

Approved: March 4, 1998  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:11 a.m. on February 25, 1998 in Room 514-S of the Capitol.

All members were present except: Senator Harrington (excused)

Committee staff present: Mike Heim, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: none scheduled

Others attending: See attached list

### **SB 640 - Enacting the Kansas drug dealer liability act**

Senator Schraad reviewed **SB 640** which his subcommittee studied. He stated the bill is a civil remedy for person's injured as a result of drug use. He stated the subcommittee recommended the bill favorably with the following amendments: a change in the burden of proof to bring it in line with civil law and strike the word "knowingly" where it appears in the bill. There was discussion on the latter and a general consensus to leave the word "knowingly" in the bill. There was also discussion on how far the pursuit of liability should reach. Kyle Smith, Assistant Attorney General, KBI, on invitation by the Chair, participated in the discussion responding to questions by Committee. Following further discussion Senator Schraad moved to strike Section II and III of the bill and add the amendments proposed by John Campbell, Senior Deputy Attorney General (attachment 1) and amendment 7 & 8 proposed by Kirk Lowry, Trial Lawyers Association (attachment 2) except striking "knowingly", Senator Goodwin seconded. Motion carried.

### **SB 298 - State Board of education prohibited from issuing certificate to certain persons**

Following brief discussion Senator Oleen moved the bill be passed with amendments, Senator Goodwin seconded. Carried.

### **SB 553 - Redesignating administrative judges as chief judges of the district court**

Following brief discussion Senator Bond moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

### **SB 667 - Enacting the Kansas chemical control act**

Senator Schraad reviewed **SB 667** which was studied in his subcommittee. Senator Goodwin proposed the bill either be blessed or passed out and not implemented immediately. Following discussion, the Chair stated he would request the President of the Senate to bless the bill and he scheduled a hearing and action on the bill on Monday March 9.

### **SB 571 - School safety and security, disclosure of information relating to student with a history of dangerous behavior**

Senator Schraad reviewed **SB 571** and requested Revisor Self explain the amendments. Revisor Self distributed the proposed amendments to the bill and covered each. (attachment 3) There was discussion and clarification on how the bill works and what it encompasses. SRS amendments were discussed and appeared acceptable to all. Senator Petty expressed concern about the lack of a discharge plan for students who depart a school. There was extended discussion on this and on expressed concern about how far the responsibility to let others know about a student with a history of violent behavior extended. Senator Goodwin moved the bill be passed as amended, Senator Schraad seconded. Carried.

### **SB 408 - Providing expedited process to review and determine validity of certain liens**

The Chair briefly reviewed this bill and its amendment and following discussion, he moved to amend the forms and pass the bill out favorably. Senator Goodwin seconded. During discussion Senator Bond requested the bill "go into the register". Motion carried.

**SB 582 - Covered offenses giving rise to forfeiture to include sexual exploitation of a child and computer crime**

The Chair reviewed this civil forfeiture statute. Following discussion no action was taken

**SB 587 - An act concerning criminal procedure relating to parole, release procedures and Kansas parole board**

The Chair briefly reviewed this bill noting that it adds educational qualifications to members of the parole board. He also discussed the decrease in size of the parole board noting that because of sentencing guidelines it is expected that hearings will decrease. Following lengthy discussion on this bill Senator Bond moved to amend the bill by deleting Section B & C of the bill and only requiring a parole board member have a college degree, Senator Oleen seconded. Carried. Senator Feleciano made a motion that the outcome of hearings be based on a majority vote (2 out of 3) rather than a unanimous vote, Senator Oleen seconded. Carried. Senator Bond moved to pass the bill out favorably as amended, Senator Feleciano seconded. Carried.

The meeting adjourned at 11:02 a.m. The next scheduled meeting is March 4, 1998

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/25/98

NAME	REPRESENTING
Mary L McIntosh, MSW Intern	TAO SRJ Adult Protective Services
R. E. Reinert	League Women Voters
Randy M. Hearrell	Judicial Council
Stacy Farmer	ICAB
Craig Grant	KNEA
Natalie Haag	Governor's Office
Harrison Brown	KS Govt Consult
Walker Dandall	Whitney Jamson, P.A.
Keele Newton	AG's office
Jane Lindberg	AG office
Loretta Blanken	AG Office
Jane Clau	KCDAA
Kyle Smith	KBI
Glenn M. Gabriel	KTLA
Hal Hudson	KS Pest Control Assoc.



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ATTORNEY GENERAL

THE SENATE JUDICIARY COMMITTEE

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TESTIMONY IN SUPPORT OF SENATE BILL 640

BY JOHN W. CAMPBELL, SENIOR DEPUTY ATTORNEY GENERAL

February 24, 1998

Mr. Chairman, members of the Committee, my name is John Campbell. I am the Senior Deputy Attorney General for the State. Attorney General Carla J. Stovall has directed me to meet with you today and give testimony in support of Senate Bill 640.

It is possible that SB 640 is the most important anti-drug legislation that any of you will ever consider. It is not a continuation of the traditional means of fighting illegal drugs. It is not about more cops or teachers. It is about empowering parents, children, employers and governments to go after the very heart of the drug business. It turns the full force of civil law and lawyers against drug dealers.

SB 640 would allow those who have been harmed by illegal drugs to sue for money damages those responsible for that harm. Parents who have had to pay for drug treatment therapy for their children would have a means to hold drug dealers responsible for payment. Employers who have lost time and money because of drug usage by employees would be able to sue the

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pushers who sold drugs to their employees. Local and state governments who have spent millions in treating crack babies and providing drug rehabilitation treatment could recover the tax money spent on those programs.

SB 640 is new but not unprecedented. Ten states have adopted similar laws. These laws replace the almost insurmountable barrier of proximate-cause liability with market-share liability. If SB 640 becomes law, the parent seeking recovery for wrongful death of their child from a drug overdose would not need to find the particular person who sold the actual drug that killed their child. Instead, those persons, who in the child's community, were knowingly engaged in the sale of the type of drug which killed their child would be held liable. This "market-share" liability recognizes the reality of the drug business and allows a real possibility for recovery.

These laws, commonly referred to as drug dealer liability acts, have resulted in judgments in other states. The first case that I am aware of took place in 1995. The full effect of the law has yet to be seen. I cannot promise what the impact of civil litigation will be on the illegal drug trade, but we all know of instances where numerous civil suits have shut down legitimate businesses, why not apply that same pressure to drug dealers?

In the war on drugs the criminal prosecution of drug dealers will, of course, remain the priority of our justice system. However, our courts have two hands, one criminal and one civil. Why should we continue to fight drug dealers with one hand tied behind our backs? Unleash the civil law on drug dealers. Pass SB 640.

