responsible insurers rather than paid by the State.

Paternity establishment also plays a vital role in SRS' overall agency mission, by reducing public assistance and allowing recovery of state-paid birth expenses. Paternity establishment and educational outreach also positively

affect the teen pregnancy problem by highlighting parental responsibility. A significant number of children benefit each year from having their parentage clearly established, opening up to them both cash and medical support, as well as family medical information and potential inheritance and other rights. In FY-91, CSE established paternity for over 3,200 children, up from 835 in FY-87.

According to federal statistics for FY-90, Kansas ranked:

- o 4th in percentage increase in collections,
- o 2nd in locates (skip tracing),
- o 2nd in revenues from unemployment offset,
- o 13th in state offset collections,
- o 33rd in total IV-D cases,
- o 30th in total collections,
- o 20th in collections per case, and
- o 16th in percent of AFDC recovery.

We are especially proud of achievements with respect to AFDC recovery, as those collections are made despite the following obstacles:

- o Pass-through of the first $50 to the family in open AFDC cases;
- o Annual increases in the mandatory federal share of AFDC collections (because of increases in the federal match for AFDC grants), and
- o Steady conversion of paying AFDC cases into paying Non-AFDC cases due to effective IV-D efforts.

KAECSES, the CSE automated system, has significantly improved program performance with respect to skip tracing. In FY-91, Kansas was informed by the federal parent locator system that we were among the top 10 states in the number of locate requests made. For comparison:

Fiscal Year	Address/employer verifications
1987	16,780 cases
1990	29,151
1991	75,120
1992	79,490

Enforcement also benefited from automation when CSE switched from manual to automated certification of claims for state debt setoff. Over 11,000 additional cases were identified, leading to a doubling of state setoff collections. Certification of claims against federal tax refunds has also improved:

Fiscal Year	Cases Certified	With Past Due Support Totalling
1987	21,000	$ 91 million
1991	36,000	$ 190 million

Automation has also helped increase the number of income withholding orders, which generally spell steady, reliable support payments:

Fiscal Year	Income withholding orders
1990	2,725
1991	8,162
1992	9,589

KAISER PERMANENTE

Kansas House Judiciary Committee
House Bill No. 2527
March 18, 1993

Mr. Chairman, I'm Cheryl Dillard, Public Affairs Manager for Kaiser Permanente in Kansas City.

Kaiser Permanente is the largest and most experienced health maintenance organization in the country with over 6.6 million members in 16 states and the District of Columbia. In the Kansas City area, we have nearly 50,000 members.

Kaiser Permanente is fully supportive of the goal of HB2527 - ensuring that more children have health benefits coverage by enforcing support orders. Our one concern with the bill has to do with how we can provide the best quality care for these children.

As many of you probably know, HMOs both provide and finance health care. We operate through a selected provider group or network. As part of our Certificates of Authority from the Kansas Insurance Department, we can only cover benefits and provide care in a designated geographic service area so that our contracted or staff physicians and hospitals are accessible to all our members. In addition, to help ensure quality and continuity of care, we encourage all our members to select a primary care physician from our plan to coordinate all their care. HMOs do not market to potential members who live outside our service area because of our inability to provide them care.

That brings me to our concern about HB2527. Page 2, New Section 3,(a) lines 18 to 30 would require HMOs to provide benefits for children living outside our service areas. Because we cover benefits provided only by a selected group of providers within a designated service area, we would have difficulty ensuring the quality, appropriateness or cost-effectiveness of care rendered outside our control. We don't believe that New Section 3 is in the best interest of the children who live away from our service area.

#2

We recommend for the Committee's consideration, substitute language from another bill before the Committee, HB2359, cited as the Kansas medical support act. Page 2, Section 4,(c) Selection among available plans seems to offer alternative language which creates a number of choices, all of which focus on the best interest of the child.

> "Section 4.(c) Selection among available plans. If more than one plan with benefits for the child is available, the child shall be enrolled in the plan (1) designated by court order or agreement of the parties, or, if none, then (2) in which the child already has benefits, or, if none, then (3) with terms closest to those designated by court order or agreement of the parties, or, if none, then (4) in which the parent or members of the parent's household have benefits, or if none, (5) in which the child will receive the greatest benefits."

I'd be happy to answer questions at this time.

Kaiser Foundation Health Plan of Kansas City, Inc.
10561 Barkley, Suite 200 Overland Park, Kansas 66212 (913) 967-4600

TESTIMONY ON SENATE BILL NO. 338 & SENATE BILL 339

Given by: Sue W. Lockett
Executive Director, CASA of Shawnee County, Inc
Kansas CASA Association

Thank you for the opportunity to appear in support of Senate Bill 338 and Senate Bill 339.

The Kansas CASA Association whose members are the 17 CASA programs certified in Kansas asked that these bills be presented.

#3

In a number of Judicial Districts, we have been requested to assign CASAs to provide information to the court & to advocate for children who are juvenile offenders or are the subject of contested custody cases. Several programs have responded to these requests and are assigning CASAs under local court rules.

Senate Bill 338 and Senate Bill 339 simply define who a CASA is and what they do. The language is similar to the Children In Need of Care Code. These definitions do not change our role, just defines it in the Juvenile Offender Code & Domestic Statutes. The existing Supreme Court standards require programs to give additional training to CASAs assigned to these types of cases.

We hope you will favorably consider these two bills.

Thank you for your consideration.

SENATE BILL NO. 338 and SENATE BILL NO. 339
House Judiciary Committee
March 18, 1993

Testimony of Kay Farley
Coordinator of Children and Family Programs
Office of Judicial Administration

Representative O'Neal and members of the committee:

Thank you for the opportunity to appear in support of Senate Bill No. 338 and Senate Bill No. 339.

Seventeen judicial districts currently have Court Appointed Special Advocate (CASA) programs and six other judicial districts are in the early planning stages for such programs.

The Supreme Court Standards and Guidelines for Kansas Court Appointed Special Advocate (CASA) Programs allow for the appointment of CASA volunteers in domestic cases and juvenile offenders cases, in addition to children in need of care cases. The Administrative Judge in each judicial district with a CASA program determines the type of cases that will be referred to the CASA program. If domestic and/or juvenile offender cases are to be referred to a CASA program, specialized training is required before a volunteer can be assigned.

#14

Currently, CASA volunteers are assigned to domestic cases in four judicial districts and to juvenile offender cases in seven judicial districts. The experience in these judicial districts is that the CASA volunteers provide the judge with valuable information and assistance.

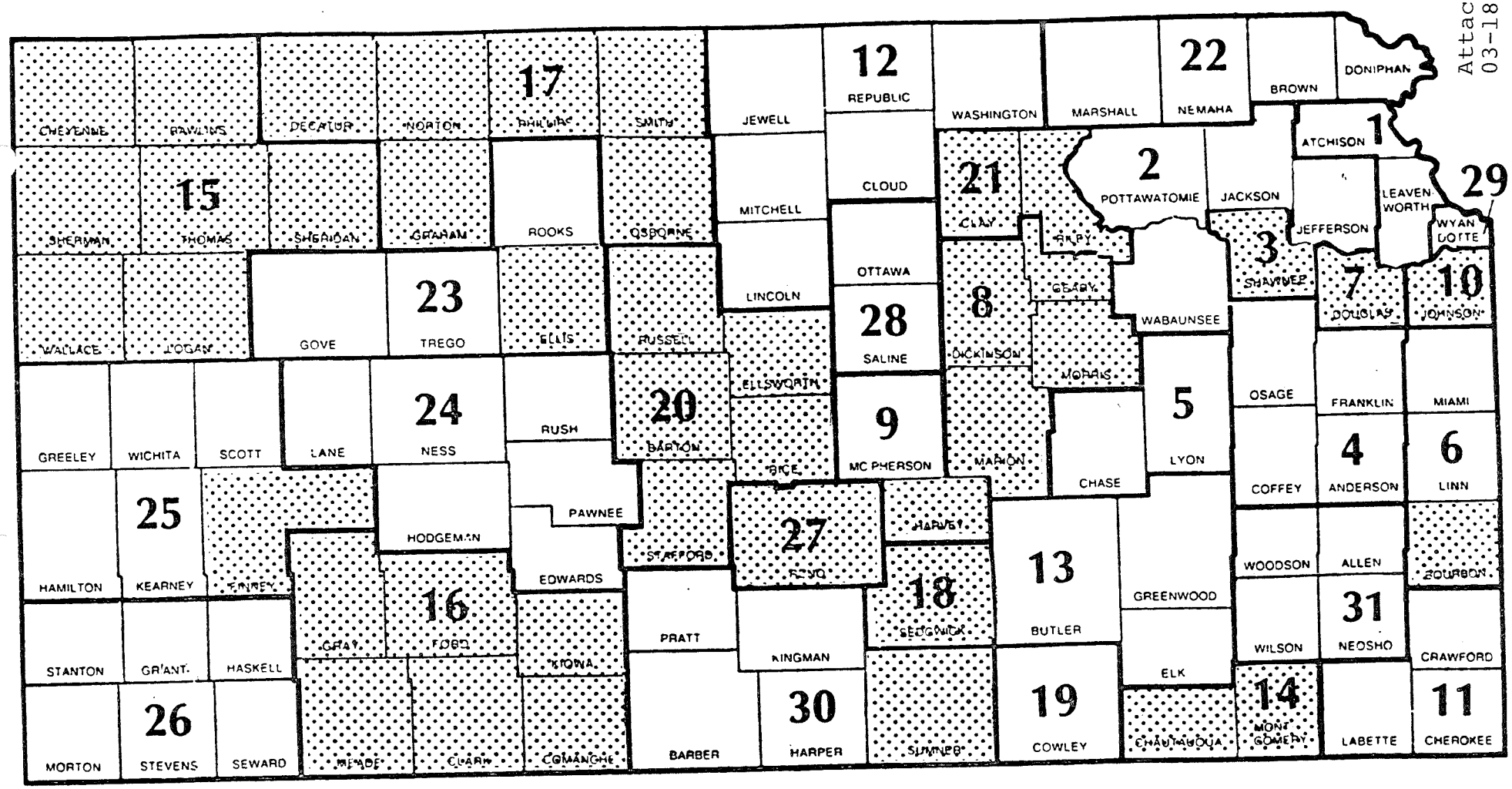
I urge you to favorably consider these two bills and codify existing practice.

