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SPECIAL COMMITTEE ON JUVENILE MATTERS

July 22 and 23, 1975
Room 517 - State House

Members Present

Representative David Heinemann, Chairman
Senator Arden Booth, Vice-Chairman
Senator Jim Parrish
Senator Robert Storey
Senator Robert Madden (Second day only)
Senator Jan Meyers (Second day only)
Representative Mike Glover
Representative Fred Lorentz
Representative Ardena Matlack
Representative Joe Norvell (Second day only)
Representative Neal Whitaker

Staff Present

Myrta Anderson, Legislative Research Department
Walt Smiley, Legislative Research Department
Mary Torrence, Revisor of Statutes Office

Others Present

Dr. Robert Harder, Secretary, State Department of Social and Rehabilitation Services
James H. Hays, Budget Division
Judge David Lord, Juvenile Judge, Winfield
Dan Logan, Probation Officer, Winfield
Judge Herbert Noyes, Juvenile Judge, Grant County
Judge Darrell Meyer, Juvenile Judge, Emporia
Judge Michael Corrigan, Juvenile Judge, Sedgwick County
Ruth Graves, A.A.U.W. and League of Women Voters
Ann Hebberger, League of Women Voters
Mike McLain, Johnson County Juvenile Court
Jack Pulliam, State Department of Social and Rehabilitation Services
Sharon Gordon, Topeka
Blanche McLaughlin, Topeka
David B. Dallam, Budget Division

Others Present (Cont'd)

Judge Bill E. Haynes, Juvenile Judge, Johnson County
Judge Dean J. Smith, Wyandotte County Juvenile Court
Gary L. Marsh, Kansas Juvenile Probation Officers Association, Lyon County Juvenile Court, Emporia
Douglas P. Smith, Kansas Juvenile Probation Officers Association, Saline County Juvenile Court, Salina
Richard C. Kline, Kansas Juvenile Probation Officers Association, McPherson County Juvenile Court, McPherson
Patrick J. Finley, Wyandotte County Juvenile Court, Kansas City
Diane Simpson, Kansas Council on Crime and Delinquency, Salina
Alleen Morris, Kansas Council on Crime and Delinquency, Topeka
Barbara Sabol, State Department of Social and Rehabilitation Services
Charles Hamm, State Department of Social and Rehabilitation Services

July 22, 1975
Morning Session

Representative David Heinemann, Chairman, called the meeting to order at 9:30 a.m., and announced that the agenda would include testimony from juvenile judges and representatives of the State Department of Social and Rehabilitation Services concerning the Juvenile Code. He stated that Judge Charles Elliott of the Magistrate Court of Olathe had been contacted concerning representatives to appear and that he had appointed a Special Committee on Juvenile Operations consisting of the following judges: Judge Honeyman, Shawnee County; Judge White, Leavenworth; Judge Rose, Liberal; Judge McClouskey, Pratt; Judge Lord, Winfield; Judge Noyes, Ulysses; Judge Nichols, Ottawa; Judge Haynes, Olathe; Judge Smith, Kansas City. Judges on the Special Committee on Minimum Standards of the Court had also been notified of the meeting. These judges included: Judge Corrigan, Wichita; Judge Farr, Garden City; Judge Elwell, Lawrence; Judge Lofferswald, Girard; Judge Haynes, Olathe; Judge Meyer, Emporia; Judge Morrison, Wichita; Judge Shay, Kingman; Judge Cotten, McPherson.

Judge Dean Smith, the first conferee, stated that he is concerned with the 16 and 17 year-old cases. He felt the certificate of waiver that was to become effective July 1 would facilitate procedures. The first certification scheduled time provision is the same for detention hearings. The time provision now in effect in the statutes is for a twenty-four hour period. He indicated this time provision should be extended and should not include Saturdays and Sundays. He has requested in Wyandotte

County that the age of juveniles be lowered. Wyandotte County borders Missouri and they have trouble with the 17-year olds from Missouri. If there are any commitments they are difficult to deal with and they use the facilities of Osawatomie and YRC at Larned.

He stated there is a definite need for security institutions. He has talked with both Dr. Harder and Governor Bennett about this need. There are no such institutions available and he recommended that study be done and action taken in this area. There are no other alternatives while the juvenile is being held but to put him in jail and this is not a satisfactory answer.

Judge Smith indicated that three terms: jurisdiction, custody and commitment should be clarified in the statutes. There is disagreement between the juvenile judges and SRS on these terms and unless the legislature clarifies the terms there may be a test case in court. In answer to a question concerning the conflict which exists on these terms, Judge Smith indicated that in K.S.A. 38-825 and 38-826 the terms are not clearly defined. The judge may commit the child in question but it is not clear what jurisdiction the court has, i.e., to hold hearings in case parents object, etc. In response to a question, Judge Smith indicated that the court can commit the child to SRS or to an institution. There is a provision for review under the SRS and SRS contacts the court because the court is the agency which committed the child.

In response to a question concerning a clarification of the time provision factor during which a waiver can be allowed to the district court, Judge Smith responded that whenever a petition is filed there are requirements for a notice which must be complied with by a detention hearing within 48 hours.

A question was raised concerning what decisions were made by the Judge with hard-core repeaters in the 16 and 17 year old age range. The Judge replied that prior to July 1 the options were limited. The district courts have decided that if a child has not been committed it will waive the hearing. The hard-core offenders stay in Larned for two days or so and then are out. The waiver statute now gives the court more leeway.

Judge Smith said he would define a hard-core offender as a person in contact with the court two or three times as in robbery cases, the person is not attending school, not working, etc. In response to a question, Judge Smith indicated that there was a problem of waiving both the hard-core offender to the district court and also the first offender. The first offense may be murder, for example, and the court rulings are indicating that there are problems in both first offenses and hard-core cases. He indicated there is little change of rehabilitation if the juvenile is convicted on an adult level. He is sent to Hutchinson to the Kansas State Industrial Reformatory. During the time period from adjudication to sentencing, around 60% of the cases are in jail. There is a definite need for security

institutions for 16 or 17 year olds and there is a question as to whether we need one facility or more than one. If the facility is located in Topeka, there may be difficulties in working with the parents of a boy who lives in Goodland. Perhaps, regional treatment facilities might be considered.

Judge Smith indicated he would furnish the Committee with a list of statutes to be reviewed with respect to the problems of jurisdiction, commitment and custody. In response to a question concerning the number of cases that might be involved in security facilities, he said he was not prepared to indicate how many cases - 25, 50, 150 - he had no statistics available. Mr. Pulliam of the State Department of Social and Rehabilitation Services indicated the closed facilities that are currently available in Topeka, Osawatomie, etc. In response to a question, Mr. Pulliam indicated that Shawnee County uses youth facilities at YRC, Youth Center in Topeka and Shawnee County facilities. Mr. Pulliam defined a security cottage as one that was kept separate, was a closed cottage, the staff goes to the cottage, meals are served in cottages, etc.

Judge Michael Corrigan of Sedgwick County was the next conferee. He indicated that swift justice for the juvenile becomes a mockery if the juvenile is held in jail. In the Wichita area, there are many boys placed at Lake Afton Boys Ranch. As far as security facilities are concerned, Judge Corrigan said he did not commit to YRC at Larned unless it was a very aggravated case. He would put the juvenile on probation. In many cases if a person is nearing the age of 18 the case will be forgotten because it is expected that he would be subject to an adult court within a short period of time. Another problem area is that district court judges take no cognizance of the juvenile's record. He said he was in favor of the waiver statute unless it was for commitment to a state institution. The court cannot be the movant, however, it is still up to the county or district attorney to be the movant in the case. The court hears but can't act. Judge Corrigan said he did not feel the age should be put back to 16 or 17 year olds. He said he understood in Nebraska and other states that the district attorney makes the decision to file in adult or juvenile court.

With respect to commitments to SRS, he said he thought SRS was a good agency but big and he felt there should be some procedure for judicial review. He indicated that this should be a direct legislative mandate. If the agency has made the wrong placement, for example, this can be corrected by judicial review.

He said there is no provision in the law to deny placement of status offenders (wayward, etc.) with more serious offenders. This should be corrected. Problems also arise with cases where security facilities are needed. Topeka State Hospital has 30 beds allotted to 15-17 year olds, males and females share facilities, and there is no security. In a response to a question as to what is directed by the court when juveniles need mental health treatment facilities, Judge Corrigan replied that they now come under the Probate Code and in Wichita they are placed in security in

St. Francis or Wesley Hospital. The juvenile court pays for the treatment process. McPherson is a good facility but not for those that need strong security.

Judge Corrigan indicated he felt the definitions of "wayward, dependency and neglect", in the statutes were too broad. He indicated there is a difference between dependency and neglect cases. If two parents die the child is dependent but not necessarily neglected. Neglect indicates fault, that someone has not done something. In response to a question as to whether there was an increase in cases of neglected children in Sedgwick County, Judge Corrigan indicated that the public is more aware of the problem and more sensitized to the issue. For example, current statutes grant immunity to persons reporting abuse cases, etc.

In response to a question concerning what you do to eliminate the problem of holding a juvenile in jail where it is likely that status offenders and hard-core offenders will not be separated, Judge Corrigan indicated there should be some kind of humane holding facility, a sheltered facility. The criterion for placement should be maturity rather than age. Sometimes beds are available in Larned, etc., but the juvenile is held in jail. Sometimes the problem is the paperwork which takes 60 to 90 days. There should be a facility right at the start for detention. Sometimes foster families can be utilized.

Judge Corrigan indicated there may be new facilities in Sedgwick County for juveniles if the county commissioners make the authorization. There also needs to be community facilities for those juveniles that have been before the Court. There also needs to be a middle-ground structured program on a regional or local level, somewhere between the probation program and those cases that need security. He indicated that some juveniles he has worked with have responded favorably when required to make restitution. In this way a sense of responsibility can be incorporated into the juvenile court system. Sometimes the juvenile can work in the community through the church program, Red Cross, etc., under supervision. In response to a question as to whether local facilities such as schools that were available since unification might be used, Judge Corrigan indicated that sometimes it is more expensive to renovate than to start a new project and that it would depend on the specific facilities available.

Judge Corrigan stated that two years ago legislation was passed requiring schools to report truancy cases to the juvenile court. He said that this amounted to something like 900 children being reported in the Wichita school district. He said he would need approximately 20 people on his staff to handle these cases and that unfortunately the legislature had not provided for funding for this purpose.

He said the schools in Wichita have approximately 26 social workers who are helping handle this type of case now. The court usually does not hear about these cases until the student has been a truant for 40-50 day periods. He indicated this was a public relations problem because it put the juvenile judge in a bad light with citizens who did not understand the difficulty in implementing the legislation.

In response to a question concerning Interstate Compact cases, Judge Corrigan said that usually a child is held in another state until someone is sent to pick him up. In many cases this procedure involved due process problems.

In response to a question concerning the 48 hour limit before detention hearings, he said this presented no problem in his county. He holds court every afternoon at 1:30 p.m. and an intake staff screens the juvenile before the judge screens him. The time might be extended to 72 hours before detention hearings are held. Parents are given 24 hour notice and can ask for continuance for 24 hours if necessary.

Judge Haynes, Juvenile Judge of Johnson County, was the next conferee. Judge Haynes said he had just returned from a National Juvenile Justice Convention. He said it was the consensus of the NJJC that status offenders should remain within the judicial system. There should be some forum available for this group. Since the Gault decision there has been a strong move to protect the rights of juveniles. Kansas is ahead of other states in this area. Juveniles should be informed of their right to an attorney and to a hearing. Judge Haynes agrees with the previous testimony of Judge Corrigan and Judge Smith concerning regional facilities. In a state study previously undertaken, ten regional facilities were recommended. There should be security facilities available at each regional facility rather than at just one. Judge Haynes said he also thought it was necessary to get away from the use of the word "criminal" in the juvenile court. We have become entrapped by the distinction between "criminal" and "status offender". Judge Haynes said he believed that children were not capable of formulating criminal intent. In reply to a question as to how he felt about the implication of habitual criminal concept written into the code such as three times a wayward escalated to miscreant, etc., he said he did not pay much attention to this, and gave some examples of ways in which he handles cases. He said he did, however, think it was a good idea to keep jurisdiction in the juvenile court over miscreants. He discussed the role of law enforcement officers and their relationship with the courts.

Judge Darrell Meyer, Juvenile Judge of Emporia was the next conferee. Judge Meyer said he disagreed with Judge Smith over the issue in lowering the age. He said he understood the study of the code included the role of the courts and the role of SRS. He saw a conflict in the two agencies with the court performing

Judge Honeyman also pointed up the problem of juvenile records. He said labeling comes from the law enforcement agencies. The court is instructed to send three certified copies of juvenile records (County Sheriff, KBI and FBI). He said he felt the Committee should be aware of the problem of invasion of privacy.

The Committee discussed the feasibility of legislation which would give the juvenile court the power to appoint a guardian ad litem to children whose parents were involved in divorce cases. It was pointed out that the judge can do this in a divorce proceeding case upon the filing of a petition. It was suggested if the state does take this action that they should provide for the attorneys fee as they do in guardian ad litem cases.

Judge Honeyman said he felt the appeal statutes for de novo proceedings in the District Court did not make sense. This procedure drives a wedge between the parent and the child, i.e., in a severance case. This provides a court record but it serves no practical purpose; there is no direction by the appellate court. The trial judges can not correct themselves. There should be some mandate by the District Court when the lower court is in fault.

Judge Honeyman said he sympathized with the problems of SRS with respect to the caseload of social workers. He said in child protection units that the caseload should be about 15 or 20 and most social workers have 30-50 cases. He said he was aware that SRS suffered from a lack of resources. He said that he had checked with several social workers and they had three major complaints: (a) frustration with the job, caseload, etc., (b) lack of resources in placement facilities, etc., and (c) communication problems. He said many go back for more education in their field and then leave and go with private facilities where they do not have the problems that they do in working with state institutions.

Judge Honeyman continued by stating that he did not feel that there should be a mixing of status offenders with delinquent and miscreant cases. However, with the present resources it is impossible to handle them correctly. He agreed with other conferees that the statutes on truancy need to be looked at. His court has reports of 70 to 80 cases per month. He questioned whether these cases should come before the court.

Discussion followed by members of the Committee and staff of SRS concerning the number of juvenile cases awaiting adjudication. Mr. Pulliam indicated there were three cases pending at the Youth Center in Topeka, one at Larned, and two at the Youth Center at Beloit. He said the number usually goes up in the spring and down in the summer. Such cases are more visible by the Police Department in the winter.

Judge Corrigan indicated there needs to be some study of recidivism. He said he felt some children were being released before they were rehabilitated because of the pressure for facilities. The average length of time that the juvenile stays at the Youth Center in Topeka varies up to six months and it is six to eight months in Atchison.

There was some Committee discussion as to the conflict in responsibility that SRS has for the juvenile and also to be responsible to the legislature. Judge Honeyman stated that as far as the metropolitan areas were concerned he felt that SRS was more concerned with funding problems and accountability to the legislature than in correct placement of the children. He felt the Court should have an automatic review every six months on placement because of the size of the system.

Judge Herbert Noyes, Grant County, was the next conferee. He is a lay judge who was appointed in September and elected in November. His county had 138 juvenile cases filed in 1973 and 151 in 1974. The type of case was similar to those in other counties only fewer in number. In addition to a clerk he has a part-time volunteer probation officer who was formerly with the Wichita Police Department. His cases consist of: 50% miscreant; 25% juvenile delinquent; 8% wayward; 8% d and n; 7% truancy. He said there were no detention centers available in his county, only two cells in the county jail. He uses two attorneys on a rotating basis for guardian ad litem cases and they also have a private practice. Judge Noyes says he tries to work out as many options as possible for placement of the juvenile but feels there are more options needed for judges and fewer restrictions. Judge Noyes described cases of 12, 13 and 14-year olds who have been placed with families in the community on a voluntary basis. He consults with a mental health counselor in placing children.

In response to a question concerning whether or not the statutes were clear about the necessity of a hearing in the child's home county, before change in placement, Judge Haynes said it should be made clear that this is available.

Judge David Lord of Winfield also presented testimony. He said he preferred placing the probation system under the Supreme Court as opposed to SRS.

Dr. Robert Harder, Secretary of SRS, was the next conferee. He said there was a need for the Committee to look at specific terms in the statutes such as: care, custody, jurisdiction, commitment, eligibility for payment, etc. He recognized

that there were areas of disagreement but said he was basically concerned with two things: a) providing the best possible care at the most opportune time, and b) developing resources for getting the job done. He said out-of-state placement was not always best but indicated there were cases when this was done. He said his agency had an ongoing and continuing interest in accountability to the legislature for funding.

The first area summarized by Dr. Harder was the section in the notebook material starting with the letter dated March 20, 1975 to nine judges, including the Services to Courts Section of the Division of Services to Children and Youth Manual. Specific statutes are included which relate to the responsibilities of SRS.

The second area summarized was the material included in a letter to juvenile judges, dated June 6, 1975, covering the method of payment (ADC-FC, GA-NC, GA CHILD). Graphs were included indicating the number of ADC-FC, GA-NC and GA Child Cases per month by county.

