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MEMORANDUM

To: Senate Committee on Judiciary
From: Jenna Moyer, Assistant Revisor of Statutes
Date: January 30, 2018
Subject: SB257 – Creating a presumption of child's equal time with parents during court determinations of legal custody, residency or parenting time.

SB 257 amends presumptions regarding bests interests of the child in determinations of legal custody, residency or parenting time under the Kansas family law code.

In an action regarding legal custody, residency or parenting time, if the parents agree to a parenting plan, current law presumes that such plan is in the bests interests of the child. Section 1 amends K.S.A. 23-3202(a) to require clear and convincing evidence to overcome this presumption. If the court were to make an order different than the agreed to parenting plan, the court would be required to consider all the factors in K.S.A. 23-3203 when making findings that the parenting plan is not in the best interests of the child.

Subsection (b) would apply when a parenting plan has not been agreed to, and the court makes decisions regarding legal custody, residency and parenting time. This bill would add a presumption that it is in the best interests of the child to spend equal or approximately equal time with each parent. Such presumption could only be overcome with clear and convincing evidence. The court could make a different determination, but only if the court makes specific findings why equal or approximately equal time with each parent is not in the child's best interests when considering the factors in K.S.A. 23-3203.

Clear and convincing evidence of the evidence means “evidence that shows that the truth of the facts asserted is highly probable.” *In re. B.D.-Y.*, 286 Kan. 686 (2008).