Approved
Date: March 7, 2001

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:38 a.m. on March 6, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)

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

Conferees appearing before the committee:
Commissioner Albert Murray, Juvenile Justice Authority (JJA)
Judge Graber, Sumner County
Judge Marla Luckert, Criminal Law Advisory Committee, Judicial Council

Others attending: see attached list

Minutes of the March 5th meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

SB 263–collection of DNA specimens

The Chair reviewed **SB 263**. Senator Schmidt explained his purpose in proposing an amendment to the bill. Following his remarks he made a motion to amend **SB 263** by striking the word "person" on line 18, Senator Umbarger seconded. During discussion it was the consensus of the Committee that Senator Schmidt draft a bill with a time table to move toward DNA testing of all felonies. Senator Schmidt withdrew his motion with the consent of Senator Umbarger. Following brief discussion Senator Adkins moved to amend **SB 263** to include two KBI amendments, one for exoneration purposes and the other to expand the statute of limitation to 10 years or 1 year after a hit was made. Senator Goodwin seconded. Carried. Senator Adkins moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

SB 291–creating the crime of causing harm to another person by motor vehicle

The Chair reviewed **SB 291**. Senator Schmidt moved to pass the bill out favorably, Senator Donovan seconded. Following discussion Senator Schmidt withdrew his motion with the consent of Senator Donovan and Senator Umbarger moved to amend the age from 7 to 10 on line 15 of the bill, Senator Donovan seconded. Carried. Senator Schmidt moved to pass the bill out favorably as amended, Senator Donovan seconded. Carried.

SB 302–concerning the Kansas juvenile justice code; re: sentencing

Conferee Murray testified in support of **SB 302**, a bill which he stated would make two changes: insure that all convicted juvenile offenders receive a criminal justice sanction for a certain term commensurate with the nature of the offense and offender's history; and prohibit the courts placing juvenile offenders in the Commissioner's custody and having those juvenile offenders remain at home. He briefly elaborated on the purpose for these changes. (attachment 1)

Conferee Graber testified in opposition to **SB 302** stating that provisions in the bill are contrary to the goals fixed in the juvenile justice code as they disrupt families. He discussed potential problems which could arise due to ambiguous language in the bill and revealed how setting a specific time period for the offender to be out of the home would increase the cost to the state. Brief discussion followed. (attachment 2)

HB 2083–concerning criminal procedure; re: release on appearance bond

Conferee Luckert testified in support of **HB 2083**, a bill which amends current law that relates to the surrender of an obligor by a surety. She presented a brief history of the bill (**2000 SB 90**) and the events which initiated the amendments. She stated that this bill gives discretionary power to the court in dealing with the accused and specifies that in order to be discharged, the surety must give sworn reasons for cancelling or terminating the bond. (attachment 3)

The meeting adjourned at 10:32 a.m. The next meeting is March 7, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 6, 2001

NAME	REPRESENTING
Mark A. Hunt	Kearney Law Office
Ruby M. Hazzell	Judicial Council
Marla J. Luckert	Judicial Council
Kyle Smith	KBI
Michael George	JJA
Albert Murray	JJA
Vicki Glynn Nelsell	~~DOB~~
J. Russell Hales	JJA
Roberta Sue McKenna	SRS
Joe Shaler	Dist Court
Mark Gleason	OJA
Joe Herold	KSC
Jan Brahm	KSC
Barb Tombs	KSC
Bill Henry	KS Gov. Consulting
Blazer	WSSWA
David Stuckman	G.B.A.
John Pinegar	Pinegar Smith Co.
John Peterson	Security Benefit Group

SJ att 1
3-6-01

Juvenile Justice Authority

Testimony before the Senate Judiciary Committee Senate Bill 302

March 6, 2001

Albert Murray, Commissioner
J. Kenneth Hales, Deputy Commissioner
Michael George, Chief Legal Counsel

Sen Jud
3-6-01
att 1

Senate Bill 302
March 6, 2001

You have before you a bill that would make two changes to the sentencing laws for juvenile offenders in Kansas.

1. The first thing Senate Bill 302 does is to insure that all convicted juvenile offenders receive a criminal justice sanction and that the sanction will be for a certain term commensurate with the nature of the offense and the offender's history. Current law allows the judge to place juvenile offenders on probation and also place those juvenile offenders in the custody of the Commissioner. Placing the juvenile offenders in the custody of the Commissioner is not a criminal justice sanction, but is done as a means of securing treatment services. When juvenile offenders are placed in custody for an out of home placement, then a treatment plan is developed for treating the juvenile offenders and returning them to the home. However, in a legal sense, that treatment plan is not a criminal justice sanction because it does not have a time certain that is ordered by the court and the success of that plan is not necessarily or totally dependent on the conduct of the juvenile offenders. The success of the treatment plan or reintegration plan is often dependent on the parents' participation.

