

Approved \_\_\_\_\_  
Date 6-27-90

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~p.m.~~ on March 28, 19 90 in room 514-S of the Capitol.

All members were present except: Senator Feleciano who was excused.

Committee staff present:

Mike Heim, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

The Chairman opened the meeting by recognizing Senator Moran to present his Subcommittee reports.

Senator Moran reported the Service of Process Subcommittee addressed three bills:

SB 321 - concerning civil procedure for limited actions; relating to service of process.

SB 620 - concerning civil procedure; relating to service of summons and petition; providing fee thereof.

HB 3021 - concerning the service of process by certified mail.

The Subcommittee recommended amending to provide sheriffs shall receive \$5.00 fee for personal Service of Process and to report favorable as amended.

It was noted in committee discussion that service of process by mail was currently possible but most attorneys request personal service. The \$5.00 suggested fee would encourage use of the mails for serving of process. It was also noted that the checks would be made to the Sheriff and the proceeds would go into the county's general fund.

Senator Moran moved to amend HB 3021 by inserting the provisions of SB 620 and recommend HB 3021 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

Senator Morris moved to recommend SB 321 "Be Not Passed". Senator Petty seconded the motion. The motion carried.

Senator Moran reported the recommendations of the Criminal Law and Uniform Commercial Code Subcommittee.

HB 2692 - concerning juvenile offenders; relating to court-ordered mediation.

The Subcommittee recommended HB 2692 be reported favorable.

Senator Moran moved to recommend HB 2692 favorable for passage. Senator Petty seconded the motion. The motion carried.

HB 2880 - concerning crimes and punishments; creating the crime of battery of a correctional officer or employee; expanding the definition of law enforcement officer; relating to vehicular battery.

The Subcommittee recommended HB 2880 be amended to provide a higher penalty for battery of correctional officers and to recommend the bill favorable as amended.

Committee discussion followed as to whether the Sentencing Commission would be working on creating new categories of crimes that would cover this type of violation, and which situations and employees this bill should address.

Senator Moran moved to conceptually amend HB 2880 to include K.S.A. 21-3413 and make it a class E felony of battery against a law enforcement officer. Senator Kerr seconded the motion. The motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 28, 1990.

Senator Oleen moved to recommend HB 2880 favorable for passage as amended. Senator Morris seconded the motion. The motion carried.

HB 2752 - concerning criminal procedure; relating to the conditions of probation. The Subcommittee recommended HB 2752 favorable for passage.

Senator Moran moved to recommend HB 2752 favorable for passage. Senator Kerr seconded the motion. The motion carried.

The Chairman turned the committee's attention to SB 742 and HB 3041.

SB 742 - concerning juveniles; prohibiting detention in adult jails; development of alternatives to detention.

HB 3041 - concerning juvenile offenders; relating to the length of detention.

Communication from Ruth Browne, District Magistrate Judge of Clay County, addressing the issue of juveniles in jail was distributed to the committee members. (ATTACHMENT I)

The Chairman reminded the committee of the motion left pending on adjournment of the March 27, 1990, 12:30 p.m. meeting. Copies of the SRS suggested amendments were distributed to the members. (ATTACHMENT II)

Senator Parrish renewed her motion to amend SB 742 to change the effective date for Children in Need of Care to July 1, 1990. Senator Bond seconded the motion. The motion carried.

It was pointed out that the intent of this amendment was to affect new cases only. Third time felony offenders were not intended to be affected.

Senator Parrish moved to amend SB 742 by adopting the proposed technical amendments dealing with the sections relating to Children in Need of Care. Senator Martin seconded the motion. The motion carried.

Senator Parrish moved to amend SB 742 to change the effective date for juvenile offenders to January 1, 1992. Senator Martin seconded the motion. The motion was declared lost. On call of a division, the motion carried.

It was noted that unless the effective date were changed to January 1, 1992, all federal funding would be lost to the State of Kansas.

