Approved 3-22-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~a.m.~~/p.m. on February 11, 19 91 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Gomez, Sebelius and Gregory who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Paul Shelby, Office of Judicial Administration
Mr. Dan Wulz, Attorney
Mr. Tom Peebles, Kennedy and Coe, Salina, Ks.
Jim Clark, Kansas County and District Attorney's Association
John Smith, Department of Revenue/Division of Vehicles
Michael Byington, Lobbyist for Ks. Association for Blind and Visually Impaired, Inc.
Alice Nida, Attorney for Ks. Dept. of Aging
Ms. Joan Strickler, Kansas Advocacy and Protective Services (KAPS)

The Chairman called the meeting to order and asked for bill requests.

Paul Shelby, Office of Judicial Administration, appeared and requested legislation which would amend KSA 60-3005 regarding civil foreign fees.

Representative Smith made a motion to introduce the proposed legislation. Representative Everhart seconded the motion. The motion carried.

Mr. Dan Wulz appeared on behalf of Mr. Donald W. Vasos, Attorney, and requested legislation which would amend the Overhead Power Line Accident Prevention Act enacted during the 1990 Legislative Session.

Representative Parkinson made a motion to introduce the proposed legislation. Representative Smith seconded the motion. The motion carried. (See Attachment # 1).

Mr. Tom Peebles, Kennedy and Coe, Salina, Kansas, appeared to request changes to the Kansas Limited Liability Statute. (See Attachment #2).

Representative Everhart made a motion to introduce the proposed legislation. Representative Parkinson seconded the motion. The motion carried.

Mr. Jim Clark, Kansas County and District Attorney's Association, appeared and requested legislation that would amend the diversion statute, making diversion count as a conviction for sentencing purposes on subsequent offenses of the uniform controlled substance act. See Attachment # 3).
Representative Smith made a motion to introduce the proposed legislation. Representative Macy seconded the motion. The motion carried.

The Chairman called for hearing on HB 2138, deleting motorized bicycles from the definition of motor vehicles in the automobile injury reparations act.

Dan Wulz, attorney, appeared in support of HB 2138, and distributed (Attachment # 4.)

Representatives from the State Highway Patrol and Department of Vehicles were present to answer questions.

The question was raised whether those persons would be affected who had their drivers

license taken away but who were using motorized bicycles to go to work. John Smith, Department of Revenue, Division of Vehicles, said this procedure would not be affected. Revisor's staff confirmed there would be no change to the Chapter 8 statutes covering this.

It was noted that the Kansas Trial Lawyers Association endorses HB 2138.

The hearing on HB 2138 was closed.

The Chairman called for hearing of HB 2137, regarding the court appointing an attorney to represent a ward or conservatee in restoration of capacity hearings.

Michael Byington, Lobbyist for Kansas Association for the Blind and Visually Impaired, Incorporated, appeared in support of HB 2137 and distributed (Attachment #5).

A committee member asked if there is a guarantee of counsel on the initial hearing. Mr. Byington affirmed.

A committee member asked if freezing up of funds for evaluation for additional testimony is a problem. Mr. Byington said usually the person has developed a relationship with rehabilitation personnel or others who are already paid; that the legal problem is how to go about asking the court to take the petition and have the hearing.

A committee member asked if it is desirable that a petition has to be prepared for restoration and then the court appoints an attorney on an ex-parte basis.

A committee member asked if the conservatee already had an attorney why that attorney does not report back to the court. Mr. Byington said the mechanism that requires a report to the court does not require continuing representation of the individual; and that a higher fiscal note might result by reliance on the court than by use of the proposal of HB 2137. The committee member noted that the court mechanism could be enforced with the provision of HB 2137 included as a guideline. Mr. Byington said he would have no problem with that type of approach.

Alice Nida, Attorney for Kansas Department on Aging, appeared in support of HB 2137, and distributed (Attachment # 6).

A committee member asked how much the proposal will cost and where will the money come from to pay the attorney. Ms. Nida said the cost would vary from case to case.

A committee member asked if it would be better to use the court mechanism already set up. Ms. Nida said she would support that but believes it would cost more.

A committee member noted the bill does not provide any mechanism for the payment of the attorney; that a court can't appoint an attorney without also providing compensation for his/her time. Ms. Nida said she would agree the language should be changed to accommodate this. The Chairman asked Ms. Nida to research further alternative language.

Ms. Joan Strickler, representing Kansas Advocacy and Protective Services Inc. (KAPS). appeared to express support for HB 2137. Ms. Strickler asked if adequate notice would be provided to all persons concerned under HB 2137; if SRS should be involved in the matter. A committee member asked if there are any arguments in favor of appointing guardian ad litems in lieu of an attorney.

The hearing on HB 2137 was closed.
The Chairman called for action on HB 2012.

Staff distributed copies of letter, dated February 11, 1991, to Representative Solbach from Senator Parrish regarding HB 2012 (Attachment # 7) and excerpt from federal law with requirements of the state advisory commission highlighted, (Attachment #8).

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 11, 1991

Representative Everhart made a motion that HB 2012 be passed. Representative Macy seconded the motion. The motion carried.

Committee discussion followed. A committee member said he didn't believe the three members under the juvenile detention system should be on a board which authorizes funds. A committee member questioned whether the person would be a misdemeanor delinquent or a status offender.

Representative Vancrum made a substitute motion to change the language to read, "Three members shall have been under the jurisdiction of the juvenile justice system", on page 2, line 14 and delete "or shall be currently". Representative Parkinson seconded the motion to amend.

Committee discussion followed. A committee member asked if federal statutes are met if the language in the substitute motion is used. Two committee members expressed their beliefs that the proposed language would be acceptable at the Federal level. The motion carried.

Representative O'Neal made a motion that HB 2012 be amended as per balloon bill distributed during bill hearing by Senator Parrish on February 6, 1991. Representative Everhart seconded the motion. The motion carried.

Representative Everhart made a motion to pass HB 2012 favorably. Representative O'Neal seconded the motion.

Committee discussion followed. A committee member said he believes the committee proposed by the bill is too large. It was noted that the interim committee had made the recommendation, combining two separate entities and saving administrative costs.

The motion carried.

The Chairman called for consideration of meeting minutes.

Representative O'Neal made a motion to approve the minutes of the meeting of January 28, 1991, as submitted. Representative Rock seconded the motion. The motion carried.

The meeting adjourned at 4:55 P.M. The next scheduled meeting of the committee is February 12, 1991, at 3:30 P.M. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/11/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
DAN L. WOLZ	222 W. 7TH, TOPEKA	BROWN, LYKINS LAW FIRM
Alice Tilton	Topeka	KS, Dept on Aging
JIM CLARK	TOPEKA	KCDAA
LT. BILL JACOBS	TOPEKA	KS HIGHWAY PATROL
John W. Smith	Topeka	Div Vehicles
Paul Shelby	Topeka	OJA
Tom Peebles	Salina	Kennedy & Coe
BILL SNEED	TOPEKA	State Farm
Marilyn Bradt	Lawrence	Kansans for Improvement of Nursing Homes.
John Strickler	Manhattan	KAPS
Michael Byington	Topeka HEARTLAND HHNC.	
Lee Wright	O.P. Ks	Farmers Ins. Group
Ron Smith	Topeka	KS Bar
Dave Hanson	Topeka	KS Assoc Prop. & Cas. Insur.
Lela Lashley	Topeka	AARP Kansas

LAW OFFICES
VASOS
KUGLER &
DICKERSON
TEN CAMBRIDGE PLACE, SUITE 200
10 EAST CAMBRIDGE CIRCLE DRIVE
KANSAS CITY, KANSAS 66103-1334
(913) 342-3100

DONALD W. VASOS
CHARLES D. KUGLER
STEPHEN G. DICKERSON
DAVID A. HOFFMAN

SUITE 105
2714 N. TOPEKA AVE.
TOPEKA, KANSAS 66617
(913) 233-0040

February 8, 1991

FEDERAL EXPRESS DELIVERY

Honorable John M. Solbach
Chairman, Judiciary Committee
House of Representatives
State House, Room 115 South
Topeka, KS 66612

RE: Overhead Power Line Accident Prevention Act

Dear Chairman Solbach:

I am enclosing herewith 25 copies of HB 3086, Overhead Power Line Accident Prevention Act, enacted during the 1990 Legislative Session, with some proposed amendments to the Act. It is my understanding the last opportunity to submit amendments such as the enclosed is Monday, February 11, 1991. I would appreciate your submitting the proposed amendments to the Committee at that time.

Please call me at your convenience regarding the amendments. Thank you for your cooperation and attention to this matter. With best regards, I am,

Very truly yours,

Donald Vasos by clw

DONALD W. VASOS

DWV:clw
Enclosures

HJUD
Attachment #1
2/11/91

PUBLIC UTILITIES

CHAPTER 239 *

House Bill No. 2699

AN ACT concerning the state corporation commission; providing for exemption of certain public utilities from certain aspects of commission regulation.

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

Section 1. (a) Except as otherwise provided in subsection (b), no nonprofit public utility shall be subject to the jurisdiction, regulation, supervision and control of the state corporation commission if the utility meets the following conditions: (1) Every customer, household or meter owner is an automatic owner of the utility and has an equal vote on matters concerning the utility; (2) the utility employs no full-time employees; and (3) the utility has no more than 50 customers.

