Approved: April 12, 2002
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 6, 2002 in Room 313-S of the Capitol.

All members were present except:
Representative Dean Newton- Excused
Representative Clark Shultz - Excused

Committee staff present:
Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Representative Tim Owens
John Donham, Attorney, Johnson County
Ken Bisel, Citizens Coalition for Children's Justice
Sara Adams, Keys for Networking
Bobbi Rine, Parent, Liberal
JoAnn Woellhof, Parent, Liberal
Representative Tom Burroughs

Hearing on **HB 2867 - rights of certain aliens to transfer or inherit real property, repealer**, was opened.

Representative Tom Burroughs appeared as the sponsor of the proposed bill which would repeal racially discriminating provisions of Kansas Law, which discriminates on the basis of race. (Attachment 1)

Hearing on **HB 2867** was closed.

Hearing on **HB 2851 - miscreants & delinquents; decaying juvenile adjudications,** was opened.

Representative Tim Owens appeared before the committee as the sponsor of the proposed bill. He stated that the goal of the proposed bill was to hold children responsible for their actions without criminalizing them. He provided the committee with a balloon amendment which would incorporate the provisions of **SB 608** into the bill. (Attachment 2) The proposed bill addresses several concerns:

- Redesignates children in their juvenile offender status as delinquents and miscreants instead of felons and misdemeanants
- Allows for adjudication in most instances to decay at a certain age
- Requires a parent or attorney be present during questioning

John Donham, Attorney, Johnson County, believes that juveniles do not have the ability to visual the consequences of their actions and that they view the acts to be "pranks". (Attachment 3)

Ken Bisel, Citizens Coalition for Children's Justice, stated that responsible parents should be included in the process unless they are deemed unfit. He preferred not to have the serious crimes decay. The proposed bill offers young people hope about their future.

Sara Adams, Keys for Networking, was concerned about families not being involved in the intake process, and that the juveniles are not afforded the same rights as adults.(Attachment 4)

Bobbi Rine, Parent, Liberal, informed the committee that her 10 year old son was arrested and had already been through the intake before she was contacted.

JoAnn Woellhof, Parent, Liberal, also expressed her concern without being included in the intake process and not having a voice on their placement at a juvenile facility.

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 6, 2002 in Room 313-S of the Capitol.

The following people did not appear before the committee but requested their written testimony be included in the minutes:

E-mail letters (Attachment 5)
Kris Kobach, Professor of Law, University of Kansas (Attachment 6)
Paul Morrison (Attachment 7)
John Conaghan (Attachment 8)
Citizen's Coalition for Children's Justice (Attachment 9)

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 7, 2002.

New York University
A private university in the public service

School of Law

40 Washington Square South, Room 319
New York, NY 10012-1099
Telephone: (212) 998-6097 - 513) - 556 - 0116
Fax: (212) 995-4590
E-mail: ching@juris.law.nyu.edu

Gabriel J. Chin
Visiting Professor of Law

July 10, 2001

Representative Tom Burroughs
State Capitol Room 284-W
Topeka, KS 66612

Dear Representative Burroughs,

I have the honor of enclosing a copy of a report urging repeal of a Jim Crow-era statute, designed to discriminate against Asians, which remains on the books as Kansas Statutes Annotated § 59-511. That section, in effect in one form or another since the 1920s, provides greater inheritance rights to aliens who are "eligible to citizenship" compared to those who are not. In that era federal law imposed a racial test on citizenship by naturalization. This statute borrowed the federal restriction; the Supreme Court explained that the aliens "eligible to citizenship" to which the statute referred were "free white persons." *Hughes v. Kerfoot*, 175 Kan. 181, 186, 236 P.2d 226, 230 (1953). In the Jim Crow era, over a dozen states had restrictions on property ownership by aliens ineligible to citizenship; the Supreme Court and legal scholars recognized that these statutes were aimed at Asians because members of other races were eligible to naturalize. For example, in *Terrace v. Thompson*, the Supreme Court explained that "[g]enerally speaking, the natives of European countries are eligible. Japanese, Chinese and Malays are not." 263 U.S. 197, 220 (1923).

The report suggests that the statute, which is unenforced, is also unconstitutional and contrary to the present public policy of Kansas. These statutes sometimes made it impossible for persons of Asian racial ancestry to work in agriculture or other industry requiring real property. Asians and others lost their land in many states, and some were prosecuted criminally. These statutes remain a source of bitterness to many Asian Americans. Last year the Alien Land Law Project asked Wyoming and New Mexico to repeal their anti-Asian statutes, and their legislatures passed repealers this year. We hope that Kansas will also repeal this anachronistic law.

Very truly yours,

G. Chin

Gabriel J. Chin
Immigration and Nationality Law Review
Alien Land Law Project

House Judiciary
Attachment 1
3-6-02

intestate succession, shall be counted as a part of the distributive share of such property to such person, and to that extent shall be taken into account in determining the estate to be distributed among those to whom it passes by intestate succession, but if such advancement exceeds the amount to which such person would be entitled by the laws of intestate succession the person shall not be required to refund any portion of the advancement. If such person receiving an advancement dies before the decedent, leaving heirs who take from the decedent, the advancement shall be allowed in like manner as if it had been made directly to them.

History: L. 1939, ch. 180, § 32; July 1.

Source or prior law:
22-125, 22-126.

Cross References to Related Sections:
Method of determining advancement, see 59-2248.

Judicial Council, 1939:
Last sentence added.

Research and Practice Aids:
Bartlett's Probate Practice § 323.
Descent and Distribution ⇐ 94.
Hatcher's Digest, Advancements § 5.
C.J.S. Descent and Distribution § 92.
Testator's property, Kansas Practice Methods § 563.

Law Review and Bar Journal References:
"The Capricious Operation of the Kansas Elective Share: Feast or Famine for the Surviving Spouse," John W. Kuether and Willard B. Thompson, 61 J.K.B.A. No. 10, 32, 36 (1992).

CASE ANNOTATIONS

1. Notes given by son to father held advancements and wiped out by will. In re Estate of Bush, 155 K. 556, 561, 127 P.2d 455.

2. Under former law (22-118) inheritance of grandchild from grandmother subject to advancement to father. Meenen v. Meenen, 180 K. 779, 786, 308 P.2d 158.

3. Bonds purchased by decedent with daughter as co-owner held advancement. Broderick v. Moore, 226 F.2d 105, 106, 107.

* **59-511. Rights of aliens.** All aliens eligible to citizenship under the laws of the United States may transmit and inherit real estate, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States. All other aliens may transmit and inherit real estate, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

History: L. 1939, ch. 180, § 33; July 1.

Source or prior law:
58-2701, 58-2702.

Cross References to Related Sections:
Rights of aliens regulated by law, Kan. Const., Bill of Rights, § 17.

Research and Practice Aids:
Bartlett's Probate Practice § 328.
Aliens ⇐ 9.
Hatcher's Digest, Aliens § 5.
C.J.S. Aliens §§ 21, 26.
Aliens eligible to citizenship, Kansas Probate Law and Practice § 332.

Law Review and Bar Journal References:
Annotation No. 1 discussed in 1953-55 surveys of Kansas law, Richard C. Harris, 4 K.L.R. 151, 153 (1955); Richard W. Stavely, 4 K.L.R. 174, 178 (1955).
"Alien Ownership of Kansas Farmland: Can It Be Prohibited?" David A. Williams, 20 W.L.J. 514, 518, 519 (1981).
"Farmers and the Law: Exemptions and Exceptions," J. W. Looney, 50 J.K.B.A. 7, 23 (1981).

CASE ANNOTATIONS

1. Aliens eligible for citizenship not governed by treaty provisions of section. Hughes v. Kerfoot, 175 K. 181, 183, 184, 185, 186, 263 P.2d 226.

2. Term "eligible for citizenship" as used in section defined and construed. Hughes v. Kerfoot, 175 K. 181, 183, 184, 185, 186, 263 P.2d 226.

* **59-512. Sale when alien not permitted to take.** Whenever by reason of K.S.A. 59-511 an heir or devisee cannot take real estate in this state, the court shall order a sale of said real estate to be made in the manner provided by law for probate sales of real estate, and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

History: L. 1939, ch. 180, § 34; L. 1976, ch. 242, § 5; Jan. 10, 1977.

Source or prior law:
58-2706.

Cross References to Related Sections:
Proceedings for sale of real estate, see ch. 59, art. 23.

Research and Practice Aids:
Bartlett's Probate Practice § 334.
Hatcher's Digest, Aliens § 5.

Law Review and Bar Journal References:
"Alien Ownership of Kansas Farmland: Can It Be Prohibited?" David A. Williams, 20 W.L.J. 514, 518, 519 (1981).

59-513. Incapacity of one who kills another to take from decedent's estate or property; effect of suicide by one who kills spouse on estates and property of both. No person who shall be convicted of feloniously killing, or procuring the killing of, another person shall inherit or take by will by intestate succession, as a surviving joint tenant, as a beneficiary under a trust or otherwise from such other person any portion of the estate or property in which the decedent had an interest: *Provided,* That when

1-2

No. 38,944

MILDRED L. HUGHES, et al., *Appellees*, v. G. H. KERFOOT, et al., *Appellees*, and ELIAS E. OWEN, *Appellant*.

(263 P. 2d 226)

SYLLABUS BY THE COURT

1. ALIENS—*"Eligible to Citizenship"—Statutes Construed.* The word "eligible" in the language, "All aliens eligible to citizenship under the laws of the United States . . .," found in G. S. 1935, 67-701, and G. S. 1949, 59-511, expresses the idea of potentiality rather than realization, and refers to those aliens who, by virtue of race or color, are capable of becoming citizens upon full compliance with federal naturalization laws and regulations, and is not limited in meaning so as to include only those aliens who have already established their eligibility to naturalization.
2. SAME—*Action in Partition—"Eligible to Citizenship."* In an action to partition real estate and for an accounting of the rents and profits, the record is examined and it is *held:* For the reasons set forth in the opinion, plaintiffs and defendants (other than appellant) are aliens "eligible to citizenship"; their rights are governed by the provisions of G. S. 1935, 67-701, and G. S. 1949, 59-511, and are not dependent upon or affected by the provisions of any treaty between this country and Great Britain, and appellant's motion to make the petition more definite and certain, and his demurrer to the petition and the answer of other defendants, were properly overruled.

Appeal from Osage district court; A. K. STAVELY, judge. Opinion filed November 7, 1953. Affirmed.

Harry T. Coffman, of Lyndon, argued the cause, and *Ward D. Martin*, of Topeka, was with him on the briefs for the appellant.

Alex Hotchkiss, of Lyndon, argued the cause, and *Paul E. Wilson*, of Topeka, was with him on the briefs for the appellees.

The opinion of the court was delivered by

PRICE, J.: This is a partition action. The appeal is from orders overruling a motion by one of the defendants to make the petition more definite and certain, and his demurrer to the petition and an answer filed by certain other defendants.

Owen Owen, also known as Owen Owens, a resident of Osage county, was a naturalized citizen of the United States. He died intestate on November 20, 1934, the owner of considerable real estate in Osage and Wallace counties. Elias E. Owen, one of the defendants (and hereinafter referred to as appellant), was appointed administrator of his estate by the probate court of Osage

county. The estate was duly administered and closed and the real estate of decedent was assigned to the heirs-at-law shown to be entitled thereto. This action is brought by heirs of an heir of Owen Owen who died subsequent to the latter's death.

The petition alleges that plaintiffs "are residents of the country of England," and lists their correct post-office address in that country. Following a recital of the death of Owen Owen, the property owned by him at the time of his death, and the fact of his estate having been administered in the probate court of Osage county, the petition proceeds to set out the respective interests of the numerous heirs of decedent as tenants-in-common of the real estate owned by him at the time of his death. It then alleges that appellant has continued in the operation and management of the described real estate, paid the taxes thereon, collected all rentals therefrom, but that he has failed to render any accounting of the profits. The prayer is for an accounting by appellant and for partition of the property.