The third area presented included statistics covering the number of children committed to SRS giving age group, type of commitment, average number of days between referral and placement, etc.

The fourth area covered included information in a memorandum to Dr. Haines, dated April 28, 1975 regarding a juvenile programs survey. This information included type of facility capacity, percent occupancy, etc.

In addition, Dr. Harder is now getting computer printouts of placement of children county-by-county. He said this material is sent back to the county so they can check the list. In addition, he said he would be glad to furnish the Judges with periodic reports at any time the Judges feel this should be available.

He also distributed the following material to the Committee:

1. Recommendations to interim committee studying the Juvenile Code.

2. Care Pending Disposition of Status Offenses, Kansas Juvenile Courts, 1974.

3. Comparative Juvenile Court Statistics, Kansas Juvenile Courts, 1974, 1973, 1972. (See Attachments 1-3).

A member of the SRS staff indicated a representative of the American Public Welfare Association, Washington, D.C. would be glad to present further information to the Committee concerning the Interstate Compact on the Placement of Children. Staff agreed to contact the representative for future meetings.

Discussion followed between SRS staff and Judges concerning the role of the courts and SRS in placement of children and funding. Dr. Harder indicated that if SRS makes payments to children then they want to be involved in the placement. He said they did not want to be informed of the case only when the bill is sent to their agency. He said if the legislature wishes the court to make this decision they should indicate a special appropriation, Special Judges Fund, no limit, agreed to by the Governor. He said he felt this should be a legislative decision and not an administrative one.

Judge Haynes and Judge Smith indicated that this was a statutory problem that the courts have to commit to the Secretary of SRS so that eligibility can be established for welfare funding. It was indicated that usually SRS has input with the courts before disposition is taken. In only a relatively few cases is there a conflict situation.

Discussion followed concerning K.S.A. 38-824, 38-825 and 38-826 pertaining to the role of SRS and the courts in placement of children, and K.S.A. 38-834 relating to the appeal process. It was pointed out that under current statutes an unfit parent has no right to appeal. Only the child has the right to appeal. If for example the court orders the child taken to California, the district social worker must take the child to California at state expense. This may or may not be a good thing for the child but SRS cannot appeal this order. When asked to estimate the number of cases in which he felt there was a conflict between the courts and SRS, Dr. Harder indicated disagreement existed in approximately 10% to 15% of the cases. It was pointed out that sometimes there is a conflict between the local social workers and the central office concerning disposition of a case. Dr. Harder outlined some of the difficulties of out-of-state placement and said there might be around 120 out-of-state cases at the present time.

The Judges indicated that when they commit to a specific facility that they know what the disposition of the case will be but when they commit to SRS they do not know what facilities will be considered. Sharon Gordon, former SRS employee, indicated she had covered some of the material being discussed in a memorandum to SRS and had felt that specific guidelines should be given by the legislature to resolve the question.

The Chairman indicated the discussion would be continued during the second day of testimony. He indicated the conferees would be probation officers, a representative of the Kansas Council on Crime and Delinquency, and the League of Women Voters. Meeting adjourned.

July 23, 1975
Morning Session

Chairman Heinemann called the meeting to order at 9:00 a.m. and announced that the agenda would include testimony from probation officers, representatives of the Kansas Council on Crime and Delinquency, and the League of Women Voters.

Mr. Gary L. Marsh, Legislative Chairman of the Kansas Juvenile Probation Officers Association and probation officer of the Lyon County Juvenile Court was the first conferee. Mr. Marsh presented prepared testimony, (see Attachments 4 and 5). The first statement, (Attachment No. 4), reviewed the areas of the Juvenile Code which he suggested needed to be studied. These areas included: Dependency and Neglect (K.S.A. 38-716, 38-717 and 38-721); Definitions (K.S.A. 38-802); Venue (K.S.A. 38-811); Probation Officers (K.S.A. 38-814); Detention Hearings (K.S.A. 38-815e). The second statement (see Attachment No. 5), is a summary of the Juvenile Officers Training Program in the State of Iowa. Iowa has given the State Supreme Court the authority to establish training requirements for all new probation officers.

His statements suggest that by 1978 the Judge of the Juvenile Court shall appoint one or more persons to serve as probation officers with the exception of peace officers as defined in K.S.A. 38-815(a). His statement suggests that a committee of Juvenile Judges, juvenile probation officers, and representatives of the state colleges and universities determine the professional education and training requirements. He suggested that the Committee should determine the legislative intent of K.S.A. 38-814 and to determine more precisely the role of the probation officer. He said there is a difference in the role of the probation officer and the peace officer in that the probation officer does not initiate proceedings in juvenile cases. There was some discussion of H.B. 2489, introduced in the last session of the legislature, which would create an Office of Juvenile Probation and establish an advisory board.

Concerning the question of detention hearings, K.S.A. 38-815(e), Mr. Marsh said he knew of cases where juveniles had been held 51 days in jail with no petition being prepared and no probation officers being assigned. He said he felt that in examples such as these the basic rights of juveniles were being denied.

Further discussion followed concerning the problem of the relationship between the judge and SRS with respect to placement of the juvenile. A representative of SRS pointed out that K.S.A. 39-709 outlines the resource level and need concerning eligibility which has to be determined by the Secretary (used to be the State Board). The Juvenile Judge can commit to an aunt or uncle who could then apply for assistance. Under federal Social Security requirements and under 39-702 aid to dependent children is payable only in the home of a relative. Ten years ago the rules were relaxed for ADC foster care. The term "relative" is defined in the statutes.

He said there is a request from SRS to the Regional Attorney in HEW for an opinion relating to eligibility, placement and financial care. He said there are some judges which never commit to SRS but commit to a facility and then send the bill to SRS. He said that no federal funds can be used in placements to Beloit, for example. If the interpretation of the Regional Attorney of HEW is one of broad interpretation such as Judge Haynes indicated New York had received recently, then the problem would be resolved. It was pointed out that K.S.A. 38-802, 38-824, 38-825 and 38-826 should be clarified. It was also pointed out that recent court cases question the right of agencies such as SRS to move a child from one facility to another without coming before the court for review.

A representative of SRS said the specific question to the Regional Office of HEW was: could we receive federal financial participation when the child is not committed to SRS but, for example placed in a foster home, and does there have to be an additional requirement to commit to SRS. The problem arises when a Juvenile Judge commits directly to a facility, which some do, or commits to SRS for placement at a specific agency. If there is no vacancy at this agency there is a problem. It was suggested that it be specifically spelled out by statute that jurisdiction was either with the courts or with SRS. Probation officers are sometimes caught in the middle of the dispute and sometimes the court does not know the disposition of the child. The Committee should be concerned with K.S.A. 38-824 and 38-826, with respect to this problem. It was pointed out that one of the reasons SRS was to be consulted with respect to placement of the child was to safeguard against the possibility that there might be a Juvenile Judge who would perform his duties in a very punative manner. The legislation was to ensure that there remains a check and balance system. Since both agencies are dealing with the Juvenile Code, it would be better to have specific guidelines in the Code rather than rely on informal agreements between SRS and the courts.

Ms. Alleen Morris of the Kansas Council on Crime and Delinquency was the next conferee. She presented a document (see Attachment No. 6), which contained a summary of the Council's recommendations with respect to the guide. She stated that they had spent some time going over the areas of the Juvenile Code with a representative of the National Juvenile Law Center. She

stated a Committee of KCCD had been studying these matters for over a year. Her Committee consisted of Ann Hebberger, Diane Simpson, Sharon Gordon, Mr. Pulliam, etc.

Ms. Morris summarized the material included in the sections-definition, detention and basic rights. In the definitions, for example, the term "miscreant" is a harsh term and not in keeping with the philosophy of the Juvenile Code. Juvenile court jurisdiction over traffic offenders has been eliminated in many states. Status offenders, e.g., truants, runaways and incorrigibles should be removed from the Juvenile Code. The need for detention facilities was discussed. Mr. Marsh, Probation Officer, Lyon County, described the detention facilities used in Emporia.

Discussion followed on disposition of runaways and status offenders if they were removed from jurisdiction of the court. It was pointed out that the Children and Youth Section of the SRS Agency had been established to handle disposition of some of the cases mentioned, but the section had only a small staff and worked primarily with getting federal grants. It was pointed out by SRS that in many states the status offenders were being taken out from jurisdiction of the courts and establishing Youth Bureaus and Child Protection Agencies for such cases.

The Committee was referred to a document "Prevention and Control of Juvenile Delinquency in Kansas" published in 1972. This study was conducted under the supervision of the Division of Institutional Management of the State Department of Social Welfare and was financed by a grant of the Youth Development and Delinquency Prevention Administration of HEW through the Governor's Committee on Criminal Administration.

Afternoon Session

The Committee was called to order by the Chairman, Representative Heinemann who introduced the next conferee, Ms. Ann Hebberger, who presented a statement to the Committee (see Attachment No. 7). Ms. Hebberger said she was a member of the Board of Directors of the League of Women Voters and that the League had found it difficult to separate the problems of the Juvenile Code from the interpretations of the 105 juvenile judges. The League's position is that there should be a trial court of general jurisdiction which would deal primarily with family problems. Regardless of the system created the League outlined ten points that should be considered in a study of the Juvenile Code. The League takes no position on the dispute between some of the juvenile judges and SRS but suggests that the problem of placement after adjudication should be statutorily defined.

Statistics indicate that there are 30% to 40% or 45% of the cases at the Youth Center at Beloit for status offenses.

In reply to a question as to what should be done with status offense cases if they are taken out of the Juvenile Code, she suggested they could be heard in informal hearings. The use of Voluntary Action groups was discussed as a means of handling these cases. A representative of SRS pointed out that even if a voluntary action plan is implemented that these homes must be cleared for licensing, a protection for the children. A discussion of the facilities available for runaways, etc., in various communities followed.

Discussion followed as to items to consider for future meetings. It was suggested that there be further discussion on the Interstate Compact, consideration of specific statutes recommended by the probation officers, juvenile judges, and other conferees to be clarified, and information on the problem of truancy from the State Department of Education. Other questions to consider include: how different counties handle paperwork, i.e., when a juvenile is waived, what information does the district court judge need, etc. How many juveniles need security detention that cannot be housed at the present time? Are statistics available on the need for security facilities? Should there be some public input in Committee deliberation?

Further discussion followed on Senate Bill No. 577 and an evaluation of how many juveniles were served by community based facilities; the court reported 35% to 40%, institutions said 15% to 20%. After further discussion, the meeting adjourned.

Prepared by Myrta Anderson

Approved by Committee on:

August 29, 1975
(Date)

I Norden SRS
11/21/75

RECOMMENDATIONS TO INTERIM COMMITTEE
STUDYING THE JUVENILE CODE

Introduction:

As indicated in previous correspondence in writing to the Committee, SRS submits certain recommendations to the Committee regarding the Juvenile Code beginning K.S.A. 38-801 et seq. SRS's suggestions were stated in summary fashion in the previous memorandum to the Committee distributed on the 11th day of July, 1975. It is our understanding that the Committee is considering revisions to the Juvenile Code as well as adoption of the Interstate Compact on Placement of Children. Attached hereto, for the Committee's consideration, is a copy of the Interstate Compact on Placement of Children.

1. Definition of Parental Unfitness:

The Juvenile Code, in K.S.A. 38-824(c), provides no definition for determination by the court as to when and how a parent may be defined as "unfit". The Committee may wish to consider the defining of "unfit".

2. Temporary Custody Order Pending a Hearing (K.S.A. 38-819)

There are children who have been in the care and custody of SRS under such an order for much too long without there being a hearing. There are cases where this has continued for several years. The rights of both the child and the parents are being abused when they have not had "their day in court."

Recommendation:

1. Revision of the Juvenile Code to require notice of continuances and hearings to SRS when SRS has custody.

2. Upon filing of the petition in juvenile court, the court shall forthwith appoint a guardian ad litem who shall be an attorney at law who shall appear for, represent, and defend the child at all stages of the proceedings. The Committee should, in considering this recommendation, look at K.S.A. 38-817 which currently requires the court to forthwith notify the parent and child that the petition has been filed and that the child and the parent have a r right to retain counsel of their own choosing. If none is chosen in five days, the court shall appoint counsel. This section seems to indicate that the counsel will represent the child but it is not clear whether that counsel is also guardian ad litem for the child. It also implies that the interests of the parent and child are the same, when in dependency and neglect cases these interests may be opposite.

3. Judge Pro Tem

Recommendation:

Revise the Juvenile Code to require the appointment of a Judge Pro Tem to act in the judge's absence. Such Judge Pro Tem should be known to and available to district and branch SRS staff and law enforcement officials in the event of emergencies relating to children and youth.

4. General Continuances

Recommendation:

A review of K.S.A. 38-823 for possible amendment to subsection (b) to change the adjournment and continuance section, which states from "time to time",to "time certain".

5. Adoption and Relinquishment

Recommendation:

1. Revision of the laws relating to juveniles to include the legal process of adoption being held in the juvenile court rather than the probate court.

2. Revision of the laws relating to juveniles to include statutory requirements regarding severance of parental rights of fathers not married to the child's mother, consent to adoption and relinquishment of children to SRS and licensed private child placing agencies. Such provisions should conform to the U.S. Supreme Court decision in Stanley v. Illinois, 405 U.S. 645, 31 L.Ed. 2d 551, 92 S.Ct. 1208 (1972).

6. Right of SRS to Appeal

Recommendation:

The Committee should consider amending K.S.A. 38-834 to give other parties than the child the right to appeal from the juvenile judge's order. Current law limits the right of appeal to the child. A parent may not appeal a severance of parental rights unless they appeal on behalf of the child. The petitioner in the juvenile court action has no right to appeal. Agencies to whom the court has committed the child or parties who are affected by the court order have no rights to appeal. Many courts are currently committing children to SRS "for placement in a specific facility or home" with further specific requirements that the home or SRS provide psychiatric treatment, etc. Some of these orders may be inappropriate to the child's needs. If SRS complies with the court order it may be violating the child's civil rights. Since SRS has no right to appeal, it is faced with the option of either facing a contempt of court citation or following what SRS believes to be an invalid order. The current Juvenile Code, in K.S.A. 38-825 and 38-826

specifically directs the Secretary of SRS as to what to do with the child who has been committed to the Secretary. Even so, many of the courts believe they have a continuing responsibility beyond committing the child to SRS and have made orders directing SRS to do specific things with the child after commitment to SRS. This puts the Secretary in the position of trying to comply with the court order which may be in variance with the statutory directive in K.S.A. 38-825 and 38-826 which says that the Secretary has certain options which the Secretary should exercise. If the Committee could spell out more clearly the perimeters of authority given to the judge and those given to SRS, it would be helpful to both the courts and SRS.

THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Finding suitable homes for children who have lost or never had them is a problem with many facets. Most often it has been thought of as an illegitimate infant or one from a broken marriage. Frequently it's a child removed from parental neglect or abuse. Sometimes, it is a child who needs special care or services.

Public attention to the problem rides up and down like a roller coaster. It is intense in times of outcry against black markets in babies; it tails away to nothing when the supply of the more sought after children nears exhaustion. The belief then becomes widespread that the problem is solved because every child who can expect to have a home has been provided with one. But such thoughts are illusions. They are based on a skewed perception of the human needs involved.

The would-be parents and children have needs for love, security, and fulfillment that can be met only when children in need of placement are matched with adults who can care for them. Thus there is always a shortage. Sometimes it is of children to satisfy the needs of would-be adoptive or foster parents. At other periods the shortage is of parents for children who are less readily placed because of handicap or because they are from minority groups. There is also a continuing need to find homes for older children hitherto less often placed but who need family environments fully as much as do infants.

Satisfying the material, emotional and spiritual needs of children who must have families and of adults who want youngsters through foster parenthood or adoption produces a never ending series of searches. Most often they are carried on in the relatively small geographic areas surrounding the living places of the people immediately involved. The child caring and placement agencies (public or private) which may provide assistance or supervision are also local or those of a single state.

But experience shows that neither the needs of children nor adults can be met by restricting child placement services and supervision to the territory of any single state. A variety of circumstances makes interstate placements of children essential and offers compelling reasons for an interstate compact under which the jurisdictional, administrative and human rights and obligations involved can be protected. The Interstate Compact on the Placement of Children, which by 1973 had been enacted in 17 states, is that compact. The Compact's text is reproduced in full at the end of this statement.

The most obvious reason why interstate placements are necessary is that almost never is the number of children requiring place-

ments and the numbers and kinds of adults anxious and able to receive them in balance within any state or local area. If the surplus in either group is to be accommodated, its fulfillment must be found in another state.

Another circumstance of increasing importance is that families move, including many with children whose adoptions have not yet been perfected or who are in foster care not intended to eventuate in adoption. In the absence of the Interstate Compact on the Placement of Children such families face undesirable alternatives:

1. They may forego the move and so lose employment, career advancement or other personal benefits or necessities; or

2. They may leave the children behind thereby denying their own needs and those of the children; or

3. They may take the children with them (in some cases illegally) and create situations in which the normal legal and administrative protections surrounding the placement are lost.

The Interstate Compact on the Placement of Children is a legally and administratively sound means of permitting child placement activities to be pursued throughout the country in much the same way and with the same safeguards and services as though they were being conducted within a single state.

