Approved: 3-23-94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on March 14, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Representative Denise Everhart
Debra Arnett, Children's Foundation Adoption and Counseling
Loretta Robinson, Tecumseh
Dr. Lorne Phillips, State Registrar, Center for Health and Environmental Statistics
Matt Lynch, Judicial Council
Carolyn Hill, Commissioner for Youth and Adult Services, Kansas Social and Rehabilitation Services
Linda Weir-Enegren, LSS Industries
Frank Ross, Elm Acres Youth Home
Jim Clark, Kansas County and District Attorneys Association
Donna Whiteman, Kansas Department of Social and Rehabilitation Services
David Rodeheffer, Kansas Psychological Association

Others attending: See attached list

HB 2852--foreign adoption; birth certificates

Representative Denise Everhart testified in support of HB 2852 and provided written testimony (Attachment No. 1). Representative Everhart said HB 2852 authorizes the court to permit a second adoption when there has been a lawful adoption in a foreign country. She said once a second adoption had occurred in a Kansas Court then the Bureau of Vital Statistics could issue a Kansas birth certificate.

Debra Arnett, Children's Foundation Adoption Counseling testified in support of HB 2852 and provided written testimony (Attachment No. 2). She gave background information on foreign adoption processes and benefits from an adoption in Kansas. She said the cost to the State as a result of HB 2852 would be minimal.

Mrs. Loretta Robinson, a parent of two children adopted in Romania, testified in support of HB 2852. She said to have a legal birth certificate was important if in the future, their children wanted to travel overseas and perhaps adopt children themselves from a foreign country.

Dr. Lorne Phillips, State Registrar, Center for Health and Environmental Statistics testified in regard to HB 2852 and provided written testimony. Dr. Phillips suggested amendments for HB 2852 and provided copies for the Committee (Attachment No. 3).

Matt Lynch, Judicial Council testified in regard to HB 2852. Mr. Lynch said he would support the bill without the House committee as a whole amendments.

Chairman Moran closed the hearings on HB 2852.

SB 693--children in need of care; limits on temporary custody; procedures for termination of parental rights; family input into placement; amount of adoption assistance payments
SB 694--juvenile offenders; communityprograms and services

Chairman Moran asked Senator Marge Petty to give an overview of SB 693 (Attachment No. 4). Senator Petty said Laura Howard, Senior Fiscal Analyst for the Legislative Research Department was available to give an overview of the existing law and answer questions in terms of the 7600 children in Social and Rehabilitation Services custody (Attachment No. 5).

Senator Moran assigned SB 693 and SB 694 to the Family Law Subcommittee chaired by Senator Bond.

Joy Enegren, Wichita, testified in support of SB 694 and provided written testimony (Attachment No. 6). She said she and her sister had been removed from their birth family and placed in the custody of Social and Rehabilitation Services.

Linda Weir-Enegren, Wichita, testified in support of SB 694 and provided written testimony (Attachment No. 7). She said she was the mother of seven children, most of whom were adopted, "high risk" or "special needs" children. Mrs. Weir-Enegren said the function of the foster care system should become a vehicle which delivers any child in need of a family to that family with as few delays as possible so healing can begin.

Frank Ross, Elm Acres Youth Home testified in support of SB 694 and provided written testimony (Attachment No. 8). Mr. Ross said SB 693 was consistent with the state's Family Agenda and the national Family Preservation and Support Act. He said for SB 694 to be effective there would need to be changes made in the Child Welfare/Juvenile Justice System.

Jim Clark, Kansas County and District Attorneys Association provided written testimony in support of SB 693 (Attachment No. 9).

Donna Whiteman, Kansas Department of Social and Rehabilitation Services provided written testimony in regard to SB 693 (Attachment No. 10).

David Rodeheffer, Kansas Psychological Association provided written testimony in regard to SB 693 (Attachment No. 11).

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 15, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary **DATE:** 3/14/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
FRANK ROSS	PHONE 316-231-9840 P.O. BOX 1135	ELM ACRES YOUTH HOME, INC.
Debra Arnett	215 Crestview Drive PAOLA KS 66071	Children's Foundation
Carolyn McNaghten	P.O. Box 17-1273 K.C. KS. 66117	KS. Children's Service League
Donna Hoffman	317 N 15th KCKS 66102	SRS
Melissa Ness	Ks. Children's Serv. League	
Susan Mc[illegible]	Topeka	[illegible]
Lisa Moots	Topeka	KSC
Bob Bora	Topeka	Attorney
Bruce Robinson	Topeka	Children's grandparent
Anna Robinson	Topeka	Children's grandparent
LORRAINE ROBINSON	4527 SE TECUMSEH RD BERRYTON KS	ADOPTIVE PARENT
ROBIN ROBINSON	4827 SE TECUMSEH RD BERRYTON, KS	ADOPTIVE PARENT
Rachel Idol	PO Box 212 Hiawatha KS 66434	Hiawatha High School
Kari Aarstad	Horton KS 66439	Horton High School
Kenneth R Hackathorn	Topeka Ks 66614	Keys for Networking
DAVID CRADEHEFFER	TOPEKA, KS	KS. Psychological Ass
Matt Lynch	Topeka	Judicial Council
[illegible] PHILLIPS	TOPEKA	KONE
JAMES CLARK	TOPEKA	KCDAA
Paul Shelby	"	OJA
Linda Weir Energy	Wichita	No affiliation
[illegible]	Wichita	
Robert Harder	LSOB	KDHE
Bruce Linhos	Lawrence	KALPCCA

#1

STATE OF KANSAS

DENISE L. EVERHART
REPRESENTATIVE, FIFTY-THIRD DISTRICT
3741 S.E. 61ST
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: RULES
MEMBER: APPROPRIATIONS
JUDICIARY
SENTENCING COMMISSION

TESTIMONY SENATE JUDICIARY
HB 2852
MARCH 14, 1994

Chairman Moran and Members of the Senate Judiciary Committee:

Thank you for this opportunity to appear in support of the HB 2852.

HB 2852 is a simple bill designed to ease the frustration and difficulties experienced by Kansas residents who have adopted foreign born children. It provides a means to readopt a child where previously the adoption took place in the foreign country.

Once a second adoption has occurred in a Kansas Court then the Bureau of Vital Statistics may issue a Kansas birth certificate.

I urge your support of the legislation.

Senate Judiciary
3-14-94
attachment 1-1

#2

SENATE JUDICIARY COMMITTEE

TESTIMONY OF DEBRA J. ARNETT

on behalf of

CHILDREN'S FOUNDATION - ADOPTION AND COUNSELING, INC.

in support of

HOUSE BILL NO. 2852

MARCH 14, 1994

Senate Judiciary
3-14-94
attachment 2-1

March 14, 1994

Senate Judiciary Committee
Kansas Legislature
Topeka, Kansas

Re: House Bill 2852

Members of the Senate Judiciary Committee:

I am testifying in support of House Bill No. 2852, which authorizes Kansas residents, who have a valid adoption from a foreign country, to also adopt the child in Kansas. This bill is needed to address inconsistent decisions from Kansas courts and eliminate requirements needlessly imposed upon these adoptive parents by certain courts.

My interest in this bill is both personal and professional. I am President of a volunteer Board of Directors of the Children's Foundation - Adoption and Counseling, Inc., a non-profit adoption agency in Kansas, which specializes in international adoptions. I am also an attorney and represent families in their efforts to adopt their children in Kansas. Lastly, but most importantly, I am the mother of a daughter adopted in the Republic of Honduras.

FOREIGN ADOPTIONS

Background information on foreign adoption processes may be helpful in understanding the need for passage of House Bill No. 2852. It is estimated that an average of 6,500 children immigrate to the United States as the result of an adoption by a U.S. citizen. The adoption can occur in two ways. The first method involves the foreign country allowing the child to leave the

country for adoption in the United States. Under this method, the adoption will be filed in accordance with the laws of the state of residence. House Bill No. 2852 will **not** effect this method of adoption.

The overwhelming majority of adoptions, however, utilize a second method whereby the Kansas resident is required to adopt the child in the foreign country in compliance with the laws of that particular country. After the foreign adoption is finalized, the U.S. Embassy, in that country, receives and inspects the adoption documents for immigration purposes. As the child remains a citizen of the foreign country, he or she must be issued a visa to immigrate to the United States with the adoptive parents. The U.S. Embassy personnel must be satisfied that a valid adoption has occurred. The law of the foreign country is considered as well as U.S. immigration law prior to issuing the visa to immigrate to the United States. Upon issuance of an immigration visa, the child enters the United States as a permanent resident alien.

