

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

3:30 ~~am~~/p.m. on February 28, 1983 in room 531-N of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Mike Boyer, Kansas Bureau of Investigation

Senate Bill 191 - Enforcement of child visitation and custody rights.

The chairman reminded the committee of the motion pending on the bill. Senator Hess had moved to report the bill favorably; Senator Gaines seconded the motion. Following committee discussion, the motion carried.

Senate Bill 105 - Amendments relating to Code for Care of Children and Juvenile Offender Code.

A staff member explained to the committee the amendments as proposed by Judge Morrison that appear in a ballooned version of particular sections of the bill (See Attachment #1). In answer to a question from a committee member, Mike Boyer explained the language in New Section 29 is like the criminal system is now. Following discussion, Senator Gaines moved to amend the bill by deleting the last sentence on page 4 of New Section 29(a); Senator Hess seconded the motion. Following the explanation of the amendment, the motion carried.

Another staff member explained the memorandum from the research department showing the suggested amendments made by various persons which amends the Kansas Code for Care of Children, the Juvenile Offenders Code, and other statutes dealing with juveniles (See Attachment #2). Following the explanation, Senator Feleciano moved to adopt proposal #1 in the memorandum; Senator Gaines seconded the motion, and the motion carried.

Following an explanation and discussion of the second proposed amendments, Senator Gaines moved to adopted proposal #2; Senator Steineger seconded the motion, and the motion carried.

Following discussion, Senator Gaines moved to adopt proposal #3; Senator Winter seconded the motion, and the motion carried.

Following committee discussion, Senator Hess moved to adopt the proposed amendment #4; Senator Werts seconded the motion, and the motion carried.

Following discussion, Senator Winter moved to adopt the suggestions made by Brilla Highfill Scott, Court/Education/SRS Liaison Committee, proposal #5; Senator Feleciano seconded the motion, and the motion carried.

Following explanation and discussion of proposal #6, Senator Gaines moved to conceptionally designate SRS as the person available to accept the child; Senator Winter seconded the motion, and the motion carried.

Following explanation and discussion, Senator Steineger moved to adopt proposal #7; Senator Winter seconded the motion, and the motion carried.

Explanation and discussion was had regarding proposal #8 of the memorandum. No action was taken.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 531-N, Statehouse, at 3:30 ~~xxx~~/p.m. on February 28, 1983.

Senate Bill 105 continued

Following committee discussion, Senator Gaines moved to adopt proposal #9; Senator Hess seconded the motion, and the motion carried.

Following explanation and discussion, Senator Feleciano moved to adopt proposal #10 on a conceptional basis that the provision be by court order; Senator Gaines seconded the motion, and the motion carried.

Committee discussion was had on proposal #11 of the memorandum. No action was taken.

Following further discussion, Senator Hess moved to adopt proposal #12; Senator Gaines seconded the motion, and the motion carried.

Committee discussion was held on proposal #13. No action was taken.

Following discussion, Senator Hess moved to adopt proposal #14; Senator Mulich seconded the motion, and the motion carried.

Committee discussion was held on proposal #15 of the memordum. No action was taken.

Following committee discussion, Senator Hess moved to adopt proposal #16; Senator Mulich seconded the motion, and the motion carried.

Committee discussion was held on proposal #17 of the memorandum. No action was taken.

Senator Gaines then moved to report the bill favorably as amended; Senator Winter seconded the motion, and the motion carried.

The meeting adjourned.

2-28-8
3:30 PM

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
NANCIE & JACIL PARADISE	9615 MEADOW LANE LEAWOOD	Div DADS Inc
Lynne Bachmann / Brown	Jopoka	Ko. Health Care Assoc
Michelle Boyer	Jopoka	KBI
Andy Kenkel	Jopoka 214 W. 6th	KCSL
Johnny H. Scott	Jopoka	KOPCA
Lisa Jelso	2653 W. Ave, Jopoka	Ko. Action for Children

SENATE BILL No. 105

By Senator Pomeroy

(By request)

1-26

0017 AN ACT concerning juveniles; amending K.S.A. 8-2117, 20-302b,
 0018 38-501, 38-506, 38-1302, ~~38-1303~~, 41-2721 and 65-503 and
 0019 K.S.A. 1982 Supp. 20-319, ~~28-170~~, 38-1502, 38-1504, 38-1512,
 0020 38-1513, 38-1517, 38-1522, 38-1523, 38-1524, 38-1526, 38-
 0021 1528, 38-1544, 38-1583, 38-1584, 38-1608, 38-1610, ~~38-1612~~,
 0022 38-1614, 38-1616, ~~38-1624~~, 38-1637, 38-1673, 38-1682, 45-201,
 0023 65-516, 65-519 and 75-52,104 and repealing the existing sec-
 0024 tions.

22-4701,

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 Section 1. K.S.A. 8-2117 is hereby amended to read as fol-
 0027 lows: 8-2117. (a) Subject to the provisions of this section, a court
 0028 of competent jurisdiction may hear prosecutions of traffic of-
 0029 fenses involving any child 14 or more years of age but less than 18
 0030 years of age. The court hearing the prosecution may impose any
 0031 fine authorized by law for the offense, but no child under the age
 0032 of 18 years of age shall be incarcerated in a city or county jail for
 0033 more than 10 days for any traffic offense and, if a child is
 0034 incarcerated in a jail, the child shall be in quarters separate from
 0035 adult prisoners. *In lieu of incarceration in a city or county jail, the*
 0036 *court may order that a child be placed in a juvenile detention*
 0037 *facility if the operator of the facility is willing to accept the child.*
 0038 The court may suspend the license of any person who is con-
 0039 victed of a traffic offense and who was under 18 years of age at
 0040 the time of commission of the offense. Suspension of a license
 0041 shall be for a period not exceeding one year, as ordered by the
 0042 court. Upon suspending any license pursuant to this section, the
 0043 court shall require that the license be surrendered to the court and
 0044 shall transmit the license to the division of vehicles with a copy of

Atch. 1

0379 tion (b)(3) of K.S.A. 1982 Supp. 38-1602 *and amendments thereto*;
 0380 and (2) upon conviction of a crime or adjudication in a subse-
 0381 quent action under this code the offense may be considered in
 0382 determining the sentence to be imposed or disposition to be
 0383 made. The person, the court and all law enforcement officers and
 0384 other public offices and agencies shall properly reply on inquiry
 0385 that no record or file exists with respect to the person. Inspection
 0386 of the expunged files or records thereafter may be permitted by
 0387 order of the court upon petition by the person who is the subject
 0388 thereof. The inspection shall be limited to inspection by the
 0389 person who is the subject of the files or records and those persons
 0390 designated by that person.

0391 (e) Copies of any order made pursuant to subsection (a) or (b)
 0392 shall be sent to each public officer and agency in the county
 0393 having possession of any records or files ordered to be expunged.
 0394 If the officer or agency fails to comply with the order within a
 0395 reasonable time after its receipt, the officer or agency may be
 0396 adjudged in contempt of court and punished accordingly.

0397 (f) The court shall inform any juvenile who has been adjudi-
 0398 cated a juvenile offender of the provisions of this section.

