Approved: 3-17-99
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 11, 1999 in Room 313-S of the Capitol.

All members were present except:
Representative Tim Carmody - excused
Representative Clark Shultz - excused

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

Conferees appearing before the committee:
Helen Pedigo, Deputy Legal Counsel, Juvenile Justice Authority
Dave Debenham, Deputy Attorney General, Criminal Division
Charles Simmons, Secretary Department of Corrections
Shannon Manazanares, Social & Rehabilitation Services Child & Family Services
Mark Gleeson, Office of Judicial Administration

Hearings on **HB 2207, juvenile justice authority**, were opened.

Helen Pedigo, Deputy Legal Counsel, Juvenile Justice Authority, appeared before the committee and explained the provisions of the bill. (Attachment 1)

Committee members were concerned with section 2 that would criminalize consensual sexual relationship between those who are "juveniles," ages 16-23, but are really considered adults.

Dave Debenham, Deputy Attorney General, Criminal Division, appeared before the committee as a proponent of the bill and stated that the propose of the bill is for the safety of inmates and security. (Attachment 2)

Charles Simmons, Secretary Department of Corrections, appeared before the committee in support of the bill and provided the committee with a balloon amendment that would broaden the definition of unlawful sexual relations to include consensual lewd fondling and touching. (Attachment 3)

Shannon Manazanares, Social & Rehabilitation Services Child & Family Services, appeared before the committee as a proponent of the bill. The passage of this bill would bring the Juvenile Justice Code into compliance with the Federal Adoption and Safe Families Act. (Attachment 4)

Mark Gleeson, Office of Judicial Administration, appeared before the committee in opposition to the bill. They were concerned with several portions of the bill. The requirement of a permanency hearing on every juvenile offender in an out-of-home placement case would create an immediate backlog of cases for the courts. He questioned whether a guardian ad litem should or would be appointed in most cases to represent the juvenile offender at each permanency hearing. OJA was also concerned that the term "child" and not "juvenile" or "juvenile offender" was used and suggested that it should be consistent with the Child In Need of Care Code. (Attachment 5)

Jeffrey Leslie, Operations Manager Southeast Kansas Regional Juvenile Detention Center, did not appear before the committee but requested his written testimony be included in the minutes. (Attachment 6)

Hearings on **HB 2207** were closed.

The committee meeting adjourned at 5:15 p.m. The next meeting is scheduled for February 15, 1999.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

NAME	REPRESENTING
David Debenham	Attorney General
JAMES CLARK	KCDAA
Kathy Porter	OJA
Shannon Manzanares	SRS/CFS
Jason Tinsman	Rep Clay Aurand
Charisse Powell	Kansas Bar Association
Derek A. Blaylock	Intern for Teresa Sittenauer
Kevin A. Smith	Kan. Sentencing Comm.
J. KELLETH HAMES	JJA
Helen Pedigo	JJA
Albert Murray	JJA
Charles Simmons	Dept. of Corrections

Juvenile Justice Authority
State of Kansas

TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE ON HB 2207
February 10, 1999

Thank you for the opportunity to testify before you today in support of HB2207. My name is Helen Pedigo, Deputy Counsel for the Juvenile Justice Authority. I want to briefly summarize the provisions of the bill and provide you with the rationale behind the proposed amendments.

Section 1 amends K.S.A. 21-3413(b) battery against a law enforcement officer from a severity level 6 person felony to a level 5 person felony. The amendment requested ensures the convicted perpetrator of this crime in a juvenile correctional facility a prison sentence. Presently, if the offender has misdemeanor priors the adult sentence for this crime is presumptive probation. If the offender has a nonperson felony prior conviction, the adult sentence for this crime is in a border box and the judge may select prison or probation upon conviction.

This amendment will encourage prosecutors to file adult charges on offenders that commit serious batteries upon juvenile correctional facility staff. This would effect older offenders who commit batteries, as younger offenders probably would not be charged in the juvenile system and could not generally be charged in the adult system, unless injuries were life threating.

Section 2 amends K.S.A. 21-3520 unlawful sexual relations to include staff employed by juvenile correctional facilities as well as those staff supervising offenders on conditional release.

The proposed legislation addresses the issue of staff forming consensual sexual relationships with offenders. Presently this type of activity is criminal if the juvenile is under the age of 16 and is covered by child abuse laws if the juvenile is under the age of 18. The proposed amendment would criminally address situations where juveniles age 16 - 23 have consensual sexual relations with staff.

