Approved: Jan 31
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 a.m. on January 27, 2000 in Room 123-S of the Capitol.

All members were present except: Sen. Bond (excused)

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

Conferees appearing before the committee:
Commissioner Murray, Juvenile Justice Authority (JJA)
Laura Howard, Social Rehabilitation Services (SRS)
Bob Alderson, Kansas Pharmacist Association
Judge Marla Luckert, Kansas Judicial Council
Christine Tonkovich, Douglas County District Attorney

Others attending: see attached list

The minutes of the January 25th meeting were approved on a motion by Senator Vratil and seconded by Senator Goodwin. Carried.

Bill Introductions:

Conferee Murray reviewed the following bill proposals from the JJA: amendments to bring Kansas law in compliance with federal law; credit for time served in detention or jail; placement matrix changes; juvenile correctional facility staff hiring requirements; sex offender registration act; and attendant care/intake and assessment.(attachment 1 Following discussion Senator Harrington moved to introduce the bill proposals, Senator Goodwin seconded. Carried.

Conferee Howard discussed a bill proposal on child support enforcement mandates with regard to Kansas Payment Center and income withholding. (attachment 2). Lengthy discussion followed. Senator Feleciano moved to introduce the bill proposal, Senator Donovan seconded. Carried.

Conferee Alderson discussed a proposed amendment to the Chemical Control Act which would insert "pharmacists" in the definition section of "practitioner". (attachment 3) Senator Vratril moved to introduce the bill amendment, Senator Goodwin seconded. Carried.

The Chair requested introduction of a bill regarding the Kansas Uniform Prudent Investor Act. (no attachment) Senator Oleen moved to introduce the bill, Senator Goodwin seconded. Carried.

SB 419–an act concerning crimes, criminal procedure and punishment; relating to sentencing

Conferee Luckert testified as a proponent of **SB 419.** She stated that the bill is the result of a study of the Judicial Council's Criminal Law Advisory Committee (JCCLAC) regarding the treatment of juvenile adjudications for sentencing guideline purposes. Currently, former juvenile adjudications are used when scoring criminal history for sentencing. This bill would exclude criminal adjudications from adult criminal history unless the court finds compelling reasons to include them. (attachment 4)

SB 424–an act concerning criminal procedure; relating to preliminary examinations; evidence; child witnesses and victims

Conferee Luckert testified as a proponent of **SB 424.** She stated that this bill is a result of a study of the JCCLAC. and is a bill which "seeks to resolve ambiguities in the current statutes which allow the use of prior statements of a child without the child having to be called at the preliminary hearing in a criminal case." The bill also "eliminates conflicts between the various statutes which deal with the admission of statements of a

child witness at trial or other hearing." She described the manner in which the bill accomplishes the "legislative intent of protecting child victims from testifying and resolves conflicts and ambiguities in current language." (attachment 5) Lengthy discussion followed.

Conferee Tonkovich testified in favor of **SB 424** agreeing with statements made by the previous conferee. She proposed an additional change to the bill which "would add the Kansas City Missouri Police Crime Lab to the list of crime labs whose certified reports are admissible at preliminary hearing without requiring the testimony of the scientist who performed the testing." She described in detail why she felt this change was necessary. (attachment 6) She also commented on **SB 419**, the amendments of which, she stated, are not in the best interest of the state and she explained why. She urged Committee to carefully consider the full impact of proposed changes. (attachment 7)

The meeting adjourned at 11:00 a.m. The next scheduled meeting is January 31st.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan. 27

NAME	REPRESENTING
Dan Ramsour	KGC
Harvey Bechard	KCDAA
Christine Tankovich	KCDAA
Albert Murray	KJJA
Helen Pedigo	JIA
Kay Snethen	KSC
Jan Brasch	KSC
KEVIN GRAHAM	KSC
Christy Molzen	Judicial Council
Tracy M. Harrell	Judicial Council
Paula J. Luckert	Judicial Council
BOB Alderson	KS. PHARMACISTS ASSOC.
Vicki Lynn Nelsen	Budget
Jessica Lee Conrad	Sen Vratil
DJ Shutt	Governor
LARRY C. MANN	KBI Laboratory
[illegible]	KBI
[illegible]	KSC Commission
Paul Davis	KBA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 27

