

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Vincent Snowbarger at ~~Chairperson~~

3:00 ~~xxx~~/p.m. on February 27, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Jenkins, O'Neal, Peterson, and Roy, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Arthur Douville
Representative Clyde Graeber
Dr. Carol Hinds, Academic Dean, Saint Mary College, Leavenworth
Charles Simmons, Attorney, Department of Corrections
Richard Mason, Kansas Trial Lawyers Association
Matt Lynch, Judicial Council
James Clark, Kansas County and District Attorneys Association
Robert C. Barnum, Commissioner, Youth Services, Social and Rehabilitation Services
David O'Brien, Youth Services, Social and Rehabilitation Services
Kathy Leonhart, Court Services Officers Association
Chip Wheelen, Kansas Medical Society
Nancy Lindberg, Attorney General's office

HEARING ON HB 3054 Additional authority of judge pro tems

Representative Arthur Douville testified that HB 3054 allows an administrative judge to appoint a pro tem judge to hear magistrate judge cases such as traffic violations, misdemeanor cases, preliminary hearings of felonies and certain types of civil cases under \$5,000 and support orders. A judge pro tem is appointed on a temporary basis to help with overloaded dockets. He submitted an amendment that in case of an appeal, how the appeal shall be heard, see Attachment I.

There being no other conferees, the hearing was closed.

HEARING ON HB 3042 Application of tort claims act to certain persons training inmates

Representative Clyde Graeber explained HB 3042 amends the Kansas Tort Claims Act by including certain faculty and teachers of Saint Mary College in Leavenworth that currently provides educational facilities and staff for the prisoners of Kansas state prisons. He said it was important to provide Saint Mary College and staff some protection under the Kansas Tort Claims Act.

Dr. Carol Hinds, Academic Dean, Saint Mary College, testified the current law excludes all independent contractors from coverage under the Kansas Tort Claims Act. The exclusion includes instructors who work under Saint Mary College contracts with the Department of Corrections. If one of the instructors is sued by an inmate as a result of action taken in the fulfillment of contractual duties, the State cannot provide legal representation in defending the suit. The cost for such representation falls upon the college or individual instructor, even though the Department of Corrections asks instructors to enforce institutional rules. Employees of the college have been subject to several lawsuits brought by inmates. All of them have been dismissed, generally as frivolous, however, Saint Mary College has been left with the legal costs involved in the dismissals. HB 3042 would include teachers and instructors of Saint Mary College under the Kansas Tort Claims Act, see Attachment II.

Charles Simmons, Legal Counsel, Department of Corrections, testified in support of HB 3042. HB 3042 would expand the definition of "employee to include employees of independent contractors who are under contract to provide educational and vocational training to inmates. This bill would allow the state to represent these individuals being sued by inmates either through department legal staff or the Attorney General's office. This bill is similar to SB 563 which has been heard in the Senate Judiciary Committee. The only difference is that SB 563 extends the definition of "employee" to include those under contract to provide program services to inmates rather than just educational

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 27, 1990.

and vocational training, see Attachment III. He also distributed a letter from the Attorney General's office to Senator Winter, Jr., Chairman of the Senate Judiciary Committee, supporting SB 563, see Attachment IV.

In answer to Committee questions, he stated SB 563 would include all of HB 3042 and more.

Richard Mason, Kansas Trial Lawyers Association, submitted testimony stating the KTLA sees no compelling reason why this bill should be passed. The sole benefit of the change would be to grant private contractors immunity that heretofore has been intended for government operations only, see Attachment V.

There being no other conferees, the hearing on HB 3042 was closed.

HEARING ON HB 3021 Service of process by certified mail.

Matt Lynch, Judicial Council testified in support of HB 3021. He explained there are two bills, SB 620 and SB 321, that have been heard in the Senate Judiciary Committee and recommended merging them with HB 3021.

There being no other conferees, the hearing on HB 3021 was closed.

HEARING ON HB 3041 Length of detention shortened from 48 hours to 24 hours for a juvenile offender.

James Clark, Kansas County and District Attorneys Association testified HB 3041 reduces the time in which a temporary custody hearing must be held when a juvenile is taken into custody. The change is necessitated by the Attorney General's interpretation of federal mandates, see Attachment VI.

Robert Barnum, Commissioner, Youth Services, Social and Rehabilitation Services, introduced David O'Brien.

David O'Brien, Grants Program Administrator, Youth Services, Social and Rehabilitation Services, informed the Committee S.R.S. requests the bill be modified to include federal requirements and to make it optional for those counties choosing to detain juvenile offenders for 24 hours in jails or lockups. He said SB 742 has language which requires only those counties choosing to detain alleged juvenile offenders for 24 hours in jail or lockups to adhere to a 24 hour detention hearing requirement, see Attachment VII. In regard to the fiscal impact, he said placement in emergency shelters costs about \$70.00 a day.

A Committee member requested Mr. O'Brien submit amendments to HB 3041.

Kathy Leonhart, Court Services Officers Association, testified that if the juvenile is held in a residential facility or a juvenile detention secure facility and not in jail, there is no need for the 24 hour detention. Notification of families is sometimes difficult to accomplish within 48 hours.

There being no other conferees, the hearing was closed on HB 3041.

