Approved:_____
Date

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 12, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:
Jill Wolters - Office of the Revisor
Mitch Rice - Office of the Revisor
Jerry Ann Donaldson - Legislative Research Department
Nicoletta Buonasera - Legislative Research Department
Bev Renner - Committee Secretary

Conferees appearing before the committee:
Representative Brenda Landwehr
Candace Shively, Deputy Secretary–Integrated Service Delivery Division-Kansas Department of Social and Rehabilitation Services (SRS)
Timothy Henderson,District Judge–18th Judicial District, Wichita
Luke Demaree
Mark Gleeson–Office of Judicial Administration
Hans Heimerman
Dustina Rose Wells
Representative Tim Owens
Marc Bennett, Assistant District Attorney, Sedgwick County
Kyle Smith, Special Agent-Kansas Bureau of Investigation (KBI)
Representative Doug Patterson
Judy Smith, Concerned Women for America in Kansas
Sheila Walker, Division of Motor Vehicles

HB 2125 - Child in need of care code, child's current foster parents could not be excluded from certain proceedings, emergency change of placement.

Chairperson Loyd opened the hearing on HB 2125.

Representative Landwehr was recognized for the purpose of testifying in support of **HB 2125** (Attachment 1). This bill amends three sub-parts of two statutes: 1) allows a child's current foster parents the right to attend Child In Need of Care (CINC) proceedings that concern their foster child; 2) adoption of a pilot program to allow parents the right to have up to two people present at CINC proceedings; and, 3) insures that when an emergency exists which requires immediate action to assure the safety and protection of the child, a hearing may be requested within 24 hours and access to the court within 72 hours, excluding weekends and holidays. The Joint Committee on Children's Issues has gained judiciary respect and cooperation regarding foster care issues. Representative Landwehr suggested a balloon on page 2 line 20 to insert ", the child's foster parents".

Candace Shively, Deputy Secretary–Integrated Service Delivery Division-SRS appeared to offer testimony in support of **HB 2125** (Attachment 2). She brought to the committee's attention that 30 days notice is required of an intent to move a foster child from a family when a child has lived with one family for six months or more. Also, another statute provides an exception to the 30 days notice in an emergency with the oversight of the court.

Judge Timothy Henderson, District Judge assigned to Juvenile Court spoke in support of **HB 2125** (Attachment 3). He thanked Representative Landwehr and the work that has gone into increasing the dialogue between the judicial branch and the legislative branch. Judges would strongly support having

foster parents in the court and of having parent advocates that would be impartial and trained such as CASA volunteers, Mental Health Association and Department of Education advocates.

Luke Demaree, foster and adoptive parent testified in support of **HB 2125** (Attachment 4). He spoke of the frustrations and unfairness of the foster parents who were unable to appear in court on behalf of their foster child. This bill is a good first step in advocating for children in need of care and in beginning reform in our state's foster care system.

Mark Gleeson, Family and Children Program coordinator for the Office of Judicial Administration (OJA) spoke in support of **HB 2125** (Attachment 5). In section 2 (c) OJA would be required to establish a pilot project in one rural and one urban court that would allow a parent in a CINC proceeding to designate up to two people who would accompany them to court. Mr. Gleeson offered an amendment to designate the Judicial Administrator as having final approval on the project design, designating parent advocates, identifying the basic training elements necessary, and clarifying the financial obligations of the county during this pilot phase. Representative Landwehr had no objection to the proposed amendment.

Hans Heineman spoke in opposition to **HB 2125**. His objection was that this bill does not go far enough in meeting the needs of a child in need of care. One element is lacking and that concerns abuse and neglect. Limited access and limited resource is creating victims and amendments are needed.

Dustina Rose Wells, a foster mother spoke emotionally and passionately about the circumstances of her foster daughter, Chloe. She spoke in support of **HB 2125** (Attachment 6) and the experiences in their life which she feels this bill will correct for foster children in the future.

Chairperson Loyd closed the hearing on HB 2125.

HB 2046 - Juvenile offenders; renaming those who commit a felony a juvenile offender type A and those who commit a misdemeanor a juvenile offender type B; decaying juvenile adjudications.

Chairperson Loyd opened the hearing on HB 2046.

Vice-Chairperson Tim Owens was recognized to present and speak in support of **HB 2046** (Attachment 7). This bill would de-criminalize juvenile offenses except for those committed by 17-year olds and more serious crimes. It would re-designate juvenile offenses to Type A and Type B juvenile offenses instead of using the adult terminology, Felon and Misdemeanant. Felony level offenses less than Types A. B, and C would decay when the youth reaches 21 and will not be used for future calculations of sentencing under the sentencing guidelines. Representative Owens referred to a list of 53 restrictions for a person who has been convicted of a felony (Attachment 8) There may need to be a balloon for technical changes.

Marc Bennett, Senior Trial Attorney, Sedgwick County appeared in opposition to raise concerns regarding **HB 2046** (Attachment 9). The purpose of sentencing guidelines is to take into account the criminal history of the offender and pronounce sentence based on the nature of the crime and that history. According to statute only person felonies and sale and/or manufacture felonies on the drug grid stay with an offender into adulthood.

Kyle Smith, Special Agent-KBI testified in opposition to **HB 2046** (Attachment 10) for the Kansas Peace Officer's Association. Prior records need to be considered. They show a pattern of conduct; a tendency or progression of criminal activity. "Decay" requires destruction of records of the underlying offense. We have seen the pendulum swing back and forth in these matters but if records are destroyed, they cannot be re-created.

Chairperson Loyd closed the hearing on HB 2046.