The Compact applies to placements preliminary to possible adoptions, placements in foster care where no adoption is contemplated, and institutional placements of adjudicated delinquents needing special services or programs not available within the state.

In brief, the Compact requires notice and ascertainment of the suitability of a placement before it is made; allocates in specific fashion the legal and administrative responsibilities during the continuance of an interstate placement; provides a better basis for enforcement of rights and responsibilities than now exists and authorizes joint actions of the administrators in all party states to further effective operations and services when either public agencies or private persons and agencies in more than one state are involved in a placement situation.

A single state acting alone is unable to effectuate similar procedures and safeguards because of its inability to give its courts and administrative agencies authority beyond its own territory. This is a jurisdictional limitation which is not overcome by the Full Faith and Credit Clause of the United States Constitution. Although Article IV, Section 1 of the Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State", this is not a proclamation that each state must enforce the laws of her sister states.

Full Faith and Credit applies only when a state's proceeding has had a jurisdictionally valid basis. Riley v. N. Y. Trust Co., 315 U.S.

343 (1941). It is not a grant which extends jurisdiction where none otherwise exists. In the absence of a multilateral law such as that of the Compact, jurisdistion can, in general, only be obtained when the parties and/or the subject of the controversy are within the state's territorial boundaries. McDonald v. Mabee, 243 U.S. 90 (1917). That an interstate compact can validly confer extraterritorial jurisdiction has, however, been reaffirmed many times, e.g. Gully v. Apple, 213 Ark. 350 (1948), Ex parte Tenner, 20 Ca2d 670 (1942). Accordingly, the Interstate Compact on the Placement of Children, which becomes valid law in each of the party states, grants the requisite jurisdiction to all of them to solve a number of specific problems encountered in interstate placements.

1. Unilateral laws seeking to regulate placements into other states or to restrict placements into the state from other states have no effect beyond the single state's borders. Many states, recognizing the need for some regulation of interstate placements have enacted child importation and exportation statutes. In general, these laws require that no child may be placed into or out of the state without consent of its public welfare agency. Consent is conditioned upon notification of the intended placement containing sufficient information for the agency to make a determination that it will not be undesirable. There is scant means of insuring compliance. The frequent statutory authorization for bond is largely ineffective, either because it is ignored or waived and because at best, it cannot substitute for any but the financial aspects of placement obligations.

For example, there is nothing to compel the sending agency or person located in another state to comply with notice requirements. Without prior notification, the state in which the child is placed has no opportunity to make any preplacement investigation. Thus, a child often arrives in the state without any determination being made as to the appropriateness of the environment. Such placements will frequently go entirely undetected and unsupervised until after something has gone wrong. Only then does a tragic situation come to the attention of the authorities. Often, those who should be responsible for taking remedial action are in another jurisdiction and cannot be reached by either administrative or court procedures. Furthermore, when a child is being placed out of a state, the state of origin has no assurances of the adequacy of the preplacement services in the receiving state, or even of obtaining any.

The ineffectiveness of these unilateral attempts to regulate interstate placements is indicated by the fact that although 29 states have importation statutes and 9 have exportation statutes, there have been very few attempts to enforce them. See In Re Adoption of Lunger, 28 N.J. Super. 614 (1953) (Statute making it

misdemeanor to place children in state without prior approval cannot be applied against placement agency located outside the state); In Re Blalock, 283 N.C. 493 (1951). (Had nonresident violators of exportation statute not placed themselves within the courts jurisdiction, their motion to dismiss would probably have been granted for lack of jurisdiction).

In contrast, the Compact provides a legally enforceable procedure for insuring that sufficient information is furnished for a determination as to the suitability of the placement (Art. III). Accordingly, there is assurance of having a sufficient determination that the prospects for the placement are satisfactory.

2. A state has no means of monitoring the performance of those who are caring for a child placed in another state. In the absence of the Compact, the sending state has no way of insuring that an agency or foster parents in another state are meeting their responsbilities toward the child. In general, one state cannot enforce the laws of another state in any affirmative sense. United States v. Constantine, 296 U.S. 287 (1935). The Compact provides the necessary authority for establishing legally sound agency relationships among public and private entities in the sending and receiving states and also makes valid the enforcement of the appropriate laws of either state in both the sending and receiving jurisdictions. See Bartkus v. Illinois, 359 U.S. 121 (1959), Abbate v. United States, 359 U.S. 187 (1959). (Punishing a given course of conduct in more than one jurisdiction not barred by the double jeopardy provision of the Fifth Amendment). This secures a means of assuring that information and supervision will be a practical reality. Furthermore, because the Compact becomes law in each of the party states, enforcement of its provisions by any one of them is actually enforcement of that state's own law.

3. Laws fixing responsibility for education, care or support of the child do not apply. Should a child be brought into a state without prior notification and arrangements, the state in which he is placed would ultimately bear the responsibility for meeting the child's welfare needs. Indeed, because absence of legal residence is not sufficient grounds for denying welfare assistance, the child has a right to the same basic support as would be provided a child already residing in the state. Shapiro v. Thompson, 394 U.S. 618 (1969). That support of a child placed from another state is a matter of concern is attested to by the fact that most of the importation statutes provide that the sending agency or person shall remain financially responsible for the child. Such an attempt to fix responsibility is often practically unavailing because it is unenforceable except by forfeiture of the bond. The Compact, which legally fixes financial responsiblity with the sending agency, gives the receiving

state a superior means to any other now existing of enforcing child support from the persons or agencies which should have the obligation.

4. Jurisdistion over the child ends at the state line. In the absence of the Compact, the sending state can no longer reach the child once he is placed out-of-state. Should a placement go bad, the state-of-origin has no means to effect removal of the child to a better environment or, if need be, to compel his return. Formerly, a child was considered to have no rights in regard to such a situation. He could be shifted about or placed at will but only by authorities who could assert jurisdiction over him. More recently, it has become established that, in addition, juveniles are entitled to a measure of due process. McKeiver v. Pennsylvania, 403 U.S. 528 (1971); In the Matter of Winship, 397 U.S. 358 (1970); In Re Gault, 387 U.S. 1 (1967). Consideration must now be given to the child's rights to proper procedures before he can be placed in a home or removed to another. Although this has always been desirable as good policy, it is now required by law. The Compact provides for the application of proper procedures consistent with the child's legal rights. It insures that the child's interest in protection from a bad placement situation will not go unremedied.

The Interstate Compact on the Placement of Children does not purport to supplant existing child placement laws, but rather is a valuable supplement to them. The Compact does not attempt to deal with all aspects of placements but only with those of particular significance for interstate situations. For example, although Stanley v. Illinois, 405 U.S. 645 (1972), is of great consequence in the field of child placement, it has no special bearing on the operation of the Compact. Such matters as relinquishment of parental rights or licensing of agencies, although of great concern in child placement are of equal importance whether the placement is intrastate or interstate. Those placement matters which are not uniquely of interstate concern remain within the realm of individual state action. The Compact provides the necessary legal framework for placements in which more than one state is involved, thereby improving protection for children and those who care for them.

TEXT OF INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

THE PLACEMENT

Policy

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ARTICLE III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to apossible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state.

Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

II Handler SRS 7/22/75

CARE PENDING DISPOSITION OF STATUS OFFENSES
KANSAS JUVENILE COURTS - 1974

Offense	No Detention	Jail or Police Sta	Detention Home	Foster Fam. Home	Other	Total
Runaway	864	209	341	18	55	1,487
	184	65	143	5	29	426
	341	345	30	2	39	757
	201	116	125	11	19	472
Totals	1,590	735	639	36	142	3,142
Truancy	1,181	2	12	0	3	1,198
	155	1	6	1	2	165
	350	4	2	1	10	367
	185	10	4	3	2	204
Totals	1,871	17	24	5	17	1,934
Curfew	1	27	1	0	0	29
Violation	0	1	0	0	1	2
	180	9	0	0	8	197
	78	8	0	0	1	87
Totals	259	45	1	0	10	315
Ungovernable	228	14	62	2	11	317
Behavior	112	21	46	3	12	194
	112	19	3	2	34	170
	122	21	12	2	11	168
Totals	574	75	123	9	68	849
Possessing or	263	1	3	0	2	269
Drinking Liquor	18	0	2	0	0	20
	201	7	1	0	2	211
	109	5	1	0	0	115
Totals	591	13	7	0	4	615
Other Offenses	196	6	16	1	2	221
	22	2	9	2	13	48
	89	4	0	0	7	100
	56	7	2	2	2	69
Totals	363	19	27	5	24	438
TOTAL ALL STATUS OFFENSES						
Big 4 - Unofficial	2,733	259	435	21	73	3,521
Big 4 - Official	491	90	206	11	57	855
Others - Unoff.	1,273	388	36	5	100	1,802
Others - Official	751	167	144	18	35	1,115
GRAND TOTALS	5,248	904	821	55	265	7,293
Percent	72.0	12.4	11.2	0.8	3.6	100.0

Note - Top figure in each category is unofficial cases handled by four metropolitan counties (Johnson, Sedgwick, Shawnee and Wyandotte); second figure is official cases handled by Big Four; third figure is unofficial cases handled by 97 smaller courts; and fourth figure is official cases handled by 97 smaller courts. (Barber, Clay, Morris and Marion counties did not report in 1974)

III Hamilton SRS
7/22/75

COMPARATIVE JUVENILE COURT STATISTICS
KANSAS JUVENILE COURTS
1974-1973-1972

	1974*	1973*	Increase 74/73	1972*	Increase 74/72
Total Cases	24,113	19,987	20.6%	17,698	36.2%
Delinquency Cases	18,999	15,435	23.1%	13,390	41.9%
Official	7,114	5,988	18.8%	5,052	40.8%
Unofficial	11,885	9,447	25.8%	8,338	42.5%
Boys Cases	13,690	11,070	23.7%	9,774	40.1%
Official	5,349	4,595	16.4%	3,899	37.2%
Unofficial	8,341	6,475	28.8%	5,875	41.9%
Girls Cases	5,309	4,365	21.6%	3,616	46.8%
Official	1,765	1,393	26.7%	1,153	53.1%
Unofficial	3,544	2,972	19.2%	2,463	43.9%

* - Barber, Clay, Marion and Morris counties did not report in 1974. These counties reported 42 cases in 1972.

\- Barber, Clay, Crawford, Marion, Morton, Phillips, Rush and Stanton counties did not report in 1973. These counties reported 214 cases in 1972.

\- Phillips and Stanton counties did not report in 1972.

Figures are for the calendar year and are compiled from reports submitted by the juvenile court to the State Department of Social and Rehabilitation Services.

KANSAS JUVENILE COURT DELINQUENCY CASES - 1974

State Total		18,999 (100%)
First Fifteen Counties		15,539 (81.8%)
Wyandotte	4,078 (21.5%)	
Johnson	3,606 (19.0%)	
Shawnee	2,243 (11.8%)	
Sedgwick	1,872 (9.9%)	
Douglas	631 (3.3%)	
Ellis	559 (3.0%)	
Saline	437 (2.3%)	
Reno	351 (1.9%)	
Lyon	334 (1.8%)	
Crawford	299 (1.6%)	
Montgomery	281 (1.5%)	
Franklin	228 (1.2%)	
Riley	221 (1.2%)	
Sumner	201 (1.1%)	
McPherson	198 (1.0%)	
Second Fifteen Counties		2,141 (11.3%)
Cherokee	188	
Pratt	188	
Leavenworth	178	
Bourbon	161	
Geary	154	
Barton	149	
Atchison	146	
Miami	142	
Cowley	140	
Seward	133	
Dickinson	127	
Finney	121	
Kingman	118	
Allen	112	
Ottawa	84	
Third Fifteen Counties		743 (3.9%)
Butler	74	
Harvey	71	
Grant	65	
Ford	62	
Thomas	57	
Jefferson	54	
Labette	54	
Stafford	45	
Ellsworth	43	
Cloud	42	
Wilson	42	
Greenwood	40	
Neosho	33	
Russell	31	
Brown	30	
Fifty-Six Other Counties		576 (3.0%)

* - Four counties did not report

KANSAS JUVENILE COURTS

CARE PENDING HEARING OR DISPOSITION (Delinquency including traffic)

	Calendar Year 1973			Calendar Year 1974		
	All Courts	Big Four	Other Courts	All Courts	Big Four	Other Courts
No Detention	13,662	7,540	6,123	17,086	10,252	6,834
Percent of total	77.2	77.5	76.8	80.0	81.2	78.3
Jail or Police Station	2,275	836	1,439	2,052	821	1,231
Percent of total	12.9	8.6	18.1	9.6	6.5	14.1
Detention Home	1,040	993	47	1,348	1,114	234
Percent of total	5.9	10.2	0.6	6.4	8.8	2.7
Other or not reported	720	361	359	867	438	429
Percent of total	4.1	3.7	4.5	4.0	3.5	4.9

WAIVED TO CRIMINAL COURT

Number Waived	55	33	22	99	54	45
Percent of total cases waived	0.31	0.34	o.28	0.46	0.43	0.52

ADMISSIONS TO KANSAS STATE YOUTH FACILITIES
(By Fiscal Year)

	Topeka	Beloit	LYRC	OYRC	AYRC	YCAA Eval.		TOTAL YC & YRC
1961	151	66				155		217
1962	155	66				131		221
1963	180	56				125		236
1964	188	66				152		254
1965	164	68				173		232
1966	168	65				170		233
1967	172	65				178		237
1968	156	67				171		223
1969	171	58				177		229
1970	165	67				174		232
1971	166	43				127		209
1972	128	68	30	27	40	118		293
1973	102	57	37	31	48	125		275
1974	122	72	51	43	30	111		318
1975	190	82	59	44	56	123		431

KANSAS

POPULATION BY AGE GROUPS - 1975

(1970 Census Projected)

Age	Born	Boys	Girls	Total
8	1967	17,448	16,789	34,237
9	1966	18,549	17,775	36,324
10	1965	19,752	19,093	38,845
11	1964	21,243	20,435	41,678
12	1963	22,024	21,015	43,039
13	1962	22,285	21,422	43,707
14	1961	22,987	22,475	45,462
15	1960	23,691	22,941	46,632
16	1959	22,809	21,883	44,692
17	1958	23,263	22,455	45,718
TOTALS		214,051	206,283	420,334

KANSAS

County	ALL JUVENILE COURT CASES - 1974 (Delinquency, Traffic, Dependency and Neglect and Special Proceedings)			DELINQUENCY CASES - 1974 (Delinquents, Miscreants, Wayward and Truants)		
	Total	Official	Unofficial	Total	Official	Unofficial
Allen	211	85	126	112	34	78
Anderson	12	12	0	10	10	0
Atchison	209	89	120	146	58	88
Barber	Did not report					
Barton	215	214	1	149	148	1
Bourbon	193	87	106	161	55	106
Brown	73	52	12	30	30	0
Butler	79	77	2	74	72	2
Chase	15	12	3	8	7	1
Chautauqua	25	24	1	13	12	1
Cherokee	220	70	150	188	57	131
Cheyenne	10	5	5	4	3	1
Clark	24	22	2	9	7	2
Clay	Did not report					
Cloud	57	25	32	42	23	19
Coffey	22	20	2	13	13	0
Comanche	3	2	1	2	1	1
Cowley	165	161	4	140	139	1
Crawford	333	299	34	299	299	0
Decatur	7	3	4	7	3	4
Dickinson	200	196	4	127	125	2
Doniphan	25	22	3	3	2	1
Douglas	757	249	508	631	193	438
Edwards	20	19	1	5	5	0
Elk	12	5	7	4	2	2
Ellis	672	84	588	559	63	496
Ellsworth	58	53	5	43	40	3
Finney	139	123	16	121	106	15
Ford	101	98	3	62	61	1
Franklin	260	30	230	228	28	200
Geary	184	103	81	154	75	79
Gove	6	6	0	0	0	0
Graham	26	24	2	12	11	1
Grant	122	26	96	65	25	40
Gray	21	21	0	8	8	0
Greeley	3	1	2	0	0	0
Greenwood	46	30	16	40	24	16

	ALL JUVENILE COURT CASES			DELINQUENCY CASES		
County	Total	Official	Unofficial	Total	Official	Unofficial
Hamilton	26	5	21	24	5	19
Harper	31	27	4	19	18	1
Harvey	89	89	0	71	71	0
Haskell	14	2	12	11	2	9
Hodgeman	1	1	0	1	1	0
Jackson	44	44	0	20	20	0
Jefferson	84	83	1	54	53	1
Jewell	11	1	10	10	1	9
Johnson	4,071	1,173	2,898	3,606	789	2,817
Kearny	4	4	0	2	2	0
Kingman	153	57	96	118	48	70
Kiowa	3	1	2	3	1	2
Labette	75	75	0	54	54	0
Lane	2	2	0	2	2	0
Leavenworth	271	269	2	178	177	1
Lincoln	54	52	2	25	24	1
Linn	34	33	1	11	11	0
Logan	39	20	19	24	10	14
Lyon	403	74	329	334	57	277
Marion	Did not report					
Marshall	34	23	11	24	18	6
McPherson	251	90	161	196	85	113
Meade	42	24	18	20	20	0
Miami	190	133	57	142	86	56
Mitchell	0	0	0	0	0	0
Montgomery	351	169	182	281	139	142
Morris	Did not report					
Morton	0	0	0	0	0	0
Nemaha	10	10	0	4	4	0
Neosho	114	113	1	33	32	1
Ness	20	20	0	6	6	0
Norton	29	27	2	21	19	2
Osage	27	27	0	18	18	0
Osborne	7	7	0	7	7	0
Ottawa	94	8	86	84	6	78
Pawnee	43	40	3	18	18	0
Phillips	36	34	2	26	24	2