HEARING ON HB 3043 Increasing compensation for screening panel members

Chip Wheelen, Kansas Medical Society, testified HB 3043 would increase the compensation paid to professional members of the screening panel from \$150 to \$250 and to increase the compensation paid to the attorney chairperson from \$250 to \$350, see Attachment VIII.

There being no other conferees, the hearing on HB 3043 was closed.

HEARING ON HB 3045 Reinserting prosecuting attorneys' training fund into court fees

Jim Clark, Kansas County and District Attorneys Association, informed the Committee HB 3045 would reinsert the prosecuting attorneys' training fund in K.S.A. 1989 Supp. 28-172a, which was inadvertently removed when the final bill was printed in the session laws, see Attachment IX.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 27, 1990

Nancy Lindberg, Attorney General's office, explained that on line 41 of HB 3045 the words "the crime victims compensation fund" should be removed. Docket fees are not used for the crime victims compensation fund. Charges are paid from fines, fees and forfeitures for the crime victims compensation fund.

There being no other conferees, the hearing on HB 3045 was closed.

The Committee meeting was adjourned at 4:45 p.m. The next meeting will be Wednesday, February 28, 1990, at 3:30 p.m in room 313-S.

HOUSE BILL No. 3054

By Committee on Judiciary

2-20

2/27/90
H. Jud Com.
Attachment I

9 AN ACT concerning judges pro tem; amending K.S.A. 1989 Supp.
10 20-310a and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 1989 Supp. 20-310a is hereby amended to read
14 as follows: 20-310a. (a) Upon the application of the administrative
15 judge of a judicial district to the departmental justice of that district,
16 for good cause shown, or in the absence, sickness or disability of a
17 district judge or district magistrate judge in any judicial district, a
18 judge pro tem may be appointed whenever the departmental justice
19 for such judicial district has not assigned a district judge from another
20 judicial district, as provided in K.S.A. 20-319 and amendments
21 thereto.

22 (b) Any judge pro tem appointed pursuant to this section shall
23 be a regularly admitted member of the bar of this state. The ap-
24 pointment of any such judge pro tem shall be made by the admin-
25 istrative judge or, in the absence of the administrative judge, by
26 the departmental justice for the judicial district.

27 (c) Any judge pro tem appointed pursuant to this section shall
28 have the full power and authority of a district judge with respect to
29 any actions or proceedings before such judge pro tem, except that
30 any judge pro tem appointed pursuant to subsection (d) or (e) shall
31 have only such power and authority as provided therein. A judge
32 pro tem shall receive such compensation as is prescribed by the
33 district court, subject to the budget limitations of such district court.

34 (d) Subject to the budget limitations of the district court, the
35 administrative judge of any judicial district may appoint one or more
36 judges pro tem for the limited purpose of hearing the original trials
37 of actions filed pursuant to the small claims procedures act. Any
38 such judge pro tem shall have only such judicial power and authority
39 as is necessary to hear such actions ~~for other action within the ju-~~
40 ~~isdiction of a district magistrate judge as provided in K.S.A. 20-~~
41 ~~302b, and amendments thereto.~~

42 (e) Subject to the budget limitations of the district court, the
43 administrative judge of any judicial district in which the board of

or other action within the jurisdiction of a district magistrate judge as provided in K.S.A. 20-302b, and amendments thereto

Any party aggrieved by any order of a judge pro tem under this subsection may appeal such order and such appeal shall be heard by a district judge de novo. If the appeal is a small claims action, the appeal shall be under K.S.A. 61-2709, and amendments thereto. If the appeal is an action within the jurisdiction of a district magistrate judge, the appeal shall be under K.S.A. ~~61-2101, et seq.,~~ and amendments thereto. 20-302b

2 county commissioners is authorized to use the code for the enforce-
3 ment of county codes and resolutions as provided in subsection (b)
4 of K.S.A. 19-101d and amendments thereto may appoint one or more
5 judges pro tem for the limited purpose of hearing such cases. Such
6 judge pro tem shall receive the salary and other compensation set
7 by resolution of the board of county commissioners which shall be
8 paid from the revenues of the county general fund or other fund
9 established for the purpose of financing code enforcement.

10 (f) The administrative judge of each judicial district shall report
11 to the judicial administrator of the courts: (1) The dates on which
12 any judge pro tem served in such district, (2) the compensation paid
13 to any judge pro tem, and (3) such other information as the judicial
14 administrator may request with regard to the appointment of judges
15 pro tem. The reports shall be submitted annually on or before Jan-
16 uary 15 on forms provided by the judicial administrator.

16 Sec. 2. K.S.A. 1989 Supp. 20-310a is hereby repealed.

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

2/27/90
H. J. Com.
Att I



27 February 1990

To: Chairman Michael O'Neill and
The Committee on Judiciary
From: Carol Hinds
Academic Dean
Saint Mary College
Leavenworth, Kansas, 66048
Re: **House Bill No. 3042**

Chairman O'Neill and Members of the Committee:

I am Carol Hinds, the Academic Dean at Saint Mary College in Leavenworth, and I am grateful to have the opportunity to speak with you this afternoon.

