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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 9, 2020

Subject: Bill Brief on SB 157

SB 157 creates a presumption in favor of shared parenting time in a court’s order for a temporary parenting plan. This bill amends K.S.A. 23-3212, relating to temporary parenting plans. K.S.A. 23-3211 defines temporary parenting plan as “an agreement or order issued defining the legal custody, residency and parenting time to be exercised by parents with regard to a child between the time of filing of a matter in which a parenting plan may be entered, and any other provisions regarding the child’s care which may be in the best interest of the child, until a final order is issued.”

This bill would only apply to temporary parenting plans under K.S.A. 23-3212, creating a presumption that when a court is making an order for a temporary parenting plan “it is in the best interests of the child for fit, willing and able parents to have temporary joint custody and share equally in parenting time.” Generally, a presumption functions as a rule of law that allows a court to assume a fact is true until there is factual evidence to disprove the presumption.

An example of a presumption from the family law code is in an action regarding legal custody, residency or parenting time, if parents enter into a parenting plan, K.S.A. 23-3202 creates a presumption that such plan is in the best interests of the child. Such a presumption could be overcome if the court makes specific findings of fact stating why the plan is not in the child’s best interests.

The Senate Committee on Judiciary amended the bill to add definitions of “joint legal custody”, “parenting time” and “equal parenting time”. The committee also added a provision that if there is presentation of documentation that would support a finding that domestic abuse has occurred, there shall be a presumption that it is not in the best interests of the child to have temporary joint legal custody and share equally in parenting time.

The Senate Committee of the Whole amended the bill to provide that necessary technical changes since this bill was introduced in 2019.