

Approved: 3-17-98  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on March 6, 1998, in Room 254-E of the Capitol.

All members were present except:

Senator Ben Vidricksen - excused  
Senator Keith Schraad - excused  
Senator Laurie Bleeker - excused

Committee staff present: Mary Galligan, Legislative Research Department  
Robin Kempf, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Midge Donohue, Committee Secretary

Conferees appearing before the committee:

Senator Greta Goodwin  
Commissioner Albert Murray, Juvenile Justice Authority  
Mr. Jim Clark, Kansas County and District Attorneys Association

Others attending: See attached list

The chair introduced Charles Schlaegel and Jared Lysaught, students from Senator Bond's home district who served as pages for the committee today.

Senator Oleen stated that, in the interest of time, due to the nature of the bill to be heard by the committee today, one of the conferees, Commissioner Albert Murray, would brief the committee on the bill's content.

Senator Oleen recognized Senator Greta Goodwin and opened the hearing on:

**SB 682**      **An act concerning juveniles**

Senator Goodwin, after greeting members of committee who serve with her on the Joint Committee on Juvenile Justice Oversight, told the committee the bill before them today was an important tool needed by the Juvenile Justice Authority if it is to move forward. She commented on the outstanding job Commissioner Murray has done and mentioned the many hours he spent working with members of the joint committee during the summer months. Senator Goodwin indicated her strong support of the bill and asked that it be reported favorably to the full Senate.

Commissioner Albert Murray, Juvenile Justice Authority (JJA), appearing as a proponent of **SB 682**, thanked the committee for the opportunity to appear before them today, and introduced two members of his staff who accompanied him, Ken Hales, deputy commissioner for the agency, and Helen Pedigo, deputy legal counsel.

Commissioner Murray referenced his written testimony (Attachment #1) and reviewed, section by section, provisions of **SB 682**.

In response to a request for clarification from the chair regarding the placement matrix referenced in the bill, Commissioner Murray stated the matrix would be implemented July 1, 1999; that it would establish minimum and maximum sentencing to juvenile correctional facilities and insure that only the chronic and valid offenders are placed in juvenile correctional facility beds. Senator Oleen inquired also about the reference in the bill to juvenile justice programs in the community, and Commissioner Murray explained it was clarifying language to heighten local decision making. He added that the community planning teams, which are functioning now, will be expected to have plans developed to provide services, and JJA's intent is to give them maximum authority to effect placement.

Commissioner Murray was asked what role JJA would have in community planning. He told the committee that the Authority has contracted with a consulting firm out of Seattle to assist JJA in implementing the plan

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:05 a.m. on March 6, 1998.

and to provide training within the various judicial districts of individuals who will serve on the community planning teams. In addition, he said the JJA will have staff present at each of the training sessions to provide technical assistance to the community planning teams. He indicated regional planners would have access not only to the program consultants but to JJA staff.

During discussion of the provision pertaining to drug testing of individuals in safety sensitive positions, Senator Oleen indicated she had visited with staff prior to the meeting, and she asked staff to explain the provision. Staff advised that, under current law, test results are confidential, but the amendment would provide an exception for disciplinary hearings such as those before the Civil Service Board. The committee was told the proposed amendment would affect all employees in safety sensitive positions, and the chair asked staff to review the proposed amendment to make certain confidentiality stays with the hearing.

Commissioner Murray emphasized the importance of having the authority to do random testing as well as testing upon reasonable suspicion and indicated he would discuss this with his staff to determine how this should be addressed.

Senator Oleen called attention to stricken language on p. 29 of the bill concerning JJA staffing and pointed out this provision was contained elsewhere in the bill. Commissioner Murray assured the committee the staffing pattern of the Authority remained unchanged.

At the urging of Senator Oleen, Commissioner Murray told the committee about the success the JJA has enjoyed. He said he was very proud of the fact that Kansas operates four juvenile correctional facilities which meet national standards; that less than 8% of such facilities, nation-wide, meet accreditation standards. Commissioner Murray explained that the accreditation process is a long and rigorous one, involving compliance with 425 standards that are set very high. He said all four Kansas facilities are not only accredited but have been reaccredited, a process required every three years. Commissioner Murray remarked that this puts Kansas in a very small and unique group of facilities which meet national accreditation standards.

