

Approved  
Date: *January 23, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:41 a.m. on January 18, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Oleen (excused)  
Senator Schmidt (excused)

Committee staff present:

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

Conferees appearing before the committee:

Sheila Walker, Kansas Department of Vehicles (KDV)  
Steve Edwards, Deputy Director Court Services, 5<sup>th</sup> Judicial District  
Bob Smith, President/CEO of United Methodist Youthville  
Joyce Allegrucci, Assistant Secretary, Children and Family Policy, SRS  
Susan Bechard, Kansas County and District Attorneys Association (KCDAA)  
Kathy Porter, Office of Judicial Administration (OJA)  
Melissa Wangemann, Office of Secretary of State

Others attending: see attached list

Minutes of the January 17, 2001 meeting were approved on a motion by Senator Donovan, seconded by Senator Umbarger. Carried.

Conferee Walker requested introduction of a "clean-up" bill to correct a discrepancy for drinking drivers under the age of 21. This would clarify the intent of current law and eliminate disparities in sentencing. (attachment 1) Following discussion Senator O'Connor moved to introduce the bill, Senator Donovan seconded. Carried.

**SB 16—concerning CINC; relating to temporary custody hearing**

Conferee Edwards testified as a proponent of **SB 16**, a bill which he stated would reduce the time for temporary custody hearing from 72 hours to 48 hours resulting in more immediate involvement by the SRS, ergo, decreased potential for the child being placed in custody, ergo, decreased cost to the county. The Conferee did recognize this change may result in a disadvantage for SRS. (attachment 2) Discussion followed.

Conferee Smith testified in opposition to **SB 16**, the amendment to change the time for temporary custody hearing from 72 hours to 48 hours. He presented an overview of his organization and elaborated on the organization's utilization of the current 72 hour time frame and its effectiveness. (attachment 3) Discussion followed.

Conferee Schalansky testified in opposition to **SB 16** stating that the 1999 legislature raised the 48 hour time limit to 72 hours at the request of SRS to allow them more time to establish services so that children in need of care (CINC) could be returned home as soon as possible rather than being placed in temporary foster care. She further discussed the \$5.1 million state funding which was allocated by the 2000 legislature to facilitate this and presented a brief overview of the CINC process and the agencies and groups involved in assisting children in need of care. (attachment 4) Discussion followed.

Conferee Bechard testified in opposition to **SB 16**. She discussed a session 2000 house bill which was passed to comply with ASFA regulations and stated these regulations require "reasonable efforts" and mandate thorough investigation and documentation in CINC cases. She expressed concern that reduced time limits for a temporary custody hearing would result in inadequate investigation and documentation. (attachment 5)

Conferee Porter testified on behalf of District Magistrate Judge Vano of the 10<sup>th</sup> Judicial District who, in a letter to Committee, expressed his concerns about **SB 16** stating that reduced time for CINC hearings will result in reduced time for thorough investigations of verifiable facts needed to render a justifiable court decision. (attachment 6) Discussion followed.

Written testimony in opposition to **SB 16** was submitted by the Children's Alliance of Kansas by Bruce Linhos. (attachment 7)

**SB 20—concerning charitable organizations and solicitations act; regarding bonds**

Conferee Wangemann testified in support of **SB 20** a bill which repeals the bond requirement in the Kansas Charitable Organizations and Solicitations Act and brings Kansas law into compliance with a recent decision of the tenth Circuit Court of Appeals which determined said bond is unconstitutional. (attachment 8) Discussion followed.

Senator Schmidt submitted a memorandum to Committee offering an amendment to **SB 20**. He stated "the amendment would increase maximum civil penalty amounts available in the statute so they mirror penalties available under the Kansas Consumer Protection Act." On inquiry by the Chair on behalf of Senator Schmidt regarding two proposed amendment provisions, Conferee Wangemann agreed to both. (attachment 9) Discussion followed.

The Chair encouraged Committee to read the printed material handed out regarding the Kansas Payment Center (KPC). A joint house and senate judiciary committee hearing on the KPC is scheduled for Monday, January 22.