When the child arrives in the State of Kansas to live, his or her parents will have various adoption pleadings and a birth certificate written in the language of the foreign country. Within six (6) months of arriving in the United States, the child will receive a card, similar to a driver's license, from Immigration and Naturalization Service of the United States Department of Justice (INS) confirming his or her status as a permanent resident alien. The foreign adoption documents, coupled with INS permanent resident alien card, are usually the only documents available to establish

the parental relationship.

BENEFITS FROM AN ADOPTION IN KANSAS

Many parents want to also adopt their foreign-born child in Kansas. The benefits to the parents and child conveyed as a result of an adoption in the State of Kansas are multiple. First, this is the only means available, to my knowledge, to register and obtain a birth certificate from the State of Kansas. When an adoption decree is granted in the State of Kansas, a Report of Adoption, Form VS-220, is forwarded to the Office of Vital Statistics in Topeka, and a new birth certificate is prepared and filed. Obviously, a birth certificate is needed throughout the child's life for such things as school enrollment, employment, passport application, social security benefits, etc. To obtain a certified copy of a birth certificate from the State of Kansas, the parent or child merely contacts the Office of Vital Statistics in Topeka, completes the written request, pays a small fee and can receive the certified copy in one day.

If the parent or adopted child must make the request of the foreign country, an inordinate amount of time and money will be required with no assurance that a birth certificate will ever be received, let alone in a timely fashion.

Second, a decree of adoption issued by a Kansas court will be readily available, and equally importantly, written in English, to establish the parental relationship with this child. Oftentimes, parents are questioned about the "legality" of the foreign

adoption. In one instance, the parents were questioned, at a major metropolitan hospital, about their right to consent to medical treatment for their daughter. It is also my understanding that another parent had difficulty obtaining Social Security benefits for her adopted child following the tragic, unexpected death of the adoptive father, because she only had a "foreign decree" available. Several other families who have adopted older children have encountered difficulty enrolling these children in school. A decree issued by a court Kansas should eliminate such obstacles.

Third, recognition of the parental-child relationship by a Kansas court is also beneficial for the child. These children will not leave the state simply because they cannot be re-adopted in the State of Kansas. They will remain a resident of Kansas for as long as they desire. However, it is important to both parents and children that the State of Kansas also give recognition of the parent-child relationship. By allowing the Kansas adoption, the foreign-born child is assured equal treatment under the law of Kansas as any child born in this State. This assurance is especially important for the child who is adopted by a family with other birth children.

Finally, the Kansas adoption process will also permit a name change, if necessary. Frequently, the foreign adoption documents misspell the child's adopted name or add the adoptive mother's maiden name, in place of or in addition to her married name. In Central and South America, two surnames are generally used, one of

which is the mother's maiden name. This custom is transferred to Kansas resident adopting in the foreign country. Needless to say, these errors lead to further confusion.

In my own case, I am a single parent and my daughter should have had only one surname, "Arnett". However, someone in the Honduras added my mother's maiden name as a second surname. To compound the error, the spelling of my mother's maiden name was changed on the Honduran birth certificate to conform to the Spanish spelling, and her passport was issued with this "new" name. When I arrived in the United States, I had an adoption decree with one name for my daughter and a birth certificate and passport with another spelling, neither of which conformed to my name or the name I had requested for my child. I was able to correct this situation very easily in my Kansas adoption. My situation was not unique. I would estimate that 50% or more of the adoptions completed through the Children's Foundation have errors in the names of either the child or adoptive parent.

CURRENT INTERPRETATION OF KANSAS LAW

Although an adoption of the child is not required, many parents want to adopt the child in Kansas for the reasons stated above. Unfortunately, courts are now inconsistently interpreting the current adoption laws in Kansas with respect to an adoption under these circumstances. Some courts give full faith and credit to the foreign adoption decree and allow a Kansas adoption to proceed. Other do not. The Shawnee County District Court has

held, in a written opinion, that the current adoption law does not permit such an adoption. Other courts have construed the current Kansas laws so narrowly with respect to consents that the adoption cannot be completed in Kansas. House Bill No. 2852 corrects these problems.

Under our existing adoption laws, the only specific reference to a foreign adoption is found in K.S.A. 59-2117(b), which states that the consent obtained from a birth parent in a foreign country should be accepted by the Kansas court. This provision has not satisfied some courts. Rather than recognizing that the foreign adoption decree has terminated all parental rights of the birth parents, some courts have held that additional consents must be obtained.

This requirement for new consents poses numerous problems. Many of these children are orphaned through abandonment. The birth parent may be known but the foreign government declared the child abandoned and eligible for adoption. The foreign country's abandonment laws may differ dramatically from the laws of Kansas and no notice to the birth parent may be required. In one case that I am handling, the person legally authorized to consent to an adoption is the First Lady of the country. In an effort to comply with the particular court's interpretation of existing Kansas law, we have attempted to obtain a "Kansas consent" signed by the First Lady and that process is now into its third month and we can only speculate when, and if, we will receive the signed consent.

If the foreign adoption involved the consent of a birth

parent, the task is more complicated. First, the adoptive parents have just completed a costly, and time-consuming foreign adoption. For some Kansas residents, it took months just to locate the birth mother for her consent to the foreign adoption. Locating the birth mother again to obtain another consent is virtually impossible. One cannot simple call the birth mother on the telephone and ask her to sign a consent. Some of these birth mothers live in remote villages with no telephones or other communication links to the rest of their country and the world. Documents must be sent by an international courier, such as Federal Express or DHL, because a mail system is either non-existent or notoriously unreliable.

Travelling to the village is usually the only means of contacting the birth parent. The adoptive parent would either need to travel to the foreign country or again retain and pay for the services of an attorney in the foreign country to locate the birth mother. In addition to those expenses, the consent would need to be translated into the language of the birth mother and then translated again into English for use in a Kansas adoption proceeding. The costs could be substantial and, the thought of going through this process again causes great trepidation for the adoptive parents.

Another, a more difficult, problem arises with the birth father. The laws in many foreign countries do not require the consent of a birth father if no person is identified on the birth certificate. Without House Bill No. 2852, the existing laws of the State of Kansas seem to require the appointment of an attorney to

represent the unknown birth father. This attorney, in Kansas, then must attempt to locate a birth father in a foreign country. The same communication restrictions apply and there is no information about the birth father to even start the process. This is an act of futility which will result in only additional expense for the adoptive parents.

It has also been suggested that notice publication in the foreign country will be required in an effort to "give notice" to the unknown birth parent. Some courts then question whether the notice should be published in the Kansas community where the child is residing or published in the foreign country. (This is required even if the adoption by the Kansas resident was in fact published as part of the foreign adoption. If the birth father had notice in the first instance, why should publication be undertaken again.) Publication in a Kansas newspaper only creates additional costs to the adoptive parent since the "notice" will not reach the birth father. If the publication occurs in the foreign country, the publication notice must be translated into the foreign language, sent to the country for publication and then returned with the verification of publication translated back into English. The adoptive family is, of course, required to bear that all of those expenses as well.

As an attorney for these adoptive parents, I am asked, "If the foreign country does not require the consent of a birth father, why should the State of Kansas?" I have no reasonable explanation. Personally, it appears that we are affording greater rights to the

birth father than his own country gives him and solely at the cost of the Kansas adoptive parents.

If the issue of consents is not enough, a judge once suggested to me that he may need a legal opinion from an attorney in the foreign country to make certain that the foreign adoption complied with the laws of that country. How will any judge sitting in Kansas determine that the legal opinion is correct? Will the next step be to require certification from a third person that the attorney is licensed to practice in the foreign country or is knowledgeable of the foreign country's adoption laws?

Needless to say, some families are simply not able to complete an adoption in Kansas due to the particular view of the court in their county of residence. Others simply cannot afford the additional expense. Others do not want to endure another lengthy, oftentimes frustrating experience in the foreign country.

Both as an adoptive parent and an attorney, I respectfully submit that House Bill No. 2852 eliminates an undue, and needless, hardship on residents of Kansas and allows Kansas residents the right to adopt his or her child without the expense of the legal gymnastics required under the current law. As a practical matter, the inability to complete an adoption in Kansas will not cause any of these foreign born children to leave the State of Kansas or be returned to their birthplace. However, the future lives of these children and their parents will be much easier if a Kansas adoption can be accomplished.

IMPLEMENTATION IN KANSAS

The costs to the State as a result of House Bill No. 2852 should be minimal. As any other adoption, the adoptive parents, or their attorney, will be responsible for preparation of all pleadings and filing of documents to establish that a valid foreign adoption occurred. Proof of INS approval should be established by production of a Permanent Resident Alien card or Certificate of Naturalized Citizenship. The foreign adoption documents can be authenticated in accordance with existing Kansas law, K.S.A. 60-465.