Mr. Jim Clark of the Kansas County and District Attorneys Association (KCDA) appeared in behalf of Mr. Thomas Alongi, Assistant Geary County Attorney, to offer amendments to **SB 682 (Attachment #2)**. He told the committee several members of the KCDA, in reviewing the bill, discovered what they considered gaps. As a result, he said they met with officials of the Youth Authority and discussed the possibility of requesting introduction of a separate bill to address those issues, but the amendments proposed by the Association involved the same statutes contained in **SB 682**. Mr. Clark emphasized that it was not the intent of the Association to interfere with the Commissioner's agenda. He said he did not believe the amendments being proposed would do that, and he asked the committee to favorably consider including the amendments in **SB 682**.

Senator Oleen requested staff to prepare a balloon amendment, incorporating the proposed amendments with input from the JJA. She noted there were no opponents to the bill and said the hearing would be continued the first part of next week.

Attention was then directed to **SB 651**, concerning alcohol and drug-related offenses and ignition interlock devices. Noting that hearings had been held on the bill, Senator Oleen told the committee she had a brief conversation with proponents of the bill and representatives of the Division of Vehicle (DOV) following the meeting yesterday. She said it was the consensus of both sides that they should discuss their differences during the summer months and, if an agreement is reached, return next session with something less complicated.

Senator Biggs moved to report the bill unfavorably to the full Senate. Senator Becker seconded the motion, and the motion carried.

The meeting adjourned at 11:45 a.m.. The next meeting is scheduled for March 9, 1998.





**JUVENILE JUSTICE AUTHORITY**

JAYHAWK WALK  
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TOPEKA, KS 66603

**PRESENTATION TO**

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**

**March 6, 1998**

Thank you for the opportunity to appear before you today. For those of you who do not know me, my name is Albert Murray. I am the commissioner of the Kansas Juvenile Justice Authority. With me today is Ken Hales, deputy commissioner for the agency, and Helen Pedigo, deputy legal counsel. We have some legislative proposals to present to you today in the form of Senate Bill 682. The proposals are outlined as follows:

Section 1 (page 1 of the bill) and section 10 (page 24) define both in a separate JJA statute as well as the State unclassified service statute certain positions, including the commissioner, deputy commissioner, assistant commissioners, attorneys, a personal secretary, and a public information officer who shall be in the unclassified service. Section 1 should be further amended to replace the reference to "secretary" with "commissioner" and "executive" with "personal". See Attachment, page 4 of this document.

Section 2 (page 3) corrects an erroneous reference to the juvenile correctional facility superintendents' appointment powers. The correction directs the reader to the intake and assessment system statute.

Section 3 (page 3) clarify's the court's 60-day limit to modify a sentence applies only to direct commitments to juvenile correctional facilities and that the court retains jurisdiction until and case discharged by the court or until the offender reaches the age of 23 in all other cases. Section 3 also proposes an amendment to eliminate adult admissions to juvenile correctional facilities, unless warranted by K.S.A. 38-16,111 This amendment ensures that juvenile facilities deal only with juveniles. The proposed legislation assists the agency in developing programs in juvenile correctional facilities geared to juvenile offender needs and ensures with certain exceptions, that adults are not placed with juvenile offenders in juvenile correctional facilities.

Section 4 (page 5) requests an amendment to the extended jurisdiction prosecution statute. As presently written, it is questionable whether EJJ prosecution provides due process when a motion can be filed anytime before adjudication or conviction. That could result in a juvenile trial being held before a judge,

as no jury is required, then a motion for EJJ prosecution could be filed, triggering the right to a jury trial. At that time, the Court would lose time and money as the trial would have to be moved to the adult court to afford the defendant's rights inherent in an adult prosecution (demand for a jury, speedy trial, etc.) Further, if a conviction resulted by the time a motion for extended juvenile jurisdiction were filed, then double jeopardy may exist, where the youth could not be retried for the same crime.

This proposal requests that the motion to prosecute for extended juvenile jurisdiction can only be filed and considered prior to the beginning of an evidentiary hearing. The proposed amendment allows this type of prosecution to be effectively used by practitioners without challenge for obvious defects. This section also modifies section (i) (page 7) to provide clarification in regard to sentencing the juvenile prosecuted as an adult.