To this petition appellant filed a motion to require plaintiffs to make it more definite and certain by stating whether plaintiffs are citizens of the United States or aliens, and, if the latter, of what country they are citizens, and by stating whether other heirs named as tenants-in-common of the real estate in question are citizens of the United States or aliens, and, if the latter, of what country they are citizens.

This motion was overruled.

Later, a number of defendants filed their answer in which they admitted the allegations of the petition and set out with some detail the deaths of certain heirs of Owen Owen, by virtue of which they (the answering defendants) succeeded to rights in the property in question. The prayer of this answer follows closely the prayer of the petition.

Appellant then filed a demurrer to the petition and answer upon the ground those pleadings did not state facts sufficient to constitute a cause of action. The demurrer was overruled and this appeal followed.

With reference to appellant's first complaint, that the court erred in overruling his motion to make the petition more definite and certain, one short answer is that we know of no statute or other authority, and none has been cited, which requires that in an action of this kind the citizenship of the parties be set out.

However, be that as it may, it is stated in appellant's brief, and

is not denied by appellees, that all of the parties to this action, with the exception of appellant (who is a resident of Osage county), are citizens of and reside in Great Britain, presumably England or Wales. We therefore proceed upon the premise that they are aliens.

The question, therefore, is whether they, as aliens, are entitled to inherit their shares of the Kansas real estate involved in this partition action.

In their briefs the parties have gone into the constitutional and legislative history of the question, but, entirely aside from the fact of lack of time and space insofar as this opinion is concerned, we do not, for the purposes of this case, consider it necessary to make an extended review of the authorities bearing on the question. Those interested are referred to *Johnson v. Olson*, 92 Kan. 819, 142 Pac. 256, L. R. A. 1915E, 327, decided in 1914.

Section 17 of the Bill of Rights of our state Constitution provides that:

". . . The rights of aliens in reference to the purchase, enjoyment or descent of property may be regulated by law."

This provision was adopted in 1888. In 1925, the legislature, insofar as the question before us is concerned, dealt with the matter when it enacted §§ 1 and 2, chapter 209, Laws of 1925, which later became G. S. 1935, 67-701 and 702. They read:

"All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state. (67-701.)

"All aliens other than those mentioned in section 1 [67-701] of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise." (67-702.)

Appellees contend that they, being aliens "eligible to citizenship," are entitled to inherit the property in question by virtue of section 701.

Appellant, on the other hand, while asserting that appellees are aliens, contends they are not aliens "eligible to citizenship"; that they fall within the provisions of section 702 and thus can inherit only to the extent permitted by treaty between this country and Great Britain, and in support of this argument refers to a 1900 treaty between the two countries, which, it is conceded, provides in

substance that where, upon the death of any person holding real property within the territories of one of the two countries, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same and to withdraw the proceeds thereof. It is to be remembered that the ancestor, Owen Owen, died in 1934, whereas this action was commenced in 1951, and appellant contends that the treaty permits only a defeasible fee which terminated upon the expiration of three years from date of death, or a reasonable time thereafter.

Appellant also makes some contention that our former escheat statute (G. S. 1935, 22-1315), providing for the escheat, under certain circumstances, of property of an alien dying intestate, has a bearing on the question. The argument is not entirely clear, but we are unable to see how that statute would have any application, if for no other reason than that Owen Owen was not an alien at the time of his death. He was a naturalized citizen of the United States.

It is clear that if appellees are aliens "eligible to citizenship," section 701, *supra*, applies, and they inherit their respective shares of the property involved.

On the other hand, if they are not aliens "eligible to citizenship," then section 702, *supra*, which refers to all aliens other than those who are "eligible to citizenship," would apply, and thus the rights of appellees to "acquire, possess, enjoy and transfer real property, or any interest therein, in this state," would be subject to the terms and extent of any treaty existing between this country and Great Britain.

Narrowed down, therefore, the basic question for determination is whether appellees, as British nationals, are aliens "eligible to citizenship" under the laws of the United States. If they are—the fact would dispose of this appeal.

In contending that they are not, appellant places a narrow interpretation upon the phrase and argues that it means no alien is "eligible to citizenship" until he has proved that he possesses certain racial, residence, moral and political qualifications required by federal law for naturalization—in other words, it is contended the phrase "eligible to citizenship," as used in the statute, is synonymous with being "eligible to naturalization," and that, as the petition and answer contain no allegations to the effect appellees are "eligible to naturalization," the demurrer should have been sustained.

Appellees, on the other hand, urge a broader interpretation of the words "eligible to citizenship," and argue that, as a practical matter, they refer to those classes of aliens who, by virtue of color or racial background, are eligible under our federal law to apply for naturalization.

At the time appellant's demurrer was overruled the trial court filed a memorandum opinion. Inasmuch as it clearly discusses the question and sets forth what we think the law to be, excerpts therefrom are quoted:

"The naturalization act answers this question by excluding from its operation all aliens other than free white persons and certain groups not here involved. Those outside the enumerated classes to whom the act is applicable are denied the benefit of the naturalization procedure and hence are barred from becoming citizens. They are aliens not eligible to citizenship and therefore do not come within the terms of our statutes.

. . . . . .

"The demurrant [appellant] contends that an alien is not eligible to citizenship until he has complied with the statutory prerequisites as to residence, declaration of intention, petition and proof. Naturalization is a somewhat lengthy process, requiring among other things five years' residence in this country, of which at least six months must be residence in the state. At what stage of the proceedings does an alien become eligible to citizenship? To carry out demurrant's [appellant's] contention, it cannot be until all of the preliminary steps have been performed. In effect this means that the alien is eligible to citizenship only during the brief interval between the judgment of admission and the taking of the oath by the candidate—usually a matter of a few minutes. As pointed out in *Gorman v. Ry. Co.*, 203 N. Y. S. 632, this position reduces the words 'eligible to citizenship' to an absurdity. It deprives sections 67-701 and 59-511 of all practical meaning and value, and would reduce their application to the infinitesimal number of cases where death suddenly occurs between the adjudication and the oath.

"It seems clear that a distinction must be made between eligibility to citizenship and eligibility to naturalization. This distinction appears to be recognized by the language of Sec. 322.1, Immigration and Nationality Laws and Regulations, which states, 'A person, not a citizen of the United States, in order *to be eligible for naturalization* upon a petition for naturalization' must comply with certain preliminary requirements. Eligibility to citizenship is quite a different thing.

"Webster defines 'eligible' as meaning 'fitted or qualified to be chosen; legally or morally suitable . . . worthy to be chosen or selected; desirable.' 'Eligible' thus expresses the idea of potentiality rather than of realization. It looks to the future and signifies a present qualification to enjoy prospective rights and benefits contingent not only thereon but also upon something else which must be done preliminary thereto. To illustrate, a person must be more than thirty years of age and have practiced law for at least four years to fill the office of district judge. Many lawyers meet these conditions and they are

therefore eligible to be district judges, but they cannot fill the office until they have put themselves in the way of securing appointment or election to it. So it is with the alien. He is eligible to citizenship if he is a free white person, but he cannot become a citizen until he has the required residence and has taken the necessary preliminary steps. These completed, he is outside the class of aliens and is a citizen. Eligibility means that he has the capacity to become a citizen when he has complied with the regulations, rather than that he actually possesses the right to take the oath and be admitted.

". . . 'Eligible to citizenship' as used in our statutes means capable, as free white persons, of becoming citizens. It does not mean qualified to be naturalized by compliance with the statutory requirements. . . .

"The plaintiffs and the defendant cotenants, being free white persons and nationals of a friendly country, they come squarely within the terms of sections 67-701 and 59-511. Those sections govern their rights and they need not depend upon the terms of the treaty of 1900; and they are therefore not subject to the provisions of Sec. 67-702, *et seq.*" (It is to be noted that sections 67-701 and 702, mentioned by the trial court, refer to G. S. 1935, and that section 59-511 refers to G. S. 1949, the latter section being substantially identical to the two earlier sections which were repealed in 1939.)

In other words, as pointed out by the trial court, there is a distinction between being "eligible to citizenship" and "eligible to naturalization." The former refers to a broad class of aliens who are capable of becoming citizens upon full compliance with federal naturalization laws and regulations. The latter refers to those aliens who not only are eligible to citizenship, but who also have already established their eligibility to naturalization by compliance with federal rules and regulations pertaining to the question. As a practical matter, an alien might be *eligible to citizenship,* and at the same time be *ineligible to naturalization*—due to his moral background or political beliefs.

It is clear that appellees are aliens "eligible to citizenship," and that their rights are not dependent upon or affected by the provisions of any treaty between this country and Great Britain.

The rulings from which the appeal was taken were correct, and the judgment of the lower court is affirmed.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

THOMAS C. (TIM) OWENS
7804 W. 100th Street
Overland Park, Kansas 66212
(913) 381-8711

STATE REPRESENTATIVE
19TH DISTRICT

March 6, 2002

Chairman O'Neal, members of the House Judiciary Committee, I am here today to testify on behalf of House Bill 2851 concerning Juvenile Offenders, how they are designated, decaying of sentences, relation to Adult Sentencing Guidelines, relation to the Juvenile Intake and Assessment process, parental involvement and custody and arrest procedures. In a nutshell, what is being attempted is to review the Juvenile Justice statutes put in place in 1996 and to attempt to correct some of the unintended consequences that have been discovered through case law experience.

HB 2851 as you have it before you is an expanded version of the initial bill I proposed. The reason for the expansion is the failure of Senate Bill 608, proposed by Senator Atkins, to be heard in the Senate Judiciary Committee prior to turnaround, thereby necessitating that the issues raised therein be added to HB2851 in order to be heard this year.

About a year ago, in my capacity as a practicing Juvenile and Family attorney, I began to notice a disturbing trend concerning how children and families were being treated in the Juvenile Intake and Assessment Center in Johnson County and further became concerned with the zero tolerance policies in the school systems as well as in the district attorney's office. I began to hear the same stories of how the children and their parents and even some of their attorneys were being treated when the children were taken to the JIAC, even for relatively minimal offenses. None of the people relating their experiences knew each other so the source of information was from disassociated parties and yet the information was the same, leading me to believe that what I was being told was accurate. I contacted several attorneys with whom I am acquainted and who also practiced in juvenile law, and asked if they were having the same information provided to them. I also asked if they too were concerned at the process as well and to a person they responded in the affirmative.

HB 2851 as amended addresses several of these concerns.

- First, it redesignates children in their juvenile offender status as delinquents and miscreants instead of felons and misdemeanants. While there is a question as to its application, case law is silent on whether a juvenile adjudication as a felony constitutes a felony as it relates to activities from which convicted felons are prohibited. It is clear under current law that an adjudication of a juvenile as a felon may be used for future sentencing under the adult sentencing guidelines. Labeling children at a young age with such designations in many cases removes all hope

from the children or their parents that their future will ever be salvaged and that meaningful opportunities will be denied them in employment, education and socio-economic status.

- Next, it allows for adjudications in most instances to decay at a certain age after the child has had an opportunity to undergo whatever treatment or penalties that are deemed necessary within the juvenile court system without criminalizing the child and replacing one harm with another.

- With regard to the issues raised in Senator Atkins' SB 608, the constitutional questions which generated the Attorney General opinion related to the Juvenile Intake and Assessment Centers, are dealt with by requiring an attorney or parent to be present during questioning along with establishing the right of the child to decline to answer questions without placing the child in jeopardy of detention for said declination.

- Taken collectively the issues raised in the consolidated bills, address all of the requirements set out in Section 4 of HB 2851 without criminalizing the children and yet still holding them responsible for their actions. The constitutional protections afforded adult criminal defendants are afforded the children as well if in fact they are to be held accountable to the same degree as though they were adults. And they become relatively irrelevant if in fact the adjudications decay and are never used as a sentence-enhancer when they become adults.