0399 (g) *Nothing in this section shall be construed to prohibit the*
 0400 *maintenance of information relating to an offense after records or*
 0401 *files concerning the offense have been expunged if the information*
 0402 *is kept in a manner that does not enable identification of the*
 0403 *offender.*

0404 ~~Section 25. K.S.A. 1982 Supp. 38-1612 is hereby amended to~~
 0405 ~~read as follows: 38-1612. It shall be the duty of each county or~~
 0406 ~~district attorney to:~~

0407 ~~(a) Prepare and file the complaint alleging a juvenile to be a~~
 0408 ~~juvenile offender and to prosecute the case; and~~

0409 ~~(b) report, on forms approved by the attorney general, to the~~
 0410 ~~central repository, as defined by K.S.A. 22-4701 and amendments~~
 0411 ~~thereto, the disposition of reported offense alleged to have been~~
 0412 ~~committed by a juvenile.~~

0413 ~~Section 26. K.S.A. 1982 Supp. 38-1614 is hereby amended to~~
 0414 ~~read as follows: 38-1614. (a) *Physical care and treatment.* (1)~~
 0415 ~~When the health or condition of a juvenile who is subject to the~~

0490 *If the person willfully fails or refuses to pay the sum, the person*
 0491 *may be adjudged in contempt of court and punished accordingly.*

0492 (3) The county may bring a separate action against ~~the parent~~
 0493 ~~of a person who by law is liable to maintain, care for or support a~~
 0494 juvenile alleged or adjudged to be a juvenile offender for the
 0495 reimbursement of expenses paid out of the county general fund
 0496 for the care and custody of the juvenile.

0497 (c) *Reimbursement by parent to state social welfare fund.*
 0498 When expenses for the care and custody of a juvenile alleged or
 0499 adjudged to be a juvenile offender have been paid out of the state
 0500 social welfare fund, the secretary may recover the expenses from
 0501 any ~~parent person who by law is liable to maintain, care for or~~
 0502 ~~support the juvenile.~~

0503 The secretary shall annually make written demand upon ~~the~~
 0504 ~~parent any person who by law is liable to maintain, care for or~~
 0505 ~~support the juvenile~~ for the amount claimed by the secretary to be
 0506 due for the preceding year. The secretary may commence an
 0507 action against the parent for the recovery of the amount claimed if
 0508 the action is commenced within three years after (1) the date of
 0509 the written demand or (2) the date that the obligor last paid any
 0510 part of the amount claimed, acknowledged the existence of a debt
 0511 or claim or promised to pay the debt or claim. The secretary shall
 0512 have the power to compromise and settle any claim due or any
 0513 amount claimed to be due from ~~parents any person who by law is~~
 0514 ~~liable to maintain, care for or support the juvenile.~~

0515 Whenever the secretary negotiates a written compromise set-
 0516 tlement of any amounts past due, no action shall thereafter be
 0517 brought or claim made for any amounts other than the amounts
 0518 provided for in the agreement. If the provisions of the compro-
 0519 mise agreement are not complied with, the failure to comply shall
 0520 serve to revive and reinstate the original amount of the claim due
 0521 before negotiation of the compromise agreement less amounts
 0522 paid on the claim.

0523 ~~New Sec. 28. 38-1617. (a) In order to properly advise the~~
 0524 ~~three branches of government on the operation of the juvenile~~
 0525 ~~justice system, there is hereby established within and as a part of~~
 0526 ~~the central repository, as defined by K.S.A. 22-4701 and amend-~~

0527 ments thereto, a Kansas juvenile justice information system. The
0528 system shall serve as a repository of information relating to
0529 juvenile offenders which is collected by law enforcement agen-
0530 cies, county and district attorneys, the courts and administrative
0531 agencies and reported to the system on forms approved by the
0532 attorney general. The system shall include all equipment (in-
0533 cluding computer hardware and software), facilities, procedures,
0534 agreements and personnel used in the collection, processing and
0535 preservation of that information.

0536 (b) Information maintained in the Kansas juvenile justice
0537 information system is confidential and shall not be publicly
0538 disclosed in a manner which enables identification of any indi-
0539 vidual who is a subject of the information, except that the infor-
0540 mation shall be open to inspection by attorneys for the parties to a
0541 proceeding under this code or upon order of a judge of the district
0542 court or an appellate court.

0543 New Section 29. Nothing in K.S.A. 22-4701 and 22-4704
0544 through 22-4711, and amendments thereto, shall be construed to
0545 prohibit the central repository, as defined by K.S.A. 22-4701 and
0546 amendments thereto, from maintaining a Kansas juvenile justice
0547 information system as provided by and for the purpose set forth
0548 in section 38-1617.

0549 Sec. 30. K.S.A. 1982 Supp. 38-1624 is hereby amended to
0550 read as follows: 38-1624. (a) *By a law enforcement officer.* A law
0551 enforcement officer may take an alleged juvenile offender into
0552 custody when:

- 0553 (1) Any offense has been or is being committed by the juve-
0554 nile in the officer's view;
- 0555 (2) the officer has a warrant commanding that the juvenile be
0556 taken into custody;
- 0557 (3) the officer has probable cause to believe that a warrant or
0558 order commanding that the juvenile be taken into custody has
0559 been issued in this state or in another jurisdiction for an act
0560 committed therein; or
- 0561 (4) the officer has probable cause to believe that the juvenile
0562 is committing or has committed an act which, if committed by an
0563 adult, would constitute:

0601 released on personal recognizance, the person shall be taken
 0602 before the court of the county where the alleged act took place or,
 0603 at the request of the person, the person shall be taken, without
 0604 delay, before the nearest court. The court shall fix the terms and
 0605 conditions of an appearance bond upon which the person may be
 0606 released from custody. The provisions of article 28 of chapter 22
 0607 of the Kansas Statutes Annotated and K.S.A. 22-2901 and amend-
 0608 ments thereto relating to appearance bonds and review of condi-
 0609 tions and release shall be applicable to appearance bonds pro-
 0610 vided for in this section.

0611 *(e) Report of detention. When a juvenile is taken to a detention*
 0612 *facility or youth residential facility pursuant to this section, the*
 0613 *facility shall report that fact to the central repository, as defined*
 0614 *by K.S.A. 22-4701 and amendments thereto, on forms approved by*
 0615 *the attorney general.*

Insert §§ 27 thru 29, attached

0616 Section 41. K.S.A. 1982 Supp. 38-1637 is hereby amended to
 0617 read as follows: 38-1637. (a) For the purpose of this section, a
 0618 respondent is incompetent for hearing when charged as a juvenile
 0619 offender and, because of mental illness or defect, is unable:

30

0620 (1) To understand the nature and purpose of the proceedings;
 0621 or

0622 (2) to make or assist in making a defense.

0623 (b) Whenever the words "competent," "competency," "in-
 0624 competent" and "incompetency" are used without qualification
 0625 in this code, they shall refer to the respondent's competency or
 0626 incompetency, as described in subsection (a).

0627 (c) (1) At any time after the respondent has been charged with
 0628 an act which, if the respondent is found to have committed,
 0629 would result in adjudication as a juvenile offender and before
 0630 adjudication, the respondent, the respondent's attorney or the
 0631 county or district attorney may request a determination of the
 0632 respondent's competency for hearing. If, upon the request of
 0633 either party or upon one's own knowledge and observation, the
 0634 judge before whom the case is pending finds that there is reason
 0635 to believe that the respondent is incompetent for hearing, the
 0636 proceedings shall be suspended and a hearing conducted to
 0637 determine the competency of the respondent.

Sec. 27. K.S.A. 1982 Supp. 22-4701 is hereby amended to read as follows: 22-4701. As used in this act, unless the context clearly requires otherwise:

(a) "Central repository" means the criminal justice information system central repository created by this act and the Kansas juvenile justice information system created pursuant to section 38-1618 and amendments thereto.

(b) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

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

(2) ~~data-pertaining-to-a-proceeding-pursuant-to-the--Kansas juvenile--code,--Kansas--code--for--care--of--children--or-Kansas juvenile-offenders-code,--but-it--does--include~~ juvenile justice history record information other than data pertaining to a person following waiver of jurisdiction pursuant to the Kansas juvenile code or an authorization for prosecution as an adult pursuant to the Kansas juvenile offenders code;

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

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

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

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of

these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and county-wide law enforcement agencies, correctional facilities, jails and detention centers;

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

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

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) "Director" means the director of the Kansas bureau of investigation.

