

M I N U T E S

SPECIAL COMMITTEE ON JUVENILE MATTERS

November 7, 1975

Room 517 - State House

Members Present

Representative David Heinemann, Chairman  
Senator Arden Booth, Vice-Chairman  
Senator Jan Meyers  
Senator Robert Madden  
Senator Jim Parrish  
Representative Michael Glover  
Representative Glee Jones  
Representative Fred Lorentz  
Representative Ardena Matlack  
Representative Joe Norvell  
Representative Jim Lowther  
Representative Neal Whitaker

Staff Present

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

Conferees and Others Present

Sharon Gordon, Kansas Council on Crime and Delinquency  
Diane Simpson, Kansas Council on Crime and Delinquency  
Jack Pulliam, Social and Rehabilitation Services  
Shannon Manzanares, Social and Rehabilitation Services  
Darlene Stearns, KCC  
James H. Hays, Division of Budget  
Dolan McKelvey, Probate and Juvenile Judge, Atchison  
Mike McLain, Juvenile Court, Johnson County  
Judge Bill Haynes, Juvenile Judge, Johnson County  
Ann Hebberger, League of Women Voters of Kansas  
Dr. Robert C. Harder, Social and Rehabilitation Services  
Fred Holloman, House of Representatives Staff

Morning Session

Chairman Heinemann called the meeting to order at 9:30 a.m. Staff distributed copies of Working Draft No. 2 of the Juvenile Code and continued with the review of the major changes in the Code. (See Attachment No. 1). The changes are as follows:

- p. 17 - K.S.A. 1975 Supp. 38-815b, lines 20-23, delete language beginning "or other counsel for the child. . ."
- p. 17 - 38-815b(b) provide for oral or written notice of detention hearing. Delete language at bottom of page 17 and top of page 18, replace with new language beginning on page 18, line 7, relating to time, place and purpose of hearing and address of guardian ad litem, etc. Time of notice remains at 24 hours, prior to time set for detention hearing.
- p. 18 - 38-815b(c), line 30, new language, providing for rehearing.

Insert two new subsections in K.S.A. 38-815b, as amended to provide for waiver of detention hearing. (See Attachment No. II). Insert Saturdays after excluding, line 25, and in specific statutes when detention hearings mentioned. Motion made and seconded to accept amendment concerning waiver of detention hearing. Motion passed, with one member abstaining.

- p. 19 - 38-816, line 15, change dependent and neglected to deprived, also line 30.

Discussion followed on whether to provide for formal intake procedures for juveniles. Since a large number of counties still do not have juvenile probation officers, it would be a difficult problem for these counties if a formal procedure were required. It was the consensus of the Committee that the informal intake procedures currently being followed be reassessed at the time that adequate probation staff is available. The motion was made and seconded that this information be stated in the report. Motion carried.

Staff continued with the review of the Code.

- p. 21 - K.S.A. 38-817, new language has been inserted beginning on line 6 to indicate that continuance of hearings be limited to good cause shown and until a time certain. Line 18, any counsel chosen is in addition to guardian ad litem. Committee agreed to strike the material from line 25-34. Similar material on traffic offenses inserted on page 25 subsection (b), lines 27-31, also deleted.

- p. 23 - K.S.A. 38-819, new language is to be inserted at top of page 24 to indicate that in the event of such an order, a hearing should be held within 48 hours.
- p. 24 - K.S.A. 38-819(d), addition to new language in lines 20-26 to clarify that if this action pertains to a child who has waived a detention hearing the time for temporary detention is still two weeks.

A representative of KCCD urged the Committee to insert into the Code specific standards for jails and detention facilities. She stated this had been done by the Penal Reform Act for adults and similar procedures could be followed for juvenile facilities. Staff agreed to check on this. (See Attachment IV - Section 121, K.S.A. 1974 Supp. 75-5228). It was pointed out this inspection and setting of guidelines could be done through the joint efforts of the Corrections Department, Health Department, and SRS, etc.

Staff continued with the review of the Code.

- p. 25 - K.S.A. 38-821. Delete lines 13-31 pertaining to guardian ad litem. Leave this as it is currently stated in the Code.
- p. 26 - K.S.A. 38-823. New language, lines 9-13 providing that any continuance or adjournment shall be only for good cause and until a time certain.

Line 17 - delete "or supplementary branch facility thereof". It was pointed out by staff of SRS that there are three separate programs provided at Atchison. First, there is the evaluation program. Second, there is a regular program for young children who have been committed by the court. Third, there is a Halfway House program to provide children with community exposure. The Youth Center at Topeka is not connected with the Youth Center at Atchison. They are both under the same administration but provide different programs.

- p. 26 - K.S.A. 38-823. Lines 15-30, change to indicate section refers to children, not just one child.

Committee discussion followed on the need to get help for children after their first wayward offense. Since the escalation from three times wayward to miscreant, etc., has been removed from the Code, early evaluation and help for these cases will be needed.



- p. 27 - K.S.A. 38-824, line 13, change depriving to severing. Lines 21-24 clarify to indicate placement can be with any state licensed facility whenever this section occurs in the Code.

It was pointed out that there is a need for the Court to be able to sever the rights of one parent without severing the rights of the other parent. Staff agreed to check on this matter.

- p. 28 - K.S.A. 38-824, lines 7-10, clarify language to indicate state licensed facility for placement of children by Secretary of SRS.
- p. 29 - K.S.A. 38-824(f), lines 20-32, delete material relating to traffic offenders.

Committee discussion followed on procedure followed from the time a wayward case is apprehended until adjudication.

- p. 30 - K.S.A. 38-825. Line 10, change Kansas children's receiving home to Youth Center at Atchison. Line 34 change to state licensed facility.
- p. 31 - K.S.A. 38-825. Line 23, change registered mail to certified mail.

Discussion followed on where to place more youthful offenders. Staff was directed to draft language to provide that discretion be allowed as far as placement because of unusual circumstances.

Discussion followed on problems involved when a juvenile needs care and treatment that is provided by mental health facilities. In larger counties the juvenile judge must refer this to another court. It was moved and seconded that the Juvenile Code be amended to provide that the Juvenile Judge have the authority to find that a child is in need of psychiatric care and treatment and that the judge be allowed to use the same procedure that is currently used in the probate court for adults in such cases. Motion carried. Staff to check concerning clarification of language and method of payment.

The Committee adjourned for lunch.

#### Afternoon Session

The Chairman called the meeting to order at 1:30 p.m. Discussion followed on a date for the next meeting. The Chairman said he had checked with the Legislative Coordinating Council and they had approved an extension in time for final bill drafts and reports. The next meeting date was set for November 19, at 9:00 a.m. instead of November 12.



Staff continued with the review of the Code. Discussion followed on procedures for billing, etc., for juveniles placed in various facilities for psychiatric treatment. Staff distributed a copy of the statutes covering guidelines for support of patients at state hospitals. (See Appendix III - K.S.A. 59-2006). The statutes provide that payment for the maintenance, care and treatment of any patient in a state hospital irrespective of the manner of his admission shall be paid by said patient, by the conservator of his estate or by any person bound by law to support him. This section includes parents of minor children. During discussion it was pointed out that parents are not billed for evaluation at Osawatomie, or at Atchison but they are billed for evaluation at Topeka State. The motion was made to provide that notwithstanding any provision to the contrary there shall be no billing on court ordered commitments for juveniles. The motion was later withdrawn. Discussion indicated there would be problems with Title 19 if this procedure were followed, and there would be confusion if a child were ordered to one place and parents were billed and were not billed if ordered to another facility.

- p. 32 - Lines 7-8. Change wording in this section and in previous section on page 27 to indicate that placement of child should be under supervision of juvenile probation officer, rather than commit to juvenile probation officer. Placement refers to area involved and custody defines responsibility. Staff to make necessary changes in language.
- p. 32 - Lines 32-35 and material on following page. Do not reinsert.
- p. 32 - Secretary of SRS gave background on why language was deleted. It was indicated that time was needed to get alternate facilities available for 16 and 17 year olds. There are now 16 beds available at Topeka State, 25 beds available at Osawatomie and also beds available at the Youth Center in Topeka. Additional facilities are needed especially a closed cottage facility.

A motion was made to remove the age restriction in subsection (8). Motion died for lack of a second.

- p. 34 - New Sec. 24. Lines 19 and 27, add language to exempt child with parental rights severed in both places. Staff to insert language indicating that final appeal should be within 30 days after order has been issued, as indicated in 38-834.
- p. 35 - K.S.A. 38-827(b), lines 12-29. Indicate in this section who is responsible for child placed in jail. Lines 30-33, change cross reference.

p. 36 - Line 5, change wording to his or her legal responsibility.

Sec. 27, lines 22-23, change wording to is adjudged or is alleged to be delinquent, a miscreant, etc. Lines 26 and 28 change language to adult person. Line 30 provide for classification of misdemeanor, to fit penalty.

Discussion completed on Working Draft No. 2, of Juvenile Code. Staff is to mail out the revised version before the next meeting, if time permits. Staff then distributed copies of the proposed legislation relating to traffic offenders. The proposed legislation provides that no child less than 16 years of age shall be confined in a jail or police station for the commission or alleged commission of a traffic offense as defined in subsection (f) of K.S.A. 1975 Supp. 38-802. (See Attachment No. IV). Delete language "unless such child is confined in quarters separate from adult prisoners." The motion was made and seconded to recommend that the proposed draft legislation be introduced and recommended for favorable consideration, to be introduced along with the revised Juvenile Code. Motion carried.

Discussion followed on standards which should be set and inspections which should be made if juveniles are to be detained in detention facilities and jails. Staff presented the material contained in the Penal Reform Act, Section 121, K.S.A. 1974 Supp. 75-5228. (See Attachment V). This section states that the Secretary of Corrections shall request assistance from the Secretary of Health and Environment and the State Fire Marshal in setting standards, etc. Staff also presented language providing for similar standards in the State of Washington statutes. (See page 2, Attachment V).

The motion was made and seconded to insert into the Juvenile Code that standards be set and inspection be made if juveniles are to be housed in jails and detention facilities. This action is to be taken by the Secretary of Health and Environment who may request assistance from the Department of Social and Rehabilitation Services, Department of Corrections, State Fire Marshal's Office, etc. It is understood that there would be one inspection team for both the adult and juvenile facilities but two reports, one for adult facilities and one for juvenile facilities. Motion carried.

A member of the staff of SRS said he wished to thank the Committee on behalf of SRS for the cooperation they had extended to the Department. The Chairman stated that he wished to thank SRS for their contributions and suggestions during Committee deliberation, and, in addition, wished to thank all of the other conferees who had appeared and presented testimony concerning the Juvenile Code.

The Chairman presented a letter received from Gary Marsh of the Juvenile Probation Officers Association concerning suggested changes in the Juvenile Code. (See Attachment No. VI). The Chairman also presented information received from G. Joseph Pierron, Assistant District Attorney of Johnson County, concerning suggested changes in the Juvenile Code. (See Attachment VII).

The motion was made and seconded to approve the minutes for the meeting of October 16 and 17. Motion carried. The next meeting will be held November 19, at 9:00 a.m. The agenda will include consideration of the final draft legislation of the Juvenile Code and the Final Report. Meeting adjourned.

Prepared by Myrta Anderson

Approved by Committee on:

November 19, 1975  
(Date)



11/7/75

WORKING DRAFT NO. 2

PROPOSED BILL NO. \_\_\_\_\_

By Special Committee on Juvenile Matters

AN ACT

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1975 Supp. 38-802 is hereby amended to read as follows: 38-802. As used in this act, unless the context otherwise indicates:

(a) "Children's aid society" means any organization having among its objectives the care, control or protection of ~~dependent and neglected~~ children who are deprived, delinquent children, miscreant, wayward, traffic offenders or truant.

(b) "Delinquent child" means a child less than eighteen (18) years of age ~~+~~ ~~(+)~~ who does an act, ~~other than one defined in subsection (e) of this section,~~ which, if done by a person eighteen (18) years of age or over, would make ~~him~~ such person liable to be arrested and prosecuted for the commission of a felony as defined by K. S. A. 21-3105 ~~+~~ ~~or~~

~~(2) who has been adjudged a miscreant child under this act three (3) or more times.~~

(c) "Miscreant child" means a child less than eighteen (18) years of age:

(1) Who does an act, other than ~~one~~ a traffic offense as defined in subsection ~~(e)~~ (f) of this section, which, if done by a person eighteen (18) years of age or over, would make ~~him~~ such

person liable to be arrested and prosecuted for the commission of a misdemeanor as defined by K. S. A. 21-3105; or

(2) who does an act, other than ~~one~~ a traffic offense as defined in subsection (e) (f) of this section, which, if done by a person eighteen (18) years of age or over, would make ~~him~~ such person liable to be arrested and prosecuted for the violation of any ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township, or other political subdivision of this state;

~~(3) who does an act, other than one defined in subsection (e) of this section, the commission of which by persons under the age of eighteen (18) years, is specifically prohibited and made unlawful by state law, city ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state;~~

~~(4) who has been adjudged a wayward child under this act three (3) or more times; or~~

~~(5) who escapes from or runs away from any juvenile detention home or farm or other juvenile center after placement therein by an order of a juvenile court.~~

(d) "Wayward child" means a child less than eighteen (18) years of age:

(1) Whose behavior is injurious to his or her welfare;

(2) who has deserted his or her home without good or sufficient cause; ~~or~~

(3) who is habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or other lawful custodian;

(4) who does an act, other than a traffic offense as defined in subsection (f) of this section, the commission of which by persons under the age of eighteen (18) years is specifically prohibited and made unlawful by state law, city ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state; or



(5) who escapes or runs away, without good or sufficient cause, from custody under court order and who is not thereby liable to be prosecuted under subsection (f) of K. S. A. 21-3611.