Thank you for your consideration.

HOUSE JUDICIARY
Attachment #4
03-18-93

Judicial Districts with a CASA Program
Effective 7/1/92

Kansas Judicial Districts (31)



KANSAS HOUSE JUDICIARY COMMITTEE HEARING

SB # 339

March 18, 1993

I, Orville E. Johnson, 2401 Bradbury, Topeka, Kansas, phone number 913-233-0212, a registered, unpaid lobbyist, who represents no special interest group,

oppose SB 339 as written.

I registered to lobby in order to get K.S.A. 60-1615 paragraph (c) (The statute amended by the passage of SB 339.) changed to conform with case law (Exhibit A) and the guaranteed protections of the Constitution of the United States of America, and the interpertations thereof by the courts of this land.

I submit that denying a party represented by counsel in a custody proceedings a copy of a report submitted to the court by anyone investigating custodial arrangements for the child violates several provisions of the U.S. Constitution and does not serve the best interest of the child, as no truth, no justice, and thus no best interest.

1. Equal protection of the law. U.S. Constitution, 14th Amend. Exhibit B, 14th Amend. life, liberty, due process

2. The parents' rights of custody and control of their children are liberty interests protected by the Fourteenth Amendment Due Process Clause.
Exhibit C Wilson v Walker-631 P2d 632, In re Cooper, Pg65

3. Implied: "akin to criminal proceedings in the impact upon the parent.
Exhibit c, Wilson v Walker-631 P2d 632, In re Cooper, Pg65

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4. "due process requires greater procedural protection as the action more nearly approximates a criminal prosecution. Exhibit c, page 65

5. Due Process--Amendment 6--and to be informed of the nature and cause of the accusation; to be confronted with the witness against him;
Exhibit D, 6th Amendment

6. Right of Confrontation--In fact, the essence of the right of confrontation is the right to cross-examination. Davis v alaska- 415 U.S. 308
Exhibit E, Legal dictionary

IT SHOULD BE OBVICUS THAT PARAGRAPH (c) of KSA 60-1615 is un-constitutional based upon the citings that I have given you here today, and should be amended to allow any party to the proceedings access to the report.

Remember, only when there is truth is there justice, and only when there is justice is the best interests of everyone served.

Thank you.

Orville E. Johnson
a concerned father

(626 P.2d 1238)

No. 52,245

CAROL EASTMAN, *Appellee*, v. CHARLES EASTMAN, *Appellant*.

SYLLABUS BY THE COURT

1. PARENT AND CHILD—*Custody—Home Study Investigative Report—Availability of Results of Study to Parties.* A home study investigative report ordered by a trial court in a child custody dispute, pursuant to K.S.A. 1980 Supp. 60-1607(*a*)(5), is relevant evidence and parties to the action must be given access to the report in a discovery proceeding.

2. SAME—*Custody—Home Study Investigative Report—Discovery Proceedings—Error to Refuse Access of Results to Parties.* In a civil action, the record is examined and it is *held:* The trial court erred in refusing to allow the parties access to the investigative report during a discovery proceeding.

Appeal from Lyon district court; R. E. MILLER, judge. Opinion filed April 24, 1981. Reversed and remanded.

Don C. Krueger, of Don C. Krueger, Chartered, of Emporia, for the appellant. No appearance for the appellee.

Before JUSTICE HERD, presiding, SWINEHART, J., and WILLIAM M. COOK, District Judge, assigned.

HERD, J.: This case involves a child custody dispute following the divorce of Carol and Charles Eastman. Charles Eastman appeals from a trial court's ruling denying him access to the results of a home study investigative report, ordered pursuant to K.S.A. 1978 Supp. 60-1607(*a*)(5). We reverse and remand this case and order that the trial court provide the appellant with the requested information.

Charles Eastman (defendant-appellant) and Carol Eastman (plaintiff-appellee) were divorced on February 2, 1976. Mrs. Eastman was awarded custody of the couple's three minor children. On March 13, 1979, defendant filed a motion for change of custody of the children, alleging a significant change of circumstances. At defendant's request, the court ordered home study investigations of the homes of both parties. The investigations were conducted by the Kansas Department of Social and Rehabilitation Services. On March 21, 1979, the court temporarily ordered the children placed in defendant's custody. On August 27, 1979, the court filed an order entered into by both parties changing custody of the children to defendant. The plaintiff filed a motion to make visitation rights definite and certain and defendant filed a motion for child support, restricted visitation rights and requested a home study on plaintiff's home.

On March 17, 1980, a hearing was held on the parties' motions.

The court ordered the plaintiff should have visitation with the children the last weekend of each month beginning with the month of March. The court further ordered a home study be conducted on plaintiff's home. Plaintiff had remarried and was then living in Colorado. The order states copies of the report would be supplied to counsel upon receipt by the court. On May 22, 1980, defendant filed a praecipe for subpoena duces tecum which was served on Gary Marsh, director of Lyon County District Court Services. The praecipe requested him to produce the SRS report from Jefferson County, Colorado.

On May 28, 1980, a final hearing was held on defendant's request to review the home study report. The court found defendant could obtain the necessary information contained in the report by cross-examination of Marsh, who was called as a witness at the hearing. The court ruled that any material in the reports was available to either party upon independent investigation. The court ordered the children could visit their mother from the last weekend in May until June 21, 1980, and ordered SRS to monitor the summer visit and report its findings to the court.

The trial court's order was based on its interpretation of K.S.A. 1980 Supp. 60-1610(*b*) which mandates that the court protect and promote the interests of minor children in custody disputes. The court concluded its duty to the minor children outweighed the rights of the parties to certain aspects of the report, such as a custody recommendation, which was not disclosed orally to the parties. Charles Eastman appeals from the trial court's denial of access to the home study report.

This case presents for review the question mentioned in *Hoffman v. Hoffman,* 228 Kan. 290, 613 P.2d 1356 (1980). In *Hoffman,* which was also a child custody dispute, appellant contended it was error for the trial court to consider reports by social agencies in its determination of custody when a party has not been given the opportunity to see the reports or examine the investigating officer. The Supreme Court held the issue was raised for the first time on appeal and was, therefore, not subject to review. In dicta, the court added that the reports were favorable to the objecting party and any error resulting from their use by the trial court was harmless.

Appellant raises several issues to support his allegations of trial

court error. He argues the trial court's refusal to disclose the actual report denied a proper request for discovery, created the possibility that otherwise inadmissible hearsay evidence would be considered by the court and denied the appellant the right to confront witnesses. In discussing relevancy in discovery proceedings, the court in *Gleichenhaus v. Carlyle*, 226 Kan. 167, 170, 597 P.2d 611 (1979), stated:

"The scope of relevancy in a discovery proceeding is broader than the scope of relevancy at trial. Relevancy includes information which may be useful in preparation for trial. A request for discovery would be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the lawsuit."

We find the information contained in the home study report is relevant evidence and the parties have a legitimate right to request its production. K.S.A. 60-226.

The ruling of the trial court must now be weighed pursuant to this court's scope of appellate review. "The control of discovery is entrusted to the discretion of the trial court and a ruling thereon will not be disturbed on appeal in the absence of a clear abuse of that discretion." *Commercial Union Ins. Co. v. City of Wichita*, 217 Kan. 44, Syl. ¶ 8, 536 P.2d 54 (1975). See *Yunghans v. O'Toole*, 224 Kan. 553, 555, 581 P.2d 393 (1978); *Vickers v. City of Kansas City*, 216 Kan. 84, Syl. ¶ 2, 531 P.2d 113 (1975); *Hamilton v. Ling*, 1 Kan. App. 2d 22, 28, 561 P.2d 880, *rev. denied* 225 Kan. 844 (1977).