In the adoptions I have completed, the court time for the entire process averaged less than one hour. (In other instances, judges have spent a far greater amount of time just discussing the issue of consent.) The filing fee paid by the adoptive parent covers the court's administrative time. The filing fee charged by the Office of Vital Statistics also covers the time required for issuance of a new birth certificate.

Passage of House Bill No. 2852 should not create any additional expense to the State of Kansas.

CONCERNS REGARDING ILLEGAL INTERNATIONAL ADOPTIONS

I understand that some legislators have concerns that this Bill will allow or encourage the immigration of children illegally into Kansas. The language of House Bill No. 2852 specifically requires that the adoption be a valid foreign adoption, approved by INS. House Bill No. 2852 does **not** circumvent the current INS laws

or create a new means of immigrating to the United States; rather, House Bill No. 2852 defers to INS as the governmental agency with the expertise and ability to determine the validity of a foreign adoption. If the adoption is deemed valid by INS, then a court in Kansas can, and should, justifiably rely upon that INS determination.

As I stated previously, the foreign adoption is first scrutinized at the U.S. Embassy in the foreign country. If the U.S. Embassy personnel perceive some irregularity in the documents, it is authorized to conduct an independent investigation to insure that the child was an orphan and that the adoption was accomplished in compliance with the laws of the foreign country. Obviously, the United States, and its Embassy personnel in the foreign country, have a vested interest in making certain that the adoption is valid and not the result of illegal activities on the part of any person associated with the adoption. Indeed, some parents, who have adopted through the Children's Foundation, have returned with reports of other Americans being denied an immigration visa for the child at the U.S. Embassy due to some irregularity in the adoption.

In addition to existing INS procedures, the issue of international adoption is also being addressed in a Hague Convention. At a May 1993 Hague Convention, a Hague Treaty designed to establish uniform adoption laws on an international basis and minimize the occurrence of improper adoptions was passed. The United States participated in that convention and agreed to the language of the final act but has not yet become a signatory

country. I attended a meeting with the State Department in Washington, D.C. in October to discuss this Treaty and understand that the United States will become a signatory country to the Treaty and implement its requirements through federal legislation to be presented to Congress in early 1995. It was clear that the State Department, working with the INS, intends to minimize the illegal and/or unethical adoption of a child born in a foreign land.

In the experience of the Children's Foundation, the U.S. Embassies in the various foreign countries are very thorough in verifying that the adoption is legal and appropriate before granting an immigration visa for the child. Consequently, I do not believe that House Bill No. 2852 will have a detrimental effect in the State of Kansas in any way or otherwise encourage residents of Kansas to bring children into the State illegally or improperly.

CONCLUSION

From personal experience, I can unequivocally state that the adoption of a child in a foreign country is a time-consuming, expensive, frustrating process that one gladly endures for the chance to be a parent and provide a home to a child in need. To return to home to Kansas only to find resistance to the adoption is difficult to understand. The State of Kansas should eliminate any unnecessary roadblocks for its residents, who simply ask that their home state give official recognition to their adopted child.

I thank you for your time and careful consideration of House Bill No. 2852 and encourage you to support its passage in the Senate and enactment into law.

Respectfully submitted,

Debra J. Arnett

Debra J. Arnett
President, Children's Foundation
- Adoption and Counseling, Inc.

#3

State of Kansas

Joan Finney Governor

Department of Health and Environment

Robert C. Harder, Secretary

Testimony presented to
Senate Judiciary Committee
by
The Kansas Department of Health and Environment
House Bill 2852

H.B. 2852 currently only addresses the need to obtain a U.S. (Kansas) birth certificate for a child born and adopted in a foreign country. KDHE proposes to amend the existing bill to allow the state registrar to disseminate birth information to state agencies administering programs geared to children's health needs and fact of death information to state and federal benefit programs. A balloon outlining our proposed amendment has been prepared for your reference and consideration.

With regard to foreign born, foreign adopted children, the Office of Vital Statistics has had several cases over the past couple of years where the parents of a child adopted in a foreign country wanted a U.S. (Kansas) birth certificate. Currently there is no provision in Kansas statute allowing a subsequent adoption of a child in Kansas if an adoption has already been granted in a foreign country. Passage of H.B. 2852 would allow the parents to petition a Kansas court for a subsequent adoption which would then allow OVS to prepare a Kansas birth certificate.

Since standard birth certificates are filed only in the **place** of birth, the birth certificate prepared for a foreign born individual is a separate form which actually states on the form "Birth Certificate for Foreign-Born Child Adoption in Kansas". It also states that "This Certificate is Not Evidence of United States Citizenship."

The amendment we are proposing to H.B. 2852 would help to ensure that programs administered by state agencies addressing children's health needs reach their targeted population. Currently those programs do not have access to birth registration information which would provide them with the most complete data available with regard to births for such programs as immunization, neonatal screening, hearing risk, etc. Likewise, benefit programs do not currently have access even to fact of death information from the vital statistics system--which would ensure that every event occurring in Kansas is reported to them. Because benefit programs do not have access to accurate, complete fact of death information, benefits may continue to be paid even though the beneficiary of the benefits is deceased. Some such programs are social security, unemployment compensation, SRS benefits, etc.

We support H.B. 2852 and recommend it be amended to allow dissemination of birth and death information as proposed.

Testimony presented by:

Dr. Lorne A. Phillips, State Registrar
Office of Vital Statistics
Center for Health and Environmental Statistics
March 14, 1994

Senate Judiciary
3-14-94
Attachment 3-1

Center for Health and Environmental Statistics, 900 SW Jackson, Room 152, Topeka, KS 66612-1290
Telephone: (913) 296-1415——Fax: (913) 296-8075

[As Amended by House Committee of the Whole]

Session of 1994

HOUSE BILL No. 2852

By Representative Everhart

2-3

AN ACT concerning adoption; relating to foreign adoptions; requesting a birth certificate from the state registrar; amending K.S.A. 65-2423 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) When an adoption occurs in a foreign country and is recognized as a valid adoption by the immigration and naturalization service of the United States department of justice, the adoptive parent or parents may petition the court, pursuant to K.S.A. 1993 Supp. 59-2126, and amendments thereto, for a subsequent adoption in the state of Kansas, pursuant to K.S.A. 1993 Supp. 59-2128, and amendments thereto. [The courts of this state shall give full faith and credit to a valid foreign adoption and shall not require new consent forms for an adoption pursuant to this section.]

(b) If the adoption is granted, the adoptive parent or parents may request a birth certificate pursuant to K.S.A. 65-2423, and mendments thereto.

(c) This section shall be part of and supplemental to the Kansas adoption and relinquishment act.

Section 2. K.S.A. 65-2423 is hereby amended to read as follows: 65-2423. (a) In cases of adoption the state registrar upon receipt of a certified order of adoption shall prepare a supplementary certificate in the new name of the adopted person and seal and file the original certificate of birth with said *such* certified copy attached thereto. Such sealed documents may be opened by the state registrar only upon the demand of the adopted person if of legal age or by an order of court. Upon receipt of a certified copy of a court order of annulment of adoption the state registrar shall restore the original certificate to its original place in the files.

(b) For any child born in a foreign country but adopted in Kansas ...tate registrar, upon request, shall complete and register a birth ...rtificate upon receipt of a certified copy of the decree of adoption, together with proof of the date and place of the child's birth. The certificate shall show the new name of the child as specified in the

K.S.A. 65-2422d is hereby amended to read as follows: 65-2422d. (a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of this act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by this act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose.

(c) The state registrar shall not permit inspection of the records or issue a certified copy of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the act for judicial review and civil enforcement of agency actions, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made.

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and stillbirth certificate data to federal, state or municipal agencies.

(continued on next page)

of adoption, and such further information concerning the ing parents as may be necessary to complete the birth certificate. The certificate shall show the true country of birth and the date of birth of the child, and that the certificate is not evidence of United States citizenship. *The provisions of this subsection shall apply to an adoption granted pursuant to section 1.*

Sec. 3. K.S.A. 65-2423 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and shall be used solely by the election officer for the purpose of correcting records of their offices.

(g) No person shall prepare or issue any certificate which purports to be an original, certified copy or copy of a certificate of birth, death or fetal death, except as authorized in this act or rules and regulations adopted under this act.

(h) Records of births, deaths or marriages which are not in the custody of the secretary of health and environment and which were created before July 1, 1911, pursuant to chapter 129 of the 1885 Session Laws of Kansas, and any copies of such records, shall be open to inspection by any person and the provisions of this section shall not apply to such records.

