Approved: Feb 10, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 a.m. on February 9, 1999 in Room123-S of the Capitol.

All members were present except: Senator Feleciano (excused)

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Representative Shari Weber, Chair, Joint Corrections & Juvenile Justice Committee (JCJJC)
Michael George, General Counsel, Juvenile Justice Authority (JJA)
Judge Dan Mitchell, 3rd District, Shawnee County, Kansas
Joyce Allegrucci, Commissioner of Child & Family Services
Kathy Porter, Office of Judicial Administration (OJA)

Others attending: see attached list

The minutes of the February 4 meeting were approved on a motion by Senator Bond, seconded by Senator Harrington. Carried.

The Chair directed Committee members attention to a list of designated subcommittees, their Chairs, and the bills in each subcommittee.

SB 103–an act concerning juvenile offenders; relating to juvenile intake and assessment; prosecution;discharge; definitions; and extension of committee

Conferee Weber stated that **SB 103** was a compilation of testimony heard in the interim JCJJC of which she is the new Chair. She further stated that the bill "contains a number of things which effect Juvenile Justice Reform but it did not go out of the Committee in a controversial way; rather the components were supported by the majority of the members." (no attachment)

Conferee George summarized JJA's position on **SB 103** regarding sections 1,2,4,6,7 and 10 stating that "the agency takes no position on the remainder of the provisions." (attachment 1) There was discussion during portions of his summary.

Conferee Mitchell referred to a copy of his letter attached to written testimony submitted by Kathy Porter, OJA, wherein he testifies in favor of amending K.S.A. 38-1604(d) " to allow the Court continuing discretion to utilize either the Child in Need of Care Code or the Juvenile Justice Code for the benefit of the juvenile and the community." (attachment 2) He iterated the contents of the letter explaining the need for the amendment.

Conferee Allegrucci testified as an opponent of **SB 103.** She stated that her testimony "concerns only the first section of the bill and the amendment to K.S.A. 38-1604". She reviewed the recent history leading up to the current legislation and stated that **SB 103** creates a problem for SRS in that SRS "no longer has the resources (money and FTE;s) or structure to serve the juvenile offender population." She requested that **SB 103** be sent to a subcommittee for further review. (attachment 3)

Written testimony was submitted by Teresa Wittenauer, Kansas Peace Officers Association, urging the Committee to "eliminate the "detention"clause in the definition of "custody" in Section 2(f)(1), or in the alternative narrow it somewhat". (attachment 4)

Following discussion the Chair referred **SB 103** to Senator Vratil's subcommittee which will meet in Room 123 S of the Capitol on Monday February 15 at 10:00 a.m.

SB 149–an act concerning the Kansas Juvenile Offenders Code; sanctions house definition

The Chair reviewed **SB 149** briefly. Conferee Porter summarized the history and purpose of the bill. (attachment 5) Senator bond moved to pass the bill out favorably, Senator Vratil seconded. Carried.

Written testimony in support of **SB 149** was submitted by Russell Northup, LSCSW, KDHE, Child Care Licensing and Registration. (attachment 6)

The meeting adjourned at 11:00 a.m. The next scheduled meeting is Wednesday, February 10, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 9, 1999

NAME	REPRESENTING
Joyce Allegrucci	SRS - CFS
Jerry Wells	Koch Crime Institute
Michael Heim	JJA
Albert Murray	JJA
John C Garlinghouse	SRS
Denise Musser	JJA
KEVIN GRAHAM	KAN. SENT. COMM.
Marcia Kerr	Sedgwick County
Chris Palazzolo	Intern - McClure
Dina Hales	Shawnee Co Juv Det
Kathy Porter	OJA
Mike Matthews	SRS
Dan Mitchell	District Court
Debra Pedigo	JJA
Virginia Starr	Federico Consulting
Charisse Lovell	Kansas Bar Association
Sharon Weber	Rep #68 District
Dennis Stanley	USD 340
James Clark	KCDAA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 9, 1999

NAME	REPRESENTING
Kathleen Lowman	USD 409 Atchison
Melissa L. Ness	Ks Children Service League
Bill Henry	Ks Government Consulting

SJud. 2/9/99
att 1

Juvenile Justice Authority
State of Kansas

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE ON SB 103
February 9, 1999

Thank you for the opportunity to testify before you today. My name is Michael George, General Counsel for the Juvenile Justice Authority. I want to briefly summarize JJA's position on SB 103 regarding sections 1, 2, 4, 6, 7 and 10. This agency takes no position on the remainder of the provisions.

JJA has no objection to the concept in **Section 1**, striking suspension of the code for the care of children. This agency feels that the Court is in the best position to determine for dually adjudicated cases whether the Code for the care of children or the juvenile justice code should be used for disposition. The Court has the most complete facts regarding the youth. However, we do think this section should be amended to provide some guidance to judges disposing of these types of cases. We would request an opportunity to further discuss this through a subcommittee hearing of this provision.

JJA supports **Section 2 (b)**, amending K. S. A. 38-1624 allowing juvenile community corrections officers to take juveniles into custody. Some districts were already allowing this, but others took a narrow view that the law authorized only Court Services to take juveniles into custody. When this law was originally passed, Court Services were the only officers in the community supervising juvenile offenders.

