

Approved: _____

4/29/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 12:30 p.m. on March 21, 1994 in Room 522-S of the Capitol.

All members were present except: Senator Parkinson (excused)
Senator Brady (excused)
Senator Rock (excused)
Senator Emert (excused)
Senator Vancrum (excused)
Senator Feleciano (excused)

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

Conferees appearing before the committee:

Representative Blaise Plummer
Bud Newell, Kansas Horse Council
Randall Raub, Assistant Professor, Kansas State University
Shirley McClennick, Council Grove

Others attending: See attached list

Sub HB 2222--domestic animals

Representative Blaise Plummer gave an overview of Sub 2222 asked for the Committee's support.

Bud Newell, Kansas Horse Council testified in support of Sub HB 2222 and provided written testimony (Attachment No. 1). He said Sub HB 2222 establishes assumption of risk for those individuals who engage in a domestic animal activity. Mr. Newell said SB HB 2222 is needed to allow the equine industry to grow in the state of Kansas and allow Kansas to compete in the market place on a national scale.

Randall Raub, Assistant Professor, Kansas State University testified in support of Sub HB 2222. He said the horse industry needed to grow in the state of Kansas to aid the economy not only in the horse industry, but the supporting industries. Professor Raub said the industry could not grow with tort liability as it is now.

Shirley McClennick, Council Grove testified in support of Sub HB 2222. She said their community was very concerned about tourism and Sub HB 2222 related to the future activities of Council Grove and tourism. She said this could have a great economic impact on the community of Council Grove.

Chairman Moran closed the hearings on Sub HB 2222.

SB 693--children in need of care; limits on temporary custody; procedure for termination of parental rights; family input into placement; amount of adoption assistance payments

A motion was made by Senator Petty, seconded by Senator Bond to adopt the subcommittee report on SB 693 which includes deletion of Section 1 and the amendments in the balloon (Attachment No. 2). The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 522-S Statehouse, at 12:30 p.m.
on March 21, 1994.

HB 2852--foreign adoptions; birth certificates

A motion was made by Senator Petty, seconded by Senator Bond to adopt the subcommittee report to amend SB 693 as amended into HB 2852. The motion carried.

A motion was made by Senator Harris, seconded by Senator Martin to further amend HB 2852 (Attachment No. 3) as recommended by the Judicial Council. The motion carried.

The meeting adjourned at 1:30 p.m.

The next meeting is scheduled for March 22, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary

DATE: 3/21/94

[illegible]



March 21, 1994

Senators:

Substitute House Bill #2222 is a bill which establishes assumption of risk for those individuals who engage in a domestic animal activity. This bill is sorely needed to allow the equine industry to grow in the state of Kansas, but more importantly, it will allow us to level the playing field so that we may compete in the market place on a national scale. Today, the horse industry is estimated to be about \$300,000,000. I personally believe that it is closer to \$750,000,000, but is choked by the liability exposure. One of the most evident signs of this malady is the obvious lack of horse facilities throughout the state and the lack of national horse/livestock events in the state of Kansas. The question is, how much is this industry worth, and can it grow our rural economy?

An example of what could be is Oklahoma City, which has hosted the World Quarter Horse Show for several years. In 1993, 2,058 horses traveled with 3.95 people per horse for 16 days and spent \$140 per diem. This event added more than \$18,000,000 in direct revenues, which extrapolated into almost \$73,000,000 total economic impact. The city of Indianapolis knows that each 3-day horse event creates \$500,000 in tourist dollars. New Jersey estimates their horse industry at 14.1 billion with over \$600,000,000 in direct revenues each year. Today Kansas cannot attract large national livestock events, due to the liability issue as it affects sponsors and participants.

In 1996, due to the efforts of Dr. Jerry Gillespie, Head of Veterinary Medicine's Teaching Hospital at Kansas State University, the World Championship 100-mile Endurance Race, 1996 WC-E, for horses, will be held in Junction City/Ft. Riley. This event will bring approximately 150 horses from 15 countries to our great state. Horse enthusiasts from all over the world will be in attendance. With the right promotion over 4,000 tourists will be in our area spending big dollars. In 1995 the warm-up race to this event will be run and will involve horses, horse enthusiasts and tourists from throughout the United States. These two events will pump approximately \$30,000,000 into our economy.

If we are successful and we can show support, Kansas will have the opportunity to host the World Equestrian Games for 2001. This event is many times larger than the WC-E 1996 race. Kansas has an excellent chance of obtaining this event. Both the 1996 World Championship Endurance Race and the Equestrian Games of 2001 will be the largest livestock events ever to occur in the great state of Kansas. A great deal of the

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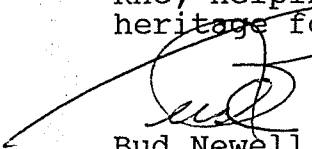
success of these events will hinge on allowing us to attract large sponsors and large crowds. Liability issues could affect and hamper these efforts by curtailing monies for international promotion.