(f) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

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

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

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

(g) "Juvenile justice history information" has the meaning provided by section 38-1617 and amendments thereto.

~~(f)~~ (h) "Reportable event" means an event specified or provided for in K.S.A. 22-4705 and amendments thereto.

~~(g)~~ (i) "Director" means the director of the Kansas bureau

of investigation.

New Sec. 28. 38-1617. As used in section 38-1618 and amendments thereto, unless the context otherwise requires:

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

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

(c) "Juvenile justice history information" means data relating to juveniles alleged or adjudicated to be juvenile offenders, offenses committed or alleged to have been committed by juveniles and proceedings pursuant to the Kansas juvenile code, Kansas code for care of children or Kansas juvenile offenders code.

(d) "Juvenile justice agency" means any county or district attorney, law enforcement agency of this state or of any political subdivision of this state, court of this state or of a municipality of this state, administrative agency of this state or any political subdivision of this state, youth residential facility or juvenile detention facility.

(e) "Reportable event" means:

(1) issuance of a court order to take a juvenile into custody;

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

(3) release of a child who has been taken into custody pursuant to this code, without the filing of a complaint;

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

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

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

(7) commitment to or placement in a youth residential facility, juvenile detention facility or state youth center pursuant to this code;

(8) release or discharge from commitment or jurisdiction of the court pursuant to this code;

(9) escape from commitment or placement pursuant to this code;

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

reverses adjudication or disposition pursuant to this code;

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

(12) any other event arising out of or occurring during the course of proceedings pursuant to this code and declared to be reportable by rules and regulations of the director.

New Sec. 29. 38-1618. (a) In order to properly advise the three branches of government on the operation of the juvenile justice system, there is hereby established within and as a part of the central repository, as defined by K.S.A. 22-4701 and amendments thereto, a Kansas juvenile justice information system. The system shall serve as a repository of juvenile justice history record information which is collected by juvenile justice agencies and reported to the system. The system shall include all equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing and preservation of juvenile justice history record information.

(b) Except as otherwise provided by this subsection, every juvenile justice agency shall report juvenile justice history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this section. A juvenile justice agency shall report to the central repository those reportable events involving a violation of a county resolution or city ordinance only when required by rules and regulations adopted by the director.

(c) Reporting methods may include:

(1) Submission of juvenile justice history record information by a juvenile justice agency directly to the central repository;

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

(3) if the information can readily be collected and reported through juvenile justice agencies that are part of a geographically based information system, submission to the

central repository by the agencies.

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

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

(f) The director shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section.

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

0860 from the amount of the grant payable to each such county. All
 0861 such charges shall be a charge against the county of commitment
 0862 except that the secretary of corrections may waive a charge
 0863 against a county in a case involving a commitment arising from
 0864 an escape or charge of aggravated juvenile delinquency.

0865 Sec. 40. K.S.A. 8-2117, 20-302b, 38-501, 38-506, 38-1302, 38-
 0866 1303, 41-2721 and 65-503 and K.S.A. 1982 Supp. 20-319, ~~28-170,~~ 22-4701,
 0867 38-1502, 38-1504, 38-1512, 38-1513, 38-1517, 38-1522, 38-1523,
 0868 38-1524, 38-1526, 38-1528, 38-1544, 38-1583, 38-1584, 38-1608,
 0869 38-1610, ~~38-1612,~~ 38-1614, 38-1616, ~~38-1624,~~ 38-1637, 38-1673,
 0870 38-1682, 45-201, 65-516, 65-519 and 75-52,104 are hereby re-
 0871 pealed.

0872 Sec. 41. This act shall take effect and be in force from and
 0873 after its publication in the statute book.

MEMORANDUM

February 28, 1983

TO: Senate Judiciary Committee
FROM: Kansas Legislative Research Department
RE: S.B. 105 - Suggested Amendments

The following is a list of suggested amendments made by various persons to S.B. 105 which amends the Kansas Code for Care of Children, the Juvenile Offenders Code, and other statutes dealing with juveniles.

- 1. K.S.A. 38-1507 which is not currently a part of S.B. 105, deals with reports of child abuse received by the Department of Social and Rehabilitation Services (SRS). SRS recommends that language be added that it shall be a violation of the Kansas Code for Care of Children for any person to knowingly permit the unauthorized dissemination of child abuse information. See Attachment I. MC
- 2. K.S.A. 38-1508 which is not currently a part of S.B. 105 deals with records and reports concerning child abuse. SRS recommends this statute be amended to protect the confidentiality of this information so as to comply with federal regulations to insure continued eligibility for a federal grant. See Attachment II. * MC
- 3. Section 11 of S.B. 105 amends K.S.A. 38-1504 dealing with venue. SRS suggests a technical amendment be made. See Attachment III. MC
- 4. Section 15 of S.B. 105 amends K.S.A. 1982 Supp. 38-1522 dealing with reporting of child abuse. SRS recommends deletion of a requirement SRS provide certain forms and the county or district attorney receive reports of child abuse. See Attachment IV. me
- 5. Section 16 of S.B. 105 amends K.S.A. 38-1523 dealing with investigation of child abuse. SRS recommends a number of clarifying amendments. See Attachment V. The Kansas Children's Service League and the Kansas Committee for the Prevention of Child Abuse support the SRS suggestion for subsection (f).

The SRS suggestion includes an amendment to subsection (g) dealing with cooperation between investigative agencies and school personnel. The Kansas Association of School Boards, the Court/Education/SRS Liaison Committee, and the Kansas County and District Attorney's Association all had suggested changes for subsection (g). See Attachment VI.

mc

6. Section 19 amends K.S.A. 1982 Supp. 38-1528 dealing with placement of a child when a law enforcement officer takes the child into custody without a court order. SRS suggests a clarifying amendment. See Attachment VII. Judge Mikesic also suggested a clarifying amendment to this section. See Attachment VIII. See Attachment VIIIa from the Judicial Administrator.

mc

7. K.S.A. 1982 Supp. 38-1533 which is not a part of this bill deals with serving of summons. A Shawnee County Assistant District Attorney suggests a clarification. See Attachment IX.

mc

8. K.S.A. 1982 Supp. 38-1541 deals with determination of interested parties. Judge Mikesic suggested a time limitation be added. See Attachment X.

mc

9. Section 22 of S.B. 105 amends K.S.A. 1982 Supp. 38-1584 which deals with custody, adoption, and reports for children in need of care. SRS suggests a clarifying amendment regarding the Secretary as guardian and conservator of any child placed in SRS custody. See Attachment XI.

mc

10. K.S.A. 1982 Supp. 38-1602 which is not currently a part of S.B. 105 is the definitions section of the Juvenile Offenders Code. Judge Mikesic and an Assistant Shawnee County District Attorney both suggest a change to the automatic waiver provision. See Attachment XII.

mc

11. K.S.A. 1982 Supp. 38-1611 deals with authority to fingerprint and photograph juveniles. The Kansas Bureau of Investigation recommends fingerprints be mandatory in felony type charges and these be submitted to the central repository. See Attachment XIII.

mc

12. Section 30 of K.S.A. 1982 Supp. 38-1624 deals with law enforcement officers taking an alleged juvenile offender into custody. Judge Mikesic makes two suggested clarifications to this section. See Attachment XIV.

mc

- 13. Section 34 of S.B. 105 amends K.S.A. 41-2721 dealing with obtaining or consuming cereal malt beverages by persons under 18. Judge Mikesic recommends children committing this offense be dealt with under the Juvenile Offenders Code. See Attachment XV. nw
- 14. Section 38 of S.B. 105 amends K.S.A. 1982 Supp. 65-519 dealing with family day care homes. SRS suggests an amendment giving SRS access to certain court orders. See Attachment XVI. me
- 15. Judge Mikesic recommends K.S.A. 1982 Supp. 38-1534 which is not currently a part of S.B. 105 be amended in subsection (f) to insert the requirement the court shall determine the factual basis for the need for service by publication. nw
- 16. Judge Mikesic recommends K.S.A. 1982 Supp. 38-1566 which deals with change of placement be amended to delete the 30 day advance notice in placement changes when all parties agree to the change. This section is not currently a part of S.B. 105. me
- 17. Senator Chaney submitted a letter requesting juveniles be released immediately on bond, no juvenile be incarcerated with or in facilities which house adults unless the person is charged as an adult and parents of juveniles be notified immediately following arrest. See Attachment XVII. nw

→ RS
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History: L. 1982, ch. 182, § 6; Jan. 1, 1983.