The home study report, containing impartial and independent assessments of a party's home, is relied upon by the trial court in its determination of custody. Each party should have the opportunity to challenge the evidence contained in the report which becomes the basis for the ultimate recommendation of SRS. The report could also contain misstatements and errors that could be clarified by the parties if they knew the exact contents of the report. Although the trial court exercised its discretion in withholding this evidence from the parents pursuant to its duty to protect the interests and promote the welfare of minor children, we find the court abused its discretion and the report should be made available to the parents. Our ruling on this issue disposes of the appeal and defendant's remaining contentions will not be considered.

The judgment of the trial court is reversed and the case is remanded for further proceedings consistent with this opinion.

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Amendment 11.—SUITS AGAINST STATES

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State.

Note: The eleventh amendment to the constitution of the United States was proposed to the legislatures of the several states by the third congress, on September 5, 1794, and was declared in a message from the president to congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three fourths of the states.

Amendment 12.—ELECTION OF PRESIDENT AND VICE-PRESIDENT

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Note: The twelfth amendment to the constitution of the United States was proposed to the legislatures of the several states by the eighth congress, on December 12, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the secretary of state, dated September 25, 1804, to have been ratified by the legislatures of three fourths of the states.

Electors may vote for any eligible citizen of United States. Breidenthal v. Edwards, 57 K. 332, 337, 46 P. 469.

Amendment 13.—SLAVERY

Note: Proclamation declaring thirteenth amendment ratified dated December 18, 1865. (Kansas ratified previous to date of said proclamation.)

SECTION 1. **Prohibition.** Neither slavery nor involuntary servitude, ex crime whereof the party sh , shall exist within the Unit ect to their jurisdiction.

SEC. 2. **Enforceme** s shall have power to enforc legislation.

EXHIBIT B

Ordinance permitting working prisoners on streets not repugnant. City of Topeka v. Boutwell, 58 K. 20, 34, 35 P. 819.

Amendment 14.—RIGHTS AND IMMUNITIES OF CITIZENS

Note: Proclamation declaring fourteenth amendment ratified dated July 28, 1868. (Kansas ratified previous to date of said proclamation.)

SECTION 1. **Citizenship; privileges or immunities; due process clause.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State may prohibit sale or manufacture of liquor. The State v. Lindgrove, 1 K. A. 51, 58, 41 P. 688.
Insanity hearing; person alleged insane must have notice and hearing. *In re* Wellman, *Petitioner*, 3 K. A. 100, 103, 45 P. 726.
Statute providing for imprisonment for debt contravenes this section. *In re* Roberts, *Petitioner*, 4 K. A. 292, 296, 45 P. 942.
Statute empowering managers of reformatory to transfer inmates to penitentiary, unconstitutional. *In re* Dumford, 7 K. A. 89, 91, 53 P. 92.
Statute allowing attorney's fee does not deny equal protection. Clark v. Ellithorpe, 7 K. A. 337, 342, 51 P. 940.
Statute requiring security for good behavior, constitutional. The State v. Webb, 7 K. A. 423, 427, 53 P. 276.
Payment of wages of employees; act held not repugnant. The State v. Haun, 7 K. A. 509, 518, 54 P. 130. Reversed: 61 K. 146, 59 P. 340.
Ordinance regulating speed of trains not obnoxious to federal constitution. Railroad Co. v. Morasch, 8 K. A. 61, 66, 54 P. 323. Affirmed: 60 K. 251, 255, 56 P. 133. (Affirmed: Erb. v. Morasch, 177 U. S. 584, 20 S. Ct. 819, 44 L. Ed. 897.)
Action on fire insurance policy; attorney's fees; constitutional. Insurance Co. v. Bayha, 8 K. A. 169, 175, 55 P. 474.
Act requiring transportation of shipper, constitutional and valid. Railway Co. v. Campbell, 8 K. A. 661, 662, 56 P. 509. Reversed: 61 K. 489, 59 P. 1051.
Taxation on personal property; injunction; penalty; act not repugnant. Railway Co. v. Labette County, 9 K. A. 545, 547, 59 P. 383.
State may prohibit manufacture and sale of intoxicating liquors. Prohibitory-Amendment Cases, 24 K. 700, 701.
Statute defining railroad's liability for negligence of coemployees held valid. Mo. P. Rly. Co. v. Haley, *Adm'r, etc.*, 25 K. 35, 53.
Former case of Missouri Pac. Rly. Co. v. Haley, followed. Mo. Pac. Rly. Co. v. Mackey, 33 K. 298, 6 P. 291. Affirmed: Missouri Pacific R. Co. v. Mackey, 127 U. S. 205, 8 S. Ct. 1161, 32 L. Ed. 107.
Attachment; defendants nonresidents; no undertaking; section not contravened. Head v. Daniels, 38 K. 1, 10, 15 P. 911.
Act regulating practice of dentistry held not repugnant. The State v. Creditor, 44 K. 565, 566, 24 P. 346.
Right to dower of nonresident spouse forbidden; not repugnant. Buffington v. Grosvenor, 46 K. 730, 733, 27 P. 137.
Statutes defining railroad's liability for negligence of coemployees held valid. C. K. & W. Rld. Co. v. Pontius, 52 K. 264, 266, 34 P. 739. Affirmed: Chicago, K. & W. R. Co. v. Pontius, 157 U. S. 209, 15 S. Ct. 585, 39 L. Ed. 675.
Statute allowing attorney's fee in actions for causing fire, constitutional. Railroad Co. v. Matthews, 58 K. 447, 49 P. 602. Affirmed: Atchison, Topeka & Santa Fe R. Co. 174 U. S. 96, 19 S. Ct. 609, 43 L. Ed. 909.

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See *Hukle v. City of Kansas City,* 212 Kan. 627, 512 P.2d 457 (1973).

The request to intervene was made orally the day of the severance hearing. A motion was not served on the party as provided for in K.S.A. 60-205; there was no timely application. Iris Walker did not have a substantial interest in the severance of Gina Wilson's parental rights. Although she cared for the child, she is more concerned with eventual custody. Intervention by Mrs. Walker as a party in the severance hearing would not have aided Mrs. Walker because she was not the object of the petition to sever. We hold the trial court did not err in denying Iris Walker's request to intervene.

The judgment of the trial court is reversed and the case is remanded for new trial on the issue of severance of Gina Wilson's parental rights. The judgment is affirmed on the issue of Iris Walker's right to intervene. The detention order of November 30, 1978, is to remain in effect until final determination of the deprived child hearing.

No. 51,276

In the Interest of JULIE COOPER, A Juvenile Under Age Eighteen.

(631 P.2d 632)

SYLLABUS BY THE COURT

1. CONSTITUTIONAL LAW—*Parents' Rights of Child Custody and Control.* The parents' rights of custody and control of their children are liberty interests protected by the Fourteenth Amendment Due Process Clause.
2. SAME—*Due Process—Determination of Necessary Safeguards.* A determination of the safeguards necessary to afford constitutional due process must be evaluated in the light of the nature of the proceeding and of the interests affected.
3. SAME—*Due Process—Balancing Interests.* The extent to which procedural due process must be afforded a person is influenced by the extent to which the person affected may be "condemned to suffer grievous loss" and depends upon whether the person's interest in avoiding that loss outweighs the governmental interest in summary adjudication.
4. SAME—*Due Process—Deprived Child Hearing—Appointment of Counsel for Indigent Parent.* Constitutional due process requires the State to appoint counsel for an indigent parent in a deprived child hearing under K.S.A. 1980 Supp. 38-817 whenever the parent, unable to present his or her case properly, faces a substantial possibility of loss of custody and permanent severance of parental rights or of prolonged separation from the child.
5. PARENT AND CHILD—*Deprived Child Hearing—Indigent Parent—Court-appointed Counsel—Constitutional Due Process Rights.* In deprived child hearings the district court should safeguard the due process rights of an indigent parent and have counsel appointed at the expense of the county when the circumstances appear to require it and, should a request for counsel be refused, grounds for such refusal shall be stated in the record so that a meaningful judicial review can be had.

Review of the judgment of the Court of Appeals in 5 Kan. App. 2d 584, 621 P.2d 437 (1980). Appeal from Shawnee district court, BILL G. HONEYMAN, associate judge. Judgment of the Court of Appeals reversing the district court is reversed. Judgment of the district court is affirmed. Opinion filed July 17, 1981.

Lowell Paul, of Legal Aid Society of Topeka, Inc., argued the cause, and *Larry R. Rute,* of the same firm, was with him on the brief for the appellant mother.

Sue Carpenter, assistant district attorney, argued the cause, and *Robert T. Stephan,* attorney general, and *David Skidgel,* guardian ad litem, of Topeka, were with her on the brief for the appellee.

The opinion of the court was delivered by

FROMME, J.: This matter comes to this court on a Petition for Review of the decision of the Court of Appeals found at 5 Kan. App. 2d 584, 621 P.2d 437 (1980). It stems from juvenile proceedings on a petition alleging that Julie Cooper, age one year

was a deprived child. The definition of a deprived child is found in K.S.A. 1980 Supp. 38-802(*g*):

"(*g*) 'Deprived child' means a child less than eighteen (18) years of age:

"(1) Who is without proper parental care or control, subsistence, education as required by law or other care or control necessary for such child's physical, mental or emotional health, and the deprivation is not due solely to the lack of financial means of such child's parents, guardian or other custodian;

. . . .

