Approved: April 28, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 16, 1995 in Room 313-S of the Capitol.

All members were present except:
Representative Doug Mays - Excused
Representative Belva Ott - Excused
Representative Vince Snowbarger, Excused
Representative Doug Spangler, Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Chuck Simmons, Acting Secretary Department of Corrections
Brent Anderson, Counsel to Governor
Chris Biggs, Geary County Attorney
Kay Farley, Office of Judicial Administration
Ann Henderson, Citizen Review Board
Jim Clark, Kansas County & District Attorneys Association
Lisa Moots, Executive Director Kansas Sentencing Commission
Mike Santos, City of Overland Park

Others attending: See attached list

Hearings on **SB 298** - Crimes and punishment, lesser included crime, were opened

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee on behalf of Paul Morrison in support of the bill. He stated that this bill would clear up the ambiguity in the law dealing with attorneys requesting instructions for the jury on lesser crimes. (Attachment 1)

Hearings on **SB 298** were closed.

Hearings on **SB 360** - Placement of inmates in Labette correctional conservation camp; reduction of sentence; supervised released, were opened.

Chuck Simmons, Acting Secretary Department of Corrections, appeared before the committee as a proponent of the bill. He explained that the bill does three things: reduces from 20% to 15% the good time which can be earned by an inmate; addresses offender management problems related to the 90 day incarceration period for violation of conditions of post-release supervision and provided a mechanism for the secretary of corrections to make direct placements of inmates to the Labette Correctional Conservation Camp in order to increase utilization. (Attachment 2)

Brent Anderson, Counsel to Governor, appeared before the committee in support of the bill. He stated that Governor Graves supports the bill and believes that its passage is vitally important to the states' future efforts to imprison violent offenders and to keep them locked up, and to qualify for Federal Crime Bill prison funding. (Attachment 3)

Hearings on **SB 360** were closed.

Hearings on **SB 307** - Local citizen review boards duties concerning juvenile offenders, were opened.

Kay Farley, Office of Judicial Administration, appeared before the committee as a proponent of the bill. She commented that there are currently nine judicial districts that have Citizen Review Boards and with the passage of this bill it would allow judges to refer juvenile offenders cases to citizen review boards to review the offenders' progress toward rehabilitation and to make recommendations to judges for further action. (Attachment 4)

Ann Henderson, Director Citizen Review Board Douglas County, appeared before the committee in support of the bill. She stated that they would be able to aid in the disposition phase of juvenile offender cases. (Attachment 5) She provided the committee with written testimony from Judge Jean Shepard (Attachment 6)

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on March 16, 1995.

Hearings on **SB 307** were closed.

Hearings on **SB 312** - Scope of review of appeals of departure sentences under the sentencing guidelines act, were opened.

Lisa Moots, Executive Director Kansas Sentencing Commission, appeared before the committee in support of the bill. She stated the bills intent is to limit the number of appeals which are brought challenging sentences imposed under the Kansas Sentencing Guidelines Act. The guidelines act contemplates appeals only in departure cases, not in cases in which the sentence imposed falls within the presumptive limits.

Hearings on **SB 312** were closed.

Hearings on **SB 333** - Controlled substances, penalties, violation involving marijuana of municipal ordinances, were opened.

Mike Santos, Senior Assistant City Attorney Overland Park, appeared before the committee as a proponent of the bill. He stated that this bill would bring consistency to the crime of possession of marijuana. (Attachment 7)

Don Moler, General Counsel League of Kansas Municipalities, did not appear before the committee but requested that his written testimony be included in the committee minutes. (Attachment 8)

Hearings on **SB 333** were closed.

Hearings on **SB 234** - Diversion programs for juvenile offenders; eligibility, were opened.

Chris Biggs, Geary County Attorney, appeared before the committee as a proponent of the bill. He explained that this bill would authorize the court to set-up diversion program for juveniles, those who would not be eligible would be DUI's, violent crimes and high severity level crimes. (Attachment 9)

Hearings on **SB 234** were closed.

SB 285 - Tort claims fund payments for charitable health care providers; local health departments and indigent health care clinics

Representative Rutledge made a motion to report **SB 285** favorably for passage and be placed on the consent calendar. Representative Nichols seconded the motion. The motion carried.

SB 296 - Capitol area security patrol; jurisdiction

Representative Pauls made a motion to report **SB 296** favorably for passage. Representative Nichols seconded the motion.

Representative Pauls made a substitute motion to have the bill apply to all of Shawnee County. Representative Goodwin seconded the motion. The motion carried.

Representative Pauls made a motion to report **SB 296** favorably for passage as amended. Representative Heinemann seconded the motion. The motion carried.

The next meeting is scheduled for March 17, 1995.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: March 16 1995

NAME	REPRESENTING
Lisa Mootz	KSC
Jan Johnson	ICDDC
Kay Farley	OJA
Ann Henderson	Citizen Review Board, Lawrence, KS
Chris Biggs	Geary County Attorney
Maye Bradshaw	ACLU
James Crawford	Intera
Jon Newman	KS Governmental Consulting
Sydney Hardman	KS Action for Children

COMMENTS TO MEMBERS OF HOUSE JUDICIARY COMMITTEE

Date: March 16, 1995

RE: Senate Bill 298

In recent years the law on the subject of instructions to juries on lesser offenses has become very complicated. The appellate courts in Kansas have routinely reversed their own decisions in this area, making it difficult for trial courts to properly instruct juries on lesser included offenses. The statute governing this is K.S.A. 21-3107.