It is important that this bill not be viewed as a Johnson County problem only just because other JIAC programs have not experienced some of the same issues described above. If nothing is done to correct these unintended consequences, they could expand to include the entire state. It is also important as you members of the committee examine this proposal that you begin by reading the goal set out in Section 4 and then consider the testimony, both oral and written, in that context. I especially want to refer you to the testimony of Dr. Jerry Wyckoff who spent many years as a school psychologist with the Shawnee Mission School District before becoming a private practitioner dealing with adolescents. It is indeed unfortunate that the short notice did not allow him to be able to be here to respond to your questions.

In closing let me urge you to support this bill and to enhance the measures that were placed into effect back in 1996 with the Juvenile Justice Reform so that we can truly address the best interests of all children in the State of Kansas.

Thank you for your consideration:

Thomas C Owens

Thomas C. (Tim) Owens
Representative, 19th District

Session of 2002

HOUSE BILL No. 2851

By Committee on Judiciary

2-13

AN ACT concerning juveniles; relating to miscreants and delinquents; relating to decaying sentences; amending K.S.A. 21-4709, 21-4710, 38-1601 and 38-1602 and K.S.A. 2001 Supp. 21-4711 and repealing the existing sections.

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

Section 1. K.S.A. 21-4709 is hereby amended to read as follows: 21-4709. The criminal history scale is represented in abbreviated form on the horizontal axis of the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes. The relative severity of each criminal history category decreases from left to right on such grids. Criminal history category A is the most serious classification. Criminal history category I is the least serious classification. The criminal history categories in the criminal history scale are:

Criminal History Category	Descriptive Criminal History
A	The offender's criminal history includes three or more adult convictions or juvenile adjudications, in any combination, for person felonies.
B	The offender's criminal history includes two adult convictions or juvenile adjudications, in any combination, for person felonies.
C	The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, and one or more adult conviction or juvenile adjudication for a nonperson felony.
D	The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudications for a nonperson felony.
E	The offender's criminal history includes three or more adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.
F	The offender's criminal history includes two adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.

Proposed Amendment
Representative Tim Owens
March 4, 2002

2-13

,

and 75-7023

,38-1606 and 38-1624

G The offender's criminal history includes one adult conviction or juvenile adjudication for a nonperson felony, but no adult conviction or juvenile adjudication for a person felony.

H The offender's criminal history includes two or more adult convictions or juvenile adjudications for nonperson and/or select misdemeanors, and no more than two adult convictions or juvenile adjudications for person misdemeanors, but no adult conviction or juvenile adjudication for either a person or nonperson felony.

I The offender's criminal history includes no prior record; or, one adult conviction or juvenile adjudication for a person, nonperson, or select misdemeanor, but no adult conviction or juvenile adjudication for either a person or nonperson felony.

As used in this section, "adult convictions" includes extended jurisdiction juvenile prosecutions, pursuant to K.S.A. 38-1636, and amendments thereto.

~~*For the purposes of the descriptive criminal history, juvenile adjudications are those adjudications for a person felony by a juvenile who is 17 years of age.*~~

Sec. 2. K.S.A. 21-4710 is hereby amended to read as follows: 21-4710. (a) Criminal history categories contained in the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203 and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

(b) A class B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.

(c) Except as otherwise provided, all convictions, whether sentenced

2-4

consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in K.S.A. 21-4716, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

(1) Only verified convictions will be considered and scored.

(2) All prior adult felony convictions~~, including expungements,~~ will be considered and scored.

(3) There will be no decay factor applicable for adult convictions.

(4) Except as otherwise provided, a juvenile adjudication *for juveniles 17 years of age when the crime occurred*, which would have been a nonperson class D or E felony if committed before July 1, 1993, or a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed on or after July 1, 1993, or a misdemeanor if committed by an adult, will decay if the current crime of conviction is committed after the offender reaches the age of ~~25~~ 23.

(5) For convictions of crimes committed before July 1, 1993, a juvenile adjudication *for juveniles 17 years of age when the crime occurred* which would constitute a class A, B or C felony, if committed by an adult, will not decay. For convictions of crimes committed on or after July 1, 1993, a juvenile adjudication *for juveniles 17 years of age when the crime occurred* which would constitute an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult, will not decay.

(6) All juvenile adjudications *for juveniles 17 years of age when the crime occurred* which would constitute a person felony will not decay or be forgiven.

(7) All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored.

(8) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(9) Prior convictions of a crime defined by a statute which has since been repealed shall *not* be scored using the classification assigned at the time of such conviction.

(10) Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.

(11) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to fel-

2-5

ony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

(12) Except as provided further, a juvenile adjudication for juveniles 16 years of age and younger when the crime occurred will decay if the current crime of conviction is committed after the offender reaches the age of 21. If a juvenile is prosecuted and adjudicated as an extended jurisdiction juvenile prosecution, such adjudication will not decay. For the purposes of a juvenile adjudication for juveniles 16 years of age and younger, decay means an automatic termination, deletion and destruction of the records from any law enforcement agency that has records of the adjudication, including, but not limited to, arrest or detention records. Such decayed juvenile adjudication shall not be used for any criminal proceeding, including, but not limited to sentencing.

(e) Notwithstanding the provisions of subsection (d)(4), (5), (6) and (12), any juvenile adjudication that occurred prior to July 1, 1996 shall not be considered and scored for criminal history purposes.

Sec. 3. K.S.A. 2001 Supp. 21-4711 is hereby amended to read as follows: 21-4711. In addition to the provisions of K.S.A. 21-4710 and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grid for nondrug crimes and the presumptive sentencing guidelines grid for drug crimes:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408 and amendments thereto occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of subsection (a)(1) of K.S.A. 21-4204 and amendments thereto, criminal possession of firearms by a person who is both addicted to and an unlawful user of a controlled substance, subsection (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm on school grounds or K.S.A. 21-4218 and amendments thereto, possession of a firearm on the grounds or in the state capitol building, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, involuntary man-

slaughter in the commission of K.S.A. 8-1567 and amendments thereto driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for involuntary manslaughter while driving under the influence of alcohol and drugs, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567 and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as described in subsection (a) of K.S.A. 21-3715 and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as described in subsection (b) or (c) of K.S.A. 21-3715 and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications must be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications will be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications must be established by the state by a preponderance of the evidence.

(f) Except as provided in subsections (4), (5) ~~and~~, (6) *and (12)* of K.S.A. 21-4710 and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303 and amend-

2-7

ments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

Sec. 4. K.S.A. 38-1601 is hereby amended to read as follows: 38-1601. Article 16 of chapter 38 of the Kansas Statutes Annotated and K.S.A. 38-16,126, 38-16,127 and 38-16,128, and amendments thereto, shall be known and may be cited as the Kansas juvenile justice code. The primary goal of the juvenile justice code is to promote public safety, hold juvenile offenders accountable for such juvenile's behavior and improve the ability of juveniles to live more productively and responsibly in the community. To accomplish this goal, juvenile justice policies developed pursuant to the Kansas juvenile justice code shall be designed to: (a) Protect public safety; (b) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the implementation of effective prevention and early intervention programs; (c) be community based to the greatest extent possible; (d) be family centered when appropriate; (e) facilitate efficient and effective cooperation, coordination and collaboration among agencies of the local, state and federal government; (f) be outcome based, allowing for the effective and accurate assessment of program performance; (g) be cost-effectively implemented and administered to utilize resources wisely; (h) encourage the recruitment and retention of well-qualified, highly trained professionals to staff all components of the system; (i) appropriately reflect community norms and public priorities; and (j) encourage public and private partnerships to address community risk factors.

In all proceedings concerning a juvenile offender, such offender shall be known as a miscreant or delinquent, as such terms apply.

Sec. 5. K.S.A. 38-1602 is hereby amended to read as follows: 38-1602. As used in this code, unless the context otherwise requires:

(a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who commits an offense while a juvenile which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include:

(1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined

in chapter 32 of the Kansas Statutes Annotated;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas code of criminal procedure;

(B) sentenced as an adult under the Kansas code of criminal procedure following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 38-16,126, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 38-1636, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(c) "Parent," when used in relation to a juvenile or a juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

(d) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which shall not be a jail.

(g) "Juvenile correctional facility" means a facility operated by the commissioner for juvenile offenders.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(i) "Commissioner" means the commissioner of juvenile justice.

(j) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

2-9

(k) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 38-1606 and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1606a, and amendments thereto, in a proceeding pursuant to this code.

(l) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(m) "Institution" means the following institutions: The Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility and the Topeka juvenile correctional facility.

(n) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(o) "Sentencing risk assessment tool" means an instrument administered to juvenile offenders which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

(p) "Educational institution" means all schools at the elementary and secondary levels.

(q) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A. ~~2000~~ *2001* Supp. 72-89b03, and amendments thereto.

(r) "Delinquent" means a person who commits an offense while a juvenile which if committed by an adult would constitute the commission of a felony as defined by K.S.A. 21-3105, and amendments thereto.

(s) "Miscreant" means a person who commits an offense while a juvenile which if committed by an adult would constitute commission of a misdemeanor as defined by K.S.A. 21-3105, and amendments thereto.

Sec. 6. K.S.A. 21-4709, 21-4710, 38-1601 ~~and~~ 38-1602 and K.S.A. 2001 Supp. 21-4711 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

2-10

See attached

And renumber remaining sections accordingly

,

,38-1606 and 38-1624

and 75-7023

Sec. 6. K.S.A. 38-1606 is hereby amended to read as follows: 38-1606. (a) Appointment of attorney to represent juvenile. (1) A juvenile who is taken into custody and taken to an intake and assessment program pursuant to the provisions of K.S.A. 38-1624, and amendments thereto, is entitled to have the assistance of an attorney during the intake and assessment process pursuant to the provisions of K.S.A. 75-7023, and amendments thereto. The intake and assessment worker shall inform the juvenile and the juvenile's parents or guardian of the right to employ an attorney.

(2) A juvenile charged under this code is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parents of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile or parent, or both, as part of the expenses of the case.

(b) Continuation of representation. An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) Attorneys' fees. Attorneys appointed ~~hereunder~~ pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 38-1613, and amendments thereto.

Sec. 7. K.S.A. 38-1624 is hereby amended to read as follows: 38-1624. (a) By a law enforcement officer. A law enforcement officer may take an alleged juvenile offender into custody when:

(1) Any offense has been or is being committed by the juvenile in the officer's view;

(2) the officer has a warrant commanding that the juvenile be taken into custody;

(3) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein;

(4) the officer has probable cause to believe that the juvenile is committing or has committed an act which, if committed by an adult, would constitute:

(A) A felony; or

(B) a misdemeanor and (i) the juvenile will not be apprehended or evidence of the offense will be irretrievably lost unless the juvenile is immediately taken into custody or (ii) the juvenile may cause injury to self or others or damage to property or may be injured unless immediately taken into custody; or

(5) the officer has probable cause to believe that the juvenile has violated an order for electronic monitoring as a term of probation.

(b) By a court services officer or juvenile community corrections officer. A court services officer or juvenile community corrections officer may take a juvenile into custody when there is a warrant commanding that the juvenile be taken

to custody, when the officer has probable cause to believe that warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein or when there is probable cause to believe that the juvenile has violated an order for electronic monitoring as a term of probation. Any court services officer or juvenile community correction officer may arrest a juvenile without a warrant or may deputize any other officer with power of arrest to arrest a juvenile without a warrant by giving the officer a written statement setting forth that the juvenile, in the judgment of the court services officer or juvenile community correction officer, has violated the condition of the juvenile's release. The written statement delivered with the juvenile by the arresting officer to the official in charge of a juvenile detention facility or other place of detention shall be sufficient warrant for the detention of the juvenile.