The meeting was adjourned at 3:30 p.m. The next scheduled meeting is February 13, 2003.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE Feb 12, 2003

NAME	REPRESENTING
Hans P. Heinemann	Victoms Rights.
Mary Beth Kidd	OJA
Joy E. Bourdess	(CWA) Concerned Women for America
Sher Hoffman	Concerned Women for America
Kimberly Kasick	tiny-k early intervention networks
Paul S. Kahmar, Police Chief	City of Spring Hill, Ks.
Judy Smith	CWA (Concerned Women for America of KS
Marsha Strahm	CWA
Jared Cheek	Intern
Debi Hatfield	KDHE
Laura Lori	
Peggie	
Marc Bennett	SG County D.A.
Landy Shively	SRS.
Marilyn Jacobson	SRS
Sheila Walker	KDOR-DMV
Nancy Ralston	KDOR - DMV
Ben Fenwick	Rep Storm
Luke Demaree	Johnson Co. Foster Parents Inc.
Alexandra Rice	Kansas Action for Children
Daynen Lahcier	Kansas Children's Service League
Keith R Landis	Christian Science Committee on Publication for Kansas
Ramona Dalrymple	KCSL
Keith Bradshaw	Budget

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE Feb 12, 2003

NAME	REPRESENTING
Teresa Schwab	KCSL
Lynna South	JJA
Denise Everhart	JJA
Mark Gleeson	Judicial Branch
Tim Henderson	Judicial Branch
Jeff Bottenberg	State Farm
Michael White	KCDAA
Dave Jones	KSC

State of Kansas
House of Representatives

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COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
HEALTH & HUMAN SERVICES
SOCIAL SERVICES BUDGET

TOPEKA

BRENDA K. LANDWEHR
Representative, Ninety-First District

Feb.12, 2003

House Bill 2125 concerns the support and care of children in need of care and the rights of foster parents. H.B. 2125 essentially contains three sub-parts, two of which would amend K.S.A. §38-1552 and the other would amend K.S.A. §38-1567.

The first component would amend §38-1552 to allow a child's current foster parents the right to attend CinC proceedings that concern their foster child. Currently, §38-1552 does not allow foster parents the right to attend juvenile dependency proceedings unless all of the interested parties are in agreement. Allowing foster parents access to CinC proceedings will put

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foster parents in a better position of understanding the needs of the child as well as educate foster parents as to the workings of the CinC system.

The second component of H.B. 2125 amends §38-1552 to adopt the implementation of a pilot project, in one urban district and one rural district, allowing parents the right to have up to two people present at CinC proceedings. Currently, §38-1552 grants broad discretionary powers to the court with regards to who is and is not permitted in the courtroom. As it is written, the only person in the courtroom on behalf of the parents is the attorney for the parent. If a parent's attorney is court appointed, it is quite possible given the tremendous workload and inexperience of court appointed attorneys, the quality of advocacy on behalf of the parent is marginal to say the least. Appearing before a CinC proceeding is undoubtedly traumatic and the support of an advocate would lend a calming effect to the CinC proceedings for the parent.

This is similar to legislation passed by the House last year. The difference is that foster parents were asking for interested party status and the two advocates for parents was not a pilot project. Last fall, the Joint committee on Children's Issues held a round table discussion with several judges regarding this & other foster care issues. The judges explained the

negative impact of interested party status. They also expressed concerns with parent advocates in the courtroom. So, we suggested a pilot program.

The third component of H.B. 2125 is to clarify and reinforce K.S.A. §38-1567 to insure, that when an emergency exists which requires immediate action to assure the safety and protection of the child, a hearing may be requested within 24 hours, excluding weekends and holidays. Upon receipt of a request for a hearing, the court must schedule a hearing within 72 hours and provide notice to the interested parties and foster parents. At the hearing, the court will determine whether an emergency existed which threatened the safety of the child and required immediate removal for the child's protection.

Thank you for your time and consideration.

Thank you,

Brenda K. Lander
State Representative
91st District

(Corrected)

Session of 2003

HOUSE BILL No. 2125

By Committee on Appropriations
(By request of the Joint Committee on Children's Issues)

1-30

AN ACT concerning the support and care of children; relating to children in need of care; concerning rights of foster parents to be present at certain proceedings; emergency change of placement; amending K.S.A. 38-1552 and 38-1567 and repealing the existing sections.

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

Section 1. K.S.A. 38-1552 is hereby amended to read as follows: 38-1552. *(a)* The court may exclude from any hearing all persons except the guardian *ad litem*, interested parties ~~and~~, their attorneys, officers of the court ~~and~~, the witness testifying *and the child's current foster parents*. Upon agreement of all interested parties, the court shall allow other persons to attend the proceedings, unless the court finds the presence of the persons would be disruptive to the proceedings.

Sec. 2. K.S.A. 38-1567 is hereby amended to read as follows: 38-1567. *(a) (1)* When an emergency exists requiring immediate action to assure the safety and protection of the child; or *(2)* the secretary is notified that the *parent, relative,* foster parents or shelter facility refuse to allow the child to remain, the secretary may transfer the child to another foster home or shelter facility without prior court approval, but the secretary shall notify the court of the action at the earliest practical time. When the child is removed from the home of a parent after having been placed in the home ~~or facility~~ for a period of six months or longer, the secretary shall present to the court in writing the specific nature of the emergency and request a finding by the court whether remaining in the home was contrary to the welfare or not in the best interests of the child. In making the finding, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such a finding, the court shall provide the secretary with a written copy of the finding by the court not more than 45 days from the date of the request.