The problem is further complicated by the fact that under current law defense attorneys can object to the giving of certain instructions and then later rely on the failure of the trial court to give them as grounds for reversal. There have been cases in Kansas where criminal convictions have been reversed on those facts. This proposed legislation is very simple: It simply requires the defense lawyer to request specifically what lesser crimes he/she wants the jury instructed upon or waive that issue on appeal. This much needed amendment to K.S.A. 21-3107 will clear up this inequity in the law.

Thank you for your time.

Paul J. Morrison, District Attorney
Johnson County, Kansas

A:\LEGISLATION\#38299.WP

House Judiciary
3-16-95
Attachment 1

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Bill Graves
Governor

Charles E. Simmons
Acting Secretary

M E M O R A N D U M

To: House Judiciary Committee

From: Charles E. Simmons
Acting Secretary of Corrections

Re: Senate Bill No. 360

Date: March 16, 1995

The Department of Corrections requested the introduction of Senate Bill No. 360 and urges its passage.

Senate Bill 360 does three things:

(1) reduces from 20% to 15% the good time which can be earned by an inmate;

(2) addresses offender management problems related to the 90 day incarceration period for violation of conditions of postrelease supervision;

(3) provides a mechanism for the secretary of corrections to make direct placements of inmates to the Labette Correctional Conservation Camp in order to increase utilization of that sentencing alternative.

GOOD TIME

The current statutes allow inmates to reduce the incarceration period of their sentence by up to 20% through earned good time credits. This bill would reduce to 15% the amount of good time which could be earned by an inmate.

Provisions of the Federal Crime Bill require that for states to access grant funds through the Truth in Sentencing Grant Program they must have in place sentencing laws which provide for violent offenders to serve not less than 85% of their sentence. It may be necessary in the near future for Kansas to proceed with expansion projects to increase its prison capacity. In the event that such projects are necessary, some of the costs to the State for

construction of the facilities may be reduced through federal grant funds. Amendment of the state statute now will place the State in a position to be eligible to receive these grant funds.

Good time is used as a management tool by corrections personnel. It provides an incentive for inmates to maintain appropriate behavior while incarcerated and to participate in work and programs assigned or recommended by staff. We believe that provisions for earned good time credits should be retained in statute but feel that a reduction by 5% in the good time which is available to be earned will not adversely impact its use as a management tool. The lower good time rate would apply to those crimes committed on and after the effective date of SB 360.

90 DAY REVOCATION ISSUE

Current law provides that when an offender's postrelease supervision period is revoked the maximum period of incarceration is 90 days following the offender's revocation hearing before the Kansas Parole Board. Parole and facility personnel have indicated that the short duration of this incarceration period presents management problems in both field and facility supervision.

In the field, staff indicate that some offenders view the 90 day period as being too short to be a deterrent to conduct which would violate conditions of postrelease supervision. These offenders ignore efforts on the part of the parole officer to enforce conditions of supervision.

Once these offenders are revoked, facility personnel report that they encounter management and discipline problems since the offenders know they will be released in 90 days whether or not they maintain good conduct. These offenders have little incentive to maintain appropriate conduct during the incarceration period.

To address these problems, provisions in SB 360 would increase the revocation period from up to 90 days to a flat 180 days. However, offenders would have the opportunity to earn up to 90 days credit in order to be released at 90 days. The longer revocation period may deter some offenders from violating conditions of supervision and the ability to earn an earlier release may be sufficient incentive for offenders to maintain appropriate conduct while incarcerated.

The bill would also increase the length of the supervision period for all offenders by 12 months (from 12 to 24 months and from 24 to 36 months), with a provision that offenders could earn credits to reduce the supervision period by 12 months back to the existing

terms. The intent of these amendments is to provide an incentive for offenders to maintain compliance with conditions of supervision. Currently the only incentive is the potential for revocation. This provision will establish an opportunity for the offender to control his or her future through appropriate conduct which is in compliance with conditions of supervision which have been imposed.

Both of these provisions are compatible with the department's offender management philosophy that offenders should be held responsible and accountable for their conduct. The increased revocation and supervision periods will affect only those individuals who commit crimes on and after the effective date of SB 360.

LABETTE CORRECTIONAL CONSERVATION CAMP

The LCCC has a capacity of 104. It is budgeted for an average daily population of 95. It has consistently operated with a count in the 70's. This has continued despite laws enacted during the 1994 session which were intended to increase utilization of the facility.

This facility is operated by Labette county through a grant of approximately $1.5 million administered by the Department of Corrections. Placements to the facility are made by sentencing courts.

The amendment proposed in SB 360 would allow the Department of Corrections to make direct placements to the LCCC. Offenders placed at the facility would be those who have sentences in the presumptive non-incarceration grid boxes of either sentencing grid and meet eligibility criteria established by the LCCC. Based on past utilization by the courts it is anticipated that approximately 40 offenders would be placed at the LCCC by the Department of Corrections each year.