(c) Procedure. (1) When any law enforcement officer takes an alleged juvenile offender into custody, the juvenile shall be taken without unnecessary delay to an intake and assessment worker if an intake and assessment program exists in the jurisdiction, or before the court for proceedings in accordance with this code or, if the court is not open for the regular conduct of business, to a court services officer, a juvenile intake and assessment worker, a juvenile detention facility or youth residential facility which the court or the commissioner shall have designated. The officer shall not take the juvenile to a juvenile detention facility unless the juvenile meets one or more of the criteria listed in K.S.A. 38-1640, and amendments thereto. Even if the juvenile meets one or more of such criteria, the officer shall first consider whether taking the juvenile to an available nonsecure facility is more appropriate.

(2) It shall be the duty of the officer to furnish the county or district attorney or the juvenile intake and assessment worker if the officer has delivered such juvenile to the worker, with all of the information in the possession of the officer pertaining to the juvenile; the juvenile's parents, or other persons interested in or likely to be interested in the juvenile; and all other facts and circumstances which caused the juvenile to be arrested or taken into custody; and with an acknowledgment that the juvenile was advised of the juvenile's rights pursuant to this section.

(3) (A) When the juvenile is less than 14 years of age, no in-custody or arrest admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile and the juvenile's parents, guardian or attorney as to whether the juvenile will waive such juvenile's right to an attorney and right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent or guardian immediately upon such juvenile's arrival unless such parent or guardian is the alleged victim or alleged codefendant of the crime under investigation.

(B) When a parent or guardian is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no in-custody or arrest admission or confession may be admitted into evidence unless the

nfession or admission was made following a consultation between e juvenile and a parent or guardian who is not involved in the investigation of the crime, or an attorney as to whether the juvenile will waive such juvenile's right to an attorney and right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent or guardian who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

(4) (A) When an officer takes an alleged juvenile offender into custody or arrests an alleged juvenile offender, the juvenile shall be advised that:

(i) The juvenile has a right to remain silent;

(ii) any statement the juvenile does make can be and may be used against the juvenile;

(iii) the juvenile has a right to have a parent or guardian present during questioning; and

(iv) the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(B) Such officer shall provide a written acknowledgment that the alleged juvenile offender was advised of such rights.

(C) If the juvenile indicates in any manner and at any stage of questioning pursuant to this subsection that the juvenile does not wish to be questioned further, the officer shall cease questioning.

(D) Before admitting any statement resulting from custodial interrogation into evidence, the judge shall find that the juvenile knowingly, willingly and understandingly waived the juvenile's rights.

(d) Release prior to detention hearing. In the absence of a court order to the contrary, the court or officials designated by the court, the county or district attorney or the law enforcement agency taking a juvenile into custody shall have the authority to direct the release of the juvenile prior to the time specified by subsection (a) of K.S.A. 38-1632 and amendments thereto. In addition, if an agreement is established pursuant to K.S.A. 38-1635, and amendments thereto, a juvenile intake and assessment worker shall have the authority to direct the release of a juvenile prior to a detention hearing after the completion of the intake and assessment process if the juvenile intake and assessment worker has reason to believe that if released the juvenile will appear for further proceedings and will not be dangerous to self or others.

(e) Person 18 or over taken into custody; detention and release. Whenever a person 18 years of age or more is taken into custody by a law enforcement officer for an alleged offense which was committed prior to the time the person reached the age of 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code, except that the provisions of this code relating to detention hearings shall not apply to that person. If detention is necessary, the person shall be detained in jail. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the court and the warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before the court of the county where the alleged act took place

, at the request of the person, the person shall be taken, thout delay, before the nearest court. The court shall fix the terms and conditions of an appearance bond upon which the person may be released from custody. The provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901 and amendments thereto relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

Sec. 8. K.S.A. 2001 Supp. 75-7023 is hereby amended to read as follows: 75-7023. (a) The supreme court through administrative orders shall provide for the establishment of a juvenile intake and assessment system and for the establishment and operation of juvenile intake and assessment programs in each judicial district. On and after July 1, 1997, the secretary of social and rehabilitation services may contract with the commissioner of juvenile justice to provide for the juvenile intake and assessment system ~~and programs~~ for children in need of care. Except as provided further, on and after July 1, 1997, the commissioner of juvenile justice shall promulgate rules and regulations for the juvenile intake and assessment system and programs concerning juvenile offenders. If the commissioner contracts with the office of judicial administration to administer the juvenile intake and assessment system and programs concerning juvenile offenders, the supreme court administrative orders shall be in force until such contract ends and the rules and regulations concerning juvenile intake and assessment system and programs concerning juvenile offenders have been adopted.

(b) No records, reports and information obtained as a part of the juvenile intake and assessment process may be admitted into evidence in any proceeding and may not be used in a child in need of care proceeding except for diagnostic and referral purposes and by the court in considering dispositional alternatives. However, if the records, reports or information are in regard to abuse or neglect, which is required to be reported under K.S.A. 38-1522, and amendments thereto, such records, reports or information may then be used for any purpose in a child in need of care proceeding pursuant to the Kansas code for care of children.

(c) (1)Upon a juvenile being taken into custody pursuant to K.S.A. 38-1624, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process as required by supreme court administrative order or district court rule prior to July 1, 1997, or except as provided above rules and regulations established by the commissioner of juvenile justice on and after July 1, 1997.

(2) Prior to commencement of the juvenile intake and assessment process, the juvenile intake and assessment worker shall provide the juvenile with a written statement of the juvenile's rights as provided in K.S.A. 38-1624, and amendments thereto. It shall be the duty of the juvenile intake and assessment worker to make reasonable effort to contact the juvenile's parent or legal guardian at the initiation of the juvenile intake and assessment process unless such parent or legal guardian is the alleged victim or alleged codefendant of the crime under investigation in which case reasonable effort to contact another responsible adult shall be made.

(3) The juvenile intake and assessment process shall be

corded and maintained by electronic means. Such record shall be intained until the juvenile reaches 18 years of age.

(d) Except as provided in subsection (g) or when a juvenile declines to participate and in addition to any other information required by the supreme court administrative order, the secretary, the commissioner or by the district court of such district, the juvenile intake and assessment worker shall collect the following ~~information~~:

(1) A standardized, validated risk assessment ~~tool, such as the problem-oriented screening instrument for teens~~;

(2) criminal history, including indications of criminal gang involvement;

(3) physical, sexual and emotional abuse history;

(4) substance abuse history;

(5) history of prior community services used or treatments provided;

(6) educational history;

(7) medical history; and

(8) family history.

(e) After completion of the intake and assessment process for such child, the intake and assessment worker may:

(1) Release the child to the custody of the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that it would be in the best interest of the child and it would not be harmful to the child to do so.

(2) Conditionally release the child to the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the child's best interest to release the child to such child's parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such child's parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to:

(A) Participation of the child in counseling;

(B) participation of members of the child's family in counseling;

(C) participation by the child, members of the child's family and other relevant persons in mediation;

(D) provision of inpatient treatment for the child;

(E) referral of the child and the child's family to the secretary of social and rehabilitation services for services and the agreement of the child and family to accept and participate in the services offered;

(F) referral of the child and the child's family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;

(G) requiring the child and members of the child's family to enter into a behavioral contract which may provide for regular school attendance among other requirements; or

(H) any special conditions necessary to protect the child from future abuse or neglect.

(3) Deliver the child to a shelter facility or a licensed attendant care center along with the law enforcement officer's

·itten application. The shelter facility or licensed attendant .re facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to K.S.A. 38-1528, and amendments thereto.

(4) Refer the child to the county or district attorney for appropriate proceedings to be filed or refer the child and family to the secretary of social and rehabilitation services for investigations in regard to the allegations.

(5) Make recommendations to the county or district attorney concerning immediate intervention programs which may be beneficial to the juvenile.

(f) The commissioner may adopt rules and regulations which allow local juvenile intake and assessment programs to create a standardized, validated risk assessment ~~tool~~, as long as such ~~tool~~ assessment meets the mandatory reporting requirements established by the commissioner.

(g) Parents, guardians and juveniles may access the juvenile intake and assessment programs on a voluntary basis. The parent or guardian shall be responsible for the costs of any such program utilized.

CITY OF OVERLAND PARK

INTRACITY COMMUNICATION

LAW DEPARTMENT

December 14, 2001

TO: Robert Watson, City Attorney

FROM: Michele Stackhouse, Law Clerk

RE: Convicted Felons

ISSUE

1. What is a person who has been convicted of a felony prohibited from doing under the laws of Kansas?

DISCUSSION

Essentially in Kansas, a person convicted of a felony cannot obtain a license or employment in the alcoholic beverage industry, racing or gaming industry, or tobacco industry. A convicted felon may not serve as a law enforcement officer. Under the Kansas Constitution a person is also stripped of his voting rights, unless his civil rights have been restored or he has been pardoned. Additionally, while serving his sentence, whether in prison or on parole, a person who has been convicted of a felony is ineligible to vote, hold public office, or serve as a juror.

A person who has been convicted of bribery is ineligible to hold public office or obtain public employment. Additionally, a license in the medical industry may be denied to a person convicted of a felony. However, this is typically discretionary.

Please note that this memo only addresses the laws of Kansas and does not address any additional federal restrictions on convicted felons. Attached to this memo is a list of restrictions handed to parolees by the Kansas Department of Corrections. This list has several additional restrictions for persons who have not fully completed their sentence under a conviction for any offense.

Here is a list of KSA's and the Kansas Constitution regarding persons convicted of a felony. Please note that many of these restrictions are discretionary.

1. KS Constitution Art. 5 sec. 2 - Cannot vote if convicted of a felony under the laws of the United States or any state, unless civil rights have been restored or has been pardoned

2. 8-2410 - may be denied a license to sell/manufacture vehicles if convicted of a felony or any crime involving moral turpitude or a conviction related to the sale or manufacture of

vehicles

3. 12-3602 - will be denied a water-conditioning contract if convicted of a felony or any crime involving deception, fraud, or moral turpitude within 5 years of the application for a contract

4. 19-4475 - shall not serve as a law enforcement director

5. 21-3901 - if convicted of bribery, a person shall forfeit his public office and forever be barred from obtaining public office or public employment

6. 21-4204 - persons convicted of certain felonies within 5 years, and other felonies within 10 years cannot possess a firearm

7. 21-4209a - cannot possess explosives if convicted of felony within last 5 years

8. 21-4615 if convicted of a felony a person cannot hold public office, cannot vote or register to vote, cannot serve as a juror. These restrictions are released when the person has fully served his sentence under his conviction

9. 38-1586 - if convicted of a felony involving sexual intercourse and a child is born, the court may terminate parental rights

10. 39-709 - loss of rights to social welfare if convicted of crimes involving theft or welfare fraud

11. 39-931a - may be denied an adult care home license

12. 41-204 - cannot be director or deputy of Division of Alcoholic Beverage Control

13. 41-308a - cannot be employed in a farm winery

14. 41-308b - cannot be employed in a micro brewery

15. 41-311 - cannot hold a liquor license

16. 41-334 - may be denied a permit for sales of alcoholic beverages

17. 41-2703 - cannot obtain a cereal malt beverage license if within the past two years a person has been convicted of a felony involving moral turpitude or any crime involving alcohol

18. 44-1505 - cannot obtain an athlete's agent certification if convicted of a felony or any

misdemeanor involving moral turpitude

19. 47-829 - application for a veterinarian's license must contain a statement that the applicant has not been convicted of a felony

20. 58-4211 - license for manufactured housing may be denied if the person within the past five years has been convicted of a felony, any crime involving moral turpitude, or any crime in connection with the manufactured housing

21. 65-1436 - may be denied a dentist or a dental hygienist license if convicted of a felony or any misdemeanor involving moral turpitude, and the applicant fails to show rehabilitation

22. 65-1517 - may be denied an optometrist's license

23. 65-1627 - may be denied a pharmacist's license if convicted of a felony and fails to show rehabilitation