(b) When a child in the custody of the secretary is removed from the home of a parent or relative or from a foster home after having lived in the home for six months or longer based on a determination by the secretary that an emergency exists which required immediate action to assure

Proposed Amendment for consideration by
the Committee on Juvenile Justice and Corrections

the safety and protection of the child: (1) The parent, relative or foster parent may request a hearing within 24 hours excluding Saturdays, Sundays and legal holidays. (2) Upon receipt of a request for hearing, the court shall schedule a hearing to be held within 72 hours excluding Saturdays, Sundays and legal holidays. The court shall give notice of the hearing to each parent whose address is available, the relative or foster parent who requested the hearing, any interested party, the child, if 12 or more years of age, and the child's guardian ad litem. (3) At the hearing the court shall determine whether an emergency existed which threatened the safety of the child and required immediate removal for the child's protection, and the court shall determine whether it is in the child's best interest to be immediately returned.

(c) (1) Notwithstanding K.S.A. 38-1552, and amendments thereto and any other provision of law to the contrary, and within the limits of appropriations therefor, a pilot project shall be established by the office of judicial administration in one rural and one urban judicial district in which such judicial district shall implement proceedings under the Kansas code for care of children in which the court may exclude from any hearing all persons except the guardian ad litem, interested parties and their attorneys, officers of the court, the witness testifying and up to two people designated by the parent of the child. Upon agreement of all interested parties, the court shall allow other persons to attend the proceedings, unless the court finds the presence of the persons would be disruptive to the proceedings. The court shall not remove the parent's designee or designees from any proceeding unless such designee becomes disruptive in such proceeding.

, the child's foster parents

(2) The provisions of this subsection shall expire on July 1, 2005.

Sec. 3. K.S.A. 38-1552 and 38-1567 are hereby repealed.

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

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

House Corrections and Juvenile Justice Committee
February 12, 2003
1:30 P.M.
Room 526 S

HB 2125 - Rights of Foster Parents

Integrated Service Delivery Division
Candy Shively, Deputy Secretary

For additional information contact:
Office of Planning and Policy Coordination
Marianne Deagle, Director

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Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

House Corrections and Juvenile Justice Committee
February 12, 2003

HB 2125 - Rights of Foster Parents

Representative Loyd and members of the Committee, I am Candy Shively, Deputy Secretary of SRS.

SRS participated with the Joint Committee on Children and Families in the review of services for children in need of care and appreciate the effort to understand this very complicated system. This bill provides the family with whom a child has been residing for six months or longer the right to a hearing within 72 hours of an emergency removal; it gives foster parents the right to attend child in need of care court hearings; and it establishes two pilot programs in which parent's are allowed to bring two observers to the court proceedings.

K.S.A. 38-1566 requires 30 days notice of an intent to move a foster child from a home when a child has lived with one family for six months or more. This is in recognition of the child's need for stability and reality that in six months the child will have established a significant relationship with that family, a particular school and within a specific community. Disrupting this relationship is not and should not be taken lightly. Within 10 days of receiving the notice, the foster family may request a hearing. The court has the ultimate authority to determine whether the move is in the best interest of the child.

K.S.A. 38-1567 provides an exception to the 30 day notice in an emergency. Although the vast majority of foster parents provide exemplary care, abuse and neglect are possible and immediate action may be necessary to protect a child. Unlike removal from birth parents, emergency removal from foster parents is within the authority of the custodian. As custodian, SRS takes this very seriously and staff are quite cautious. However, it is a judgement call and oversight by the court is appropriate. Currently the move must be reported to the court, but there is no provision specifically authorizing a foster parent to request a hearing or requiring the court to evaluate evidence and determine whether an emergency justified disruption of the child's life. Having responded appropriately to an emergency, staff should be able to explain the determination to a court within a time frame that allows the child to return to familiar caretakers and surroundings if appropriate.

Sufficient confidentiality to protect the privacy of vulnerable children and families while insuring sufficient openness to facilitate accountability and understanding are critical, competing requirements and difficult to balance. Insuring the inclusion of foster parents in court hearings to determine the best interests of the children they care for 24 hours every day, seems a reasonable step toward openness. I believe it will have little impact on practice in most courts. However, I do urge some discretion remain with the court to determine when the presence of any person is disruptive or when a witness may need to be sequestered. Courts must have the ability to address the unforeseeable.

Thank you and I stand for questions.

TIMOTHY H. HENDERSON
DISTRICT JUDGE
DIVISION 24

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thenders@dc18.org

DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
JUVENILE DEPARTMENT COURT BUILDING
1015 S. MINNESOTA
WICHITA, KANSAS
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TESTIMONY TO HOUSE, CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
REGARDING HB 2125
February 12, 2003

Mr. Chairman, Members of the Committee, thank you for the opportunity to testify in support of House Bill 2125. My name is Timothy H. Henderson and I am a District Court Judge in the Juvenile Division of the 18th Judicial District, Sedgwick County, Kansas.

I first want to extend my thanks to Representative Brenda Landwehr for inviting myself and my colleagues to a discussion in November of 2002 to discuss matters related to the Kansas Code for the Care of Children. We are extremely grateful to have the opportunity to engage in dialogue and discuss how Kansans can best protect children and preserve families in the State of Kansas.

House Bill 2125 essentially addresses two issues that were of mutual concern both to the representatives on the committee as well as the judges in the State of Kansas. The first issue was foster parent access to the court. While the initial discussion considered granting foster parents "interested party status, it would be the unanimous advice of all the judges that interested party status would be of great disservice to foster parents. "Interested party status" is a very specific term of art under the Kansas Code for the Care of Children. It essentially makes a person a litigant.

