

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 22, 1999 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

HB 2207 - juvenile justice and juvenile justice authority

Representative Adkins made the motion to report HB 2207 favorably for passage. Representative Haley seconded the motion.

Representative Adkins made the substitute motion to adopt a balloon amendment that would change the definition of permanency hearing and add interested parties. (Attachment 1) Representative Lloyd seconded the motion. The motion carried.

Representative Rehorn made the motion to amend in portions of **HB 2437 - judge will determine whether child in need of care code or juvenile justice code applies to case; delaying the effect of the juvenile offender placement matrix to July 1, 2000**, regarding the delay of the placement of the matrix system till July 1, 2000. Representative Crow seconded the motion. The motion carried.

Representative Adkins made the motion to amend in portions of **HB 2468 - Kansas youth authority abolished, powers transferred**, that would transfer the activities and powers from the Kansas Youth Authority to the Juvenile Justice Authority and strike section 3 from the statute books. Representative Haley seconded the motion. The motion carried.

Representative Adkins made the motion to amend in **HB 2301- juvenile justice, placement of chronic runaway youths**, and strike in line 29 the word "care". Representative Howell seconded the motion. The motion carried.

Representative Flaharty made the motion to strike the comma, as recommend by the Department of Corrections. Representative Long seconded the motion. The motion carried.

Representative Pauls made the motion to strike section 11. Representative Howell seconded the motion. The motion carried.

Representative Pauls made the motion to extend the Joint Committee on Corrections and Juvenile Oversight for one year. Representative Adkins seconded the motion. The motion carried.

Representative Klein made the motion to delete new section 9. Representative Pauls seconded the motion. The motion failed 8-9.

Representative Adkins made the motion to report **HB 2207** favorably for passage, as amended. Representative Loyd seconded the motion. The motion carried.

HB 2371 - civil procedure, garnishment, orders, answers of garnishee, forms

Representative Loyd made the motion to report **HB 2371** favorably for passage. Representative Howell seconded the motion.

Representative Loyd made a substitute motion to delete the requirement that the garnishee mail a copy to the plaintiff or his attorney and leave that responsibility on the clerk of the court. Representative Swenson seconded the motion. The motion carried.

Upon committee discussion it was believed that the bill needed further explanation and Representative Powell made the motion to table **HB 2371**. Representative Flaharty seconded the motion. The motion carried.

Committee discussion on **HB 2002 - joint shared child custody and parenting time; concerning child support**

The committee discussed changing the wording from "visitation" to "parenting time". They believed that it was less offensive to parents who do not have custody of their children.

Several members were offended by the judicial bias that was shown by Judge Buchele when he appeared. He believed that he knew better than the parents what's best for someone else's children. Members were curious if he understood why a divorced father wanting custody would not want to come before his court.

The committee agreed that they wouldn't adopt the whole bill but parents are not divorcing their children but each other and why should there be a concept of a winner and loser when it comes to custody.

Concern was express that there is a local practice among judges that when mom & dad can't agree, the judge already has in his mind made up as to what the order is going to be. Instead he should start with each parent being equal and then divert from there. The committee was split on requiring judges to list his findings as to why one parent receives custody over the other.

The committee meeting adjourned at 6:00 p.m. The next meeting is scheduled for February 23, 1999.

House Bill 2207
Balloon prepared by Mark Gleeson
Office of Judicial Administration
February 22, 1999

Section 4. K.S.A. 1998 Supp. 38-1602

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

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

(p) "Extended out of home placement" means a ~~child juvenile~~ *child juvenile* has been in the custody of the commissioner and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a ~~child juvenile~~ *child juvenile* in the custody of the commissioner was first removed from the home.

(q) "Permanency hearing" means a notice and opportunity to be heard is provided to parents, foster parents, preadoptive parents or relatives providing care for the ~~child juvenile~~ *child juvenile*. The court, after consideration of the evidence, shall determine whether reintegration into a parental home is a viable alternative. If reintegration is a viable alternative the court shall set a date for the juvenile to return home. If reintegration is not a viable alternative, the court shall determine if there is a compelling reason why neither adoption nor permanent guardianship are in the best interest of the juvenile.

Section 6. K.S.A. 1998 Supp. 38-1664

Sec. 6. K.S.A. 1998 Supp. 38-1664 is hereby amended to read as follows: 38-1664. (a) Prior to placing a juvenile offender in the custody of the commissioner and recommending out-of-home placement, the court shall consider and determine that, where consistent with the need for protection of the community:

(1) Reasonable efforts have been made to prevent or eliminate the need for out-of-home placement or reasonable efforts are not possible due to an emergency threatening the safety of the juvenile offender or the community; and (2) out-of-home placement is in the best interests of the juvenile offender.

(b) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall notify the court in writing of the initial placement of the juvenile offender as soon as the placement has been accomplished. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or a community mental health center. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(c) During the time a juvenile offender remains in the custody of the commissioner, the commissioner shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile offender.

(d) If the juvenile offender is placed outside the juvenile offender's home, a *permanency* hearing shall be held not more than ~~18~~ 12 months after the juvenile offender is placed outside the juvenile offender's home and, *if reintegration is a viable alternative*, every 12 months thereafter. **The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing.** Juvenile offenders who have been in extended out of home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. If reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile offender the county or district attorney shall file a petition alleging the juvenile is a child in need of care and requesting termination of parental rights or the appointment of a permanent guardian pursuant to the Kansas code for care of children. If the juvenile offender is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the juvenile offender's adjustment, progress and condition. The juvenile justice authority...

New Sec. 9

(a) (3) If a factual aspect of a crime is a statutory element of the crime or is used to determine crime severity, that aspect of the current crime of conviction may be used as an aggravating factor only if the criminal conduct ~~constitution~~ **constituting** that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in subsection (b)(2) of K.S.A. 21-4716, and amendments thereto, and in subsection (~~s~~ a) of K.S.A. 21-4717, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.