MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m./p.m. on February 6, 1978.

All members were present except: Senators Everett and Gaar

The next meeting of the Committee will be held at 11:00 a. m./p.m. on February 7, 1978.

~~These minutes of the meeting held on _____, 19____ were considered, corrected and approved.~~

Elwaine F. Pomeroy
Chairman

The conferees appearing before the Committee were:

Don Horttor - Kansas Bankers Association
Hugh A. McCullough - Assistant Public Defender
Gene M. Olander - Shawnee County District Attorney
Walter Scott - Associated Credit Bureaus of Kansas
Bill Henry - Governor's Office

Staff present:
Art Griggs - Revisor of Statutes
Paul Purcell - Legislative Research Department
Jerry Stephens - Legislative Research Department

Senator Hein moved that the minutes of January 17 be approved; Senator Parrish seconded the motion, and the motion carried.

Senate Bill 780 - Restoring parental rights after a deprival or termination thereof pursuant to a divorce or juvenile code action. Senator Hein, co-author of the bill, explained what the bill would do. Following committee discussion, action was deferred on the bill until the committee heard SB 841, which also amends the same statute as this bill does.

The chairman announced that the governor's office requested a bill be introduced concerning mandatory sentencing. Senator Burke moved that such a bill be introduced and referred back to the committee; Senator Hein seconded the motion. Following committee discussion, and after hearing an explanation of the proposed bill from Bill Henry, the motion carried.

The chairman explained a proposal for a committee bill dealing with the statute providing for mortgage registration taxes, so as to avoid the payment of such taxes on the filing of an affidavit of equitable ownership. Senator Parrish moved to introduce such a bill; Senator Steineger seconded the motion, and the motion carried.

Mr. Don Horttor appeared to request a committee bill which would amend the statute dealing with the investment powers of a conservator. Following his explanation of the bill, and committee discussion,

Senator Burke moved to introduce such a bill; Senator Simpson seconded the motion, and the motion carried.

Senator Parrish explained a proposal for a committee bill dealing with the filing of an affidavit of prejudice concerning a judge on post-judgment remedies. Senator Parrish moved to introduce such a bill; Senator Hein seconded the motion, and the motion carried.

Senator Parrish explained another proposed committee bill dealing with aids in execution. Following committee discussion, Senator Parrish moved to introduce such a committee bill; Senator Simpson seconded the motion, and the motion carried.

The chairman explained various materials which had been distributed to committee members dealing with various aspects of the juvenile code bills which will be heard by the committee the rest of the week.

Senate Bill 676 - Prosecutions for aggravated juvenile delinquency to be heard pursuant to juvenile code.
House Bill 2709 - Crimes, contributing to misconduct or deprivation of a child and aggravated juvenile delinquency.
Senator Parrish, the author of SB 676, explained what his bill does. He also explained the similarities between this bill and HB 2709, and also pointed out the differences between the two bills.

Hugh McCullough, from the public defender's office, appeared to discuss both bills. A copy of his statement is attached hereto. Following his presentation, there was discussion between Mr. McCullough and the members of the committee.

Gene Olander appeared in opposition to SB 676. He stated there were 27 escapes in 1976 from the Youth Center in Topeka; in 1977 there were 26, and there have been 23 this year. He stated that he feels that an amenability hearing is an unnecessary step. Following his presentation, there was discussion between him and members of the committee.

Senator Gaines moved that the committee introduce a committee bill providing for appropriation of moneys for the preparation of preliminary plans for the construction of a juvenile facility or facilities. Senator Hess seconded the motion, and the motion carried.

Mr. Walter Scott appeared briefly before the committee, and distributed copies of materials concerning federal legislation concerning debt collection agencies. A copy of the material is attached hereto.

The meeting adjourned.

These minutes were read and approved by the committee on 2-21-78.

2-6-78

the court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding the period during which the obligation to support shall continue, to the spouse or to the guardian or conservator of said spouse or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his entering into a recognizance, with or without surety in such sum as the court or a judge thereof may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise of full force and effect.

(*d*) If the court be satisfied by due proof that at any time during the period while the obligation to support continues the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence as the case may be.

(*e*) Nonsupport of a spouse is a class E felony. [L. 1969, ch. 180, § 21-3605; L. 1970, ch. 124, § 4; July 1.]

Source or prior law: 21-442, 21-443, 21-444, 21-445, 21-446.

Judicial Council, 1968: The former law of Kansas protected both the wife and children. It was based upon the Uniform Desertion and Non-Support Act which was drafted in 1910. The proposal substantially follows the former law.

Subsection (1) (*b*) makes the act specifically applicable to adopted children and illegitimate children whose paternity has been judicially established or acknowledged in writing. Note, under the present statutes of Kansas, paternity is regularly and normally an issue only in a bastardy proceeding. It may be proper to provide for a special proceeding in which a preliminary determination of paternity may be made. Such a section probably should be located in the chapter on procedure.

The section was based largely on former K. S. A. 21-442 through 21-447, as modified.

Law Review and Bar Journal References:

Mentioned; definition of "nonsupport of a spouse" limited: under prior law, it was failure to support where the individual knew of an existing legal obligation to provide support, Robert F. Bennett, 39 J. B. A. K. 107, 185 (1970).

21-3606. Criminal desertion. Criminal desertion is a husband's or wife's abandonment or willful failure without just cause to provide for the care, protection or support of a spouse who is in ill health or necessitous circumstances.

Criminal desertion is a class E felony. [L. 1969, ch. 180, § 21-3606; July 1, 1970.]

Judicial Council, 1968: This section supplements section 21-3605. Penalties are imposed for desertion of either spouse who is ill or in necessitous circumstances.

21-3607. Encouraging juvenile misconduct. Encouraging juvenile misconduct is knowingly:

(a) Encouraging any person subject to the Kansas juvenile code to violate any law of the state; or

(*b*) Causing or permitting any person subject to the Kansas juvenile code to be or remain in any house of prostitution or any room or place where intoxicating liquor is unlawfully kept, possessed, sold or bartered or any gambling place.

Encouraging juvenile misconduct is a class B misdemeanor. [L. 1969, ch. 180, § 21-3607; July 1, 1970.]

Source or prior law: 38-712.

Judicial Council, 1968: Part of the substance of the section was formerly found in the Juvenile Code, former K. S. A. 38-712. However, one who actually causes a child to commit a crime would be liable under 21-3205. "Gambling place" is defined in 21-4302 (5).

21-3608. Endangering a child. (1) Endangering a child is willfully:

(a) Causing or permitting a child under the age of eighteen (18) years to suffer unjustifiable physical pain or mental distress; or

(*b*) Unreasonably causing or permitting a child under the age of eighteen (18) years to be placed in a situation in which its life, body or health may be injured or endangered.

(*c*) Nothing in this section shall be construed to mean a child is endangered for the sole reason his parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(2) Endangering a child is a class A misdemeanor. [L. 1969, ch. 180, § 21-3608; July 1, 1970.]

Source or prior law: 38-713.

21-3609. Abuse of a child. Abuse of a child is willfully torturing, cruelly beating or inflicting cruel and inhuman corporal punish-

2-6-78

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Linda Morgan	Topeka	Junior League of Topeka
Beata Weiss	Topeka	
Maureen Farrar ASC	Wichita	
Renee Kirmis ASC	"	
Jim McClark	Topeka	Dist Atty
Walter Mott	Topeka	Asso. Credit Bureaus
Hugh A. McCullough	Topeka	Asst Public Defender
Ellen Richardson	Box 5314 Topeka	Ks. Children's Service League
Ag Stearns	topeka	Coop Churches of Ks
Bill Henry	"	Governor's Office
Ruth Graves	topeka	AAUW-KCCY
Don Hoelting	"	Kansas Bankers Trust Council
Steve Starr	Topeka	P.N.
Charles S. Hamm	State Off Bldg Topeka	SRS
James A Hays	Topeka	Division of Budget
Joan Wikoff	Top	Jr. League Topeka

2-6-78

STATE OF KANSAS

THIRD JUDICIAL DISTRICT PUBLIC DEFENDER

IRA KIRKENDOLL
BRETT H. ROBINSON
JOSEPH D. JOHNSON
HUGH R. McCULLOUGH

Tel. (913) 234-0474
424 South Kansas Avenue
TOPEKA, KANSAS 66601

MEMORANDUM

TO: Topeka Bar Association Committee on Amendments to Laws
FROM: Hugh R. McCullough
RE: Cost to Shawnee County for Aggravated Juvenile Delinquency Prosecutions
DATE: August 22, 1977

I have been requested to prepare a memorandum for the Committee which sets forth as closely as possible the costs to Shawnee County for prosecuting aggravated juvenile delinquency cases. Although various intangibles make it impossible to arrive at a total cost figure, this memo will provide as much as possible in the way of costs which can be isolated and estimated. Statistics which will be related come from the calendar year 1976 and primarily from the files of the Shawnee County Public Defenders office.

In calendar year 1976, our office was appointed on 25 aggravated juvenile delinquency cases at the trial level stage and on 6 appeals of convictions under that statute. Of the 25 trial level cases, 12 resulted in a jury trial. These figures account for virtually all aggravated juvenile delinquency cases processed in Shawnee County during 1976. A check with the District Attorney reveals that at the very most, 2 cases were filed but not handled by our office.

At the outset, it is easily seen that a rather high percentage of these type of cases result in jury trial. The reason for this is that it does not make much difference in terms of probation whether an individual relieves the State of the burden of a jury trial or not. Of the 25 individuals who were charged with the crime of aggravated juvenile delinquency, 24 were convicted, and of the 24, one received probation. The rest were sentenced to a term of from 1-5 years and transferred to the reformatory at Hutchinson.

The twelve jury trials in 1976 consumed approximately 18 days of court time. The Shawnee County Court administrator estimates the cost of a jury to be approximately $288.00 per day for fees, mileage, costs, etc. This would total $5,184.00 of

"out of pocket costs" to Shawnee County. Witness fees in these cases are negligible. There is no reasonable manner of estimating the cost of court time, tying up a courtroom, reporter, bailiff and judge for the 18 days of jury trial. The Shawnee County Court administrator is unable to place a figure on this.

Of the 25 cases handled by our office, our clients spent (estimating very conservatively) 1555 total days in jail or in the Shawnee County Youth Center. The cost for keeping an individual in jail is $17.50 per day which would total $27,212.00 in a direct out of pocket cost to Shawnee County. This is a conservative figure because the individuals actually spent some more time in jail which is impossible to estimate and because Shawnee County Youth Center has a higher cost per day for keeping individuals.

Court costs, which are never recovered, at $70.00 per felony case would come to a total of $1750.00 for the 25 cases. Another direct cost is the $400.00 per appeal handled charged to the County by the District Attorney's office. For 6 appeals this would total $2400.00. Further, the Shawnee County District Attorney's office figures their per case cost for a felony case to be approximately $200.00 per trial level case. For the 25 cases this would be a total of $5000.00 attributable to Shawnee County.

Thus, the total estimable, direct cost to Shawnee County would be approximately $41,500.00 per calendar year. The actual cost is much, much higher but a figure cannot be arrived at because the costs are of so much of an intangible nature encompassing court time, judge's salaries, salaries of various and sundry officials and the very considerable cost to Shawnee County for the Court Services work in doing pre-sentence reports required.

The cost per case for the Shawnee County Public Defenders office is approximately $290.00 per felony case whether trial stage or appeal. This cost is not attributable to Shawnee County as it is wholly funded from the Aid to Indigent Defendant's Fund. The same is true for all appellate costs incurred in the defense of these cases and for all private appointed counsel.

Hugh R. McCullough

2-6-78

RE: PROPOSAL NO. 37 - JUVENILE CODE*

Proposal No. 37, assigned to the Special Committee on Judiciary -B, was a review of the juvenile code including the possibility of lowering the jurisdictional age under the code, a study of the definitions of the various juvenile offenses, and a consideration of juvenile placement practices of the courts and of the Department of Social and Rehabilitation Services (SRS).

Background

The Juvenile Code (K.S.A. 38-801 et seq., as supplemented and amended) was earlier the subject of interim studies in 1975 (Proposal No. 30), 1974 (Proposal No. 81), and 1973 (Proposal No. 13 and Proposal No. 88) but the major portion of recommendations made by the Committees considering those proposals did not become law. Twelve bills relating to the Juvenile Code were introduced during the 1977 Session, only one of which became law.

Three of the bills introduced during the last session dealt with the age of juveniles: S.B. 212 and H.B. 2370 and H.B. 2403. At the end of the session, S.B. 212 remained in the Senate Judiciary Committee, H.B. 2370 remained in the House Judiciary Committee, and H.B. 2403 remained in the House Committee on Federal and State Affairs. Because of the growing concern with this issue of age it was included as a part of the charge of Proposal No. 37.

Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C.A. 5633(a)(12)) requires those states receiving federal money under the Act to provide, within two years after submission of the required plan, that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in juvenile detention or

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* S.B. 553, H.B. 2707, H.B. 2708, H.B. 2709, and H.B. 2710 accompany this report.

correctional facilities but must be placed in shelter facilities. In light of the probability of state application for funding under the Juvenile Justice and Delinquency Prevention Act of 1974, definitions of the various juvenile offenses as well as dispositions authorized for the various offenses need appropriate scrutiny. Hence, part of the charge of Proposal No. 37 included a study of these definitions.

The juvenile placement practices of the courts and of the Department of Social and Rehabilitation Services have, on occasion, conflicted. Generally, SRS believes it should have complete and final placement authority for juveniles who have been committed to the Secretary of SRS while some judges who handle juvenile cases believe they should be able to commit a juvenile to the Secretary with an order directing placement of that juvenile in a specific institution or setting within or without the state. SRS is concerned with its obligation and ability to pay for such court ordered placement as well as with the possiblity that federal funding will be jeopardized if such court ordered placement is allowed. On the other hand, some judges feel that they have the responsibility for ordering placement of a juvenile in a setting most beneficial to the proper care and treatment of the juvenile. This problem was also a part of the charge of Proposal No. 37.

Because of the frequency with which Juvenile Code matters are brought before the Legislature and the continuing legislative concern and activity in this area, an interim study of the Juvenile Code was again undertaken.

Committee Activity

The Committee interpreted the charge of Proposal No. 37 as requiring a thorough review of the Juvenile Code and the entire juvenile procedure, a study of the implications of amending the Juvenile Code to comply with the federal act, and a limited inquiry into a number of other juvenile-oriented issues.

The Committee reviewed the provisions of the current Juvenile Code, all of the bills that will carry over into the

1978 Session, and the Committee Reports from the 1973, 1974, and 1975 interim studies. Two and one-half days of hearings were held with representatives of the following being heard:

Department of Social and Rehabilitation Services
Governor's Committee on Criminal Administration
Law Enforcement Assistance Administration
Department of Education
Achievement Place Research Project
Topeka Youth Center
Topeka State Hospital
Shawnee County Court Services
Kansas Juvenile Probation Officers Association
District Attorney's Office of the Third Judicial District

In addition, five judges who handle juvenile cases were heard, as were several other interested citizens. A number of letters and printed materials was also considered.

A Subcommittee on Juvenile Affairs, consisting of five members of the full Committee, was authorized by the Legislative Coordinating Council for the purpose of drafting a comprehensive bill. The Subcommittee held three drafting sessions and then presented four bills to the full Committee which voted to include additional provisions and introduce a fifth bill. The final versions of those bill are appended to this report and described below.

Conclusion and Recommendations

The Committee recommends that the standing Ways and Means Committees examine the facilities and programs available for juvenile offenders. The Committee believes that such facilities and programs are currently inadequate and that the Legislature needs to spend that amount of money that would sufficiently pay for appropriate care and treatment of adjudicated juvenile offenders.

The Committee recommends application and state compliance with requirements for federal money under the Juvenile Justice and Delinquency Prevention Act of 1974.

The Committee believes that the procedure (K.S.A. 1976 Supp. 38-824) for the permanent deprivation of parental rights in cases of dependency and neglect needs further examination and an amendment that would establish objective criteria for a determination of parental unfitness and entry of an order of permanent deprivation of parental rights.

The Committee recommends that S.B. 553, an Act amending and supplementing the juvenile code, be introduced in the Senate and that the remaining four bills be introduced in the House of Representatives.

Regarding H.B. 2708, the Committee is aware that the cost of requiring such a procedure may be high. While having insufficient time to examine cost, the Committee nevertheless recommends passage of the bill.

The following are brief summaries of the five bills endorsed by this Committee:

H.B. 2707 would prohibit a person from serving as a juvenile probation officer and as a law enforcement officer at the same time.

H.B. 2708 would require the appointment of a guardian ad litem for a juvenile whenever there will be a detention hearing or whenever there is filed a petition to declare a child delinquent, miscreant, wayward, a traffic offender, truant, or dependent and neglected. It would also permit a court to assess the cost of the guardian ad litem against the juvenile's parent or the conservator of the estate of the juvenile.

H.B. 2709 would redefine the crimes of encouraging juvenile misconduct and aggravated juvenile delinquency.

H.B. 2710 would allow recovery of damages from the parents of a juvenile that maliciously or willfully inflicted

inflicted bodily injury on the plaintiff. Damages for such personal injury would be limited to actual medical expenses.

S.B. 553 would amend the juvenile code as follows:

Section 1 would delete the escalation clauses in the definitions of delinquent and miscreant child; delete from the definition of miscreant child and place in the definition of wayward child the commission of acts unlawful only because the actor is under the age of 18; redefine "traffic offender"; eliminate the term "dependent and neglected child" and replace it with the newly defined "deprived child"; and define "law enforcement officer."

Section 2 specifies to whom court records of juveniles may be disclosed.

Section 3 allows a court to retain jurisdiction over a deprived child until the juvenile turns 18 or has been adopted; allows a court to retain until the age of 21 judisdiction over a child charged with an act of delinquency, miscreancy, waywardness, truancy, or an act that could result in the juvenile's being adjudicated a traffic offender; require a court to retain jurisdiction over a mentally ill juvenile until the juvenile is discharged pursuant to the act for obtaining treatment for a mentally ill person.

New Section 4 establishes rules for service of process.

Section 5 makes a change in terminology.

Section 6 establishes rules for venue in adjudicatory and dispositional proceedings.

Section 7 makes K.S.A. 1976 Supp. 38-812 applicable only to a deprived child.

New Section 8 governs the taking of juveniles into custody by a law enforcement officer.

Section 9 would establish procedures for the prosecution and disposition of juveniles 14 years of age or older that have been charged with certain traffic offenses or convicted of such traffic offenses.

New Section 10 requires proceedings pursuant to the juvenile code whenever a person 18 or over is taken into custody for miscreant or delinquent acts allegedly committed before the person had reached 18. It also governs the setting of an appearance bond.

Section 11 would allow, with the judge's consent, fingerprints and photographs of juveniles being prosecuted under the code of criminal procedure; and establish rules of disclosure for all records of law enforcement officers and agencies, municipal courts, and other governmental entities in this state concerning a juvenile offense.

New Section 12 governs expungement of juvenile records.

Section 13 governs the waiver upon written consent by the juvenile and the guardian ad litem of a right to a detention hearing. It also allows a parent to request under specified conditions a rehearing on the issue of temporary detention or custody.

Section 14 makes a change in terminology.

Section 15 makes changes to conform the statute amended with changes made in other sections of the bill.

Section 16 is a technical amendment.

Section 17 governs temporary detainment or custody of a juvenile and specifically allows for any juvenile adjudged a delinquent or miscreant to be detained in the county jail or police station in quarters separate from adult prisoners.

Section 18 prohibits the permanent deprivation of parental rights if the parent was not represented by counsel.

Section 19 would allow the court, in cases where a juvenile was found to be a deprived child, to order the parents of the deprived child to attend such counseling sessions as the court directs.

Section 20 is a technical amendment.

New Section 21 governs rehearings on the issue of placement or commitment, and appeals of a final order of placement or commitment.

New Section 22 establishes a procedure for dealing with juveniles who have allegedly violated a condition of probation, a condition of a court ordered placement, or a condition of release from a state juvenile facility.

Section 23 would allow a court to order the parents of any child adjudicated a delinquent, miscreant, wayward, traffic offender, or truant to attend such counseling sessions as the court directs. It would also allow the court to order restitution and prohibit the Secretary of Social and Rehabilitation Services from placing waywards and truants in the youth centers at Topeka or Beloit.

Section 24 is a technical amendment.

Section 25 is a technical amendment.

New Section 26 establishes a procedure for dealing with a juvenile who may be a mentally ill person.

New Section 27 would establish procedures for appeals on questions reserved by the county or district attorney in cases involving delinquency, miscreancy, and traffic offenders, or a finding that a juvenile is a fit and proper person to be dealt with under the Kansas juvenile code.