(b) The state corporation commission shall retain jurisdiction and control over the service territory of a utility described in subsection (a) and over all matters concerning natural gas pipeline safety.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 5, 1990.

CHAPTER 240 *

House Bill No. 3086

AN ACT establishing the overhead power line accident prevention act.

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

Section 1. This act may be cited and shall be known as the overhead power line accident prevention act.

Sec. 2. As used in this act:

(a) "Authorized person" means:

(1) An employee of a public utility or an employee of a contractor which has been authorized by a public utility to perform construction, operation or maintenance on or near the poles or structures of any utility;

(2) an employee of a cable television or communication services company or an employee of a contractor authorized to make cable television or communication service attachments; or

(3) an employee of the state or a county or municipality which has authorized circuit construction, operation or maintenance on or near the poles or structures of a public utility.

Amendments proposed 2-11-91

[ ] Indicates Deletions

1-2

1-2-91
attachment #1-2

(b) "High voltage" means electricity in excess of 600 volts measured between conductors or between a conductor and the ground.

(c) "Overhead lines" means all electrical conductors installed above ground.

(d) "Person" means an individual, firm, joint venture, partnership, corporation, association, municipality or governmental unit which contracts to perform any function or activity upon any land, building, highway or other premises in proximity to an overhead line.

(e) "Public utility" means and includes those entities defined in .S.A. 66-104, and amendments thereto, municipally owned elec-.ical systems and electric cooperatives as defined in K.S.A. 17-4601 *et seq.*, and amendments thereto.

Sec. 3. Unless danger against contact with high voltage overhead lines has been guarded against as provided by section 4, no person, individually or through an agent or employee, shall store, operate, erect, maintain, move or transport any tools, machinery, equipment, supplies or materials, within 10 feet of any high voltage overhead line, or perform or require any other person to perform any function or activity if at any time during the performance thereof it is reasonably foreseeable that the person performing the function or activity could move or be placed within 10 feet of any high voltage overhead line.

Sec. 4. A public utility shall not construct, operate, or maintain any high voltage overhead line strung after the effective date of this act within ten (10) feet of any adjacent structure. When such lines must be strung in closer proximity than permitted herein, the public utility is responsible for providing protection from contact danger.

5. Sec. [4.] (a) When any person desires to carry out temporarily any function or activity in closer proximity to any high voltage overhead line than is permitted by this act, the person or persons responsible for the function or activity shall notify the public utility which owns or operates the high voltage overhead line of the function or activity and shall make appropriate arrangements with the public utility for temporary barriers, temporary deenergization and grounding of the conductors, temporary rerouting of electric current or temporary relocating of the conductors before proceeding with any function or activity which would impair the clearances required by this act.

(b) A person or persons requesting a public utility to provide temporary clearances or other safety precautions shall be responsible for payment of only those costs incurred by such utility in the temporary rerouting of electric current or the temporary relocating of the conductors. Upon request, a public utility shall provide a written costs estimate for the work needed to provide temporary routing of electric current or temporary relocating of the conductors. Unless otherwise agreed to, or unless circumstances require a longer period of time before work commences in order to assure continuity of service to electric customers, a public utility shall com-

1-3

HJUD 2-11-91 attach #1-3

mence work on such temporary rerouting of electric current, temporary relocating of the conductors, temporary barriers or temporary deenergization and grounding of the conductors as may be appropriate, within three working days after such notification has been made in accordance with subsection (a) of section 4.

(c) If a person requesting a public utility to provide temporary rerouting of electric current or the temporary relocating of the conductors disagrees with the reasonableness of the written costs estimate or the description of the work to be performed, the following options are available to such person:

(1) Such person under protest may pay the utility for the work in accordance with the written cost estimate, but shall be entitled to seek recovery of all or any part of the money so paid in an arbitration proceeding as hereinafter provided; or

(2) prior to directing the work to be performed, the person or persons may submit to binding arbitration, as hereinafter provided, to resolve the issue of the reasonableness of the written cost estimate or the description or extent of the work to be performed by the public utility under such estimate.

(d) Disputes submitted to binding arbitration under this section shall be submitted in accordance with the procedures set forth in K.S.A. 5-401 *et seq.*, and amendments thereto. The decision of the arbitrator or arbitrators as to the reasonableness of the costs or the necessity of the work to be performed shall be final and binding upon the parties.

6. Sec. [5.] Each person, individually or through an agent or employee, or as an agent or employee, who operates any crane, derrick, power shovel, drilling rig, hoisting equipment, or similar apparatus, any part of which is capable of operating in closer proximity to any high voltage overhead line than is permitted by this act, shall post and maintain in plain view of the operator thereof, a durable warning sign, legible at 12 feet, stating:

"Unlawful to operate this equipment within 10 feet of high voltage overhead lines unless protected from contact danger."

Each day's failure to post or maintain such signs shall constitute a separate violation.

7. Sec. [6.] (a) Except as provided further, every person as defined herein who violates any of the provisions of this act may be subject to a civil penalty in a sum set by the court of not more than $1,000 for each violation. The provisions of this subsection shall not apply to a person who, at the time the act or acts occur which constitute a violation, is acting as an agent or employee under the direction of an individual, firm, joint venture, partnership, corporation, association, municipality or governmental unit.

5(e) The public utility shall identify the owner or operator of the high voltage line, provide notice of the requirements of this act, and list a toll free telephone number that will enable members of the public to request protection from contact danger. Any notice in the following form will be deemed to be sufficient to meet the requirements of this act:

> It is unlawful to work within ten feet of this power line. The (insert name) utility will provide guarding or insulation of overhead power lines upon request. Please telephone 800_____.

provided without cost by the public utility, and

1-4

1-4 2-11-91 attached

(b) In a civil action in a court of this state when it is shown by competent evidence that damage to any high voltage overhead line owned or operated by a public utility, a personal injury or other damages occurred as a result of a violation of this act, there shall be a rebuttable presumption that the person violating the provisions of this act was negligent as a result of such violation.

(c) Nothing in this act is intended to limit or modify the provisions of:

(1) K.S.A. 60-258a, and amendments thereto; or

(2) the national electrical safety code, which would otherwise be applicable.

Sec. 7. This act does not apply to:

(a) Construction, operation or maintenance by an authorized person as defined herein;

(b) highway vehicles or agricultural equipment which in normal use may incidentally pass within the clearances prescribed by this act;

(c) the operation or maintenance of any equipment traveling or moving upon fixed rails;

(d) governmental entities responding to an emergency situation; or

(e) moving buildings or structures on streets, alleys, roads and highways pursuant to K.S.A. 17-1914 *et seq.*, and amendments thereto.

Sec. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 1990.

CHAPTER 241

Senate Bill No. 489

AN ACT relating to motor carriers; concerning the regulation thereof; amending K.S.A. 66-1,109 and K.S.A. 1989 Supp. 66-1,129 and repealing the existing sections.

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

New Section 1. The commission, at any time for good cause shown, may suspend the operation of any public motor carrier of property or passengers, any contract motor carrier of property or

or the national electrical safety code
or public utility, as defined herein,
or the Code

8(f) when overhead power lines are not constructed, operated or maintained in compliance with the national electrical safety code;
8(g) any individual not contracting to perform any function or activity as defined in Section 2(d).

Sec. 9. If a public utility shall violate any provision of the national electrical safety code, or this act, it shall be rebuttably presumed in any civil action in a court of this state that the public utility was negligent as a result of such violation.

REQUEST FOR INTRODUCTION

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

PROPOSED CHANGES TO KANSAS LIMITED LIABILITY STATUTE

The following changes are necessary to bring the Kansas Limited Liability Statute into conformity with existing law in other areas and to improve it in several respects. Briefly described, the changes are as follows:

1. To make the statute consistent with the Kansas Constitution, to prevent a limited liability company, which is intended to be operated as a partnership, from being classified as a corporation for tax purposes.

2. To make the provision of the act with respect to the prohibitions on corporate farming consistent with the Kansas Corporation Code.

3. To make some technical corrections for internal consistency in the statute and also to eliminate some references to agreements, all of which can be combined into one document, namely, the bylaws.

4. To incorporate several provisions of the Kansas Uniform Limited Partnership Act into this statute so that the two entities are as similar as possible.

5. To delete the requirement in the current statute for monetary contributions to be referenced by exact dollar amounts and the name of the contributor. The proposal will modify the statute so that it corresponds to the Uniform Limited Partnership Act. In addition, a limited liability company would be allowed to file a confidential annual report based on the same requirements that currently apply to corporations.

6. To simplify the procedures for designating parties who are authorized to enter into oral and written contracts. This will benefit both the limited liability company entity as well as others dealing with it, such as lenders, contracting parties, etc.

7. To allow professionals to practice using a limited liability company. The proposal will apply the same limitations, that currently apply to a professional practicing as a professional corporation, to a professional who practices as a limited liability company.

1053

HJUD
Attachment 2
2/11/91

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

REQUEST FOR LEGISLATION

The Kansas County and District Attorneys Association requests legislation that would amend the diversion statute, specifically K.S.A. 22-2909(c), to add violations of the Uniform Controlled Substances Act, K.S.A. 65-4101 et seq., including attempting, conspiring or soliciting such violations of K.S.A. 65-4101, et seq. The statute should be further amended to include language taken from K.S.A. 8-1567 (k) which makes diversion count as a conviction for sentencing purposes on subsequent offenses.

