

Approved: _____

Date

2-8-99

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on January 21, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused
Representative John Edmonds - Excused
Representative Andrew Howell - Excused
Representative Tom Klein - Excused
Representative Candy Ruff - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Jim Clark, Kansas County & District Attorneys Association
John Peterson, Kansas Governmental Consulting
Albert Murray, Commissioner Juvenile Justice Authority

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee with requests for four bill introductions regarding raising the penalty for aggravated incest; amending the aggravated battery statute by adding language that would include the recklessness causing great bodily harm, causing bodily harm with a deadly weapon, or causing bodily harm in a manner in which great bodily harm, disfigurement or death could be inflicted while driving under the influence of alcohol or drugs; expanding the definition of conviction to include extended juvenile jurisdiction cases for enhancement or criminal history purposes; and allow a statement by a juvenile at intake to be used to impeach the child at disposition and against an abuser. (Attachment 1) Representative Loyd made the motion to have the request introduced as committee bills. Representative Flaharty seconded the motion. The motion carried.

John Peterson, Kansas Governmental Consulting, appeared before the committee with a bill request involving the authorization of a stockholder to appoint a proxy by electronic or telephone transmission. (Attachment 2) Representative Crow made the motion to have the request introduced as a committee bill. Representative Lloyd seconded the motion. The motion carried.

Albert Murray, Commissioner Juvenile Justice Authority, provided the committee with an overview of the Juvenile Justice Authority and requested eight bill introductions. The first would give the Commissioner sole authority to make decisions on disbursement of juvenile justice funds. The next would mandate the use of the matrix for committing juveniles to juvenile correctional facilities. The third is a technical change that would allow the Juvenile Justice Authority to receive and handle money belonging to and held in trust for juvenile offenders confined within a juvenile correctional facility. The fourth would amend K.S.A. 21-3413 to ensure that a perpetrator convicted of battery on a juvenile correctional officer is given a prison sentence. The next would amend K.S.A. 21-3810 so an individual convicted of escaping from a juvenile facility would serve time in an adult prison. The sixth request was a technical amendment to K.S.A. 38-1602. The seventh proposal would add "staff employed by juvenile correctional facilities as well as those supervising offenders on conditional release" to the list of those that are unlawful to have sexual relations with juvenile offenders. The last proposal would make changes in the Juvenile Justice Reform Act to comply with Adoption and Safe Families Act. (Attachment 3) Representative Lloyd made the motion to have the requests introduced as committee bills. Representative Powell seconded the motion. The motion carried.

Several committee members were concerned that the juvenile offenders health insurance cards were not following them from SRS and requested that the Commissioner look into the issue.

Committee minutes from January 13, 14, 19 were handed out.

The committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for January 25, 1999.

Julie A. McKenna, President
 David L. Miller, Vice-President
 Jerome A. Gorman, Sec.-Treasurer
 William E. Kennedy, III, Past President



DIRECTOR

William B. Elliott
 John M. Settle
 Christine C. Tonkovich
 Gerald W. Woolwine

Kansas County & District Attorneys Association

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 EXECUTIVE DIRECTOR, JAMES W. CLARK

January 21, 1999

TO: House Judiciary Committee

FROM: Kansas County and District Attorneys Association

RE: Requests for Committee Bills

The Kansas County and District Attorneys Association respectfully requests that the following proposals be introduced as Committee Bills:

1. **Raise the penalty for aggravated incest, K.S.A. 21-3603, to the same level as those for aggravated indecent liberties with a child, K.S.A. 21-3504, i.e. from a level 5 to level 3, and level 7 to level 4.** While abuse of a fiduciary relationship or position of trust has historically been punished less severely by the Legislature, the amendments of 1993 eliminating such disparity for the more serious sex offenses; as well as appellate court decisions supporting upward departure sentences for abuse of fiduciary relationships indicate a change in perception regarding sexual abuse of children by those in a position of trust, and the statute should be changed accordingly.
2. **Amend the aggravated battery statute, K.S.A. 21-3414, by adding language that would include the reckless causing great bodily harm, causing bodily harm with a deadly weapon, or causing bodily harm in a manner in which great bodily harm, disfigurement or death could be inflicted while driving under the influence of alcohol or drugs.** In May, the Kansas Supreme Court reversed a conviction of reckless aggravated battery based on an underlying DUI, holding that Kansas courts have long recognized a distinction between reckless driving and driving under the influence. A mere showing of a BAT of over .08, without other evidence of recklessness, is insufficient. The Legislature has already anticipated this distinction in homicide cases with the creation of a new offense, involuntary manslaughter while DUI, K.S.A. 1997 Supp. 21-3442, in 1996.
3. **Amend K.S.A. 21-3110(4), the definition of "conviction", to include extended juvenile jurisdiction cases for enhancement or criminal history purposes.**
4. **Amend K.S.A. 75-7023 to allow a statement by a juvenile at intake to be used to impeach the child (there is no right to lie), at disposition (when guilt is no longer in issue) and against another (i.e. when the child identifies an abuser).**

JOHN C. PETERSON
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Please Reply to Topeka Office

January 21, 1999

Representative Mike O'Neal, Chair
House Judiciary Committee
Statehouse
Topeka KS 66612

RE: Electronic/Telephonic Proxies

Dear Mike:

On behalf of Security Benefit Group, I am requesting introduction of an amendment to K.S.A. 17-6502, "Voting rights of stockholders; proxies, limitations."

The proposal will expressly permit a stockholder to authorize the appointment of a proxy by electronic or telephonic transmission. It also recognizes photocopies and facsimile transmissions of the proxy appointment. Attached is a copy of the proposed amendment.

Thank you for your consideration of this request.

Respectfully submitted,

A handwritten signature in cursive script that reads "John C. Peterson".

John C. Peterson
JCP:dk

Enclosure

17-6502. Voting rights of stockholders; proxies, limitations. (a) Unless otherwise provided in the articles of incorporation and subject to the provisions of K.S.A. 17-6503, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. If the articles of incorporation provide for more or less than one (1) vote for any share on any matter, every reference in this act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

(b) (1) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for ~~him~~ the stockholder by proxy as provided in this subsection, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

(2) (i) A stockholder may sign a writing authorizing another person to act as proxy.

(ii) Signing may be accomplished by the stockholder or the stockholder's authorized agent signing the writing or causing the stockholder's signature to be affixed to the writing by any reasonable means, including facsimile signature.

(3) A stockholder may authorize another person to act as proxy by transmitting, or authorizing the transmission of, a telegram, cablegram, or other means of electronic transmission, including telephonic transmission, to the person authorized to act as proxy or to a proxy solicitation firm, proxy support service organization, or other person authorized by the person who will act as proxy to receive the transmission, provided that any such electronic transmission must either contain or be accompanied by information from which it can be determined that the stockholder authorized the transmission.

(4) A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission authorized under paragraphs (2) and (3) of this subsection may be substituted for the original writing or transmission for any purpose for which the original writing or transmission could be used.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.



Presentation to the House Judiciary Committee

Thursday, January 21, 1999

Commissioner Albert Murray

Major Initiatives for FY 1999 and FY 2000

1. Putting the Community plans into ACTION

Since October of 1997, close to 1,000 people across Kansas participated in a community planning process to identify and address the needs of juveniles at the community level, per the requirements of the Juvenile Justice Reform Act of 1996. For the past year, training events and on-going technical assistance were provided by JJA to give the 29 teams the necessary assistance and support to develop the comprehensive plans required in legislation. The Juvenile Justice Authority (JJA) sponsored 34 regional training events at which teams were given information, data and program resources that would be useful to them in their plan development.

In an effort to keep the planning initiative a high priority, a stringent timeline was developed for the planning teams to attend the training, compile and analyze data, assess local program needs and prepare the district's comprehensive strategic plan. I am pleased to announce that as of early December 1998, all 29 comprehensive strategic plans had been submitted to this agency.