"(3) who has been abandoned or physically, mentally, emotionally abused or neglected or sexually abused by his or her parent, guardian or other custodian;"

Sufficiency of the evidence is not in question. The district court after appointing an attorney for the child, as required by K.S.A. 1980 Supp. 38-817, proceeded with the hearing.

The mother, Marilyn Dickey, was present and was advised of her right to retain counsel. She proceeded with the hearing without counsel, without requesting counsel, and without having a determination made as to whether she could afford counsel. The attorney appointed for the child was present throughout the hearing and both he and the child's mother took part in the proceedings and questioned the State's witnesses. Marilyn Dickey testified at length against the State's position. At the conclusion of the hearing the legal care, custody and control of the child, Julie Cooper, were continued with the Department of Social and Rehabilitation Services until further order of the district court. Visitation rights were granted to the parents. The parents were ordered to undergo psychological and psychiatric testing as to their abilities to carry out the duties of parents. They were ordered to attend the Child Development Center program at the Topeka State Hospital, along with the child.

On appeal of the judgment to the Court of Appeals the mother, Marilyn Dickey, presented two points. The second point concerned the sufficiency of the district court's findings and conclusions. The Court of Appeals examined the findings and conclusions and approved their sufficiency. The point was not raised on the Petition for Review and we consider that matter settled.

The first point raised in the Court of Appeals concerned the failure of the trial court to appoint an attorney for the mother, Marilyn Dickey. The Court of Appeals concluded that in every "deprived child" hearing the parents are not only entitled to have counsel present during the hearing but indigency must be determined and if indigent they are entitled to counsel at the expense of the county. The court held the requirement of counsel is no

different in a "deprived child" hearing, when the custody is taken from the parent temporarily, than it is in severance proceedings when custody is permanently severed.

The case was remanded to the trial court with directions to determine whether Marilyn Dickey was indigent at the time of the "deprived child" hearing. If Marilyn Dickey was found to be indigent at the hearing, the judgment was ordered reversed and the trial court was directed to appoint an attorney for her at t' county's expense, and a new trial was to be granted to her.

The district attorney on behalf of the State filed a Petition for Review, pointing out that the question was one of first impression in Kansas. The district attorney contends the decision has far-reaching effects in all juvenile proceedings and that the question deserves a more definitive treatment. We granted review.

At the outset it is noted all statutory references to the juvenile code will be found in the K.S.A. 1980 Supplement. The policy under the juvenile code is stated at 38-801 as follows:

"This act shall be liberally construed, to the end that each child coming within its provisions shall receive such care, custody, guidance, control and discipline, preferably in the child's own home, as will best serve the child's welfare and the best interests of the state. In no case shall any order, judgment or decree of the district court, in any proceedings under the provisions of this act, be deemed or held to import a criminal act on the part of any child; but all proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state."

When there is a permanent deprivation or severance of pare rights both the statute, 38-820, and the case law, *In re Brehm*, 3 Kan. App. 2d 325, 594 P.2d 269 (1979), require that the natural parent or parents be represented by counsel at the hearing. If the parent is financially unable to employ counsel, the court must assign counsel to the parent at the expense of the county. The question now confronting this court is whether it is necessary and appropriate to extend this right to "deprived child" hearings where there is a temporary loss of custody with a view to giving care, guidance and discipline such as will best serve the child's welfare in the exercise of the parental power of the State.

With regard to permanent severance of parental rights, the statute in pertinent part states:

"In any proceedings pursuant to the juvenile code in the district court in ' ' ' the parent . . . may be deprived of the permanent custody of suel summons shall issue to such parent. . . . Such summons

ing the parents' interest in the custody and control of the child, petitioner argues that a *temporary* deprivation of custody does not require court appointment of counsel to represent the indigent parent.

As previously pointed out 38-820 requires that the parents be represented by counsel in an action for the severance of their parental rights. *In re Brehm,* 3 Kan. App. 2d 325. Due process also requires the assistance of counsel in an appeal from a severance proceeding where the parent is unable to afford an attorney; in such cases one must be court appointed.

It is universally held that constitutional due process requires the assistance of counsel in severance proceedings. The same is not true of proceedings for temporary removal of children from the family for care, treatment and assistance. Virtually all jurisdictions including Kansas recognize the parents' rights of custody and control of their children are liberty interests protected by the Fourteenth Amendment Due Process Clause. *Danforth v. State Department of Health & Welfare,* 303 A.2d 794 (Me. 1973), illustrates the rationale:

"While the precise question . . . has never been squarely decided by the Supreme Court of the United States, there has been ample suggestion by that Court that the right to raise one's children is of constitutional dimension.

"Over a half a century ago Mr. Justice McReynolds, speaking for the court in Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1922), said:

" 'The problem for our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. "No State shall . . . deprive any person of life, liberty, or property without due process of law."

" 'While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, *to marry, establish a home and bring up children,* to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.' (Emphasis supplied) 262 U.S. at 399, 43 S.Ct. at 626.

"Later in Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1924), the Court restated its view that there is a constitutionally protected right of parents to bring up their children when it said:

" 'The fundamental theory of liberty upon which all governments in the Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only.' 268 U.S. at 535, 45 S.Ct. at 573." 303 A.2d at 796.

The extent of the parents' interest in the continued and uninterrupted custody of the child, and the due process requirements necessary to protect that interest, vary from jurisdiction to jurisdiction. In *In re Cager,* 251 Md. 473, 248 A.2d 384 (1967), for example, the court found no due process violation from denying the indigent mother appointed counsel where the child was represented by a guardian ad litem, and the mother was given notice and the opportunity to be heard at the dependency and neglect proceedings. This case appears to stand alone for we find no other similar holdings.

Several jurisdictions have required as minimum due process requirements the appointment of counsel for indigent parents in every dependency and neglect proceeding when the child may be temporarily removed from the home. The parent was faced with the potential loss of the child's society as well as the possibility of criminal charges in *Matter of Ella B.,* 30 N.Y.2d 352, 334 N.Y.S.2d 133 (1972). Noting the "gross imbalance" of expertise between the state and unrepresented parent, the court held that denial of counsel to an indigent parent violated both due process and equal protection. The procedural defect was not cured in that case even though the parent was represented at a subsequent termination proceeding, because evidence from the previous dependency and neglect proceeding was considered and relied upon.

However, the United States Supreme Court recently held the Constitution of the United States does not require the appointment of counsel for indigent parents in every parental status termination proceeding. *Lassiter v. Department of Social Services,* 452 U.S. 18, 68 L.Ed.2d 640, 101 S.Ct. 2153 (1981).

In *Danforth v. State Department of Health and Welfare,* 303 A.2d 794, the court held neglect proceedings to be akin to criminal proceedings in the impact upon the parent, noting that due process requires greater procedural protection as the action more nearly approximates a criminal prosecution. The *Danforth* court was also concerned about the imbalance of expertise, and required the appointment of counsel for indigent parents when the child was being temporarily removed from the home.

Other jurisdictions follow a middle road and require appointment of counsel for indigent parents in dependency and

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Note: The first ten amendments to the constitution of the United States were proposed to the legislatures of the several states by the first congress, on the 25th of September, 1789. They were ratified by the eleventh state, constituting three fourths of all the states, December 15, 1791.

Amendment 1.—FREEDOM OF RELIGION, SPEECH AND PRESS

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Cited in upholding bequest to priest for celebration of mass. Harrison v. Brophy, 59 K. 1, 6, 51 P. 883.
Statute penalizing advocacy of violence in bringing about governmental change is valid. State v. Fiske, 117 K. 69, 230 P. 88. Reversed: Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108.
Prohibition of unnecessary Sunday labor held not to violate section. State v. Blair, 130 K. 863, 864, 288 P. 729.

Amendment 2.—RIGHT TO BEAR ARMS

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Legislature may prohibit and punish the promiscuous carrying of arms. Salina v. Blakeley, 72 K. 230, 231, 83 P. 619.

Amendment 3.—QUARTERING SOLDIERS IN HOUSES

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment 4.—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Liquor still and appartus taken by officer without authority is admissible as evidence. State v. Johnson, 116 K. 58, 226 P. 245.
Section 19-242 relating to unlawful allowance of claims by county commissioners, valid. State v. Rogers, 142 K. 841, 847, 54 P. 2d 1211.