County	ALL JUVENILE COURT CASES			DELINQUENCY CASES		
	Total	Official	Unofficial	Total	Official	Unofficial
Pottawatomie	23	0	23	21	0	21
Pratt	203	69	134	188	60	128
Rawlins	8	7	1	1	1	0
Reno	498	352	146	351	303	48
Republic	2	0	2	1	0	1
Rice	41	36	5	25	24	1
Riley	264	258	6	221	215	6
Rooks	30	30	0	21	21	0
Rush	4	2	2	3	1	2
Russell	46	22	24	31	19	12
Saline	470	100	370	437	82	355
Scott	74	71	3	24	24	0
Sedgwick	2,480	1,778	702	1,872	1,185	687
Seward	163	156	7	133	133	0
Shawnee	2,723	559	2,164	2,243	412	1,831
Sheridan	13	2	11	7	1	6
Sherman	69	22	47	20	19	1
Smith	8	8	0	8	8	0
Stafford	54	12	42	45	11	34
Stanton	7	0	7	0	0	0
Stevens	1	1	0	1	1	0
Sumner	245	98	147	201	81	120
Thomas	83	15	68	57	13	44
Trego	31	31	0	18	18	0
Wabaunsee	19	17	2	13	13	0
Wallace	5	5	0	4	4	0
Washington	7	7	0	2	2	0
Wichita	0	0	0	0	0	0
Wilson	61	60	1	42	42	0
Woodson	21	6	15	13	6	7
Wyandotte	5,278	1,232	4,046	4,078	848	3,230
TOTALS *	24,113	10,076	14,037	18,999	7,114	11,885

*-Four counties did not report in 1974

Kansas Juvenile Court Statistics - 1974, 1973, 1972

County	Total Court Cases			Total Delinquency Cases		
	1974	1973	1972	1974	1973	1972
Allen	211	201	191	112	109	95
Anderson	12	15	21	10	10	13
Atchison	209	223	175	146	181	137
Barber	-	-	10	-	-	5
Barton	215	232	230	149	167	166
Bourbon	193	154	142	161	125	105
Brown	73	107	82	30	31	35
Butler	79	77	35	74	67	25
Chase	15	10	1	8	-	1
Chautauqua	25	18	19	13	11	16
Cherokee	220	119	95	188	83	79
Cheyenne	10	11	9	4	7	2
Clark	24	23	24	9	4	10
Clay	-	-	-	-	-	-
Cloud	57	22	18	42	16	9
Coffey	22	14	6	13	11	5
Comanche	3	9	4	2	3	2
Cowley	165	198	113	140	166	101
Crawford	333	-	181	299	-	107
Decatur	7	13	5	7	5	2
Dickinson	200	139	98	127	85	59
Doniphan	25	27	15	3	14	3
Douglas	757	701	316	631	632	288
Edwards	20	13	13	5	8	8
Elk	12	14	8	4	8	1
Ellis	672	363	339	559	303	275
Ellsworth	58	55	26	43	87	20
Finney	139	42	84	121	41	82
Ford	101	114	93	62	66	39
Franklin	260	250	43	228	227	40
Geary	184	215	178	154	176	147
Gove	6	2	3	-	-	1
Graham	26	39	26	12	27	13
Grant	122	105	78	65	45	39
Gray	21	20	46	8	12	29
Greeley	3	7	1	-	-	1
Greenwood	46	54	33	40	30	18

Kansas Juvenile Court Statistics - 1974, 1973, 1972

County	Total Court Cases			Total Delinquency Cases		
	1974	1973	1972	1974	1973	1972
Hamilton	26	19	5	24	18	4
Harper	31	16	26	19	12	11
Harvey	89	134	88	71	92	74
Haskell	14	16	17	11	7	5
Hodgeman	1	2	2	1	1	2
Jackson	44	54	44	20	31	24
Jefferson	84	45	50	54	40	36
Jewell	11	15	17	10	9	13
Johnson	4,071	3,344	3,211	3,606	2,921	2,746
Kearny	4	16	11	2	10	8
Kingman	153	63	73	118	47	48
Kiowa	3	20	20	3	13	18
Labette	75	60	106	54	30	81
Lane	2	6	5	2	3	1
Leavenworth	271	251	238	178	156	174
Lincoln	54	29	10	25	21	6
Linn	34	15	22	11	8	9
Logan	39	32	14	24	20	7
Lyon	403	562	466	334	455	346
Marion	-	-	22	-	-	21
Marshall	34	21	14	24	16	12
McPherson	251	241	137	198	185	72
Meade	42	36	21	20	26	13
Miami	190	196	110	142	157	54
Mitchell	-	22	25	-	10	16
Montgomery	351	389	511	281	302	349
Morris	-	31	10	-	25	6
Morton	-	-	-	-	-	-
Nemaha	10	7	14	4	2	8
Neosho	114	153	143	33	31	28
Ness	20	19	17	6	7	7
Norton	29	37	14	21	30	7
Osage	27	48	30	18	34	12
Osborne	7	8	6	7	8	6
Ottawa	94	132	122	84	102	115
Pawnee	43	47	33	18	31	26
Phillips	36	-	-	26	-	-

Kansas Juvenile Court Statistics - 1974, 1973, 1972

County	Total Court Cases			Total Delinquency Cases		
	1974	1973	1972	1974	1973	1972
Pottawatomie	23	29	33	21	23	33
Pratt	203	195	201	188	162	177
Rawlins	8	10	9	1	5	19
Reno	498	525	409	351	303	192
Republic	2	6	21	1	5	19
Rice	41	100	42	25	61	23
Riley	264	243	132	221	202	82
Rooks	30	34	24	21	20	10
Rush	4	-	1	3	-	-
Russell	46	17	21	31	17	18
Saline	470	567	433	437	544	380
Scott	74	34	53	24	7	32
Sedgwick	2,480	2,516	2,583	1,872	1,972	2,040
Seward	163	151	144	133	114	115
Shawnee	2,723	1,038	999	2,243	704	630
Sheridan	13	10	2	7	8	2
Sherman	69	51	48	20	16	15
Smith	8	7	7	8	5	7
Stafford	54	10	15	45	9	15
Stanton	7	-	-	-	-	-
Stevens	1	6	15	1	3	14
Sumner	245	330	199	201	276	161
Thomas	83	76	13	57	71	11
Trego	31	14	13	18	8	10
Wabaunsee	19	14	9	13	9	6
Wallace	5	3	1	4	-	-
Washington	7	4	13	2	2	3
Wichita	-	3	2	-	2	2
Wilson	61	41	50	42	20	33
Woodson	21	23	10	13	7	2
Wyandotte	5,278	4,238	3,781	4,078	3,289	3,003
TOTALS	24,113	19,987	17,698	18,999	15,435	13,390

March 4
7/23/75

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

It is with a good deal of pleasure that we appear today before your committee and we wish to express our gratitude to you, Mr. Chairman, and to the staff for the assistance in scheduling.

Today in the state of Kansas there exists no uniform system of operative guidelines for Juvenile Courts, other than the Kansas Juvenile Code. This code has generally worked quite effectively over the years. However, there are some areas within the code that perhaps need to be more closely studied.

DEPENDENCY AND NEGLECT--K.S.A. 38-716, 38-717, 38-721

The stated intention of the State of Kansas is to provide for the safety and welfare of children. Further, it is now a crime for certain persons not to report suspected Child Abuse and/or Neglect. And yet, there is no statutory requirement of how long an agency has to preliminarily investigate and to determine if action is required to protect the safety and welfare of children.

There should be a statutory time requirement that would make it incumbent upon the agency or the court probation staff to promptly investigate any and all reports of suspect child abuse and/or neglect. This would then necessitate that Social and Rehabilitation Services child protective service staff be boosted in size and competency in certain areas of the state and further that child protective service workers positions be determined by number of reported cases and not by the same formula used to obtain other social worker positions, ie. number of people on assistance. There is no evidence to support the notion that people on assistance abuse their children more frequently than others.

DEFINATIONS--38-802

This statue is basically sound and requires only minor modifications. The legislature should be commended for providing for a breakdown of various levels of infractions of the law and of the code and for not labeling all youths delinquent simply because they are referred to the court system.

However, subsection (c) (4) should be deleted. There is no need to make a Wayward Child Miscreant and thereby consider him a criminal if he were an adult, simply because he or she has committed three or more Wayward acts. If the legislature wishes for the institutions to admit Waywards, then this should be provided for, but the law should not condone this backdoor approach which in some cases amounts to trumped up charges of injurious behavior.

Likewise, under subsection (b) (2), there is no need to make a Miscreant a Delinquent. The Juvenile Code is not a criminal court and making one guilty of a greater offense because of the number of times he appears before a Judge would be the same as finding one a habitual criminal. This is simply not necessary and should be deleted.

This association would recommend that the legislature give serious consideration to the entire matter of status offenses. It would appear that these cases could be handled outside of the Juvenile Court process, however, no decisions should be made until there is provided ample alternatives for placement of hard to manage youths who have violated no law and further until provisions are made for the effective handling of out of state runaway youths. Frankly, the area of the Wayward Child is one of the most difficult to deal with and prior to any decisions being made more study should be had as to the most effective method of dealing with these youths.

VENUE--38-811

It is recommended that venue be in the county of the commission of the offense for the purpose of ajudication, however, that for the purpose of disposition, the venue should be in the county of residency of the child.

PROBATION OFFICERS--K.S.A. 38-814

It is recommended that by 1978 the Judge of the Juvenile Court "shall" appoint one or more persons to serve as probation officers, with the exception of peace officers as defined in 38-815 (a). Further that due consideration be given to the area of professional education and training and that this be accomplished through a committee of Juvenile Judge's, Juvenile Probation Officer's, and representatives of the state colleges and universities.

This association also would like to go on record as supporting regionalization in probation services in the rural areas of the state. The statute provides for this, however, in the interests of economics it should be further pursued.

DETENTION HEARINGS--38-815 (e)

This statute has caused considerable controversy across the state since its implementation one year ago, however, it is a statute that should be kept with only minor modification.

It is recommended that the 48 hour provision remain, however, that Saturdays, Sundays, and Legal Holidays be excluded. Further the written 24 hour notice will be required unless the parties shall volunteer to appear.

An adult is afforded an immediate arraignment and a child should not be detained for extended periods of time unless it is found by the court in a hearing that continued detention is necessary for the three reasons set forth:

The Kansas Juvenile Probation Officer's Association recommends the above changes to this committee for their consideration. The Association does not feel that a complete overhaul of the Code is necessary. In our opinion Kansas has a workable Juvenile Code now and that a complete rewrite would not cause it to function better.

The Association would like to call to the committee's attention the matter of Probation Services for the state. We feel that the legislature should mandate these services for all court jurisdictions within the state.

For the purpose of implementing a state wide juvenile probation program, we would call the committees attention to the state of Iowa who has recently unified their court system and who provides these services through the Supreme Court of the state of Iowa. This appears to be a workable plan for Kansas and deserves close consideration.

The matter of providing staff in all areas of the state is only a part of the problem. Once, Kansas is committed to this end, the matter of staff education and training needs

to be statutory mandated. Kansas has, over the years, lost many talented probation officers due to the lack of continued training, salaries, and politics. The youth of the state deserve competent probation staff that can benefit from adequate salaries, and quality education.

Probation officers are unique individuals in as much as they must integrate the knowledge and the expertise of several disciplines into one for their jobs. They must be knowledgeable in the law, corrections, child welfare, and law enforcement. The combination of these serves as a fundamental rationale for lodging the administrative authority of the Kansas Juvenile Probation program within the state Court System. To be placed under the umbrella of Social and Rehabilitation Services could result in an undue emphasis on Social Services and a serious slighting of law enforcement, corrections, and the law. The same could be true of lodging juvenile probation with corrections.

GARY L. MARSH
Legislative Chairman
Kansas Juvenile Probation Officer's Association

GLM/sjm

March - 5

7/23/75

JUVENILE OFFICERS TRAINING PROGRAM
STATE OF IOWA*

Iowa has established, by statute provision for minimum standards for juvenile probation officers. The Iowa law vests with the State Supreme Court authority to establish training requirements for all new probation officers. To date there have been two training sessions of 5 weeks with 10 to 12 probation officer trainees.

A group of Iowa juvenile probation officers concerned about the need for training in fundamentals in juvenile probation work formulated a proposal which included the establishment of a training committee. The plan was supported by the juvenile judges and, with useful modifications, was adopted by the Iowa Supreme Court.

The Iowa juvenile probation program appears to be taking on a much higher level of professionalization. The Training Committee members note the predominant positive nature of the evaluations on the training sessions by nearly all participants. Greater care is being exercised in the selection of juvenile probation officers and there is some indication that probation officers view their employment with a greater sense of permanence and pride.

Iowa has recently undergone court reorganization and unification. The state is divided into a relatively small number of districts.* Juvenile judges are District Court judges. They are appointed and re-elected under the Missouri Plan which removes judges from partisan elections. This change has also contributed to greater juvenile probation officer stability, and by statute the juvenile probation officer is specifically prohibited from active participation in elections.

With the administration of juvenile courts lodged with the state judiciary, the important matter of salaries has been removed from the legislature. Salaries are set by a committee of District Judges. The budgets of the juvenile courts are set by the judges and the Iowa County Commissions are ordered to provide the necessary funds.

The training requirements which begin with all new probation officers were established officially on July 1, 1974. The first phase was the development of the five week training program. It is anticipated that additional phases will be added to include:

1. Specialized short term training programs of one day to one week.
2. Combinations of regionalized and state wide seminars. The Iowa Court Districts lend themselves to primary staff units which will help to eliminate the traditional isolated small county probation officer arrangement. These "units," though not yet formalized, lend themselves to productive training and mutual help groups.

* Under court re-organization and unification, Iowa has 8 judicial districts.

3. Curriculum development designed to encourage probation officers to develop and work toward strengthening their career preparation. The five-week training program is offerred on a credit basis. With the broad network of public and private state and community colleges and universities there are excellent opportunities for achieving advanced degrees, thus improving the quality of probation services.

The training program for the juvenile probation officers, as set out by the Supreme Court includes the following disciplines:

1. Law
2. Law enforcement
3. Corrections
4. Child welfare

These are accomplished with a curriculum design that includes twelve courses at the present time. These courses are as follows:

1. Criminal Law and Evidence
2. Juvenile Law
3. Court Systems
4. Probation and Parole
5. Alcohol and Drug Abuse
6. Child Abuse
7. Principles of Law Enforcement
8. Child Welfare
9. Community Relations and Resources
10. Investigative and Supervisory Skills
11. Probation Officer Seminar
12. Field Contacts (Exposure/Demonstration)

Attached are several official documents which set forth the present Iowa plan. These include:

1. Rules, standards, qualifications and training requirements. (Iowa Supreme Court order July 1, 1974.)
2. Order of adoption of an educational training program for juvenile probation officers. (By the Chief Justice of the Iowa Supreme Court, July 1974.)
3. Juvenile Probation Officers Training Program Course Descriptions. (Prepared by the Training Committee and Approved by the Iowa Supreme Court on March 24, 1975.)
4. A fact sheet on the Spring Session, 1975, Juvenile Officers Training Program. (Prepared by the Training Committee.)
5. The detailed, daily-weekly, calendar for the Probation Officer Training Program for Spring, 1975. (Prepared by the Training Committee.)
6. The State of Iowa Judicial District map of 1975. (One has to keep in mind that the population of Iowa is much more evenly distributed than is the population of Kansas, when making comparisons. Even so Iowa has roughly the same total population and has many sparsely populated counties.)

7. A training certificate sample copy. (This is furnished the probation officer on the successful completion of the training program.)

The Iowa juvenile probation program responds to the unique nature of juvenile probation work. It combines a knowledge of law, law enforcement, corrections and child welfare. In doing so the Iowa probation program aims to enhance the probation officer's work with the primary law enforcement and social agencies. It also provides a knowledge and skill base for working directly with youngsters and their families. All of this is centered in the court which is a court of law, and thus requires the probation officer to have a fundamental knowledge of criminal and juvenile law, and a knowledge of the court system.

The Iowa probation officer is not a policeman although he is expected to understand law enforcement. He or she is not a lawyer although expected to have a fundamental grasp of the law relevant to juvenile and family matters. The probation officer is not a social worker, however, he or she is expected to have a fundamental knowledge of helping methods and the skills to work effectively with youngsters, families and community resources. It is to this broad area of knowledge and expertise that the Iowa training program is addressed.

