Approved March 18, 1985
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./p.m. on February 27, 1985 in room 514-S of the Capitol.

All members were present except: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Judge Donald Allegrucci, Kansas District Judges Association
Judge Robert Morrison, Sedgwick County District Court
Judge Thomas Graber, District Judge, Sumner County
Judge Lee Nusser, Magistrate Judges Association
Karen Dunlap, Kansas Court Services Officers
Jim Clark, Kansas County and District Attorneys Association
Hannes Zacharias, City of Lawrence

Senate Bill 2 - Prohibition against holding juveniles in adult jail; Re Proposal No. 24.

Judge Donald Allegrucci, Kansas District Judges Association, stated the judges do not oppose the concept of the bill, but there are concerns. You are changing the definition of a juvenile detention center. Their only alternative is to transport the juveniles. You will note the people who are here today are the people who are going to deal with the people out in the real world. He stated judges are not going to send traffic offenders 150 to 175 miles to Wichita. The judges association is concerned about the juvenile, but they need the tools. Where are the alternatives to detention? He suggested putting the laws in place first, and then mandating nondetention. A copy of Judge Allegrucci's testimony is attached (See Attachment I).

Judge Robert Morrison, Sedgwick County District Court, stated he believes the enactment of this bill would have most undesirable results. He said he could best explain by reviewing some other Kansas legislative attempts at removing minors from adult lockups. A copy of his comments are attached (See Attachment II). He suggested to the committee to request the Kansas Judicial Council have another review.

Judge Thomas Graber, District Judge, Sumner County, stated he is opposed to the bill. He said he doesn't deal with statistics, he deals with kids who have problems. He is speaking for judges in Reno and Harvey Counties. There have to be detention facilities for some of the kids they have, and they are going to be without a place to detain them. They checked their alternative facilities, and they were told they may not be able to take care of them. What happens to his county? Sedgwick County says they cannot guarantee a place for their offenders. Until there are other resources, don't take away what they already have. Riley County has a separate facility for their juveniles in the basement of their jail, but this bill would prohibit them using those facilities. Having juveniles in a humane existence needs to be pursued, but not in a manner as this bill proposes. Rural areas need to retain a youth, and many areas would be without secure facilities if this bill is passed. We don't need to develop detention facilities or be concerned about it, let's develop the other facilities and wait and see if they work. When a kid is dangerous to himself he needs immediate care. Judge Graber suggested looking at specific

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room 514-S, Statehouse, at 10:00 a.m./pxx. on February 27, 1985

Senate Bill 2 continued

categories of kids that cannot be dealt with in home counties. The kids who are commonly picked up on the highway from out of county, out of state, and are 16 or 17 years old need to be detained until daytime.

Judge Lee Nusser, Magistrate Judges Association, stated he has the same concerns as expressed by the preceding judges. He said in Section 1 of the bill it prohibits incarceration in an adult jail, and we have no place for them. He lives in a small community and sees a lot of kids through the year. They would have to have some alternative other than what is in this bill. Their closest alternative facility is Wichita, and these detention centers are not going to have room if they use them. It is a forty-six hour trip to these centers for some communities. There is a continuous problem with runaways. You can't turn your back on these kids, you have to help them. The concept of the bill is great, but the practicality is not. The association is asking the committee not to pass this bill in its present form.

Karen Dunlap, Kansas Court Services Officers, stated her organization is greatly concerned about the possible impact of this bill. They are not in dispute with the philosophy of the bill, we are in agreement that in most cases, jails are not in the best interest of any child. The implementation of the bill as written does raise several unanswered questions. A copy of her testimony is attached (See Attachment III).

Jim Clark, Kansas County and District Attorneys Association, appeared in opposition to the bill. He stated he is concerned with the way dangerous offenders are treated in Section 6 of the bill. We need to see how much federal benefit we are getting. There would not be a place for the offenders in the counties if this bill passes. Unless funding of a secure facility for dangerous offenders is provided, this bill would be a disaster. The dangerous offender is not cared for in this bill, and there is no proposal from the state to fund that.