Substitute House Bill #2222 was expanded from its original form to stress assumption of risk and to cover those animals which are involved with our 4-H kids. Every day we are bombarded by the plight of youth violence, demise of the extended family, parenting, etc. Today there are some problems with attracting individuals and companies to sponsor 4-H events. 4-H is, in my estimation, one of the greatest examples of extended families we can offer our youngsters, both urban and rural. From age 8 to 18, 4-H offers leadership and goals for these young citizens. However, liability issues have been affecting 4-H. We cannot allow this to happen when we need to invest in our youth today.

Recently I spent 3 days at the Governor's Forum on Rural Kansas. The future looks pretty bleak and new clean industry must be created and nurtured. The horse industry is in place, it only needs some liability relief so investors can buy-in. We are not asking for tax relief, industrial parks to be built, or the addition of streets and storm sewers. We are simply asking for relief of the liability issue so investors can buy-in. This industry can be self-driven and create millions of dollars for our future.

I urge you to support this legislation which is before you. The Kansas Horse Council and your constituents who are involved with this industry, 4-H and tourism, only ask that persons involved with livestock assume the inherent risk associated with these animals.

KHC, helping build our
heritage for tomorrow,



Bud Newell
President

BN:nkb

SENATE BILL No. 693

By Senators Petty, Downey, Gooch, Jones, Karr, Lee, Martin,
Parkinson and Walker

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9 AN ACT concerning children; relating to adoption assistance; con-
10 cerning children in need of care; relating to temporary custody
11 and termination of parental rights; amending K.S.A. 38-324, 38-
12 1502, 38-1543, 38-1565, 38-1582, 38-1583, 38-1584, 38-1585 and
13 38-1591 and repealing the existing sections; also repealing K.S.A.
14 38-1543a.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 38-324 is hereby amended to read as follows:
18 38-324. A prospective parent seeking adoption support hereunder
19 shall be a person who has the character, judgment, sense of re-
20 sponsibility and disposition which makes ~~him~~ or ~~her~~ *the person*
21 suitable as an adoptive parent under the provisions of K.S.A. 59-
22 2101 *et seq.*; and *amendments thereto* and who lacks the financial
23 means fully to care for such child. Factors to be considered by the
24 secretary in setting the amount of any payment or payments to be
25 made pursuant to this act shall include: The size of the family,
26 including the adoptive child; the usual living expenses of the family;
27 the special needs of any family members; and the family income.
28 *In no case shall payments be less than payments would be if the*
29 *child were placed in a foster home.* Whenever it appears to the
30 secretary that the adoptive parents are no longer in need of adoption
31 support, such support shall be terminated.

32 Sec. 2. K.S.A. 38-1502 is hereby amended to read as follows:
33 38-1502. As used in this code, unless the context otherwise indicates:

34 (a) "Child in need of care" means a person less than 18 years of
35 age who:

36 (1) Is without adequate parental care, control or subsistence and
37 the condition is not due solely to the lack of financial means of the
38 child's parents or other custodian;

39 (2) is without the care or control necessary for the child's physical,
40 mental or emotional health;

41 (3) has been physically, mentally or emotionally abused or ne-
42 glected or sexually abused;

43 (4) has been placed for care or adoption in violation of law;

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1 (5) has been abandoned or does not have a known living parent;
2 (6) is not attending school as required by K.S.A. 72-977 or 72-
3 1111, and amendments thereto;

4 (7) except in the case of a violation of K.S.A. 41-727 or subsection
5 (j) of K.S.A. 74-8810, and amendments thereto, does an act which,
6 when committed by a person under 18 years of age, is prohibited
7 by state law, city ordinance or county resolution but which is not
8 prohibited when done by an adult;

9 (8) while less than 10 years of age, commits any act which if
10 done by an adult would constitute the commission of a felony or
11 misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

12 (9) is willfully and voluntarily absent from the child's home with-
13 out the consent of the child's parent or other custodian;

14 (10) is willfully and voluntarily absent at least a second time from
15 a court ordered or designated placement, or a placement pursuant
16 to court order, if the absence is without the consent of the person
17 with whom the child is placed or, if the child is placed in a facility,
18 without the consent of the person in charge of such facility or such
19 person's designee; or

20 (11) has been residing in the same residence with a sibling or
21 another person under 18 years of age, who has been physically,
22 mentally or emotionally abused or neglected, or sexually abused.

23 (b) "Physical, mental or emotional abuse or neglect" means the
24 infliction of physical, mental or emotional injury or the causing of
25 a deterioration of a child and may include, but shall not be limited
26 to, failing to maintain reasonable care and treatment, negligent treat-
27 ment or maltreatment or exploiting a child to the extent that the
28 child's health or emotional well-being is endangered. A parent le-
29 gitimately practicing religious beliefs who does not provide specified
30 medical treatment for a child because of religious beliefs shall not
31 for that reason be considered a negligent parent; however, this ex-
32 ception shall not preclude a court from entering an order pursuant
33 to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

34 (c) "Sexual abuse" means any act committed with a child which
35 is described in article 35, chapter 21 of the Kansas Statutes Annotated
36 and those acts described in K.S.A. 21-3602 or 21-3603, and amend-
37 ments thereto, regardless of the age of the child.