The combination of knowledge and expertise in the disciplines of law, corrections, child welfare and law enforcement serves as a fundamental rationale for lodging the administrative authority of the Iowa juvenile probation program with the state court system. To be placed with the State Department of Social Service could result in an undue emphasis on social services and a serious slighting of law enforcement, corrections and law. The same could be true of lodging juvenile probation with corrections. However, placed as it is under the administration of the courts, the juvenile probation system is directed to work with all four of these disciplines.

Summary of notes made in interview with Gary Ventling, Chief Probation Officer, Polk County Juvenile Court, Des Moines, Iowa, on June 27, 1975. Mr. Ventling was one of the originators and promoters of a statewide training program in Iowa. He also teaches the courses relating to probation practice.

Prepared by Forrest L. Swall, Training Associate for Probation and Parole, The Institute of Public Affairs and Community Development, July 7, 1975.

SPRING SESSION, 1975

JUVENILE PROBATION OFFICERS TRAINING PROGRAM

- FACT SHEET -

WHAT: A training program for new as well as experienced probation officers.

AUTHORITY: By order of the Iowa Supreme Court, dated July 1, 1974: "All juvenile probation officers appointed to office after July 1, 1974, must, within the first year of their employment, successfully complete a basic training program which is oriented toward the disciplines of law, law enforcement, corrections, and child welfare. Program length shall be not less than four consecutive weeks of five days each and not more than seven such weeks. The program shall be offered twice each calendar year."

ADMINISTRATION: Vested in a Training Committee appointed by the Supreme Court and consisting of the following members:

1. Don L. Tidrick (Chairman) Judge of the Juvenile Court, Des Moines
2. Ross F. Caniglia, Judge of the Juvenile Court, Council Bluffs
3. Richard C. Miller, Chief Probation Officer, Decorah
4. Gary Veatling, Chief Probation Officer, Des Moines
5. William Wilcken, Instructor, Hawkeye Technical Institute, Waterlo

WHEN: The Spring training session will begin on April 14, 1975, and will run for five weeks (Sunday evenings through Friday noons), ending May 16, 1975. The next session will be offered in the Fall, 1975.

WHERE: The Des Moines Area Community College, Ankeny.

CURRICULUM: Courses specifically designed to teach the basic and practical aspects of the probation officers job. Academics and field exposure will be intermixed.

INTENT: To promote universality of knowledge and standardization of procedures.

INSTRUCTORS: Regular faculty of the College as well as part-time faculty recruited by the College from the appropriate applied disciplines, including practicing probation officers.

PROGRAM CAPACITY: 25 participants per session. New probation officers covered under the mandatory clause of the Supreme Court order will receive preference for enrollment. Remaining slots will be open to other juvenile probation officers on a "first come first serve" basis.

SUCCESSFUL COMPLETION: Participating probation officers must maintain regular attendance as well as meet the academic requirements of the College. 12 credit hours (under-graduate) in Criminal Justice will be awarded by the College to successful participants.

Child Welfare

Physical, mental and emotional development of children with emphasis on problems of adolescence. Strategies and techniques for dealing with problems of exceptional children.

Community Relations and Resources

Practical patterns and modes of interaction, communication, and utilization of/with judges, attorneys, police, school personnel, social agencies, institutions, citizens groups, and other strategic resources.

Investigative and Supervisory Skills

Interviewing and counseling techniques for variable purposes and situations. Methods of gathering information for presentence reports; analysis of information; proper format; making the recommendations. Probation and supervision skills for delinquency, dependency and neglect cases.

Probation Officer Seminar

Guest lecturers on juvenile problems encountered, techniques and programs employed, and selected resources utilized throughout the state.

Field Contact

Participants will receive practical exposure and demonstration at numerous institutional and agency settings in the surrounding geographical area.

JUVENILE PROBATION OFFICERS TRAINING PROGRAM

COURSE DESCRIPTIONS

Criminal Law and Evidence

Principles of criminal law with particular emphasis on procedures, rights and responsibilities, case precedents, and component understanding of Iowa criminal sections. Included is a practical treatment of evidence and its admissibility. Mock juvenile hearings (both adversary and traditional) will involve program participants in the practical aspects of courtroom procedure.

Juvenile Law

A practical examination of Chapters 231 and 232 of the Code of Iowa, concentrating on the role of the probation officer and procedural distinctions of the juvenile process.

Court Systems

Examination and analysis of the Iowa Court structure and its functioning including a consideration of the judicial selection process. Special emphasis given to the Juvenile Court.

Probation and Parole

Developmental perspective on probation and parole as alternatives in the correctional process; traditional and contemporary practices; and emphasis on applied procedures including most recent legal decisions.

Alcohol and Drug Abuse

Specialized instruction in alcohol and drugs; their identification, uses, abuses, effects and symptoms. Special emphasis on Iowa's Controlled Substance Act. Consideration of contemporary treatment programs.

Child Abuse

Consideration of the phenomenon, its detection and causes; Iowa's Child Abuse laws; the relationship of public and private social agencies to the problem; and contemporary approaches toward resolution.

Principles of Law Enforcement

Development and philosophy of law enforcement systems; organization and structure; techniques of investigation and patrol; unique problems and techniques of the juvenile law enforcement specialist.

WITHDRAWAL: Probation officers who withdraw from the program prior to its completion may do so "in good standing" only upon written order of the appropriate juvenile judge and in conformity with the "withdrawal in good standing" procedures of the College.

RESIDENCY: During the five week session all participating probation officers will be lodged in a reserved block of rooms at a motel near the College. Rooms will be assigned on a double-occupancy basis and are reserved seven days a week for the entire session. Mandatory residency, Sunday nights through Friday noons, will be required of all participants.

FOOD: Breakfast and lunch will be served, Mondays through Fridays, by the College's Food Services Division. Dinner will be provided at the motel, Sundays through Thursdays.

TRANSPORTATION: The College will furnish a bus to transport participants from the motel to the campus and on field trips.

COST AND BILLING: LEEP funding will not be available for the Spring session. Total costs are currently estimated at approximately $725.00 and will include tuition, books, supplies, certain incidentals and room and board. The responsible county (or counties) of each participating probation officer will be billed at the conclusion of the session by the College's business office. Such costs are covered in Section 231.12, Code of Iowa, under "necessary and actual expenses." Probation officers and their judges may wish to alert their county boards of supervisors prior to attending, or may wish to seek funding through other sources.

FILED

JUL 1 1974

IN THE SUPREME COURT OF IOWA
CLERK SUPREME COURT

IN THE MATTER OF THE)
ADOPTION OF AN) O R D E R
EDUCATIONAL TRAINING PROGRAM)
FOR JUVENILE PROBATION OFFICERS)

The Supreme Court of Iowa hereby establishes the following "Training Requirements" for juvenile probation officers:

TRAINING REQUIREMENTS

All juvenile probation officers appointed to office after July 1, 1974, must, within the first year of their employment, successfully complete a basic training program which is oriented toward the disciplines of law, law enforcement, corrections, and child welfare. Program length shall be not less than four consecutive weeks of five days each and not more than seven such weeks. The program shall be offered twice each calendar year.

Administration of the Program shall be vested in a Training Committee comprised of five members appointed by the Supreme Cou The original appointment shall be 1 member for a one-year term, two for a two-year term, and two for a four-year term. The Court shall designate one of the four-year members to be chairma All succeeding appointments by the Court shall be for terms of four years. Two of the members shall be juvenile court judges, two shall be juvenile probation officers, and one shall be a collegiate-level educator in the criminal justice field. Vacanc created by the resignation of a member shall be filled for the unexpired term in the same manner as the original appointments. Membership on the Committee shall not constitute holding a public office and members shall serve without compensation.

It shall be the duties of the Committee to fix the dates an locale of each training session, to determine the curriculum content of the Program, to oversee the operation of the Program, to seek out and secure funding for the Program's operation, if necessary, and to develop rules, standards, and requirements, all subject to the approval of the Supreme Court.

The Committee shall make an annual report to the Supreme Co by December 31st of each year. Included therein shall be releva data regarding the curriculum, operation, standards, and the degree of participation in the Training Program.

Done this 1st day of July, 1974.

Chief Justice - Iowa Supreme Cou

Minn - 7/23/7-
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NOTE: Michigan House Bill No. 4704 has not been Xeroxed and included in the various appendices which refer to it. Rather, specific sections are referred to in the appendices, and the entire bill has been Xeroxed and included for easy reference.

I. DEFINITIONS

The definitions pertinent to the Juvenile Code are found in K.S.A. 38-802. This section contains two definitions which are not directly related to the children the code protects. First, a "children's aid society" is an organization purposing to provide care, control, or protection of dependent and neglected or delinquent children. Second, "parent" or "parents" are all persons having the legal duty to maintain care for, or support a child or children.

Six other definitions are of specific classes of children: delinquent, miscreant, wayward, traffic offender, truant, dependent/neglected. The term "miscreant" is peculiar to the Kansas Code and involves an element of stigmatization. The juvenile justice system was established as an alternative to processing youth offenders in the adult criminal system. One of the features of the new system was the development of labels to avoid the stigmatization of the adult vocabulary: children were delinquent, not criminal; they are adjudicated not tried; they receive a disposition, not a sentence. Miscreant, which means depraved or villainous, is a harsh term and not in keeping with the philosophy of the juvenile code. Furthermore, although the term is defined in order to distinguish the classification from delinquent, no other distinction for dispositional or any other purpose is drawn. [See Appendix A.]

Juvenile court jurisdiction over traffic offenders has been eliminated in many states. The caseload of the juvenile court is usually very heavy; by removing traffic offenses, the court's burden is eased considerably. Initially the juvenile system was

believed to be a major deterrent to crime and delinquency. Traffic violations are not that type of act for which juvenile court treatment is necessary. K.S.A. 38-802(e) retains jurisdiction over traffic offenders under 16; however, there seems to be no reason to include these offenders based on age.

Status offenders, e.g. truants, runaways, incorrigibles, should also be removed from the juvenile code. Many juvenile justice officials feel that eliminating the court's authority to hear cases which do not involve an injury to persons or damage to property would strengthen the juvenile system and decrease the court's caseload. This position reflects the fact that even though the court has helped many young people, it has also hurt many such youth. In addition, serious constitutional questions are raised when juvenile codes retain jurisdiction over status offenders. Statutes have been challenged as: void for vagueness (where the language of the statute makes it an offense to lead an "idle, dissolute, lewd or immoral life"); a punishment for a status [the status of being a drug addict has been held unconstitutional, Robinson v. California, 370 U.S. 660 (1962)]; a denial of equal protection (persons over the jurisdictional age are not liable for the same act done by a juvenile simply because of the age difference).

Language subject to challenge as vague can be found in the Kansas statute: "habitually disobedient to the reasonable and lawful commands of his parent..." K.S.A. 38-802(d)(3); or as punishment for a status (runaway): "deserted his home without good or sufficient cause," K.S.A. 38-802(d)(2). If a child is

declared a "wayward" child under one of these provisions, he is then declared a "miscreant" child [K.S.A. 38-802 (c)(4)] and will receive a more severe disposition. Thus on the basis of three status offenses which are not in themselves acts of delinquency or crimes if committed by an adult, the child is labeled a "delinquent." Clearly an adult would not be held responsible for these acts, which raises the equal protection issue.

Sanctions exercised by the court to curtail status offender acts by juveniles have been ineffective. Runaways and truants are not often helped by formal court action. Supervising the probation of these children demands the limited time of probation personnel that should be spent on more serious offenders. In addition, any child brought into a juvenile court is subject to the detrimental psychological effects of being labeled an offender and thereby feels stigmatized. There is a persuasive belief that this labeling and stigma causes significant and negative self-image problems for a juvenile. To avoid this effect, other sections of the code provide for the confidentiality and expungement of records and diversion from the system whenever possible. By removing status offenders from the juvenile code, the stigmatization problem will be eliminated.

Removing status offenders from the juvenile code does not mean that society is not concerned with this type of behavior or that no action should be taken. Rather, by removing these cases from the courts, other institutions would be forced to assume responsibility. For example, schools should be concerned with the problem of truancy.

The current Kansas school finance structure encourages local school systems to disengage problematic children from their systems, since schools need only retain such youth until the 20th of September to receive 100% funding for the entire school

year, regardless of whether services are delivered for the youth in question du[illegible] the remainder of the year.

A change in this formula could have the effect of insuring that the truant youth problem could receive a higher priority and claim on considerable federal funding available to the school systems through Title III ESEA programs. Parents and community agencies should also be allowed and/or required to deal with incorrigible youth and runaways rather than resorting to the courts to settle what are essentially family disputes.

Finally, what courts can do with these children is increasingly restricted by law and court decision. Many states now bar their commitment to state delinquency institutions; Maryland and New Jersey prohibit their pre-trial detention. Detention of status offenders violates the letter and spirit of In re Gault, 387 U.S. 1 (1967), which precipitated a narrowing of the focus of the juvenile courts to the more severe and repeated offender. By eliminating status offenders entirely, the limited resources of court personnel (judge, probation officer, prosecutor, defense counsel) can be maximized and the more serious problems will receive proper attention.

II. VENUE

In the juvenile court system, the issue of venue arises most frequently when a juvenile commits an act or is apprehended in a county other than the county in which he resides. The determination of venue is entirely dependent upon the statutory scheme of a particular state; case law on the subject of venue is very limited. According to K.S.A. 38-812, venue lies in the county where the child is found, where the juvenile resides or where the delinquent act is committed. Transfer is permitted at the discretion of the judge. Recent legislative proposals have established standards to guide the judge's exercise of discretion. [See Appendix A.] Statutory standards for the exercise of this discretion include a showing of "good cause," the "best interests of the child," and the "convenience of the parties."

Although there is no case law applying constitutional standards to venue in juvenile court, there is an argument to be made requiring that venue lie in the jurisdiction where the particular act was committed. This argument is based upon the "accurate fact-finding" test and the Sixth Amendment to the Constitution of the United States, which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law....[Emphasis added.]

In order to apply the Sixth Amendment to juvenile venue issues, it must be determined whether the adjudicatory stage of a juvenile proceeding is a criminal prosecution within the meaning of the Sixth Amendment. The Supreme Court has avoided

this question in the past fearing that such a holding would introduce needless rigidity into the juvenile justice system. In In re Gault,[1] the Supreme Court held that in spite of the fact that the Fifth Amendment specifically applies to "criminal cases," to so hold "would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings." The Court further held that "substantial fairness" and due process apply in juvenile cases.[2] Thus, the criminal prosecution question can be avoided by a thorough analysis of the rights, interests and policies involved in the juvenile process. The Court has characterized the protections provided by Gault as those designed to insure "accurate factfinding."[3]

In a venue argument the critical effect upon sound fact-finding is readily apparent: holding the trial where the alleged act occured would aid in the ascertainment and appearance of witnesses and in obtaining access to the evidence in the case. There is also an argument for the proposition that the child should be able to return to his place of residence for disposition. This argument could proceed from either of two approaches. First, it may be based on the grounds that the child's constitutional right to treatment requires individualized treatment tailored to meet the needs of the child. Arguably, this can most readily be accomplished in the place of the child's residence, where he and his family would have greater access to supportive and rehabilitative services and where the child has a greater chance to become a functioning member of society. Secondly, the present

statute, K.S.A. 38-801, establishes a statutory preference that the child receive such care, guidance and control in his own home as will be conducive to the child's welfare. Disposing of the case in a jurisdiction far from the child's home is clearly inconsistent with the home placement preference. [See Appendix B, proposals favoring venue in the county of the child's residence.]

III. JUVENILE COURT PERSONNEL

The present Kansas statute does not clearly define the function of each official in the juvenile court system and neither provides guidelines for decision making or places limits on the discretion exercised by court personnel in handling cases. Because court personnel must play carefully coordinated roles in this process, a proper division of labor is necessary to insure that court operations are responsibly conducted. For this reason, the statute should treat each official separately in creating the position; however, the role of the official must be defined according to the stage in the proceeding at which the person appears, thus recognizing that the entire juvenile justice system should function as a whole rather than as a group of disjointed components.

Initially juvenile court proceedings were envisioned as informal. The judge participated in every stage of the proceeding from the pre-adjudication stages where social investigations reports are considered, to the adjudicatory stage where a determination of the factual issues is made, to the final dispositional stage. For a number of reasons, it becomes apparent not only that such judicial participation gives rise to a charge of bias, but also that some structure in the juvenile court system is necessary to screen out cases in order to relieve the crowded court docket, to serve the interests of some minors, to divide the labor of the court to eliminate overlapping of responsibility and to aid in the orderly administration of justice.

The juvenile court referee serves an important function in the system and eliminates the possibility of a charge of bias against the judge for involvement in pre-adjudication determinations. While the prosecutor is concerned with the screening of complaints and conducting hearings in contested cases, the referee makes decisions based on the social investigation reports at the pre-trial stage in addition to conducting preliminary hearings and rendering other legal decisions. By the creation of the position of referee in addition to that of judge, the juvenile is assured fairness in the conduct of the proceedings at all stages, since decisions at each juncture are made by independent and impartial officials.

The referee's duties, however, must be carefully limited so that the hearings conducted before him do not become full-blown adversarial proceedings. Where a complete determination of contested issues is made at preliminary hearings before a referee and again before a judge, the issue of double jeopardy is raised. The referee should be involved only in reviewing the facts and issuing specific orders of a limited order, e.g., detention orders, probable cause findings. [See Appendix A.]