Section 3 amends K.S.A. 21-3810 aggravated escape to include a penalty for escaping from a juvenile correctional facility at a severity level 5. The amendment requested ensures the convicted perpetrator of this crime serves an adult prison sentence. Presently, the penalties for escape are levels 6 and 8 felonies and class A misdemeanors for the crime. Amending the statute

would encourage prosecutors to file adult charges resulting in a prison sentence, when offenders escape from a juvenile correctional facility setting. At present there is no motivation to do so, as the penalty is presumptive probation in the adult system. This would effect older offenders who escape from facilities, as younger offenders probably would not be charged in the juvenile system and could not generally be charged in the adult system.

Section 4 amends K.S.A. 38-1602(1) to specify "75-7023" rather than "76-3202". This section refers to the intake and assessment statute and was a typo.

Sections 4, 5, and 6 amend K.S.A. 38-1602, K.S.A. 38-1604(d) and K.S.A. 38-1664 to require permanency hearings for juvenile offenders who are in extended out of home placements as required by the Federal Adoption and Safe Families Act (ASFA). For those children in out of home placements for 15 of 22 months, a prosecutor must file a case for termination of parental rights, absent a finding of compelling reasons to keep the child with parents. The legislature adopted language last year in the child in need of care code for this purpose. This agency has discovered since that time, that ASFA provisions apply to juvenile offenders in out of home placements as well. This proposal applies the ASFA statutes in the child in need of care code to the juvenile justice code and will bring the State into compliance with ASFA.

This proposal is necessary to bring the State into compliance with federal law so that the State retains eligibility for Federal reimbursement funds under Title IV-E. Title IV-E money used by both SRS and JJA to help defray the cost of group home and family foster care placements.

Sections 7,8, and 9 amend K.S.A. 38-1681, 38-16,129 and add a new section to the law to clarify the use of the sentencing matrix on and after July 1, 1999. The amendment requires the court to use the matrix guidelines for felony or misdemeanor cases when making direct commitment to juvenile correctional facilities on and after July 1, 1999. JJA believes this change brings statutory language into compliance with intent of the Juvenile Justice Reform Act.
The primary reason for seeking the change in sections 7-9 is to ensure fairness and consistency when committing and discharging juvenile offenders to juvenile correctional facilities. This change would ensure that juveniles directly committed to the juvenile correctional facilities would receive the same sentence for the same crime. Prior to the adoption of the Juvenile Justice Reform Act, the facilities had discretion when they could discharge a juvenile that had satisfactorily completed the program. In addition, the District courts had broad discretion on when it could commit to a juvenile correctional facility. This resulted in complaints of unfair treatment by many individuals involved in juvenile crime. A failure to adopt this change forces the juvenile correctional facilities to admit and discharge juveniles from the facilities under two separate systems. The first system is the old discretionary and the second is the matrix. If the change is adopted, it forces everyone to adhere to the matrix.

Section 10 amends K.S.A. 76-172 to add to the list of designated agencies, the Juvenile Justice Authority to receive and handle money belonging to and held in trust for the use and benefit of students, clients, members, patients, inmates, or juvenile offenders. Prior to the creation of the Juvenile Justice Authority, the function of handling the trust accounts for juvenile offenders was the responsibility of the Department of Social and Rehabilitation Services. Now that this

function has been transferred to the Juvenile Justice Authority, the law should be changed to conform to the change in responsibility.

Section 11 amends K.S.A. 79-4803(b) as amended by Ch. 156, Section 113 to clarify the role of the Kansas Advisory Group on juvenile justice and delinquency prevention and the commissioner of juvenile justice regarding disbursement of funds. The amendment requested gives the commissioner the authority to disburse funds and strikes wording indicating necessary approval by the Kansas Advisory Group on juvenile justice and delinquency prevention. While not explicitly stated in this statute, the Kansas Youth Authority, as advisory group to the Juvenile Justice Authority, shall advise the Juvenile Justice Authority in regard to these funds.
The proposed legislation addresses the issue of potential conflicts and timeliness by allowing the Commissioner the authority needed to make financial decisions so that the agency can best carry out its mission.

