KANSAS
DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Kathleen Sebelius, Governor
Don Jordan, Secretary

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January 20, 2009

The Honorable Tim Owens
Chair, Senate Judiciary Committee
536-N
300 SW 10th Street
Topeka, KS 66612

RE: Senate Bill No. 27

Dear Chairman Owens,

I would like to offer a few comments concerning Senate Bill 27, which would amend the Kansas Parentage Act. If enacted, this legislation will affect the Child Support Enforcement program, administered under Title IV-D of the Social Security Act.

The historical presumption of parentage based on marriage is generally good for children, as are the other presumptions of parentage contained in K.S.A. 38-1114. Consequently, Kansas common law provides that, before pursuing the question of paternity where there is a presumed father, the court must first consider the best interests of the child if the child was born of a marriage or has emotional ties to the presumed father.

It is widely recognized that extramarital involvements strain and complicate the emotional relationships within families, and there is no longer one single definition of what is in a child's best interests. Children are not insulated from emotional upheavals between their parents; that is one factor in deciding where the child's best interests may lie. The ability to perform accurate and inexpensive genetic testing is also having an impact on the decisions we see when courts rule upon the child's best interests. Judges frequently do find that a paternity determination will be in the child's best interests, whether because the child is already aware of the dispute and is best served by a clear resolution or because the child is still very young and has not bonded deeply with the presumed father.

As introduced, new subsection (g) will prohibit judges from considering the best interests of the child when deciding whether a paternity case should proceed, no matter how the litigation will affect the child at the heart of the case. SRS believes that current law fairly addresses and balances the wide range of interests involved, while keeping the well-being of the innocent child in focus.

Should the committee decide to advance this bill, however, there are three technical issues we would ask to have corrected:

- First, the amendment in subsection (e) creates confusion concerning the finality of support orders based on a presumption. Unless paternity is raised as an affirmative defense, Title IV-D states that presumed parentage must be sufficient basis for establishing a child support order without further litigation concerning paternity; subsection (e) as it exists addresses that federal requirement. While the new language added to (e) clouds the meaning of that subsection, it is not essential in order to give effect to new subsection (g). In fact, it can only have meaning if the test results and the judge's subsequent ruling pursuant to (g) are in conflict with a support order under (e). We recommend that the amendment in (e) be omitted.

- Second, subsection (g) as introduced would apply to any presumption arising under K.S.A. 38-1114, including a voluntary acknowledgement under subsection (a)(4), and it would apply "Notwithstanding any other law to the contrary...." Title IV-D, however, specifies the limited conditions under which a written voluntary acknowledgement of paternity may be challenged; those specifications are covered by K.S.A. 38-1115(e). We are concerned that enactment of S.B. 27 as introduced would put Kansas out of compliance with Title IV-D state plan requirements. We believe the introductory clause in (g) is unnecessary to give full effect to the policy proposed, and recommend that, if the bill moves forward, "Notwithstanding any other law to the contrary" be replaced with "Subject to the provisions of K.S.A. 38-1115(e)" to assure continued compliance with Title IV-D requirements.

- Finally, we believe that the current wording of the final sentence of subsection (g) would have unintended consequences. It appears that the purpose of that sentence is to provide finality for orders where the child has already turned 18. However, the current wording would allow parentage to be challenged at any time, not just during minority, for all children who turn 18 on or after July 2, 2009. If it is the decision of the committee to move this bill forward, we urge you to replace the final sentence of subsection (g) with the following, "The provisions of this subsection shall apply only until the child attains 18 years of age."

Current Kansas law concerning children who were born of a marriage or have strong emotional ties to the presumed father, which places the best interests of the child in the forefront, is good public policy. If, however, this bill is moved forward, SRS requests your consideration of the three changes outlined above. CSE staff will attend the hearing on January 21, in case there are any questions.

Sincerely,

Don Jordan
Secretary