

Approved 3-23-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

4:30 P.M. ~~xxx/xxx~~ on March 2, 19 89 in room 123-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty, Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Gene Johnson, Kansas Community Alcohol Safety Action Project

Senate Bill 262 - Method of trial for disdemeanor and traffic

Senator Moran, chairman of the subcommittee on criminal matters, explained the bill. Senator Rock moved to report the bill favorably. Senator Bond seconded the motion. Senator Moran made a substitute motion to amend the bill by inserting "first" before "notice" in line 23. Senator Feleciano seconded the motion. The motion carried. Senator Feleciano moved to report the bill favorably as amended. Senator Oleen seconded the motion. The motion carried.

Senate Bill 263 - Notice of plea of insanity.

Senator Moran explained the bill and the attached amendment (See Attachment I). Following committee discussion, Senator Gaines moved to amend the bill as indicated on the balloon. Senator Rock seconded the motion. The motion carried. Senator Oleen moved to report the bill favorably as amended. Senator Petty seconded the motion. The motion carried.

Senate Bill 211 - Credit for time spent in residential facility in imposing consecutive sentences.

The chairman explained the bill and the proposed amendment on page 3, lines 106 and 107. Considerable committee discussion was held. Senator D. Kerr moved to amend the bill in line 106 by inserting "residential" after "community corrections". Senator Bond seconded the motion. The motion carried. Senator Kerr moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

Senate Bill 212 - Purpose of state reception and diagnostic center.

Senator Bond moved to amend the bill in line 22 by reinserting "all" before "felony". Senator Petty seconded the motion. The motion carried. Senator Gaines moved to amend the bill conceptually to give authority to the Department of Corrections to contract out for private services. Senator Bond seconded the motion. Following considerable committee discussion, the motion carried. A committee member was concerned with turning over so much authority to the secretary of corrections. The citizens were promised certain things and the promises haven't been kept. I would like to hold these two bills to wait to see what the plans are the department has. I would like to know how it will affect my district.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 123-S, Statehouse, at 4:30 P.M. ~~xxx/xxx~~ on March 2, 1989, 1989.

Senate Bill 212 - continued

Another committee member pointed out 100 beds will be given up, and I am concerned with the flexibility given to the secretary. Volume Shoes is also concerned about the facility. A copy of a letter from Volume Shoes is attached (See Attachment II). Senator Gaines moved to amend the bill to require the secretary of corrections to conduct a public hearing concerning public safety. Senator Bond seconded the motion. Following committee discussion, the motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Yost seconded the motion. The motion carried. Senators Parrish and Petty requested their "no" vote be recorded in the minutes.

Senate Bill 213 - Evaluation of and program for female correctional inmates.

Senator Parrish moved to amend the bill as indicated on the attached balloon (See Attachment III). Senator Gaines seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Kerr seconded the motion. The motion carried. Senators Petty and Parrish requested their "no" vote be recorded in the minutes.

Senate Bill 214 - Assessment of costs of transporting correctional inmates to court proceedings.

Senator Gaines moved to report the bill favorably. Senator Bond seconded the motion. The motion carried.

Senate Bill 75 - Alcohol and drug evaluations required for certain offenders.

Gene Johnson, Kansas Community Alcohol Safety Action Project, explained the proposed amendments that appear on the attached balloon (See Attachment IV). Senator Bond moved to amend the bill by changing "shall" to "may" throughout the bill. Senator Gaines seconded the motion. Following committee discussion, Senator Bond withdrew his motion. Senator Yost moved to adopt the amendments that appear on the balloon. Senator Parrish seconded the motion. The motion carried.

The meeting adjourned.

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

SENATE BILL No. 263

By Committee on Judiciary

2-14

14 AN ACT concerning criminal procedure; relating to plea of insanity;
15 notice thereof; amending K.S.A. 22-3219 and repealing the existing
16 section.
17

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

19 Section 1. K.S.A. 22-3219 is hereby amended to read as follows:
20 22-3219. (1) Evidence of mental disease or defect excluding criminal
21 responsibility is not admissible upon a trial unless the defendant
22 serves upon the prosecuting attorney and files with the court a
23 written notice of such defendant's intention to rely upon ~~the~~ defense
24 ~~of insanity or other~~ mental disease or defect. Such notice must be
25 served and filed before trial and not more than thirty days after
26 entry of the plea of not guilty to the information or indictment. For
27 good cause shown the court may permit notice at a later date.

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involving the presence of

28 (2) A defendant who files a notice of intention to rely on ~~the~~
29 defense ~~of insanity or other~~ mental disease or defect thereby submits
30 and consents to abide by such further orders as the court may make
31 requiring the mental examination of the defendant and designating
32 the place of examination and the physician or physicians by whom
33 such examination shall be made. No order of the court respecting
34 a mental examination shall preclude the defendant from procuring
35 at such defendant's own expense an examination by a physician of
36 such defendant's own choosing. A defendant requesting a mental
37 examination pursuant to K.S.A. 22-4508 and amendments thereto
38 may request a physician of such defendant's own choosing. The judge
39 shall inquire as to the estimated cost for such examination and shall
40 appoint the requested physician if such physician agrees to accept
41 compensation in an amount in accordance with the compensation
42 standards set by the board of supervisors of panels to aid indigent

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Attachment I
3-2-89 pm

43 defendants. A report of each mental examination of the defendant
44 shall be filed in the court and copies thereof shall be supplied to
45 the defendant and the prosecuting attorney.

46 Sec. 2. K.S.A. 22-3219 is hereby repealed.

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

49



VOLUME SHOE CORPORATION

A DIVISION OF THE MAY DEPARTMENT STORES COMPANY
CORPORATE HEADQUARTERS • 3231 EAST 6TH STREET • P.O. BOX 1189 • TOPEKA, KANSAS 66601
913/233-5171 • CABLE ADDRESS: VOLSHU
OPERATING NATIONALLY AS PAYLESS SHOESOURCE

Volume Shoe Corporation is in agreement with the Kansas Department of Corrections intent to remove the current population and programs at the State Diagnostic and Reception Center and relocate them to a proposed new facility. Also, Volume Shoe Corporation supports the Department of Corrections agreement that would prohibit the use of the Correctional Vocational Training Center for housing any maximum security prisoners.

Volume Shoe Corporation, however, is in opposition to continued use, of any kind, of the existing State Diagnostic and Reception Center. While it may be in the State's best interest to relocate female prisoners currently held at the KCIL to a new facility, their relocation to the existing SRDC facility would require significant refurbishment spending and further degrade the adjacent business and residential environment by permanently housing maximum security prisoners in this location.