Proposed amendments to SB640

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page 4 (Section 4)

9 Sec. 4. As used in this act: (a) "Illegal drug" means a drug whose  
10 distribution is a violation ~~of state law~~ of the controlled substances act, K.S.A. 65-410, et  
seq. and amendments thereto or a comparable law in another state or the comprehensive  
11 drug abuse prevention and control act of 1970, public law 91-513, 84 Stat. 1236, codified  
12 at 21 U.S.C. 801 et seq.;

page 5 (Section 4)

22 (n) "specified illegal drug" means cocaine, heroin or methampheta-  
23 mine and any other drug the distribution of which is a violation ~~of state~~  
24 ~~law~~ of the controlled substances act, K.S.A. 65-410, et seq. and amendments thereto or a  
comparable law in another state or the comprehensive drug abuse prevention and control  
act of 1970, public law 91-513, 84 Stat. 1236, codified at 21 U.S.C. 801 et seq.

page 5 (Section 5)

25 Sec. 5. (a) A person who ~~knowingly~~ participates in the illegal drug  
26 market within this state is liable for civil damages as provided in this act.  
27 A person may recover damages under this act for injury resulting from  
28 an individual's use of an illegal drug.

page 6 (Section 6)

1 (b) A person entitled to bring an action under this section may seek  
2 damages from one or more of the following: (1) A person who ~~knowingly~~  
3 distributed, or ~~knowingly~~ participated in the chain of distribution of, an  
4 illegal drug that was actually used by the individual drug user; and  
5 (2) a person who ~~knowingly~~ participated in the illegal drug market if:  
6 (A) The place of illegal drug activity by the individual drug user is within  
7 the illegal drug market target community of the defendant; and

page 6 (Section 6)

*(d) A defendant shall not be allowed to make a defense or claim of pre-existing condition  
to diminish damages nor shall statutory caps on punitive and non-economic damages be  
applied in actions brought pursuant to this act;*

page 8

14 (b) A person against whom recovery is sought who has a criminal

15 conviction pursuant to a violation of the controlled substances act, K.S.A.  
16 65-410, *et seq.* and amendments thereto or a comparable law in another state  
17 or the comprehensive drug abuse prevention and control act of 1970,  
18 public law 91-513, 84 Stat. 1236, codified at 21 U.S.C. 801 *et seq.*, is  
19 estopped from denying participation in the illegal drug market. Such a  
20 conviction is also *prima facie* evidence of the person's participation in the  
21 illegal drug market during the two years preceding the date of an act  
22 giving rise to a conviction.

*page 8*

*Section 11 (d) Other than for individual drug users the liability of defendants is joint and several liability and not comparative fault.*

page 8

10 Sec. 13. (a) ~~Proof of participation in the illegal drug market in an~~  
11 ~~action brought under this act shall be shown by clear and convincing~~  
12 ~~evidence. Except as otherwise provided in this act, other elements of the~~  
13 ~~cause of action shall be shown by a preponderance of the evidence .~~

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# PALMER, LOWRY & LEATHERMAN

2/25/98  
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att

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By the  
National Board of Trial Advocacy

**Kirk W. Lowry,  
Vice President for Legislation  
Testimony on the Drug Dealer Liability Act  
Before the Senate Judiciary Committee**

**February 24, 1998**

The Drug Dealer Liability Act is good progressive legislation that uses the civil justice system to attack drug dealers. The civil justice system is the best system of justice in the world. It provides a legal means for people to settle their disputes in a civil matter instead of resorting to violence. The Kansas Trial Lawyers Association supports Senate Bill 640.

I have the following suggestions:

1. Section 5, p. 5, line 25, strike the word "knowingly."
2. Section 6(b), p. 5, line 2, strike the word "knowingly."
3. Paragraph 6(b), p. 6, lines 3 and 5, strike the word "knowingly." (This is a civil bill and requiring that a defendant knowingly participate in drug dealing is probably redundant and not required in the civil justice system.
4. Section 11, p. 7, should have a paragraph added to make it clear that other than for individual drug users the liability of defendants is joint and several liability and not comparative fault.
5. Section 13, subparagraph (a), I think that the standard of proof should be preponderance of the evidence and not clear and convincing evidence. Requiring proof of participation in the illegal drug market by clear and convincing evidence could be the death of the bill or at least substantially limit its applicability.
6. Section 6(c), should have an additional paragraph added that does not

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allow a defendant to make a claim of pre-existing condition to diminish damages. Since we are dealing with drug users in some cases, those cases will be almost impossible to prove on the damage side because of pre-existing problems. If pre-existing condition defense is not allowed, those cases might be viable.

7. It should also be made clear under Section 6(c) that the cap on non-economic damages and punitive damages does not apply.

8. Finally, in order get at the really big drug dealers, the long arm statute found at K.S.A. 60-308 should be amended to include participating in the illegal drug market as new subparagraph 12. to K.S.A. 60-308(b)(12).

I would like to commend Senator Schraad for an innovative and forward thinking bill. The Kansas Trial Lawyers Association hopes that the Committee will consider the proposed amendments.

Respectfully submitted,

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SENATE BILL No. 571

Proposed Amendments to SB No. 571

By Committee on Judiciary

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9 AN ACT concerning children and juveniles; relating to students with his-
10 tory of dangerous behavior; school safety and security; disclosure of
11 certain information; [unlawful acts and penalties therefor;] amending
12 K.S.A. 1997 Supp. 38-1502, 38-1507, 38-1602, 38-1608, 38-1618, 72-
13 89b01, 72-89b02, 72-89b03 [and 72-89b04] and repealing the existing
14 sections; also repealing K.S.A. 1997 Supp. 38-1502b.

[and

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

17 Section 1. K.S.A. 1997 Supp. 72-89b01 is hereby amended to read
18 as follows: 72-89b01. This act shall be known and may be cited as the
19 Kansas school safety and security act. The purpose of this act is to create
20 safer and more secure schools and to provide a safe and orderly environ-
21 ment conducive to learning. The provisions of this act shall be liberally
22 construed to effectuate such purpose.

23 Sec. 2. K.S.A. 1997 Supp. 72-89b02 is hereby amended to read as
24 follows: 72-89b02. As used in this act:

25 (a) "Board of education" means the board of education of a unified
26 school district or the governing authority of an accredited nonpublic
27 school.

28 (b) "School" means a public school or an accredited nonpublic school.

29 (c) "Public school" means a school operated by a unified school dis-
30 trict organized under the laws of this state.

31 (d) "Accredited nonpublic school" means a nonpublic school partic-
32 ipating in the quality performance accreditation system.

33 (e) "Educational institution" means all schools at the primary, sec-
34 ondary and post secondary levels.

35 (f) "Student with a history of dangerous behavior" means any student
36 who:

37 (1) Has been expelled as provided by subsection (c) of K.S.A. 72-8901
38 and amendments thereto for conduct which endangers the safety of others;

39 (2) has been expelled as provided by subsection (d) of K.S.A. 72-8901
40 and amendments thereto;

41 (3) has been expelled under a policy adopted pursuant to K.S.A. 72-
42 89a02 and amendments thereto;

43 (4) has been adjudged to be a juvenile offender and whose offense, if

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1 committed by an adult, would constitute a felony under the laws of Kansas  
2 or the state where the offense was committed, except that this subsection  
3 shall not apply to an adjudication as a juvenile offender involving a felony  
4 theft offense involving no direct threat to human life; or

5 (5) has been tried and convicted as an adult of any felony, except that  
6 this subsection shall not apply to any felony conviction of theft involving  
7 no direct threat to human life.

