

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael R. O'Neal at
Chairperson

7:00 a.m. ~~xxx~~ on March 30, 1990 in room 423-S of the Capitol.

All members were present except:

Representatives Douville, 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:

DISCUSSION AND ACTION ON BILLS:

SB 736 Charitable health care providers employees of state for purposes of the Kansas Tort Claims Act

Representative Snowbarger moved to strike the words "primary care" wherever they appear in the bill and insert the word "professional"; on page 2 in line 39 strike all after "of"; in line 40 to strike "ices" and insert "health and environment"; strike lines 41 and 42; and on page 4 to strike lines 14 through 19. Representative Moomaw seconded the motion. The motion passed.

Representative Snowbarger moved and Representative Moomaw seconded to report SB 736, as amended, favorably for passage. The motion passed.

SB 721 Marriage licenses and officiants' credentials

Representative Walker moved and Representative Snowbarger seconded to report SB 721 favorably for passage. The motion passed.

SB 725 Public health laboratory tests; laboratory defined

Representative Fuller moved to report SB 725 favorably for passage. Representative Sebelius seconded the motion. The motion passed.

SB 231 Endangering a child to include failure to report child abuse by certain persons

Representative Sebelius moved to table SB 231. Representative Everhart seconded the motion. The motion passed.

SB 562 Community corrections, corrections advisory board, state purchase of services

Representative Whiteman moved and Representative Fuller seconded to report SB 562 favorably for passage. The motion passed.

HB 3060 Amendments to the durable power of attorney act and the durable power of attorney for health care decisions act

Representative Walker moved to recommend HB 3060 for Judicial Council Study. Representative Fuller seconded the motion. The motion passed.

SB 719 Allowing municipal court judges to officiate marriage ceremonies.

Representative Snowbarger moved to table SB 719. Representative Walker seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 423-S, Statehouse, at 7:00 a.m./~~P.M.~~ on March 30, 1990.

SB 629 **Eliminate right to jury trial for defendants charged with minor traffic infractions.**

Representative Snowbarger moved to amend SB 629 to strike the word "infraction" and to insert the word "offense" in lines 15, 23 and 28; to strike all after "(5)" in line 29; strike lines 30, 31 and 32 and insert "The trial of traffic infraction cases shall be to the court". Representative Lawrence seconded the motion. The motion passed.

Representative Buehler moved and Representative Lawrence seconded to report SB 629, as amended, favorably for passage. The motion passed.

HB 2666 **Juvenile offenders to be prosecuted as adults at 14 or 15 years of age**

The Committee discussed the balloon on HB 2666, see Attachment I. It was recommended to delete (7), lines 3 and 4 on page 2 of the balloon "a person 16 years of age or over who is charged with a class A or B felony". It was also recommended to amend the balloon to include the Youth Center at Beloit and that the Secretary of Corrections shall have the authority to order the placement of a juvenile felon in the youth center at Topeka or the youth center at Beloit until such felon reaches the age of 21 years. No person under 16 years of age, sentenced to the Secretary of Corrections' custody shall be placed in the Kansas State Penitentiary or the Kansas State Industrial Reformatory.

Representative Walker moved to amend the balloon to change the age from 25 years to 21 years that juvenile felons shall be allowed to be in the youth centers at Topeka and Beloit. Representative Vancrum seconded the motion. The motion passed.

Representative Walker moved and Representative Vancrum seconded to amend the balloon to include evaluation at age 18 of juvenile offenders at the State Reception and Diagnostic Center. The motion was withdrawn.

Representative Walker moved to amend the balloon to include S.R.D.C. evaluation of a juvenile offender at the time of a transfer from the Youth Center at Topeka or Beloit to a D.O.C. facility. Representative Vancrum seconded the motion. The motion passed.

A motion was made by Representative Jenkins to delete Section 1. Representative Snowbarger seconded the motion. The motion passed.

Representative Buehler moved to report HB 2666, as amended, favorably for passage. Representative Hochhauser seconded the motion. The motion passed.

The Committee meeting was adjourned at 8:30 a.m.

HOUSE BILL No. 2666

By Committee on Judiciary

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AN ACT concerning juvenile offenders; relating to prosecution as an adult; notice to victims of release or discharge of certain juvenile offenders; amending K.S.A. 38-1636, 38-1673 and 38-1675 and K.S.A. 1989 Supp. 38-1602 and repealing the existing sections.

juveniles; relating to juvenile felons and

defining juvenile felons; allowing the secretary of corrections to place a juvenile felon in the youth center at Topeka;

, 38-1618, 75-5206

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

Section 1. K.S.A. 1989 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. 41-727 or subsection (i) of K.S.A. 1988 1989 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 de-

1 linquency as defined by K.S.A. 21-3611 and amendments thereto;

2 or

3 (7) a person 16 years of age or over who is charged with a class
4 A or B felony.

