

Approved 2-26-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~am~~/p.m. on February 17, 1992 in room 313-S of the Capitol.

All members were present except:

Representative Allen who was excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Joan Adam, State Representative
Carolyn Hill, Acting Commissioner of Youth & Adult Services
Helen Stephens, Kansas Peace Officers Association
Jim Clark, Kansas County & District Attorneys Association
Chip Wheelen, Kansas Psychiatric Society
Bob Frey, Kansas Trial Lawyers Association

The Chairman called the meeting to order.

Representative Douville made a conceptual motion to introduce a bill concerning uninsured motorists. Representative Macy seconded the motion. Motion carried.

Hearings were opened on HB 2713, limiting court commitments to state youth centers to A, B, & C felonies.

Joan Adam, State Representative, gave the history of why HB 2713 was introduced. She urged committee members to pass the bill. She felt this would help control population in the youth centers.

Carolyn Hill, Acting Commissioner of Youth & Adult Services, testified on behalf of Donna Whiteman, Secretary of Department of Social & Rehabilitation Services, in favor of HB 2713. (Attachment #1) In answer to committee members questions she said that residents of youth homes are not segregated by crime because of limited ability to segregate residents. She said SRS had requested the addition of attorneys to their district offices, and this proposal was supported by the Governor. In answer to a committee member's question, she agreed that if the court commits a juvenile to a youth center they are committing them into SRS custody, therefore SRS already has the power to move the children as they see necessary. She said this bill would not reduce any cost, but would increase the cost to local communities.

Helen Stephens, Kansas Peace Officers Association, testified that her organization would support HB 2713 if Lines 36 thru 38 were reinstated. (Attachment #2)

Jim Clark, Kansas District & County Attorneys Association, testified in opposition to HB 2713. (Attachment #3)

Representative O'Neal moved to amend HB 2713 by reinstating Line 36 thru Line 38. Rep. Douville seconded the motion. Motion carried.

Representative Everhart moved to recommend HB 2713 as amended favorable for passage. Representative Smith seconded the motion. Discussion followed. The motion was withdrawn with consent of second. Because of the amendment the bill is merely a conflict resolution. The Revisor will find another bill in which to include the conflict resolution.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S Statehouse, at 3:30 ~~am~~/p.m. on February 17, 1992

Hearing on HB 2794, expressions of sympathy inadmissible in medical malpractice liability action, was opened for hearing.

Chip Wheelen, Kansas Psychiatric Society, testified in favor of HB 2794. (Attachment #4) He answered committee members questions and concerns. He said his members believe that an expression of sympathy can currently be used against them in court.

Bob Frey, Kansas Trial Lawyers Association, opposed HB 2794. (Attachment #5) He answered committee members questions.

Representative Rock requested legislation concerning 1) mental health care providers; 2) civil procedures relating to punitive & exemplary damages; 3) requiring proper identification prior to the receipt of cash assistance; 4) defining and classifying the crime of poisoning or causing injury or death to a police dog and 5) pawnbrokers, relating to pledged goods and loans secured. Representative Hochhauser moved to introduce requested bills. Representative Heinemann seconded motion. Motion carried.

The meeting adjourned at 4:45 P.M.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna Whiteman, Secretary

House Judiciary Committee
January 30, 1992

Testimony in Regard to

House Bill 2713

AN ACT amending the juvenile offenders code; concerning commitments of juvenile offenders to state youth centers; amending K.S.A. 1991 Supp. 38-1663 and repealing the existing section; also repealing K.S.A. 1991 Supp. 38-1663b.

Mr. Chairperson, Members of the Committee, I appear to present testimony in support of House Bill 2713.

Purpose: This bill would amend the dispositional section of the juvenile offenders code to restrict the offenses for which courts could order juvenile offenders into youth centers. The current code permits court commitments of youths who (a) have committed offenses which would be A, B, or C felonies if committed by adults or who (b) are adjudicated on any offense and have a prior adjudication for any offense. The bill would repeal the latter option. Juvenile offenders in this latter category could continue to be placed in the custody of the department, which would have responsibility for determining appropriate placement.