HJUD
Attachment # 3
2/11/91

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

REQUEST FOR LEGISLATION

The Kansas County and District Attorneys Association requests a bill that would impose the same mandatory minimum incarceration periods for convictions of violations of the Uniform Controlled Substances Act, K.S.A. 65-4101, et seq., as are imposed for convictions of violations of K.S.A. 8-1567, which are: a minimum of 48 consecutive hours for first conviction; a minimum of five consecutive days for second conviction; and a minimum of 90 days for third and subsequent convictions. Such incarceration periods shall be in the custody of the county sheriff, and not in the custody of the Secretary of Corrections.

HJUD
2-11-91
attachment # 3-2

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

REQUEST FOR LEGISLATION

The Kansas County and District Attorneys Association requests a bill that would amend the littering statute, K.S.A. 21-3722, by making a violation of the statute a class A misdemeanor.

HJUD
2-11-91
Attachment 3-3

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

REQUEST FOR LEGISLATION

The Kansas County and District Attorneys Association requests a bill that would express legislative intent that once a court has jurisdiction over a case because of the nature of the crime charged, i.e. a homicide or juvenile felon, that jurisdiction continues even if the defendant or juvenile felon is convicted of a lesser offense.

HJOD
2-11-91
Attachment 3-4

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

REQUEST FOR LEGISLATION

The Kansas County and District Attorneys Association requests a bill that would amend K.S.A. 1990 Supp. 21-3501(2) to make the definition of sodomy gender neutral.

HJUD
2-11-91
attachment 13-5

BRYAN, ...KINS, HEJTMANEK & WULZ, ...
ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
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(913) 235-5678

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
DAN L. WULZ
CATHLEEN M. REEDER

FAX
(913) 357-1729

February 11, 1991

Representative John Solbach
Chairman, House Judiciary Committee
State Capitol Building
300 S.W. 10th Avenue
Topeka, Kansas 66612

RE: HB 2138

Dear Mr. Solbach:

This is submitted in support of House Bill 2138, amending K.S.A. 40-3103(m) to delete the phrase: "but such term does not include a motorized bicycle."

This phrase has the effect of allowing insurance companies in certain situations to deny claims for personal injury protection (PIP) benefits in an automobile policy when an insured is injured while riding a non-owned motorized bicycle. Yet PIP benefits are available in the same automobile insurance policy if the insured is riding a non-owned motorcycle.

Motorcycles are "motor vehicles" under K.S.A. 40-3103(m), yet under present law "motorized bicycles" are not. [For your reference, "motorized bicycle" is defined at K.S.A. 8-126(aa)]. There is no sound public policy reason to treat motorized bicycles differently than motorcycles.

As you know, the entire no-fault scheme is designed to require motor vehicle owners to look to their own insurance company for medical benefits and loss of monthly earnings when involved in an auto accident, whether the insured is a pedestrian, a passenger, or a driver. If one owns a car and insures it, one has PIP benefits in one's own policy no matter where in the world one may be---except on a motorized bicycle.

I have a client whose 13-year-old son was injured in an auto collision while driving a neighbor's uninsured motorized bicycle. My client's parents did not know their son would be allowed to drive this motorized bicycle. My clients own a car which has PIP coverage for all "motor vehicles" (thus including motorcycles), but since K.S.A. 40-3103(m) allows the insurance company to

HJUD
2-11-91
attachment #4

exclude "motorized bicycles," they did not have PIP coverage for their son's medical bills in their own policy. (Since the son did collide with a motor vehicle, I may be able to obtain PIP benefits under the motor vehicle driver's policy; claim has been made but is not resolved).

Regardless, there are situations under present law where one would find themselves without PIP coverage if injured while riding a non-owned, uninsured motorized bicycle. For example, if a child is injured on a motorized bicycle other than in a collision with another vehicle, no PIP coverage is available. (Because K.S.A. 40-3103(m) excludes motorized bicycles, the child has no PIP coverage available under his parents' auto policy). If HB 2138 is passed, this child would be able to make a PIP claim under his parents' auto policy.

Another example would be where an owner of a motor vehicle is struck by an auto while riding a non-owned, uninsured motorized bicycle. As noted above, present law allows the injured person's own auto insurer to exclude PIP coverage for motorized bicycles. Further, this person also has no PIP coverage available under the policy on the vehicle which struck him. State Farm's definition of "insured" in its PIP coverage states: "Insured means: ... any other person while occupying or struck as a pedestrian by a motor vehicle insured under the liability and no-fault coverages of this policy. IF SUCH OTHER PERSON IS THE OWNER OF A MOTOR VEHICLE REQUIRED BY THE NO-FAULT ACT TO CARRY A MOTOR VEHICLE LIABILITY INSURANCE POLICY, HE OR SHE IS NOT AN INSURED." Thus, in this example, since the injured person owned a car, he has no PIP available under the policy on the vehicle which struck him. If HB 2138 is passed, this person would be able to make a PIP claim under his own policy.

Under present law, a motorcycle is a "motor vehicle" under K.S.A. 40-3103(m). If one is injured on someone else's uninsured motorcycle, one has PIP benefits available under one's own auto insurance.

It is true that motorcycles are treated differently than cars, and I do not disagree with that here. [Motorcycle owners can reject PIP coverage under K.S.A. 40-3107(f)]. Motorcycles are more risky than cars and the owner is allowed to decide whether to carry PIP coverage. If a motorcycle owner decides not to carry PIP coverage, then he cannot claim that coverage on another vehicle. Kresyman v. State Farm Mut. Auto. Ins. Co., 5 Kan.App.2d 666 (1981). The change in the law sought in HB 2138 will not affect this law whatsoever.

HJUD
2-11-91
attachment 4-2

All HB 2138 does is to place motorized bicycles on the same legal footing as motorcycles. In this way, anyone who is injured on an uninsured motorized bicycle they do not own (and thus have no opportunity to insure) will still have PIP coverage available in their own auto policy---which is the only place they can buy PIP coverage to protect themselves.

Please give this matter your thoughtful attention. Amendment of the law will serve to protect mostly children, who are probably those injured most often on motorized bicycles.

Sincerely,

Dan L. Wulz

HJUD
2-11-91
attachment 4-3

ALLIED GROUP
Insurance
ALLIED Group
Lincoln Regional Office
700 North Cotner Blvd. • P.O. Box 8075
Lincoln, Nebraska 68501-075
(402) 467-238
Fax: (402) 467-365

December 14, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

TO: Randy and Debra Hayes
911 Sunset Avenue
Manhattan, KS 66502

RE: Claim No.: 15-B13867
Insured: Randy & Debra Hayes, Christopher L. Hayes
Date of Loss: 7-13-90

We have received a notice of loss as a result of an incident occurring on the 13th day of July, 1990, at Woods Drive and Tressmill, Manhattan, Kansas.

You were issued a policy of liability insurance, policy number AAP 2590960-8 by the ALLIED Mutual Insurance Company of Des Moines, Iowa for the policy period of 4-22-90 to 10-22-90 and you are now claiming benefits under this policy.

We deny and disclaim coverage and contend that you are not entitled to benefits under this policy because the accident arose out of the operation of a motorized bicycle.

Under policy endorsement form AA 0564 (3-88), your attention is drawn to the following provisions and definitions:

SECTION I

PERSONAL INJURY PROTECTION COVERAGE

The Company will pay in accordance with the Kansas Automobile Injury Reparations Act personal injury protection benefits for:

(a) medical expenses,
(b) rehabilitation expenses,
(c) work loss,
(d) essential service expenses,
(e) funeral expenses, and
(f) survivors' loss

incurred with respect to bodily injury sustained by an eligible injured person caused by an accident arising out of the ownership, operation, maintenance or use of a motor vehicle.

DEFINITIONS

When used in reference to this coverage:

"motor vehicle" means a self-propelled vehicle of a kind required to be registered in the State of Kansas including any trailer, semi-trailer, or pole

HJUD
2-11-91
Attachment #4-4

ALLIED GROUP
Insuranc
ALLIED Grou
Lincoln Regional Offic
700 North Cotner Blvd. • P.O. Box 807
Lincoln, Nebraska 68501-07
(402) 467-23
Telefax (402) 467-36

trailer designed for use with such a vehicle, but such term does not include a motorized bicycle;

Due to the fact that your son was operating a motorized bicycle, he is not eligible for Personal Injury Protection coverage.

By naming the specific grounds for this disclaimer of coverage, we do not waive any of our rights or any provisions and conditions of the policy of insurance and specifically reserve all of our rights and remedies under this policy and under the statutes and common law.

We can take no further action. If additional information or evidence is available to you or a lawsuit is filed against you, NOTIFY US IMMEDIATELY.

Michael D. Munro
Litigation Specialist
ALLIED Mutual Insurance Company

CC/File
CC/Agent

ga/f20

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Kansas Association for the Blind and Visually Impaired, Inc.

AN AFFIL... OF THE AMERICAN COUNCIL OF THE BLIND

February 11, 1991

TO: House Judiciary

FROM: Michael Byington, Lobby

SUBJECT: House Bill 2137

This proposed change allows disabled citizens access to their due process rights. While these rights may already be assured by the applicable statutes, actual access to these rights is currently by no means guaranteed.

I rise in support of this legislation, and was the person to request its introduction. The Kansas Association for the Blind and Visually Impaired has been kind enough to vote support for this Bill by convention motion, but I came to the decision to request the bill based on my work as a hands-on instructor with the Kansas Project of the Helen Keller National Center for Deaf-Blind Youths and Adults.

