Approved 3/31/92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~a.m.~~/p.m. on March 3, 1992 in room 313-S of the Capitol.

All members were present except:

Representatives O'Neal and Parkinson who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Jeff Sonnich, Kansas Nebr. League of Savings Institutions
Matt Lynch, Judicial Council
Ray Olson, Silver Haired Legislature
Karen France, Kansas Association of Realtors
Gene Yockers, Kansas Real Estate Commission
Dist. Magistrate Judge Ruth Browne
William Kennedy, Riley County District Attorney
Rod Beeker, State Board of Education

The chairman called the meeting to order.

Hearing on HB 2098, shortening redemption period under certain situations, was opened.

Jeff Sonnich, Kansas Nebraska League of Savings Institutions, testified in favor of HB 2098. (Attachment #1) He answered committee members questions.

Matt Lynch, Judicial Council, testified in favor of HB 2098 and presented several amendments. (Attachment #2) He answered committee members questions.

Representative Garner moved to amend HB 2098 as requested by the Judicial Council. Rep. Douville seconded the motion. Motion carried.

Representative Vancrum moved to amend HB 2098 on page 5, lines 27 thru 29 deleting the sentence beginning with "Failure of.." Rep. Heinemann seconded the motion. Motion carried.

Representative Vancrum moved to recommend HB 2098 as amended favorably for passage. Rep. Carmody seconded the motion. Motion carried.

Hearing on HB 2398, contract for deed sales, was opened.

Ray Olson, Silver Haired Legislature, testified in support of HB 2398. (Attachment #3)

Karen France, Kansas Association of Realtors, testified in opposition to HB 2398. (Attachment #4) She answered committee members questions.

Gene Yockers, Kansas Real Estate Commission, testified in favor of HB 2398. (Attachment #5)

Hearing on HB 2398 was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 a.m./p.m. on March 3, 1992.

Hearing on HB 3147, creating county school attendance review boards, was opened.

District Magistrate Judge Ruth Browne, Clay Center, testified in favor of HB 3147 and explained why she felt this bill was needed. (Attachment #6) She said she didn't think there was a need for a fiscal note on HB 3147. She said consideration was given to using the word "may" instead of "shall", but she felt strongly that it should be a mandatory bill. In answer to a member's question, she said Clay County would be glad to be a pilot county for this program.

William Kennedy, Riley County District Attorney, testified in favor of HB 3147. (Attachment #7) In answer to a member's question, he said the concept was good but perhaps should be referred to an interim committee for study.

Rod Beeker, State Board of Education, felt the concept of the bill was good, however he would have to oppose the bill the way it is currently written. He felt the confidentiality factor was of great concern.

Chairman Solbach appointed the following subcommittee to work with Judge Brown on HB 3147:

Rep. Hamilton, Chairman
Rep. Jan Pauls
Rep. Barbara Lawrence
Rep. George Gomez

Representative Everhart moved to amend HB 2856 to contract bonds for public works, then recommend HB 2856 as amended favorably for passage. Rep. Douville seconded the motion. Motion carried.

The meeting adjourned at 5:05 P.M.

GUEST LIST

COMMITTEE: House Judiciary DATE: 3-3-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
Judge Ruth Browne	P.O. Box 203 Clay Center, Kan 67432	
William E Kennedy	105 Courthouse Plaza	Manhattan Ks 66502
Martha Jenkins	Topeka	AIA
Ray Olson	Topeka	Silver Haired Legislature
Katie Pyle	"	AARP-CCTF
Lyndon Dunn	Topeka	KDOA
JEFF SOMNICH	TOPEKA	KNLSA
KAREN FRANCE	TOPEKA	KAR
Gene Yockers	Top	KREC
Matt Lynch	Topeka	Judicial Council

Kansas-Nebraska League of Savings Institutions

Jeffrey D. Sonnich, Vice-President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
(913) 232-8215

March 3, 1992

TO: HOUSE COMMITTEE ON JUDICIARY

FROM: JEFFREY SONNICH, VICE PRESIDENT KNLSI

RE: H.B. 2098 - MORTGAGE FORECLOSURE REDEMPTION LAW CHANGES

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the House Committee on Judiciary in support of H.B. 2098. The measure makes important revisions to the present Kansas redemption law. Many of the changes are technical in nature, however one provision would provide for reduced or extinguished redemption periods for the mortgagor. The right of redemption would remain intact for the legitimate homeowner who may be experiencing financial difficulty. The major changes would allow a creditor to request the Court to reduce or extinguish the redemption period where the property has been abandoned by the defendant owner.

