

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~am~~ p.m. on March 28, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Peterson was excused

Committee staff present:

Mark Burghart, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

William J. Paprota, Divorced Dads, Inc., Kansas City, Kansas
Linda Woody, National Organization for Women
Elizabeth Taylor, Kansas Association for Education of Young Children
Senator Paul Hess

The minutes of March 21, 1983, were approved.

SB 191 - An act relating to domestic relations and child custody.

Bill Paprota, a member of Divorced Dads, Inc., supported the bill (Attachment No.1). He said fathers should know if their children are moved out-of-state before the move takes place. At present, every judge rules differently on this matter.

Testimony in support of the bill from Jack Paradise, Divorced Dads, Inc., is attached (Attachment No.2). Testimony from Jim Robertson, Legal Counsel for the Kansas Child Support Enforcement Agency and Kansas agent for the Uniform Reciprocal Enforcement of Support Act, listing objections to the bill which he believed were not in the best interest of the child is attached (Attachment No.3).

Linda Woody said NOW opposes SB 191. Her statement is attached (Attachment No.4). She objected to a mother having to obtain the consent from a father who she never sees or hears from. The bill should also require the father to get the consent of the mother. A member noted a move could be a material change that would affect the best interest of the child and might warrant a reconsideration of the case.

Elizabeth Taylor supported the bill but suggested transportation costs pertaining to visitation rights should not be part of support payments.

A statement from the Kansas Women's Political Caucus noting objections to SB 191 is attached (Attachment No.5).

Representative Wagon said she had been contacted by interested persons who object to the bill. She furnished testimony from Roberta Hawver, attorney, outlining objections to Section 1 (Attachment No.6). A compromise with Senator Hess, sponsor, was reached as outlined in the amendment in Attachment No.6. She said Senator Hess may want to retain lines 33-44 pertaining to material circumstances. Representative Wagon moved to adopt the amendments, seconded by Representative Matlack.

Senator Hess said he worked with Representative Wagon and others on the compromise, and they knew of his amendment (Attachment No.7) to leave in lines 33-44. Both Judge Walton and Judge Buchele are presently using this provision and have no objections to language being written to clarify for all judges what may be considered material circumstances. Senator Hess agreed with the amendment for New Section 1 (a) and (b). He said line 33 should be consistent with New Section 1 (a) as it was not his intent that there should be a court case if a child goes out-of-state but does not move. Representative Wagon agreed to these amendments.

Representative Douville made a substitute motion to make line 33 in Attachment No.7 consistent with New Section 1 (a) and the amendments in Attachment No.7 be adopted, seconded by Representative Patrick. Substitute motion carried. Representative Knopp moved to add, in line 35 after "prior", "order of child support or custody" and to strike lines 36-44. Also, to provide that 21 days prior notice be given to the noncustodial parent. The motion was seconded by Representative Schweiker. Motion carried. Representative Knopp then moved to re-

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ^{XX}a.m./p.m. on March 28, 1983

port SB 191, as amended, favorable for passage, seconded by Representative Douville. Motion carried.

SB 105 - An act relating to juveniles.

Information from the Kansas Committee for the Prevention of Child Abuse regarding detention in jails is attached (Attachment No.8).

Representative Patrick reviewed the amendments (Attachment No.9) resulting from the subcommittee meeting. They incorporate some of the suggestions made by conferees and written requests. Concern was expressed regarding Section 22 and the possibility of children being placed in jails when no other facilities were available. Representative Wagnon moved to strike, in the amendments, lines 152-155 and through "holidays" on line 156, seconded by Representative Duncan. Representative Patrick said the provision was necessary due to the fiscal element. He made a substitute motion to adopt the amendments. There was no second. The pros and cons of using jails when necessary were discussed, it being noted that some areas may have no alternative to jails. Representative Wagnon said the policy has been for law enforcement officers to place children in foster shelter homes in lieu of jails, and the policy should be continued. The vote on the motion carried. Representative Erne voted against the motion. Representative Knopp moved to adopt the remaining amendments, seconded by Representative Justice. Motion carried. Representative Knopp then moved to report SB 105, as amended, favorable for passage, seconded by Representative Patrick. Motion carried.

SB 199 - An act relating to car warranties.

Representative Douville moved that the bill be tabled, seconded by Representative Knopp. Motion failed to carry 8 to 9. Representative Barkis moved to report the bill favorable for passage, seconded by Representative Schweiker. A member said the bill would add no new remedies to present law. Another member said it added a definite number of attempts to repair a car and gives leverage to the consumer. The vote on the motion carried 9 to 8.

SB 81 - An act relating to determination of death.

Representative Buehler moved to report the bill favorable for passage, seconded by Representative Knopp. The amendment suggested by the Medical Society at a previous meeting was discussed, but no action was taken. Motion carried.

SB 370 - An act relating to venue and actions for divorce.

Representative Knopp moved to report the bill favorable for passage, seconded by Representative Douville. Representative Schweiker made a substitute motion to conceptionally amend the bill to make it conform with the existing divorce code, seconded by Representative Miller. The substitute motion carried. Representative Knopp moved that SB 370, as amended, be reported favorable for passage, seconded by Representative Douville. Motion carried.

SB 346 - An act relating to the marketable record title time period.

Representative Patrick moved to report the bill favorably, seconded by Representative Solbach. Motion carried.

SB 106 - An act relating to limited partnerships.

Staff pointed out, because the provision mentioned is no longer law, the bill needed cleanup amendments to strike, on line 767 and 803 "Subject to provision". Representative Solbach moved to adopt these amendments, seconded by Representative Ediger. Motion carried. Representative Patrick moved to report SB 106, as amended, favorable for passage, seconded by Representative Wagnon. Motion carried.

SB 51 - An act relating to controlled substances.

Representative Ediger moved to report the bill adversely, seconded by Representative Erne. Representative Schweiker made a substitute motion to table the bill, seconded by Representative Duncan. Substitute motion carried.

SB 350 - An act relating to process servers.

Amendments suggested by Judge Buchele (Attachment No.10) were presented, but no action was

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taken. Representative Patrick moved to table the bill, seconded by Representative Schweiker. Motion carried.

SB 353 - An act relating to issuance of warrants or summons.

Representative Patrick moved to report the bill adversely, seconded by Representative Cloud. Motion failed to carry. Representative Douville moved to report the bill favorable for passage, seconded by Representative Barkis. Motion carried.

SB 354 - An act relating to certain unlawful acts.

Amendments presented previously (March 25, 1983) by Art Griggs were discussed. Representative Knopp offered compromise amendments which he believed would avert another veto. He moved to amend SB 354 as per Attachment No.11, seconded by Representative Solbach. Representative Barkis said there was no easy way to make the bill workable and recommended an interim study. He made a substitute motion to table SB 354, seconded by Representative Schweiker. Substitute motion failed to carry. Representative Solbach made a substitute motion to incorporate Attachment No.11 amendments into Section 2 and include the Griggs amendments in Section 1, seconded by Representative Campbell. It was noted there would be two sections dealing with the same thing with different approaches. Representative Solbach withdrew his substitute motion. The vote on the original motion carried. Representative Knopp then moved to report SB 354, as amended, favorable for passage, seconded by Representative Douville. Motion carried.

SB 336 - An act relating to hazardous wastes.

Representative Patrick moved to report the bill favorably, seconded by Representative Knopp. Representative Schweiker made a substitute motion to make the fine \$10,000 with no reference to penalty classifications, seconded by Representative Solbach. It was noted this would eliminate the Class D felony. Representative Schweiker withdrew his substitute motion. The vote on the original motion carried.

SB 369 - An act relating to inquisitions.

Representative Schweiker moved to report the bill adversely, seconded by Representative Erne. Motion failed to carry 6 to 7. Representative Patrick said some limitation should be placed on the use of the evidence if no prosecution is brought. He made a conceptional motion to require that the information be sealed or returned, seconded by Representative Knopp. Representative Miller made a substitute motion to reconsider action taken on Representative Schweiker's motion to report the bill adversely, seconded by Representative Schweiker. The substitute motion carried. The vote was taken on the motion to report SB 369 adversely. Motion carried.

SB 371 - An act relating to terroristic threats.

The point was made that the bill, as amended, would not fulfill the intent of the sponsors. Representative Miller moved to reinstate in (b) the stricken words and to add "or the making of any statement that one has done so with the intent to terrorize", seconded by Representative Schweiker. Representative Miller said this would include in the bill persons who have contaminated products or who say they have done so. Representative Barkis made a substitute motion to table SB 371. There was no second. The vote on the original motion carried. Representative Patrick moved to report the bill, as amended, favorable for passage, seconded by Representative Buehler. Motion carried.

The Chairman adjourned the meeting at 6:15 p.m.

LEONARD O. THOMAS
J. D. LYSAUGHT
GEORGE MAIER, JR.
ROGER D. STANTON
JON C. CHRISTLIEB
ERVIN G. JOHNSTON
RICHARD MILLSAP
CHARLES O. THOMAS
LARRY E. BENSON
DAVID K. FROMME
DAVID L. HIGGINS
JAMES P. ZAKOURA
HOWARD L. ROSENTHAL
MONTI L. BELOT
LEE M. SMITHYMAN
DONALD C. RAMSAY
WADE A. DOROTHY
JOHN D. PETERSEN
H. DAVID BARR
WILLIAM J. PAPROTA
EDMUND S. GROSS
PEGGY GRANT-COBB
ROBERT E. JOHNSTON
J. DONALD LYSAUGHT, JR.
MARK D. HINDERKS

LAW OFFICES
WEEKS, THOMAS & LYSAUGHT
CHARTERED
HOME STATE BANK BUILDING - MINNESOTA AT FIFTH
BOX 1028
KANSAS CITY, KANSAS 66117-0028
AREA CODE 913
321-7500

ARTHUR J. STANLEY
(1874-1967)

J. E. SCHROEDER
(1905-1967)

LEE E. WEEKS
RETIRED

ATTACHMENT # 1

JOHNSON COUNTY OFFICE
14 CORPORATE WOODS - SUITE 420
8717 WEST 110TH STREET
P. O. BOX 12245
OVERLAND PARK, KANSAS 66212
642-7770

MEMORANDUM

Re: Statement in support of Senate Bill 191

Date: March 28, 1983

To: Members of the House Judiciary Committee

I am a member of the law firm of Weeks, Thomas & Lysaught, Chartered, with offices in Wyandotte County and Johnson County. I have been a resident of Johnson County since 1980 and a resident of the state of Kansas since 1969. I presently reside in Lenexa, Kansas. I have been a practicing member of the State Bar since 1977. Approximately 40% of my legal practice is in domestic relations, split almost evenly between Johnson County and Wyandotte County. I am also the father of two children, recently divorced, with my children residing with their mother in Salina, Kansas.

