

MEMORANDUM

TO: House Judiciary Committee
FROM: Kansas Judicial Council – Ronald W. Nelson
DATE: Monday February 17, 2014
RE: Kansas Judicial Council Testimony on House Bill 2568

HB 2568 was drafted by the Judicial Council's Family Law Advisory Committee and was approved by the Kansas Judicial Council in 2013. The majority of the bill cross-references other articles of the family law code and deletes redundant provisions from the parentage act. Additionally, there are three major substantive changes. First, the Committee recommends amending K.S.A. 23-2215 so that the preference for joint custody will now apply to both divorce and parentage proceedings. Second, the Committee recommends amendments to K.S.A. 23-2707 in order to address *In re Marriage of Brown*, 295 Kan. 966, 291 P.3d 55 (2012). Finally, the Committee recommends amendments to K.S.A. 23-3002 in order to address *Jones v. Jones*, 45 Kan. App. 2d 854, 268 P.3d 494 (2010) and to produce a different outcome in future cases. A list of the Committee members is attached to this testimony.

BACKGROUND

In 2009, the Chairman of Senate Judiciary asked the Judicial Council to study the Kansas Paternity Act. In order to complete a full review of the act and the laws impacting the act, the Family Law Advisory Committee studied a variety of sources. For instance, the Committee examined uniform laws, case law and related issues such as child support and child custody. HB 2568 is the result of the Committee's work. Comments to the amendments contained in the bill are set forth below.

HB 2568 Sec. 1 - K.S.A. 20-165

The Committee recommends moving the list of factors from K.S.A. 23-2215(g) (formerly K.S.A. 38-1121) directly to this section rather than cross-referencing.

HB 2568 Sec. 2 - K.S.A. 23-2201

K.S.A. 23-2225 is deleted as duplicative and unnecessary. These provisions already appear in K.S.A. 23-3222.

HB 2568 Sec. 3 - K.S.A. 23-2215

The amendment in subsection (a) is a technical clarification. It makes this section consistent with K.S.A. 23-2211(b), which provides that failure to join any person as a party does not deprive the court of jurisdiction to determine whether a party has a duty to support the child.

The amendments to subsections (c) and (d) are intended to ensure that the same rules apply to child custody and support orders entered in parentage cases and divorce cases. The amendment in subsection (c) cross-references Article 30 of Chapter 23, which governs establishment and modification of child support. This cross-reference to Article 30 eliminates the need for the remaining provisions in subsection (c), which already appear in K.S.A. 23-3001 and K.S.A. 23-3005.

The amendment in subsection (d) cross-references Article 32 of Chapter 23, which governs custody, residency and parenting plans. This cross-reference eliminates the need for the remaining provisions in subsection (d), which already appear in K.S.A. 23-3202 and K.S.A. 23-3207.

The Committee recognizes that cross-referencing Article 32 in the parentage act will result in a substantive change in the law, because the preference for joint custody will now apply to both divorce and parentage proceedings. However, the Committee believes there could be a constitutional issue with treating the two situations differently based solely on marital status. The Committee noted that most parentage actions involve parents who have cohabited, rather than single parents. The Committee believes judges can be relied upon to use their discretion in not

ordering joint custody in situations where there has been no ongoing relationship between the child and alleged parent.

Subsection (e) is amended to address how a court may order retroactive child support.

The list of factors in subsection (g) is moved to K.S.A. 20-165 where they are currently cross-referenced.

Subsections (h) and (i) are deleted as duplicative and unnecessary.

HB 2568 Sec. 4 - K.S.A. 23-2216

The amendments clarify the statute by breaking it down into four separate subsections, each dealing with a different kind of cost, fee or expense. The amendments also clarify that attorney fees are not allowed for any attorney representing a public agency.

HB 2568 Sec. 5 - K.S.A. 23-2223

After the recodification of the family law code, subsection (d) is no longer needed.

HB 2568 Sec. 6 - K.S.A. 23-2224

Subsection (a) is amended to clarify that a court can make an order relating to child custody only if it has jurisdiction under the UCCJEA.

After recodification of the family law code, subsection (d) is no longer needed.