NAME	REPRESENTING
Chris Collins	Kansas Medical Society
Nora Smith	Intern - Sen. Feleciano
Amy Kelly	OJA
[illegible]	KTLA
Mark Gordon	Hein + Weir
Susan Mahoney	Senate leadership office
Thaine Hoffman	DOAS
BARRY CREEK	DOAS

STATE OF KANSAS

BILL GRAVES
Governor

Juvenile Justice Authority
Albert Murray, Commissioner

Jayhawk Walk
714 SW Jackson, Suite 300
Topeka, Kansas 66603
Telephone: (785) 296-4213 FAX: (785) 296-1412

Request for Senate Judiciary Committee
JJA Legislation 2000

1. **Amendments to bring Kansas law in compliance with federal law**

- Brings state into compliance with the Deinstitutionalization of Status Offenders requirements under the Juvenile Justice and Delinquency Prevention Act
- Require use of nonsecure confinement except when alternatives are exhausted or clearly inappropriate
- Ensures that only juvenile offenders are placed in secure juvenile detention
- Gives JJA authority to review jail records to monitor and ensure that children are not placed in adult jails in violation of federal law

2. **Credit for time served in detention or jail**

- Mandates that credit be given to juvenile offenders for time spent at detention centers prior to their incarceration at juvenile correctional facilities

3. **Placement matrix changes**

- Technical changes in placement matrix regarding the classification of a prior adjudication on a Chronic III offender to a Level 4 drug felony
- JJA would set a blanket 10-day notification to the Court and prosecutor regarding release from a juvenile correctional facility. JJA will retain the 45 day notice to the Court for violent pre-matrix juvenile offenders

4. **Juvenile correctional facility staff hiring requirements**

- Adds hiring requirements for juvenile corrections officers: that they be at least age 21 and free of felony convictions. Also would add physical agility requirements for officers

5. **Sex offender registration act**

- Allows the court to order juvenile offenders who are convicted of sexually violent offenses to register under the Kansas offender registration act; Currently, only juvenile offenders on probation and/or diversion programs for sexually violent offenses may be required to register.

6. **Attendant care/ Intake and assessment**

- Technical amendment; strikes "juvenile" and replaces with "child," to agree with the rest of the statute

Sn Jud
1-27-00
att 1

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
2000 Legislative Proposal

Program Area: Legal Div'n - Child Support Enforcement
Contact Person: Jamie Corkhill OR Jim Robertson

Proposal No: 1
Phone No: 296 - 3237
E-mail: jxlc@srskansas.org

1. **Proposal.** Child Support Enforcement mandates - Kansas Payment Center and income withholding

2. **Summary.** Meet federal mandates by enacting or clarifying:

   - Kansas Payment Center - Confirm the authority of the Kansas Supreme Court to redirect support payments through the Kansas Payment Center. Prevent garnishment of support moneys held by the Kansas Payment Center. If necessary, clarify authority concerning disbursements to IV-D families.

   - Income withholding - Adapt medical withholding form requirements to meet federal standards. Clarify definition of "copy" of withholding order and payor's duties.

3. **Fiscal Impact.** Failure to enact this proposal puts the State of Kansas at risk of having its Child Support Enforcement (Title IV-D) state plan found out of compliance with Title IV-D requirements. Based upon federal Fiscal Year 1998 totals, the penalty for noncompliance would be $30 million per year ($26.8 million in IV-D money plus 4% of TANF funds), or about $7.5 million per quarter.

   No other fiscal impact is expected to result from enacting (or failing to enact) this proposal. No additional staffing is needed if this proposal is enacted.

4. **Policy Implications and Impact on the Agency Strategic Plan.** The elements of this proposal are needed to insure compliance with federal requirements under Title IV-D.