New Section 28 governs assessment and payment of costs of an appeal.

Section 24 is a technical amendment.

Section 30 would govern appeals by the county or district attorney in cases involving waywards, truants, and deprived children.

Respectfully submitted,

December 2, 1977

Rep. Richard Brewster,
Chairperson
Special Committee on
Judiciary - B

Sen. Donn J. Everett,
Vice-Chairperson
Sen. Ron Hein
Sen. Joseph F. Norvell
Sen. Jim Parrish
Rep. Ben Foster

Rep. Michael G. Glover
Rep. John F. Hayes
Rep. Fred C. Lorentz
Rep. Phil Martin
Rep. Kent A. Roth

ADDENDUM

Several members of the Committee believe that waywards, truants, and runaways should not come within the coverage of the juvenile code and will, therefore, prepare an additional draft that will incorporate all of the changes made by S.B. 553 while eliminating coverage of waywards, truants, and runaways. This alternate draft will be delivered for study to the standing committee that will consider S.B. 553.

Session of 1978

SENATE BILL No. 553

By Special Committee on Judiciary—B

Re Proposal No. 37

12-7

AN ACT amending and supplementing the Kansas juvenile code; amending K.S.A. 38-811 and 38-829 and K.S.A. 1977 Supp. 38-802, 38-805, 38-806, 38-807, 38-812, 38-815, 38-815a, 38-815b, 38-816 to 38-820, inclusive, 38-824 to 38-827, inclusive, 38-828 and 38-834 and repealing the existing sections; also repealing K.S.A. 1977 Supp. 38-810.

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

Section 1. K.S.A. 1977 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~~ *deprived, miscreant, wayward, truant,* or delinquent children *or traffic offenders.*

(b) "Delinquent child" means a child less than eighteen (18) years of age~~:~~ ~~(1)~~ 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 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 defined in subsection (e) ~~of this section~~, which if done by a person eighteen (18) years of age or over, would make such person liable to be arrested and prosecuted for the commission of a misdemeanor as defined by

K.S.A. 21-3105~~;~~

~~(2) 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 such person liable to be arrested and prosecuted for~~ *or* 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;~~ *city ordinance or county resolution; or*

~~(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)~~ *(2)* who escapes from or runs away from any ~~juvenile detention home or farm or other juvenile center after~~ *lawful court ordered* placement ~~therein by an order of a court of competent jurisdiction~~.

(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*; or*

(4) who does an act, other than one defined in subsection (e), the commission of which by persons under the age of eighteen (18) years, is specifically prohibited and made unlawful by state law, city ordinance or county resolution.

(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 such person liable to be arrested and prosecuted for 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. *8-262, 8-287, 8-1566, 8-1568 or* 21-3405 and K.S.A. ~~1976~~ *1977* Supp. *8-235 or* 8-1567; or

(2) any *city* ordinance~~, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state~~ *or county resolution* 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 when such ordinance or resolution violation would also constitute a violation of K.S.A. 8-262, 8-287, 8-1566, 8-1568 or 21-3405 or K.S.A. 1977 Supp. 8-235 or 8-1567.*

(f) "Truant" 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. ~~1976~~ *1977* 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 such child's 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 injurious to his or her welfare;~~

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

~~(5) who, by reason of the neglect of his or her parent to provide such child 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 the child or such child's parent, or both, receive assistance under the social welfare acts or otherwise receive support from public funds.~~ *"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; or

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

(h) "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.

(i) "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. 1977 Supp. 38-805 is hereby amended to read as follows: 38-805. (a) The record in the district court for proceedings pursuant to the Kansas juvenile code shall consist of the petition, process and the service thereof, orders and writs, and such documents shall be recorded and kept by the court, separate from other records of the court.

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

~~(c)~~ *(b)* All *records, files or other* information *maintained,* obtained ~~and records~~ *or* prepared by any *officer or* employee of the district court ~~for~~ *in connection with* proceedings under the Kansas juvenile code shall be privileged and shall not be disclosed, directly or indirectly, to anyone ~~other than the judge of the district court or others entitled under this act to receive such~~

except:

(1) A judge of the district court and members of the staff of the court designated by a judge of the district court;

(2) parties to the proceeding and their counsel;

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

(4) to any other person when authorized by a judge of the district court, subject to any conditions imposed by the judge; or

(5) a court in which such person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, officials of penal institutions and other penal facilities to which such person is committed or a parole board considering such person's parole or discharge or exercising supervision over such person.

Sec. 3. K.S.A. 1977 Supp. 38-806 is hereby amended to read as follows: 38-806. (a) Except as provided in K.S.A. ~~1976~~ *1977* Supp. 21-3611 and *subsection (b) of* 38-808 ~~(b)~~, proceedings concerning any child, living or found within the county, who appears to be *a* delinquent, miscreant, wayward~~,~~ *or deprived child or* a traffic offender~~, a~~ *or* truant ~~or dependent and neglected~~, as defined in K.S.A. ~~1976~~ *1977* Supp. 38-802, *as amended,* shall be governed by the provisions of the Kansas juvenile code.

(b) When jurisdiction has been acquired by the district court over the person of a ~~dependent and neglected~~ *deprived* child, it may continue until the child*: (1)* Has attained the age of ~~twenty-one (21)~~ *eighteen (18)* years~~, and when the 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 such child's minority with a children's aid society or with a public or private institution used as a home or place of detention or correction~~*; (2) has been adopted; or (3) has been discharged by the court.*

(c) Except as provided by subsection (b) of K.S.A. ~~1976~~ *1977* Supp. 38-808, when any person *is* charged with having committed an act ~~of delinquency before reaching the age of eighteen (18) years is brought before the court after reaching said age~~ *which may cause such person to be adjudicated a delinquent, miscreant*

or wayward child or a traffic offender or truant, the court shall proceed pursuant to the Kansas juvenile code and the person charged shall continue under the jurisdiction of said court for such act until such person is finally discharged by the court or has reached the age of twenty-one (21) years.

(d) When the district court has ordered treatment of a child in accordance with K.S.A. 59-2917 or has ordered referral of a child in accordance with K.S.A. 59-2918, the jurisdiction of the court, with respect to such child's status as a mentally ill person, shall continue until the child is finally discharged pursuant to the act for obtaining treatment of a mentally ill person.

New Sec. 4. (a) All summons, notices and other process of the court for proceedings pursuant to the juvenile code shall be served in accordance with this section.

(b) The court shall direct the method of service of summons, notice of hearings and other process from among the following applicable alternatives:

(1) *Personal Service.* Personal service is completed by delivering a copy of the process personally to the person named therein;

(2) *Residential Service.* Residential service is completed by leaving a copy of the process in a conspicuous place at the usual place of residence of the person named therein at least forty-eight (48) hours prior to the hearing for which the summons, notice or other process is being issued;

(3) *Restricted Mail Service.* Service by restricted mail, as defined by K.S.A. 60-103, is completed upon mailing;

(4) *Service by Publication.* Service by publication is completed by publishing a copy of the process once a week for two consecutive weeks in some newspaper of the county authorized to publish legal notices;

(5) *Service Upon Confined Parent.* If it appears that a parent of a child who is the subject of a juvenile proceeding is confined in a state penal institution, state hospital or other state institution, service shall be made by restricted mail to both the confined parent and to the person in charge of the institution. It shall be the duty of the person having charge of the institution to confer

with the parent, if the parent's mental condition is such that a conference will serve any useful purpose, and to 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; or

(6) *Oral Notice.* Oral notice may be permitted by the court for giving notice of a detention hearing only.

(c) Summons issued for a hearing on a petition, as provided in K.S.A. 1977 Supp. 38-817, as amended, shall be accompanied by a copy of the petition or shall state all information required to be included in the petition.

(d) When personal service or residential service of process is directed, such process shall be served by a juvenile probation officer, the sheriff or any other person appointed by the court for such purpose. The person serving the process shall inform the court of the time and manner of service.

(e) If any person summoned shall fail without reasonable cause to appear and abide the order of the court, such person may be proceeded against for contempt of court. No warrant shall issue for failure to appear at a hearing, unless the person failing to appear either received service of summons for such hearing by personal service or such person signed the receipt for a summons which had been sent by restricted mail.

Sec. 5. K.S.A. 1977 Supp. 38-807 is hereby amended to read as follows: 38-807. Where 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 such person is not a fit and proper person to have the 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 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 district court and order the county or district attorney to cause proper proceedings to be instituted to determine whether said child is ~~dependent and neglected~~ *a deprived child.*

Sec. 6. 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~~ *the child* may be found.

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

(c) Except as provided in subsection (d), 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. When the dispositional hearing is to be held in a county other than the county where the offense was committed, the adjudicating judge shall transmit the record of the adjudicatory hearing, and recommendations as to disposition, to the court where the dispositional hearing is to be held.

(d) If the adjudicatory hearing is held in a county other than the county of the child's residence, the dispositional hearing also may be held in such other county if the adjudicating judge, upon motion by the petitioner or any person authorized to appeal pursuant to K.S.A. 1977 Supp. 38-834, as amended, finds that it is in the best interests of the child and the community that the dispositional hearing also be held in the county where the act was committed.

(e) Venue in cases involving prosecution of persons charged under ~~section 30 of this act~~ *K.S.A. 1977 Supp. 38-830* shall be in the county where the *alleged* offense ~~has been~~ *was* committed.

Sec. 7. K.S.A. 1977 Supp. 38-812 is hereby amended to read as follows: 38-812. (a) Upon application of any interested person~~,~~ the district court in which ~~the~~ original proceedings are pending *alleging that a child is a deprived child* may order said proceedings transferred 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. Any judge transferring any case to another

court shall transmit to said court a complete ~~transcript~~ *record* thereof and, upon receipt of such ~~transcript~~ *record*, said court shall assume jurisdiction as if such proceedings were originally filed in such court. *The transferring judge, if an adjudicatory hearing has been held, shall also transmit recommendations as to disposition.* In case the child is not present in the county to which such case is transferred *and such county is not the residence of the child's parent or parents,* the 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 *for a child* from any order of the court made in proceedings pursuant to the Kansas juvenile code.

New Sec. 8. A law enforcement officer may take a child under eighteen (18) years of age into custody when:

(a) Any offense has been or is being committed by such child in the officer's view;

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

(c) 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 a child a delinquent child; or

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

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

(2) such child may cause injury to self or others or damage to property or may be injured unless immediately taken into custody.

Sec. 9. K.S.A. 1977 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 (b) 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 be delivered into the custody of a juvenile probation officer *or any other person designated by the court* or *shall* be taken forthwith before the district court for proceedings in accordance with the Kansas juvenile code. It shall be the duty of such ~~peace~~ officer to furnish such court with all of the information in the possession of such officer pertaining to the child, the child's 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.

(b) Whenever a child fourteen (14) years of age or older is charged with a traffic offense described in subsection (e) of K.S.A. 1977 Supp. 38-802, as amended, the prosecution of such offense shall not be heard pursuant to the juvenile code but shall be commenced in a court of competent jurisdiction in the same manner as prosecutions involving adults. The court hearing any such prosecution may impose any fine authorized by law for such offense, but no child under the age of eighteen (18) years of age shall be incarcerated for any such offense. Upon conviction of any such offense, the court may suspend the license of any child who was under eighteen (18) years of age at the time of committing such offense. Suspension of a license shall be for a period of one year or a part thereof as ordered by the court. Upon suspending any license pursuant to this section, the court shall require that such license be surrendered to the court who shall transmit the same to the division of vehicles with a copy of the court order showing the time for which the license is suspended. The court may modify the time for which the license is suspended, in which case it shall notify the division of vehicles in writing thereof. After the time period has passed for which the license is suspended the division of vehicles shall issue an appropriate license to the person whose license had been suspended upon successful completion of the examination required by K.S.A. 1977 Supp. 8-241

and upon proper application and payment of the required fee.

(c) *Except as provided in subsection (b) of this section,* if a child under the age of eighteen (18) years is taken before a judge of the district court and such child is not charged in accordance with the provisions of the juvenile code or if a child under the age of eighteen (18) years is taken before a municipal judge, it shall be the duty of such judge to dismiss the charge or complaint and to refer the same for proceedings in the district court pursuant to the juvenile code.

(d) *Except as provided in subsection (b) of this section,* if during the pendency of any action, charge or complaint against a person involving a public offense or quasi-public offense, before a municipal judge or judge of the district court, it shall be 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 to refer the same for proceedings in the district court pursuant to the juvenile code~~, except that no traffic offender action, charge or complaint against a child who has attained the age of sixteen (16) years shall be so dismissed unless it shall be ascertained that the child was under sixteen (16) years of age at the time of committing the alleged offense~~. *Unless the person is eighteen (18) years of age or more,* the officer of the court making such referral ~~having charge of such child,~~ forthwith shall ~~take~~ *cause* the child *to be taken* to the place of detention designated by the district court, or to the district court itself, or shall release the child to the custody of a duly appointed juvenile probation officer or other person designated by the district court, to be brought before the district court at a time and place designated by the judge of the district court. Thereupon, the district court shall proceed as provided in subsection (d) of K.S.A. ~~1976~~ *1977* Supp. 38-816, *as amended.*

(e) Whenever a child under the age of eighteen (18) years is taken into custody by a ~~peace~~ *law enforcement* officer and is thereafter taken before the district 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~~ *law enforcement* 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, *or the right to such hearing is waived,* as provided in K.S.A. ~~1976~~ *1977* Supp. 38-815b, *as amended.*

New Sec. 10. Whenever a person eighteen (18) years of age or more is taken into custody by a law enforcement officer for an alleged miscreant or delinquent act which was committed prior to the time such person reached the age of eighteen (18), the officer shall notify and refer the matter to the district court for proceedings pursuant to the juvenile code, except that the provisions of the juvenile code relating to detention hearings shall not apply to such person. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the district court and such warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before a judge of the district court of the county where the alleged act took place. The judge shall fix the terms and conditions of an appearance bond upon which the person may be released from custody. The provisions of article 28 of chapter 22 relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

Sec. 11. K.S.A. 1977 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 district court having jurisdiction. 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) *Except as provided in subsection (c),* all records *of law enforcement officers or agencies, municipal courts and other governmental entities* in this state concerning a public 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 ~~open to inspection, except by order of the district court.~~ *disclosed to anyone, except:*

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

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

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

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

(5) to any other person, when ordered by a judge of a district court in this state, under such conditions as the judge may prescribe.

(c) Subsections (b) and (d) shall not apply to records and files:

(1) Made in conjunction with prosecutions pursuant to the code of criminal procedure;

(2) concerning an offense for which a district court has directed prosecution pursuant to K.S.A. 1977 Supp. 38-808;

(3) concerning a traffic offense described in subsection (e) of K.S.A. 1977 Supp. 38-802, as amended, which was committed or alleged to have been committed by a child fourteen (14) years of age or more; or

(4) specified in K.S.A. 1977 Supp. 38-805, as amended.

(d) 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 person less than eighteen (18) years of age,* to ~~at once~~ *promptly* report to the judge of the district court of the district 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 the possession of the 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 district court of the district in which such record is made shall have the power~~

~~to order such record expunged. If the person to whom such order is directed shall refuse or fail to do so within a reasonable time after receiving such order, such person may be adjudged in contempt of court and punished accordingly.~~

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

New Sec. 12. (a) When any records or files specified in K.S.A. 1977 Supp. 38-805 or in subsection (b) of K.S.A. 1977 Supp. 38-815a, 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 district court of any county in which such records or files are maintained to have the records or files in such county expunged. The application shall specify the records or files sought to be expunged and shall state the offense to which such records or files relate. After hearing, the court shall order the expungement of such records and files if the court finds that:

(1) 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;

(2) since the final discharge of the person, such person has not been convicted of a felony or of a misdemeanor other than a traffic offense 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. 1977 Supp. 38-805 or 38-815a, both as amended, have been made concerning a person less than eighteen (18) years of age, the judge of the district court of the county in which such records or files are maintained may order the expungement of such records or files at any time on the judge's own motion and after hearing.

(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

(d) Upon entry of an order expunging records or files, the offense which such records or files concern shall be treated as if it never occurred, except that upon conviction of a subsequent crime or disposition in a subsequent juvenile code action the offense may be considered in considering the sentence to be imposed or disposition to be made. The person, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the person. Inspection of the expunged files or records thereafter may be permitted by order of the district 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 expunged. 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.

(f) The court shall inform any child that has been adjudicated a delinquent, miscreant, wayward or deprived child or traffic offender or truant of the provisions of this section.

Sec. 13. K.S.A. 1977 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 district 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. ~~1976~~ *1977* 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 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 advise such persons that they have 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 shall advise 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. ~~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 a juvenile probation officer, 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. 1976 Supp. 38-810~~ *but if all persons required to receive notice agree to have such hearing at an earlier time, the court may proceed with a detention hearing prior to the elapse of twenty-four (24) hours after giving notice of the hearing.*

(c) The district court may order temporary custody or detention as provided in K.S.A. ~~1976~~ *1977* Supp. 38-819, *as amended,* in a detention hearing under this section after determining that: (1) The child is dangerous to 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. ~~1976~~ *1977* Supp. 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 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 a juvenile probation officer, or may impose any other conditions which may be required, subject to modification by the court.

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

(1) The child and the child's guardian ad litem are informed 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 and the guardian ad litem for the child consent in writing to waive the right to a detention hearing; and

(3) the judge of the district 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), the child, the guardian ad litem for the child or the child's parent, guardian or other legal custodian may reassert such right at any time prior to adjudication by submitting a written request to the judge of the district court. 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 Sundays and legal holidays, after the receipt of the request.

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

Sec. 14. K.S.A. 1977 Supp. 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 delinquent, miscreant, wayward~~,~~ *or deprived child or* a traffic offender~~, a~~ *or* truant, ~~or dependent and neglected~~ as defined in K.S.A. ~~1976~~ *1977* Supp. 38-802, *as amended*, may file with the

district court having jurisdiction, a petition in writing, verified by affidavit, which shall set forth, in plain and concise language, without repetition, the facts which bring the child under the jurisdiction of the district court; and so far as known: (1) The name, age and residence of the child; (2) the names and residence of the child's parents; (3) the name and residence of the child's 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 district court that a child appears to be either delinquent, miscreant, wayward~~,~~ *or deprived child or* a traffic offender~~, a~~ *or* truant ~~or dependent and neglected~~, as defined in K.S.A. ~~1976~~ *1977* Supp. 38-802, *as amended,* it shall be the duty of such court, or its duly appointed juvenile 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 the previous history of such child. If, after such inquiry, the judge of the district court determines that the circumstances so justify, such judge shall authorize a petition, in writing, to be filed in his or her 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 court shall proceed in accordance with the juvenile code.

(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. ~~1976~~ *1977* Supp.

38-815, *as amended,* a case is referred for proceedings in the district court pursuant to the juvenile code, the district court may proceed to make a preliminary inquiry and investigation and authorize a petition to be filed in the manner provided in subsection (b) of this section, except that the county or district attorney, when requested by the judge of the district court, shall file such petition without such inquiry and investigation. Upon the filing of such petition, the court shall proceed in accordance with the juvenile code.