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

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

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

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

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

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

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

27 Sec. 2. K.S.A. 38-1636 is hereby amended to read as follows:
28 38-1636. (a) At any time after commencement of proceedings under
29 this code against a respondent who was: (1) 14 or 15 years of age
30 at the time of the offense alleged in the complaint, if such offense
31 is a class A or B felony, and prior to entry of an adjudication or
32 the beginning of an evidentiary hearing at which the court may enter
33 adjudication as provided in K.S.A. 38-1655 and amendments thereto,
34 or (2) 16 or more years of age at the time of the offense alleged in
35 the complaint and prior to entry of an adjudication or the beginning
36 of an evidentiary hearing at which the court may enter adjudication
37 as provided in K.S.A. 38-1655 and amendments thereto, the county
38 or district attorney may file a motion requesting that the court au-
39 thorize prosecution of the respondent as an adult under the appli-
40 cable criminal statute.

41 (b) The motion may also contain a statement that the prosecuting
42 attorney will introduce evidence of the offenses alleged in the com-
43 plaint and request that, on hearing the motion and authorizing pros-

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ecution as an adult under this code, the court may make the findings required in a preliminary examination provided for in K.S.A. 22-2902 and amendments thereto and the finding that there is no necessity for further preliminary examination.

(c) Upon receiving a motion to authorize prosecution as an adult, the court shall set a time and place for hearing on the motion. The court shall give notice of the hearing to the respondent, each parent of the respondent, if service is possible, and the attorney representing the respondent. The motion shall be heard and determined prior to any further proceedings on the complaint.

(d) If the respondent fails to appear for hearing on a motion to authorize prosecution as an adult after having been properly served with notice of the hearing, the court may hear and determine the motion in the absence of the respondent. If the court is unable to obtain service of process and give notice of the hearing, the court may hear and determine the motion in the absence of the respondent after having given notice of the hearing once a week for two consecutive weeks in a newspaper authorized to publish legal notices in the county where the hearing will be held.

(e) In determining whether or not prosecution as an adult should be authorized, the court shall consider each of the following factors: (1) The seriousness of the alleged offense and whether the protection of the community requires prosecution as an adult; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the offense was against a person or against property, greater weight being given to offenses against persons, especially if personal injury resulted; (4) the number of alleged offenses adjudicated and pending against the respondent; (5) the previous history of the respondent, including whether the respondent had been adjudicated a delinquent or miscreant under the Kansas juvenile code or a juvenile offender under this code and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence; (6) the sophistication or maturity of the respondent as determined by consideration of the respondent's home, environment, emotional attitude, pattern of living or desire to be treated as an adult; (7) whether there are facilities or programs available to the court which are likely to rehabilitate the respondent prior to the expiration of the court's jurisdiction under this code; and (8) whether the interests of the respondent or of the community would be better served by criminal prosecution. The insufficiency of evidence pertaining to any one or more of the factors listed in this subsection shall not in and of itself be determinative of the issue. Subject to

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1 the provisions of K.S.A. 38-1653 and amendments thereto, written
2 reports and other materials relating to the respondent's mental, phys-
3 ical, educational and social history may be considered by the court.

4 (f) The court may authorize prosecution as an adult upon com-
5 pletion of the hearing if the court finds that the respondent was: (1)
6 14 or 15 years of age at the time of the alleged commission of the
7 offense, if the offense is a class A or B felony, or (2) 16 or more
8 years of age at the time of the alleged commission of the offense
9 and that there is substantial evidence that the respondent should be
10 prosecuted as an adult for the offense with which the respondent is
11 charged. In that case, the court shall direct the respondent be pros-
12 ecuted under the applicable criminal statute and that the proceedings
13 filed under this code be dismissed.

14 (g) If the respondent is present in court and the court also finds
15 from the evidence that it appears a felony has been committed and
16 that there is probable cause to believe the felony has been committed
17 by the respondent, the court may direct that there is no necessity
18 for further preliminary examination on the charges as provided for
19 in K.S.A. 22-2902 and amendments thereto. In that case, the court
20 shall order the respondent bound over to the district judge having
21 jurisdiction to try the case.

22 (h) If the respondent is convicted, the authorization for prose-
23 cution as an adult may attach and apply to any future acts by the
24 respondent which are or would be cognizable under this code if the
25 order of the court so provides.

26 Sec. 3. K.S.A. 38-1673 is hereby amended to read as follows:
27 38-1673. (a) When a juvenile offender has satisfactorily completed
28 the program at the state youth center to which the juvenile offender
29 was committed or placed, the person in charge of the state youth
30 center shall have authority to release the juvenile offender under
31 appropriate conditions and for a specified period of time.