(e) "Traffic offender" means a child under ~~sixteen--(16)~~ fourteen (14) years of age who does an act which, if done by a person ~~sixteen--(16)~~ fourteen (14) years of age or over, would make ~~him or her~~ such person liable to be arrested and prosecuted for the commission of a traffic offense as defined in subsection (f) of this section.

(f) "Traffic offense" means the violation of:

(1) Any statute relating to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or nonself-propelled vehicles of any kind, ~~except violations under K. S. A. 21-3405 and K. S. A., 8-287, 8-1566, 8-1567 or 8-1568;~~ or

(2) any ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state which relates to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or nonself-propelled vehicles of any kind, except any ordinance, police regulation, order, rule or regulation the violation of which also constitutes a violation of K. S. A. 21-3405, 8-287, 8-1566, 8-1567 or 8-1568.

~~(f)~~ (g) "Truant child" means a child who, being by law required to attend school, absents himself or herself therefrom to the extent of being a truant under the provisions of K. S. A. 1975 Supp. 72-1113, ~~and any amendments thereto.~~

~~(g) -- "Dependent and neglected child" means a child less than eighteen--(18)--years-of-age+~~

~~(1) -- whose parent neglects or refuses, when able so--to--do, to provide proper or necessary support and education required by law, or other care necessary for his or her well-being+~~

~~(2) -- who is abandoned or mistreated by his or her--parent, stepparent, foster parent, guardian, or other lawful custodian+~~

~~(3) -- whose occupation, environment or association is injuri-~~



~~ous to his or her welfare;~~

~~(4) who is otherwise without proper care, custody or support of;~~

~~(5) who, by reason of the neglect of his or her parent to provide him or her with proper or necessary support, education or care, is in the custody of a children's aid society or is being supported by the county or state; except that a child shall not be classed as a "dependent and neglected child" under this subsection solely because of the fact that he the child or his or her parent, or both, receive assistance under the social welfare acts or otherwise receive support from public funds.~~

(h) "Deprived child" means a child less than eighteen (18) years of age:

(1) Who is without proper parental care or control, subsistence, education as required by law or other care or control necessary for such child's physical, mental or emotional health, and the deprivation is not due to the lack of financial means of such child's parents, guardian or other custodian;

(2) who has been placed for care or adoption in violation of law;

(3) who has been abandoned or physically, mentally, emotionally or sexually abused or neglected by his or her parent, guardian or other custodian;

(4) whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child; or

(5) who is without a parent, guardian or legal custodian.

~~(h)~~ (i) "Parent" or "parents," when used in relation to a child or children, include guardian, conservator and every person who is by law liable to maintain, care for or support a child.

(j) "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.

(k) "Commit" means transfer custody.

(l) "Custody" means the right to have physical custody of a

child and the right and duty to provide food, clothing, shelter, ordinary medical care, education and discipline and, in an emergency, to authorize surgery or other extraordinary care for the child. Custody may be taken from a parent only by court order.

(m) "Place" means transfer physical custody.

(n) "Law enforcement officer" means any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

Sec. 2. K. S. A. 38-805 is hereby amended to read as follows: 38-805. (a) The record in the juvenile court shall consist of the petition, process and the service thereof, orders and writs, and such documents shall be recorded in books kept by the juvenile court for such purpose.

~~(b) The official records of the juvenile court shall be open to inspection only by consent of the juvenile court judge, or upon order of a judge of the district court, or upon order of the supreme court.~~

~~(c)~~ (b) All records, files or other information maintained, obtained and records or prepared by the juvenile court or any employee of the juvenile court thereof in connection with a proceeding under the Kansas juvenile code shall be privileged, and shall not be disclosed, directly or indirectly, or open to inspection by anyone other than except:

(1) The juvenile court judge or others entitled under this act to receive such information, unless and until otherwise ordered by such judge and members of the staff of the juvenile court designated by the judge;

(2) the parties to the proceeding and their counsel;

(3) a public or private agency or institution providing supervision or having custody of the child under order of a court; and

(4) any other person, agency, institution or court, upon order of the juvenile court, district court or supreme court.



made only on motion for good cause shown, or on the court's own motion, and subject to such terms and conditions as the court deems proper.

Sec. 3. K. S. A. 1975 Supp. 38-806 is hereby amended to read as follows: 38-806. (a) Except as provided in K. S. A. 21-3611 and subsection (b) of K. S. A. 1975 Supp. 38-808 ~~(b)~~ and unless jurisdiction is by statute specifically conferred upon some other court or courts, the juvenile court of each county of this state shall have:

(1) Exclusive original jurisdiction in proceedings concerning the person of a child living or found within the county who appears to be delinquent, miscreant, wayward, a traffic offender, a truant or ~~dependent-and-neglected, as defined in K. S. A. 1975 Supp. 38-802,~~ deprived.

(2) Such jurisdiction over other persons as provided by law.

(b) When jurisdiction has been acquired by the juvenile court over the person of a ~~dependent-and-neglected~~ deprived child, it may the jurisdiction of the court, with respect to the deprived status of such child, shall continue until the child is finally discharged by the juvenile court or has attained the age of twenty-one (21) years, and when the juvenile court has not by order retained jurisdiction, it may be reasserted at any time prior to age twenty-one (21) if such child has not been adopted or placed for the period of his or her minority with a children's aid society or with a public or private institution used as a home or place of detention or correction.

(c) When any child is charged with having committed an act ~~of delinquency before reaching the age of eighteen (18) years, is brought before the judge of the juvenile court after reaching said age~~ which would make such child liable to be declared delinquent, miscreant, wayward, a traffic offender or truant, the jurisdiction of ~~said~~ the juvenile court over such ~~person~~ child for any such act shall not expire on account of the child arriving at the age of eighteen (18) years, but ~~the said person~~ such



child shall continue under the jurisdiction of said court for such act until he or she is finally discharged by the juvenile court or has reached the age of twenty-one (21) years.

Sec. 4. K. S. A. 38-807 is hereby amended to read as follows: 38-807. ~~Where~~ When any person applies to any court having jurisdiction for a writ of habeas corpus or other writ or order for the production of a child, and the court finds that such person has abandoned or deserted the child, or that ~~he~~ such person is not a fit and proper person to have ~~the~~ legal custody of the child, the court may refuse to issue the writ or make the order. If the court shall determine that no person claiming ~~the~~ legal custody of a child is a fit and proper person to have such custody, it may order said child delivered to ~~the custody of~~ the juvenile court and order the county or district attorney to cause proper proceedings to be instituted to determine whether said child is ~~dependent and neglected~~ deprived.

Sec. 5. K. S. A. 38-809 is hereby amended to read as follows: 38-809. The juvenile court, in addition to its general jurisdiction, shall have the power to:

(a) Compel the attendance of witnesses, to examine them on oath, and to preserve order during proceedings before such court.

(b) Issue subpoenas, citations, warrants, executions, and attachments, ~~to~~ and make orders and render judgments and decrees, and ~~to~~ enforce them by any process or procedure appropriate for that purpose.

(c) Issue commissions to take depositions of witnesses, either within or without the state, in any matter pending before it, ~~Provided,~~ except that, in any contested matter, notice of the taking of depositions shall be given as provided by law.

(d) Continue or adjourn any hearing from time to time, but ~~when objection is made the~~ any continuance or adjournment shall be only for good cause and until a time certain.

(e) Correct and amend its records to ~~make them speak~~ reflect the truth.

(f) Vacate or modify any of its orders, judgments or

decrees when such is deemed to be in the best interest of the child.

(g) Fine or imprison for contempts of court in the same manner and to the same extent as district courts of this state, except that, in cases of indirect contempts, the judge of ~~such~~ the juvenile court shall assign an attorney to any person so charged who may be unable to employ counsel and may award a reasonable fee to said counsel to be paid from the general fund of the county.

(h) Exercise such other powers as are conferred by law.

Sec. 6. K. S. A. 38-810 is hereby amended to read as follows: 38-810. (a) As directed by the judge of the juvenile court, summons, writs or other process of the juvenile court shall be served by a probation officer of the court, or by the sheriff of any county in the state, or by any person appointed by the court for such purpose. Due return thereof to the court issuing same shall be made by the officer or person to whom it is delivered for service. In all cases, the return must state the time and manner of service.

(b) Except as otherwise provided in subsection (c) of this section, all summonses to appear in the juvenile court, under any section of this act requiring same to be served as provided in this section, shall be served: (1) By delivering a copy of the summons to the person named therein personally; or (2) if such personal service cannot be made, by leaving one at ~~his~~ such person's usual place of residence at least forty-eight (48) hours before the time set in the summons for his appearance at the juvenile court hearing. Due return of service made under this subsection shall be made as provided in subsection (a) of this section; ~~Provided, That,~~ In the event of a rehearing of ~~such~~ a matter, notice may be waived.

(c) When a parent of a ~~dependent-and-neglected~~ deprived child may be deprived of his or her parental rights and when, upon proper affidavit of the officer or person making the return, the judge of the juvenile court is satisfied that it is impos-



sible to serve the summons upon such parent pursuant to subsections (a) and (b) of this section, ~~he~~ such judge may order service made by publication once a week for two (2) consecutive weeks in some newspaper of the county authorized to publish legal notices. Said publications shall state the court in which the petition is filed, the nature of the proceedings and that such parent may be deprived of his or her parental rights, ~~and~~. Such publication shall also state the names of the persons sought to be served, if known, and, if unknown, shall describe them as unknown, and shall contain notice of the time and place of the hearing, and to there show cause, if any there be, why the judgment, the nature of which shall be stated, should not be rendered accordingly.

Sec. 7. K. S. A. 38-811 is hereby amended to read as follows: 38-811. (a) Venue of any case involving a ~~dependent and neglected~~ deprived child shall be in the county of such child's residence or in the county where he or she may be found.

(b) Venue ~~of~~ for adjudicatory proceedings in any case involving a child alleged to be a delinquent ~~child~~, a miscreant ~~child~~, a wayward ~~child~~, a traffic offender or a truant shall be in ~~any~~ the county where ~~an~~ the alleged ~~act--of--delinquency--is~~ offense was committed or in the county of ~~his~~ such child's residence.

(c) Venue for dispositional proceedings in any case involving a child alleged to be delinquent, miscreant, wayward, a traffic offender or truant shall be in the county of such child's residence or, if such child is not a resident of this state, in the county where the alleged offense was committed.

(d) Venue in cases involving prosecution of persons charged under ~~section 30 of this act~~ K. S. A. 38-830 shall be in the county where the alleged offense ~~has been~~ was committed.

Sec. 8. K. S. A. 38-812 is hereby amended to read as follows: 38-812. (a) Upon application of any interested person or on the court's own motion, ~~an order may be made by~~ the juvenile court in which ~~the original~~ adjudicatory proceedings are pending



may make an order transferring said proceedings to the court of the county where the child is physically present or where the parent or parents reside ~~before or after adjudication~~. The court to which such case is transferred shall accept the case. ~~AN interested person, within the meaning of this section, shall be any person who would be entitled to appeal from any order of the juvenile court made in such proceedings.~~ Any judge transferring any case to another juvenile court shall transmit to said court a complete certified transcript thereof and, upon receipt of such transcript, said juvenile court shall assume jurisdiction as if such proceedings were originally filed in such court. In case said child is not present in the county to which such case is transferred such juvenile court shall return the case to the court where it originated.

(b) An interested person, within the meaning of this section, shall be any person who would be entitled to appeal from any order of the juvenile court made in the proceedings.