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

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

Sec. 15. K.S.A. 1977 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 district 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 for good and sufficient cause grant a continuance when deemed necessary. Immediately upon the filing of such petition the court shall *summon and* give notice of the time and place of such hearing to the child and the parent, guardian or other person having legal custody of such child or if there be none then some relative or other interested person, if there be one. Such notice *and summons shall be served as provided in section 4 and* shall include a statement advising such child and the parent, guardian or other person having legal custody of such child of the right to retain counsel of their 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 the cost of appointed counsel may be assessed to the parent, guardian or other person having legal

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. In cases where the petition declares the child to be a traffic offender, as defined by subsection (e) of K.S.A. 1977 Supp. 38-802, *as amended,* 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 a juvenile probation officer of the court, by the sheriff of the county, by a person appointed by the court for such purpose or by restricted mail, as defined by K.S.A. 60-103. If the judge of the district 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, 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 court may 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 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 to the child's guardian, if there is one, or, if there is neither parent nor guardian or if the residence of the parent or guardian is unknown, then to some relative, if there is one and his or her residence is known.~~

~~(d) If it appears that a parent of the child is confined in the~~

~~state penitentiary, any state hospital or any state charitable or penal institution, a copy of the summons shall be served upon such parent, and also upon the person having charge of the institution, by mail. Such service shall be in lieu of the service prescribed by K.S.A. 1977 Supp. 38-810. It shall be the duty of the person having charge of the institution to confer with the parent, if the parent's mental condition is such that a conference will serve any useful purpose, and to 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 court, or to bring the child, such person may be proceeded against for contempt of court.~~

~~(f)~~ *(b)* At the time fixed in the summons, or by order of the court, the court shall proceed to hear and dispose of the case and enter judgment or decree therein. The court may apply the schedule of fees provided for in K.S.A. 1977 Supp. 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. 1977 Supp. 38-816. Except as otherwise specifically provided in this section, such summons shall be served as provided in K.S.A. 1977 Supp. 38-810.~~

Sec. 16. K.S.A. 1977 Supp. 38-818 is hereby amended to read as follows: 38-818. In any proceedings pursuant to the juvenile code in the district court in which the parent, guardian or other person having legal custody of a child may be deprived of the permanent custody of such child, summons shall issue to such

name of the court and shall contain notice of the time and place of the hearing and a statement requiring the person named in the summons to appear and there show cause why he or she should not be deprived of the permanent custody of _____ (name of child). ~~Such summons shall be served as provided by K.S.A. 1976 Supp. 38-810.~~

Sec. 17. K.S.A. 1977 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 *a* delinquent, miscreant, wayward~~,~~ *or deprived child or* a traffic offender~~, a~~ *or* truant ~~or dependent and neglected, filed~~, *commenced* pursuant to K.S.A. ~~1976~~ *1977* Supp. 38-816, *as amended,* the district court may order that such child be placed in some form of temporary detention or custody as provided in this section~~, but only after~~. *Any such detention or custody shall not exceed forty-eight (48) hours, excluding Sundays and legal holidays, unless within such forty-eight-hour period* a determination is made as to the necessity therefor in a detention hearing as provided by K.S.A. ~~1976~~ *1977* Supp. 38-815b, *as amended. If the hearing on the petition results in the child being adjudged a delinquent, miscreant, wayward or deprived child or a traffic offender or truant, the court may order that the child be placed in some form of temporary detention or custody as provided by this section pending execution of the order of disposition.*

(b) ~~Upon such a determination,~~ *Pursuant to subsection (a),* the 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~~ *who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, but who shall become licensed thereunder within thirty (30) days of the entry of the court order if the child remains in such person's custody;* to a children's aid society~~, or~~*;* to a public or private institution used as a home or place of detention ~~or correction,~~*;* or to the secretary of social and rehabilitation services.

(c) ~~Upon such a determination,~~ *Pursuant to subsection (a),* the court may order any such child who is alleged *or adjudged* 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 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 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) Unless otherwise provided for, and subject to payment or reimbursement as required by K.S.A. ~~1976~~ *1977* Supp. 38-828, *as amended,* the expenses of any temporary detention or custody ordered by the district 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. ~~1976~~ *1977* Supp. 39-709 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. 1977 Supp. 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 K.S.A. ~~1976~~ *1977* Supp. 38-824, *as amended,* shall be made unless such parent is *represented by counsel and* present in district court or has been served with summons ~~as provided by K.S.A. 1976 Supp. 38-810~~. The judge of the district 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. 1977 Supp. 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~~ *a deprived child,* within the meaning of this act, either at the initial hearing or any subsequent hearing.

(b) In the absence of an order depriving parental rights, the district court may make such ~~dependent and neglected~~ *deprived* child a ward of the court and commit the child to:

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

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

(4) the secretary of social and rehabilitation services.

In addition to the foregoing provisions of this section, the court may order the parents of any child who has been adjudicated a deprived child to attend such counseling sessions as the court may direct. The costs of any such counseling may be assessed as costs in the case.

(c) When the parents, or parent in case there is one parent only, are found and adjudged to be unfit to have the custody of such ~~dependent and neglected~~ *deprived* child, K.S.A. ~~1976~~ *1977* Supp. 38-820, *as amended,* and other applicable provisions of this act having been fully complied with, the district court may make an order permanently depriving such parents, or parent, of 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 institution used as a home or place of detention ~~or correction~~;

(3) to the care of some association willing to receive 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.

(d) In any case where the court shall award a child to the care of an individual or association, in accordance with clause (1) or (3) of subsection (c) 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 the child 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 court to enter proper order or decree of adoption. In any case where the court shall award a child to the care of the secretary of social and rehabilitation services, in accordance with clause (4) of subsection (c) of this section, the 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. ~~1976~~ *1977* Supp. 38-825, *as amended.* In any such case, upon the filing of the application provided for in K.S.A. ~~1976~~ *1977* Supp. 59-3009 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) When the health or condition of such ~~dependent and neglected~~ *deprived* child shall require it, the district 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) above, the 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 such child.

Sec. 20. K.S.A. 1977 Supp. 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, said secretary, if he or she deems it to be in the best interest of the child, may place the child in the youth center at Atchison or in a foster care facility, or may transfer such child to the jurisdiction of a children's aid society willing to accept the child, or with the written consent of the judge of the district court to the home of the parent, or parents, who have not been deprived of parental rights.

(b) A parent or parents of a child under the jurisdiction of the secretary of social and rehabilitation services, who has not been deprived of parental rights, may file with the district court having jurisdiction, a petition in writing for the return of such child to 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 peti-

tioner 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 in the best interests of the child to be returned to his or her parents, the court shall so order.

New Sec. 21. (a) At any time after the entry of any final order by the district court placing or committing a child pursuant to subsection (a) of K.S.A. 1977 Supp. 38-824, as amended, or pursuant to K.S.A. 1977 Supp. 38-826, *as amended,* the secretary of social and rehabilitation services, the guardian *ad litem* for the child, the child's parent, guardian or other legal custodian or any party to the original proceeding may file a motion with the district 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) Any appeal from any final order by the district court placing or committing a child pursuant to subsection (a) of K.S.A. 1977 Supp. 38-824, as amended, or pursuant to K.S.A. 1977 Supp. 38-826, *as amended,* shall be allowed by the secretary of social and rehabilitation services, the guardian *ad litem* for the child, the child's parent, guardian or other legal custodian or any party to the original proceeding. Such appeal shall be taken in the manner provided by K.S.A. 1977 Supp. 38-834, as amended.

New Sec. 22. (a) In the case of an alleged violation of a condition of probation or condition of a court ordered placement that would not constitute grounds for commencing an action pursuant to the juvenile code the county or district attorney, the assigned juvenile probation officer or the person to whom care, custody and control of a child has been placed may file a motion with the court describing the alleged violation and requesting a hearing thereon. When any such motion is filed, the court shall proceed in the same manner and under the same procedure as provided in the juvenile code for a hearing on a petition filed pursuant to K.S.A. 1977 Supp. 38-816, as amended. If the court finds at the hearing that the juvenile violated a condition of probation or placement, the court may make any order that the court was empowered to make at the original dispositional pro-

(b) If it is alleged that a violation of a condition of release, which would not constitute grounds for commencing an action pursuant to the juvenile code or K.S.A. 1977 Supp. 21-3611, has been committed by a child who was committed to a state juvenile facility pursuant to paragraph (7) of subsection (a) of K.S.A. 1977 Supp. 38-826, *as amended*, and who was thereafter permitted to leave such facility under specified conditions of release, the director of the facility, the supervisor of the social worker assigned by the department of social and rehabilitation services or the county or district attorney may file a motion with the court that ordered the commitment. The motion shall describe the alleged violation and request a hearing thereon. When any such motion is filed, the court shall proceed in the same manner and under the same procedure as provided in the juvenile code for a hearing on a petition filed pursuant to K.S.A. 1977 Supp. 38-816, as amended. If the court finds that a condition of release has been violated the court may impose such additional conditions of release as the court may deem necessary or the court may order that the juvenile be returned to the facility until discharged by the director thereof.

Sec. 23. K.S.A. 1977 Supp. 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 district court may make an order to:

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

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

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

(4) place such child in the care of a children's aid society, subject to such terms and conditions as the court may deem proper;

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

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

(7) commit such child, if a boy thirteen (13) years of age or older, to the youth center at Topeka or other training or rehabilitation facility for juveniles or, if a girl thirteen (13) years of age or older, to the youth center at Beloit or other training or rehabilitation facility for juveniles~~.~~*; or*

(8) require the child to make restitution in an amount fixed by the court to persons whose property has been damaged by reason of acts of the child or to require the child to accept employment approved by the court for the purpose of providing funds to make restitution or to work for the person whose property has been damaged in order to make restitution for such damage.

(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 district court may make an order to place such child in the same manner as provided in paragraphs (1), (2), (3), (4), (5) and (6) 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 district 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 court;

(2) suspending or revoking such 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 committed an act making him or her 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 in which such offender has residence; or

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

(d) When a child has been committed to the state secretary of social and rehabilitation services, pursuant to paragraph (6) of 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. ~~1976 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. *Notwithstanding the foregoing, no wayward or truant child shall be placed in the youth center at Topeka or the youth center at Beloit.*

(e) In addition to the orders authorized pursuant to the foregoing provisions of this section, the court may order the parents of any child who has been adjudicated a delinquent, miscreant or wayward child or a traffic offender or truant to attend such counseling sessions as the court may direct. The costs of any such counseling may be assessed as costs in the case.

~~(e)~~ *(f)* After placement of a child, the secretary of social and rehabilitation services shall retain jurisdiction over the child and 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.

Sec. 24. K.S.A. 1977 Supp. 38-827 is hereby amended to read as follows: 38-827. (a) Unless otherwise provided for, and subject to payment or reimbursement as required by K.S.A. ~~1976~~ *1977* Supp. 38-828, or any amendments thereto, the expenses of the care and custody of a ~~dependent and neglected~~ *deprived* child, committed under clauses (2), (3) and (4) of subsection (b) of

K.S.A. ~~1976~~ *1977* Supp. 38-824, or any amendments thereto, or placed in a hospital under subsection (e) of K.S.A. ~~1976~~ *1977* Supp. 38-824, or any amendments thereto, or referred to the youth center at Atchison or facility thereof under subsection (c) of K.S.A. ~~1976~~ *1977* Supp. 38-823, or any amendments thereto, shall be paid out of the state social welfare fund if such child is eligible for assistance under K.S.A. ~~1976~~ *1977* Supp. 39-709, or any amendments thereto, otherwise 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. ~~1976~~ *1977* 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 (2), (3), (4), (5) and (6) of subsection (a) of K.S.A. ~~1976~~ *1977* Supp. 38-826, or any amendments thereto, or referred to the youth center at Atchison or facility thereof or other facility under subsection (c) of K.S.A. ~~1976~~ *1977* Supp. 38-823 shall be paid out of the state social welfare fund if such child is eligible for assistance under K.S.A. ~~1976~~ *1977* Supp. 39-709, or any amendments thereto, otherwise out of the general fund of the county in which the proceedings are brought, except that the expenses of the care and custody of any child committed to the secretary of social and rehabilitation services pursuant to clause (6) of subsection (a) of K.S.A. ~~1976~~ *1977* Supp. 38-826, or any amendments thereto, shall not be paid out of the county general fund.

(c) When a child is committed under clause (4) of subsection (b) of K.S.A. ~~1976~~ *1977* Supp. 38-824, or any amendments thereto, or under clause (6) of subsection (a) of K.S.A. ~~1976~~ *1977* Supp. 38-826, or any amendments thereto, the expenses of the care and custody of such child may be paid out of the state social welfare fund, subject to payment or reimbursement as required in K.S.A. ~~1976~~ *1977* Supp. 38-828, or any amendments thereto, even though the child does not meet the eligibility standards of K.S.A. ~~1976~~ *1977* Supp. 39-709, or any amendments thereto

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

Sec. 25. K.S.A. 1977 Supp. 38-828 is hereby amended to read as follows: 38-828. (a) When, under the provisions of subsection (d) of K.S.A. ~~1976~~ *1977* Supp. 38-819, *as amended,* and of K.S.A. ~~1976~~ *1977* Supp. 38-827, *as amended,* expenses may be or have been paid out of the state social welfare fund or out of the county general fund, the district court shall fix a time and place for a hearing on the question of requiring payment or reimbursement of all or part of such expenses by the parent or parents, conservator or other person liable by law to maintain, care for or support the child. The time for such hearing may be extended by the court for cause. If requested by the court, the secretary of social and rehabilitation services shall make an investigation regarding the income and resources of such parent, conservator or person, with respect to his or her ability to pay such expenses, and be prepared to report its findings to the court at the time of the hearing.

(b) Unless such parent, conservator or other person shall voluntarily appear or be in court at the time and place so fixed, summons shall be issued stating the court in which such hearing is to be held, the name and residence of each party to whom the summons is issued and all information necessary to fully apprise such party of the nature of such hearing. ~~Such summons shall be served as provided in K.S.A. 1976 Supp. 38-810.~~

(c) The court, at the time fixed in the summons or by its order, shall proceed to hear and dispose of the case and may enter a final order requiring such parent, conservator or person to pay, in such manner as the court may direct, such sum, within his or her ability to pay, as will cover in whole or in part the expenses referred to in subsection (a) of this section. Any such parent, conservator or person who shall willfully fail or refuse to pay such sum may be adjudged in contempt of court and punished accordingly.

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

New Sec. 26. (a) If, at any time during the pendency of a

proceeding under the juvenile code concerning a child, the judge of the district court determines that the circumstances so warrant, such judge shall authorize the filing of an application to determine whether such child is a mentally ill person, as defined by K.S.A. 59-2902 and any amendments thereto, by a reputable person having knowledge of the facts of the case. Such application shall be in the form and manner provided by K.S.A. 59-2913 and any amendments thereto.

(b) When an application has been filed as provided in subsection (a) of this section, the court shall proceed in the manner provided in article 29 of chapter 59 of the Kansas Statutes Annotated and acts amendatory thereof and supplementary thereto and may make any order which the court is empowered to make thereunder.

New Sec. 27. (a) In actions alleging a child is delinquent, miscreant or a traffic offender, appeals to the court of appeals may be taken by the county or district attorney from cases before a district judge or associate district judge upon a question reserved. In any such actions, appeals to a district judge or associate district judge may be taken by the county or district attorney from cases before a district magistrate judge upon a question reserved. An appeal under this subsection shall be taken within thirty (30) days from the date the court ruled upon the question reserved.

(b) In any hearing pursuant to subsection (b) of K.S.A. 1977 Supp. 38-808, the prosecuting attorney may appeal from a finding that a child is a fit and proper person to be dealt with under the Kansas juvenile code. Notice of such appeal must be given to the court within ten (10) days from the date of such finding. When such appeal is taken from a district judge or associate district judge the appeal shall be to the court of appeals; the record on appeal and any briefs shall be filed not later than forty-five (45) days from the date the notice of appeal was filed. When the appeal is from a district magistrate judge, the appeal shall be to a district judge or associate district judge in the county; any such appeal shall be heard *de novo* and a decision thereon rendered within thirty (30) days from the date of the filing of the notice of

(c) An appeal pursuant to subsection (a) or (b) shall not stay any order or proceeding so appealed but the court to which the appeal is taken may make such temporary orders for care and custody of the child as it may deem advisable.

(d) Except as otherwise provided by this section or rule of the supreme court, any appeal pursuant to this section shall be taken in accordance with article 21 of chapter 60 of the Kansas Statutes Annotated. Costs on appeal shall be assessed in accordance with the provisions of the juvenile code.

New Sec. 28. Whenever an appeal is taken pursuant to the juvenile code, other than appeals from prosecutions pursuant to K.S.A. 1977 Supp. 38-830, expenses incurred on appeal for fees of the guardian *ad litem* and costs of transcripts and records on appeal shall be taxed as costs on appeal. The court to which the appeal is taken may assess such costs against the parent, guardian or conservator of the child or order that they be paid from the general fund of the county. When the court orders such costs assessed against the parent, guardian or conservator of a child:

(a) The costs shall be paid from the county general fund, subject to reimbursement by such parent, guardian or conservator.

(b) The county may enforce such order in the same manner as enforcement of a civil judgment in the district court, except that the court shall not require the county to pay any docket fee or other fee for execution.

Sec. 29. 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 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, and if it shall appear that a continuance of such custody is not for the best interests of such child, the court may revoke and set aside the order giving such custody and make such further orders in the premises as to the future custody of the child as shall seem best.

Sec. 30. K.S.A. 1977 Supp. 38-834 is hereby amended to read

as follows: 38-834. (a) The provisions of this section shall not apply to appeals *from prosecutions* under K.S.A. ~~1976 Supp. 38-833~~ *1977 Supp. 38-830, nor appeals by the prosecution under section 27.*

(b) An appeal shall be allowed by any child from any final order in any proceeding pursuant to the juvenile code. When the order appealed from was made by a district magistrate judge, such appeal shall be taken to an associate district judge or district judge. When the order appealed from was made by a district judge or associate district judge, the appeal shall be to the court of appeals. Such appeal may be demanded on the part of the child by such child's parent, guardian, guardian *ad litem* or custodian, or by any relative of such child within the fourth degree of kinship. Such appeal shall be taken within thirty (30) days after the making of the order complained of, by written notice of appeal filed with the district court, which shall specify the order appealed from. *In actions alleging a child to be a wayward or deprived child or truant, the county or district attorney may appeal from any final order in the same manner provided for in this section for appeals by a child.*

(c) Such appeal shall not suspend or vacate the order appealed from, but the same shall continue in force in all respects the same as if no appeal had been taken until final judgment has been rendered on appeal, except that the court on appeal, pending a hearing, may make such modification of the order appealed from, and upon such conditions, as the court may deem proper. The case shall be heard and disposed of in accordance with the provisions of this act and in the exercise of all the powers and discretion herein given to the district court.

(d) Within the thirty (30) days specified in subsection (b) of this section, the appellant shall serve upon the adverse party or such party's attorney or record a notice of appeal. Proof of service thereof verified by affidavit shall be filed with the district court.

(e) Whenever a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the court on appeal may permit an amendment on

(f) A record of the proceedings upon appeal shall be filed and made a part of the files of the case.

~~(g) If the effective date of this act occurs within the time allowed for appeal from any order, judgment, decision or decree of a juvenile court, any appeal thereof shall be taken to a district judge of the county in which such juvenile court was located.~~

New Sec. 31. New sections 4, 8, 10, 12, 21, 22, 26, 27 and 28 shall be a part of and supplemental to the Kansas juvenile code.

Sec. 32. K.S.A. 38-811 and 38-829 and K.S.A. 1977 Supp. 38-802, 38-805, 38-806, 38-807, 38-810, 38-812, 38-815, 38-815a, 38-815b, 38-816 to 38-820, inclusive, 38-824 to 38-827, inclusive, 38-828 and 38-834 are hereby repealed.

Sec. 33. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1978

HOUSE BILL No. 2707

By Special Committee on Judiciary—B

Re Proposal No. 37

12-7

AN ACT relating to juvenile probation officers; prohibiting law enforcement officers from serving as juvenile probation officers; amending K.S.A. 1977 Supp. 38-814 and repealing the existing section.

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

Section 1. K.S.A. 1977 Supp. 38-814 is hereby amended to read as follows: 38-814. *(a)* The administrative judge of each judicial district may appoint such juvenile probation officers and investigators as are necessary. Such probation officers and investigators shall receive such compensation, payable from the county, as is prescribed by the judges of the district court, within the limits of the budget for district court operations payable by the county. In addition to their compensation, such probation officers and investigators shall receive mileage at the rate prescribed pursuant to K.S.A. 75-3203a and amendments thereto for each mile actually and necessarily traveled in the performance of their duties, when such travel is authorized by a judge of the district court or such monthly car allowance as may be authorized by the administrative judge within the limits of the district court budget.

(b) Juvenile probation officers and investigators shall furnish the court with any information that may be obtained and render any assistance requested by the court in any proceeding pursuant to the juvenile code, which may be helpful to the court or the child. Under the direction of the court, a juvenile probation officer shall take possession and custody of any child under the court's jurisdiction and make such arrangements for the tempo-

(c) No person appointed as a juvenile probation officer shall serve as a law enforcement officer during such person's service as a juvenile probation officer.

Sec. 2. K.S.A. 1977 Supp. 38-814 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1978

HOUSE BILL No. 2708

By Special Committee on Judiciary—B

Re Proposal No. 37

12-7

AN ACT relating to the juvenile code; concerning the appointment of guardians *ad litem*; amending K.S.A. 1977 Supp. 38-815b and 38-817 and repealing the existing sections.

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

Section 1. K.S.A. 1977 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 district 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 *child's* parent, ~~guardian or such other person having legal custody~~ *or the conservator of the estate* of the child as part of the costs of the case as provided in subsection (f) of K.S.A. ~~1976~~ *1977* Supp. 38-817.

(b) 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 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 ~~advise such persons that they have 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~~

~~guardian ad litem. Such notice shall set forth the name and address of such guardian ad litem and shall advise 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~~ *include 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 child's parent or to the conservator of the estate of the child and that the parent, guardian or other person having 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 at least twenty-four (24) hours prior to the time set for the detention hearing, by a juvenile probation officer, 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. 1976 Supp. 38-810.