38 (d) "Parent," when used in relation to a child or children, in-
39 cludes a guardian, conservator and every person who is by law liable
40 to maintain, care for or support the child.

41 (e) "Interested party" means the state, the petitioner, the child,
42 any parent and any person found to be an interested party pursuant
43 to K.S.A. 38-1541 and amendments thereto.

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1 (f) "Law enforcement officer" means any person who by virtue
2 of office or public employment is vested by law with a duty to
3 maintain public order or to make arrests for crimes, whether that
4 duty extends to all crimes or is limited to specific crimes.

5 (g) "Youth residential facility" means any home, foster home or
6 structure which provides 24-hour-a-day care for children and which
7 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
8 Annotated.

9 (h) "Shelter facility" means any public or private facility or home
10 other than a juvenile detention facility that may be used in accor-
11 dance with this code for the purpose of providing either temporary
12 placement for the care of children in need of care prior to the
13 issuance of a dispositional order or longer term care under a dis-
14 positional order.

15 (i) "Juvenile detention facility" means any secure public or private
16 facility used for the lawful custody of accused or adjudicated juvenile
17 offenders which must not be a jail.

18 (j) "Adult correction facility" means any public or private facility,
19 secure or nonsecure, which is used for the lawful custody of accused
20 or convicted adult criminal offenders.

21 (k) "Secure facility" means a facility which is operated or struc-
22 tured so as to ensure that all entrances and exits from the facility
23 are under the exclusive control of the staff of the facility, whether
24 or not the person being detained has freedom of movement within
25 the perimeters of the facility, or which relies on locked rooms and
26 buildings, fences or physical restraint in order to control behavior
27 of its residents. No secure facility shall be in a city or county jail.

28 (l) "Ward of the court" means a child over whom the court has
29 acquired jurisdiction by the filing of a petition pursuant to this code
30 and who continues subject to that jurisdiction until the petition is
31 dismissed or the child is discharged as provided in K.S.A. 38-1503
32 and amendments thereto.

33 (m) "Custody," whether temporary, protective or legal, means
34 the status created by court order or statute which vests in a cus-
35 todian, whether an individual or an agency, the right to physical
36 possession of the child and the right to determine placement of the
37 child, subject to restrictions placed by the court.

38 (n) "Placement" means the designation by the individual or
39 agency having custody of where and with whom the child will live.

40 (o) "Secretary" means the secretary of social and rehabilitation
41 services.

42 (p) "Relative" means a person related by blood, marriage or adop-
43 tion but, when referring to a relative of a child's parent, does not

1 include the child's other parent.

2 (g) "Court-appointed special advocate" means a responsible adult
3 other than an attorney guardian *ad litem* who is appointed by the
4 court to represent the best interests of a child, as provided in K.S.A.
5 38-1505a and amendments thereto, in a proceeding pursuant to this
6 code.

7 (r) "Multidisciplinary team" means a group of persons, appointed
8 by the court or by the state department of social and rehabilitation
9 services under K.S.A. 38-1523a and amendments thereto, which has
10 knowledge of the circumstances of a child in need of care.

11 (s) "Jail" means:

12 (1) An adult jail or lockup; or

13 (2) a facility in the same building or on the same grounds as an
14 adult jail or lockup, unless the facility meets all applicable standards
15 and licensure requirements under law and there is (A) total separation
16 of the juvenile and adult facility spatial areas such that there could
17 be no haphazard or accidental contact between juvenile and adult
18 residents in the respective facilities; (B) total separation in all juvenile
19 and adult program activities within the facilities, including recreation,
20 education, counseling, health care, dining, sleeping, and general
21 living activities; and (C) separate juvenile and adult staff, including
22 management, security staff and direct care staff such as recreational,
23 educational and counseling.

24 (t) *"Kinship care" means the placement of a child in the home*
25 *of the child's relative or in the home of another adult with whom*
26 *the child or the child's parent already has a close emotional at-*
27 *tachment.*

28 Sec. 3. K.S.A. 38-1543 is hereby amended to read as follows:
29 38-1543. (a) Upon notice and hearing, the court may issue an order
30 directing who shall have temporary custody and may modify the
31 order during the pendency of the proceedings as will best serve the
32 child's welfare.

33 (b) A hearing hereunder shall be held within 48 hours, excluding
34 Saturdays, Sundays and legal holidays, following a child having been
35 taken into protective custody.