(i) Social security numbers furnished pursuant to K.S.A. 65-2409 and amendments thereto shall only be used as permitted by title IV-D of the federal social security act and amendments thereto or as permitted by section 7(a) of the federal privacy act of 1974 and amendments thereto. The secretary shall make social security numbers furnished pursuant to K.S.A. 65-2409 and amendments thereto available to the department of social and rehabilitation services for purposes permitted under title IV-D of the federal social security act.

(j) The secretary may direct the state registrar to provide birth information upon request to state agencies for programs notifying mothers of young children about children's health needs. Such information shall not be used for commercial purposes. Confidential medical and statistical information will not be released.

(k) *Death record Fact of death information may be disseminated to state and federal agencies administering benefit programs. Such information shall be used for file clearance purposes only.*

Sec. 2. K.S.A. 65-2422 and 65-2422d are hereby repealed.

#4
SB 693

ADOPTION/FOSTER CARE BILL

Currently there are 7600 children in SRS custody. Of that number 559 are ready for adoption. About 4400 children have been adjudicated as a child in need of care or are in temporary custody. Children can now be in temporary custody "indefinitely" and never have a plan developed for them that assures them a safe, permanent home (permanency plan).

Many juvenile offenders were once adjudicated as CINC'S and lived in multiple foster homes.

The bill sets clear time limits and some urgency in providing a safe and permanent placement for children in need of care.

The following are features of the Adoption/Foster Care bill by outcome:

OUTCOME: PERMANENCY WITH EXTENDED FAMILY

* Provides the option, at the 30 day dispositional hearing of having the extended family determine who among its members is best able to care for the child.

* "Kinship" care is defined as extended family who provide care and which provides an exception from some of the termination time limits.

OUTCOME: FAMILY REUNIFICATION/FOSTER CARE

* Sets a time limit of 60 days for temporary custody (Current law: no time limit).

* Sets a time limit of 12 months to review the plan for a safe, permanent home for the child (Permanency Plan) (Current law: 18 months).

* Creates expedited track for freeing certain children from reunification plans when parent has been convicted of causing death of sibling.

* Establishes time lines of one and two years in Foster Care with parent refusing to carry out plan as grounds for termination; rebuttable presumption.

OUTCOME: ADOPTION

* Requires appellate courts to establish appeals of parental rights as the highest priority.

* Places notice to grandparents or closest relatives at the notice of termination hearing. (Current law: at dispositional hearing which is later in the process and often cuts out grandparents or relatives from being caregivers).

* Establishes adoption subsidy as no less than foster care subsidy.

Senate Judiciary
3-14-94
attachment #-1

26693

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MEMORANDUM

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March 14, 1994

To: Senate Judiciary Committee

From: Laura Howard, Senior Fiscal Analyst

Re: Adoption and Termination of Parental Rights

This memorandum discusses the termination of parental rights and adoption, particularly as it relates to the foster care system.

Barriers to adoption occur at various stages in the process, commencing with the initial removal of children from their homes and placement into some type of temporary custody or adjudication as a child in need of care. The following sections of this memorandum discuss timeframes relating to the termination of parental rights; factors considered in termination; and barriers to adoption which relate to the needs of the children and the availability of adoptive families.

In each case background information on current statutory requirements is provided, followed by proposed initiatives by SRS and provisions included in the settlement agreement between SRS and the American Civil Liberties Union.

Timeframes Relating to the Termination of Parental Rights

In reviewing timeframes relating to the termination of parental rights, it is important to look not only at the actual timeframes specified in statute for judicial systems to act to free children in foster care for adoption, but to also look at timeframes established for child welfare agencies to act.

The process of moving children from foster care to permanent adoptive homes is a sequential process which begins with removal of the child from her family and placement in the care of a child welfare agency. The second phase relates to legal actions by the state to terminate parental rights or secure voluntary relinquishment of parental rights. The last phase involves legal adoption.

Federal policy in the Adoption Assistance and Child Welfare Act of 1980 was the first time at the federal level that statutory recognition was given to permanency planning procedures. In order to receive the full share of federal appropriations, states must set permanent placement goals for all children in care, provide services to the child or family to help them meet those goals, and establish procedures to monitor the appropriateness of foster care services. **Reimbursement is linked to states demonstrating that children enter and remain in care despite "reasonable efforts" by the child welfare agency to**

Senate Judiciary
3-14-94
Attachment 5-1

reunite the child and her family. In situations where family reunification is not viable, adoption, guardianship, or permanent foster care become the child's permanency plan.

CURRENT TIMEFRAMES

Protective Custody and Child in Need of Care Timeframes

The Code for the Care of Children has several provisions relating to children entering protective custody, temporary custody, and being adjudicated as a child in need of care. In some cases, specific timeframes are established for actions regarding the child to take place.

Protective Custody. A child can be taken into protective custody by a law enforcement officer without a court order and placed in the custody of a shelter, a court services officer, or another person authorized to care for the child under the Code. However, the child must be discharged by the custodian **not later than 48 hours following admission, excluding Saturdays, Sundays and legal holidays, unless a court has entered an order pertaining to temporary custody or release.** (K.S.A. 1992 Supp. 38-1528)

Temporary Custody. As noted above, if no hearing takes place for a child within 48 hours, the child returns home. K.S.A. 38-1543 requires a temporary custody hearing to be held within 48 hours, excluding Saturdays, Sundays and legal holidays, following a child being taken into protective custody. In entering an order of temporary custody, a court must determine that the child is dangerous to self or others; the child is not likely to be available within the court's jurisdiction for future proceedings; or the health or welfare of the child may be endangered without further care.

Following temporary custody, there are three possible outcomes to the case: dismissal, informal supervision (K.S.A. 38-1544), and adjudication of the child as a child in need of care (K.S.A. 38-1556). **There are no time limits set in statute for the amount of time a child may remain in temporary custody.** Anecdotal reports of certain SRS staff indicate that in some cases children are adjudicated as children in need of care at the same time as parental rights are terminated. This would mean that no case planning had taken place for this child.

Informal Supervision. K.S.A. 38-1544 provides that at any time after filing a petition, but prior to adjudication, the court may enter an order for continuance and informal supervision, without an adjudication if there is no objection by any interested party. **An order for informal supervision may remain in force for up to six months, and may be extended for six-month intervals, up to a maximum of two years.**

Adjudication as a Child in Need of Care. K.S.A. 38-1556 authorizes the court to enter an order adjudicating the child to be a child in need of care and to proceed to enter orders of disposition as authorized by the code. Subsequent to adjudication as a child in need of care, the following timeframes apply:

> **Within 30 days** a dispositional hearing pursuant to K.S.A. 38-1561 must be held within 30 days of the adjudication of the child as a child in need of care.

Within 60 days after the dispositional hearing, a plan for reintegration of the child into the family or another alternative placement must be prepared. The Secretary of SRS is responsible for preparation of this plan if the child is placed in the custody of the Secretary; otherwise, a court services officer must prepare the plan. (K.S.A. 38-1565)

Regular Six-Month Reports. The Secretary or the court services officer must submit a written report of the progress being made towards the goals of the reunification or alternate placement plan at least every six months. Foster parents or parents also must submit a report regarding the child's progress and condition every six months if the child has been placed in foster care.

18-Month Hearing. K.S.A. 38-1565 directs that the court review progress made towards meeting the established plan and the foster care report, and to hold a hearing when it is found that progress is inadequate or the goals are no longer viable. When the Secretary of SRS has custody of the child, such hearing must be held within 18 months after the child is placed outside the home, and at least every 12 months thereafter. If the goal of the plan is reintegration, and the court determines after 18 months from the time such plan is first submitted that progress is inadequate, the court is directed to hold a hearing to determine whether proceedings should be commenced to terminate parental rights. When, after such a hearing, the court finds the child's needs are not adequately being met, the plan is inadequate or the goals are not viable, the court may rescind prior dispositional orders, enter new dispositional orders, order commencement of proceedings to terminate parental rights, or order preparation of a new plan for reintegration or alternative placement.

Although the court must consider termination at this 18-month period, there is no mandate that such termination take place. Where no order occurs commencing proceedings to terminate parental rights, regular six-month court reports continue to be required.

Termination of Parental Rights Timeframes.

K.S.A. 38-1581 *et seq.*, relates to the termination of parental rights. K.S.A. 38-1581 authorizes any interested party to request that the parental rights of either or both parents be terminated either in a child in need of care petition or in a motion made in proceedings under the code for the care of children.