Section 2(c) indicates an intake and assessment worker may deliver the juvenile to an emergency foster care facility, a juvenile detention facility, a shelter facility or a licensed attendant care center. Passage of this section may have a fiscal implication to the agency for vehicles and additional staffing to cover transportation as local JJA contractors will feel pressure to transport juveniles, and will request funds from JJA to do so. The agency also questions whether intake and assessment workers should be transporting juveniles to detention. When a juvenile is sent to detention, it can be assumed that the individual is too dangerous to be sent to a nonsecure placement. Allowing intake and assessment workers to transport these individuals raises public safety, training, and staffing issues.

Section 4 amending K. S. A. 38-1640 adds a new subsection indicating that if a juvenile does not fit criteria necessary to place in detention, the Court may still order such placement. JJA opposes the section 4 amendment as it is inconsistent with the philosophy of the juvenile justice reform act and with best national practices of least restrictive placement.

Section 6 amending K. S. A. 38-1675 requires the Commissioner to consider juvenile community corrections officer recommendations before discharge. JJA opposes the section 6 amendment as it is drafted. Consideration of the community corrections officer's

Sen. Jud
2-9-99
att 1

recommendations would be more useful before conditional release from the facility so that the officer could assist in prerelease planning and in setting conditions of release.

Section 7 amending K. S. A. 38-16,129 adds two provisions: (e) juveniles would be held to the same rules as adults when multiple misdemeanor convictions of the crime would result in a felony conviction as an adult, for example the crime of misdemeanor theft; and (f) the placement matrix would be discretionary. JJA opposes both provisions. Subsection (e) would have the potential to modify the placement matrix projections, wherein an escalating misdemeanant category already exists. This amendment would result in offenders who meet the criteria for incarceration as a more serious offender. For example, a juvenile committing their third misdemeanor theft goes from being an escalating misdemeanant (subject to serve 3 – 6 months in a juvenile correctional facility) to an escalating felon (subject to serve 6 – 18 months in a juvenile correctional facility) under this amendment.

Subsection (f) does not amend the language presently in existence. Placed within the placement matrix statute, it seems to say that the court may use matrix or not in sentencing to a juvenile correctional facility. More admissions and longer lengths of stay could be expected, with no ability to project the number of offenders or costs from year to year. We would propose instead that the committee review the JJA proposal in HB 2207, Sections 7, 8 and 9. The JJA proposal gives the court discretion to determine whether to sentence a juvenile offender to a juvenile correctional facility (JCF) if the criteria are met for admission. However, if the juvenile is sentenced to a JCF, the court must use the placement matrix categories and terms of incarceration. We also propose a departure procedure for those crimes that for compelling reasons require an increased term of incarceration.

Section 10 amending K. S. A. 75-7023 does the following: Subsection (e)(5) allows intake and assessment workers to make recommendations to the county or district attorney concerning immediate intervention programs which may be beneficial to the juvenile. This agency has the same concerns about this subsection as outlined in Section 2 previously. Subsection (f) gives the Commissioner authority to adopt rules and regulations allowing intake and assessment programs to create a risk assessment tool. JJA supports section 10 (f) as it will allow JJA to develop rules and regulations surrounding development of risk assessment tool for intake and assessment risk assessment tool. Subsection (g) allows parents to voluntarily access intake and assessment services for a fee. This agency supports this amendment.

As stated earlier, JJA takes no position on the remainder of the provisions. If committee members have questions, I would be happy to answer them. Otherwise I want to thank you for allowing me to testify today.

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507
(785) 296-2256

February 9, 1999

Hon. Tim Emert, Chairman
and Members of the Senate Judiciary Committee
300 SW 10th Ave., Room #123-S
Topeka, KS 66612-1504

Dear Senator Emert and Senate Judiciary Committee Members:

Attached are letters from judges who wrote to the SRS Transition Oversight Committee last December about a provision that is now addressed in subsection (d) on pages 1 and 2 of 1999 SB 103. By deleting the language of K.S.A. 38-1604(d), as SB 103 does, the bill continues to allow Kansas judges who hear juvenile cases the discretion to apply either the Kansas Code for Care of Children or the Kansas Juvenile Justice Code when a juvenile is adjudicated a juvenile offender and has previously been adjudicated a child in need of care.

The attached letters were written from the perspective of urging the SRS Transition Oversight Committee not to make a recommendation that would require application of the Code for Juvenile Offenders when a child in need of care commits any type of juvenile offense. The judges who wrote these letters would very much support subsection (d) on pages 1 and 2 of SB 103.

Several of the judges who wrote these letters were interested in appearing in support of SB 103, but were unable to clear their dockets so that they could appear. On their behalf, I urge your support for subsection (d) of SB 103, and I thank you for consideration of this issue.

Sincerely,

Kathy Porter

Kathy Porter
Executive Assistant to Judicial Administrator

KP:ps
Attachment

SUMNER COUNTY DISTRICT COURT

THIRTIETH JUDICIAL DISTRICT
Division No. 2

District Judge:
Thomas H. Graber

Sumner County Courthouse
Wellington, Kansas 67152

To: Senator Morris and the Members of the SRS Transition Oversight Committee.