36 (c) Whenever it is determined that a temporary custody hearing
37 is required, the court shall immediately set the time and place for
38 the hearing. Notice of a temporary custody hearing shall be in sub-
39 stantially the following form:

40 (Name of Court)

41 (Caption of Case)

42 NOTICE OF TEMPORARY CUSTODY HEARING

43 TO:

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	(Names)	(Relationship)	(Addresses)
1			
2			
3			
4			

5 On _____, _____, 19____, at ____ o'clock ____m. the court
 6 (day) (date)

7 will conduct a hearing at _____ to determine if the above named child
 8 or children should be in the temporary custody of some person or agency other than
 9 the parent or other person having legal custody prior to the hearing on the petition
 10 filed in the above captioned case. *The court may order one or both parents to pay*
 11 *child support.*

12 _____, an attorney, has been appointed as guardian *ad litem* for the
 13 child or children. Each parent or other legal custodian has the right to appear and
 14 be heard personally, either with or without an attorney. An attorney will be appointed
 15 for a parent who can show that the parent is not financially able to hire one.

16 Date _____, 19____ Clerk of the District Court
 17 by _____

18 (Seal)

19 REPORT OF SERVICE

20 I certify that I have delivered a true copy of the above notice to the persons above
 21 named in the manner and at the times indicated below:

	Location of Service				
	Name	(other than above)	Manner of Service	Date	Time
23					
24					
25					
26					

27 Date Returned _____, 19____

28 _____
 29 (Signature)

30 _____
 31 (Title)

32 (d) Notice of the temporary custody hearing shall be given at
 33 least 24 hours prior to the hearing. The court may continue the
 34 hearing to afford the 24 hours prior notice or, with the consent of
 35 the party, proceed with the hearing at the designated time. If an
 36 order of temporary custody is entered and the parent or other person
 37 having custody of the child has not been notified of the hearing, did
 38 not appear or waive appearance and requests a rehearing, the court
 39 shall rehear the matter without unnecessary delay.

40 (e) Oral notice may be used for giving notice of a temporary
 41 custody hearing where there is insufficient time to give written
 42 notice. Oral notice is completed upon filing a certificate of oral notice
 43 in substantially the following form:

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(Name of Court)

(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at _____ o'clock _____m.
on _____, 19_____, to the persons listed, in the manner
and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I advised each of the above persons that:

- (1) The hearing is to determine if the above child or children should be in the temporary custody of a person or agency other than a parent;
- (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or children named above;
- (3) each parent or legal custodian has the right to appear and be heard personally either with or without an attorney; and
- (4) an attorney will be appointed for a parent who can show that the parent is not financially able to hire an attorney; and
- (5) *the court may order one or both parents to pay child support.*

(Signature)

(Name Printed)

(Title)

(f) The court may enter an order of temporary custody after determining that: (1) The child is dangerous to self or to others; (2) the child is not likely to be available within the jurisdiction of the court for future proceedings; or (3) the health or welfare of the child may be endangered without further care.

(g) Whenever the court determines the necessity for an order of temporary custody the court may place the child in the temporary custody of: (1) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (h); (2) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated; (3) a youth residential facility; or (4) the secretary. When the child is placed in the temporary custody of the secretary, the secretary shall have the discretionary authority to place the child with a parent or to make other suitable placement for the child. When circumstances require, a child may be placed

1 in a juvenile detention facility or other secure facility, but the total
2 amount of time that the child may be held in such facility under
3 this section and K.S.A. 38-1542 and amendments thereto shall not
4 exceed 24 hours, excluding Saturdays, Sundays and legal holidays.
5 The order of temporary custody shall remain in effect until modified
6 or rescinded by the court or a disposition order is entered *but not*
7 *exceeding 60 days.*

, unless good cause shown and
stated on the record.

8 (h) If the court issues an order of temporary custody, the court
9 may enter an order restraining any alleged perpetrator of physical,
10 sexual, mental or emotional abuse of the child from residing in the
11 child's home; visiting, contacting, harassing or intimidating the child;
12 or attempting to visit, contact, harass or intimidate the child.

13 (i) The court shall not enter an order removing a child from the
14 custody of a parent pursuant to this section unless the court first
15 finds from evidence presented by the petitioner that reasonable ef-
16 forts have been made to prevent or eliminate the need for removal
17 of the child or that an emergency exists which threatens the safety
18 of the child and requires the immediate removal of the child. Such
19 findings shall be included in any order entered by the court.

20 Sec. 4. K.S.A. 38-1565 is hereby amended to read as follows:
21 38-1565. (a) If a child is placed outside the child's home and no plan
22 is made a part of the record of the dispositional hearing, a written
23 plan shall be prepared which provides for reintegration of the child
24 into the child's family or, if reintegration is not a viable alternative,
25 for other placement of the child. If the goal is reintegration into the
26 family, the plan shall include measurable objectives and time sched-
27 ules for reintegration. The plan shall be submitted to the court not
28 later than 60 days after the dispositional order is entered. If the
29 child is placed in the custody of the secretary, the plan shall be
30 prepared and submitted by the secretary. If the child is placed in
31 the custody of a facility or person other than the secretary, the plan
32 shall be prepared and submitted by a court services officer.