   Kansas Payment Center. In collaboration with the Office of Judicial Administration, SRS has undertaken establishment of the Kansas Payment Center (KPC), a centralized location for the receipt and disbursement of child support. Creation of the KPC is a State Plan requirement, mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Child support receipting and disbursement has traditionally been handled by the clerks of the district court in Kansas. The transition to the KPC will be governed by Supreme

Court administrative orders and rules.

Very late in the 1999 Session, it became apparent that clarification of the Supreme Court's authority was needed because of inconsistencies among the statutes governing payment of support. To assure that all support payments could be redirected to the KPC during the initial period of conversion, a proviso in the 1999 omnibus budget bill was enacted. The proviso's clarification needs to be made permanent by amending the individual statutes that specify payment of child support through the clerk of court.

One of the functional requirements for the Kansas Payment Center is disbursement of support within two business days of receipt. If support payments in the possession of the KPC are not made exempt from attachment or garnishment, there is a risk that disbursement could be delayed beyond the federal limit. (Note: This exemption would apply only to support moneys held by the KPC, not to assets of the KPC contractor or to wages of KPC employees.)

Another functional requirement for the KPC is that all disbursements to families, both IV-D and non IV-D, be made from a single location. SRS and OJA are currently working with the Department of Administration's Division of Accounts and Reports to see if current state law is broad enough to accommodate this requirement; if it is not, appropriate amendments (modeled on those for Electronic Benefit Transfers) will be needed.

Income Withholding. Under the Child Support Performance and incentive Act of 1998 (H.R. 3130), the states must require use of a new standardized form for third parties to enroll children for group health coverage when there is a medical support order. The Kansas medical withholding provisions need to be amended to conform to this requirement.

In addition, a standardized notice/order of (cash) income withholding must be used in all states. Some confusion exists concerning the existing state law's definition of the term "copy," so we propose clarifying the definition to assure that the standardized form is used statewide and is honored by all payors.

Federal law requires the State to penalize any payor who fails to comply with an income withholding order at least the amount that would have been withheld and paid over but for the payor's failure. Under Kansas law, this penalty is currently imposable only in the judge's discretion; it must be made mandatory to comply with Title IV-D.

55 27 03

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785) 232-0753
FACSIMILE: (785) 232-1866
WEB SITE: www.aldersonlaw.com

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
LESLIE M. MILLER
DEBORAH FRYE STERN

OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON
JOHN E. JANDERA (RETIRED)

*LL.M., TAXATION
**LICENSED TO PRACTICE IN KANSAS AND MISSOURI

MEMORANDUM

TO: Senator Tim Emert, Chairman, and Members of Senate Committee on Judiciary
FROM: Bob Alderson on behalf of Kansas Pharmacists Association
DATE: January 27, 2000
RE: Request for Introduction of a Bill Amending K.S.A. 1999 Supp. 65-7003

As you will recall, during the 1999 session the Senate Committee on Judiciary had under consideration Substitute for House Bill No. 2469 which had as a major purpose the elimination of the illegal manufacturing of methamphetamines and other controlled substances. Preliminary to the full Committee's deliberations, Senator Vratil chaired a subcommittee which considered potential amendments to the bill. I appeared before Senator Vratil's subcommittee on behalf of the Kansas Pharmacists Association to request an amendment which would exempt pharmacists to the same extent that all other "practitioners" (as defined in the bill) were exempted. The subcommittee adopted the recommended change, the full committee included that amendment in the bill recommended for passage to the full Senate and it was included in the version of the bill passed by the Senate.

The efficacy of the exemption adopted by the Senate depended upon the definition of "practitioner" in Section 9 of the bill (now codified as K.S.A. 1999 Supp. 65-7003). However, the conference committee recommended substitution of the definition of "practitioner" found in the Uniform Controlled Substances Act, apparently for the sole purpose of maintaining consistency with that act, and without any thought of its effect on the exemption. Unfortunately, that definition of "practitioner" does not include pharmacists. Thus, the exemption of pharmacists sought to be achieved by this Committee was undone.