Re: K.S.A. 38-1604(d)

I cannot over emphasize to the committee the critical need for the amendment or total deletion of K.S.A. 38-1604(d). The current language puts children and families at risk by disrupting placements, by terminating services already paid for by the State of Kansas, by increasing the risk of out of home placements, by preventing the court from having any ability to protect children from established risks by denying the court a reasonable opportuinty for transition of children from SRS custody to JJA custody.

The danger of disrupting placements can be illustrated by my family's personal example. I have a foster grandson who has been placed with my step-daughter since he was 9 years old and he is now 16. He came to live with Renee two days before Thanksgiving in 1991 because his grandparents were retired and wanted to travel without responsibility for him. He had not seen his mother in 2 years, had never known his father and both parents' parental rights have been severed. He was in B.D. classes at the time. Until this last year, he and Reneee lived in a trailor home in our yard on the farm. He is now a junior in high school, main streamed in all classes. He is starting on the varsity basketball team as a junior and is making better grades than he ever has. However, he has an adjudication as a juvenile offender for shoplifting and is currently under supervision for that offense. As K.S.A 38-1604 is now written on July 1, 1999 he will no longer be subject to placement with Renee under his CINC case unless the offender case is terminated. If the adjudication had happened after July 1, 1999 he would automatically have been removed from

her home because she is a foster parent for United Methdist Youthville and they do not contract with JJA. Tony is as much a part of our family as any of our grandchildren and I do not believe he nor anyone else will benefit from his being removed from the only home and family he has.

An example of the termination of services already paid for by the State are family preservation services being provided by the SRS contractor which are immediately terminated to any child who is adjudicated as a Juvenile Offender. That means that if the family is receiving family preservation services from an SRS contractor they immediately stop even though paid for. If they are later provided by JJA, they will be paid for again. A related problem is with a family that has more than one child receiving benefits fom the provider. Upon adjudication the provider cannot provide the JO with services even though continuing service to other family members. If the JO is to get services, they will have to be paid for by JJA even though they had previously been paid for under the SRS contract.

The existing provisions increase the likelihood of out of home placements because of the interruption of services as described above. A family already determined to be at risk and being provided services has them interrupted by an adjudication and the court cannot get any like services instituted through JJA until after sentencing, which will probably not happen for at least 30 days after adjudication. It is highly likely that many of the family situations will not survive the delay and the removal of needed services.

The current provisions prevent the court from being able to continue protecting children from established risks. For example, a girl, who has been sexually abused by mother's boyfriend and is being protected in the mother's home by an order which orders the perpetrator out of the home and orders no contact with the child, will automatically loose that protection if she is

adjudicated as a juvenile offender or even a simple shoplifting. Once the CINC proceeding is suspended, the court has no way to protect her in the home. The court can't even remove her from the home until sentencing in the offender case, if then.

The current provisions of the statute take effect upon adjudication and the court does not have any orders entered until sentencing . The sentencing by statute and by simple common sense should not take place until after a presentrence investigation report is provided to the court. In most courts sentencing does not take place for at least 30 days after the adjudication. In the meantime any orders entered in the CINC case are suspended and the child is in limbo. SRS has taken the position, in some cases that a child in their custody who they brought to court will not even be transported from the court room after an adjudication. They child has no placement under the offender code or with JJA.

The critical language is that **suspending** the Kansas code for care of children and doing so at the time of **adjudication**. I would urge you to support repeal of the provisions. If you connot support that I would offer as an alternative the proposed language in exhibit "A" , attached to this letter.

I wish that I felt that I had found the right words to convey my concern over the need to change the effect of the current language.I honestly believe that there is no greater single threat to the effective implementation of privitaziation and the Juvenile Justice Act than the existing provisions of K.S.A. 38-1604(d). We critically need to be able to have the two codes complimenting, supporting and enhancing the efforts being made in regard to the most needy and at risk children in our society. The current provisions absolutely defeat those ends and create greater risk while contributing nothing for the children involved, their families or society.

2-4

If I can be of any assitance or you have any questions please contact me.

Sincerely,

Thomas H. Graber
District Judge

EXHIBIT "A"

Jurisdiction K.S.A. 38-1604 (d) as amended in 1998 Session Chap.187

(d) *Effective July 1, 1999, if a juvenile is adjudicated a juvenile offender and has previously been adjudicated a child in need of care, the Kansas juvenile justice code shall apply to such juvenile and the Kansas code for care of children shall suspend during the time of jurisdiction pursuant to the Kansas juvenile justice code. Prior to july1, 1999, the court may apply the provisions of either code to a juvenile adjudicated under both codes.* Nothing in this subsection shall preclude such juvenile offender from accessing services provided by the department of social and rehabilitation services or any other state agency if such juvenile is eligible for such services.