Receipt of Termination Request. K.S.A. 38-1582 directs that upon receiving a petition or motion regarding termination of parental rights, the court shall set the time and place for hearing on the request. Certain notice requirements for parents are also established as well as provision of an attorney to represent parents who fail to appear. **There is no timeframe in statute for when the court must act after receipt of a motion or petition.**

Procedures Following Termination. K.S.A. 38-1584 establishes certain procedures following termination for the stated purpose of "providing stability in the life of a child who must be removed from the home of a parent, to acknowledge that time perception of a child differs . . . and to **make the ongoing physical, mental and emotional needs of the child the decisive consideration in proceedings** . . . . The section states that the primary goal for all children whose parents' parental rights have been terminated is

placement in a permanent family setting." Subsequent to termination, the following timeframes apply:

Grandparents' Notice. Prior to granting custody of the child for adoption proceedings or long-term foster care, the court shall require notice of the custody hearing be given to all grandparents or closest relative of each of the child's parents. This notice must be given **not less than ten days** prior to the disposition hearing. (K.S.A. 38-1584).

Permanent Placement Plan. Subsequent to termination of parental rights, and prior to accomplishment of adoption or other permanency, the person or agency awarded custody of the child must submit a **written plan for permanent placement within 60 days.** The report is required to include both measurable objectives and time schedules. Reports are thereafter required **not less frequently than every six months.** (K.S.A. 38-1584)

18-Month Hearing. The court may determine that a hearing should be held upon any submitted report, but in any case, a hearing regarding progress towards finding an adoptive home or the acceptability of the long-term foster care plan must take place within **18 months after parental rights have been terminated** and **every 12 months thereafter.** The court at this hearing may rescind any orders and make any new orders based upon the submitted evidence. (K.S.A. 38-1584)

Appeal. Pursuant to K.S.A. 38-1591, parties have the right to appeal the parental rights termination. No specific timeframe is established for consideration of such an appeal.

The child is discharged from the court's jurisdiction upon accomplishment of adoption.

ACLU Settlement Timeframes

Certain timeframes are established within the ACLU settlement agreement. These timeframes are not established in statute and the agency will not have to meet these guidelines until towards the end of the settlement agreement. The agreement is slated to expire on December 31, 1997, upon the agency meeting all conditions for a one-year period. The agency's established timeframes envision the provisions relating to adoption as among the last to be met.

The following summarizes the provisions of the ACLU Settlement Agreement pertaining to adoption, particularly as it relates to timeframes for action by SRS. Other portions of the agreement relating to adoption are discussed in the accompanying material regarding barriers to adoption.

12 Months after Out-of-Home Placement. SRS is required to consider adoption at the first administrative review that occurs one-year after the child's initial out-of-home placement. At that point, if adoption appears appropriate, SRS will discuss relinquishment when appropriate with the parents. If adoption is not considered as appropriate, then the worker must document the basis for determining that adoption is not appropriate or necessary to achieve permanency.

45-60 Days Subsequent to Administrative Review. SRS must send all information necessary for a motion to terminate parental rights to the county or district attorney within 45 days after the staffing at which SRS decides to seek termination. If SRS must collect additional information beyond its control, it has 60 days to send the required information.

Post Termination Actions -- 20-30 Days. Except in cases where the foster parent or other qualified persons have agreed to a plan of adoption, SRS agrees to send to the central office all material necessary to receive approved families within 20 working days of receipt of the journal entry terminating parental rights. Where additional information is required, the Department agrees to submit the information within 30 days.

90 Days for Preplacement or Referral. If no approved family has indicated agreement to the adoption process by initiating preplacement visits within 90 working days of the sending of the material to the central office, then SRS must refer the child to specialized adoption agencies and/or to national adoption resource directories; and/or develop individualized recruitment plans. SRS is authorized an additional 90 days when the preplacement process disrupts.

Finalization of Adoption. SRS agrees to consider finalizing an adoptive placement at each six-month administrative review after placement, and to approve for finalization within 18 months of the placement, unless specific circumstances are documented in the case record.

Parental Rights Termination Denied. Where a court denies termination, SRS agrees to hold a staffing to consider a plan for the child within 30 working days or receiving the journal entry denying the motion for termination.

Factors Considered in Termination of Parental Rights

The following summarizes factors considered in Kansas with respect to termination of parental rights. Kansas statutes include both considerations the court may take into account when considering termination, as well as certain presumptions of parental unfitness when the state proves certain facts by clear and convincing evidence.

K.S.A. 38-1581 *et seq.*, relates to the termination of parental rights.

K.S.A. 38-1581 authorizes any interested party to request that the parental rights of either or both parents be terminated either in a child in need of care petition or in a motion made in proceedings under the child in need of care code. Further, pleadings requesting termination of parental rights are to contain a statement of specific facts relied upon to support the request.

CONSIDERATIONS IN TERMINATION

K.S.A. 1992 Supp. 38-1583 states that when a child has been adjudicated to be a child in need of care, the court may terminate parental rights when the court finds by clear and convincing evidence that:

> the parent is unfit by reason of conduct or condition which render the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.

The court is directed to consider certain factors, in making such a determination, but is not limited to the listed factors:

1. emotional illness, mental illness, mental deficiency, or physical disability of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child;

2. conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

3. excessive use of intoxicating liquors or narcotic or dangerous drugs;

4. physical, mental, or emotional neglect of the child;

5. conviction of a felony and imprisonment;

6. unexplained injury or death of a sibling;

7. reasonable efforts by appropriate child caring agencies have been unable to rehabilitate the family; and

8. lack of effort on the part of the parent to adjust the parent's circumstances, conduct, or conditions to meet the needs of the child.

In cases where the child is not in the physical custody of a parent, the court is also directed to consider the following:

1. failure to assure care of the child in the parental home when able to do so;

2. failure to maintain regular visitation, contact, or communication with the child or the custodian;

3. failure to carry out a reasonable plan approved by the court directed towards integration of the child into the parental home; and

4. failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.

The court is authorized to disregard incidental visitation, contacts, communications, or contributions.

Further, the statute provides that the rights of parents may be terminated if the courts find that the parents have abandoned the child, or left the child under such circumstances that the parental identity cannot be ascertained despite diligent searching, and the parents have not come forward **within three months** after the child is found.

The statute states that the existence of any one of the above factors may, but does not necessarily establish grounds for termination of parental rights. The determination is to be based on an evaluation of all applicable factors. In considering the above factors, the court is directed to **give primary consideration to the physical, mental, or emotional condition and needs of the child**. The court is directed to consider as evidence testimony from certain professionals relating to the physical, mental, or emotional considerations and needs of the child, with such testimony subject to cross examination.

PRESUMPTION OF PARENTAL UNFITNESS

K.S.A. 1992 Supp. 38-1585 creates a presumption of parental unfitness, for purposes of termination of parental rights, when the state proves by clear and convincing evidence that:

1. the parent previously has been found to be unfit under Kansas or any other state law;

2. the parent has twice previously been convicted of a crime against persons, sex offense, or a crime affecting the family relationships and children; or

3. on two or more prior occasions a child in the parent's custody has been declared a child in need of care.

CHILD BORN AS A RESULT OF CERTAIN FELONIES

Chapter 258 of the *1993 Session Laws of Kansas* authorizes the court to terminate parental rights to a child born as a result of a felony during which sexual intercourse occurred whether the offender is an adult or a juvenile.

Barriers to Adoption

There are several barriers to adoption which relate not to the process of freeing the child for adoption but to the recruitment of adoptive parents and the placement of the child in an adoptive home.

SRS reports that at the beginning of this fiscal year, July 1, 1993, 697 children in the custody of the Secretary had parental rights terminated. Of these 697 children, 627 were identified with a permanency goal of adoption.

Of the 627 children identified with adoption as a goal, 127 were currently in their adoptive families, but the adoption had not yet been finalized. An additional 115 had been referred by area offices to the central office for matching for adoption from a pool of identified families. It is uncertain how many different sibling groups were included in these 627 children.

However, SRS indicated at that time that it currently had only approximately 115 identified potential adoptive parents. SRS also contracts with private agencies for various adoption services.

SRS also indicates that an additional 363 petitions for termination of parental rights have been requested by SRS staff in the last year. Seventy petitions have either not been filed or followed through by county or district attorneys, with 115 cases still pending in the court process.

Many of the children in SRS custody awaiting adoption have been identified as special needs children because of the presence of certain characteristics and conditions which make it difficult to find permanent homes. The definition of children with special needs may include older children, children of color, children with physical, mental, or emotional problems, or children who are a part of a sibling group. The term has also come to have a broader meaning referring to **a child welfare service which seeks permanent homes for children in foster care who will not ever be able to be reunited with their birthparents.** Families have found that caring for children who have been abused or neglected can be very difficult.

An adoption subsidy is available, but its potential use has not been maximized. At the current time, the subsidy may not exceed the regular family foster care rate, it is a negotiated rate. Thus, in some cases, the amount of the cash adoption subsidy is less than the foster parent receives to retain the child as a foster child. Also, although in some cases the child may be covered by the adoptive parent's insurance, the medical subsidy must be applied for and received at the time of adoption in order to be available if the child experiences problems later in life, particularly during the teen years.