Hannes Zacharias, City of Lawrence, testified he would rise in mild opposition to this bill. He has no problem with the philosophy, but has problems with the mechanics of the bill; in line 38, the language "same building as an adult jail". I would like to have the flexibility to put "secure facility" in the same building as the adult jail. He recommended extending the effective date to 1988 to give them more time to comply.

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 2-27-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
David O'Brien	Topeka	SRS-Youth Services
Lynn Barclay	"	KCSL
Kopper Pellant	Topeka	Shawnee Co. Dept of Corrections
Robert L. Morrison	Wichita	Dist Ct.
Donald Allegrucci	Pittsburg	District Judge
Thomas H. Huber	Wellington	Dist. Judge
Karen Dunlap	Concordia	Court Services
Dee Nusser	St John	Judge
Sue Lockett	Topeka	Kansas Action for Children
Ann Johnson	Topeka	Kansas Association of Child Care Workers
Glenn W. Braley	Topeka	KCDAA
Leonard A. Murphy	LaCrosse	JUDGE
Mary Lou McNeil	Topeka	KBI
Nancy Ingle	"	Budget
Bob Lee	"	SRS
Chris McKenzie	Topeka	League of Ks. Municipalities
David Clafflin	LAWRENCE	VISITOR
RON CALBERT	MEADE	U.J.C.
Barb Remert	Topeka	Planned Parenthood of Ks.
John Roth	Overland Park	Visitor
Mike Slotsky	Lawrence	Intern Sen Parrish
Ron Carnes	Topeka	SRS
Brenda Hoyt	"	AG
Marjorie Van Buren	Topeka	OJA
Mike Boyer	Topeka	KBI

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GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
HANNES ZACHARIAS	LAWRENCE	City of Lawrence
HARRY WILLIFORD	WICHITA	Boeing Co.
Wanda Fuller	Topeka	SRS
Ruth Glover	Topeka	KFCG

Attach. IV

2-27-85
10:

TO: Senate Judiciary Committee

FROM: Donald L. Allegrucci, Chairman
Legislative Coordinating Committee of
Kansas District Judges Association

RE: Senate Bill No. 2

The District Judges Association supports the primary objective of Senate Bill No. 2, which is to remove juveniles from adult jails. However, we cannot support Senate Bill No. 2 unless conforming juvenile detention facilities are in place and reasonably available to the courts on the date that Senate Bill No. 2 is to become effective.

The following are submitted as examples of problems which Senate Bill No. 2 does not address and which, therefore, are of concern to the judges:

1. Chronic runners. Senate Bill 2 does not give adequate protection to youngsters that have chronic running problems. Let us take a hypothetical example of a teenage girl who is a child in need of care who has a chronic running problem. At times, youth will run in order to avoid what they perceive to be an unpleasant situation. Say for example, that a hypothetical youth got consequented for an inappropriate behavior, was angry at the staff, had a history of temper tantrums and running as a way of dealing with such stresses. If apprehended by the police and returned to the facility, she might run again within ten minutes. She could very easily get as far as 100 miles away in a few hours. Once apprehended by the police, she would have to be returned again, only to run immediately upon her return to the facility. This scenario could be repeated and, in fact, has been, many times. Obviously, such a child presents great difficulty for those people entrusted with acting in the best interest of the child. Are they to continue returning her to the foster placement even though there is a high probability she will continue to run? What impact will this have on the juvenile who is a chronic runner? Is the inability to detain these youngsters serving the best interest of the child? Is short term detention for children of this nature more harmful to the youth than allowing them to run and expose themselves to the dangers of hitch-hiking, the availability of drugs, finding a place to stay wherever possible at whatever cost, no resources for food, clothing and crisis counseling, along with an added incentive to resort to breaking the law to survive. How would Senate Bill 2 protect the interests of these children?