If a juvenile is adjudicated a juvenile offender is subject to sentencing as a Violent Offender I, Violent Offender II, Serious Offender I, Serious Offender II, Chronic Offender I, Chronic Offender II, or Chronic Offender III as defined by K.S.A. 38 16,129, the sentence imposed by the court shall have precedence over any orders entered because of a prior adjudication of the juvenile as a child in need of care. In all other instances both codes may apply to a juvenile who has a prior adjudication as a child in need of care, however, the sentencing court shall give full consideration to promoting public safety, holding the juvenile offender accountable for the juvenile's behavior and improving the ability of the juvenile to live more productively and responsibly in the community while assuring that the services provided under both of the codes are

coordinated to those aims and services are not duplicated or paid for by both SRS and JJA or any othe state or local agency. If the sentencing Judge is not the Judge having jurisdiction under the child in need of care proceeding the sentencing Judge in the juvenile offender proceeding and the Judge in child in need of care proceeding shall consult with each other to assure that as both codes are applied full consideration to promoting public safety, holding the juvenile offender accountable for the juvenile's behavior and improving the ability of the juvenile to live more productively and responsibly in the community while assuring that the services provided under both of the codes are coordinated to those aims and services are not duplicated or paid for by both SRS and JJA or any other state or local agency.

DOUGLAS COUNTY DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
JUDICIAL CENTER, 111 E. 11TH
LAWRENCE, KANSAS 66044-2966

785-832-5230

JEAN F. SHEPHERD, Judge
Third Division

PATTY HOBBS
Administrative Assistant

COURT REPORTERS

MELISSA HERRIOTT
832-5123

TAMMARA HOGSETT
832-5249

MARY KAY SCHEETZ
832-5250

SHELEE SHAFER
832-5234

December 15, 1998

Senator Steve Morris
Chair, Legislative SRS
Oversight Committee

REF: Dually Adjudicated Youth

Dear Senator Morris and Committee Members:

It appears to me that the "heated" discussion involving who should have jurisdiction over dually adjudicated youth is more about who will pay for services and what is easiest for agencies rather than what is in the best interest of kids.

As we all know, not every youth who comes to court as a juvenile offender is a violent or chronic offender. Indeed, many of the kids we see in juvenile court are kids we see one time for one stupid act. Under the law which now will take effect July 1, 1999, when a child in a foster care home, a home which contracts with one of our three foster care contractors, commits a minor juvenile offense such as shoplifting, disorderly conduct, or even misdemeanor battery which might involve a school yard fight, at the time of adjudication that child would have to be moved to a home which contracts with the Juvenile Justice Authority or be returned to his/her own home. This is extraordinary punishment for a child in order to simplify bookkeeping for adults. Under circumstances when any other child would be kept in her parent's home and placed on probation through court services, a child who is in the foster care system would lose his child in need of care foster home to be placed on probation, and he could be returned to an inappropriate family home or placed in a new foster or group home. I can see this as only a downward spiral for the child. An attorney for a child in need of care treated in this way might well raise an equal protection argument in that the state is mandating that children who are in one system for their own protection are punished more severely than children who commit identicl offenses who live in their own homes. Most children in need of care are in custody due to their being abused and neglected; this does not justify treating them more severely than other kids because they are offenders.

Staying a child in need of care action due to adjudication as a juvenile offender will also have possible ramification for children who have already been victimized: changes in therapist, changes in schools, and possibly changes in community. These are children who are most in need of continuity and on-going assistance.

Children who have been the victims of severe physical, sexual and emotional abuse often reach a point in therapy when they begin to have some behavior problems. At this time, some are adjudicated as juvenile offenders; at this critical point do we really want these children moved from a therapeutic process in which they are making progress and moved from a placement they know and from a school environment which is familiar with them?

On the other hand is not appropriate for a child who is a child in need of care who breaks the law to be given no consequences in order to keep him/her in the child in need of care system. However, courts have done this in order to prevent a child's being removed from the system and/or home which best meets his/her needs. Courts will continue to attempt to manipulate the system in order to see that a child's needs are being served.

Some dually adjudicated youth do need to be immediately placed in JJA custody; some do not. These children are not cookies cut with the same cookie cutter; I would hope that the legislature allows the court to continue to have the discretion to determine which placement system will best meet the needs of our youth for both rehabilitation and consequences.

If the legislature has concerns about inappropriate children being kept in custody as children in need care rather than placed in custody as offenders, the legislature could create a list of factors for the court to consider. These might include; a. the nature of the offense; b. the youth's number of prior adjudications; c. the youth's community and family ties; d. the youth's age; e. the availability of appropriate consequences if a youth remains a child in need of care; f. the youth's history of violent or seriously assaultive behavior, even if there have been no prior adjudications; g. the child's prior runaway behavior; h. protection of the community; i. whether the offense was against persons or property; j. the sophistication and maturity of the youth; or j. which system offers the programs most likely to rehabilitate the youth and to best meet his needs.

I have heard SRS say they do not "have services to meet the needs of offenders;" many young first-time offenders need no different services than any other child in need of care. They may simply need to be placed on probation through court services, which is not a service necessary for SRS to provide. In addition, some youth can be maintained as children in need of care in a foster home or a group home with supervision by community corrections. Again, this is not a service for SRS to provide.