8 (g) "Educator" means any teacher or other professional or parapro-  
9 fessional employee of an educational institution who has exposure to a  
10 student with a history of dangerous behavior ~~or whose students are ex-~~  
11 ~~posed, either on the grounds of the educational institution or at an edu-~~  
12 ~~cational-institution-sponsored activity, to a student with a history of dan-~~  
13 ~~gerous behavior.~~

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14 (h) "Administrator" means any individual who serves an educational  
15 institution in a supervisory or managerial capacity.

16 Sec. 3. K.S.A. 1997 Supp. 72-89b03 is hereby amended to read as  
17 follows: 72-89b03. (a) ~~For the purpose of creating safer and more secure~~  
18 ~~schools and to provide a safe and orderly environment conducive to learn-~~  
19 ~~ing, each Administrators who come into possession of information about~~  
20 ~~a student with a history of dangerous behavior shall inform educators of~~  
21 ~~the following:~~

with knowledge that a student is

22 (1) The identity and dangerous propensities of any student who has  
23 been expelled as provided by subsection (c) of K.S.A. 72-8901 and amend-  
24 ments thereto for conduct which endangers the safety of others;

25 (2) the identity and dangerous propensities of any student who has  
26 been expelled as provided by subsection (d) of K. S. A. 72-8901 and  
27 amendments thereto;

28 (3) the identity and dangerous propensities of any student who has  
29 been expelled under a policy adopted pursuant to K.S.A. 72-89a02 and  
30 amendments thereto;

31 (4) the identity and dangerous propensities of any student who has  
32 been adjudged to be a juvenile offender and whose offense, if committed  
33 by an adult, would constitute a felony under the laws of Kansas or the  
34 state where the offense was committed, except that this subsection shall  
35 not apply to an adjudication as a juvenile offender involving a felony theft  
36 offense involving no direct threat to human life; and

37 (5) the identity and dangerous propensities of any student who has  
38 been tried and convicted as an adult of any felony, except that this sub-  
39 section shall not apply to any felony conviction of theft involving no direct  
40 threat to human life.

41 (b) Each board of education shall adopt a policy that ~~will provide for~~  
42 ~~includes:~~

43 (1) A requirement that an immediate report be made to the appro-

1 piate state or local law enforcement agency by or on behalf of any school  
 2 employee who knows or has reason to believe that an act has been com-  
 3 mitted at school, on school property, or at a school supervised activity and  
 4 that the act involved conduct which constitutes the commission of a felony  
 5 or misdemeanor or which involves the possession, use or disposal of ex-  
 6 plosives, firearms or other weapons; and

7 (2) the procedures for making such a report;

8 ~~(2) compiling and reporting annually~~

9 (c) *School employees shall not be subject to the provisions of subsec-*  
 10 *tion (b) of K.S.A. 1997 Supp. 72-89b04 if:*

11 (1) *They follow the procedures from a policy adopted pursuant to the*  
 12 *provisions of subsection (b); or*

13 (2) *their board of education fails to adopt such policy.*

14 (d) *Each board of education shall annually compile and report to the*  
 15 *state board of education at least the following information relating to*  
 16 *school safety and security: The types and frequency of criminal acts that*  
 17 *are required to be reported under provision (1) pursuant to the provisions*  
 18 *of subsection (b), disaggregated by occurrences at school, on school prop-*  
 19 *erty and at school supervised activities. The report shall be incorporated*  
 20 *into and become part of the current report required under the quality*  
 21 *performance accreditation system;*

22 ~~(3) making~~ (e) *Each board of education shall make available to pu-*  
 23 *pils and their parents, to school employees and, upon request, to others,*  
 24 *district policies and reports concerning school safety and security, includ-*  
 25 *ing those required by this subsection, except that the provisions of this*  
 26 *subsection shall not apply to the disclosures required pursuant to subsec-*  
 27 *tion (a).*

28 ~~(b)~~ (f) *Nothing in this section shall be construed or operate in any*  
 29 *manner so as to prevent any school employee from reporting criminal*  
 30 *acts to school officials and to appropriate state and local law enforcement*  
 31 *agencies.*

32 (e) (g) *The state board of education shall extract the information re-*  
 33 *lating to school safety and security from the quality performance accred-*  
 34 *itation report and transmit the information to the governor, the legisla-*  
 35 *ture, the attorney general, the secretary of health and environment, and*  
 36 *the secretary of social and rehabilitation services.*

37 ~~Sec. 4. K.S.A. 1997 Supp. 72-89b04 is hereby amended to read as~~  
 38 ~~follows: 72-89b04. (a) Willful~~ *The following shall be unlawful: (1) Inten-*  
 39 *tional and knowing failure of an administrator to disclose information*  
 40 *about a student with a history of dangerous behavior, as required under*  
 41 *subsection (a) of K.S.A. 1997 Supp. 72-89b03 and amendments thereto;*

42 (2) *intentionally preventing or interfering with the making of a report*  
 43 *required by subsection (a) of K.S.A. 1997 Supp. 72-89b03 and amend-*

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1 ~~ments thereto;~~

2 ~~(3) intentional and knowing failure of a school employee to make a~~  
3 ~~report required by subsection (a)(1) (b)(1) of K.S.A. 1997 Supp. 72-89b03,~~  
4 ~~and amendments thereto; is a class B nonperson misdemeanor;~~

5 ~~(4) intentionally preventing or interfering with, with the intent to~~  
6 ~~prevent, the making of a report required by subsection (a)(1) (b)(1) of~~  
7 ~~K.S.A. 1997 Supp. 72-89b03, and amendments thereto; is a class B non-~~  
8 ~~person misdemeanor;~~

9 ~~(b) willful (5) intentional and knowing failure of any employee des-~~  
10 ~~ignated by a board of education to transmit reports made by school em-~~  
11 ~~ployees to the appropriate state or local law enforcement agency as re-~~  
12 ~~quired by subsection (a)(1) (b)(1) of K.S.A. 1997 Supp. 72-89b03, and~~  
13 ~~amendments thereto; is a class B nonperson misdemeanor;~~

14 ~~(6) intentionally preventing or interfering with, with the intent to~~  
15 ~~prevent, the transmission of reports required by subsection (a)(1) (b)(1)~~  
16 ~~of K.S.A. 1997 Supp. 72-89b03, and amendments thereto; is a class B~~  
17 ~~nonperson misdemeanor;~~

18 ~~(7) intentional and knowing failure of any employee designated by a~~  
19 ~~board of education to compile and report information as required by~~  
20 ~~subsection (d) K.S.A. 1997 Supp. 72-89b03 and amendments thereto;~~

21 ~~(8) intentionally preventing or interfering with the compilation and~~  
22 ~~reporting required by subsection (d) K.S.A. 1997 Supp. 72-89b03 and~~  
23 ~~amendments thereto;~~