In this capacity, I work with many multiply disabled visually impaired-hearing impaired Kansans. I have come in contact with a number of these people who have been placed several years ago under extremely restrictive guardianships and conservatorships. In doing so, the courts seemed to feel that, because the conditions of the individuals were not predicted to improve, their abilities to make their own decisions would not improve either.

This assumption is not in all cases correct. A few of the multiply disabled people with whom I am working have made tremendous strides toward independence and competence through motivated and diligent work via the rehabilitation process. These people now need much less restrictive guardianships, and in a very few cases, they may not need guardianship or conservatorship at all any more.

In attempting to help these few people petition for restoration to competence, I have joined them in discovering a due process inadequacy in the Kansas Guardianship Statutes. The statutes assure the person who has been determined "disabled" or "not competent" the opportunity to petition for restoration to competence. A court is not obligated to entertain such a petition more often than once in a six month period of time, and the "disabled" individual may have an attorney present to represent them. Here, however, we run into the due process problem. When the individual is found to be "disabled" or not competent initially, they are assured of having legal counsel for the hearing involved. If they do not have funds to compensate counsel, the county provides same. The individual is not assured, though, of the same access to legal counsel should they wish to petition for restoration to competence. This is the case even though they may be even less

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capable of obtaining or compensating counsel than they were at the time they were originally declared "disabled." After all, now that a court has found them not to be competent, they may not have permission from the Guardian to go see an attorney. Yet more likely, even if the "disabled" person owns a good deal of money, the control of it would almost always be in the hands of the Guardian/Conservator. Thus if the Guardian/Conservator does not concur with the ward's decision to hire counsel to petition for restoration, the Guardian/Conservator can effectively prevent it from happening by declining to release the money.

My clients and I have looked for less drastic solutions to this problem than a law change, but have not found any. Legal Aid and other low income legal services charge a sliding scale based on income. They may not be able to help if the individual has income, but simply lacks access to it. Also, Legal Aid retains the right to reject such cases based on time available or pre-judged issues of merit. I also requested the Kansas Judicial Council to examine the current law and determine whether their might be an implied right to have cousel appointed within the language of the existing statutes. The Judicial Council discussed the matter at some length, but concluded that they could not make such a determination. The language is not there and to insure the availability of legal counsel, a change of statutes is necessary.

As far as fiscal impact of this legislation is concerned, there is every reason to believe it will be negligible. There is of course no way to predict the number of people who will want to obtain restorations any more than the number of felons requiring appointed legal counsel can be predicted, but in doing my research on this issue before requesting the bill, I talked with two urban civil judges who told me that in many years on the bench, they could only recall four or five individuals approaching the court seeking restoration. While this number is small, it is not too small to bother with. No one should be denied due process.

While the current statutes require court reviews of existing guardianships, these reviews in no way constitute the due process of a restoration hearing. Usually the ward is not even consulted and most certainly counsel for the ward is not provided. In many counties, the review is handled by a short questionnaire to the Guardian/Conservator. Thus the only way to assure our State's "disabled" wards having access to due process is through the adoption of this bill. Thank you.

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TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

By
Kansas Department on Aging
February 11, 1991

My name is Alice Hamilton Nida. I am presenting the testimony of Esther Valladolid Wolf, Acting Secretary of the Kansas Department on Aging. Secretary Wolf regrets that she is unable to speak before you this afternoon. Thank you for the opportunity to present testimony.

The Kansas Department on Aging supports the passage of HB 2137, which would require the district court to appoint an attorney to represent the ward at the hearing on the petition for restoration. Guardianship strips the civil rights of the ward. No one questions that most wards need guardians. But some wards reach a point in time when they no longer need a guardian or, more likely, where they have improved to the point that they are capable of exercising some of their rights. Kansas law provides for limited guardianship, (KSA 59-3018, 3014(d)), so the ward could by law regain certain rights and capabilities.

But how will the ward show their capabilities? It is a giant hurdle for someone to say "I'm no longer incompetent". The ward may also have problems reaching an attorney. The ward does not have control of his funds to pay for an attorney's services. The guardian and the ward, often, have competing interests. Therefore the guardian often will not support the petition for restoration to capacity. A ward who is over 60 years of age can get council from the local Senior Law Project funded by the Area Agency on Aging with Older Americans Act funds. But this requires the ward

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to know about the service, or to be working with an advocate who can get them to the service. Certainly, most wards are not active participants in aging programs.

How will the court know the facts, pro and con, about the ward's capacity? The judiciary does not employ investigative staff who could conduct interviews with interested parties. An attorney who represented the rights of the ward could provide the factual information through depositions and testimony that would allow the presiding judge to make a decision in an informed and efficient manner.

There will be costs associated with the required appointment of attorneys. But we believe the appointment of attorneys will guarantee a substantial civil right at a very small cost. In 1988, there were 2,432 filings for guardianship proceedings in Kansas. This past year, Kansas Advocacy and Protective Services', KAPS, guardians represented 1,275 wards in Kansas or approximately one/half of the wards in the state. KAPS stated that they have about 2-4 restorations per year for those wards that they serve.

For the ward who improves, the stroke victim that regains capabilities, the diabetic who gets his disease under control through medication and life style changes, the Department on Aging recommends the passage of HB 2031.

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STATE OF KANSAS

CY PARRISH
STATE SENATOR, NINETEENTH DISTRICT
SHAWNEE COUNTY
3632 S E TOMAHAWK DR
TOPEKA, KANSAS 66605
913-379-0702 HOME
913-296-7373 BUSINESS

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMEN
CHAIRMAN ADVISORY COMMISSION ON JUVENILE OFFENDER PROGRAMS
MEMBER ASSESSMENT AND TAXATION
JUDICIARY
EDUCATION
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

February 11, 1991

Representative John M. Solbach
Statehouse
Topeka, KS 66612

Dear Representative Solbach:

This is to address several issues which arose last Wednesday at the Judiciary Committee's hearing on H.B. 2012. We have sought clarification from the General Counsel in the Office of Justice Programs, U.S. Department of Justice.

(1) Issue of Youth Membership: The requirement that three members of the Advisory Commission have been or shall currently be under the jurisdiction of the juvenile justice system applies to the whole membership of the Commission and not specifically to the youth members. Therefore, theoretically, none of the youth members would have to have been or currently be under the jurisdiction of the juvenile justice system. In fact, on the current SAG, two of the three members who meet this requirement are adults: one is an attorney and the other is a court services officer.

The Office of Justice programs would find it inconsistent with the spirit and rehabilitative emphasis of the JJDP Act to define the types of offenses which would qualify a member to serve in this capacity.

(2) The addition of the Secretary of Health and Environment (or designee) to the Commission would not necessitate adding another member; instead, the number of governor's appointees could be reduced by one.

The significance of this is twofold: (a) the governor's discretion in appointing public members would be reduced in that the requirement for 50% private members would have to be adhered to. (Note: since Kansas legislators are considered part-time employees, they are counted as non-public employee representatives). (b) Due to the requirement of one-fifth youth membership, if the Commission is increased from 25 to 26, the number of required youth members rises from five to six.

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(3) Structural requirements under the federal Act are attached. They include Sections 223(a)(3) and 291(c)(1) of the Act and various regulations and comments.

Section 291(c)(1) is the provision under which Kansas negotiated in 1982 the current arrangement in which the State Advisory Group appointed by the governor advises the Advisory Commission on Juvenile Offender Programs on matters related to the JJDP Act. It is under this section that H.B. 2012 has been reviewed by OJP General Counsel and approved as a mechanism for overseeing the JJDP function. The stipulation made by General Counsel is that the membership requirements under Section 223(a)(3) must be incorporated in the Advisory Commission's makeup. As stated during the hearing, General Counsel offered the opinion that in making the appointments, the governor shall attempt to do so in a manner which assures broad representation of the various elements of the juvenile justice system and youth serving programs. The reason H.B. 2012 contains all if the membership references in lines 40 p. 1 through line 10 p. 2 is to assure a balanced representation of interests. There is no requirement that every interest must be represented.

I hope this information is helpful. If additional information is necessary, please do not hesitate to call.