2. The second objective of the bill is to prohibit the courts placing juvenile offenders in the Commissioner's custody and having those juvenile offenders remain at home. For all intents and purposes, this is done simply to secure a means of financing services for the juvenile offenders who are at home.

Concurrent probation combination sentencing: This proposal amends K. S. A. 38-1663(a)(4) sentencing alternatives to mandate concurrent probation with custody to the Commissioner for a specific term. This bill would clarify that placing an offender in JJA custody is only an option when the Court removes the juvenile offender from the parental home. K.S.A. 38-1664, the statute requiring certain findings for removal from the home, is also amended to be consistent with this change.

Impact on the Juvenile Justice Authority: Currently, juvenile offenders may be placed in the Commissioner's custody for years on an open-ended basis. For example, we have some kids who remain in JJA custody for years to receive foster care services even after they have done all that is expected of them to satisfy their criminal justice sanction. At the present time, in some cases, juvenile offenders are placed in JJA custody in order for the juvenile offender to be "eligible" for community services or medical services, such as counseling, therapy, etc. There is no need for the Court to place an offender in JJA custody to have access to services.

With regard to eligibility for medical care services, a juvenile offender is no more eligible to use a medical card while in JJA custody than out of JJA custody. This includes juvenile justice services such as prevention, community supervision, counseling and treatment services. This proposal would help the agency more effectively manage caseloads.

AM:bt

SJ 3-5-01 att 12

TESTIMONY OF HON. THOMAS H. GRABER
30TH JUDICIAL DISTRICT, SUMNER COUNTY
WELLINGTON, KANSAS

Telephone: 620-326-5936

SENATE BILL NO. 302

I am opposed to the proposed changes as reflected on Page 1, beginning with Line 29 through 32. The language as proposed would mandate that at any time a juvenile offender was placed in the custody of the commissioner that the juvenile offender be placed on probation and it would limit the alternative of probation if the court was removing the juvenile from the parental home.

The first problem is that language as written could be interpreted to limit the court being able to place the juvenile offender on probation to those times when the juvenile is placed out of the home and in the custody of the commissioner. Probation is one of the primary alternatives used by the court and must not be limited in that way.

I further object to the modification because of its unnecessary limitation of the discretion of the court. Currently the court has the discretion under K.S.A. 38-1663(a)(7) as reflected on Page 2 beginning at Line 7 of the bill to place an offender on probation as well as in the custody of the commissioner and that discretion should be retained.

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I further oppose the language of the amendment being proposed beginning on Page 8, Line 22. The amendment is specifically an attempt to limit the placement of juvenile offenders in the custody of the commissioner to out-of-home placements. The result of that restriction would be an increase in out-of-home placements and an increase in cost and expenses to the State of Kansas would not serve the best interests of the juvenile offenders and their families.

I believe that these suggested amendments arise out of financial concerns over the payment of services for the offenders placed in custody but allowed to remain at home. The reason that courts are currently placing juvenile offenders in the custody of the Juvenile Justice Authority and allowing them to remain at home is to access services that are not available through JJA or on any other basis, and the courts believe that with these services the placement in the home may be preserved and assure that reasonable efforts have been made to avoid the out-of-home placement.

One type of service that may be accessed in this manner is case management services. Those services provide a person who can help the family identify their needs, help them access community services, coordinate the needed services, and assure the court that the offender and family will follow through on the use of those services.

If the in-home custody alternative is taken from the

courts, the courts will just order those offenders into out-of-home placements and the State and JJA will have the increased cost of, at the very least, family foster care.

I would further point out that if it is the intent of the amendments to establish a specific time for the offender to be out of the home, that will increase the cost to the State and will not serve the best interest of the family, offender or the State. Under the current law, if there is an out-of-home placement, a reintegration plan is to be developed and under that plan, the road map for the return home is specifically designed and a time-frame established. If that can be done in 30 days, the offender can be returned home at that time. If it can be done in six months, the offender can be returned home. In fact, if the projection in the reintegration plan is for six months and the tasks are completed and the child can be safely returned home in three months, the commissioner may simply notify the court of the plan to return the offender home in advance of the six month date and return the offender home. See K.S.A. 38-1664(b).

If the court is called upon to set a specific period of time for the out-of-home placement at the time of sentencing, I believe that the majority of courts will set an extended time and order the offender out of home for a period of years rather than months. That will be necessitated because at the time of sentencing the court will not have sufficient information in regard to the performance of the family or the specific needs and

terms of the reintegration plan to be sure that a short term will be adequate.