The Juvenile Detention Facilities Fund (JDFF), Correctional Institutions Building Fund (CIBF), and the Economic Development Initiatives Fund (EDIF) each receive a percentage of the State Gaming Revenues Fund. The JDFF is the only fund with a requirement for approval of expenditures by a board consisting of members from outside the agency. The Secretary of Corrections and the Secretary of Commerce and Housing both have authority to make expenditure decisions over money appropriated from the CIBF and the EDIF, respectively. The Commissioner of Juvenile Justice does not have this same authority. Once the Legislature has appropriated funding from a special revenue fund, expenditures from the fund should be authorized by the agency head, assuming that the expenditures are in line with the Governor's budget. Approval by the Kansas Advisory Group interferes with executive branch decision making.

. If committee members have questions, I would be happy to answer them. Otherwise thank you for allowing me to testify today.

State of Kansas
Office of the Attorney General
301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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TESTIMONY OF
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM
BEFORE THE HOUSE JUDICIARY COMMITTEE
RE: HOUSE BILL 2207
FEBRUARY 10, 1999

Mr. Chairman and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of House Bill 2207. Specifically, I would like to address Sec. 2 of the bill which amends the current crime of Unlawful Sexual Relations. This bill would amend the language of K.S.A. 21-3520 and make the provisions applicable not only to employees within the department of corrections but also to law enforcement officers or employees of a local jail facility. K.S.A. 21-3520(a)(3).

When K.S.A. 21-3520 was originally enacted in 1993, the purpose of the law was to make it unlawful for an employee of the Department of Corrections to engage in sexual relations with an inmate or parolee. It was clear that the purpose behind the law was to prevent these types of consensual relationships. Although these relationships may appear to be voluntary, the employee is in a unique position of authority over the inmates.

This same rationale exists when the situation involves an inmate in a local jail facility. In these situations the employee or law enforcement officer is in a unique position of authority over the inmate. This position can create the opportunity for the employee or law enforcement officer to impose their will and obtain sexual favors from an inmate through intimidation, coercion or even promises of preferential treatment. Even though an investigation of the case may appear to result in a finding of consensual sex, this may not be the actual situation.

This type of behavior can also lead to blackmail type situations in which the jail employee or law enforcement officer is threatened with the revealing facts of the liaison unless illicit contraband is supplied to the inmate. The unlawful sexual relations addressed in this bill poses a security and safety threat to the inmates and the individuals that work at these facilities.

Recently the Office of the Attorney General was involved in an investigation at a local jail facility

in which an allegation was raised that one of the jailers was forcing the female inmates to participate in sexual activity with him. The jailer admitted having sexual relations with the female inmates but claimed it was consensual. In order to file criminal charges, we had to show that the inmates did not consent to the sexual activity and that their will was overcome by force or fear. Based on the facts of the investigation, this could not be proved beyond a reasonable doubt.

Presently, K.S.A. 21-3520 does not address the consensual sexual activity between a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and a person who is confined to a jail. The present amendment will alleviate this problem by making this conduct illegal and preventing a law enforcement officer or employee from using consent of the inmate as a defense to a criminal prosecution for this offense.

On behalf of Attorney General Stovall, I would urge your favorable consideration of House Bill 2207.

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: House Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: HB 2207

Date: February 10, 1999

I am appearing to request that the committee consider amendments to Sections 2 and 3 of HB 2207.

Section 2 of the bill expands the scope of individuals who are prohibited from engaging in sexual relations with persons in their custody or under their supervision. Current law prohibits consensual sexual intercourse and sodomy between KDOC employees (including contract employees) and offenders under KDOC supervision. HB 2207 expands the scope of officers and contract employees prohibited from engaging in consensual sexual intercourse or sodomy to include law enforcement officers, jail employees, juvenile detention facility employees, juvenile sanction house employees, and JJA employees. I have no objection to the amendments proposed in Section 2. However, I would like to advise the committee of additional amendments to KSA 21-3520 which have been proposed by the Department of Corrections and which are contained in SB 131, a bill with numerous sentencing revisions introduced at the request of the Kansas Sentencing Commission.

The amendments to KSA 21-3520 which we are seeking will broaden the definition of unlawful sexual relations to also include consensual lewd fondling and touching. We believe that it is inappropriate and should be unlawful for any form of sexual activity to occur between offenders and those with a custodial responsibility for supervising them. True consent cannot be given under these circumstances. Moreover, sexual relations between offenders and employees leads to a number of operational and security problems. I therefore request that the committee consider broadening the definition of unlawful sexual relations as indicated in the attached balloon of Section 2.