Accordingly, I am respectfully requesting on behalf of the Kansas Pharmacists Association the introduction of a bill amending K.S.A. 1999 Supp. 65-7003, the definition section of the Kansas Chemical Control Act enacted by HB 2469, so as to insert "pharmacists" in the definition of "practitioner" as set forth in subsection (k). By this change, the exemption of pharmacists intended by this Committee last session will be accomplished.

Thank you for your consideration of this request. I will be happy to respond to any questions.

Jud 1-27-00 att 3

TESTIMONY OF JUDICIAL COUNCIL
IN SUPPORT OF SENATE BILL 419

Senate Bill 419 is the result of a study of the Judicial Council's Criminal Law Advisory Committee regarding the treatment of juvenile adjudications for sentencing guideline purposes. The study parallels a national debate and examination of due process and equal protection issues which arise when juvenile adjudications are automatically scored in criminal history.

There are several considerations which frame this subject. First, in many respects, the goal of the juvenile justice system is to bring the offender into contact with available resources in the community for rehabilitation. Concerns regarding future sentencing consequences often restrain resolutions which would allow optimum use of such resources. Second, the juvenile justice system was not originally intended to attach criminal consequences to an adjudication. Hence, for decades, juvenile cases were resolved without concern for future consequences; rather, the goal often was quick resolution regardless of the outcome so that community resources could be more quickly accessed. Third, even today with sentencing guidelines in places, the juvenile justice system lacks many of the due process protections which are available to the adult defendant. Fourth, because juvenile court records are not accessible in many states, criminal histories are often inaccurate. Defendants who have lived in Kansas during their youth, especially those who have committed all their offenses in one county, often receive a disparate sentence in comparison to defendants who have lived in other places.

On the other hand, criminal activity which a defendant committed while a juvenile should not be ignored.

In an attempt to balance these competing interests, the Committee concluded that a defendant's juvenile record is relevant and should be considered by the trial court at sentencing, but should not be arbitrarily scored in criminal history. Rather, the presence of a juvenile record should be an aggravating factor for consideration in determining whether a departure sentence is appropriate. Thus, the sentencing court could consider the level of due process and other factors in determining whether the adjudication should result in a more severe subsequent sentence.

Under sentencing guidelines, the court may count adjudications in determining the sentence. The proposed language of the aggravating factor, see lines 36 and 37 on page 8, allows the trial court to utilize not only adjudications, but also any criminal activity. This language parallels language of sentencing statutes which apply to sentences for crimes committed before sentencing guidelines were effective. Under K.S.A. 21-4606, the court could consider prior criminal activity. The Supreme Court of Kansas upheld the consideration of crimes where the defendant had not been charged, charges which were dismissed as a part of a plea bargain and other evidence of criminal activity even where an adjudication or conviction had not resulted. *See, e.g., State v. O'Neal*, 256 Kan. 909, 911, 889 P.2d 128 (1995).

Hence, it is not that a "softer" approach to juvenile crime is intended. What is intended is that a sentencing judge will examine the proceedings in the juvenile matter, assure that due process guarantees were given and exercise discretion of whether the prior adjudication or other criminal activity should be an aggravating factor in the sentence.

After consideration of the report, Judicial Council approved the report and proposed legislation, and urges you to adopt Senate Bill 419.

Criminal Law Advisory Committee
Kansas Judicial Council

Marla J. Luckert, Judge, Topeka

Ellen Byers, Professor, Washburn Law School, Topeka

James W. Clark, Prosecutor, Kansas Securities Commission, Topeka

Edward G. Collister, Defense attorney, private practice, Topeka

Jim D. Garner, House of Representatives and defense attorney, private practice, Coffeyville

Michael Malone, Judge, Lawrence

Steven L. Opat, Defense attorney, private practice, Junction City

Debra Peterson, Assistant district attorney, Wichita

Elwaine F. Pomeroy, Defense attorney, private practice, Topeka

Mark J. Sachse, Defense attorney, private practice, Kansas City

Loren L. Taylor, Law enforcement advisor and instructor, Kansas City

TESTIMONY OF THE JUDICIAL COUNCIL OF KANSAS IN SUPPORT OF SENATE BILL NO. 424

JANUARY 27, 2000

Senate Bill 424 is the result of a study of the Criminal Law Advisory Committee of the Judicial Council. The legislation seeks to resolve ambiguities in the current statutes which allow the use of prior statements of a child without the child having to be called at the preliminary hearing in a criminal case. The legislation also eliminates conflicts between the various statutes which deal with the admission of statements of a child witness at trial or other hearing.