To serve the best interests of the State, the City and the prisoners in question, suitable facilities should be located away from major population or business centers. The existing SRDC facility should be razed and the site utilized for local economic development purposes.

Attachment II
Senate Judiciary Committee
3-2-89

SENATE BILL No. 213

By Committee on Judiciary

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AN ACT concerning corrections; relating to female inmates; amend-
ing K.S.A. 75-5220 and 75-5229 and repealing the existing sections.

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

Section 1. ~~K.S.A. 75-5220~~ is hereby amended to read as follows:
75-5220. (a) Within three days of receipt of the notice provided for
in K.S.A. 75-5218 and amendments thereto, the secretary of cor-
rections shall notify the sheriff having such offender in custody to
convey such offender immediately to the state reception and diag-
nostic center or if space is not available at such center, then to some
other state correctional institution until space at the center is avail-
able, except that, in the case of first offenders who are conveyed to
a state correctional institution other than the state reception and
diagnostic center, such offenders shall be segregated from the in-
mates of such correctional institution who are not being held in
custody at such institution pending transfer to the state reception
and diagnostic center when space is available therein. The expenses
of any such conveyance shall be charged against and paid out of the
general fund of the county whose sheriff conveys the offender to the
institution as provided in this subsection.

(b) Any female offender sentenced according to the provisions of
K.S.A. 75-5229 and amendments thereto shall not be conveyed to
the state reception and diagnostic center but shall be conveyed by
the sheriff having such offender in custody directly to ~~the Kansas~~
~~correctional institution at Lansing~~ a correctional institution des-
ignated by the secretary of corrections. The expenses of such con-
veyance to the ~~Kansas correctional institution at Lansing~~
designated institution shall be charged against and paid out of the

On July 1, 1989,

33 19

, subject to the provisions of section 3

3-2-89
Attachment III

44 to such institution.

45 (c) Each offender conveyed to a state correctional institution pur-
46 suant to this section shall be accompanied by the record of the
47 offender's trial and conviction as prepared by the clerk of the district
48 court in accordance with K.S.A. 75-5218 and amendments thereto.

On July 1, 1989,

49 Sec. 2. ~~K.S.A. 75-5229~~ is hereby amended to read as follows:
50 75-5229. (a) Every woman sentenced to imprisonment for a felony
51 shall be sentenced to the custody of the secretary of corrections.

52 (b) Every woman sentenced to the custody of the secretary of
53 corrections shall be given a scientific examination and study and shall
54 have a ~~rehabilitation~~ program planned and recommended for her,
55 which examination, study and program shall be substantially equal
56 to that ~~required for male felons at the state reception and di-~~
57 ~~agnostic center as provided for in K.S.A. 75-5262 and amendments~~
58 ~~thereto. At the direction of and in accordance with procedures~~
59 ~~prescribed by the secretary,~~ The examination shall be given, the
60 study shall be made and the ~~rehabilitation~~ program shall be pre-
61 pared at the ~~Kansas correctional institution at Lansing or at~~
62 ~~another appropriate state institution, other than a correctional~~
63 ~~institution, in the manner prescribed in K.S.A. 75-5209 and~~
64 ~~amendments thereto, or at a local governmental or private fa-~~
65 ~~ility which has been approved by the secretary for these pur-~~
66 ~~poses in accordance with procedures prescribed by the secretary of~~
67 ~~corrections.~~

,subject to the provisions of section 3

New Sec 3. The state correctional-vocational training center at Topeka, Kansas, shall be used to confine or house only female inmates having a custody or security classification of medium or minimum or lower and shall not be used to confine or house such inmates having a maximum custody or security classification either on a permanent or temporary basis.

68 Sec. ~~3.~~ K.S.A. 75-5220 and 75-5229 are hereby repealed.

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

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Kansas register

SENATE BILL No. 75

By Senators Doyen, Allen, Frahm, Gaines, D. Kerr,
Montgomery, Parrish, Vidricksen,
Winter and Yost

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AN ACT relating to certain alcohol and drug related offenses; concerning diversion, disposition or sentencing; amending K.S.A. 12-4509, 21-4502, 21-4603, 22-2909 and 38-1563 and K.S.A. 1988 Supp. 12-4416 and 38-1663 and repealing the existing sections; also repealing K.S.A. 21-4603a.

, 38-1502, 38-1602 and

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

Section 1. K.S.A. 1988 Supp. 12-4416 is hereby amended to read as follows: 12-4416. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the city attorney, the city attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to *counsel*, a speedy arraignment, a speedy trial, and the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. The diversion agreement shall state:

- (1) The defendant's full name;
- (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name;
- (3) the defendant's sex, race and date of birth;
- (4) the crime with which the defendant is charged;
- (5) the date the complaint was filed; and

3-2-89
Senate Judiciary Comm.
Attachment IV

45 (6) the municipal court with which the agreement is filed.

46 (b) If a diversion agreement is entered into in lieu of further
47 criminal proceedings on a complaint alleging an alcohol related of-
48 fense, the diversion agreement shall include a stipulation, agreed to
49 by the defendant and the city attorney, of the facts upon which the
50 charge is based and a provision that if the defendant fails to fulfill
51 the terms of the specific diversion agreement and the criminal pro-
52 ceedings on the complaint are resumed, the proceedings, including
53 any proceedings on appeal, shall be conducted on the record of the
54 stipulation of facts relating to the complaint. In addition, the agree-
55 ment shall include a requirement that the defendant:

56 (1) Pay a fine specified by the agreement in an amount equal to
57 an amount authorized by K.S.A. 8-1567 and amendments thereto
58 for a first offense or, in lieu of payment of the fine, perform com-
59 munity service specified by the agreement, consonant with K.S.A.
60 8-1567 and amendments thereto; and

61 (2) enroll in and successfully complete an alcohol and drug safety
62 action program or a treatment program, or both, as provided in
63 K.S.A. 8-1008 and amendments thereto, and specified by the agree-
64 ment, and pay the assessment required by K.S.A. 8-1008 and amend-
65 ments thereto.