HB 2568 Sec. 7 - K.S.A. 23-2707

The Committee amended K.S.A. 23-2707(a) in order to address *In re Marriage of Brown*, 295 Kan. 966, 291 P.3d 55 (2012). *Brown* stated, “the Kansas Legislature has limited a district court’s authority to discharge past-due child support in a final decree of divorce; specifically, a court’s authority is limited by the provision in K.S.A. 60-1610(a)(1) that limits the retroactivity of a modification to a date at least 1 month after the date that a motion to modify was filed.” Under the Committee’s proposal, the judge may modify or vacate orders until the entry of the final judgment. Thus, the proposal eliminates the month delay.

HB 2568 Sec. 8 - K.S.A. 23-3002

The Committee believes the deleted language is obsolete and should be repealed. Language has been added to clarify that trial courts must follow the child support guidelines adopted by the Supreme Court.

New subsection (b) requires that a completed domestic relations affidavit and child support worksheet accompany any motion to modify child support. The requirement already appears in Supreme Court Rule 139. However, in *Jones v. Jones*, 45 Kan. App. 2d 854, 268 P.3d 494 (2010), the Court of Appeals held that a delay in filing the domestic relations affidavit and child support worksheet as required by Supreme Court Rule 139 until sometime after the filing of a motion to modify child support did not affect the court's ability to make the modification effective back to 1 month after the filing of the motion. The proposed amendment is intended to require a different result in future cases.

HB 2568 Sec. 9 - K.S.A. 23-3005

In subsection (a), the words "or change" are stricken as redundant.

Subsection (b) is amended to clarify when a retroactive modification of support may take effect and when a retroactive support order may become a lien on real property.

HB 2568 Sec. 10 - K.S.A. 23-3203

The Committee proposes amendments to K.S.A. 23-3203 in order to clarify the appropriate factors to be considered in determining child custody. The factors under current law are based on a third party custody case and are not applicable to most residential custody situations.

HB 2568 Sec. 11 - K.S. A. 23-2217

This section was deleted as an unnecessary provision after the Committee compared the current Kansas parentage act with the 1973 version of the Uniform Parentage Act. For instance, some provisions were outdated, such as the reference to "under prior law," which was a reference to laws in effect before 1985. Other provisions were duplicative rather than outdated. For example, (b)

was removed because the income withholding act applies to any child support ordered under Chapter 23, Article 30. Similarly, (c) was removed because the parentage act includes enforcement, and thus there is no need to include the contempt provision.

HB 2568 Sec. 11 - K.S.A. 23-2218

This section was deleted as an unnecessary provision, because the parentage act refers to child support and child custody and delineates how and when jurisdiction continues for each particular matter. Thus, the general provision is too broad.

HB 2568 Sec. 11 - K.S.A. 23-2225

This section is deleted as duplicative and unnecessary. These provisions already appear in K.S.A. 23-3222.

COMMITTEE MEMBERS

Charles F. Harris, Chair, Wichita. Practicing attorney who serves on the Child Support Guideline Committee and is an expert witness on child support.

Sara S. Beezley, Girard. Practicing family law attorney.

Hon. Sam K. Bruner, Overland Park. Retired district judge.

Dr. Sharon E. Cain, M.D., Overland Park. Director of Child and Adolescent Psychiatry at the University of Kansas Medical Center.

Jamie Corkhill, Topeka. Retired attorney who previously served at the Kansas Department of Social and Rehabilitation Services.

Hon. William B. Elliott, Hill City. Senior judge for the State of Kansas.

Hon. Robert J. Frederick, Garden City. District judge.

Joyce Grover, Topeka. Practicing attorney who works with domestic violence, sexual assault, and stalking.

Rep. Lance V. Kinzer, Olathe. Practicing attorney, State Representative and Chairman of the House Judiciary Committee.

Prof. Nancy Maxwell, Topeka. Professor of Law and member of the Washburn University School of Law Children and Family Law Center.

Ronald W. Nelson, Shawnee Mission. Practicing attorney who works with high conflict family law disputes.

Cynthia Patton, Topeka. Practicing family law attorney.

Ardith R. Smith-Woertz, Topeka. Practicing family law attorney.

Prof. Suzanne Valdez, Lawrence. Clinical Professor at the University of Kansas School of Law.