24 ~~(9) intentional and knowing failure of any administrator employed by~~  
25 ~~a board of education to make policies and reports available, as required~~  
26 ~~by subsection (e) of K.S.A. 1997 Supp. 72-89b03 and amendments thereto;~~  
27 ~~and~~

28 ~~(10) intentionally preventing or interfering with access to policies and~~  
29 ~~reports, as required by subsection (e) of K.S.A. 1997 Supp. 72-89b03 and~~  
30 ~~amendments thereto.~~

31 ~~(b) A violation of subsection (a) is a class B nonperson misdemeanor.~~

32 ~~(c) No board of education shall terminate the employment of, or pre-~~  
33 ~~vent or impair the profession of, or impose any other sanction on any~~  
34 ~~school employee because the employee made an oral or written report~~  
35 ~~to, or cooperated with an investigation by, a law enforcement agency~~  
36 ~~relating to any criminal act that the employee knows has been committed~~  
37 ~~or reasonably believes will be committed at school, on school property,~~  
38 ~~or at a school supervised activity.~~

39 ~~(d) Any board of education, and any member or employee thereof,~~  
40 ~~participating without malice in the making of an oral or written report to~~  
41 ~~a law enforcement agency relating to any criminal act that is known to~~  
42 ~~have been committed or reasonably is believed will be committed at~~  
43 ~~school, on school property, or at a school supervised activity shall have,~~

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1 ~~immunity from any civil liability that might otherwise be incurred or im-~~  
2 ~~posed. Any such participant shall have the same immunity with respect~~  
3 ~~to participation in any judicial proceedings resulting from the report.~~

4 New Sec. <sup>[5]</sup> If any provision of this act or the provisions of K.S.A. [4]  
5 72-89b01 *et seq.* as originally enacted or the application thereof to any  
6 person or circumstances is held invalid, the invalidity shall not affect other  
7 provisions or applications of the act which can be given effect without  
8 the invalid provisions or application and, to this end, the provisions of this  
9 act are severable.

10 Section <sup>[6]</sup> K.S.A. 1997 Supp. 38-1502 is hereby amended to read as [5]  
11 follows: 38-1502. As used in this code, unless the context otherwise in-  
12 dicates:

13 (a) "Child in need of care" means a person less than 18 years of age  
14 who:

15 (1) Is without adequate parental care, control or subsistence and the  
16 condition is not due solely to the lack of financial means of the child's  
17 parents or other custodian;

18 (2) is without the care or control necessary for the child's physical,  
19 mental or emotional health;

20 (3) has been physically, mentally or emotionally abused or neglected  
21 or sexually abused;

22 (4) has been placed for care or adoption in violation of law;

23 (5) has been abandoned or does not have a known living parent;

24 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,  
25 and amendments thereto;

26 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)  
27 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-  
28 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-  
29 4204a and amendments thereto, does an act which, when committed by  
30 a person under 18 years of age, is prohibited by state law, city ordinance  
31 or county resolution but which is not prohibited when done by an adult;

32 (8) while less than 10 years of age, commits any act which if done by  
33 an adult would constitute the commission of a felony or misdemeanor as  
34 defined by K.S.A. 21-3105 and amendments thereto;

35 (9) is willfully and voluntarily absent from the child's home without  
36 the consent of the child's parent or other custodian;

37 (10) is willfully and voluntarily absent at least a second time from a  
38 court ordered or designated placement, or a placement pursuant to court  
39 order, if the absence is without the consent of the person with whom the  
40 child is placed or, if the child is placed in a facility, without the consent  
41 of the person in charge of such facility or such person's designee;

42 (11) has been residing in the same residence with a sibling or another  
43 person under 18 years of age, who has been physically, mentally or emo-

1 tionally abused or neglected, or sexually abused; or  
2 (12) while less than 10 years of age commits the offense defined in  
3 K.S.A. 21-4204a and amendments thereto.

4 (b) "Physical, mental or emotional abuse or neglect" means the in-  
5 fliction of physical, mental or emotional injury or the causing of a dete-  
6 rioration of a child and may include, but shall not be limited to, failing to  
7 maintain reasonable care and treatment, negligent treatment or maltreat-  
8 ment or exploiting a child to the extent that the child's health or emotional  
9 well-being is endangered. A parent legitimately practicing religious beliefs  
10 who does not provide specified medical treatment for a child because of  
11 religious beliefs shall not for that reason be considered a negligent parent;  
12 however, this exception shall not preclude a court from entering an order  
13 pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

14 (c) "Sexual abuse" means any act committed with a child which is  
15 described in article 35, chapter 21 of the Kansas Statutes Annotated and  
16 those acts described in K.S.A. 21-3602 or 21-3603, and amendments  
17 thereto, regardless of the age of the child.

18 (d) "Parent," when used in relation to a child or children, includes a  
19 guardian, conservator and every person who is by law liable to maintain,  
20 care for or support the child.

21 (e) "Interested party" means the state, the petitioner, the child, any  
22 parent and any person found to be an interested party pursuant to K.S.A.  
23 38-1541 and amendments thereto.

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

28 (g) "Youth residential facility" means any home, foster home or struc-  
29 ture which provides 24-hour-a-day care for children and which is licensed  
30 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

31 (h) "Shelter facility" means any public or private facility or home  
32 other than a juvenile detention facility that may be used in accordance  
33 with this code for the purpose of providing either temporary placement  
34 for the care of children in need of care prior to the issuance of a dispo-  
35 sitional order or longer term care under a dispositional order.

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

39 (j) "Adult correction facility" means any public or private facility, se-  
40 cure or nonsecure, which is used for the lawful custody of accused or  
41 convicted adult criminal offenders.

42 (k) "Secure facility" means a facility which is operated or structured  
43 so as to ensure that all entrances and exits from the facility are under the

1 exclusive control of the staff of the facility, whether or not the person  
2 being detained has freedom of movement within the perimeters of the  
3 facility, or which relies on locked rooms and buildings, fences or physical  
4 restraint in order to control behavior of its residents. No secure facility  
5 shall be in a city or county jail.

6 (l) "Ward of the court" means a child over whom the court has ac-  
7 quired jurisdiction by the filing of a petition pursuant to this code and  
8 who continues subject to that jurisdiction until the petition is dismissed  
9 or the child is discharged as provided in K.S.A. 38-1503 and amendments  
10 thereto.

11 (m) "Custody," whether temporary, protective or legal, means the  
12 status created by court order or statute which vests in a custodian,  
13 whether an individual or an agency, the right to physical possession of  
14 the child and the right to determine placement of the child, subject to  
15 restrictions placed by the court.

16 (n) "Placement" means the designation by the individual or agency  
17 having custody of where and with whom the child will live.

18 (o) "Secretary" means the secretary of social and rehabilitation serv-  
19 ices.

20 (p) "Relative" means a person related by blood, marriage or adoption  
21 but, when referring to a relative of a child's parent, does not include the  
22 child's other parent.

23 (q) "Court-appointed special advocate" means a responsible adult  
24 other than an attorney guardian *ad litem* who is appointed by the court  
25 to represent the best interests of a child, as provided in K.S.A. 38-1505a  
26 and amendments thereto, in a proceeding pursuant to this code.