66 (c) If a diversion agreement is entered into in lieu of further
67 criminal proceedings on a complaint alleging an alcohol related of-
68 fense, the diversion agreement may restrict the defendant's driving
69 privileges, in addition to any suspension and restriction required by
70 K.S.A. 1988 Supp. 8-1014 *and amendments thereto*, to driving only
71 under the following circumstances: (1) In going to or returning from
72 the person's place of employment or schooling; (2) in the course of
73 the person's employment; (3) during a medical emergency; (4) in
74 going to and returning from probation or parole meetings, drug or
75 alcohol counseling or any place the person is required to go to attend
76 an alcohol and drug safety action program as provided in K.S.A. 8-
77 1008 and amendments thereto; (5) at such times of the day as may
78 be specified by the diversion agreement; and (6) to such places as
79 may be specified by the diversion agreement.

80 In lieu of restricting the defendant's driving privileges as provided
81 above, or in lieu of suspending or revoking such privileges, th

82 diversion agreement may restrict the defendant's driving privileges
83 to driving only a motor vehicle equipped with a functioning ignition
84 interlock device, as defined by K.S.A. 1988 Supp. 8-1013 *and amend-*
85 *ments thereto*, which is approved by the division of vehicles of the
86 department of revenue and is obtained, installed and maintained at
87 the defendant's expense. Any fine required by this subsection[*], (b)
88 shall be reduced by the diversion agreement in an amount equal to
89 the expense incurred by the defendant for obtaining, installing and
90 maintaining such device.

91 Restrictions imposed pursuant to this subsection shall be for a
92 period of not less than 90 days nor more than one year, as specified
93 by the diversion agreement.

94 Upon entering a diversion agreement restricting a person's driving
95 privileges under this subsection, the city attorney shall require that
96 the license be surrendered to the city attorney. The city attorney
97 shall transmit the license to the division of vehicles of the department
98 of revenue, together with a copy of the diversion agreement. Upon
99 its receipt, the division of vehicles shall issue without charge a
100 driver's license which shall indicate on the face of the license that
101 restrictions have been imposed on the person's driving privileges
102 and that a certified copy of the diversion agreement imposing the
103 restrictions is required to be carried by the person for whom the
104 license was issued any time the person is operating a motor vehicle
105 on the highways of this state. If the person is a nonresident, the
106 city attorney shall transmit a copy of the diversion agreement to the
107 division. The division shall forward a copy of the diversion agreement
108 to the motor vehicle administrator of the person's state of residence.
109 The city attorney shall furnish to any person whose driving privileges
110 have been restricted under this subsection a copy of the diversion
111 agreement, which for a period of 30 days only shall be recognized
112 as a valid Kansas driver's license pending issuance of the restricted
113 license as provided in this subsection.

114 Upon expiration of the period of time for which restrictions are
115 imposed pursuant to this subsection, the licensee may apply to the
116 division for the return of the license previously surrendered by the
117 licensee. If the license has expired, the person may apply to the
118 division for a new license, which shall be issued by the division

119 upon payment of the proper fee and satisfaction of the other con
120 ditions established by law, unless the person's privilege to operate
121 a motor vehicle on the highways of this state has been suspended
122 or revoked prior to expiration. Violation of restrictions imposed under
123 this subsection is a misdemeanor subject to punishment and driver's
124 license suspension as provided by K.S.A. 1987 1988 Supp. 8-291
125 and amendments thereto.

126 (d) If a diversion agreement is entered into in lieu of further
127 criminal proceedings on a complaint alleging an alcohol related of-
128 fense, the diversion agreement may suspend or revoke the defend-
129 ant's driving privileges. Suspension or revocation imposed pursuant
130 to this subsection shall be for a period of not less than 90 days nor
131 more than one year, as specified by the diversion agreement.

132 Upon entering a diversion agreement suspending or revoking a
133 defendant's driving privileges pursuant to this subsection, the city
134 attorney shall require that such license be surrendered to the city
135 attorney. The city attorney shall transmit the license to the division
136 to be retained by the division.

137 Upon expiration of the period of time for which suspension or
138 revocation is imposed pursuant to this subsection, the licensee may
139 apply to the division for the return of the license previously sur-
140 rendered by the licensee. If the license has expired, the person may
141 apply to the division for a new license, which shall be issued by
142 the division upon payment of the proper fee and satisfaction of the
143 other conditions established by law, unless the person's driving priv-
144 ileges have been otherwise suspended or revoked prior to expiration.

145 (e) If the city attorney elects to offer diversion in lieu of further
146 criminal proceedings on the complaint and the defendant agrees to
147 all of the terms of the proposed agreement, the diversion agreement
148 shall be filed with the municipal court and the municipal court shall
149 stay further proceedings on the complaint. If the defendant declines
150 to accept diversion, the municipal court shall resume the criminal
151 proceedings on the complaint.

152 (f) The city attorney shall forward to the division of vehicles of
153 the state department of revenue a copy of the diversion agreement
154 at the time such agreement is filed with the municipal court. The
155 copy of the agreement shall be made available upon request to an

156 county, district or city attorney or court.

157 New Sec. 2. If a diversion agreement between a city attorney
 158 and a defendant is entered into in lieu of further criminal proceedings
 159 alleging a violation by the defendant, while under 21 years of age,
 160 of an ordinance prohibiting an act prohibited by the uniform sub-
 161 stances act (K.S.A. 65-4101 *et seq.* and amendments thereto) or
 162 K.S.A. 41-719, 41-727, 41-2719, 65-4152, 65-4153, 65-4154 or 65-
 163 4155, and amendments thereto, the agreement shall require the
 164 defendant to submit to and complete an alcohol and drug evaluation
 165 by a community-based alcohol and drug safety action program cer-
 166 tified pursuant to K.S.A. 8-1008 and amendments thereto and to
 167 pay a fee not to exceed the fee established by that statute for such
 168 evaluation. If the city attorney finds that the defendant is indigent,
 169 the fee may be waived.

41-804,

41-2720,

170 Sec. 3. K.S.A. 12-4509 is hereby amended to read as follows:
 171 12-4509. (a) Whenever an accused a person is found guilty of the
 172 violation of an ordinance, the municipal judge may:

173 (1) Release the accused person without imposition of sentence;
 174 or

175 (2) release the accused person on probation after the imposition
 176 of sentence, without imprisonment or the payment of a fine or a
 177 portion thereof, subject to conditions imposed by the court; or

178 (3) impose such sentence of fine, or imprisonment, or both, as
 179 may be authorized for the ordinance violation.