The bill amends K.S.A. 60-2414 to make several changes in the mortgage foreclosure redemption law. The changes include:

1. Where the property before or after the sale is abandoned or not occupied in good faith, the court may shorten or extinguish the owner's right of redemption.

2. Technical changes in the law for junior creditors to redeem after the owner's exclusive redemption period has expired.

3. Holders of the certificate of purchase are allowed to add sums spent to prevent waste to the amount the owner must pay to redeem.

4. Technical changes in the procedure to seek a deficiency.

Jeffrey Sonnich, KNLSI

HJC
3-3-92
Attach #1

JUDICIAL COUNCIL TESTIMONY ON HB 2098
HOUSE JUDICIARY COMMITTEE
MARCH 3, 1992

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.

During the 1990 session, the House Judiciary Committee had before it two bills (1990 HB 2642 and 2972) which contained proposed amendments to the redemption statute. At the request of the House Judiciary Committee, these bills were assigned for study by the Judicial Council.

1990 HB 2642 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.

1990 HB 2972 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.

The House Judiciary Committee held a hearing on HB 2098 in 1991, however, no action was taken on the bill. Since that time, the Judicial Council has received correspondence from Representative Don Smith and Byron Springer, an attorney in Lawrence, suggesting amendments to HB 2098. Based on this correspondence, the Judicial Council has approved a limited number of technical and clarifying amendments to HB 2098.

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.

HJC
3-3-92
Attach #2
1 of 5

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 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

HJC 3-3-92 Attach #2 2 of 5

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.

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.

H JC 3-2-92 Attach #2 3 of 5

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 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.

Further Amendments to HB 2098

As mentioned previously, Byron Springer provided the Judicial Council with suggested amendments to HB 2098. Due to the proposed deletions in lines 23 through 28 of page 3, Mr. Springer suggested adding a reference to a redeeming creditor to avoid any interpretation that such a creditor cannot make and recover the expenditures as are set out in subsection (d). It was the opinion of the Civil Code Committee that the phrase "holder of the certificate of purchase" would include a redeeming creditor, however, to avoid any possible misinterpretation the committee approved Mr. Springer's suggestion. The committee also agreed with Mr. Springer that the last sentence of subsection (b) may arguably miss certain expenditures allowed under (d) such as insurance premiums, sums necessary to prevent waste and interest or sums due upon any prior lien or encumbrance. The committee adopted a parallel amendment in line 19 of page 1. In subsection (g) on page 5 relating to redemption of property sold in parcels, the committee adopted Mr. Springer's suggestion to clarify that a redeeming creditor's claim is added pro rata to the parcels "sold" and not just to those "redeemed".

Based on discussions with interested persons, Representative Don Smith provided the Council with certain suggested amendments. The technical amendments provided by Representative Smith are included in the amendments recommended by the Council. However, a more substantive change relating to use of the property by an assignee or transferee of statutory redemption rights is not included. The proposal forwarded by Representative Smith would delete "or by agent or tenant" in line 28 of page 5. This proposal appears to be aimed at abuses by "equiteers," persons who purchase redemption rights and rent out the property during the redemption period. It is the position of the Civil Code Committee that the rights of a defendant owner during the redemption period as they exist under the present law should be continued in new legislation in this area. During the

HJC 3-2-92 Attach #2 495

redemption period, the defendant owner currently has the right to (1) stay in the property, (2) rent the property or (3) transfer the owner's redemption rights. The Civil Code Committee views the new language on lines 27 through 29 of page 5 as a recognition of these currently existing rights and does not support changing such rights.

HJC
3-2-92
Attach #2
5 of 5

March 3, 1992

Testimony

House Judiciary Committee

House Bill 2398

Mr. Chairman and members of the committee, I am here today to testify on behalf of Arris Johnson, Speaker of the Silver Haired Legislature, who was unable to be here. My name is Ray Olson and I am a Silver Haired Legislature delegate from PSA 4, District 6 in Topeka.

I want to bring to the committee's attention that in our October 1991 session, the SHL passed Resolution 802 (copy attached) urging the Kansas State Legislature to enact legislation concerning contract for deed sales as outlined in House Bill 2398.

It was felt there was a need for this legislation to correct abuses associated with contract for deed sales which continue to exist. It was also felt that the contract should always dictate the terms of the sale and have equal legal status with other contracts used by finacial institutions.

The Silver Haired Legislature urges your support of House Bill 2398.