Juvenile court workers perform the important function of screening cases referred to the juvenile court. Like the referee, these court officials are concerned with evaluation data dealing with the child, the family and the community. Juvenile court workers make decisions about the course the proceedings will take. If the juvenile worker determines at the intake stage that formal court intervention is not necessary, the case may be

informally adjusted, i.e., a program of treatment for the child is established without a formal adjudication. The juvenile court worker thus has considerable power and exercises a great deal of discretion in handling cases. In order to limit this discretion and to prevent abuses, several branches of the juvenile court structure should be involved in the decision making.

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The prosecutor must fulfill a dual role, so that "while he is the community's primary weapon against delinquency, he is also expected to protect the constitutional rights of those children accused of delinquency, making certain that the juvenile justice system accords basic fairness and due process of law to them." Several other decisions are left to the prosecutor's discretion: to determine if sufficient evidence exists to warrant the filing of a complaint against a minor, and to determine whether a juvenile is to be transferred to the adult criminal system for prosecution

or remain within the juvenile system. However, the prosecutor cannot proceed with the charges until there has been a valid waiver of jurisdiction by the juvenile court according to the criteria laid down by the Supreme Court in Kent v. United States.[2] The same criteria are equally applicable to guide the prosecutor in determining in which cases a petition should be filed. Where the prosecutor is charged with determining whether to treat a youth as an adult, the decision is one within the bounds of traditional prosecutorial discretion.[3] However, since the juvenile court philosophy is based on the rehabilitative model rather than the punitive, the decision to prosecute must be based on an analysis of the needs of the child and of the amenability of the child to rehabilitation.

The complaint made to the juvenile court must be screened to determine 1) whether the facts alleged, if true, provide a basis for court action, 2) whether from the available evidence there are reasonable grounds to believe that the alleged facts are true, and 3) that the alleged acts are sufficiently serious to warrant court action. The prosecuting attorney or a lawyer employed by the court intake department should be available to screen the evidence in all cases and in a manner which assumes the likelihood of a trial on the merits. Screening of information concerning the offense should occur in all cases before any social investigation is begun. Also, in all cases in which a petition is filed a hearing to determine probable cause should be available upon demand of the respondent.

If juvenile court workers alone perform the intake function, scrutiny of the evidence typically receives little attention. The concern is whether the child and his family need help, an issue

which may be considered without considering the alleged offense. Insofar as attention is focused on the offense, the juvenile court worker infrequently screens the offense prior to the intake interview, ususally waiting to ask the potential respondent if he did the acts claimed.

Two major difficulties are presented in the inquiry concerning the offense by the juvenile court worker in his intake interview with the child and his family. First, juvenile court workers in some courts view themselves as helping persons and many times give the respondent a false sense of security, persuading him not to contest the charges since the purpose of the court is to assist, not to punish. The child or parent may realize later, when it is too late, that the helping person turned out to be one of the enemies. A second problem is that if a violation of the criminal law is alleged and the child admits involvement, the juvenile court worker is unlikely to ascertain whether the child admits all of the elements of the alleged offense, whether he may be asserting an available defense, or whether he is trying to take the rap for one of his buddies. The supposition is that the child committed an offense, but further inquiry might reveal this to be an incorrect assumption. If the case is not adjusted, it will be set for hearing and, with an admission to the offense expected, the juvenile court worker will begin preparation for the hearing on disposition. Consequently the primary focus at the judicial hearing will be disposition, and unless the child is adequately represented at the hearing, his plea of guilty may be accepted by the court with little scrutiny.

Similar problems occur in screening admissions to detention. Most admissions to detention and shelter care occur between 7 p.m.

d 3 a.m. In cases processed during those hours a judge is almost never involved in the initial detention decision; judicial review, if any, occurs later. Court probation personnel are typically assigned the responsibility to screen admissions to detention. In many courts this initial decision is delegated even when the court is open for business for the reasons that in a metropolitan court the judge may have a full docket of adjudicatory and dispositional hearings and in a rural court the judge may be available only a few hours each week.

Often the admission to detention or shelter care is made by a person who has very little training for his work. Only rarely are guidelines provided for the exercise of screening responsibilities. In fact, in some courts no real screening occurs; the child is simply checked in when brought to the facility by police officers or welfare personnel.

If pre-trial custody determinations are to be properly controlled, considerable attention must be given to the screening of admissions to detention and shelter care. The first pre-requisite often neglected in practice is that a written complaint be filed prior to admission of the child. A second task rarely performed is the effort to contact a parent or relative of the child. Many statutes require the police officer or other person taking the child into custody to inform the parents and to consider release to a parent before taking the child to a detention facility. (K.S.A. 38-815).

As a matter of court policy, the juvenile court worker should be required to contact a parent or relative of the child to explore the possibility of releasing the child. If the child is not released to a parent or relative, the juvenile court worker should have the immediate responsibility to explore alternative

pre-trial custody arrangements and to prepare recommendations for the care of the child to be considered by the court at the detention hearing. If a parent or relative has not been located and apprised of the time set for the hearing, the juvenile court worker should have the responsibility to continue efforts to contact a parent or relative to obtain his presence at the hearing. Studies of detention practices have indicated that the decision to release the child at the hearing will not often be made unless a specific plan for custody and supervision is presented to the court and the person to be responsible for the care of the child attends the hearing.

Court personnel should also have the clear duty to apprise the child and his parents of their right to counsel and where the party entitled to counsel is indigent, to act to have counsel appointed before the detention hearing. [See Appendix B for current proposals.]

IV. TAKING INTO CUSTODY

Certain procedures for dealing with children after they have been taken into custody are outlined in K.S.A. 38-815; however, the statute is silent concerning the procedures to be followed in taking a child into custody initially. Juveniles may be taken into custody under the same circumstances as adults: pursuant to a valid warrant issued by a neutral and detached magistrate, or without a warrant where an offense is committed in the presence of a police officer or where the officer has reasonable grounds to believe that a felony has been committed and that the person to be arrested has committed it.[1] It has been expressly found that the protection of the Fourth Amendment to the United States Constitution, to be free from unreasonable searches and seizures, extends to juveniles as well as adults.[2] In the juvenile system, however, different standards must be established to govern taking delinquent and neglected children into custody. In the case of alleged offenders, the taking into custody is in effect an arrest, while dependent and neglected children are taken into custody for their protection.

Generally, recent statutory proposals have reflected the idea that for purposes of determining its validity, the act of taking into custody will be considered an arrest. (See Appendix A.) However, the civil disabilities that follow an adult arrest will not apply in juvenile cases. The standard most usually applied in dependent and neglected cases is that the child be in an environment that "immediately" or "urgently" endangers his health. Both situations should require that the law enforcement official's

action be based on probable cause or reasonable grounds to believe that facts exist to support his actions.

V. INTAKE

The intake stage of the juvenile court process provides the most efficient and timely opportunity to dispense "treatment" to the alleged juvenile offender, yet it also represents an opportunity for inappropriate intervention into the family. Intake is critically important in the juvenile process since more than half of the referrals to juvenile court never proceed beyond this stage. When implemented properly, the intake procedure can reduce the considerable demands on limited court resources to managable levels. Secondly, intake should be used to screen out cases which are inappropriate for court handling. The referral function is the most important aspect of intake, a function which only a few courts perform adequately. Intake personnel should be aware of all youth-serving agencies in the community and be attuned to their treatment practices so that children can be directed to community programs as alternatives to court intervention in cases in which court authority is not necessary to provide needed assistance.

Intake is given little attention in the present statute (see K.S.A. 38-816). The present procedure authorizes the judge or probation officer to make a preliminary inquiry to determine if further action is necessary. An investigation is to be conducted "whenever practicable" and is not stated as a duty for the intake personnel to perform. Under K.S.A. 38-815 no investigation is made; there is only a detention hearing to determine the need for further detention, K.S.A. 38-815b. Thus children brought before the court in ways analogous to those of arrest and information in the

adult system are not screened to determine if formal court action is warranted. In view of the importance of the intake process,[1] it is recommended that the statute incorporate a clearly defined procedure for intake. Several deficiencies and problems exist in the present provision, K.S.A. 38-816.

The intake determination involves several questions: the seriousness of the alleged offense, the sufficiency of the evidence available, and the need of the child and family for some form of care or assistance. The judge or probation officer is not required to conduct a preliminary inquiry, K.S.A. 38-816(b), into the circumstances, the home environment and the child's previous history; however, it must decide whether further action is necessary. Without the information a preliminary investigation would yield, the court lacks a basis for its decision. Furthermore, the court is not required to consider the seriousness of the alleged offense even when a preliminary investigation is conducted.

Many juvenile courts have no written guidelines for the intake decision; a deficiency which has been criticized. "[W]ritten guides and standards should be formulated and imparted in the course of inservice training....Explicit written criteria would also facilitate achieving greater consistency in decision making."[2] Failure of a juvenile court to specify adequate procedures and guidelines for the intake process is currently before a federal district court.[3] This class action for declaratory and injunctive relief claims a denial of equal protection in that the right to release at a preliminary hearing in an adult criminal case unless a prima facie case is established is not accorded juveniles. The second claim is that juveniles are denied due process because

of the overbroad discretion allowed to the intake worker and the vagueness of the standards for his decision. Briefly stated, the arguments supporting this claim are: 1) that the lack of standards denies a juvenile the opportunity to make an intelligent, informed response in his attempt to secure a discharge at the intake interview, and 2) that the intake policy of automatically filing petitions against juveniles who deny violations of the law with which they are charged is not rationally related to the juvenile court's purpose of according individualized attention to juveniles.

The complaint seeks a declaratory judgment that the intake process as presently operated violates the juvenile's constitutional rights, and seeks to enjoin all further proceedings until juveniles are granted a preliminary hearing or an equivalent procedure to test the propriety of referring a juvenile to the court for formal adjudication. Currently trial of the case, is delayed pending adoption by the Pennsylvania Supreme Court of rules for the juvenile court process including intake procedures and standards. Several recent proposals have explicit intake provisions. (See Appendix A.)

The second major problem is the task of determining the proper role of the judge, prosecuting attorney and juvenile court worker at intake. Since adversary proceedings are not mandated,[4] there must be a clearly defined division of responsibility for the processing of cases in juvenile court. (See Section .) The court or a probation officer performs the intake function according to K.S.A. 38-816(b). There is no opportunity for the prosecuting attorney under K.S.A. 38-816 or

K.S.A. 38-815 to determine the sufficiency of the evidence.

The complaint made to the juvenile court must be screened to determine: 1) whether the facts alleged, if true, provide a basis for court action; 2) whether from the available evidence there are reasonable grounds to believe that the alleged facts are true; and 3) whether the alleged acts are sufficiently serious to warrant court action. The prosecuting attorney should perform this function in a manner which assumes the likelihood of a trial on the merits. Screening of information concerning the offense should occur in all cases before the question of the child's need for assistance is addressed.

If the juvenile court worker alone performs the intake function, there is a tendency to gloss over problems of proof. If the prosecuting attorney later tries the case, the prosecutor will undoubtedly complain about not having made the initial decision to proceed. On the other hand, if the prosecuting attorney alone makes the intake decision, he will usually confine his inquiry to the seriousness of the alleged offense and the strength of the available evidence. Referral and informal adjustment, distinctive aspects of juvenile court, will be severely diminished if not eliminated entirely if the prosecuting attorney alone makes the determination.

Subsequent to screening of the evidence, the juvenile court workers most knowledgeable concerning community resources should make the determination whether referral to a community agency may be more appropriate than official court intervention.[5] This is the current practice in Kansas according to K.S.A. 38-816, which

requires the judge to authorize the filing of a petition, a function clearly inappropriate for the judge. Several courts have held that the judge's review of social investigation reports or record of prior delinquency determinations prior to or during the adjudicatory hearing is ground for reversal.[6] In one case the court considered the Rhode Island statute concerning intake and held that the judge's participation in the accusatory as well as adjudicatory stages in juvenile court cases to be unconstitutional.[7]

In order to eliminate the possibility for challenging the statute and to provide the benefits of the intake function to juveniles, the current statute should be revised. See Appendix A for recent proposals which attempt to cure these defects.

VI. DETENTION

The current statutory scheme implements the right to a detention hearing, (K.S.A. 38-815b), which has been called the sine qua non of due process.[1] The decision to detain must be based on certain criteria set out in the statute to guide the decision maker. Preventive detention should not be allowed; the state must show that there is reason to believe that the child has committed an offense and there is a high probability that the child will flee if not detained. The statute is unclear concerning the time of the filing of a complaint alleging the acts which bring the child before the court. K.S.A. 38-815 directs law enforcement officials to take juveniles before a juvenile judge or probation officer and provide all the information he possesses concerning the juvenile and the circumstances. However, the juvenile court is not required to take this information into account at the detention hearing. The court merely determines whether detention is necessary according to the criteria listed at K.S.A. 38-815b(c).

Thus, although the child is given a detention hearing within 48 hours after being taken into custody, no determination is made that probable cause exists to believe the child committed the acts alleged. Where the juvenile in detention is not afforded a probable cause hearing, it may be argued that his detention is illegal and therefore he is entitled to release on habeas corpus.[2] In order to overcome this challenge, the statute should incorporate provisions so that the sufficiency of the charge against the juvenile is determined before the adjudicatory hearing. [See

Appendix A.] Those cases which do not meet the probable cause requirement should be dismissed, thereby avoiding needless detention of juveniles and saving the state the costs of detention and a full trial.

The statute requires that a guardian ad litem be appointed immediately, but does not define the duties of the guardian. [K.S.A. 38-815b(b)]. However, K.S.A. 38-821 specifies that the guardian be an attorney and appear, represent and defend the child. It would appear therefore that the child is represented by counsel at the detention hearing. The statute should contain a cross-reference to this section at section 38-815b or refer to the guardian as "counsel", since a guardian ad litem need not always be an attorney nor appear as one.

The places of detention and conditions of confinement are inadequately defined. A list of places where juveniles may be detained is provided in K.S.A. 38-819. A child alleged to be a delinquent or miscreant may be held in an adult jail facility, provided that there are separate areas for adults and juveniles. During the course of the hearing, the child can be transferred to a Kansas children's receiving home for care, treatment or evaluation, K.S.A. 38-823(c). Juveniles who have not been adjudicated delinquent should not be detained in jails. Furthermore, the conditions of confinement must be the least restrictive of the juvenile's freedom since the state's only justification for pre-adjudication detention is to insure the minor's presence at trial and/or protect the community.[3] The Juvenile Code should contain standards for juvenile detention facilities and jail facilities which are used for the detention of juvenile offenders. [See Appendix B.]

The current trend in legislation is to prohibit detention of juveniles in adult facilities, unless there is no other facility immediately available and then only for 24 to 48 hours. [See Appendix C.]

Finally, the time limits established by the statute should be revised. A hearing must be held within 48 hours, excluding Sundays and holidays according to K.S.A. 38-815(e). Because even temporary detention of a child away from home is a traumatic experience, a hearing should be held within 24 hours and operate continuously with no Sunday or holiday exclusions.[4] Detention may also continue after adjudication for 30 days before a final disposition is made. If a child has been transferred pursuant to K.S.A. 38-823(e), detention is authorized for 30 days after the filing of a report which can take up to 90 days from the time of transfer. Shorter time limits should be imposed to speed up the process so that juveniles are not kept in detention where they receive minimal treatment but rather promptly receive a final disposition so that rehabilitative treatment may begin.

VII. BASIC RIGHTS

The current Kansas Juvenile Code contains no provisions regulating the conduct of adjudicatory hearings nor ensuring that certain basic rights are accorded to juveniles. Certain rights have been extended to juveniles by cases which established minimum standards for juvenile proceedings. The case law is set out below. Recent legislative proposals indicate that the trend is to apply the rules of criminal procedure of the adult system in juvenile courts. [For examples of these proposals see Appendix A.] Although the rights enumerated below may be observed in practice in Kansas Juvenile Courts, it is preferable to have written guidelines, i.e. court rules or statutory provisions, so that the parties are aware of their rights in every case and all adjudications are conducted fairly and according to set standards.

The Supreme Court in In re Gault,[1] held that a juvenile has the right to be represented by counsel in a delinquency proceeding at which the juvenile is subjected to the possibility of the loss of his liberty by commitment to an institution. The language of Gault, that the child requires the guiding hand of counsel at every step of the proceedings against him, strongly suggests that the right to counsel should extend to all stages of a delinquency proceeding. The threat of loss of liberty attaches from the inception of any preliminary investigation against a child and extends through attempts for postdispositional remedies.

K.S.A. 38-817 requires the court to appoint counsel for the child within 5 days after the filing of a petition, if not retained by the parents for the child. Costs are to be assessed

against the parents. The child clearly has a right to be represented by counsel as the statute recognizes. However, the parents are not necessarily liable for the costs. In a Florida case, the parents of an alleged delinquent successfully argued that the common law duty to provide necessities to minor children did not include furnishing legal services.[2] Another problem that frequently occurs is parental pressure on the juvenile to waive the right to counsel. K.S.A. 38-817 does not include standards for accepting waivers; standards should be incorporated to eliminate undue parental pressure.