180 (b) *In addition to or in lieu of any other sentence authorized by*
 181 *law, whenever an accused a person is found guilty of the violation*
 182 *of an ordinance and there is evidence that the act constituting the*
 183 *violation of the ordinance was substantially related to the possession,*
 184 *use or ingestion of a cereal malt beverage or an alcoholic beverage*
 185 *liquor by such person, the judge may:*

186 (1) Order any of the dispositions authorized by subsection
 187 (a); or

188 (2) order such person to attend and satisfactorily complete
 189 a suitable educational or training program directed to the effects
 190 of alcohol or other chemical substances when ingested by hu-
 191 mans; or

192 (3) Any appropriate combination of paragraphs (1) and (2)

193 of this subsection order such person to attend and satisfactorily
 194 complete an alcohol or drug education or training program certified
 195 by the administrative judge of the judicial district or licensed by the
 196 secretary of social and rehabilitation services.

197 (c) In addition to or in lieu of any other sentence authorized by
 198 law, whenever a person is convicted of having violated, while under
 199 21 years of age, an ordinance prohibiting an act prohibited by the
 200 uniform controlled substances act (K.S.A. 65-4101 et seq. and amend- 41-804,
 201 ments thereto) or K.S.A. 41-719, 41-727, 41-2719, 65-4152, 65-4153,
 202 65-4154 or 65-4155, and amendments thereto, the municipal judge 41-2720,
 203 shall order such person to submit to and complete an alcohol and
 204 drug evaluation by a community-based alcohol and drug safety action
 205 program certified pursuant to K.S.A. 8-1008 and amendments thereto
 206 and to pay a fee not to exceed the fee established by that statute
 207 for such evaluation. If the judge finds that the person is indigent,
 208 the fee may be waived.

209 Sec. 4. K.S.A. 21-4502 is hereby amended to read as follows:
 210 21-4502. (1) For the purpose of sentencing, the following classes of
 211 misdemeanors and the punishment and the terms of confinement
 212 authorized for each class are established:

213 (a) Class A, the sentence for which shall be a definite term of
 214 confinement in the county jail which shall be fixed by the court and
 215 shall not exceed one (1) year;

216 (b) Class B, the sentence for which shall be a definite term of
 217 confinement in the county jail which shall be fixed by the court and
 218 shall not exceed six (6) months;

219 (c) Class C, the sentence for which shall be a definite term of
 220 confinement in the county jail which shall be fixed by the court and
 221 shall not exceed one (1) month;

222 (d) Unclassified misdemeanors, which shall include all crimes de-
 223 clared to be misdemeanors without specification as to class, the
 224 sentence for which shall be in accordance with the sentence specified
 225 in the statute that defines the crime; if no penalty is provided in
 226 such law, the sentence shall be the same penalty as provided herein
 227 for a class C misdemeanor.

228 (2) Upon conviction of a misdemeanor, a person may be punished
 229 by a fine, as provided in K.S.A. 21-4503 and amendments thereto;

230 instead of or in addition to confinement, as provided in this section.

231 (3) *In addition to or in lieu of any other sentence authorized by*
232 *law, whenever there is evidence that the act constituting the mis-*
233 *demeanor was substantially related to the possession, use or ingestion*
234 *of cereal malt beverage or an alcoholic beverage liquor by such*
235 *person, the court may:*

236 (a) *Order any of the dispositions authorized by this section*
237 *or by article 46 of chapter 21 of the Kansas Statutes Annotated;*

238 (b) *order such person to attend and satisfactorily complete*
239 *a suitable educational or training program dealing with the*
240 *effects of alcohol or other chemical substances when ingested*
241 *by humans; or*

242 (c) *Any appropriate combination of subsections (a) and (b)*
243 *of this subsection order such person to attend and satisfactorily*
244 *complete an alcohol or drug education or training program certified*
245 *by the administrative judge of the judicial district or licensed by the*
246 *secretary of social and rehabilitation services.*

247 (4) *In addition to or in lieu of any other sentence authorized by*
248 *law, whenever a person is convicted of having committed, while*
249 *under 21 years of age, a misdemeanor under the uniform controlled*
250 *substances act (K.S.A. 65-4101 et seq. and amendments thereto) or*
251 *K.S.A. 41-719, 41-727, 41-2719, 65-4152, 65-4153, 65-4154 or 65-*
252 *4155, and amendments thereto, the court shall order such person*
253 *to submit to and complete an alcohol and drug evaluation by a*
254 *community-based alcohol and drug safety action program certified*
255 *pursuant to K.S.A. 8-1008 and amendments thereto and to pay a*
256 *fee not to exceed the fee established by that statute for such eval-*
257 *uation. If the court finds that the person is indigent, the fee may*
258 *be waived.*

259 Sec. 5. K.S.A. 21-4603 is hereby amended to read as follows:
260 21-4603. (1) Whenever any person has been found guilty of a crime
261 and the court finds that an adequate presentence investigation cannot
262 be conducted by resources available within the judicial district, in-
263 cluding mental health centers and mental health clinics, the court
264 may require that a presentence investigation be conducted by the
465 state reception and diagnostic center or by the state security hospital.
266 If the offender is sent to the state reception and diagnostic center

41-804,
41-2720,

267 or the state security hospital for a presentence investigation under
268 this section, the institution or hospital may keep the offender con-
269 fined for a maximum of 120 days or until the court calls for the
270 return of the offender. While held at the reception and diagnostic
271 center or the state security hospital the defendant may be treated
272 the same as any person committed to the secretary of corrections
273 or secretary of social and rehabilitation services for purposes of main-
274 taining security and control, discipline, and emergency medical or
275 psychiatric treatment, and general population management except
276 that no such person shall be transferred out of the state or to a
277 federal institution or to any other location unless the transfer is
278 between the reception and diagnostic center and the state security
279 hospital. The state reception and diagnostic center or the state se-
280 curity hospital shall compile a complete mental and physical eval-
281 uation of such offender and shall make its finding known to the court
282 in the presentence report.

283 (2) Whenever any person has been found guilty of a crime, the
284 court may adjudge any of the following:

285 (a) Commit the defendant to the custody of the secretary of
286 corrections or, if confinement is for a term less than one year, to
287 jail for the term provided by law;

288 (b) impose the fine applicable to the offense;

289 (c) release the defendant on probation subject to such conditions
290 as the court may deem appropriate, including orders requiring full
291 or partial restitution;

292 (d) suspend the imposition of the sentence subject to such con-
293 ditions as the court may deem appropriate, including orders requiring
294 full or partial restitution;

295 (e) assign the defendant to a community correctional services
296 program subject to such conditions as the court may deem appro-
297 priate, including orders requiring full or partial restitution;

298 (f) assign the defendant to a house arrest program pursuant to
299 K.S.A. 21-4603b;

300 (g) order the defendant to attend and satisfactorily complete an
301 alcohol or drug education or training program as provided by sub-
302 section (3) of K.S.A. 21-4502 and amendments thereto; or

303 (g) (h) impose any appropriate combination of (a), (b), (c), (d);

304 (e) ~~or (f)~~, (f) or (g).