24. 65-1751 - may be denied an embalmer's license or a funeral directors license if convicted of a felony and fails to show rehabilitation, or any crime involving moral turpitude

25. 65-2006 - may be denied a podiatrist license if convicted of a felony and fails to show rehabilitation

26. 65-2836 - may be denied a license in the healing arts, shall be revoked if convicted of a felony after July 1, 2000, unless 2/3 vote of the board is in favor that an applicant has shown rehabilitation

27. 65-28a05 - may be denied a physician's assistant license

28. 65-4118 - may be denied a license for the sale/manufacture/distribution of a controlled substance

29. 65-4209 - may be denied a mental health technician license if convicted of a felony or a misdemeanor involving an illegal substance, unless the applicant can show rehabilitation; license will be denied if convicted of a felony involving a crime against persons

30. 65-5410 - may be denied an occupational therapist's license if the conviction is found by the board to have a direct bearing on whether such person should be entrusted to serve the public

31. 65-5510 - may be denied a respiratory therapist's license if the conviction is found by the board to have a direct bearing on whether such person should be entrusted to serve the public

32. 65-5809 - may be denied a professional therapists license if convicted of a felony and does not show rehabilitation

33. 65-6133 - may be denied ability to teach or be in the emergency medical services if convicted of a felony and fails to show rehabilitation

34. 65-6311 - may be denied a social workers license if convicted of a felony and fails to show rehabilitation

35. 65-6911 - may be denied an athletic trainer's license if convicted of a felony and fails to show rehabilitation

36. 72-1397 - shall be denied a teacher's certificate if convicted of a felony listed under this statute

37. 74-1404 - cannot serve on the Kansas Dental Board if convicted of a felony or any crime involving the dental profession

38. 74-5324 - may be denied a psychologist license if convicted of a felony involving moral turpitude or any crime associated with the profession, and list of other offenses

39. 74-5369 - same as above, except for master psychologist license

40. 74-5610 - a law enforcement agency cannot permit auxiliary personnel who have been convicted of a felony access to police records or communications systems

41. 74-8708 - cannot obtain a license to sell lottery tickets if convicted of a felony within the last 10 years

42. 74-8803 - cannot serve on the Kansas Racing and Gaming Commission

43. 74-8805 - cannot be an executive director on the Kansas Racing and Gaming Commission

44. 74-8816 - may be denied a parimutuel occupational license if convicted of a felony or a juvenile offense that would be a felony within past 5 years

45. 74-8817 - may be denied a parimutuel concessionaire license if convicted of a felony or a juvenile offense that would be a felony within past 5 years

46. 74-8837 - may be denied a racing wagering services or equipment license if convicted of a felony or a juvenile offense that would be a felony within past 5 years

47. 74-9804 - may not be appointed executive director of the Kansas Gaming Agency that overseas tribal gaming

48. 75-711 - cannot serve on the KBI

49. 75-7b04 - may be denied a private investigator's or security operation's license if convicted of a felony or any crime within the last 10 years involving moral turpitude and/or other criteria

50. 75-7b21 - cannot obtain a license to train private investigators regarding firearms if convicted of a felony or a misdemeanor within the past 10 years

51. 76-1908 - cannot be admitted to a veteran's institution or soldiers home if convicted of a felony, unless the applicant can show rehabilitation

52. 79-3304 - may be denied a license to sell tobacco products if convicted of a felony or any crime involving moral turpitude or a crime associated with the sale of tobacco products and the applicant has failed to fulfill his obligations under the conviction

53. 79-3464b - may be denied a license under the motor vehicle fuel tax laws if convicted of a felony involving theft within the past 5 years or has ever been convicted of a felony involving fraud or tax evasion

his/her instructions in reporting on a regular basis and keep the officer continuously informed of my residence and employme it becomes necessary that I travel outside of my assigned parole district (as determined by the parole officer) or the State of Kansas, I will obtain advance permission from my parole officer.

2. **Laws:** I shall obey all federal and state laws, municipal or county ordinances, including the Kansas Violent Offender Registration Act. If the Kansas Offender Registration Act is applicable to me, I will register with the local Sheriff's Office within 10 days of arrival in the county of residence upon moving to any other county in Kansas. Changes in residence within the same county requires written notification to the Sheriff's Office. If I am arrested for any reason, I will notify my parole officer at the earliest allowable opportunity.

3. **Weapons:** I will not own, possess, purchase, receive, sell or transport any firearms, ammunition or explosive device, or any device designed to expel or hurl a projectile capable of causing injury to persons or property, **or any weapon prohibited by law.**

4. **Personal Conduct:** I will not engage in assaultive activities, violence, or threats of violence of any sort.

5. **Narcotics/Alcohol:** I will not illegally possess, use, or traffic in any controlled substance, narcotics or other drugs as defined by law except as prescribed by a licensed medical practitioner. I will not consume any mind-altering substances. I agree and consent to submit to a blood, Breathalyzer or urine test at the direction of the parole officer. At no time will I consume intoxicating liquor, including beer or wine, without written permission from my parole officer. At no time will I become intoxicated from the consumption of any substance, including, but not limited to, wine, beer, glue, or paint.

6. **Association:** I will not associate with persons engaged in illegal activity and will obtain written permission from the parole officer and institutional director to visit or correspond with inmates of any correctional institution.

7. **Employment:** I agree to secure and maintain reasonable, steady employment within 45 days of my release from prison or residential treatment unless excused for medical reasons or an extension of time is given by my parole officer. I agree to notify my employer of my current and prior (non-expunged) adult felony convictions and status as an offender.

8. **Education:** I agree to make progress toward or successfully complete the equivalent of a secondary education if I have not completed such by the time of my release and I am capable, as determined by my parole officer.

9. **Costs:** I agree to pay restitution, court costs, supervision fees, and other costs as directed by my parole officer.

10. **Treatment/Counseling:** I agree to comply with my relapse prevention plan and the recommendations of any treatment or counseling, or assessment program which I have completed during my incarceration or while under supervision. I agree to follow any directives given to me by my parole officer regarding evaluations, placement and/or referrals. I agree to submit to polygraph examinations as directed by my parole officer and/ or treatment provider.

11. **Victim:** I agree to have no contact with the victim(s) in my case(s) or the victim's family by any means including, but not limited to, in person, by phone, via computer, in writing, or through a third party without the advance permission of my parole officer.

12. **Search:** I agree to subject to a search by parole officer(s) of my person, residence, and any other property under my control.

Special Conditions: I agree to abide by the special conditions(s) set forth below, as well as to comply with instructions which may be given or conditions imposed by my parole officer from time to time as may be governed by the special requirements of my individual situation.

All special conditions previously imposed remain in effect.

I also agree that if I leave the state of Kansas without permission or am ordered to return from Kansas to another state, I will not contest any effort to be returned.

Inmate Signature _____ Number _____

WITNESS: _____ Date _____

2-22
~~2-22~~

Testimony in Support of 2002 HB 2851
House Judiciary Committee

Jerry Wyckoff Ph.D.

In my experience in dealing with juveniles, ranging from 10-year-olds to 17- year-olds, there are several issues that emerge. First, these youth have, for the most part, made mistakes that could in the past have been written off as stupid, careless, or simply youthful indiscretions. Because of the current Kansas laws covering juveniles, however, they are charged with misdemeanors or felonies.

We aren't dealing with adults here. These youth have immature brains with prefrontal cortex development that has not yet reached maturity, which for males may not happen until their early twenties. Perhaps our ancestors were wiser than we in insisting that the age of adulthood be 21 years. Without the prefrontal cortex saying, "Don't do that! It's stupid!" youth will commit many mistakes while believing that they won't matter. The "personal fable of adolescents'" is a belief that because they are unique, things that happen to others won't happen to them. As a result, potential punishment, or even the prospect of death, doesn't help them to always make good decisions. Adolescence is a time of identify formation, and when a youth's identity has been criminalized, he or she will likely carry that identity into adulthood.

Most of the young people I have dealt with who have gone through JIAC and the court system have come to believe that they are criminals who aren't worthy of remaining members of the community. They have lost respect for themselves and for the system that they had thought up to that point would protect them. Most even state that because they are now wiser, they will be able to get away with things without being caught. They have created for themselves a virtual underworld that allows them to hide from adult authority.

The emotional state that results from their trip through "the system" ranges from anger through anxiety and ultimately to depression. Some of the adolescents have considered suicide as a way of ending the pain that they now feel. Most have difficulty in school after being on diversion or probation, and most choose the companionship of others who are marginal students or who have also been through "the system."

The trip to *JIAC* often begins with the zero tolerance policies of Johnson County schools, which lead to expulsion and criminal charges for minor infractions, without due process. Adults become the enemy, which pushes' adolescents further into their own underground world, a consequence I'm certain the legislature didn't foresee when drafting the current laws.

Unfortunately, criminalizing our youth won't make them better adults. That will only make them want to get back at adults and prolong their stay in the "cool" adolescent world that is so much less hostile to them.

I hope the new bill which allows for a return to treating children and adolescents as the immature children that they are and not the miniature adults that we've made them, will pass. Our experiment with the current system appears to be doing much more harm than good. Our youth need much more guidance and less criminal prosecution.

Jerry Wyckoff Ph.D
Child Physiologist

~~2-22~~
2-23

IN SUPPORT OF HB2851

John C. Donham
Attorney at Law
P.O. Box 274
Olathe, Kansas 66051-0274
(913) 764-3012

I support HB2851 and urge this Committee to favorably recommend it for a vote.

My reasons for supporting it are:

- The age group 10 years through 16 years is, on the whole, too immature to be held to the same awareness and culpability standards as adults.
- This bill recognizes the fact that holding ALL persons 10 years to 16 years to adult standards in order to deal with a fringe group that ought to be so held often has the unintended consequence of an unnecessary, harmful stigmatization as a "felon".
- This bill does not prohibit the local District Attorney from seeking extended jurisdiction juvenile prosecution or waiver to adult status.

Immature kids are tempted to perform "pranks" or "dares" that may violate laws. This may entail turning over an outhouse (criminal destruction of property). It might entail "hill jumping" in their car (reckless driving - or worse, aggravated battery).

Immature students are susceptible to mimicking Hollywood characters in order to be seen as "grown up". This may entail a John Wayne response to someone who has leveled an insult (battery). Or it could be behaving like the really cool adults in the Oscar winning motion picture, American Beauty (smoking marijuana).

Immature kids are deprived of many privileges extended to adults precisely because of their immaturity. Society recognizes that until a young person gets a few more years under his or her belt, his or her ability to first visualize and then weigh consequences of the contemplated act is minimal, if any.

The notion of the "evil mind" has always played a predominant role in our criminal justice system. It is used to distinguish, for example, 1st degree murder from

House Judiciary
Attachment 3
3-6-02

voluntary manslaughter. Whereas Smith kills Jones in each case, we require a harsher sentence if the killing was a premeditated killing. And so it should be. But for the very reason a harsher sentence is called for where the "evil mind" is greater, a diminished sentence is called for where the "evil mind" is less, i.e. for the immature 10 year through 16 year olds.

Sending a young person on through the educational pipeline after recording a "felony" adjudication in his or her file places a social stigma on the young person. It can cause the youngster to carry a lower self-image of himself or it can cause the more profound effect of causing the youngster to be ostracized from the rest of his classmates. In the worst-case scenario, it can bring on a sense of hopelessness leading to the youngster just giving up on trying to better himself.

For the isolated case of a youngster aged 10 years through 16 years that does exhibit the "evil mind" and hence is susceptible to being tried as an adult or through the extended juvenile prosecution process, this bill does not foreclose that option.

This bill: (1) eliminates the mechanical application of certain degrading titles such as "felon" to an age group that, on the whole, is too immature to warrant such a stigma; (2) removes from consideration in the criminal history section those acts based more on immaturity than "evil mind" thereby guaranteeing that those whose criminal history is composed of crimes committed with an "evil mind" are subject to a harsher penalty for future crimes than those who acquired their criminal history out of ignorance; and, (3) leaves to those most familiar with the facts of the case the option to seek waiver to adult status or extended jurisdiction juvenile prosecution.