JJA staff are presently in the process of conducting an analysis of each of the plans. The purpose of this thorough review is

- ❖ to ensure that all the necessary requirements of the plans have been addressed
- ❖ to compile a detailed assessment as to the communities' determination of risk factors
- ❖ to compile gaps in resources, program needs
- ❖ to develop the community's recommendations to meet those needs.

It is projected this analysis will be completed in February, 1999.

Throughout this year long planning process JJA central office staff routinely attended numerous community planning team meetings, public hearings, editorial board meetings, county and city official meetings, and special events to provide information and support for the local planning process. It cannot be overstated the number of hours, the effort, the energy and the time Kansans have volunteered to complete this planning initiative. I have been so thoroughly impressed with the level of dedication and commitment I have seen across the state in all the districts among the conveners, facilitators, key leaders, local officials and close to 1,000 planning team members in this planning endeavor. The communication and collaboration I have first hand observed at the community level has been outstanding. They have truly stepped up to the challenge of addressing the needs of **their** youth in **their** communities.

Each strategic plan is to address specific program components as set forth by the reform act. This include prevention programs geared toward improving the ability of youth to bond with healthy, positive peer groups and adults. It also includes juvenile intake/assessment, local detention services, and community-based graduated sanctions for juvenile offenders such as juvenile probation, intensive supervision, electronic monitoring, drug testing, out-of-home placements, and aftercare services.

Some of the preliminary observations of our review of the comprehensive plans are:

- Community plans are placing a high emphasis on the need for prevention programs.
- Intake and Assessment is being identified as having a major role in the plans.
- There is a need for case managers to have a structured decision making instrument and process to determine the appropriate types of services, structure, and supervision that would best benefit the juvenile offender.
- Reported perhaps most often and uniformly from the community planning teams was the lack of a juvenile justice information system has been a barrier in the collection of juvenile justice data. Those who work with the juvenile justice system acknowledge the critical need to continue to develop a statewide juvenile justice information system.
- In some of the urban areas the need reported is the enhancement of existing graduated sanction programs rather than developing a large number of new programs. Smaller districts identified greater gaps in program services and see the need for more programs.
- Reported in almost all plans was the need to expand local bed capacity for out-of-home placements, and in particular, the need for out-of-home placements in the western part of the state.

- Many teams reported the need for local juvenile justice system coordination at the local level, particularly among service providers, courts and case managers.

The fiscal impact of the plans is still being analyzed. It is important to understand that the funding identified in the plans encompasses more than state funding. Grants, other state streams of money outside of the JJA, local funding resources as well as private resources were included in the recommendations within comprehensive plans. The JJA will use a formula based on communities' level and type of juvenile crime as its mechanism to determine the percentage of state funds each community may receive for programs within the strategic plans. As set forth in the Governor's Budget, \$7,329,440 million in new money is recommended for funding of the first year's priorities within the comprehensive plan programs. Of that money, \$4 million is to be used from the Children's Health Care Fund for prevention programs.

There has been extensive work done by the community planning teams in a short period of time to fulfill their commitment required of them in House Substitute for Senate Bill 69. They are looking with great interest at the degree to which the state will support this initiative through adequate funding of the comprehensive plans. We will be working closely with the Legislature over this session to provide the necessary information to ensure this can be accomplished.

2. EXPANSION OF CAPACITY AT JUVENILE CORRECTIONAL FACILITIES

The plan to build a 225- bed maximum security and diagnostic and classification center is an important step toward the agency's commitment to providing a cohesive, comprehensive juvenile correctional system that realizes the objectives set forth in the Reform Act. It is also in acknowledgement and response to the accelerating incidences of serious and violent crime being perpetrated by a younger segment of the general population.

One of the tasks inherent to the development of the state's overall juvenile justice strategic plan was a re-evaluation of the role(s) that the existing facilities should play in consideration of the revised system mission and the implementation of the new placement matrix. The facilities master plan, completed last year, charted a path of facility development designed to best serve the goals and objectives of the Juvenile Justice Reform Act.