305 *In addition to or in lieu of any of the above, the court shall order*
306 *the defendant to submit to and complete an alcohol and drug eval-*
307 *uation, and pay a fee therefor, when required by subsection (4) of*
308 *K.S.A. 21-4502 and amendments thereto.*

309 In imposing a fine the court may authorize the payment thereof
310 in installments. In releasing a defendant on probation, the court shall
311 direct that the defendant be under the supervision of a court services
312 officer. If the court commits the defendant to the custody of the
313 secretary of corrections or to jail, the court may specify in its order
314 the amount of restitution to be paid and the person to whom it shall
315 be paid if restitution is later ordered as a condition of parole or
316 conditional release.

317 The court in committing a defendant to the custody of the secretary
318 of corrections shall fix a maximum term of confinement within the
319 limits provided by law. In those cases where the law does not fix
320 a maximum term of confinement for the crime for which the de-
321 fendant was convicted, the court shall fix the maximum term of such
322 confinement. In all cases where the defendant is committed to the
323 custody of the secretary of corrections, the court shall fix the min-
324 imum term within the limits provided by law.

325 (3) (a) *Except when an appeal is taken and determined adversely*
326 *to the defendant as provided in subsection (3)(b), at any time within*
327 *120 days after a sentence is imposed or within 120 days after pro-*
328 *bation or assignment to a community correctional services program*
329 *has been revoked, the court may modify such sentence, revocation*
330 *of probation or assignment by directing that a less severe penalty*
331 *be imposed in lieu of that originally adjudged within statutory limits.*

332 (b) *If an appeal is taken and determined adversely to the de-*
333 *fendant, such sentence may be modified within 120 days after the*
334 *receipt by the clerk of the district court of the mandate from the*
335 *supreme court or court of appeals.*

336 (4) *The court may modify the sentence at any time before the*
337 *expiration thereof when such modification is recommended by the*
338 *secretary of corrections and the court is satisfied that the best in-*
339 *terests of the public will not be jeopardized and that the welfare of*
340 *the inmate will be served by such modification. The court shall have*

341 the power to impose a less severe penalty upon the inmate, including
342 the power to reduce the minimum below the statutory limit on the
343 minimum term prescribed for the crime of which the inmate has
344 been convicted. The recommendation of the secretary of corrections,
345 the hearing on the recommendation and the order of modification
346 shall be made in open court. Notice of the recommendation of mod-
347 ification of sentence and the time and place of the hearing thereon
348 shall be given by the inmate, or by the inmate's legal counsel, at
349 least 21 days prior to the hearing to the county or district attorney
350 of the county where the inmate was convicted. After receipt of such
351 notice and at least 14 days prior to the hearing, the county or district
352 attorney shall give notice of the recommendation of modification of
353 sentence and the time and place of the hearing thereon to any victim
354 of the inmate's crime who is alive and whose address is known to
355 the county or district attorney or, if the victim is deceased, to the
356 victim's next of kin if the next of kin's address is known to the county
357 or district attorney. Proof of service of each notice required to be
358 given by this subsection shall be filed with the court.

359 (5) Dispositions which do not involve commitment to the custody
360 of the secretary of corrections and commitments which are revoked
361 within 120 days shall not entail the loss by the defendant of any
362 civil rights.

363 (6) This section shall not deprive the court of any authority con-
364 ferred by any other Kansas statute to decree a forfeiture of property,
365 suspend or cancel a license, remove a person from office, or impose
366 any other civil penalty as a result of conviction of crime.

367 (7) An application for or acceptance of probation, suspended sen-
368 tence or assignment to a community correctional services program
369 shall not constitute an acquiescence in the judgment for purpose of
370 appeal, and any convicted person may appeal from such conviction,
371 as provided by law, without regard to whether such person has
372 applied for probation, suspended sentence or assignment to a com-
373 munity correctional services program.

374 Sec. 6. K.S.A. 22-2909 is hereby amended to read as follows:
375 22-2909. (a) A diversion agreement shall provide that if the defendant
376 fulfills the obligations of the program described therein, as deter-
377 mined by the county or district attorney, the county or district

378 attorney shall act to have the criminal charges against the defendant
379 dismissed with prejudice. The diversion agreement shall include
380 specifically the waiver of all rights under the law or the constitution
381 of Kansas or of the United States to a speedy arraignment, prelim-
382 inary examinations and hearings; and a speedy trial, and in the case
383 of diversion under subsection (c) waiver of the ~~right to~~ *rights to*
384 *counsel and* trial by jury. The diversion agreement may include, but
385 is not limited to, provisions concerning payment of restitution, in-
386 cluding court costs and diversion costs, residence in a specified
387 facility, maintenance of gainful employment, and participation in
388 programs offering medical, educational, vocational, social and psy-
389 chological services, corrective and preventive guidance and other
390 rehabilitative services.

391 (b) The diversion agreement shall state: (1) The defendant's full
392 name; (2) the defendant's full name at the time the complaint was
393 filed, if different from the defendant's current name; (3) the de-
394 fendant's sex, race and date of birth; (4) the crime with which the
395 defendant is charged; (5) the date the complaint was filed; and (6)
396 the district court with which the agreement is filed.

397 (c) If a diversion agreement is entered into in lieu of further
398 criminal proceedings on a complaint alleging a violation of K.S.A.
399 8-1567 and amendments thereto, the diversion agreement shall in-
400 clude a stipulation, agreed to by the defendant and the county or
401 district attorney, of the facts upon which the charge is based and a
402 provision that if the defendant fails to fulfill the terms of the specific
403 diversion agreement and the criminal proceedings on the complaint
404 are resumed, the proceedings, including any proceedings on appeal,
405 shall be conducted on the record of the stipulation of facts relating
406 to the complaint. In addition, the agreement shall include a re-
407 quirement that the defendant:

408 (1) Pay a fine specified by the agreement in an amount equal to
409 an amount authorized by K.S.A. 8-1567 and amendments thereto
410 for a first offense or, in lieu of payment of the fine, perform com-
411 munity service specified by the agreement, in accordance with
412 K.S.A. 8-1567 and amendments thereto; and

413 (2) enroll in and successfully complete an alcohol and drug safety
414 action program or a treatment program, or both, as provided in

415 K.S.A. 8-1008 and amendments thereto, and specified by the agree-
416 ment, and pay the assessment required by K.S.A. 8-1008 and amend-
417 ments thereto.