Saint Mary has a contract with the Department of Corrections to provide educational services to the inmates at Kansas Correctional Facilities in Lansing, Topeka, and Ossawatomie, Kansas.

For that reason I would like to speak in favor of House Bill No 3042, an act amending the Kansas Tort Claims Act so that it will include employees of independent contractors, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who are engaged in providing such services. Saint Mary College supports this bill for several reasons.

*2/27/90
Jud Com.*

House Bill No. 3042—2

1. There is good reason for excluding most independent contractors from the protection of the Kansas Tort Claims Act. Makers of concrete and electricians and plumbers and carpenters provide products to the state that can be weighed and measured. They fulfill their contracts and they leave. When they are working for correctional facilities they have little responsibility for inmate behavior; often they have little contact with inmates. The same is not true for independent contractors who are teachers.
2. Yet, the current law excludes all independent contractors from coverage under the Kansas Tort Claims Act. The exclusion includes instructors who work under Saint Mary's contracts with the Department of Corrections. If one of our instructors is sued by an inmate as a result of action taken in the fulfillment of contractual duties, the State cannot provide legal representation in defending the suit. The cost for such representation falls upon the college or individual instructor.
3. Such costs fall to the college, even though the Department of Corrections asks instructors to enforce institutional rules, just as they ask other employees to enforce them. In a prison setting, such disciplinary action can prompt an inmate initiated lawsuit against an instructor.

2/27/90
H. J. Com
Att II
2

House Bill No. 3041—3

4. The possibility of such lawsuits is of great concern to Saint Mary, primarily because of the seemingly increasing tendency of inmates to litigate almost any given issue.
5. More than 90% of these lawsuits are dismissed as "frivolous," but the instructor and the college have neither the defenses available to them under the Kansas Tort Claims Act, nor the benefits of defense and payment of judgments given to Kansas employees by that act.
4. In a prison setting, normal disciplinary action can prompt an inmate initiated lawsuit against an instructor who is simply doing his or her job, but who but has no legal protection for doing so. Such a possibility is difficult to justify under any circumstances, but it becomes painfully ludicrous when one considers the number of frivolous lawsuits.
5. Employees of the college have, over the years, been subject to several lawsuits brought by inmates; all of them have been dismissed, generally as frivolous. Saint Mary has, however, been left with the legal costs involved in the dismissals. Those costs have not been enormous, but any costs hurt an institution that operates on as tight a budget as Saint Mary does. "Frivolous" costs, perhaps, hurt the most.

2/27/90
H. J. J. J.
Com
Att II
3

House Bill No. 3042

6. In normal circumstances, the college could countersue the plaintiff in such suits for legal costs. For Saint Mary to countersue an inmate would simply result in throwing good money after bad.

7. Therefore, Saint Mary College, requests your careful consideration of House Bill #3042.

Thank you.

Are there any questions?

2/27/90
H Jud Com
Att II
4



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Mike Hayden
Governor

Steven J. Davies, Ph.D.
Secretary

RE: HOUSE BILL NO. 3042

Purpose of Amendment:

Expand definition of "employee" to include employees of independent contractors who are under contract to provide educational and vocational training to inmates and who are engaged in providing such services.

Basis for Amendment:

Through contracts with program providers, the Department requires that teachers, counselors, instructors, and other personnel employed by these providers enforce department and institution rules. This may result in an inmate receiving a disciplinary report or being removed from a program. On occasion, an inmate will respond by filing a lawsuit against the contractor's employee. Under current law, the state may not defend these individuals. As a result the contractor or employee must hire private counsel for their defenses.

The large majority of such lawsuits are frivolous or unsuccessful. However, the contractor must bear the cost of the legal expenses. This amendment would allow the state to represent these individuals the same as department employees, either through department legal staff or the Attorney General's office.

This bill is very similar to Senate Bill No. 563 which has been heard in the Senate Judiciary Committee. The only difference is that S.B. 563 extends the definition of "employee" to include those under contract to provide program services to inmates rather than just educational and vocational training as does H.B. 3042.

Note: In 1989, K.S.A. 75-6116 was amended to include health care providers who provide professional services at a state correctional institution within the definition of "employee" for purposes of that section.

2/27/90
H. Jud. Com.

Attachment III



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 12, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

The Honorable Wint Winter, Jr.
Chairman of the Senate Judiciary Committee
Capitol
Topeka, Kansas

Re: Senate Bill No. 563

Dear Senator Winter:

I am writing on behalf of the Attorney General in support of SB 563.

As you know, the Kansas prison system is under supervision by the federal courts. Arney, et al. v. Hayden, et al., U.S.D.C. #77-3045-R. One of the Court's concerns is proper medical care for inmates. In order to meet this concern, independent health care providers have been retained for the prisons. These health care providers are often subjected to suit by litigious prisoners.

Under current law, prison health care providers are represented and indemnified by the state in civil rights litigation pursuant to K.S.A. 75-6116. However, for non-civil rights actions (torts), such providers are neither represented, nor indemnified. Further, they may not use the exceptions to tort liability given to state employees pursuant to K.S.A. 75-6104.