Keys for Networking, Inc.

The Kansas Parent Information and Resource Center

The State Organization of the Federation of Families for Children's Mental Health

March 6, 2002

To: Representative O'Neal, Members of the Judiciary Committee
From: Sarah Adams, Director of Information Systems

I am offering testimony to you on behalf of Keys For Networking, Inc., the state organization which represents Kansas families whose children have serious emotional disabilities. Last year, Keys staff provided services to over 10,000 families.

Today, we ask you to include two concerns from these families who have children in the juvenile intake process. As an organization that supports children and family involvement, we see the need to include in this bill an opportunity for families to be involved with their child during this intake process.

In the juvenile corrections arena we see a lack of family involvement, lack of tolerance for family interest and a notion that kids are not attached in meaningful ways to their families. We would like to see children have the same rights as adults, including the right to legal counsel and an opportunity for their family to be involved and have meaningful participation included in all phases and stages of the juvenile justice system.

Currently, during this intake process, children are often interrogated for several hours without the consult of a parent or an attorney. Sometimes during this process families don't even know the whereabouts of their child. The information they divulge at this time about their family life, living conditions, and alleged crime, with no informed consent, can be used against them and their family in a manner which could result from their being removed from their home. They have no idea that information they give at this time could be used against them to take them away from their family.

I have with me today two parents Bobbi Rine and Joan Woellhof who would like to talk about their experiences with the intake process.

Thank you for allowing us to testify before you today. Please support family involvement with the intake process and the judicial system.

1301 S. Topeka Blvd. • Topeka, Kansas 66612
(785) 233-8732 • (800) 499-8732 msg line • Fax (785) 235-6659 fax line

House Judiciary
Attachment 4
3-6-02

March 5, 2002

The Honorable Representative Owens
House Judiciary Committee
300 SW 10th Street
Topeka, KS 66612-1504

Dear Representative Owens:

This letter is in support for HB 2851. Many concerned citizens want the law changed to protect children from the horrible ordeal they are subjected to if they get caught up in the "as is" system.
It is only lack of knowledge about the present system that keeps the vast majority of concerned citizens from raising the roof. Parents, school counselors, teachers and administrators I informed
could not believe what they were being told.

The present system is nothing short of a nightmare for those unfortunate enough to experience it.

When a child is charged with a crime, they need to have, at minimum, the same rights as adults. They need to have their rights read to them. I thought they did, but under the present system it is perfectly acceptable for the police to lie, cheat and bribe children to get information, make an arrest, handcuff, transport, strip search and delouse a child over the age of 10 years without the child ever being read their constitutional rights, being able to make a phone call to inform parents where they are, or given notice that they have a right to an attorney before being surrounded, stared down and drilled, The questions they are asked upon entering JIAC are way out of line.

The current system needs to change. It is abusive and unfair. The effects of these abusive practices are long lasting. The children who are often subjected to this treatment are the weaker more venerable ones and this further crushes their limited self-esteem.

It is our hope that with the passage of this legislation, other families will not have to go through what we did.

Thank you for sponsoring this extremely important legislation.

Sincerely,

Kareem and Sallie Amir

From: <Tvhog90@aol.com>
To: <owens@house.state.ks.us>
Date: Tue, Mar 5, 2002 7:57 PM
Subject: PASS HB 2851

Dear Representative Owens:

I am writing to ask you to support HB 2851. This legislation is needed to provide protection of our children and parent's constitutional rights. Children should be treated with respectful and caring attitudes that teach and guide them to maturity; not subjected to harsh punishment for childish behavior. The current laws that regulate the Juvenile Justice system are faulty, by not allowing the participation of the child's parents and ensuring the child their constitutional protections. I greatly respect the time and effort you have invested in service to the public, and now I ask you to stand for what is right. Please give this your serious attention and consideration. HB 2851 is vital for the future of our children and the State of Kansas.

Thank You,

William A. Shefter

From: "Toni Gelpi" <tonigelpi@hotmail.com>
To: <Crow@house.state.ks.us>, <Dillmore@house.state.us>, <Flaharty@house.ks.us>, <Klein@house.state.ks.us>, <Long@house.state.ks.us>, <Morrison@house.state.ks.us>, <Oneal@house.state.ks.us>, <Pauls@house.state.ks.us>, <Ruff@house.state.ks.us>, <Shultz@house.state.ks.us>, <Owens@house.state.ks.us>, <Decastro@house.state.ks.us>, <Divita@house.state.ks.us>, <Howell@house.state.ks.us>, <Lloyd@house.state.ks.us>, <Newton@house.state.ks.us>, <Patterson@house.state.ks.us>, <Rehorn@house.state.ks.us>, <Shriver@house.state.ks.us>, <Swenson@house.state.ks.us>
Date: Tue, Mar 5, 2002 9:59 PM
Subject: HB 2851

To: The Honorable Representatives of the House Judiciary Committe,

Please support HB 2851. As a parent of a child who went through the system and who has suffered the emotional, academic and career repercussions for almost six years, I can tell you that we need to fix the system. It's time to protect our children's rights and let them know that the system is working for them and the community.

My son was falsely accused of sexual battery in 1996 when he was 14 years old. We know this beacause the girl's mother told me later that she made it up. My son has paid the price ever since. Just hwen we thought we had closure, the nightmare returns. We did not find out until this summer that juvenile records could be expunged when no charges had been filed. He went through the process, but we do not still do not know if the actual file was expunged before the FBI did security checks on student pilots after Sept 11th. You see, my son
is in commercial flight school at Saint Louis University.

I urge you to support this bill that will help protect our children. How long should they have to pay for a mistake they made when they were young. My child did nothing wrong and he is still paying. If you would like to here his story, you may contact me at 913.381.7521.
Thank you for listening.
Sincerely,
Toni Gelpi
8504 West 88th Street
Overland Park, KS 66212

From: <Maskedbandit36@aol.com>
To: <owens@house.state.ks.us>
Date: Tue, Mar 5, 2002 3:50 PM
Subject: Support HB 2851

Dear Representative Owens,

I strongly support the changes to the Juvenile Justice system that would be effected by HB 2851. It just makes good common sense to treat children with simple dignity and not criminalize them for minor childhood behavior. On the other hand the present law does exactly that. I know that you will give this your best, as you carefully weigh and consider the provisions of HB 2851. We elected you and we trust you to do what is right for Kansas children and families. Thank you for stepping forward on this very important issue.

Sincerely,

Doug Replogle

Kris W. Kobach
PROFESSOR OF LAW
UNIVERSITY OF MISSOURI-KANSAS CITY
SCHOOL OF LAW
5100 ROCKHILL ROAD
KANSAS CITY, MISSOURI 64110-2499

TESTIMONY REGARDING H.B. 2851

6 March 2002

To the Members of the Judiciary Committee, Kansas House of Representatives:

As a Professor of Constitutional Law at the University of Missouri-Kansas City School of Law I wish to express my support for H.B. 2851, which is a beneficial and appropriate adjustment of Kansas law. Its alteration of sentencing rules and its decay provisions are desirable policies. However, it is of critical importance that the Kansas Legislature make other changes to the juvenile justice code, beyond those included in H.B. 2851, in order to cure defects in the law that frequently lead to violations of the United States Constitution.

It is my firm conclusion that procedures at juvenile intake and assessment centers (JIACs) are unconstitutional in several respects. I am most familiar with the procedures used at the Johnson County intake and assessment center, where center personnel have in the past violated the Fourth, Fifth, and Sixth Amendment rights of juveniles in their custody. Because these constitutional infirmities are primarily procedural in nature, their existence and gravity will depend on the particular circumstances of each juvenile's treatment at a given intake and assessment center. It is for this reason that Kansas Attorney General Stovall recently concluded that while the procedures at Johnson County's JIAC are not inherently unconstitutional, they run the risk of violating the Constitution in several ways. I outline these violations below.

The Sixth Amendment Right to Consult with an Attorney

The Sixth Amendment protects a juvenile during the verbal and written

questioning that occurs at an intake and assessment center. In constitutional terms, once a juvenile arrives at an intake and assessment center is presented with oral or written questions, a "custodial interrogation" has begun, and he has a right to have an attorney present. Only if the juvenile could freely walk out at any time without incurring adverse consequences would the questioning not be classified as a custodial interrogation.

The United States Supreme Court has long held that the protections of the Fifth and Sixth Amendments extend to juveniles during custodial questioning. See Fare v. Michael C., 439 U.S. 1310 (1978). Indeed, the inherently coercive aspects of custodial interrogation that the Court described in Miranda v. Arizona, 384 U.S. 436 (1966), are multiplied when the person being questioned is a juvenile. When a juvenile is out of his comfort zone, surrounded by the coercive power and intimidating machinery of the state, he may succumb to isolation and pressure. As the Miranda Court said, "Custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." Id. Juveniles are particularly prone to such weakness.

The written statement that is handed to juveniles in custody at the Johnson County JIAC, which indicates that detainees possess the right to have an attorney present, is inadequate to protect their constitutional rights in this regard. There are three problems with this written statement. First, it is not communicated verbally. Second, the statement is buried in the middle of a document that is more than 500 words long. Juveniles of tender years are unlikely to read the small print and decipher the legalese. Their rights must be clearly stated to them in order for the procedure to pass constitutional scrutiny. Third, the statement is framed in ambiguous terms. It does not meet the "clear and unequivocal" standard established by the Miranda Court. "If you want to speak to an attorney, or if your parents want you to speak to an attorney, then you will be given that opportunity." This phrasing leaves it unclear whether the juvenile may refuse to answer questions until he has first spoken to an attorney, or whether he may merely consult with an attorney at some point in the future, after the intake and assessment process is completed. In summary, the warning is inadequate because it is written, buried, and unclear.

The Fifth Amendment Privilege Against Self-Incrimination

As described above, the coercive atmosphere and custodial setting of intake and assessment center questioning trigger the protections of not only the right to counsel, but also the Fifth Amendment right against self-incrimination. The "problem oriented screening instrument for teens" (POSIT) questionnaire includes numerous questions relating to the commission of crimes. Some of the most obvious examples are:

"31. Have you accidentally hurt yourself or someone else while high on alcohol or drugs?"
"43. Have you stolen things?"
"45. Do you ever feel you are addicted to alcohol or drugs?"
"81. Have you had a car accident while high on alcohol or drugs?"
"86. Have you ever intentionally damaged someone else's property?"

A report based on the juvenile's answers is provided to the District Attorney's office. Although the answers cannot be admitted into evidence in a judicial proceeding against the juvenile, as stipulated by K.S.A. 75-7023, they are nonetheless used derivatively in a way that transgresses the Fifth Amendment, as explained below.

It must be remembered that the protections of the Fifth Amendment are *not* limited merely to the presentation of evidence in a criminal setting. The Fifth Amendment provides a broad umbrella of protection against self-incrimination in a variety of contexts. As the U.S. Supreme Court proclaimed in Kastigar v. United States:

> The privilege [against compulsory self-incrimination] reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. It can be asserted in any proceeding, civil or criminal, *administrative or judicial*, investigatory or adjudicatory; and it protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution *or could lead to other evidence that might be so used*. This Court has been zealous to safeguard the values that underlie the privilege. 406 U.S. 441, 444-45 (1972) (emphasis added) (internal citations omitted).

Thus, the mere fact that intake and assessment centers are administrative entities does not remove them from the reach of the Fifth Amendment. Although the juvenile's answers may not be admitted at trial, prosecutors do make derivative use of the answers; and this derivative use violates the Fifth Amendment.