As a litigant, a foster parent would be subject to having attorneys for the State, the Guardian ad Litem, as well attorneys for the parents to be able to pry into the personal lives of foster parents. This could subject them to inquiry as to what occurs in the foster parents' home as well as their own personal finances. Under the special status that foster parents currently have, the court is able to protect them from this sort of inquiry. However, if they are granted interested party status, the court is obligated to treat them as any other litigant.

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The judiciary is also concerned about the limitations on communications that currently exists between foster parents and the court if they are granted interested party status. One of the fundamental rules of fairness in any case is that any party's communication with the court has to be made available to all other parties. Since a foster parent is not a party to the law suit, they are specifically able to communicate directly with the court without the other parties made aware of their concerns. This allows foster parents, through my experience, to communicate the very detailed information regarding their observations of the children in their care. It would be a disservice to foster parents and even more importantly to the children they care for, if they are not able to communicate freely with the court. To borrow a phrase from my colleague in Sedgwick County, Judge Burgess, foster parents deserve a special place in heaven. The language of House Bill 2125 allows them to maintain a special place in Juvenile Court.

Section 2 (c) regards parent advocates. As we discussed in our meeting of November 2002, the judges were strongly supportive of allowing parent advocates. The parent advocates recommended by the judges were those that would be impartial and trained such as our CASA volunteers. There are numerous other examples of independent, objective trained volunteers assisting adults such as parent advocates developed by the Mental Health Association in Sedgwick County as well as education advocates through the Department of Education. The language of HB 2125 does not require any training or impartiality for the parent advocate. This is troubling.

One of the many common denominators I see daily in my court is women who are both in a situation where their children are being abused and they themselves are the victims of abuse by a boyfriend/spouse in their home. All the experts tell us that the control of a violent boyfriend/spouse is exerted in many ways. If a parent is allowed to designate anybody to be a parent advocate, then this abusive boyfriend/spouse can force himself in to this role to continue to control the mother of the children. On many occasions, I have seen these controlling, abusive men attempt to force themselves into the court in order to continue their domination over the mother of the children. It is only due to the court's ability to exclude them are we able to assist the mother in removing herself from the cycle of violence that she is subjected to. Without training, without requirement of impartiality and neutrality in these parent advocates, this legislation has the potential to continue the cycle of violence for many women who appear in front of the juvenile court. Parent advocates would be a wonderful addition to the juvenile court. Please do not allow it to be a continuation of the living hell many of our mothers have to go through.

Thank you for your time and attention. I am happy to remain to answer any questions.

TESTIMONY OF LUKE DEMAREE
BEFORE THE
COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

January 12, 2003

Chairperson Loyd, and Distinguished Representatives,

My name is Luke Demaree, and as a foster and adoptive parent and children's rights advocate in the state of Kansas, I am here today to address issues concerning House Bill 2125, in particular, issues concerning the interested party status of Kansas foster parents. I believe HB 2125 is clear and understandable, and as such my testimony will be short and will focus on 1) the need by both foster parents and Kansas' Children in Need of Care to involve foster parents in our courts' decisions and 2) what this Bill means to Kansas' foster parents and foster children.

As the Kansas Privatization Experiment now enters its seventh year, a number of momentous occurrences have led foster parents, parents and grand-parents alike to our capitol's steps. Last year, concerned citizens lined the halls for nearly three days in hopes of addressing their concerned Representatives about the problems they are facing under privatization. By the end of the same year, the Department of Social and Rehabilitative Services ("SRS") had finally reached the end of federal oversight mandated by the 1993 ACLU lawsuit settlement, and as we began this year, we are all faced with the horrible tragedy in the Edgar case. While each of these events raises separate concerns, they all lead to one question: "What are we to do about our state's foster care system?"

While I do not believe that HB 2125 is the "be all" cure to our state's foster care issues, it is a starting point, and one that I believe all concerned parties can agree upon. The real question before us today is whether a foster parent should be allowed to advocate for the children in their home. We are "allowed" to change their diapers, wipe their tears, and provide comfort when they are scared, but there are those who believe that as temporary parents, our concern for these children should end with a warm bed and full stomach, or as one SRS worker told my wife and I, "Your job is simply to provide these children with a bed, so why don't you just go home and let the educated professionals decide what is best for the children."

I wish that each of you could spend just a half hour with a foster child when they first come into care, or when they return from a family visit. I wonder what you would tell them when they ask "why can't I go home?" I know that you would want to be there for your child or foster child to provide comfort, support and input as to their daily needs when the "educated professionals" made their ultimate decision as to what is best for your child.

I was one of the original advocates of HB 2907 "Interested Party Status for Foster Parents," and I spent my fifteen minutes before the Fed and State Committee, last year, telling them of my own experience where I was asked not to enter the courtroom when my

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foster children's fate was being decided. I will not share that experience with you today. Instead, I would like to share the testimony of a sixteen-year-old girl who helped me realize how important foster parents are to our foster care system.

Last year before the Fed and State Subcommittee, we were approaching the end of our second full day of testimony when Laurie Odom and her daughter came forward to give their testimony. As with the ten speakers before them, Representative Mays asked the Odoms to keep their remarks to five minutes so that others would have an opportunity to address the Committee. To no avail, Mrs. Odom spent over thirty minutes telling the Committee how she had been banned from attending her daughter's proceedings and eventually quit fostering children. When her daughter began her testimony Chairman Mays stopped her and told her that there was no time for her to read her testimony. As she stepped away, the Chairman asked her to please continue, but to simply tell the Committee "in her own words" why she was there.