Before the split of the juvenile offenders out from the umbrella of SRS, the court has been faced with SRS's inability to provide services to children unless they were in SRS custody. I know that at that time I placed more children in SRS custody than I would at other times where services were available. I know I committed them when the provision of services could have been beneficial in in-home placements but such services were not available. SRS at that time simply said that if the child is not in our custody, we will provide no services. That is the essence of where JJA is now moving. I guarantee that it will result in more out-of-home placements and longer out-of-home placements. The federal IV-E funds for paying for out-of-home placements will be endangered, not only for juvenile offenders but for children in need of care. Federal funds are not to be used to pay for placements. If federal funds are used, Kansas's entire IV-E funding will be endangered.

These changes may endanger IV-E funding for out-of-home placements of both juvenile offenders and children in need of care. Federal regulations envision that no IV-E funds be used if reasonable efforts are not being made to avoid unnecessary out-of-home placement. If no services are offered to the family and an out-of-home placement is necessitated, the courts will be faced with findings in the future that reasonable services are

not being provided and federal funds cannot be used for out-of-home placement for the child. If funds are then used, Kansas is in danger of being punished by its future IV-E funding being reduced or lost and being required to pay back any funds wrongfully used.

Respectfully submitted,

Thomas H. Graber
District Judge

3-6-01
att 3

JUDICIAL COUNCIL TESTIMONY
REGARDING HOUSE BILL 2083
BEFORE THE
SENATE JUDICIARY COMMITTEE
March 6, 2001

The Criminal Law Subcommittee of the Judicial Council originated this bill. Members of the Criminal Law Subcommittee include district court judges, prosecutors, defense attorneys, law professors and counsel to law enforcement agencies.

House Bill 2083 amends K.S.A. 22-2809 which relates to the surrender of an obligor by a surety. K.S.A. 22-2809 is a part of the statutory regulation of the pretrial release of persons charged with a crime, including provisions allowing for the release of an arrested person upon the posting of a surety. The surety is often a professional bondsman, but may be any resident of Kansas who has posted a surety on behalf of the accused and met other requirements of the Court. Under K.S.A. 22-2809, a surety is authorized to return the accused to custody for any reason. In fact, the surety is not required to have a reason. The Court is then required to place the accused in custody and to release the surety from any obligation of the bond. The Judge has no discretion.

This provision and the lack of discretion were brought to the committee by a judge and a criminal defense attorney from Douglas County. Each of them had dealt with separate situations in which it was felt that there was no articulated justification for the surrender. Yet, the Judge had no discretion but to place the accused in custody, allow the surety to walk away having the benefits of whatever the surety had been paid, and yet have no obligation in return. The committee unanimously agreed that an amendment was appropriate. Other members told of situations where the application of the mandatory language was unjust. Some recounted situations that were particularly egregious, involving situations where the accused told the judge that the surety had asked the accused to engage in illegal activities and, when the accused had refused, the surety had returned the individual to court. Other cases were less salacious, but still seemed unjust in that the accused had paid the surety, often a considerable amount of money, and the surety was remanding the person to custody for no articulated reason. This allows the surety to benefit financially without any risk in return.

Last session, the Judicial Council proposed an amendment, which became Senate Bill 90, that would have required the release of the surety only if there is good cause for the return of the individual to custody. When this proposal was submitted to the House Judiciary Committee last session, there was concern that the issue might shift to the other end of the spectrum and a surety would not be released from an obligation when the surety had a legitimate concern that a defendant may fail to appear. Judicial Council, in House Bill 2083, proposed language that would give the court the discretion of whether to remand the accused to custody, but would require the discharge of the surety. The proposal would also require the surety to establish good cause for the surrender and, if good cause could not be established, would allow the court to require the refund of the consideration.

Su Jud
3-6-01
att 3

The House Judiciary Committee amended the bill as proposed by the Judicial Council to the form now presented. The provisions requiring the refund of amounts was deleted. Also, the requirement that a surety show good cause for the release was deleted. The amended version would require the surety to set forth in a sworn oral or written statement the reasons for the discharge. The House Committee articulated concerns that the legislation would interfere with a contract, was procedurally ambiguous, and did not define good cause.

SENATE BILL No. 263

By Senators Adkins and Goodwin

2-7

AN ACT concerning crimes, criminal procedure and punishment; relating to collection of DNA specimens; amending K.S.A. 2000 Supp. 21-2511 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any ~~offense which requires such person to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 et seq., or~~ [*person*] *felony;* a violation of subsection (a)(1) of K.S.A. 21-3505, *and amendments thereto; a violation of K.S.A.* 21-3508, ~~21-3602 or 21-3609~~ and amendments thereto~~,~~*; and a violation of K.S.A. 21-3517, and amendments thereto; a violation of K.S.A. 21-3424, and amendments thereto, when the victim is less than 18 years of age; or a violation of K.S.A. 21-3507, and amendments thereto, a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, or a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age;* including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663,

Delete