In addition the bill amends into K.S.A. 38-1663 changes that were passed in the 1991 session which led to the creation of a supplemental section, 38-1663b. These amendments would simplify the dispositional section of the juvenile offenders code and permit the repeal of 38-1663b.

Background: On June 30, 1991, the Department was responsible for 1700 juvenile offenders: either in custody or committed to a state youth center. This population is made up of about 12% A, B, or C felony type offenders, 35% D or E felony type offenders, 53% misdemeanor type offenders.

The program and placement of juvenile offenders by SRS is based on an individual assessment of the youth and the appropriateness and availability of resources. Although placements are made in a wide variety of resources, the general distribution is as follows: 25% with family or relatives, 9% in foster homes, 19% in group homes, 27% in the youth centers, and 20% in all other living arrangements.

There is a significant problem with the number of youth admitted to the youth centers. The number of youth in residence is limited by the capacity of the facilities. When admissions increase, the primary impact is in increased turnover of the population -- which means decreased lengths of stay at each

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youth center. After several years of gradually increasing admissions, the youth centers admitted an all time high 726 juvenile offenders in FY 1990, compared to 548 in 1989. As a result, the youth centers reduced their average length of stay to 7-1/2 months.

Discussion: During FY 1990, the department needed to respond to the admissions crisis. Either we needed to get accustomed to the higher number of admissions and adjust our program accordingly or establish which juvenile offenders should no longer be admitted. As we explored the issues, it became apparent that the preferred alternative was to admit fewer juvenile offenders in order to keep those most needy of youth center treatment for a longer period so that the impact of youth center treatment would be maximized.

To achieve this end, we targeted two populations: (a) SRS custody admissions, particularly those youths with misdemeanor adjudications and first time property offenses and (b) technical violators of conditional release as those juvenile offenders most likely to benefit from community based services and programming. During FY 1991, we were able to reduce misdemeanor admissions by SRS from 180 in FY 1990 to 127; conditional release technical violators from 77 to 59; and felony type adjudications from 210 to 144.

In contrast, the pattern of commitments by the court shows a steadily increasing number of misdemeanor and felony property offenders being ordered into youth centers. From FY 1989 to FY 1991 court commitments of misdemeanor offenders increased by 72%. Although the number of court commitments is down somewhat six months into the current fiscal year, it is currently projected by the end of the year, 182 out of the projected 238 court commitments will be misdemeanants or D and E felony offenders.

In the SRS Family Agenda for Children and Youth, SRS Youth and Adult Services has proposed the development of more community based and family focused resources which provide a level of supervision to meet public safety needs and are consistent with the level of risk that the youth presents. The department does not propose to refuse to admit these less serious offenders to youth centers -- indeed many of them will be admitted. The department is, however, requesting authority to make determinations regarding which of these offender youths need youth center treatment and which can be satisfactorily treated in their homes or communities. Then we will be in a position to manage appropriately the population of juvenile offenders placed in our care.

Recommendation: House Bill 2713 proposes to restrict the court from ordering into a youth center those juvenile offenders the Department has targeted to deal within the community. Passage of HB 2713 will help us provide a longer length of stay and a more meaningful impact upon the most serious juvenile offenders while holding the department responsible to manage the population of less serious offenders. Youth who remain in the community would receive services through community based programming. Your favorable action on HB 2713 would be appreciated.

Donna L. Whiteman
Secretary
Department of Social and Rehabilitation
Services
(913) 296-3271

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We do not have any method for recording plea bargained agreements. The data may be available to the extent that the youth centers receive complete sets of journal entries that show original charges filed and final offenses stipulated. The information is not nearly all present, however, and gathering the data would be quite labor intensive if it were available.