Sections 5 and 6 are amended on page 8 to include consideration of adjudications under the previous juvenile code as previous adjudications, correction of an erroneous statutory reference (page 12), and in 1999, provides that custody decisions will be based on the juvenile justice programs in the community (page 13). Also in 1999 a provision is added by which admissions and lengths of stay in a juvenile correctional facility will be governed by a placement matrix (page 13).

Section 7 (page 20) amends the placement matrix language to reflect the original policy recommendations made by the KYA. The intent was that it be mandatory for the Court to make a finding that all appropriate community placement options had been exhausted only in the case where they wish to incarcerate a chronic III-escalating misdemeanor. However, the provision as it presently exists in statute refers to all groups included in the placement matrix.

Sections 8 and 9 (page 22) propose to amend K.S.A. 65-6001 and 65-6008 to include juvenile correctional facility employees in the group of people who may apply to the court for an order requiring a person to submit to infectious disease tests if exposure to the transmission of body fluids occurs within the scope of the employee's duty. The proposed legislation addresses a safety and morale issue among employees working in the juvenile offender environment. The agency proposes this legislation to have a means at its disposal to discover whether an offender is HIV positive and to let the affected staff know the outcome of testing, so that both can get proper treatment as early as possible.

Section 11 (page 26-27) amends K.S.A. 75-4362, the State Drug Screening Program, to include juvenile correctional facility staff in the definition of safety sensitive positions and allows the agency to test other people employed within the juvenile correctional facility, such as contractors, upon reasonable suspicion. The facilities would then have the ability to test and discipline employees who test positive for illegal drug use, and thus to adopt and enforce a zero tolerance policy for illegal drug use. The agency proposes this legislation to have a means at its disposal to discover employees and contract workers within the institution who may be illegal users and who may put other staff in danger, or function at less than full capacity on the job because of illegal drug use.

Section 12 (page 26) proposes an amendment to give greater latitude to the Commissioner in developing the divisions within the agency as long as essential functions, as defined by statute, are performed. Language is deleted to on page 26 of the bill and section 1 was added as it was felt that the subject

warranted a separate statute outlining the list of unclassified agency employees. This is consistent with other agencies.

That summarizes the Juvenile Justice Authority's proposed amendments. If you have questions, I or my staff would be happy to address them. Thank you.

## ATTACHMENT

17 New Section 1. The commissioner of juvenile justice may appoint  
18 deputy commissioners and assistant commissioners as determined nec-  
19 essary by the commissioner to effectively carry out the mission of the  
20 authority. All deputy commissioners and assistant commissioners shall  
21 serve at the pleasure of the commissioner, shall be in the unclassified  
22 service under the Kansas civil service act and shall receive an annual salary  
23 fixed by the *secretary commissioner* and approved by the governor. The commissioner  
24 may appoint a public information officer, a chief attorney, other attorneys  
25 and an *executive personal* secretary for the juvenile justice authority. These em-  
26 ployees shall serve at the pleasure of the commissioner and shall be in  
27 the unclassified service under the Kansas civil service act and shall receive  
28 an annual salary fixed by the commissioner and approved by the governor.  
29 All other employees of the juvenile justice authority unless otherwise  
30 designated shall be in the classified service.

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TO: Senator Lana Oleen, Chairperson, Federal & State Affairs Committee  
FROM: Tom Alongi, Assistant Geary County Attorney  
DATE: March 6, 1998  
RE: SB 682

Dear Senator Oleen:

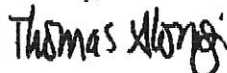
Please forgive the late submission, but I learned just yesterday afternoon that your committee plans to review SB 682 this morning. Last November, the Kansas County & District Attorneys Association asked me to chair a subcommittee devoted to juvenile concerns. Our efforts assembled the proposed legislation attached to this cover letter. Some suggestions would engender more thorough alterations to existing law. For example, the 1999 juvenile sentencing matrix fails to address a number of offenses, especially drug felonies, when combined with specific criminal histories. Our amendment would fill these gaps, while simultaneously simplifying the grid itself by using the existing adult grid as a model.

Other changes do not cut so deeply, but are equally important. K.S.A. 38-1602(b)(3), which defines who must be prosecuted as a juvenile offender, currently does not provide for minors previously certified as adults in different jurisdictions, or who were adjudicated under the new "extended jurisdiction" rule and later sentenced as adults. We assume the legislature did not intend to create such a loophole. Changes to K.S.A. 38-1663, which governs sentencing, would permit placement of juvenile offenders (who subsequently turn 18 years old) into a county jail instead of a sanctions house. This is consistent with current law which recognizes a similar distinction concerning pretrial detention. Other italicized amendments are self-explanatory.