Sincerely,

Nancy Parrish
Senator

NP:DOB:nm

Attachment

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§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency described in section 5671(c)(1) of this title as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group appointed by the chief executive of the State to carry out the functions specified in subparagraph (F) and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than 15 and not more than 33 persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, (B) which shall include locally elected officials, representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, special education, or youth services departments, (C) which shall include (i) representatives of private organizations, including those with a special focus on maintaining and strengthening the family unit, those representing parents or parent groups, those concerned with delinquency prevention and treatment and with neglected or dependent children, and those concerned with the quality of juvenile justice, education, or social services for children; (ii) representatives of organizations which utilize volunteers to work with delinquents or potential delinquents; (iii) representatives of community based delinquency prevention or treatment programs; (iv) representatives of business groups or businesses employing youth; (v) youth workers involved with alternative youth programs; and (vi) persons with special experience and competence in addressing the problems of the family, school violence and vandalism, and learning disabilities, (D) a majority of whose members (including the chairman) shall not be full-time employees of the Federal, State, or local government, (E) at least one-fifth of whose members shall be under the age of 24 at the time of appointment, and at least 3 of whose members shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this subchapter, advise the State agency designated under paragraph (1) and its supervisory board; (ii) shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraphs (12), (13), and (14); (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1), except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; (iv) may be given a role in monitoring State compliance with the requirements of paragraphs (12), (13), and (14), in advising on State agency designated under paragraph (1) and local criminal justice advisory board composition, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan; and (v) shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system;

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(4) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

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(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, shall be expended—

(A) through programs of units of general local government or combinations thereof, to the extent such programs are consistent with the State plan;

(B) through programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of general local government or combination thereof; and

(C) to provide funds for programs of Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior) and that agree to attempt to comply with the requirements specified in paragraphs (12)(A), (13), and (14), applicable to the detention and confinement of juveniles, an amount that bears the same ratio to the aggregate amount to be expended through programs referred to in subparagraphs (A) and (B) as the population under 18 years of age in the geographical areas in which such tribes perform such functions bears to the State population under 18 years of age,

(6) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the "local agency") which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

(7) provide for an equitable distribution of the assistance received under section 5632 of this title within the State;

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(8) provide for (A) an analysis of juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs within the relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions), a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs of the jurisdiction; (B) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (C) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

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(9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, health, and welfare within the State;

(10) provide that not less than 75 per centum of the funds available to such State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of general local government or combination thereof, or through grants and contracts with public or private agencies, shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to confinement in secure detention facilities and secure correctional facilities, to encourage a diversity of alternatives within the juvenile justice system, to establish and adopt juvenile justice standards, and to provide programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, particularly programs which are designed to improve sentencing procedures, provide resources necessary for informed dispositions, provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems. These advanced techniques include—

(A) community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, education, special education, day treatment, and home probation, and any other designated community-based diagnostic, treatment, or rehabilitative service;

(B) community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

(C) youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

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(E) educational programs or supportive services designed to encourage delinquent youth and other youth to remain in elementary and secondary schools or in alternative learning situations, including programs to counsel delinquent youth and other youth regarding the opportunities which education provides;

(F) expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth and their families;

(G) youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(H) statewide programs through the use of subsidies or other financial incentives to units of local government designed to—

(i) remove juveniles from jails and lockups for adults;

(ii) replicate juvenile programs designated as exemplary by the National Institute of Justice;

(iii) establish and adopt, based on the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within the State;

(iv) increase the use of nonsecure community-based facilities and discourage the use of secure incarceration and detention; or

(v) involve parents and other family members in addressing the delinquency-related problems of juveniles;

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(I) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles;

(J) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles;

(K) programs and projects designed to provide for the treatment of juveniles' dependence on or abuse of alcohol or other addictive or nonaddictive drugs; and

(L) law-related education programs and projects designed to prevent juvenile delinquency;

(11) provide for the development of an adequate research, training, and evalution capacity within the State;

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 5603(1) of this title;

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

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(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 (18);

(15) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and nonsecure facilities to insure that the requirements of paragraph (12)(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (12)(A) in paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

(16) provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth;

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(17) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen and maintain the family units of delinquent and other youth to prevent juvenile delinquency. Such approaches should include the involvement of grandparents or other extended family members when possible and appropriate;

(18) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(19) provide that fair and equitable arrangements shall be made to protect the interests of employees affected by assistance under this chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such protective arrangements shall, to the maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

(B) the continuation of collective-bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this chapter; and

(E) training or retraining programs;

(20) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter;

(21) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(22) provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary;

(23) address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population; and

(24) contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter.

(b) Approval by State criminal justice council

The State agency designated under subsection (a)(1) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Approval by Administrator; compliance with statutory requirements

(1) The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the requirement of subsection (a)(12)(A) of this section within the three-year time limitation shall terminate any State's eligibility for funding under this part unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years.

(2) Failure to achieve compliance with the requirements of subsection (a)(14) of this section within the 5-year time limitation shall terminate any State's eligibility for funding under this part unless the Administrator—

(A) determines, in the discretion of the Administrator, that such State has—

(i)(I) removed not less than 75 percent of juveniles from jails and lockups for adults; or

(II) achieved substantial compliance with such subsection; and

(ii) made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years; or

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(B) waives the termination of the State's eligibility on the condition that the State agrees to expend all of the funds to be received under this part by the State (excluding funds required to be expended to comply with subsections (c) and (d) of section 5632 of this title and with section 5633(a)(5)(C) of this title, only to achieve compliance with subsection (a)(14) of this section.

(3) Except as provided in paragraph (2), failure to achieve compliance with the requirements of subsection (a)(14) of this section after December 8, 1985, shall terminate any State's eligibility for funding under this part unless the Administrator waives the termination of the State's eligibility on the condition that the State agrees to expend all of the funds to be received under this part by the State (excluding funds required to be expended to comply with subsections (c) and (d) of section 5632 of this title and with section 5633(a)(5)(C) of this title, only to achieve compliance with subsection (a)(14) of this section.

(4) For purposes of paragraph (2)(A)(i)(II), a State may demonstrate that it is in substantial compliance with such paragraph by showing that it has—

(A) removed all juvenile status offenders and nonoffenders from jails and lockups for adults;

(B) made meaningful progress in removing other juveniles from jails and lockups for adults;

(C) diligently carried out the State's plan to comply with subsection (a)(14) of this section; and

(D) historically expended, and continues to expend, to comply with subsection (a)(14) of this section an appropriate and significant share of the funds received by the State under this part.

(d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds

In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 3783, 3784, and 3785 of this title, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allotment under the provisions of section 5632(a) of this title available to local public and private nonprofit agencies within such State for use in carrying out the purposes of subsection (a)(12)(A) of this section, subsection (a)(13) of this section, or subsection (a)(14) of this section. The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis and to those States that have achieved full compliance with the requirements under subsection (a)(12)(A) of this section and subsection (a)(13) of this section.

(Pub.L. 93–415, Title II, § 223, Sept. 7, 1974, 88 Stat. 1119; Pub.L. 94–503, Title I, § 130(b), Oct. 15, 1976, 90 Stat. 2425; Pub.L. 95–115, §§ 3(a)(3)(B), 4(c)(1), (2), (3)–(15), Oct. 3, 1977, 91 Stat. 1048, 1051–1054; Pub.L. 96–509, §§ 11, 19(g), Dec. 8, 1980, 94 Stat. 2755, 2764.)

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(As amended Pub.L. 98–473, Title II, § 626, Oct. 12, 1984, 98 Stat. 2111; Pub.L. 100–690, Title VII, §§ 7258, 7263(b)(1), Nov. 18, 1988, 102 Stat. 4439, 4447.)

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Historical Note

References in Text. Reference to the "Associate Administrator" in the provisions following subsec. (a)(22) should probably be a reference to the "Administrator" in view of the substitution of "Administrator" for "Associate Administrator" throughout this chapter by Pub.L. 96–509.

This chapter, referred to in subsec. (a)(3)(C) and (18), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 11(a)(1), in the provisions preceding par. (1), provided for 3-year, rather than annual, plans and annually submitted performance reports which describe the progress in implementing programs contained in the original plan and the status of compliance with State plan requirements.

Pub.L. 96–509, §§ 11(a)(15)(B), 19(g)(11), in the provisions following par. (22) substituted reference to section 3743 of this title for reference to section 3733(a) of this title and added provision that plans be modified by States as soon as possible after Dec. 8, 1980, in order to comply with the requirements of par. (14).

Subsec. (a)(1). Pub.L. 96–509, § 19(g)(1), substituted "State criminal justice council established by the State under section 3742(b)(1) of this title" for "State planning agency established by the State under section 3723 of this title".

Subsec. (a)(2). Pub.L. 96–509, § 19(g)(2), substituted "criminal justice council" for "planning agency".

Subsec. (a)(3)(A). Pub.L. 96–509, §§ 11(a)(2), 19(g)(3), provided that State advisory groups shall consist of between 15 and 33 members rather than between 21 and 33 members and substituted "juvenile delinquency" for "a juvenile delinquency".

Subsec. (a)(3)(B). Pub.L. 96–509, § 11(a)(3), provided that locally elected officials be included on State advisory groups and made clear that special education departments be included along with other public agencies for representation on State advisory groups.

Subsec. (a)(3)(E). Pub.L. 96–509, § 11(a)(4), provided that one-fifth of the members of State advisory groups be under 24 years of age at the time of their appointment, rather than one-third under 26 years of age.

Subsec. (a)(3)(F). Pub.L. 96–509, §§ 11(a)(5), (6), 19(g)(4), substituted in cl. (i) "criminal justice council" for "planning agency", in cl. (ii) provision that the State advisory groups submit recommendations to the Governor and the legislature at least annually regarding matters related to its functions for provision that the State advisory groups advise the Governor and the legislature on matters related to its functions as requested, in cl. (iii) "criminal justice council" for "planning agency other than those subject to review by the State's judicial planning committee established pursuant to section 3723(c) of this title", in cl. (iv) "criminal justice council and local criminal justice advisory" for "planning agency and regional planning unit supervisory" and "section 3793a of this title" for "sections 3768(b) and 5671(b) of this title", and added cl. (v).

Subsec. (a)(8). Pub.L. 96–509, § 11(a)(7), provided that State juvenile justice plan requirements conform to State criminal justice application requirements and required a State concentration of effort to coordinate State juvenile delinquency programs and policy.