Senator Parrish moved to amend SB 742, as amended, into HB 3041. Senator Petty seconded the motion. The motion carried.

It was noted in committee discussion that some members feel the State of Kansas is allowing itself to be stampeded by federal money. The costs of implementing the requirements contained in the legislation under consideration far outweigh the federal funds involved. Other members stated that the question is whether decisions should be revenue driven or need driven. The Chairman stated that the opportunity presents itself in this legislation to do long range planning using the identification of need presented.

Senator Parrish moved to recommend SB 3041 favorable for passage as amended. Senator Martin seconded the motion. The motion carried.

The Chairman noted that passage of this bill will require recognition of the need to provide state funding by implementing the provisions of the Lottery to help the counties.

Senator Moran stated that the good things intended in HB 3041 as amended do come with a price tag. He referred to the community corrections programs and stated the same difficulties exist in both areas. Problems arise when programs are mandated and then monies required to implement the programs are not allotted.

The meeting was adjourned.



Court House  
Clay County, Kansas

**RUTH T. BROWNE**  
District Magistrate Judge  
21st Judicial District

Ph. (913) 632-2636  
Clay Center, Kansas 67432

March 26, 1990

Senator Wint Winter, Chairman  
Senate Judiciary Committee  
Kansas State Senate  
Topeka, Kansas

Dear Senator Winter:

My name is Ruth Browne and I am a District Magistrate Judge in the 21st Kansas Judicial District composed of Clay and Riley counties. Clay Center, the county seat of rural Clay County is my hometown, and while I work in both counties every week, most of my work is in Clay County.

I would like to tell you about our Clay County juvenile attendant-care facility, the second in Kansas. The room (with adjacent bathroom) was created by enclosing a large porch on an older house on our Courthouse square.

Historically, this house was the home of the Sheriff, but it has evolved into offices for Clay County Sheriff Gary Caldwell and the Clay Center Chief of Police Larry Mossburgh.

The juvenile attendant-care room is basically furnished with a sleeper sofa, a comfortable platform rocker, a desk and chair. The majority of the time it serves as the office of Clay County Undersheriff, Phillip Taylor, so it has a dual purpose.

The adult jail is new and is adjacent to the house.

We have trained four men and four women as attendants. The attendants represent a broad spectrum of our population-ranging from young parents and farmers to an elderly man and woman, who, incidentally, have been very successful attendants.

Our juvenile attendant-care room has been in place for about two years. It has worked very well for juvenile offenders, run-away juveniles and as an emergency shelter for children in need of care.

Be assured, I firmly believe that there are a small number of violent or psychotic youth who must be detained in secure facilities. I would have no reservation nor hesitation in holding them and sending them to our nearest detention center in Salina. I am not a Pollyanna.

It is very important to remember that the number of violent and psychotic youngsters is small. I have never had one in seven years.

I support-strongly and firmly-removing all juveniles from jail, because there are better and safer alternatives.

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I shall never forget the horror, grief and immense sadness I felt when I heard that a youngster in an adjoining county had committed suicide in the jail. Juveniles do not belong in jails. There are many good and sound reasons for not putting youth in jails; beginning with their physical safety from beatings, rape, molestation, abuse and disease from inmates.

If that isn't sufficient, the high rate of suicide among jailed juveniles should stop us in our tracks. In addition, there are the emotional and psychological scars developed from the experiences, plus the hardening of their attitude toward society and the system. Juveniles simply do not possess the psychological resources, perspective and enough life experience to deal with the isolation and despair.

The issue of liability is very sobering and important as well as the other considerations.

I sincerely hope this statement has been helpful to you in making the difficult and important decisions you must make concerning this issue, and the even more difficult problem of funding the decision.

It is my personal opinion however, that the great majority of people in Kansas do not support jailing juveniles in adult jails for all of the above reasons.

Thank you for your time and kind consideration.