Although child neglect proceedings are often termed civil in nature, since Gault the viability of the civil-criminal distinction has been progressively eroded. Recently it has been held that the Constitution requires the appointment of counsel for parents, if indigent, in a proceeding on both due process and equal protection grounds.[3] The Supreme Court has frequently held that parental rights are fundamental.[4] The potential consequences of an adjudication of neglect are severe. A parent stands not only to lose custody and control of his child, but also to be stigmatized and subjected to possible criminal sanctions. Minimal procedural justice requires that the parent be given a meaningful opportunity to be heard and to defend himself.[5] The assistance of counsel is necessary to make the hearing meaningful since a parent may be without the requisite skill and knowledge to employ discovery procedures, analyze statutes, present evidence and protect his rights against self-incrimination.

In addition to the right to counsel, the Supreme Court mandated that a juvenile who faces possible commitment to a state institution be guaranteed the Sixth Amendment right to confront and cross-examine adverse witnesses and the Fifth Amendment privilege against self-incrimination.[6] K.S.A. 38-839 provides that the juvenile shall not be questioned until he has conferred with counsel; however the issues of the admissibility of statements made in custody, confessions and waiver of the privilege against self-incrimination is not directly covered.

Every court which has considered the question of whether the strictures of the Fourth Amendment bind police in their dealings with juveniles, has answered in the affirmative.[7] The decisions have been based on the following grounds: (1) the Fourth Amendment is not limited in its language to adults or to criminal cases, it is the right of every person to be secure against unreasonable search and seizure; (2) the rehabilitative function of the juvenile court would be seriously undermined if the police were not required to deal fairly and legally with juveniles; (3) since juveniles are entitled to the fairness guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Gault and In re Winship[8] and due process have been held to incorporate the Fourth Amendment protections, the arrest and search of juveniles must meet constitutional standards.

The exclusionary rule is equally applicable to exclude confessions obtained in violation of the Fifth and Sixth Amendments.[9] Courts have held that proper warnings must be given if a juvenile

confession is to be admissible, based on the belief that adolescents as a class will succumb more easily to the inherently coercive nature of police interrogation than will adults.[10] Confessions obtained even after technically proper warnings have been given may be excluded from evidence where the minor's young age is such that he could not understand the warning.[11] In addition, the presence of a youth's parents when he confesses, or the failure to notify the parents, or the ineffective or imprudent advice of a youth's parents can be important in determining whether a confession was constitutionally obtained.[12] There is a trend toward a requirement of the presence of either a parent, adult friend, or an attorney as a prerequisite to a valid waiver.[13] The minor, above the age where he could be expected to comprehend the nature of the warnings given, still requires the assistance of counsel in order to understand the consequences of any statement made. Absent the assistance and advice of counsel, a minor's waiver may not come within the requirement that it be "intelligent, knowing and voluntary."

Although the Miranda test applies only to custodial interrogation, the scope of 'custodial interrogation' has been left to the courts to develop. If a statement is made in a situation that does not fall within the category of custodial interrogation, the exclusionary rule is not applied. In the case of juveniles, instances of questioning may be seen as custodial interrogation that would not be considered such in adult cases. The age and inexperience of the person under interrogation are critical factors to be considered in assessing the effect that

the situation has on the person. A suspect is subjected to custodial interrogation not only when questioned while deprived of his freedom of movement, but also when questioned while he reasonably believes that his movement is restricted. This test is especially applicable to juvenile cases, where due to the juvenile's size and lack of maturity, he is more likely to perceive a situation as one where he is not free to leave than would an adult. The place of interrogation need not be a police station or squad car,[14] nor must the interrogator be a police officer in order to constitute custodial interrogation.[15] Thus statements made by juveniles should be subject to close analysis in order to protect the rights of the minor.

The present Kansas juvenile code does not specify the standard of proof required before a juvenile may be adjudged delinquent. The Supreme Court has held that proof beyond a reasonable doubt is required in delinquency proceedings.[16] The Statute should reflect this Constitutional mandate.

The Supreme Court has not recognized the juvenile's right to trial by jury,[17] however some states have granted this right by statute.[18] The juvenile may feel that he is being more fairly treated if he finds that he is entitled to the same fundamental right of a trial by jury as an adult. A child who feels he has been dealt with fairly and not merely expediently is a better prospect for rehabilitation.

K.S.A. 38-813 states that the code of civil procedure relating to witnesses applies to juvenile procedures, which insures the juvenile's right to confront and cross-examine witnesses, however

neither this section nor any other specifies the type of evidence that should be admitted at the adjudicatory hearing. The Supreme Court has recognized the similar situation of an adult criminal defendant and an alleged delinquent and has found that the alleged delinquent is entitled to many of the protections guaranteed an adult defendant.[19] An adult defendant may not be convicted on the basis of hearsay evidence or evidence obtained from incompetent witnesses. An alleged juvenile offender is entitled to similar protections. Receipt of hearsay is in violation of the juvenile's right to due process as guaranteed by the Sixth and Fourteenth Amendments to the Constitution.

The standards applicable to criminal cases should also apply when a guilty plea is under consideration by the juvenile court. The entry of a guilty plea is a critical step in juvenile proceedings. The plea waives the juvenile's constitutional rights to confront and cross-examine adverse witnesses and his privilege against self-incrimination.[20] The acceptance of the plea is tantamount to a finding of delinquency or neglect and there are serious attendant consequences. Therefore, the court should observe strict requirements before accepting the plea. There should be a provision in the statute that recognizes the necessity for voluntary pleas by a requirement that the plea or admission be accepted only if the subject fully understands his rights and the potential consequences of his admissions.[21]

VIII. TRANSFER OF JURISDICTION

The current Kansas provisions dealing with transfer from the juvenile court to the criminal court are found in K.S.A. 38-808(b). That section provides that "at any time during a hearing upon a petition alleging that a child is by reason of violation of any criminal statute a delinquent or a miscreant child....when substantial evidence has been adduced to support a finding that the child was sixteen (16) years of age or older at the time of the alleged commission of such offense, and that the child would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, the court may make a finding...that the child is not a fit and proper subject to be dealt with under the Kansas juvenile code.... The juvenile court may then direct the prosecuting attorney to bring an action against the child under the applicable statute, or, if prosecution previously commenced in another court has been suspended while the juvenile court proceedings were in progress, dismiss the petition and issue an order directing the other court proceeding to resume. The statute provides that the juvenile court's order here may provide thereafter that the juvenile court's jurisdiction no longer applies to this juvenile.

Case law fills in some of the gaps of K.S.A. 38-800. In In re Templeton, 202 Kans. 89, 449 P.2d 158 (1968), the court approved the application of the Kent requirements to the transfer process in Kansas. The Supreme Court has held that the juvenile in a transfer proceeding be accorded fundamental due process, stating that waiver was a "critically important" stage in juvenile

proceedings, determining "vitally important rights of the juvenile."[1]

The Kent court required that a juvenile have notice of waiver proceedings, a hearing on the question of waiver, access to social records upon which the waiver decision will be based, and that the court list its reasons for waiving jurisdiction. Even though the Kansas statute does not specifically list these requirements, Kansas courts, after the Kent decision, have incorporated them into the statute.

Although K.S.A. 38-808 does not require an investigation before a waiver petition is filed, K.S.A. 38-816(b) requires an investigation before any petition, including a petition requesting waiver, is brought before the court.

K.S.A. 38-808, like many other waiver provisions, gives only an indefinite standard for determining when waiver is appropriate, i.e., that the child is not amenable to treatment. Case law gives further guidance as to how this determination is to be made. The Kansas Supreme Court has determined that the seriousness of the offense involved is not determinative in waiver proceedings and outlined the following factions to be considered in determining amenability to treatment: (1) social record and staff reports, (2) prior attempts at rehabilitation, (3) nature of previous delinquency, if any, (4) success or failure of prior probation, (5) cause, nature and result of prior counseling, (6) the persistence of prior misconduct, and (7) effort to determine the degree of culpability of an individual if more than one person is involved in the offense.[2]

The Kansas courts have also required that the three findings required for waiver, i.e., age, alleged violation of a criminal statute, and nonamenability to treatment by the juvenile court, be supported by substantial evidence.[3] "Substantial evidence" has been defined as evidence possessing something of substance and relevant consequence and which furnishes a substantial basis of fact from which issues tendered can be reasonably restricted.[4]

Waiver generally represents a determination by the juvenile court that a particular child is not suitable for its treatment. This process carries with it serious consequences for the child. Therefore, it should be accomplished only through provisions designed to protect the child. The current Kansas statute is deficient in this area. [See Appendix A for examples.]

The Kansas courts have attempted to set out standards for determination of waiver. But, in order to protect the child, it is desirable that the statute itself suits these standards. [See Appendix B.] The legislature might incorporate some of the standards discussed in recent Kansas cases.

In light of Kent, and In re Gault,[5] notice of the proceedings is constitutionally required. The fundamental requirements of due process are violated if the child does not have an adequate opportunity to prepare to defend against a charge that he is not amenable to treatment by the juvenile court. A statute governing waiver should provide for timely notice of the proceedings to be directed to the juvenile, his parents or guardian, and his counsel. [See Appendix C.] Model Rules for Juvenile Courts (1969), Rule 10, requires notice at least

48 hours before the hearing.

A minor involved in waiver proceedings should also be notified of his constitutional right to counsel and of his right to remain silent.[6] Kansas should make some provision for such notice. Model Rules for Juvenile Courts, supra, Rule 10, provides that a summons to a child carry notice of these rights. Rule 11 permits no waiver of counsel at a transfer hearing because of the inherent seriousness of these proceedings.[7]

Time limitations on waiver proceedings may be desirable. It is in the child's best interest that undue delay in juvenile proceedings be avoided.

Although Kansas case law recognizes the necessity for a hearing on the question of waiver[8] the statute makes no provisions for the conduct of such hearing. It is desirable that a waiver statute outline hearing procedures. Kansas courts have specifically held that a probable cause finding is not essential for waiver.[9] Many states now require this finding. The requirement is similar to the requirement in adult criminal cases that there is probable cause to believe that the defendant has committed an offense before he is arrested and tried. It seems logical to extend the requirement to juvenile waiver proceedings, where the consequences of an adverse finding may be as substantial as an adult trial and conviction.

It is desirable that the statute itself recognize counsel's right of access to social files in waiver proceedings. This right is mandated by Kent. Parties need this access in order to defend against any adverse influences in this material.

The current Kansas statute makes no provisions for disqualification of a judge who has presided at waiver proceedings

where waiver has been denied. A judge in this position has heard evidence prejudicial to the minor. He should not be permitted to make an ultimate determination of the minor's guilt or innocence.

A Supreme Court decision in May of this year requires that a juvenile adjudicated delinquent may not subsequently be transferred to the criminal court.[10] Such a procedure violates the Double Jeopardy clause of the Fifth Amendment as applied to the states through the Fourteenth Amendment. The current Kansas statute seems to recognize this since it provides that criminal proceedings may only be initiated after the juvenile court has waived jurisdiction and waiver apparently must take place prior to a delinquency adjudication.

The current statute does not specify who is to initiate waiver proceedings.[11] A child should not be considered for waiver unless there is some evidence that he has committed the alleged offense. A prosecutor is more competent in deciding whether a case has prosecutorial merit. Initially, the prosecutor should either bring the waiver petition or be required to approve such petition before it is filed. [See Section III, Juvenile Court Personnel.]

IX. DISPOSITION

Dispositional alternatives available to the juvenile court are listed at K.S.A. 38-826. No criteria is provided, however, to guide the judge in selecting an appropriate disposition nor is there a requirement that certain alternatives be exhausted before a more drastic or severe alternative is ordered. The only limits placed on the selection of a disposition are based on the nature of the charge against the child; only those children adjudged delinquent or miscreant may be committed to a state industrial training school. [K.S.A. 38-826(a); 38-826(b)] Furthermore, if the judge places the child on probation or in the custody of a person or institution, additional conditions may be imposed which are not spelled out in the statute. Finally, the court may modify its disposition at any time (K.S.A. 38-829) and a child may be transferred between institutions [K.S.A. 38-826(e)] without a rehearing. The statute also does not provide for a hearing to determine disposition after the adjudicatory hearing.

With these general statutory directives as the only guideposts for the court, how is the child to be assured a helpful disposition? It is generally conceded that since the dispositional order may be critically important for the future of the child and his family, fairness requires that a hearing be held to determine disposition.[1] The right to a hearing would be of little avail if it did not comprehend the right to the assistance of counsel. The question of the right to counsel on constitutional grounds has rarely been litigated for the simple reason that counsel has usually been allowed at least some function at disposition.

However, the proper role of counsel at disposition has been

ıe subject of litigation recently in other states. If the judge denies counsel the right to present a dispositional plan the juvenile court order has been reversed.[2] Counsel should have access to the social investigation report to enable the child to dispute erroneous facts contained in the report.

In holding that a juvenile has the right to a hearing in a proceeding to waive jurisdiction to the criminal court, the U.S. Supreme Court ruled in Kent v. United States[3] that if the court staff's reports include "materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to denigrate such matter."

Although consideration of the social investigation report is important in tailoring disposition to the individual child, care should be exercised that the judge does not consider dispositional material before or during the adjudicatory hearing.[4]

The next question is the issue of hearsay evidence, assertions offered as testimony but not open to test by cross-examination. For example, the social study may contain statements of neighbors, teachers, and psychologists; these would be hearsay unless the person quoted is present for cross-examination. With some technical exceptions, hearsay evidence is excluded from fact finding proceedings in the courts. The juvenile court hearing has been the notable exception until Gault and Winship[5] which require that an adjudication of delinquency be based on competent evidence and proof beyond a reasonable doubt.

In a recent case[6] the Colorado Court of Appeals dealt squarely with the issue of hearsay at disposition. The Court noted the

potential unfairness in hearsay reports but resolved the question by pointing to a section of the statute which allows parties to compel authors of disputed reports to attend the hearing. In a surprising number of recent cases, commitments to juvenile institutions have been reversed for the reason that the juvenile court judge had not properly considered evidence concerning the child's welfare.[7]

The juvenile court worker must be able to identify a number of dispositional alternatives reasonably appropriate to the case. Next, he must be able to articulate the underlying theoretical assumptions of the particular "treatment" plan he is proposing to the court and explain specifically how his plan will operate. What are the "treatment" goals, how do they benefit the child, and how do they mesh with the original reason for the court appearance? In view of the statutory preference for dealing with a child in his home or a home substitute, the court worker who recommends placement outside of the child's home should be able to set forth reasons why removal from the home is necessary. If commitment to an institution is recommended, the court worker should be prepared to explain why a foster home, group home or other "community-based" placement is inappropriate.

The most common disposition is probation. Although the aim of probation is to provide needed guidance and "treatment," its chief characteristic is the imposition of limitating conditions on the child's continued freedom. Where the statute is silent concerning permissible terms of probation, the judge is apparently free to follow his own predilections in setting conditions. In

light of recent cases, probation conditions are subject to certain limitations.

Restitution for injuries caused is a favorite term of probation. The first problem is that the amount of damages is not an issue in a delinquency case but is a proper issue in a civil damage suit. Unless the child agrees to the valuation, the court has no basis for determining the amount of restitution.[8] A second problem is that a child is usually without financial resources of his own and the burden of payment will fall on his parents.

Requiring the probationer to remain within the area is a fairly common condition related to the need to supervise the child. Occasionally, courts turn the coin and prohibit the child from entering certain places or associating with certain persons. In a number of adult cases such restrictions, when not carefully drawn, have been held to conflict unduly with the rights to freedom of expression and assembly.[9]

Ideally, probation conditions should be spelled out specifically by the judge so that the child has a clear understanding of the behavior expected of him. Also, any condition imposed upon a juvenile must be consistent with the rehabilitative goal. The Michigan Court of Appeals has even applied this rehabilitative requirement to a criminal case involving a young college student who played for his school's basketball team. Following a plea of guilty to charges of breaking and entering, one condition of probation imposed was that he could not play either college or professional basketball without the judge's consent. His appeal

challenged the validity of this condition on the ground that it was irrelevant and even detrimental to his rehabilitation. In eliminating the condition, the Court placed the burden of justifying the terms of probation on the prosecution and probation personnel; conditions of probation should be pertinent to the offense or the rehabilitation of the offender.[10]

The order of probation may not be the end of the case. Probationers are often brought back to Court if the juvenile court worker feels that probation is not working properly. After the judge has entered a dispositional order, it may be amended or supplemented at any time.[11]

The statute is silent concerning the procedures to be followed. A recent Michigan case indicates that a child should have the right to a hearing and counsel prior to modification of disposition in juvenile court. In that case a young defendant had been placed on probation as a youthful trainee. At the "hearing" at which his probation was revoked, the judge heard no evidence as to violations on the ground that the youthful trainee statute gave him absolute discretion to revoke. Adult probationers, however, have a statutory right to notice and hearing and, applying the Equal Protection clause of the U.S. Constitution, the Court held that the same right should be afforded to juveniles under the youthful training act.[12] This reasoning applies equally to juvenile court cases.[13]

The burden of proof required to support a modification of disposition has been held to be a preponderance of the evidence.[14] However, when the alleged violation of probation is a criminal offense the burden of proof should be beyond a reasonable doubt.[15]

X. RECORDS

Drafters of juvenile statutes have recognized that however benevolent a juvenile system may be in design and however successful it may actually be in instilling the proper attitudes and values in a child, society as a whole considers a graduate of the system the equivalent of an ex-convict. The average citizen sees no difference between the act of assault with a deadly weapon committed by an adult and that same act committed by a child. Likewise a commitment to a training school or other juvenile facility is viewed as the equivalent of imprisonment, an outlook also shared by confined children who see their tenure in an institution as "doing time." Furthermore, commitment to a juvenile institution is viewed in the same harsh light whether imposed for an act that would be a crime if committed by an adult or for a status offense such as habitual truancy. Because these attitudes are so prevalent, it is obvious that a child who has been processed through the juvenile system may suffer the same social and economic ostracism faced by an ex-convict.

