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Re: HB 2450 and HB 2452

Chair Connie OBrien
House Committee on Children and Seniors

I present this written testimony in opposition to the above bills.

Good afternoon. My name is Ronald W. Nelson. I have practiced family law in Kansas – with my offices in Johnson County – for over 30 years. I am a past-president of the Kansas Bar Association Family Law Section, I am a Fellow in both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers, and I have spent years trying to improve Kansas family law for children and families. In addition to my daily practice representing clients in divorce, parentage, and other domestic relations disputes, I have also written chapters in the Kansas Bar Association PRACTITIONERS' GUIDE TO KANSAS FAMILY LAW.

There are numerous problems with the bill.

First, the bill mandates that all separating families shall have joint physical and and legal custody of their children, unless it is proven "beyond a reasonable doubt" that one parent is a "danger" to the child. At this time, parents are rarely determined to be a danger to their child. And in either family law or child in need of care cases, and the standard to make that determination is preponderance of evidence (clear and convincing evidence in CInC). Requiring that a parent show that the other parent is a "danger" to the child in order not to be forced to have joint physical and legal custody of their children would dramatically increase false allegations, conflict in and out of court, and the cost of any child custody matter would increase many times from what it is now.

Contrary to the presumption in the bill, while shared residency is certainly good for many children and families, it is only in those situations where the parents can get along with each other very well that shared residency arrangements work to everyone's advantage. While there are numerous studies showing that children are better off when they are in a good, cooperative, and low conflict family setting in which the parent each respecting others' rights, do not fight about any issues (other than very minor issues) and they are able to be gracious and generous with each other, there are also many studies that report shared residency as detrimental if the law forces parents into a relationship with the other parent when there is abusive, controlling behavior, or other similar disputes. Shared residency in those situations does not serve the children, but serves instead the interests of a controlling abusive person to allow that person to use the system to further abuse the child and the other parent.

Second, the bill removes court oversight from approval of parenting agreements. This is another provision that would dramatically increase controlling and abusive behavior by some parents

over another abused or weaker parent and it would not serve the child. There are already many situations in which one parent tries to force the other parent to capitulate to unreasonable demands over child-support or a parenting agreement to suit the more powerful or controlling parents desires. The purpose of court approval of agreed parenting plans is to "level the playing field" and to make sure that the agreements between the parents are in fact voluntary, and are entered into with knowledge of the parent's rights, and to make sure that the parents considered what is best for the child. By removing any court oversight, controlling and abusive parents would be encouraged to use that power over the other parent and the child without concern their attempts would face any independent review.

Third, the first sections of the bill seek to do away with the present independent child support guidelines committee, instead putting in its place a legislative child support guidelines committee. In those states where this has occurred, the result has not been viewed well.

Virginia, for example, is for the first time since child support guidelines were instituted in the late 1980s reviewing and revising their guidelines in its 2014 session. Every time attempts were made to revise and update antiquated provisions in its guidelines, the Virginia Legislature failed to act because the legislature was subjected to heavy political pressure by all sides to do not what was best for children or families, but to instead do what narrow interest groups or people who did not want to provide any adequate support level for another parent or the child.

The Kansas Legislature originally assigned the responsibility to determine child support guidelines to a child support commission to remove political influences (as much as possible) from the process and to allow both sides direct input into the process. It has carried on that mandate as best it can holding numerous hearings throughout the state and time and time again making revisions to the guidelines in an attempt to change errors some saw in the existing provisions -- never satisfying some others.

Fourth, one of the many sections in the bill that indicates a complete lack of understanding of family law is the introductory preamble and a few sections in the bill that imply that the state implicates itself in families of its own initiative and that parental rights are "terminated" under the Kansas Family Law Code. The Kansas family Law code does not include ANY provision that allows the termination of parental rights. Parental rights may be limited or terminated only under the Kansas code for care of children - and that Code provides for strict proof of allegations by the state against a parent, for mandated reintegration processes, and for appointment of attorneys for parents whose rights are threatened.

Determination of the parents' respective rights, duties, and obligations for a child, including the allocation of parenting time between parents, under the family Law code is fundamentally different than the ability to restrict and terminate a parents rights under the Kansas code for care of children. The Kansas code for care of children protects the constitutional rights of parents by mandating that there must be efforts by the state to return the child to the parents unless the parent show that they are unable or unwilling to care for the child at minimal standards – an application of the "least detrimental alternative" standard. The "least detrimental alternative" standard is applied in code for care of children because (presumably) one or both parents have serious deficits that need to be addressed for the child's protection, rather than the presumption in the family law code and the "best interests of the child" standard that assumes the child has

two good parents, with an appropriate allocation of time made between them at their own request.

