

WRITTEN TESTIMONY

OF

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IN SUPPORT OF SB 124

KANSAS SENATE COMMITTEE ON JUDICIARY

FEBRUARY 16, 2016

Thank you, Chairman Wilborn and members of the Committee, for allowing me the opportunity to submit testimony in support of SB 124.

This bill provides necessary clarity to the Kansas custody statute and helps ensure that courts will properly consider a full range of abusive behavior when adjudicating child custody and related issues.

I. SB 124 ELIMINATES CONFUSION BY MAKING CLEAR THAT THE “BEST INTEREST OF THE CHILD” STANDARD APPLIES TO LEGAL CUSTODY, RESIDENCY, AND PARENTING TIME.

Within the lay understanding of the term child custody, Kansas law contemplates three separate but related concepts: legal custody, residency, and parenting time. In adjudicating each of these, courts should be guided by the best interest of the child. This bill ensures that the language of K.S.A. 23-3201 matches the language in other sections of the custody statute, such as K.S.A. 23-3203(a), and reflects the current understanding of child custody law in Kansas. The change will eliminate confusion created by the incongruous language and ensure that all judicial system actors understand that the best interest standard applies to legal custody, residency, and parenting time.

II. SB 124 HELPS PROTECT THE RIGHTS OF ABUSE VICTIMS WITH A BETTER DEFINED DOMESTIC ABUSE FACTOR ENCOMPASSING A BROAD RANGE OF RELEVANT ABUSIVE BEHAVIORS.

This bill takes an important step towards better protecting the rights of victims and their children during custody proceedings, and protecting children from needless exposure to abuse, whether direct or indirect. The new definition of domestic abuse captures a broad range of behaviors and tactics that are used against victims, which will encourage courts to consider those critical facts when making custody determinations. The bill also makes clear that both a single act and a pattern or history of abuse must be considered.

Domestic abuse, when present in a family, should be a primary concern in a custody case. Children who experience or witness domestic abuse experience a range of adverse consequences, including negative emotional, physical, and behavioral effects.¹ Past abusive behavior is relevant to child custody determinations because children deserve to be free from experiencing or witnessing abuse in the future. Furthermore, research shows that spousal abuse and child abuse are closely linked and the presence of either increases the future likelihood of both. Courts simply cannot make decisions in the best interest of a child without considering any and all domestic abuse that has either occurred in the family or been committed by either parent.

Domestic abuse victims who seek to protect themselves and their children face significant challenges in custody cases.² Research has shown that judges and lawyers are prone to disbelieve spousal and child abuse allegations, even though evidence shows that most allegations are, in fact, substantiated.³ This bill takes a first step towards helping level the playing field for victims and protecting children who experience or are exposed to abuse.

For the foregoing reasons, I urge the committee to support SB 124.

Respectfully submitted,
Gillian Chadwick

¹ Todd I. Herrenkohl, et. al., *Intersection of Child Abuse and Children's Exposure to Domestic Violence*. TRAUMA, VIOLENCE & ABUSE, VOL. 9, NO. 2, APR. 2008, 84-99.

² See Gillian Chadwick, et. al., SUPPLEMENTAL STATEMENT REGARDING THE DECEMBER 2, 2016 REPORT OF THE JUDICIAL COUNSEL FAMILY LAW ADVISORY COMMITTEE.

³ Linda D. Elrod & Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance*, 42 FAM. L.Q. 381, 395 (2008).