Again, I urge that you leave the determination as to whether a youth should be in the custody of SRS as a child in need of care or in the custody of the Juvenile Justice Authority as a juvenile offender up to the discretion of the court familiar with the child. Mandating a change in the child's custody status solely due to adjudication as an offender appears to me to be totally driven by systems which purportedly exist to benefit the youth of this state; this request does not address the needs of the youth the systems are there to serve. Instead, it only simplifies life for people managing those systems by making youth fit into neat slots whether or not the slot is right.

I thank you for your usual courteous attention my perspective, and I am available to answer questions from any committee members.

Very truly yours,

Jean F. Shepherd
District Judges

JFS:ph

DISTRICT COURT OF KANSAS
TWELFTH JUDICIAL DISTRICT
Cloud, Jewell, Lincoln, Mitchell, Republic and Washington

Cloud County Courthouse
Post Office Box 423
Concordia, Kansas 66901
Facsimile 913-243-8188

THOMAS M. TUGGLE
District Judge
913-243-8125

JO ANNE RICE
Administrative Assistant
913-243-8131

BECKY L. HOESLI, C.S.R.
Official Court Reporter
913-243-8193

December 15, 1998

Hon. Stephen R. Morris
SRS Transition Oversight Committee
State Capitol
Topeka, KS 66601

Dear Senator Morris and Members of the Committee:

It is my understanding that Secretary Rochelle Chronister has recommended legislation that the authority of judges to place children be restricted by requiring that any child in SRS custody convicted of an offense be automatically placed with the Juvenile Justice Authority.

There are times when a child in need of care may have committed a minor offense while in SRS foster care. It may or may not make sense to move the child to a foster care placement operated by JJA.

Certainly, a local judge should be able to make the decision after hearing all the facts, rather than having a preordained legislative outcome.

I respectfully urge you to recommend to the legislature that the current flexibility in the law be retained indefinitely.

Sincerely,

Thomas M. Tuggle

TMT/jr

DISTRICT COURT OF KANSAS
TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061
(913) 764-8484 x5492

CHAMBERS OF:
ALLEN R. SLATER
DISTRICT COURT JUDGE
DIVISION NO. 9

December 18, 1998

Attn: Senator Steve Morris

Re: K.S.A. 38-1604 - Dually Adjudicated Children

Fax: (785) 296-7076

Dear Senator Morris:

A judge hearing a case of a child adjudicated as a child in need of care as well as a juvenile offender can apply the provisions of either the child in need of care code or the juvenile offender code depending on what is best for the child and the child's family. It is critical that Judges continue to have this authority in the future. Currently, this authority is to "sunset" on July 1, 1999 and it is my understanding your committee will receive a recommendation to eliminate the "sunset" provision and allow Judges to retain this authority. There are a number of cases where a child who is adjudicated as a CINC will commit a juvenile offense. Under the law to go into effect on July 1, 1999 this child once adjudicated as a juvenile offender will be under the exclusive control of our juvenile code. To assume the juvenile code and the Juvenile Justice Authority can meet the needs of all children in need of care and their families is unrealistic. Some children in need of care do

act out and commit juvenile offenses due to the abuse and/or neglect they suffer in their homes; however they need CINC services not offender services. The Juvenile Justice Authority does not have the trained and experience social workers necessary to provide the case management for these difficult cases. An experienced social worker is an important resource to a court in crafting an appropriate case plan and reintegration plan. Additionally, under the child in need of care code the parents are parties to the case and can be ordered to complete extensive requirements outlined by the court. This is not true under the juvenile offender code. If a child in need of care child commits a juvenile offense I lose important remedies to help the parents become better parents and to modify the child's behavior.

The Commissioner of SRS is opposed to any changes in this statute and wants to transfer as much responsibility to other agencies as possible. With all due respects to the commissioner, she does not attend court on a daily basis and does not have to meet face to face with family members who are looking for a solution for a child. It is difficult to tell a crowded courtroom the judge is not going to enter the orders to help the child because of a legal technicality. The families are not interested in nor do they understand legal technicalities and simply expect the court to do what is best for the child. These family members do not care which state agency pays for the care of the children but simply want the best for the child.

I strongly encourage you to reject the Commissioner of SRS' position and accept the recommendation that courts have the authority to select the code which best meets the needs of the child and the child's family. I am confident a number of judges are concerned

about this important matter that we would be willing to meet with your committee and provide any information you request.

Please feel free to call me if you have any questions or comments.

Very Truly Yours,

Allen R. Slater

cc: Honorable Jean Shepard

District Court of Kansas
Third Judicial District

Shawnee County, Kansas

Chambers of
Daniel L. Mitchell
Judge of the District Court
Division No. Ten
Shawnee County Courthouse
Topeka, Kansas 66603-3922

Lee Ann Froelich
Administrative Assistant
(913) 233-8200 Ext. 4361

December 16, 1998

Senator Stephen Morris and Members of
SRS Transition Oversight Committee
State Capitol
Topeka, Kansas

Dear Senator Morris and Committee Members:

It is my understanding that consideration is being given to amending K.S.A. 38-1604 (d) in the upcoming session. I offer my strong support to modify K.S.A. 38-1604 (d) to allow the Court continuing discretion to utilize either the Child in Need of Care Code or the Juvenile Justice Code for the benefit of the juvenile and the community.