418 (d) If a diversion agreement is entered into in lieu of further
419 criminal proceedings on a complaint alleging an alcohol related
420 offense a violation of K.S.A. 8-1567 and amendments thereto, the
421 diversion agreement may restrict the defendant's driving privileges,
422 in addition to any suspension and restriction required by K.S.A.
423 1988 Supp. 8-1014 and amendments thereto, to driving only under
424 the following circumstances: (1) In going to or returning from the
425 person's place of employment or schooling; (2) in the course of the
426 person's employment; (3) during a medical emergency; (4) in going
427 to and returning from probation or parole meetings, drug or alcohol
428 counseling or any place the person is required to go to attend an
429 alcohol and drug safety action program as provided in K.S.A. 8-1008
430 and amendments thereto; (5) at such times of the day as may be
431 specified by the diversion agreement; and (6) to such places as may
432 be specified by the diversion agreement.

433 In lieu of restricting the defendant's driving privileges as provided
434 above, or in lieu of suspending or revoking such privileges, the
435 diversion agreement may restrict the defendant's driving privileges
436 to driving only a motor vehicle equipped with a functioning ignition
437 interlock device, as defined by K.S.A. 1988 Supp. 8-1013 and amend-
438 ments thereto, which is approved by the division of vehicles of the
439 department of revenue and is obtained, installed and maintained at
440 the defendant's expense. Any fine required by this subsection (c)
441 shall be reduced by the diversion agreement in an amount equal to
442 the expense incurred by the defendant for obtaining, installing and
443 maintaining such device.

444 Restrictions imposed pursuant to this subsection shall be for a
445 period of not less than 90 days nor more than one year, as specified
446 by the diversion agreement.

447 Upon entering a diversion agreement restricting a person's driving
448 privileges under this subsection, the county or district attorney shall
449 require that the license be surrendered to the county or district
450 attorney. The county or district attorney shall transmit the license
451 to the division of vehicles of the department of revenue, together

452 with a copy of the diversion agreement. Upon its receipt, the division
453 of vehicles shall issue without charge a driver's license which shall
454 indicate on the face of the license that restrictions have been imposed
455 on the person's driving privileges and that a certified copy of the
456 diversion agreement imposing the restrictions is required to be car-
457 ried by the person for whom the license was issued any time the
458 person is operating a motor vehicle on the highways of this state.
459 If the person is a nonresident, the county or district attorney shall
460 transmit a copy of the diversion agreement to the division. The
461 division shall forward a copy of the diversion agreement to the motor
462 vehicle administrator of the person's state of residence. The county
463 or district attorney shall furnish to any person whose driving priv-
464 ileges have been restricted under this subsection a copy of the
465 diversion agreement, which for a period of 30 days only shall be
466 recognized as a valid Kansas driver's license pending issuance of the
467 restricted license as provided in this subsection.

468 Upon expiration of the period of time for which restrictions are
469 imposed pursuant to this subsection, the licensee may apply to the
470 division for the return of the license previously surrendered by the
471 licensee. If the license has expired, the person may apply to the
472 division for a new license, which shall be issued by the division
473 upon payment of the proper fee and satisfaction of the other con-
474 ditions established by law, unless the person's privilege to operate
475 a motor vehicle on the highways of this state has been suspended
476 or revoked prior to expiration. Violation of restrictions imposed under
477 this subsection is a misdemeanor subject to punishment and driver's
478 license suspension as provided by K.S.A. 1987 1988 Supp. 8-291
479 and amendments thereto.

480 (e) If a diversion agreement is entered into in lieu of further
481 criminal proceedings on a complaint alleging ~~an alcohol related~~
482 ~~offense a violation of K.S.A. 8-1567 and amendments thereto~~, the
483 diversion agreement may suspend or revoke the defendant's driving
484 privileges. Suspension or revocation imposed pursuant to this sub-
485 section shall be for a period of not less than 90 days nor more than
486 one year, as specified by the diversion agreement.

487 Upon entering a diversion agreement suspending or revoking a
488 defendant's driving privileges pursuant to this subsection, the county

489 or district attorney shall require that such license be surrendered
 490 to the county or district attorney. The county or district attorney
 491 shall transmit the license to the division to be retained by the
 492 division.

493 Upon expiration of the period of time for which suspension or
 494 revocation is imposed pursuant to this subsection, the licensee may
 495 apply to the division for the return of the license previously sur-
 496 rendered by the licensee. If the license has expired, the person may
 497 apply to the division for a new license, which shall be issued by
 498 the division upon payment of the proper fee and satisfaction of the
 499 other conditions established by law, unless the person's driving priv-
 500 ileges have been otherwise suspended or revoked prior to expiration.

501 *(f) If a diversion agreement is entered into in lieu of further*
 502 *criminal proceedings alleging commission of a misdemeanor by the*
 503 *defendant, while under 21 years of age, under the uniform controlled*
 504 *substances act (K.S.A. 65-4101 et seq. and amendments thereto) or*
 505 *K.S.A. 41-719, 41-727, 41-2719, 65-4152, 65-4153, 65-4154 or 65-*
 506 *4155, and amendments thereto, the agreement shall require the de-*
 507 *fendant to submit to and complete an alcohol and drug evaluation*
 508 *by a community-based alcohol and drug safety action program cer-*
 509 *tified pursuant to K.S.A. 8-1008 and amendments thereto and to pay*
 510 *a fee not to exceed the fee established by that statute for such*
 511 *evaluation. If the county or district attorney finds that the defendant*
 512 *is indigent, the fee may be waived.*

513 *(g) If the county or district attorney elects to offer diversion in*
 514 *lieu of further criminal proceedings on the complaint and the de-*
 515 *fendant agrees to all of the terms of the proposed agreement, the*
 516 *diversion agreement shall be filed with the district court and the*
 517 *district court shall stay further proceedings on the complaint. If the*
 518 *defendant declines to accept diversion, the district court shall resume*
 519 *the criminal proceedings on the complaint.*

520 ~~(g)~~ *(h) Except diversion agreements reported under subsection*
 521 ~~(h)~~ *(i), the county or district attorney shall forward to the Kansas*
 522 *bureau of investigation a copy of the diversion agreement at the*
 523 *time such agreement is filed with the district court. The copy of the*
 524 *agreement shall be made available upon request to any county,*
 525 *district or city attorney or court.*

41-804,

41-2720,

526 (h) (i) At the time of filing the diversion agreement with the
527 district court, the county or district attorney shall forward to the
528 division of vehicles of the state department of revenue a copy of
529 any diversion agreement entered into in lieu of further criminal
530 proceedings on a complaint alleging a violation of K.S.A. 8-1567 and
531 amendments thereto. The copy of the agreement shall be made
532 available upon request to any county, district or city attorney or
533 court.