Subsec. (a)(10). Pub.L. 96–509, § 11(a)(8)(A)–(C), in the provisions preceding subpar. (A), made clearer that the advanced techniques described in this paragraph are to be used to provide community-based alternatives to "secure" juvenile detention and correctional facilities and that advanced techniques can be used for the purpose of providing programs for juveniles who have committed serious crimes, particularly programs designed to improve sentencing procedures, provide resources necessary for informed dispositions, and provide for effective rehabilitation.

Subsec. (a)(10)(A). Pub.L. 96–509, § 11(a)(9), added provisions indicating that education and special education programs are appropriate to be included among community-based programs and services.

Subsec. (a)(10)(E). Pub.L. 96–509, § 11(a)(10), clarified the point that educational programs included as advanced techniques should be designed to encourage delinquent and other youth to remain in school.

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Subsec. (a)(10)(H). Pub.L. 96–509, § 11(a)(11), provided that statewide programs through the use of subsidies or other financial incentives to units of local government be designed to: (1) remove juveniles from jails and lock-ups for adults; (2) replicate juvenile programs designed as exemplary by the National Institute of Justice; (3) establish and adopt standards for the improvement of juvenile justice within the State; or (4) increase the use of nonsecure, community-based facilities and discourage the use of secure incarceration and detention.

Subsec. (a)(10)(I). Pub.L. 96–509, § 11(a)(12), revised subpar. (I) to provide that advanced technique programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities include on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles.

Subsec. (a)(10)(J). Pub.L. 96–509, § 11(a)(8)(D), added subpar. (J) relating to projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of juvenile gangs and their members.

Subsec. (a)(11). Pub.L. 96–509, § 19(g)(5), substituted "provide" for "provides".

Subsec. (a)(12)(A). Pub.L. 96–509, § 11(a)(13), clarified that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in "secure detention facilities or secure correctional facilities" rather than simply, as formerly, "juvenile detention or correctional facilities."

Subsec. (a)(12)(B). Pub.L. 96–509, § 19(g)(6), substituted "Administrator" for "Associate Administrator".

Subsec. (a)(14). Pub.L. 96–509, § 11(a)(15)(A), added par. (14). Former par. (14) was redesignated (15).

Subsec. (a)(15). Pub.L. 96–509, §§ 11(a)(14), (15)(A), 19(g)(7), redesignated former par. (14) as (15) and in par. (15) as so redesignated, provided that the annual reporting requirements of the results of the monitoring required by this section can be waived for States which have complied with the requirements of par. (12)(A), par. (13), and the new par. (14), and which have enacted legislation, conforming to those requirements, which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively and substituted "to the Administrator" for "to the Associate Administrator".

Subsec. (a)(16), (17). Pub.L. 96–509, § 11(a)(15)(A), redesignated pars. (15) and (16) as (16) and (17), respectively.

Subsec. (a)(18). Pub.L. 96–509, §§ 11(a)(15)(A), 19(g)(8), redesignated par. (17) as (18) and, in subpar. (A) of par. (18) as so redesignated, substituted "preservation of rights" for "preservation or rights".

Subsec. (a)(19), (20). Pub.L. 96–509, § 11(a)(15)(A), redesignated pars. (18) and (19) as (19) and (20), respectively.

Subsec. (a)(21). Pub.L. 96–509, §§ 11(a)(15)(A), 19(g)(9), redesignated par. (20) as (21) and, in par. (21) as so redesignated, substituted "State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator" for "State planning agency will from time to time, but not less often then annually, review its plan and submit to the Associate Administrator".

Subsec. (a)(22). Pub.L. 96–509, §§ 11(a)(15)(A), 19(g)(10), redesignated par. (21) as (22) and, in par. (22) as so redesignated, substituted "Administrator" for "Associate Administrator".

Subsec. (b). Pub.L. 96–509, § 19(g)(12), substituted "criminal justice council" for "planning agency".

Subsec. (c). Pub.L. 96–509, § 11(b), made conforming amendment, redefined "substantial compliance" with regard to subsec. (a)(12)(A) of this section to include either 75 percent deinstitutionalization of juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children or the "removal of 100 percent of such juveniles from secure correctional facilities", and added a new sentence at the end defining the term substantial compliance with regard to new subsec. (a)(14) of this section.

Subsec. (d). Pub.L. 96–509, §§ 11(c), 19(g)(13), substituted reference to sections 3783, 3784, and 3785 of this title for reference to sections 3757, 3758, and 3759 of this title and provided that redistributed allotments be for the purposes of removing juveniles from jails and lockups for adults, replicating exemplary juvenile programs, or establishing and adopting standards to improve the juvenile justice system, or to increase the use of nonsecure community-based facilities and to provide that the Administrator shall make such reallocated funds available on an equitable ba-

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sis to States that have achieved full compliance with the requirements under subsecs. (a)(12)(A) and (a)(13) of this section.

1977 Amendment. Subsec. (a)(3). Pub.L. 95–115, § 4(c)(1), in the material preceding subpar. (A) substituted provisions relating to functions under subpar. (F) and participation in the development and review of the plan, for provisions relating to advisement of the State planning agency and its supervisory board, in subpar. (C) added provisions relating to representatives from business groups and businesses, and in subpar. (E) added requirement for at least three of the members to be or have been under the jurisdiction of the juvenile justice system, and added subpar. (F).

Subsec. (a)(4). Pub.L. 95–115, § 4(c)(2), added provisions relating to grants or contracts with local private agencies or the advisory group, and substituted "units of general local government or combinations thereof in" for "local governments in".

Subsec. (a)(5). Pub.L. 95–115, § 4(c)(3)(B), substituted "(d)" for "(e)".

Subsec. (a)(6). Pub.L. 95–115, § 4(c)(4), added provision relating to regional planning agency and "unit of general" preceding "local government".

Subsec. (a)(8). Pub.L. 95–115, § 4(c)(5), added provisions relating to programs and projects developed under the study.

Subsec. (a)(10). Pub.L. 95–115, § 4(c)(6)(B), substituted "(d)" for "(e)".

Subsec. (a)(10)(A). Pub.L. 95–115, § 4(c)(6)(A)(ii), added "twenty-four hour intake screening, volunteer and crisis home programs, day treatment, and home probation," following "health services,".

Subsec. (a)(10)(C). Pub.L. 95–115, § 4(c)(6)(A)(iii), substituted "other youth to help prevent delinquency" for "youth in danger of becoming delinquent".

Subsec. (a)(10)(D). Pub.L. 95–115, § 4(c)(6)(A)(iv), substituted provisions relating to programs stressing advocacy activities, for provisions relating to programs of drug and alcohol abuse education and prevention and programs for treatment and rehabilitation of drug addicted youth and drug dependent youth as defined in section 201(q) of this title.

Subsec. (a)(10)(G). Pub.L. 95–115, § 4(c)(6)(A)(v), added "traditional youth" following "reached by".

Subsec. (a)(10)(H). Pub.L. 95–115, § 4(c)(6)(A)(vi), substituted "are" for "that may include but are not limited to programs".

Subsec. (a)(10)(I). Pub.L. 95–115, § 4(c)(6)(A)(vii), added subpar. (I).

Subsec. (a)(12). Pub.L. 95–115, § 4(c)(7), redesignated existing provisions as subpar. (A) and, as so redesignated, substituted provisions relating to detention requirements respecting programs within three years after submission of the initial plan, for provisions relating to detention requirements respecting programs within two years after submission of the plan, and added subpar. (B).

Subsec. (a)(13). Pub.L. 95–115, § 4(c)(8), added "and youths within the purview of paragraph (12)" following "delinquent".

Subsec. (a)(14). Pub.L. 95–115, §§ 3(a)(3)(B), 4(c)(9), added "(A)" following "(12)" and "Associate" preceding "Administrator" and substituted "facilities, correctional facilities, and non-secure facilities" for "facilities, and correctional facilities".

Subsec. (a)(15). Pub.L. 95–115, § 4(c)(10), struck out "all" preceding "disadvantaged".

Subsec. (a)(19). Pub.L. 95–115, § 4(c)(11), struck out ", to the extent feasible and practical" preceding "the level".

Subsecs. (a)(20), (21). Pub.L. 95–115, § 3(a)(3)(B), added "Associate" preceding "Administrator" wherever appearing therein.

Subsec. (b). Pub.L. 95–115, § 4(c)(12), substituted provisions relating to advice and recommendations for provisions relating to consultations.

Subsec. (c). Pub.L. 95–115, § 4(c)(13), added provisions relating to failure to achieve compliance with the requirements of subsec. (a)(12)(A) within the three-year time limitation.

Subsec. (d). Pub.L. 95–115, § 4(c)(14), added provision relating to the State choosing not to submit a plan and provision relating to reallocation of funds by the Administrator.

Subsec. (e). Pub.L. 95–115, § 4(c)(15), struck out subsec. (e) which related to reallotment of funds in a state where the state plan fails to meet the requirements of this section as a result of oversight or neglect.

1976 Amendment. Subsec. (a). Pub.L. 94–503 substituted "(15), and (17)" for "and (15)" in the provisions preceding par. (1).

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

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Section 4(c)(3)(B) of Pub.L. 95–115 provided in part that the amendment of subsec. (a)(5) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(3)(B) of Pub.L. 95–115 is effective on Oct. 1, 1978.