As can be seen from the above, I have a professional as well as a personal reason for seeing that the laws of our state regarding child visitation are drafted in such a way as to ensure fairness and equity to all concerned, i.e., the children, parents and grandparents.

I am here today to applaud the passage of Senate Bill 191 by the Senate Judiciary Committee and to urge its passage by the House Judiciary Committee.

This bill, taken together with last year's passage of the new joint custody law, gives legislative recognition to the legal and god-given rights of fathers to have frequent, continuing and unfettered contact with their children.

Since the turn of the century, the prevailing view in our country, including the state of Kansas, regarding parental rights and responsibilities has been dictated by the Victorian mind set of a woman's role and a man's role in society. This view permeated all aspects of our society. Women's rights organizations, and the groundswell created by the ERA made significant inroads for women

WEEKS, THOMAS & LYSAUGHT

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in how society viewed the role of women. At the same time that this movement was gaining ground in creating new opportunities for women, opportunities that were supported by changes in the law to guarantee equality of treatment, the role of fathers, and how they were viewed by our legal institutions, continued to be what it had been since the 1890's - that of financier and nothing else.

Today it is generally recognized that a father is equally important to the nurturing and upbringing of his children as is the mother. Despite this recognition of the importance of a father to his children, the law has been slow to ensure to a father any remedy for the enforcement of his right to frequent and continuing contact with his children.

As an attorney, I have been faced, on countless occasions, with the sad task of explaining to a frustrated father exactly how our system works (actually, how it does not work) to protect a father's right to visit his children. It is not uncommon for visitation abuses and interferences to continue for months, even years, before a Judge will take cognizance of the problem. More often than not, a slap on the wrist will be the ultimate punishment handed out - and then the father throws all respect for the system out the window when he is ordered to pay his ex-wife's attorney fees plus, of course, his own.

Senate Bill 191, for the first time, gives the father a remedy at law which is one of legislative origin and not beholden to the discretion of the Judge for its recognition. Senate Bill 191 recognizes an important fact: That father's rights are not to be taken lightly, by either the custodial mother, or by the Courts.

In this regard, the proposed new Section (1)(a) to K.S.A. 60-1616, as contained in Senate Bill 191, is specifically embraced, as is new Section (2)(d) regarding the assessment of costs.

The removal of a child from the state, in essence, severs the father's parental rights, as he is effectively denied frequent and continuing contact with his children, and almost always is a unilateral decision by the custodial parent which does not consider the impact of such a move on the children. Such a decision impacts on the children, the father, and ultimately on the judicial system. The cost of such a decision is untold - be it to the father in terms of psychological pain and confusion and disrespect for a system that allows such a thing, or for the children, where love for their father and their desire for contact with him go unheeded, or for the judicial system which must then contend with litigation for child support enforcement and contempt proceedings for nonpayment.

WEEKS, THOMAS & LYSAUGHT

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What Senate Bill 191 does is provide a procedural vehicle for the father to present the question of removal from the state to a Court, before it happens. In this context, then, the Court can make an informed decision as to what will have the least detrimental effect on the children - be it removal from the state or a requirement that the children remain in the state.

Senate Bill 191, in short, insures to noncustodial parents, some semblance of due process - notice and an opportunity to be heard - before a decision so fundamental to their being is made.

I urge the passage of Senate Bill 191 without amendment.

Respectfully submitted,



William J. Paprota
for
WEEKS, THOMAS & LYSAUGHT, CHARTERED

WJP:jp



**JAYHAWK
PLASTICS INC.**

15285 South Keeler
Olathe, Kansas
66061

Suburban Kansas City

ATTACHMENT # 2

Phone 913-764-8181

March 23, 1983

TESTIMONY IN SUPPORT OF SB 191 - Child Custody, visitation rights

Jack D. Paradise, Lifetime Kansas resident, Joint custodial parent since 1977, President, Jayhawk Plastics, Inc. President, Divorced Dads, Inc. (Kansas and Missouri). Extensive work directly and indirectly with several state legislatures on the subject of child custody/visitation rights after divorce.

Senate Bill 191 is intended to serve the best interests of children in divorce cases and we support this bill. Our support is best summed up in a direct quotation from a recent U. S. Supreme Court case, Santosky v. Kramer, 80-5889, March 24, 1982:


"...declared it plain beyond the need for multiple citation that a natural parent's desire for and right to the companionship, care, custody and management of his or her children is an interest far more precious than any property right."

We believe this bill provides for the protection of parent/child bonds and provides legal remedies when those bonds are disturbed unnecessarily.

This bill parallels recent enactments in several states, our neighbor Missouri being the most recent.

I had hoped to testify on this important subject personally, however, my wife, children and I are 1500 miles away on a vacation planned some months ago. The cost and time involved in returning to Kansas make personal testimony impossible.

Sincerely,


Jack D. Paradise
President

JDP:rr

Senate Bill 191

TESTIMONY IN OPPOSITION TO SUBSECTION (b)(1) OF NEW SECTION 1. (lines 0032-0037)

Jim Robertson - Senior Legal Counsel for the Kansas Child Support Enforcement Agency and Kansas URESA Information Agent (Uniform Reciprocal Enforcement of Support Act - K.S.A. 23-451 et seq.) phone number: 296-3410

(b) (1) would allow a court to modify a child support order because of problems in exercising a separate visitation or custody order due to a change of residence or removal of the child from the state (with or without permission of the court). In summary, this section ties support and visitation together so that if visitation is not granted, support could be reduced or terminated.

1. Historically, child support and visitation have been treated by the courts and the legislature as separate issues which should not be dependent on one another. Each have their separate remedies and they should be enforced as separate orders. Subsection (b)(1) is in conflict with existing case and statutory law.

A. The Uniform Reciprocal Enforcement of Support Act (effective in all 50 states and several foreign jurisdictions) was enacted to allow for the establishment and enforcement of support obligations across jurisdictions within a state and across state boundaries. In section 23 of the model code and at K.S.A. 23-472, the act states,

"The determination or enforcement of a duty of support owed to one obligee (i.e. the child) is unaffected by any interference by another obligee (i.e. the mother) with the rights of custody or visitation granted by a court." (examples added)

This existing law distinguishes support, visitation and custody as separate orders. In establishing or enforcing a support order, this act regards only the needs of the child without considering the collateral issues of custody or visitation. For example, a mother could violate a visitation or custody order in Kansas by moving to Colorado and the child could still receive support pursuant to this act. Moreover, undermining the principals of the Act would affect Kansas uniformity.

B. In the case of Patterson v. Patterson (2 Kan. App. 447) referring to the Interstate enforcement of support actions, the Kansas Supreme Court held, "a district judge in a responding state is without jurisdiction to condition disbursement of support payments on visitation rights." In Thompson v. Kite (214 Kan. 700) the court stated "The goal sought by this legislation was to provide a prompt, expeditious way of enforcing the duty of support without getting the parties involved in other complex collateral issues."

C. The intent and spirit of K.S.A. 60-1612 would also be undermined. This section was enacted last year to clearly separate the support and visitation issues.

" If a party fails to comply with a provision of a decree ---, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but the other party may request by motion that the court grant an appropriate order."

If there was a denial of visitation, for example, I would submit that, according to Kansas case law, an "appropriate order" would concern only the visitation issue and have nothing to do with support. (i.e. a motion to establish a specific visitation schedule, a motion for change of custody, a citation for contempt against the custodial parent.)

2. Child support has long been recognized as a right that belongs exclusively to the child. The Kansas Supreme Court has held, in a series of cases spanning nearly 50 years, that "the right to support is held to be a chose in action (a personal right) belonging solely to the child. The right cannot be compromised or settled by a parent acting independently." (Myers v. Anderson, 145 Kan. 775; Huss v. Demott, 215 Kan 452).

The verbage in K.S.A. 60-2204 illustrates the Child's right to the support ordered paid.

"whenever a judgment or decree of divorce has been made or subsequently becomes a lien on real property in favor of the minor child or children of the person holding legal title to such real property, the parent, legal guardian, or other person having legal custody of such child or children may release such lien on said real property on behalf of such minor child or children." (emphasis added)

3. Too often, courts will inappropriately attempt to use the payment of support as a cohesive lever to force compliance with collateral orders, such as visitation, by depriving the child of support. Subsection (b)(1) of this bill would only encourage such rationale despite the fact that such pressure rarely works. The parent with physical custody may leave the state and obtain a support order pursuant to the URESA; or he or she may obtain ADC public assistance in another state based on the needs of the child. All too often, however, the child is deprived of adequate food, clothing, and shelter by such orders. Moreover, the child suffers without regard to its best interests.
4. The current state of the law is sufficient to protect the financial interests of the non-custodial parent with visitation rights.
 - A. Often, the courts will require the custodial parent to pay all or a part of transportation costs as a part of the visitation order (no effect on child support).
 - B. The child support order may currently be modified by a showing of "changed circumstances" regarding the needs of the child and/or the ability of the non-custodial parent to pay support.

In summary, the proposed legislation in subsection (b)(1) has the potential for discounting the fact that child support is a right that belongs to the child - not the custodial parent. It would "open the door" for the courts to substantially reduce or terminate a support order because visitation is not being allowed. The child's rights and needs should not be placed in jeopardy because of a wrongful action taken by its custodial parent. In this case, two wrongs do not make a right. Visitation and support should be treated and enforced as two unrelated issues. Rather than attempting to solve the problems of visitation and custody by taking away a totally unrelated right that belongs to a child, perhaps legislation should be proposed to make the enforcement of such orders more enforceable by providing additional remedies not related to support or by strengthening uniform child custody acts. Granted, a solution to enforcing visitation and custody orders is needed, but not at the expense of the child's health and welfare.



Kansas National Organization for Women opposes SB191. Our first objection is to the NEW SECTION 1. The court has chosen to grant custody to a parent with the total care and responsibility of this child resting in their hands. Under SB 191 the parent cannot decide to move without the "written consent of the other parent" OR a "court order". What if the other parent is an achoholic, is presently living in Germany or just can't be found? The majority of children are still placed in the custody of their mothers, causing SB 191 to be directed at women. Most women move for economic reasons (for better jobs or to move back with parents). They cannot afford to move for the sake of harassing their ex-husbands visitation rights.

Our second objection is to lines 0035, 0036, 0037 referring to defraying the cost in whole or part, the added expense incurred by the other parent. May I remind the committee that we are talking about "child" support not "visitation" support. We are talking about supporting a child, something that doesn't have anything to do with the mother. SB 191 is willing to affect the standard of living of the child just so it will be easier for the other parent to visit.

Kansas NOW strongly urges you not to pass SB 191. It is yet another bill aimed at the harrassment of women. Thank-you.

Linda Carol Woody
LOBBYIST/PRESIDENT



KANSAS WOMEN'S POLITICAL CAUCUS

March 28, 1983

Chairman Frey,
Members of the Kansas House Judiciary Committee,

The Kansas Women's Political Caucus opposes SB 191
on principle.