Sincerely,

*Ruth T. Browne*

Ruth T. Browne  
District Magistrate Judge

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SENATE BILL 742

Explanation of Balloon - due to a personal problem in the Revisors Office, the bill was incorrectly drafted and, as presented, did not meet the federal deadlines and requirements.

- A. The ballooned date changes have the effect of prohibiting the confinement of CINCs in jail as of July 1, 1990 and of all other juveniles as of July 1, 1991.
- B. P 4, Lines 24 and 25; Corrective deletion.
- C. P. 5, Line 15; P. 6, Line 38: Replaces a partial federal definition with the complete definition.
- D. P. 7, Line 3: Corrective addition to accurately define sight and sound definition.
- E. P. 7, Lines 8 - 16: Corrective language for the federal 24-hour exception for rural areas which is allowed through 1993. Adds the Saturday, Sunday and legal holiday exclusion allowed under federal law; requires only those counties using the exception to hold detention hearings within 24 hours. Same language as in H.B. 3041.
- F. P. 7, Line 36: Corrective deletion.
- G. P. 8, Lines 5-9: Corrective addition and deletion.
- H. P. 13, Line 6: Makes explicit that the Advisory Commission on Juvenile Offender Programs would oversee the expenditure of funds appropriated to the Juvenile Detention Facilities Fund for the purposes of construction or renovation under KSA 79-4803.

Robert C. Barnum  
Commissioner of Youth Services

Presented on Behalf of:

Winston Barton, Secretary  
Department of Social & Rehabilitation Services

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K.S.A. 8-241 and amendments thereto and upon proper application and payment of the required fee unless the child's driving privileges have been revoked, suspended or cancelled for another cause and the revocation, suspension or cancellation has not expired.

(b) Instead of suspending a driver's license pursuant to this section, the court may place restrictions on the child's driver's privileges pursuant to K.S.A. 1985 1989 Supp. 8-292 and amendments thereto.

(c) Instead of the penalties provided in subsections (a) and (b), the court may place the child under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, and sentence the child to the same sentence as an adult traffic offender under K.S.A. 1988 Supp. 8-2116, and amendments thereto.

(d) As used in this section, "traffic offense" means a violation of the uniform act regulating traffic on highways or a violation of a 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.

July 1, 1991

Sec. 2. On and after ~~July 1, 1992~~, K.S.A. 1989 Supp. 32-1040 is hereby amended to read as follows: 32-1040. The court hearing the prosecution of any child 16 or 17 years of age who is charged with a violation of any provision of the wildlife and parks laws of this state or rules and regulations adopted thereunder may impose any fine authorized by law for the offense, ~~but no child under 18 years of age shall be incarcerated in a jail for more than 10 days for such an offense. If the child is incarcerated in a jail, the child shall be in quarters separate from adult prisoners. In lieu of incarceration in a city or county jail, the court or may order that the child be placed in a juvenile detention facility if the operator of the facility is willing to accept the child.~~

July 1, 1990

Sec. 3. On and after ~~July 1, 1992~~, K.S.A. 1989 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;

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1 (6) is not attending school as required by K.S.A. 72-977 or 72-  
2 1111, and amendments thereto;

3 (7) except in the case of a violation of K.S.A. 41-727 or subsection  
4 (i) of K.S.A. ~~1988~~ 1989 Supp. 74-8810, and amendments thereto,  
5 does an act which, when committed by a person under 18 years of  
6 age, is prohibited by state law, city ordinance or county resolution  
7 but which is not prohibited when done by an adult;

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

11 (9) is willfully and voluntarily absent from the child's home with-  
12 out the consent of the child's parent or other custodian; or

13 (10) is willfully and voluntarily absent at least a second time from  
14 a court ordered or designated placement, or a placement pursuant  
15 to court order, if the absence is without the consent of the person  
16 with whom the child is placed or, if the child is placed in a facility,  
17 without the consent of the person in charge of such facility or such  
18 person's designee.