After a well rehearsed first sentence, the young girl paused for a moment and then stated, "I'm here because I'm nothing more than a number." She went on to explain that she had had X number of case workers, X number of therapists, X number of family workers, social workers and that she even had her own attorney. She said that they all did their jobs and took notes as they asked her questions, but that she felt as if no one really listened to her. To them she was nothing more than case number CV----. She told the Committee that this really didn't matter because she never really knew any of her support staff well enough to confide in them anyway, but she started to cry as she recanted the day she went to court to determine her future placement. She began "I had my own attorney, but he didn't even know my name…."

To answer the Committee's inquiry as to why she was there, she said that her foster mom, now her mom, was the only person that was always there for her. Her foster mom was at her side during every case plan, and after every therapy visit to comfort her and tell her that everything was going to be OK. She stated that her foster mom was the only person whom she trusted and in whom she could confide, but on the scariest day of her life when the system decided what was going to happen to case number CV----, her mom wasn't allowed to enter the court!

Dear Representatives, I began by characterizing HB 2125 as a first step. You have before you today both parents and foster parents advocating for the passage of this bill. My understanding is that even those judges who were opposed to HB 2107 are satisfied with this amended bill. This bill will give parents and foster parents the right to advocate for foster children's needs, but more importantly, it will ensure that the everyday concerns that face our state's Children in Need of Care are addressed. It is time that we begin to take notice of that group of individuals who see our state's foster children as more than just another case, and it is time take the first step in reforming our state's foster care system.

Thank You for Your Time and Consideration,

Luke Demaree

State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

Testimony to House Corrections and Juvenile Justice Committee

Re: HB 2125

February 12, 2003

Mr. Chairman, members of the committee, thank-you for the opportunity to testify in support of HB 2125. My name is Mark Gleeson and I am the Family and Children Program Coordinator for the Office of Judicial Administration.

House Bill 2125 stems from a meeting in November 2002 at which 7 judges, representatives from the Department of Social and Rehabilitation Services and representatives from the Joint Committee on Children's Issues met to discuss a number of matters related to the Kansas child welfare system. Representative Brenda Landwehr was the organizing force behind this meeting and her efforts were much appreciated by the judges who were invited to the meeting.

House Bill 2125 addresses three important concerns brought up during the 2002 legislative session. First, HB 2125 provides foster parents the right to attend all hearings for a child residing in their home by adding "the child's current foster parents" to the list of persons who cannot be excluded from a hearing. This language does not provide foster parents with "interested party status" as they requested last year. It does, however, provide them with continued, confidential access to the court without cross-examination as well as the right to attend all hearings. By doing so, foster parents have protections not available to any other party to provide judges with information about the child, about SRS and about SRS contractors.

Section (b) of HB 2125 establishes procedures whereby the parent, relative or foster parent shall have access to the court with 72 hours, excluding Saturdays, Sundays and holidays, in the event a child, who has resided with them for the past six months or more, is removed from their residence. The court is then required to examine the facts surrounding the emergency removal of the child and determine if it is in the child's best interest to be immediately returned to the petitioner's home. Anytime there is an expedited process requiring a hearing before the court, it places an increased burden on the courts. Due to the lack of data regarding this type of hearing, it is impossible to determine the fiscal impact of this new process.

Section 2 (c) requires the Office of Judicial Administration to establish a pilot project in one rural and one urban court that would effectively allow a parent in a CINC proceeding to designate up to two people who would accompany them to court. We are willing to do this but we want to make certain the direction we take meets with what you intend for us to do. By way of background, this was an issue at the November 2002 meeting with Representative Landwehr. My understanding, and the understanding of judges who attended the meeting, was the person or persons accompanying the parent in the CINC case would function in a similar manner to a Court

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Attachment 5

Appointed Special Advocate for a child. As such, this person would be trained in basic information about the child in need of care code, the role of various persons involved in the proceedings, dispositional options available to the court, and they would have a general understanding of court procedures. In support of this, I am offering the attached document which amends section 2 by: Designating the Judicial Administrator as having final approval on the project design, designating these persons as parent advocates, identifying the basic training elements necessary for a person to serve as a parent advocate, reiterating the parent's right to an attorney, and clarifying the financial obligations of the county during this pilot phase.

If this bill passes and the Office of Judicial Administration is required to establish these two pilot projects, we estimate the cost to be between $5,000 and $10,000 for project development and coordination, to provide training and materials, and to conduct a limited evaluation of these two pilot projects.

Thank you for your time and attention. I will remain to answer any questions.

HB 2125

By Committee on Appropriations

Amendments proposed by the Office of Judicial Administration

February 12, 2003

Sec. 2. K.S.A. 38-1567 (c) (1) Notwithstanding K.S.A. 38-1552, and amendments thereto and any other provision of law to the contrary, and within the limits of appropriates therefore, a pilot project shall be established by the Office of judicial administration in one rural and one urban judicial district in which such judicial district shall implement proceedings under the Kansas code for care of children in which the court may exclude from any hearing all persons except the guardian *ad litem*, interested parties and their attorneys, officers of the court, the witness testifying and up to two people **who have participated in a parent advocate orientation program approved by the judicial administrator and** designated by the parent of the child. **Such advocate orientation program shall include but may not be limited to the following requirements: 1, Confidentiality of proceedings; 2, child and parent's right to counsel; 3, definitions and jurisdiction; 4, types and purpose of hearings; 5, options for informal supervision and dispositions; 6, placement options; 7, parent's obligation to financially support the child while the child is in the state's custody; 8, obligations of the Secretary of SRS; 9, obligations of the SRS contractors for family preservation, foster care, and adoption; 10, termination of parental rights; 11, procedures for appeals; and 12, basic rules regarding court procedure.** Upon agreement of all interested parties the court shall allow other persons to attend the proceedings, unless the court finds the presence of the persons would be disruptive to the proceedings. The court shall not remove the parent's designee or designees from any proceeding unless such designee becomes disruptive in such proceeding. **The parent advocate shall not be paid or reimbursed for expenses from the county unless so ordered by the court. Nothing in this section relinquishes the obligation of the court to appoint an attorney to represent the parent if an attorney is desired and the parent is determined to be eligible for a court appointed attorney pursuant to K.S.A. 38-1505 (b).**