38-1507. Records and reports concerning child abuse or neglect. All records and reports concerning child abuse or neglect received by the department of social and rehabilitation services or a law enforcement agency, in accordance with K.S.A. 1982 Supp. 38-1522, are confidential and shall not be disclosed except under the following conditions:

delete

and it shall be a violation of the Kansas code for care of children for any person, association, firm, corporation or other agency willfully or knowingly to permit or encourage the unauthorized dissemination of the contents of such records and reports except as otherwise provided by the Kansas code for care of children or

(a) Upon the order of any court after a determination by the court issuing the order that the records and reports are necessary for the conduct of proceedings before it and are otherwise admissible in evidence, except that access shall be limited to *in camera* inspection unless the court determines that public disclosure of the information contained in the records and reports is necessary for the resolution of an issue then pending before it.

(b) The secretary or the law enforcement agency where the report is filed may authorize access to the records and reports to:

(1) A person licensed to practice the healing arts who has before that person a child whom the person reasonably suspects may be abused or neglected;

(2) an agency having the legal responsibility or authorization to care for, treat or supervise a child who is the subject of a report or record;

(3) a parent or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons;

(4) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; or

(5) an agency of another state charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children within that state, if the state of the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of this code.

History: L. 1982, ch. 182, § 7; Jan. 1, 1983.

0860 from the amount of the grant payable to each such county. All
0861 such charges shall be a charge against the county of commitment
0862 except that the secretary of corrections may waive a charge
0863 against a county in a case involving a commitment arising from
0864 an escape or charge of aggravated juvenile delinquency.

0865 Sec. ~~40~~ K.S.A. 8-2117, 20-302b, 38-501, 38-506, 38-1302, 38-
0866 1303, 41-2721 and 65-503 and K.S.A. 1982 Supp. 20-319, 28-170,
0867 38-1502, 38-1504, 38-1512, 38-1513, 38-1517, 38-1522, 38-1523,
0868 38-1524, 38-1526, 38-1528, 38-1544, 38-1583, 38-1584, 38-1608,
0869 38-1610, 38-1612, 38-1614, 38-1616, 38-1624, 38-1637, 38-1673,
0870 38-1682, 45-201, 65-516, 65-519 and 75-52,104 are hereby re-
0871 pealed.

0872 Sec. ~~41~~. This act shall take effect and be in force from and
0873 after its publication in the statute book.

Sec. 40. K.S.A. 1982 Supp. 38-1508 is hereby amended to read as follows: 38-1508. All records and reports concerning child abuse or neglect received by law enforcement agencies shall be kept separate from all other records and shall not be disclosed to anyone except as authorized in K.S.A. 38-1507 and amendments thereto.

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

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

(c) the department of social and rehabilitation services;

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

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

(f) any other person when authorized by a court order, subject to any conditions imposed by the order.

41

38-1508,

42

delete

2
Attachment II

0461 in need of care shall be in the county of the child's residence or in
0462 the county where the child may be found.

0463 (b) Upon application of the petitioner, or any person autho-
0464 rized to appeal any final order in any proceedings pursuant to this
0465 code *and after notice to all other interested parties*, the court in
0466 which original proceedings are pending alleging that a child is a
0467 child in need of care may order the proceedings transferred to the
0468 court of the county where the child is physically present, where
0469 the parent or parents reside or where other proceedings are
0470 pending in this state concerning custody of the same child or
0471 children. *The judge of the court in which the case is pending shall*
0472 *consult with the judge of the court to which the case is to be*
0473 *transferred prior to transfer of the case. If the judges do not agree*
0474 *that the case should be transferred or if a hearing is requested, a*
0475 *hearing shall be held on the desirability of the transfer, with notice*
0476 *to interested parties, ~~SRS~~ and the proposed receiving court. If the*
0477 *judge of the transferring court orders the case to be transferred,*
0478 *the order of transfer shall include findings as why the case is being*
0479 *transferred. The court to which the case is transferred shall accept*
0480 the case. Any judge transferring any case to another court shall
0481 transmit a complete record thereof and, upon receipt of the
0482 record, the receiving court shall assume jurisdiction as if the
0483 proceedings were originally filed in that court. The transferring
0484 judge, if an adjudicatory hearing has been held, shall also trans-
0485 mit recommendations as to disposition. In case the child is not
0486 present in the county to which the case is transferred and that
0487 county is not the residence of the child's parent or parents, the
0488 court shall return the case to the court where it originated.

0489 Sec. 12. K.S.A. 1982 Supp. 38-1512 is hereby amended to
0490 read as follows: 38-1512. (a) *How paid.* (1) If a child alleged or
0491 adjudged to be a child in need of care is not eligible for assistance
0492 under K.S.A. 39-709 and amendments thereto, expenses for the
0493 care and custody of the child shall be paid out of the general fund
0494 of the county in which the proceedings are brought. For the
0495 purpose of this section, a child who is a nonresident of the state of
0496 Kansas or whose residence is unknown shall have residence in
0497 the county where the proceedings are instituted.

delete

the state department of social and rehabili-
tation services

#2
Dawson 11/17

0646 report forthwith. Every written report shall contain, if known, the
 0647 names and addresses of the child and the child's parents or other
 0648 persons responsible for the child's care, the child's age, the nature
 0649 and extent of the child's injury (including any evidence of pre-
 0650 vious injuries) and any other information that the maker of the
 0651 report believes might be helpful in establishing the cause of the
 0652 injuries and the identity of the persons responsible for the inju-
 0653 ries.

0654 (b) Any other person who has reason to suspect that a child
 0655 has been injured as a result of physical, mental or emotional
 0656 abuse or neglect or sexual abuse may report the matter as pro-
 0657 vided in subsection (c).

0658 (c) Reports made pursuant to this section shall be made to the
 0659 state department of social and rehabilitation services. When the
 0660 department is not open for business, the reports shall be made to
 0661 the appropriate law enforcement agency. *On the next day that the*
 0662 *state department of social and rehabilitation services is open for*
 0663 *business, the law enforcement agency shall report to the depart-*
 0664 *ment any report received and any investigation initiated pursuant*
 0665 *to subsection (a) of K.S.A. 1982 Supp. 38-1524 and amendments*
 0666 *thereto. The reports may be made orally or, on request of the*
 0667 *department, in writing* ~~on forms provided by the department.~~

delete

0668 (d) Any person required by this section to report an injury to a
 0669 child and who has reasonable cause to suspect that a child died
 0670 from injuries resulting from physical, mental or emotional abuse
 0671 or neglect or sexual abuse shall notify the coroner *or appropriate*
 0672 *law enforcement agency* of that suspicion.

0673 (e) *Reports of child abuse or neglect by persons employed by*
 0674 *or of children of persons employed by the state department of*
 0675 *social and rehabilitation services shall be made to the appropriate*
 0676 *law enforcement agency* ~~or county or district attorney.~~

delete

0677 (f) Willful and knowing failure to make a report required by
 0678 this section is a class B misdemeanor.