In 1993, legislation was introduced to allow the admission of out-of-court statements of children less than 13 years of age at preliminary hearings and under other circumstances. From the legislative history, it appears the purpose of the provisions was to protect the child witness from the stress and emotional upset of having to testify in court.

The Judicial Council study began when the Honorable Kay Royse of the Kansas Court of Appeals noted ambiguities in K.S.A. 22-2902(3) which currently reads: "Except for witnesses who are children less than 13 years of age, the defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf." The intent of the provision would seem to be that if a prosecutor elected to use an out-of-court statement of a child witness, the defendant could not insist on a right to cross-examine. However, if literally interpreted, the provision would prohibit the defendant from cross-examining a witness who did testify in court and prevent the defendant from calling witnesses on his own behalf even in situations which might not be traumatic for the child witness.

Sen Jud
1-27-00
att 5

Then in *State v. Correll,* 25 Kan. App. 2d 770 (1998), the Court of Appeals found a conflict between K.S.A. 22-3433 and 60-460(dd). The Court of Appeals stated that the conflict "must eventually be addressed by our Supreme Court and/or legislature. Meanwhile, we hold that where both statutes apply, as they do under the facts of the present case, K.S.A. 60-460(dd) takes precedence and controls the proceedings." 25 Kan. App. 2d at 775. The conflict arises because K.S.A. 22-3433 requires a finding that the child is available to testify, but would be traumatized. K.S.A. 60-460(dd) requires a finding that the child be unavailable to testify.

Senate Bill 424 repeals K.S.A. 22-3433, and deletes the ambiguous language from K.S.A. 22-2902. In place of the repealed language a simple statement is added to K.S.A. 22-2902a to allow the admission of hearsay statements of a child victim less than 13 years of age at preliminary hearings. Currently, this statute allows the admission of reports of certain forensic tests without the testimony of the tester. This provision has been upheld as constitutional in *State v. Sherry*, 233 Kan. 920, 929, 667 P.2d 367 (1983). Hence, the Committee believes the language at lines 36 and 37 of Senate Bill 424 would be found constitutional under the reasoning of the decision in *Sherry* and of cases upholding the constitutionality of K.S.A. 60-460(dd) (*see State v. Chisholm*, 245 Kan. 145, 777 P.2d 753 (1989); *State v. Eaton*, 244 Kan. 370, Syl. ¶¶ 1, 2, 769 P.2d 1157 (1989); *White v. Illinois*, 502 U.S. 346).

The Criminal Law Advisory Committee believes Senate Bill 424 accomplishes the legislative intent of protecting child victims from testifying, and resolves conflicts and ambiguities in current language. The Judicial Council adopted the report of the Criminal Law Advisory Committee and recommends the passage of Senate Bill 424.

Criminal Law Advisory Committee
Kansas Judicial Council

Marla J. Luckert, Judge, Topeka

Ellen Byers, Professor, Washburn Law School, Topeka

James W. Clark, Prosecutor, Kansas Securities Commission, Topeka

Edward G. Collister, Defense attorney, private practice, Topeka

Jim D. Garner, House of Representatives and defense attorney, private practice, Coffeyville

Michael Malone, Judge, Lawrence

Steven L. Opat, Defense attorney, private practice, Junction City

Debra Peterson, Assistant district attorney, Wichita

Elwaine F. Pomeroy, Defense attorney, private practice, Topeka

Mark J. Sachse, Defense attorney, private practice, Kansas City

Loren L. Taylor, Law enforcement advisor and instructor, Kansas City

5-5
1-27
Att 1

OFFICE OF THE DISTRICT ATTORNEY
SEVENTH JUDICIAL DISTRICT
JUDICIAL & LAW ENFORCEMENT CENTER
111 E. 11th STREET • LAWRENCE, KS 66044-2909