This amendment is intended to increase utilization of the LCCC to a level closer to that for which it is budgeted.

CES/nd

STATE OF KANSAS

I RAVES, *Governor*
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590

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OFFICE OF THE GOVERNOR

TESTIMONY SUBMITTED TO THE HOUSE JUDICIARY COMMITTEE ON SENATE BILL 360 BY BRENT ANDERSON, COUNSEL TO THE GOVERNOR MARCH 16, 1995, 3:30 P.M.

Governor Graves strongly supports Senate Bill 360 and urges the committee to recommend it favorably for passage. As you know, the bill passed out of the Senate 38-2. The Governor believes passage of this bill is vitally important to our state's future efforts to imprison violent offenders and to keep them there for as long as the interests of justice require.

A key provision of the bill would reduce from 20 to 15 percent the good time credit that inmates can earn during their incarceration. Not only does this provision reinforce this Legislature's commitment to determinate sentencing, as advocated by candidate Graves and most of the members of this committee, but it also is the final component necessary for Kansas to qualify for up to $80 million in federal funds over the next five years to be used for construction, maintenance and operation of state prisons.

By reducing good time to 15 percent, corrections personnel maintain an effective tool in managing inmates while Kansas establishes a good time rate that is consistent with federal sentencing and a soon-to-be large majority of states. It is that consistency of message -- that those criminals who are caught and convicted must serve a minimum of 85 percent of their guidelines sentence before they are eligible for release from prison -- that assures the public that justice is being done and would-be criminals that their punishment will be fair, swift and certain.

The Governor also endorses the proposed increase in the incarceration period -- to 180 days from 90 -- for those offenders who violate the conditions of their postrelease supervision. Corrections personnel -- and the public -- need this tool to make certain that offenders are held accountable for their conduct outside prison walls as well as within. The existing 90-day term is simply too short to serve this purpose.

The Governor also supports the bill's provision that enables the Department of Corrections to fully utilize the boot camp facility operated by Labette County.

Thank you for this opportunity to emphasize Governor Graves' strong support for this important legislation.

# # # #

House Judiciary
3-16-95
Attachment 3

House Judiciary Committee
Senate Bill 307
March 16, 1995

Testimony of Kay Farley
Coordinator of Children and Family Programs
Office of Judicial Administration

Representative O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you today in support of SB 307. This bill would allow judges to refer juvenile offender cases to citizen review boards after adjudication for the review the offenders' progress toward rehabilitation and to make recommendations to the judge for further action on the case.

Currently there are eight citizen review board (CRB) programs which cover nine judicial districts - 3rd, 5th, 7th, 11th/31st, 16th, 23rd, 27th, and 28th Judicial Districts. The attached map shows the placement of these programs.

Citizen review boards (CRBs) have proven to be an effective mechanism for involving community members in the child welfare system. In the child welfare system, CRBs have served multiple purposes and proved beneficial to the overall child welfare system.

1. CRB hearings have allowed for a somewhat informal process for all parties to review progress on cases and have input on the recommendations to the judge for further action. These informal hearings have allowed considerably more time to discuss individual cases than would have been allowed in a formal court proceeding.

2. CRBs have served as a means to educate community members about the problems in the community and the additional services that are needed in the community.

3. CRBs have also increased the accountability for the child welfare system, as community members are able to evaluate the effectiveness of the agencies providing services to the children.

Allowing CRBs to review juvenile offender cases should bring the same benefits to the juvenile justice system. Every juvenile offender case is not appropriate for referral to a CRB. The bill as drafted allows the judge discretion for determining which cases would most benefit from the CRB process.