SB 563 is an attempt to correct this situation. It would expand the definition of "employee" contained in the Kansas Tort Claims Act to include our prison's health care providers. Of course, health care providers would still have to purchase insurance when required by the Health Care Providers Act, K.S.A. 40-3401, et seq. (See also, K.S.A. 75-6108, 75-6109). What this amendment would do is allow such providers to utilize the defenses of the Tort Claims Act, and in certain circumstances, provide the state with the option of having a self-insured prison health care provider.

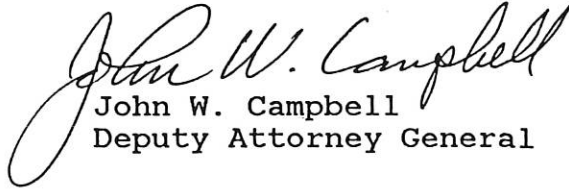
2/27/90
H. Jud. Com.

Attachment IV

The prison system needs this legislation. Most of the prison litigation is frivolous. However, much of it can not be summarily dismissed. Passage of SB 563 will work to assist the Kansas prison system comply with federal law.

Sincerely,

OFFICE OF ATTORNEY GENERAL
ROBERT T. STEPHAN


John W. Campbell
Deputy Attorney General

JWC/mb

2/27/90
S. J. Com.
Att IV



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

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MEMORANDUM

February 27, 1990

TO: House Judiciary Committee Members
FROM: Richard Mason
SUBJECT: HB 3042 - Application of Tort Claims Act

House Bill 3042 would change the Kansas Tort Claims Act to provide that private, non-governmental contractors would be afforded the protection of limited immunity from tort actions. From the inception of the Kansas Tort Claims Act, the Kansas Trial Lawyers Association has taken a position that governmental immunity should be afforded to those persons and activities which are purely governmental and that private citizens, contractors and businesses should not be given the special protection that the Act gives.

The concept of narrowly defined limited immunity remains a rational and viable approach to the treatment of tort claims against government agencies and its employees. The desired effect of limiting liability insurance costs to government has largely been met. The protection of government against unreasonable claims has been effective and the public generally has benefited in the trade-off of limited liability for efficient, cost effective government services which have been provided to the public.

If HB 3047 is adopted, it would go against the expressed policy of the State of Kansas to not provide limited immunity to independent contractors who contract with government to provide services. Independent contractors have the ability and the right to provide for the tort liability protection that they feel they may need by purchasing liability insurance or by self insuring themselves. The need for liability protection will vary substantially from contractor to contractor depending upon the function which they perform but it is universally true that they can best determine what that cost will be and how that cost can be factored into their contracts.

In providing limited immunity to these contractors through the Kansas Tort Claims Act, the legislature will be making an unwarranted expansion of that Act into the private sector and extending a substantial benefit to the private companies with no commensurate benefit being granted to the consuming public.

RICHARD H. MASON
EXECUTIVE DIRECTOR

Attachment V

Testimony of Kansas Trial Lawyers Association
HB 3042
Page 2

It may be true that the consuming public in this case is prisoners in the Kansas prison system who would be deprived of their right to full compensation for damages which may be caused by the independent contractors, but that is no reason to take those rights away.

The Kansas Trial Lawyers Association urges this Committee to move cautiously in this area. We see no compelling reason why this bill should be passed and that is especially so where, as in this case, the sole benefit of the change would be to grant private contractors immunity that heretofore has been intended for government operations only.

2/27/90
H. Jud. Com.
Att. V



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Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

House Bill 3041

The Kansas County and District Attorneys Association requested House Bill 3041, and appears in its support.

The bill simply reduces the time in which a temporary custody hearing must be held when a juvenile is taken into custody. The change is necessitated by the Attorney General's interpretation of federal mandates (attached).

Regardless of the individual feelings of members of this committee on the subject of removal of juveniles from adult jails, it is clear that at least in rural areas of our state, no alternate system is yet in place. By making the suggested changes in the statute, not only does the Legislature remove a threat of liability from local officials, but it also ensures a more speedy determination of the issue of temporary custody.

2/27/90
H. Jud. Com.

Attachment VI



COPY

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 27, 1989

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Kerwin L. Spencer
Sumner County Attorney
Sumner County Courthouse
500 North Washington
Wellington, Kansas 67152-0497

Dear Mr. Spencer:

In the past month this office has received several inquiries regarding the effect of the 1988 amendment to the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601 et seq. Basically the questions asked are: 1) Whether local units of government in Kansas are now precluded entirely from placing juvenile offenders in adult jails; and 2) if so, what are the consequences for violation of this prohibition.

The Juvenile Justice and Delinquency Prevention Act (JJJPA) has as one of its purposes the assistance of state and local governments in removing juveniles from adult jails. 42 U.S.C.A. §5602(a)(8). 42 U.S.C.A. §5631 (West Supp. 1989) authorizes the administrator of the federal program to make grants to the states. To be eligible for such grant moneys, the state is required to formulate and submit a plan to carry out the purposes of the program. 42 U.S.C.S. §5633(a) (West Supp. 1989). The Kansas Department of Social and Rehabilitation Services (SRS), entered into this program and began receiving grant moneys in 1978. While specific provisions of the act have been amended from time to time, it appears that the removal of juveniles from adult jails has been one of the goals of the program from its inception.