The new Divorce Code does not yet need "fine-tuning"
in a piece-meal fashion. If changes are needed, why
not wait for recommendations from the Judicial Council
or the Family Law Council?

In particular, we object to subsection (b) (1) of New
Section 1, (lines 0032-0037) because visitation;
custody; support; are separate court orders and should
remain just that way.

The law need not single out the availability of this
sort of provision for modification of child support.
The problem of non-compliance with one court order can
be handled, at the discretion of the court, without
violating another court order, specifically; monetary
support for children.

We agree with the author that notice should be given of
removal of a child from the state. However, (lines 0029-
0031) we believe that the indefinite amount of time and
possible delay involved with scheduling a hearing could
amount to considerable hardship to the custodial parent.

If the Judiciary Committee feels that this bill is
necessary at this time, our opposition would be somewhat
ameliorated by:

- 1) Adoption of the amendment to New Section 1 that
specifies 21 days notice to the other parent
as being sufficient.
- 2) Changing the word "shall" to the word "may"
(line 0056, pg. 2) thereby undergirding the
discretionary capacity of the court.

Thank you for your time and consideration.

Barbara Reinert
Barbara Reinert
Lobbyist for the Kansas
Women's Political Caucus

STATE OF KANSAS

JOAN WAGNON
REPRESENTATIVE, FIFTY-FIFTH DISTRICT
1606 BOSWELL
TOPEKA, KANSAS 66604



TOPEKA

HOUSE OF
REPRESENTATIVES

March 28, 1983

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT
PENSIONS, INVESTMENTS AND
BENEFITS
PUBLIC HEALTH AND WEL ARE

ATTACHMENT # 6

TO: House Judiciary Committee Members
FROM: Joan Wagnon
RE: Proposed Amendment to SB 191

In the interest of preserving committee time for discussion of several other important bills this afternoon, I am furnishing you copies of an amendment to SB 191 which I intend to offer today. Also included is testimony from several conferees who would have opposed the bill in its present form.

The amendment is the result of a conference call between Senator Hess, myself, Linda Elrod (law professor at Washburn), and Judges Buchele (Topeka) and Walton (Olathe).

Please look over the material if you have time and bring it with you to committee this afternoon.

Thanks.

A handwritten signature in black ink that reads "Joan". The signature is written in a cursive, flowing style with a large initial 'J' and a long, sweeping tail.

SENATE BILL No. 191

By Senator Hess

2-8

0018 AN ACT concerning domestic relations; relating to child custody
0019 and visitation in divorce, separate maintenance and annul-
0020 ment; amending K.S.A. 1982 Supp. 60-1616 and repealing the
0021 existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. (a) A parent entitled to the custody of a child
0024 pursuant to K.S.A. 60-1610 and amendments thereto shall not
0025 change the residence of the child to another state or remove the
0026 child from this state for a period of time exceeding 90 days except
0027 upon order of the court or with the written consent of the other
0028 parent. If joint or divided custody of the child has been ordered
0029 or if the other parent has been granted visitation rights by the
0030 decree, the court shall not authorize the change of residence or
0031 removal of the child from the state until notice has been given to
0032 the other parent and after opportunity for hearing.

0033 (b) A change of residence or removal of a child from this state
0034 may be considered a material change of circumstances which
0035 justifies modification of a prior:

0036 (1) Child support order so as to defray, in whole or in part, the
0037 added expense incurred by the other parent in exercising cus-
0038 tody or visitation rights; or

0039 (2) custody order, if the change of residence or removal is
0040 done without authorization or written consent as required by this
0041 section.

0042 *[(c) Nothing contained in this section shall be construed to*
0043 *authorize any change in the support or custody of a child which*
0044 *is not in the best interests of the child.]*

0045 Sec. 2. K.S.A. 1982 Supp. 60-1616 is hereby amended to read
0046 as follows: 60-1616. *Visitation.* (a) *Parents.* A parent not granted

0047 custody of the child is entitled to reasonable visitation rights
0048 unless the court finds, after a hearing, that visitation would
0049 endanger seriously the child's physical, mental, moral or emo-
0050 tional health.

0051 (b) *Grandparents and stepparents.* Grandparents and step-
0052 parents may be granted visitation rights.

0053 (c) *Modification.* The court may modify an order granting or
0054 denying visitation rights whenever modification would serve the
0055 best interests of the child.

0056 (d) *Costs of enforcing rights.* The court shall award reason-
0057 able attorney fees and costs of any proceeding to enforce visita-
0058 tion rights against a parent who unreasonably denies or inter-
0059 feres with the other parent's visitation rights.

0060 Sec. 3. K.S.A. 1982 Supp. 60-1616 is hereby repealed.

0061 Sec. 4. This act shall take effect and be in force from and
0062 after its publication in the statute book.

SENATE BILL No. 191

By Senator Hess

2-8

018 AN ACT concerning domestic relations; relating to child custody
019 and visitation in divorce, separate maintenance and annul-
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027 upon order of the court or with the written consent of the other
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029 or if the other parent has been granted visitation rights by the
030 decree, the court shall not authorize the change of residence or
031 removal of the child from the state until notice has been given to
032 the other parent and after opportunity for hearing.~~

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034 may be considered a material change of circumstances which
035 justifies modification of a prior:~~

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037 added expense incurred by the other parent in exercising cus-
038 tody or visitation rights; or~~

039 ~~(2) custody order, if the change of residence or removal is
040 done without authorization or written consent as required by this
041 section.~~

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045 Sec. 2. K.S.A. 1982 Supp. 60-1616 is hereby amended to read
046 as follows: 60-1616. Visitation. (a) Parents. A parent not granted

New Section 1. (a) A parent entitled to the custody of a child pursuant to K.S.A. 60-1610 and amendments thereto shall give written notice to the other parent not less than 21 days prior to changing the residence of the child to a place outside this state or removing the child from this state for a period of time exceeding 90 days.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

granted. *In re Gambrell*, 160 K. 620, 623, 164 P.2d 122. Rehearing denied: 161 K. 4, 6, 165 P.2d 760.

15. Proceeding to protect private rights not criminal; section inapplicable. *Frey v. Willey*, 161 K. 196, 197, 166 P.2d 659.

16. "Thereupon" defined; accusation filed 5 days after defendant's appearance sufficient. *State, ex rel., v. Wilson*, 162 K. 507, 509, 510, 511, 512, 513, 515, 178 P.2d 277.

17. Applicability to liquor nuisance injunction proceeding mentioned but not applied. *State v. Coleman*, 168 K. 159, 162, 211 P.2d 81.

18. Contempt proceeding limited to determining whether accused is guilty as charged. *Haynes v. Haynes*, 168 K. 219, 225, 212 P.2d 312.

19. Mentioned in discussing contempt finding of Colorado district court. *Shaefer v. Milner*, 169 K. 324, 337, 219 P.2d 663.

20. Practicing law without license in probate court is contempt of supreme court. *In re Root*, 173 K. 512, 249 P.2d 628.

21. Mentioned; persons cited for direct contempt may be summarily punished. *In re Ferris*, 175 K. 704, 714, 267 P.2d 190. Reversed: *Courtney v. Schroeder*, 348 U.S. 933, 75 S.Ct. 355, 99 L.Ed. 732.

22. Discussed; indirect contempt proceedings held criminal; no appeal from finding of not guilty. *Hendrix v. Consolidated Van Lines, Inc.*, 176 K. 101, 111, 269 P.2d 435.

23. Formal accusation essential and prerequisite to finding of indirect contempt. *Weber v. Sutorius Bread Company*, 185 K. 178, 180, 341 P.2d 965.

24. Indirect contempt not reviewable as specification of error in criminal action. *State v. Eldredge*, 197 K. 694, 703, 421 P.2d 170.

25. In original proceeding for contempt of supreme court order, commissioner's findings adopted. *State v. Blase*, 208 K. 969, 494 P.2d 1224.

20-1204a. Indirect contempts; procedure. (a) When an order in a civil action has been entered, the court that rendered the same may order a person alleged to be guilty of indirect contempt of such order to appear and show cause why such person should not be held in contempt if there is filed a motion requesting an order to appear and show cause which is accompanied by an affidavit specifically setting forth the facts constituting the alleged violation.

(b) Except as provided in subsection (e), the order to appear and show cause shall be served upon the party allegedly in contempt by the sheriff or some other person appointed by the court for such purpose. Such order shall state the time and place where the person is to appear and shall be accompanied by a copy of the affidavit provided for in subsection (a). The court shall hear the matter at the time specified in the order, and upon proper showing, may extend the time so as to give the accused a reasonable opportunity to purge himself or herself of the contempt. If the court determines that a

person is guilty of contempt such person shall be punished as the court shall direct.

(c) If, after proper service of the order to appear and show cause, the person served shall not appear in court as ordered, or if the court finds at a hearing held on motion of a party to the civil action that the person allegedly in contempt is secreting himself or herself to avoid the process of the court, the court may issue a bench warrant commanding that the person be brought before the court to answer for contempt. When such person is brought before the court, the court shall proceed as provided in subsection (b). The court may make such orders concerning the release of the person pending the hearing as the court deems proper.

(d) The provisions of this section shall apply to both criminal and civil contempts, but in the case of a criminal contempt the court on its own motion may cause the motion and affidavit provided for in subsection (a) to be filed.

(e) In cases involving an alleged violation of a restraining order issued pursuant to paragraph (2) of subsection (a) of K.S.A. 1978 Supp. 60-1607, and any amendments thereto, if the affidavit filed pursuant to subsection (a) alleges physical abuse in violation of the court's order, the court immediately may issue a bench warrant and proceed as provided in subsection (c).

History: L. 1978, ch. 114, § 1; July 1.

20-1205. Contempt of court; appeal; stay of judgment. The testimony taken on the trial of any accusation of contempt shall be preserved. An appeal may be taken from any judgment of conviction therefor in the same manner as is provided by law in civil cases. Upon the filing and service of a notice of appeal, execution of the judgment shall be stayed upon the giving of such bond as may be required by the court or a judge thereof, or by any justice or judge of an appellate court.

History: L. 1897, ch. 106, § 5; R.S. 1923, 20-1205; L. 1979, ch. 83, § 1; July 1.

Research and Practice Aids:

Contempt—66 (1).
C.J.S. Contempt § 115 et seq.

CASE ANNOTATIONS

1. Stay of proceedings permits attorney to practice until appeal decided. *Bird v. Gilbert*, 40 K. 469, 19 P. 924.
2. Supreme court has inherent power to punish for contempt. *The State v. Ross*, 74 K. 260, 85 P. 803.

CONTEMPORANEA

design to make provision against its results or to defeat the operation of the insolvency laws. *Flockhart Foundry Co. v. Cox Automatic Pipe Bending Co.*, 95 N.J.Eq. 3-2, 123 A. 151, 152.

CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated.

CONTEMPORANEA EXPOSITIO EST OPTIMA ET FORTISSIMA IN LEGE. Contemporaneous exposition is the best and strongest in the law. 2 Inst. 11. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after. 10 Coke, 70; *Broom. Max.* 682.

CONTEMPT. A willful disregard or disobedience of a public authority.

CONTEMPT OF COURT. Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. *Ex parte Hobbrook*, 133 Me. 276, 177 A. 418, 420. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given. *Snow v. Hawkes*, 183 N.C. 365, 111 S.E. (2d) 622, 23 A.L.R. 183.

Classification

Contempts are of two kinds, direct and constructive.

Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. These are punishable summarily. They are also called "criminal" contempts, but that term is better used in contrast with "civil" contempts. See *infra*. *State v. McClaugherty*, 33 W.Va. 250, 10 S.E. 497. *Pelletier v. Glacier County*, Mont., 107 Mont. 221, 82 P.2d 595, 597.

Constructive (or indirect) contempts are those which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, and the term is chiefly used with reference to the failure or refusal of a party to obey a lawful order, injunction, or decree of the court laying upon him a duty of action or forbearance. *Maryott v. Maryott*, 124 Neb. 274, 246 N.W. 343.

Constructive contempts were formerly called "consequential" and this term is still in occasional use.

Contempts are also classed as civil or criminal. The former are those quasi-contempts which consists in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts

are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued, and a fine is imposed for his incemnity. But criminal contempts are offenses or injuries offered to the court, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment. *Staley v. South Jersey Realty Co.*, 90 A. 1042, 1043, 83 N.J.Eq. 300, L.R.A.1917E, 113, Ann.Cas.1916E, 955; *Fenton v. Walling*, C.C.A.Cal., 139 F.2d 608, 609.

CONTEMPT OF CONGRESS, LEGISLATURE, or PARLIAMENT. Whatever obstructs or tends to obstruct the due course of proceeding of either house, or grossly reflects on the character of a member of either house, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of the house, and thereby a breach of privilege. Sweet.

CONTEMPTIBILITER. Lat. Contemptuously. In old English law. Contempt, contempts. *Fleta*, lib. 2, c. 60, § 35.

CONTENEMENTUM. See *Wainagium*; *Contentment*.

CONTENTIOUS. Contested; adversary; litigated between adverse or contending parties; a judicial proceeding not merely *ex parte* in its character, but comprising attack and defense as between opposing parties, is so called. The litigious proceedings in ecclesiastical courts are sometimes said to belong to its "contentious" jurisdiction, in contradistinction to what is called its "voluntary" jurisdiction, which is exercised in the granting of licenses, probates of wills, dispensations, faculties, etc.

CONTENTIOUS JURISDICTION. In English ecclesiastical law. That branch of the jurisdiction of the ecclesiastical courts which is exercised upon adversary or *contentious* (opposed, litigated) proceedings.

CONTENTIOUS POSSESSION. In stating the rule that the possession of land necessary to give rise to a title by prescription must be a "contentious" one, it is meant that it must be based on opposition to the title of the rival claimant (not in recognition thereof or subordination thereto) and that the opposition must be based on good grounds, or such as might be made the subject of litigation. *Railroad Co. v. McFarlan*, 43 N.J. L. 621.

CONTENTMENT, CONTENIMENT. A man's countenance or credit, which he has together with, and by reason of, his freehold; or that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life. Wharton; Cowell.

Comfort; consolation; ease; enjoyment; happiness; pleasure; satisfaction. *National Surety Co. v. Jarrett*, 95 W.Va. 420, 141 S.E. 294, 295.

March 25, 1983

RE: S.B. 191

As amended S.B. 191 makes an imperfect, but needed improvement in and is consistent with the spirit of current domestic relations law. My concern lies with the punitive and unbalanced tone of the second section. Shouldn't the unreasonable party bear the expense, if possible, whether the subject matter is visitation, child support, custody or whatever? I also question the use of the imperative shall rather than the discretionary may; surely court costs ought not come from the mouths of babes even when the custodial parent has been unreasonable. Without amendment S.B. 191 is a regrettable withdrawal into the adversarial domestic relations process our new code sought to soften. Children's best interests are rarely served when their parents are forced to spend time in court. By its nature an adversarial process requires two sides to be pitted one against the other. There is a winner and a loser and when that happens in a family everyone loses. Where children are concerned a family is a family even after dissolution of a marriage.

It is proper and beneficial for the law to encourage communication and provide an opportunity for hearing when necessary. As amended S.B. 191, Section 1 does both. Without amendment, S.B. 191 provides a hasty, harsh, and regressive solution which can only complicate and increase the pain of families caught in the transition of a dissolving marriage.

ROBERTA SUE HAWVER
HAWVER & IRIGONEGARAY, P.A.
1515 SW Topeka Boulevard
Topeka, Kansas 66612
913/354-7661

[As Amended by Senate Committee of the Whole]

Session of 1983

SENATE BILL No. 191

By Senator Hess

2-8

0018 AN ACT concerning domestic relations; relating to child custody
0019 and visitation in divorce, separate maintenance and annul-
0020 ment; amending K.S.A. 1982 Supp. 60-1616 and repealing the
0021 existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 ~~New Section 1. (a) A parent entitled to the custody of a child
0024 pursuant to K.S.A. 60-1610 and amendments thereto shall not
0025 change the residence of the child to another state or remove the
0026 child from this state for a period of time exceeding 90 days except
0027 upon order of the court or with the written consent of the other
0028 parent. If joint or divided custody of the child has been ordered
0029 or if the other parent has been granted visitation rights by the
0030 decree, the court shall not authorize the change of residence or
0031 removal of the child from the state until notice has been given to
0032 the other parent and after opportunity for hearing.~~

0033 ~~(b) A change of residence or removal of a child from this state
0034 may be considered a material change of circumstances which
0035 justifies modification of a prior:~~

0036 (1) Child support order so as to defray, in whole or in part, the
0037 added expense incurred by the other parent in exercising cus-
0038 tody or visitation rights; or

0039 (2) custody order, if the change of residence or removal is
0040 done without authorization or written consent as required by this
0041 section.

0042 ~~[(c) Nothing contained in this section shall be construed to
0043 authorize any change in the support or custody of a child which
0044 is not in the best interests of the child.]~~

0045 Sec. 2. K.S.A. 1982 Supp. 60-1616 is hereby amended to read
0046 as follows: 60-1616. *Visitation.* (a) *Parents.* A parent not granted

New Section 1. (a) A parent entitled to the custody of a child pursuant to K.S.A. 60-1610 and amendments thereto shall give written notice to the other parent not less than 21 days prior to changing the residence of the child to a place outside this state or removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c)

following the requirements of subsection (a)

(d)



To: Members of the House Judiciary Committee

ATTACHMENT # 8

From: Kansas Committee for Prevention of Child Abuse
and Kansas Children's Service League

RESPONSE TO QUESTIONS ON THE PLACEMENT OF "CHILDREN IN NEED OF CARE" IN DETENTION AND JAIL BY LAW ENFORCEMENT OFFICERS WITHOUT A COURT ORDER AS ALLOWED IN S.B. 105

1. THE AMENDMENT WE PROPOSE IS TO NOT AUTHORIZE LAW ENFORCEMENT OFFICERS TO PLACE "CHILDREN IN NEED OF CARE" IN DETENTION CENTERS OR JAIL WITHOUT A COURT ORDER BECAUSE REQUIRING A COURT ORDER PROVIDES A SAFEGUARD FROM MAKING SUCH PLACEMENTS TOO CONVENIENT OR ROUTINE: Delete lines 0152 thru "holidays" line 0156, Sec. 22, pg. 26. The new juvenile code as passed in 1982 did not authorize law enforcement to make such placements, but does provide for unusual circumstances "after hours" by allowing for ex parte court orders for such placements.
2. "CHILDREN IN NEED OF CARE" ARE ABUSED AND NEGLECTED CHILDREN (80%), AND OTHER NON OFFENDERERS (20%) such as truants, runaways and children thrown out of their homes. Children accused of committing crimes are not "Children in Need of Care".
3. FISCAL IMPACT:
 - *NOT PLACING "CHILDREN IN NEED OF CARE IN DETENTION AND JAIL DOES NOT REQUIRE BUILDING NEW GROUP HOMES. These children can be (and most are already being) placed in Kansas' 91 group homes, 2,000 foster homes, in volunteer foster homes as some counties now do, with relatives, or with parents if not abuse/neglect cases.
 - *"CHILDREN IN NEED OF CARE" CAN ONLY STAY IN DETENTION OR JAIL FOR 24 HOURS ANYWAY. IT IS A MATTER OF GETTING THE CHILD TO ONE OF THESE OTHER RESOURCES IN THE FIRST PLACE. Some communities which have not already done so, may have to re-allocate placement beds presently available to serve some emergency placements.
 - *Even if a particular community did have a resource shortage, Kansas has more than \$400,000 in unobligated FY 82 and 83 federal Juvenile Justice and Delinquency Prevention grant funds for which a major purpose is the de-institutionalization of non-offenders.
 - *NO IMPACT ON THE FY 84 FOSTER CARE BUDGET BECAUSE OUR PROPOSED AMENDMENT LEAVES THE JUVENILE CODE JUST AS IT WAS WHEN PASSED IN 1982. In addition, according to the SRS foster care administrator, the FY 84 foster care budget request was not adjusted down as a result of the lack of a clear provision requiring SRS payment for care in the initial period before custody. However, if one wishes to isolate the cost of care of, for example, the 628 "Children In Need Of Care" in detention and jail in 1981, a high estimate would be \$28,000 (assuming 314 children for one day, and 314 for two days at \$30 a day.)
4. JOHNSON COUNTY'S PROBLEM WITH RUNAWAYS IS NOT RELATED TO JAIL OR DETENTION PLACEMENT according to the local SRS and court services. Johnson County law enforcement did pick up runaways until the new code was effective in 1983, but do not think the new code authorizes them to do so even to take the child home. According to Johnson County cour services, they have had a general policy of not placing non-offenders in detention for the past two years.

0120 department of social and rehabilitation services that a child
0121 appears to be a child in need of care, the department shall make a
0122 preliminary inquiry to determine whether the interests of the
0123 child require further action be taken. Whenever practicable, the
0124 inquiry shall include a preliminary investigation of the circum-
0125 stances which were the subject of the information, including the
0126 home and environmental situation and the previous history of
0127 the child. If reasonable grounds to believe abuse or neglect exist,
0128 immediate steps shall be taken to protect the health and welfare
0129 of the abused or neglected child as well as that of any other child
0130 under the same care who may be in danger of abuse or neglect.
0131 After the inquiry, if the department determines it is not possible
0132 to provide otherwise those services necessary to protect the
0133 interests of the child, the department shall recommend to the
0134 county or district attorney that a petition be filed.