House Judiciary
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Attachment 3

Section 3 of the bill addresses the penalty for escape. Under current law, escapes are classified as a severity level 8 or a severity level 6 offense, depending on whether or not violence or the threat of violence is used to effect the escape. The amendment proposed in Section 3 increases the severity level of all escapes by juvenile offenders to a severity level 5—which would be classified as a person felony if violence or the threat of violence is involved, and a nonperson felony if there is no violence or threat of violence involved. This bill only addresses escapes by juveniles, but we also have concerns about the provisions of current law relative to escapes by inmates in the KDOC system.

The Sentencing Guidelines Act does not take into full account the criminal history of an inmate who escapes. Since a felony conviction is a necessary element of the crime, current law prohibits using the conviction(s) for which the incarceration sentence was imposed in determining the criminal history for the escape offense. For example, first-time offenders who escape from confinement imposed for a felony conviction have a criminal history classification of "I" (one misdemeanor conviction or no record). When the department asked the Sentencing Commission to support a proposal for allowing prior convictions to be counted in the criminal history for escape convictions, the commission had concerns about creating a special rule for that purpose and instead endorsed increasing the severity level of the offense. SB 131, the Sentencing Commission bill, classifies escape from a KDOC custody as a severity level 5 offense, the same as the penalty proposed for juvenile escapes in HB 2207. The department supports this approach and requests that 2207 be amended to raise the penalty for escapes from KDOC custody to severity level 5. Proposed amendments to the bill are attached. In its fiscal note on SB 131, the Sentencing Commission estimated that increasing the penalty for escapes from KDOC custody would increase bedspace needs in the correctional system by 43 beds over the course of the 10-year projection period ending in FY 2009.

Attachment

Session of 1999

HOUSE BILL No. 2207

By Committee on Judiciary

2-1

AN ACT concerning juvenile justice and the juvenile justice authority; amending K.S.A. 21-3520, 76-172 and 79-4803 and K.S.A. 1998 Supp. 21-3413, 21-3810, 38-1602, 38-1604, 38-1664, 38-1681 and 38-16,129 and repealing the existing sections; also repealing K.S.A. 1998 Supp. 38-1602a.

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

Section 1. K.S.A. 1998 Supp. 21-3413 is hereby amended to read as follows: 21-3413. Battery against a law enforcement officer is a battery, as defined in K.S.A. 21-3412 and amendments thereto:

(a) (1) Committed against a uniformed or properly identified state, county or city law enforcement officer other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty;

(2) committed against a state correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(3) committed against a juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(4) committed against a juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(5) committed against a city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(b) Battery against a law enforcement officer as defined in subsection (a)(1) is a class A person misdemeanor. Battery against a law enforcement officer as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5) is a severity level ~~6~~ *5*, person felony.

(c) As used in this section:

(1) ``Correctional institution'' means any institution or facility under the supervision and control of the secretary of corrections.

(2) ``State correctional officer or employee'' means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

(3) ``Juvenile correctional facility officer or employee'' means any of-

ficer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 38-1602 and amendments thereto.

(4) ``Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-1602 and amendments thereto.

(5) ``City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

Sec. 2. K.S.A. 21-3520 is hereby amended to read as follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual sexual intercourse or sodomy with a person who is not married to the offender if: , lewd fondling, or touching,

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate; or , lewd fondling, or touching,

(2) the offender is a parole officer and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate who has been released on parole or conditional release or post-release supervision under the direct supervision and control of the offender.; *or* , lewd fondling, or touching,

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is a person 16 years of age or older who is confined by lawful custody to such jail; or , lewd fondling, or touching,

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or , lewd fondling, or touching,

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility; or , lewd fondling, or touching,

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the direct supervision and control of the offender or (B) placed in the custody of the juvenile justice authority under the direct supervision and control of the offender. , lewd fondling, or touching,

(b) For purposes of this act:

(1) ``Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(2) ``inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(3) ``parole officer" means the same as prescribed by K.S.A. 75-5202,

and amendments thereto; ~~and~~

(4) ``postrelease supervision'' means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703~~.~~*;*

(5) ``juvenile detention facility'' means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(6) ``juvenile correctional facility'' means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(7) ``sanctions house'' means the same as prescribed by K.S.A. 38-1602, and amendments thereto.