0679 Sec. 16. K.S.A. 1982 Supp. 38-1523 is hereby amended to
 0680 read as follows: 38-1523. (a) ~~When a report to a law enforcement~~
 0681 ~~agency pursuant to K.S.A. 1982 Supp. 38-1522 indicates that a~~
 0682 ~~child has been or is being subjected to physical injury or sexual~~

#2
 06/15/82

0016 *duty to receive and investigate reports of child abuse or neglect*
 0017 ~~for the purpose of determining whether the report is valid and~~
 0018 ~~whether action is required to protect the child from further abuse~~
 0019 ~~or neglect. If the department determines that no action is neces-~~
 0020 ~~sary to protect the child but that a criminal prosecution should be~~
 0021 ~~considered, the department shall make a report of the case to the~~
 0022 ~~appropriate law enforcement agency.~~

by a person responsible for a child's welfare. A person responsible for a child's welfare includes the child's parent, guardian, foster parents, an employee of a public or private youth residential facility or other persons responsible under state law for the child's welfare in a residential setting.

0053 ~~(b)~~ *Joint investigations. When a report of child abuse or ne-*
 0054 *glect indicates (1) that there is serious physical injury to or serious*
 0055 *deterioration of the child or that the case is of a type designated by*
 0056 *the county or district attorney for criminal investigation and (2)*
 0057 *that action may be required to protect the child, the investigation*
 0058 ~~shall~~ *be conducted as a joint effort between the department of*
 0059 *social and rehabilitation services and the appropriate law en-*
 0060 *forcement agency or agencies, with a free exchange of information*
 0061 *between them. In such a case representatives of the state depart-*
 0062 *ment of social and rehabilitation services shall not conduct any*
 0063 *interrogation of any person suspected of having committed a*
 0064 *crime without first obtaining authorization from the investigating*
 0065 *law enforcement agency. If a statement of a suspect is obtained by*
 0066 *the law enforcement agency, a copy of the statement shall be*
 0067 *provided to the department of social and rehabilitation services*
 0068 *on request.*

delete

there is sexual abuse

(b) When it is apparent from a report made to the department of social and rehabilitation services pursuant to K.S.A. 38-1522 and amendments thereto that a crime has been committed, the department shall promptly report the incident to the appropriate law enforcement agency.

(c)

immediate

0069 ~~(c)~~ *Investigation of certain cases. Suspected child abuse or*
 0070 *neglect by persons employed by or of children of persons em-*
 0071 *ployed by SRS shall be investigated by the appropriate law*
 0072 *enforcement agency under the direction of the appropriate county*
 0073 *or district attorney, and not by the state department of social and*
 0074 *rehabilitation services.*

may

(d)

the state department of social and rehabilitation services

0075 ~~(d)~~ *Coordination of investigations by county or district attor-*
 0076 *ney. If a dispute develops between agencies investigating a re-*
 0077 *ported case of child abuse or neglect, the appropriate county or*
 0078 *district attorney shall take charge of, direct and coordinate the*
 0079 *investigation.*

delete

0080 (e) *Investigations concerning certain facilities. Any investiga-*
 0081 *tion involving a facility subject to licensing or regulation by the*
 0082 *secretary of health and environment shall be promptly reported to*

by the department of social and rehabilitation services or a law enforcement agency

#2
 March 2012

0016 duty to receive ~~and investigate~~ reports of child abuse or neglect
 0017 for the purpose of determining ~~whether the report is valid and~~
 0018 ~~whether action is required to protect the child from further abuse~~
 0019 ~~or neglect. If the department determines that no action is neces-~~
 0020 ~~sary to protect the child but that a criminal prosecution should be~~
 0021 ~~considered, the department shall make a report of the case to the~~
 0022 ~~appropriate law enforcement agency.~~

and to investigate reports of child abuse or neglect by a person responsible for a child's welfare. A person responsible for a child's welfare includes the child's parent, guardian, foster parents, an employee of a public or private youth residential facility or other persons responsible under state law for the child's welfare in a residential setting. The appropriate law enforcement agency shall investigate all other reports of child abuse or neglect.

0053 ~~(b)~~ Joint investigations. When a report of child abuse or ne-
 0054 ~~glect indicates (1) that there is serious physical injury to or serious~~
 0055 ~~deterioration of the child or that the case is of a type designated by~~
 0056 ~~the county or district attorney for criminal investigation and (2)~~
 0057 ~~that action may be required to protect the child, the investigation~~
 0058 ~~shall be conducted as a joint effort between the department of~~
 0059 ~~social and rehabilitation services and the appropriate law en-~~
 0060 ~~forcement agency or agencies, with a free exchange of information~~
 0061 ~~between them. In such a case representatives of the state depart-~~
 0062 ~~ment of social and rehabilitation services shall not conduct any~~
 0063 ~~interrogation of any person suspected of having committed a~~
 0064 ~~crime without first obtaining authorization from the investigating~~
 0065 ~~law enforcement agency. If a statement of a suspect is obtained by~~
 0066 ~~the law enforcement agency, a copy of the statement shall be~~
 0067 ~~provided to the department of social and rehabilitation services~~
 0068 ~~on request.~~

delete

there is sexual abuse

(b) When it is apparent from a report made to the department of social and rehabilitation services pursuant to K.S.A. 38-1522 and amendments thereto that a crime has been committed, the department shall promptly report the incident to the appropriate law enforcement agency.

0069 ~~(c)~~ Investigation of certain cases. Suspected child abuse or
 0070 ~~neglect by persons employed by or of children of persons em-~~
 0071 ~~ployed by SRS shall be investigated by the appropriate law~~
 0072 ~~enforcement agency under the direction of the appropriate county~~
 0073 ~~or district attorney, and not by the state department of social and~~
 0074 ~~rehabilitation services.~~

(c)

immediate

may

(d)

the state department of social and rehabilitation services

0075 ~~(d)~~ Coordination of investigations by county or district attor-
 0076 ~~ney. If a dispute develops between agencies investigating a re-~~
 0077 ~~ported case of child abuse or neglect, the appropriate county or~~
 0078 ~~district attorney shall take charge of, direct and coordinate the~~
 0079 ~~investigation.~~

delete

0080 ~~(e)~~ Investigations concerning certain facilities. Any investiga-
 0081 ~~tion involving a facility subject to licensing or regulation by the~~
 0082 ~~secretary of health and environment shall be promptly reported to~~

by the department of social and rehabilitation services or a law enforcement agency

-
-

0083 the state secretary of health and environment.
 0084 (f) Cooperation between agencies. Law enforcement agencies
 0085 and the department of social and rehabilitation services shall
 0086 ~~assist~~ each other in taking action which is necessary to protect the
 0087 child regardless of which party conducted the initial investiga-
 0088 tion.

cooperate with

to include consultation, if needed, when the department is not open for business

0089 ~~(g) Cooperation of school personnel. Administrators of pri-~~
 0090 ~~mary and secondary schools shall cooperate with the state de-~~
 0091 ~~partment of social and rehabilitation services or any law enforce-~~
 0092 ~~ment agency, when investigating reports of child abuse or neglect,~~
 0093 ~~by allowing employees of the department or law enforcement~~
 0094 ~~agency to have access to the child while on school premises for the~~
 0095 ~~purpose of investigating a report.~~

delete

Cooperation between investigative agencies and school personnel. Administrators and employees of elementary and secondary schools, the department of social and rehabilitation services and any involved law enforcement agency shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. Administrators and employees of elementary and secondary schools shall provide employees of the department of social and rehabilitation services or a law enforcement agency investigating a report of suspected child abuse or neglect access to a child who is the subject of the report in a setting on school premises determined by school personnel for the purpose of such investigation.

0096 Sec. 17. K.S.A. 1982 Supp. 38-1524 is hereby amended to
 0097 read as follows: 38-1524. (a) When a report to a law enforcement
 0098 agency indicates that a child may be in imminent danger, the law
 0099 enforcement agency shall promptly initiate an investigation. If the
 0100 law enforcement officer reasonably believes the child is in immi-
 0101 nent danger, the officer shall remove the child from the location
 0102 where the child is found as authorized by K.S.A. 1982 Supp.
 0103 38-1527 and amendments thereto.