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

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

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

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

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

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(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 must not be a jail.

(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.

[Deletion Only]

(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

1 other than an attorney guardian *ad litem* who is appointed by the  
2 court to represent the best interests of a child, as provided in K.S.A.  
3 38-1505a and amendments thereto, in a proceeding pursuant to this  
4 code.

5 (r) "Multidisciplinary team" means a group of persons, appointed  
6 by the court or by the state department of social and rehabilitation  
7 services under K.S.A. ~~1988~~ 1989 Supp. 38-1523a and amendments  
8 thereto, which has knowledge of the circumstances of a child in need  
9 of care.

10 (s) "Jail" means:

11 (1) An adult jail or lockup; or

12 (2) a facility in the same building or on the same grounds as an  
13 adult jail or lockup, unless the facility meets all applicable standards  
14 and licensure requirements under law and there is (A) total sepa-  
15 ration of the juvenile and adult facilities such that there could be no haphazard or accidental contact between  
16 juvenile and adult residents in the respective facilities; (B) total separation in all  
17 juvenile and adult program activities within the facilities, including recreation, education,  
18 counseling, health care, dining, sleeping, and general living activities; and (C) separate  
19 juvenile and adult staff, including management, security staff and direct care staff such  
20 as recreational, educational and counseling.  
21 July 1, 1990

22 New Sec. 4. (a) On and after ~~July 1, 1992~~, no child under 18  
23 years of age shall be detained or placed in any jail pursuant to the  
24 Kansas code for care of children.

25 (b) This section shall be part of and supplemental to the Kansas  
26 code for care of children.

27 Sec. 5. On and after ~~July 1, 1992~~, K.S.A. 1989 Supp. 38-1602  
28 is hereby amended to read as follows: 38-1602. As used in this code,  
29 unless the context otherwise requires:

30 (a) "Juvenile" means a person 10 or more years of age but less than  
31 18 years of age.

32 (b) "Juvenile offender" means a person who does an act while a  
33 juvenile which if done by an adult would constitute the commission  
34 of a felony or misdemeanor as defined by K.S.A. 21-3105 and amend-  
35 ments thereto or who violates the provisions of K.S.A. 41-727 or  
36 subsection (i) of K.S.A. ~~1988~~ 1989 Supp. 74-8810, and amendments  
37 thereto, but does not include:

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

43 (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

facility spatial areas such that there could be no haphazard or accidental contact between  
juvenile and adult residents in the respective facilities; (B) total separation in all  
juvenile and adult program activities within the facilities, including recreation, education,  
counseling, health care, dining, sleeping, and general living activities; and (C) separate  
juvenile and adult staff, including management, security staff and direct care staff such  
as recreational, educational and counseling.  
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1 after having been adjudicated in two separate prior juvenile pro-  
2 ceedings as having committed an act which would constitute a felony  
3 if committed by an adult and the adjudications occurred prior to the  
4 date of the commission of the new act charged;

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

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

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

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

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

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

23 (f) "Juvenile detention facility" means any secure public or private  
24 facility which is used for the lawful custody of accused or adjudicated  
25 juvenile offenders and which, ~~if in a city or county jail, must be~~  
26 ~~in quarters separate from adult prisoners must not be a jail.~~

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

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

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

34 (j) "Jail" means:

35 (1) An adult jail or lockup; or

36 (2) a facility in the same building as an adult jail or lockup,  
37 unless the facility meets all applicable licensure requirements under  
38 law and there is (A) total separation of the juvenile and adult facilities  
39 such that there is no haphazard or accidental contact between the  
40 residents of the respective facilities; (B) total separation of all juvenile  
41 and adult program activities within the respective facilities;

facility spatial areas such that there could be no haphazard or accidental contact between  
juvenile and adult residents in the respective facilities; (B) total separation in all  
juvenile and adult program activities within the facilities, including recreation, educa-  
tion, counseling, health care, dining, sleeping, and general living activities; and (C)  
separate juvenile and adult staff, including management, security staff and direct care  
staff such as recreational, educational and counseling.