(c) Unlawful sexual relations is a severity level 10 person felony.

Sec. 3. K.S.A. 1998 Supp. 21-3810 is hereby amended to read as follows: 21-3810. Aggravated escape from custody is:

(a) Escaping while held in lawful custody *(1)* upon a charge or conviction of a felony or *(2)* upon a charge or adjudication as a juvenile offender as defined in K.S.A. 38-1602, and amendments thereto, where the act, if committed by an adult, would constitute a felony~~,~~ *or (3)* prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto~~,~~ *or (4)* upon commitment to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq. and amendments thereto or *(5)* upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a felony~~;~~ or *(6)* by a person 18 years of age or over who is being held ~~in lawful custody~~ on an adjudication of a felony~~;~~ or

(7) upon incarceration at a state correctional institution as defined in K.S.A. 75-5202 and amendments thereto while in the custody of the secretary of corrections; or

(b) Escaping *effected or facilitated by the use of violence or the threat of violence against any person* while held in *lawful* custody *(1)* on a charge or conviction of any crime or *(2)* on a charge or adjudication as a juvenile offender as defined in K.S.A. 38-1602, and amendments thereto, where the act, if committed by an adult, would constitute a felony~~,~~ *or (3)* prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto~~,~~ *or (4)* upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq. and amendments thereto or *(5)* upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime or *(6)* by a person 18 years of age or over who is being held ~~in lawful custody or~~ *on* a charge or adjudication of a misdemeanor or felony ~~when such escape is effected or facilitated by the use of violence or the threat of violence against any person~~.

or (7) upon incarceration at a state correctional institution as defined in K.S.A. 75-5202 and amendments thereto while in the custody of the secretary of corrections.

(c) (1) Aggravated escape from custody as described in subsection (a)*(1), (a)(3), (a)(4), (a)(5) or (a)(6)* is a severity level 8, nonperson felony.

(2) Aggravated escape from custody as described in subsection (a)(2) is a severity level 5, nonperson felony.

or (a)(7)

~~(2)~~ *(3)* Aggravated escape from custody as described in subsection (b)*(1), (b)(3), (b)(4), (b)(5) or (b)(6)* is a severity level 6, person felony.

(4) Aggravated escape from custody as described in subsection (b)(2) is a severity level 5, person felony.

or (b)(7)

Sec. 4. K.S.A. 1998 Supp. 38-1602 is hereby amended to read as follows: 38-1602. As used in this code, unless the context otherwise requires:

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

(b) ``Juvenile offender'' means a person who ~~does an act~~ *commits an*

Kansas Department of Social and Rehabilitation Service
Rochelle Chronister, Secretary

House Judiciary
HB 2207

February 10, 1999

Mr. Chairman and Members of the Committee, I am Roberta Sue McKenna with the Office of General Counsel for SRS. I thank your for the opportunity to appear before you today on behalf of Secretary Chronister and in support of House Bill 2207.

My testimony is limited to:

K.S.A. 38-1602 (p) and (q) which defines "Extended out of home placement" and "Permanency Hearing";

K.S.A. 38-1604 which provides that the Kansas code for care of children will apply when termination of parental rights or permanent guardianship are in the best interests of the juvenile; and

K.S.A. 38-1664 related to permanency hearings and filing of petitions to terminate parental rights or appoint a permanent guardian.

This legislation brings the Juvenile Justice Code into compliance with the Federal Adoption and Safe Families Act. Last year this body passed similar amendments to the Kansas Code of Care of Children. Many of the youth who are in the custody of the Commissioner of JJA, are in foster care placements and thus eligible for federal IV-E foster care payments. That eligibility also makes them subject to the provisions of the Adoption and Safe Families Act. The permanency hearing is designed to examine:

whether the family is or will be a resource for this child;

if not, is there a compelling reason why this child should not be placed for adoption or with a permanent guardian; and

if there is a compelling reason none of the above is viable, what other permanency alternative is feasible.

This hearing also sets time lines for the next action so that children do not drift in the foster care system.

At first blush one might wonder about the appropriateness of applying to the adjudicated juvenile offender population the same provisions as children in need of care. These are children who are in the custody of the state and in foster care. Most will return to their families. But for some returning to their families would not be appropriate. Although they must be held accountable for behavior which violated the criminal code, we all have an interest in providing them with safe, permanent homes when their own families are not a viable option. These changes to the juvenile justice code enable Kansas to address the this need for all children.