Section 4(c)(6)(B) of Pub.L. 95–115 provided in part that the amendment of subsec. (a)(10) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(6)(B) of Pub.L. 95–115 is effective Oct. 1, 1978.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Costs and Implications of Removal of Juveniles From Adults in Jails; Report to Congress. Section 17 of Pub.L. 96–509 provided that:

"(a) The Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after the date of the enactment of this Act [Dec. 8, 1980], shall submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 [see Short Title note under section 5601 of this title] which would mandate the removal of juveniles from adults in all jails and lockups.

"(b) The report required in subsection (a) shall include—

"(1) an estimate of the costs likely to be incurred by the States in implementing the requirement specified in subsection (a);

"(2) an analysis of the experience of States which currently require the removal of juveniles from adults in all jails and lockups;

"(3) an analysis of possible adverse ramifications which may result from such requirement of removal, including an analysis of whether such requirement would lead to an expansion of the residential capacity of secure detention facilities and secure correctional facilities for juveniles, thus resulting in a net increase in the total number of juveniles detained or confined in such facilities; and

"(4) recommendations for such legislative or administrative action as the Administrator considers appropriate."

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 94–503, 1976 U.S.Code Cong. and Adm.News, p. 5374; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Cross References

Submission of plans under this section as condition for reception of funds under this chapter, see section 3745 of this title.

Notes of Decisions

1. Private right of action

This chapter did not define a civil right of liberty such as to be actionable under section 1343(3) of Title 28 granting federal district courts jurisdiction over "civil rights" cases, even though this chapter clearly evinced intention to implement "least restrictive alternative" in regard to rehabilitation of juvenile delinquents, since there was no evidence that a private cause of action was created by Congress so as to give standing to juvenile herein to sue state or state agencies for not complying with such national federal policy. Cruz v. Collazo, D.C.Puerto Rico, 1979, 84 F.R.D. 307.

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Historical and Statutory Notes

1988 Amendment. Subsec. (a)(1). Pub.L. 100–690, § 7263(b)(1), substituted "section 291(c)(1)" for "section 261(c)(1)", codified as "section 5671(c)(1)".

Subsec. (a)(5). Pub.L. 100–690, § 7258(a)(1)(A), (B)(i), (ii), (C)(i), (ii), (D), substituted in introductory text "shall be expended" for "shall be expended through"; substituted in subpar. (A) "through programs" for "programs" and struck "and" at the end thereof; substituted in subpar. (B) "through programs" for "programs" and inserted "and" after the semicolon; and added subpar. (C).

Subsec. (a)(8)(A). Pub.L. 100–690, § 7258(a)(2)(A), (B), substituted "relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions)" for "relevant jurisdiction" and "juvenile crime problems (including the joining of gangs that commit crimes)" for "juvenile crime problems" in two instances.

Subsec. (a)(14). Pub.L. 100–690, § 7258(b)(1)–(3), substituted "1993" for "1989"; substituted a semicolon for the period at the end of subpar. (iii); and redesignated subpars. (i), (ii), and (iii) as amended, as subpars. (A) to (C).

Subsec. (a)(22). Pub.L. 100–690, § 7258(c)(1), struck "and" at the end of par. (22).

Subsec. (a)(23). Pub.L. 100–690, § 7258(c)(3), added par. (23). Former par. (23) redesignated (24).

Subsec. (a)(24). Pub.L. 100–690, § 7258(c)(2), redesignated par. (23) as (24).

Subsec. (c)(1). Pub.L. 100–690, § 7258(d)(1)–(3), substituted "part" for "subpart"; designated existing provisions as par. (1); and struck out existing last sentence, which read: "Failure to achieve compliance with the requirements of subsection (a)(14) of this section within the 5-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years."

Subsec. (c)(2) to (4). Pub.L. 100–690, § 7258(d)(4), added pars. (2) to (4).

1984 Amendment. Subsec. (a)(1). Pub.L. 98–473, § 626(a)(1), substituted "agency described in section 5671(c)(1) of this title" for "criminal justice council established by the State under section 3742(b)(1) of this title".

Subsec. (a)(2). Pub.L. 98–473, § 626(a)(2), struck out "(hereafter referred to in this part as the 'State criminal justice council')" before "has or will have authority".

Subsec. (a)(3)(C). Pub.L. 98–473, § 626(a)(3)(A), designated the matter following "representatives of private organizations" as cl. (i), in cl. (i) as so designated added ", including those with a special focus on maintaining and strengthening the family unit", designated the matter following "which utilize" as cl. (ii), in cl. (ii) as so designated added "representatives of organizations which", added cl. (iii), designated the matter following "business groups" as cl. (iv), designated the remainder of subpar. (C) as cl. (v) and in cl. (v) as so designated substituted "family, school violence and vandalism, and learning disabilities," for "school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this chapter,".

Subsec. (a)(3)(F). Pub.L. 98–473, § 626(a)(3)(B)(i), substituted "agency designated under paragraph (1)" for "criminal justice council" wherever appearing.

Subsec. (a)(3)(F)(ii). Pub.L. 98–473, § 626(a)(3)(B)(ii), substituted "paragraphs (12), (13), and (14)" for "paragraphs (12)(A) and paragraph (13)" at the end thereof.

Subsec. (a)(3)(F)(iv). Pub.L. 98–473, § 626(a)(3)(B)(iii)(I), substituted "paragraphs (12), (13), and (14)" for "paragraphs (12)(A) and paragraph (13)".

Pub.L. 98–473, § 626(a)(3)(B)(iii)(II), struck out "in advising on the State's maintenance of effort under section 3793a of this title," before "and in review".

Subsec. (a)(9). Pub.L. 98–483, § 626(a)(4), added "special education" after "education".

Subsec. (a)(10) prec. (A). Pub.L. 98–473, § 626(a)(5)(A)(i), substituted "programs for juveniles, including those processed in the criminal justice system," for "programs for juveniles" before "who have committed serious crimes".

Pub.L. 98–473, § 626(a)(5)(A)(ii), substituted "provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems" for "and provide for effective rehabilitation" after "for informed dispositions".

Subsec. (a)(10)(E). Pub.L. 98–473, § 626(a)(5)(B), added ", including programs to counsel delinquent youth and other youth regarding the opportunities which education provides" before the semicolon at the end thereof.

Subsec. (a)(10)(F). Pub.L. 98–473, § 626(a)(5)(C), added "and their families" before the semicolon at the end thereof.

Subsec. (a)(10)(H)(iii). Pub.L. 98–473, § 626(a)(5)(D)(i), substituted "National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice with-

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in the State;" for "Advisory Committee, standards for the improvement of juvenile justice within the State;".

Subsec. (a)(10)(H)(v). Pub.L. 98–473, § 626(a)(5)(D)(iii), added cl. (v).

Subsec. (a)(10)(I). Pub.L. 98–473, § 626(a)(5)(E), struck out "and" at the end thereof.

Subsec. (a)(10)(J). Pub.L. 98–473, § 626(a)(5)(F), struck out "juvenile gangs and their members" and added "gangs whose membership is substantially composed of juveniles" at the end thereof.

Subsec. (a)(10)(K), (L). Pub.L. 98–473, § 626(a)(5)(G), added subpars. (K) and (L).

Subsec. (a)(14). Pub.L. 98–473, § 626(a)(6), added ", through 1989," after "shall" and substituted provisions relating to exceptions for former provisions which related to the special needs of areas characterized by low population density with respect to the detention of juveniles and exceptions for temporary detention in adult facilities of juveniles accused of serious crimes against persons.

Subsec. (a)(17). Pub.L. 98–473, § 626(a)(12), added par. (17).

Pub.L. 98–473, § 626(a)(11), redesignated former par. (17) as (18).

Subsec. (a)(18) to (23). Pub.L. 98–473, § 626(a)(11), redesignated former pars. (17), (18), (19), (20), (21), and (22) as pars. (18), (19), (20), (21), (22), and (23) respectively.

Subsec. (a)(19). Pub.L. 98–473, § 626(a)(7)(A), substituted "shall be" for "are" after "arrangements".

Pub.L. 98–473, § 626(a)(7)(B), substituted "and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such" for ". Such" after "chapter".

Subsec. (a)(19)(D). Pub.L. 98–473, § 626(a)(7)(C), added "and" at the end thereof.

Subsec. (a)(19)(E). Pub.L. 98–473, § 626(a)(7)(D), substituted a semicolon for the period at the end thereof.

Subsec. (a)(19) foll. (E). Pub.L. 98–473, § 626(a)(7)(E), struck out "The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;".

Subsec. (a)(22). Pub.L. 98–473, § 626(a)(8), substituted "agency designated under paragraph (1)" for "criminal justice council" after "State".

Subsec. (a) foll. (23). Pub.L. 98–473, § 626(a)(9), struck out "Such plan may at the discretion of the Associate Administrator be incorporated into the plan specified in section 3743 of this title."

Pub.L. 98–473, § 626(a)(10), struck out "Such plan shall be modified by the State, as soon as practicable after December 8, 1980, in order to comply with the requirements of paragraph (14)."

Subsec. (b). Pub.L. 98–473, § 626(b)(1), substituted "agency designated under subsection (a)(1) of this section" for "criminal justice council designated pursuant to subsection (a) of this section" after "State".

Pub.L. 98–473, § 626(b)(2), substituted "subsection (a) of this section" for "section 5633(a)". Substitution had already been made editorially so that the amendment by Pub.L. 98–473 resulted in no change in text.

Subsec. (c). Pub.L. 98–473, § 626(c), substituted "3" for "2" before "additional years".