Amendment 5.—CRIMINAL PROSECUTIONS; DUE PROCESS OF LAW; EMINENT DOMAIN

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Commitment of witness by examining magistrate authorized. *In re* Petrie, *Petitioner*, 1 K. A. 184, 40 P. 118.
Laws of 1879, ch. 100, drainage act, not violative of this section. Griffith v. Pence, 9 K. A. 253, 59 P. 677.
Section applicable only to proceedings in United States courts. The State of Kansas v. Barnett, 3 K. 250, 253.
What constitutes "due process of law" defined and discussed. The State v. Whisner, 35 K. 271, 10 P. 852.
Where land not actually taken this section does not apply. O. O. C. G. Rld. Co. v. Larson, 40 K. 301, 19 P. 661.
Laws of 1903, ch. 487, stockyards rates, not violative of this section. Rat... 15, 86 P. 150.
This section ... the federal courts. ... 757.
The State ...
Forfeiture of ... s not violate amend... P. 1089.
Congress in it ... be obedient to fifth amendment ... v. Packing Co., 109 K. 629, 20 ...
Ordinance req ... register and thumb prints of ... v. Wolkow, 110 K. 127, 202 P ...
Liquor still and apparatus taken by officer without authority admissible in evidence. State v. Johnson, 116 K. 58, 226 P. 245.
Fraudulent purchaser of property when deprived of possession may be denied recovery for improvements. Leinbach v. Dyatt, 117 K. 265, 230 P. 1074.
Fifth amendment is not a limitation upon power of state. State, ex rel., v. Kansas City, 125 K. 88, 262 P. 1032.
Bylaw of fraternal benefit society held to violate due process provision. Wichita Council v. Security Benefit Ass'n, 138 K. 841, 847, 28 P. 2d 976.
Cited in determining when jeopardy attaches under Kansas constitution. *In re* Brown, 139 K. 614, 622, 32 P. 2d 507.
Mentioned but not applied. Farmers Coöp. G. & S. Co. v. Chicago, R. I. & P. Rly. Co., 139 K. 677, 680, 33 P. 2d 170.
Section 7-102, relating to admittance of attorneys to bar, held valid. Depew v. Wichita Association of Credit Men, 142 K. 403, 404, 406, 49 P. 2d 1041.
Section 19-242 relating to unlawful allowance of claims by county commissioners, valid. State v. Rogers, 142 K. 841, 847, 54 P. 2d 1211.

Amendment 6.—FURTHER GUARANTIES IN CRIMINAL CASES

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 7.—TRIAL BY JURY

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 8.—BAIL AND PUNISHMENTS

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Cited in case upholding state regulation of charges at stockyards. Ratcliff v. Stockyards Co., 74 K. 1, 6, 86 P. 150.

Amendment 9.—EFFECT OF ENUMERATION OF RIGHTS

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

All governmental power is inherent in the people. Jamison v. Flanner, 116 K. 624, 228 P. 82.

Amendment 10.—RESERVATION OF POWERS TO STATES

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

EXHIBIT D

Attachment #5 — 10
03-18-93

CONFRONT— CROSS EXAMINE

EXHIBIT E

the territory of two or more juri… …hat branch of jurisprudence, ari… … the laws of different nati… … their application to rig… … ciles the inconsistency, or … …m is to govern in the particular … …egree of force to be accorded to the la… …jurisdiction, (the acts or rights in question … …isen under it) either where it varies from the d… …stic law, or where the domestic law is silent or not exclusively applicable to the case in point. Restatement, Second, Conflicts of Law, § 2. *See also* Center of gravity doctrine; Choice of law; Grouping of contacts; Kilberg doctrine; Lex celebrationis; Lex contractus; Lex fori; Lex loci; Lex loci celebrationis; Lex loci contractus; Lex situs; Lex solutionis; Lex validitatis; Renvoi doctrine.

Conflict of personal laws. Term used to describe conflicts within a particular state arising from application of general law to racial and religious groups which have their own laws, *e.g.* tribal laws of the Indians.

Conformed copy. An exact copy of a document on which has been written explanations of things that could not or were not copied; *e.g.* written signature might be replaced on conformed copy with notation that it was signed by the person whose signature appears on the original.

Conforming. In law of sales, goods or conduct including any part of a performance are conforming or conform to the contract when they are in accordance with the obligations under the contract. U.C.C. § 2–106(2).

Conforming use. In zoning and land use planning, a use of a structure which is in conformity with those uses permitted by the particular zoning classification of the area. *Compare* Nonconforming use.

Conformity. Correspondence in form, manner, or use; agreement; harmony; congruity.

Conformity Act, *or* **statute.** A term used to designate Act June 1, 1872, c. 255, § 5, 17 Stat. 197, providing that the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the federal district courts shall conform, as near as may be, to those existing in like causes in the courts of the state within which such district courts are held. Since the adoption of the Federal Rules of Civil Procedure, 28 U.S.C.A., the Conformity Act is no longer effective. Hydraulic Press Mfg. Co. v. Williams, White & Co., C.C.A.Ill.1947, 165 F.2d 489.

Conformity, Bill of. *See* Bill *(Equity pleading and practice).*

Conformity hearing. Hearing ordered by court to determine whether judgment or decree directed to be prepared by the prevailing party conforms with decision of court. Commonly after court makes its findings it directs prevailing party to draw judgment or decree in conformity with such findings and decision.

Confrairie /kónfrèriy/kənfrériy/. Fr. In old English law, a fraternity, brotherhood, or society.

Confreres /kónfrerz/kənfrérz/. Brethren in a religious house; fellows of one and the same society.

Confrontation. In criminal proceedings, the accused has a right to be "confronted with the witnesses against him." This Sixth Amendment right consists of the act of setting a witness face to face with the accused, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused; and, does not mean merely that witnesses are to be made visible to the accused, but imports the constitutional privilege to cross-examine them. In fact, the essence of the right of confrontation is the right to cross-examination. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347. A disruptive defendant may, however, lose his right to be present in the courtroom, and, as a result, lose his right to confront witnesses. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353.

Confrontation clause. *See* Confrontation.

Confusio /kənfyúwz(h)(i)yow/. In the civil law, the inseparable intermixture of property belonging to different owners; it is properly confined to the pouring together of fluids, but is sometimes also used of a melting together of metals or any compound formed by the irrecoverable commixture of different substances. It is distinguished from *commixtion* by the fact that in the latter case a separation may be made, while in a case of *confusio* there cannot be. 2 Bl.Comm. 405.

Confusion. This term, as used in the civil law and in compound terms derived from that source, means a blending or intermingling, and is equivalent to the term "merger" as used at common law. To mix or blend so that things cannot be distinguished. Spangler Candy Co. v. Crystal Pure Candy Co., D.C.Ill., 235 F.Supp. 18, 27. The mixing together of goods of two or more owners so that the independent goods cannot be identified. *See also* Commingle.

Confusion of boundaries. The title of that branch of equity jurisdiction which relates to the discovery and settlement of conflicting, disputed, or uncertain boundaries.

Confusion of debts. An obsolete term which refers to a mode of extinguishing a debt, by the concurrence in the same person of two qualities or adverse rights to the same thing which mutually destroy each other. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer.

Confusion of goods. Results when goods belonging to two or more owners become intermixed to the point where the property of any of them no longer can be identified except as part of a mass of like goods. Johnson v. Covey, 1 Utah 2d 180, 264 P.2d 283. *See also* Commingle.

Confusion of rights. A union of the qualities of debtor and creditor in the same person. The effect of such a

SENATE BILL NO. 365
House Judiciary Committee
March 18, 1993

Testimony of Kay Farley
Coordinator of Children and Family Programs
Office of Judicial Administration

Representative O'Neal and members of the committee:

Thank you for the opportunity to appear before you in support of Senate Bill No. 365.

This bill was requested on behalf of the District Court Trustees. The bill amends the Uniform Reciprocal Enforcement of Support Act and has three major purposes. First, the bill would allow the District Court Trustees to retain jurisdiction for enforcing a support order under the Act as long as the obligor is subject to a support order in the respective trustee's judicial district. Second, the avoidance of a multiplicity of actions and retention of all records of support payments in one district court would be fostered by the suggested amendments. Third, amendments to the Act are suggested to clarify that the role of the District Court Trustee is to initiate and prosecute proceeding under the Act and to clarify that there is not an attorney-client relationship between the District Court Trustee or other public prosecutor and the obligee.

I believe that the suggested amendments would be beneficial for child support enforcement efforts. I urge you to favorably consider this bill.

Thank you for your consideration.

HOUSE JUDICIARY
Attachment #6
03-18-93

TESTIMONY ON S.B. 365

ANNE MCDONALD, COURT TRUSTEE

HOUSE JUDICIARY COMMITTEE, MARCH 18, 1993

There are two main changes in the statute addressed in this bill. The first expands jurisdiction. The second seeks to remove the appearance of a conflict of interest on the part of the Court Trustee, SRS or other prosecuting attorney which is implied by the present language. S. B. 365 also introduces gender-neutral language, substituting the title of the official for the pronoun "him".

K.S.A. 23-460, Sec. 1, new subsection b, expands jurisdiction to a district court of the county in which an obligor is subject to an order of support. The present law allows only the circumstances in subsection a, which is the district court of the county in which the obligor or obligee resides. In today's mobile society it is entirely possible that both parties have moved from the place where they got their divorce. But the order would probably have to be registered in the new county before it could be sent to another state for enforcement, which adds extra time and steps to the process. With the proposed change, the agency in the original jurisdiction could stay on the case and send it to a responding state where the obligor resides or derives income without further legal action.

Example: Ruth and Robert Rowe are divorced in Wyandotte County in 1990 and a child support order is entered. The child support enforcement case is opened in the office of the Court Trustee. (Most child support enforcement agencies in Kansas do NOT have a residency requirement for the opening of a case). In 1991 Ruth moves to Leavenworth County, Kansas. In 1992, Robert moves to Houston, Texas. At this point, the court order and enforcement of the case are left in Wyandotte County, but both of the parties reside elsewhere. Without the change proposed in S.B. 365, the obligee (Ruth) would most likely need to have the case transferred to the Leavenworth County agency AND they would register the order there before sending an Interstate Transmittal to Texas. This could result in quite a delay: weeks, or possibly months. With new subsection b, Wyandotte County could continue to handle all aspects of the case on a more timely basis.