Studies have shown that the current situation for children of color in foster care is particularly alarming and that the adoption field has historically been less effective in developing adoptive homes for children of color. Approximately 42 percent of the children in SRS custody with parental rights terminated are children of color.

SRS FAMILY AGENDA

The Family Agenda, SRS' three-year plan for improvement of services to children and their families, adopted in January, 1992, includes provisions relating to adoption. Specifically, the family agenda notes the findings of the Legislative Division of Post Audit that children remain in custody after parental rights have been terminated due to no adoptive homes being available for the child. The Department established a three-year goal in the family agenda of:

- o increasing the number of adoptive families available for children awaiting adoption placement by 550 in three years;

- o reducing the time period children wait for adoption placement; and
- o reducing the number of children in the foster care system.

Specifically, the Family Agenda strategy would involve a new recruitment agenda whereby private agencies would be used to recruit, assess, and approve adoptive families interested in adopting children served by SRS. SRS identified expenditures of $258,750 in FY 1993, $155,250 in FY 1994 and $155,250 in FY 1995 to meet this goal. One-half of the cost would be from state funds. No funding was specifically appropriated for this purpose.

ACLU SETTLEMENT AGREEMENT

The ACLU Settlement Agreement contains several provisions with respect to identifying and recruiting adoptive homes for children freed for adoption. The following summarizes provisions SRS has agreed to meet under the settlement agreement.

- o SRS agrees to make all reasonable efforts to assure that it has a sufficient number of appropriate adoptive homes, including but not limited to:

  completing the Manhattan pilot project where current resources are used to contract for adoptive-home assessment, with expansion to other area offices if this proves successful; and

  SRS agrees to design a new formal strategy for recruiting prospective adoptive parents.

- o SRS agrees to complete a study of the feasibility and utility of decentralizing some or all of the adoption program to expedite steps necessary to secure adoptive homes for appropriate children;
- o if no approved family has begun preplacement visits within 90 days of the material sent to central office subsequent to the termination of parental rights, SRS must refer the child to specialized adoption agencies and/or the national adoption resource directories and/or develop individualized recruitment plans; and
- o SRS agrees to request that the Permanency Planning Task Force conduct a formal assessment of whether and how to modify its policies and practices for attempting to match children with prospective adoptive homes prior to the termination of parental rights. If the Permanency Planning Task Force is unwilling to undertake this study, and SRS is unable to identify another entity to conduct the study, then SRS and the ACLU will confer in an effort to identify someone to complete the study.

The adoption portion of the ACLU settlement agreement is phased for compliance in the latter part of the five-year process. Specifically, under the timeframe established for compliance, SRS agrees to comply at

a rate of 80 percent to these provisions by January, 1996, and to comply at a rate of 90 percent by July, 1996.

#6

Good morning. My name is Joy Enegren. I am 16 years old. Recently I learned the term, "CINC", a term which stands for child in need of care. I stand here before you today as an "ex-cinc".

That is because my sister and I were removed from our birth family and placed in the custody of SRS. Our oldest sister remained with our birth parents. Later she also was removed from the home but at this time we are not certain of what actually happened to her.

When a child is removed from her home she becomes like a survivor of a disaster. She is relocated to a temporary placement or perhaps many temporary placements.

My sister and I were very lucky. We only were moved two times in three years. Still this is an emotional struggle for any child. There are many fears...the fear of not being loved, the fear of not knowing where you might be put the next day and the fear of not knowing if you'll ever have a permanent home again. Many of these fears last for many years, even after you are placed in an adoptive home.

Believe me, I know. My own journey was a very hard struggle. Although I do not need to give you all of the details I will give you a few examples: Two years ago I was not in school, my self-esteem was very low. I couldn't stop feeling, even with assurances from my adoptive parents that I was a good person, that something about me was so bad that these birth parents had left me.

My behavior was leading me down the wrong road in a major way. I was angry with everyone including the adoptive family who had loved me for so many years. I also was hurt. I do not know why I was so angry. My agenda was simple: I had been had when I was little and someone was going to pay. Frankly I didn't care who.

I understand the rage of kids in foster care. You feel so hurt that you want to constantly scream inside. You just want to get at someone. Trust me, every kid needs a real family like my sister and I have. If I had not had the total support and love of a family who took me in as one of their own and who stood beside me with help and love to guide me through my crisis, I think that right now one of three things would have happened: I wouldn't be in school, I would have a kid, or I'd be dead.

Again, I'd rather not go into detail as to why I've reached this conclusion.

My sister, Mandy, who came into the adoptive placement with me is mentally retarded, has cerebral palsy, and a heart defect. It has not been cheap to raise her or me but my parents never

Senate Judiciary
3-14-94
Attachment 6-1

considered giving up on either of us.

Although Mandy and I both bear physical scars from our early life, as well as emotional scars, I am determined now that none of that will keep me from achieving my goal of entering an eight year program at KU to become a psychologist. I expect to specialize in adoption and to use my experiences to help other people.

I am well on my way to achieving that goal. With good grades I now am completing my junior research paper. It is, of course, on adoption.

Thank you for letting me come today to urge your support of Senate Bill 693.

#7

Good morning. Thank you for letting me speak to you today in support of Senate Bill 693. My name is Linda Weir-Enegren and I reside in Wichita, Ks. In my public life I am best known for having founded three United Way agencies and programs for children in Sedgwick County and for having served as the first chair of the Citizens Utility Ratepayer's Board, or CURB. In my private life I am the president and general manager of a Wichita manufacturing company. I also am the mother of seven children, most of whom are adopted, "high risk" or "special needs" children.

Our family grew so rapidly that it was only one morning when I had been married for seven years that I looked around the table and counted six children, all of whom were calling me mommy, that I realized fully the enormity of what my husband, St. Phil, and I had undertaken. I was pregnant with the seventh at the time. I frequently have said that although it would appear that I should have counted sooner, I had not even had the time to sit down, let alone count children. Including a new baby and two adopted cerebral palsied children I had at that time five children under the age of eight, three of whom could not walk.

At the time we adopted Joy and her sister Mandy, my friend Judy Frick gave me a beautiful pewter plate with the inscription, "Children are a gift from God." My husband said he had not realized that. He thought they came from SRS.

In 1980, out of a frustration at the way the foster care system failed children entrusted to it, I co-founded the first CASA program in Kansas through the Roots and Wings Program which I also co-founded. It has continued to be discouraging to be a part of a system in which more seems wrong than right. When a year ago I was invited to be a part of the Kellogg project, Families for Kids, I eagerly accepted, because this is where my heart is. I value the idea of all children growing up in families. More than that I understand that we never are too old to benefit from familial love. Whenever I hear someone state that an adolescent in the system is "too old" to be adopted I wonder; where will they eat Thanksgiving dinner for the rest of their lives? Who will stand beside them at the birth of their first child and brag with them that this really IS the cutest baby ever born?

When I hear someone within the system speak nonchalantly of a six month continuance in a case involving a two year old child I wonder how they can fail to understand that they are talking about twenty five percent of his life. A two year stay in foster care for a four year old is half of her life.

When I think of any child I love, and I would ask you to do the same, forming a tie with a foster parent only to suddenly and

Senate Judiciary
3-14-94
attachment 7-1

inexplicably have that relationship snatched from them, not just once but over and over again, I feel their pain as my own. If we teach children transience as a way of life why should we be surprised when they casually discard relationships as adults?

Permanence, you know, doesn't just mean geographical location. It means relationships, rules, beliefs: it is what grounds children and gives them the security they need to allow their souls to grow.

In high school most of us had to memorize the poem by Vachel Lindsay: "Let not young souls be trampled out, before they do quaint deeds and fully flaunt their pride. It is the world's one crime." I think of those words when I think of all that is endured by children because the system into which we cast them isn't just ineffective: it's broken. Senate Bill 693 is about fixing that system.

You have heard today from one of my children. Another, legally blind and with cerebral palsy, severely physically disabled and diagnosed with an IQ of 32, was on his way to Winfield when we intervened and adopted him. He just successfully completed his first semester at Emporia State University. Another who consistently chose physically abusive men as dates when we took her at age 14 is today in a loving and stable marriage of five years, buying a home and furthering her education despite the fact that she also is fighting a terminal illness. Her own words are that she would have died in a gutter without our intervention. At this moment it appears that all seven of our children have or will meet adulthood ready to live full, rich and contributing lives.

