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 20, 2003, in Room 526-S of the Capitol.

All members were present except:
Ranking Minority Member Jim Ward - excused
Representative Dale Swenson - excused

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

Conferees appearing before the committee:
Acting Commissioner Denise Everhart, Juvenile Justice Authority (JJA)
Donna Whiteman, KS Association of School Boards
Judge David W. Boal, District Court Division Fifteen, Wyandotte County
Mark Gleeson, Family and Children Program Coordinator, Office of Judicial Administration
Ron Paschal, Chief Attorney, Eighteenth Judicial District, Sedgwick County
Judge James Burgess, Eighteenth Judicial District, Sedgwick County (written testimony)
Attorney General Phill Kline
Matthew D. All, Chief Counsel, Office of the Governor

HB 2270 - Kansas juvenile justice code.

Chairperson Loyd announced continuation of the hearing on HB 2270.

Acting Commissioner Denise Everhart, JJA was recognized to speak in support of **HB 2270** (Attachment 1). The majority of changes represented in this bill are technical or clarifying in nature. One provision affects the way JJA conducts operations and an amendment is requested. This amendment would add the definition of a juvenile corrections officer to mean "court services officer, juvenile justice authority case manager, community corrections officer or juvenile intensive supervision probation officer."

Donna Whiteman from the Kansas Association of School Boards appeared to offer a suggested amendment to **HB 2270** (Attachment 2). Current law states the court may order the "juvenile offender to participate in a program of education offered by a local board of education including placement in an alternative education program approved by a local board of education." **HB 2270** omits "offered by a local board of education" and the Kansas Association of School Boards would recommend the reinsertion of this phrase.

Judge David W. Boal, Division Fifteen District Court was introduced to the committee to speak of his concerns in **HB 2270** (Attachment 3). Section 55 would grant a right to a jury trial to juveniles charged with a felony. The Kansas and United States Supreme Courts have held that juveniles have no constitutional right to a jury trial and Judge Boal addressed concerns about the ramifications of creating the right. Present resources and facilities are not sufficient to support the additional responsibilities if a jury trial becomes a juvenile right. The Supreme Court is looking for a suitable case to address this issue and it may be wise to wait for that decision.

Mark Gleeson, Family and Children Program Coordinator for the Office of Judicial Administration spoke in commendation of the Judicial Council for their comprehensive edit of the juvenile offender code put forth in **HB 2270** (Attachment 4). The Office of Judicial Administration is opposed to Section 55 because of the concerns of requirements for a judge to hold a jury trial for any juvenile offender accused of a felony offense. Presently, a jury trial may be provided at the discretion of the judge. Under current law,

juvenile jury trials are not often requested and few of those requests are granted except in the most serious cases. Additional staff would be needed to perform duties necessary to impanel juries and clerks of the district court would require at least 12 hours of time per trial to notify potential jurors and take care of the people and necessary paperwork processing. The total cost estimate to meet the needs necessitated by this legislation would be $1,078,887. Other matters of concern is the shift of responsibility from magistrate judges to district judges and the changes proposed in section 12 regarding fingerprints and photographs. Mr. Gleeson quoted Judge Vieux, Chief Judge of the 25th Judicial District concerning the importance of fingerprints and photographs to the identification of a transient population of offenders in his district. An exception noted by the Chairperson is that a court can make a standing order to collect fingerprints.

Ron W. Paschal, Chief Attorney, 18th Judicial District, testified in opposition to the jury trial provision in **HB 2270** (Attachment 5). This amendment would greatly increase the cost of resolving juvenile cases to the state of Kansas and the citizens of Sedgwick County, as well as a delay in the resolution of the case.

Representative Pauls expressed the views of the Judicial Council. They were aware that the right to jury trial would be a "lightning rod" and would be willing to withdraw this provision in the interest of furthering the acceptance of the Juvenile Code edit.

Written testimony was submitted by Judge James Burgess, 18th Judicial District of Sedgwick County, in opposition to the jury trial provision of **HB 2270** (Attachment 6).

Chairperson Loyd closed the hearing on HB 2270.

HB 2390 - Amendments to the statutes concerning the civil commitment of sexually violent predators.

HB 2391 - Second or subsequent rape, hard 40; prostitution of a minor; endangering the child; aggravated battery on a law enforcement officer.

Chairperson Loyd opened the hearing on HB 2390 and HB 2391.

Attorney General Phill Kline appeared in support of **HB 2390** (Attachment 7). He thanked Governor Sebelius and her staff for their cooperation in drafting this legislation to address a problem regarding the Kansas Sex Predator Act and its' interpretation by the courts. The statute mandates that a trial shall be conducted within 60 days of a probable cause hearing. Failure to do so results in a jurisdictional issue. **HB 2390** will set forth that the provisions are not jurisdictional and that it was never the intent of the Legislature that the provisions of the statute be jurisdictional. This would provide for cases currently being considered and for the cases in which the issue has yet to be raised. Also, the term "predatory" should be removed to remain consistent.

Matthew D. All, Chief Counsel to the Governor testified in support of **HB 2390** and **HB 2391** (Attachment 8) on behalf of Governor Sebelius. These bills do the following:

1) Raise the severity classification of a second or subsequent rape to an off-grid person felony
2) Authorize the Hard 40 sentence for second and subsequent rapes
3) Raise the severity classification of prostitution of a child from a severity level 6, person felony to a severity level 5 person felony
4) Expand the definition of endangering a child to include knowingly and intentionally causing a child to be present where methamphetamines are being manufactured, sold or possessed with intent to sell, and reclassifies each endangerment as a severity level 9, person felony
5) Expand the definition of aggravated battery against a law enforcement officer to include violent acts against off-duty officers when the offender knows the victim is a law enforcement officer
6) Clarify the process and order for annual review of a convicted sexual predator's mental condition

Representative Kassebaum expressed concern that any altercation between a citizen and a law enforcement officer could be construed as aggravated battery because of this legislation. Chief Counsel All agreed that more definitive language could be used to state that the act occurred because the victim was a law enforcement officer.