HJC
3-3-92
#3
1 of 8

SILVER HAIRED LEGISLATURE RESOLUTION NO. 802

By PSA 7 and 10

A RESOLUTION urging the Kansas State Legislature to enact legislation concerning contract for deed sales as outlined in 1991 House Bill 2398.

WHEREAS, The need for this legislation to correct the abuses associated with contract for deed sales continues to exist; and

WHEREAS, The contract should always dictate the terms of the sale and have equal legal status with other contracts used by financial institutions; and

WHEREAS, Real estate associates and brokers continue to act as escrow agents in contract for deed sales: Now, therefore,

Be it resolved by the Silver Haired Legislature of the State of Kansas: That the Silver Haired Legislature supports the changes as specified in 1991 House Bill 2398.

#JC 3-3-92 #3 2682

KANSAS ASSOCIATION OF REALTORS®

REALTOR®

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: THE HOUSE JUDICIARY COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: MARCH 3, 1992

SUBJECT: HB 2398, CONTRACTS FOR DEED

Thank you for this opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to provide commentary on HB 2398 which I hope will be helpful.

We tried to work with the Silver Haired Legislative Committee who studied this bill last year in order to get it into a workable solution to the problem which brought it to their attention. While this bill is an improvement over the original version, it still appears to have some problems. We were unable to participate in discussions this year by the Silver Haired Legislature. We believe the bill has the same problems which we pointed out to you last year.

New Section 1(a) appears to apply to contracts for deed drawn after the effective date of this act. However, without specifically stating that, as paragraph (b) does, it appears to have an impact on all contracts for deed in existence. It raises the question of whether a judge could find an equitable interest for contracts written prior to July 1. If not, then it would appear this language would remove equitable interests in contracts which might have intended it all along, given the status of the law when the contracts were written.

HJC
3-3-92
Attach #1

Even if a date were injected into this paragraph, we have a strong suspicion, that, given the nature of equitable interests at common law, it would seem very likely that judges will continue to find equitable interests in contract for deed situations, regardless of this statute.

Section 2 of the bill amends the Real Estate Brokers' and Salespersons' License Act by prohibiting real estate licensees from acting as escrow agents in contract for deed sales. While we understand the general intent of this prohibition and we agree that a real estate agent may be an inappropriate person to hold contracts for deed in escrow for great lengths in time, this language poses two problems. First, would this prevent licensees from holding any earnest money deposits in contract for deed transactions? These earnest money deposits are generally short term deposits which are held until the details of the contract are worked out. Under this language it appears this would be prohibited.

Second, what are our members supposed to do with the contracts for deed which they are now holding in escrow? My members tell me that it is often times very difficult to get both parties to agree to move the escrow to another location such as an attorney or a bank. Sometimes it is hard to locate the sellers, as they are living out of state. At what point will our members be penalized for holding this escrow, since the practice was perfectly legal when they agreed to act as the escrow agent?

Contract for deed sales usually occur out of convenience for one or both parties. A buyer could not qualify for traditional financing; a seller can offer more favorable interest rates than the market offers; a seller does not want to have to pay capital gains tax and chooses to spread it over a period of years; a relative wants to make sure the property stays in the family.

HJC 3-3-92 Attach #4 2 of 3

The list of reasons for contract for deed sales goes on and on. While we appreciate the gravity of the situation which gave rise to this proposal, this bill raises many more questions which need to be answered. Like many other pieces of legislation, without thinking this through, the cure may be worse than the ill.

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3-3-92
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383

House Judiciary Committee
March 3, 1992
House Bill 2398

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the Director of the Kansas Real Estate Commission. I am here to oppose the amendments in Section 2 of the bill, which would prohibit real estate licensees from acting as escrow agents in contract for deed sales [line 27 on page 4, and lines 3 and 28 on page 5].

We do not believe that a real estate licensee should be prohibited from engaging in an activity which other individuals, who are not regulated by any state agency, may perform. If an individual chooses to act in that capacity in conjunction with a real estate brokerage business, we believe it is unfair to deprive the individual of that opportunity of earning income.

Thank you for your consideration.

HJC
3-3-92
Attach #5

The Mandate to Create Student Attendance Review Boards H.B. 3147

(1) It is apparent that new methods, legislation and programs are needed to insure that students who are truants, dropouts, irregular attenders or behavior problems remain in school and receive the education, socialization and skills necessary to be productive in our society.

(2) The proposed legislation is based on a general recognition that the Juvenile Justice System is not the best answer to most school attendance and behavior problems. It would remove the majority of school-related problems of children and youth from the necessity of competing for attention in the Juvenile Court, while preserving the jurisdiction of the Court as the resource of last resort.