Finally, we ask the legislature to review K.S.A. 1997 Supp. 38-1691, which defines those circumstances under which a juvenile may be detained in an adult facility. The current statute inexplicably permits such detention regarding a juvenile against whom an adult certification motion has been *filed*, but would apparently forbid such detention of any juvenile against whom such a motion has *succeeded*. It also fails to address those juvenile who have been previously convicted as an adult, or sentenced as an adult following "extended jurisdiction" proceedings under K.S.A. 1997 Supp. 38,126.

I am told that Jim Clark, Executive Director of the KCDA, plans to attend your meeting and offer live testimony concerning SB 682. He is familiar with each of these proposals and can probably answer any questions you might have. If I can be of any further assistance, please do not hesitate to call me at your convenience.

Sincerely,



Thomas Alongi  
Assistant Geary County Attorney

Sen. Federal & State Affairs Comm.  
Date: 3-6-98  
Attachment: #2



**38-1602. Definitions.** As used in this code, unless the context otherwise requires:

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

(b) "Juvenile offender" means a person who does an act while a juvenile which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include:

(1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117 and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated; or

(3) ~~a person whose prosecution as an adult is authorized pursuant to K.S.A. 38-1636 and amendments thereto and whose prosecution results in the conviction of an adult crime:~~

*under 18 years of age previously: (A) convicted as an adult under the Kansas code of criminal procedure;*

*(B) sentenced as an adult under the Kansas code of criminal procedure following termination of his status as an extended jurisdiction juvenile pursuant to K.S.A. 38-16, 126(b), and amendments thereto; or*

*(C) convicted or sentenced as an adult in another state or foreign jurisdiction because of substantially similar procedures, or because of attaining the age of majority designated in that state or jurisdiction.*

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

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

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

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which must not be a jail.

(g) "Juvenile correctional facility" means a facility operated by the commissioner for juvenile offenders.

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

(i) "Commissioner" means the commissioner of juvenile justice.

(j) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(k) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 38-1606 and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 1995 1996 Supp. 38-1606a, and amendments thereto, in a proceeding pursuant to this code.

(l) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to section 5 K.S.A. 1996 Supp. 76-3202, and amendments thereto.

(m) "Institution" means the following institutions: The Atchison juvenile correctional facility at Atchison, the Beloit juvenile correctional facility at Beloit, the Larned juvenile correctional facility at Larned, the juvenile correctional facility at Osawatomie and the Topeka juvenile correctional facility at Topeka.

(n) "Sanction house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents. Upon an order from the court, a

licensed juvenile detention facility may serve as a sanction house. A sanction house may be physically connected to a nonsecure shelter facility provided the sanction house is not a licensed juvenile detention facility.

(o) "Sentencing risk assessment tool" means an instrument administered to juvenile offenders which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

**38-1663. Authorized sentences.** (a) When a respondent has been adjudged to be a juvenile offender, the judge may select from the following alternatives:

(1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate, including a requirement of making restitution as required by subsection (d).

(2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders, including a requirement of making restitution as required by subsection (d).

(3) Place the juvenile offender in the custody of a youth residential facility, subject to the terms and conditions the court orders.

(4) Place the juvenile offender in the custody of the commissioner.

(5) Commit the juvenile offender to a sanctions house for a period no longer than seven days. Following such period, the court shall review the placement. The court may continue to recommit the juvenile offender to a sanctions house for a period no longer than seven days followed by a court review. In no event shall such sanctions house commitment exceed 28 consecutive days. *An offender over 18 years old at sentencing may instead be committed to a county jail, in lieu of a sanctions house, under the same time restrictions as above. No offender may be committed under this subsection unless he or she has first violated probation.*

~~(7) Commit the juvenile offender, if 18 years of age or less than 23 years of age, to the county jail for a period no longer than seven days and only when the juvenile offender has violated probation.~~

(6) Commit the juvenile offender to a community based program available in such judicial district subject to the terms and conditions the court orders.

(7) Impose any appropriate combination of subsections (a)(1), and (2), subsection ~~(a)(3)~~, or ~~subsection (a)(4)~~, (5) or (6), and make other orders directed to the juvenile offender as the court deems appropriate.