The master plan took into consideration an analysis of juvenile offender population projections and the mandatory lengths of stay articulated in the new Legislatively mandated placement matrix for juvenile offenders which will become law on July 1, 1999. It also analyzed the best use of the existing correctional facilities.

The master plan concluded the following:

- ❖ There will be a long-term increase in the demand for juvenile correctional facility (JCF) bed space.
- ❖ The bed space will need to be constructed to house increasingly volatile and dangerous youth.
- ❖ The primary mission of the JCF's must provide for public safety by providing commitment capacity for the most serious, violent and chronic offenders.
- ❖ The system should be designed to house medium to maximum-security classification juvenile offenders.
- ❖ Re-constitute the existing facilities within a system of dedicated, classification-based facilities.

There are two basic reasons for proceeding with the project outlined in the Governor's budget:

1. There is a compelling need for an operational efficient maximum-security facility that does not currently exist.
2. The Reform act appropriately mandates the development of a diagnostic and classification center that does not currently exist.

With funding for FY2000, the JJA intends to proceed with architectural planning for a 225-bed combined maximum security/diagnostic classification facility.

The facility will play an integral role in the evolution of the JJA mission by addressing four JJA system-wide needs.

1. It will provide a single, centralized processing center for all offenders
2. Will establish a dedicated maximum-security juvenile correctional facility.
3. It will provide for acute medical services.
4. It will establish a program and living facility for pregnant female offenders during the third trimester.
5. It will allow the adoption of a classification based juvenile correctional facility system, in which offenders will be incarcerated in the facility most appropriate for them, based on their need for structure and security. The previous system placed juveniles in the three facilities for males primarily according to their age levels.

The facility's 225 beds will be divided among three housing components.

- ❖ 60-bed diagnostic/classification center
- ❖ 150-bed maximum-security facility and,
- ❖ 15-bed infirmary. (Up to 5 beds in the infirmary may be used to house pregnant female offenders on an as-needed basis.)

The overall design blends the consolidated complex and the campus-style concept.

The projected cost for the facility:

Total project costs--\$38,296,085

Total operational costs--\$9,965,044

Annual costs:

FY2000: \$2,185,297 for planning

FY2001: \$19,913,515 for construction

FY2002: \$16,197,274 for construction

The Governor's budget recommendation for FY2000 is \$2,185,297 million from the State Institutions Building Fund for the cost involved with architectural planning. The Governor has also recommended setting aside \$6 million from the State Institutions Building Fund for the JJA to use on constructing the facility, which would begin in FY2001.

3. RE-CLASSIFICATION OF YOUTH SERVICES SPECIALIST POSITIONS

Another initiative JJA has undertaken since it began on July 1, 1997, is the continued professionalization of the direct care staff in the four juvenile correctional facilities. The Governor has recommended that \$595,120 be used to upgrade the youth services specialist positions within the four juvenile correctional facilities. This upgrade would affect 376 direct care staff (64% of JJA employees) at the following locations:

- ❖ 77 – Atchison
- ❖ 49 – Beloit
- ❖ 86 – Larned
- ❖ 164 - Topeka

The rationale behind this recommendation is that with Juvenile Justice Reform, the requirements of the job performed by the youth service specialists include more complex and different job responsibilities and reflects the shift at the facilities from a social welfare model to a correctional model, in which juveniles are expected to be held more responsible for making changes in their lives that will benefit themselves and the rest of society. Staff will have greater responsibility with regard to maintaining security at the institutions and as the population trend continues within our facilities, will be required to deal with juveniles with complex needs.

The JJA is recommending two classification series:

1. juvenile correctional officer positions that emphasize case management
2. juvenile correctional specialist

The final stages of approval by the Department of Personnel Services, a division of the Department of Administration, is underway. It is our belief that the position upgrades will help reduce turnover and retain quality employees within the facilities, as well as help the agency attract well-qualified new staff as positions open. This would make the juvenile correctional facility staff positions more comparable to positions at the Department of Corrections as they exist in the adult system's current pay structure.