The Kansas family Law code presumes that there are two good parents who are unable to agree and that the court is requested to step in to determine those disputes (the court does not insert itself into any family unless it is requested to do so by one of the members of the family).

Fifth, the provision in the bill allowing jury trials in any case when a parent demands it would dramatically increase the cost of any child custody matter. At this point, there are only two states that allow jury trials of child custody matters – Texas and Georgia. In both of those states jury trials of child custody matters often run into the hundreds of thousands of dollars, last for years, and often turn not on what is best for the family or the child but who can throw the most dirt and exhausted the resources of the other parent the fastest. Again, this kind of provision feeds into the desires of controlling and abusive persons who wish to use the system to further their past battering, controlling, and abusive behaviors towards their child's other parent. Jury trials in child custody cases do not further a search for the truth, but instead further a dysfunctional desire to abuse.

Sixth, many provisions in the bill are directly contrary to federal mandates and requirements to obtain federal program funding.

For example, the bill seeks to do away with income withholding for support enforcement. Various federal laws require that the states have income withholding. Income wage withholding is provided for by the uniform interstate family support act, and federal funding of various services in the state require that these income withholding provisions be in place. Income withholding is part of the federal requirements under welfare programs to recover state funds outlays.

Seventh, replacing "best interests of the child" with "least detrimental alternative" is nonsensical. "Best interest of the child" focuses on what is best for the child considering numerous factors, including what would be the least detrimental alternative. The standard presumes the involvement (or potential involvement) of two good parents. The "least detrimental alternative" focuses on what is "least" bad -- a negative consideration -- and presumes that one or both parents have significant deficits in being able to function as a minimally capable parent. It is typically a standard that is considered in abuse and neglect cases rather than in a determination of parenting time or responsibilities.

Eighth, the entirety of the bill seems to be focused on a belief that the state interferes in and insert itself into a family. But virtually all of the situations in which the family Law code is applicable are situations where the parents are separating (divorce) or a new relationship is being established (parentage actions). Contrary to the presumption of this bill, the state is not "inserting itself" into the family. Instead, The courts are being requested by one of those parents to resolve conflicts between the parents or establish a parenting relationship and establish an appropriate parenting plan only if the parents are not otherwise able to agree on one between themselves.

Ninth, the drafter of the bill seems not to understand the difference between abuse and neglect cases and child custody cases. When the state inserts itself into the family, the standard presently used is "least detrimental alternative" with a presumption that the relationship shall be

preserved and that all resources are focused on returning the child and family. In a child custody matter, the child is always with the family – one parent or the other – and the purpose of the court action is to resolve disputes between the parents in the best interest of the child – not merely which of the two parents would be the "least detrimental alternative."

Just one of the many issues in the bill that indicates a complete lack of understanding of family law is the introductory preamble and the first few sections. Children's connections with a parent are never terminated under the Kansas family Law code -- that is done only under the Kansas code for care of children.

Determination of the respective rights, duties, and obligations including the allocation of parenting time between parents under the family Law code is fundamentally different than restricting and culminating right and the Kansas code for care of children. The Kansas code for care of children considers the constitutional rights of parents by mandating that there be efforts exercised by the state to return the child to the parents unless the parent show that they are unable or unwilling to care for the child at minimal standards – thus the application of the least detrimental alternative. The "least detrimental alternative" standard is applied in code for care of children because there are (presumably) two parents with deficits rather than two good parents. The Kansas family Law code presumes that there are two good parents who are unable to agree and that the court is requested to step in to determine those disputes (the court does not insert itself into any family unless it is requested to do so by one of the members of the family).

Tenth, Another provision in the bill removes court oversight from approval of any parenting agreement. This is another provision that would dramatically increase controlling and abusive behavior by parents over a week or parents and would not serve the child. There are already many situations in which one parent tries to force the other parent into capitulation over child-support or a parenting agreement to suit the more powerful or controlling parents desires. The purpose of the court is to "level the playing field" and to make sure that the agreements between the parents are in fact voluntary, Entered into with knowledge of their rights, and consider what is best for the children. By removing any court oversight, controlling and abusive parents would be encouraged to use that power over the other parent and the child.

Eleventh, he bill allows a child as young as 10 years of age to choose the parent with whom that child will live. Children certainly should have a voice in where they should live. But this provision -- like many other sections of this bill -- allows for inappropriate manipulation of a child by parents and others to make them pawns in an ongoing Payton Place scenario.

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