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January 30, 2018

Kansas House Committee on Judiciary
Representative Blaine Finch, Chair

RE: 2018 HB 2481: Kansas Adoption and Relinquishment Act amendments

Hearing Date: January 30, 2018

TESTIMONY ON HB 2481
OF RONALD W. NELSON

Chairman Finch and Members of the Committee:

I am a family law attorney in Johnson County. I've practiced family law for over 30 years. My practice is focused on complex issues in family law and high conflict child custody litigation. My practice frequently involves representing parents – and grandparents – in family law disputes at the trial court level and in the appellate courts. My practice A significant portion of my practice is devoted to representing and advising persons dealing with domestic violence situations, trying to help them to handle those situations appropriately, to escape controlling, abusive, and threatening situations and relationships, and to giving them advice on how to protect themselves before, during, and after the end of those relationships.

I participated in writing revisions to Kansas child custody law in 2000, the 2011 Recodification of Kansas family law, updates to the Kansas Parentage Act and statutory criteria for parenting-time determinations in 2014, and other changes in Kansas family law practice and procedure. I have also assisted drafting family law forms for state-wide use in Kansas, including forms for divorce, post-decree child support and parenting time modifications, protection from abuse, and

protection from stalking, and I am involved in seeking to find ways to improve access to the courts for self-represented individual and to reduce the conflict and acrimony in family law cases, while protecting vulnerable children and adults. A large portion of my practice deals with post-decree modification matters.

I speak today in support of the changes to the Kansas Adoption and Relinquishment Act – except to raise a couple of issues that I think need revised for clarity and to assure that the bill properly balances the rights of parents seeking the termination of another parent, the rights of the parent whose rights are sought terminated, and the child.

I strongly support the provisions for jurisdiction of adoption and termination cases stated in Section 12. This revised provision corrects an error with the statute recognized by the Kansas Supreme Court in In re Adoption of HCH, 297 Kan. 819, 304 P.3d 1271 (2013).

1. Propose changing the term "residence of the child," that appears throughout the bill to "where the child lives" or similar language, using "residence" in reference only for adults who have capacity to form an intent to reside.

A child cannot "reside" anywhere. A child does not have the requisite capacity to form an intent required to create a desire to reside in a place or places– it is the adult with whom that child lives who determines the parent residency. As stated by K.S.A. K.S.A. 77-201 Twenty-third, the term "residence" as "the place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats at one place and sleeps at another, the place where the person sleeps shall be considered the person's residence." Similarly, K.S.A. K.S.A. 77-201 Twenty-fourth defines "usual place of residence" and "usual place of abode" as that place "usually adopted by that person." But again, only adults have the capacity to adopt a place as that person's residence, because residence, domicile, and place of abode all require an intent to create a legal residence instead of merely living.

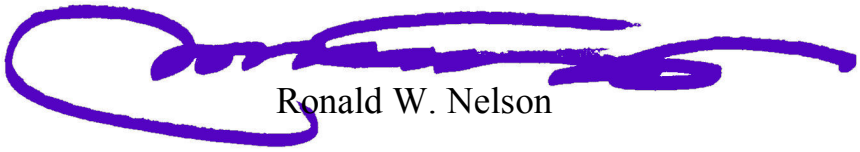
Although the bill defines at various places the child's residence as that of a "parent," that is not the child's residence. The Uniform Child Custody Jurisdiction and Enforcement Act (K.S.A. 23-37,101 et seq uses the term "where the child lives" because of this issue. This was a change to the UCCJEA from the previous version of the Act (the Uniform Child Custody Jurisdiction Act). Instead of using

the term "residence" or "reside," the bill should use the same term as in the UCCJEA to which it refers.

2. Eliminating stepparent adoption and termination provisions amending the statute to allow for the same list of reasons to terminate a parents' rights without differentiating between "possible," "presumed," and "established" parents.

The particular problem with the section is that it treats all fathers the same — whether presumptive, established, or possible. The US Supreme Court has determined that parents with established rights have specific constitutional rights to a relationship with their child, and that presumptive parents have a right to specific due process and other rights to establish their parentage. The manners and types of notice to be given to each of those classes of parents varies because of their constitutional rights.

This bill, this section, allowing for the termination of parental rights on the same bases violates those rights. It lumps all parents into one category when under US Supreme Court precedent must be treated differently. And this is the reason why the uniform parentage act and every other uniform law passed out of the uniform laws commission treats them differently. Established parents have constitutional rights that cannot be terminated in the ways that a presumptive parents' rights may be. And certainly, established parents may not have their rights terminated in the same way as "possible" parents who are not even entitled to a presumption of parentage under the uniform parentage act. To lump them all into one group whose rights may be terminated according to the various provisions stated makes that section of the bill unconstitutional.



Ronald W. Nelson