CHRISTINE K. TONKOVICH
DISTRICT ATTORNEY
DOUGLAS COUNTY, KANSAS

TELEPHONE (785) 841-0211
FAX (785) 832-8202

January 27, 2000

Chairman Emert, Members of the Senate Judiciary Committee

I am Christine Tonkovich, District Attorney for the Seventh Judicial District, Douglas County. I appreciate the opportunity to speak with you today about Senate Bill 424, which has been proposed by the Judicial Council. As Judge Luckert indicated, the proposed amendment would clarify the existing law with regard to children victims at preliminary hearing. This will not change the apparent legislative intent of K.S.A. 22-2902, but will provide a clear directive to trial courts regarding evidence at a preliminary hearing when a child is a victim. The safeguards of K.S.A. 60-460(dd) still apply when addressing admissibility of child hearsay statements at trial, specifically a finding of reliability when such statements are to be introduced at trial.

I am also a member of the Kansas County and District Attorney's Association (KCDAA) Board of Directors. This change is supported by the KCDAA.

An additional change to K.S.A. 22-2909a that I want to propose is to add the Kansas City Missouri Police Crime Laboratory to the list of crime laboratories whose certified reports are admissible at preliminary hearing without requiring the testimony of the scientist who performed the testing. As this committee is aware, the Kansas Bureau of Investigation laboratories across the state are burdened with a high case load and a lack of staff to complete the required testing while an accused person is awaiting trial. For example, the KBI has only one ballistics expert, with a backlog of 229 cases to be examined. This same scientist is trained as a toolmark expert, however, he does not have the time needed to do toolmark analysis on all cases. KBI is not able to perform toolmark analysis unless the case is a homicide. KBI was provided two additional firearms examiners to be housed at the Kansas City, Kansas Crime Laboratory, currently under construction. Funding for the personnel to staff that position has been eliminated from the KBI budget. Also, for approximately 8 months the KBI lab was unable to do any testing of DNA with a method known as PCR. (Polymerase Chain Reaction). This method of testing is used when the samples are small or degraded. While the newer and more exacting method of PCR testing was brought on-line at the KBI, all requests for testing sent to KBI were referred to the FBI laboratory which has an 8 to 12 month backlog of its own.

The Kansas City, Missouri Police Crime Lab recently changed its name from the Kansas City Regional Criminalistics Laboratory, to clarify its role as a part of the KC Missouri Police Department. This lab is a regional crime lab which accepts evidence

Sn Jud
1-27-00
att 6

from any law enforcement agency. The Lawrence Police Department has sent at least 11 cases to this lab in the past two years. Other Kansas agencies which have sent evidence for analysis include:

Butler County
Douglas County
Garden City
Independence, Kansas
Johnson County, including the crime lab at Johnson Co. Sheriff's Dept.
Kansas City, Kansas Police Dept,
U.S. Attorney's Office for the District of Kansas
Kansas State University's Police Department
Lawrence Police
Leavenworth Police
Leawood Police,
Merriam Police
Metro Squad (KCK)
Olathe Police,
Overland Park Police.
Pittsburg-Crawford County
Shawnee County Sheriff
Shawnee Police,
Topeka Police
Wichita Police
Wyandotte County.

To date, the KBI lab does not do hair and fiber analysis, does not do toolmark impressions except for homicide cases, has an extensive ballistics backlog, and until recently was unable to do PCR DNA testing. Many Kansas agencies have sent evidence to be evaulated at the KCMO Police Crime lab. The laboratory is accredited and its scientists have been subpoenaed to testify in a number of different district and circuit courts, including Kansas, Missouri, Colorado and Oklahoma. They also do testing for several federal agencies including FBI, ATF, FAA and the U.S. Postal Service.

I have previously testified in support of funding efforts for the KBI lab. The KBI lab and its scientists continue to have my confidence and support. Funding for the KBI lab to ensure the continued quality of service to law enforcement should be a priority. In those cases where forensic evidence must be sent to another lab, and when that lab has earned the credentials that the KCMO Police Crime lab has earned, then the reports should be treated just as the KBI reports are treated for purposes of Preliminary Hearings.