As indicated in the prepared testimony, the department imposed a correction during the 1990 fiscal year when admissions ran so high. The field responded well -- possibly too well -- to that request from central office to avoid referring first time and minor offenders. The 1992 referral rate is up from the 1991 rate as field staff seek to be most judicious in their referral choices. Without the development of further community-based resources field staff are at the bare bones minimum in terms of referrals they can make to youth centers. Of course, at the policy level we can make whatever decision needs to be made in order to meet our objectives (e.g., refusing to take any misdemeanors). However, without the passing of HB 2713 it is safe to predict that any downward adjustment that the department makes will be met with a corresponding upward adjustment in court commitments.

Budgets, educational costs, and numbers of residents in the youth centers were also requested for the last five years. As the Youth Center at Larned is budgetarily under the Larned State Hospital budget, that information is not available:

	FY 87	FY 88	FY 89	FY 90	FY 91
YOUTH CENTER AT ATCHISON					
			Rated Capacity: 100		
Total Budget	3,561,398	3,709,450	4,002,123	4,335,295	4,405,873
Educ. Budget	659,248	737,642	777,284	793,629	819,571
Admissions	97	116	121	190	151
Ave Daily Census	95	103	100	97	92
Per Diem Cost (less education)	83.70	79.05	88.35	100.03	106.80
Per Diem Educ. Cost (229 day contract)	30.30	31.27	33.94	35.73	38.90
YOUTH CENTER AT BELOIT					
			Rated Capacity: 84		
Total Budget	3,184,804	3,222,128	3,513,070	3,806,771	3,910,410
Educ. Budget	722,672	748,160	796,997	847,726	872,784
Admissions	83	78	71	84	63
Ave Daily Census	79	75	78	79	80
Per Diem Cost (less education)	75.79	79.74	84.56	91.09	92.47
Per Diem Educ. Cost (260 day contract)	31.23	33.85	34.83	36.63	37.30
YOUTH CENTER AT LARNED					
			Rated Capacity: 60		
Total Budget	1,131,332	1,144,860	1,280,012	1,433,662	1,445,980
Admissions	57	70	71	97	90
Ave Daily Census	62	68	74	80	82
Per Diem Cost (less education and support/administrative provided by LSH)	49.99	46.13	47.39	49.10	48.31

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	FY 87	FY 88	FY 89	FY 90	FY 91
YOUTH CENTER AT TOPEKA			Rated Capacity: 219		
Total Budget	6,241,317	6,536,064	7,112,695	7,982,545	8,218,665
Educ. Budget	1,142,347	1,206,093	1,176,972	1,508,710	1,581,993
Admissions	271	248	298	340	294
Ave Daily Census	200	218	210	224	219
Per Diem Cost (less education)	69.85	66.98	77.58	79.18	83.03
Per Diem Educ. Cost (232 day contract)	24.62	23.85	24.16	29.03	31.14

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YOUTH CENTER ADMISSIONS BY
JUDICIAL DISTRICT
FY 1991

	COURT COMMIT.	SRS CUSTODY
DISTRICT 1: Atchison, Leavenworth		
A, B, C Felonies	3	1
D, E Felonies	0	3
Misdemeanors	2	7
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TOTAL	5	11
DISTRICT 2: Jackson, Jefferson, Pottawatomie, Waubunsee		
A, B, C Felonies	0	0
D, E Felonies	3	0
Misdemeanors	0	2
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TOTAL	3	2
DISTRICT 3: Shawnee		
A, B, C Felonies	5	1
D, E Felonies	6	12
Misdemeanors	8	13
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TOTAL	19	26
DISTRICT 4: Anderson, Coffey, Franklin, Osage		
A, B, C Felonies	1	0
D, E Felonies	3	0
Misdemeanors	1	2
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TOTAL	5	2
DISTRICT 5: Chase, Lyon		
A, B, C Felonies	1	2
D, E Felonies	2	1
Misdemeanors	3	2
-----	----	----
TOTAL	6	5
DISTRICT 6: Bourbon, Linn, Miami		
A, B, C Felonies	1	0
D, E Felonies	2	4
Misdemeanors	0	2
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TOTAL	3	6