42 U.S.C.A. §5633 sets forth the provisions required to be contained in each participating state's plan. Of particular relevance to the inquiries addressed herein is subsection (a)(14) which states:

"(a) In accordance with regulations which the Administrator shall prescribe, such plan shall --

2/27/90
H. J. Com
Att VI

. . . .

"(14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1993, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which--

"(A) are outside a Standard Metropolitan Statistical Area,

"B) have no existing acceptable alternative placement available, and

"C) are in compliance with the provisions of paragraph (13). . . ." (West Supp. 1989).

Thus, in order to be eligible for grant moneys, SRS has agreed that no juveniles shall be detained or confined in adult jails. (Note: 28 C.F.R. §31.303(e)(3)(i) acknowledges that juvenile detention facilities may be located in the same building or on the same grounds as adult jail facilities as long as the criteria for separateness of the two facilities are met. If the criteria are met, the placement of juveniles in such detention facilities is not deemed to be placement in an adult jail.) While there is an exception for certain states in 42 U.S.C.A. §5633(a)(14), Kansas is not eligible for the exception because we do not have a law requiring an initial court appearance for juvenile offenders within twenty-four hours of being taken into custody. K.S.A. 1988 Supp. 38-1632(a) provides for forty-eight hours of detention before an initial hearing. Even if K.S.A. 1989 Supp. 38-1632 were amended to allow Kansas to make use of the exception, the exception itself expires in 1993.


Having concluded that Kansas, by virtue of SRS's agreement to accept JJCPA funds under specified circumstances, is currently precluded from detaining juvenile offenders in adult jails, we turn now to the question of possible

7/27/90
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Att VI

consequences for violation of this prohibition. Aside from possible monetary consequences as a result of action taken by the Office of Juvenile Justice and Delinquency Prevention, local units of government, particularly sheriffs and chiefs of police, may be held liable in private causes of action brought by juveniles "wrongfully" incarcerated under the JJDP. In Hendrickson v. Griggs, 856 F.2d 1041 (8th Cir. 1988) the United States Circuit Court, in finding unappealable an interlocutory order requiring the State of Iowa to submit a plan in substantial compliance with the JJDP, indicated that a private cause of action may be brought to enforce the requirements of the JJDP. We have been advised that the district court's ruling in this regard will be appealed once a final order is entered and thus the circuit court will be able to handle this as a substantive issue at that time. Until it does so and renders a decision to the contrary, however, we must consider such private causes of action a possibility. See Soler, Dale and Flake, "Stubborn and Rebellious Children: Liability of Public Officials for Detention of Children in Jails," 1980 B.Y.U.L. Rev. 1, 12 (1980); Dale, "Detaining Juveniles in Adult Jails and Lockups: An Analysis of Rights and Liabilities," Am. Jails, Spring 1988, at 46; "Hendrickson vs. Griggs - Juvenile Justice Act Creates Rights for Detainees," Detention Reporter, August 1987, at 3. On the other hand, local units of government may be held liable for releasing a juvenile offender who then proceeds to commit subsequent crimes. Thus, local units of government are placed in a delicate situation and may be well advised to consider each case individually with these possibilities in mind.

I trust this information will be of assistance in clearing up any questions brought on by Ruth O'Donnell's (SRS) letter dated May 5, 1989.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas

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(c) *Amendment of report.* The judge may allow an amendment of a report of service at any time and upon the terms as are deemed just to reflect correctly the true manner of service.

History: L. 1982, ch. 182, § 82; Jan. 1, 1983.

38-1629. Service of other pleadings. (a) *Proceedings upon filing.* Upon the filing of a subsequent pleading requesting or indicating the necessity for a hearing, the court shall fix the time and place for the hearing.

(b) *Form of notice.* The notice of hearing shall be given by the clerk, dated the day it is issued, contain the name of the court and the caption in the case and be substantially in the following form:

(Name of Court)
(Caption of Case)
NOTICE OF HEARING

TO:

(Juvenile)	
(Father)	
(Mother)	
(Other having custody— relationship)	(Address)

This court has received a _____ (describe pleading) a copy of which is attached, which will require a hearing before the court.

On _____, 19____, at ____ o'clock ____ m. at _____, the court will hear this matter.

The above named juvenile and a parent and any other person having legal custody of the juvenile are required to be present. Failure to appear may cause the juvenile to be taken into custody and brought before the court.

Date: _____, 19____ Clerk of the District Court by _____

(Seal)

(c) *Method and report of service.* Notice of hearing and motions or other pleadings subsequent to the complaint shall be served and report of service shall be made in the same manner as service of the complaint and summonses.

History: L. 1982, ch. 182, § 83; Jan. 1, 1983.

38-1630. Subpoenas and witness fees. (a) A party shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, the subpoenas and other compulsory process shall be issued and served in the same

manner and the disobedience thereof shall be punished the same as in other civil cases.

(b) The court shall have the power to compel the attendance of witnesses from any county in the state for proceedings under this code.

(c) Only witnesses who have been subpoenaed shall be allowed witness fees and mileage. No witness shall be entitled to be paid the fee or mileage before the witness' actual appearance at court.

History: L. 1982, ch. 182, § 84; Jan. 1, 1983.