42 New Sec. 6. (a) On and after July 1, 1991, no juvenile shall be  
43 detained or placed in any jail pursuant to the Kansas juvenile of-

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1 offenders code except as provided by subsections (b) and (c).

2 (b) Upon being taken into custody, an alleged juvenile offender  
3 may be temporarily detained in a jail, in quarters ~~separate~~ with sight and sound separation

4 and transferring the juvenile to a youth residential facility or juvenile  
5 detention facility. If a juvenile is detained in jail under this sub-  
6 section, the juvenile shall be so detained only for the minimum time  
7 necessary, not to exceed six hours, and in no case overnight, ~~unless~~  
8 ~~all the following criteria are met:~~ Through 1993, if a juvenile is detained in a jail under this subsection, the juvenile  
9 may be detained for no more than 24 hours, excluding Saturdays, Sundays and legal  
10 holidays, from the time the initial detention was imposed if all of the following  
11 criteria are met:

12 (1) A detention hearing is held in accordance with K.S.A. 1989  
13 Supp. 38-1632 and amendments thereto within 24 hours/after the  
14 juvenile is taken into custody and notice of such hearing, unless  
15 waived, is given at least eight hours prior to the hearing;  
16 , excluding Saturdays, Sundays and legal holidays,

17 (2) no part of the county where the juvenile is in custody is  
18 within an area designated by the United States bureau of the census  
19 as a metropolitan statistical area; standard

20 (3) there is no acceptable alternative placement for the juvenile,  
21 as determined in accordance with ~~any~~ applicable criteria provided  
22 by law; and [deletion only]

23 (4) the jail where the juvenile is detained has been certified by  
24 the secretary of corrections to provide for sight and sound separation  
25 of juveniles and incarcerated adults.

26 (c) The provisions of this section do not apply to detention of:

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

33 (2) a juvenile who has been prosecuted as an adult by reason of  
34 subsection (c)(1) and whose prosecution results in conviction of a  
35 crime;

36 (3) a juvenile with regard to whom a motion has been filed  
37 requesting prosecution as an adult pursuant to K.S.A. 38-1636 and  
38 amendments thereto; or

39 (4) a juvenile who has been/convicted of aggravated juvenile  
40 delinquency as defined by K.S.A. 21-3611 and amendments thereto. charged with or

41 (d) This section shall be part of and supplemental to the Kansas  
42 juvenile offenders code.

43 Sec. 7. On and after July 1, 1992, K.S.A. 38-1632 is hereby  
44 amended to read as follows: 38-1632. (a) Length of detention. (1)  
45 Whenever an alleged juvenile offender is taken into custody and is  
46 thereafter taken before the court or to a juvenile detention facility  
47 July 1, 1991

outh 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 [insert]

(2) If a juvenile is detained in jail pursuant to subsection (b) of section 6, the detention hearing required by this section shall be held within 24 hours after the juvenile is taken into custody. ~~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 waived, the juvenile, the attorney for the juvenile or the juvenile's parents may reassert 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. Except as otherwise provided by subsection (b)(1) of section 6, 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: \_\_\_\_\_  
 (Juvenile) \_\_\_\_\_  
 \_\_\_\_\_  
 (Father) \_\_\_\_\_  
 \_\_\_\_\_  
 (Mother) \_\_\_\_\_  
 \_\_\_\_\_  
 (Other having custody-relationship) \_\_\_\_\_ (Address) \_\_\_\_\_

On \_\_\_\_\_, 19\_\_\_\_,  
 (day) (date)

at \_\_\_\_\_ 'clock \_\_\_\_\_ m. 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

further detention is necessary

[deletion only]

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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:

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:

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)