TESTIMONY BEFORE THE HOUSE COMMITTEE ON CORRECTIONS
AND JUVENILE JUSTICE

Chairperson Loyd and Distinguished Representatives:

I am writing in concern of and support of House Bill 2125 which is before the House today, February 12, 2003. My husband and I are foster parents to a 13 year old girl named Chloe. Chloe has been in our home nearly 14 months, during which time she has come from a terrified, abused 11 year old with D's and F's in school and a borderline eating disorder to a straight A student who is also in the advanced class in her private piano lessons, who eats healthy and is, in general, a well-rounded, happy child.

Chloe has stated on several occasions and to several different people that it is her preference to remain in her present enviroment; that she does not want to go live with her birth-mom. I shared this information with Chloe's Guardian Ad Litem on several occasions by phone and even sent
him documentation of Chloe's references to the abuse she suffered from her birth-mom. As the trial for termination of the birth-mom's rights progressed, both my husband and I asked if we, as Chloe's foster parents, could go to court and share any of what Chloe had told us and/or just report on her progress and how she has come such a long way and how happy she is and how she has said she wants to stay here. We were told that we could show up to court if we wanted to, but that we couldn't say anything. Chloe's GAL told me that this trial had nothing to do with Chloe, but, that, rather, it was about her mother and wheter or not she was a fit mom. Chloe's GAL has only seen Chloe once in 14 months and that was in January of 2002. He has not called about her or spoken to her. I contacted him several times to try and find out more about what was happening with Chloe's case as a lot of time had passed. During the trial, my husband and I told the GAL and our social worker that Chloe had confided to her teacher at school that it was her secret prayer request that she be allowed to stay in our home and be adopted by our family. (Chloe was told by our social worker, in front of me in November of 2002, that she was going to be with the Wells family for the rest of her life.)

On January 31, the Judge ruled that reintegration will now be the plan and that visits are to start up again with

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birth-mom. Although Chloe is unaware of this situation at this point,- (the Farm instructed us not to tell her)-she has said outright that she would only agree to a visit if it was the last one; a goodbye visit. Our concern is that we feel this decision was made without the judge being informed of all the facts. We are disappointed that neither Chloe nor either of us as foster parents were allowed to even speak at the trial, but the birth-mom, who has had approximately 7 hours of visits with Chloe during the past 4 years was allowed several days of witness. My husband and I are with Chloe every morning and every night. We have not put her in respite even once. She attends the school where I teach. She and I are together almost every hour of every day. It would seem that if the best interest of the child was at stake, the people who have been with her on a constant basis should at least have been asked in court bout her welfare and present state of mind.

The news that she will have to return to her birth-mom will be devasting to Chloe. For 11 years she suffered abuse, neglect, and abandanment at the hands of both birth-parents. Then birth-dad gave her away and the state had to go looking for birth-mom to start visits, which, at tha time, got Chloe's hopes up that she would again be with birth-mom.

Then, after 7 months, the social workers came and told Chloe that birth-mom was out of the picture and visits were cancelled. Now that Chloe is healing up from all of that trauma and has now adjusted to her new life, she has to face yet another upheaval for which she is not responsible nor does she want. Life is quite difficult for any 13 year old girl, even if every thing is fine. Children this age resist change even in the best of circumstances. For Chloe to have to move to another state (Missouri), change schools and friends, change parents and families again and all of this against her wishes and without her in-put is, in my opinion, very cruel and unjust.

I thank you for your patience in this matter and hope that you will see fit to pass a bill that could help the plight of foster children in the future.

Sincerely,

Dustina Rose Wells

Dustina Rose Wells
14833 S. Brougham
Olathe, KS. 66062
913-764-1528

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

TESTIMONY REGARDING HB 2046

Good afternoon Mr. Chairman and committee. Thank you for the privilege of presenting HB 2046 for your consideration this afternoon. I will try to make my comments concise and then stand for questions. The bill itself appears to be complicated due to the fact that it involves a discussion of the sentencing guidelines. In actuality the purpose of the bill is quite simple. It is only the technical requirements within the guidelines that complicate it.

I have practiced law for almost 30 years and during that time have had a significant caseload in the juvenile law area. I have represented well over 1000 juveniles in juvenile court in and around the Johnson and Wyandotte County area. I also served, as many of you know, as the chief counsel for the Kansas Department of SRS for three years from 1988 – 1991 under the Hayden Administration. During that time, I had considerable exposure to juvenile matters from within the government establishment.

In my practice in the past three years or so, I began to see a significant change in the emphasis that has been given to juvenile crime and the manner in which the community at large and the legislature in specific dealt with it. Due to the impact of the Columbine tragedy, there was a major outcry across the nation that government do something about juvenile crime. In this atmosphere there were some unanticipated consequences, which resulted as government (and specifically for our consideration here, Kansas Government) reacted to the public demand for a tougher policy regarding juvenile offenders. In some instances, most notably to me in Johnson County, an attitude and policy of zero tolerance was spawned and we began to see a number of juvenile offenses being filed and a criminalization if you will of juveniles in our communities. This criminalization went far beyond the concerns in my opinion of the public outcry over serious offenses such as the Columbine example. It caught many of what I call "dolphins in the net" in an effort to curb juvenile crime.