0135 Sec. ~~18 21~~. K.S.A. 1982 Supp. 38-1526 is hereby amended to
0136 read as follows: 38-1526. Anyone participating without malice in
0137 the making of an oral or written report to a law enforcement
0138 agency or the department of social and rehabilitation services
0139 relating to injury inflicted upon a child under 18 years of age as a
0140 result of physical, mental or emotional abuse or neglect or sexual
0141 abuse or in any follow-up activity to *or investigation of* the report
0142 shall have immunity from any liability, civil or criminal, that
0143 might otherwise be incurred or imposed. Any such participant
0144 shall have the same immunity with respect to participation in
0145 any judicial proceedings resulting from the report.

0146 Sec. ~~19 22~~. K.S.A. 1982 Supp. 38-1528 is hereby amended to
0147 read as follows: 38-1528. (a) When any law enforcement officer
0148 takes into custody a child under the age of 18 years, without a
0149 court order, the child shall forthwith be delivered *to the state*
0150 *department of social and rehabilitation services or* to a court
0151 designated shelter facility, court services officer or other person.
0152 ~~If the officer has reason to believe that the child will not remain~~
0153 ~~in a shelter facility, the child may be delivered to and detained~~
0154 ~~in a juvenile detention facility, designated by the court, for not~~
0155 ~~more than 24 hours, excluding Saturdays, Sundays and legal~~
0156 ~~holidays.~~ It shall be the duty of the law enforcement officer to



**KANSAS COMMITTEE FOR
PREVENTION OF CHILD ABUSE**

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January H. Scott

DATE: March 28, 1983

TO: Members of the House Judiciary Committee

FROM: January H. Scott, Chairperson of the
Ad Hoc Committee on Child Abuse Investigations

QHS

THE AD HOC COMMITTEE ON CHILD ABUSE INVESTIGATIONS SUPPORTS SECTION 19, (38-1523) AS WRITTEN IN S.B. 105 WITH NO AMENDMENTS.

The Ad Hoc Committee has studied and worked on the investigation section since November of 1982. The Judicial Council Juvenile Code Subcommittee was simultaneously working on the investigation section. Both versions contained the same basic concepts and were combined by the Judicial Council Subcommittee into the present section 19.

The Ad Hoc Committee was made up of the following representatives: two former assistant district attorneys for deprived child cases, Wyandotte County Child Abuse Unit of Court Services, Johnson County Mental Health Sexual Abuse Treatment Program, Kansas Children's Service League, Kansas Committee for Prevention of Child Abuse, Kansas Action for Children, Kansas Association for Education of Young Children, Kansas Association of Licensed Child Care Providers, Kansas Foster Parents Association, and law enforcement consultation from Major Troy Hampton of the Wichita Police Department and consultation from SRS area staff.

The Ad Hoc Committee was formed because of the widespread concern over the last minute amendments in the 1982 session on the investigation section which made major changes in the public policy on investigations with no opportunity for study or public debate.

0196 cause, within the judge's jurisdiction, in other district courts.
 0197 Any departmental justice may request the assistance of any
 0198 district judge, associate district judge or district magistrate judge
 0199 from another department.

0200 (c) The departmental justices shall supervise all administra-
 0201 tive matters relating to the district courts within their depart-
 0202 ments and require reports periodically, covering such matters
 0203 and in such form as the supreme court may determine, on any
 0204 such matter which will aid in promoting the efficiency or the
 0205 speedy determination of causes now pending. Departmental
 0206 justices shall have the power to examine the dockets, records and
 0207 proceedings of any courts under their supervision. All judges and
 0208 clerks of the several courts of the state shall promptly make such
 0209 reports and furnish the information requested by any depart-
 0210 mental justice or the judicial administrator, in the manner and
 0211 form prescribed by the supreme court.

0212 In order to properly advise the three branches of government
 0213 on the operation of the juvenile justice system, each district court
 0214 shall furnish the judicial administrator such information regard-
 0215 ing juveniles coming to the attention of the court pursuant to the
 0216 Kansas code for care of children or the Kansas juvenile offenders
 0217 code as is determined necessary by the secretary of social and
 0218 rehabilitation services and the director of the statistical analysis
 0219 center of the Kansas bureau of investigation, on forms approved
 0220 by the judicial administrator.

0221 The departmental justice shall assign to each administrative
 0222 judge in the justice's department such duties as are necessary to
 0223 carry out the intent of just, speedy and inexpensive litigation for
 0224 the litigants of the state.

0225 *Sec. 5. K.S.A. 1982 Supp. 22-4701 is hereby amended to read*
 0226 *as follows: 22-4701. As used in this act, unless the context clearly*
 0227 *requires otherwise:*

0228 (a) *"Central repository" means the criminal justice infor-*
 0229 *mation system central repository created by this act and the*
 0230 *[Kansas juvenile justice] information system created pursuant to*
 0231 *section 38-1618 and amendments thereto.*

juvenile offender

0233 tiated or collected by a criminal justice agency on a person
 0234 pertaining to a reportable event. The term does not include:

0235 (1) Data contained in intelligence or investigatory files or
 0236 police work-product records used solely for police investigation
 0237 purposes;

0238 (2) data pertaining to a proceeding pursuant to the Kansas
 0239 juvenile code, Kansas code for care of children or Kansas juve-
 0240 nile offenders code, but it does include ~~juvenile justice history~~
 0241 ~~record~~ information other than data pertaining to a person fol-
 0242 lowing waiver of jurisdiction pursuant to the Kansas juvenile
 0243 code or an authorization for prosecution as an adult pursuant to
 0244 the Kansas juvenile offenders code;

0245 (3) wanted posters, police blotter entries, court records of
 0246 public judicial proceedings or published court opinions;

0247 (4) data pertaining to violations of the traffic laws of the
 0248 state or any other traffic law or ordinance, other than vehicular
 0249 homicide; or

0250 (5) presentence investigation and other reports prepared for
 0251 use by a court in the exercise of criminal jurisdiction or by the
 0252 governor in the exercise of the power of pardon, reprieve or
 0253 commutation.

0254 (c) "Criminal justice agency" means any government agency
 0255 or subdivision of any such agency which is authorized by law to
 0256 exercise the power of arrest, detention, prosecution, adjudica-
 0257 tion, correctional supervision, rehabilitation or release of per-
 0258 sons suspected, charged or convicted of a crime and which
 0259 allocates a substantial portion of its annual budget to any of
 0260 these functions. The term includes, but is not limited to, the
 0261 following agencies, when exercising jurisdiction over criminal
 0262 matters or criminal history record information:

0263 (1) State, county, municipal and railroad police depart-
 0264 ments, sheriffs' offices and countywide law enforcement agen-
 0265 cies, correctional facilities, jails and detention centers;

0266 (2) the offices of the attorney general, county or district
 0267 attorneys and any other office in which are located persons
 0268 authorized by law to prosecute persons accused of criminal

juvenile offender

0270 (3) *the district courts, the court of appeals, the supreme court,*
0271 *the municipal courts and the offices of the clerks of these courts.*

0272 (d) *“Criminal justice information system” means the equip-*
0273 *ment (including computer hardware and software), facilities,*
0274 *procedures, agreements and personnel used in the collection,*
0275 *processing, preservation and dissemination of criminal history*
0276 *record information.*

0277 (e) *“Director” means the director of the Kansas bureau of*
0278 *investigation.*

0279 (f) *“Disseminate” means to transmit criminal history record*
0280 *information in any oral or written form. The term does not*
0281 *include:*

0282 (1) *The transmittal of such information within a criminal*
0283 *justice agency;*

0284 (2) *the reporting of such information as required by this act;*
0285 *or*

0286 (3) *the transmittal of such information between criminal*
0287 *justice agencies in order to permit the initiation of subsequent*
0288 *criminal justice proceedings against a person relating to the*
0289 *same offense.*

0290 (g) *“Juvenile~~justice history~~ information” has the meaning* → offender
0291 *provided by section 38-1617 and amendments thereto.*

0292 (h) *“Reportable event” means an event specified or pro-*
0293 *vided for in K.S.A. 22-4705 and amendments thereto.*

0294 (g) *“Director” means the director of the Kansas bureau of*
0295 *investigation.*

0296 Sec. 5 6. K.S.A. 1982 Supp. 28-170 is hereby amended to
0297 read as follows: 28-170. (a) The docket fee prescribed by K.S.A.
0298 60-2001 and amendments thereto shall be the only costs assessed
0299 for services of the clerk of the district court and the sheriff in any
0300 case filed under chapter 60 of the Kansas Statutes Annotated. For
0301 services in other matters in which no other fee is prescribed by
0302 statute, the following fees shall be charged and collected by the
0303 clerk. Only one fee shall be charged for each bond, lien or
0304 judgment:

- 0305 1. For filing, entering and releasing a bond, mechanic's lien,
- 0306 personal property tax judgment or any judgment on which
- 0307 execution process cannot be issued.

0463 72-1111[,] and amendments thereto;

0464 (7) ~~does an act the commission of which by a juvenile is~~
 0465 ~~specifically prohibited and made unlawful which, when com-~~
 0466 ~~mitted by a person under 18 years of age, is prohibited by state~~
 0467 ~~law, city ordinance or county resolution but which is not pro-~~
 0468 ~~hibited when done by an adult; or~~

0469 (8) while less than 10 years of age, commits any act which if
 0470 done by an adult would constitute the commission of a felony or
 0471 misdemeanor as defined by K.S.A. 21-3105 and amendments
 0472 thereto.

0473 (b) "Physical, mental or emotional abuse or neglect" means
 0474 the infliction of physical, mental or emotional injury or the
 0475 causing of a deterioration of a child and may include, but shall
 0476 not be limited to, failing to maintain reasonable care and treat-
 0477 ment, negligent treatment or maltreatment or exploiting a child
 0478 to the extent that the child's health or emotional well-being is
 0479 endangered. A parent legitimately practicing religious beliefs
 0480 who does not provide specified medical treatment for a child
 0481 because of religious beliefs shall not for that reason be consid-
 0482 ered a negligent parent; however, this exception shall not pre-
 0483 clude a court from entering an order pursuant to *subsection (a)(1)*
 0484 *of K.S.A. 1982 Supp. 38-1513(a)(1) 38-1513 and amendments*
 0485 *thereto.*

0486 (c) "Sexual abuse" means any act committed with a child
 0487 which is described in article 35, chapter 21 of the Kansas Statutes
 0488 Annotated and those acts described in K.S.A. 21-3602 or 21-3603,
 0489 and amendments thereto.

0490 (d) "Parent," when used in relation to a child or children,
 0491 includes a guardian, conservator and every person who is by law
 0492 liable to maintain, care for or support the child.