Thank you for allowing me to address this issue. I will gladly try to answer any questions you may have regarding this proposal.

SJ 1-27 att #7

OFFICE OF THE DISTRICT ATTORNEY
SEVENTH JUDICIAL DISTRICT
JUDICIAL & LAW ENFORCEMENT CENTER
111 E. 11th STREET • LAWRENCE, KS 66044-2909

CHRISTINE K. TONKOVICH
DISTRICT ATTORNEY
DOUGLAS COUNTY, KANSAS

TELEPHONE (785) 841-0211
FAX (785) 832-8202

January 28, 2000

Chairman Emert, Members of the Senate Judiciary Committee:

I am Christine K. Tonkovich, Douglas County District Attorney and member of the board of Kansas County and District Attorneys Association (KCDAA). I first want to thank you for allowing my comments yesterday during your hearing on S.B. 419. There were a few points that I wanted to bring to your attention.

As I stated, my perspective is that of a career prosecutor. I have been Douglas County District Attorney since August 1996, and a prosecutor in this office since September 1989. I began my career as the juvenile prosecutor and have handled every type of case this office is assigned.

I strongly believe that the amendments to the sentencing statutes outlined in S.B. 419 are not in the best interest of this State. I urge this committee to carefully consider the full impact of the proposed changes. In addition, I have since testifying, received information that the KCDAA board opposes this bill.

As you are aware, the recent changes made in the juvenile justice system reversed a trend to make it easier to prosecute juveniles as adults. In fact, the "automatic waiver" provision was eliminated to address the concern that children were automatically thrown into the adult system as a result of "youthful mistakes". Under the current system, most juveniles will stay in the juvenile justice system. Except in the cases of the most violent offenses, a juvenile will be prosecuted as an adult only after all possible resources of the juvenile system are exhausted.

The implementation of Sentencing Guidelines in this state addressed a number of issues. First, it created sentence grids that would keep non-violent offenders who have a history of non-violent convictions out of prison. Only the more violent crimes, and those committed by individuals with prior person felonies, consistently fall within the presumptive prison boxes.

Further, the legislature has addressed the issue of prior juvenile adjudications and criminal history. K.S.A. 21-4710(d)(4) provides that juvenile adjudications for nonperson, lower level felonies and misdemeanors will decay if the offender commits a subsequent felony after he or she reaches the age of 25.

SenJud 1-27-00
Att 7

Except in the cases of the most violent offenders, a person will be given "a second chance" upon reaching age 25.

A second goal of Sentencing Guidelines was to ensure equal treatment of similarly situated offenders across the state. Thus, a court is required to impose the guideline sentence unless the court finds substantial and compelling reasons to depart from the guideline sentence. The proposed amendments would add a prior adjudication as a juvenile to the list of aggravating factors that may be considered for departure. Departure sentences raise two concerns. First, there will be a disparity among the various jurisdictions as to whether the prior adjudication will result in a different sentence. Second, a departure sentence is subject to appellate review, whereas a guideline sentence is not. In part, the Sentencing Guidelines have served to reduce the number of appeals docketed regarding sentencing issues.

Finally, those of us who have prosecuted before and after Sentencing Guidelines recognize that the question of retroactive application is important. The system has only recently resolved the question of many inmates whose sentence was imposed pre-guidelines, and who wanted that sentence reduced under the conversion process. The legislature will have to decide whether the proposed changes would apply retroactively to persons sentenced under the current guidelines. Also, regardless of the legislature's decision, the appellate courts will be flooded with appeals filed by persons in custody with prior person juvenile adjudications.

Accountability is a key concern. The juvenile justice system does address the need to allow youthful offenders a chance to learn and rehabilitate before labeling a juvenile a career criminal. The adult system allows adults with non-violent prior crimes to be treated as "first-time offenders" at the age of 25. The proposal to remove prior person adjudications will not serve the interests of the citizens of our communities.

Thank you for the opportunity to address these issues. I will gladly try to answer any questions you may have.

7-2