2. Alcohol, Drug Affected Behavior. Often times youth exhibit behavior that is drug and alcohol affected, or is otherwise out of control, even though they have not committed an offense that would allow them to be detained under the

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provision of Senate Bill 2. Having these youth out on their own presents a great danger to them. For example, one girl who has a chronic chemical dependency problem, stated her intention to run off with an employee of a carnival. She ran several times from our facility only to be returned. Each time, she clearly stated her intention that, if returned, she would simply run again. Finally, she was apprehended by police officers and group home employees in the trailer of a carnival employee and was taken into protective custody, against her will, for her protection. My understanding is that under Senate Bill 2, we would not have been able to afford this youngster any protection. Although she had not broken any adult laws, are we adequately insuring her right to a safe and secure environment by allowing her to make this choice. Several days later, when she became more rational and her judgment more sound, the youth was able to better assess her lack of judgment with regard to this incident. Another hypothetical example would pertain to a youth who is out of control and presenting a clear danger to others and to the personal property of others. Under Senate Bill 2, what provisions would be made for a youth who is so out of control that he is physically damaging a youth care facility or foster home? If this youth could not be picked up and detained by police upon the filing of charges, what recourse would the youth home, youth shelter or foster placement have? Would they be expected to allow the youth to continue in his unrestrained, out of control destructiveness, with no immediate consequences? Obviously, they would not want to have the youth removed from the facility with no provisions for environmental protection. However, what are the other alternatives without available detention?

3. If an alleged juvenile offender is apprehended at midnight for a felony offense, then by 6:00 a.m. the sheriff will have to transport the juvenile offender to Olathe, Wichita, etc. The detention hearing may be set for 3:00 p.m. that day. The sheriff's office will have to transport the juvenile offender back for the hearing. If the court determines that detention is required, the sheriff will have to transport one more time. Thus, in less than 24 hours, the sheriff's department will have made three round trips and the juvenile offender has yet his first appearance, trial and, if convicted, adjudication, usually all separate hearings.

4. Another common event occurs where the police apprehend the juvenile offender and the parents, for one reason or another, refuse custody. The same scenario as above occurs, but at the time of the detention hearing the parents have a change of heart and the juvenile offender is placed in his parents' custody. The family gets home and sometimes that very night, "things blow up" and police apprehend juvenile offender again and we have an immediate repeat, so that there has now been five to six trips and we're still not to the first appearance. This happens quite often.

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Some of the immediate side effects would be the prolonging of setting the detention hearings the full 48 hours. Now, the court sets the detention hearing the very next day. With Senate Bill 2, the tendency would be to delay as long as possible to blunt some of the concentrated strain on the sheriff's department manpower within that first 24 hours. I can also envision the sheriff's department "taking the juvenile offender into custody", releasing at the end of six hours and then re-apprehending. The ultimate abuse here is obvious. The tendency to look for outs to ease the strain will be less desirable than the present system.

Attch. I

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10:

COMMENTS ON SENATE BILL NO. 2, FEBRUARY 27, 1985
BY ROBERT L. MORRISON, DISTRICT JUDGE

I believe that the enactment of Senate Bill No. 2 would have most undesirable results. I can best explain by reviewing some other Kansas legislative attempts at removing minors from adult lockups.

Sect. 1, restricts the incarceration of an adolescent traffic violator who is subject to prosecution as an adult. In 1978 the legislature reduced the age on a juvenile "traffic offender" from 16 to 14 years of age but provided a restriction that "...no child under the age of eighteen (18) years of age shall be incarcerated for any such offense." [L.1978, Ch. 158, § 34] That particular section became K.S.A. 8-2117. Judges who formerly had authority to incarcerate 16 and 17 year old traffic violators now found they were without power to impose any sanction on those between 14 and 18 other than to assess a fine or suspend the driver's license for up to one year.

In 1981 the courts were granted authority to place restrictions on the driver's license in lieu of suspension. [L. 1981, Ch. 183, § 1] Many judges found themselves dealing with youthful traffic offenders from whom a fine was uncollectible and who refused to honor restrictions or suspension of their driver's license. The courts were virtually powerless in such situations. A 1982 amendment authorized incarceration of traffic offenders 14 to 18 years of age in a county jail for not more than 10 days in quarters separate from adult prisoners. [L. 1982, Ch. 182, § 118]

Sect. 2 relates to 16 and 17 year olds who have violated the fish and game laws. When the new Kansas juvenile offenders code was passed the age division for fish and game violations was reduced to 16, the age at which one is eligible to obtain a license. Following the lead from the preceeding year, the legislature authorized incarceration but limited it to not more than 10 days. [L. 1983, Ch. 140, § 2]

Sect. 3 and 4 would amend the Kansas code for care of children which would make it impossible to provide even very temporary shelter for these children.