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\_\_\_\_\_  
(Name Printed)  
\_\_\_\_\_

(Title)

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5 (e) *Hearing, finding, bond.* At the time set for the detention  
6 hearing if no retained attorney is present to represent the juvenile,  
7 the court shall appoint an attorney for the juvenile, and may recess  
8 the hearing for 24 hours to obtain attendance of the attorney ap-  
9 pointed *unless the juvenile is detained in jail pursuant to subsection*  
10 *(b)(1) of section 6.* At the detention hearing, if the court finds the  
11 juvenile is dangerous to self or others, the juvenile may be detained  
12 in a juvenile detention facility or youth residential facility which the  
13 court shall designate. If the court finds the juvenile is not likely to  
14 appear for further proceedings, the juvenile may be detained in a  
15 juvenile detention facility or youth residential facility which the court  
16 shall designate or may be released upon the giving of an appearance  
17 bond in an amount specified by the court and on the conditions the  
18 court may impose, in accordance with the applicable provisions of  
19 article 28 of chapter 22 of the Kansas Statutes Annotated. In the  
20 absence of either finding, the court shall order the juvenile released  
21 or placed in temporary custody as provided in subsection (f).

22 In determining whether to place a juvenile in a juvenile detention  
23 facility pursuant to this subsection, the court shall consider all rel-  
24 evant factors, including but not limited to the criteria listed in K.S.A.  
25 38-1640 and amendments thereto. If the court orders the juvenile  
26 to be detained in a juvenile detention facility, the court shall record  
27 the specific findings of fact upon which the order is based.

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

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

37 Sec. 8. On and after July 1, 1991, K.S.A. 1989 Supp. 38-1664  
38 is hereby amended to read as follows: 38-1664. (a) When a juvenile  
39 offender has been placed in the custody of the secretary, the sec-  
40 retary shall notify the court in writing of the initial placement of the  
41 juvenile offender as soon as the placement has been accomplished.  
42 The court shall have no power to direct a specific placement by the  
43 secretary, but may make recommendations to the secretary. The

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1 secretary may place the juvenile offender in an institution operated  
2 by the secretary, a youth residential facility or a community mental  
3 health center. If the court has recommended an out-of-home place-  
4 ment, the secretary may not return the juvenile offender to the  
5 home from which removed without first notifying the court of the  
6 plan.

7 (b) The secretary shall not permit the juvenile offender to  
8 remain detained in any jail for more than 72 hours, excluding  
9 Saturdays, Sundays and legal holidays, after the secretary has  
10 received the written order of the court placing the juvenile  
11 offender in the custody of the secretary, except that, if the  
12 juvenile offender is to be placed in a state youth center and  
13 that placement or another appropriate placement cannot be  
14 accomplished, the offender may remain in jail for an additional  
15 period of time, not exceeding 10 days, which is specified by  
16 the secretary and approved by the court.

17 (c) During the time a juvenile offender remains in the custody  
18 of the secretary, the secretary shall report to the court at least each  
19 six months as to the current living arrangement and social and mental  
20 development of the juvenile offender. If the juvenile offender is  
21 placed in foster care, the foster parent or parents shall submit to  
22 the court, at least every six months, a report in regard to the juvenile  
23 offender's adjustment, progress and condition. The department of  
24 social and rehabilitation services shall notify the foster parent or  
25 parents of the foster parents' or parent's duty to submit such report,  
26 on a form provided by the department of social and rehabilitation  
27 services, at least two weeks prior to the date when the report is  
28 due, and the name of the judge and the address of the court to  
29 which the report is to be submitted. Such report shall be confidential  
30 and shall only be reviewed by the court and the child's attorney.