Sec. 9. K. S. A. 38-814 is hereby amended to read as follows: 38-814. The judge of the juvenile court may appoint one or more competent persons of good character to serve as juvenile probation officers during his the pleasure of the judge. No person so appointed shall serve as a law enforcement officer at any time during such person's service as a juvenile probation officer. Unless otherwise specifically provided by statute, said probation officers shall receive as compensation, to be paid from the general fund of the county, a reasonable sum to be fixed by the juvenile court. In addition to their compensation, probation officers shall receive the mileage at the rate prescribed by law under K. S. A. 1975 Supp. 75-3203a and amendments thereto for each mile actually and necessarily traveled in the performance of their duties, when such travel is authorized by the judge of the juvenile court. The probation officers may be paid such other necessary traveling expenses as may be authorized by the judge of the juvenile court.

All probation officers shall furnish the court with any

information that may be obtained and render any assistance requested by the juvenile court in any proceeding, which may be helpful to the court or the child. Under the direction of the court, a probation officer shall take ~~possession-and~~ custody of any child under the court's jurisdiction and make such arrangements for the temporary care of any child as directed by the court. Such probation officers shall do and perform such other duties in connection with the work of the juvenile court as may be directed by the court. A person may serve as probation officer of more than one juvenile court and receive compensation and traveling expenses from each of the counties wherein is located a juvenile court which ~~he shall serve~~ such person serves.

New Sec. 10. (a) Except as provided in subsection (b) of this section, a law enforcement officer may take a child under eighteen (18) years of age into custody when:

(1) The officer has a warrant or court order commanding that such child be taken into custody; or

(2) The officer has probable cause to believe that a warrant or court order commanding that such child be taken into custody has been issued in this state or in another jurisdiction for an act committed therein which, if committed in this state, would make such child a delinquent child; or

(3) The officer has probable cause to believe that the child is:

(A) A delinquent child; or

(B) A miscreant, wayward, truant or deprived child or a traffic offender, and the officer has probable cause to believe that:

(i) Such child will not be apprehended or evidence of the offense will be irretrievably lost unless such child is immediately taken into custody; or

(ii) Such child may cause injury to self or others or damage to property or may be injured unless immediately taken into custody; or

(4) Any offense has been or is being committed by such



child in the officer's view.

(b) A child fourteen (14) years of age or over may be taken into custody as provided by K. S. A. 22-2401 for the commission of a traffic offense as defined by subsection (f) of K. S. A. 1975 Supp. 38-802, as amended.

Sec. 11. K. S. A. 1975 Supp. 38-815 is hereby amended to read as follows: 38-815. ~~(a) As used in this section, the term "peace officers" includes sheriffs and their deputies, marshals, members of the police force of cities, highway patrolmen, and other officers whose duty it is to enforce the law and preserve the public peace.~~

~~(b)~~ (a) Except as provided in subsection (d) of this section, when any peace law enforcement officer takes into custody a child under the age of eighteen (18) years, with or without a warrant or court order, such child shall not be taken before a municipal judge, district court judge or judge of any other court now or hereafter having jurisdiction of the offense charged, but shall be delivered into the custody of the a juvenile probation officer or be taken forthwith before the juvenile court; ~~and~~. It shall be the duty of such peace officer to furnish such juvenile court with all of the information in his such officer's possession pertaining to said child, its parents, guardian or other person interested in, or likely to be interested in, the child, and all other facts and circumstances which caused such child to be taken into custody.

~~(c)~~ (b) Except as provided in subsection (d) of this section, if a child under the age of eighteen (18) years, ~~shall have been~~ is taken before a municipal judge, district court judge or judge of any other court, it shall be the duty of such judge to dismiss the charge or complaint and refer same to the juvenile court, and it shall be the duty of the officer having the child in charge to take such child before the juvenile court; ~~and~~. It shall be the duty of such judge or officer to deliver to said juvenile court all of the papers, documents, and other information in his the possession of such judge or officer pertaining to



such child.

~~(c)~~ (c) Except as provided in subsection (d) of this section, if during the pendency of any action, charge or complaint against a person involving a public offense or quasi-public offense, other than a traffic offense, before a municipal judge, judge of the district court or judge of any other court, it ~~shall be~~ is ascertained that such person was under the age of eighteen (18) years at the time of committing the alleged offense, it shall be the duty of such judge to forthwith dismiss such action, charge or complaint, and refer same to the juvenile court, together with all the papers, documents, and testimony connected therewith. ~~Provided, No traffic offender action, charge or complaint against a child who has attained the age of sixteen (16) years shall be so dismissed and referred unless it shall be ascertained that he was under sixteen (16) years of age at the time of committing the alleged offense.~~ The officer of the court making said referral, having charge of such the child, shall forthwith take ~~him~~ such child to the place of detention designated by the juvenile court, or to that court itself, or shall ~~release~~ deliver such child to the ~~custody~~ care and control of a ~~duly appointed~~ juvenile probation officer, or other person designated by the juvenile court, to be brought before the juvenile court at a time and place designated by the judge thereof. Thereupon, the juvenile court shall proceed as provided in subsection (d) of K. S. A. 38-816, as amended.

(d) When a child fourteen (14) years of age or over is charged with the commission of a traffic offense as defined in subsection (f) of K. S. A. 1975 Supp. 38-802, as amended, such child shall be taken before a court of competent jurisdiction for such charge and the same shall not be referred to the juvenile court.

(e) Whenever a child under the age of eighteen (18) years is taken into custody by a peace officer and is thereafter taken before or referred to the juvenile court as required by this section, such child shall not remain in any detention or custody,

other than the custody of the parent, guardian or other person having legal custody of the child, for more than forty-eight (48) hours, excluding Sundays and legal holidays, from the time the initial custody was imposed by a peace officer, unless a determination is made, within such forty-eight (48) hour period, as to the necessity for any further detention or custody in a detention hearing as provided in ~~section 4 of this act~~ K. S. A. 1975 Supp. 38-815b, as amended.

Sec. 12. K. S. A. 1975 Supp. 38-815a is hereby amended to read as follows: 38-815a. (a) Neither the fingerprints nor a photograph shall be taken of any child less than eighteen (18) years of age, taken into custody for any purposes, without the consent of the judge of the court having jurisdiction; and when the judge permits the fingerprinting of any such child, the prints shall be taken as a civilian and not as a criminal record.

(b) (1) Except as provided in paragraph (2) of this subsection, all records and files in this state concerning a public an offense committed or alleged to have been committed by a child less than eighteen (18) years of age, shall be kept separate from criminal or other records, and shall not be disclosed, directly or indirectly, or open to inspection, except by order of the juvenile court by anyone except:

(A) The judge, and members of the court staff designated by the judge, of a juvenile court having the child before it in any proceeding;

(B) counsel for a party to the proceeding;

(C) the officers of public institutions or agencies to whom the child is committed;

(D) law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; and

(E) a court in which he or she is convicted of a criminal offense for the purpose of a pre-sentencing report or other dispositional proceeding or by officials of penal institutions and other penal facilities to which he or she is committed, or by a parole board in considering his or her parole or discharge or



in exercising supervision over him or her.

(2) This subsection shall not apply to records and files:

(A) Concerning an offense for which jurisdiction of the juvenile court has been waived pursuant to K. S. A. 1975 Supp. 38-808;

(B) Concerning a traffic offense as defined in subsection (f) of K. S. A. 1975 Supp. 38-802, as amended, committed or alleged to have been committed by a child fourteen (14) years of age or more; or

(C) Specified in K. S. A. 38-805, as amended.

(c) It shall be the duty of any peace law enforcement officer, judge or other similar public officer, making or causing to be made any such record or file concerning an offense committed or alleged to have been committed by a child less than eighteen (18) years of age, to at once report promptly to the judge of the juvenile court of his the county of such officer or judge the fact that such record or file has been made and the substance thereof together with all of the information in his the possession of such officer or judge pertaining to the making of such record or file.

~~(c)---When a record has been made by or at the instance of any peace officer, judge or other similar officer, concerning a public offense committed or alleged to have been committed by a child less than eighteen (18) years of age, the judge of the juvenile court of the county in which such record is made shall have the power to order such officer or judge to expunge such record; and, if he shall refuse or fail to do so within a reasonable time after receiving such order, he may be adjudged in contempt of court and punished accordingly.~~

~~(d)---This section shall be construed as supplemental to and a part of the Kansas juvenile code.~~

New Sec. 13. (a) When any records or files specified in K. S. A. 38-805 or K. S. A. 1975 Supp. 33-815a, both as amended, have been made concerning a person less than eighteen (18) years of age, such person may apply in his or her own behalf or, if



such person is a minor, such person's parent, guardian or guardian ad litem may apply to the judge of the juvenile court of any county in which such records or files are maintained to have the records or files in such county sealed. The application shall specify the records or files sought to be sealed and shall state the offense to which such records or files relate. After hearing, the court shall order the sealing of such records and files if the court finds:

(1) That the person has reached an age of twenty-one (21) years or more or that two (2) years have elapsed since the final discharge of the person and

(2) that, since the final discharge of the person, such person has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated a delinquent or miscreant child and no proceeding is pending seeking such conviction or adjudication and

(3) such person has been rehabilitated.

(b) When any records or files specified in K. S. A. 38-805 or K. S. A. 1975 Supp. 38-815a, both as amended, have been made concerning a person less than eighteen (18) years of age, the judge of the juvenile court of the county in which such records or files are maintained may order, at any time, on the judge's own motion and after hearing, the sealing of such records or files.

(c) Notice of any hearing held pursuant to this section shall be given to (1) The county or district attorney of the county in which the records or files are maintained and (2) the person who is the subject of the records or files sought to be sealed. Such notice shall be given in the manner prescribed by K. S. A. 38-810, as amended, or by registered mail to the last known address of the person sought to be notified.

(d) Upon entry of an order sealing records or files, the offense which such records or files concern shall be treated as if it never occurred. The person, the court and all peace officers and other public officers and agencies shall properly reply

on inquiry that no record or file exists with respect to the person. Inspection of the sealed files or records thereafter may be permitted by order of the juvenile court upon petition by the person who is the subject thereof. Such inspection shall be limited to inspection by the person who is the subject of the files or records and those persons designated by such person.

(e) Copies of any order made pursuant to subsection (a) or (b) of this section shall be sent to each public officer and agency in the county having possession of any records or files ordered to be sealed. If any such officer or agency fails to comply with such order within a reasonable time after its receipt, such officer or agency may be adjudged in contempt of court and punished accordingly.

Sec. 14. K. S. A. 1975 Supp. 38-815b is hereby amended to read as follows: 38-815b. (a) Whenever there is required to be a determination as to the need for any detention or custody of a child in a detention hearing under this act, the juvenile court shall immediately set the time and place for such hearing and shall appoint a guardian ad litem for the child, unless one has already been appointed ~~or other counsel for the child has been retained in lieu thereof, to serve until such time as such other counsel may be retained.~~ The costs of such guardian ad litem may be assessed to the parent, guardian or such other person having legal custody of the child as part of the costs of the case as provided in subsection (f) of K. S. A. 1975 Supp. 38-817, as amended.

(b) Oral or written notice of the detention hearing ~~setting forth the time, place and purpose of such hearing~~ and of the appointment of a guardian ad litem shall be given ~~immediately~~ to the child, to the guardian ad litem and, if ~~he~~ one can be found, to the parent, guardian or such other person having legal custody of the child or, if there is none, ~~then~~ to some other relative or other interested person, if there is one. Such notice shall include ~~a statement advising such persons of the right to retain counsel of their own choosing, and that the court has appointed~~



~~counsel to serve as guardian ad litem until such time as the court is notified of the name and address of the counsel for the child which has been retained in lieu of such guardian ad litem. Such notice shall set forth the name and address of such guardian ad litem and that the cost of such guardian ad litem may be assessed to the parent, guardian or such other person having legal custody of the child as part of the costs of the case~~ the time, place and purpose of the hearing and the name and address of the guardian ad litem. In addition, such notice shall advise that the cost of the guardian ad litem may be assessed, as a part of the costs of the case, to the parent, guardian or other person having legal custody of the child and that such parent, guardian or other person having legal custody of the child may retain counsel of his or her own choosing, in addition to the guardian ad litem. ~~Written~~ Notice of the detention hearing as provided in this subsection shall be served ~~given~~ at least twenty-four (24) hours prior to the time set for the detention hearing, by the probation officer or by the sheriff of the county or by any other person appointed by the court for such purpose. ~~Except as otherwise specifically provided in this section, such notice shall be served in the manner, other than by publication, provided for the service of summons in K. S. A. 33-810.~~

(c) The juvenile court may order temporary custody or detention as provided in K. S. A. 38-819, as amended, in a detention hearing under this section after determining that: (1) The child is dangerous to ~~himself~~ self or to others; (2) the child is not likely to appear at a hearing for adjudication on any petition filed pursuant to K. S. A. 38-816, as amended; or (3) the health or welfare of the child may be endangered without further care. If temporary custody or detention is ordered and the parent, guardian or other person having legal custody of the child has not been notified of the hearing, did not appear or waive appearance and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay.