(8) Commit the juvenile offender, if 13 years of age or older, to a juvenile correctional facility if the juvenile offender:

(A) Has previously been ~~adjudged~~ *adjudicated* as a juvenile offender under this code for an act which, if committed by an adult, would constitute any felony, a class A misdemeanor, a class B person or nonperson select misdemeanor, or a class C person misdemeanor; or

(B) 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 class A, B or C felony as defined by the Kansas criminal code or, if done on or after July 1, 1993, would constitute an off-grid crime or a nondrug crime ranked in severity level 1 through 5 or a drug crime ranked in severity level 1 through 3.

~~(10)~~ (9) Place the juvenile offender under a house arrest program administered by the court pursuant to K.S.A. 21-4603b and amendments thereto.

(b)(1) In addition to any other order authorized by this section, the court may order the: (A) Juvenile offender and the parents of the juvenile offender to:

(i) Attend counseling sessions as the court directs; or  
(ii) participate in mediation as the court directs. Participants in such mediation may include, but shall not be limited to, the victim, the juvenile offender and the juvenile offender's parents. Mediation shall not be mandatory for the victim;

(B) parents of the juvenile offender to participate in parenting classes; or

(C) juvenile offender to successfully participate in a program of education offered by a local board of education including placement in an alternative educational program approved by a local board of education.

(2) Upon entering an order requiring a juvenile offender's parent to attend counseling sessions or mediation, the court shall give the parent notice of the order. The notice shall inform the parent of the parent's right to request a hearing within 10 days after entry of the order and the parent's right to employ an attorney to represent the parent at the hearing or, if the parent is financially unable to employ an attorney, the parent's right to request the court to appoint an attorney to represent the parent. If the parent does not request a hearing within 10 days after entry of the order, the order shall take effect at that time. If the parent requests a hearing, the court shall set the matter for hearing and, if requested, shall appoint an attorney to represent the parent. The expense and fees of the appointed attorney may be allowed and assessed as provided by K.S.A. 38-1606 and amendments thereto.

(3) The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than that the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than that the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative.

(c)(1) If a respondent has been adjudged to be a juvenile offender, the court, in addition to any other order authorized by this section, may suspend the juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the juvenile offender may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another

suspension or revocation of the juvenile offender's privilege to operate a motor vehicle is in effect. As used in this subsection, "highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto. Any respondent who is adjudged to be a juvenile offender who does not have a driver's license may have such juvenile offender's driving privileges revoked. No Kansas driver's license shall be issued to a juvenile offender whose driving privileges have been revoked pursuant to this section for a definite time period to be determined by the court.

(2) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any respondent adjudged to be a juvenile offender, as provided in subsection (c)(1), the court in which such juvenile offender was adjudged to be a juvenile offender may enter an order which places conditions on such juvenile offender's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such juvenile offender shall be required to carry any time such juvenile offender is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed and shall specify that such duration shall be for a definite time period to be determined by the court. Upon entering an order restricting a juvenile offender's license hereunder, the court shall require such juvenile offender to surrender such juvenile offender's driver's license to the court who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such juvenile offender's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the juvenile offender for whom the license was issued any time such juvenile offender is operating a motor vehicle on the highways of this state. If the juvenile offender convicted is a nonresident, the court shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator of such juvenile offender's state of residence. Such court shall furnish to any juvenile offender whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this subsection. Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such juvenile offender may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such juvenile offender's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any juvenile offender shall violate any of the conditions imposed under this subsection, such juvenile offender's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period as determined by the court in which such juvenile

offender is convicted of violating such conditions.

(d) Whenever a juvenile offender is placed pursuant to subsection (a)(1) or (2), the court, unless it finds compelling circumstances which would render a plan of restitution unworkable, shall order the juvenile offender to make restitution to persons who sustained loss by reason of the offense. The restitution shall be made either by payment of an amount fixed by the court or by working for the persons in order to compensate for the loss. If the court finds compelling circumstances which would render a plan of restitution unworkable, the court may order the juvenile offender to perform charitable or social service for organizations performing services for the community.

Nothing in this subsection shall be construed to limit a court's authority to order a juvenile offender to make restitution or perform charitable or social service under circumstances other than those specified by this subsection or when placement is made pursuant to subsection (a)(3) or (4).