0104 (b) Whenever any person furnishes information to the state
 0105 department of social and rehabilitation services that a child
 0106 appears to be a child in need of care, the department shall make a
 0107 preliminary inquiry to determine whether the interests of the
 0108 child require further action be taken. Whenever practicable, the
 0109 inquiry shall include a preliminary investigation of the circum-
 0110 stances which were the subject of the information, including the
 0111 home and environmental situation and the previous history of the
 0112 child. If reasonable grounds to believe abuse or neglect exist,
 0113 immediate steps shall be taken to protect the health and welfare
 0114 of the abused or neglected child as well as that of any other child
 0115 under the same care who may be in danger of abuse or neglect.
 0116 After the inquiry, if the department determines it is not possible
 0117 to provide otherwise those services necessary to protect the in-
 0118 terests of the child, the department shall recommend to the
 0119 county or district attorney that a petition be filed.

#2

agencies. These facts should be taken into account in passing laws dealing with the rights and responsibilities of the agencies, the schools and most of all - the children.

2

In hopes of solving the concerns of all parties we offer a substitute for Section 16(g) as follows:

"(g) Cooperation of school personnel . . .

"Upon receipt of a written statement from the director of an area office of the state department of social and rehabilitation services that a child abuse case has been opened with respect to a particular child, administrators of primary and secondary schools shall allow employees of the department to interview that child on school premises, at such time and place and under such other conditions as the principal of the child's school shall determine in his sole discretion as being necessary to avoid disruption of the school and of the child's educational activities.

"Administrators of ^{elementary}~~primary~~ and secondary schools shall cooperate with law enforcement agencies in the investigation of a report of child abuse or neglect by allowing law enforcement officers to interview the child on school premises at such time and place and under such other conditions as the principal of the child's school shall determine in his sole discretion as being necessary to avoid disruption of the school and of the child's educational activities."

*

WEST JUNIOR HIGH SCHOOL

7. 2

Lawrence Unified School District #497
Lawrence, Kansas 66044

2700 Harvard Road
Phone (913) 843-4772

Brilla Highfill Scott, Principal
Michael J. Lowe, Asst. Principal
Emily A. Lee, Counselor
Donna J. Marston, Counselor

February 18, 1983

Senator Elwaine F. Pomeroy
145 Topeka Ave.
Topeka, Kansas 66612

Dear Senator Pomeroy:

Thank you for your letter of February 10 and your phone call.

The Court/Education/SRS Liaison Committee met today. As a part of our agenda, we discussed Senate Bill 105, Sections 16 & 18 in particular.

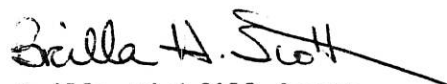
Concern was expressed about Section 16g and the phrase, "primary and secondary schools." The typical divisions of the public schools are elementary and secondary schools. Primary refers to grades 1-3.

Another concern expressed centered on what the word "cooperation" meant in the Section 16g. As a result, the following motion was passed to suggest this wording to you and your committee:

Cooperation between school personnel and investigative agencies. Elementary and secondary schools, the state department of social and rehabilitation services, and any involved law enforcement agency shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. Administrators of elementary and secondary schools shall provide to employees of the state department of social and rehabilitation services and/or law enforcement agencies access to a child in a setting on school premises determined by school personnel for the purpose of the investigation of such report.

We appreciate the opportunity to express our opinion. If you have further questions, please let me know.

On behalf of the Court/Education/SRS
Liaison Committee,


Brilla Highfill Scott
Chairman

cc: Dr. Merle Bolton
Dr. Robert C. Harder
Chief Justice Alfred G. Schroeder

2

Replaces section G of SB 105

Cooperation between school personnel and investigative agencies.

Elementary and secondary schools, the Department of SRS, and any involved law enforcement agency shall cooperate with each other in the investigation of reports of suspected child abuse or neglect.

Administrators of elementary and secondary schools shall provide to the employees of SRS and/or law enforcement agency access to a child in a setting on school premises determined by school personnel for the purposes of investigating such reports.

Verification of case files?

#2

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William T. North, Vice-President
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Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK

February 24, 1983

TO: Chairman Pomeroy and Members of the Senate Judiciary Committee

FROM: Jim Clark, Executive Director
Kansas County & District Attorneys Association

SUBJECT: Senate Bill 105

* The Kansas County and District Attorneys Association supports SB 105. We are in particular support of those provisions dealing with collection of data on juvenile offenses. The waiver of juvenile court jurisdiction on a repeat offender was an important compromise in the juvenile code revision of the 1982 session. In a highly mobile population, such repeat offenders cannot be identified without some sort of centralized method of collecting data on juvenile offenders.

There is, of course, some concern about the fiscal impact that such a data collection system might have upon the state. I would remind the Committee that SB 520, which reorganized the juvenile code, shifted the pre-adjudication responsibility of reporting, investigation and prosecution of juveniles from the state-supported court system to local law enforcement and prosecution resources (with some additional loads on SRS). Perhaps some of the fiscal resources previously allocated to the court system for these pre-adjudication functions can be shifted to the KBI for the maintenance of a juvenile offender record system.

* I do have one proposed amendment. Just as war is too important to be left to the generals, so is child abuse too important to be left to turf battles between school officials and social workers. I would propose amending Section 16(g) by striking all references to the State Department of Social and Rehabilitation Services. The effect of the amendment would be to allow the disruption of the child's school routine only by a law enforcement officer (who could be accompanied by an SRS worker). This limitation of disruption of the school process is consistent with other provisions of SB 105, in that law enforcement agencies generally become involved only in emergency situations, (Section 15(c)) or in the more serious cases, (Sections 15(d), 16(a), 16(b), and 16(c)).

With the limitations of the proposed amendment, school disruptions would be fewer, but when they occurred, they would be justified.

0120 Sec. 18. K.S.A. 1982 Supp. 38-1526 is hereby amended to
 0121 read as follows: 38-1526. Anyone participating without malice in
 0122 the making of an oral or written report to a law enforcement
 0123 agency or the department of social and rehabilitation services
 0124 relating to injury inflicted upon a child under 18 years of age as a
 0125 result of physical, mental or emotional abuse or neglect or sexual
 0126 abuse or in any follow-up activity to *or investigation of* the report
 0127 shall have immunity from any liability, civil or criminal, that
 0128 might otherwise be incurred or imposed. Any such participant
 0129 shall have the same immunity with respect to participation in any
 0130 judicial proceedings resulting from the report.

0131 Sec. 19. K.S.A. 1982 Supp. 38-1528 is hereby amended to
 0132 read as follows: 38-1528. (a) When any law enforcement officer
 0133 takes into custody a child under the age of 18 years, without a
 0134 court order, the child shall forthwith be delivered to a court
 0135 designated shelter facility, court services officer or other person

willing to accept the child

0136 *If the officer has reason to believe that the child will not remain in*
 0137 *a shelter facility, the child may be delivered to and detained in a*
 0138 *juvenile detention facility, designated by the court, for not more*
 0139 *than 24 hours, excluding Saturdays, Sundays and legal holidays.*

0140 It shall be the duty of the law enforcement officer to furnish to
 0141 the county or district attorney, without unnecessary delay, all the
 0142 information in the possession of the officer pertaining to the
 0143 child, the child's parents or other persons interested in or likely to
 0144 be interested in the child and all other facts and circumstances
 0145 which caused the child to be taken into custody.