(d) When the court finds that the continued detention of the

child pending adjudication in a hearing on a petition is not required to serve the welfare of the child and the best interests of the state as determined in subsection (c) of this section, the court shall order the child's release and in doing so may place the child in the custody of the parent, guardian or other person having legal custody of the child, or in the custody of a juvenile probation officer, or may impose any other conditions which may be required subject to modification by the court.

~~(c) This section shall be construed as supplemental to and a part of the Kansas juvenile code.~~

Sec. 15. K. S. A. 38-816 is hereby amended to read as follows: 38-816. (a) Any reputable person eighteen (18) years of age or over having knowledge of a child who appears to be either delinquent, miscreant, wayward, a traffic offender, a truant or ~~dependent and neglected as defined in K. S. A. 1969-Supp. 38-802 and any amendments thereto~~ deprived, may file with the juvenile court having jurisdiction, a petition in writing, verified by affidavit, which shall, in plain and concise language, without repetition, set forth the facts which bring the child under the jurisdiction of the juvenile court; and so far as known: (1) The name, age and residence of the child; (2) the names and residence of his or her parents; (3) the name and residence of his or her legal guardian, if there be one; or (4) the name and residence of the person or persons having custody or control of the child, or of the nearest known relative if no parent or guardian can be found.

(b) Whenever any reputable person shall furnish information to the juvenile court that a child appears to be either delinquent, miscreant, wayward, a traffic offender, a truant or ~~dependent and neglected as defined in K. S. A. 1969-Supp. 38-802 and any amendments thereto~~ deprived, it shall be the duty of such court, or its duly appointed probation officer when requested by the judge thereof, to make a preliminary inquiry to determine whether the interest of the public or of such child requires that further action be taken. Whenever practicable, such inquiry



shall include a preliminary investigation of the circumstances which were the subject of such information, including the home and environmental situation and previous history of such child, ~~and his previous history~~. If, after such inquiry, the judge of the juvenile court determines that the circumstances so justify, ~~he~~ such judge shall authorize a petition, in writing, to be filed in ~~his~~ the juvenile court by the person furnishing such information, or by some other reputable person having such knowledge, or, when so requested by such judge, ~~the county~~ or district attorney shall file such petition. Such petition shall be verified and may be upon information and belief. It shall be in plain and concise language, without repetition, and shall set forth the facts enumerated in subsection (a) of this section, and if any of the facts therein required are not known to the petitioner, the petition shall so state. Upon the filing of such petition, the juvenile court shall proceed as provided in this act.

(c) The proceedings shall be entitled: "In the interest of \_\_\_\_\_, a child under eighteen (18) years of age."

(d) When, under subsection (d) of K. S. A. ~~1969~~ 1975 Supp. 38-815 and any amendments thereto, a case is referred to the juvenile court, such court may proceed to make preliminary inquiry and investigation and authorize a petition to be filed in the manner as set forth in subsection (b) of this section. ~~Provided,~~ The county or district attorney shall, when requested by the judge of such court, file such petition without such inquiry and investigation. Upon the filing of such petition, such court shall proceed as provided in this act.

(e) No defect in statements of jurisdictional facts actually existing shall invalidate any proceedings.

(f) Upon the hearings on any petition, the judge of the juvenile court may amend the petition to conform with the facts, and render judgment accordingly.

Sec. 16. K. S. A. 1975 Supp. 38-817 is hereby amended to

read as follows: 38-817. (a) Upon the filing of a petition to declare a child to be delinquent, miscreant, wayward, a traffic offender, a truant or ~~dependent-and-neglected~~ deprived, the juvenile court shall fix the time and place for the hearing thereon. The date set for hearing shall be within two (2) weeks following the date of the filing of such petition but the court ~~may, on motion~~ for good ~~and-sufficient~~ cause shown, may grant a continuance ~~when--deemed--necessary~~ until a time certain. Immediately upon the filing of such petition the court shall give notice of the time and place of such hearing and of the appointment of a guardian ad litem to the child, to the guardian ad litem and to the parent, guardian or other person having legal custody of such child or, if there be none ~~then,~~ to some relative or other interested person, if there be one. Such notice shall include a ~~statement-advising-such-child-and~~ the name and address of the guardian ad litem and shall advise that the parent, guardian or other person having legal custody of such child ~~of~~ has the right to retain counsel of ~~their~~ his or her own choosing but ~~that-upon the-failure-to-retain-counsel-and-notify-said-court-of--the--name and--address-of-such-counsel-within-five-(5)-days-of--the-service of-such-notice,-the-court-will-forthwith-appoint-counsel-for-such child-and,~~ in addition to the guardian ad litem, and that the cost of ~~appointed-counsel~~ the guardian ad litem may be assessed to the parent, guardian or other person having legal custody of the child as part of the costs of the case. ~~Upon-the-expiration of-such-five-(5)-day-period-the--court--shall--forthwith--appoint counsel--for--such--child--and--notify-counsel,-the-child-and-the parent,-guardian-or-other-person--having--legal--custody--of--the child--thereof+--Provided,-however,-In-case-the-petition-declares the-child-to-be-a-traffic-offender,-as-defined-by-subsection--(c) of-K.-S.-A.--38-802,-and-it-is-such-child's-first-appearance-in said-court-as-a-traffic-offender,-the-court-shall-not-be-required to-appoint-counsel-for--said--child--unless--other--circumstances warrant-such-appointment.~~ Such notice and a copy of the petition shall be served by the probation officer of the court or by the



sheriff of the county or by registered mail, return receipt requested. ~~---Provided,~~ except that if the judge of the juvenile court is satisfied that by reason of the fact that the whereabouts of the parent, guardian or other person having legal custody of the child is unknown, it is impossible to serve such notice in such manner, ~~he~~ such judge may order service made by publication once each week for two (2) consecutive weeks in a newspaper of the county authorized to publish legal notices. Promptly upon the filing of the petition, the juvenile court ~~may~~ shall send to the secretary of social and rehabilitation services a copy thereof. If requested by the court, the secretary of social and rehabilitation services, without cost to the natural parents or to the petitioner, shall make such investigation as the court may request and be prepared to report ~~his~~ the findings to the court upon the hearing of the petition.

(b) Unless the parties shall voluntarily appear or be in court, a summons shall issue in the name of the state of Kansas, requiring the child and the person having custody and control of the child or with whom the child may be, to appear with the child at the place and at the time set in the summons.

(c) Unless they shall voluntarily appear or be in court, summons shall also issue to the parents of the child, if living and their residence known, or ~~his~~ to the child's guardian, if one there be, or if there is neither parent nor guardian, or if ~~his~~ the residence of the parent or guardian is unknown, then ~~to~~ some relative, if there be one, and his or her residence is known.

(d) If it shall appear that a parent of the child is confined in the state penitentiary, or any of the state hospitals, or in any state charitable or penal institution, a copy of the summons for said parent shall be served upon said parent, and also upon the person having charge of said institution, by mail. Such service shall be in lieu of the service prescribed by K. S. A. 38-810, as amended. It shall be the duty of the person having charge of said institution to confer with said parent, if said parent's mental condition is such that a conference will

serve any useful purpose, and advise the court in writing as to the wishes of such parent with regard to said child. The failure of the person having charge of said institution to perform such duty shall not invalidate the proceeding.

(e) If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the juvenile court, or to bring the child, such person may be proceeded against for contempt of court.

(f) At the time fixed in the summons, or by order of the court, the juvenile court shall proceed to hear and dispose of the case and enter judgment or decree therein. The juvenile court may apply the schedule of fees provided in K. S. A. 28-171, where appropriate, to compute the costs of all proceedings under the Kansas juvenile code and, in the discretion of the court, the costs of such proceedings may be adjudged against the person or persons so summoned or appearing, and collected as provided by law in civil cases, or charged to the county and paid out of the general fund.

(g) All summonses issued pursuant to this section shall state the court in which the petition is filed and all the information appearing in the petition pursuant to subsection (a) of K. S. A. 38-816, as amended. Except as otherwise specifically provided in this section, such summons shall be served as provided in K. S. A. 38-810, as amended.

Sec. 17. K. S. A. 1975 Supp. 38-819 is hereby amended to read as follows: 38-819. (a) Prior to or during the pendency of a hearing on a petition to declare a child to be delinquent, miscreant, wayward, a traffic offender, a truant or ~~dependent and neglected~~ deprived, filed pursuant to K. S. A. 38-816, as amended, the juvenile court may order that such child be placed in some form of temporary detention or custody as provided in this section, ~~but~~. Except as provided in subsection (e) of K. S. A. 1975 Supp. 38-815, such temporary detention or custody shall be ordered only after a determination is made as to the necessity therefor in a detention hearing as provided in ~~section~~



~~4-of-this-act~~ K. S. A. 1975 Supp. 38-815b.

(b) Upon such a determination, the juvenile court may make an order temporarily granting the custody of such child to some person, other than the parent, guardian or other person having legal custody, or to a children's aid society, or to a public or private institution used as a home or place of detention ~~er~~ ~~correction~~, or to the secretary of social and rehabilitation services.

(c) Upon such a determination, the juvenile court may order any such child who is alleged to be a delinquent or miscreant child to be placed in detention in the county jail or police station in quarters separate from adult prisoners. In such cases, the juvenile court, if it deems it advisable, may order such child confined in a jail or police station prior to or during the pendency of the hearing on the petition. When such provisions for separate quarters have not been made for the care and custody of the child in such detention, the juvenile court may order such child to be kept in some suitable place of detention provided by the county other than the county jail or police station.

(d) Excluding the periods of time for any continuances requested or consented to by the guardian ad litem for the child and continuances on motion for good cause shown and after a hearing, no child shall remain in temporary detention or care and control ordered pursuant to this section for more than two (2) weeks unless within such time such child is adjudged by the juvenile court to be delinquent, miscreant, wayward, truant or deprived.

~~(d)~~ (e) Unless otherwise provided for, and subject to payment or reimbursement as required by K. S. A. 1975 Supp. 38-828, the expenses of any temporary detention or custody ordered by the juvenile court pursuant to this section shall be paid out of the state social welfare fund if the child is determined by the secretary of social and rehabilitation services to be eligible for assistance under K. S. A. 39-709, or any amendments thereto, otherwise such expenses shall be paid from the county general

fund of the county in which the matter or proceeding is pending.

Sec. 18. K. S. A. 38-820 is hereby amended to read as follows: 38-820. No order or decree permanently depriving a parent of his or her parental rights in a ~~dependent-and-neglected~~ deprived child under subsection (c) of ~~section-24---of---this---act~~ K. S. A. 38-824, as amended, shall be made unless such parent is present and represented by counsel in juvenile court or has been served with summons as provided in ~~section--10--of--this--act~~ K. S. A. 38-810, as amended. The judge of the juvenile court shall assign an attorney to any such parent who is unable to employ counsel and may award a reasonable fee to said counsel to be paid from the general fund of the county.

Sec. 19. K. S. A. 38-821 is hereby amended to read as follows: 38-821. (a) Except as provided in subsection (b) of this section, in all hearings the judge of the juvenile court shall appoint a guardian ad litem who shall be an attorney at law to appear for, represent, and defend:

~~(a)~~ (1) A child who is the subject of proceedings under this act; or

~~(b)~~ (2) a parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings; under this act. The guardian ad litem shall make an independent investigation of the facts and representations made in the petition and he may be allowed a reasonable fee for such services, to be fixed by the juvenile court, and taxed as costs in such proceedings; such costs may be taxed to the parent, conservator, or custodian, or they may be taxed to the county and paid out of the county general fund.

(b) If a petition is filed alleging a child to be a traffic offender and it is such child's first appearance in the juvenile court as a traffic offender, the court shall not be required to appoint a guardian ad litem for such child unless other circumstances warrant such appointment.

Sec. 20. K. S. A. 1975 Supp. 38-823 is hereby amended to read as follows: 38-823. (a) Prior to or during the pendency



of a hearing on a petition filed pursuant to K. S. A. 38-816, ~~or any amendments thereto~~ as amended, the juvenile court may allow the child named in such petition to remain in ~~his--or--her~~ the child's own home in the custody of the parent, guardian or other person having legal custody of the child, place such child in the care and control of a juvenile probation officer, or order temporary detention or custody as provided in K. S. A. 1975 Supp. 38-819, ~~or any amendments thereto~~.

(b) ~~In any case~~ Subject to the provisions of subsection (e) of this section, the juvenile court may continue or adjourn a hearing in any case from time to time ~~except--as--otherwise--provided--in--subsection--(e)--of--this--section~~, but any continuance or adjournment shall be only for good cause and until a time certain.