We heard testimony last week from Senator David Atkins regarding the establishment of the Juvenile Justice Reform Act and the Juvenile Justice Authority, which indicated the results of an extensive study done by legislators and others into the question of how to address the issue of Juvenile crime. I take no issue with most of what was done and certainly the preamble, which Senator Atkins read to us and referred to, is something that I believe needs to be followed. But we can do that without criminalizing children. We can still capture the attention of juvenile offenders and hold them

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accountable without criminalizing them. We can still find the community programs that will assist in refocusing our youth and redirecting youth and their families to try to assuage them from a path that unchecked could lead to adult criminal activity.

What HB 2046 does is to close the gate, if you will, between juvenile offenses committed by children under the age of 17; so that offenses less than the major ones such as A, B, and C felony level offenses will decay when they reach 21 and will not be used against them for future calculations of sentencing under the sentencing guidelines. As it stands today, we refer to our juvenile offenders as felons and misdemeanants--the same designations as our adult offenders. Those designations carry over into these children's adult lives and, as a result, carry an impact on a variety of things that they can and cannot do as a result of convictions of juvenile offenses, primarily those designated as felonies.

HB 2046 would re-designate juvenile offenses to Type A and Type B juvenile offenses instead of using the adult terminology, Felon and Misdemeanant. The bill would de-criminalize juvenile offenses except for those committed by 17 year olds and for the more serious crimes. Under Kansas law we currently have the ability to waive juvenile offenders to adult status for the serious offenses, and I would suggest that this is a better alternative to the implementation of a zero tolerance policy that captures the "dolphins in the net" with the serious offenders and in effect criminalizes our children to to their extreme detriment.

Another problem which this bill solves in my opinion is to eliminate a constitutional question that was raised by one of my former colleagues on the Overland Park city council, Kris Kobach, and I when it came to our attention that juveniles, who were brought into the system through the Juvenile Intake and Assessment Centers, were being required to respond to a lengthy evaluative tool questionnaire without the advice and counsel of either parent or attorney, with the resulting potential that information gleaned from that questionnaire could in fact be used to determine penalties for these juvenile offenders. The constitutional questions really arose when it was determined that, in the wrong hands or in an overzealous prosecution of these children, conviction of a juvenile offense could result in an enhancement of their sentence as an adult for future offenses. The lack of legal counsel at the juvenile level may, in fact, have an impact on their incarceration for future offenses. That being the case, Mr. Kobach, who now is an attorney in the US Attorney General's office following his tenure as a White House Fellow, and I determined that something needed to be done to address the concerns at the outset and not later on after the harm had been done. Hence our investigation into the issues surrounding the Juvenile Justice Reform and the JIAC policies in particular.

HB 2046, I believe allows us to address all of the concerns raised by the public about Juvenile Crime, allows us to address all of the issues raised in the preamble to the Juvenile Justice Reform Act addressed by Senator Atkins, and yet protects our children from criminalization at an early age which would be greatly detrimental to their development as adults in the future. I will be happy to stand for questions and am able to respond with specific case type examples to illustrate the kinds of cases to which I am referring. I can also be specific as to methodologies which have been followed in an

effort to implement the JIAC and zero tolerance policies in the area I represent but which would be replicated wherever in the state that an elected person in charge of such matters might choose to implement them. Thank you again Mr. Chairman for the opportunity to address HB 2046.

Thomas C. Owens
Representative, 19th District

7-3

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

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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

1. **Reporting and Travel:** Upon release from the institution, I agree to report as directed to the assigned parole officer and follow his/her instructions in reporting on a regular basis and keep the officer continuously informed of my residence and employ[illegible]. If 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

8-6

Office of the District Attorney
Eighteenth Judicial District of Kansas
Trial Division
at the Sedgwick County Courthouse
535 North Main
Wichita, Kansas 67203

Nola Foulston
District Attorney

Marc Bennett
Senior Trial Attorney

February 12, 2003

re: HB2046

Chairman Loyd and members of the Committee,

The Office of the District Attorney of the Eighteenth Judicial District wishes to raise several concerns regarding HB2046, specifically section 2, which would amend **K.S.A. 21-4710**, to read that all juvenile adjudications prior to July 1, 1996 and essentially all adjudications for crimes committed by a juvenile 16 or younger, would decay when the offender turns 21 – and specifically require the "*automatic termination, deletion and destruction of the records of the adjudication, including, but not limited to, arrest or detention records.* "

First, the proposed amendments run contrary to the purpose of the guidelines, which is to take into account the criminal history of the individual offender and sentence the individual accordingly based upon the nature of the crime and that history. To ignore serious violations of the law based solely upon the age of the offender at the time of the commission of the offense, undermines this purpose. Additionally, long before the Kansas Sentencing Guidelines were enacted, juvenile adjudications were relied upon for sentencing consideration:

> "We note that the Kansas Legislature permitted consideration of juvenile adjudications in the sentencing of adult offenders prior to the adoption of the KSGA. K.S.A. 1993 Supp. 21-4606a has provided since its enactment in 1984 that in determining whether the presumption for probation applies for certain offenders, "the court shall consider any prior record of the person's having been convicted or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult." Likewise, K.S.A. 1993 Supp. 21-4606b used similar language when enacted in

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1989 for determining whether presumptive assignment to community corrections applied to certain offenders by requiring the court to consider "any prior record of the person's having been convicted of a felony or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult." State v. Lamunyon, 259 Kan. 54, 60 (1996).