For example, in Johnson County it is standard JIAC procedure to provide a report summarizing a juvenile's POSIT responses to the District Attorney. And the Johnson

County District Attorney has stated publicly that these reports are "used to help determine if a charge should be filed." (*The Overland Park Sun*, May 9, 2001.) This is precisely the sort of derivative use of compelled statements that the Fifth Amendment prohibits. Derivative use prohibited by the Fifth Amendment includes: "assistance in focusing the investigation, *deciding to initiate prosecution*, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F. 2d 305, 311 (8th Cir., 1983). (emphasis added). If the information obtained by JIAC is used by the District Attorney in his decisions to initiate criminal prosecutions (as the District Attorney has publicly acknowledged), then requirements of the Fifth Amendment must be observed. Therefore, juveniles must be fully informed of the privilege against self-incrimination and must be free to exercise it.

The Fourth Amendment Prohibition of "Unreasonable Seizures"

Although the case law in this area is less developed, there is a significant possibility that the coercive use of the POSIT assessment device, which is currently permitted under Kansas law, offends the Fourth Amendment. A Fourth Amendment violation would be likely in any instance in which a juvenile did something minor that led to his being taken to an intake and assessment center (e.g., swearing at school, an act that has resulted in trips to JIAC in the past). If such a child is then led to believe that he must answer POSIT questions unrelated to the incident before he can go home, the detention of the child at the intake and assessment center is unreasonable under the Fourth Amendment.

In determining whether an investigative detention is "reasonable" as required by the Fourth Amendment, it must be considered (1) whether the detention was reasonable at its inception, and (2) "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Terry v. Ohio, 321 U.S. 1, 20 (1968). It is with respect to the second requirement that detention at an intake and assessment center falls short. Many of the POSIT questions bear no reasonable relationship to whatever incident resulted in the juvenile being detained at the intake and assessment center. For example:

"7. Do your parents or guardians argue a lot?"
"10. Have you ever had sex with someone who shot up drugs?"
"15. Have you dated regularly during the past year?"
"45. Do you ever feel you are addicted to alcohol or drugs?"
"125. Do you have friends who have stolen things?"
"135. On a typical day, do you watch more than two hours of TV?"
"139. Have you ever had sexual intercourse without using a condom?"

Although "...it is impossible to draw 'bright lines' in the area of Fourth Amendment rights," and each case depends on "the totality of circumstances presented," United States v. Walker, 941 F. 2d 1086, 1090 n. 3 (1991), it is likely that many detentions at intake and assessment centers run afoul of the Fourth Amendment. The scope of the POSIT questions is so vast that it is difficult to draw the reasonable relationship between the incident and the questions that the Constitution requires. Among other factors that must be considered in determining the reasonableness of a seizure are its duration, intensity, and subjective intrusiveness. In many cases, questioning at an intake and assessment center is a lengthy, intense, and intrusive process-aspects that weigh heavily against its constitutionality.

Recommended Amendments to H.B. 2851

Curing these constitutional defects in intake and assessment center procedures may be accomplished relatively easily, and such minor reforms would not impede the mission of the juvenile intake and assessment system. First and foremost, juveniles must be verbally informed of their right to consult an attorney immediately upon their arrival at an intake and assessment center. Second, juveniles must be given the option of speaking to their parents before questioning begins. JIAC officials have argued, unconvincingly, that involving the parents in the process poses a threat to juveniles who have abusive parents. This argument misses the point entirely. Because parental involvement is *optional*, with the decision left to the juvenile, no such risk is present. Third, reference to the POSIT should be deleted from Kansas law, and intake and assessment centers should be directed not to ask questions that are incriminating. Fourth, the law must make clear that juveniles may refuse to answer questions at any time, without suffering adverse

consequences.

Statutory language that cures these (and other) defects is included in the attached draft legislation. Inserting such amendments into H.B. 2851 will do much to secure the constitutional rights of Kansans. I applaud the committee for revisiting the juvenile justice system and looking for ways to improve it. Fixing the constitutional problems with the intake and assessment system can be done relatively easily. I encourage the committee to do so now, so that vital constitutional rights are protected in the future.

Session of 2002

HOUSE BILL NO. XXXX

By Committee on Judiciary

X-XX

AN ACT concerning juvenile offenders; relating to the right to an attorney during the intake and assessment process; amending K.S.A. 38-1606 and K.S.A. 2000 Supp. 75-7023 and repealing the existing sections.

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

Section 1. K.S.A. 38-1606 is hereby amended to read as follows: 38-1606. *(a) Appointment of attorney to represent juvenile. (1) A juvenile who is taken into custody and taken to an intake and assessment program, pursuant to K.S.A. 38-1624, and amendments thereto, is entitled to have a parent or guardian present, and is entitled to the assistance of an attorney during the intake and assessment process pursuant to K.S.A. 75-7023, and amendments thereto. The intake and assessment worker shall verbally inform the juvenile of the right to employ an attorney, as stipulated in K.S.A. 75-7023, and amendments thereto. The intake and assessment worker shall also verbally inform the juvenile's parents or guardian of the right to employ an attorney.*

(2) A juvenile charged under this code is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parents of the right to employ an attorney.

(3) Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile or parent, or both, as part of the expenses of the case.

(b) *Continuation of representation.* An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) *Attorneys' fees.* Attorneys appointed hereunder shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 38-1613, *and amendments thereto.*

Sec. 2. K.S.A. 2000 Supp. 75-7023 is hereby amended to read as follows: 75-7023. (a) The supreme court through administrative orders shall provide for the establishment of a juvenile intake and assessment system and for the establishment and operation of juvenile intake and assessment programs in each judicial district. On and after July 1, 1997, the secretary of social and rehabilitation services may contract with the commissioner of juvenile justice to provide for the juvenile intake and assessment system and programs for children in need of care. Except as provided further, on and after July 1, 1997, the commissioner of juvenile justice shall promulgate rules and regulations for the

juvenile intake and assessment system and programs concerning juvenile offenders. If the commissioner contracts with the office of judicial administration to administer the juvenile intake and assessment system and programs concerning juvenile offenders, the supreme court administrative orders shall be in force until such contract ends and the rules and regulations concerning juvenile intake and assessment system and programs concerning juvenile offenders have been adopted.

(b) No records, reports ~~and~~ *or* information obtained as a part of the juvenile intake and assessment process may be admitted into evidence in any proceeding and may not be used in a child in need of care proceeding except for diagnostic and referral purposes and by the court in considering dispositional alternatives. However, if the records, reports or information are in regard to abuse or neglect, which is required to be reported under K.S.A. 38-1522, and amendments thereto, such records, reports or information may then be used for any purpose in a child in need of care proceeding pursuant to the Kansas code for care of children.

(c) (1) Upon a juvenile being taken into custody pursuant to K.S.A. 38-1624, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process as required by supreme court administrative order or district court rule prior to July 1, 1997, or except as provided above rules and regulations established by the commissioner of juvenile justice on and after July 1, 1997.

(2) Immediately upon a juvenile's arrival at the intake and assessment center, and prior to beginning the intake and assessment process, an intake and assessment worker shall verbally state the following to the juvenile:

> *"You may contact your parents or a guardian and speak to them now or at time during the intake and assessment process. If you wish, you may have a parent or guardian present with you while you are here. You also have the right to have an attorney present. While you are here, you may be asked to fill out a questionnaire or answer other questions. You do not have to answer any question that you do not want to answer. Information that you give cannot be used in court against you, but it may be shared with prosecutors."*

The intake and assessment worker shall also present the statement to the juvenile in writing.

(3) Immediately thereafter, and prior to beginning the intake and assessment process, an intake and assessment worker shall contact the juvenile's parents or guardian, notify them that the juvenile is at the center, and inform them of their right to employ an attorney pursuant to K.S.A. 38-1606, and amendments thereto.

(d) Except as provided in subsection (g) and in addition to any other information required by the supreme court administrative order, the secretary, the commissioner or by the district court of such district, the juvenile intake and assessment worker shall collect the following information:

~~(1) A standardized risk assessment tool, such as the problem oriented screening instrument for teens;~~

(2) criminal history, including indications of criminal gang involvement;

(3) abuse history;

(4) substance abuse history;

(5) history of prior community services used or treatments provided;

(6) educational history; *and*

(7) medical history.; and

(8) family history.-

(e) After completion of the intake and assessment process for such child, the intake and assessment worker may:

(1) Release the child to the custody of the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that it would be in the best interest of the child and it would not be harmful to the child to do so.

(2) ~~Conditionally release the child to the childs parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the childs best interest to release the child to such childs parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such childs parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to:~~ *Recommend that one or more of the following programs be undertaken. Participation by the child and/or the child's parents in such programs shall be entirely voluntary. The intake and assessment worker may not make participation in such programs a condition of the child's release. Nor may the intake and assessment worker coerce participation by threatening prosecution. The programs may include, but not be limited to:*

(A) Participation of the child in counseling;

(B) participation of members of the childs family in counseling;

(C) participation by the child, members of the childs family and other relevant persons in mediation;

(D) provision of inpatient treatment for the child;

(E) referral of the child and the childs family to the secretary of social and rehabilitation services for services and the agreement of the child and family to accept and participate in the services offered;

(F) referral of the child and the childs family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;

(G) ~~requiring~~ *requesting* the child and members of the childs family to enter into a behavioral contract which may provide for regular school attendance among other requirements; or

(H) any special ~~conditions~~ *measures* necessary to protect the child from future abuse or neglect.

(3) Deliver the child to a shelter facility or a licensed attendant care center along with the law enforcement officers written application. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to K.S.A. 38-1528, and amendments thereto.

(4) Refer the child to the county or district attorney for appropriate proceedings to be filed or refer the child and family to the secretary of social and rehabilitation services for investigations in regard to the allegations.

(5) Make recommendations to the county or district attorney concerning immediate intervention programs which may be beneficial to the juvenile.

(f) The commissioner may adopt rules and regulations which allow local juvenile intake and assessment programs to create a risk assessment tool, as long as such tool

meets the mandatory reporting requirements established by the commissioner.

(g) Parents, guardians and juveniles may access the juvenile intake and assessment programs on a voluntary basis. The parent or guardian shall be responsible for the costs of any such program utilized.

(h) Information collected regarding a juvenile during the intake and assessment process shall be retained by the intake and assessment center until the juvenile's eighteenth birthday, at which point all such information except for records of criminal convictions shall be purged from the intake and assessment center's records. No agency of the state of Kansas or of any county shall retain such information after the juvenile's eighteenth birthday. Only records of criminal convictions shall be retained after the juvenile's eighteenth birthday.

(i) All information collected regarding a juvenile during the intake and assessment process shall be made available to the juvenile's attorney. Such information shall also be made available to the juvenile's parents or guardian, except in cases in which a judge issues an order determining that the juvenile has suffered abuse at the hands of said parents or guardian.

Sec. 3. K.S.A. 38-1606 and K.S.A. 2000 Supp. 75-7023 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

SPONSOR:
Committee on Judiciary

SUBJECT: JUVENILE CRIME; JUVENILE JUSTICE; LAWYERS; LEGISLATORS; RIGHT TO COUNSEL

KRIS WILLIAM KOBACH
White House Fellow

Office Address:
Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
1878
Washington, DC 20530

v
Telephone: (202) 514-1061

Home Address:
200 W. Uhler Terrace
Alexandria, VA 22301
Telephone: (703) 837-

kris.w.kobach@usdoj.go

EDUCATION

Yale Law School, New Haven, CT
J.D., June 1995

Marshall Scholar,
Oxford University (Brasenose College), England
D.Phil. in Politics, July 1992
M.Phil. in Politics, July 1990

Dissertation entitled "Direct Democracy in Switzerland: The Impact of the Referendum upon Political Institutions and Behavior."

Harvard University, Cambridge, MA
B.A. in Government, June 1988, *summa cum laude*, Phi Beta Kappa (graduated first in class in Government Department).

EXPERIENCE

2001-Present — **White House Fellow**
Office of the U.S. Attorney General
Advisor to the Attorney General on constitutional law, border security, and immigration.