(c) A child, during the pendency of a hearing and before final order or decree, may be referred to the youth center at Atchison or supplementary branch facility thereof or to any state institution with the facilities capable of care, treatment or evaluation of children except that no child shall be referred to such youth center or facility unless the court shall have been previously advised by the secretary of social and rehabilitation services that such youth center or facility is a suitable place to care for, treat or evaluate such child and that space is available, ~~and~~. The expenses of transportation to and from said youth center or facility may be so paid as part of the expenses of ~~such~~ temporary care and custody. ~~Such~~ The youth center or facility to which such child has been referred may receive, detain, care for, treat and evaluate such child and shall make a report of its findings and recommendations to the juvenile court within ninety (90) days after its acceptance of such child.

(d) Nothing in this section shall be construed to mean that any person shall be relieved of legal responsibility to support a child.

(e) Excluding the periods of time required for any continuances made at the request of the child or the child's counsel,

the disposition ~~in a hearing on a petition~~ by the juvenile court shall be made no more than thirty (30) days after adjudication, except that where a child has been referred for evaluation prior to such disposition, the disposition shall be made no more than thirty (30) days after the receipt by the juvenile court of the evaluation report.

Sec. 21. K. S. A. 38-824 is hereby amended to read as follows: 38-824. ~~(a) The provisions of this section shall apply to any child under the age of eighteen (18) years found to be dependent and neglected, within the meaning of this act, either at the initial hearing or any subsequent hearing;~~

~~(b)~~ (a) When a child has been adjudged to be deprived, the juvenile court, in the absence of an order depriving parental rights, ~~the juvenile court~~ may make such ~~dependent and neglected~~ child a ward of the court and commit the child to:

(1) ~~The custody of~~ Either or both ~~of his~~ parents;

(2) ~~the care, custody and control of~~ a juvenile probation officer ~~duy appointed by the court,~~ or other individual;

(3) ~~the care of some~~ a children's aid society; ~~or~~

(4) the secretary of social and rehabilitation services; or

(5) the secretary of social and rehabilitation services, with direction to place such child in a state institution under the jurisdiction of the secretary and used as a home or place of detention for juveniles.

~~(c)~~ (b) When the parents, or parent in the case there is one parent only, are ~~(or is)~~ found and adjudged to be unfit persons ~~(or an unfit person)~~ to have the custody of such dependent and neglected a deprived child, K. S. A. 38-820 and other all applicable provisions of this act having been fully complied with, the juvenile court may make an order permanently depriving such parents, or parent, of ~~their (his or her)~~ parental rights and commit the child:

(1) To ~~the care of~~ some reputable citizen of good moral character;

(2) to ~~the care of~~ some suitable public or private insti-



tution used as a home or place of detention ~~or correction~~;

(3) to ~~the care of~~ some association willing to receive ~~it~~ the child, embracing in its objects the purpose of caring for or obtaining homes for ~~dependent and neglected~~ deprived children;

(4) to the secretary of social and rehabilitation services;  
or

(5) to the secretary of social and rehabilitation services, with direction to place such child in a state institution under the jurisdiction of the secretary and used as a home or place of detention.

~~(d)~~ (c) In any case where the juvenile court shall award commit a child to ~~the care of~~ an individual or association, in accordance with clause (1) or (3) of subsection ~~(e)~~ (b) of this section, the child shall, unless otherwise ordered, become a ward of, and be subject to the guardianship of the individual or association to whose care it is committed. Such individual or association shall have authority to place such child in a family home, give consent for the adoption of such child, and be party to proceedings for the legal adoption of the child, and such consent shall be the only consent required to authorize the probate court to enter proper order or decree of adoption. In any case where the juvenile court shall award commit a child to ~~the care of~~ the secretary of social and rehabilitation services, in accordance with clause (4) or (5) of subsection ~~(e)~~ (b) of this section, said state secretary of social and rehabilitation services shall be the guardian of the person and the estate of said child and shall be empowered to place such child for adoption and give consent therefor, or to make transfer of such child for adoption and give consent therefor, or to make transfer of such child as provided ~~for~~ by K. S. A. 38-825, as amended. In any such case, upon the filing of the application provided for in K. S. A. ~~1972~~ 1975 Supp. 59-3009, ~~of the act entitled "act for obtaining a guardian or conservator, or both"~~ by the secretary of social and rehabilitation services, the court shall forthwith appoint the secretary of social and rehabilitation services the

"conservator" of such child.

~~(e)~~ (d) When the health or condition of a ~~such-dependent and-neglected~~ deprived child shall require it, the juvenile court may cause the child to be placed in a public or private hospital under the care of a competent physician. In cases other than those provided for in subsection ~~(d)~~ (c) above, the juvenile court may delegate the authority to issue consents to the performance and furnishing of hospital, medical or surgical treatment or procedures to the individual, association, or agency to whom the court has ~~granted-custody-of~~ committed such child pursuant to subsection (b) of this section.

(e) When a child has been adjudged to be a wayward or truant child under the provisions of this act, the juvenile court may make an order committing such child in the same manner as provided in paragraphs (1), (2), (3), (4) and (5) of subsection (a) of this section.

(f) When a child has been adjudged to be a traffic offender under the provisions of this act, the judge of the juvenile court may make an order:

(1) Imposing a penalty of not more than one hundred fifty dollars (\$150) for each offense, which penalty shall be in addition to any costs adjudged against the offender in the discretion of the juvenile court;

(2) suspending or revoking the offender's motor vehicle operator's license and requiring a copy of the order to be forwarded by certified mail, to the division of vehicles of the department of revenue together with a statement of the fact showing that such offender has been adjudged a traffic offender under the provisions of this act, and the division of vehicles of the department of revenue shall forthwith comply with said order by suspending or revoking such offender's motor vehicle operator's license;

(3) directing such offender to attend a police department traffic school in a city of the county of his or her residence;  
or



(4) committing such child in the same manner as provided in paragraphs (1), (2), (3), (4) and (5) of subsection (a) of this section.

Sec. 22. K. S. A. 38-825 is hereby amended to read as follows: 38-825. (a) When a ~~dependent--and--neglected~~ deprived child has been committed to the secretary of social and rehabilitation services pursuant to clause (4) of subsection (a) or clause (4) of subsection (b) of K. S. A. 38-824, as amended, said secretary, if he or she deems it to the best interest of the child, may place the child in the Kansas children's receiving home ~~or,~~ in a foster care facility, ~~or may transfer such child to the jurisdiction of~~ in a children's aid society willing to accept the child, ~~or,~~ with the written consent of the judge of the juvenile court ~~to,~~ in the home of the parent, or parents, ~~who if such parent or parents~~ have not been deprived of parental rights.

(b) Unless deprived of parental rights, a parent or parents of a child ~~under the jurisdiction of~~ committed to the secretary of social and rehabilitation services, ~~who has not been deprived of his parental rights,~~ may file with the juvenile court having jurisdiction, a petition in writing for the return of such child to ~~him or them~~ such parent or parents. Such petition shall be verified by affidavit and shall state the name, age and residence of the child and name and residence of each petitioner. The court shall fix a time and place for a hearing on such petition and shall notify each petitioner and the secretary of social and rehabilitation services of such time and place. If after the hearing, the court shall determine from the evidence that it would be to the best interests of the child ~~that--he~~ to be returned to his or her parent or parents, it shall so order.

(c) When a child has been committed to the secretary of social and rehabilitation services pursuant to subsection (e) of K. S. A. 38-824 or subsection (a) of K. S. A. 38-826, both as amended, and the court has not directed placement of such child is a specific state institution under the jurisdiction of the secretary, the secretary may place the child in any institution

operated by the director of mental health and retardation services or may contract and pay for the placement of the child in a county detention home or in a county detention home or in a private children's home, as defined by K. S. A. 1975 Supp. 75-3329, or for the placement of such child in a child care, facility, boarding home for children or community mental health clinic.

(d) When a child has been committed to the secretary of social and rehabilitation services pursuant to K. S. A. 38-824 or K. S. A. 38-826, both as amended, and the court has not directed placement of such child in a specific state institution under the jurisdiction of the secretary, the secretary shall retain custody over the child and may place such child at any time in any institution, detention home, mental health clinic, private children's home, child care facility or boarding home for children. Each six (6) months after such commitment to the secretary and each time a change of placement is made by the secretary, the secretary shall file a report on the child's status with the juvenile court. If a change in placement has been made the juvenile court, within seven (7) days of the receipt of the report, shall send notice of such change to the guardian ad litem for the child and the child's parent or parents or other legal guardian, such notice to be by registered mail to the last known address of the person sought to be notified. Upon its own motion or upon the motion of the guardian ad litem, parent or other legal guardian or the secretary of social and rehabilitation services, the court shall review the placement of the child and may order that the commitment to the secretary remain in affect or may order that such commitment be revoked and commit or place such child in accordance with the appropriate subsection of K. S. A. 38-824 or 38-826, both as amended.

Sec. 23. K. S. A. 38-826 is hereby amended to read as follows: 38-826. (a) When a child has been adjudged to be a delinquent child or a miscreant child under the provisions of this act, the judge of the juvenile court may make an order to:



(1) Place such child on probation in the care, custody and control of either or both of his parents, subject to such terms and conditions as the juvenile court may deem proper, and may make such additional orders directed to the juvenile or his the juvenile's parents or both as may be deemed necessary to effectively carry out the probation;

(2) ~~place~~ commit such child ~~in to~~ the care, custody and control of a ~~duly-appointed~~ juvenile probation officer or other suitable person, subject to such terms and conditions as the juvenile court may deem proper;

(3) ~~place~~ commit such child ~~in to~~ a detention home, parental home or farm, subject to such terms and conditions as the juvenile court may deem proper;

(4) ~~place~~ commit such child ~~in the care of~~ to a children's aid society, subject to such terms and conditions as the juvenile court may deem proper ~~Provided, however, That:~~

(5) if such child is sixteen (16) years of age or over, ~~the juvenile court may~~ place such child in the county jail pending final disposition or may place ~~him~~ such child on probation on such terms and conditions as the juvenile court may deem proper;

~~(5)~~ (6) commit such child to the state secretary of social and rehabilitation services;

(7) commit such child to the secretary of social and rehabilitation services, with direction to place such child in a state institution under the jurisdiction of the secretary and used as a home or place of detention for juveniles; or

~~(6)~~ (8) commit such child, if a boy thirteen (13) years of age or older, to the state industrial school for boys or other training or rehabilitation facility for juveniles or, if a girl thirteen (13) years of age or older, to the state industrial school for girls or other training or rehabilitation facility for juveniles ~~Provided, That from the effective date of this act and until July 1, 1975, no child sixteen (16) years of age or over shall be committed to the state industrial school for boys, state industrial school for girls or other training or rehabilitation~~

facility--for--juveniles--unless--the--court--shall--have--been--previously--advised--by--the--director--of--mental--health--and--retardation services--that--space--is--available--at--one--of--such--facilities--for the--care--treatment--and--training--of--such--child.

(b)--When--a--child--has--been--adjudged--to--be--a--wayward--child--or a--truant--under--the--provisions--of--this--act--the--judge--of--the--juvenile--court--may--make--an--order--to--place--such--child--in--the--same--manner--as--provided--in--paragraphs--(1)--(2)--(3)--(4)--and--(5)--of--subsection--(a)--of--this--section.

(c)--When--a--child--has--been--adjudged--to--be--a--traffic--offender under--the--provisions--of--this--act--the--judge--of--the--juvenile--court may--make--an--order:

(1)--Imposing--a--penalty--of--not--more--than--one--hundred--fifty dollars--(\$150)--for--each--offense--which--penalty--shall--be--in--addition--to--any--costs--adjudged--against--such--offender--in--the--discretion--of--the--juvenile--court;

(2)--suspending--or--revoking--his--motor--vehicle--operator's--license--and--requiring--a--copy--of--the--order--to--be--forwarded--by--certified--mail--to--the--division--of--vehicles--of--the--department--of revenue--together--with--a--statement--of--the--fact--showing--that--such offender--has--committed--an--act--making--him--a--traffic--offender--under the--provisions--of--this--act--and--the--division--of--vehicles--of--the department--of--revenue--shall--forthwith--comply--with--said--order--by suspending--or--revoking--his--motor--vehicle--operator's--license;

(3)--directing--such--offender--to--attend--a--police--department traffic--school--in--a--city--of--the--county--in--which--he--has--residence; or

(4)--placing--such--child--in--the--same--manner--as--provided--in paragraphs--(1)--(2)--(3)--and--(4)--of--subsection--(a)--of--this section.