4. JUVENILE CORRECTIONAL FACILITY OVERCROWDING

The Governor has recommended that \$748,313 be used over FY99 and FY2000 to provide for a 57-bed expansion at the Topeka Juvenile Correctional Facility (Topeka JCF.) To this end, an additional four FTE staff positions are recommended in the budget. Plans are underway to add additional beds to two units at Topeka JCF, in an effort to increase capacity and therefore, mitigate overcrowding that has been prevalent over the past three years at the three facilities for male juvenile offenders. These additional beds at the Topeka facility are designed as a temporary measure to address overcrowding until additional beds can be built. It will allow for a temporary capacity of 276 beds.

5. SUMMARY OF NECESSARY LEGISLATIVE PROPOSALS

In order to fully implement juvenile justice reform, we see a need for some language changes in the reform act. These changes are, in some instances, minor and technical changes, but they make a great difference in empowering the State to move forward with the spirit of reform. Therefore, the JJA proposes the following changes which I will submit to the legislature for consideration. A summary of the forthcoming proposals are as follows:

1. Juvenile Detention Facilities Fund K.S.A. 79-4803 (b)

This amendment gives the Commissioner sole authority to make decisions on the disbursement of appropriated juvenile detention facilities fund monies and strikes wording requiring approval by the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention.

2. Matrix K.S.A. 38-16-129

This amendment mandates the use of the matrix for **committing juveniles to the juvenile correctional facilities**. The change also allows for an exception when the District Court determines that there are compelling reasons based on evidence of aggravating or mitigating circumstances. The change also addresses departure procedures much like the adult system.

3. Trust Fund K.S.A. 76-172

The proposal is a technical change of the statute. This change allows the Juvenile Justice Authority to receive and handle money belonging to and held in trust for juvenile offenders confined within a juvenile correctional facility and placed in the community. Previously this authority was vested with SRS when it had control over the state youth centers.

4. Battery on Law Enforcement K.S.A. 21-3413

This amendment ensures that a perpetrator convicted of battery on a juvenile correctional officer is given a prison sentence. Thus, the severity level of this crime is raised from a level 6 to a level 5. Currently the law allows for a juvenile offenders to commit a battery on a juvenile correctional officer and receive probation if convicted as an adult because of the presumptive probation requirement.

5. Escape from a Juvenile Correctional Facility K.S.A. 21-3810

This amendment ensures that an individual convicted for escaping from a juvenile correctional facility will serve an adult prison sentence. The proposal amends the statute to raise the penalty for escaping from a juvenile correctional facility to a severity level 5 crime. Presently, the penalties for escaping are levels 6 and 8 felonies and class A misdemeanors.

6. Juvenile Intake K.S.A. 38-1602

This proposal amends K.S.A. 38-1602 (1) to specify "75-7023" rather than "76-3202". This should correct the typographical error that currently exists within the statute.

7. Unlawful Sexual Relationship K.S.A. 21-3520

This proposal amends the above statute concerning unlawful sexual relations to include staff employed by juvenile correctional facilities as well as those supervising offenders on conditional release. The purpose of this change is to ensure that staff employed by the Juvenile Justice Authority or those contracting with this agency face a severe penalty for having sex with the juvenile offenders receiving services.

8. Changes in Juvenile Justice Reform Act to Comply with Adoption and Safe Families Act K.S.A. 38-1604 (d)

This proposal amends the above statute to require permanency hearings at 12 months for juvenile offenders who are in out-of-home placements to determine whether reintegration with the family is a viable option. For those children in out of home placement 15 of the last 22 months and where the court has not found that reintegration is a viable option, a prosecutor **must file** a case for termination of parental rights. The states are mandated to comply with this federal law which impacts Title IV-E funding. Last year the Child In Need Of Care Code in Kansas was amended to comply with the same requirement.