Sect. 5 and 6 would amend the Kansas juvenile offenders code and would severely limit the detaining of a juvenile offender in other than a juvenile detention facility, which may not be in the same building as an adult jail.

Sect. 7 and 8 would repeal the authority to hold an adjudicated juvenile offender in a county jail following a dispositional order placing the juvenile offender in the custody of the secretary of social and rehabilitation services (SRS).

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In 1979 the legislature sought to expedite the removal of such juveniles from county jails by enactment of a restriction that they be detained in a county jail no longer than 72 hours after SRS was advised that the juvenile had been committed to SRS. [L. 1979, Ch. 126, § 6; L. 1979, Ch. 119, § 1] Acknowledging that placements might be not accomplished or state youth centers might not be able to receive them within the 72 hour period, the statute included the provision that "...the secretary may make any temporary placement the secretary deems appropriate, other than placement than in a jail..." The discussions at the time were to the effect that, if the youth center couldn't receive them, the secretary could move them to some other temporary holding type of arrangement.

The result was that often, when the 72 hours expired and it had been impossible to accomplish replacement, the only temporary placement available was back in the home from which the youth had been removed. Such action created much concern and consternation in the community which had been subjected to the unlawful acts of the juvenile offender. That was corrected in 1982 when a similar provision was included in the new Kansas juvenile offenders code but with a proviso that the secretary could leave the youth in a jail for an additional period of 10 days if approved by the court. [L. 1982, Ch. 182, § 103 and § 107]

In discussing sections 9 and 10 it is necessary to review some legislative history. In its 1982 session the legislature was considering replacing the old Kansas juvenile code with the Kansas code for care of children and the Kansas juvenile offenders code. [L. 1982, Ch. 182] Preceeding 1982 there had been many attempts to make juvenile offenders more accountable for their actions. Prior 1982 the state youth centers had been under the direction of the commissioner of mental health and retardation services within SRS, the operator of the state hospitals. On January 22, 1982, the governor issued Executive Reorganization Order Number 20 which created within SRS a new juvenile offender services headed by a commissioner. [L. 1982, Ch. 474] In the Executive Reorganization Order the governor said, "Our juvenile justice system has at times failed to communicate to the offender the message which is most basic to his or her rehabilitation; that actions have consequences; and the more serious the action, the more grave the consequence."

Before Executive Reorganization Order Number 20 became effective on July 1, 1982 it was amended and a more extensive reorganization of the department of social and rehabiliation services was accomplished by putting all youth programs under a new commissioner of youth services. [L. 1982, Ch. 357] Under the commissioner of youth services was then created the positions of director of juvenile offender programs and director of child in need of care programs. I believe it was then that Secretary Harder suggested creation of a new advisory commission on juvenile offender programs to assist the new commissioner and director in studying and enhancing programs designed to

more effectively deal with juvenile offenders. Particular attention is invited to the charge given this advisory commission as it is shown on page 13 commencing at line 0488 in Senate Bill No. 2, i.e. "... charged with the task of making recommendations to those responsible for developing a working philosophy of accountability related to juvenile offender programs."

In 1982 the governor's committee on criminal administration was being abolished and the administering of any federal funds available to the state under the federal juvenile justice and delinquency act of 1974 was transferred to SRS. [L. 1982, Ch. 324, § 3] In order to clarify what body would review and approve applications for grants of such funds, the wording found on lines 0500 through 0503 of Senate Bill No. 2 was incorporated into the 1982 bill and made a function of this new advisory commission. It seems that they have taken compliance with the federal act as their principle objective regardless of the fiscal impact it may have on the state.

Sect. 9 seems to have the effect of removing the Advisory Commission of Juvenile Offender Programs from it's mission to SRS and put it somewhat on that same level as the Children and Youth Advisory Committee. [See K.S.A. 1984 Supp. 38-1401 and K.S.A. 38-1402 et. seq.] It would seem to me that one advisory body on that broad of scope is sufficient.