See Insert

534 Sec. 7. ⁸ K.S.A. 38-1563 is hereby amended to read as follows:
535 38-1563. (a) After consideration of any evidence offered relating to
536 disposition, the court may retain jurisdiction and place the child in
537 the custody of the child's parent subject to terms and conditions
538 which the court prescribes to assure the proper care and protection
539 of the child, including supervision of the child and the parent by a
540 court services officer, or may order the child and the parent to
541 participate in programs operated by the secretary or another appro-
542 priate individual or agency. The terms and conditions may require
543 any special treatment or care which the child needs for the child's
544 physical, mental or emotional health.

545 (b) The duration of any period of supervision or other terms or
546 conditions shall be for an initial period of no more than 18 months.
547 The court, at the expiration of that period, upon a hearing and for
548 good cause shown, may make successive extensions of the supervision
549 or other terms or conditions for up to 12 months at a time.

550 (c) The court may order the child and the parents of any child
551 who has been adjudged a child in need of care to attend counseling
552 sessions as the court directs. The expense of the counseling may be
553 assessed as an expense in the case. No mental health center shall
554 charge a greater fee for court-ordered counseling than the center
555 would have charged to the person receiving counseling if the person
556 had requested counseling on the person's own initiative.

557 (d) If the court finds that placing the child in the custody of a
558 parent will not assure protection from physical, mental or emotional
559 abuse or neglect or sexual abuse or will not be in the best interests
560 of the child, the court shall enter an order awarding custody of the
561 child, until the further order of the court, to one of the following:

562 (1) A relative of the child or a person with whom the child has

563 close emotional ties;

564 (2) any other suitable person;

565 (3) a shelter facility; or

566 (4) the secretary.

567 In making such a custody order, the court shall give preference,
568 to the extent that the court finds it is in the best interests of the
569 child, first to granting custody to a relative of the child and second
570 to granting custody of the child to a person with whom the child
571 has close emotional ties. If the court has awarded legal custody
572 based on the finding specified by this subsection, the legal custodian
573 shall not return the child to the home of that parent without the
574 written consent of the court.

575 (e) When the custody of the child is awarded to the secretary:

576 (1) The court may recommend to the secretary where the child
577 should be placed, but the court shall not have the power to direct
578 a specific placement; and

579 (2) the secretary shall notify the court in writing of any placement
580 of the child as soon as the placement is accomplished.

581 (f) If custody of a child is awarded under this section to a person
582 other than the child's parent, the court may grant any individual
583 reasonable rights to visit the child upon motion of the individual
584 and a finding that the visitation rights would be in the best interests
585 of the child.

586 (g) If the court issues an order of custody pursuant to this section,
587 the court may enter an order restraining any alleged perpetrator of
588 physical, sexual, mental or emotional abuse of the child from residing
589 in the child's home; visiting, contacting, harassing or intimidating
590 the child; or attempting to visit, contact, harass or intimidate the
591 child.

592 (h) The court shall not enter an order removing a child from the
593 custody of a parent pursuant to this section unless the court first
594 finds from evidence presented by the petitioner that reasonable ef-
595 forts have been made to prevent or eliminate the need for removal
596 of the child or that an emergency exists which threatens the safety
597 of the child and requires the immediate removal of the child. Such
598 findings shall be included in any order entered by the court.

599 (i) *In addition to or in lieu of any other order authorized &*

600 *this section, if a child is adjudged to be a child in need of care by*
 601 *reason of a violation of ~~K.S.A. 41-719 or 41-2719~~, and amendments*
 602 *thereto, the court shall order the child to submit to and complete*
 603 *an alcohol and drug evaluation by a community-based alcohol and*
 604 *drug safety action program certified pursuant to K.S.A. 8-1008 and*
 605 *amendments thereto and to pay a fee not to exceed the fee established*
 606 *by that statute for such evaluation. If the court finds that the child*
 607 *and those legally liable for the child's support are indigent, the fee*
 608 *may be waived. In no event shall the fee be assessed against the*
 609 *secretary or the department of social and rehabilitation services.*

610 *Sec. 8. K.S.A. 1988 Supp. 38-1663 is hereby amended to read*
 611 *as follows: 38-1663. (a) When a respondent has been adjudged to*
 612 *be a juvenile offender, the judge may select from the following*
 613 *alternatives:*

614 (1) Place the juvenile offender on probation for a fixed period,
 615 subject to the terms and conditions the court deems appropriate,
 616 including a requirement of making restitution as required by sub-
 617 section ~~(b)~~ (c).

618 (2) Place the juvenile offender in the custody of a parent or other
 619 suitable person, subject to the terms and conditions the court orders,
 620 including a requirement of making restitution as required by sub-
 621 section (c).

622 (3) Place the juvenile offender in the custody of a youth resi-
 623 dential facility, subject to the terms and conditions the court orders.

624 (4) Place the juvenile offender in the custody of the secretary.

625 (5) Impose any appropriate combination of subsections (a)(1) and
 626 (2), subsection (a)(3) or subsection (a)(4) and make other orders di-
 627 rected to the juvenile offender as the court deems appropriate.

628 (6) Commit the juvenile offender, if 13 years of age or older, to
 629 a state youth center if the juvenile offender:

630 (A) Has had a previous adjudication as a juvenile offender under
 631 this code or as a delinquent or miscreant under the Kansas juvenile
 632 code; or

633 (B) has been adjudicated a juvenile offender as a result of having
 634 committed an act which, if done by a person 18 years of age or
 635 over, would constitute a class A, B or C felony as defined by the
 636 Kansas criminal code.

the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto) or K.S.A. 41-719, 41-804, 41-2719, 65-4152, 65-4153, 65-4154 or 65-4155

See Insert

637 (b) (1) In addition to any other order authorized by this section,
638 the court may order the juvenile offender and the parents of the
639 juvenile offender to attend counseling sessions as the court directs.