Second, if the impetus for the above detailed amendment is concern that juvenile offenders will be unfairly burdened by the stigma and/or consequences of minor juvenile indiscretions, **K.S.A. 21-4710** already takes care of that. Under the current state of the law only person felonies & sale/manufacture felonies on the drug grid stay with an offender into adulthood.

Third, the proposed amendment runs contrary to the application of existing criminal law. For example, the State's ability to file a motion under **K.S.A. 60-455**, to prove motive, intent etc. based upon a prior bad act; the "Hard 50" aggravating factor under **K.S.A. 21-4636(a)**--i.e., a prior conviction for a felony where "great bodily harm, disfigurement, dismemberment or death" was inflicted; and the Persistent Sex Offender Sentencing Enhancement under **K.S.A. 21-4704(j)**, would each be negated with respect to all but a handful of juvenile adjudications.

Fourth, the section of the proposal which calls for the destruction of all records of the crime by law enforcement would unnecessarily strip law enforcement of a tremendous resource in it's fight to solve crimes: information regarding associates, known addresses, aliases, and the means by which the offender committed the crime–all of which can be gleaned from arrest, and investigative records generated regarding a juvenile adjudication. Arguably, fingerprints and DNA samples derived from a juvenile adjudication would need to be destroyed as well.

Fifth, the cost associated the mandatory destruction of records, and of re-sentencing offenders whose sentences were set based upon juvenile adjudications would be considerable.

For the above stated reasons, we urge the committee to reject the proposed modifications.

Sincerely,

Marc Bennett
Assistant District Attorney

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KANSAS PEACE OFFICER'S ASSOCIATION

Before the House Corrections and Juvenile Justice Committee
In Opposition to HB 2046
Kyle G. Smith
Special Assistant Attorney General
Kansas Peace Officer's Association
February 12, 2003

Chairman Lloyd and Members of the Committee,

I appear to day as Legislative Chairman of the Kansas Peace Officer's Association in opposition to the policy decisions underlying HB 2046. There are five primary concerns that we would draw to the Committee's attention.

- Page 2, lines 14-16. This amendment changes sentencing guidelines to disregard all prior criminal history by juveniles, except person felonies committed while 17 years of age.

  What does this mean? For sentencing purposes, if a crime is committed by a juvenile younger than 17, even up to and including rape and murder, it will no longer matter. Is it good public policy to treat a first time offender the same as a person with three or four serious prior felony convictions even if the offender was 14, 15 or 16 at the time at the crimes?

- Page 3, lines 5-6. (As drafted, HB 2046 is unconstitutional as the change in this section would modify all adult records and the title says it pertains only to juveniles.)

  This section would delete consideration by the court of all expunged convictions. Again, is it good public policy to treat these convictions as if they never happened? To sentence a true first time offender the same as a person who may have a serious prior conviction, but got it expunged? To treat two people differently who have the same prior conviction, but one could afford an attorney to get it expunged?

- Page 3, lines 33-35. The change in this section is made by merely adding one word *"not"* deletes consideration for sentencing of all repealed statutes. Most repeals are done as new statutes are passed, not because the old statute was unconstitutional or infirm. When sentencing guidelines was instituted, there was a major review of the entire criminal code and a number of Kansas criminal statutes involving sex, drug and various other crimes, were repealed and replaced. This amendment would negate consideration of those serious and valid convictions in sentencing new offenders.

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- Page 4, lines 1-5. This section prohibits the consideration of juvenile adjudications of crimes committed by juveniles under 16 years of age after they turn 21. I have personally prosecuted a brutal rape and beating with a hammer by a 15 year old juvenile, which left the victim physically and mentally viciously scarred. To disregard that action and pretend it didn't happen if he commits another rape is not justice.

  Further, review of a criminal history of a juvenile and adult will often reveal a tendency or progression of criminal activity. What may start out as cruelty to animals or 'peeping toms' may evolve into burglary and then into rape and murder. Leaving out pieces of that puzzle would not serve the sentencing court nor the treatment professionals in the prison system.

- Page 4, lines 7-8. *"Decay"* requires destruction of records of the underlying offense. I would suggest this is very bad public policy for a number of reasons. What happens if this bill is passed and in the next year or two the decision is made by the legislature that this proposal was poor public policy. You can repeal the statute, but if the records have been destroyed, our hands are tied. While fortunately not having appeared in Kansas, we have all read of convictions that later were reversed by the evolution of technology, such as DNA testing. What happens if the investigative records are destroyed and it is later determined that the person convicted is innocent? The guilty person would then totally escape justice because of this destruction order. It is difficult to foresee the future and these records may be needed and relevant, not just in that individual's future cases, but in civil and criminal trials of other individuals. These records should not be destroyed.

- Page 4, lines 12-14. Subsection (e) bans consideration of any juvenile adjudication prior to July 1, 1996. This apparently is not limited to persons under 16. Again, deliberate acts of juvenile offenders including burglaries, murders and rapes proven beyond a reasonable doubt would not be considered in determining new sentences. This flies in the face of rational thought and experience.

In conclusion, I would suggest that the blanket assumptions this legislation is based on - that juveniles under 17 are wayward tads and who mischievous brushes with the law should be discarded as erroneous. Many of these offenders have committed brutal, vicious felonies. The public would be ill-served to pretend those crimes did not occur in sentencing these individuals as adults when they again commit crimes.

I would be happy to answer questions.