The second change concerns language. K.S.A. 23-462 presently speaks of "Officials to represent obligee".

HOUSE JUDICIARY
Attachment #7
03-18-93

Represent is a word which implies an attorney-client relationship. S.B. 365 removes the term "represent" and substitutes "initiate or prosecute proceedings". Attorneys practicing in the area of child support enforcement are very aware of potential ethical dilemmas because we do not fit neatly into a standard category. We are not district attorneys with authority to handle criminal charges, yet neither do we function quite like attorneys in a general private practice. The Disciplinary Administrator has stated that he believes our client is the state or the agency rather than the individual obligee/custodial person. But when we take legal action, it usually appears to be on behalf of the obligee, thus giving rise to the appearance of an attorney-client relationship.

We have gone to great lengths in recent years to apprise the parties and all others with whom we deal, that there is NOT an attorney-client relationship with the individual obligee. The change in this language is part of the ongoing effort to clarify our obligation.

There have been two separate commissions which have examined the present interstate laws (U.R.E.S.A. and R.U.R.E.S.A) recently and proposed changes. One was the Commission on Uniform Laws and the other was a specially appointed Commission on Interstate Child Support Enforcement. In the draft proposals, they also addressed this situation. They changed "represent the obligee" to "provides services", for the same reason.

Both the Court Trustees and the Kansas Child Support Enforcement Association have discussed the concepts in S.B. 365 within the last month were discussed by the group and have expressed support for the amendments set out in this bill. Thank you for the opportunity to present testimony.

Respectfully submitted,

Anne McDonald
Court Trustee, 29th Judicial District
Past President, KCSEA
Kansas City, Kansas 66101
(913) 573-2992

COURT TRUSTEE

Geary County Courthouse
P.O. Box 1147
Junction City, Kansas 66441
(913) 762-2583
Facsimile (913) 762-3903

Testimony of Audrey B. Magana
Geary County District Court Trustee
Senate Bill 365
House Judiciary Committee Room 313 South
March 18, 1993

Rep. O'Neal and members of the Committee

Thank you for the opportunity to engage in a dialogue with you in support of Senate Bill No. 365.

There are three changes in the statutes addressed in the bill.

One of the changes is a limited expansion of jurisdiction to specify that if a Kansas district court has previously entered a monthy support order then that forum, in addition to a forum where an obligee may reside in Kansas, is an appropriate forum to initiate proceedings pursuant to K.S.A. 23-451 et. seq. as amended. The filing of interstate proceedings in the same district court as has previously entered a support order governing the issue of support which is the subject of an interstate proceeding will promote the efficient administration of justice by reducing multiplicy of actions. Support prosecutor's could properly continue to proceed with interstate enforcement on an existing file even though the obligee (a Kansas resident) no longer (if ever) resides in the county where a support order had previously been entered. Court clerks records of pertinent information including support payments could be kept in one district court rather than having cases and payment records scattered in two or more Kansas district courts.

Another change is to amend the references in K.S.A 23-451 et. seq., to clarify that no attorney client relationship exists between the State's attorneys prosecuting interstate proceedings under the Revised Uniform Reciprical Enforcement of Support Act and support obligees who benifit from the

prosecutor's actions. I defer to testimony on this change provided or to be provided by my colleague Ms. Ann McDonald, District Court Trustee of Wyandotte County, Kansas. Also on this subject I attach a copy of Legal Clearance # 92-1 issued by the Kansas IV-D Support Enforcement Program. The clearance identifies why attorney client relationships should not exist between support prosecutors and support obligees or support obligors.

The bill also incorporates a third change to make the statute gender neutral.

Thank you.

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Program

M E M O R A N D U M

TO: CSE Attorneys
CSE Chiefs
County/District Attorney Contractors
Office of Judicial Administration
CSE Central Office Management Staff

DATE: March 9, 1992

FROM: J.A. Robertson
Administrator and Senior Counsel

SUBJECT: LEGAL CLEARANCE # 92-1
Conflicts of Interest

I. STATEMENT OF POLICY

In recent years the CSE Program has expanded tremendously both in the amount and type of cases handled. Along with this growth has come an increasing number of perceived "conflicts of interest" between IV-D attorneys and applicants or recipients of the services this program provides.

This clearance publishes and defines the policies of the CSE Program on such perceived conflicts as follows:

A. It is the policy of this program that the client of the IV-D attorney is the Secretary of The Kansas State Department of Social and Rehabilitation Services.

B. It is the policy of this program that no express attorney-client relationship is created between a IV-D attorney and an applicant or recipient of CSE program services.

C. It is the policy of this program that no conflict of interest arises solely due to a change in custody of the child/ren which then reverses the roles of the child support obligor, obligee and/or some third party custodian.

D. It is the policy of this program to maintain the confidentiality of all information received in the administration of the IV-D program. While this prohibition will prevent disclosure of such information to the general public, it will not prevent the use of any such information to establish or collect support obligations from any responsible party or as otherwise authorized by the CSE Manual.

E. It is the policy of this program to disclose these policies to all applicants or recipients of the Child Support Enforcement Program's services.

F. It is the policy of this program that no CSE attorney, or attorneys, shall simultaneously advocate for and defend against any child support issue which pertains to the same parties.

G. It is the policy of this program that the Secretary of SRS, or his or her designee, has the same power as an individual client to consent to any actions adverse to the interests of the client (Secretary).

II. THE RELATIONSHIP OF THE SECRETARY AND IV-D ATTORNEYS

The Preamble to the Model Rules of Professional Conduct (MRPC) explains that "for proposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists." **K.S.A. 39-756 (e)** is the "substantive law" which covers this area and it establishes that there is no attorney-client relationship between any program participant and any IV-D attorney, but rather, that the IV-D attorney represents the Secretary of SRS.

The Secretary of SRS, as the IV-D attorney's client, acquires the right to establish and enforce support obligations by means of the statutory assignments found at **K.S.A. 39-709 (c), (g) and (h)**, and **K.S.A. 39-756 (a) (2)**. Concerning the rights of an assignee, the Kansas Supreme Court has consistently held that:

> "The Kansas cases clearly state the rule to be that an assignment passes all of the assignor's title or interest to the assignee, and divests the assignor of all right to control over the subject matter of the assignment." Army National Bank v. Equity Developers, Inc., 245 Kan. 3 (1989).

Thus, the Secretary is the client of the IV-D attorney and has the sole power to establish policies in the CSE program concerning how these assigned support rights will be administered. If, then, an attorney-client relationship exists between anyone other than the Secretary of SRS and the IV-D attorney, this program's ability to carry out it mission will be seriously impaired.

For a case study in possible conflicts of interest, please see Attachment A.

III. RATIONALE FOR CONFLICTS POLICIES

A. Model Rules

The Preamble to the Model Rules states that:

> "Under various provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships.. . . They may also have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These rules do not abrogate any such authority."

The Model Rules thus recognize that as government lawyers, IV-D attorneys cannot be characterized exactly as private attorneys since they can be granted authority not extended to private counsel.

B. Distinctions between IV-D attorneys and the private bar

The extent of this authority is not readily apparent to many outside of the CSE program. IV-D attorneys are not the only ones who can establish paternity, child support orders or income withholding orders. Any attorney can initiate an outgoing URESA, seek modification of an existing order, file a request for a garnishment, revive dormant judgments, file and foreclose on liens, and prosecute an accusation in contempt or an aid in execution of a judgment to help collect child support.

However, when a child support obligee participates in the IV-D program, either voluntarily or by applying for or receiving AFDC payments, they are deemed by K.S.A. 39-709 to have assigned their child support rights to the Secretary of SRS. This assignment grants authority to the IV-D attorney to access information and take legal actions which are not available to members of the private bar.

IV-D attorneys can gain access to information to help locate individuals and identify their assets. Some of these sources within Kansas include Department of Motor Vehicle information about an individual's driver's license; Human Resources' data on employment earnings; KBI, Department of Corrections', sheriff's and local police department's criminal files; and Health and Environment information on birth certificates. Regionally or

nationally there is also IRS data from 1099's and 1040's; Federal Parent Locator Services; and motor vehicle and employment security information from other states.

There are also legal remedies which are only available to IV-D attorneys. These would include the set-off mechanisms for both state and federal payments found in K.S.A. 75-6201 et seq., and 42 U.S.C. 664 et seq.; and interstate income withholding, K.S.A. 23-4,125 et seq.

While any attorney may initiate a paternity action, only IV-D attorneys have access to the reduced rates pursuant to contract for paternity testing services. Further, IV-D staff are able to request the attendance of expert witnesses in contested cases at no extra cost under the terms of the contract with the CSE program.

