Approved: May 11, 2012

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(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM on Tuesday, January 31, 2012 in 346-S of the Capitol.

All members were present except:
Melanie Meier
Greg Smith

Committee staff present:
Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:
Russell C. Leffel, Attorney
Austin K. Vincent, The Adoption Bar
Matt and Molly Nagel
Matthew and Rita Moss

Others in attendance:
See attached.

Chairman Kinzer opened the meeting and advised a revised fiscal note on **HB 2464** has been placed in the Committee member folders. Chairman reminded the Committee the agenda for Wednesday is a briefing from Judiciary on the Blue Ribbon Commission, and, if time permits, three bills may be worked: **HB 2121**, **HB 2253**, and **HB 2473**.

Representative Brookens requested a bill dealing with case management in domestic family cases, trying to delineate some of the criteria and modifications to what can be done at a hearing. The request was seconded by Representative Kelly and the bill was accepted without objection.

Patrick Vogelsberg requested a bill, on behalf of the Kansas Self Storage Owners Association, to update the notice requirements language to include electronic mail and other modern language.

Representative Ryckman moved to accept the request, seconded by Representative Brookens and the bill was accepted without objection. (Attachment 1)

Chairman Kinzer opened the hearing on **HB 2483–Planning and zoning; appeals to district court; jurisdiction retained on remand**. Katherine McBride provided an overview of the bill content.

Russell Leffel testified in support of **HB 2483**, stating he and his wife, Paula, appealed a zoning matter in their home city in Johnson County, which ultimately ended up in the Court of Appeals but then was remanded back to the City Board of Zoning Appeals for reconsideration. They continued to have differences with the City Board of Zoning Appeals, so Mr. Leffel took it back a second time to District Court and again it went to the Court of Appeals. This was all done using the original case file number and the existing Judge. Mr. Leffel stated he then received a letter from the Court of Appeals asking to show cause and read this excerpt from the letter, "The procedural posture of the case was a remand from the District Court to the Board of Zoning Appeals. The record, similarly, does not contain an order by the District Court retaining jurisdiction over the matter during the Board's reconsideration. We question our jurisdiction in this matter." The District Court Judge had advised the Leffels if they had problems to let the Judge know. This was all done verbally. When this went beyond the District Judge up to the Court of Appeals, even though it was a second round of the Board of Zoning Appeals during the remand, it was a separate final decision, and the Appeals Court was saying a new filing was needed. Mr. Leffel proposed **HB 2483** would make it a default position that the District Court retains jurisdiction of the case file and of the whole matter throughout the proceedings of the remand so a new lawsuit and filing fees would not be needed. Mr. Leffel offered this was a touch-up amendment to K.S.A. 12-759 (f) and, because K.S.A. 12-760 is so similar, the same language should be added there as well. (Attachment 2)

Chairman Kinzer closed the hearing on **HB 2483** and opened the hearing on **HB 2482–Relating to the Kansas adoption and relinquishment act; parental rights**. Katherine McBride provided an overview of the bill content.

Austin K. Vincent testified in support of **HB 2482** on behalf of a group of adoption agencies, attorneys and social workers who have concerns about the present interpretation and some anomalies in the statutes. Mr. Vincent summarized how adoption practitioners, within the last 18 months, have seen a dramatic shift in interpretations by the appellate courts on some of the statutes. (Attachment 3)

Mr. Vincent stated the typical scenario in adoptions is a mother will determine an adoption is in the best interests of her child. In some cases, the father will object. The question becomes has

the father done enough to protect his rights. The courts say he must show his interest in concrete ways. A father merely saying he will provide support or will help out in any way with his child is not enough.

Mr. Vincent shared information from two recent court cases. In the first case, the Supreme Court regarding the *Adoption of Baby Girl P.*, 291 Kan. 424. *Previous Case Law*, the child's father found out he had a child after the birth. There had to be clear and convincing evidence the father had failed to make reasonable efforts to support or communicate with his child. Support had always been interpreted as providing significant support- financial commitment, action, or both. In this case, the father visited the child twice and thanked the adoptive parents for the visits. The father provided some nominal Christmas presents and offered the adoptive family anything they might need, but he never provided anything to the adoptive family. He said he understood his responsibilities, but he never did. He basically offered talk and nominal support. This level of support has never been found to be satisfactory to protect one's rights in an adoption case at the Court of Appeals or Kansas Supreme Court. The trial court agreed. The Court of Appeals agreed. The Supreme Court ruled these efforts did demonstrate a commitment to assuming the role of the father. Mr. Vincent expressed this decision is a "dumbing down" of fatherhood in Kansas. There is language in one of the opinions that suggests they are changing the rules. **HB 2482** would define support as a tender of significant monetary or non-monetary support.