As of July 1, 1999, if a child is dually adjudicated, the Child in Need of Care Case is to be suspended until jurisdiction is terminated under the Juvenile Justice Code. Currently the Court may utilize either jurisdiction as controlling and thus insure the best interest of the child. Obviously a serious, violent, chronic offender will be subject to the Juvenile Justice Code exclusively and I would not oppose language to that effect. But a child who is already under Child in Need of Care jurisdiction and is appropriately placed who commits a misdemeanor or felony that does not constitute a serious, violent offense should not be summarily expelled from in-place services to be put under the jurisdiction of the Juvenile Justice Code. Some level of minor offender behavior is not unexpected from children in the system because of abuse and or neglect. To impose hard line criteria of any juvenile offender adjudication without some court discretion is a disservice to children and not the intent of the Juvenile Justice Reform Act of 1996 as I understand it.

The goals of the Juvenile Justice Reform Act can and will be served to insure protection of the community, accountability of the juvenile and rehabilitation without sacrificing those services needed for the legitimate child in need of care by allowing judicial discretion to continue.

Thank you for your attention to and consideration of this issue.

Very truly yours,

Daniel L. Mitchell
District Court Judge

DLM:laf

Timarie Walters
Clerk of the District Court

Lee Nusser
District Magistrate Judge

Stafford County Courthouse
P.O. Box 365
St. John, Kansas 67576
Telephone (316) 549-3295
FAX (316) 549-3298

December 16, 1998

Senator Stephen R. Morris
Members of the SRS Transition Oversight Committee:

Dear Senator Morris and Members:

This letter is written in regards to KSA 38-1604 and amendments, which you and your committee are reviewing. As you are aware, effective July 1, 1999, the court will no longer have discretion over a child in need of care, who is later adjudicated as a juvenile offender. I have grave concerns if this statutue as written is allowed to become law without being amended. A child in need of care who is in foster care and commits a minor crime (shoplifting, fight, disorderly conduct, etc.) and is then adjudicated as a juvenile offender would then be removed from foster care, and any services this child would be receiving will be discontinued or interputed.

We, (the courts, SRS, and the state of Kansas) will be doing a very great disservice to these children. When services are interputed, the prospects of a child overcoming any disabilities or problems they have will be severely diminished. This harkens back to the days when foster children were moved 3 to 4 times a year. This is very upsetting to the child.

Senator Morris, I would urge you and the committee to amend the statute by very simply striking the effective date, "July 1, 1999, and allow the court to have the discretion it needs in working with children. Simply allowing SRS to have the authority to remove a child for being adjudicated as a juvenile offender, we lose the check and balance we now have monitoring CINC cases.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lee Nusser

DISTRICT COURT OF KANSAS

CHAMBERS OF
JAN A. WAY
DISTRICT JUDGE

WYANDOTTE COUNTY

COURTHOUSE
KANSAS CITY, KANSAS
66101

December 16, 1998

Senator Stephen R. Morris and
Members of the SRS Transition Oversight Committee
State House
Topeka, Kansas 66612

Dear Senator Morris and Members:

It is this Court's position that the Court should have the discretion to continue to proceed with a juvenile in a CINC case even if a juvenile offender case is filed, or vice versa. Currently, KSA 38-1604(d) requires the child in need of care case be suspended during the time the juvenile offender case applies. No automatic conflict between these two types of proceedings is seen. Rather, prohibiting the Court from using its full discretion in these matters is not only not in the best interest of respondents and society; it limits common-sense solutions evident to the parties in the Court room.

Children don't fit into nice, neat packages. Some children who have been seriously abused (whether sexually, physically, or otherwise) have a liklihood of acting out in placements. This acting out can lead to charges. I see cases where the children have been charged with disorderly conduct for disruptive behavior while in a group home or a CINC placement. This doesn't mean that their treatment or their family's CINC action should be interrupted. In these cases, there may be other siblings, and the family's CINC case must continue anyway.

In other CINC cases, the District Attorney and Court may be moving towards terminating parental rights. These cases should not stop because of an act of shoplifting by a twelve year-old girl while in foster care.

Sometimes the parental rights have already been terminated. If the Court closes the juvenile offender case after sentencing with a reprimand so the CINC case prevails, the juvenile then may learn there are no sanctions. The current statute is problematic

and not curative of the juveniles' problems.

It is hoped the State opts for the best interests of the child over limitations based on categories or departmentalization. The Court should have discretion and be allowed to use Court Services staff and others to bring information to the Court that will allow good decisions on a case-by-case basis.

Sincerely,

Jan A. Way
District Judge

JAW/js

C:\MyFiles\proposal

Thirteenth Judicial District of Kansas

Rebecca D. Lindamood - MAGISTRATE JUDGE
Greenwood County Courthouse
Eureka, Kansas 67045
316-583-8155

December 15, 1998

Senator Stephan Morris and Committee Members
SRS Transition Oversight Committee

Dear Senator and Committee members:

I am deeply concerned about any move to prevent dual adjudication of children in the Court system. There are times when dual adjudication is the tool a judge needs to provide the most appropriate care for children. Children are often CINC and offender. Dual adjudication allows the Court to protect and care for these children, while at the same time, being able to mete out consequences where appropriate. Too many children we are seeing now are not just CINC, or, not just juvenile offenders.