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	COURT COMMIT.	SRS CUSTODY
DISTRICT 7: Douglas		
A, B, C Felonies	2	0
D, E Felonies	0	7
Misdemeanors	0	4
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TOTAL	2	11
DISTRICT 8: Dickinson, Geary, Marion, Morris		
A, B, C Felonies	1	0
D, E Felonies	1	1
Misdemeanors	2	1
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TOTAL	4	2
DISTRICT 9: Harvey, McPherson		
A, B, C Felonies	0	0
D, E Felonies	3	2
Misdemeanors	0	3
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TOTAL	3	5
DISTRICT 10: Johnson		
A, B, C Felonies	7	1
D, E Felonies	5	3
Misdemeanors	9	6
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TOTAL	21	10
DISTRICT 11: Cherokee, Crawford, Labette		
A, B, C Felonies	1	0
D, E Felonies	4	4
Misdemeanors	1	4
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TOTAL	6	8
DISTRICT 12: Cloud, Jewell, Lincoln, Mitchell, Republic, Washington		
A, B, C Felonies	0	0
D, E Felonies	1	0
Misdemeanors	2	2
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TOTAL	3	2
DISTRICT 13: Butler, Elk, Greenwood		
A, B, C Felonies	1	1
D, E Felonies	2	3
Misdemeanors	2	0
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TOTAL	5	4

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	COURT COMMIT.	SRS CUSTODY
DISTRICT 14: Chautauqua, Montgomery		
A, B, C Felonies	1	2
D, E Felonies	12	0
Misdemeanors	3	2
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TOTAL	16	4
DISTRICT 15: Cheyenne, Logan, Rawlins, Sherman, Sheridan, Thomas, Wallace		
A, B, C Felonies	0	0
D, E Felonies	0	2
Misdemeanors	1	2
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TOTAL	1	4
DISTRICT 16: Clark, Comanche, Ford, Gray, Kiowa, Meade		
A, B, C Felonies	1	0
D, E Felonies	2	1
Misdemeanors	1	1
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TOTAL	4	2
DISTRICT 17: Decatur, Graham, Norton, Osborne, Phillips, Smith		
A, B, C Felonies	0	0
D, E Felonies	0	0
Misdemeanors	1	1
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TOTAL	1	1
DISTRICT 18: Sedgwick		
A, B, C Felonies	3	12
D, E Felonies	5	38
Misdemeanors	4	47
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TOTAL	12	97
DISTRICT 19: Cowley		
A, B, C Felonies	0	0
D, E Felonies	2	6
Misdemeanors	0	4
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TOTAL	2	10
DISTRICT 20: Barton, Ellsworth, Rice, Russell, Stafford		
A, B, C Felonies	0	0
D, E Felonies	1	2
Misdemeanors	0	4
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TOTAL	1	6

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	COURT COMMIT.	SRS CUSTODY
DISTRICT 21: Clay, Riley		
A, B, C Felonies	0	0
D, E Felonies	2	0
Misdemeanors	0	1
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TOTAL	2	1
DISTRICT 22: Brown, Doniphan, Marshall, Nemaha		
A, B, C Felonies	0	0
D, E Felonies	0	0
Misdemeanors	0	0
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TOTAL	0	0
DISTRICT 23: Ellis, Gove, Rooks, Trego		
A, B, C Felonies	0	0
D, E Felonies	2	0
Misdemeanors	0	0
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TOTAL	2	0
DISTRICT 24: Edwards, Hodgeman, Lane, Ness, Pawnee, Rush		
A, B, C Felonies	0	0
D, E Felonies	1	1
Misdemeanors	3	0
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TOTAL	4	1
DISTRICT 25: Finney, Greeley, Hamilton, Kearney, Scott, Wichita		
A, B, C Felonies	2	0
D, E Felonies	7	2
Misdemeanors	3	1
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TOTAL	12	3
DISTRICT 26: Grant, Haskell, Morton, Seward, Stanton, Stevens		
A, B, C Felonies	1	0
D, E Felonies	3	0
Misdemeanors	2	1
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TOTAL	6	1
DISTRICT 27: Reno		
A, B, C Felonies	0	3
D, E Felonies	2	6
Misdemeanors	3	2
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TOTAL	5	11