The meeting adjourned at 10:26 a.m. The next scheduled meeting is January 22, 2001 at 3:30 p.m. in room 313-S.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 18, 2011

NAME	REPRESENTING
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Scott Brunner	DOB
BOB SMITH	UNITED METHODIST YOUTHVILLE
Bill Henry	United Methodist Youthville
Joe Harold	KSC
MAUREEN MATHONEY	KAW VALLEY CTR
Evan Bechard	KCPAA
Melissa Wangemann	Sec. of state
Shelly King	Jochos, Braden, Benbow, Hesse
Mark Kiser	OJA
Amy Bertrand	OJA
Kathy Ponder	OJA
Charita Shahn	CWA of Ks.
Harley Becker	KRTA
Melissa Druidson	in lieu for Sen. O'Connor
Steve Kuyelick	ATTORNEY GENERAL
Bruce Lutz	Children's Alliance
Melissa Ness	Ks Children's Service League
Barb Coxant	KRTA



Sheila J. Walker, Director  
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Division of Vehicles

TESTIMONY

**TO:** Chairman John Vratil  
Members of the Senate Judiciary Committee

**FROM:** Sheila J. Walker, Director  
Kansas Division of Vehicles *Sheila J. Walker*

**DATE:** January 18, 2001

**RE:** DUI Discrepancy for Drivers Under 21

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Chairman Vratil and members of the Senate Judiciary Committee, my name is Sheila Walker, and I serve as Director of the Kansas Division of Motor Vehicles. I appreciate the opportunity to introduce a bill that is intended to clean up a discrepancy for drinking drivers under the age of 21.

Currently, a driver under the age of 21, whose blood alcohol content is less than .08, serves a hard, one-year driver's license suspension. If that same driver's blood alcohol content measures *above* .08, the license is suspended for one-year or the length of diversion. There are courts that are allowing 30-day license suspensions, rather than a full year. The message this sends to teens is: the more you drink, the less of a driver's license suspension you may serve.

The division recommends consistency, so affected drivers under the age of 21 serve a standard, one-year suspension.

Thank you for your consideration of this simple cleanup measure.

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1-18-01  
att 1*

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**COURT SERVICES  
and  
COMMUNITY CORRECTIONS  
FIFTH JUDICIAL DISTRICT COURT  
Lyon and Chase Counties**

Gary L. Marsh, Director  
Steven Edwards, Deputy  
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Fax No. (316) 341-3456

Merlin G. Wheeler, Chief District Judge  
John O. Sanderson, District Judge  
W. Lee Fowler, District Judge  
John R. Conklin, Magistrate Judge

JANUARY 18, 2001

SENATE JUDICIARY COMMITTEE-SENATE BILL 16  
CINC TEMPORARY CUSTODY HEARING

PRESENTED BY: STEVEN EDWARDS, DEPUTY DIRECTOR  
COURT SERVICES FIFTH JUDICIAL DISTRICT, EMPORIA

1. REDUCING THE TIME FROM 72 HOURS TO 48 HOURS FOR TEMPORARY CUSTODY HEARING. THE ADVANTAGE FOR REDUCING THE TIME SHOULD HELP SRS BECOME INVOLVED IN A MORE TIMELY MANNER WITH THEIR CINC INVESTIGATION. THIS IN TURN COULD SAVE MONEY FOR UNNESSARY PLACEMENT EXPENSES OF THE CHILD.
2. A DISADVANTAGE TO REDUCING THE AMOUNT OF TIME, COULD BE THAT SRS MIGHT NOT HAVE ENOUGH TIME TO COMPLETE THE INVESTIGATION IF THERE ARE SEVERAL CHILDREN INVOLVED OR IT IS A COMPLEX CASE.
3. WHEN A CHILD IS PLACED IN POLICE CUSTODY FOR THE WEEKEND AND THE CHILD IS A CINC, THE ON CALL INTAKE WORKER HAS TO COMPLETE THE INTAKE AND ASSESSMENT AND FIND A PLACEMENT FOR THE CHILD FOR THE WEEKEND. ON MONDAY MORNING SRS IS NOTIFIED. SRS SHOULD START THE INVESTIGATION AS SOON AS POSSIBLE. IN THE PAST WE HAVE INCIDENTS WHERE SRS DID NOT RESPOND UNTIL THE AFTERNOON WHEN THEY WERE TOLD IN THE MORNING.

*Signed  
1-18-01  
att 2*

4. THE IDEAL SITUATION WOULD BE THAT SRS BE INVOLVED FROM THE START OF THE INTAKE PROCESS. I BELIEVE IN THE LONG RUN THIS WOULD SAVE MONEY FOR SRS AS WELL AS OUR LOCAL PURCHASE OF SERVICE MONEY.
  
5. THE COST OF PAYING THE INTAKE WORKER AFTER HOURS AND ON THE WEEKENDS IS PAID BY THE COUNTY. THE COST OF PLACING THE CHILDREN IN FOSTER CARE OR ATTENDANT CARE IS PAID BY THE COUNTY UNTIL THE CHILD IS PLACED IN SRS CUSTODY. IF THE CHILD IS PLACED BACK HOME BY SRS WE ARE NOT REIMBURSED THE COST FOR THE PLACEMENT. ALL COSTS INCURRED FOR PLACEMENT ARE PAID BY THE COUNTY.
  