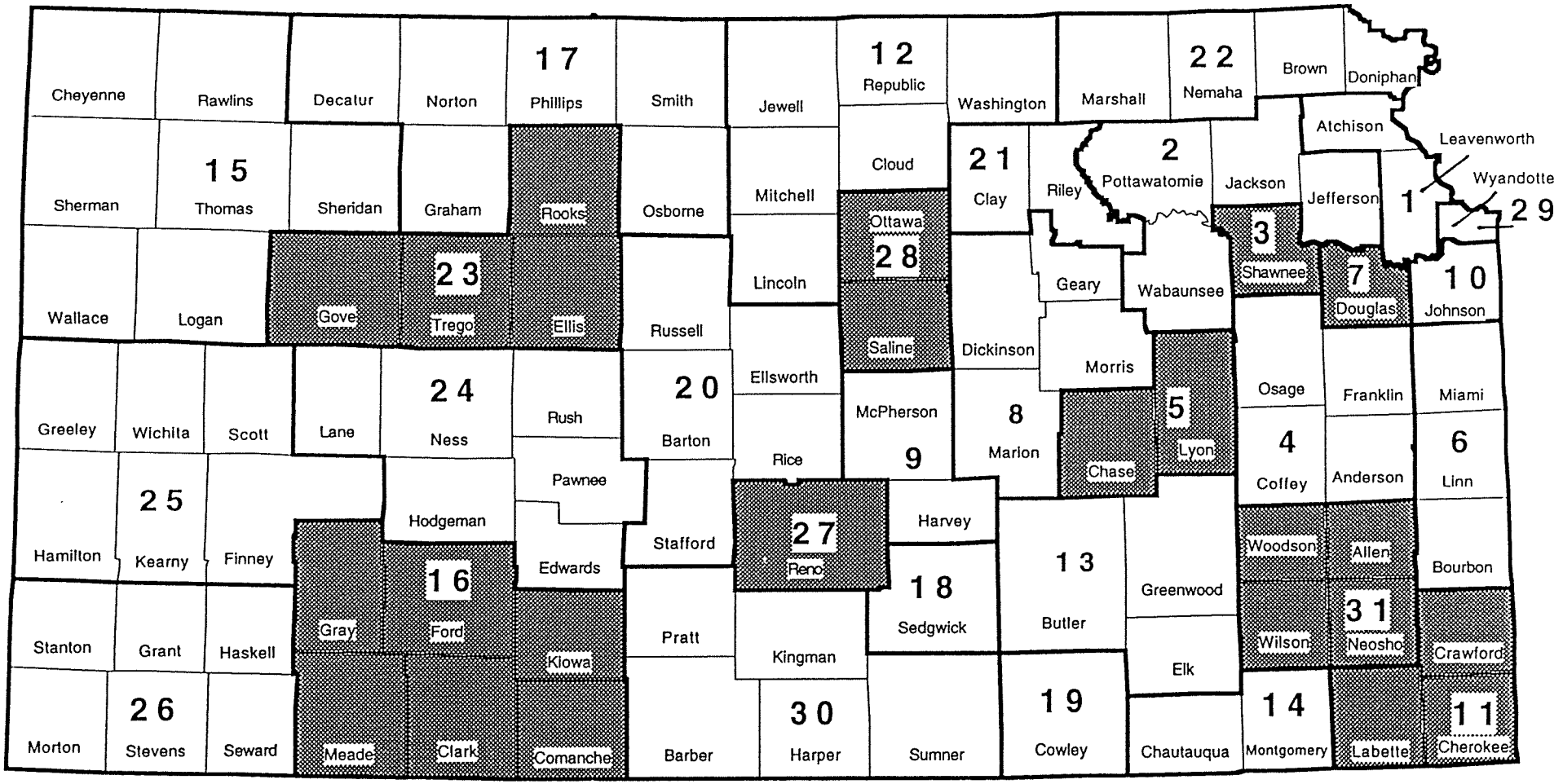
I urge your favorable consideration of the bill. I would be glad to stand for questions.

Attachment

House Judiciary
3-16-95
Attachment 4

Kansas Judicial Districts (31)

Citizen Review Boards



■ Judicial Districts with Citizen Review Boards (8)

□ Judicial Districts without Citizen Review Boards

Revised 11/94

Testimony from Ann Henderson
Director Citizen Review Board Douglas County

House Judiciary Committee Hearing
March 16, 1995.

Good Afternoon. Thank you Representative O'Neal for giving me the opportunity to come and speak to this committee.

My name is Ann Henderson. I am the Director of the Citizen Review Board (CRB) of Douglas County. Citizen Review Boards are comprised of community members who volunteer their time to review child in need of care (CINC) court cases and make recommendations to the juvenile judge to facilitate a permanent home for every child reviewed. The majority of the citizen review board hearings are in lieu of the six month review before the Court. In our county our review boards review approximately 87% of all of our child in need of care cases at least once a year. The judge reviews CRB recommendations and if he\she approves, they are then made a part of the courts order.

I would like to focus my remarks today on Senate Bill 307. Senate Bill 307 would add juvenile offender language to K.S.A. 38-1812, which governs citizen review boards. K.S.A. 38-1812 was passed in 1992. There are currently eight citizen review board programs serving nine judicial districts in Kansas. Interest in this effective program continues to rise. The language in K.S.A. 38-1812 currently allows for the use of citizen review board hearings in child in need of care cases only.

Last year Senate Bill 657 was passed to add the use of Court Appointed Special Advocates (CASA'S) in juvenile offender proceedings. Passage of Senate Bill 307 would extend the involvement of the community in juvenile offender cases through citizen review boards. Citizen review boards and CASA's give a community perspective to an otherwise closed juvenile justice system. Citizen review boards and CASA's provide a vehicle for community ownership. Service delivery increases as the community becomes more aware of the needs of this population. Increased community resources for juvenile offenders in custody may provide a cost savings by providing community structure and supervision rather than more expensive out of home and out of county placements.

Passage of Senate Bill 307 would allow the use of the citizen review boards in the juvenile offender system. Citizen review boards would be used to aid in the disposition phase of juvenile offender cases. The presence of community volunteers early in juvenile offender cases may assist in the reduction of repeat offender rates by identifying and implementing community resources early in the juvenile offender system.

I would ask that you recommend passage of Senate Bill 307. Thank you.