(d)--When--a--child--has--been--committed--to--the--state--secretary of--social--and--rehabilitation--services--pursuant--to--subsection--(a) or--subsection--(b)--of--this--section--said--secretary--may--place--the child--in--any--institution--operated--by--the--director--of--mental health--and--retardation--services--or--it--may--contract--and--pay--for



~~the placement of the child in a county detention home or in a private children's home, as defined by K. S. A. 1972 Supp. 75-3329, or for the placement of such child in a child-care facility, or boarding home for children, or in a community mental health clinic.~~

~~(e) After placement of a child, the secretary of social and rehabilitation services shall retain jurisdiction over the child, and it may transfer such child at any time to any institution, detention home, mental health clinic, private children's home, child-care facility or boarding home for children.~~

New Sec. 24. (a) Upon the entry of any final order by the juvenile court placing or committing a child pursuant to K. S. A. 38-824 or 38-826, both as amended, the secretary of social and rehabilitation services, the guardian ad litem for the child, the parent or other legal guardian of the child or any party to the original proceeding may file a motion with the juvenile court for a rehearing on the issue of such placement or commitment. Upon such motion, the court shall rehear the matter without unnecessary delay.

(b) An appeal from any final order by the juvenile court placing or committing a child pursuant to K. S. A. 38-824 or 38-826, both as amended, shall be allowed to the district court by the secretary of social and rehabilitation services, the guardian ad litem for the child, the parent or other legal guardian of the child or any party to the original proceeding. Such appeal shall be taken in the manner provided by K. S. A. 38-834.

Sec. 25. K. S. A. 1975 Supp. 38-827a is hereby amended to read as follows: 38-827a. (a) Unless otherwise provided for, and subject to payment or reimbursement as required by K. S. A. 1975 Supp. 38-828, ~~or any amendments thereto,~~ the expenses of the care and custody of a dependent and neglected deprived child, committed under ~~clauses~~ clause (2), (3), and (4) ~~or (5)~~ of subsection ~~(b) (a)~~ of K. S. A. 38-824, ~~or any amendments thereto as amended,~~ or placed in a hospital under subsection ~~(e) (d)~~ of

K. S. A. 38-824, ~~or any amendments thereto~~ as amended, or referred to the youth center at Atchison or facility thereof under subsection (c) of K. S. A. 1975 Supp. 38-823, ~~or any amendments thereto~~ as amended, shall be paid out of the state social welfare fund if such child is eligible for assistance under K. S. A. 39-709, ~~or any amendments thereto~~. Otherwise, such expenses shall be paid out of the general fund of the county in which the proceedings are brought. For the purpose of this subsection, a child who is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the county where the proceedings are instituted.

(b) Unless otherwise provided for, and subject to payment or reimbursement as required by K. S. A. 1975 Supp. 38-828, ~~or any amendments thereto~~, the expenses of the care and custody of a child placed in accordance with the provisions of ~~clauses~~ clause (2), ~~(3), (4) and (5)~~ to (7), inclusive, of subsection (a) of K. S. A. 38-826, ~~or any amendments thereto~~ as amended, or referred to the youth center at Atchison or facility thereof or other facility under subsection (c) of K. S. A. 1975 Supp. 38-823, as amended, shall be paid out of the state social welfare fund if such child is eligible for assistance under K. S. A. 39-709, ~~or any amendments thereto~~. Otherwise such expenses shall be paid out of the general fund of the county in which the proceedings are brought. ~~Provided, except~~ that the expenses of the care and custody of any child committed to the secretary of social and rehabilitation services pursuant to clause ~~(5)~~ (6) or (7) of subsection (a) of K. S. A. 38-826, ~~or any amendments thereto~~, as amended, shall not be paid out of the county general fund.

(c) When a child is committed under clause (4) or (5) of subsection ~~(b)~~ (a) of K. S. A. 38-824, ~~or any amendments thereto~~ as amended, or under clause ~~(5)~~ (6) or (7) of subsection (a) of K. S. A. 38-826, ~~or any amendments thereto~~ as amended, the expenses of the care and custody of such child may be paid out of the state social welfare fund, subject to payment or reimburse-



ment as required in K. S. A. 38-828, ~~or any amendments thereto,~~ even though the child does not meet the eligibility standards of K. S. A. 39-709, ~~or any amendments thereto.~~

(d) Nothing in this act shall be construed to mean that any person shall be relieved of his legal or her responsibility to support a child.

Sec. 26. K. S. A. 38-829 is hereby amended to read as follows: 38-829. In any proceedings where a ~~dependent--and neglected~~ deprived, delinquent, miscreant, wayward or a truant child has been placed ~~in the care and custody of~~ placed with or committed to any children's aid society or individual by the court, the court may cause the child to be brought before it, together with the person or persons ~~in whose custody--he--may--be~~ with whom such child is placed or to whom such child is committed, and if it shall appear that a continuance of such eustody placement or commitment is not for the best interests of such child, the court may revoke and set aside the order ~~giving such--eustody~~ making such placement or commitment and may make such further orders ~~in the premises~~ as to the future eustody placement or commitment of the child as shall seem best.

Sec. 27. K. S. A. 38-830 is hereby amended to read as follows: 38-830. (a) In all cases where any child ~~shall be--a~~ is adjudged to be delinquent, a miscreant, wayward, a traffic offender, truant, or a ~~dependent and neglected child,--as--defined in--section--38-802--of--the--General--Statutes--Supplement--of--1957--or any--amendments--thereto~~ deprived, any parent or other person responsible for such child's act or for such ~~dependency--and neglect~~ child's being deprived, or any parent or other person, who shall by any act have caused or encouraged same, or contributed thereto, shall be deemed guilty of a misdemeanor, and upon trial and conviction thereof shall be fined in a sum not to exceed one thousand dollars (\$1,000), or imprisoned in the county jail for a period not to exceed one (1) year, or by both ~~such fine and imprisonment.~~

(b) The juvenile court shall have jurisdiction of all cases

coming within the provisions of this section, and the judge thereof may proceed to the hearing on the complaint charging that any parent or other person has violated the provisions of subsection (a) of this section, even though a petition has not been filed in the interest of a child under the provisions of ~~section~~ K. S. A. 38-816 of the General Statutes Supplement of 1957 or any amendments thereto, as amended.

(c) Upon the request of the judge of the juvenile court, the county or district attorney shall prosecute any parent or other person charged with violating the provisions of subsection (a) of this section.

(d) The judge of the juvenile court shall ~~assign~~ appoint an attorney ~~to~~ for any parent or other person charged under subsection (a) of this section who is unable to employ counsel and may award a reasonable fee to ~~said-counsel~~ such attorney to be paid from the general fund of the county.

Sec. 28. K. S. A. 38-839 is hereby amended to read as follows: 38-839. When any child under the age of eighteen (18) years has been taken into custody by a law enforcement official, and such child indicates in any manner and at any stage of the process that he or she wishes to consult with an attorney before speaking, he such child shall not be questioned until he or she has had an opportunity to consult with ~~retained--or--appointed~~ counsel the guardian ad litem appointed in the case. Except in cases where there is imminent danger that such child will escape, it shall be the duty of the law enforcement official having custody of the detained child to provide a suitable place where he or she may confer privately with ~~his--attorney~~ the guardian ad litem without surveillance or other intrusion by the law enforcement officials. The court shall prescribe by rule the procedure to be followed in obtaining the services of counsel to represent indigent children detained by such law enforcement officials prior to appearance before the court and may award a reasonable fee to ~~said-counsel~~ the guardian ad litem to be paid from the general fund of the county. ~~This section shall be a part of--and supplemental to the Kansas juvenile code.~~



11/7/75

## SUGGESTED AMENDMENT CONCERNING WAIVER OF DETENTION HEARING:

Insert two new subsections in K. S. A. 38-815b, as amended, to read as follows:

(e) The right of a child to a detention hearing may be waived if:

(1) The child and the child's parent, guardian or other legal custodian, if there is one, are informed, in writing, of the right to have a determination as to the need for detention or custody in a detention hearing and of the right to request such a hearing at any time;

(2) The child, the guardian ad litem for the child and the child's parent, guardian or other legal custodian, if there is one, consent, in writing, to waive the right to a detention hearing; and

(3) The judge of the juvenile court determines that a detention hearing is not required to serve the welfare of the child.

(f) Whenever the right to a detention hearing has been waived pursuant to subsection (e) of this section, the child, the guardian ad litem for the child or the child's parent, guardian or other legal custodian, if there is one, may reassert such right at any time prior to adjudication by submitting a written request to the juvenile judge. Upon such request, the judge shall immediately set the time and place for such hearing, which shall be held in accordance with the provisions of this section and not more than forty-eight (48) hours, excluding <sup>Saturdays</sup> Sundays and legal holidays, after the receipt of the request.



SUPPORT OF PATIENTS AT CERTAIN INSTITUTIONS

59-2006

initially to determine executor's attorney fees hereunder. *In re Estate of Murdock*, 213 K. 837, 851, 852, 853, 854, 519 P.2d 108.

committed to state security hospital. *State Department of Social Welfare v. Richards, Conservator*, 209 K. 403, 408, 496 P.2d 1287.

Article 18.—GUARDIANSHIP

Cross References to Related Sections:

Act for obtaining a guardian or conservator, or both, 59-3001 et seq.

Law Review and Bar Journal References:

Certain former sections hereunder cited in discussing gifts to minors, *Melvin C. Poland*, 5 W. L. J. 29, 32, 37, 38, 39, 40 (1965).

59-1801 to 59-1813. [K. S. A. 59-1801 to 59-1813; Repealed, L. 1965, ch. 347, § 35; Jan. 1, 1966.]

Article 19.—ESTATES OF CONVICTS

Law Review and Bar Journal References:

Act mentioned in "Expungement of Criminal Convictions in Kansas: A Necessary Rehabilitative Tool," *Richard M. Klinge*, 13 W. L. J. 93, 94 (1974).

59-1902. Provisions applicable to convicts' estates. The provisions of law relating to the estates of incapacitated persons, conservators thereof, and their powers, duties, and liabilities in connection therewith, shall govern in the administration and management of the estates of such convicts, trustees thereof, and their powers, duties and liabilities in connection therewith. [K. S. A. 59-1902; L. 1965, ch. 348, § 23; Jan. 1, 1966.]

59-1903. Termination of trusteeship. Upon the death of such imprisoned convict, or the commutation of his sentence to a sentence of less than life, or his lawful release from his imprisonment by parole or otherwise, the trustee shall settle his accounts as required of a conservator upon the death or restoration of an incapacitated person. [K. S. A. 59-1903; L. 1965, ch. 348, § 24; Jan. 1, 1966.]

Article 20.—SUPPORT OF PATIENTS AT CERTAIN INSTITUTIONS

Note:

and treatment of mentally ill persons, see 59-2001 et seq.

59-2001 to 59-2005. [K. S. A. 59-2001 to 59-2005; Repealed, L. 1965, ch. 348, § 40; Jan. 1, 1966.]

Note:

see 59-2901 et seq.

CASE ANNOTATIONS

59-2001 and 59-2003 cited in holding conservator for maintenance, care and treatment of found incompetent to stand trial and

59-2006. Duty to support patients; recovery; demand; time limitation; voluntary payments; compromise and settlement; bar to future recovery, when. The following shall be bound by law to support persons committed to, admitted to, transferred to, or received as patients at the state hospitals, the state security hospital, the state hospitals and training centers, and the Kansas neurological institute, all hereinafter referred to in this act as state hospitals: Spouses and parents of minor children. Payment for the maintenance, care and treatment of any patient in a state hospital irrespective of the manner of his admission shall be paid by said patient, by the conservator of his estate or by any person bound by law to support him. The secretary of social and rehabilitation services may recover the basic maximum charge established as provided for in subsection (a) of K. S. A. 1973 Supp. 59-2006b, as amended, or the actual per patient costs established as provided in subsection (b) of K. S. A. 1973 Supp. 59-2006b, as amended, as compensation for the maintenance, care and treatment of a patient from such patient when no legal disability exists, or from the estate of such patient or from any person bound by law to support such patient.

The secretary of social and rehabilitation services shall annually make written demand upon the patient or his relatives liable for the amount claimed by said secretary to be due for the preceding year, and no action shall be commenced by said secretary against such patient or his responsible relatives for the recovery thereof unless such action is commenced within three (3) years after the date of such written demand: *Provided, however*, When any part of the amount claimed to be due shall have been paid or any acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made by the obligor an action may be brought in such case within three (3) years after such payment, acknowledgment or promise, but such acknowledgment or promise must be in writing signed by the party to be charged thereby. If there be two or more joint debtors, no one of whom is entitled to act as the agent of the others, no such joint debtor shall lose the benefit of the statute of limitations so as to be chargeable by reason of any acknowledgment, prom-



ise or payment made by any other or others of them, unless done with the knowledge and consent of, or ratified by the joint debtor sought to be charged. The secretary may accept voluntary payments from patients or relatives or from any source, even though the payments are in excess of required amounts and shall deposit the same as provided by law.

