

Approved March 23, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:15 on March 22, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Ken Hales, Juvenile Justice Authority (JJA)
Joyce Allegrucci, Secretary, Child and Family Services, SRS

Others attending: see attached list

The minutes of the March 20th joint and regular meetings and the March 21st meeting were approved on a motion by Senator Goodwin and seconded by Senator Donovan. Carried.

Senate Sub for HB 2224—children and adults, abuse of, reporting requirements, exemptions

Conferee Hales requested reconsideration of **SB 622/Senate Substitute for HB 2224** and briefly reviewed the JJA's amendments to this bill. He stated that these amendments are necessary to bring the juvenile offender code into compliance with Federal regulations. (attachment 1) Following discussion Senator Goodwin moved to amend the JJA amendments into Senate Sub for HB 2224 and pass the bill out favorably as amended, Senator Vratil seconded. Carried.

SubSB 633—CINC; defining child in need of protection and youth in need of community intervention; creating the family services and community intervention fund

The Chair inquired of Conferee Allegrucci if there was a way to take from the bill what is needed by SRS for the adoption of the Adoption and Safe Families Act (AFSA). Conferee Allegrucci stated that it would require rewriting the bill. She reiterated from her testimony yesterday that most of the opposition with this bill is with the bifurcation of the Child in Need of Care (CINC) code. She stated she felt it was important to have distinctions in the CINC code to assure accountability. She reviewed the work SRS has done over this past year meeting with judges and district attorneys to address their concerns. Reluctance to pass the bill was expressed by several Committee members due to fears expressed by the opposition that this issue was "moving too fast" and needed further consideration. It appears there is an urgent need to pass the bill within a week in order to receive federal funds. On inquiry by Committee, Conferee Allegrucci stated that the bifurcation of CINC was not required in AFSA. Following further discussion, the Chair requested that SRS Attorney Laura Howard work with Revisor Gordon Self to draft a version of the bill that might be acceptable to all.

The meeting adjourned at 11:00 a.m. The next scheduled meeting is March 23, 2000.

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Albert Murray, Commissioner

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BILL GRAVES
Governor

SENATE JUDICIARY COMMITTEE
REQUEST FOR RECONSIDERATION
AND AMENDMENT TO
SB 622/ SENATE SUBSTITUTE FOR HB 2224
MARCH 22,2000

What is it?

The attached amendments redefine reasonable efforts and contrary to the welfare language required for court removal of a juvenile from the parental home. The amendments also require a finding that reasonable efforts are being made to finalize a permanency plan for a child in state custody. The new language mandates that these findings be made by the court and journalized for each juvenile that is removed from the home.

Why are the amendments necessary?

The amendments are necessary to bring the juvenile offender code into compliance with Federal regulations referred to in yesterday's testimony on SB 633. JJA expects to receive approximately \$2.5 million in Title IV-E funding for the current fiscal year. JJA is under the same IV-E mandates that SRS representatives referred to in testimony yesterday.

What happens if the amendments are adopted?

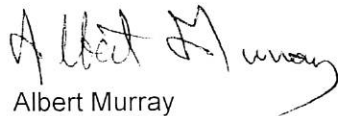
Passage of legislation is step one. Step two is training at the court level to implement the requirements. Step three is passing the federal audit this summer. For every audited case after the regulation's effective date that does not contain the required findings in the journal entry, the State must reimburse the IV-E funds that were received for the child and the child is ineligible from that point forward for IV-E. If the State incurs a significant number of violations, additional penalties can be assessed against the State.

What happens if the amendments are not adopted?

Every juvenile offender case that is audited this summer and in the future will be out of compliance, requiring repayment of IV-E funds and additional penalties, as well as making the child ineligible for IV-E funding for the duration of custody with an agency.

In conclusion:

We have worked with the judiciary, specifically Judge Graber, regarding the language of these amendments. We feel we have a good product that parallels the regulations. I would appreciate your consideration of the attached amendments and hope that you will report the bill out of committee favorably inclusive of them. Thank you.