33 (b) A court services officer or, if the child is in the secretary's
34 custody, the secretary shall submit to the court, at least every six
35 months, a written report of the progress being made toward the
36 goals of the plan submitted pursuant to subsection (a). If the child
37 is placed in foster care, the foster parent or parents shall submit to
38 the court, at least every six months, a report in regard to the child's
39 adjustment, progress and condition. The department of social and
40 rehabilitation services shall notify the foster parent or parents of the
41 foster parent's or parent's duty to submit such report, on a form
42 provided by the department of social and rehabilitation services, at
43 least two weeks prior to the date when the report is due, and the

1 name of the judge and the address of the court to which the report
2 is to be submitted. Such report shall be confidential and shall only
3 be reviewed by the court and the child's guardian ad litem. The
4 court shall review the progress being made toward the goals of the
5 plan and the foster parent report and, if the court determines that
6 progress is inadequate or that the goals are *the plan* is no longer
7 viable, the court shall hold a hearing pursuant to subsection (c). If
8 the secretary has custody of the child, such hearing shall be held
9 no more than ~~18~~ 12 months after the child is placed outside the
10 child's home and at least every 12 months thereafter. If the goal of
11 the plan submitted pursuant to subsection (a) is reintegration into
12 the family and the court determines after ~~18~~ 12 months from the
13 time such plan is first submitted that progress is inadequate, the
14 court shall hold a hearing pursuant to subsection (c) ~~to determine~~
15 ~~whether proceedings shall be commenced pursuant to this code~~
16 ~~to terminate the parental rights of either or both parents.~~ Noth-
17 ing in this subsection shall be interpreted to prohibit termination of
18 parental rights prior to the expiration of ~~18~~ 12 months.

19 (c) Whenever a hearing is required under subsection (b), the
20 court shall notify all interested parties and hold a hearing regarding
21 the adequacy of the plan submitted pursuant to subsection (a);
22 progress toward the goals of such plan and the viability of such
23 goals ~~to determine whether proceedings shall be commenced pur-~~
24 ~~suant to this code to terminate the parental rights of either or both~~
25 ~~parents.~~ If, after hearing, the court determines that the child's needs
26 are not adequately being met, the plan is inadequate or the goals
27 are not viable ~~the court shall order commencement of proceedings~~
28 ~~pursuant to this code to terminate the parental rights of either or~~
29 ~~both parents unless the court finds good cause why the plan should~~
30 ~~be modified or a new plan adopted. If the court finds good cause~~
31 ~~why the plan should be modified or a new plan adopted,~~ the court
32 may rescind any of its prior dispositional orders and enter any dis-
33 positional order authorized by this code; ~~may order commencement~~
34 ~~of proceedings pursuant to this code to terminate the parental~~
35 ~~rights of either or both parents or may order that a new plan for~~
36 ~~the reintegration, or an alternative plan for the child's placement,~~
37 be prepared and submitted to the court.

38 Sec. 5. K.S.A. 38-1582 is hereby amended to read as follows:
39 38-1582. (a) Upon receiving a petition or motion requesting termi-
40 nation of parental rights the court shall set the time and place for
41 the hearing on the request.

42 (b) (1) The court shall give notice of the hearing: (A) As provided
43 in K.S.A. 38-1533 and 38-1534 ~~and amendments thereto; and (B) to~~

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1 all the child's grandparents at their last known addresses or, if no
2 grandparent is living or if no living grandparent's address is known,
3 to the closest relative of each of the child's parents whose address
4 is known, which notice shall be given by restricted mail not less
5 than 10 business days before the hearing.

6 (2) The provisions of subsection (b)(1)(B) shall not require ad-
7 ditional notice to any person otherwise receiving notice of the hearing
8 pursuant to K.S.A. 38-1536 and amendments thereto.

9 (3) Prior to the commencement of the hearing the court shall
10 determine that due diligence has been used in determining the
11 identity of the interested parties and in accomplishing service of
12 process.

13 (c) In any case in which a parent of a child cannot be located
14 by the exercise of due diligence, service shall be made upon the
15 child's nearest blood relative who can be located and upon the person
16 with whom the child resides. Service by publication shall be ordered
17 upon the parent.

18 (d) Prior to a hearing on a petition or a motion requesting ter-
19 mination of parental rights, the court shall appoint an attorney to
20 represent any parent who fails to appear and may award a reasonable
21 fee to the attorney for services. The fee may be assessed as an
22 expense in the proceedings.

23 Sec. 6. K.S.A. 38-1583 is hereby amended to read as follows:
24 38-1583. (a) When the child has been adjudicated to be a child in
25 need of care, the court may terminate parental rights when the court
26 finds by clear and convincing evidence that the parent is unfit by
27 reason of conduct or condition which renders the parent unable to
28 care properly for a child and the conduct or condition is unlikely to
29 change in the foreseeable future.