(c) The district court may order temporary custody or detention as provided in K.S.A. ~~1976~~ *1977* Supp. 38-819, in a detention hearing under this section after determining that: (1) The child is dangerous to 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. ~~1976~~ *1977* Supp. 38-816; or (3) the health or welfare of the child may be endangered without further care.

(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 a juvenile probation officer, or may impose any other conditions which may be required subject to modification by the court.

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

Sec. 2. K.S.A. 1977 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, the district 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 for good and sufficient cause grant a continuance when deemed necessary. 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 ~~and~~, *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 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 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 *child's* parent~~, guardian~~ or ~~other person having legal custody~~ *the conservator of the estate* 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. In cases where the petition declares the child to be a traffic offender, as defined by subsection (c) of K.S.A. 1977 Supp. 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 a juvenile probation officer of the court, by the sheriff of the county, by a person appointed by the court for such purpose or by restricted mail, as defined by K.S.A. 60-103. If the

judge of the district 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, 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 court may 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 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 to the child's guardian, if there is one, or, if there is neither parent nor guardian or if the residence of the parent or guardian is unknown, then to some relative, if there is one and his or her residence is known.

(d) If it appears that a parent of the child is confined in the state penitentiary, any state hospital or any state charitable or penal institution, a copy of the summons shall be served upon such parent, and also upon the person having charge of the institution, by mail. Such service shall be in lieu of the service prescribed by K.S.A. 1977 Supp. 38-810. It shall be the duty of the person having charge of the institution to confer with the parent, if the parent's mental condition is such that a conference will serve any useful purpose, and to 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 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 court shall proceed to hear and dispose of the case and enter judgment or decree therein. The court may apply the schedule of fees provided for in K.S.A. 1977 Supp. 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,~~ *the child's parent or the conservator of the estate of the child* 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. 1977 Supp. 38-816. Except as otherwise specifically provided in this section, such summons shall be served as provided in K.S.A. 1977 Supp. 38-810.

Sec. 3. K.S.A. 1977 Supp. 38-815b and 38-817 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1978

HOUSE BILL No. 2709

By Special Committee on Judiciary—B

Re Proposal No. 37

12-7

AN ACT relating to crimes involving children; defining the crime of contributing to the misconduct or deprivation of a child; concerning the crime of aggravated juvenile delinquency; amending K.S.A. 1977 Supp. 21-3611 and repealing the existing section; also repealing K.S.A. 21-3607 and K.S.A. 1977 Supp. 38-830.

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

New Section 1. (1) Contributing to a child's misconduct or deprivation is causing or encouraging a child under eighteen (18) years of age:

(a) To become a delinquent, miscreant, wayward or deprived child or a traffic offender or truant, as defined by K.S.A. 1977 Supp. 38-802, and any amendments thereto; or

(b) to commit a felony or misdemeanor.

Contributing to a child's misconduct or deprivation is a class A misdemeanor, except that if the defendant caused or encouraged the child to be a delinquent child or to commit a felony, the offense is a class E felony.

(2) A person may be found guilty of this section even though no prosecution of the child, whose misconduct or deprivation the defendant caused or encouraged, has been commenced pursuant to the juvenile code or code of criminal procedure.

(3) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 2. K.S.A. 1977 Supp. 21-3611 is hereby amended to read as follows: 21-3611. (1) Aggravated juvenile delinquency is any of the following acts committed by ~~any person confined in the youth center at Topeka or in the youth center at Beloit or by any~~

delinquent child or miscreant child, as such terms are defined by K.S.A. ~~1976~~ *1977* Supp. 38-802, *and any amendments thereto,* who is *sixteen (16) years of age or over and is* confined in any training or rehabilitation facility under the jurisdiction and control of the department of social and rehabilitation services:

(a) Willfully burning or attempting to burn any building of any of such institutions or facilities, or setting fire to any combustible material for the purpose of burning such buildings;

(b) Willfully burning ~~or otherwise~~, destroying *or otherwise damaging* property ~~of~~ *belonging to the state of Kansas, and the damage exceeds* the value of ~~more than~~ one hundred dollars ($100) ~~belonging to the state of Kansas~~;

(c) ~~Willfully and forcibly resisting the lawful authority of any officer of any of such institutions or facilities;~~

~~(d)~~ Committing an aggravated assault or aggravated battery upon any officer, attendant, employee or person confined to any such institutions or facilities;

~~(e) Exerting a dangerous and pernicious influence over other persons confined in any of such institutions or facilities by gross or habitual misconduct;~~

~~(f)~~ *(d)* Running away or escaping from any of such institutions or facilities after having previously run away or escaped therefrom one or more times.

(2) Aggravated juvenile delinquency is a class E felony.

(3) Persons charged with aggravated juvenile delinquency, as defined by this section, shall not be prosecuted pursuant to the Kansas juvenile code; such persons shall be prosecuted under the general criminal laws of the state.

Sec. 3. K.S.A. 21-3607 and K.S.A. 1977 Supp. 21-3611 and 38-830 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Session of 1978

HOUSE BILL No. 2710

By Special Committee on Judiciary—B

Re Proposal No. 37

12-7

AN ACT authorizing the recovery of civil damages due to the malicious or willful acts of minors; amending K.S.A. 38-120 and repealing the existing section.

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

Section 1. K.S.A. 38-120 is hereby amended to read as follows: 38-120. ~~Any city, county, township, board of education of a city, common school district, community high school district, rural high school district or other taxing district, and any commission, board, department, office, institution or agency of the state of Kansas~~ *Any person receiving bodily injury* or any person, partnership, corporation ~~or association, or any religious organization whether incorporated or unincorporated~~, *political subdivision or other entity whose property has been damaged or destroyed* shall be entitled to recover damages in an appropriate action at law in a court of competent jurisdiction from the parents of any ~~minor under age of eighteen (18) years~~ *child*, living with the parents, who ~~shall~~ maliciously or willfully ~~damage or destroy property, real, personal or mixed, belonging to such city, county, township, board of education of a city, common school district, community high school district, rural high school district or other taxing district, and any commission, board, department, office, institution or agency of the state of Kansas, or person, partnership, corporation or association or religious organization: Provided, however, That~~ *injured such person or damaged or destroyed such property while under the age of eighteen (18) years.* Such recovery shall be limited to the actual damages in an amount not to exceed one thousand dollars ($1,000), in addition

to taxable court costs, unless the court or jury finds that the malicious or willful act of such minor causing such *injury,* damage or destruction is the result of parental neglect, in which event the one thousand dollars ($1,000) limitation does not apply. *Recovery under this section for bodily injury shall be limited to actual medical expenses.*

Sec. 2. K.S.A. 38-120 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

38-827a.
History: K.S.A. 38-827; L. 1975, ch. 234, § 1; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

38-828. Payment of expense of care and custody of child by parent, conservator or others; procedure. (a) When, under the provisions of subsection (d) of K.S.A. 1976 Supp. 38-819, and of K.S.A. 1976 Supp. 38-827, expenses may be or have been paid out of the state social welfare fund or out of the county general fund, the district court shall fix a time and place for a hearing on the question of requiring payment or reimbursement of all or part of such expenses by the parent or parents, conservator or other person liable by law to maintain, care for or support the child. The time for such hearing may be extended by the court for cause. If requested by the court, the secretary of social and rehabilitation services shall make an investigation regarding the income and resources of such parent, conservator or person, with respect to his or her ability to pay such expenses, and be prepared to report its findings to the court at the time of the hearing.

(b) Unless such parent, conservator or other person shall voluntarily appear or be in court at the time and place so fixed, summons shall be issued stating the court in which such hearing is to be held, the name and residence of each party to whom the summons is issued and all information necessary to fully apprise such party of the nature of such hearing. Such summons shall be served as provided in K.S.A. 1976 Supp. 38-810.

(c) The court, at the time fixed in the summons or by its order, shall proceed to hear and dispose of the case and may enter a final order requiring such parent, conservator or person to pay, in such manner as the court may direct, such sum, within his or her ability to pay, as will cover in whole or in part the expenses referred to in subsection (a) of this section. Any such parent, conservator or person who shall willfully fail or refuse to pay such sum may be adjudged in contempt of court and punished accordingly.

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

History: K.S.A. 38-828; L. 1975, ch. 234, § 2; L. 1976, ch. 207, § 29; Jan. 10, 1977.

38-828a. "Ward's account" established; care and disposition of moneys belonging to wards of department of social and rehabilitation services. As used in this act, "ward" means any child committed to or in the custody of the department of social and rehabilitation services. There is hereby established the "ward's account." The secretary of social and rehabilitation services shall designate one or more employees to manage and be in charge of the ward's account and subsidiary accounts thereof. All moneys in the possession of the secretary belonging to wards shall be within the ward's account. The person in charge of the ward's account shall maintain a subsidiary account for each ward having any money in the ward's account. All moneys received, that are hereby designated to be within the ward's account, shall be deposited in a bank account designated by the pooled money investment board. The persons in charge of the ward's account shall be the persons authorized to write checks on such bank account. Such persons in charge of the ward's account may withdraw money from such bank account and deposit the same in savings accounts of a bank or savings and loan association, insured by the federal government or agency thereof, designated by such board, and each amount so deposited shall indicate the ward's subsidiary account to which the interest thereon shall be credited. Moneys deposited in such a savings account shall be subject to withdrawal within six (6) months of deposit or interest payment. Moneys of wards' accounts shall not be in or a part of the state treasury but shall be subject to post audit under article 11 of chapter 46 of Kansas Statutes Annotated.

History: L. 1974, ch. 358, § 1; L. 1976, ch. 58, § 3; July 1.

PENALTIES

38-830. Causing, encouraging or contributing to offenses, or to dependency or neglect of child; penalty; jurisdiction of district court; enforcement; counsel. (a) In all cases where any child shall be a delinquent, a miscreant, wayward, traffic offender, truant, or a dependent and neglected child, as defined by K.S.A. 1976 Supp. 38-802, any parent or other person responsible

for such child's act or for such dependency and neglect, 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 both.

(b) The district 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), even though a petition has not been filed in the interest of a child under the provisions of K.S.A. 1976 Supp. 38-816.

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

(d) The judge of the district court shall assign an attorney to any parent or other person charged under subsection (a) 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.

History: K.S.A. 38-830; L. 1976, ch. 207, § 30; Jan. 10, 1977.

CASE ANNOTATIONS

1. Referred to in upholding termination of parental rights; hearsay evidence harmless. *In re* Johnson, 214 K. 780, 783, 522 P.2d 330.

38-832. Same; trial procedure. The procedure in the district court for the trial of any person charged under K.S.A. 1976 Supp. 38-830, shall be in accordance with the code of criminal procedure.

History: K.S.A. 38-832; L. 1975, ch. 236, § 1; L. 1976, ch. 207, § 31; Jan. 10, 1977.

38-833.

History: K.S.A. 38-833; L. 1975, ch. 236, § 2; Repealed, L. 1976, ch. 207, § 34; Jan. 10, 1977.

CASE ANNOTATIONS

1. State has no right of appeal from juvenile court order declining to waive its original jurisdiction. *In re* Waterman, 212 K. 826, 829, 519 P.2d 466.

APPEAL PROVISIONS

38-834. Appeal to associate district judge, district judge or court of appeals; effect; notice; record. (a) The provisions of this section shall not apply to appeals under K.S.A. 1976 Supp. 38-833.

(b) An appeal shall be allowed by any child from any final order in any proceeding pursuant to the juvenile code. When the order appealed from was made by a district magistrate judge, such appeal shall be taken to an associate district judge or district judge. When the order appealed from was made by a district judge or associate district judge, the appeal shall be to the court of appeals. Such appeal may be demanded on the part of the child by such child's parent, guardian, guardian *ad litem* or custodian, or by any relative of such child within the fourth degree of kinship. Such appeal shall be taken within thirty (30) days after the making of the order complained of, by written notice of appeal filed with the district court, which shall specify the order appealed from.

(c) Such appeal shall not suspend or vacate the order appealed from, but the same shall continue in force in all respects the same as if no appeal had been taken until final judgment has been rendered on appeal, except that the court on appeal, pending a hearing, may make such modification of the order appealed from, and upon such conditions, as the court may deem proper. The case shall be heard and disposed of in accordance with the provisions of this act and in the exercise of all the powers and discretion herein given to the district court.

(d) Within the thirty (30) days specified in subsection (b) of this section, the appellant shall serve upon the adverse party or such party's attorney of record a notice of appeal. Proof of service thereof verified by affidavit shall be filed with the district court.

(e) Whenever a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the court on appeal may permit an amendment on such terms as may be just.

(f) A record of the proceedings upon appeal shall be filed and made a part of the files of the case.

(g) If the effective date of this act occurs within the time allowed for appeal from any order, judgment, decision or decree of a juvenile court, any appeal thereof shall be taken to a district judge of the county in which such juvenile court was located.

No. 44,620

STATE OF KANSAS, ex rel. ROBERT C. LONDERHOLM, Attorney General, and KEITH SANBORN, County Attorney of Sedgwick County, Kansas, *Appellees*, v. CLARK V. OWENS, as Judge of the Juvenile Court of Sedgwick County, Kansas, *Appellant*.

(416 P. 2d 259)

SYLLABUS BY THE COURT

1. JUVENILE DELINQUENTS—*Extending Jurisdictional Age Limits—Constitutionality of Act.* The provisions of Chapter 278, Laws of 1965, extending the jurisdiction of juvenile courts in Kansas to include boys 16 and 17 years of age who appear to be delinquent, miscreant or wayward, are examined on appeal in a mandamus action and *held* to be constitutional, except for a portion of Section 6 (*a*) (5) authorizing commitment to the state industrial reformatory which is *held* to be unconstitutional, and severable from the remainder of the act.
2. PRISONS—*Reformatory a Penal Institution.* The state industrial reformatory at Hutchinson, Kansas, is a penal institution.
3. JUVENILE DELINQUENTS—*Nature of Proceeding—Due Process—Constitutionality.* So long as the proceeding in the juvenile court is in the nature of a protective proceeding entirely concerned with the welfare of the child in accordance with K. S. A. 38-801, and conforms to the substantive requirements of essential due process, there is no constitutional shortcoming in the proceeding. The whole design of the juvenile law is to avoid charging the juvenile offender with crime, thus making inappropriate application of the criminal laws of the state.
4. SAME—*Confinement in Penal Institution—Proceedings Criminal—Constitutional Safeguards Required.* Confinement of a juvenile offender in a penal institution will convert the proceedings from juvenile to criminal and require the observance of constitutional safeguards just the same as if he were an adult charged with a crime.

Appeal from Sedgwick district court, division No. 3; B. MACK BRYANT, judge. Opinion filed June 28, 1966. Affirmed in part and reversed in part.

Robert A. Coldsnow, of Wichita, argued the cause, and *E. Lael Alkire*, also of Wichita, was with him on the brief for the appellant.

Richard H. Seaton, Assistant Attorney General, argued the cause, and *Robert C. Londerholm*, Attorney General, and *Keith Sanborn*, County Attorney, were with him on the brief for the appellees.

The opinion of the court was delivered by

SCHROEDER, J.: This is an appeal by the judge of the juvenile court of Sedgwick County, Kansas, (defendant-appellant) from an order of mandamus issued by the district court compelling him to accept jurisdiction over 16 and 17-year-old boys who appear to be delinquent, miscreant or wayward under Chapter 278, Laws of 1965, which amended certain sections of the Kansas juvenile code (K. S. A. 38-801, *et seq.*). The order of mandamus was secured by the state, on the relation of the attorney general of Kansas and the county attorney of Sedgwick County, after the defendant had refused to accept jurisdiction in all such cases on the ground that the act conferring jurisdiction was unconstitutional in its entirety. The district court upheld the constitutionality of the act in all respects.

2-6-78

The underlying question on appeal is whether Chapter 278, Laws of 1965, is in whole or in part unconstitutional.

The state in its petition, filed January 17, 1966, alleged under Section 2 of the act (Senate Bill No. 31—L. 1965, ch. 278) the juvenile court of Sedgwick County has exclusive original jurisdiction in proceedings concerning a child living or found within Sedgwick County, had a duty under this act to assume jurisdiction in such proceedings; that the judge of said court has refused and continues to refuse to assume jurisdiction in all proceedings concerning a child who appears to be delinquent, miscreant or wayward, and who was 16 or 17 years of age, as required by the act.

The defendant in his answer, filed January 26, 1966, alleged that he:

". . . did take jurisdiction, as Juvenile Judge of Sedgwick County, Kansas, of Case No. 16537 in the Juvenile Court of Sedgwick County, Kansas, in a matter entitled 'In the Interest of [name omitted], a male minor under the age of 18 years, to-wit: 16 years', in which said matter the said alleged child was charged with the offense of 'glue sniffing' and was charged as a wayward child by reason thereof. That said child had several previous adjudications as a wayward or miscreant child, and by reason of the provisions of L. 1965, Ch. 278, Sec. 6 (*a*) (5), would have subjected said child to a possible sentence in the Kansas Industrial Reformatory at Hutchinson, Kansas. That the acts upon which said child was charged are neither a misdemeanor nor a felony under the laws of the State of Kansas. That in said proceedings, this defendant did, as Juvenile Judge of the Juvenile Court of Sedgwick County, Kansas, pass upon the constitutionality of the provisions of L. 1965, Ch. 278, Secs. 1 through 9, and in said action did determine [on January 11, 1966] that said L. 1965, Ch. 278, Secs. 1 through 9 generally known as Senate Bill No. 31 was unconstitutional in its entirety. . . ."

The answer further stated the defendant's reasons for declaring the act unconstitutional.

The mandamus action was tried in the district court on February 15, 1966, and after taking the matter under advisement, the trial court on March 8, 1966, made its findings and conclusions.

On March 7, 1966, the trial court granted the writ of mandamus commanding the defendant to forthwith assume jurisdiction in all proceedings concerning the person of a child 16 or 17 years of age who appears to be delinquent, miscreant or wayward as defined in the act, but stayed the force and effect of the judgment until the matter could be determined on appeal by the Supreme Court. This stay was later modified on March 9, 1966, to grant a stay of 30 days from March 3, 1966, to allow time for appeal to the Supreme Court and for any further application for additional stay to the Supreme Court. The appellant filed a motion in the Supreme Court to stay the order of the district court on the 21st day of March, 1966, and on the same day the parties were granted an oral hearing, following which the motion for stay was denied and the case was advanced to the May session for hearing.

In general the act in question amended the Kansas juvenile code to extend jurisdiction of the juvenile court to include boys 16 and 17 years of age who appear to be delinquent, miscreant or wayward as defined in the act. Prior to the amendment it included girls less than 18 years of age and boys less than 16 years of age falling within the provisions of the Kansas juvenile code.

This feature of the act, extending the jurisdiction of the juvenile court to include 16 and 17-year-old boys, is not in controversy. If this was the only change made in the Kansas juvenile code by the act in question, it must be conceded to be entirely within the prerogative of the legislature to extend such jurisdiction to the juvenile court.

It is the other amendments made by the act in question that give rise to this controversy. Generally they empower the judge to determine whether 16 and 17-year-old boys who commit an act of delinquency are amenable to juvenile court treatment, and if not, to dismiss the juvenile proceedings and direct the county attorney to prosecute in the criminal courts. In addition, they authorize the court to commit certain boys in this age group to the state industrial reformatory, as well as to those institutions previously authorized for younger boys.

A brief consideration of the significant sections of the act in question will serve as a basis for further discussion of the basic issue in the case.

Section 1 of the a[illegible]efines the terms used. Among these provisions it defines a "De[illegible]quent child" as:

". . . a child less than eighteen (18) years of age:

"(1) 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 liable to be arrested and prosecuted for the commission of a felony as defined by K. S. A. 62-104; or

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

It defines a "Miscreant child" as:

". . . a child less than eighteen (18) years of age:

"(1) 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 liable to be arrested and prosecuted for the commission of a misdemeanor as defined by K. S. A. 62-105;

"(2) 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 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; or

"(3) who has been adjudged a wayward child under this act three (3) or more times."

It defines a "Wayward child" as:

". . . a child less than eighteen (18) years of age:

"(1) Whose behavior is injurious to his welfare;

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

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

Section 2 of the act, with certain exceptions, confers upon the juvenile court of each county of this state *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. 38-802. It further provides when jurisdiction has been acquired by the juvenile court over the person of a dependent and neglected child it may continue until the child has attained the age of 21 years. It also provides that when a child charged with having committed an act of delinquency before reaching the age of 18 years is brought before the judge of the juvenile court after reaching such age, the jurisdiction of the juvenile court over such person for any such act shall not expire on account of the child having arrived at the age of 18 years, but such child shall continue under the jurisdiction of the juvenile court for such act until he is finally discharged by the juvenile court or has reached the age of 21 years.