0493 (e) "Interested party" means the state, the petitioner, the
 0494 child, any parent and any person found to be an interested party
 0495 pursuant to K.S.A. 1982 Supp. 38-1541 *and amendments thereto.*

0496 (f) "Law enforcement officer" means any person who by
 0497 virtue of office or public employment is vested by law with a
 0498 duty to maintain public order or to make arrests for crimes,

[except in the case of a violation of K.S.A. 41-715 or 41-2721, and
 amendments thereto,

0537 agency having custody of where and with whom the child will
0538 live.

0539 (o) "Secretary" means the secretary of social and rehabilita-
0540 tion services.

0541 Sec. 44 12. K.S.A. 1982 Supp. 38-1504 is hereby amended to
0542 read as follows: 38-1504. (a) Venue of any case involving a child
0543 in need of care shall be in the county of the child's residence or
0544 in the county where the child may be found.

0545 (b) Upon application of the petitioner, or any person autho-
0546 rized to appeal any final order in any proceedings pursuant to
0547 this code *and after notice to all other interested parties*, the
0548 court in which original proceedings are pending alleging that a
0549 child is a child in need of care may order the proceedings
0550 transferred to the court of the county where the child is physi-
0551 cally present, where the parent or parents reside or where other
0552 proceedings are pending in this state concerning custody of the
0553 same child or children. *The judge of the court in which the case*
0554 *is pending shall consult with the judge of the court to which the*
0555 *case is to be transferred prior to transfer of the case. If the*
0556 *judges do not agree that the case should be transferred or if a*
0557 *hearing is requested, a hearing shall be held on the desirability*
0558 *of the transfer, with notice to interested parties, SRS the state*
0559 *department of social and rehabilitation services and the pro-*
0560 *posed receiving court. If the judge of the transferring court*
0561 *orders the case to be transferred, the order of transfer shall*
0562 *include findings*^[a] *why the case is being transferred. The court*
0563 *to which the case is transferred shall accept the case. Any judge*
0564 *transferring any case to another court shall transmit a complete*
0565 *record thereof and, upon receipt of the record, the receiving*
0566 *court shall assume jurisdiction as if the proceedings were origi-*
0567 *nally filed in that court. The transferring judge, if an adjudicatory*
0568 *hearing has been held, shall also transmit recommendations as to*
0569 *disposition. In case the child is not present in the county to*
0570 *which the case is transferred and that county is not the residence*
0571 *of the child's parent or parents, the court shall return the case to*
0572 *the court where it originated.*

stating

and, if available, the names and addresses of all interested parties upon whom the receiving court should serve notice of any further proceedings

0611 tents of records or reports concerning child abuse or neglect
 0612 received by the department of social and rehabilitation services
 0613 or a law enforcement agency in accordance with K.S.A. 1982
 0614 Supp. 38-1522 and amendments thereto except as provided by
 0615 this code.

0616 Sec. 14. K.S.A. 1982 Supp. 38-1508 is hereby amended to
 0617 read as follows: 38-1508. All records and reports concerning
 0618 child abuse or neglect received by law enforcement agencies
 0619 shall be kept separate from all other records and shall not be
 0620 disclosed to anyone except:

0621 (a) The judge and members of the court staff designated by
 0622 the judge of the court having the child before it in any proceed-
 0623 ings;

0624 (b) the guardian *ad litem* and the parties to the proceedings
 0625 and their attorneys as provided by K.S.A. 1982 Supp. 38-
 0626 1507(b)(3);

0627 (c) the department of social and rehabilitation services;

0628 (d) the officers of public institutions or agencies to whom
 0629 custody of the child has been granted;

0630 (e) law enforcement officers or county or district attorneys or
 0631 their staff when necessary for the discharge of their official
 0632 duties; and

0633 (f) any other person when authorized by a court order, sub-
 0634 ject to any conditions imposed by the order as provided by K.S.A.
 0635 1982 Supp. 38-1507 and amendments thereto.

0636 Sec. 15. K.S.A. 1982 Supp. 38-1512 is hereby amended to
 0637 read as follows: 38-1512. (a) *How paid.* (1) If a child alleged or
 0638 adjudged to be a child in need of care is not eligible for assist-
 0639 ance under K.S.A. 39-709 and amendments thereto, expenses for
 0640 the care and custody of the child shall be paid out of the general
 0641 fund of the county in which the proceedings are brought. For the
 0642 purpose of this section, a child who is a nonresident of the state
 0643 of Kansas or whose residence is unknown shall have residence in
 0644 the county where the proceedings are instituted.

0645 (2) When custody of a child is awarded to the secretary the
 0646 expenses of the care and custody of the child may be paid by the
 0647 social welfare fund, subject to payment

a law enforcement officer has taken a child into custody as authorized by subsection (b) of K.S.A. 1982 Supp. 38-1527 and amendments thereto and delivered the child to a person or facility designated by the secretary or

0120 department of social and rehabilitation services that a child
0121 appears to be a child in need of care, the department shall make a
0122 preliminary inquiry to determine whether the interests of the
0123 child require further action be taken. Whenever practicable, the
0124 inquiry shall include a preliminary investigation of the circum-
0125 stances which were the subject of the information, including the
0126 home and environmental situation and the previous history of
0127 the child. If reasonable grounds to believe abuse or neglect exist,
0128 immediate steps shall be taken to protect the health and welfare
0129 of the abused or neglected child as well as that of any other child
0130 under the same care who may be in danger of abuse or neglect.
0131 After the inquiry, if the department determines it is not possible
0132 to provide otherwise those services necessary to protect the
0133 interests of the child, the department shall recommend to the
0134 county or district attorney that a petition be filed.

0135 Sec. 48 21. K.S.A. 1982 Supp. 38-1526 is hereby amended to
0136 read as follows: 38-1526. Anyone participating without malice in
0137 the making of an oral or written report to a law enforcement
0138 agency or the department of social and rehabilitation services
0139 relating to injury inflicted upon a child under 18 years of age as a
0140 result of physical, mental or emotional abuse or neglect or sexual
0141 abuse or in any follow-up activity to *or investigation of* the report
0142 shall have immunity from any liability, civil or criminal, that
0143 might otherwise be incurred or imposed. Any such participant
0144 shall have the same immunity with respect to participation in
0145 any judicial proceedings resulting from the report.

0146 Sec. 49 22. K.S.A. 1982 Supp. 38-1528 is hereby amended to
0147 read as follows: 38-1528. (a) When any law enforcement officer
0148 takes into custody a child under the age of 18 years, without a
0149 court order, the child shall forthwith be delivered ~~to the state~~
0150 ~~department of social and rehabilitation services~~ *for* to a court
0151 designated shelter facility, court services officer or other person.
0152 *If the officer has reason to believe that the child will not remain*
0153 *in a shelter facility, the child may be delivered to and detained*
0154 *in a juvenile detention facility, designated by the court, for not*
0155 *more than 24 hours, excluding Saturdays, Sundays and legal*

a facility or person designated by the secretary

0157 furnish to the county or district attorney, without unnecessary
0158 delay, all the information in the possession of the officer per-
0159 taining to the child, the child's parents or other persons inter-
0160 ested in or likely to be interested in the child and all other facts
0161 and circumstances which caused the child to be taken into
0162 custody.

0163 (b) Whenever a child under the age of 18 years is taken into
0164 custody by a law enforcement officer without a court order and is
0165 thereafter placed in the custody of a ~~court designated~~ shelter
0166 facility, court services officer or other person as authorized by
0167 this code, the facility or person shall have physical custody and
0168 provide care and supervision for the child upon written applica-
0169 tion of the law enforcement officer. The application shall state:

0170 (1) The name and address of the child, if known;
0171 (2) the names and addresses of the child's parents or nearest
0172 relatives and persons with whom the child has been residing, if
0173 known; and

0174 (3) the officer's belief that the child is a child in need of care
0175 and that there are reasonable grounds to believe that the cir-
0176 cumstances or condition of the child is such that, unless the child
0177 is placed in the immediate custody of the shelter facility or other
0178 person, an imminent danger to the child would exist.

0179 (c) A copy of the application shall be furnished by the facility
0180 or person receiving the child to the county or district attorney
0181 without unnecessary delay.

0182 (d) The shelter facility or other person designated by the
0183 court who has custody of the child pursuant to this section shall
0184 discharge the child not later than 48 hours following admission,
0185 excluding Saturdays, Sundays and legal holidays, unless a court
0186 has entered an order pertaining to temporary custody or release.

0187 (e) In absence of a court order to the contrary, the county or
0188 district attorney *or the placing law enforcement agency* shall
0189 have the authority to direct release of the child prior to the time
0190 set out in subsection (d).

0191 *Sec. 23. K.S.A. 1982 Supp. 38-1533 is hereby amended to*
0192 *read as follows: 38-1533. (a) Persons upon whom served. The*

0252 with a copy of the order. The conditions may include appropriate
0253 dispositional alternatives authorized by K.S.A. 1982 Supp. 38-
0254 1563 *and amendments thereto.*

0255 (b) An order for informal supervision may remain in force for
0256 a period of up to six months and may be extended, upon hearing,
0257 for additional six-month periods up to two years.

0258 (c) The court after notice and hearing may revoke or modify
0259 the order with respect to a party upon a showing that the party,
0260 being subject to the order for informal supervision, has substan-
0261 tially failed to comply with the terms of the order, or that
0262 modification would be in the best interests of the child. Upon
0263 revocation, proceedings shall resume pursuant to this code.

0264 (d) Parties to the order for informal supervision who suc-
0265 cessfully complete the terms and period of supervision shall not
0266 again be proceeded against in any court based *solely* upon the
0267 *allegations* in the original petition and the proceedings shall be
0268 dismissed.

0269 *Sec. 25. K.S.A. 1982 Supp. 38-1566 is hereby amended to*
0270 *read as follows: 38-1566. Except as provided in K.S.A. 1982*
0271 *Supp. 38-1567, if a child has been in the same foster home or*
0272 *shelter facility for six months or longer, or has been placed by*
0273 *the secretary in the home of a parent or relative, the secretary*
0274 *shall give written notice of any plan to move the child to a*
0275 *different placement. The notice shall be given to (a) the court*
0276 *having jurisdiction over the child; (b) each parent whose address*
0277 *is available; (c) the foster parent or custodian from whose home*
0278 *or shelter facility it is proposed to remove the child; (d) the child,*
0279 *if 12 or more years of age; and (e) the child's guardian ad litem.*
0280 *The notice shall state the home or shelter facility to which the*
0281 *secretary plans to transfer the child and the reason for the*
0282 *proposed action. The notice shall be delivered or mailed 30 days*
0283 *in advance of the planned transfer, except that the secretary*
0284 *shall not be required to wait 30 days to transfer the child if all*
0285 *persons enumerated in clauses (b) through (e) consent* → *in writing*
0286 *transfer. Within 10 days after receipt of the notice any person*
0287 *receiving notice as provided above may request, either orally or*
conduct a hearing to determine

0400 not a hearing should be held on the subject. If the court deter-
 0401 mines that inadequate progress is being made toward finding an
 0402 adoptive placement or establishing an acceptable long-term fos-
 0403 ter care plan, the court may rescind its prior orders and make
 0404 other orders regarding custody and adoption that are appropriate
 0405 under the circumstances. Reports of a proposed adoptive place-
 0406 ment need not contain the identity of the proposed adoptive
 0407 parents.