Subsec. (d). Pub.L. 98–473, § 626(d), substituted, in the original, "sections 802, 803, and 804" for "sections 803, 804, and 805". Provision had been translated as "sections 3783, 3784, and 3785 of this title" and resulted in no change in text.

Effective Date of 1988 Amendment; Applicability. Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, and inapplicable to a State with respect to a fiscal year beginning before Nov. 18, 1988, if the State plan is approved before such date for such fiscal year, pursuant to section 7296(a), (b)(1) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 98–473, see 1984 U.S.Code Cong. and Adm.News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm.News, p. 5937.

Notes of Decisions

Issues reviewable 3
Private right of action 1
Removal of juveniles from jails 2

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1. Private right of action

Juvenile Justice and Delinquency Prevention Act, providing that in order to obtain federal funding made available thereunder state must not incarcerate juveniles in any institution in which they would have regular contact with adults, was intended to provide private right of action only against state and/or local agencies eligible for funding under Act and could not serve as basis for juvenile arrestee's civil rights claim against arresting officers. Doe v. Borough of Clifton Heights, E.D.Pa.1989, 719 F.Supp. 382.

Juvenile Justice and Delinquency Prevention Act does not provide an express right of action and its purpose and history do not give rise to an implied right of action, nor does it form the basis for a civil rights action. Doe v. McFaul, D.C. Ohio 1984, 599 F.Supp. 1421.

2. Removal of juveniles from jails

In order to remedy state's noncompliance with provision of Juvenile Justice and Delinquency Prevention Act requiring removal of juvenile offenders from adult jails, state would be required to submit plan for achieving combination of policy changes and reduction in rate of juvenile jailing which would place state in compliance with the Act by end of year. Hendrickson v. Griggs, N.D.Iowa 1987, 672 F.Supp. 1126, appeal dismissed 856 F.2d 1041.

3. Issues reviewable

District court order directing state officials to submit plan for achieving compliance with Juvenile Justice and Delinquency Prevention Act did not contain injunctive relief apart from requirement that state submit plan and did not grant portion of relief sought in connection with plan or specify nature or extent of relief plan would afford and was thus nonappealable interlocutory order; order did not expressly require state to seek new legislation, did not preclude state from withdrawing from federal grant program and did not specify method for achieving compliance, other than incorporating general funding conditions of Act. Hendrickson v. Griggs, C.A.8 (Iowa) 1988, 856 F.2d 1041.

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JUDICIAL COUNCIL TESTIMONY ON HB 2098
HOUSE JUDICIARY COMMITTEE
FEBRUARY 13, 1991

1991 House Bill No. 2098 contains the recommendations of the Judicial Council Civil Code Advisory Committee for amendments to K.S.A. 60-2414.

K.S.A. 60-2414 sets forth rights and procedures for statutory redemption of real property from execution sale.

Last session the House Judiciary Committee had before it 1990 HB 2642, which contained extensive revisions to K.S.A. 60-2414. Lewis "Pete" Heaven, Jr. was primarily responsible for the drafting of HB 2642. As a member of the Executive Committee of the Real Estate, Probate and Trust Section of the Kansas Bar Association, Pete was requested to develop recommended changes to K.S.A. 60-2414. The eventual result of Pete's recommendations, and the responses to them, was HB 2642. The House Judiciary Committee referred the subject matter of HB 2642 to the Judicial Council for consideration.

Another bill amending K.S.A. 60-2414 was also before the legislature last session, 1990 HB 2972. It was requested by officials of the City of Wichita and was aimed at situations in which property, subject to a mortgage, has been abandoned. The property is often run down and being used for drug-related or other criminal activity. The City is interested in seeing the property removed or repaired. However, the City is hesitant to take action on property which serves as collateral. Mortgage holders are not interested in taking action on the property until the expiration of the redemption period. Consequently, HB 2972 was designed to shorten the redemption period in cases of abandonment to promote quicker action in regard to such property.

In developing HB 2098, the Civil Code Committee considered both HB 2642 and 2972 and met with their proponents.

Historically, Kansas has had legislation on the right of redemption since 1861. With some amendments, the basic features of K.S.A. 60-2414 have been in effect since 1893.

The basic elements of K.S.A. 60-2414 state: (1) Who can redeem (the defendant owner, such owner's assignee or transferee, lien creditors), (2) The amount that must be paid to redeem (the basic factor being the sale price), (3) The time periods for redemption (which vary for different classes of persons) and (4) The effects of redemption.

One purpose of the redemption statute is to give the mortgagor or other person entitled to exercise the right of redemption additional time to refinance and save the property. However, it appears to the Civil Code Committee that the primary

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purpose of the statute is to apply the property as fully as possible to satisfy claims against the defendant owner and to avoid, as much as possible, deficiency judgments against the defendant owner. It is the goal of the statute to put pressure on foreclosing creditors to bid the value of the property at sale, at least up to the amount of the underlying debt.

The first change made by HB 2098 appears on page 1 in lines 19 and 20 and concerns the rate of interest to be paid on the amount necessary for redemption. The amendment provides for interest at the judgment rate specified in K.S.A. 16-204(e)(1). Presently, the statute does not specify a particular rate of interest. Appellate cases indicate the appropriate interest rate is that of the lien foreclosed. The Civil Code Committee adopted Mr. Heaven's reasoning that the successful bidder at sale may have had to borrow money to purchase the property and it makes more sense to use a definite rate of interest which bears some relationship to current economic conditions rather than that of a note which could be many years old.

On line 23 of page 1, language is inserted to allow the court, after hearing, to find the property has been abandoned or is not occupied in good faith and to shorten or extinguish the redemption period. Presently in such cases, the court can shorten the redemption period to six months. This new provision would appear to satisfy in large measure the concerns raised by the City of Wichita.

Amendments on page 1 in lines 29 through 43, and continuing on page 2, reword the existing provisions on waiver of redemption rights. The new language is intended to retain the ability of corporations and partnerships to waive redemption rights and to protect individuals from such waiver in regard to agricultural land or single or two-family dwellings. The new language should allow other entities such as joint ventures or syndicates which are purchasing real property for investment purposes, to waive redemption rights.

The amendments to subsection (b) on page 2 are intended to clarify the redemption period for a redeeming creditor where there has been a waiver of redemption rights by the defendant owner or a shortening or extinguishing of such owner's redemption rights. As amended, the subsection also implements the concept that there should be only one redemption by a creditor. Redemption among creditors seldom occurs and the provisions on creditor-to-creditor redemption are generally perceived as confusing. The Advisory Committee saw some value in retaining the potential of redemption by one creditor in that the possibility of such redemption should promote the foreclosing lienholder bidding the amount of his or her judgment at the sale. The Advisory Committee also believes that allowing only one creditor to redeem will promote creditors bidding at the sale if they believe there is any further value to be realized from the property.

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The elimination of creditor-to-creditor redemption allows the deletion of considerable language in subsection (d) and the entirety of current subsections (e), (f), and (g).

In subsection (d) on page 3 in line 17 and 18, the advisory committee adopted Mr. Heaven's suggestion that the holder of the certificate of purchase be able to recover money spent to prevent waste during the redemption period in that such a provision will promote preservation of the property.

Subsections (e) and (f) relate to redemption by a creditor and its impact on what the defendant owner must pay to redeem from the creditor and the consequences of a subsequent redemption or failure to redeem by the owner. For the most part, the amendments represent an elaboration or adjustment of the existing law on these issues. Essentially, the redeeming creditor must make a determination whether the value of the land satisfies the creditor's claim. If the creditor deems the land sufficient, the creditor only files a statement of the amount unpaid due on the claim of that creditor. If the defendant owner wishes to redeem, the defendant owner must add the unpaid amount of the creditor's claim to the redemption amount to redeem the property and the claim of the creditor is satisfied. If the defendant owner does not redeem the property is deemed to have satisfied the claim of the creditor and such claim is extinguished. If the redeeming creditor does not believe the land is sufficient to satisfy the creditor's claim, the creditor may file a statement of a lesser amount the creditor is willing to credit on the claim of the defendant owner in the event of redemption. The defendant owner must then only pay that additional amount in order to redeem from the creditor, the creditor's lien is extinguished but the creditor has a deficiency for the difference between the unpaid amount of the creditor's claim and the lesser amount as stated in the creditor's affidavit. If the defendant owner does not redeem, the creditor's claim is reduced by the lesser amount included in the creditor's statement. It would appear unfair to require the defendant owner to pay the full amount of the creditor's claim in order to redeem and, in the failure of such redemption by the defendant owner, let the creditor realize some satisfaction of the creditor's claim from the property and retain a deficiency judgment for the full amount of the creditor's unpaid claim.

In regard to subsection (j) on pages 5 and 6, Mr. Heaven pointed out the ambiguity as to who may be held responsible for injury or waste against the property. The amendment is intended to clarify that any person committing or permitting injury or waste is liable.

The Advisory Committee also adopted Mr. Heaven's recommendation in regard to subsection (m) on page 6. Mr. Heaven characterized the intent of the subsection as allowing the court to reduce the redemption period in situations where the land owner has an insignificant amount of equity in the property. He observed that confusion has resulted with regard to what "indebted-

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ness" is to be used to determine whether one-third of the indebtedness has been paid, or what "indebtedness" should be measured against the market value of the property. The last sentence of the subsection reflects that events justifying a shorter redemption period under subsection (a) may have occurred.

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