Section 3 provides:

"Existing K. S. A. 38-808 is hereby amended to read as follows: 38-808. (*a*) This subsection (*a*) shall apply to all cases under the jurisdiction of the juvenile court involving offenses committed by a child less than eighteen (18) years of age, which, if done by a person eighteen (18) years of age or over, would make him liable to be arrested and prosecuted for the commission of a felony as defined by K. S. A. 62-104. In all such cases the judge of the juvenile court *may* refer the child apprehended to the district court for trial by jury and, upon a verdict that such child is a delinquent child as defined in K. S. A. 38-802, the district court shall remand the case to the juvenile court for judgment.

"(*b*) Notwithstanding any provisions of the Kansas juvenile code or any other law of this state to the contrary, *at any time during a hearing upon a petition alleging that a child is, by reason of violation of any criminal statute, a delinquent child* described in K. S. A. 38-802 (*b*) (1), *when substantial evidence has been adduced to support a finding that the offense alleged is punishable as a felony under the general law and that the child was sixteen (16) years of age or older* at the time of the alleged commission of such offense, *and that the child would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, the court may make a finding, noted in the minutes of the court, that the child is not a fit and proper subject to be dealt with under the Kansas juvenile code,* and the court shall direct the county attorney of the proper county to prosecute the person under the applicable criminal statute and thereafter dismiss the petition or, if a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are held, shall dismiss the petition and issue its order directing that the other court proceedings resume." (Emphasis added.)

Section 3 (*b*) is entirely new and authorizes the juvenile court to waive its *exclusive original jurisdiction.*

Section 4 defines peace officers and delineates their duties upon arrest of a child taken into custody who is under the age of 18 years. It also provides for the referral of cases from other courts with a specific proviso concerning traffic offenders. It further provides:

"(*f*) 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.

"(*g*) All records in this state concerning a public 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 open to inspection, except by order of the juvenile court; and it shall be the duty of any peace officer, justice of the peace, county judge, police magistrate, city judge or city police judge, or other similar officer, making or causing to be made any such record, to at once report to the judge of the juvenile court of his county the fact that such record has been made and the substance thereof together with all of the information in his possession pertaining to the making of such record.

"(*h*) When a record has been made by or at the instance of any peace officer, justice of the peace, county judge, police magistrate, city judge or city police 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, justice, magistrate 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."

Section 5 relates to the proceedings to be taken in the juvenile court generally.

Section 6 provides in part:

". . . (*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 and custody of either or both of his parents, subject to such terms and conditions as the juvenile court may deem proper;

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

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

"(4) place such child in the care of a children's aid society, subject to such terms and conditions as the juvenile court may deem proper: *Provided, however,* That if such child is a boy, 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 on probation on such terms and conditions as the juvenile court may deem proper;

"(5) *commit such child,* if a boy under the age of sixteen (16), to the state industrial school for boys, *or if a boy sixteen (16) years of age or over to either the state industrial school for boys, or the state industrial reformatory: Provided,* No boy sixteen (16) years of age or over shall be committed to the state industrial school for boys unless such commitment has received the prior approval of the director of the division of institutional management, *and if any boy sixteen (16) years of age or over is committed to the state industrial reformatory such commitment shall be subject to the same conditions and rights as would be the case if such commitment were made by a district court;* or

"(6) commit such child, if a girl, to the state industrial school for girls." (Emphasis added.)

Section 6 (*a*) (5) is new. Prior to amendment it simply read:

"commit such child, if a boy, to the state industrial school for boys; or"

The remaining three sections of the act are not of particular significance to our decision in this case to warrant attention, except to note that the act contains no saving clause if any portion thereof is declared to be unconstitutional.

Other sections of the Kansas juvenile code are also important to a consideration of the basic question involved.

K. S. A. 1965 Supp. 38-821 provides that in all hearings the judge of the juvenile court shall appoint a guardian *ad litem* to appear for, represent, and defend a child who is the subject of proceedings under the Kansas juvenile code. It further provides 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.

The introductory section of the Kansas juvenile code is K. S. A. 38-801 and relates to the construction of the code. It provides:

"This act shall be liberally construed, to the end that each child coming within its provisions shall receive such care, custody, guidance, control and discipline, preferably in his own home, as will best serve the child's welfare and the best interest of the state. *In no case shall any order, judgment or decree of the juvenile court, in any proceedings under the provisions of this act, be deemed or held to import a criminal act on the part of any child; but all proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state.* This section shall not apply to proceedings under section 30 [38-830] of this act." (Emphasis added.)

The trial court, after finding that the defendant refused to assume jurisdiction of any proceedings concerning the person of a child 16 or 17 years of age who appeared to be delinquent, miscreant or wayward, as defined in Chapter 278, Laws of 1965, because, in his opinion, the act was unconstitutional, made additional specific findings based directly upon the sections of the act in question, 38-801, *supra*, and 38-821, *supra*, by paraphrasing their provisions. The trial court in its findings also quoted K. S. A. 76-2110 and K. S. A. 76-2320. Upon such findings the trial court concluded:

"1. The legislature of this state has provided that the juvenile court shall have exclusive original jurisdiction over all proceedings concerning children under eighteen years of age.

"2. The legislature of this state has provided that no order, judgment or decree of the juvenile court, in any proceedings under the provisions of the Juvenile Code shall be deemed or held to import a criminal act on the part of any child. A child being held by the juvenile court pending a hearing or awaiting the direction or decision of the juvenile court is not being held as a criminal or for having committed a criminal act. A child involved in a proceeding in the juvenile court, not being held for having committed a criminal act, is not deprived of any constitutional right when bail or jury trial is not provided.

"3. The State Industrial Reformatory was established by the legislature as a reformatory. The operations and programs of the State Industrial Reformatory are for the purpose of reforming individuals.

"4. The legislature has a right to designate the place of confinement for the reformatory treatment of the juvenile person. A juvenile sent to the reformatory by the juvenile court is not convicted of any crime nor is he sentenced to the institution for any crime. The juvenile is committed to the reformatory, and his commitment cannot be held to import a criminal conviction.

"5. The juvenile court does not relinquish jurisdiction or control over a juvenile because the State Industrial Reformatory is designated as the place of confinement.

"6. The Laws of 1965, Chapter 278, Sections 1 through 9 which vest in the juvenile court the discretion, after making certain findings, as to which court a person alleged to have violated a criminal statute, punishable as a felony, shall be handled is not an unconstitutional or unlawful delegation of legislative power to the judicial authority.

"7. The fact that the vesting of such discretion in the juvenile court may be a very desirable judicial power is best illustrated by the juvenile judge when he stated, 'As a matter of fact, in the case at bar there probably isn't anything the court could do but commit this boy to the State Industrial Reformatory for the reason that this boy has also had several miscreancy adjudications and the court has used all the facilities at its command in attempting to rehabilitate this young man.'

"8. Chapter 278, Sections 1 through 9 of the Laws of 1965 violates neither the Constitution of the United States or the State of Kansas in any manner as alleged by the defendant. It is a valid exercise of the power and authority of the legislature of this state in its duty to guard and protect the interests of children and to protect and control them.

"9. The order of mandamus prayed for by the plaintiff should be and the same is hereby granted commanding the defendant to forthwith assume jurisdiction in all proceedings concerning the person of a child sixteen or seventeen years of age who appear to be delinquent, miscreant, or wayward as defined in the Laws of 1965, Chapter 278, Sections 1 through 9. This order of mandamus is to become effective forthwith."

The theory of juvenile proceedings for the state of Kansas has already been clearly enunciated. (*In re Turner*, 94 Kan. 115, 145 Pac. 871; *In re McCoy*, 184 Kan. 1, 334 P. 2d 820; and *Lennon v. State*, 193 Kan. 685, 396 P. 2d 290.) The *McCoy* case was decided before the provisions of 38-801, *supra*, were enacted, but they are substantially the same as the prior law (G. S. 1949, 38-415) upon which the *McCoy* case was decided. In the *McCoy* case this court said:

"Without attempting to summarize all of the foregoing sections of the statutes, the law-making body in its legislative wisdom has by the above section of the statute proscribed the nature of a juvenile proceeding. The action of a juvenile court is deemed to have been taken and done in the exercise of the parental power of the state. These statutes are an assertion upon the part of the state of its right to exercise its power as *parens patriae* for the

welfare of such of its minor citizens as are deprived of proper parental control and oversight, and are disposed to go wrong.

"The old Spartan theory that the child and the citizen are for the state has been reversed by our civilization. It regards the state as an institution for the good of the child and the citizen, still the state as *parens patriae* may exercise over the child parental care and authority in order that he may receive the highest good from the state and achieve the best results for himself thus guarded and directed in youth. This is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails. *No constitutional right is violated,* but one of the most important duties which organized society owes to its helpless members is performed, just in the measure that the law is framed, with wisdom. It is to be carefully administered. *Statutes of this kind are parental and as such a jury may not be demanded as a matter of constitutional right.* (*In re Turner,* 94 Kan. 115, 145 Pac. 871; and see, also, *Richardson v. Browning,* 18 F. 2d 1008.) The history of our law and the statutes are reviewed in the Turner case." (pp. 8, 9.) (Emphasis added.)

From the foregoing it may be said a juvenile proceeding under Kansas law is a protective proceeding entirely concerned with the welfare of the child, and is not punitive. The procedures supersede the provisions of the criminal law. The inquiry is directed to the proper care, custody, guidance, control and discipline of the child, and not to his guilt or innocence as a criminal offender. The objectives of a statute creating a juvenile court are designed to provide measures of guidance and rehabilitation for the child and protection for society, and not to fix criminal responsibility, guilt and punishment. For that reason a juvenile proceeding may properly dispense with formal constitutional requirements relating to criminal proceedings.

The United States Supreme Court in the recent case of *Kent v. United States,* 383 U. S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045, has clearly recognized the distinction between juvenile proceedings and criminal proceedings by the following language:

"1. The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in the *corpus juris.* Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is *parens patriae* rather than prosecuting attorney and judge. But the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.

"2. Because the State is supposed to proceed in respect of the child proceeding as *parens patriae* and not as adversary, courts have relied on the premise that the proceedings are 'civil' in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment. For example, it has been held that he is not entitled to bail; to indictment by grand jury; to a speedy and public trial; to trial by jury; to immunity against self-incrimination; to confrontation of his accusers; and in some jurisdictions (but not in the District of Columbia, see *Shioutakon v. District of Columbia,* 98 U. S. App. D. C. 371, 236 F. 2d 666 [1956], and *Black v. United States, supra* [122 U. S. App. D. C. 393, 355 F. 2d 104]) that he is not entitled to counsel." (pp. 554, 555.)

The trial court, in an effort to reconcile the provisions of Section 6 (*a*) (5) of the act in question, which authorized commitment of boys 16 and 17 years of age adjudged to be delinquent or miscreant to the state industrial reformatory at Hutchinson, Kansas, quoted K. S. A. 76-2320. This statute provides in part:

"The discipline to be observed in said reformatory [state industrial reformatory at Hutchinson] shall be reformatory, and it shall be the duty of said director to maintain such control over all persons committed to his care as shall prevent them from committing crime and best secure their self-support and accomplish their reformation; and to this end said director shall adopt such means of reformation as consistent with the improvement of the inmates as he deems expedient. . . ."

From this statute the trial court concluded the idea and philosophy of the program at the state industrial reformatory was to reform. By reason thereof it held commitment of boys 16 and 17 years of age to the state industrial reformatory fell within the spirit of the Kansas juvenile code, because it was designed for reformation of the child.

In support of the trial court's position the state relies on language in the case of *In re Dunkerton,* 104 Kan. 481, 179 Pac. 347, as follows:

". . . Reformation and education are the primary objects of the [boys] reform school, of the state industrial reformatory, and of the [girls] industrial school. Punishment is incidental only. These institutions are primarily schools, not prisons. . . ." (p. 482.)

The state also relies on a similar expression by the court in *Moffett v. Hudspeth,* 165 Kan. 656, 198 P. 2d 153, where it was said:

"The state industrial reformatory is a corrective institution for youths who may be made useful and law-abiding citizens. (*Martin v. Amrine,* 156 Kan. 384, 387, 133 P. 2d 582.) . . ." (p. 657.)

Despite the provisions of 76-2320, *supra,* and the foregoing language, we hold as a matter of law that *the state industrial reformatory at Hutchinson is a penal institution.* K. S. A. 76-24a01 defines "state penal institutions" to include the *state industrial reformatory* along with the state penitentiary or any other penal institution hereafter established by the state for the confinement of male offenders.

K. S. A. 76-2306 provides that any male person between the ages of 16 and 25 years who shall be convicted for the first time of any offense punishable by confinement in the state penitentiary may, in the discretion of the trial judge, be sentenced either to the state penitentiary or to the *Kansas state industrial reformatory.* K. S. A. 75-20d02 provides that *the state director of penal institutions* shall have the general supervision and management of the state penitentiary, the state industrial farm for women, and *the state industrial reformatory.*

By contrast all the jurisdiction, powers and duties relating to the state industrial school for boys and the state industrial school for girls are conferred upon *the state department of social welfare* by the provisions of K. S. A. 75-3307.

Justice Burch, speaking for the court in *State v. Dubray,* 121 Kan. 886, 250 Pac. 316, said the industrial school acts were based on the principle, then gaining recognition, that the child offender should not be classified as a criminal; that the reformatory act established a penal institution in which young offenders might be segregated, and discipline appropriate to their personalities might be administered. The history of Kansas juvenile court law is reviewed in the opinion.

The director of penal institutions, Mr. McAtee, testified at the hearing in this case that the state industrial reformatory at Huchinson, Kansas, has a high security wall, a perimeter wall, and that in attempting to categorize it as a penologist it would be considered a maximum security facility. It has guards, iron bars, and normal cellhouses with cell guards and guard towers. To a degree it has a solitary confinement section. He further testified that for the past year it has had approximately a daily average inmate population of 900.

By contrast he said both the girls industrial school and the boys industrial school have a very small inmate population, which allows a program to develop which is more individual and more individually directed. There was a difference in staffing in the realm of professionals in the behavioral sciences, psychiatrists, psychologists and psychiatric social workers. At the Kansas industrial reformatory he said they had no one who is a trained professional social worker; that they had classification committee case workers who served the same function, gather the same type of information, and process it into a social hist[illegible]r social summary for each individual, but in the way of a trained social worker they had none.

So long as the proceeding in the juvenile court is in the nature of a protective proceeding entirely concerned with the welfare of the child, and conforms to the substantive requirements of essential due process, there is no constitutional shortcoming. The whole design of the juvenile law is to avoid charging the juvenile offender with crime, thus making inappropriate application of the criminal laws of the state. The breadth of the court's authority to deal with juveniles is matched by a corresponding breadth of responsibility to protect the minor's interests. The validity of the whole juvenile system is dependent upon its adherence to its protective, rather than its penal, aspects. *Dispensing with formal constitutional safeguards can be justified only so long as the proceedings are not, in any sense, criminal.*

We hold confinement in a penal institution will convert the proceedings from juvenile to criminal and require the observance of constitutional safeguards. The noncriminal aspect is the legal backbone of the constitutionality of all American juvenile court legislation. If after a juvenile proceeding, the juvenile can be committed to a place of penal servitude, the entire claim of *parens patriae* becomes a hypocritical mockery. Such action confines a person in a penal institution without having been found guilty of a crime.

On facts before the court in the instant case, the juvenile offender, 16 years of age, had committed a wayward act, not denounced as a crime in Kansas had he been an adult. By reason of previous misconduct he would have been adjudged a miscreant and thereby made eligible for commitment to the state industrial reformatory at Hutchinson, a penal institution. It is thus readily apparent the act in question permits the commitment of a juvenile boy 16 or 17 years of age to a penal institution without ever having committed a crime (either a felony or a misdemeanor) had he been an adult.

The Supreme Court of Vermont in *In re Rich,* 125 Vt. 373, 216 A. 2d 266 (1966), had before it the case of a juvenile offender on appeal in a habeas corpus case. There the juvenile offender was committed to Weeks School for the remainder of his minority by the juvenile court. He was later transferred by executive order of the governor to the House of Correction at Windsor, because he failed to obey the regulations of such school and was not of good deportment. This was said to be a transfer of the juvenile from a detention home to a penal institution, and the court held:

"It is therefore essential to the constitutional vali[illegible] of our juvenile court procedures that the power to connect it to a punitive [illegible]eeding in the criminal

sense be removed. The rehabilitative caretaking offered in exchange for constitutional protections must be substantive and real, not mere verbiage. Otherwise the exchange is, in the words of Professor Paulsen, counterfeit. Paulsen 'Fairness to the Juvenile Offender' supra, 41 Minn. L. R. 547, 576 (1957).

"To this end we hold that any transfer from Weeks School to a penal institution must be founded upon a criminal prosecution and conviction attended by the constitutional guarantees appropriate to such a proceeding. Transfers under the authority of 28 V. S. A. § 415 can constitutionally be made only under such circumstances. This did not occur in this case and must be corrected by a return of the petitioner to Weeks School." (p. 378.)

Under Kansas law a juvenile offender committed to the boys industrial school cannot be transferred to the Kansas state industrial reformatory without a trial in the criminal sense, wherein the offender is charged with a felony and tried as an adult with all of the accompanying constitutional safeguards. (K. S. A. 21-2001; and *Burris v. Board of Administration,* 156 Kan. 600, 134 P. 2d 649.)

For the reasons heretofore assigned, we hold the provision of Section 6 (*a*) (5) of Chapter 278, Laws of 1965, which authorizes the juvenile court to commit a boy 16 years of age or over to the state industrial reformatory, is unconstitutional, and the portion thereof which provides "and if any boy sixteen (16) years of age or over is committed to the state industrial reformatory such commitment shall be subject to the same conditions and rights as would be the case if such commitment were made by a district court" is also unconstitutional.

Our decision is also prompted by the legislative scheme which is made apparent by the enactment of Chapter 278, Laws of 1965. This act did not change or alter K. S. A. 38-801 by which the legislature had previously indicated the underlying theory of the Kansas juvenile code, and the manner in which it should be construed. Other provisions of the act, whereby amendments were made to sections of the code, specifically retained safeguards consistent with the theory of juvenile proceedings as they had previously been construed by the court. There is no indication in the act that the legislature intended to convert proceedings in the juvenile court to criminal proceedings.

Upon striking the invalid portions of Section 6 (*a*) (5) heretofore indicated from the act, many of the arguments advanced by the appellant that the act is unconstitutional in its entirety fall by the way, such as the failure to provide for jury trial, the right to bail, etc., and the unequal treatment of boys and girls.

The appellant contends the grant of discretionary power to the juvenile court to waive its exclusive original jurisdiction (Section 3 [*b*]) is contrary to the due process and equal protection guarantees of the United States Constitution, and the Constitution of the state of Kansas, and further constitutes an unlawful delegation of legislative authority to a judicial tribunal contrary to the Constitution of the state of Kansas. On this point the appellant's argument stems from a policy statement made by the advisory council of judges concerning transfer of cases between juvenile and criminal courts. (Vol. 8, Crime and Delinquency, January, 1962.) This study observes the following:

"At first glance previous failure seems a reasonable ground for transfer, but it, too, is in conflict with juvenile court purposes and philosophy, since in effect it means that the court rejects any further attempt to treat the child. Such rejection implies either inadequacy of resources, for which the child is thus made to suffer, or a desire on the part of the court to avoid recording another failure.

. . . . . .

"3. If the juvenile court feels powerless to help . . . is the criminal court in a better position? . . . It has been held that the juvenile court is not justified in transferring a case, no matter how serious, to the criminal court unless the child's own good and the best interests of the state cannot be obtained by retention of jurisdiction. . . .

"4. An illustration of transfer as punishment for a child's attitude came from a study in one state which found that 'three counties engage in the questionable practice of remanding the youth to the criminal court for trial when the youth denies the allegations of the petition. . . . The threat of certification to the criminal court is also used in some instances to prevent a youth from asserting his rights.'" (pp. 6, 7.)

This court is requested to determine whether the portion of the act in question provides clear standards and guidelines for these waiver decisions to guarantee against abuses and meet the requirements of due process and equal protection, as contained in the Fifth and Fourteenth Amendments to the United States Constitution and the equal protection provisions of the Kansas Constitution.