6. THE BOTTOM LINE IS THAT THE SOONER SRS INTERVENES WITH A CNIC, THE LESS CHANCE THAT THE CHILD WILL HAVE TO GO INTO CUSTODY.
  
7. WHEN A COURT DATE IS SET FOR THE TEMPORARY CUSTODY HEARING, A 24 HOUR NOTICE HAS TO BE GIVEN TO ALL INTERESTED PARTIES. THIS 24 HOURS NOTICE THEN CUTS THE TIME IN HALF FOR THE CINC INVESTIGATION. SO IN REALITY SRS ONLY HAS 24 HOURS TO COMPLETE THEIR INVESTIGATION AND FILE THE CINC PETITION WITH THE COURT.

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**TESTIMONY OF BOB SMITH**  
**UNITED METHODIST YOUTHVILLE**  
**SENATE JUDICIARY COMMITTEE**  
**SENATE BILL 16**

**January 18, 2001**

Mr. Chairman and Senators, my name is Bob Smith and I am President/CEO of United Methodist Youthville. United Methodist Youthville is one of the largest not-for-profit, child and family care agencies in the state of Kansas. In two years, we will celebrate our 75 anniversary. Currently, we have over 450 foster homes and we are the lead contractor for foster care and reunification services in Sedgwick County (Region 5). In addition, we have two residential campuses one in Newton and the other in Dodge City. Both residential campuses house boys and girls ages 10 to 18 in two different levels of care as well as an Emergency Shelter/Temporary Shelter on our Dodge City campus.

We appreciate the opportunity to explain United Methodist Youthville's concern if Senate Bill #16 would pass with in its current recommended state. Specifically, I would like to address the seriousness of changing line 18 (b) from the current 72 hours to the suggested 48 hours.

Every day we work as partners to find the most appropriate placement for children. Over the last few years those of us in Child Welfare have utilized the 72 hour time frame to help vulnerable children. By allowing the system this time, we may prevent a family from entering the foster care system or the foster care contractors will have sufficient time to find an appropriate foster care or kinship placement.

Sen Jud  
1-18-01  
att 3

**Prevention:** The extra day allows SRS to find community resources (family preservation, mental health services, etc.) to wrap around the family which can prevent them from entering the foster care system.

**Appropriate Placement:** All of us in Child Welfare work hard to keep the number of moves for children in the foster care system down as few as possible. The extra day allows us to look for family foster homes for large sibling groups, find placement for children in their local community/school area, and find appropriate placement for special needs children.

**Kinship:** Currently in Region 5, our foster care staff work to locate kinship options immediately upon the child's potential entry into the foster care system. The extra day has often afforded them opportunities for children that may have required a move to an emergency placement and then later to the relatives home.

All of us at Youthville appreciate the work done on behalf of children by the courts, SRS, community providers, and you our legislators. Thank you.



**Kansas Department of Social and Rehabilitation Services  
Janet Schalansky, Secretary**

Senate Judiciary Committee, Room 123-S  
January 18, 2001 9:30 a.m.

**Testimony: Senate Bill 16**

Thank you Mr. Chairman and committee members for this opportunity to appear in opposition to a change to the Kansas Code for Care of Children in Senate Bill 16.

During the 1999 Kansas legislative session the 48 hour time limit was raised to 72 hours at the request of SRS. The extra day was added to allow community service providers and SRS more time to establish services so that children could return home and avoid placement in the custody of the Secretary of SRS or the Commissioner of Juvenile Justice. This change became even more important last legislative session when the Governor and the Kansas Legislature agreed to provide \$5.1 million in new funding to reduce the flow of children inappropriately into foster care.

The effort to keep children at home with their own families whenever their safety can be assured is in recognition of the fact that disrupting family ties can and often does injure children. The first responsibility of SRS is to protect children. However, safety from harm must entail a full understanding of the harms which a child can suffer and these include harm to a child's emotional development and loss of attachment when family connections are disrupted. Based on this understanding SRS, with your support, is expanding the services available to families in their home communities. The goal is to assure that whenever possible services will be provided to families to assist them in maintaining their children at home.

SRS has allocated funds to the 11 area SRS offices and the offices have collaborated with others in the community to expand the array of services available to families. These working relationships have included law enforcement, local juvenile justice agencies, intake and assessment centers, emergency shelters, community mental health centers, schools, service providers and others interested in child welfare. Local service needs were identified and plans developed to assure new alternatives are available to families to avoid children being removed from their homes.