38-1631. Issuance of warrant. If the court finds there is probable cause to believe that an offense was committed and that it was committed by the respondent, or that a person has absconded while on probation or escaped from a facility or person vested with that person's legal custody or supervision pursuant to this code or the Kansas juvenile code for a nonstatus offense, the court may issue a warrant commanding that the respondent or person be taken into custody and brought before the court. The warrant shall designate where or to whom the respondent or person is to be taken if the court is not open for the regular conduct of business. The warrant shall describe the offense charged in the complaint or the applicable circumstances of the person's absconding or escaping.

History: L. 1982, ch. 182, § 85; Jan. 1, 1983.

38-1632. Detention hearing; waiver; notice; procedure. (a) *Length of detention.* Whenever an alleged juvenile offender is taken into custody and is thereafter taken before the court or to a juvenile detention facility or youth residential facility designated by the court, the juvenile shall not remain detained for more than 48 hours, excluding Saturdays, Sundays and legal holidays, from the time the initial detention was imposed, unless the court determines after hearing, within the forty-eight-hour period, that further detention is necessary.

(b) *Waiver of detention hearing.* The right of a juvenile to a detention hearing may be waived if the juvenile and the attorney for the juvenile consent in writing to waive the right to a detention hearing and the judge approves the waiver. Whenever the right to a detention hearing has been

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waived, the juvenile, the attorney for the juvenile or the juvenile's parents may reserve the right at any time not less than 48 hours prior to the time scheduled for adjudication by submitting a written request to the judge. Upon request, the judge shall immediately set the time and place for the hearing, which shall be held not more than 48 hours after the receipt of the request excluding Saturdays, Sundays and legal holidays.

(c) Notice of hearing. Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for the hearing. Notice of the detention hearing shall be given at least 24 hours prior to the hearing, unless waived, and shall be in substantially the following form:

(Name of Court)
(Caption of Case)
NOTICE OF DETENTION HEARING
TO:

Form with fields for (Juvenile), (Father), (Mother), (Other having custody-relationship), and (Address).

On _____, 19____, at _____ o'clock _____ m.
(day) (date)

there will be a hearing for the court to determine if there is a need for further detention of the above named juvenile. Each parent or other person having legal custody of the juvenile should be present at the hearing which will be held at _____.

You have the right to hire an attorney to represent the above juvenile. Upon failure to hire an attorney the court will appoint an attorney for the juvenile and the juvenile, parent or other person having legal custody of the juvenile may be required to repay the court for the expense of the appointed attorney.
Date: _____, 19____ Clerk of the District Court
by _____

(Seal)
REPORT OF SERVICE
I certify that I have delivered a true copy of the above notice on the persons above named in the manner and at the times indicated below:

Table with columns: Name, Location of Service (other than above), Manner of Service, Date, Time.

Date Returned: _____, 19____
(Signature)
(Title)

(d) Oral notice. When there is insufficient time to give written notice, oral notice may be given and is completed upon filing a

certificate of oral notice with the clerk in substantially the following form:

(Name of Court)
(Caption of Case)
CERTIFICATE OF ORAL NOTICE OF DETENTION HEARING
I gave oral notice that the court will hold a hearing at _____ o'clock _____ m. on _____, 19____, to the persons listed, in the manner and at the times indicated below:

Table with columns: Name, Relationship, Date, Time, Method of Communication (in person or telephone).

- I advised each of the above named persons that:
(1) The hearing is to determine if the above named juvenile shall be detained;
(2) each parent or person having legal custody should be present at the hearing;
(3) they have the right to hire an attorney of their own choice for the juvenile;
(4) if an attorney is not hired, the court will appoint an attorney for the juvenile; and
(5) the juvenile, parent or other person having custody of the juvenile may be required to repay the court for the expense of the appointed attorney.

(Signature)
(Name Printed)
(Title)

(e) Hearing, finding, bond. At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney for the juvenile, and may recess the hearing for 24 hours to obtain attendance of the attorney appointed. At the detention hearing, if the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated. In the absence of either finding, the court shall order the juvenile released or placed in temporary custody as provided in subsection (f).

In determining whether to place a juvenile in a juvenile detention facility pursuant

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to this subsection, the court shall consider all relevant factors, including but not limited to the criteria listed in K.S.A. 38-1640. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(f) *Temporary custody.* If the court determines that it is not necessary to detain the juvenile but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility, the secretary or some other suitable person willing to accept temporary custody.

History: L. 1982, ch. 182, § 86; L. 1986, ch. 162, § 4; July 1.

Cross References to Related Sections:

Criteria for detaining juvenile in detention facility, see 38-1640.

38-1633. Pretrial hearings. (a) When the respondent appears in response to a complaint without an attorney, the court shall inform the respondent of the following:

(1) The nature of the charges in the complaint;

(2) the right to hire an attorney of the respondent's own choice;

(3) the duty of the court to appoint an attorney for the respondent if no attorney is hired by the respondent or parent; and

(4) that the court may require the respondent or parents to pay the expense of a court appointed attorney.

Upon request the court shall give the respondent or parent an opportunity to hire an attorney. If no request is made or the respondent or parents are financially unable to hire an attorney, the court shall forthwith appoint an attorney for the respondent. The court shall afford the respondent an opportunity to confer with the attorney before requiring the respondent to plead to the allegations of the complaint.