The legislation proposed would modify our existing statutes to facilitate the creation of School Attendance Review Boards in every district, modeled on the California plan. This plan would divert the minor who is truant, irregular in attendance, or insubordinate or disorderly during attendance at school,and his or her parents,to a SARB or Student Attendance Review Board, after the school had exhausted its policies. This board would be composed of educators, SRS, law enforcement, parents and other community service resources. Operationally, they would meet monthly during the school term and discover and refer the truant, disorderly or needful student to the proper remedial agency. The parents are an integral part of the process and their required presence at all hearings is essential. That is why subpoena powers are necessary.

The School Attendance Review Boards would have the duty, upon a determination that available public and private services were insufficient or inappropriate to correct school attendance or school behavior problems, to propose and promote use of the Juvenile Justice System, as a last resort.

Prior to the use of the Juvenile Justice System, the SARB would:

(1) Promote the use of alternative agencies for the youth and family.
(2) Provide for the maximum utilization of community and regional resources.
(3) Encourage an understanding that the community alternatives resources be committed toward the improvement of the resources and the creation of resources, if they are needed.

Although School Attendance review Boards might require some special funding to be fully effective, in the main, the legislation or mandate can be satisfied by a re-evaluation of existing budget priorities to permit reassignment of existing personnel and resources and by planning for the utilization of some volunteer services.

This system will impact dramatically, and decisively, early identification of children at risk in a consistent and orderly way.

This system is totally in harmony with new and current legislation concerning multi-disciplinary teams.

HJC
3-3-92
Attach #6
1 of 2

This system, further, may be thought of as a plan with great potential for a major impact on the systems affecting the pre-delinquent and early delinquent child. The systems include the resources; services of the community, the educational system and of course, the Juvenile Justice System.

The value and definition of a SARB mandate are these:

(1) The SARB focuses on attendance, not in a restricted sense of truancies and tardies, but rather in a broader concern for any problem, behavior or combination of behaviors that adversely affect a childs effective school achievement.

(2) A SARB provides for a carefully designed review of all efforts made on behalf of a child and of all other services that might be utilized as a last resort prior to a referral to Juvenile Court.

(3) A SARB is specifically charged with finding solutions to problems identified in school and would bring together on a regular and continuing basis those agencies having prime responsibilities for the welfare of children and youth.

(4) It is a means of giving leadership statewide to the resolution of school-related problems, through consistency and continuity of service, rather than isolated and sporadic efforts by different agencies and groups.

(5) It is a means of utilizing resources for delinquency prevention and treatment, more fully & effectively.

(6) It is a means of promoting the development of resources where none exist, or of school programs and education alternatives, where they are weak or non-existent.

(7) It is a means of conservation of often duplicative services of agencies with responsibilities for delinquency prevention.

(8) It is a means of diversion of youth from the Juvenile Court system to appropriate school, family and community resources.

Finally, (to further describe the concept) the California model is implemented by a law that mandates that every school board appoint a SARB and the law allows the juvenile court to have subpoena powers to assure the parents presence and participation in the process and remedies.

I respectfully submit this HB 3147 to you for your consideration.

Ruth T. Browne

Ruth T. Browne
District Magistrate Judge
P.O. Box 203
Clay Center, Kansas 67432

HJC 3-3-97 Attach #6 2982

Office of the Riley County Attorney

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GENIECE A. WRIGHT
Legal Specialist

The concept of House Bill No. 3147 is excellent in that it rules on both professional and volunteer help for students. It grants a school board a wider scope of authority and draws on the wisdom of the public.

The bill is flawed in several particulars:

Ref Sec. 1(a)

School districts are not creatures of county lines. Riley County for example is home to three school districts at least two of which extend to other counties, and I believe that a district quartered in Geary County draws some Riley County students. This makes the mandatory language difficult to follow.

I suggest that each school district have its own committee and that the legislature encourage these committees to work together.

Ref. Sec. 2(a)

Kansas does not have a "juvenile court", and what we do have is not authorized to issue subpoenas unless a case is filed.

The proposed bill refers to minor pupils. Current K.S.A. 72-1111 requires school until age 16.

Ref. Sec. 6(c)

Most of us are county attorneys, and a probation officer has no real authority to file a case, and a District court has no jurisdiction unless a case is filed.

Please continue to work on this concept. The habitual truant is not a Huckleberry Finn but a seriously disturbed person. At present these matters are reviewed by SRS and by prosecutors, but there is so little funding that truancies take a back seat to active child abuse cases.

H.J.C.
3-3-92
Attach #7