27 (r) "Multidisciplinary team" means a group of persons, appointed by  
28 the court or by the state department of social and rehabilitation services  
29 under K.S.A. 38-1523a and amendments thereto, which has knowledge  
30 of the circumstances of a child in need of care.

31 (s) "Jail" means:

32 (1) An adult jail or lockup; or

33 (2) a facility in the same building or on the same grounds as an adult  
34 jail or lockup, unless the facility meets all applicable standards and licen-  
35 sure requirements under law and there is (A) total separation of the ju-  
36 venile and adult facility spatial areas such that there could be no haphaz-  
37 ard or accidental contact between juvenile and adult residents in the  
38 respective facilities; (B) total separation in all juvenile and adult program  
39 activities within the facilities, including recreation, education, counseling,  
40 health care, dining, sleeping, and general living activities; and (C) separate  
41 juvenile and adult staff, including management, security staff and direct  
42 care staff such as recreational, educational and counseling.

43 (t) "Kinship care" means the placement of a child in the home of the



8-3

1 child's relative or in the home of another adult with whom the child or  
2 the child's parent already has a close emotional attachment.

3 (u) "Juvenile intake and assessment worker" means a responsible  
4 adult authorized to perform intake and assessment services as a part of  
5 the intake and assessment system established pursuant to K.S.A. 75-7023  
6 and amendments thereto.

7 (v) "Educational institution" means all schools at the primary, sec-  
8 ondary and postsecondary levels.

9 (w) "Student with a history of dangerous behavior" means any stu-  
10 dent who:

11 (1) Has been expelled as provided by subsection (c) of K.S.A. 72-8901  
12 and amendments thereto for conduct which endangers the safety of others;

13 (2) has been expelled as provided by subsection (d) of K.S.A. 72-8901  
14 and amendments thereto;

15 (3) has been expelled under a policy adopted pursuant to K.S.A. 72-  
16 89a02 and amendments thereto;

17 (4) has been adjudged to be a juvenile offender and whose offense, if  
18 committed by an adult, would constitute a felony under the laws of Kansas  
19 or the state where the offense was committed, except that this subsection  
20 shall not apply to an adjudication as a juvenile offender involving a felony  
21 offense involving no direct threat to human life; and

22 (5) has been tried and convicted as an adult of any felony, except that  
23 this subsection shall not apply to any felony conviction of theft involving  
24 no direct threat to human life.

25 (x) "Educator" means any teacher or other professional or parapro-  
26 fessional employee of an educational institution who has exposure to a  
27 student with a history of dangerous behavior ~~or whose students are ex-~~  
28 ~~posed, either on the grounds of the educational institution or at an edu-~~  
29 ~~cational-institution-sponsored activity, to a student with a history of dan-~~  
30 ~~gerous behavior.~~

DELETE

31 Sec. ~~7~~ K.S.A. 1997 Supp. 38-1507 is hereby amended to read as  
32 follows: 38-1507. (a) *Except as otherwise provided*, in order to protect  
33 the privacy of children who are the subject of a child in need of care  
34 record or report, all records and reports concerning children in need of  
35 care, including the juvenile intake and assessment report, received by the  
36 department of social and rehabilitation services, a law enforcement  
37 agency or any juvenile intake and assessment worker shall be kept con-  
38 fidential except: (1) To those persons or entities with a need for infor-  
39 mation that is directly related to achieving the purposes of this code, or  
40 (2) upon an order of a court of competent jurisdiction pursuant to a  
41 determination by the court that disclosure of the reports and records is  
42 in the best interests of the child or are necessary for the proceedings  
43 before the court, or both, and are otherwise admissible in evidence. Such

6

1 access shall be limited to in camera inspection unless the court otherwise  
2 issues an order specifying the terms of disclosure.

3 (b) *The provisions of subsection (a) shall not prevent disclosure of*  
4 *information to an educational institution or to individual educators about*  
5 *a student with a history of dangerous behavior.*

6 (c) When a report is received by the department of social and reha-  
7 bilitation services, a law enforcement agency or any juvenile intake and  
8 assessment worker which indicates a child may be in need of care, the  
9 following persons and entities shall have a free exchange of information  
10 between and among them:

11 (1) The department of social and rehabilitation services;

12 (2) the commissioner of juvenile justice;

13 (3) the law enforcement agency receiving such report;

14 (4) members of a court appointed multidisciplinary team;

15 (5) an entity mandated by federal law or an agency of any state au-  
16 thorized to receive and investigate reports of a child known or suspected  
17 to be in need of care;

18 (6) a military enclave or Indian tribal organization authorized to re-  
19 ceive and investigate reports of a child known or suspected to be in need  
20 of care;

21 (7) a county or district attorney;

22 (8) a court services officer who has taken a child into custody pursuant  
23 to K.S.A. 38-1527, and amendments thereto;

24 (9) a guardian ad litem appointed for a child alleged to be in need of  
25 care;

26 (10) an intake and assessment worker; and

27 (11) any community corrections program which has the child under  
28 court ordered supervision.

29 (d) The following persons or entities shall have access to infor-  
30 mation, records or reports received by the department of social and re-  
31 habilitation services, a law enforcement agency or any juvenile intake and  
32 assessment worker. Access shall be limited to information *reasonably nec-*  
33 *essary to carry out their lawful responsibilities to maintain their personal*  
34 *safety and the personal safety of individuals in their care* or to diagnose,  
35 treat, care for or protect a child alleged to be in need of care.

36 (1) A child named in the report or records.

37 (2) A parent or other person responsible for the welfare of a child,  
38 or such person's legal representative.

39 (3) A court-appointed special advocate for a child, a citizen review  
40 board or other advocate which reports to the court.

41 (4) A person licensed to practice the healing arts or mental health  
42 profession in order to diagnose, care for, treat or supervise: (A) A child  
43 whom such service provider reasonably suspects may be in need of care;

*or educate  
following protect*

1 (B) a member of the child's family; or (C) a person who allegedly abused  
2 or neglected the child.

3 (5) A person or entity licensed or registered by the secretary of health  
4 and environment or approved by the secretary of social and rehabilitation  
5 services to care for, treat or supervise a child in need of care. In order to  
6 assist a child placed for care by the secretary of social and rehabilitation  
7 services in a foster home or child care facility, the secretary shall provide  
8 relevant information to the foster parents or child care facility prior to  
9 placement and as such information becomes available to the secretary.

10 (6) A coroner or medical examiner when such person is determining  
11 the cause of death of a child.

12 (7) The state child death review board established under K.S.A.  
13 22a-243, and amendments thereto.

14 (8) A prospective adoptive parent prior to placing a child in their care.

15 (9) The department of health and environment or person authorized  
16 by the department of health and environment pursuant to K.S.A. 59-512,  
17 and amendments thereto, for the purpose of carrying out responsibilities  
18 relating to licensure or registration of child care providers as required by  
19 chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments  
20 thereto.

21 (10) The state protection and advocacy agency as provided by sub-  
22 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.  
23 74-5515, and amendments thereto.