House Judiciary
2-11-99
Attachment 4

House Bill 2207
Testimony from the Office of Judicial Administration
February 11, 1999

Mr. Chairman, members of the committee, my name is Mark Gleeson and I am the Family and Children Program Coordinator for the Office of Judicial Administration. Thank you for the opportunity to testify on this bill. HB 2207 is an unexpected and unbudgeted expansion of the federal Adoption and Safe Families Act (ASFA) into the increasingly complex area of juvenile offender court. While the Juvenile Justice Authority has reviewed federal law and has concluded the permanency hearing sections of this bill are necessary, we want the committee to understand the consequences, from a fiscal as well as a process perspective, of continuing to add statutory obligations to the duties of judges, nonjudicial personnel, prosecutors, and attorneys representing juvenile offenders.

We are aware this is not a budget hearing and we are also aware we will have the opportunity to address the impact of HB 2207 during the Omnibus session, should this bill pass. As you consider this bill, however, we simply ask you to keep in mind that the state and the counties must fund prosecutors, guardians ad litem and parents attorneys when parents are not able to afford them. HB 2207 requires a permanency hearing on every juvenile offender in an out of home placement every 12 months, and within 30 days of a request from the Commissioner when a youth has been in custody for 15 of the past 22 months. House Bill 2207 will create an immediate backlog of cases where the extended out of home placement provision applies, as happened with children in need of care (CINC) cases this past year.

During the past 8 months we have worked with the Department of Social and Rehabilitation Services (SRS) to meet the requirements imposed by House Bill 2820 passed by the 1998 legislature (the Kansas counterpart to the federal Adoption and Safe Families Act). Governor Graves and Secretary Chronister deserve considerable credit for providing $500,000 to the Kansas Judicial Branch and an additional $500,000 for prosecutors, guardians ad litem, parents attorneys, and SRS case workers in support of literally hundreds of additional CINC hearings required by ASFA.

Chief Justice McFarland, the Administrative Judges, each District and Magistrate Judge, District Court Clerks, Court Services Officers and Court Reporters continue to direct considerable attention to these CINC cases to assure the purpose and legal requirements for permanency hearings are being met. As we have with CINC cases, we will hold the required permanency hearings for juvenile offenders as soon as this law, if passed, becomes effective and as soon as the Juvenile Justice Authority provides the Office of Judicial Administration with a list of juveniles in their custody to whom this bill would apply. To date, we have only a rough estimate of the number of youth who will require a hearing under the extended out of home placement provisions of this bill.

Our early experience with SRS and CINC cases suggests an accurate identification of which juveniles in placement require a permanency hearing may

be difficult to determine. We have had conversations with JJA personnel regarding the need for this information and they are working with their contractors to compile this list. One thing is certain, under this proposal, every juvenile in an out of home placement will require at least an annual permanency hearing.

In addition to the number of hearings and an expansion of notice of hearing requirements, it is important to recognize the difference between a review hearing and a permanency hearing. Three new elements are being introduced into juvenile offender case management which currently do not exist. First, the concept of reintegration as a viable alternative must be determined at each permanency hearing. The concept of reintegration as a viable alternative is defined in the CINC code which cites circumstances under which reintegration may not a viable option. The committee should consider adopting this CINC code language in to the Juvenile Offender code where it is appropriate, since a juvenile offender permanency hearing could result in the filing of a CINC case and a petition for termination of parental rights. This "statutory link" between the CINC and juvenile offender code suggests a need for consistent language where the two codes share a common process.

Second, if reintegration is not a viable option, the court must determine if there are "compelling reasons why neither adoption nor permanent guardianship are not in the juveniles best interests." In most instances, these specific findings will require testimony from witnesses which goes beyond the scope of testimony presented during current review hearings.

Third, if reintegration is not a viable option and either adoption or permanent guardianship are in the juvenile offender's best interests, the prosecutor has no choice but to file a CINC case and request termination of parental rights. Creating this one-way link from the Juvenile Offender Code to the CINC code blurs the present distinction between the juvenile offender and CINC process and makes a full determination of the impact difficult to predict.

