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TESTIMONY OF RONALD W. NELSON
Nelson & Booth, Overland Park, Kansas
January 17, 2006

Re: HB 2571

Members of the Committee:

Good morning. I practice domestic relations law in Overland Park. I worked closely with the Kansas Bar Association in 2000 working on compromises and language that was included in Substitute Senate Bill 150, which updated the Kansas custody statutes. I appeared at the August 2005 Interim Special Judiciary Committee hearing on SB 61 and I have testified to the Senate Judiciary Committee on that bill. I've attached my testimony opposing SB 61 to this testimony, which relates directly to the changes proposed in HB 2571.

At the completion of testimony on SB61, the interim committee recommended amendments to SB 61 deleting the original proposed amending language (adding "shared residency" to the currently listed "residency" and "divided residency" to K.S.A. 60-1610). As pointed out in my testimony to the Interim Special Judiciary Committee, that language would inject needless conflict into child custody litigation, instead of helping resolve those conflicts. The intention of the 2000 amendments to the Kansas child custody statutes was to *remove* labels from the statutes and to encourage parents and judges to focus on what should be the most appropriate parenting schedule for that particular family rather than first determining the contentious issue of who "won" the child and then determine the schedule the "loser" had with the child. The interim committee saw the wisdom of that approach and removed the remaining vestiges of the previous "label-based" statute directing instead that the court determine an appropriate parenting plan that was either agreed by the parents or, in the absence of agreement, that fit the court's view of the child's best interests. These recommended changes are included in HB 2571. While I wholeheartedly support this bill, some other conferees have pointed out that the language in HB 2571 that directs the court "adopt" a parenting plan seems to imply that the court cannot exercise its own discretion to fashion an appropriate parenting schedule that is different from that proposed by either parent or combine aspects of both parenting plans. While I agree there is some concern about this wording, I think it clear that the language is intended to place in the courts' hands the power to determine an appropriate parent schedule *using* the parents' plans, but not binding the court to them.

The 2000 Amendments provided that the courts can order *any* appropriate parenting schedule after looking at the particular needs of the child and the family. The Amendments contained in HB 2571 further the recent trend in domestic relations law across the country, which is to generalize statutes so that the courts can make individual schedules for each family, rather than trying to fit a family into a labeled approach that doesn't help anyone.

Other conferees have expressed their concerns that the changes proposed in HB 2571 may inject conflict into child custody cases by upsetting the traditional manner of determining child custody cases, which proposes to first determine where the child lives and then determine the schedule the child is to live with each parent. I don't believe the changes proposed in HB 2571 create those conflicts. Instead, I think it is the approach that some who are steeped in the traditional way of doing things take rather than the statutory change that may be responsible for that conflict. HB 2571 intentionally does not require the determination of where a child *usually* lives because that is the same as determining who is a primary or non-primary parent. HB 2571 proposes that instead of determining "residency" and then a schedule of parenting time, that the courts determine how to break up the time so that the child is with both parents on a schedule that is in the child's best interests. In doing so, the court need not use labels or relegate either parent to a lesser status – only determine what days and times is the child to be with each.

The statutes already require that parents file proposed parenting plans if they don't agree on a schedule. The fact is that most proposed plans are very similar and that by requiring both parents file their own plan, the court (and parents) can see where they disagree, if at all.

If you have any questions I am glad to address them.

Ronald W. Nelson