*Sn Jud  
1-18-01  
att 4*

Another initiative SRS has had in place since 1998 is a program administered by the Children's Alliance which funds case managers in 16 emergency shelters. These staff are responsible for working with families to try to return their child home rather than having them placed in foster care. This is accomplished by the case managers working with the family to identify service needs and then making arrangements for these services to be in place when the child is released from the emergency shelter. During FY 2000 emergency shelters housed 3,813 children who were in police protective custody. 2,760 or 72.4% of these children returned home from the shelter rather than having been placed in state custody.

Allowing community providers time to assess the family situation, develop service plans, coordinate schedules, and authorize services is critical to such efforts being successful. All of this takes time and the additional 24 hours provided by the 1999 Kansas Legislature is important in allowing this coordination to take place. Rushing the decision to remove children can and will cause more children to be removed from their families.

Thank you, I will now stand for questions.

Another initiative SRS has had in place since 1998 is a program administered by the Children's Alliance which funds case managers in 16 emergency shelters. These staff are responsible for working with families to try to return their child home rather than having them placed in foster care. This is accomplished by the case managers working with the family to identify service needs and then making arrangements for these services to be in place when the child is released from the emergency shelter. During FY 2000 emergency shelters housed 3,813 children who were in police protective custody. 2,760 or 72.4% of these children returned home from the shelter rather than having been placed in state custody.

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Thank you, I will now stand for questions.

ERS

David L. Miller, President  
Jerome A. Gorman, Vice-President  
John M. Settle, Secretary-Treasurer  
Julie McKenna, Past President  
Steven F. Kearney, Executive Director



DIR

IS

Edmond D. Brancart  
Thomas J. Drees  
Christine K. Tonkovich  
Gerald W. Woolwine

## Kansas County & District Attorneys Association

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January 18, 2001

Chairman Vratil and members of the Senate Judiciary Committee,

The Kansas County and District Attorneys Association would like to voice its opposition to Senate Bill 16 which would amend the time for a temporary custody hearing from 72 hours to 48 hours.

Last year HB 2224 was passed to comply with ASFA regulations. The intent of the ASFA "reasonable efforts" requirements is to prevent unnecessary removal of a child. These regulations require "reasonable efforts" which mandate more documentation and investigation to determine whether a child should be removed from the home and placed into temporary custody. As a result the time requirements have become more demanding not less. By shortening the time period for a temporary custody hearing there is concern that the time constraints will jeopardize the "reasonable efforts" requirements. As a result county attorneys, social workers and judges would be mandated to comply with "reasonable efforts" requirements and literally not have the time necessary for proper investigation and documentation.

Thank you for taking time today to hear our concerns.

Thank You,

Susan Bechard  
KCDAA

Su Jud  
1-18-01  
att 5

TO: Senate Judiciary Committee  
DA: January 17, 2001  
RE: SB 16

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att 6

Senator Vratil and Members of the Committee:

It appears that Senate Bill 16 will compress the time frame for conducting temporary custody hearings for children in protective custody. The current limit is 72 hours. The bill will reduce that requirement to 48 hours.

Generally, courts can hear these cases whenever the litigants are ready to have them heard. Most judges can accelerate cases deserving priority settings. Even a crowded docket can be adjusted to hear emergency matters. So, it seems the problem, if any, would not be with the courts directly.

Compressing the time frame, however, will make it more difficult for the social workers, and the prosecutor's office to interview interested parties and investigate the safety issues for the child. It is safe to presume judges want accurate verifiable facts presented by the party requesting court intervention. The more complete the factual basis, the better the court decision can be justified.

The Judges will apply the law in the fashion you give it to us. The problem with the compressed time frame is simply that the courts may not have enough facts available to make the appropriate decisions. We run a greater risk of having kids kept in protective custody who do not need to be there. Worse, we may release defenseless kids back to dangerous situations where they continue to be exposed to abuse and potential death.

Assuming a judge, hearing a temporary custody matter on a compressed time frame, releases a child from protective custody back into a dangerous home, and the child gets hurt or killed, the public outcry will simply be something like the following: "Child Suffers After Judge Sends Her Home!" The press and general public will not care one moment about the compressed time for investigation or the absence of reliable facts placed before the court. They see only the harm.

As a practical matter, as soon as SRS or the prosecuting attorneys are satisfied that a child can be released from protective custody and placed back with parents, with or without services, the kid can be released. That can happen without any case being filed, assuming we give enough time.