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	COURT COMMIT.	SRS CUSTODY
DISTRICT 28: Ottawa, Saline		
A, B, C Felonies	1	3
D, E Felonies	1	7
Misdemeanors	1	4
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TOTAL	3	14
DISTRICT 29: Wyandotte		
A, B, C Felonies	17	0
D, E Felonies	50	11
Misdemeanors	29	11
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TOTAL	96	22
DISTRICT 30: Barber, Harper, Kingman, Pratt, Sumner		
A, B, C Felonies	1	0
D, E Felonies	4	0
Misdemeanors	3	0
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TOTAL	8	0
DISTRICT 31: Allen, Neosho, Wilson, Woodson		
A, B, C Felonies	0	0
D, E Felonies	1	1
Misdemeanors	3	1
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TOTAL	4	2

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YOUTH CENTER ADMISSIONS
BY COMMITTING OFFENSE
FY 1991

	COURT COMMITTED	SRS CUSTODY
A FELONIES		
Aid & Abet Murder	1	0
Murder	1	0
B FELONIES		
Aggr. Arson	0	2
Aggr. Battery of LEO	2	0
Aggr. Robbery	8	3
Aggr. Sodomy	3	1
Kidnapping	0	1
Rape	1	2
Second Degree Murder	0	1
C FELONIES		
Aggr. Asslt. of LEO	0	1
Aggr. Battery	9	5
Aggr. Burglary	4	3
Aid & Abet Arson	1	0
Aid & Abet Robbery	2	0
Arson	3	2
Indecent Liberties w/ a Child	7	3
Poss. of Drugs w/ Intent to Sell	10	2
Robbery	2	1
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TOTAL A, B, C FELONIES	54	27
D FELONIES		
Aggr. Asslt	7	4
Aggr. Incest	0	5
Aggr. Sexual Battery	3	3
Aid & Abet Burglary	1	1
Attempted Aggr. Battery	1	0
Attempted Ind. Liberties	1	1
Attempted Poss. of Drugs w/Int.	0	1
Attempted Robbery	2	0
Burglary	52	42
Involuntary Manslaughter	1	0
Possession of Hallucinogens	0	1
E FELONIES		
Aggr. Escape from Custody	0	1
Aid & Abet Theft	1	0
Attempted Burglary	0	3
Auto Burglary	0	2
Conspiracy to Commit Felony	1	1
Criminal Damage to Property	11	3
Forgery	9	3
Obstructing a LEO	1	0
Poss. of Burglary Tools	1	0

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	COURT COMMITTED	SRS CUSTODY
Poss. of Controlled Substance	0	1
Poss. of Weapon	1	0
Terroristic Threat	1	2
Theft	30	41
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TOTAL D & E FELONIES	124	115
A MISDEMEANORS		
Battery of a LEO	1	1
Criminal Damage to Property	10	14
Desecration of a Cemetery	0	1
Escape fr Custody	1	0
Lewd & Lascivious Beh.	0	1
Obstructing Legal Process	4	2
Poss. of Marijuana	0	4
Poss. of Stolen Property	0	1
Sexual Battery	0	1
Theft	22	50
Unlawful Deprivation of Property	12	13
Unlawful Restraint	1	0
Unlawful Use of Finance Card	1	0
B MISDEMEANORS		
Assault on a LEO	0	1
Attempted Theft	1	1
Battery	16	27
Carrying a Concealed Weapon	1	1
Criminal Trespassing	5	4
Unlawful Use of a Weapon	2	4
C MISDEMEANORS		
Assault	2	1
Conspiracy to Commit Misdem.	0	1
Disorderly Conduct	7	2
UNCLASSIFIED MISDEMEANORS		
Carrying BB Gun in City Limits	0	1
Transporting Open Container	2	0
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TOTAL MISDEMEANORS	88	131