640 (2) Upon entering an order requiring a juvenile offender's parent
641 to attend counseling sessions, the court shall give the parent notice
642 of the order. The notice shall inform the parent of the parent's right
643 to request a hearing within 10 days after entry of the order and the
644 parent's right to employ an attorney to represent the parent at the
645 hearing or, if the parent is financially unable to employ an attorney,
646 the parent's right to request the court to appoint an attorney to
647 represent the parent. If the parent does not request a hearing within
648 10 days after entry of the order, the order shall take effect at that
649 time. If the parent requests a hearing, the court shall set the matter
650 for hearing and, if requested, shall appoint an attorney to represent
651 the parent. The expense and fees of the appointed attorney may be
652 allowed and assessed as provided by K.S.A. 38-1606 and amendments
653 thereto.

654 (3) The costs of any counseling may be assessed as expenses in
655 the case. No mental health center shall charge a fee for court-ordered
656 counseling greater than that the center would have charged the
657 person receiving the counseling if the person had requested coun-
658 seling on the person's own initiative.

659 (c) Whenever a juvenile offender is placed pursuant to subsection
660 (a)(1) or (2), the court, unless it finds compelling circumstances which
661 would render a plan of restitution unworkable, shall order the ju-
662 venile offender to make restitution to persons who sustained loss by
663 reason of the offense. The restitution shall be made either by pay-
664 ment of an amount fixed by the court or by working for the persons
665 in order to compensate for the loss. If the court finds compelling
666 circumstances which would render a plan of restitution unworkable,
667 the court may order the juvenile offender to perform charitable or
668 social service for organizations performing services for the
669 community.

670 Nothing in this subsection shall be construed to limit a court's
671 authority to order a juvenile offender to make restitution or perform
672 charitable or social service under circumstances other than those
673 specified by this subsection or when placement is made pursuant to

574 subsection (a)(3) or (4).

675 (d) In addition to or in lieu of any other order authorized by
676 this section, the court may order a juvenile offender to pay a fine
677 not exceeding \$250 for each offense. In determining whether to
678 impose a fine and the amount to be imposed, the court shall consider
679 the following:

680 (1) Imposition of a fine is most appropriate in cases where the
681 juvenile offender has derived pecuniary gain from the offense.

682 (2) The amount of the fine should be directly related to the
683 seriousness of the juvenile offender's offense and the juvenile of-
684 fender's ability to pay.

685 (3) Payment of a fine may be required in a lump sum or
686 installments.

687 (4) Imposition of a restitution order is preferable to imposition
688 of a fine.

689 (5) The juvenile offender's duty of payment should be limited in
690 duration and in no event should the time necessary for payment
691 exceed the maximum term which would be authorized if the offense
692 had been committed by an adult.

693 (e) In addition to or in lieu of any other order authorized by
694 this section, if a juvenile is adjudged to be a juvenile offender by
695 reason of a violation of the uniform controlled substances act (K.S.A.
696 65-4101 et seq. and amendments thereto) or K.S.A. 41-727, 65-4152,
697 65-4153, 65-4154 or 65-4155, and amendments thereto, the court
698 shall order the juvenile offender to submit to and complete an alcohol
699 and drug evaluation by a community-based alcohol and drug safety
700 action program certified pursuant to K.S.A. 8-1008 and amendments
701 thereto and to pay a fee not to exceed the fee established by that
702 statute for such evaluation. If the court finds that the juvenile of-
703 fender and those legally liable for the offender's support are indigent,
704 the fee may be waived. In no event shall the fee be assessed against
705 the secretary or the department of social and rehabilitation services.

706 Sec. 9.¹¹ K.S.A. 12-4509, 21-4502, 21-4603, 21-4603a, 22-2909 and
707 38-1563 and K.S.A. 1988 Supp. 12-4416 and 38-1663 are hereby
708 repealed.

709 Sec. 10.¹² This act shall take effect and be in force from and after
710 its publication in the statute book.

41-719,

41-804, 41-2719, 41-2720,

, except that such evaluation may be waived by the court if the court finds that the juvenile offender has successfully completed an alcohol and drug evaluation, approved by the community-based alcohol and drug safety action program, subsequent to the offender's arrest on this offense.

, 38-1502, 38-1602 and

INSERT FOR SENATE BILL NO. 75

Sec. 7. K.S.A. 1988 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

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

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. ~~41-715~~, ~~41-2721~~ 41-727 or subsection (i) of K.S.A. ~~1987~~ 1988 Supp. 74-8810, and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

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

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian; or

(10) is willfully and voluntarily absent at least a second

time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee.

(b) "Physical, mental or emotional abuse or neglect" means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

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

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

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

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

(g) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and

which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(h) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for the care of children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

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

(j) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(k) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility, other than a juvenile detention facility, shall be in a city or county jail.

(l) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to this code and who continues subject to that jurisdiction until the petition is dismissed or the child is discharged as provided in K.S.A. 38-1503 and amendments thereto.

(m) "Custody," whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(n) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(o) "Secretary" means the secretary of social and rehabilitation services.

(p) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(q) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1505a and amendments thereto, in a proceeding pursuant to this code.

(r) "Multidisciplinary team" means a group of persons, appointed by the court or by the state department of social and rehabilitation services under K.S.A. 1988 Supp. 38-1523a and amendments thereto, which has knowledge of the circumstances of a child in need of care.

INSERT FOR SENATE BILL NO. 75

Sec. 9. K.S.A. 1988 Supp. 38-1602 is hereby amended to read as follows: 38-1602. (a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who does an act while a juvenile which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto or who violates the provisions of K.S.A. ~~41-715,--41-2721~~ 41-727 or subsection (i) of K.S.A. ~~1987~~ 1988 Supp. 74-8810, and amendments thereto, but does not include:

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

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

(3) a person 16 years of age or over who is charged with a felony or with more than one offense of which one or more is a felony after having been adjudicated in two separate prior juvenile proceedings as having committed an act which would constitute a felony if committed by an adult and the adjudications occurred prior to the date of the commission of the new act charged;

(4) a person who has been prosecuted as an adult by reason of subsection (b)(3) and whose prosecution results in conviction of a crime;

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

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

(c) "Parent," when used in relation to a juvenile or a

juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

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

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

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

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

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

(i) "Secretary" means the secretary of social and rehabilitation services.