(b) When the respondent appears with an attorney in response to a complaint, the court shall require the respondent to admit or deny the allegations stated in the com-

plaint or plead *nolo contendere*, unless there is an application for and approval of a diversion program. Prior to making this requirement, the court shall inform the respondent of the following:

(1) The nature of the charges in the complaint;

(2) the right of the respondent to be presumed innocent of each charge;

(3) the right to trial without unnecessary delay and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(4) the right to subpoena witnesses;

(5) the right of the respondent to testify or to decline to testify; and

(6) the dispositional alternatives the court may select as the result of an adjudication.

(c) If the respondent admits the allegations contained in a complaint or pleads *nolo contendere*, the court shall determine, before accepting the admission or plea and entering an order of adjudication: (1) That there has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4) and (5); and (2) that there is a factual basis for the admission or the plea of *nolo contendere*.

(d) If allegations of the complaint are denied, the court shall schedule a time and date for trial to the court.

History: L. 1982, ch. 182, § 87; Jan. 1, 1983.

38-1634. *Nolo contendere.* A plea of *nolo contendere* is a formal declaration that the respondent does not contest the charge. When a plea of *nolo contendere* is accepted the court shall adjudge the respondent to be a juvenile offender. The plea cannot be used against the respondent as an admission in any other action based on the same act.

History: L. 1982, ch. 182, § 88; Jan. 1, 1983.

38-1635. Diversion. Each court may adopt a policy and establish guidelines for a diversion program by which a respondent who has not been previously adjudged to be a juvenile offender may avoid such an adjudication.

History: L. 1982, ch. 182, § 89; Jan. 1, 1983.

Law Review and Bar Journal References:

"Kansas Diversion: Defendant's Remedies and

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DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary

Testimony on House Bill 3041

AN ACT CONCERNING JUVENILE OFFENDERS;
RELATING TO THE LENGTH OF DETENTION

Mr. Chairman, Members of the Committee, I appear before you today regarding House Bill 3041, which amends the detention hearing time for juvenile offenders placed in detention.

As currently defined, juvenile detention facilities include adult jails and lockups. This bill represents an attempt to allow counties to take advantage of a 24 hour exception to the requirement in the federal Juvenile Justice and Delinquency Prevention (JJDP) Act that no juveniles be held in adult jails.

As written, the bill does not adhere to the federal regulations in four regards: the JJDP Act exception is applicable (1) only to counties outside standard metropolitan statistical areas; (2) only when a determination is made that no existing alternative placement is available; (3) only when the jail or lockup has been certified by the Secretary of Corrections as having sight and sound separation between adult and juvenile quarters; and (4) is effective only until 1993.

This bill unnecessarily subjects the entire state to the 24-hour detention hearing requirement. SB 742 has language which requires only those counties choosing to detain alleged juvenile offenders for 24 hours in jails or lockups to adhere to a 24-hour detention hearing requirement.

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As written, the bill places a burden upon the entire juvenile justice system which has limited resources. The entire court system, in particular, would be burdened with a requirement which is not necessary to meet the requirements of the JJDP Act. These requirements can be met by making the 24-hour detention hearing mandatory only for those counties which choose to jail alleged juvenile offenders for 24 hours.

SRS has some concerns that a statewide shortened detention period might result in increased orders for temporary custody which would require out-of-home placement. The kind of out-of-home placement most suitable to these youth would be emergency shelters, which are our most expensive resource.

ACTION REQUESTED: Modification of the bill to include the federal requirements, and to make it optional for those counties choosing to detain juvenile offenders for 24 hours in jails or lockups.

Winston Barton
Secretary
Department of Social and
Rehabilitation Services
913/296-3217

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KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

February 27, 1990

TO: House Judiciary Committee
FROM: Kansas Medical Society *Chip Weelen*
SUBJECT: House Bill 3043; Compensation Paid Screening Panel Members

Thank you for this opportunity to express our support of HB 3043. Some of our members who have served on screening panels have indicated that because such panels must review extensive, technical information, the panels devote a substantial amount of time to their deliberations and report. When analyzed in comparison to the modest compensation paid to panel members, this translates into a rather low fee per hour of service.

We believe that an increase in the amount paid to panel members will encourage more physicians to serve as members and will encourage more attorneys to serve as chairmen. For this reason, we respectfully request your favorable recommendation on HB 3043. Thank you for your consideration.

CW:lg

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Attachment VIII

1 as follows: 28-172a. (a) Except as otherwise provided in this section,
2 whenever the prosecuting witness or defendant is adjudged to pay
3 the costs in a criminal proceeding in any county, a docket fee shall
4 be taxed as follows:

5	Murder or manslaughter	\$149	\$152
6	Other felony.....	119	122
7	Misdemeanor	89	92
8	Forfeited recognizance.....	49	52
9	Appeals from other courts.....	49	52

10 (b) In actions involving the violation of any of the laws of this
11 state regulating traffic on highways (including those listed in sub-
12 section (c) of K.S.A. ~~1986~~ 1988 Supp. 8-2118 and amendments
13 thereto), any act declared a crime pursuant to the statutes contained
14 in chapter 32 of Kansas Statutes Annotated and amendments thereto
15 or any act declared a crime pursuant to the statutes contained in
16 article 8 of chapter 82a of the Kansas Statutes Annotated and amend-
17 ments thereto, whenever the prosecuting witness or defendant is
18 adjudged to pay the costs in the action, a docket fee of ~~\$29~~ \$32
19 shall be charged. When an action is disposed of under subsections
20 (a) and (b) of K.S.A. ~~1986~~ 1988 Supp. 8-2118 and amendments
21 thereto, whether by mail or in person, the docket fee to be paid as
22 court costs shall be ~~\$29~~ \$32.