0408 ~~(d)~~ (e) *Discharge upon adoption.* When the adoption of a
 0409 child has been accomplished, the court shall enter an order
 0410 discharging the child from the court's jurisdiction in the pending
 0411 proceedings.

0412 *Sec. 28. K.S.A. 1982 Supp. 38-1602 is hereby amended to*
 0413 *read as follows: 38-1602. (a) "Juvenile" means a person 10 or*
 0414 *more years of age but less than 18 years of age.*

0415 (b) *"Juvenile offender" means a person who does an act*
 0416 *while a juvenile which if done by an adult would constitute the*
 0417 *commission of a felony or misdemeanor as defined by K.S.A.*
 0418 *21-3105 and amendments thereto, but does not include:*

0419 (1) *A person 14 or more years of age who commits a traffic*
 0420 *offense in violation of chapter 8 of the Kansas Statutes Anno-*
 0421 *tated or any city ordinance or county resolution which relates to*
 0422 *the regulation of traffic on the roads, highways or streets or the*
 0423 *operation of self-propelled or nonself-propelled vehicles of any*
 0424 *kind;*

0425 (2) *a person 16 years of age or over who commits an offense*
 0426 *defined in chapter 32 of the Kansas Statutes Annotated; or*

0427 (3) *a person 16 years of age or over who is charged with a*
 0428 *felony after having been adjudicated in two separate prior*
 0429 *juvenile proceedings as having committed an act which would*
 0430 *constitute a felony if committed by an adult and the adjudica-*
 0431 *tions occurred prior to the date of the commission of the new act*
 0432 *charged;*

0433 (4) *a person who has been prosecuted as an adult by reason*
 0434 *of subsection (b)(3) and whose prosecution results in conviction*
 0435 *of a crime if the order of the convicting court provides that the*
 0436 *person will be prosecuted as an adult for all future acts of the*

or who violates the provisions of K.S.A. 41-715 or 41-2721, and amendments thereto

or with more than one offense of which one is a felony

0437 ~~person which are or would be cognizable under this code; or~~ ;

0438 (5) a person whose prosecution as an adult is authorized
0439 pursuant to K.S.A. 1982 Supp. 38-1636 and amendments thereto

0440 (c) "Parent," when used in relation to a juvenile or a juvenile
0441 offender, includes a guardian, conservator and every person who
0442 is by law liable to maintain, care for or support the juvenile.

0443 (d) "Law enforcement officer" means any person who by
0444 virtue of that person's office or public employment is vested by
0445 law with a duty to maintain public order or to make arrests for
0446 crimes, whether that duty extends to all crimes or is limited to
0447 specific crimes.

0448 (e) "Youth residential facility" means any home, foster home
0449 or structure which provides 24 twenty-four-hour-a-day care for
0450 juveniles and which is licensed pursuant to article 5 of chapter
0451 65 of the Kansas Statutes Annotated.

0452 (f) "Juvenile detention facility" means any secure public or
0453 private facility which is used for the lawful custody of accused
0454 or adjudicated juvenile offenders and which, if in a city or
0455 county jail, must be in quarters separate from adult prisoners.

0456 (g) "State youth center" means a facility operated by the
0457 secretary for juvenile offenders.

0458 (h) "Warrant" means a written order by a judge of the court
0459 directed to any law enforcement officer commanding the officer
0460 to take into custody the juvenile named or described therein.

0461 (i) "Secretary" means the secretary of social and rehabilita-
0462 tion services.

0463 Sec. 23 29. K.S.A. 1982 Supp. 38-1608 is hereby amended to
0464 read as follows: 38-1608. (a) All records of law enforcement
0465 officers and agencies and municipal courts concerning a public
0466 offense committed or alleged to have been committed by a
0467 juvenile under 16 years of age shall be kept separate from
0468 criminal and other records and shall not be disclosed to anyone
0469 except:

0470 (1) The judge and members of the court staff designated by
0471 the judge of a court having the juvenile before it in any pro-
0472 ceedings;

0473 (2) parties to the proceedings and their attorneys;

; or (6) a person who has been convicted of aggravated juvenile delinquency as defined in K.S.A. 21-3611 and amendments thereto

0474 (3) the department of social and rehabilitation services or the
0475 officers of public institutions or agencies to whom the juvenile is
0476 committed;

0477 (4) law enforcement officers or county or district attorneys or
0478 their staff when necessary for the discharge of their official
0479 duties;

0480 (5) *the central repository, as defined by K.S.A. 22-4701 and*
0481 *amendments thereto, for use only as a part of the ~~Kansas~~*
0482 *juvenile justice information system established under section*
0483 *~~38-1617~~ 38-1618; and*

0484 (5) (6) any other person when authorized by a court order,
0485 subject to any conditions imposed by the order.

0486 (b) The provisions of this section shall not apply to records
0487 concerning:

0488 (1) A violation, by a person 14 or more years of age, of any
0489 provision of chapter 8 of the Kansas Statutes Annotated or of any
0490 city ordinance or county resolution which relates to the regula-
0491 tion of traffic on the roads, highways or streets or the operation of
0492 self-propelled or nonself-propelled vehicles of any kind;

0493 (2) a violation, by a person 16 or more years of age, of any
0494 provision of chapter 32 of the Kansas Statutes Annotated; or

0495 (3) an offense for which the juvenile is prosecuted as an
0496 adult.

0497 (c) *All records of law enforcement officers and agencies and*
0498 *municipal courts concerning a public offense committed or*
0499 *alleged to have been committed by a juvenile 16 or 17 years of*
0500 *age shall be treated in the same manner as the records of adults.*

0501 Sec. 34 30. K.S.A. 1982 Supp. 38-1610 is hereby amended to
0502 read as follows: 38-1610. (a) Any records or files specified in this
0503 code concerning a juvenile offender may be expunged upon
0504 application to a judge of the court of the county in which the
0505 records or files are maintained. The application for expungement
0506 may be made by the person who is the juvenile offender or, if the
0507 person is a juvenile, by the person's parent or next friend.

0508 (b) When a petition for expungement is filed, the court shall
0509 set a date for a hearing on the petition and shall give notice
0510 thereof to the county or district attorney. The petition shall state:

juvenile offender

0696 preservation of that information.

0697 (b) Information maintained in the Kansas juvenile justice
0698 information system is confidential and shall not be publicly
0699 disclosed in a manner which enables identification of any indi-
0700 vidual who is a subject of the information; except that the
0701 information shall be open to inspection by attorneys for the
0702 parties to a proceeding under this code or upon order of a judge
0703 of the district court or an appellate court.

0704 New Section 29. Nothing in K.S.A. 22-4701 and 22-4704
0705 through 22-4711, and amendments thereto, shall be construed to
0706 prohibit the central repository, as defined by K.S.A. 22-4701 and
0707 amendments thereto, from maintaining a Kansas juvenile justice
0708 information system as provided by and for the purpose set forth
0709 in section 38-1617.

0710 New Sec. 33. 38-1617. As used in section 38-1618 and
0711 amendments thereto, unless the context otherwise requires:

0712 (a) "Central repository" has the meaning provided by K.S.A.
0713 22-4701 and amendments thereto.

0714 (b) "Director" means the director of the Kansas bureau of
0715 investigation.

0716 (c) "Juvenile ~~justice history record~~ information" means data offender
0717 relating to juveniles alleged or adjudicated to be juvenile of-
0718 fenders, offenses committed or alleged to have been committed
0719 by juveniles ~~and~~ proceedings pursuant to the Kansas juvenile in
0720 code ~~Kansas code for care of children~~ or Kansas juvenile of-
0721 fenders code.

0722 (d) "Juvenile justice agency" means any county or district
0723 attorney, law enforcement agency of this state or of any political
0724 subdivision of this state, court of this state or of a municipality
0725 of this state, administrative agency of this state or any political
0726 subdivision of this state, ~~youth residential facility~~ or juvenile state youth center
0727 detention facility.

0728 (e) "Reportable event" means: warrant

0729 (1) Issuance of a ~~court order~~ to take a juvenile into custody
0730 ~~pursuant to this code~~; juvenile

0731 (2) taking a ~~child~~ into custody pursuant to this code; juvenile

0732 (3) release of a ~~child~~ who has been taken into custody pursu-

0733 ant to this code, without the filing of a complaint;

0734 (4) dismissal of a complaint filed pursuant to this code;

0735 (5) an adjudication in a proceeding pursuant to this code;

0736 (6) a disposition in a proceeding pursuant to this code;

0737 (7) commitment to or placement in a youth residential facil-

0738 ity, juvenile detention facility or state youth center pursuant to

0739 this code;

0740 (8) release or discharge from commitment or jurisdiction of

0741 the court pursuant to this code;

0742 (9) escape from commitment or placement pursuant to this

0743 code;

0744 (10) entry of a judgment of an appellate court that reverses

0745 adjudication or disposition pursuant to this code;

0746 (11) an order authorizing prosecution as an adult; or

0747 (12) any other event arising out of or occurring during the

0748 course of proceedings pursuant to this code and declared to be

0749 reportable by rules and regulations of the director.

0750 New Sec. 34. 38-1618. (a) In order to properly advise the

0751 three branches of government on the operation of the juvenile

0752 justice system, there is hereby established within and as a part of

0753 the central repository, as defined by K.S.A. 22-4701 and amend-

0754 ments thereto, a ~~Kansas juvenile justice~~ information system. The

0755 system shall serve as a repository of juvenile ~~justice history~~

0756 ~~record~~ information which is collected by juvenile justice agen-

0757 cies and reported to the system.

0758 (b) Except as otherwise provided by this subsection, every

0759 juvenile justice agency shall report juvenile ~~justice history rec-~~

0760 ~~ord~~ information, whether collected manually or by means of an

0761 automated system, to the central repository, in accordance with

0762 rules and regulations adopted pursuant to this section. A juve-

0763 nile justice agency shall report to the central repository those

0764 reportable events involving a violation of a county resolution or

0765 city ordinance only when required by rules and regulations

0766 adopted by the director.

0767 (c) Reporting methods may include:

0768 (1) Submission of juvenile ~~justice history record~~ information

juvenile offender

offender

offender

offender

0770 (2) if the information can readily be collected and reported
0771 through the court system, submission to the central repository by
0772 the administrative office of the courts; or

0773 (3) if the information can readily be collected and reported
0774 through juvenile justice agencies that are part of a geographic-
0775 ally based information system, submission to the central reposi-
0776 tory by the agencies.