The argument that no standard is provided ignores the fact that the standard is expressly stated to be whether the child is "amenable to the care, treatment and training program available through the facilities of the juvenile court." To require more precision than this would be impracticable. The factors entering into a juvenile judge's decision on disposition of a child brought before him are many and varied. This was recognized in *State v. Doyal,* 59 N. M. 454, 286 P. 2d 306 (1955), where a similar attack was made. The

New Mexico waiver provision itself contained no express standard under which the court was to act. However, the Supreme Court held a sufficient standard was provided by the general purposes clause, which stated that the intent of the act was "'for the rehabilitation and best interest and welfare of the juvenile delinquent.'" (p. 460.) The court rejected an argument that the legislature was required to spell out with particularity the factors best calculated to promote this purpose, saying:

". . . The considerations that might so move a judge are so multifarious, however, that to test validity of legislation by an omission to list them would be almost equivalent to attempting to name all the advantages of being upright and good." (p. 460.)

A similar attack was made in *People v. Shipp*, 59 Cal. 2d 845, 31 Cal. Rptr. 457, 382 P. 2d 577 (1963). The Supreme Court of California held the trial judge was required to exercise his discretion reasonably, in the furtherance of justice, and to serve the purposes of the juvenile court law, and the claim of invalidity was said to be without merit.

The Kansas Supreme Court has previously upheld a statute giving discretion of a similar nature to the juvenile court in the case of *In re Gassaway*, 70 Kan. 695, 79 Pac. 113. There a 13-year-old girl was committed to the industrial school under a statute providing such treatment for any girl "'who is incorrigible and habitually disregards the commands of her father, mother, or guardian, and who leads a vagrant life, or resorts to immoral places or practices, and neglects or refuses to perform labor suitable to her years and condition, and to attend school.'" (p. 696.) This section was challenged as delegating a legislative task to the judiciary. In rejecting the claim the court stated:

". . . In the determination of the questions the court exercises judicial discretion and judgment, determines from the evidence what would be to the best interest of the state and of the girl, and renders its judgment accordingly. The authority thus exercised is purely judicial, and is not inconsistent with the full and free exercise of the duties imposed upon such courts by the constitution. We have, therefore, a judicial tribunal, created by the constitution, exercising judicial functions conferred by statute." (p. 697.)

The section of the act in question herein requires that substantial evidence be adduced to support a finding that the offense alleged is a felony; that the child was 16 years of age or older at the time of the alleged commission of the offense, and that the child would not be amenable to the care, treatment and training program

available through the facilities of the juvenile court. Considering the nature of the task imposed upon the court, these standards are more than adequate.

A waiver provision similar to that presently under consideration was before the United States Supreme Court under the District of Columbia Juvenile Court Act in *Kent v. United States*, 383 U. S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045 (March, 1966). The United States Supreme Court there reviewed the criminal conviction of a 16-year-old boy. Kent had been arrested by the police on charges of breaking and entering and rape. He had previously been adjudged a ward of the juvenile court of the District of Columbia and placed on probation. Prior to the court's consideration concerning the waiver of its exclusive original jurisdiction, counsel for the juvenile moved the court to retain jurisdiction and requested the court to give him access to the social service file relating to the juvenile. The juvenile court did not rule upon these motions and held no hearing. The court simply stated that after "full investigation" it waived jurisdiction over the juvenile, and he was transferred to the district court for the District of Columbia.

Kent appealed the order of the juvenile court waiving jurisdiction, but the order was affirmed. A writ of habeas corpus on the issue was also denied. In the district court the juvenile moved to dismiss the indictment on the grounds that the waiver was invalid, but the court denied this motion to dismiss. Kent was found not guilty by reason of insanity as to the rape charge, but guilty on six counts of house breaking and robbery. He was sentenced to serve 5 to 15 years on each of these six counts, a total of 30 to 90 years' imprisonment. The court of appeals affirmed the conviction, but the United States Supreme Court reversed on the grounds that the juvenile court's waiver was invalid. It held:

"We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not." (p. 554.)

Various contentions advanced in the *Kent* case raised problems of substantial concern which were mentioned by the United States Supreme Court but sidestepped. There attention was directed to the petitioner's arguments as to the infirmity of the proceedings by

which the juvenile court waived its otherwise exclusive jurisdiction. The court said:

". . . *The issue is the standards to be applied upon such review.*" (p. 552.) (Emphasis added.)

On this issue the court said in the course of its opinion:

"We agree with the Court of Appeals that the statute contemplates that the Juvenile Court should have considerable latitude within which to determine whether it should retain jurisdiction over a child or—subject to the statutory delimitation—should waive jurisdiction. But this latitude is not complete. At the outset, it assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a 'full investigation.' *Green v. United States,* 113 U. S. App. D. C. 348, 308 F. 2d 303 (1962). The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be considered, the weight to be given them and the conclusion to be reached. It does not confer upon the Juvenile Court a license for arbitrary procedure. The statute does not permit the Juvenile Court to determine in isolation and without the participation or any representation of the child the 'critically important' question whether a child will be deprived of the special protections and provisions of the Juvenile Court Act. It does not authorize the Juvenile Court, in total disregard of a motion for hearing filed by counsel, and without any hearing or statement or reasons, to decide—as in this case—that the child will be taken from the Receiving Home for Children and transferred to jail along with adults; and that he will be exposed to the possibility of a death sentence instead of treatment for a maximum, in Kent's case, of five years, until he is 21." (pp. 552-554.)

In its decision the United States Supreme Court quoted and referred approvingly to *Black v. United States,* 122 U. S. App. D. C. 393, 355 F. 2d 104, decided by the court of appeals for the District of Columbia on December 8, 1965, which held that *assistance of counsel in the "critically important" determination of waiver is essential to the proper administration of juvenile proceedings, and that the need is even greater in the adjudication of waiver than was the assistance of counsel in juvenile court proceedings, since it contemplated the imposition of criminal sanctions.*

In speaking of the determination of whether to transfer a child from the statutory structure of the juvenile court to the criminal processes of the district court, the United States Supreme Court said:

". . . We hold that it is, indeed, a 'critically important' proceeding. The Juvenile Court Act confers upon the child a right to avail himself of that court's 'exclusive' jurisdiction. As the Court of Appeals has said, '[I]t is implicit in [the Juvenile Court] scheme that non-criminal treatment is to be the rule—and the a[illegible]riminal treatment, the exception which must be governed by the partic[illegible]ctors of individual cases.' *Harling v. United States,* 111 U. S. App. D. C. 174, 177-178, 295 F. 2d 161, 164-165 (1961).

"Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not 'assume' that there are adequate reasons, nor may it merely assume that 'full investigation' has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of 'full investigation' has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit meaningful review." (pp. 560, 561.)

Accordingly, we hold the provisions of Section 3 (*b*) of the act in question are not unconstitutional for any of the reasons asserted by the appellant, and the standards to be applied in adjudicating waiver proceedings are adequate when applied in accordance with the requirements set forth in *Kent v. United States,* supra.

The appellant's argument, that the act in question is ambiguous and discriminatory in its provisions to the extent that it cannot be uniformly applied nor interpreted in a clear and concise manner, in view of the foregoing discussion, is so nebulous that we think it merits no attention as a challenge directed to the constitutional validity of the act in question.

The remaining question is whether, having declared the provisions of the act authorizing commitment to the state industrial reformatory at Hutchinson unconstitutional, these provisions are severable from the other provisions in the act.

The appellant contends where an act contains no severability clause and is found to be unconstitutional in part, and all parts of the act are so related that the unconstitutional parts are a condition of, a compensation for, or an inducement to the constitutional part, or where it is obvious the legislature would not have enacted one but for the other, then the unconstitutional parts invalidate the entire statute.

It is argued the sole purpose of the legislature in passing the act in question was to extend juvenile jurisdiction over male persons 16 and 17 years of age, but as a consideration for this change in jurisdiction, Section 3 (*b*) was enacted providing for waiver of jurisdiction by the juvenile court, and Section 6 (*a*) (5), (a portion of which we have found to be unconstitutional) was enacted. Without these two provisions, it is contended, the l[illegible]lature would not

have passed the act in question extending the juvenile court's jurisdiction.

While the legislature may not have contemplated the burden it imposed upon the juvenile courts of Kansas, first, by conferring upon them original exclusive jurisdiction over all boys 16 and 17 years of age, and second, by authorizing the juvenile court to waive its original jurisdiction in accordance with the provisions of Section 3 (*b*), considered in the light of *Kent v. United States,* supra, the entire act is not unconstitutional for this reason.

The general doctrine is that only the invalid parts of a statute are without legal efficacy. This is qualified by the further rule that if the void and valid parts of the statute are so connected with each other in the general scheme of the act that they cannot be separated without violence to the evident intent of the legislature, the whole must fall. (*State v. Smiley,* 65 Kan. 240, 69 Pac. 199.)

In *State, ex rel., v. Wyandotte County Comm'rs,* 140 Kan. 744, 39 P. 2d 286, this court said:

". . . Frequently the court can say with assurance that if the legislature had been apprised of the invalidity of some incidental feature of a legislative measure, it would have eliminated it and would have enacted the measure nevertheless. In such situations it becomes a judicial question to discover, if practicable, the paramount legislative intent. . . ." (pp. 750, 751.)

The majority of the members of this court think the invalid portions of the act in question, authorizing commitment to the state industrial reformatory, are severable from the remainder of the act and will not do violence to the evident intent of the legislature; that the paramount intent of the 1965 legislature in enacting Chapter 278 was to extend the jurisdiction of the juvenile court to include 16 and 17-year-old males, and to give it the power to decide whether the particular child is amenable to juvenile court treatment or should be referred to the criminal courts.

The provision for commitment to the state industrial reformatory at Hutchinson is merely one authorized disposition among many possible dispositions for males adjudicated miscreant or delinquent. That commitment to the Kansas state industrial reformatory at Hutchinson is not an essential part of the juvenile court's extended jurisdiction under the act is illustrated most strikingly by the testimony of the appellant in this case. He testified that the Kansas Probate Judges' Association decided early not to use this provision of the act. [illegible] judges obviously felt the act could be effectively administered without the provision for commitment to the Kansas state industrial reformatory.

Accordingly, the order of mandamus issued by the lower court commanding the appellant to forthwith assume jurisdiction in all proceedings concerning the person of a child 16 or 17 years of age who appears to be delinquent, miscreant or wayward, as defined in the Laws of 1965, Chapter 278, Sections 1 to 9, is affirmed to the extent that the act in question is held to be constitutional, but reversed as to the portion thereof which is held to be unconstitutional and invalid.

SCHROEDER, J., dissenting: I must respectfully dissent from that portion of the opinion written for the court holding the invalid portion of Chapter 278, Laws of 1965, separable from the remainder of the act.

The legislature was fully aware that the facilities of the state for handling juvenile offenders was limited. This is indicated by the provisions of Section 6 (*a*) (5), which read:

"(5) commit such child, if a boy under the age of sixteen (16), to the state industrial school for boys, *or if a boy sixteen (16) years of age or over to [either] the state industrial school for boys, [or the state industrial reformatory:] Provided, No boy sixteen (16) years of age or over shall be committed to the state industrial school for boys unles such commitment has received the prior approval of the director of the division of institutional management, [and if any boy sixteen (16) years of age or over is committed to the state industrial reformatory such commitment shall be subject to the same conditions and rights as would be the case if such commitment were made by a district court;]* . . ." (Emphasis added.)

The new provisions of this subsection are emphasized, and those held invalid are set apart in brackets.

By providing that no boy 16 years of age or over shall be committed to the state industrial school for boys unless such commitment has received the prior approval of the director of the division of industrial management, the legislature froze commitments to that institution in keeping with the facilities available at that institution. Evidence in the record discloses that the state industrial school for boys will be capable of taking not more than 20 or 30 boys per year in the 16 and 17 year age group for the entire state of Kansas.

K. S. A. 76-2110 provides:

"Whenever there shall be as large a number of boys in the school as can properly be accommodated, it shall be the duty of the department of social welfare to give notice to the courts of the fact by publication in some daily paper of general circulation published at the capital of the state, whereupon no boys shall be sent to the school by the said c[illegible] until notice shall be given them by the department of social welfare a[illegible]oresaid that more can be received."

Reports issued monthly by the Kansas Bureau of Investigation disclose that there are approximately 350 to 400 offenders per month in the state of Kansas 16 and 17 years of age. For the month of March, 1966, there were 455.

The appellant testified that in 1965 there were 826 boys 16 and 17 years of age arrested in Sedgwick County for felonies and misdemeanors, not counting traffic offenses.

It was abundantly clear to the legislature that some outlet for the extension of jurisdiction of the juvenile courts to include the 16 and 17-year-old male offenders had to be provided. It therefore designated the Kansas state industrial reformatory as a place for the commitment of these offenders. Little did it suspect this portion of the act would be declared unconstitutional, and little did it suspect the *original exclusive jurisdiction* foisted upon the juvenile court would obligate the juvenile court to conduct the full dress hearings required by *Kent v. United States*, 383 U. S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045, to waive such jurisdiction.

In my opinion, the legislature would not have enacted the act in question had it known the portion authorizing commitment to the state industrial reformatory at Hutchinson was invalid.

The burden cast upon the probate judges of the state, who are by statute made the judges of the juvenile courts of their respective counties (K. S. A. 38-804) will be intolerable, particularly in the greater populated counties. Nowhere was any appropriation for additional money made to cover the expense of such extended jurisdiction and resultant litigation. (See, 6 Kan. L. Rev. 347, 349.)

Throughout the history of our state the legislature has had an eye on economy in resolving litigation. For example, see K. S. A. 60-102. The legislature obviously did not contemplate the tremendous expense which is being imposed upon juvenile courts to waive the original exclusive jurisdiction conferred upon them over 16 and 17-year-old male offenders who were previously handled in the criminal courts, where the facilities had become established and the procedures tested.

Under *Kent* the juvenile court is confronted with a critically important proceeding, if its original exclusive jurisdiction is to be waived and the offender is to be prosecuted in the criminal courts. The juvenile offender is entitled to counsel, and whether the requirement of K. S. A. 1965 Supp. 38-821, that a guardian *ad litem* be appointed, will fulfill this requirement remains to be seen. He is not only entitled to counsel, but must be informed of his rights

to counsel. The juvenile court must accompany its waiver order with a statement of reasons or consideration therefor. The statement must be sufficient to demonstrate that the statutory requirements of Section 3 (*b*) have been met; that the question has received the careful consideration of the juvenile court; *and it must set forth the basis for the order with sufficient specificity to permit meaningful review.*

Not only this but consider further requirements imposed by the United States Supreme Court where a waiver hearing is conducted. In *Kent* it was said:

"With respect to access by the child's counsel to the social records of the child, we deem it obvious that since these are to be considered by the Juvenile Court in making its decisions to waiver, they must be made available to the child's counsel. This is what the Court of Appeals itself held in *Watkins*. [*Watkins v. United States*, 119 U. S. App. D. C. 409, 343 F. 2d 278 (1964)]. There is no doubt as to the statutory basis for this conclusion, as the Court of Appeals pointed out in *Watkins*. We cannot agree with the Court of Appeals in the present case that the statute is 'ambiguous.' The statute expressly provides that the record shall be withheld from 'indiscriminate' public inspection, 'except that such records or parts thereof *shall* be made available by rule of court or special order of court to such persons . . . as have a *legitimate interest* in the protection . . . of the child. . . .' D. C. Code §11-929 (b) (1961), now § 11-1586 (b) (Supp. IV, 1965). (Emphasis supplied.) The Court of Appeals has held in *Black* [*Black v. United States*, 122 U. S. App. D. C. 393, 355 F. 2d 104 (1965)] and we agree, that counsel must be afforded to the child in waiver proceedings. Counsel, therefore, have a 'legitimate interest' in the protection of the child, and must be afforded access to these records.

"We do not agree with the Court of Appeals' statement, attempting to justify denial of access to these records, that counsel's role is limited to presenting 'to the court anything on behalf of the child which might help the court in arriving at a decision; it is not to denigrate the staff's submissions and recommendations.' On the contrary, if the staff's submissions include materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to 'denigrate' such matter. There is no irrebuttable presumption of accuracy attached to staff reports. If a decision on waiver is 'critically important' it is equally of 'critical importance' that the material submitted to the judge—which is protected by the statute only against 'indiscriminate' inspection—be subjected, within reasonable limits having regard to the theory of the Juvenile Court Act, to examination, criticism and refutation. While the Juvenile Court judge may, of course, receive *ex parte* analyses and recommendations from his staff, he may not, for purposes of a decision on waiver, receive and rely upon secret information, whether emanating from its staff or otherwise. The Juvenile Court is governed in this respect by the established principles which control courts and quasi-judicial agencies of the Government." (pp. 562, 563.)

The waiver proceeding necessarily contemplates review in the appellate courts, and the burdensome expenses upon the taxpayers to pay the bill follow just as night follows day. (See, *State v. Dubray*, 121 Kan. 886, 250 Pac. 316.)

The waiver provision in Section 3 (*b*) of the act is new to the Kansas juvenile code, and the expense will also be new and additionally burdensome, particularly with the provisions of the act designed by the legislature as an outlet—commitment of 16 and 17-year-old male offenders to the Kansas state industrial reformatory —declared invalid. Failure of adequate facilities to cope with the problem will undoubtedly lead the juvenile courts to resort to waiver proceedings.

The act as it now stands thwarts the very purpose of the Kansas juvenile code as expressed in K. S. A. 38-801, because the state cannot exercise its parental power where it lacks proper facilities to provide for the juveniles.

I am confident the legislature would not have enacted Chapter 278, Laws of 1965, had it known the portion declared invalid was unconstitutional. Accordingly, it is respectfully submitted the entire act should be declared unconstitutional because the portion declared invalid is inextricably tied to the whole enactment.

FATZER, J., concurring and dissenting: I do not find the issues of this case as simple and straightforward as does the court. For me, the record is not susceptible to the reading given it. The court has proceeded to declare portions of the 1966 juvenile code (L. 1965, Chs. 278, 279, 280, effective January 1, 1966) unconstitutional purely upon the *assumption* that some of the questions decided are presented in the record. I would rest the decision of this case solely on the basis that the judge of the juvenile court of Sedgwick County had jurisdiction of the alleged wayward child it discharged and direct that it assume jurisdiction of all alleged juvenile offenders sixteen and seventeen years of age and dispose of their cases in accordance with the juvenile code as the facts and circumstances warrant. I cannot agree the court should here go further and strike down the provisions of K. S. A. 38-826 (*a*) (5) upon the grounds that the commitment of sixteen and seventeen-year-old youths to the Kansas State Industrial Reformatory is unconstitutional. As hereafter indicated, the question is simply not before the court for consideration.

It is unnecessary to further detail the progressive and humanitarian purpose of the Kansas juvenile code. That has been done in the court's opinion and in the decisions of this court which are cited. The revised juvenile code which went into effect on July 1, 1957 (L. 1957, Ch. 256 [K. S. A. 38-801—38-838]) carries out the philosophy that an act committed by a juvenile, no matter what the act might be, is not considered a crime, but a juvenile offense. This philosophy has been a conscientious state policy of long standing, and the Kansas juvenile code is considered by many states as a model code for dealing with juvenile offenders.

The 1966 juvenile code here considered amended eleven sections of the 1957 juvenile code: K. S. A. 38-802; 806; 808; 815; 816; 819; 821; 824; 826; 828 and 836, and among other things, extended the jurisdiction of the juvenile court to include sixteen and seventeen-year-old boys. As quoted in the court's opinion, 38-826 (*a*) (5) provides that a child adjudged to be a delinquent or a miscreant child, if such child is a boy sixteen years of age or over, may be ordered committed to the Kansas State Industrial Reformatory by the judge of the juvenile court, and such commitment "shall be subject to the same conditions and rights as would be the case if such commitment were made by a district court . . ."

I am in accord with the court's opinion the juvenile court of Sedgwick County had exclusive original jurisdiction of the sixteen-year-old alleged wayward child and it erred in discharging him and it also erred in refusing to assume jurisdiction of the person of a child sixteen or seventeen years of age who was alleged to be delinquent, miscreant or wayward as defined in 38-802. It is clearly within the power of the legislature to classify persons by age for the purpose of dealing with them as delinquents, miscreants or as wayward children. The fact that the legislature deemed it proper to increase the jurisdiction of the juvenile court over male youths from sixteen years of age to those under eighteen years cannot be questioned by a juvenile court, nor afford a judge of that court valid reasons to deny jurisdiction of youthful offenders falling within that age classification.

Our Bill of Rights, including Section 2, which has been held to be the equivalent of the due process and equal protection clauses of the Fourteenth Amendment (*Tri-State Hotel Co. v. Londerholm*, 195 Kan. 748, 408 P. 2d 877, Syl. ¶ 1, and cases cited), is designed, among other things, to secure to our citizens certain "rights" which at times had formerly been denied them, and it does not follow that the state is not concerned with them, yet such rights are personal

in nature and must be asserted *by the individual* who claims their violation. This is so fundamental in our judicial process as to require no citation of authority.