0146 (b) Whenever a child under the age of 18 years is taken into
 0147 custody by a law enforcement officer without a court order and is
 0148 thereafter placed in the custody of a court designated shelter
 0149 facility, court services officer or other person as authorized by
 0150 this code, the facility or person shall have physical custody and
 0151 provide care and supervision for the child upon written applica-
 0152 tion of the law enforcement officer. The application shall state:

- 0153 (1) The name and address of the child, if known;
- 0154 (2) the names and addresses of the child's parents or nearest
- 0155 relatives and persons with whom the child has been residing, if
- 0156 known; and

#2
 2/28/11

Sec. ~~25~~¹⁹ KSA 38-1528 (a) Child under 18, when law enforcement officer takes into custody.

In section (a) after the second child, add: "Shall be placed in the legal custody of the Secretary and..."

So the sentence will read: When any law enforcement officer takes into custody a child under the age of 18 years, without a Court order, the child shall be placed in the legal custody of the Secretary and shall forthwith be delivered to a Court designated shelter facility, Court Service Officer or other person.

NEED FOR CHANGE: To resolve the issue of who is responsible for the care of any child and the cost of any care for child for the first 48 hours of care prior to the temporary order of custody hearing. Also medical facilities are concerned about who is responsible for required medical treatment during this first 48 hour period, when parents cannot be found.

Attachment VIII a

#2



Supreme Court of Kansas

Kansas Judicial Center

301 W. 10th

Topeka, Kansas 66612

HOWARD SCHWARTZ
Judicial Administrator

(913) 296-4873

February 24, 1983

To: Administrative Judges

From: Howard Schwartz, Judicial Administrator

Re: K.S.A. 1982 Supp. 38-1528
(Kansas Code for Care of Children)

K.S.A. 1982 Supp. 38-1528 in part provides:

When any law enforcement officer takes into custody a child under the age of 18 years, without a court order, the child shall forthwith be delivered to a court designated shelter facility, court services officer or other person.

Some courts have found it necessary to designate the Secretary of SRS or his designated agent within the county as an "other person" to whom a child falling within the ambit of 38-1528 may be delivered. This designation, typically, has been effected by means of an administrative order.

SRS previously has interpreted the statute to exempt SRS from any such designation. A recent SRS commissioner's letter, promulgated through the Commissioner of Youth Services, embraces that interpretation and requires local SRS action implementing SRS policy based on that interpretation.

As of February 18, SRS has ceased implementation of this policy of exemption.

February 24, 1983

2

Those courts that, because of the lack of other available resources in the county or out of other necessity, have designated the Secretary of SRS or his designated agent within the county as an "other person" pursuant to K.S.A. 1982 Supp. 38-1528 may expect SRS to comply with any such court-ordered designation under the existing language of the statute.

Dan Biles, Assistant Attorney General, should be contacted by courts experiencing difficulties in obtaining such compliance in the future. His telephone number is (913) 296-2215.

HS:dm

cc: Dr. Robert Harder
Mr. Dan Biles

Senator Pomeroy:.

I would like you to consider adding/amending to these changes in wording in SB 105.

1. 38-1533: Summons; persons upon whom served; form (a) Persons upon whom served. The summons and a copy of the petition shall be served on the child alleged to be a child in need of care by serving the guardian ad litem appointed for the child, *the parents, or parent having legal custody, the person with whom the child is residing and anyother person designated by the county or district attorney.

2. 38-1626: same change in wording - to "parents, or parent having legal custody, the person with whom the child is residing, etc.

Other Problems/Contradictions

- 3. 38-1532(a) requires service personally by sheriff (designated person) 38-1534 contradicts and allows service by mail first and then personal service.
- 4. 38-1506(b) was the intent to keep the judge from seeing the social file? Later provisions require submission of reports to "the Court" (38-1565, 38-1514)
- 5. 38-1554 says judge may not consider reports not properly in evidence. Contradicts with sections requiring reports to be submitted "to the Court".
- 6. 38-1602,b,3
 - 1) by excluding 3rd delinquencies from jurisdiction, authority of juvenile prosecutors is limited. If adult prosecutors don't want to charge felony, we cannot charge another delinquency in juvenile.
 - 2) Also - law doesn't say whether such automatic waivers into adult court are permanent, or only to that offense.

Ann L. Smith
Assistant District Attorney
Shawnee County, Kansas
February 16, 1983

Mikesic

Attached ~~X~~

RECOMMENDED AMENDMENTS TO CHILD IN NEED OF
CARE CODE AND JUVENILE OFFENDER CODE

#2

~~S. 4~~ KSA 38-1541 Determination of interested party. At the end of paragraph - add: All motions to determine interested parties must be filed no later than 30 days prior to any hearing on a motion to sever parental rights.

NEED FOR CHANGE: 1) to require all potential interested parties to make their interest known prior to severance hearing; 2) to avoid parties from coming in after severance of parents' rights and delaying adoption of child.

0268 retary or corporation shall have authority to place the child in a
0269 family home, be a party to proceedings and give consent for the
0270 legal adoption of the child which shall be the only consent
0271 required to authorize the entry of an order or decree of adoption.

0272 ~~The secretary shall be guardian and conservator of any child~~
0273 ~~placed in the secretary's custody, subject to any prior conserva-~~
0274 ~~torship.~~

delete

In lieu of granting custody of the child to some person or
0275 corporation, the court may grant custody of the child to proposed
0276 adoptive parents and consent to the adoption of the child by the
0277 proposed adoptive parents.

0278 (2) *Custody for long-term foster care.* When parental rights
0279 have been terminated, but it does not appear that adoption is a
0280 viable alternative, the court may grant custody of the child for
0281 foster care to (A) a reputable person of good moral character, (B) a
0282 youth residential facility, (C) the secretary or (D) a corporation or
0283 association willing to receive the child, embracing in its objec-
0284 tives the purpose of caring for or obtaining homes for children.

(c) The secretary shall be guardian and conservator of any child placed in the secretary's custody, subject to any prior conservatorship.

0285 ~~(e) Reports and review of progress.~~ After parental rights have
0286 been terminated and up to the time an adoption has been ac-
0287 complished, the person or agency awarded custody of the child
0288 shall within 60 days submit a written plan for permanent place-
0289 ment which shall include measurable objectives and time sched-
0290 ules and shall thereafter not less frequently than each six months
0291 make a written report to the court stating the progress having
0292 been made toward finding an adoptive or long-term foster care
0293 placement for the child. Upon the receipt of each report the court
0294 shall review the contents thereof and determine whether or not a
0295 hearing should be held on the subject. If the court determines that
0296 inadequate progress is being made toward finding an adoptive
0297 placement or establishing an acceptable long-term foster care
0298 plan, the court may rescind its prior orders and make other orders
0299 regarding custody and adoption that are appropriate under the
0300 circumstances. Reports of a proposed adoptive placement need
0301 not contain the identity of the proposed adoptive parents.

delete

(d)

0302 ~~(d) Discharge upon adoption.~~ When the adoption of a child
0303 has been accomplished, the court shall enter an order discharging
0304 the child from the court's jurisdiction in the pending proceed-

delete

(e)

#2

~~Sec 38-1602~~ KSA 38-1602 Definitions (b)(3) The automatic waiver provision.

At the end of sentence add: Any person convicted under this section shall thereafter remain an adult for any future offense charged.

NEED FOR CHANGE: It is possible that a 16 or 17 year old could be convicted of a felony and placed on probation or released from custody prior to their 18th birthday, and then be charged with the commission of a misdemeanor. Under the current definition it appears this person would be tried as a juvenile. On a normal waiver the Court usually mandates adult status for all further acts, but this is not the case under the automatic waiver. I doubt juvenile Court could be very effective where the offender has already been into the adult system.

Senator Pomeroy:

I would like you to consider adding/amending to these changes in wording in SB 105.