0777 (d) The director may determine, by rule and regulation, the
0778 reportable events to be reported by each juvenile justice agency,
0779 in order to avoid duplication in reporting.

0780 (e) Juvenile ~~justice history record~~ information maintained in offender
0781 the ~~Kansas juvenile justice~~ information system is confidential juvenile offender
0782 and shall not be disseminated or publicly disclosed in a manner
0783 which enables identification of any individual who is a subject
0784 of the information, except that the information shall be open to
0785 inspection by attorneys for the parties to a proceeding under this
0786 code or upon order of a judge of the district court or an
0787 appellate court.

0788 (f) The director shall adopt any rules and regulations neces-
0789 sary to implement, administer and enforce the provisions of this
0790 section.

0791 (g) Section 38-1617 and this section shall be part of and
0792 supplemental to the Kansas juvenile offenders code. (h)

0793 Sec. 38-35. K.S.A. 1982 Supp. 38-1624 is hereby amended to
0794 read as follows: 38-1624. (a) By a law enforcement officer. A law
0795 enforcement officer may take an alleged juvenile offender into
0796 custody when:

0797 (1) Any offense has been or is being committed by the juve-
0798 nile in the officer's view;

0799 (2) the officer has a warrant commanding that the juvenile be
0800 taken into custody;

0801 (3) the officer has probable cause to believe that a warrant or
0802 order commanding that the juvenile be taken into custody has
0803 been issued in this state or in another jurisdiction for an act
0804 committed therein; or

0805 (4) the officer has probable cause to believe that the juvenile
0806 is committing or has committed an act which, if committed by an

(f) Any journal entry of an adjudication of a juvenile to be a juvenile offender shall state the number of the statute under which the juvenile is adjudicated to be a juvenile offender and whether the offense, if done by an adult, would constitute a felony as defined by K.S.A. 21-3105 and amendments thereto.

(g)

(h)

1011 after the entry of the order appealed from.

1012 Sec. ~~34~~ 40. K.S.A. 41-2721 is hereby amended to read as
1013 follows: 41-2721. (a) No person under 18 years of age shall:

1014 (1) Claim to be 18 or more years of age for the purpose of
1015 obtaining or attempting to obtain any cereal malt beverage from
1016 any person;

1017 (2) purchase or attempt to purchase any cereal malt beverage
1018 from any person; or

1019 (3) possess or consume any cereal malt beverage.

1020 (b) Any person who violates this section, upon adjudication
1021 thereof, shall be deemed a ~~wayward child under the Kansas~~
1022 ~~juvenile code~~ ~~[child in need of care under the Kansas code for~~
1023 ~~care of children]~~ juvenile offender under the Kansas juvenile offender code

1024 (c) This section shall not apply to the possession and con-
1025 sumption of cereal malt beverage by a person under 18 years of
1026 age when such possession and consumption is permitted, and
1027 such beverage is furnished, by the person's parent or legal
1028 guardian.

1029 (d) This section shall be part of and supplemental to article
1030 27 of chapter 41 of the Kansas Statutes Annotated.

1031 Sec. ~~35~~ 41. K.S.A. 1982 Supp, 45-201 is hereby amended to
1032 read as follows: 45-201. (a) All official public records of the state,
1033 counties, municipalities, townships, school districts, commis-
1034 sions, agencies and legislative bodies, which records by law are
1035 required to be kept and maintained, shall at all times be open for
1036 a personal inspection by any citizen, and those in charge of such
1037 records shall not refuse this privilege to any citizen.

1038 (b) The provisions of this section shall not apply to:

1039 (1) Personally identifiable records, files and data which are
1040 described in K.S.A. 72-6214 *and amendments thereto* and the
1041 accessibility and availability of which is limited by the terms of
1042 that section;

1043 (2) records of the district court concerning proceedings pur-
1044 suant to the Kansas juvenile code or Kansas code for care of
1045 children;

1046 (3) adoption records;

1047 (4) records of birth of illegitimate children; and

1122 *a boarding home for children or a family day care home in order*
1123 *to determine whether or not the home meets the requirements of*
1124 *K.S.A. 65-516 and 65-519, and amendments thereto.*

1125 Sec. ~~39~~ 45. K.S.A. 1982 Supp. 75-52,104 is hereby amended
1126 to read as follows: 75-52,104. (a) Each county receiving grants
1127 under this act shall be charged a sum determined by the secre-
1128 tary of corrections which shall be equal to the total of the per
1129 diem costs to the state general fund of confinement and rehabil-
1130 itation of those persons who are committed to the secretary of
1131 corrections on and after the first day of the calendar quarter for
1132 which the county first receives grant payments under K.S.A.
1133 ~~1982 Supp.~~ 75-52,105 and amendments thereto, except that no
1134 charge shall be made for those persons: (A) Convicted of a class
1135 A, B or C felony; (B) convicted of a class D or E felony who had
1136 more than one prior felony conviction; (C) convicted of aggra-
1137 vated assault under K.S.A. 21-3410 and amendments thereto; (D)
1138 convicted of a sex offense under article 35 of chapter 21 of the
1139 Kansas Statutes Annotated and amendments and supplements
1140 thereto; or (E) sentenced under K.S.A. 21-4618 *and amendments*
1141 *thereto.*

1142 (b) In addition to amounts charged under subsection (a) to
1143 each county receiving grants under the community corrections
1144 act, on and after the first day of the calendar quarter for which the
1145 county first receives grant payments under K.S.A. ~~1982 Supp.~~
1146 75-52,105 and amendments thereto, a charge shall be assessed
1147 against the county in the amount of \$3,000 for the first calendar
1148 year the county receives the grants and \$6,000 during the second
1149 calendar year and each calendar year thereafter that the county
1150 receives the grants for each juvenile committed to or placed in a
1151 state youth center, as defined by K.S.A. 1982 Supp. 38-1602 *and*
1152 *amendments thereto*, except that no charge shall be assessed
1153 when the commitment or placement in any such facility involves
1154 a juvenile adjudged *to be* a delinquent or a juvenile offender as a
1155 result of conduct which if committed by an adult would consti-
1156 tute a class A, B or C felony, an aggravated assault under K.S.A.
1157 21-3410 and amendments thereto or a ~~sex offense under article~~ felony

Sec. ____ . K.S.A. 1982 Supp. 38-1541 is hereby amended to read as follows: 38-1541. Upon motion of any person with whom the child has been residing or who is within the fourth degree of relationship to the child and who desires to have standing to participate in the proceedings regarding the child, the court may order that the person may participate in the proceedings. Upon the filing of the motion, the court may send to the department of social and rehabilitation services a copy of the motion. Upon its receipt, the department shall make an investigation of the advisability of the matter and report its findings and recommendations to the court. In determining whether to enter the order, the court shall take into consideration the length of time the child has resided with the person, the nature of the custody, the relationship between the child and the person and the degree to which the person has been standing in the place of or assumed the obligations of the child's parent. The status as an interested party granted pursuant to this section may be terminated at any time by order of the court. Any motion for a determination of whether a person is an interested party in a proceeding for termination of parental rights must be filed not less than 30 days before any hearing on the motion to terminate parental rights.

Sec. ____ . K.S.A. 1982 Supp. 38-1611 is hereby amended to read as follows: 38-1611. (a) No fingerprints or photographs shall be taken of any juvenile who is taken into custody for any purpose except that: (1) Fingerprints and photographs of the juvenile may be taken if authorized by a judge of the district court having jurisdiction; ^{and} ~~or~~ (2) fingerprints and photographs of the juvenile ~~may~~ shall be taken if the juvenile is taken into custody for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto.

(b) The fingerprints and photographs shall be kept separate

from those of persons of the age of majority.

(c) The fingerprints and photographs of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state ~~unless~~ except that: (1) Fingerprints and photographs may be sent to a depository if the juvenile has been convicted of a felony; (2) fingerprints and photographs may be sent to a depository if the juvenile has unlawfully terminated the juvenile's commitment to a state youth center; ~~or~~ (3) fingerprints and photographs may be sent to a depository if the juvenile is a runaway and a fingerprint check or photograph is needed for identification purposes to return the juvenile to the juvenile's parents or other lawful custodian; and (4) fingerprints and photographs shall be sent to the central repository if the juvenile has been adjudicated to have committed an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto.

(d) Fingerprints of juveniles may be furnished to another law enforcement agency if the other agency has a legitimate need for the fingerprints.

Section 1, page 1 - Restore language stricken in lines 24 and 25; and in line 25, after the word "clerk", add the word "or". (The Judge does not feel we should totally eliminate special appointments by the court - only provide a simpler alternative.)

Section 2, page 1, lines 39 - 41, strike the Senate amendment.

Section 2, page 1, line 38, after the word "registration", strike the comma and add the following language:

"which is endorsed by a district judge, sheriff or clerk of the district court for the county where the applicant resides,"

(This eliminates the good character objection - also provides numerous options to obtain an endorsement for appointment.)

Section 2, page 1, line 42, strike \$1,000 and insert \$5,000.

(This is policy. The Judge doesn't care. Notary bond is \$2,500.)

Also, Mr. Bennett's amendment regarding aggregate liability should be included.

Page 2, line 52, strike the period after the word "applicant" and insert the following:

"and advise the clerk of the district court of the county where the applicant resides that the certificate has been issued."

(Important to have local list of process servers.)

Page 2, line 53, strike the word "one" and insert the word "two".

(Self-explanatory. Might want to consider 4 years. The Judge feels one year is too short - fee \$25 plus bond \$25 equals \$50 plus nuisance would deter if had to do it each year.)

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

ATTACHMENT # 11

Your Committee on Judiciary

Recommends that Senate Bill No. 354
As Amended by Senate Committee

"AN ACT concerning civil remedies for certain unlawful acts;
amending K.S.A. 38-120 and repealing the existing section."

Be amended:

On page 1, by striking lines 21 through 40; in line 41, by striking "Sec. 2" and inserting "Section 1";

On page 2, in line 45, after "damages", by inserting "and a civil penalty not exceeding \$1,000"; in line 48, by striking all after the comma; in line 49, by striking "or parents,"; also in line 49, before "injured", by inserting ", maliciously or willfully"; in line 51, by striking ". Such recovery" and inserting ", if the child was under 18 years of age and living with the parent or parents at the time of commission of the offense. The recovery of damages"; in line 53, by striking "\$5,000" and inserting "\$2,500"; also in line 53, after "to", by inserting "the civil penalty and"; in line 57, by striking "\$5,000" and inserting "\$2,500"; also in line 57, after "Recovery", by inserting "of damages"; by renumbering sections 3 and 4 as sections 2 and 3;

And the bill be passed as amended.

Chairperson