23 (c) If a conviction is on more than one count, the docket fee
24 shall be the highest one applicable to any one of the counts. The
25 prosecuting witness or defendant, if assessed the costs, shall pay
26 only one fee. Multiple defendants shall each pay one fee.

27 (d) Statutory charges for law library funds, the law enforcement
28 training center fund, ~~the crime victims reparations compensation~~
29 ~~fund~~ and the prosecuting attorneys' training fund shall be paid from
30 the docket fee. All other fees and expenses to be assessed as ad-
31 ditional court costs shall be approved by the court, unless specifically
32 fixed by statute. Additional fees shall include, but are not limited
33 to, fees for service of process outside the state, witness fees, fees
34 for transcripts and depositions, costs from other courts, doctors' fees
35 and examination and evaluation fees. No sheriff in this state shall
36 charge any district court of this state a fee or mileage for serving
37 any paper or process.

38 (e) In each case charging a violation of the laws relating to parking
39 of motor vehicles on the statehouse grounds or other state-owned
40 or operated property in Shawnee county, Kansas, as specified in
41 K.S.A. 75-4510a and amendments thereto or as specified in K.S.A.
42 75-4508 and amendments thereto, the clerk shall tax a fee of \$2,
43 which shall constitute the entire costs in the case, except that witness
44

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Attachment 18

And your committee on conference recommends the adoption of this report.

JERRY MORAN
LANA OLEEN
MARGE PETTY
Conferees on part of Senate.

MICHAEL O'NEAL
MARTHA JENKINS
JOHN M. SOLBACH
Conferees on part of House.

Senator Petty moved the Senate adopt the Conference Committee report on S. Sub. HB 2009.

On roll call, the vote was: Yeas 37, nays 0; present and passing 1; absent or not voting 2.

Yeas: Allen, Anderson, Bond, Burke, Daniels, Doyen, Ehrlich, Feleciano, Frahm, Francisco, Gaines, Harder, Hayden, Johnston, Kanan, Karr, D. Kerr, F. Kerr, Langworthy, Lee, Martin, Montgomery, Moran, Morris, Oleen, Parrish, Petty, Rock, Salisbury, Sallee, Steineger, Strick, Thiessen, Vidricksen, Walker, Winter, Yost.

Present and Passing: Reilly.

Absent or not voting: Bogina, McClure.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT: Your committee on conference on Senate amendments to HB 2200, An act concerning victims of crime; relating to reparations and assistance thereto; changing the official designation of the crime victims reparations board and placing the board under the jurisdiction of the attorney general; establishing position of victims rights coordinator; establishing the bill of rights for victims of crime; relating to disposition of fines, penalties and forfeitures; increasing certain fees and prescribing their disposition; amending K.S.A. 20-350, 20-362, 20-2801, 23-108a, 74-7302, 74-7303, 74-7304, 74-7305, 74-7306, 74-7308, 74-7311, 74-7313, 74-7316 and 74-7325 and K.S.A. 1988 Supp. 8-2107, 28-172a, 32-155b, 60-2313, 74-7301, 74-7312, 74-7317, 74-7319, 74-7320, 74-7321 and 75-5211 and repealing the existing sections, begs leave to submit the following report:

On page 25, in line 14, following the first "to" by inserting "existing programs or to establish and maintain new";

On page 26, in line 42, by striking ", 1%" and inserting "and 4%"; by striking all after "fund"; by striking line 43;

On page 27, by striking lines 1 and 2; in line 3, by striking all before the period; in line 5, following "deposit", by inserting "grant"; in line 6, following "(a)", by inserting ", from the crime victims assistance fund,";

And your committee on conference recommends the adoption of this report.

JERRY MORAN
AUDREY H. LANGWORTHY
RICHARD R. ROCK
Conferees on part of Senate.

MICHAEL R. O'NEAL
MARTHA JENKINS
JOHN M. SOLBACH
Conferees on part of House.

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Sec. 6. K.S.A. 1988 Supp. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

Murder or manslaughter	\$149	\$152
Other felony	119	122
Misdemeanor	89	92
Forfeited recognizance	49	52
Appeals from other courts	49	52

(b) In actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. ~~1986~~ 1988 Supp. 8-2118 and amendments thereto), any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of ~~\$20~~ \$32 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. ~~1986~~ 1988 Supp. 8-2118 and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~\$20~~ \$32.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the crime victims ~~reparations~~ compensation fund and the prosecuting attorneys' training fund shall be paid from the docket fee. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a and amendments thereto or as specified in K.S.A. 75-4508 and amendments thereto; the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness

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