The secretary of social and rehabilitation services shall have the power to compromise and settle any claim due or claimed to be due from such patient or his relatives liable, for his care, maintenance and treatment, and may, upon payment of a valuable consideration by the patient or the persons bound by law to support him, discharge and release patient or relative of any or all past liability herein. Whenever the secretary shall negotiate a compromise agreement to settle any claim due or claimed to be due from a patient or his relatives responsible under this act to support him, no action shall thereafter be brought or claim made for any amounts due for the care, maintenance and treatment of such patient incurred prior to the effective date of the agreement entered into, except for the amounts provided for in the agreement if the provisions of such compromise agreement are faithfully performed. In the event the terms and conditions of such compromise agreement are not complied with, such failure to comply shall serve to revive and reinstate the original amount of the claim due before negotiation of such compromise agreement, less amounts paid on said claim. [K. S. A. 59-2006; L. 1965, ch. 349, § 1; L. 1967, ch. 474, § 1; L. 1969, ch. 281, § 1; L. 1974, ch. 237, § 1; July 1.]

#### Law Review and Bar Journal References:

This section and prior 1907 act mentioned in case note concerning constitutionality of statutory provisions for support of mentally ill, James M. Immel, 13 K. L. R. 298, 302 (1964).

#### CASE ANNOTATIONS

14. Construed; state argued no conflict existed between provision of statute and 78-2463; trial court's ruling following state's argument held proper. State Department of Social Welfare v. Richards, Conservator, 209 K. 403, 404, 406, 408, 409, 410, 496 P.2d 1287.

**59-2006a.** [K. S. A. 59-2006a; Repealed, L. 1967, ch. 474, § 4; July 1.]

**59-2006b.** Same; basic maximum rates of charge; computation; publication; judicial notice. (a) The secretary of social and rehabilitation services shall annually on July 1, or as soon thereafter as the actual operating

costs for the previous fiscal year may be secured from the director of accounts and reports, and not later than October 1, establish the basic maximum rate of charge for treatment of patients in state hospitals, such rates shall not exceed hospital costs as determined by application of generally acceptable hospital accounting principles. In determining these rates, the secretary shall compute the average daily operating cost of treatment of all patients in each of the following state institutions, namely, the Topeka state hospital, the Osawatimie state hospital, the Larned state hospital, including the state security hospital, the Norton state hospital, the Winfield state hospital and training center, Parsons state hospital and training center, and the Kansas neurological institute, and then set a basic maximum rate of charge for each and every patient in those hospitals and his responsible relatives at the average daily operating cost of each institution so computed. When established, these rates shall be published in the official state paper by the secretary and thereafter, until a subsequent rate is published as provided in this act, the rates last published shall be the legal rate of charge. For that period beginning July 1, 1969, which immediately follows the effective date of this act, the rates provided in the appropriate statute before the effective date of this act shall be used until the new rates provided for herein above have been published. All courts in this state shall recognize and take judicial notice of said procedure and the rates established thereunder.

(b) In lieu of the procedure for computing the basic maximum rate of charge established by subsection (a) of this section, the secretary of social and rehabilitation services may authorize any state institution listed in subsection (a) of this section to compute an individual patient charge on the basis of rates for services based on cost incurred by such hospital as determined by application of generally acceptable hospital accounting principles. [L. 1967, ch. 474, § 2; L. 1969, ch. 281, § 2; L. 1974, ch. 237, § 2; July 1.]

**59-2006c.** Same; appeals to secretary of social and rehabilitation services from decisions compromising or refusing to compromise claim. Any patient or his relative liable for his support under this act may appeal to the secretary of social and rehabilitation services pursuant to K. S. A. 75-3306 from any decision of the state hospital or employee of the department of social and rehabilitation

services in comprising  
mise a claim against  
for the cost of treatm  
1967, ch. 474, § 3;  
July 1.]

**59-2007, 59-2008;** Repealed, L. 1968, ch. 237, § 1, Jan. 1, 1968.]

#### Article 21.—ADOPTION

**59-2102.** Written acknowledgment; irrevocable when; effect of parent's consent; minor child is adopted to such adoption.

(1) by the living child or

(2) by the mother

or  
(3) by one of the parents if the parent failed or refused to support the child or parent for two (2) consecutive years capable of giving such

(4) by the legal guardian if both parents are dead or refused to assume the care of the child for two (2) consecutive years

(5) by the state department of social welfare, a person, or by an agency or association if the parents have been legally declared incompetent by the body of the child has been such person, department or person with authority to control the child.

In all cases where the child is adopted is over fourteen (14) years of age and of sound intelligence, the child must be given the opportunity to be heard and his consent shall be in writing. If the parent or parents is not present or is not acknowledged and may be present, the judge of a court of competent jurisdiction consent is acknowledged, it shall be final and irrevocable. It shall be revoked by the person or persons named in the same. In all other cases, the consent shall be acknowledged and authorized by law to take effect when such consent has been filed in court, the same shall be binding on the consenting party. If the consent was not free and voluntary, the burden of proof

\_\_\_\_\_ BILL NO. \_\_\_\_\_

BY SPECIAL COMMITTEE ON JUVENILE MATTERS

AN ACT prohibiting confinement of children in certain facilities.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) No child less than sixteen (16) years of age shall be confined in a jail or police station for the commission or alleged commission of a traffic offense as defined in subsection (f) of K. S. A. 1975 Supp. 38-802, and amendments thereto, unless ~~such child is confined in quarters separate from adult prisoners.~~

(b) This section shall be construed as supplemental to and a part of chapter 8 of the Kansas Statutes Annotated.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.



ERS, EMPLOYEES [Ch. 462

of mental health and  
the state board of  
ment, and with the ap-  
abilitation services, may  
outpatient mental health  
personnel in accordance  
the secretary of social

is hereby amended to  
y of administration shall:  
75-3706, as amended,  
ed recommended by the  
the purposes of this act  
d;

cribed by law with respect  
ion;

1974 Supp. 75-3706, as  
or exceptions to general  
listed in K. S. A. 75-2934  
and regulations;

secretary of social and re-  
d of health secretary of  
costs incurred in connec-  
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deposited in the state treasury

provided in the Kansas civil

request of the governor, or  
use, or of its own motion.  
of the Kansas civil service

(c) make the services and facilities of the division of personnel and its staff available upon request, subject to rules and regulations adopted as provided in K. S. A. 1974 Supp. 75-3706, as amended, to political subdivisions of the state. In making such service and facilities available, it shall be understood that requirements for the enforcement and administration of the provisions of this act shall be given precedence and that the political subdivisions shall reimburse the state for the reasonable cost of such services and facilities, and such reimbursement moneys shall be deposited in the state treasury and credited to the state general fund.

Sec. 121. K. S. A. 1974 Supp. 75-5228 is hereby amended to read as follows: 75-5228. No person shall be incarcerated in any correctional institution or jail or any part thereof that has been deemed unsanitary, unsafe, or a detriment to human life by the secretary of corrections. The secretary is hereby authorized to promulgate standards relating to the sanitation and safety of such institutions and jails. In promulgating such standards and in inspecting such institutions and jails, the secretary shall request assistance from the state board of health secretary of health and environment and the state fire marshal.

Sec. 122. K. S. A. 1974 Supp. 75-5271 is hereby amended to read as follows: 75-5271. Any person, firm or corporation desiring to conduct a program of plasmapheresis employing inmates shall submit to the secretary of corrections or his the designee of the secretary a written proposal containing a detailed statement of the purpose and nature of the proposed program. Any such proposal shall be submitted by the secretary or his the designee of the secretary to the physician of the correctional institution for his the review and recommendation of such physician. Upon a favorable recommendation from the physician of the correctional institution, the secretary or his the designee of the secretary may approve the proposed program subject to such conditions as they or the physician of the correctional institution may prescribe. The secretary or his designee of the secretary may grant to the person, firm or corporation conducting an approved program of plasmapheresis a license to enter upon the correctional institution and conduct the approved program: *Provided, That*. The secretary shall not approve the conduct of any program which has not been submitted to and been approved by the state board of health secretary of health and environment.

Sec. 123. K. S. A. 1974 Supp. 75-5325 is hereby amended to read as follows: 75-5325. In order to provide guidance and assistance to the division of services to children and youth in carrying out the provisions of this act, an advisory committee shall be formed consisting of the following persons or their designees: (a) The director of services to children and youth; (b) the director of health secretary of health and environment; (c) the commissioner of education; (d) the director of social services; (e) the director of mental health and retardation services; (f) the director of vocational rehabilitation; (g) the executive director of the governor's

sed to 2nd reading.

*Washington -*

*9.2 Attachment V*

*Review of S.B. 2689  
11-7-75*

*5*

NEW SECTION. Sec. 33. DETENTION FACILITIES STANDARDS.

31 The judges of the superior courts of each county shall adopt, no  
32 later than one hundred eighty days after the effective date of this

1 1974 amendatory act and after holding public hearings and consulting  
2 with the department of SRS & Health & Envt. social and health services, rules for the  
3 regulation and government of juvenile detention facilities except  
4 licensed foster homes, upon the following subjects:

5 (a) Standards of cleanliness of the facilities;

6 (b) Provisions of food, bed, clothing, and bath facilities for  
7 the children;

8 (c) Public health standards including heat, ventilation, and  
9 lighting of the facilities;

10 (d) Standards for availability of medical and other health  
11 care for the children;

12 (e) Communication between the children and their counsel or  
13 other persons;

14 (f) Procedures to determine and sanctions to be applied for  
15 violations by children of the rules of the facility;

16 (g) Such other regulations as the judges shall deem necessary  
17 for the welfare of the children.

18 (2) The judges may, from time to time, revise or amend the  
19 rules, and such revisions or amendments shall be delivered and posted  
20 as provided in subsection (3) of this section.

21 (3) The rules for the regulation and government of facilities  
22 used for juveniles shall be delivered to the county council or  
23 commissioners, the juvenile court, juvenile probation office, state  
24 department of social and health services, and each juvenile detention  
25 facility. Each detention facility shall keep a copy of the rules  
26 posted in a conspicuous place. Such rules and regulations shall be  
27 reviewed annually by the superior court judges.

*Appreciate requirements*

*Physical & Recreation*

*Education  
Program Staff  
Educational*



11/7/75

LYON COUNTY YOUTH CENTER  
PROBATION & DETENTION SERVICES

1215 Sylvan Street

Emporia, Kansas 66801 (316) 342-5637

DARRELL D. MEYER, Judge      GARY L. MARSH, Chief Probation Officer

G. PHILLIP MARTIN, Director

OCTOBER 15, 1975

HONORABLE DAVID HEINEMANN, CHAIRMAN  
INTERIM COMMITTEE ON JUVENILE MATTERS  
STATE OFFICE BUILDING  
TOPEKA, KANSAS 66601

DEAR REPRESENTATIVE HEINEMANN;

I HAVE HAD AN OPPORTUNITY TO REVIEW THE MINUTES AND VARIOUS PROPOSALS FOR MODIFICATION OF THE JUVENILE CODE. IT IS MY OPINION THAT THE COMMITTEE HAS INVESTED A GOOD DEAL OF TIME AND THOUGHTFUL ENERGY AND SHOULD BE COMMENDED FOR THEIR EFFORTS. I WOULD, HOWEVER, LIKE TO POINT OUT A FEW AREAS OF CONCERN:

- (1) THERE HAS BEEN A RECOMMENDATION MADE, I BELIEVE, BY SOCIAL AND REHABILITATION SERVICES FOR INSERTION OF THE WORDS "COMMIT", "PLACE", AND "CUSTODY" UNDER 38-802. I AM OPPOSED TO THESE AS THEY WERE OUTLINED. THE WORD COMMIT IS TO MEAN THE TRANSFER OF LEGAL AND PHYSICAL CUSTODY. THIS CAN BE ACCOMPLISHED ONLY THROUGH A SEVERANCE OF PARENTAL RIGHTS. LEGAL CUSTODY CAN NOT OTHERWISE BE "COMMITTED" TO ANYONE. CARE, CUSTODY, AND CONTROL OF THE JUVENILE CAN BE GIVEN TO SOCIAL AND REHABILITATION SERVICES OR OTHERS, BUT NOT THE LEGAL CUSTODY.
- (2) WHILE IN THEORY I AGREE WITH THE EXCLUSION OF STATUS OFFENSES, IN PRACTICAL TERMS, I SEE NO WAY TO REMOVE THESE FROM THE JUVENILE CODE. ONLY BY AND THROUGH A COURT DETERMINATION CAN ADEQUATE LEGAL PROTECTION BE GUARANTEED TO THE WAYWARD CHILD. IF ONE WAS TO PLACE THE DECISION MAKING PROCESS WITH A SOCIAL AGENCY, DUE PROCESS MAY NOT BE AFFORDED.
- (3) UNDER K.S.A. 38-808, THERE HAS BEEN A LENGTHY RECOMMENDATION MADE THAT WOULD ALLOW JURISDICTION UNTIL THE AGE OF 21 AND WOULD APPARENTLY ALLOW FOR A REASSERTION OF THIS JURISDICTION ONCE IT HAD BEEN TERMINATED. THIS IS A VERY BAD CONCEPT AND RAISES MANY LEGAL QUESTIONS AND CERTAINLY SOME MORAL ONES.
- (4) THERE REMAINS THE BASIC QUESTION OF LEGAL JURISDICTION AND THIS MUST BE CLARIFIED. IT IS MY HONEST OPINION

(2)

THAT ONLY THROUGH A COURT PROCEEDING CAN JURISDICTION OVER YOUTHS BE ESTABLISHED AND FURTHER THAT THIS JURISDICTION DOES NOT END ONCE AN ADJUDICATION AND DISPOSITION HAVE BEEN MADE. WHEN CHILDREN ARE PLACED, THE COURT CONFERS TO SOMEONE OTHER THAN THE PARENT THE CARE, CUSTODY, AND CONTROL OVER THE CHILD, HOWEVER, THE JURISDICTION OF THE COURT CONTINUES UNTIL THAT JURISDICTION IS TERMINATED BY COURT ORDER OR UNTIL THE CHILD REACHES THE APPROPRIATE AGE. PROCEDURE FOR PETITIONING THE COURT FOR A REVIEW MUST ALWAYS BE GUARANTEED.