1996-Present — **University of Missouri at Kansas City School of Law**
Professor and Daniel L. Brenner Faculty Scholar (Associate Professor 1996-2000)
Subjects of teaching and research: Constitutional Law, American Legal History, Legislation, Legislative Drafting, Comparative Constitutional Law.

1999-2001 — **City of Overland Park, Kansas**
City Council Member

1995-1996 — **Chambers of Judge Deanell Tacha, US Court of Appeals, 10th Cir.**
Judicial Clerk

1994-95 — **Yale University**
Instructor in Political Science
Taught the following undergraduate Political Science courses: Direct Democracy; The Constitution and the Modern Regulatory Welfare State.

1992-94 — **Yale University**
Teaching Fellow in Political Science

Taught writing-intensive and regular sections of the following undergraduate Political Science courses: Civil Rights and Civil Liberties, Constitutional Law.

1990-92 **Brasenose College, Oxford University**, England
Politics and Philosophy Tutor
Taught the following undergraduate courses: Political Theory, Comparative Political Insitutions.

PUBLICATIONS: BOOKS

Kris W. Kobach, The Referendum: Direct Democracy in Switzerland (Aldershot, Eng.: Dartmouth, 1993).

Kris W. Kobach, Political Capital: The Motives, Tactics, and Goals of Politicized Businesses in South Africa (Lanham, MD: University Press of America, 1990).

Chapter in multiple-author book: Kris W. Kobach, *Taking Shelter Behind the First Amendment: The Defense of the Popular Initiative*, in The Battle Over Citizen Lawmaking (M. Dane Waters, ed.) (Carolina Academic Press, 2001).

Chapter in multiple-author book: Kris W. Kobach, *Lessons Learned in the Participation Game*, in Direct Democracy: The Eastern and Central European Experience (Andreas Auer & Michael Butzer, eds.) (London: Ashgate, 2001).

Chapter in multiple-author book: Kris W. Kobach, *Switzerland*, in Referendums Around the World (David Butler and Austin Ranney, eds.) (Washington: American Enterprise Institute, 1994).

PUBLICATIONS: SCHOLARLY ARTICLES

Kris W. Kobach, *May "We the People" Speak? The Forgotten Role of Constituent Instructions in Amending the Constitution*, 33 U. Cal. Davis L. Rev. 1 (1999).

Kris W. Kobach, *Contingency Fees May Be Hazardous to Your Health: A Constitutional Analysis of Congressional Interference with Tobacco Litigation Contracts*, 49 S.C. L. Rev. 215 (1998).

Kris W. Kobach, *Justice Stephen Field and the Pitfalls of Court Caricature*, App. Prac. J., Winter 1998, at 5 (book review).

Kris W. Kobach, *The Origins of Regulatory Takings: Setting the Record Straight*, 1996 Utah L.Rev. 1211 (1997).

Kris W. Kobach, *Spurn thy Neighbor: Direct Democracy and Swiss Isolationism*, West European Politics, Vol. 20, No. 3, at 185 (1997).

Kris W. Kobach, Note, *Rethinking Article V: Term Limits and the Seventeenth and Nineteenth Amendments*, 103 Yale L.J. 1971 (1994).

Kris W. Kobach, *Recent Developments in Swiss Direct Democracy*, 12 Elect. Stud. 342 (1993).

OTHER NOTABLE SKILLS AND ACHIEVEMENTS

- Frequent columnist on constitutional and legal issues for the *New York Post*.
- Guest on the *Today Show*, the *Fox News Channel*, *Barnicle* (MSNBC) and over 100 other television or radio broadcasts.
- Quoted by the U.S. Supreme Court in *Cook v. Gralike*, 121 S. Ct. 1029, 1037 (2001).
- Testified before the U.S. Senate Committee on Commerce, Science, and Transportation, regarding the constitutionality of proposed congressional interference with states' tobacco litigation contracts, Feb. 26, 1998.

- Leadership Kansas, 1996 (one of 35 Kansans selected by the Kansas Chamber of Commerce and Industry).
- Presenter on monthly radio program, *The Word Mavens*, exploring the origins of words and phrases in the English language (on Kansas City's NPR station).
- Basic proficiency in German.
- National rowing champion, men's pair event, master's division, 1998.

Testimony to the Judiciary Committee

Regarding House Bill 2851

Paul J. Morrison, District Attorney - Tenth Judicial District
March 6, 2002

I'm sending this letter today to represent my testimony in opposition to this bill. When the Sentencing Guidelines were passed in 1993 there was much discussion about the fact that some juvenile convictions should continue to "count" as a prior criminal record when one becomes an adult. After much discussion within the legislature and with the recommendations of the Kansas Sentencing Commission, this body passed the current statutes which basically provide for more serious juvenile crimes to count against an individual into adulthood while allowing more minor crimes to decay. I am very much aware of the fact that in some circles in the last couple of years there has been discussion about modifying these "decay" rules against juveniles. However, I am adamantly opposed to the manner in which they decay as currently comprised in this bill. For one thing, I believe most prosecutors in this State would be very much opposed to providing a "free pass" for all juvenile crimes committed prior to the age of 16. I can tell you that I've seen several serious offenders in my career that embarked on criminal careers long before the age of 17.

A public policy change of this magnitude carries many repercussions. In addition to other things, it could cause many court challenges by currently incarcerated inmates and potentially cost the State a lot of money. In addition, dangerous offenders who are currently incarcerated could potentially be released. A major change such as this should only be made after much study by stakeholders in the criminal justice system. I am opposed to this legislation.

Dear Senators and Representatives: March 6, 2002

Have you ever had a call from a cop that your 8th grader has been taken out of school and is now at JIAC; that he will now be interrogated and you will receive a call in an hour or two when they are done; that you are forbidden from coming out until that call; that you absolutely may not speak with your child or be informed of the procedure and substance of the interrogation or the qualifications of the person involved; that a subjective database will be built on your child and your entire family that is accessible to 14 state agencies and growing?

Have you ever had a JIAC official accuse your son of attempted murder in your presence (heaven help what he did before my arrival) because he hit a kid in self-defense after the other combatant had taunted him about his mom's cancer, making fun of her baldness and calling her a cancerous bitch? Then, that same JIAC official tries to play judge and jury and tells you to your face that your son can request diversion but it won't be granted and he will be convicted?

Add to this the police officer, who, once it is proven that he made a knee-jerk arrest, deliberately withholds exonerating witnesses' statements from the D.A.'s file, one by a teacher, and then won't return any of your attorney's calls. Pile on even more with a 3rd year law student Assistant D.A. who knows very little about the law and absolutely nothing about how her zealousness for victory at all costs will impact a youth's life, this being his first and lasting impression of the legal system. Prove to that 3rd year law student the highly inflammatory remarks and show the deliberately withheld witnesses' statements, and what justice does she show to an 8th grader: she changes the charge to misdemeanor battery for knocking the other kid's books out of his hand. The youth's first and lasting impression of the legal system: victory at all costs, take no survivors.

Have you ever been violated by cowards hiding behind the apparent authority of the law and government?

Throughout all of this unbelievable insanity, from the school and its zero tolerance policy, a cop who will do anything to back his arrest, a prosecuting attorney who lacks the maturity to lord over a child's life, to the strictly penal diversion process that has no rehabilitative value, an element of sanity did arise. In the final court mandated counseling session, the counselor, upon hearing the whole sordid story, inquired about the other combatant. When informed that his nose was broken she responded: "Good for you, Shane!"

As a reporter for the Overland Park Sun said to me, when discussing the infringement of parental rights that are guaranteed by the 14th amendment due process clause: "It's the price you pay to live in Johnson County." But this infringement is not localized. On March 13, 1998, your Kansas Supreme Court, in its ruling "In the Matter of B.M.B." 264 Kan. 417, chastised the arresting officer and the lower court judge in Sedgwick County for the gross violations of rights committed upon the accused, a prepubescent 10 year old. This type of practice is statewide. Regretfully, I am acutely aware of others. As our elected officials you have a charge to read this case and change the law. If you don't feel you have the time, then you don't represent some of God's most vulnerable.

Respectfully,

John Conaghan

John T. Conaghan
8222 W. 99th St.
Overland Park, Ks. 66212

CCCJ

Citizen's Coalition for Children's Justice

The mission of the Citizen's Coalition for Children's Justice is…

Individuals working together
to achieve justice for children
with compassion, conscience,
and according to the
principles of our Constitution.

Guided by faith in family integrity
and with respect for parental rights and
responsibilities, CCCJ will provide
education, advocacy, support and action
to make a positive difference for children.

Dear Representatives,
We have dozens of articles, a great deal of information, research, and letters. Please call us at 913-963-CCCJ or e-mail ideas4cccj@yahoo.com if you would like more understanding of why positive changes are needed. Thank you for your efforts on behalf of Kansas children and families.
With Hope, CCCJ

House Judiciary
Attachment 9
3-6-02

The Citizen's Coalition for Children's Justice Supports HB2851

My name is Shelley Gathright and I'm from Overland Park, Kansas. In 1998, a friend came to me knowing that I was an active volunteer on committees at both the school and state level for school safety, preventing substance abuse and juvenile justice. Her 12-year-old son was crying because he had just been suspended from school for a shove in self-defense. She received a call to go to JIAC. She asked me "What is this Juvenile Intake place? Why does my son need to go there for a shove in self-defense?" That question started my research and attempt to understand what was happening to children and families. The more I learned, the more alarmed I became.

There are many parents here and many more back home who are involved in the Citizen's Coalition for Children's Justice. Almost a year ago, we came together as CCCJ because of longstanding parent and attorney concerns about juvenile justice. In July 2001, we had a forum on Zero Tolerance and JIAC and were surprised to have over 150 attend. We support HB2851 for these reasons:

- We believe that responsible parents should be included, not excluded, when authorities are interviewing, assessing or gathering private information from children. Unless a parent is suspected of being unfit, they should be included at all stages of the JIAC process. On June 5, 2000, the Supreme Court of the United States affirmed the fundamental right of parents to make decisions regarding the care, custody, and control of their children. Kansas has always had a strong tradition of supporting the strength of our community – families. You recently passed another bill that holds parents liable for the actions of their children. Parents will accept responsibility but you should not leave them out of the decision-making process. For minor children, if parents are willing and responsible, they should help decide whether their own children will answer questions about potentially embarrassing and private behaviors in JIAQ, POSIT or MAYSI as well as decide whether they wish to seek counsel. Don't assume just because a child is at JIAC that parents won't accept responsibility. Most will. You have CINC laws for those who do not. Please respect parents' liberty to make decisions for their own children by passing HB2851.

- We support the language changes to delinquencies and miscreancies. I know parents whose children's' records might look dreadful if one were looking only at open records in computers and not at the individual circumstances. Many times when records are checked for employment or college, they only see the criminal language but do not know what it was for. For example, the shove on the playground shows up as battery. Taking french fries from a lunch mate shows up as theft. We understand that sometimes teens commit real crimes that need the heavy hand of the law to make them change their ways. Those committing serious crimes can be waived to adult status and have the record. We do not want serious violent crimes to decay. Under HB2851, they would not. We do want to make sure that those children who have been in trouble for lesser offenses are not labeled for life.

- We are NOT soft on crime. We are against a zero tolerance mind-set that criminalizes children for misbehavior. I wish I had the time to tell you the many stories I have heard about futures derailed and children afraid. Children need consequences and real criminal activity needs to be punished. HB2851 does not change any of that. What it does do is offer young people hope that if they do the right thing, they will have opportunities to go to college, get good jobs and serve our country in the military. As Kansas citizens and taxpayers, our Coalition wants justice for children with compassion, conscience and according to the principles of our Constitution. HB2851 will help achieve that goal for all Kansas children.

With a spirit of hope for the future and faith in families, please pass HB2851.

Respectfully Submitted to Chairman O"Neal and the House Judiciary Committee on March 6, 2002