March 14, 1995

MEMO TO: House Judiciary Committee
Representative Mike O'Neal

MEMO FROM: Jean F. Shepherd
District Judge

RE: Juvenile Offender Citizen
Review Board

Citizen review boards have operated in Douglas County since 1986. These boards consist of a cross section representation of local community members who take an oath of confidentiality, receive specialized training, and review cases involving children in the foster care system. We started citizen review boards in Douglas County in an attempt to increase community involvement in cases involving children, to give the court a fresh perspective on the assistance these children need and/or receive in the social service, foster care, court, mental health, and education systems; and in some small measure to open up juvenile court to the community, so that community members have a broader understanding of problems families face and services families need; and, finally, to develop an increasing number of advocates for children and families in our community. The results of our initial citizen review board have far exceeded our expectations. Douglas County has grown from one to five boards which review almost all of our child in need of care cases on an alternating basis with the court; these boards then make recommendations to the court for court review and orders.

It has long been my view that a citizen review board would be of great assistance in the area of review of juvenile offender disposition cases. After an offender has been

adjudicated, as you know, the court must make difficult decisions with often limited resources as to community placement, out-of-community placement, or institutional placement for offenders. With very young offenders we frequently have families which need assistance in learning appropriate supervision skills for adolescents, and we have adolescents who need assistance in learning appropriate life skills. It has been my opinion that community input into this process can only be helpful to the offenders, their families, victims of offenses, the state, and the court. As a result of this input I expect to see more willingness in our community to try to provide appropriate services to these youth within the community, and more community ownership and acknowledgment that indeed these youth do exist, that they exist in our home town, and that we need to attempt to provide appropriate prevention and rehabilitation resources. I would expect that members of this board would also become informed advocates for youth, families, and victims in the offender system, letting legislators and other governmental officials know what they, as educated community members, perceive to be appropriate community standards and appropriate dispositions for these youth.

The 1994 Legislature enacted K.S.A. 38-1664 which requires a reasonable efforts determination in juvenile offender cases. In addition, that statute mandates reviews of juvenile offenders in placement. The 1994 legislature also made CASA's available for juvenile offenders at K.S.A. 38-1606(a). CRB legislation is part of this legislative

force for meaningful review and monitoring of children in placement.

The funding for this program is provided in the Corporation for Change, Citizen Review Board legislation, at K.S.A. 38-1812; this legislation, overwhelmingly passed in 1992, provides statutory authority for state-wide citizen review programs based upon the model we had been using in Douglas County. The programs are under the umbrella of the Kansas Corporation for Change and funding for these programs is provided by a surcharge on birth certificates, as set out at K.S.A. 38-1808, placed in a fund called the Permanent Families Fund. At this time no additional funding is being requested.

Citizen involvement in the juvenile court system is imperative. Such involvement gives the juvenile court a perspective on community standards and citizen viewpoint, it gives juvenile court judges and the bureauracy in which all of those in the juvenile justice system are involved a fresh perspective, and it creates new advocates for appropriate community and out-of-community resources for these youth. I appreciate your consideration of this proposal.

The City of Overland Park KANSAS

Law Department
Robert J. Watson, City Attorney

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Overland Park, Kansas 66212
913/ 381-5252 • FAX 913/ 381-9387
PROCOMM 913/ 381-0558

March 16, 1995

Chairman Mike O'Neal and
Members of the House Judiciary Committee

RE: SENATE BILL 333

Presently, K.S.A. 65-4127b provides that any person that violates the provisions of this section shall be guilty of a class A nonperson misdemeanor. If a person has a prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then such person shall be guilty of a drug severity level 4 felony.

The prior conviction language has been interpreted by the case of State v. Floyd, 218 Kan. 764 (1976), not to include convictions for possession of marijuana in municipal court. Law enforcement officials believe that the same act of possessing marijuana should not be treated differently based solely on whether the prior conviction for possession of marijuana occurred in municipal court or district court. It is the same act.

Senate Bill 333 simply treats the act of possessing marijuana the same.

Sincerely,

Michael R. Santos
Senior Assistant City Attorney

/mrs

cc: Mayor Ed Eilert
Donald E. Pipes, City Manager
Alan Sims, Assistant City Manager
Robert J. Watson, City Attorney

House Judiciary
3-16-95
Attachment 7

League
of Kansas
Municipalities

LEGAL DEPARTMENT · 300 S.W. 8TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: House Judiciary Committee

FROM: Don Moler, General Counsel

RE: Support for SB 333

DATE: March 16, 1995

I appreciate the opportunity afforded to the League of Kansas Municipalities to present written testimony in support of SB 333, concerning prior convictions for unlawful possession of marijuana in municipal court.

Current Kansas law states that any person who violates K.S.A. 65-4162(a) would be deemed guilty of a class A, nonperson misdemeanor. If a person has a prior conviction under K.S.A. 65-4162(a) or a conviction for a substantially similar offense from another jurisdiction, then such person would be guilty of a severity level 4 felony. Although the language "or a conviction for a substantially similar offense from another jurisdiction" would appear to include convictions of "substantially similar offense" in municipal court, the Kansas Supreme court has opined that "(A)bsent a clear expression of legislative intent the rule of strict construction requires us (the court) to hold that a conviction under a city ordinance cannot be used as a basis for an enhanced penalty for a subsequent violation of state statute." State v Floyd, 218 Kan. 764 (1976). Thus a person could be convicted multiple times in municipal court (or even in multiple municipal courts around the state) for a violation of a city ordinance that contains the exact language of K.S.A. 65-4162(a) and then person could not be found guilty of the severity level 4 felony as set out by statute.