You probably already are aware of the tremendous correlation between our prison population and those who were abused as children...some figures according to Paul Vander Velde of the Kellogg Foundation show as high a correlation as 94%. There is only one difference, in my opinion , between my children and this 94% population; that is, that my children had a healing relationship with an adult. I believe that relationship makes all things possible. The irony is that the state can not provide that relationship for any amount of money because it is not for sale at any price. That relationship can not be bought. It only can be freely given to a child by an adult who wants to make a difference.

The function of the foster care system, then must be to become a vehicle which delivers any child in need of a family to that family with as few delays as possible so that the healing can begin. Perhaps our foster care program should be called Operation Safe Passsage. Perhaps with your passage of Senate Bill 693 that is what will happen. Please consider passing it now, before half of another child's life has passed.

#8

TESTIMONY - SENATE BILL #693

Thank you for the opportunity to be here today. I appreciate your efforts to find solutions to the many problems facing children at risk in our state.

I am Frank Ross, executive director of Elm Acres Youth Home, Inc., Pittsburg and Columbus, Kansas. Elm Acres provides residential child care to 64 adolescents, ages 12 to 18 - 20 boys in our Pittsburg Level IV facility, 14 boys in our Pittsburg Level V facility, and 30 girls at our Columbus Level IV group home. In addition, I am currently serving as president of our state child care association, the Kansas Association of Licensed Private Child Care Agencies.

I have a Masters degree in Social Work from the University of Kansas and I am a licensed Clinical Social Worker. I have worked in human services in Kansas for over 24 years, including work at Topeka SRS as a Child Protective Service Supervisor, five years in community mental health in southeast Kansas and for the past 14½ years, I have been director of Elm Acres Youth Home.

I am going to use my time to share some of my observations about the continuum of child care in Kansas. I hope my perspective will be helpful as you struggle with the provisions of Senate Bill #693 and the many other issues relating to families and children in Kansas.

Senate Judiciary
3-14-94
Attachment 8-1

I have always believed very strongly in the notion that, when it is necessary to remove children from their parents, ideally, one of two things should happen.

1) The problems that necessitated removal should be corrected and the child should be reunited with their parents as quickly as possible.
2) If reunification is not possible, parental rights should be severed and the youth should be placed for adoption.

Unfortunately, we live in a world that is far less than ideal. I believe that we are perhaps a generation or two away from the point where most children in foster care will fit this framework. Sadly, there are many adolescents in Kansas who do not fit in very nicely with the provisions of Senate Bill #693.

We are experiencing increasing numbers of families that have severe problems that make the prognosis for reunification very questionable. At the same time, we have an increasing number of children in need of care and juvenile offenders for whom adoption is not a very realistic possibility, due to their age and behavior problems. These kids are in the system now. Very soon many of them will be parents and, without our help, will begin repeating devastating cycles of child abuse, crime, welfare dependency and other problems that cause human suffering and drain our tax dollars. While I am a strong advocate of preventive services and intervention at the earliest possible moment, it would be a

catastrophic mistake to write off these adolescents and focus our efforts only on younger children. The provisions of Senate Bill #693 put pressure on the system to be increasingly accountable for what happens to these youngsters and that is very positive. This bill, and other efforts that are afoot in our state, can play a vital role in pressuring the system to better address the permanency needs of all children.

It may come as a surprize to many of you that I happen to believe that we have in Kansas a fairly well conceived Child Welfare/Juvenile system that has the potential to be very effective. Unfortunately the system appears to be broken because there are so many gaps in the system that must be addressed if we are truly serious about doing what is best for families and children in Kansas. I have purposely used the term Child Welfare/Juvenile Justice together as I believe we must begin to view problems regarding children, adolescents and families from a much broader perspective.

For example, Senate #693 addresses only children in need of care and not juvenile offenders. At Elm Acres, we have some youth adjudicated as juvenile offenders that have a much higher likelihood of successful adoption than some of the youth that are adjudicated as children in need of care. I recognize that the current Kansas Juvenile Code makes a clear distinction between children in need of care and juvenile offenders. However, it is my strong view, regarding

adolescents, that these distinctions are more legal and artificial than practical. We must recognize that our efforts on behalf of all children and adolesents must focus on a continuum of services both to children in need care and juvenile offenders. The truth is that most juvenile offenders at Elm Acres have been children in need of care at some point in their lives. And, in fact, many adolescent children in need of care have committed offenses that would make them juvenile offenders had charges been filed.

From my perspective as a residential services provider I am going to comment on some of the gaps in the continuum of care to families and children that must be attended to if Senate Bill #693 is going to be successful.

At times program decisions are being driven by a lack of resources. In those instances where reunification is a realistic possibility, we need the resources to provide the family services necessary to reunite young people with their families sooner and more successfully. Children in our facilities are often returned to their families before they have had an opportunity for the youth and their families to work the therapeutic process. And frankly, many children that need placement are not placed at all because of a shortage of resources. To illustrate this point, during the most recent three month period our Pittsburg boys facility had 110 referrals and only two openings.

The provisions of Senate Bill #693 must go hand in hand with adequate in-home, family preservation services to families. It is my understanding that less than 1/3 of 1% of the entire SRS budget presently goes to fund in-home, family based services. By the same token, it is essential that you do not fund family services by stealing resources away from other essential service components. The adoption assistance provisions of Senate Bill #693 address another piece of the continuum where additional resources are needed.

I have one last comment. Over the years we have all been frustrated when we experience situations where parents have not followed through on recommended therapy or other service obligations, yet children are sent home anyway. Once again, this is a result of a service delivery system where service decisions are often driven by a lack of resources. Senate Bill #693 can help move us in the direction we must go regarding families and children and is very consistent with the state's Family Agenda and the national Family Preservation and Support Act. However, I want to warn you that none of this legislation is going to be effective if the Child Welfare/Juvenile Justice System is allowed to continue to have so many glaring gaps in the continuum of child care.

#9

Kansas County & District Attorneys Association

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Testimony in Support of

SENATE BILL NO. ~~793~~ 693

The Kansas County and District Attorneys Association appears in support of SB 793, which revises the child in need of care code to both expedite and give priority to these kinds of cases. The provisions for adoptive financial assistance is viewed as especially helpful, since many foster parents resist adoption because of loss of funding.

Some specific reservations include: 1.) the 60-day limit on temporary custody (lines 6 & 7, p. 7) needs an exception for delays by offending parent(s), and clarification on consequences of going over time period, i.e. are children automatically returned to offending parent(s). Perhaps adding language allowing an additional 60 days upon showing of good cause is in order;

2.) giving court authority to order termination proceeding (lines 20 - 30, p. 8) presents both separation of powers question regarding involvement of county/district attorney; and fairness issue regarding parents' rights;

3.) does giving grandparents notice (lines 1 -5, p. 9) give them standing to intervene, require appointment of counsel, etc.?;

4.) how is priority on appeals (lines 43, p. 13 and 1, p. 14) construed in contrast to the expedited appeal for notification of abortions in K.S.A. 65-6705(h)?

5.) New Section 10 (lines 3 - 42, p. 14) appears to place a great deal of discretion with SRS. What happens if interested relatives are not included, and may such a conference be compelled by other parties if SRS does not call it;

6.) the bill appears to be part of the annual tinkering by SRS to restrict discretion of the local courts, which causes resistance to change due to policy disagreements as well as negative learning curves;

7.) why is "kinship care" added (lines 24 - 27, p. 4) since under the reasonable efforts doctrine such considerations should have been made prior to filing a case;

8.) the secretary's authority for placement (lines 41 - 43, p. 6) should be deleted. Placement is a judicial, not administrative function.

9.) notice to grandparents (lines 42 -43, p. 8, lines 1 - 5, p. 9, should be deleted. The bill creates a notice (and cost) nightmare and slows the process.

Senate Judiciary
3-14-94
Attachment 9-1

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

Senate Judiciary Committee
Testimony on Senate Bill 693

March 14, 1994

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SRS Mission Statement

"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."

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TITLE

An Act concerning children; relating to adoption assistance; concerning children in need of care; relating to temporary custody and determination of parental rights.

Mr. Chairman, I am pleased to provide you with this testimony in general support of Senate Bill 693 which amends the adoption support laws and the Kansas Code for Care of Children. We suggest amendment to Section 1. which provides adoption subsidy not be less than for foster care.

BACKGROUND

Senate Bill 693 amends the adoption support laws by providing that no adoption support payment may be less than reimbursement for foster care. The current procedure is that payments made to adoptive parents are negotiated and are not to exceed the foster care payment.

The bill also amends the Kansas Code for Care of Children with the following provisions: 1) an order of temporary custody of a child may not exceed 60 days; 2) a hearing must be held regarding the progress on a reintegration plan 12 months after a child's out of home placement (the current time frame is 18 months); 3) the hearing shall determine whether parental rights of either or both parents are to be terminated; 4) notices to grandparents are confined to the termination of parental rights hearings (such notice is now also required for the dispositional hearing); and 5) conviction of a parent for causing the death of a child, having a child in reintegration, or in out-of-home placement for a total of two years or more with inadequate progress are added to the statutes regarding presumption of unfitness of a parent.