Sect. 10 drastically changes the original concept of this advisory commission's task. Instead of developing more effective programs to deal with juvenile offenders, their whole concern is convincing this legislature that it must immediately comply with the federal act.

The activities of the advisory commission on juvenile offender programs over the two and a half years it has existed indicate that they have no desire to work on the task which they were originally assigned. I agree that repealing K.S.A. 75-5388 and 75-5389 abolishing the advisory commission on juvenile offender programs would be quite appropriate. If the federal government ever requires 100% compliance with the jail removal aspect of the juvenile justice and prevention act of 1974, I think Kansas is going to have to acknowledge that it is not economically feasible for us and forgo accepting those federal funds, if there are any by that time.

Attch. II

2-27-85
10:00

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

Testimony
before
Senate Judiciary Committee

Honorable Chairman and Committee Members:

My name is Karen Dunlap and I am the Chief Court Services Officer for the Twelfth Judicial District. I am here representing the Kansas Association of Court Services Officers. We represent professionals across the State of Kansas who work with juvenile and adult offenders through the court system.

Kansas Court Services Officers are greatly concerned about the possible impact of Senate Bill 2, requiring the removal of juveniles from Kansas jails, if the bill is passed as it is currently written.

As an organization, we are not in dispute with the philosophy of the bill, we are in agreement that in most cases, jails are not in the best interest of any child.

However, the implementation of the bill as written does raise several unanswered questions. For example:

- How about community involvement? Communities at this point have not been involved to determine a needs assessment, or to determine if this will be a regional system or a state system. Funding has been suggested for nonsecure facilities, but funding for secure facilities has not even been addressed.

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Attch. III

- How about available facilities? Communities need to be involved to determine facilities that are already available within the community.

- Areas of responsibility? Who will be responsible for establishing criteria for which juveniles should be held. There is already a problem with inappropriate jailing, will criteria be established? Who will be responsible for screening, intake and transportation?

- Transportation? Will funding be established at cost per trip, at .22 cents per mile, rate per hour?

- The current bill addresses the youth over 16, but under 18, who are convicted of DUI. They are not to be jailed. Has an inpact study been made to determine the sentences of municipal courts and the additional number of juveniles who will be required to be detained in juvenile detention facilities. Again, will cost be a factor, and will there be any predictability of the number who will require detention.

- Available beds? Will beds be available when needed within six hours? Will beds be paid for on an as needed basis and only if used or will they be taken because a municipal court is holding a 17 year old for DUI sentencing. Will beds be guaranteed to a region, or will there be state wide accessibility. Will a juvenile in Concordia, Kansas be required to travel to Topeka to be detained? If so, is he then to be denied access to his parents, his attorney and necessary court actions?

Attch. III

- Funding Formula, how will beds be paid for, how will transportation be paid for, how will secure facilities be funded?

- What group will have daily control over function of detention facilities?

These are only a few of the many questions our association has on the implementation of Senate Bill 2. I could definitely state that these questions are only the beginning.

No, I do not come today to bring alternatives or solutions. I came only to say there are many, many questions and we need a plan. Senate Bill 2 authorizes for the establishment of an advisory commission of Juvenile Offender Programs. This commission must be expanded to include representation from Court Services. Therefore, we are requesting that line 383, page 11, be amended to include Court Services. We would further request that this advisory commission be charged with formally implementing a plan for the removal of juveniles fro the jails. This plan would include involvement from communities, county and judicial districts, law enforcement and court services to establish a plan for establishing procedure, determining facilities available. When a full plan is developed to include secure and non secure facilities costs will be determined and funding formulas established. Without full funding and without total planning a mandate of removing juveniles from jails could not be met without confusion and disaster.

Attch. III

In review, the Kansas Association of Court Services officers makes the following recommendations:

1. The Advisory Commission on Juvenile Offender Programs to be expanded to include a representative of Court Services.

2. Planning should be with local involvement for a regional system or a state system. A total program for secure and non secure facilities with implementation and funding required should be established prior to mandate of removal.

3. Funding in full must be provided prior to mandate.

4. The mandate for implementation should be delayed until 1988 to allow for development of implementation plan and required funding to be legislated.

I thank you for your time and I would attempt to answer any questions.

Attch. III