One particular case I have right now, case in point: one of three siblings in a CINC case is dual-adjudicated. The parent of these children will not care for them, and abuses drugs. The twelve year-old, now, has a misdemeanor theft charge. Such behavior from a child in this kind of situation, though not condemned, is common. Without dual adjudication, in this kind of case, the Court's hands are tied, and this boy would be without proper care.

Another question: What would happen with children in a sexual abuse case who strike out toward others while in foster care? This could, and does, make these children offenders. But, they are first, and formost, CINCS. How can their needs be met without dual adjudication?

To expect children, or anyone for that matter to fit into one tight little category might make things appear better, neater and more easily managed on paper. However, people, particularly children, do not often lend themselves to such nice predictable packaging and pidgeon holing. And, if what we are about is to care and protect children, all children, then none should be allowed to fall through the cracks. Without dual adjudication, how many of our children would fall through the cracks?

I sincerely appreciate your time to consider my thoughts and feelings on this matter, and hope this will help give you some incite as to the problems the judges have to face, where children are concerned.

Sincerely,

Rebecca D. Lindamood

Rebecca D. Lindamood
District Magistrate Judge

DISTRICT COURT
ELEVENTH JUDICIAL DISTRICT, DIVISION 1
CRAWFORD COUNTY COURTHOUSE
P.O. BOX 69
GIRARD, KANSAS 66743

DONALD R. NOLAND
JUDGE

TELEPHONE
316 724-6213

December 16, 1998

Senator Stephen R. Morris and
Members of SRS Transition Oversight Committee

Re: Proposed Amendment to K.S.A. 38-1604(d)

Dear Senator Morris and Members
of SRS Transition Oversight Committee:

I have been advised that a request to amend K.S.A. 38-1604(d) will be introduced in the next legislative session. The amendment as proposed will restore judicial discretion in proceeding with dually adjudicated youth. K.S.A. 38-1604(d) presently provides that effective July 1, 1999, any Child in Need of Care (CINC) who is adjudicated a juvenile offender shall have the CINC case automatically suspended and all further proceedings regarding the child will be conducted solely under the juvenile justice code. It is my understanding that SRS opposes the amendment.

I have a great concern for the mandate imposed by the statute and would respectfully request that you and the other members of the SRS Transition Oversight Committee favorably consider the proposed amendment.

The statute as presently enacted will remove all judicial discretion as to what code (CINC or juvenile offender) should apply to dually adjudicated youth. We will be summarily prevented from using the CINC code to address a youth's needs, even though it may be determined that the CINC code most appropriately answers those needs.

In my experience, I have observed that certain youth need the protection of the CINC code, even though they may be dually adjudicated. The absolute mandate of the statute will not allow for the continued protection of the CINC code. For instance, a CINC should not automatically be transferred to the juvenile justice system simply because he or she is convicted of a minor theft or vandalism. In such a scenario, the youth will have fewer placement alternatives as typically JJA youth are more difficult to place. This potentially then results in youth who have been adjudicated of minor offenses being placed with serious and chronic offenders.

Moreover, it is much more difficult to order family counseling in juvenile offender cases as by statute (K.S.A. 38-1663) parents of juvenile offenders can object to court-ordered family counseling and are even entitled to a court-appointed attorney to represent

them in contesting the order for family counseling. This unwieldy process does not apply in CINC cases. Further, we are allowed to use Reintegration Plans (an Order to the parents requiring specific improvements in housing and parenting skills) in CINC cases. We cannot do this in juvenile offender cases. In short, CINC cases allow us to address nuclear family problems before a return of the youth to the home. We cannot do this in juvenile offender cases, which often results in the return of a youth to a home where the same problems exist which initially caused the illegal conduct.

In summary, I respectfully request that consideration be given to amending K.S.A. 38-1604 to provide for judicial discretion in determining which code to utilize for dually adjudicated youth. Allow us to use our experience and the input of all involved in a case to make decisions which are based on the best interests and needs of the child.

Thank you for your valuable time and please feel free to contact me if any of you have any questions.

Very truly yours,

Donald R. Noland
District Judge

DRN:tc

S Jud
2-9-99
#3

State of Kansas
Department of Social & Rehabilitation Services

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary

For additional information, contact:

SRS Office of the Secretary
Laura Howard, Special Assistant
915 SW Harrison Street, Sixth Floor
Topeka, Kansas 66612-1570
☎785.296.6218 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office
Diane Duffy, CFO
915 SW Harrison Street, Tenth Floor
Topeka, Kansas 66612-1570
☎785.296.6216 / Fax 785.296.4676

Senate Judiciary
February 9, 1999
10:00 a.m. (Room 123-S)

Testimony: Opposition to SB 103

Children and Family Services
Joyce Allegrucci, Commissioner
785.368.6448

Sen Jud 2-9-99
att 3

Contents

Testimony Opposition to SB 103

Kansas Department of Social and Rehabilitation Service
Rochelle Chronister, Secretary

Senate Judiciary

February 9, 1999

Mr. Chairman and Members of the committee, I am Joyce Allegrucci, Commissioner of Children and Family Services. Thank you for the opportunity to testify on behalf of Secretary Chronister today concerning Senate Bill 103. I appear here today in opposition to this legislation.