24 (11) Any educational institution to the extent ~~allowed pursuant to law~~  
25 ~~or pursuant to court order~~ *necessary to enable the educational institution*  
26 *to provide the safest possible environment for its students and employees.*

27 (12) *Any educator to the extent necessary to enable the educator to*  
28 *protect the personal safety of the educator and the educator's students.*

29 ~~(d)~~ (e) Information from a record or report of a child in need of care  
30 shall be available to members of the standing house or senate committee  
31 on judiciary, house committee on appropriations, senate committee on  
32 ways and means, legislative post audit committee and joint committee on  
33 children and families, carrying out such member's or committee's official  
34 functions in accordance with K.S.A. 75-4319 and amendments thereto,  
35 in a closed or executive meeting. Except in limited conditions established  
36 by  $\frac{2}{3}$  of the members of such committee, records and reports received  
37 by the committee shall not be further disclosed. Unauthorized disclosure  
38 may subject such member to discipline or censure from the house of  
39 representatives or senate.

40 ~~(e)~~ (f) Nothing in this section shall be interpreted to prohibit the  
41 secretary of social and rehabilitation services from summarizing the out-  
42 come of department actions regarding a child alleged to be a child in  
43 need of care to a person having made such report.

1    ~~(f)~~ (g) Disclosure of information from reports or records of a child in  
 2 need of care to the public shall be limited to confirmation of factual details  
 3 with respect to how the case was handled that do not violate the privacy  
 4 of the child, if living, or the child's siblings, parents or guardians. Further,  
 5 confidential information may be released to the public only with the ex-  
 6 press written permission of the individuals involved or their representa-  
 7 tives or upon order of the court having jurisdiction upon a finding by the  
 8 court that public disclosure of information in the records or reports is  
 9 necessary for the resolution of an issue before the court.

10   ~~(g)~~ (h) Nothing in this section shall be interpreted to prohibit a court  
 11 of competent jurisdiction from making an order disclosing the findings  
 12 or information pursuant to a report of alleged or suspected child abuse  
 13 or neglect which has resulted in a child fatality or near fatality if the court  
 14 determines such disclosure is necessary to a legitimate state purpose. In  
 15 making such order, the court shall give due consideration to the privacy  
 16 of the child, if, living, or the child's siblings, parents or guardians.

17   ~~(h)~~ (i) Information authorized to be disclosed in subsections ~~(e)~~ (d)  
 18 through ~~(f)~~ (g) shall not contain information which identifies a reporter  
 19 of a child in need of care.

20   ~~(i)~~ (j) Records or reports authorized to be disclosed in this section  
 21 shall not be further disclosed, *except that the provisions of this subsection*  
 22 *shall not prevent disclosure of information to an educational institution*  
 23 *or to individual educators about a student with a history of dangerous*  
 24 *behavior.*

25   ~~(j)~~ (k) Anyone who participates in providing or receiving information  
 26 without malice under the provisions of this section shall have immunity  
 27 from any civil liability that might otherwise be incurred or imposed. Any  
 28 such participant shall have the same immunity with respect to participa-  
 29 tion in any judicial proceedings resulting from providing or receiving in-  
 30 formation.

31   ~~(k)~~ (l) No individual, association, partnership, corporation or other  
 32 entity shall willfully or knowingly disclose, permit or encourage disclosure  
 33 of the contents of records or reports concerning a child in need of care  
 34 received by the department of social and rehabilitation services, a law  
 35 enforcement agency or a juvenile intake and assessment worker except  
 36 as provided by this code. Violation of this subsection is a class B misde-  
 37 meanor.

38    Sec. ~~[8]~~ K.S.A. 1997 Supp. 38-1602 is hereby amended to read as  
 39 follows: 38-1602. As used in this code, unless the context otherwise re-  
 40 quires:

- 41    (a) "Juvenile" means a person 10 or more years of age but less than
- 42    18 years of age.
- 43    (b) "Juvenile offender" means a person who does an act while a ju-

1 venile which if done by an adult would constitute the commission of a  
2 felony or misdemeanor as defined by K.S.A. 21-3105 and amendments  
3 thereto or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-  
4 727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but  
5 does not include:

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

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

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

13 (4) a person who has been found to be an extended jurisdiction ju-  
14 venile pursuant to subsection (a)(2) of K.S.A. 38-1636, and amendment  
15 thereto, and whose stay of adult sentence execution has been revoked.

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

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

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

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

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

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

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

36 (j) "Jail" means:

37 (1) An adult jail or lockup; or

38 (2) a facility in the same building as an adult jail or lockup, unless the  
39 facility meets all applicable licensure requirements under law and there  
40 is (A) total separation of the juvenile and adult facility spatial areas such  
41 that there could be no haphazard or accidental contact between juvenile  
42 and adult residents in the respective facilities; (B) total separation in all  
43 juvenile and adult program activities within the facilities, including rec-

1 reation, education, counseling, health care, dining, sleeping, and general  
2 living activities; and (C) separate juvenile and adult staff, including man-  
3 agement, security staff and direct care staff such as recreational, educa-  
4 tional and counseling.

5 (k) "Court-appointed special advocate" means a responsible adult,  
6 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-  
7 ments thereto, who is appointed by the court to represent the best inter-  
8 ests of a child, as provided in K.S.A. 1997 Supp. 38-1606a, and amend-  
9 ments thereto, in a proceeding pursuant to this code.

10 (l) "Juvenile intake and assessment worker" means a responsible  
11 adult authorized to perform intake and assessment services as part of the  
12 intake and assessment system established pursuant to K.S.A. 1997 Supp.  
13 76-3202, and amendments thereto.

14 (m) "Institution" means the following institutions: The Atchison ju-  
15 venile correctional facility, the Beloit juvenile correctional facility, the  
16 Larned juvenile correctional facility and the Topeka juvenile correctional  
17 facility.

18 (n) "Sanction house" means a facility which is operated or structured  
19 so as to ensure that all entrances and exits from the facility are under the  
20 exclusive control of the staff of the facility, whether or not the person  
21 being detained has freedom of movement within the perimeters of the  
22 facility, or which relies on locked rooms and buildings, fences, or physical  
23 restraint in order to control behavior of its residents. Upon an order from  
24 the court, a licensed juvenile detention facility may serve as a sanction  
25 house. A sanction house may be physically connected to a nonsecure  
26 shelter facility provided the sanction house is not a licensed juvenile de-  
27 tention facility.

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

32 (p) "Educational institution" means all schools at the primary, sec-  
33 ondary and postsecondary levels.