(e) In addition to or in lieu of any other order authorized by this section, the court may order a juvenile offender to pay a fine not exceeding \$250 for each offense. In determining whether to impose a fine and the amount to be imposed, the court shall consider the following:

- (1) Imposition of a fine is most appropriate in cases where the juvenile offender has derived pecuniary gain from the offense.
- (2) The amount of the fine should be directly related to the seriousness of the juvenile offender's offense and the juvenile offender's ability to pay.
- (3) Payment of a fine may be required in a lump sum or installments.
- (4) Imposition of a restitution order is preferable to imposition of a fine.
- (5) The juvenile offender's duty of payment should be limited in duration and in no event should the time necessary for payment exceed the maximum term which would be authorized if the offense had been committed by an adult.

(f) In addition to or in lieu of any other order authorized by this section, if a juvenile is adjudged to be a juvenile offender by reason of a violation of the uniform controlled substances act (K.S.A. 65-4101, ~~et seq.~~ through 65-4164, and amendments thereto) or K.S.A. 8-1599, 21-3610, 21-3610a, 41-719, or 41-727; ~~65-4152, 65-4153, 65-4154 or 65-4155~~ or K.S.A. 1996 Supp. 8-1599, and amendments thereto, the court shall order the juvenile offender to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation; ~~except that such evaluation may be waived by the court if the~~. *The court may waive such evaluation if it finds that the juvenile offender has successfully completed an alcohol and drug*

evaluation, approved by the community-based alcohol and drug safety action program, within 12 months ~~of before the offender's arrest sentencing on this offense~~. If such evaluation occurred more than 12 months ~~after the offender's arrest on this offense~~ before sentencing, the court shall order the juvenile offender to resubmit to and complete such evaluation and program as provided herein. If the court finds that the juvenile offender and those legally liable for the offender's support are indigent, the fee may be waived. In no event shall the fee be assessed against the commissioner or the juvenile justice authority. The court may require the parent or guardian of the juvenile offender to attend such program with the juvenile offender.

(g) The board of county commissioners of a county may provide by resolution that the parents or guardians of any juvenile offender placed under a house arrest program pursuant to subsection (a)(7) shall be required to pay to the county the cost of such house arrest program. The board of county commissioners shall further prepare a sliding financial scale based on the ability of the parents to pay for such a program.

(h) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the respondent the court may, and when custody is placed with the commissioner shall, order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the respondent. If the parent is not presently ordered to pay support for the respondent and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-16,117 and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq. and amendments thereto for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-16,119 and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

(i) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the judge's minutes.

(j) In addition to the requirements of K.S.A. 38-1671, and amendments thereto, on or after July 1, 1997, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an act which if done by an adult would constitute the



commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.

(k) The sentencing hearing shall be open to the public as provided in K.S.A. 38-1652, and amendments thereto.

**38-1691. Prohibiting placement or detention of juvenile in jail.** (a) On and after January 1, 1993, no juvenile shall be detained or placed in any jail pursuant to the Kansas juvenile justice code except as provided by subsections (b) and (c).

(b) Upon being taken into custody, an alleged juvenile offender may be temporarily detained in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a youth residential facility or juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be so detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.

(c) The provisions of this section do not apply to detention of a juvenile: (1) ~~with regard to whom~~ (A) *against whom* a motion has been filed requesting prosecution as an adult or extended jurisdiction pursuant to K.S.A. 38-1636 and amendments thereto; and (B) *who has received the benefit of a detention hearing pursuant to K.S.A. 38-1640 and amendments thereto;*

(2) *whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to K.S.A. 38-1636 and amendments thereto; or*

(3) *who has been previously convicted as an adult under the code of criminal procedure, or the criminal laws of another state or foreign jurisdiction.*