Basically, my objection to the court's sweeping decision striking down portions of 38-806 (*a*) (5) is twofold. First, as applied to the 1966 amendments, the precise nature of the "rights" of juvenile male offenders allegedly involved in this case are not clear. In fact, they do not exist. There is no delinquent or miscreant child's personal or constitutional rights before this court for adjudication. The only youthful offender *to which the act might have been applied* was discharged by the judge of the juvenile court of Sedgwick County. That court has not assumed jurisdiction of any alleged juvenile offenders, and no delinquent or miscreant child has been committed to the Kansas State Industrial Reformatory. In speculating upon the alleged wayward child's case when he discharged him, the judge of the juvenile court said:

". . . If this case were to proceed to hearing and after hearing the evidence the Court found this boy to actually have committed this act of glue sniffing and were to adjudicate him wayward, it would be this boy's third wayward adjudication, and he *would in all probability* be adjudicated a miscreant child, and *could* be committed to the State Industrial Reformatory . . ." (Emphasis supplied.)

The record indicates that the judge of the juvenile court voted against use of the so-called "reformatory section" of the 1966 amendments at the Kansas Probate Judge's Association, and he testified in this case he would not use that section to commit juvenile offenders to the Kansas State Industrial Reformatory when rendering judgment in a juvenile court case. Nonetheless, based upon this conjecture, the court has stated the wayward youth ". . . would have been adjudged a miscreant and thereby made eligible for commitment to the state industrial reformatory at Hutchinson, a penal institution." Acting purely upon this *assumption* the court declared that portion of 38-826 (*a*) (5) indicated in the opinion, to be unconstitutional. In the recent case of *Kent v. United States*, 383 U. S. 541, 16 L. Ed. 2d 84, 86 S. Ct. 1045, the Supreme Court of the United States said "[M]eaningful review requires that the reviewing court . . . should not be remitted to assumptions . . ." I concur in that view. It is a long-standing rule of constitutional law that courts will not refuse to pass on the constitutionality of statutes in an oceeding in which such determination is necessarily involved, but unnecessary considerations of attacks on their validity will be avoided *and courts will not pass upon constitutional questions not duly raised and insisted upon since they are not properly before it.* (*State, ex rel., v. Fadely*, 180 Kan. 652, 308 P. 2d 537, and cases cited.) No substantial claims of constitutional violation is properly raised or presented, and it is clear to me the judge of the juvenile court may not advance constitutional claims for an alleged wayward child based solely upon conjecture of what his findings or judgment *might have been* had he not discharged the child from his court's jurisdiction.

We can rightly expect the juvenile code will be applied under many and varied conditions, but until it is *actually applied* this court is purely "guessing" on what questions will arise and under what facts and circumstances they will be presented. To illustrate, had the judge of the juvenile court assumed jurisdiction of the alleged wayward child and found from the evidence and records of the court he was a miscreant child and ordered him committed to the Kansas State Industrial Reformatory, the miscreant child could allege that, in a habeas corpus proceeding, his civil right of personal liberty was infringed and present specific questions by which this court could measure his constitutional rights under Section 2 of our Bill of Rights. It goes without saying this court should not "assume" in some fanciful case, that constitutional rights have been or will be violated by the judge of a juvenile court in dealing with juvenile offenders. Assuming that, as the court holds, the Kansas State Industrial Reformatory is a penal institution, a commitment of a delinquent or miscreant child to that reformatory might, under circumstances not here presented, be held to be unconstitutional, and under other circumstances be held to be lawful and proper, as hereafter detailed. However, based upon the assumptions heretofore noted, the court's opinion gives us no chance to pass upon the validity of the commitment of a sixteen or seventeen-year-old delinquent youth whose case has been referred to the district court where he is charged with a felony and given all the essential constitutional rights of an adult charged with crime, and when found guilty by a jury as being a delinquent child as defined in 38-802, he is remanded back to the juvenile court for judgment and sentence as provided in the act.

Second, the court proceeds to strike down 38-826 (*a*) (5) upon the ground a sixteen or seventeen-year-old delinquent or miscreant child may not be confined in the Kansas State Industrial Reformatory without a trial by a jury in the criminal sense wherein the youthful offender is tried as an adult with all the ompanying essential

constitutional safeguards. In the words of the court "confinement in a penal institution will convert the proceedings from juvenile to criminal and require the observance of constitutional safeguards," (p. 223) and that "the provision of Section 6 (*a*) (5) of Chapter 278, Laws of 1965, [K. S. A. 38-826 (*a*) (5)] which authorizes the juvenile court to commit a boy 16 years of age or over to the state industrial reformatory, is unconstitutional, and the portion thereof which provides 'and if any boy sixteen (16) years of age or over is committed to the state industrial reformatory such commitment shall be subject to the same conditions and rights as would be the case if such commitment were made by a district court' is also unconstitutional." (p. 224.)

In my opinion, the court does not have this question before it. When current criminal statistics of the state are brought into proper focus, the impact of the court's sweeping decision becomes readily apparent. The Kansas Bureau of Investigation is the only statewide agency which compiles a record of crimes committed in the state and the age of the persons committing them. The police departments of the cities, the sheriffs' offices of the counties, and the State Highway Patrol make monthly reports of this information to the Kansas Bureau of Investigation. These records indicate that in 1965 there were 11,592 crimes committed by persons under eighteen years of age and that 3,982 of those youthful offenders were referred to juvenile courts or to probation departments. Most important is the astounding fact that these records show *more crimes are being committed, with respect to burglary, larceny, auto theft and arson, and perhaps other crimes, by offenders under eighteen years of age than by all persons over eighteen years of age.* The same trend is established for the first three months of 1966. This is impressive evidence. The record indicates that the present facilities of the boys industrial school are wholly inadequate to rehabilitate youthful offenders of this number, and the legislature clearly intended that the facilities of the Kansas State Industrial Reformatory should be used to reform persistent offenders of this age group.

The jurisdiction to determine the preliminary question, which the court holds to be "critically important" as detailed in the opinion, whether an alleged delinquent child shall be proceeded against as a criminal or as a delinquent, pursuant to 38-808, resides exclusively in the juvenile court and this court should not assume those provisions will be ignored by the judges of the juvenile courts,

or in view of the foregoing criminal statistics, that they will not be consistently applied. Hence, I ask, what is the status of a delinquent offender less than eighteen years of age who violates a criminal statute, which if done by a person eighteen years of age or over, would make him liable to be arrested and prosecuted for the commission of a felony, and is referred by a proper order to the district court pursuant to 38-808, and charged, tried and convicted of committing a felony, with all the essential constitutional safeguards afforded an adult offender, and the jury's verdict is that the child is a delinquent child as defined in 38-802, and he is remanded to the juvenile court for judgment and sentence? Can it be contended the provisions of 38-826 (*a*) (5) are unconstitutional because the juvenile court, not the district court, orders him committed to the Kansas State Industrial Reformatory? The court's decision holds the commitment of such delinquent youth is unconstitutional. I do not agree.

Prior to the enactment of the 1966 amendments, a male offender sixteen or seventeen years of age, under the same facts and circumstances, that is, charged, tried and convicted of a felony with all essential constitutional safeguards in the district court, could be lawfully committed by that court to the Kansas State Industrial Reformatory pursuant to K. S. A. 76-2306 which reads:

"Any male person between the ages of sixteen (16) and twenty-five (25) who shall be convicted for the first time of any offense punishable by confinement in the state penitentiary may, in the discretion of the trial judge, be sentenced either to the state penitentiary or to the Kansas state industrial reformatory."

In the recent case of *State v. Crow*, 196 Kan. 663, 414 P. 2d 54, this court construed and applied the statute and no one has ever entertained the thought that the confinement of a sixteen or seventeen-year-old youth in the reformatory under such circumstances was unconstitutional.

Under the 1966 amendments to the juvenile code, the jurisdiction of sixteen and seventeen-year-old male juvenile offenders committing felonies has been removed from the district courts and the juvenile courts now have exclusive original jurisdiction. But the court's opinion makes it impossible for a juvenile court to confine them in the Kansas State Industrial Reformatory under circumstances where they have been properly referred to the district court pursuant to 38-808, tried by a jury with all accompanying constitutional safeguards, found to be delinquent as defined in the act, and remanded to the juvenile court for sentence.

As indicated, the court has passed upon constitutional questions in this case which are not presented, but are only *assumed* to exist. In no event, however, should it strike down the provisions of 38-826 (*a*) (5) with respect to confinement in the Kansas State Industrial Reformatory *in toto*. It is a well-established rule in this jurisdiction that it is the court's duty to uphold legislation rather than defeat it, and if there is any reasonable way to construe legislation as constitutionally valid, that should be done. (*Marks v. Frantz*, 179 Kan. 638, 298 P. 2d 316.) The court starts at the threshold of the inquiry of validity of a statute with the presumption the legislature intended to enact a valid law and to enact it for the accomplishment of a needful purpose. (*State, ex rel., v. Board of Education*, 137 Kan. 451, 453, 21 P. 2d 295.) Since the court persists in considering the constitutional validity of 38-826 (*a*) (5), the section could well be construed to apply only to cases of male offenders over sixteen years of age where they have been referred to the district court pursuant to 38-808 and are tried and convicted by a jury of the commission of a felony, with all the accompanying constitutional safeguards, and remanded to the juvenile court for judgment and sentence. Such a construction would be consistent with the language of the section that a commitment ". . . shall be subject to the same *conditions* and *rights* as would be the case *if such commitment were made by a district court* . . ." (Emphasis supplied.) It would seem logical to suggest the legislature's use of the words "conditions," "rights" and "made by a district court" were intended to refer to proceedings in the district court where a delinquent offender was afforded all constitutional safeguards and his guilt was determined by a jury.

Again, I reiterate all of the questions decided by the court in this case are not before it for decision, except that the judge of the juvenile court of Sedgwick County has exclusive original jurisdiction over sixteen and seventeen-year-old male offenders who are alleged to be delinquent, miscreant or wayward as defined in the act and to dispose of their cases in accordance with the juvenile code. When the court decided that question it should have concluded its opinion. I would enter judgment sustaining the 1966 amendments to the juvenile code in conformity with the views herein expressed.

JULY TERM, 1966

PRESENT

HON. ROBERT T. PRICE, CHIEF JUSTICE
HON. HAROLD R. FATZER,
HON. ALFRED G. SCHROEDER,
HON. JOHN F. FONTRON,
HON. ROBERT H. KAUL,
HON. EARL E. O'CONNOR,
HON. ALEX M. FROMME,
} JUSTICES.
HON. EARL H. HATCHER, COMMISSIONER
HON. JEROME HARMAN, COMMISSIONER

No. 43,155

STATE OF KANSAS, *Appellee*, v. WILLIAM NAY WOOD, *Appellant*.

(416 P. 2d 729)

SYLLABUS BY THE COURT

1. SEARCH AND SEIZURES—*Constitutional Protection Against Unreasonable Search.* The fourth amendment to the United States Constitution protects the individual only from "unreasonable" searches and seizures; the question of reasonableness of a search and seizure must be resolved from the facts and circumstances of each particular case.
2. SAME—*Test for Reasonableness.* To meet the test of reasonableness, a search and seizure without a warrant may be incident to a lawful arrest if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. The right to make a contemporaneous search extends to things under the accused's control and, depending on the circumstances, to the place where he is arrested.
3. SAME—*Place of Arrest Involving Automobiles—Reference to Vehicle Not Location.* The "place of arrest" in cases involving a search of an automobile over which an accused has immediate control at the time of arrest has reference to the vehicle itself rather than its geographical location.
4. SAME—*Admission of Evidence Taken by Unreasonable Search and Seizure—Effect When Cumulative.* The admission of evidence secured by an unreasonable search and seizure, which was cumulative in nature, and did not result in prejudice to or affect the substantial rights of the defendant, is not reversible error.
5. CRIMINAL LAW—*Unreasonable Search and Seizure—Admission of Evidence—Motion for Directed Verdict—New Trial Denied.* The record is examined in a reinstated criminal appeal, and for the reasons more fully stated in the opinion, it is *held:* The trial court did not err in (1) admitting

the same. The provisions of K. S. A. 60-2410, 60-2414 and 60-2416 and any amendments thereto shall not be applicable to post-judgment proceedings pursuant to this chapter, nor shall executions and orders of sale issued pursuant to this chapter be levied upon real property of the judgment debtor except as provided in K. S. A. 60-2418 and any amendments thereto. [L. 1969, ch. 290, § 61-2201; L. 1976, ch. 258, § 44; Jan. 10, 1977.]

Source or prior law: 61-421, 61-422, 61-1201 to 61-1224.

61-2202. Post-judgment proceedings. If a party in whose favor a judgment is rendered pursuant to this chapter shall file, pursuant to K. S. A. 60-2418, and any amendments thereto, a transcript of such judgment with the clerk of the district court of the county in which the judgment was rendered, all post-judgment proceedings for the enforcement of such judgment, including garnishment, execution and proceedings in aid of execution, shall be brought in such district court pursuant to article 24 of chapter 60 of the Kansas Statutes Annotated. [L. 1969, ch. 290, § 61-2202; L. 1976, ch. 258, § 45; Jan. 10, 1977.]

61-2203. Exemptions from seizure and sale. The provisions of article 23 of chapter 60 of the Kansas Statutes Annotated, and acts amendatory thereof and supplemental thereto, relating to exemptions from seizure and sale, shall apply to attachments, executions and other process issued from any court in this state pursuant to this chapter. [L. 1969, ch. 290, § 61-2203; L. 1976, ch. 258, § 46; Jan. 10, 1977.]

61-2204. Hearings in aid of execution, when; failure to appear and answer; contempt proceedings; penalty; disclosure of nonexempt property. When an execution against a judgment debtor, or against several debtors in the same judgment, has been issued pursuant to this chapter to the sheriff of the county in which the court issuing such execution is situated, and is returned unsatisfied in whole or in part, or if the judgment creditor ~~satisfied said court~~ avers that said judgment creditor is without sufficient knowledge of the debtor's assets to advise the officer where and on what to levy execution, the court shall have the power to order such debtor or debtors to appear and answer concerning such debtor's or debtors' property before such court at a time and place specified in such order within the county where the court is situated, and witnesses may also be subpoenaed to testify at such hearing.

If, on proper application by the judgment creditor, the court finds that it will not cause undue hardship on the judgment debtor, the court may order a debtor residing in another county in this state to appear before said court for such examination. If any person fails, neglects or refuses to so appear and answer concerning his or her property at the time and place specified in such order, or, if any person so subpoenaed as a witness in said proceeding shall fail, neglect or refuse to appear or to testify concerning anything about which such witness can lawfully be interrogated, such witness shall be guilty of contempt of court, and the court or judge shall issue a citation requiring such witness, at an early day therein to be appointed, to appear before the court and show cause, if any, why such witness should not be punished for contempt.

If, after proper service of citation by any officer or other person, such person shall not on the day appointed appear before the court, or it appears to the court that such person is secreting himself or herself to avoid the process of the court or is about to leave the county for that purpose, the court may issue an attachment or bench warrant commanding the officer to whom it is directed to bring such person before the court to answer for contempt. If the court shall determine that any such person is guilty of contempt the court may punish such person by a fine of not more than fifty dollars ($50) or by imprisonment in the county jail for a period of not to exceed thirty (30) days or by both such fine and imprisonment.

At any such hearing or examination, when the existence of any nonexempt property of the judgment debtor is disclosed, the court shall order such debtor to deliver the property to the sheriff or other officer under its jurisdiction and shall also order the sheriff or other officer to accept delivery thereof; and upon receipt of such property the sheriff or officer shall give a receipt for the same; and if such property is other than currency, such property shall be sold, in the same manner as other property taken under execution is sold and the proceeds from such a sale shall be applied to the judgment and costs. Further, if during and upon such examination, it appears that the debtor may have property which such debtor refuses to disclose or apply to such judgment, such debtor may be ordered to return to the court, from time to time, to attend before the court as the judge shall direct; and any debtor who fails to appear before the court as so ordered shall be guilty of contempt; and the

It shall be the duty of the judge to assist the judgment creditor in the enforcement of the judgments of the court. To this end at

same procedure as hereinbefore provided may be invoked at any time nonexempt property of the debtor is disclosed. [L. 1969, ch. 290, § 61-2204; L. 1972, ch. 226, § 2; L. 1976, ch. 258, § 47; Jan. 10, 1977.]

Source or prior law: 20-1443.

Cross References to Related Sections:

Proceedings in aid of execution under code of civil procedure, see 60-2419.

Article 23.—FORCIBLE DETAINER

Cross References to Related Sections:

Appeal bond, see 61-2106.

Limitation of action for forcible entry and detaining, see 60-506.

Law Review and Bar Journal References:

Discussed, implied warranty of habitability possible defense to forcible entry and detainer, 22 K. L. R. 666, 681 (1974).

Act mentioned in article entitled "The New Residential Landlord and Tenant Act," John W. Brand, Jr., 44 J. B. A. K. 227, 235 (1975).

61-2301. Forcible detainer, scope. Actions of forcible detainer pursuant to this article shall include actions brought against persons alleged to have made unlawful and forcible entry into lands or tenements of the plaintiff and have detained the same, as well as actions against persons alleged to have made lawful and peaceable entry into lands or tenements and have unlawfully and by force detained the same. [L. 1969, ch. 290, § 61-2301; L. 1976, ch. 258, § 48; Jan. 10, 1977.]

Source or prior law: 61-1301.

Law Review and Bar Journal References:

Cited in comment discussing the constitutionality of certain provisions of forcible entry and detainer law, Russell Read, 21 K. L. R. 71, 76 (1972).

CASE ANNOTATIONS

1. Action hereunder held contract purchaser, as equitable owner of real property, had paramount right of redemption and possession over plaintiff claiming under 60-2414 (a) and (f). Pine v. Pittman, 211 K. 380, 506 P. 2d 1184.

61-2302. Cases in which proceedings had. Proceedings under this article may be had in all cases against tenants holding over their terms; in sales of real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree by virtue of which such sale was made; in sales by executors, administrators, conservators and on partition, where any of the parties to the partition were in possession at the com-

2-6-78

CONSUMER CREDIT PROTECTION ACT, AMENDMENTS

TITLE VIII DEBT COLLECTION PRACTICES

89-139 O - 77 (117)

Effective March 20, 1978

Public Law 95-109
95th Congress

An Act

Sept. 20, 1977
[H.R. 5294]

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Consumer Credit Protection Act, amendments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

"TITLE VIII—DEBT COLLECTION PRACTICES

Fair Debt Collection Practices Act.

"Sec.

15 USC 1601 note.

"§ 801. Short title

"This title may be cited as the 'Fair Debt Collection Practices Act'.

15 USC 1692.

"§ 802. Findings and purpose

"(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

"(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

"(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

"(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

"(e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

"§ 803. Definitions

15 USC 1692a.

"As used in this title—

"(1) The term 'Commission' means the Federal Trade Commission.

"(2) The term 'communication' means the conveying of information regarding a debt directly or indirectly to any person through any medium.

"(3) The term 'consumer' means any natural person obligated or allegedly obligated to pay any debt.

"(4) The term 'creditor' means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

"(5) The term 'debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

"(6) The term 'debt collector' means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (G) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

"(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

"(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

"(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

"(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

"(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

"(F) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and

"(G) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

"(7) The term 'location information' means a consumer's place of abode and his telephone number at such place, or his place of employment.

"(8) The term 'State' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

15 USC 1692b. **"§ 804. Acquisition of location information**

"Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

"(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

"(2) not state that such consumer owes any debt;

"(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

"(4) not communicate by post card;

"(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

"(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

15 USC 1692c. **"§ 805. Communication in connection with debt collection**

"(a) COMMUNICATION WITH THE CONSUMER GENERALLY.—Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

"(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

"(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless

the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

"(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

"(b) COMMUNICATION WITH THIRD PARTIES.—Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

"(c) CEASING COMMUNICATION.—If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

"(1) to advise the consumer that the debt collector's further efforts are being terminated;

"(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

"(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

"(d) For the purpose of this section, the term 'consumer' includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

"§ 806. Harassment or abuse 15 USC 1692d.

"A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

"(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

"(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

"(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3) of this Act. 15 USC 1681a, 1681b.

"(4) The advertisement for sale of any debt to coerce payment of the debt.

"(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

"(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

"§ 807. False or misleading representations 15 USC 1692e.

"A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

Without limiting the general application of the foregoing, the following conduct is a violation of this section:

"(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

"(2) The false representation of—

"(A) the character, amount, or legal status of any debt; or

"(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

"(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

"(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

"(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

"(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

"(A) lose any claim or defense to payment of the debt; or

"(B) become subject to any practice prohibited by this title.