34 (q) "Student with a history of dangerous behavior" means any student  
35 who:

36 (1) *Has been expelled as provided by subsection (c) of K.S.A. 72-8901*  
37 *and amendments thereto for conduct which endangers the safety of others;*

38 (2) *has been expelled as provided by subsection (d) of K.S.A. 72-8901*  
39 *and amendments thereto;*

40 (3) *has been expelled under a policy adopted pursuant to K.S.A. 72-*  
41 *89a02 and amendments thereto;*

42 (4) *has been adjudged to be a juvenile offender and whose offense, if*  
43 *committed by an adult, would constitute a felony under the laws of Kansas*

1 venile which if done by an adult would constitute the commission of a  
2 felony or misdemeanor as defined by K.S.A. 21-3105 and amendments  
3 thereto or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-  
4 727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but  
5 does not include:

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

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

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

13 (4) a person who has been found to be an extended jurisdiction ju-  
14 venile pursuant to subsection (a)(2) of K.S.A. 38-1636, and amendment  
15 thereto, and whose stay of adult sentence execution has been revoked.

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

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

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

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

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

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

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

36 (j) "Jail" means:

37 (1) An adult jail or lockup; or

38 (2) a facility in the same building as an adult jail or lockup, unless the  
39 facility meets all applicable licensure requirements under law and there  
40 is (A) total separation of the juvenile and adult facility spatial areas such  
41 that there could be no haphazard or accidental contact between juvenile  
42 and adult residents in the respective facilities; (B) total separation in all  
43 juvenile and adult program activities within the facilities, including rec-

1 reation, education, counseling, health care, dining, sleeping, and general  
2 living activities; and (C) separate juvenile and adult staff, including man-  
3 agement, security staff and direct care staff such as recreational, educa-  
4 tional and counseling.

5 (k) "Court-appointed special advocate" means a responsible adult,  
6 other than an attorney appointed pursuant to K.S.A. 38-1606 and amend-  
7 ments thereto, who is appointed by the court to represent the best inter-  
8 ests of a child, as provided in K.S.A. 1997 Supp. 38-1606a, and amend-  
9 ments thereto, in a proceeding pursuant to this code.

10 (l) "Juvenile intake and assessment worker" means a responsible  
11 adult authorized to perform intake and assessment services as part of the  
12 intake and assessment system established pursuant to K.S.A. 1997 Supp.  
13 76-3202, and amendments thereto.

14 (m) "Institution" means the following institutions: The Atchison ju-  
15 venile correctional facility, the Beloit juvenile correctional facility, the  
16 Larned juvenile correctional facility and the Topeka juvenile correctional  
17 facility.

18 (n) "Sanction house" means a facility which is operated or structured  
19 so as to ensure that all entrances and exits from the facility are under the  
20 exclusive control of the staff of the facility, whether or not the person  
21 being detained has freedom of movement within the perimeters of the  
22 facility, or which relies on locked rooms and buildings, fences, or physical  
23 restraint in order to control behavior of its residents. Upon an order from  
24 the court, a licensed juvenile detention facility may serve as a sanction  
25 house. A sanction house may be physically connected to a nonsecure  
26 shelter facility provided the sanction house is not a licensed juvenile de-  
27 tention facility.

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

32 (p) "Educational institution" means all schools at the primary, sec-  
33 ondary and postsecondary levels.

34 (q) "Student with a history of dangerous behavior" means any student  
35 who:

36 (1) *Has been expelled as provided by subsection (c) of K.S.A. 72-8901*  
37 *and amendments thereto for conduct which endangers the safety of others;*

38 (2) *has been expelled as provided by subsection (d) of K.S.A. 72-8901*  
39 *and amendments thereto;*

40 (3) *has been expelled under a policy adopted pursuant to K.S.A. 72-*  
41 *89a02 and amendments thereto;*

42 (4) *has been adjudged to be a juvenile offender and whose offense, if*  
43 *committed by an adult, would constitute a felony under the laws of Kansas*



1 or the state where the offense was committed, except that this subsection  
2 shall not apply to an adjudication as a juvenile offender involving a felony  
3 theft offense involving no direct threat to human life;

4 (5) has been tried and convicted as an adult of any felony, except that  
5 this subsection shall not apply to any felony theft involving no direct  
6 threat to human life.

7 (r) "Educator" means any teacher or other professional or parapro-  
8 fessional employee of an educational institution who has exposure to a  
9 student with a history of dangerous behavior ~~or whose students are ex-~~  
10 posed, either on the grounds of the educational institution or at an edu-  
11 cational-institution-sponsored activity, to a student with a history of dan-  
12 gerous behavior

DELETE

13 Sec. ~~9~~ K.S.A. 1997 Supp. 38-1608 is hereby amended to read as  
14 follows: 38-1608. (a) All records of law enforcement officers and agencies  
15 and municipal courts concerning a public offense committed or alleged  
16 to have been committed by a juvenile under 14 years of age shall be kept  
17 readily distinguishable from criminal and other records and shall not be  
18 disclosed to anyone except:

8

19 (1) The judge and members of the court staff designated by the judge  
20 of a court having the juvenile before it in any proceedings;

21 (2) parties to the proceedings and their attorneys;

22 (3) the department of social and rehabilitation services;

23 (4) any individual, or any officer of a public or private agency or in-  
24 stitution, having custody of the juvenile under court order or providing  
25 educational, medical or mental health services to the juvenile or a  
26 court-approved advocate for the juvenile;

27 (5) any educational institution to the extent necessary to enable the  
28 educational institution to provide the safest possible environment for its  
29 students and employees;

30 (6) any educator to the extent necessary to enable the educator to  
31 protect the personal safety of the educator and the educator's students;

32 (7) law enforcement officers or county or district attorneys or their  
33 staff when necessary for the discharge of their official duties;

34 ~~(6)~~ (8) the central repository, as defined by K.S.A. 22-4701 and  
35 amendments thereto, for use only as a part of the juvenile offender in-  
36 formation system established under K.S.A. 38-1618 and amendments  
37 thereto;

38 ~~(7)~~ (9) juvenile intake and assessment workers;

39 ~~(8)~~ (10) juvenile justice authority;

40 ~~(9)~~ (11) any other person when authorized by a court order, subject  
41 to any conditions imposed by the order; and

42 ~~(10)~~ (12) as provided in subsection (c).

43 (b) The provisions of this section shall not apply to records concern-

1 ing:

2 (1) A violation, by a person 14 or more years of age, of any provision  
3 of chapter 8 of the Kansas Statutes Annotated or of any city ordinance or  
4 county resolution which relates to the regulation of traffic on the roads,  
5 highways or streets or the operation of self-propelled or nonself-propelled  
6 vehicles of any kind;

7 (2) a violation, by a person 16 or more years of age, of any provision  
8 of chapter 32 of the Kansas Statutes Annotated; or

9 (3) an offense for which the juvenile is prosecuted as an adult.

10 (c) All records of law enforcement officers and agencies and munic-  
11 ipal courts concerning a public offense committed or alleged to have been  
12 committed by a juvenile 14 or more years of age shall be subject to the  
13 same disclosure restrictions as the records of adults. Information identi-  
14 fying victims and alleged victims of sex offenses, as defined in K.S.A.  
15 chapter 21, article 35, shall not be disclosed or open to public inspection  
16 under any circumstances. Nothing in this section shall prohibit the victim  
17 or any alleged victim of any sex offense from voluntarily disclosing such  
18 victim's identity.