There are many instances where a person will face discrimination because of his contact with the juvenile court system. Job opportunities may be limited because application forms often require the applicant to state whether or not he has ever been arrested or taken into custody. Educational opportunities may also be impaired when application forms require information about previous arrests or prior court action. Recognizing the near impossibility of changing societal views toward juvenile offenders, the harmful effects of a delinquency adjudication have been combated

by statutory schemes providing for the concealment of juvenile records to aid the child's reintegration into society.

The major issues in this area concern the use of juvenile court records in subsequent court proceedings against the same child and access to court and police records by the child and other parties. As one means of minimizing the adverse effects of a juvenile adjudication, many state statutes provide that no adjudication, disposition, or evidence from a juvenile proceeding is admissible against a child in any criminal or other action, except in subsequent juvenile proceedings involving the same child.[1] The record may also be used as an aid in sentencing if the juvenile is ever subsequently convicted of a criminal charge as an adult. Although juvenile records under such statutes were not admissible, recently the Supreme Court has held that they can be introduced in a criminal prosecution to impeach the defendant's testimony.[2]

Access to juvenile court records is generally limited by statute in most states. Ordinarily only the juvenile or his representatives, court personnel or an agency having custody of the child will have access, but the juvenile judge is often authorized to release this information to an interested third party, e.g., news media reporters. By giving the judge discretion to release this information to "outsiders," a loophole is created that permits information to be gained by prospective employers, educational institutions or the military, and so adversely affect the child. Regardless of the intent of the statute to protect the child, the child suffers as long as anyone other than the child

or his representative has access to court records.

According to K.S.A. 38-815(a) juvenile records are to be kept apart from criminal records, and closed to public inspection. The court also has the power to order the expungement of juvenile records. Both expungement and access are subject to judicial discretion; the statute does not limit or guide the exercise of this discretion. Anyone could have access to the records if the court so orders. Further, the statute does not specify when the court may or shall order records expunged; it merely authorizes the judge to order it. The statute does not provide a mechanism for either automatic sealing or sealing upon motion by the juvenile.

A more effective means of protecting juvenile records from inquisitive eyes is incorporated into the statutes of many states where either "sealing," or "destruction" of records is authorized. Under these provisions, a child or his representative or even the court on its own motion can initiate proceedings to expunge the juvenile's records.[3] In most instances expungement is granted only after a specified period of time has elapsed since the termination of the jurisdiction of the juvenile court. [See Appendix A for examples of recent legislation.] In order to be fully effective, expungement statutes should also authorize the court to seal police records, which can adversely affect the juvenile just as court records.

Arrest records pose many problems in the juvenile area. In many jurisdictions arrest records of juveniles must be kept separate from the arrest records of the general populace, and the consent of the juvenile judge is required before a child under a certain age may be photographed or fingerprinted. K.S.A. 38-815(a)

implements this practice. Law enforcement agencies should be prevented from disseminating arrest records for the same reason that courts keep their files closed. [See Appendix B.]

The stated policy of nearly every state is to protect the confidentiality of a child's juvenile record. Particularly, however, juvenile records appear to be available to anyone who seeks access to them. This is due in part to the loose language typically found in juvenile statutes.

Provisions for sealing or expungement of records usually apply only to court records -- not those of arrest or those in the possession of social agencies. In addition, nearly all statutes require a person to apply for the expungement of his own record but permit this only after a lengthy waiting period. Further, the judge has great discretion in deciding whether to grant or deny the application.

If the benevolent, rehabilitative purposes of the juvenile court are actually to be served then expungement of all records, court and arrest, should be automatic. There should be no unwieldly process that the child must initiate in order to get results. Rather, the court, police, and social agencies should be required to expunge all records when juvenile court jurisdiction is terminated.

In addition, the statutes should authorize the expungement of arrest records that do not result in the filing of a petition or which result in the acquittal of the child. Currently, no state statute provides for such a procedure; however, two states are considering a bill containing a proposal with this procedure. [See Appendix C.]

XI. CABINET POSITION

Since its inception in Illinois in 1899, the underlying philosophy of the juvenile justice system has always been that children should be protected from the rigors of criminal prosecution and at the same time be provided with the care and guidance needed to secure their rehabilitation and reorientation into society. Yet as the caseloads of the juvenile courts and youth servicing agencies increases, these goals grow harder to achieve.

Two major problems exist in the programs designed to assist children. First, caseloads have reached such levels that attention to both individual cases and overall policy planning is reduced. Secondly, often there is no agency or individual with the responsibility to guarantee adequate use of existing child-supportive activities and to develop new responses to the problem of youth.

These problems result to a large extent from lack of knowledge and awareness that short-comings exist in child related programs. In addition, limited financial resources at all levels results in inadequate funding.

Certain state agencies concerned with specific types of child supportive activities have been created as well as issue oriented citizens' groups. Both groups are limited, however, by available resources and their outlook tends to be parochial in nature.

The problems cannot be dealt with in any short length of time, nor will they be solved without an expenditure of resources. Until this occurs, children do not always receive the services to which they are entitled. Therefore, it is necessary to establish a high level Youth Advocacy program.

It should be noted that the Youth Advocacy program is not a replacement of the State Planning Agency under 42 U.S.C. §3723 and 42 U.S.C. §5601 et. seq. The Youth Advocacy program is not designed for planning per se but reaches planning only in conjunction with analysis of existing programs and recommendation for change. In addition, the Youth Advocacy program should be free of the restraints of federal requirements and other political considerations.

Youth or child advocacy is an emerging concept.[1] Few states have such an agency; however two existing programs have been drawn from heavily in this proposal. They are the Illinois Commission on Children and the North Carolina Governor's Advocacy Council on Children and Youth. [See Appendix A.]

The Youth Advocacy program will be presented in three segments: 1) general provisions; 2) specific duties; and 3) specific problem areas.

General Provisions

Youth Advocacy program is merely a label. The name of the agency is not of major importance unless a specific name will encourage support and recognition among the public, legislature, or state agencies and institutions.

A statewide advisory council, consisting of public officials, laymen, and youth, with expertise in areas related to youth, should be provided. This council will not only give a basis of expertise and direction to the program, but also its existence should encourage support on a broad scale.

The staff size and expertise should be of such a nature that promise does not outstrip performance. This does not necessarily

mean a large staff. It does mean a staff large enough to realistically fulfill the statutory duties. It also means a staff with expertise in child supportive activities.

Cooperation from existing state agencies and institutions should be mandated. Of course, cooperation cannot really be legislated. However, program access to reports, studies, files and documents of other agencies and institutions must be available. Some effort should be made to assure existing agencies and institutions that the Youth Advocacy program is designed to assure their effectiveness rather than to usurp their functions.

Finally, the program should receive adequate funding so that it may perform its tasks. In terms of all child supportive activities, the cost of this program should be minimal.

Specific Duties

Tasks or purposes should be general enough to allow flexibility but concrete enough to give direction. [See Appendix A for examples of duties.] At a minimum, the program should have the tasks outlined below.

The Youth Advocacy program should provide ongoing review of existing child-supportive activities to ensure that they are fulfilling their responsibilities. This should include both statutory duties and internal policies.

The Youth Advocacy program should review existing programs in Kansas and other states in order to propose and support necessary new programs in the state legislature.

The program should encourage private action on behalf of children. Groups probably exist with interest in specific areas such as mental health. These groups should be maintained, since

their interest and expertise can be influential on a state as well as local area. In addition, these groups can supply valuable input to the reviewing process.

The Youth Advocacy program should encourage the development of legal services to juveniles on a statewide basis and then insure high quality legal services. In addition, the program should seek research and action on children's legal rights. State and local bar associations and law school students are an important resource. They should be contacted and encouraged to participate in Youth Advocacy programs. Law students are an important source and can be utilized to represent children in all court proceedings, if local court rules authorize appearance by third year students. Both receive benefits: students profit from actual court experience and the children benefit from representation at no cost.

Finally, an ombudsmen project should be established at all institutions housing children. This is not to suggest that any agency is purposely depriving children of rights or services or that the ongoing review of agencies and institutions will be ineffective. However, mistakes and oversights will always occur. An ombudsman would be the watchdog to catch these problems. In addition, it should aid the rehabilitative and curative process if children feel there is a person available whose sole job is to look out for their interests. [Appendix B is from an ombudsman project started in New York in 1971.]

The above tasks have not been clearly adapted to the Kansas situation as that job can be better done by the Legislative Council. But they are tasks which should be assigned to the program.

The targets of the Youth Advocacy program are individual cases, private groups, state agencies and institutions, the legislature, and juvenile courts. In each, however, the actual target is the child. The outlook of the program should be solely that of children. The sole goals should be to provide the best services for the needful youth of Kansas.

Specific Problems Areas

The first problem, and probably a continuing one, will be funding. Initially, resistance might appear from state agencies and legislators due to the limited resources of the state and the current economic status. It is hard to fund a new program when existing ones demand additional support. However, the programs should save money for the state over the long term through improved efficiency of allocation of energies.

On a continuing basis, funding could be a problem due to political repurcussions. The program could recommend some politically unpopular actions. As experience indicates, interest groups and legislatures often respond with purse-string retaliation. These battles, however, can only be fought as they arise.

The second major problem which will probably arise is competition. Existing agencies might resist development of a program which may seem to them to be either duplicative or a slap at their effectiveness. In addition, the Youth Advocacy program may occassionally be an adversary of those whose support is vital. The best way to combat this situation is to conduct an extensive educational campaign. All existing child-supportive activities should be allowed to assist in the development of the programs as well as receive communication as to the goals and duties of the Youth Advocacy program.

Hebberger 7/23

LEAGUE OF WOMEN VOTERS OF KANSAS

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STATEMENT TO THE SPECIAL COMMITTEE ON JUVENILE MATTERS

Representative David Heinemann, Chairman
Topeka, Kansas
July 22-23, 1975

I am Ann Hebberger, member of the Board of Directors of the League of Women Voters of Kansas.

The League has found it most difficult during our studies and conclusions since 1972, to separate the Juvenile Code from the 105 juvenile judges who interpret the Code in our present non-system. We have also had difficulty separating the Code from the services that should be provided to a juvenile court system to begin to be effective. After listening to testimony during the Committee's last hearing, I feel that the League is not the only one having the problem.

We don't wish to muddy the waters further, but the League feels that it is important for us to mention at this time that as of February 1975, based on our State position that all courts within the State of Kansas should be organized into a unified court system, we now support the establishment of a division of the trial court of general jurisdiction which would deal with legal matters relating to the family. We know that a trial court combining family matters cannot solve all social ills, nor do we believe that any kind of court can do that. We do believe that there is the possibility that there are more families with problems then juveniles with problems, and that a division within the unified court system might be able to handle these problems more efficiently.

However, no matter what kind of system that is created to handle juvenile cases, the Code should:

1. Include a statement that guarantees every child equal protection under the law.
2. Include the same basic philosophy which provides that each child should receive, preferably in his own home, the care, custody, guidance, control and discipline which is to his or her own advantage as well as to the advantage of the state.
3. Define juvenile as a person under 18 years of age.
4. Define delinquency as an act that, if committed by an adult, would constitute a criminal offense, period.
5. Define miscreancy as an act that, if committed by an adult, would be a misdemeanor, period.
   There is nothing in number 5 or number 6 that would deny a judge from deciding what number of miscreant acts would determine an act of delinquency.
6. Include existing statutes re: confidentiality of records, fingerprinting, etc.
7. Include dependent, neglected and abused children, child custody, paternity actions and adoption cases.

8. Provide that judicial functions be performed by full-time judges, and that these judges possess law degrees and be members of the bar. (It is agreed that, until this position is reached, non-lawyers in the unified court system shall be certified by the State Supreme Court.)
9. Include a structure for informal hearings, if that type of hearing is to continue, to protect the best interest of a juvenile who is processed in this manner.
10. Include the 48 hour detention hearing statute. The League supports the Legislative intent as a method of curbing possible abuses, and we would not like to see it changed to a longer period of time.

I would like to mention at this point, that we have no opinion on the dispute between some of the juvenile judges and S.R.S., but we do feel that the problem of placement after adjudication should be statutorily defined.

The League believes that:
1. The court or division should, by statute, be authorized to order the institutionalization of a juvenile only upon a determination of delinquency, and a finding that no alternative disposition would accomplish the desired result. A determination of delinquency should require a finding that the state has proved beyond a reasonable doubt that the juvenile has committed an act, that if committed by an adult, would constitute a criminal offense.
2. The court or division should have access to resources which enable it to deal effectively with the problems that may underlie the legal matters coming before it. An adequately staffed and supported intake unit should be authorized to identify and develop alternatives to formal processing of delinquent juveniles, and to determine which delinquents are appropriate subjects for these alternatives. Detention and shelter care decisions should be made only with direct judicial supervision. Besides an intake unit, there should be probation services with well-qualified and adequately paid personnel, operating under standardized state guide-lines.
3. The court or division should utilize, by contract, community services such as counseling or diagnostic services when available, but should provide such services directly when necessary.
4. Specialized training should be provided for all persons participating in the processing of cases through this court or division, including prosecutors, defense and other attorneys, and the judges. We feel that the guardian ad litem system is not functioning as it should. Whether this system is continued, or an alternative such as legal aid would be implemented, lawyers who handle juvenile cases should not be in the court system, should be adequately budgeted for, and be an advocate for the juvenile being represented by making sure that the rights of the juvenile are protected through the whole judicial process.

The League would like to ask that the interim Committee investigate, as much as possible, status offenses before determining what should be included in the Code. We do not want them included. On the other hand, existing facilities and services are not able or willing to deal with some of the social problems such as truancy, run-aways, etc., and of course, some services are non- existent at the present time. We are concerned that some of the girls are being institutionalized for status offenses, and therefore are being discriminated against.

The following remarks are taken from "GIRLS IN TROUBLE: 'SECOND CLASS' DELINQUENTS", by Senator Birch Bayh. The article includes some of his subcommittee's findings before the passage of the Juvenile Justice and Delinquency Prevention Act of 1974.

'...The juvenile justice system responsible for meeting the needs of troubled youth is a dismal failure...The system's impact on the lives of troubled girls is especially serious.

Children are continually incarcerated for running away from home, being truant from school, being incorrigible, or being promiscuous. It is not surprising that many of the prejudices our society has against females are reflected in the juvenile justice system, but the ramifications of such discrimination and bias are shocking. Girls are arrested more often than boys for status offenses...And girls are jailed for status offenses longer than boys...There are three to four times more girls than boys in detention for non-criminal acts!!

Additionally, the available research and evidence adduced by my subcommittee shows that a girl is likely to be given a longer term of confinement than a boy, and that her parole will be revoked for violations less serious then for male revocation. In responding to these facts which affirm gross discrimination, the direction of a state institution for girls explained: 'Girls, unlike boys, offend more against themselves than against other persons or property.' What she really meant was that often girls - not boys - are locked up for engaging in dissapproved sexual conduct at an early age; that our society applies the term 'promiscuous' to girls but not to boys.

Such arbitrariness and unequal treatment, at a minimum, produces more criminals. It is well documented that the earlier a child comes into the juvenile justice system, the greater the likelihood that the child will develop and continue a delinquency and criminal career...Another disturbing reality is that juvenile records normally go with children if arrested as an adult. Young girls incarcerated for status offenses will have a criminal record for life, and if arrested as an adult, will more likely be incarcerated...(Bayh then discusses the need for alternative services, foster care, halfway houses for runaways, and community-based programs for the serious juvenile delinquents. He also emphasizes the need for 24-hour crisis centers and Youth Services Bureaus, and a greatly expanded parole and probation system to provide supervision and counseling for the large majority of children who never should face institutionalization).

We need to focus more specifically on the manner in which and the frequency with which females are entering the juvenile justice system. We must assure equal treatment for these girls and see to it that assistance is available to them on an equal basis."

The League has heard conflicting statistics on the number of girls at the Youth Center at Beloit. While more girls are being institutionalized, it appears that anywhere from 30% to 40% to 45% are there for status offenses. This is an appalling situation, no matter what the figures show, and we hope that you will study this matter in depth.

A professor at the University of Oklahoma was heard to remark that in his native country of India, there are very few delinquents. The reason being, that there are very few laws covering delinquency. We hope that when you are making your determinations, you will take the League's positions into consideration. We also hope that you will think about what the professor said when dealing with status offenses.

Thank you for the opportunity to allow us to speak to you today.