30 (b) In making a determination hereunder the court shall consider,
31 but is not limited to, the following, if applicable:

32 (1) Emotional illness, mental illness, mental deficiency or physical
33 disability of the parent, of such duration or nature as to render the
34 parent unlikely to care for the ongoing physical, mental and emo-
35 tional needs of the child;

36 (2) conduct toward a child of a physically, emotionally or sexually
37 cruel or abusive nature;

38 (3) excessive use of intoxicating liquors or narcotic or dangerous
39 drugs;

40 (4) physical, mental or emotional neglect of the child;

41 (5) conviction of a felony and imprisonment;

42 (6) unexplained injury or death of a sibling another child or
43 stepchild of the parent;

6-8

1 (7) reasonable efforts by appropriate public or private child caring
2 agencies have been unable to rehabilitate the family; and

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

5 (c) In addition to the foregoing, when a child is not in the physical
6 custody of a parent, the court, in proceedings concerning the ter-
7 mination of parental rights, shall also consider, but is not limited to
8 the following:

9 (1) Failure to assure care of the child in the parental home when
10 able to do so;

11 (2) failure to maintain regular visitation, contact or communica-
12 tion with the child or with the custodian of the child;

13 (3) failure to carry out a reasonable plan approved by the court
14 directed toward the integration of the child into the parental home;
15 and

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

18 In making the above determination, the court may disregard in-
19 cidental visitations, contacts, communications or contributions.

20 (d) The rights of the parents may be terminated as provided in
21 this section if the court finds that the parents have abandoned the
22 child or the child was left under such circumstances that the identity
23 of the parents is unknown and cannot be ascertained, despite diligent
24 searching, and the parents have not come forward to claim the child
25 within three months after the child is found.

26 (e) The existence of any one of the above standing alone may,
27 but does not necessarily, establish grounds for termination of parental
28 rights. The determination shall be based on an evaluation of all factors
29 which are applicable. In considering any of the above factors for
30 terminating the rights of a parent, the court shall give primary
31 consideration to the physical, mental or emotional condition and
32 needs of the child. If presented to the court and subject to the
33 provisions of K.S.A. 60-419, and amendments thereto, the court shall
34 consider as evidence testimony from a person licensed to practice
35 medicine and surgery, a licensed psychologist or a licensed social
36 worker expressing an opinion relating to the physical, mental or
37 emotional condition and needs of the child. The court shall consider
38 any such testimony only if the licensed professional providing such
39 testimony is subject to cross-examination.

40 (f) A termination of parental rights under the Kansas code for
41 care of children shall not terminate the right of the child to inherit
42 from or through the parent. Upon such termination, all the rights
43 of birth parents to such child, including their right to inherit from

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1 or through such child, shall cease.

2 Sec. 7. K.S.A. 38-1584 is hereby amended to read as follows:
3 38-1584. (a) *Purpose of section.* The purpose of this section is to
4 provide stability in the life of a child who must be removed from
5 the home of a parent, to acknowledge that time perception of a child
6 differs from that of an adult and to make the ongoing physical, mental
7 and emotional needs of the child the decisive consideration in pro-
8 ceedings under this section. The primary goal for all children whose
9 parents' parental rights have been terminated is placement in a
10 permanent family setting.

11 ~~(b) *Notice of dispositional hearing.* After terminating pa-~~
12 ~~rental rights and before granting custody of the child for adop-~~
13 ~~tion proceedings or long-term foster care, the court shall require~~
14 ~~notice of the time and place of the hearing on custody to be~~
15 ~~given to all the child's grandparents at their last known ad-~~
16 ~~dresses or, if no grandparent is living or if no living grand-~~
17 ~~parent's address is known, to the closest relative of each of the~~
18 ~~child's parents whose address is known. Such notice shall be~~
19 ~~given by restricted mail not less than 10 business days before~~
20 ~~the hearing. The provisions of this subsection shall not require~~
21 ~~additional notice to any person otherwise receiving notice of~~
22 ~~the hearing pursuant to K.S.A. 38-1536 and amendments~~
23 ~~thereto.~~

24 ~~(c) (b) *Actions by the court.* (1) *Custody for adoption.* When~~
25 ~~parental rights have been terminated and it appears that adoption~~
26 ~~is a viable alternative, the court shall enter one of the following~~
27 ~~orders:~~

28 ~~(A) An order granting custody of the child, for adoption pro-~~
29 ~~ceedings, to a reputable person of good moral character, the secretary~~
30 ~~or a corporation organized under the laws of the state of Kansas~~
31 ~~authorized to care for and surrender children for adoption as provided~~
32 ~~in K.S.A. 38-112 et seq. and amendments thereto. The person,~~
33 ~~secretary or corporation shall have authority to place the child in a~~
34 ~~family home, be a party to proceedings and give consent for the~~
35 ~~legal adoption of the child which shall be the only consent required~~
36 ~~to authorize the entry of an order or decree of adoption.~~

37 ~~(B) An order granting custody of the child to proposed adoptive~~
38 ~~parents and consenting to the adoption of the child by the proposed~~
39 ~~adoptive parents.~~

40 ~~(2) *Custody for long-term foster care.* When parental rights have~~
41 ~~been terminated and it does not appear that adoption is a viable~~
42 ~~alternative, the court shall enter an order granting custody of the~~
43 ~~child for foster care to a reputable person of good moral character,~~

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1 a youth residential facility, the secretary or a corporation or asso-
2 ciation willing to receive the child, embracing in its objectives the
3 purpose of caring for or obtaining homes for children.