"(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

"(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

"(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

"(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

"(11) Except as otherwise provided for communications to acquire location information under section 804, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

"(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

"(13) The false representation or implication that documents are legal process.

"(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

"(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

"(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act. 15 USC 1681.

"§ 808. Unfair practices 15 USC 1692f.

"A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

"(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

"(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

"(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

"(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

"(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

"(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

"(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

"(B) there is no present intention to take possession of the property; or

"(C) the property is exempt by law from such dispossession or disablement.

"(7) Communicating with a consumer regarding a debt by post card.

"(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

"§ 809. Validation of debts 15 USC 1692g.

"(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

"(1) the amount of the debt;

"(2) the name of the creditor to whom the debt is owed;

"(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

"(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

"(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

"(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

"(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

15 USC 1692h. **"§ 810. Multiple debts**

"If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

15 USC 1692i. **"§ 811. Legal actions by debt collectors**

"(a) Any debt collector who brings any legal action on a debt against any consumer shall—

"(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

"(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

"(A) in which such consumer signed the contract sued upon; or

"(B) in which such consumer resides at the commencement of the action.

"(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

15 USC 1692j. **"§ 812. Furnishing certain deceptive forms**

"(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

"(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

"§ 813. Civil liability 15 USC 1692k.

"(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of—

"(1) any actual damage sustained by such person as a result of such failure;

"(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

"(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

"(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

"(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

"(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

"(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

"(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

"(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs. Jurisdiction.

"(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

"§ 814. Administrative enforcement 15 USC 1692*l*.

"(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of 15 USC 58.

15 USC 58.

the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

"(b) Compliance with any requirements imposed under this title shall be enforced under—

12 USC 1818.

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

"(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

12 USC 1464. 12 USC 1730. 12 USC 1426, 1437.

"(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

12 USC 1751.

"(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

"(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

49 USC 1301 note.

"(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or any foreign air carrier subject to that Act; and

7 USC 181. 7 USC 226, 227.

"(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

"(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

"(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

15 USC 1692m.

"§ 815. Reports to Congress by the Commission

"(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title

is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

"(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

"§ 816. Relation to State laws 15 USC 1692n.

"This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

"§ 817. Exemption for State regulation 15 USC 1692o.

"The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

"§ 818. Effective date 15 USC 1692 note.

"This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.".

Approved September 20, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).
SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 123 (1977):
Apr. 4, considered and passed House.
Aug. 5, considered and passed Senate, amended.
Sept. 8, House agreed to Senate amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:
Sept. 20, Presidential statement.

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What should I do if I'm a victim of harassment, abusive language or threats from a collector?

The first thing you should do is call the manager or owner of the firm that contacted you and explain the problem. No ethical collector will knowingly engage in these practices and he will be grateful for your help in alerting him to such practices by an employee.

If you are dealing with a truly unethical collector, you should consider contacting the original credit granter and complaining to him, your attorney or the Federal Trade Commission. Ethical collectors do not want those unethical practitioners in the industry and you will be doing a service to all by helping to stop them.

What are some good guidelines to follow to avoid getting too deeply into debt?

The best way to keep out of excessive debt is to have good, strict money management policies at home. Know exactly how much your take-home pay is each month. It is impossible to stay within your means if you don't know what your income is. Then, try to limit your credit obligations to 20 percent of your monthly salary, after deducting your rent or mortgage payment.

When you shop, know exactly how much you can afford to add to your monthly credit payments. It often takes strong will-power to resist a bargain, but if you can't afford it, don't spend it.

And, if you must borrow money to pay off other bills or meet some unexpected emergency, shop around for the most favorable interest rate and credit terms. Also, know exactly what you are signing before you write your name on any contract. If you are not sure, tell the lender you're not ready yet. Then, find a friend, relative or even a lawyer to help you interpret the contract.

Finally, save part of your paycheck every month and build up a cash reserve. It's easier if you can have your employer put a certain amount in your savings account before you get paid. If that's not possible stop at a savings institution and make a deposit before you spend any of your paycheck.

For more information on this subject write for Associated Credit Bureaus, Inc.'s free brochure entitled "How to Manage Your Money Cleverly." Single copies are available free of charge.

How can I find out more about the Fair Debt Collection Practices Act?

Your local Associated Credit Bureaus Collection Service Division member may have copies of the law itself, or our explanatory pamphlet available. It's called "Consumers, Collectors and the Fair Debt Collection Practices Act." If they don't have it, single copies may be obtained by writing to Associated Credit Bureaus, Inc., 6767 Southwest Freeway, Houston, Texas 77074.

Associated Credit Bureaus, Inc.
Collection Service Division
6767 Southwest Freeway
Houston, Texas 77074

Form E-12

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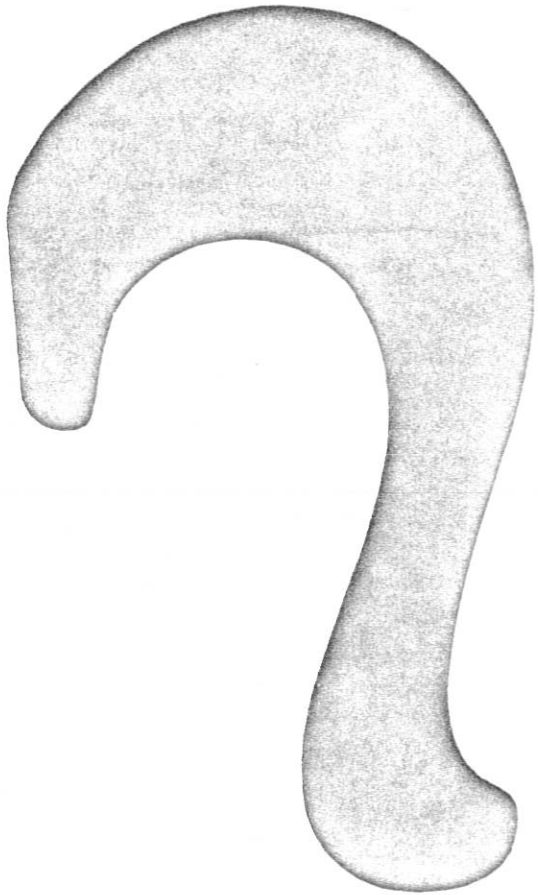

WHAT IS A DEBT COLLECTOR

Because of the very nature of their work, debt collectors generally are not thought of in glowing terms.

In actual fact, they perform an invaluable service to both their clients and the general public. If it were not for a professional debt collector's ability to collect past-due bills for credit granters, retail prices would be higher than they already are. Let's explain.

Today, almost everyone lives on credit and also lives up to their obligation to pay when billed for such credit purchases. This permits the suppliers and sellers who also operate on credit to pay their bills and to continue providing the needs of our society. When customers fail to pay their bills, however, the system is disrupted and there is an adverse impact on everyone. Creditors use the professional debt collector to recover unpaid bills and thereby minimize the adverse financial impact on those who fail to pay their debts.

What happens if credit granters can't collect the money owed them?

Just to keep its doors open, any business must recover its own costs and make a reasonable profit. Someone has to pay, and if credit granters didn't use professional debt collectors to collect unpaid bills, they would have to raise their prices to offset those losses. Consumers who **do** pay their bills would pay even higher prices to make up for those who don't pay.

The fact that the professional bill collectors exist motivates many people to pay. This, plus the accounts that collectors do collect, helps to hold down costs for everyone, consumers as well as credit granters.

Why don't some people pay their bills?

Few people actually intend to "rip-off" a credit granter by not paying, but some get into financial difficulty for a variety of reasons. Their difficulties can stem from poor financial planning, or a prolonged illness or death in the family.

Unfortunately, many peo become so embarrassed by inability to pay their bills that they fail to stay in touch with their credit granters. The best course of action the consumer can take is to explain the problems to the credit granter and work out terms that will meet everyone's needs. The credit granter would much rather do this than lose the money due him as well as a valued customer.

Non-payment can stem from other causes such as defective products or inferior service. Again, the consumer should contact the credit granter to work out these problems to everyone's mutual advantage. People shouldn't wait until an account is turned over to a debt collector and then complain about defective merchandise or inferior service.

How do collectors go about collecting past-due bills?

The usual first step used by an ethical debt collector is to send a form requesting payment to the consumer. Besides indicating the name of the creditor and the amount owed, the form advises the individual of certain consumer rights under the Fair Debt Collection Practices Act.

If there is no response to the requests for payment by mail, the collector may begin to contact the debtor by phone at times convenient to the consumer. When contact by either mail or phone is made, the collector's objective is to motivate the consumer to pay. If the consumer is short of money to make a full payment, the collector will usually work out a payment schedule.

Do collectors use threats to motivate consumers to pay their debts?

Ethical debt collectors use only responsible business-like methods to convince a consumer to pay his bills. Threats, intimidation and harassment are not only illegal, but also practices to which no ethical collector would stoop. Convincing a consumer to pay a debt is a selling job of which ethical collectors are proud.

What about those stories in the press about harassing tactics?

As with almost any enterprise, there are a few "bad apples" in the debt collection industry and the unethical tactics they use are the headline-makers. Fortunately, unethical collectors make up only a minute portion of the industry. Unfortunately, they produce most of the headlines.

If most collectors are ethical operators, why was a federal law necessary?

Congress recognized that while unethical collectors comprised only a small portion of the debt collection industry, "the suffering and anguish which they regularly inflict is substantial." They also recognized that technology such as computers and WATS lines enabled unethical collectors to avoid the inconsistent state laws on debt collection and continue to use unethical collection tactics.

The Fair Debt Collection Practices Act sets a national standard of conduct for professional debt collectors and that standard is supported by the ethical debt collectors in the United States.

What actually constitutes harassment?

Harassment and similar terms are very difficult to define because different people have different standards.

While unable actually to define harassment, the Congress did set some general guidelines for what it means by terming six practices as "harassment" and specifically prohibiting them in the Fair Debt Collection Practices Act.

Those six practices are: threatening violence, using obscene or profane language, publishing public lists of debtors, advertising a debt for sale, making annoying telephone calls and making anonymous telephone calls.

In outlawing harassing tactics, the Congress expects ethical debt collectors to use what is called the "reasonable man" approach to judging collection practices. If the collector would object to certain practices being used on him, then it wo be reasonable to judge them as harassing.

QUICK FACTS ABOUT THE

FAIR DEBT COLLECTION PRACTICES ACT

On September 20, 1977, President Carter signed the Fair Debt Collection Practices Act into law. It becomes effective March 20, 1978. This legislation, known as Public Law 95-109, is a new title to the Consumer Credit Protection Act which includes such other titles as the Truth In Lending and Fair Credit Reporting Acts.

This law was written to "protect consumers from a host of unfair, harassing and deceptive debt collection practices without imposing unnecessary restriction on ethical debt collectors." Because the legislation is workable and fair, it was supported in both the House and Senate by Associated Credit Bureaus, Inc., the national trade association for the credit reporting and debt collection industries.

COVERAGE: The new debt collection law applies only to "third-party" debt collectors. "In-house" collection activities of creditors and attorneys collecting for their clients are generally exempt from the law.

PROHIBITED PRACTICES: Debt collectors in the course of their duties may not make threats of violence, use abusive language, make harassing telephone calls or calls at inconvenient times, impersonate government officials or attorneys, misrepresent a consumer's legal rights, obtain information under false pretenses, collect more than is legally due, misuse postdated checks or hold debtors up to public ridicule.

INFORMATION TO THIRD PERSONS: Debt collectors may not disclose the fact of a debt to third parties without the prior consent of the debtor. The exceptions are credit reporting agencies, the debtor's spouse or his attorney for the debt in question. Debt collectors may not contact the debtor's employer without permission of the debtor, except to verify employment or to obtain location information from a former employer.

LOCATION INFORMATION: Debt collectors may seek information on the location of missing debtors, but these skip-tracers may not indicate the existence of a debt to the persons with whom they communicate. Also, to insure the consumer's privacy, they may not volunteer that they are employed by a debt collector. If specifically asked to do so by a potential source of location information, they must identify their employer.

VALIDATION OF DEBTS: Debt collectors must routinely inform debtors of certain new rights when they first ask for payment. For instance, if the debtor challenges the validity or correctness of the debt in writing, the collector must obtain verification data from the creditor and send it to the consumer.

CEASING COMMUNICATIONS: Debt collectors must cease communications with the debtor once they know he is represented by legal counsel for that debt. If a debtor makes a specific written request to do so, the collector must cease all further communications with him except he may inform the debtor of the legal remedies still available to the creditor or collector to collect the account, such as civil lawsuits, for example.

OTHER PROHIBITED PRACTICES: Debt collectors may not file lawsuits in locations where the debtor does not live or where the debt was not incurred. The practice of using "flat rate" letter services, which give the false impression a creditor is using a third-party collector, is prohibited.

PENALTIES: Debt collectors may be sued by individuals or in class actions. If found in violation of the law, the collector may be assessed the actual damages, plus additional damages not to exceed $1,000 and reasonable attorney's fees. In class actions, the collector may be assessed up to $500,000 or one percent of his net worth, whichever is less.

When an alleged violation of the law is unintentional and the collector can demonstrate he has used reasonable procedures for compliance with the law, there is no liability. If a court finds that a debtor has sued a collector only for the purpose of harassing him, the court may assess the consumer bringing suit the cost of the collector's defense and attorney's fees.

ENFORCEMENT: The Fair Debt Collection Practices Act is enforced primarily by the Federal Trade Commission, although the FTC has no rule-making authority. State laws which provide the debtor with even greater protection take precedence over the federal law and federal law takes precedence over state law where it provides greater protection.

ADDITIONAL INFORMATION: For additional information on Public Law 95-109, the Fair Debt Collection Practices Act, please contact Associated Credit Bureaus, Inc., 6767 Southwest Freeway, Houston, Texas 77074, Telephone 713/774-8701; William Detlefsen, Hugh C. Akin, D. Barry Connelly or T. Monty Skiles. Also, Rives, Dyke/Y&R., P. O. Box 27359, Houston, Texas 77027, Telephone 713/783-7640; Marvin B. Kaplan, Public Relations Counsel to Associated Credit Bureaus, Inc.

Associated Credit Bureaus, Inc.

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L. 1933, ch. 168, § 3; L. 1947, ch. 222, § 1; June 30.]

Research and Practice Aids:

Judges⇐40.
C. J. S. Judges § 73.
Change of venue, Kansas Practice Methods § 1776.

Judicial Council Bulletin References:

The judge pro tem in Kansas, A. K. Stavely, 1952 J. C. B. 28, 30, 31, 32, 35.

CASE ANNOTATIONS

1. Agreement of litigants appointing judge pro tem and fixing his compensation upheld. McCleery v. McCleery Lbr. Co., 140 K. 117, 123, 33 P. 2d 1112.
2. Trial judge cousin of plaintiff's mother; not disqualified to sit. Thompson v. Barnette, 170 K. 384, 391, 227 P. 2d 120.
4. Divorce action; application to disqualify trial judge properly denied by him. Leverenz v. Leverenz, 183 K. 79, 84, 325 P. 2d 354.

20-311a. [L. 1935, ch. 149, § 1; Repealed, L. 1965, ch. 215, § 7; June 30.]

Revisor's Note:

New act, see 20-318, 20-319.

CASE ANNOTATIONS

1. Cited in referring to presiding judge in criminal case. State v. Stiff, 148 K. 224, 225, 80 P. 2d 1089. Rehearing denied: 148 K. 457, 83 P. 424.
2. District judge disqualifying himself in criminal case supreme court may appoint judge pro tem. *In re* Fredrick Appeals, 155 K. 165, 173, 183, 184, 123 P. 2d 806.
3. Divorce action; application to disqualify trial judge properly denied by him. Leverenz v. Leverenz, 183 K. 79, 84, 325 P. 2d 354.

20-311b. [L. 1935, ch. 149, § 2; Repealed, L. 1965, ch. 215, § 7; June 30.]

Revisor's Note:

New act, see 20-318 to 20-321.

20-311c. [L. 1949, ch. 225, § 1; Repealed, L. 1965, ch. 215, § 7; June 30.]

Revisor's Note:

New act, see 20-318, 20-319.

20-311d. Change of judge; affidavit; procedure; grounds; legal sufficiency of prior affidavits. (*a*) If either party to any action in a district court files an affidavit alleging any of the grounds specified in subsection (*b*) the administrative judge shall at once transfer the action to another division of the court if there is more than one division, or shall request a judge of another judicial district be assigned to preside in such cause. If an affidavit be filed in a district court in which there is but one division or judge, then such judge shall at once notify the departmental justice for such

or either party's attorney

district and request the appointment of another judge to hear such action.

(*b*) Grounds which may be alleged as provided in subsection (*a*) for change of judge are:

(1) That the judge has been engaged as counsel in the action prior to the appointment or election as judge.

(2) That the judge is otherwise interested in the action.

(3) That the judge is of kin of or related to either party to the action.

(4) That the judge is a material witness in the action.

(5) That the party filing the affidavit has cause to believe and does believe that on account of the personal bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial. Such affidavit shall state the facts and the reasons for the belief that bias, prejudice or an interest exists.

(*c*) In any affidavit filed pursuant to this section, the recital of previous rulings or decisions by a court concerning the legal sufficiency of any prior affidavits filed by counsel for a party in any judicial proceeding, or filed by said counsel's law firm, pursuant to this section, shall not be deemed legally sufficient for any belief that bias or prejudice exists. [L. 1971, ch. 198, § 3; L. 1972, ch. 97, § 1; L. 1973, ch. 130, § 1; July 1.]

or fair and impartial enforcement of post judgment remedies.

Cross References to Related Sections:

Change of judge due to death, sickness or other disability, see 60-263.

Change of venue for reason other than disqualification of judge, see 60-609.

Law Review and Bar Journal References:

Mentioned in "1971 Legislative Synopsis," Robert F. Bennett, 40 J. B. A. K. 307, 310 (1971).

Mentioned; use of "prejudice affidavit" limited under 1972 amendment, Robert F. Bennett, 41 J. B. A. K. 7, 53 (1972).

CASE ANNOTATIONS

1. Comprehensive review and analysis of provisions of act; basis and procedure for disqualifying judge; constitutionality. Hulme v. Woleslagel, 208 K. 385, 386, 390, 391, 392, 393, 397, 398, 400, 401, 402, 403, 493 P. 2d 541.

20-311e. Same; punishment for contempt prohibited. No judge or court shall punish for contempt any one making, filing or presenting the affidavit provided for by section 3 [20-311d] of this act, or any motion founded thereon. [L. 1971, ch. 198, § 4; July 1.]

20-311f. Same; limitations. (*a*) No party shall be granted more than one change of judge in any action, but each party shall be heard to urge his objections to a judge in

the first instance: *Provided, however,* That a party shall have seven (7) days after pretrial, or after receipt of written notice of the judge to which the case is assigned or before whom the case is to be heard, whichever is later, in which the affidavit may be filed. ——— in pre-judgment matters

(*b*) The trial shall be held within the county in which venue lies. [L. 1971, ch. 198, § 5; July 1.] ——— In post judgment proceedings the affidavit may be filed at any time.

CASE ANNOTATIONS

1 Discussed in determining procedural requirements for disqualification of judge under act. Hulme v. Woleslagel, 208 K 385, 393, 493 P. 2d 541.

20-311g. Severability. If any provision of this act or the application thereof is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [L. 1971, ch. 198, § 6; July 1.]

20-312. Bailiff; appointment; oath; duties; secretary-bailiffs; appointment, powers and duties. Except where otherwise provided by statute, judges of the district courts of this state may appoint in each county in their judicial districts a bailiff or bailiffs, to hold their office at the pleasure of the judge appointing them. It shall be the duty of such bailiff or bailiffs to perform all acts imposed by law upon bailiffs and deputy sheriffs and to attend upon all sessions of court, to take charge of the jury during the time of its deliberations upon any case tried in said court, to open and close court, and otherwise to perform all duties which may be required of them by the judge of said court. In every case in which a bailiff is placed in charge of a jury during its deliberations, such bailiff shall, before entering upon the discharge of such duty, take and subscribe to an oath to support the constitution of the United States and the constitution of the state of Kansas, to faithfully perform the duties of bailiff of such court in charge of the jury in the case upon trial, to keep such jury together in some safe, convenient and proper place without food except such as the court shall order, and not to permit any person to speak or communicate with such jury in any way, or to do so himself unless ordered by the court, except to inquire if they have agreed upon a verdict, nor communicate to anyone the state of the deliberations of such jury, and to return said jury into court when so ordered by the court.

In lieu of appointing a bailiff as provided