19 (d) Relevant information, reports and records shall be made available  
20 to the department of corrections upon request and a showing that the  
21 former juvenile has been convicted of a crime and placed in the custody  
22 of the secretary of the department of corrections.

23 (e) All records, reports and information obtained as a part of the  
24 juvenile intake and assessment process for juvenile offenders shall be  
25 confidential and shall not be disclosed except as provided in this section  
26 or by rules and regulations established by the commissioner of juvenile  
27 justice.

28 (1) Any court of record may order the disclosure of such records,  
29 reports and other information to any person or entity.

30 (2) The head of any juvenile intake and assessment program, certified  
31 pursuant to the commissioner of juvenile justice, may authorize disclosure  
32 of such records, reports and other information to:

33 (A) A person licensed to practice the healing arts who has before that  
34 person a child whom the person reasonably suspects may be abused or  
35 neglected;

36 (B) a court-appointed special advocate for a child, which advocate  
37 reports to the court, or an agency having the legal responsibility or au-  
38 thorization to care for, treat or supervise a child;

39 (C) a parent or other person responsible for the welfare of a child,  
40 or such person's legal representative, with protection for the identity of  
41 persons reporting and other appropriate persons;

42 (D) the child or the guardian ad litem for such child;

43 (E) the police or other law enforcement agency;

1 (F) an agency charged with the responsibility of preventing or treat-  
 2 ing physical, mental or emotional abuse or neglect or sexual abuse of  
 3 children, if the agency requesting the information has standards of con-  
 4 fidentiality as strict or stricter than the requirements of the Kansas code  
 5 for care of children or the Kansas juvenile justice code, whichever is  
 6 applicable;

7 (G) a person who is a member of a multidisciplinary team;

8 (H) an agency authorized by a properly constituted authority to di-  
 9 agnose, care for, treat or supervise a child who is the subject of a report  
 10 or record of child abuse or neglect;

11 (I) any individual, or public or private agency authorized by a properly  
 12 constituted authority to diagnose, care for, treat or supervise a child who  
 13 is the subject of a report or record of child abuse or neglect and specif-  
 14 ically includes the following: Physicians, psychiatrists, nurses, nurse prac-  
 15 titioners, psychologists, licensed social workers, child development spe-  
 16 cialists, physicians' assistants, community mental health workers, alcohol  
 17 and drug abuse counselors and licensed or registered child care providers;

18 (J) a citizen review board;

19 (K) an educational institution if related to a juvenile *offender* that is  
 20 ~~required to attend~~ attends such educational institution as part of an im-  
 21 ~~mediate intervention program, probation or post-release supervision;~~ and

22 (L) *educators who have exposure to the juvenile offender or who are*  
 23 *responsible for students who have exposure to the juvenile offender.*

24 (3) To any juvenile intake and assessment worker of another certified  
 25 juvenile intake and assessment program.

26 Sec. ~~10~~ K.S.A. 1997 Supp. 38-1618 is hereby amended to read as  
 27 follows: 38-1618. (a) In order to properly advise the three branches of  
 28 government on the operation of the juvenile justice system, there is  
 29 hereby established within and as a part of the central repository, as de-  
 30 fined by K.S.A. 22-4701 and amendments thereto, a juvenile offender  
 31 information system. The system shall serve as a repository of juvenile  
 32 offender information which is collected by juvenile justice agencies and  
 33 reported to the system. Unless extended by an official action of the Kansas  
 34 criminal justice coordinating council, the juvenile offender information  
 35 system shall be operational and functional on or before July 1, 1997.

36 (b) Except as otherwise provided by this subsection, every juvenile  
 37 justice agency shall report juvenile offender information, whether col-  
 38 lected manually or by means of an automated system, to the central re-  
 39 pository, in accordance with rules and regulations adopted pursuant to  
 40 this section. A juvenile justice agency shall report to the central repository  
 41 those reportable events involving a violation of a county resolution or city  
 42 ordinance only when required by rules and regulations adopted by the  
 43 director.

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1 (c) Reporting methods may include:

2 (1) Submission of juvenile offender information by a juvenile justice  
3 agency directly to the central repository;

4 (2) if the information can readily be collected and reported through  
5 the court system, submission to the central repository by the office of  
6 judicial administrator; or

7 (3) if the information can readily be collected and reported through  
8 juvenile justice agencies that are part of a geographically based infor-  
9 mation system, submission to the central repository by the agencies.

10 (d) The director may determine, by rule and regulation, the report-  
11 able events to be reported by each juvenile justice agency, in order to  
12 avoid duplication in reporting.

13 (e) Juvenile offender information maintained in the juvenile offender  
14 information system is confidential and shall not be disseminated or pub-  
15 licly disclosed in a manner which enables identification of any individual  
16 who is a subject of the information, except that the information shall be  
17 open to inspection by law enforcement agencies of this state, by the de-  
18 partment of social and rehabilitation services if related to an individual in  
19 the secretary's custody or control, by the juvenile justice authority if re-  
20 lated to an individual in the commissioner's custody or control, by the  
21 department of corrections if related to an individual in the commissioner's  
22 custody or control, by the educational institution to the extent allowed  
23 pursuant to law or pursuant to a court order, if related to an individual  
24 that is required to attend such educational institution as part of an im-  
25 mediate intervention program, probation or post-release supervision ed-  
26 ucational institutions to the extent necessary to enable such institutions  
27 to provide the safest possible environment for students, teachers and other  
28 employees, by any educator to the extent necessary to enable the educator  
29 to protect the personal safety of the educator and the educator's students,  
30 by the officers of any public institution to which the individual is com-  
31 mitted, by county and district attorneys, by attorneys for the parties to a  
32 proceeding under this code, the intake and assessment worker or upon  
33 order of a judge of the district court or an appellate court.

34 (f) Any journal entry of a trial of a juvenile adjudged to be a juvenile  
35 offender shall state the number of the statute under which the juvenile  
36 is adjudicated to be a juvenile offender and specify whether each offense,  
37 if done by an adult, would constitute a felony or misdemeanor, as defined  
38 by K.S.A. 21-3105 and amendments thereto.

39 (g) Any law enforcement agency that willfully fails to make any report  
40 required by this section shall be liable to the state for the payment of a  
41 civil penalty, recoverable in an action brought by the attorney general, in  
42 an amount not exceeding \$500 for each report not made. Any civil penalty  
43 recovered under this subsection shall be paid into the state general fund.

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1 (h) The director shall adopt any rules and regulations necessary to  
2 implement, administer and enforce the provisions of this section.

3 (i) K.S.A. 38-1617 and amendments thereto and this section shall be  
4 part of and supplemental to the Kansas juvenile justice code.

5 (j) The director shall develop incentives to encourage the timely entry  
6 of juvenile offender information into the central repository.

7 Sec. [1] K.S.A. 1997 Supp. 38-1502, 38-1502b, 38-1507, 38-1602, 10  
8 38-1608, 38-1618, 72-89b01, 72-89b02, 72-89b03 and 72-89b04 are

9 hereby repealed. and

10 Sec. [2] This act shall take effect and be in force from and after its  
11 publication in the statute book. 11