My testimony concerns only the first section of the bill and the amendment to K.S.A. 38-1604. A review of recent history may be helpful in understanding my perspective.

- The Kansas Youth Authority and the "1996" and "1997" legislature created the Juvenile Justice Authority (JJA) to care for all juvenile offenders.

- SRS served both children in need of care and juvenile offenders until June 30, 1997.

- Effective July 1, 1997 the responsibility for adjudicated juvenile offenders was transferred to JJA.

- K.S.A 38-1604 (amended during 1997 legislative session) provided that upon an adjudication as a juvenile offender an existing child in need of care case was suspended. To assure continuity and a smooth transition of youth between SRS and JJA, SRS continued to serve dually adjudicated youth in community placements until July 1, 1998.

- K.S.A. 38-1604 amended during the 1998 legislative session postponed the complete transition of dually adjudicated youth until July 1, 1999, at which time the child in need of care code would automatically suspend when a youth was adjudicated a juvenile offender.

- From July 1, 1998 to date SRS has served those juvenile offenders designated by the court to be treated as children in need of care within in its current resources.

SB 103 effectively removes the July 1, 1999 transition date and leaves approximately 300 dually adjudicated juvenile offenders in limbo. SRS no longer has the resources (money and FTE's) or structure to serve the juvenile offender population. We respectively request that SB 103 be sent to a subcommittee for further review. These juvenile offenders deserve a full array of services from the state under either JJA or SRS, not both nor neither.

MEMORANDUM

TO: Senator Tim Emert, Chair
Senate Judiciary Committee

FROM: Teresa L. Sittenauer
Kansas Peace Officers Association

DATE: February 9, 1999

RE: SB 103

Mr. Chairman, members of the committee, my name is Teresa Sittenauer and I appear today on behalf of the Kansas Peace Officers Association ("KPOA"), the largest professional law enforcement organization in Kansas. We appreciate this opportunity to express our concerns with SB 103.

SB 103 does a number of things, however, the focus of KPOA's concern is with the added definition of "custody" in Section 2(f) of the bill. Custody is defined in part as the "detention" of a juvenile. Detention is a very broad concept which covers a variety of situations. It potentially includes every stop of a juvenile by a law enforcement officer for a brief period, for example truancy checks, car stops, suspicious person stops, etc.

The broad definition causes problems in the context of the juvenile's right in Section 2(c)(3)(A) to consult a parent, guardian or attorney prior to waiving his or her right of self-incrimination and right to counsel. KPOA understands the constitutional

requirements attendant to full custodial interrogation situations. However, defining "custody" as "detention" under this section would necessitate detaining juveniles for a lengthy period of time in order to meet the right to consult requirement when a brief stop and a couple of questions would suffice, and the officer would have otherwise sent the juvenile quickly on his or her way. The new definition would result in officers being forced to make a federal case out of a small matter.

We would urge the committee to eliminate the "detention" clause in the definition of "custody" in Section 2(f)(1), or in the alternative narrow it somewhat. Thank you for this opportunity to express our concerns with SB 103. Please do not hesitate to contact me if you have questions or need further information.

Testimony in Support of SB 149

Senate Judiciary Committee

February 9, 1999

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to appear in support of 1999 SB 149. The bill was introduced at the request of Senator Dave Kerr on behalf of a Reno County judge, and would simply delete the following language on page 3 of the bill:

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

Other amendments included in the bill are conflict resolution language added by the Revisor of Statutes, and do not amend current law.

When the 1997 Legislature added this definition of "sanction house" to the Juvenile Offenders Code, this language at issue was added because it was thought that federal regulations required the language. However, that was not the case. There is some difference of opinion as to whether the plain language of the present provision allows sanctions house beds to be connected physically to a licensed juvenile detention facility. In light of this language, Reno County has been reluctant to designate a portion of its licensed juvenile detention facility as sanctions house beds. Deleting the language noted above would take care of this situation.

Mr. Russell Northrup, Administrator of the Child Care Licensing Section of the Kansas Department of Health and Environment, the division in charge of licensing juvenile facilities, stated that he was not opposed to the proposed amendment, and thought that it would clear up any confusion or differences of opinion that might exist.

Thank you for the opportunity to appear in support of SB 149, and I would be glad to stand for any questions that you might have.

Sen Jud
2-9-99
att 5

Sen Jud 2-9-99 att 6

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde Graeber, Acting Secretary

Date: February 9, 1999

To: Senator Tim Emmert
Senate Judicial Committee

Re: SB: 149

From: Russell Northup, LSCSW Russell Northup
Department of Health and Environment
Child Care Licensing and Registration
Suite 620, Landon State Office Building

I would like to express support for the Senate Bill 149 as amended in order to clarify the definition of a "Sanction House". We would find this change most helpful as we work with the4 communities of Kansas to support the development of these facilities.

Sen Jud
2-9-99
att 6