31 Sec. 9. On and after ~~July 1, 1992~~, K.S.A. 38-1671 is hereby  
32 amended to read as follows: 38-1671. (a) *Actions by the court.* When  
33 a juvenile offender has been committed to a state youth center, the  
34 clerk of the court shall forthwith notify the secretary of the com-  
35 mitment and provide the secretary with a certified copy of the com-  
36 plaint, the journal entry of the adjudicatory hearing and the  
37 dispositional order. The court shall also forward those items from  
38 the social file which could relate to a rehabilitative program. If the  
39 court wishes to recommend placement of the juvenile offender in a  
40 specific state youth center, the recommendation shall be included  
41 in the dispositional order. After the court has received notice of the  
42 state youth center designated as provided in subsection (b), it shall  
43 be the duty of the court or the sheriff of the county to deliver the

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1 venile offender to the facility at the time designated by the  
2 secretary.

3 (b) *Actions by the secretary.* (1) After receiving notice of com-  
4 mitment as provided in subsection (a), the secretary shall give the  
5 committing court notice designating the state youth center to which  
6 the juvenile offender is to be admitted and the date of the admission.

7 (2) ~~The secretary shall not permit the juvenile offender to~~  
8 ~~remain detained in any jail for more than 72 hours, excluding~~  
9 ~~Saturdays, Sundays and legal holidays, after the secretary has~~  
10 ~~received the written order of commitment, except that, if the~~  
11 ~~commitment or another appropriate placement cannot be ac-~~  
12 ~~complished, the offender may remain in jail for an additional~~  
13 ~~period of time, not exceeding 10 days, which is specified by~~  
14 ~~the secretary and approved by the court. Except as provided by~~  
15 ~~section 6, the secretary may make any temporary out-of-home place-~~  
16 ~~ment the secretary deems appropriate, other than placement in a~~  
17 ~~jail, pending placement of the juvenile offender in a state youth~~  
18 ~~center, and the secretary shall notify the court of that placement.~~

19 (c) *Transfers.* During the time a juvenile offender remains com-  
20 mitted to a state youth center, the secretary may transfer the juvenile  
21 offender from one state youth center to another.

22 Sec. 10. K.S.A. 75-5389 is hereby amended to read as follows:  
23 75-5389. (a) The advisory commission on juvenile offender programs  
24 shall hold regular quarterly meetings and such other meetings as  
25 the chairperson of such commission deems advisable and in addition  
26 shall meet at such other times upon the call of the director of juvenile  
27 offender programs or the governor. It shall be the duty of the ad-  
28 visory commission to confer, advise, and consult with the director  
29 of juvenile offender programs with respect to the policies governing  
30 the management and operation of all services, programs or institu-  
31 tions under the jurisdiction of the commissioner. The commission  
32 shall also consult with and advise the governor from time to time  
33 with reference to the management, conduct and operations of in-  
34 stitutions and services and programs relating to juvenile offenders.  
35 A member or members of the advisory commission shall, from time  
36 to time, visit each institution providing services or programs for  
37 juvenile offenders for the purpose of inspecting same. Such visits  
38 shall be made at such times and in such manner as the advisory  
39 commission shall determine at a regular meeting thereof.

40 (b) The advisory commission shall oversee implementation of a  
41 policy of eliminating detention of juveniles in ~~adult jails and adult~~  
42 ~~lockups~~ jails, as defined in K.S.A. 38-1602 and amendments thereto  
43 and shall assist in the development of local or regional alternatives

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1    detention of juveniles. For this purpose, the advisory commission  
 2 shall advise and consult with local governmental officials and private  
 3 persons interested in developing alternatives to detention. In ad-  
 4 dition, the advisory commission shall advise the secretary of social  
 5 and rehabilitation services and the commissioner of youth services  
 6 in detail on the expenditures of any moneys appropriated/ or oth-  
 7 erwise available for developing or maintaining facilities or programs  
 8 which provide alternatives to detention of juveniles and transpor-  
 9 tation of juveniles to alternative detention and may apply for and  
 10 accept any moneys made available for that purpose. Expenditures  
 11 of such moneys shall be made in accordance with appropriation acts  
 12 upon warrants of the director of accounts and reports issued pursuant  
 13 to vouchers approved by the secretary of social and rehabilitation  
 14 services or by a person or persons designated by the secretary. The  
 15 secretary of social and rehabilitation services shall provide to the  
 16 advisory commission such technical assistance as necessary to carry  
 17 out the provisions of this section.