Albert Murray
Commissioner

Sn Jud
3-22-00
Att 1

38-1664. Juvenile offenders placed in custody of commissioner, considerations by court; notification of court; reports by commissioner and foster parents; permanency hearing.

(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.

K. S. A. 38-1664(a)

Strike the present (1) and (2) and replace with the following:

(1) Reasonable efforts have been made to maintain the family unit and prevent unnecessary removal of a child from the child's home, as long as the child's safety is assured, or an emergency exists which threatens the safety of the child. If the juvenile is in the custody of SRS, the secretary shall prepare a report for the court documenting such reasonable efforts. If the juvenile is in the custody of JJA, the commissioner shall prepare a report for the court documenting such reasonable efforts. Otherwise, the predisposition investigation writer shall prepare a report to the court documenting such reasonable efforts. Reasonable efforts are not required prior to removal if the court finds:

- (A) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances;
- (B) A court of competent jurisdiction has determined that the parent has been convicted of murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the child or another child of the parent; or
- (C) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

Such findings must be included in the court's order.

(2) The juvenile's removal from the home must be the result of a judicial determination to the effect that continuation of residence in

the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions the removal of a child from home.

(3) A permanency plan must be presented at disposition or within 30 days thereafter. If a permanency plan is in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. If the child is placed in the custody of JJA the commissioner shall prepare the plan. The plan must comply with the requirements of K. S. A. 38-1565(a) as amended. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan.

(4) The court must determine that reasonable efforts have been made and what progress has been made to finalize the permanency plan that is in effect within twelve months of the date the child is considered to have entered foster care and at least once every twelve months thereafter while the child is in foster care.

(5) The court must reflect reasonable efforts and contrary to the welfare findings in orders awarding custody to the commissioner temporarily, at sentencing and at modification hearings. If the child is placed in the custody of the commissioner, the court shall provide the commissioner with a written copy of any orders entered upon making the order for the purpose of documenting the orders.

(6) If the child is placed in JJA custody, the commissioner shall document in writing the reasonable efforts that have been made and the progress made to finalized the permanency plan, before each hearing reviewing the plan.

K. S. A. 38-1664(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. K. S. A. 38-1664(c) and document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan.

38-1632. Detention hearing; waiver; notice; procedure; audio-video communications.

K.S.A. 38-1632

(f) – Strike “, the commissioner”.

New (g) The court may enter an order removing a child from the custody of a parent and placing in the temporary custody of the commissioner pursuant to K. S. A. 38-1664.

Current (g) would become new (h)

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(f) *Temporary custody.* If the court determines that it is not necessary to detain the juvenile but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility, ~~the commissioner~~ or some other suitable person willing to accept temporary custody.

h (g) *Audio-video communications.* Detention hearings may be conducted by two-way electronic audio-video communication between the alleged juvenile offender and the judge in lieu of personal presence of the juvenile or the juvenile's counsel in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's counsel during such proceedings or counsel may be personally present in court as long as a means of communication between the juvenile and the juvenile's counsel is available for consultation between the juvenile and the juvenile's counsel in confidence.

38-1663. Sentencing alternatives. (a) When a respondent has been adjudicated to be a juvenile offender, the judge may select from the following alternatives:

- (1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate based on the juvenile justice programs in the community, including a requirement of making restitution as required by subsection (d).
- (2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders based on the juvenile justice programs in the community, including a requirement of making restitution as required by subsection (d).
- (3) Place the juvenile offender in the custody of a youth residential facility or, in the case of a chronic runaway youth, place the youth in a secure facility, subject to the terms and conditions the court orders.
- (4) Place the juvenile offender in the custody of the commissioner.

K.S.A. 38-1663(a)(4)
as provided in K.S.A. 1997 Supp. 38-1664, and amendments thereto..