Thank you for the opportunity to share these brief remarks and observations. And, thank you for your continuing service to the State.

James F. Vano  
District Magistrate Judge  
10<sup>th</sup> Judicial District  
Johnson County Courthouse  
Olathe, KS 66061

c: Kansas District Magistrate Judges Association, Legislative Committee

S. Jud  
1-18-01  
att 6



Tom Edminster  
Catholic Community Services  
President

**CHILDREN'S  
ALLIANCE**  
**OF KANSAS**

Bruce Linhos  
Executive Director

Community Agencies Serving Children and Families

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**Senate Judiciary Committee**

**SB 16**

**January 18, 2001**

I appreciate the opportunity to appear before this committee this morning. My name is Bruce Linhos and I am the Director of the Children's Alliance. The Children's Alliance is the association of non-profit child welfare agencies in Kansas. Our members provide an array of services to the families and children they assist, including foster and residential care, emergency services, adoption, family preservation, juvenile intake and assessment, day treatment, drug and alcohol services, educational services, family counseling and many more.

Currently the association has 22 member agencies representing better than 80% of the not-for-profit child welfare services provided in Kansas. With privatization, members of the association represent both contractors and subcontracting agencies. Members of our association are also providing services to youth that are being served through Juvenile Justice.

Briefly this morning I would like to speak in opposition to SB 16. Two years ago the legislature increased from 48 to 72 hours the length of time a child could be held in protective custody. The increase from 48 to 72 hours was widely supported, because the extra day gave agencies more time to find community alternatives which could allow children to not be brought into the custody of the state.

The time frame created by the 48 hour rule frequently worked to the disadvantage of the child. We believe that the additional day has given SRS time to do background investigations and to identify resources for the child, if those are necessary. The result of this has been that numbers of children have avoided being placed in SRS custody. As experience has taught us, once a child enters custody it is increasingly difficult for that child to be reintegrated into their family or to find permanence. We believe that the 72 hour time frame for protective custody better serves the permanency needs of children.

Submitted by:  
Bruce Linhos  
Executive Director  
January 18, 2001

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RON THORNBURGH  
Secretary of State



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TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE  
ON SB 20  
JANUARY 18, 2001

The Secretary of State appreciates the introduction of SB 20 and supports its passage. SB 20 amends the Kansas Charitable Organizations and Solicitations Act to bring Kansas law into compliance with a recent decision of the Tenth Circuit Court of Appeals.

The Charitable Organizations and Solicitations Act governs charitable organizations and the professional fundraisers and professional solicitors that raise money for the organizations. The act requires these groups to register with the Secretary of State. A professional fundraiser must also include a \$5,000 bond with its registration. SB 20 repeals the bond requirement, bringing Kansas statutory law into compliance with recent case law.

The Tenth Circuit Court of Appeals invalidated Utah's statutory requirement of a fundraiser's bond in American Target Advertising v. Giani. 199 F. 3d 1241 (Jan. 2000), *cert. denied* 121 S.Ct. 34 (Oct. 2000). The court determined that the bond was an unconstitutional infringement on freedom of speech.

The Kansas bond is significantly lower than Utah's bond, which is \$25,000 compared to the Kansas bond requirement of \$5,000. However, the court opinion appears to invalidate all bonds, regardless of amount. This interpretation was the consensus of several Secretary of State Offices and Attorney General Offices in the Tenth Circuit, including the Utah Assistant Attorney General who argued the case.

I appreciate the opportunity to appear today and will be happy to answer questions.

Melissa Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

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# MEMORANDUM

TO: Chairman John Vratil, Senate Judiciary Committee  
FR: Derek Schmidt *DS*  
RE: Questions related to Charitable Organizations and Solicitations Act hearing

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Thank you for agreeing to pose a question during tomorrow's hearing on the Secretary of State's proposed bill amending the Charitable Organizations and Solicitations Act. I regret that I will be necessarily absent on business of the Agriculture Committee.

As I indicated, I intend to offer an amendment to the charities bill when the Judiciary Committee works it. The amendment would increase maximum civil penalty amounts available in the statute so they mirror penalties available under the Kansas Consumer Protection Act. My question for the witnesses:

**Would you have any objection to an amendment that would do the following:**

- a. **Increase the maximum civil penalty that can be imposed for a violation of the Charitable Organizations act from the current \$2,000 to \$5,000 per violation?**
- b. **Add a section to the Charitable Organizations act permitting courts to impose an enhanced penalty of up to \$10,000 per violation if the State demonstrates that the violation was committed against an elder (age 60 or older) or disabled person?**

*SJDW*  
*1-18-01*  
*att9*