C. Federal Statutory Authority

It is extremely important that this program emphasize the reason why these various grants of authority are extended to IV-D cases. The rationale as given by the U.S. Congress is found at 42 U.S.C. 651 which is the preamble to Title IV-D of the Social Security Act. It mandates that these provisions are to be established:

> "For the purpose of enforcing the support obligations owed by absent parents to their children . . . locating absent parents, establishing paternity, obtaining child and spousal support and assuring assistance in obtaining support will be available under this part to all children . . ."

Thus, private rights were not intended to be created for individual child support obligees, but rather, child support obligations are to be established and enforced by IV-D attorneys. The Child Support Enforcement Program in Kansas has consistently interpreted this to mean that IV-D attorneys do not represent the child support obligees, but represent the Secretary of SRS as the assignee of the rights to the child support obligation. This is done in order to act in the public interest to make sure that parents are the ones who support their children and not the state.

D. American Public Welfare Association position

Similarly, according to a January 31, 1991 policy statement of the American Association of Public Welfare Attorneys (AAPA), an affiliate of the American Public Welfare Association:

> "The AAPWA takes the firm position that the IV-D attorney represents only the IV-D agency and that no attorney-client relationship exists between the IV-D agency and the IV-D recipient. This position is taken because the services of the IV-D agency and the IV-D attorney enure to the recipient as a byproduct of a government program, and not as the result of an attorney-client relationship."
> See attachment B.

E. Federal Court litigation

The issue of whether or not private rights were intended to be created under Title IV-D actions has been addressed by several federal courts. The 11th Circuit Court of Appeals in Wehunt v. Ledbetter, 875 F2d 1558, 6/29/89, 15 FLR 1442, dismissed an AFDC recipient's suit to require state and federal officials to establish paternity and collect support from the father. Citing that the Title IV-D program is not a legal assistance program, and that recipients assign their support rights, the court declined to hold that the act created private enforceable rights. A petition for certiorari was filed to the U.S. Supreme Court on this case on filed on 12/22/89 (110 S. Ct. 1472) and it was denied at 110 S. Ct. 1472.

In the 6th Circuit Federal Court of Appeals, the case of Carelli v. Howser, 923 F2d 1208, 1/19/91, 17 FLR 1166, reversed a Federal District Court case which held that the IV-D program created private rights. No petition for certiorari was filed.

Until the U.S. Supreme Court addresses this issue, the policies of the Child Support Enforcement Program shall be as set forth above.

IV. CREATION OF IMPLIED RELATIONSHIP

Even though it is the stated policy of the CSE Program that there is no express attorney-client relationship, all IV-D attorneys must be extraordinarily careful to avoid creating an implied relationship between themselves and the child support obligee. Here, the obligee could be viewed as a third party beneficiary of the actions taken on behalf of the state. Thus, the duty of loyalty which a IV-D attorney owes to the Secretary of SRS, as their primary client, could be inferred to extend to the beneficiary of those actions, the child support obligee, as the derivative client.

Therefore, an implied attorney-client relationship would create as many problems as would a direct relationship. To avoid this

situation, **NEVER REFER TO THE CHILD SUPPORT OBLIGEE AS YOUR "CLIENT."** Do not do so in conversations with or in correspondence to them. No IV-D attorney shall represent him or herself as their counsel to the court, or in discussions with counsel for the child support obligor. A violation of this policy can result in serious adverse consequences to the IV-D Program.

V. DISCLOSURES

To assure that no attorney-client relationship arises, affirmative disclosures need to be made to the child support obligee at the earliest reasonable opportunity. Appropriate written disclosures shall be made to all existing and new IV-D applicants and recipients as outlined below to assure they understand that the mission of the Child Support Enforcement Program is both to act in the public interest to make sure that parents are the ones who support their children and to assure that wise use is made of taxpayers dollars.

A revised form SE-5033.2 (AFDC Support Questionnaire), currently in draft status, has been amended to include disclosures to applicants of our conflict policies. Attachment "C" is the page of that form which contains the new conflicts language. Similar language will also be added to the Non-ADC Support Questionnaire.

In the event that a CSE attorney perceives that an apparent conflict of interest exists, or may soon exit on a IV-D case, it will be the responsibility of that attorney to provide notice to current applicant/recipient of the CSE conflict of interest policy. Language similar to that included in attachment "C" should be used.

In oral communications with applicant/recipients, make clear to them that the objectives of the IV-D program do not allow IV-D attorneys to have the same confidential relationship with the obligee that the obligee would have with a private attorney. Advise them that while information provided to the IV-D program will not be disclosed to the general public, but it may be used as needed to collect support from either parent. It would be helpful to cover some of the situations that frequently arise where this could become an issue.

VI. MULTIPLE REPRESENTATION PROHIBITED

Situations will arise where CSE attorneys could be given referrals to work opposite each other in the same case. One such situation would be in requesting an increase in support for one obligee and defending against it on behalf of the other obligee if there was split custody and both parties wanted IV-D services. In no instance will a CSE attorney appear against another CSE attorney in a IV-D matter. To avoid this situation, the program has the option to refuse to provide services to the second applicant for services.

VII. EXISTENCE OF A TRUE CONFLICT

An exception to this policy exists where the IV-D attorney has represented the child support obligor previously in a private matter. This situation is covered by Rule 1.9 of the Model Rules:

> "A lawyer who has formerly represented a client in a matter shall not thereafter:
> (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
> (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known."

If this happens, the IV-D attorney may request that both the current client (SRS) and the former client (the obligor) consent to the representation after a full disclosure to both. Only the CSE Program Administrator has the authority to consent to the representation in these circumstances. If not, the legal referral should be reassigned to another IV-D attorney to handle the matter.

Another exception to this policy exists where the Secretary has a claim against an obligee. Examples of such claims could include, but not be limited to, overpayment of assistance or retained support paid to an applicant/recipient; foster care expenses; or UI, SDSO, or FDSO payments sent to an applicant/recipient that are later refunded to the obligor.

In these instances, the Secretary may decline to undertake to provide IV-D services to a child support obligee until arrangements have been made to settle the outstanding claim to the satisfaction of the Secretary. This could be by a repayment plan, by means of payment in full of the claim, or any other appropriate plan.

This limitation on providing IV-D services does not permit the CSE Program to close a IV-D ADC case due to the above circumstances. Please refer to the CSE Manual, section 2450 for details on how to handle IV-D recovery matters.

Please consult your supervisor if you have any questions. This Legal Clearance should be filed for future reference.

JAR:DNS

ATTACHMENT A

CASE STUDY FOR CONFLICTS OF INTEREST

Allen (husband) and **Alice** (wife) were married and had three children: **Alfred, Andrew** and **Angel. Alice** moves out on her own and gets a divorce from **Allen. Allen** received custody of two of the children, **Alfred** and **Andrew,** and **Alice** received custody of **Angel. Allen** was ordered to pay $415.00 per month to **Alice.** The decree was silent as to **Alice's** responsibility for child support.

Allen applies for Non-ADC services for **Alfred** and **Andrew.**

Alice while living on her own has a child, **Carl Jr.,** and applies for AFDC for **Carl Jr.** and **Angel. Alice** names **Carl Sr.** as the father of **Carl Jr.**

Carl Sr. currently has his own open AFDC case along with his daughter **Connie** from his first marriage with **Carla.** Court records show that **Carla** divorced **Carl Sr.** several years ago after she was graduated from law school and took a job with the IV-D program somewhere in far western Kansas. She was ordered to pay $100.00 per month, but there are no records of any payments.

Upon learning that **Carl Sr.** has been named as the father of **Carl Jr., Carl's** current wife, **Eva** leaves him and sues for divorce.

While working the referral on **Carl Sr.'s** open AFDC case for a citation in contempt against **Carla** for failure to support **Connie, Carl Sr.** advises the IV-D attorney that **Carla** told him to tell the IV-D attorney that she has been making her child support payments just like clock-work, and that all the payments have been coming directly to **Carl.**

Eva marries **Frank** after her divorce from **Carl Sr.** is final. They move in next door to **Allen** and his two sons **Alfred** and **Andrew.**

Frank, from his prior marriage with **Florence** had one child, a girl, **Flora. Frank** has custody of **Flora,** and **Florence** has an obligation of $325.00 per month for **Flora's** child support.

Frank had an open Non-AFDC case for his daughter **Flora,** but there was no known address for her mother **Florence.**

Flora turned eighteen in October of her senior year. She decides to go and live with her mother, **Florence,** after receiving a post card from her with a return address in Middle Saddle River, Pennsyltucky.

Immediately upon **Flora's** arrival, **Florence** opens an AFDC case. Both Pennsyltucky and Kansas permit support to continue

until the end of a child's senior year in school. Pennsyltucky promptly fires a URESA back to Kansas to establish a support order for **Flora** against **Frank.**

Before the URESA papers are served on **Frank, Flora** discovers that she is pregnant from a short term relationship she had with **Andrew** (the second child of **Allen** and **Alice)** who lived next door to her while she lived with her father **Frank** and her step-mother **Eva. Andrew** is thirteen years old and is still living at home with his father **Allen.**

SCENARIOS INVOLVING CONFLICTS

A. CHANGE OF CUSTODY

While there are an infinite number of possible conflicting situations which may arise, most of them involve the same nucleus of facts. Consider **Frank** and **Florence. Frank** had custody of his daughter **Flora** and he applied for our Non-ADC services. At a later date, his daughter moved from his residence to live with his ex-wife **Florence,** from whom we were originally attempting to collect support. Then **Florence** applies for our services and wants us to establish, modify or enforce a support order against **Frank.**

If our program had established an attorney-client relationship with **Frank,** then our attorney could not at a later date take **Florence** as a client, whether she was living in Kansas, or in another state, as in this case. This situation is covered by Rule 1.9 of the MRPC which states:

> "A lawyer who has formerly represented a client in a matter shall not thereafter:
>
> (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
>
> (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known."