4 (3) *Preferences in custody for adoption or long-term foster care.*
5 In making an order under subsection ~~(e)(1)~~ (b)(1) or (2), the court
6 shall give preference, to the extent that the court finds it is in the
7 best interests of the child, first to granting such custody to a relative
8 of the child and second to granting such custody to a person with
9 whom the child has close emotional ties.

10 ~~(d)~~ (c) *Guardian and conservator of child.* The secretary shall
11 be guardian and conservator of any child placed in the secretary's
12 custody, subject to any prior conservatorship.

13 ~~(e)~~ (d) *Reports and review of progress.* After parental rights have
14 been terminated and up to the time an adoption has been accom-
15 plished, the person or agency awarded custody of the child shall
16 within 60 days submit a written plan for permanent placement which
17 shall include measurable objectives and time schedules and shall
18 thereafter not less frequently than each six months make a written
19 report to the court stating the progress having been made toward
20 finding an adoptive or long-term foster care placement for the child.
21 Upon the receipt of each report the court shall review the contents
22 thereof and determine whether or not a hearing should be held on
23 the subject. In any case, the court shall notify all interested parties
24 and hear evidence regarding progress toward finding an adoptive
25 home or the acceptability of the long-term foster care plan within
26 18 months after parental rights have been terminated and every 12
27 months thereafter. If the court determines that inadequate progress
28 is being made toward finding an adoptive placement or establishing
29 an acceptable long-term foster care plan, the court may rescind its
30 prior orders and make other orders regarding custody and adoption
31 that are appropriate under the circumstances. Reports of a proposed
32 adoptive placement need not contain the identity of the proposed
33 adoptive parents.

34 ~~(f)~~ (e) *Discharge upon adoption.* When the adoption of a child
35 has been accomplished, the court shall enter an order discharging
36 the child from the court's jurisdiction in the pending proceedings.

37 Sec. 8. K.S.A. 38-1585 is hereby amended to read as follows:
38 38-1585. (a) It is presumed in the manner provided in K.S.A. 60-
39 414 and amendments thereto that a parent is unfit by reason of
40 conduct or condition which renders the parent unable to fully care
41 for a child, if the state establishes by clear and convincing evidence
42 that:

43 (1) A parent has previously been found to be an unfit parent in

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1 proceedings under K.S.A. 38-1581 *et seq.* and amendments thereto,
2 or comparable proceedings under the laws of another state, or the
3 federal government;

4 (2) a parent has twice before been convicted of a crime specified
5 in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated,
6 or comparable offenses under the laws of another state, the federal
7 government or any foreign government, or an attempt or attempts
8 to commit such crimes and the victim was under the age of 18 years;
9 or

10 (3) on two or more prior occasions a child in the physical custody
11 of the parent has been adjudicated a child in need of care as defined
12 by subsection (a)(3) of K.S.A. 38-1502 and amendments thereto;

13 (4) *the parent has been convicted of causing the death of another*
14 *child or stepchild of the parent;*

15 (5) *the child has been in an out-of-home placement, other than*
16 *kinship care, under court order for a cumulative total period of one*
17 *year or longer and the parent has substantially neglected or willfully*
18 *refused to carry out a reasonable plan, approved by the court,*
19 *directed toward reintegration of the child into the parental home;*
20 *or*

21 (6) (1) *the child has been in an out-of-home placement, other*
22 *than kinship care, under court order for a cumulative total period*
23 *of two years or longer; (2) the parent has failed to carry out a*
24 *reasonable plan, approved by the court, directed toward reintegration*
25 *of the child into the parental home; and (3) there is a substantial*
26 *probability that the parent will not carry out such plan in the near*
27 *future.*

28 (b) The burden of proof is on the parent to rebut the presump-
29 tion. In the absence of proof that the parent is presently fit and
30 able to care for the child or that the parent will be fit and able to
31 care for the child in the foreseeable future, the court shall now
32 terminate the parents parental rights in proceedings pursuant to
33 K.S.A. 38-1581 *et seq.* and amendments thereto.

34 Sec. 9. K.S.A. 38-1591 is hereby amended to read as follows:
35 38-1591. (a) An appeal may be taken by any interested party from
36 any adjudication, disposition, termination of parental rights or order
37 of temporary custody in any proceedings pursuant to this code.