SB 333 gives the "clear express of legislative intent" necessary to use a prior conviction in municipal court for violation of a city ordinance for a "substantially similar offense," if the offense involved marijuana or tetrahydrocannibol as designated in K.S.A. 65-4105(d), as grounds to increase the penalty to a severity level 4 felony.

The legislature took similar action in K.S.A. 8-1567 (the DUI law) when it added the language in subsection (k) to include municipal court convictions for the offense of "driving under the influence of alcohol or drugs" in order to use the stricter penalties (including a felony offense for a third conviction) as set out by statute.

The net effect of SB 333 would be to treat convictions of an offense involving marijuana or tetrahydrocannibol, as designated in K.S.A. 65-4105(d), in municipal court as a qualified prior conviction necessary to raise subsequent convictions to a felony offense. The League supports SB 333 and urges the Committee to report it favorably.

House Judiciary
3-16-95
Attachment 8

September 19, 1994

The Mayor's Task Force on Juvenile Crime, comprised of members of the Junction City, Geary County community, from education, church, law enforcement, mental health, business, and youth activity backgrounds, urge you, representatives of the Koch Commission, to propose or support the following initiatives in future sessions of the Kansas legislature:

1. *Amend K.S.A. 38-1635 to authorize court-ordered or administrative, "prefiling" diversion even for minors who have been previously adjudicated as juvenile offenders, or, alternatively, exclude from these programs only those whose prior record includes a level [x] or worse felony.* The mayor's committee wishes to sponsor a "deferred prosecution" program which will involve the support and active participation of the community. This program is tailored for youth who may have gone seriously awry, perhaps even committed a felony offense (*e.g.* burglary, theft or criminal damage to property), but can still be "salvaged" with strong intervention from volunteers and professionals. Our deferred prosecution requires an admission in open court to the offense, but withholding of the actual adjudicatory order pending completion of the diversion program. The program may run for as long as twelve months, and require regular community service, payment of restitution, counseling and/or participation in youth activities. The leverage needed to encourage offender compliance comes, of course, from the threat of the court entering its judgment and saddling the juvenile with a criminal record. The sentencing guidelines'

strengthened emphasis on criminal history, as well as stricter rules for adult certification, should encourage many juveniles to avail themselves of this program. But the current version of K.S.A. 38-1635 places diversion beyond the reach of those very children who could benefit most. A first-time offender would probably not require this type of community attention; but a repeat offender whose conduct has become troublesome, but not yet lethal, might appreciate our help.

2. *Amend the definition of "juvenile offender" to include minors who violate city ordinances and county resolutions.* Current city ordinances aimed at curbing illegal juvenile activity are ineffective because the definition of "juvenile offender" does not include one who violates such an ordinance. A juvenile can disregard these ordinances (*e.g.* curfew) with impunity, knowing the arresting officer can do little more than call the parent(s) and send him home. City attorneys, who can prosecute violation of the applicable ordinance, do not have jurisdiction to handle juvenile cases; and county attorneys, who <u>do</u> have jurisdiction to file juvenile complaints, cannot enforce municipal ordinances!

3. *Amend K.S.A. 38-1671(b) to reinstitute a mandatory deadline by which Kansas SRS must transfer incarcerated juvenile offenders to their age-appropriate youth center, or assume the full cost of their local detention.* This proposal speaks for itself. Ever since the seventy-two (72) hour rule was abolished by the legislature, Kansas SRS has (predictably) warehoused serious offenders in our regional detention facility for weeks, or even months, while its

bureaucratic machinery whittles away at the waiting list. This practice not only impedes the offender's rehabilitation, but deprives our community of the bedspace needed for other juveniles who truly require detention pending court proceedings. Worst of all, the county must foot the bill for SRS' incompetence. Recent Kansas appellate decisions suggest that, absent clearly stated legislative intent to the contrary, SRS cannot be forced to pay for housing and support of a child not specifically placed in agency custody. Thus, the secretary has everything to gain, and nothing to lose, by allowing a committed offender to simply wallow in jail until a transfer becomes convenient. Some (preferably financial) disincentive for this practice must be included in the statute.

4. *Open all juvenile records to victims and school administrators, and require notification to law enforcement and school officials of the release of offenders from youth correctional facilities into the community.* Instead of following the current trend of opening to the public all of these records concerning very young offenders, victims and school officials alone should possess the discretion to examine a juvenile's court and social file, so long as they in turn cannot disclose the information to a third party.

5. *Enact legislation which will specifically forbid Kansas SRS from executing contracts with group homes and other high level facilities which permit the latter to refuse or expel "undesirable" juveniles.* Our juvenile court is regularly hamstrung with the problem of juveniles who must be returned to

foster care, despite their critical need for greater daily structure, because SRS cannot find a placement for them. The agency typically states that "no facility will accept [him/her]." Why the department boxes itself into this predicament by allowing independent contractors to take taxpayer money and then pick and choose their patients is mystifying. If Kansas SRS is paying these facilities to treat needy children, then SRS should possess the exclusive power to dictate which child goes in which facility.