18    (c) The advisory commission shall make reports on or before  
 19 December 1 of each year to the governor, the commissioner of  
 20 education, the secretary of social and rehabilitation services, the  
 21 attorney general, the chief justice of the Kansas supreme court and  
 22 the members of the legislature, and make such recommendations as  
 23 it deems advisable for appropriate legislation.

24    (d) The advisory commission shall be charged with the task of  
 25 making recommendations to those responsible for developing a work-  
 26 ing philosophy of accountability related to juvenile offender pro-  
 27 grams. The advisory commission shall study and make  
 28 recommendations concerning the defining of appropriate roles of the  
 29 various state agencies involved in providing programs and services  
 30 to the juvenile offender and shall be responsible for reviewing any  
 31 and all programs relating to services or programs for juvenile of-  
 32 fenders. The advisory commission shall perform such other studies  
 33 or tasks as may be assigned by the governor or specifically requested  
 34 by the chief justice or the attorney general.

35    (e) For the purposes of the federal juvenile justice and delin-  
 36 quency prevention act of 1974, as amended, the advisory commission  
 37 on juvenile offender programs shall act as the supervisory board.

38    Sec. 11. On July 1, 1992, K.S.A. 38-1632 and 38-1671 and  
 39 K.S.A. 1989 Supp. 8-2117, 32-1040, 38-1502, 38-1602 and 38-1664  
 40 are hereby repealed.

41    Sec. 12. K.S.A. 75-5389 is hereby repealed.

42    Sec. 13. This act shall take effect and be in force from and after  
 43 its publication in the statute book.

\_\_\_\_\_ , including funds appropriated under K.S.A. 79-4803 for the juvenile detention facilities fund,

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SENATE BILL No. 742

By Committee on Judiciary

2-21

AN ACT concerning juveniles; prohibiting detention in adult jails; development of alternatives to detention; amending K.S.A. 38-1632, 38-1671 and 75-5389 and K.S.A. 1989 Supp. 8-2117, 32-1040, 38-1502, 38-1602 and 38-1664 and repealing the existing sections.

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

Section 1. On and after July 1, 1991, K.S.A. 1989 Supp. 8-2117 is hereby amended to read as follows: 8-2117. (a) Subject to the provisions of this section, a court of competent jurisdiction may hear prosecutions of traffic offenses involving any child 14 or more years of age but less than 18 years of age. The court hearing the prosecution may impose any fine authorized by law for a traffic offense, including a violation of K.S.A. 8-1567 and amendments thereto, and may order that the child be placed in a juvenile detention facility, as defined by K.S.A. 38-1602 and amendments thereto, for not more than 10 days. If the child is less than 18 years of age, the child shall not be incarcerated in a jail as defined by K.S.A. 1989 Supp. 38-1602 and amendments thereto. If the statute under which the child is convicted requires a revocation or suspension of driving privileges, the court shall revoke or suspend such privileges in accordance with that statute. Otherwise, the court may suspend the license of any person who is convicted of a traffic offense and who was under 18 years of age at the time of commission of the offense. Suspension of a license shall be for a period not exceeding one year, as ordered by the court. Upon suspending any license pursuant to this section, the court shall require that the license be surrendered to the court and shall transmit the license to the division of vehicles with a copy of the court order showing the time for which the license is suspended. The court may modify the time for which the license is suspended, in which case it shall notify the division of vehicles in writing of the modification. After the time period has passed for which the license is suspended, the division of vehicles shall issue an appropriate license to the person whose license had been suspended, upon successful completion of the examination required by

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