Finally, we question whether a guardian ad litem should or would be appointed in most cases to represent the juvenile offender at each permanency hearing. The "best interests of the juvenile" language, referenced several times in this bill, may create a legal ethical dilemma in the CINC case if the juvenile's wishes, as to representative in the juvenile offender care are not consistent with his or her "best interests". Although this best interests language is found in current statute relating to the out of home placement of a juvenile offender, adding this new language in the context of "reintegration as a viable alternative," or, "compelling reasons why neither adoption nor permanency guardianship are not in the juveniles best interests" may trigger the appointment of a guardian ad litem.

It is not difficult to predict at least two consequences related to the legal

representation of juveniles under HB 2207. First, there will be an increased cost to the county for indigent defense and guardian ad litem (GAL) services if in most, if not each of these cases, a juvenile is represented by both defense counsel and by a guardian ad litem at the permanency hearing. Second, the already difficult task of finding and retaining qualified attorneys to represent juvenile offenders and guardians ad litem to represent children in need of care will become more difficult when not one, but two attorneys are representing the same youth under this permanency hearing scenario. Caseloads which are too high and frequent turnover among contract GAL and appointed defense counsel contribute to significant delays in case flow and in achieving permanence for children in many judicial districts.

There are other elements of the bill which we believe need your attention.

Section 4, uses the term "child" and not "juvenile" or "juvenile offender" as does the rest of the code. All references to the defendant should be consistent within the juvenile offender code.

Section 5, attempts to address the problem of the dually adjudicated child by applying the CINC code to carry out provisions of 38-1664. Currently, K.S.A. 38-1604 (d) creates a potentially disastrous scenario for a child under the jurisdiction of the court as a CINC who later commits a crime. Specifically, 38-1604 suspends all aspects of the CINC code when a child adjudicated as a CINC is subsequently adjudicated as a juvenile offender. This means that if a CINC is in protective custody, and perhaps a termination of parental rights is underway, any adjudication as a juvenile offender will suspend the CINC case along with all protective orders and actions of the court. Until July 1, 1999, the court may choose to apply the CINC code following a juvenile offender adjudication when circumstances warrant. As written, after July 1, 1999, HB 2207 denies the court the ability to protect and safeguard children under the CINC code when these circumstances arise. Senate Bill 103 addresses this issue by striking K.S.A. 38-1604 (d). This solution is preferred by the court.

Section 8, removes discretion of the court by requiring the court to apply the placement matrix when sentencing a juvenile to a youth correctional facility. The judge may depart from the matrix on his or her own volition and would use the same criteria for departure using the sentencing guidelines standard (K.S.A. 21-4716 and K.S.A. 21-4717) for mitigating or aggravating circumstances. Understanding the Juvenile Justice Authority's desire for predictable sentencing, leaving the current application of the matrix at the discretion of the court seems to accomplish the same outcome without imposing the need for additional motions and hearings on all parties and the court.

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February 10, 1999

To: House Judiciary Committee

Fr: Jeffrey Leslie, Operations Manager
Perry Russell, Executive Director

Re: Testimony concerning HB 2207 lines 643-644

We oppose the change of KSA 79-4803 included in HB 2207 which would remove Kansas Advisory Group on juvenile justice and delinquency prevention (KAG) oversight of administration of the Juvenile Detention Facilities Fund (JDFF) and therefore give authority for the administration of this fund totally to the Commissioner of Juvenile Justice.

Included in the purposes for creation of the JDFF, as outlined in KSA 79-4803, is assisting the counties with the cost of operations for juvenile detention. During the life of the fund, and especially since the creation of the Juvenile Justice Authority (JJA), there has been minimal granting of money from the fund to help the counties offset the cost of detention operations. Additionally, because of changes in payment practices by JJA, compared to what SRS did in some service areas, many counties have recently seen their cost of care for state custody youth who are in detention dramatically increase. It would appear to better follow the original intent for this fund to do the opposite of this proposal and have the JDFF administered independently by the KAG with instructions to disperse available funds, after debt service, each year.

SRS and JJA have used a sizeable amount of JDFF money over the last several years to compliment their budget to pay per diem costs for detention services of state custody youth. It appears that giving independent control of the JDFF to the Commissioner would continue the practice of not actively granting the funds to the counties and could actually mean counties will not directly receive any of this intended help in the future. KAG can better resist this type of pressure to use available JDFF money for purposes other than defraying the cost of juvenile detention operations for the counties and therefore should at very least retain dual oversight for use of the JDFF.