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

**K.S.A. 1997 Supp. 38-16,129**

On and after July 1, 1999: (a) For the purpose of sentencing juvenile offenders, the following placements may be applied by the judge in felony or misdemeanor cases for offenses committed on or after July 1, 1999. If used, the court shall establish a specific term of commitment.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender ~~if the~~ for an offense which, if committed by an adult, would ~~be constitute~~ an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender ~~if the~~ for an offense which, if committed by an adult, would ~~be constitute~~ a nondrug level 1, 2 or 3 ~~person~~ felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the of age 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender ~~if the~~ for an offense which, if committed by an adult, would ~~be constitute~~ a nondrug severity level 4, 5 or 6 ~~person~~ felony or a drug severity level 1, ~~or 2 or 3~~ felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) The serious offender II is defined as an offender adjudicated as a juvenile offender ~~if the~~ for an offense which, if committed by an adult, would ~~be constitute~~ a nondrug severity level 7, 8, 9 or 10 ~~person~~ felony or a drug severity level 4 felony, ~~with one prior felony adjudication with: (1) a criminal history resulting in presumed imprisonment as defined by K.S.A. 21-4701, et seq., and amendments thereto, or (2) a history of two or more "placement failures" as defined in this section.~~ Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(C) *The serious offender III is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 felony or a drug severity level 4 felony, with a criminal history resulting in presumed probation as defined by K.S.A. 21-4701, et seq., and amendments thereto. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 12 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.*

~~(3) Chronic Offenders. (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender if the offense, if committed by an adult, would be a:~~

- ~~(i) One present nonperson felony adjudication and two prior felony adjudications; or~~
  - ~~(ii) one present severity level 3 drug felony adjudication and two prior felony adjudications.~~
- ~~Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.~~

~~(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender if the offense, if committed by an adult, would be a:~~

- ~~(i) One present felony adjudication and two prior misdemeanor adjudications;~~
- ~~(ii) one present felony adjudication and two prior severity level 4 drug adjudications;~~
- ~~(iii) one present severity level 3 drug felony adjudication and two prior misdemeanor adjudications; or~~
- ~~(iv) one present severity level 3 drug felony adjudication and two prior severity level 4 drug adjudications.~~

~~Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.~~

~~(C) The chronic offender III, escalating misdemeanor is defined as an offender adjudicated as a juvenile offender if the offense, if committed by an adult, would be a:~~

- ~~(i) One present misdemeanor adjudication and two prior misdemeanor adjudications and two out-of-home placement failures;~~
- ~~(ii) one present misdemeanor adjudication and two prior severity level 4 drug felony adjudications and two out-of-home placement failures;~~
- ~~(iii) one present severity level 4 drug felony adjudication and two prior misdemeanor adjudications and two out-of-home placement failures; or~~
- ~~(iv) one present severity level 4 drug felony adjudication and two prior severity level 4 felony adjudications and two out-of-home placement failures.~~

~~Offenders in this category may be committed to a juvenile correctional facility for a minimum~~

~~term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.~~

(3) *Misdemeanant Offenders.* (A) *The misdemeanor offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a misdemeanor with a history of one or more prior juvenile adjudications or "placement failures" as defined in this section. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.*

(B) *The misdemeanor offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a misdemeanor with no prior history of juvenile adjudications or "placement failures" as defined in this section. Offenders in this category may not be committed to a juvenile correctional facility.*

(4) *Conditional Release Violators.* Conditional release violators may be committed for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of two months and up to a maximum term of six months, or the maximum term of the original aftercare term, whichever is longer.

(b) As used in this section: (1) "Placement failure" means a juvenile offender has been placed out-of-home on probation in a community placement accredited by the commissioner in a juvenile offender case and the offender has significantly violated the terms of probation in that case.

(2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense which if done by an adult would constitute the commission of a felony or misdemeanor shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if done by an adult would constitute the commission of a felony is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the offense, which if done by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) (1) *Except as provided in subsection (c)(2), the court shall consider all ~~All~~ appropriate community placement options ~~shall have been exhausted~~ before placing such juvenile an offender ~~shall be placed~~ in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been ~~pursued~~ *considered* and no such option is appropriate.*

(2) (A) *It is presumed, in the manner provided in K.S.A. 60-414 and amendments thereto, that a juvenile adjudicated as a violent offender I or II, or serious offender I, shall be committed to a juvenile correctional facility for the minimum and maximum terms prescribed for each respective classification.*

(B) *The burden of proof is on the respondent to rebut the presumption. In the absence of proof that an alternative, community placement option will promote offender reformation without unreasonably threatening community safety interests, the court shall forthwith commit said respondent to a juvenile correctional facility.*

(d) *The commissioner shall work with the community to provide ongoing support and incentives for the development of additional community placements to ensure that the chronic offender III, escalating misdemeanor sentencing category is not frequently utilized. minimize the need for court commitments to juvenile correctional facilities.*