6. *Amend K.S.A. 38-1563(e)(1) and 38-1664(a) to invest the court and "interested parties" in a child in need of care or juvenile offender action with the power to veto an SRS placement decision upon unanimous agreement.* K.S.A. 38-1544, which outlines the procedure for implementing preadjudicatory, informal supervision of a child in need of care case, requires all interested parties (*i.e.* county attorney, guardian *ad litem* & parents) and the court to agree that informal supervision, versus the time-consuming adjudicatory procedure, will serve a child's best interests. The proposed amendments would likewise permit these parties and the court to unanimously prohibit Kansas SRS from making a specific placement - whether the parental home, foster care or an institution.

7a. *Amend K.S.A. 1993 Supp. 21-4603d(a)(1) and K.S.A. 38-1663(d) to permit the sentencing or juvenile court to order, at the outset, payment of restitution in conjunction with an order of commitment to the secretary of corrections or state youth center.*

9-4

7b. *Amend K.S.A. 1993 Supp. 22-3718 and K.S.A. 38-1675 to require the amount of restitution owed at expiration of probation, parole, conditional release or direct discharge to be entered as a civil judgment against the defendant or respondent.*

7c. *Amend 38-120 and 38-1663(d) to hold a juvenile offender and his/her parent(s) jointly and severally liable for restitution ordered at a dispositional hearing.*

These self-explanatory restitution proposals are designed to streamline the civil process by which victims must obtain compensation from liable parties. They eliminate the far too commonplace scenario whereby a youthful offender is discharged from the court's jurisdiction while still hundreds (or thousands) of dollars in arrears on restitution payments. By holding parents of offenders equally liable from the moment of disposition, and automatically entering any final arrearage as a civil judgment, the victim need not hire counsel and instigate a duplicative civil proceeding in order to study the dizzying intricacies of parental liability for wilful and malicious torts of their minors.

8. *Remove the administration of juvenile offenders from the list of responsibilities allocated to Kansas SRS and create an independent agency which must:*

a. *oversee a comprehensive system for the adjudication, incarceration and rehabilitation of juvenile offenders including the use of "boot camps";*

b. *assess current juvenile facilities, with an emphasis on creating a maximum security facility to house violent offenders;*

c. *provide a community corrections program for juvenile offenders comparable to that now existing for adults; and*

d. *mandate postrelease supervision comparable to adult parole.*

This task force believes much of the juvenile problem in our state arises when one agency, Kansas SRS, tries to serve two types of youth (*i.e.* children in need of care and juvenile offenders) with the same, exclusively rehabilitative philosophy - even when problems posed by the latter demand an increasing emphasis on accountability or even societal retribution. The agency has proven itself incapable of adjusting its mindset to cope with the unique difficulties presented by the bitterly violent, 15-17 year-old offender who is not interested in rehabilitation except to the extent that playing along will earn him an earlier release. There are enough important distinctions between the code for care of children (K.S.A. 38-1501, *et seq.*) and juvenile offenders code (K.S.A. 38-1601, *et seq.*) to warrant their assignment to different agencies.

9. *Amend K.S.A. 38-1602(b)(3) to replace automatic referral with "presumed" adult prosecution of a 16-17 year-old juvenile for any offense which would require presumptive imprisonment if perpetrated by an adult.* This proposal constitutes a compromise between those who would lower the age of majority to sixteen (16) years, and those who prefer the *status quo.* It is also more flexible than the 1994 amendment, which requires adult prosecution for this age group when the offender has any kind of felony on his/her record and

a new felony is committed - no matter how comparatively harmless the prior (or current) offense may be. Under the task force proposal, any 16 or 17 year-old minor would be considered subject to presumed adult prosecution if his offense falls within the imprisonment range of the new sentencing guidelines grids. Additionally, both the prosecutor (at the initial charging stage) and the court (following a "reverse" certification hearing) would possess the discretion to authorize proceeding under the juvenile offenders code if substantial and compelling mitigating circumstances presented themselves.

10. *Classify possession or sale of narcotics by a 16 or 17 year-old minor on unified school district property as an offense requiring adult prosecution.* This measure is obviously designed to better protect our students who wish to receive an education at public schools. There seems little justification to award a 17 year old cocaine dealer, who thrives on trafficking contraband in schools, the protection of our juvenile offenders code.

11. *Amend K.S.A. 1993 Supp. 21-3718 to classify arson as a severity level 4, person felony where the resultant damage exceeds 25K, or where the building is a dwelling; and classify arson as a severity level 6, person felony where the building is a nondwelling and the resultant damage is less than 25K.* This proposal recognizes the inherently deadly threat that fire, as opposed to other tools of property crime, presents to law enforcement, firefighters and laypersons alike. The bifurcation of severity levels based on "dwelling" status corresponds to the new burglary statute at K.S.A. 1993 Supp. 21-3715.