Pursuant to this policy, the conflict would be avoided.

B. MULTIPLE CHILDREN

Closely related to this is the situation where there are multiple children, as in the case of **Allen** and **Alice.** In their case, the court originally granted split custody between the parents with

Allen to pay $415.00 per month to Alice. The decree is silent as to Alice's responsibility. Allen then applies for Non-ADC services and about one week later Alice applies for AFDC payments. The attorney receives two referrals. First, one to enforce the current order against Allen for $415.00 and later another to establish an order against Alice for current support.

Applying a "first in time" rule, after taking Allen's application, we will not later pursue him on behalf of Alice so long as Allen's IV-D case remains open. In this manner, we avoid having two IV-D attorneys appearing against each other in the same case, one proposing a modification and one opposing it.

C. PATERNITY ESTABLISHMENT

In the area of paternity establishment, Carl Sr. has an open AFDC case. He thereafter is named as the father of a child by Alice who has a separate AFDC case totally unrelated to that of Carl Sr.'s AFDC case. If Carl Sr. is our client, we cannot pursue him in a separate case since this would be in a substantially related matter to his open AFDC case and his interests in that case would be diametrically opposed to our interests in establishing an order against him on behalf of Alice.

This can be avoided if it is clear that he is not our client. Further, since we do not owe him a duty to defend him in a paternity matter unrelated to his open IV-D case, the situation will not arise where two IV-D attorneys appear in the same action taking opposite positions.

D. INTERSTATE CASES

Sometimes the conflict arises when another state requests us to establish or enforce an order on behalf of a custodian within their jurisdiction, such as Florence, and against a non-custodian in our jurisdiction, such as Frank. The problem arises when we have done enforcement work in the past on behalf of the non-custodian, Frank, who lives in our jurisdiction. If the current non-custodian, Frank, is our former client, we could not now pursue him on behalf of the other jurisdiction. Since he is not our client, we may pursue him to establish or enforce a support obligation.

E. FOSTER CARE

The other common area of conflict comes from foster care cases. First, assume an ADC recipient such as Alice, who has no order in place for child support against Carl Sr. for Carl Jr. After we start to establish an order for support against Carl Sr., but before one is established, Carl Jr. goes into the care, custody and control of the Secretary of SRS in "foster care." Now, add to the above situation another child, Angel, that is still in the custody of Alice and for whom we are pursuing support from Allen. Should

we still collect support for **Alice** from **Allen** for **Angel**? Can we pursue **Alice** for reimbursement for the foster care expenses of **Carl Jr.**? Can we help her establish paternity for **Carl Jr.**? Can we pursue **Carl Sr.** since he has an open AFDC case?

We can answer yes to each of these questions. The reasoning is similar to that used in the previous section dealing with paternity establishment since it is clear that neither **Alice** nor **Carl Sr.** are our clients. Further, since we owe neither or them a duty to defend them in a matter unrelated to their open IV-D case, the situation will not arise where two IV-D attorneys appear in the same action taking opposite positions.

F. MINOR CHILDREN

A problem that is occurring more and more is one where either or both of the parents are minors. In this case, **Flora**, who is now eighteen, and was when she became pregnant, claims that **Andrew** is the father. Since **Andrew** is thirteen, **Flora** could be facing criminal charges for her sexual contact with **Andrew**. Assuming the criminal angle is not a major problem, there is still a problem since **Andrew's** father, **Allen**, has an open Non-AFDC on behalf of **Andrew**. Can we use any of the information we might have received from **Andrew's** father against the boy? Since there should be no expectation of any communication being held in confidence, we could pursue paternity against **Andrew**.

G. FRAUD

Another problem to consider is how to handle the disclosure of fraud on the part of the recipient in receiving AFDC funds. If the recipient, **Carl Sr.**, is deemed to be the client of the IV-D attorney, and if **Carl Sr.** discloses his fraudulent activity to the attorney while establishing or enforcing a support order, the attorney cannot inform the agency of that fraudulent conduct without violating (MRPC) 1.6. An exception to this rule would exist if the recipient agrees to the disclosure, which in all probability will not be given. However, since the attorney's client is the Secretary, this conflict would not arise, and the fraudulent conduct could be reported without breaking any of the MRPCs.

ATTACHMENT B

AMERICAN ASSOCIATION OF PUBLIC WELFARE ATTORNEYS

TO: AAPWA Executive Committee Members
Regional Representatives

FROM: CATHLEEN TUCKER

DATE: January 31, 1991

RE: Who Does the IV-D Attorney Represent?

You will recall at the 1990 Annual Meeting in San Francisco that AAPWA agreed to develop a policy statement on its position as to who the IV-D attorney represents.

James Graves, J.B. McReynolds, Jon Merseaeru and Dave Hogan staffed the committee assigned to formulate the attached proposed policy position. Please take a few moments to review it and note any questions/comments you have. The Executive Committee will discuss and act on the issue at its March 1st meeting.

An affiliate of the American Public Welfare Association
810 First Street, N.E., Suite 500, Washington, D.C. 20002-4205 (202) 682-0100

LEGAL ETHICS AND TITLE IV-D

WHO DOES THE IV-D ATTORNEY REPRESENT?

Considerable discussion has been devoted to the issue of ethics and the IV-D attorney. Particular emphasis has been given to the issue as to whom the IV-D attorney ethically represents. For this reason the AAPWA feels it imperative that it formally state its position on this issue.

The IV-D agency and the IV-D attorney fulfill a number of roles. In government they fulfill the role of shifting certain financial burdens from the taxpayer. In society they fulfill the role of obtaining support for children. Both roles are of extreme importance, yet sometimes conflicting. However, there can be no conflict as to whom the IV-D attorney represents.

The AAPWA takes the firm position that the IV-D attorney represents only the IV-D agency and that no attorney-client relationship exists between the IV-D agency and the IV-D recipient. This position is taken because the services of the IV-D agency and the IV-D attorney enure to the recipient as a by-product of a government program, and not as the result of an attorney-client relationship.

This arrangement is similar to the arrangement between a prosecutor and his witnesses and is a model upon which many IV-D programs are organized. Similar "services" are rendered and roles fulfilled in both situations.

The position of AAPWA on this issue appears to be in the best interest of the children, the IV-D agency and the IV-D attorney. In conjunction with this position, the AAPWA reccomends that the IV-D agency seek appropriate legislation to this effect and likewise explain its position on this issue to the IV-D recipient at every stage of the IV-D process. In this way the ultimate goal of providing IV-D services to as many IV-D recipients as possible will be achieved without misunderstanding, conflict or delay. The AAPWA feels that both the taxpayer and the IV-D child deserve nothing less.

SECTION N - ATTORNEY/CLIENT DISCLAIMER

Under Kansas law, the Secretary of SRS is the client of the attorneys in the Child Support Enforcement (CSE) Program. This means that there is no attorney/client relationship between you and any CSE attorney.

If your interests and SRS' interests are not the same, the CSE attorney's duty is to SRS. It also means that information you give the CSE Program or a CSE attorney could be used if SRS needs to take an action against you. Two examples are if you keep child support that belongs to SRS or if you become responsible for paying child support yourself.

CSE attorneys cannot be involved in custody or visitation disputes between a child's parents or other family members. You will need to get your own attorney if custody or visitation becomes an issue in your child support case.

Anyone involved in a legal action has the right to get advice from an attorney of their choice. If you do not have an attorney and you want one, you may call the Kansas Bar Association Lawyer Referral Service at 1-800-432-3593. A Kansas Legal Services Office may also be able to help you.

SECTION O - STATEMENTS OF UNDERSTANDING, AUTHORIZATION, AND SIGNATURE

I understand that to be eligible for Cash and Medical Assistance, I must cooperate with the Child Support Enforcement (CSE) Program. This includes turning in to the CSE Office any assigned child support and alimony payments that I receive from the Absent Parent. It includes any payments that the Court may send to me after my application for AFDC assistance is approved and any medical payments received from the Absent Parent or from any other source. Intentionally keeping support payments could result in theft charges being filed against me.

My signature below authorizes the Child Support Enforcement (CSE) office to get certified copies of my child's birth certificate if the certificate is needed in the administration of the CSE Program.

I understand that each individual who receives assistance must provide or apply for a Social Security number. I authorize the use of these Social Security number(s) for such purposes as identification, program reviews or audits, and computer matching with other agencies and institutions, both public and private.

Under penalty of perjury, I hereby state that I understand the information on this page and that the information I have given on this form and any added pages is correct and complete.

Signature of Applicant/Recipient	City	State	Date