I DO NOT BELIEVE THAT ANY SOCIAL AGENCY CAN EVER BE GIVEN THE COMPLETE JURISDICTION BOTH LEGAL AND PHYSICAL, OF ANY CHILD UNLESS OR UNTIL A LEGAL DETERMINATION HAS BEEN MADE THAT PARENTAL RIGHTS ARE SEVERED. THIS CAN NEVER BE DONE ON DELINQUENT, MISCREANT, OR WAYWARD CASES. IN ALL OF THESE CASES THE COURT RETAINS LEGAL JURISDICTION AND TRANSFERS TO THAT SOCIAL AGENCY ONLY THE PHYSICAL CUSTODY.

IT HAS BEEN MY OBSERVATION OVER THE YEARS THAT WELL-INTENDED PEOPLE HAVE BEEN GUILTY OF VIOLATING THE RIGHTS OF CHILDREN. THE COURT IS THE APPROPRIATE PLACE FOR JUDICIAL DETERMINATIONS AND EVERY CHILD AND EVERY PARENT SHOULD ALWAYS BE GRANTED THE ABSOLUTE RIGHT TO A JUDICIAL REVIEW. THIS CAN BE EASILY ACCOMPLISHED BY CLARIFYING THE CONTINUING JURISDICTION OF THE JUVENILE COURT.

I WISH TO THANK THE COMMITTEE FOR REVIEWING THESE THOUGHTS. SHOULD THE COMMITTEE DESIRE TO HEAR FROM ME IN PERSON ON ANY OF THESE ISSUES OR ANY ISSUE RELATING TO THE FIELD OF JUVENILE PROBATION, I WOULD BE MORE THAN HAPPY TO AGAIN APPEAR.

SINCERELY,



GARY L. MARSH  
CHIEF PROBATION OFFICER, LYON COUNTY  
LEGISLATIVE CHAIRMAN  
KANSAS JUVENILE PROBATION OFFICER'S ASSOCIATION

GLM/SJM



COMMENTARY ON PROPOSED JUVENILE CODE AMENDMENTS

K.S.A. 32-801. It would be a mistake to transfer status offenders out of the juvenile court. The first question is, "Where will they be sent?". Many status offenders, that is, those who do not commit what would be crimes if committed by adults, mainly runaways, truants and chronic behavior problems, have serious psychological difficulties. Sometimes families themselves contribute to the juvenile's problem. In any event, it is often necessary to remove the child from the home or be able at least to enforce strong rules of probation or to have the capacity to order counseling. No social agency would be able to do this as a person's due process rights could not be adequately protected unless they were granted the protections offered by courts.

It should be noted that "informal" handling of cases, that is, not filing formal juvenile charges and using other resources, is a common procedure in the juvenile court and, in fact, is used in the majority of the cases. Juvenile courts are committed to limiting penetration into the court system by use of non-judicial resources. If filing is not necessary for trifling offenses it need not be done. On the other hand, if it would be necessary to use court proceedings in those cases where they are indispensable, depriving the juvenile court of jurisdiction over status offenses would simply limit the ability of the state to provide services or supervision and strong direction to the child.

The philosophy of the juvenile court is to treat and monitor the child, not to arbitrarily categorize him as a status offender as opposed to a miscreant or delinquent offender. Many times a status offender will have more deep-rooted problems than a child who is technically a delinquent child. This is often seen in children who are more self-destructive than destructive of others. It is in these types of cases where the need for flexibility in the court's alternatives can be most readily seen and the folly of treatment by category most clearly established.

K.S.A. 38-802. The lowering of the juvenile age limit to 17 would simply be an admission of defeat and would not solve any problems. Since the lowering of the juvenile age limit to 16 the difficulty has not been with juvenile courts but with the lack of facilities or programs to be provided for offenders. Too often we forget that the overwhelming majority of those children who are 17 years of age and who commit what would be crimes if committed by an adult are not involved in highly serious offenses and are not permanent problems to society. It is the small number who make headlines that lead to the impetus to lower the juvenile age limit. Such a move is unnecessary as the waiver provisions of the juvenile code as it has been amended makes waiver of a 17 year old who is a serious threat to society or who is not amenable to the juvenile processes reasonably easy.

The two provisions to eliminate the escalation of offenses to higher classes is probably sound. The only problem with doing this deals with the differences in treatment available to



the various classes of offenders. For instance, status offenders cannot be sent to the youth centers at Topeka or Beloit no matter if they would benefit by it. There are no other facilities generally available to provide that type of service. Under the present statute if the person is found wayward three times they can be adjudged a miscreant and sent to the youth center. Similarly, if a person reaches their 18th birthday the juvenile court loses jurisdiction over them if they have committed only a miscreancy. If they have had three miscreancies they may be found to be a delinquent and the jurisdiction of the court may be exercised over them until they are 21 years of age. Of course, any actions after the 18th birthday are handled by the adult courts. If the escalators are eliminated the statute should be amended so as to provide that all treatments be available to any child regardless of the type of offense for which the child is brought to the attention of the court. The only criteria should be whether the treatment is appropriate. The only exception might be that the statute could well forbid use of the various youth centers for mere traffic offenders.

It would probably be wise to define a wayward child, but such action should be taken carefully so as not to exclude any child who might benefit from the services of the court and is a palpable danger to himself or others.

Elimination of traffic offenders from the juvenile court would probably cause no difficulties except in situations where you had very young children who were driving illegally.

Elimination of truancy from the code is fraught with the same difficulties as eliminating waywardness from the code.

The schools are generally unable to handle chronic truants and it is for that reason that they are brought to the attention of the juvenile court. I do not find any suggestion as to how truants are to be handled if the juvenile court is not available.

Creating an arbitrary distinction between dependant and neglected children will lead to many problems. One would have to come up with another arbitor to decide whether the child indeed had no one to care for them or whether someone was neglecting them. It is rather a rare instance where a child is in a social vacuum where no one is legally responsible for him/her. Transfer of this kind of case to administrative agencies would be unwise. To deprive children and their guardians of the due process provided by courts in the very important matter of child custody would be a regressive step and would lead to nothing but confusion and habeas corpus actions. Such an act might be struck down by the courts as failing to provide due process.

K.S.A. 38-805. Requiring a transcript of proceedings would increase the costs and, in a huge majority of the cases, is unnecessary. At the present time transcripts of appeals are automatic as all appeals are held in the District Court which is a court of record. Re-emphasizing the privacy of juvenile court records is laudable.

K.S.A. 38-806. Jurisdiction has a common legal meaning completely distinct from committment and custody. The court must always retain jurisdiction, that is, judicial supervision, over all aspects of any child coming under the provisions of the juvenile code.



The proposals to extend the provisions of K.S.A. 38-806(c) and to end jurisdiction after 18 years of age are contradictory. Children may benefit from court services after they reach the age of 18, especially in dependant and neglect situations and in those situations where the child first comes to the attention of the court shortly before the 18th birthday. With these understandings the legal status of a child after his 18th birthday and before his 21st needs no further clarification.

K.S.A. 38-807. The term "parental unfitness" is very much like the term "beyond a reasonable doubt". There is a great deal of case law involving divorce proceedings which attempts to define this nebulous concept. The term is essentially one which calls upon the court to act as a court in equity and to do what is best for the child. It would be impossible to define the term meaningfully in anything shorter than an act as long as the juvenile code itself. Even after such an exposition there would probably be exceptional cases that would be left out and the meaning of the phrase would probably still be unclear. It would be a good idea for the court to specify in the journal entry its reason for finding unfitness as District Courts often do now. The term "custody of the juvenile court" is presently legally definable and requires no further definition.

K.S.A. 38-808. Elimination of the waiver section is regressive. While prosecutorial discretion must be wide the philosophy of the juvenile code and public policy in general would seem to call for the decision of whether or not the child should be prosecuted in the juvenile or adult court being made

by persons elected for expertise in that particular area and who have staffs especially trained to make that type of determination.

K.S.A. 38-809. Sub-paragraph (d) is generally used by the courts to allow things to work themselves out or to allow additional time for further study. Barring some showing of abuse it is difficult to see why the court should not be allowed this latitude in this type of proceeding.

K.S.A. 38-811. A proposal has been made by the Special Judges Association to vest venue in much the same way as is set out in the proposed change. However, it would allow for disposition in the county where the act was committed if it was appropriate. This would be a more flexible response to the problem than decreeing that the disposition must be in the residence county of the child no matter what difficulties this might cause.

K.S.A. 38-814. All efforts should be made to provide adequate juvenile probation officers in all parts of the state. In that the courts are vested with the major responsibility of protecting the rights of the child and society it should be the court's responsibility and prerogative to direct the standards for education, training and policy of juvenile probation officers. To do otherwise is to remove juvenile probation from the control of those who are supposed to be supervising it.

K.S.A. 38-815. There is probably no difficulty in requiring probable cause to take a child into custody unless this becomes a problem in the investigation of runaways.



Caseworkers could probably be allowed to take dependant and neglected children into their custody on a showing to the court that there was probable cause to believe that the child was in danger. The hearing would have to follow as set out in the code. An extension of the 48 hour period to 72 hours or the exclusion of Saturdays is more consistent with the realities of getting hearings together, but is not essential. Provision for waiver of this right is sound.

After a close reading of K.S.A. 38-815(e) and K.S.A. 38-819(a) no conflict is discernible. Both procedures are subject to the detention hearing process as set out in K.S.A. 38-815b.

Under K.S.A. 38-815b(b), besides allowing more time for notice and allowing waiver of the notice, provision for telephonic or other communication as opposed to writing might be considered. Section (c) would probably fall under the provisions concerning detention as stated above.

K.S.A. 38-816. The suggestion to provide for commitment of a child to the juvenile court is unclear. At the present time a parent may accomplish the same thing by acquainting the court with facts which tend to show the child is or will be dependant and neglected. Parents should not be encouraged to simply sign over children when they become difficult. The requirement of a preliminary investigation is sound and promptness is always of the essence.

K.S.A. 38-817. Informal proceedings for any type of offender are possible under the present code if it is in the best interest of the child and society. Under the present code the court may

make a determination that counsel retained by the parents may be the guardian ad litem if the court is satisfied that he will represent the best interest of the child alone. It would be difficult to have a situation where the guardian ad litem in the dependant and neglect action could be hired by the parents.

Under sub-paragraph (f) the code could simply state that proceedings in the juvenile court shall follow the rules of evidence. Supreme Court decisions have already defined the difference between an adjudicatory hearing and a dispositional hearing.

K.S.A. 38-819. This section has been discussed previously concerning prehearing detention. At the present time a parent may petition at any time that the child be returned to him or her. Additions to 819(b) would seem unnecessary.

K.S.A. 38-821. The guardian ad litem should be independent of the court except to the extent that the court owes an obligation to see that the child's interest is represented.

K.S.A. 38-823. Previous comments will apply to section (b) concerning continuances and as to (e), as always the longer placement or justice is delayed the closer you are to denying the person their rights.

K.S.A. 38-824. The two additions have already been discussed.

K.S.A. 38-824, K.S.A. 38-825 and K.S.A. 38-826. All are subject to numerous changes that have been suggested by the Special Court Judges. Jurisdiction and custody require no additional definition although the word "commitment" probably is



inappropriately used in these statutes. "Custody" would generally be a better word. No reason is cited for granting the Department of Social and Rehabilitation Services the right to become a party in interest in juvenile matters. The courts must make all placements although, of course, they will take into account the recommendations made by the Department of Social and Rehabilitation Services. This matter is discussed in depth in the proposed changes submitted by the Special Court Judges.

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G. Joseph Pierron/db  
Assistant District Attorney  
Johnson County, Kansas