DEFERRED PROSECUTION OF JUVENILE OFFENDERS
(Pursuant to Attorney General Opinion 83-163)
SB 234

Preamble. This policy accommodates in part the growing need for community intervention in the juvenile crime problem. Although implemented by the county attorney in the normal course of his duties as the chief law enforcement officer in this jurisdiction, the program itself represents a joint effort by community leaders and citizens to address the needs of young offenders who still present the potential for rehabilitation. It enlists the aid of local youth organizations, churches, schools and public agencies, all of whom participate with the minors on an individualized basis during the deferment period. It also requires the offender to make restitution to his victim, and participate in counseling if necessary.

An eligible child who wishes to avail himself of the deferment program completes the application and submits it through the Juvenile Diversion Coordinator, for approval by the Geary County Attorney. He enters an admission to the complaint, at which time both parties move the court to refrain from entering judgment for the appropriate deferment period. The admission also includes a stipulation to the police reports and any exhibits deemed necessary to supply a factual basis.

If the minor successfully completes the deferment program, no prosecution for the offense will be instituted in the Geary County

District Court and he is relieved of any further obligation in the matter. If he fails to abide by program terms, the county attorney may file a complaint, or file a motion to revoke the deferment and enter a judgement against him based upon his earlier admission. The court then conducts a due process hearing to determine if the prosecutor's allegations are true.

Standards. The state will ***not*** offer deferment to any minor who:

1. has been previously committed to a state youth center, subjected to a suspended youth center placement, or placed on a deferment, diversion or felony [redacted] probation; or

2. now faces pending charges, as a juvenile offender for committing acts which, if perpetrated by an adult, would constitute:

(a) a person felony;
(b) a violation of K.S.A. 1993 Supp. 65-4127a;
(c) an offense involving a firearm;
(d) an act which, if proven, would require presumptive imprisonment on the adult sentencing grid; or
(e) an anticipatory crime associated with any of the above (*i.e.* attempt, conspiracy or solicitation)

Preliminary Requirements. A candidate for this program, who otherwise meets the above standards, must accomplish the following tasks before the county attorney will consider deferment:

(a) completion of the attached application;
(b) completion of a screening evaluation at Pawnee Mental Health Services, 814 Caroline, Junction City, KS 66441 (felony and person misdemeanors only); and
(c) submission of a restitution plan, if the victim has suffered tangible monetary loss due to property damage or personal injury.

Deferment Requirements. Any juvenile whose application is approved by the county attorney, must make full restitution during the deferment period, and perform community service to the extent dictated by the severity of the offense. One hundred (100) hours of service shall be imposed in felony cases, forty (40) hours for person misdemeanors, and thirty (30) hours for all other offenses. The minor must also refrain from committing any new offense, as well as from any conduct described by K.S.A. 38-1502(a)(2), (6), (7), (9) or (10) (*e.g.* home disruption or disobedience, running away, truancy and curfew violation).

The county attorney may, upon noting areas of concern identified in the screening evaluation, require compliance with some or all of these additional programs as a condition of successful deferment:

(a) individual and/or family counseling;
(b) active participation in a civic or church youth group, or community organization (not a street gang!);
(c) attendance by the juvenile's custodian at parenting classes;
(d) participation in a special school district program, including tutoring, and/or an extra-curricular activity;
(e) enrollment in Big Brothers/Big Sisters program;
(f) acceptance of a C.A.S.A. or other assigned volunteer in a regular, supervisory capacity;
(g) participation in the C.O.J.O.P. or J.A.I.L. program;
(h) letter of apology to victim; and
(i) no unexcused tardiness, absence or suspension from school.

The period of deferment may run for twenty four months (24), or twelve (12) months in felony cases, nine (9) months for person misdemeanors, and six (6) months for all other offenses.

Effective Date. This deferment program shall become effective upon approval by the Geary County Attorney.

DATE

Chris E. Biggs
Geary County Attorney
County Courthouse
Junction City, KS 66441
(913) 762-4343

Stipulation. I hereby enter my admission to the offense(s) alleged in Police Report Number _____, and agree that a factual basis exists for my admission. I understand the nature of the charges facing me, and dispositional alternatives the court may impose if I am adjudicated as a juvenile offender. I have decided to give up the following rights:

(a) entitlement to presumption of innocence;
(b) prompt trial without unnecessary delay;
(c) confrontation and cross-examination of state's witnesses;
(d) subpoena power to compel the appearance of defense witnesses on my own behalf; and
(e) right to remain silent without penalty, or alternatively, to testify on my own behalf.

I further stipulate to the material facts contained in any written or recorded documents associated with the investigation of this case, including police reports, laboratory tests, video or audio cassettes and witness statements, and hereby agree to their absolute admissibility in any judicial proceeding to which I may be a party. I also agree to waive any evidentiary objection which might normally hinder or prevent their introduction at said proceeding, regardless of its purpose.

Execution of the Agreement. The following parties understand this contract and agree to comply with its terms.

_____

Saul Arceo
Assistant Geary County Attorney
County Courthouse
Junction City, KS 66441
(913) 762-4343

_____

Parent/Guardian

_____

Respondent

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____, 1995.

_____

Notary Public
Geary County, Kansas