32 (b) At least 15 days prior to releasing a juvenile offender as
33 provided in subsection (a), the person in charge of the state youth
34 center shall notify the committing court of the date and conditions
35 upon which it is proposed the juvenile offender is to be released.

36 (c) Upon receipt of the notice required by subsection (b), the
37 court shall review the proposed conditions of release and may rec-
38 ommend modifications or additions to the conditions.

39 (d) If, during the conditional release, the juvenile offender is not
40 returning to the county from which committed, the person in charge
41 of the state youth center shall also give notice to the court of the
42 county in which the juvenile offender is to be residing.

43 (e) To assure compliance with conditions of release from a state

and that there is substantial evidence that the respondent should
be prosecuted as an adult for the offense with which the respondent
is charged

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youth center, the secretary shall have the authority to prescribe the manner in which compliance with the conditions shall be supervised. When requested by the secretary, the appropriate court may assist in supervising compliance with the conditions of release during the term of the conditional release.

(f) The department of social and rehabilitation service shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the release of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender to any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court. Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

Sec. 4. K.S.A. 38-1675 is hereby amended to read as follows: 38-1675. When a juvenile offender has reached the age of 21 years or has successfully completed the program at a state youth center together with any conditional release following the program, the superintendent in charge of the state youth center shall discharge the juvenile offender from any further obligation under the commitment. The discharge shall operate as a full and complete release from any obligations imposed on the juvenile offender arising from the offense for which the juvenile offender was committed. *The department of social and rehabilitation service shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the discharge of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the discharge of the juvenile offender to any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court. Failure to notify pursuant to this section shall not be a reason to postpone a discharge. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as*

a result of the failure to notify pursuant to this section.

Sec. 5. K.S.A. 38-1636, 38-1673 and 38-1675 and K.S.A. 1989

Supp. 38-1602 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Attached

, 38-1618, 75-5206

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Sec. 5. K.S.A. 38-1618 is hereby amended to read as follows:
38-1618. (a) In order to properly advise the three branches of government on the operation of the juvenile justice system, there is hereby established within and as a part of the central repository, as defined by K.S.A. 22-4701 and amendments thereto, a juvenile offender information system. The system shall serve as a repository of juvenile offender information which is collected by juvenile justice agencies and reported to the system.

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

(c) Reporting methods may include:

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

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

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

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

(e) Juvenile offender information maintained in the juvenile offender information system is confidential and shall not be disseminated or publicly disclosed in a manner which enables identification of any individual who is a subject of the information, except that the information shall be open to

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inspection by law enforcement agencies of this state, by the department of social and rehabilitation services if related to an individual in the secretary's custody or control, by the department of corrections if related to an individual in the secretary's custody or control, by the officers of any public institution to which the individual is committed, by county and district attorneys, by attorneys for the parties to a proceeding under this code or upon order of a judge of the district court or an appellate court.

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

(g) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

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

(i) K.S.A. 38-1617 and amendments thereto and this section shall be part of and supplemental to the Kansas juvenile offenders code.

Sec. 6. K.S.A. 75-5206 is hereby amended to read as follows:
75-5206. (a) Except as provided in subsection (c) or (d), to carry out the purposes of this act, the secretary shall have authority to order the housing and confinement of any person sentenced to the secretary's custody to any institution or facility herein placed under the secretary's supervision and management or to any contract facility, including a conservation camp.

(b) All institutions of the department of corrections shall

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be institutions for the incarceration of felons.

(c) No person under 16 years of age sentenced to the secretary's custody shall be placed in the Kansas state penitentiary or the Kansas state industrial reformatory.

(d) The secretary shall have the authority to order the placement of a juvenile felon in the youth center at Topeka. Such juvenile felon shall be allowed to be in the youth center at Topeka only until such felons reach the age of 25 years.

New Sec. 7. When a juvenile felon has been placed in the custody of the secretary of the department of corrections, the secretary shall notify the court in writing of the initial placement of the juvenile felon in the youth center at Topeka as soon as the placement has been accomplished. The secretary shall not permit the juvenile felon to remain detained in any jail for more than 72 hours, excluding Saturdays, Sundays and legal holidays, after the secretary has received the written order of the court placing the juvenile felon in the custody of the secretary, except that, if that placement cannot be accomplished, the juvenile felon may remain in jail for an additional period of time, not exceeding 10 days, which is specified by the secretary and approved by the court. During the time a juvenile felon remains in the custody of the secretary until the juvenile becomes 18 years of age, the secretary shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile felon. Such report shall be confidential and shall only be reviewed by the court and the child's attorney.

New Sec. 8. As used in this act, the term "juvenile felon" means those persons who are 14 or 15 years of age at the time of the offense alleged in the complaint, such offense is a class A or B felony, such person was prosecuted as an adult and such person has been found guilty of such offense.

RENUMBER SECTIONS ACCORDINGLY;

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