38 (b) An appeal from an order entered by a district magistrate judge
39 shall be to a district judge. The appeal shall be heard ~~de novo~~ within
40 30 days from the date the notice of appeal is filed. ^

41 (c) Procedure on appeal shall be governed by article 21 of chapter
42 60 of the Kansas Statutes Annotated.

43 (d) *Notwithstanding any other provision of law to the contrary,*

If no record was made of the
proceedings, the trial shall be *de*
novo.

1 appeals under this section shall have priority over *all* other cases
2 except those having statutory priority.

3 New Sec. 10. (a) Before placement of a child with a person other
4 than the child's parent pursuant to this code, the secretary or a
5 representative of the secretary may convene a conference of the
6 child's grandparents, aunts, uncles, siblings, cousins and other rel-
7 atives determined by the secretary or the secretary's representative
8 to have a potential interest in determining a placement which is in
9 the best interests of the child. The secretary or the secretary's rep-
10 resentative shall provide for the child's relatives to be given any
11 information relevant to the determination of the placement of the
12 child, including the needs of the child and any other information
13 that would be helpful in making a placement in the best interests
14 of the child. After presentation of the information, the relatives of
15 the child shall be permitted to discuss and decide, outside the pres-
16 ence of any other persons, the family member or members with
17 whom it would be in the child's best interest to be placed. The
18 relatives shall make their recommendation to the secretary or the
19 secretary's representative. Unless the secretary determines that there
20 is good cause to place the child with a person other than the relative
21 recommended by the child's relatives, the child shall be placed in
22 accordance with the recommendations of the relatives.

23 (b) Before placement of a child with a person other than the
24 child's parent pursuant to this code, the court or a court services
25 officer at the direction of the court may convene a conference of the
26 child's grandparents, aunts, uncles, siblings, cousins and other rel-
27 atives determined by the court or court services officer to have a
28 potential interest in determining a placement which is in the best
29 interests of the child. The court or the court services officer shall
30 provide for the child's relatives to be given any information relevant
31 to the determination of the placement of the child, including the
32 needs of the child and any other information that would be helpful
33 in making a placement in the best interests of the child. After
34 presentation of the information, the relatives of the child shall be
35 permitted to discuss and decide, outside the presence of any other
36 persons, the family member or members with whom it would be in
37 the child's best interest to be placed. The relatives shall make their
38 recommendation to the court or court services officer. Unless the
39 court determines that there is good cause to place the child with a
40 person other than the relative recommended by the child's relatives,
41 the child shall be placed in accordance with the recommendations
42 of the relatives.

43 (c) A person participating in a conference pursuant to this section

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1 shall have immunity from any civil liability that might otherwise be
2 incurred or imposed as a result of the person's participation.

3 (d) This section shall be part of and supplemental to the Kansas
4 code for care of children.

5 Sec. 11. K.S.A. 38-324, 38-1502, 38-1543, 38-1543a, 38-1565, 38-
6 1582, 38-1583, 38-1584, 38-1585 and 38-1591 are hereby repealed.

7 Sec. 12. This act shall take effect and be in force from and after
8 its publication in the statute book.

HOUSE BILL No. 2852

By Representative Everhart

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

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) When an adoption occurs in a foreign country
16 and is recognized as a valid adoption by the immigration and nat-
17 uralization service of the United States department of justice, the
18 adoptive parent or parents may petition the court, pursuant to K.S.A.
19 1993 Supp. 59-2126, and amendments thereto, for a subsequent
20 adoption in the state of Kansas, pursuant to K.S.A. 1993 Supp. 59-
21 2128, and amendments thereto. ~~[The courts of this state shall give~~
22 ~~full faith and credit to a valid foreign adoption and shall not require~~
23 ~~new consent forms for an adoption pursuant to this section.]~~

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

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

29 Section 2. K.S.A. 65-2423 is hereby amended to read as follows:
30 65-2423. (a) In cases of adoption the state registrar upon receipt of
31 a certified order of adoption shall prepare a supplementary certificate
32 in the new name of the adopted person and seal and file the original
33 certificate of birth with said such certified copy attached thereto.
34 Such sealed documents may be opened by the state registrar only
35 upon the demand of the adopted person if of legal age or by an
36 order of court. Upon receipt of a certified copy of a court order of
37 annulment of adoption the state registrar shall restore the original
38 certificate to its original place in the files.

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

59-2128

the applicable provisions of
the Kansas adoption and
relinquishment act

In an adoption under this section, the
court shall recognize and give effect to the
laws of the foreign country and proceedings
conducted in accordance with the laws of the
foreign country pertaining to relinquishment,
termination of parental rights and consent to
the adoption.

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1 decree of adoption, and such further information concerning the
2 adopting parents as may be necessary to complete the birth certifi-
3 cate. The certificate shall show the true country of birth and the
4 date of birth of the child, and that the certificate is not evidence of
5 United States citizenship. *The provisions of this subsection shall*
6 *apply to an adoption granted pursuant to section 1.*

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

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

Senate Judiciary
3-21-94
attached 3-1