Senate Judiciary
3-14-94
Attachment 10-1

EFFECT OF PASSAGE

The prevailing foster care reimbursement is to provide for ordinary daily cost of rearing a child. Foster parents who care for children who present special needs may be eligible for additional reimbursement under therapeutic foster care rates. Medical cards are provided for all eligible children.

Parents who adopt with subsidy support are now eligible for all these supports. The actual rate of subsidy is negotiated with the adopting parents depending on the child's needs and the wishes of the parents. Most adopting parents are able and willing to absorb the daily cost of care but are unable to meet extraordinary costs of counseling or medical or surgical care. These parents request only a token payment to make them eligible for medical care. They do not want additional reimbursement.

The current language of the bill would eliminate this option.

It is anticipated that this provision will necessitate an increase in the cost of adoption subsidy in order to bring subsistence payments up to the foster care payment resulting in an additional $1.6 million annual cost to the state.

The child in need of care provisions could have the effect of having children in the custody of the Department for a shorter period of time. It would have an offsetting effect of requiring more intensive services to families in order to provide reasonable efforts to reunite the child and family. Any savings realized by having children in SRS custody for a shorter time would offset by increased cost of more intensive services to the families in order to meet shortened deadlines.

RECOMMENDATION

The Department of Social and Rehabilitation Services recommends favorable consideration of Senate Bill 693 if amended to delete the provision for adoption subsidy not less than the foster care rate.

Donna L. Whiteman
Secretary
Social and Rehabilitation Services
(913) 296-3271

#11

KANSAS PSΨCHOLOGICAL ASSOCIATION

Testimony on Senate Bill 693
Senate Judiciary Committee
March 14, 1994

I am David C. Rodeheffer, Ph.D., and am appearing before you today on behalf of the Kansas Psychological Association, its president, Michelle Coker, Ph.D. and its board of governors. I should also state that I am a father of one natural child and two adopted children, so that my views on this issue entail both professional and personal experiences. I would like to thank-you for the opportunity to present testimony on this bill.

Over the last ten years or more, we as a state and society, have worked hard to attempt to deal with protecting children from dangerous and damaging home environments. We have strengthened laws and procedures for reporting and acting on reports of harm and neglect. We have developed a large system, through SRS and associated facilities (e.g. foster care, group homes, treatment centers and state hospitals) to attempt to work with these children and their families.

At the same time, as stresses have impacted the fabric of families and their ability and capacity to cope and as our awareness and understanding of what constitutes an actual or potentially damaging home environment has increased, the numbers of children taken into SRS custody has burgeoned. Today, at any point in time, there are upwards of four thousand five hundred children in some kind of protective custody in this state. During this time we have struggled with how best to serve these children. While we have done, I think, a reasonably good job of getting children out of detrimental environments, we have struggled with what to do with them once they are removed. We have swung back and forth between the two apparently opposing philosophies of placement outside the home versus family preservation or re-unification. Many of these children remain in limbo for months to years, to entire childhoods. They live in a kind of never-never land, where they belong to no one, are on their way to somewhere and are constantly experiencing loss as they are placed in one child care situation after another. Currently in my practice I have a youngster, age 13, who has been in foster and group home care since infancy. I have another youngster, now almost 18, who has been in a similar situation since about age 5. I have a number of other children who have been in "temporary" custodies and placements going on now 3 or more years.

Perhaps the best way to understand what this means to a child, is to liken it to a plant, such as a tree, that is constantly being replanted, moved from one yard to the next. Sometimes the soil might be rich and nourishing while at other times sparse or even cruel. Regardless, the plant is only left for a brief period before it is torn up by its roots and planted somewhere else. It does not take long to see that the roots, that nourish, support and anchor this plant, will soon become weak and will eventually lose their ability to support this plant to any significant degree.

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Senate Judiciary 3-14-94 attachment 11-1

The "roots" in human beings, rest on our capacity to bond and to attach to those around us. This is the cornerstone and foundation of all aspects of human development. Erick Erickson, an early pioneer in studying human development, labelled the first stage of development as "basic trust/mistrust" to underscore the crucial component this plays in all subsequent development. Without a sense of bonding and attachment to others, we as humans never adequately or completely develop. One needs only remind oneself of the studies of WW II orphaned infants, who, despite adequate physical care (food and clothing), continued to die in large numbers until it was discovered that by rocking them a few minutes during the day and holding them, their survival rates dramatically improved.

Through the course of my over ten years of working in Kansas, at the state hospital and in private practice, I have worked with a number of children who have been placed in this unending never-never land. I will tell you that these are troubled and frightening children. They can talk coldly and calculatingly of using other humans and view "attachments" as solely the means by which they "manipulate others to achieve some material or other gain. These are children, under the right circumstances, who can kill or harm others cruelly and without feeling. They are children who have little appreciation for others feelings or rights. In their eyes, people are no more than objects to be used to their own ends. They live in a detached and alienated world where they are connected to no one. They maintain a sense of distrust of others. Those that are perhaps "stronger" in some sense or more aggressive, are likely to prey on others in order to reach whatever ends they devise for themselves. Those who are less resourceful or aggressive, become isolated and dysfunctional, often coming to rely on the state to care for them in one fashion or another.

Children who have been removed from a home environment, who have been taken up by their roots, need to be re-planted as quickly as possible, in an environment that will be able to care for them and nourish them until they become adults. Failure to do so, will mean that they will never be able to adequately attach and bond to others and thus will become alienated and isolated from our society. This will put them as risk for criminal activity as well as other dysfunctional behavior.

To be sure, the best solution would be to return them to their family of origin or to relatives that are a part of that family. This is because some sense of attachment and bonding has already begun in most cases, even when the home environment has been severely damaging. However, we do these children a disservice when we leave them in the foster care and group home care limbo for years at a time. It is important to keep in mind, that a year in a child's life is more critical than that same period of time for an adult. Important developmental tasks and hurdles are being addressed, and without adequate rooting, they will be only partially able to address these important tasks. Research tells us that by about the age of 14, personality or characterological development begins to coalesce into more fixed and established modes of thinking, perceiving and relating that will soon evolve into what we know as personality. Even before this time, our ability to attach and to be able to trust others becomes increasingly tenuous in the face of multiple losses and the lack of stable parenting figures. Therefore,

leaving children for long periods of time without a permanent placement, in the hopes that the family might be able to eventually care for them, may lead to marked distortions in their psychological development.

We are in support of Senate Bill 693 because it has measures which begin to address the need to find permanent placements for children.

1. It makes the finding of permanent placements the highest priority in dealing with children in need of care, including looking early on within the kinship group for possible caregivers.

2. It also provides a higher and more secure degree of financial support and aid for those individuals willing to assume the often very difficult task of caring for these children.

3. It defines the viability of reunification with the family of origin within the context of realistic time frames and allowing courts to seek a permanent placement outside the home after that time period has elapsed.

As we move to deal with the over 4500 children in care in this state, it is important, we believe, to move beyond dichotomies such as outside placement versus reunification and termination of rights versus living with parents. We must be more flexible in addressing these difficult issues. We believe, for example, that laws should support open adoption that would allow for contact and involvement of natural parents with adoptive parents and their children where realistic and helpful. Termination of parental rights, need not mean absence of contact or involvement of the natural parent in the life of the child. In many cases, such contact is both realistic and helpful for the child in terms of bonding and development.

In addition to changing laws that make the process of permanent child placement overly rigid and dichotomized, it is important to assure that treatment, training and support are available to the children caught up in this traumatic process and to the families (natural, foster and adoptive) who are attempting to raise these children. These children are extremely difficult to raise and to parent, esp. when they have experienced severe physical and/or sexual abuse and have been subject to many hears of foster and group home placements. Not only are issues of attachment and bonding apparent, but so are struggles with loyalty to old families and old relationships. Often these children lead stormy and difficult lives until they are able to come to terms with these issues. They are many times very impulsive and angry and express their inner turmoil through acting out. Throughout it all, these children are in need of someone who cares about them and who will stay with them no matter what. They are in need of someone who thinks they are the most important person in the world.

We would like to express our appreciation and approval that you have been willing to take up this difficult issue. It is one fraught with many emotionally laden issues, including the rights of families to preserve themselves, a most basic cornerstone of any society. Again, we feel that the

current bill is a step in the right direction of addressing some of the systemic hurdles to permanent placement and would urge your support of it.

Thank-you again for allowing us this time to present our views. I would be happy to answer any questions you might have now, or at a later time.