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AVEY, President
Cement Training Center
Lawson, Kansas 67504

CLIFF HACKER, President-Elect
Lawson County Sheriff
Emporia, Kansas 66801

LARRY MAHAN, Vice-President
Kansas Highway Patrol
Wichita, Kansas 67211

ALVIN THIMMER
Secretary-Treasurer
Kansas Peace Officers' Association
Wichita, Kansas 67201

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Chief of Police

Arkansas City, Kansas 67005

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Chief W.S.U. Police

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Kansas Highway Patrol

Topeka, Kansas 66603

BOB SCHUMAKER

Santa Fe R.R. Police

Topeka, Kansas 66612

DISTRICT 1

FRANK P. DENNING

Johnson Co. Sheriff's Office

Olathe, Kansas 66202

DAVE SMALL

Paola Police Department

Paola, Kansas 66071

DARRELL PFLUGHOF

Kansas Lottery Security

Kansas City, Kansas 66103

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Riley County Police Department

Manhattan, Kansas 66502

RANDALL THOMAS

Lyon County Sheriff's Office

Emporia, Kansas 66801

DOUGLAS PECK

Kansas Highway Patrol

Emporia, Kansas 66801

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Chief of Police

Ellsworth, Kansas 67439

CARL McDONALD

Dickinson County Sheriff's Office

Abilene, Kansas 67410

ALLEN BACHELOR

Kansas Highway Patrol

Salina, Kansas 67401

DISTRICT 4

LAWRENCE YOUNGER

Chief of Police

Hays, Kansas 67601

JOHN FROSS

Ft. Hays State University Police

Hays, Kansas 67601

FRANK REESE

Ellis County Sheriff's Office

Hays, Kansas 67601

DISTRICT 5

KENT NEWPORT

Holcomb Police Department

Holcomb, Kansas 67851

CAMERON HENSON

Kansas Bureau of Investigation

Liberal, Kansas 67901

RAY MORGAN

Kearny County Sheriff's Office

Lakin, Kansas 67860

DISTRICT 6

DAVE SMITH

Hosington Police Department

Hosington, Kansas 67594

JIM DAILY

Barton County Sheriff's Office

Great Bend, Kansas 67530

DICK BURCH

Kansas Law Enforcement Training Ctr.

Hutchinson, Kansas 67504

DISTRICT 7

DELBERT FOWLER

Chief of Police

Derby, Kansas 67037

BOB ODELL

Cowley County Sheriff

Winfield, Kansas 67156

LARRY WELCH

Ks. Law Enforcement Training Center

Hutchinson, Kansas 67504

DISTRICT 8

ALLEN FLOWERS

Chief of Police

Coffeyville, Kansas 67337

LOWELL PARKER

Greenwood County Sheriff

Eureka, Kansas 67045

TINY WILNERD

Ks. Dept. Wildlife & Parks

Honard, Kansas 67349

SERGEANT-AT-ARMS

KENNETH MCGLEASON

Kansas Highway Patrol

Wakeeney, Kansas 67672

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030

FAX 316-729-0655

P.O. BOX 2592 • WICHITA, KANSAS 67201



February 17, 1992
House Bill No. 2713

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the 3,000 members of the Kansas Peace Officers Association.

KPOA opposes House Bill No. 2713 in its present form. Our opposition centers on the deletion of lines 36-38 on page 1.

If our interpretation is correct, a juvenile who has had prior adjudication(s) as a juvenile offender and has been adjudicated a juvenile offender as a result of having committed an act which, if done by a person 18 years of age or over, would constitute a D felony; could no longer be committed to a state youth center.

We would ask that lines 36-38 on page 1 be reinstated to give a judge the option of the youth center.

Examples of D felonies are sexual battery, burglary, and theft.

Please consider the following: A juvenile has fired several gunshots into a home -- no one is injured, but damage to the home is in excess of \$600. This juvenile is apprehended and charged with a D and E felony (damage in excess of \$500). Further investigation reveals several prior convictions for burglary. Under HB 2713 in its present form, the judge would have no other option than to keep this juvenile in the community.