The second case, in *Baby Girl B.*, 46 Kan. App. 2d 96, the Court of Appeals stated once a father knows the mother is pregnant, he has an obligation to support the mother during the pregnancy, however she will allow him to do so. The facts were the mother told the father several months before the birth she might be pregnant. There were no other discussions for quite a while. The father said he would come and visit, but he did not. Later, there were two very long conversations by phone, and two versions of the conversations. The father said the mother told him she might be pregnant, and he told her to go get a pregnancy test. The father asked if he could be the father, and the mother said yes. The mother's version was she knew she was pregnant because she took a test. The birth father said he would come visit her during the holidays, but never did. The child was born two months later. The trial court found the birth father had knowledge of the pregnancy. The Court of Appeals, based on the *Baby Girl P* opinion, determined the trial court reached the conclusion the birth father had knowledge of the pregnancy, based on the failure to investigate the possible pregnancy because he didn't do anything but tell her to get a pregnancy test. The Trial Court believed the mother's version, but the Appeals Court took a different look. In **HB 2484**, "knowledge of the pregnancy or a possible pregnancy" would be sufficient to put the father on notice of his responsibility to provide support.

Mr. Vincent stated there is confusion among the appellate courts on the issue of the termination of parental rights. The courts, up until recently, have maintained a two ledger approach in a stepparent adoption, as there has to be proof the father failed to maintain the duties of a parent over a two-year period by failing to provide financial and emotional support. The courts repudiated the two-ledger support this past fall, changing the standard to a consideration of the "totality of the circumstances" *In re J.M.D. and K.N.D.,* 293 Kan.153. **HB 2482** would codify this in the statute. Under stepparent adoptions, there also has been confusion about using the phrase "best interests of the child," and **HB 2482** would clarify the court may consider the best interests of the child if they found grounds for termination of parental rights in stepparent adoptions.

Regarding amendments to address issues in existing statutes, Mr. Vincent advised the statute says one has to prove in certain stepparent adoptions the father has failed to assume the duties of a parent for two years, and he would like the statute to allow a consideration of fitness to parent as one of the grounds in stepparent adoption terminations. In agency adoptions, it is appropriate to clarify the relinquishment of a child by a parent to an agency must be voluntary. Parents can either relinquish a child to an agency by signing a document or they may consent to an adoption by a particular family. Under present statutory language, only consents have to be voluntarily given. The voluntary relinquishment to an agency needs to be addressed also. An additional clarification needs to be made for when an adoption is not granted for any reason. The court is currently limited to 30 days to make a decision as to who will care for the child and he would like the statute to allow the court to consider exigent circumstances and extend the time to 90 days. Regarding attorney's fees, the way the statute reads and how the courts have ruled is if the father or mother objects to the adoption, an attorney is appointed by the court to fight the adoption and the adoptive family has to pay the fees. The proposed change would expand the options of the court to consider the person responding, the adoptive family, or the county-depending on the indigent circumstances, in proportioning the fees among the parties.

A discussion ensued regarding the use of words "significant" and "tender" among the Committee members with Mr. Vincent and whether these terms would prove useful. Mr. Vincent agreed to try and provide some additional guidance to the Committee on defining these terms. Mr. Vincent clarified the existing statute allows for the best interests of the child to be considered to grant the adoption, and the proposed change would allow the best interests of the child to be considered in terminating the rights of the parent. The Supreme Court has said a father needs to grasp the opportunity to provide significant support when he has knowledge of the mother's pregnancy or possible pregnancy, and a father has to do something more than just offer to provide support.

Matt and Molly Nagel testified in support of **HB 2482** as the adoptive parents of *Baby Girl P*, discussed by Mr. Vincent. They told their story of happily becoming the adoptive parents of Waverly Isabel Nagel and how over a two and one-half year court process they lost custody of their daughter when the Supreme Court system ultimately ruled to overturn the district court and appellate court's ruling and uphold the birth father's rights to gain custody of his child. (Attachment 4)

Matt and Rita Moss testified in support of **HB 2482** as the adoptive parents of *Baby Girl B*, discussed by Mr. Vincent. They told their story of when they got the call to come to the hospital to become the adoptive parents of Ava Gabrielle Moss. Their happiness turned to worry when they learned the birth father's mother had decided that she would like to raise the child. The birth father had verbally agreed to terminate his rights, and he had shown no interest in the child, even after he was confirmed as the father. The next two years were spent in the courts. A district court ruled to terminate the birth father's parental rights for failure to support the birth mother during the last six months of her pregnancy. The court also found clear and convincing evidence that the baby's best interests favor termination of the birth father's parental rights. The ruling was appealed. The appellate court ruled that the trial court erred in ruling the facts in the case, justifying a finding that clear and convincing evidence existed the birth father abandoned and failed to support the birth mother. The Supreme Court refused to hear the Moss's appeal and they had to transition their child back to the birth father in only nine days. They have not seen their daughter since November 29, 2011. (Attachment 5)

Chairman Kinzer advised the committee that written testimony has been submitted in support of **HB 2482** by Dana Booe, Kansas Children's Service League (Attachment 6) and Bruce Linhos, Children's Alliance of Kansas. (Attachment 7)

Chairman Kinzer closed the hearing on **HB 2482**.

The next hearing is scheduled for Wednesday, February 1, 2012. The meeting was adjourned at 5:07 p.m.