1. 38-1533: Summons; persons upon whom served; form (a) Persons upon whom served. The summons and a copy of the petition shall be served on the child alleged to be a child in need of care by serving the guardian ad litem appointed for the child, *the parents, or parent having legal custody, the person with whom the child is residing and any other person designated by the county or district attorney.
2. 38-1626: same change in wording - to "parents, or parent having legal custody, the person with whom the child is residing, etc.

Other Problems/Contradictions

3. 38-1532(a) requires service personally by sheriff (designated person) 38-1534 contradicts and allows service by mail first and then personal service.
4. 38-1506(b) was the intent to keep the judge from seeing the social file? Later provisions require submission of reports to "the Court" (38-1565, 38-1514)
5. 38-1554 says judge may not consider reports not properly in evidence. Contradicts with sections requiring reports to be submitted "to the Court".
6. 38-1602,b,3
 - 1) by excluding 3rd delinquencies from jurisdiction, authority of juvenile prosecutors is limited. If adult prosecutors don't want to charge felony, we cannot charge another delinquency in juvenile.
 - 2) Also - law doesn't say whether such automatic waivers into adult court are permanent, or only to that offense.

Ann L. Smith
 Assistant District Attorney
 Shawnee County, Kansas
 February 16, 1983



THOMAS E. KELLY
DIRECTOR

KANSAS BUREAU OF INVESTIGATION #2

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
3420 VAN BUREN
TOPEKA, KANSAS 66611
(913) 267-5000



ROBERT T. STEPHAN
ATTORNEY GENERAL

Senate Bill 105 Proposed Amendment

Current Code 38-1611 Fingerprints

* Remove "may" from 38-1611(2) replace with "shall".

+ Strike 38-1611(c).

+ Insert new (c) providing for submission to central repository.

Rationale

Overall service to prosecutors preparing case.

Certainty in providing information to prosecutors on the "three strikes and out" procedure pursuant to 38-1602(b) (3) definition.

Without certainty requests to verify overall record of individual is open to question, possible law suit and would add to the burden of prosecutors to ascertain validity of information received from the statistical system.

Fiscal Impact

1. Personnel
Fingerprint Technician, with fringe benefits - \$15,578.00

arranged ~~AL~~
2

~~S. 78~~ KSA 38-1624(c) Juvenile taken into custody -
Procedure.

Strike word "forthwith" and insert in lieu thereof "without unnecessary delay".

NEED FOR CHANGE: Forthwith means immediately, and it is not practical to expect police to immediately take an alleged juvenile offender to Court even prior to all the investigation and police reports being prepared.

This change would conform this section to the wording of the adult code in KSA 22-2901. Also if Court is in session it is not practical to have police sitting around guarding a juvenile if Court is not available to hear any matter. Also the Juvenile wouldn't have an attorney, parents probably wouldn't be there, and the police have already determined that the juvenile should be detained. So what is the Court to do?

#2

~~Sec. 78~~ KSA 38-1624 Juvenile taken into custody

Add new subsection (d) and redesignate (d) as (e) and insert a provision similar to SB 105, page 23, line 170 thru 173. As follows:

In the absence of a Court order to the contrary, the Court or District Attorney or the arresting law enforcement agency shall have the authority to direct release of the alleged juvenile offender prior to the time set out in KSA 38-1632(a).

NEED FOR CHANGE: If the complaining witness changes their mind about prosecution or if the case falls apart due to the lack of evidence after preliminary investigation by the police, then the alleged offender shouldn't have to spend the weekend in detention, and the police or prosecutor should be able to release unless the Court has entered an order to the contrary.

Attached XV

#2

Sec. 34 of SB 105, page 38, KSA 41-2721 Cereal malt beverage violation. KSA 21-2721 (b) should be amended as follows: strike all after deemed, and insert, a juvenile offender.

NEED FOR CHANGE: This is a clean-up section and it seems to me that this problem could be better dealt with under the offender code then under the CINC code. What should the Court do with a 16 or 17 year old who goes out with fake ID and buys a 6 pack of beer? I honestly don't feel calling them a child in need of care is the solution. What should the police and SRS do as to investigation on this type case?

SRS

0786 code; ~~who~~ or the Kansas code for care of children; (d) has been
 0787 convicted of a sexual offense; ~~who~~; (e) has signed a diversion
 0788 agreement pursuant to K.S.A. 22-2906 *et seq.*, and amendments
 0789 thereto, involving a charge of child abuse or a sexual offense;
 0790 ~~who~~; (f) has been found to be an incapacitated person in need of a
 0791 guardian or conservator, or both, pursuant to the act for obtaining
 0792 a guardian or conservator, or both; ~~who~~; (g) has been found to be
 0793 unfit to have custody of a minor child pursuant to K.S.A. 1982
 0794 Supp. 60-1610 and amendments thereto; or ~~who~~ (h) has an infec-
 0795 tious or contagious disease.

0796 Sec. 38. K.S.A. 1982 Supp. 65-519 is hereby amended to read
 0797 as follows: 65-519. (a) The ~~secretary~~ shall issue a certificate of
 0798 registration to any person who applies for registration on forms
 0799 furnished by the secretary and who attests to the safety of the
 0800 family day care home for the care of children and certifies that no
 0801 person residing in the family day care home: (1) Has been
 0802 convicted of child abuse or a sexual offense;; (2) has had a child
 0803 declared to be deprived or a child in need of care; (3) has had a
 0804 child removed from the home pursuant to the Kansas juvenile
 0805 code, or the Kansas code for care of children; (4) has signed a
 0806 diversion agreement pursuant to K.S.A. 22-2906 *et seq.*, and
 0807 amendments thereto, involving a charge of child abuse or a sexual
 0808 offense;; (5) has been found to be an incapacitated person in need
 0809 of a guardian or conservator, or both, pursuant to the act for
 0810 obtaining a guardian or conservator, or both;; (6) has been found
 0811 to be unfit to have custody of a minor child pursuant to K.S.A.
 0812 1982 Supp. 60-1610; and amendments thereto; or (7) has an
 0813 infectious or contagious disease, and further attests to the safety
 0814 of the family day care home for the care of children.

0815 (b) The secretary shall furnish each applicant for registration
 0816 a family day care home safety evaluation form to be completed by
 0817 the applicant and submitted with the registration application.

0818 (c) The certificate of registration shall be renewed annually in
 0819 the same manner provided for in this section.

0820 Sec. 39. K.S.A. 1982 Supp. 75-52,104 is hereby amended to
 0821 read as follows: 75-52,104. (a) Each county receiving grants
 0822 under this act shall be charged a sum determined by the secretary

2

(d) The secretary shall have access to any court orders or adjudications in any court of record or any records of such orders or adjudications in the department of social and rehabilitation services concerning persons residing in such boarding homes or family day care homes in order to determine whether or not the home meets the requirements of K.S.A. 65-516 and 65-519 or any amendments thereto.

Attachment #111
#2

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER ASSESSMENT AND TAXATION
ENERGY AND NATURAL RESOURCES
ELECTIONS
PUBLIC HEALTH AND WELFARE

BERT CHANEY
SENATE DISTRICT 34
RENO COUNTY
915 EAST 13TH
HUTCHINSON, KANSAS 67501

February 24, 1983

Senator Elwaine Pomeroy
State Capitol
Topeka, KS

Dear Senator Pomeroy:

Thank you for hearing my remarks on SB 105 pertaining to incarceration of juveniles. I met with representatives of the National Association for the Advancement of Colored People on Sunday, February 20, and they requested the following points be clarified in law.

1. Juveniles be released immediately on bond or recognizance of the parents.
2. No juvenile be incarcerated with or in facilities which house adults unless the person is charged and will be tried as an adult. (Separate facilities).
3. The parents of any juvenile arrested shall be notified immediately following arrest or within a reasonable time but no later than _____?

Sincerely,

Bert Chaney
Bert Chaney

BC:sc

cc: Members of Senate Judiciary Committee
Darrell Pope