We agree that in many instances the youth center is not the best option, and believe strongly that the addition of "house arrest" is an excellent option for some of our juveniles, but not all. We believe the public safety, the victim, and maybe the juvenile would be better served if lines 36-38 were reinstated and kept as an option.

Thank you for the opportunity to speak to you today.

In Unity There Is Strength

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OFFICERS

Randy Hendershot, President
Wade Dixon, Vice-President
John Gillett, Sec.-Treasurer
Rod Symmonds, Past President



DIRECTORS

Nola Foulston
Dennis Jones
William Kennedy
Paul Morrison

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Opposition to

HOUSE BILL NO. 2713

The Kansas County and District Attorneys Association opposes House Bill No. 2713.

While many aspects of the bill are to be recommended, including use of house arrest and mediation in juvenile offender cases, and even reduction in the population of the youth center, the bill would actually prohibit committing a youth 13 or over to the Youth Center unless adjudicated for an A, B, or C felony. This would mean that the juveniles adjudicated for involuntary manslaughter, aggravated vehicular homicide, attempted sale of cocaine, aggravated assault, attempted aggravated battery, terroristic threat, aggravated sexual battery, felony theft, felony criminal damage to property and burglary--even if the juvenile is a repeat offender.

While the concerns behind the bill are well-intentioned, the aim of the bill is simply too broad. Do not deprive juvenile judges of a placement option for a potentially dangerous juvenile, unless and until there are optional placements available.

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February 17, 1992

Kansas Psychiatric Society

259 Pembroke Lane
Topeka, KS 66604
Telephone: (913) 232-5985
or (913) 235-3619

TO: House Judiciary Committee
FROM: Kansas Psychiatric Society *Chip Wheelen*
SUBJECT: House Bill 2794; Condolences by Health Care Providers

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One of the most important principles of medical ethics prescribes that a physician shall be dedicated to providing competent medical service with compassion and respect for human dignity. This is particularly important in the practice of psychiatry because of the very personal and oftentimes intensely emotional nature of the relationship between the patient and psychiatrist. We requested introduction of HB 2794 in order to restore the final element of compassion in such relationships; an expression of sympathy to the patient's family when the patient dies or suffers an injury.

Currently, physicians are admonished by defense counsel, the liability insurer, and hospital risk management officers if they consider sending a sympathy note or communicating with the family after a patient dies. This is because such expressions of condolence are likely to be used as evidence if an allegation of negligence is made.

The worst case example is the situation which occurs when, in spite of medications and psychotherapy, a patient suffering from a major depressive disorder commits suicide. The psychiatrist experiences grief as does the family, but is restrained from communicating his or her sorrow. This often leaves the family perplexed or even angry when the psychiatrist does not express condolences, and the lack of closure in the relationship prevents the emotional healing that is such an important part of the grief process.

House Bill 2794 is simple and straightforward. It prevents expressions of sympathy from being admitted as evidence in a medical malpractice lawsuit. We respectfully request your favorable consideration and recommendation for passage.

Thank you for considering our concerns about this important issue.

CW/cb

*HJC
2-17-92
Attach #4*



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TESTIMONY

of the

KANSAS TRIAL LAWYERS ASSOCIATION

before the

HOUSE JUDICIARY COMMITTEE

regarding HB 2794 - Sympathy

February 17, 1992

The Kansas Trial Lawyers Association opposes HB 2794. We do not feel sufficient problems exist with respect to health care providers expressing sympathy to the patients or families of patients where the patient was a victim of medical malpractice to warrant the restrictions imposed by this bill. More importantly, in those few instances where a condolence is made, particularly those in writing, the question of its relevancy in determining the liability of a health care provider for medical negligence properly rests with the jury.

HB 2794 is not needed and may in certain circumstances result in the withholding of pertinent information from the jury. We encourage the members of the House Judiciary Committee to reject it.

HJC
2-13-92
Attach #5