Attorney General Phill Kline returned to give testimony in support of **HB 2391** (Attachment 9). Kansas Law Enforcement agencies have reported 3,210 rapes in the last three reporting years, 1999-2001. Current law allows a two time rapist to be out on the street after serving 11 years on the first offense and 18 years on the second offense, if good time credit is applied. In most cases, this means the rapist is free to victimize again.

General Kline continued, regarding the battery of an off-duty law enforcement officer–if an officer is in his or her uniform and suffers an aggravated battery, the criminal faces a level 3 felony and prison time. If the officer is not in his uniform, even if the criminal is attacking the officer for his work in the line of duty, an aggravated battery is only level 6 felony resulting in presumptive probation.

General Kline went on to relate the greatest responsibility a society has is to protect its children from harm. This legislation recognizes that severe consequences result when a child is intentionally and knowingly exposed to the dangers inherent in the sale, distribution or manufacture of methamphetamines. Victims rights groups have expressed concerns for women who are in dependent or abusive relationships but General Kline feels that the current statute regarding child endangerment requires that the parent act in an unreasonable fashion. That coupled with intentional and knowing exposure should address these concerns.

The Fiscal Note and Sentencing Commission report of projected bed space is not available at this time.

The meeting was adjourned at 3:26 p.m. because of time constraints without closing the hearing on **HB 2390** and **HB 2391**. The hearing will be continued at the next scheduled meeting on February 21, 2003.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE Feb 20, 2003

NAME	REPRESENTING
Michelle Wirt	KCDAA
Ron Paschal	Sdg Cty DA's office
Judy Moler	KAC
Mark Gleeson	Judicial Branch
David Boal	Judicial Branch
Kelly Rhoades	KCSDV
Marilynn Ault	KCSDV
Adam Watson	none - page
Tim Carr	
Cindy D'Ercole	Kansas Action for Children
Duane Banks	Russell County Leadership
Rudy M. Hamel	Judicial Council
Sue Barnett	KCSDV
Keith Bradshaw	Budget
Stuart Little	Ks Community Corrections Assoc.
Jennifer Crow	Governor's office
Jodie Weinaug	RCLS
Ramona Dierksen	KCSL
Raslene Rose	RCLS
Justin Pfeifer	RCLS
Rhonda Haberer	RCLS
Carol Bonbrugh	RCLS
Wanda Whiteman	Ks. Assn. School Boards
Brenda Harmon	KSC

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE Feb. 20, '03

NAME	REPRESENTING
Lynaia South	JJA

KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, ACTING COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE
February 19, 2003

Testimony on House Bill 2270

HB 2270 represents the tireless work of the Judicial Council in reviewing the Kansas Juvenile Justice Code as a whole and recommending changes to improve the code and its application. While there are some policy changes reflected in the recommended changes, the vast majority of the proposed changes are technical or clarifying only.

The Juvenile Justice Authority supports the clarifications the Judicial Council recommends. There is one provision, however, that would affect how we conduct our operations and we respectfully request an amendment.

K.S.A. 38-1602(i) would add the definition of a juvenile corrections officer to mean "court services officer, juvenile justice authority case manager, community corrections officer or juvenile intensive supervision probation officer." See HB 2270 p. 5 l. 41-43. This term is then used at K.S.A. 38-1607(defining the class of persons who have access to the juvenile's social file and adding juvenile corrections officers to that class), 38-1608(defining the class of persons who have access to records of law enforcement for juveniles under 14 years of age and adding juvenile corrections officers to that class), and 38-1624(discussing taking a juvenile into custody, circumstances, and adding juvenile corrections officers to this class). Id. at 11 l. 23-29; p. 12 l. 32; p. 33 l. 33-35.

The recommended definition of juvenile corrections officer is inconsistent with the current use of the term by JJA and those with whom we work. Currently juvenile corrections officer is a term used to describe those employees at our correctional facilities who are in the state classification of juvenile corrections officer.

In May 1999, the State established the Juvenile Corrections Officer class series including Juvenile Corrections Officers I, II, and III, Juvenile Corrections Director, and Juvenile Corrections Specialist. This class series completely replaced the now abolished Youth Service Specialist class series in the State's personnel system. The duties and responsibilities of these employees include, but are not limited to, direct offender supervision, maintaining a safe and secure environment for offenders and co-workers, and control of offender behavior to prevent acts dangerous or destructive to self, others or property. They are often referred to as the direct care or line staff at our facilities.

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2-20-03
Attachment 1

The legislature has enacted specific minimum qualifications for persons seeking employment in juvenile corrections officer positions, including the person must be at least 21 years of age and satisfactorily complete a physical agility test (post-offer work screen). K.S.A. 75-7055. Furthermore, these employees must complete a minimum of 160 hours of initial training and 40 hours of training each year thereafter. In fact, the Juvenile Justice Authority is seeking legislation in HB 2016 to formalize that training and provide for the certification of these corrections officers.

Those proposed to be included in the definition by the Judicial Council are court services officers, case managers, community corrections officers and juvenile intensive supervision probation officers. These are all employed at the local level and have differing training and duties based on their actual assignment. We recommend defining these groups as juvenile community corrections officers or some other acceptable term and reserving the term juvenile corrections officer for those employed in the correctional facilities, who meet the statutory qualifications and meet the Juvenile Justice Authority's training requirements.

In addition to the above, we would simply bring the following to your attention:

1. K.S.A. 38-1624(b) – as recommended by the judicial council states "A court services officer or juvenile corrections officer may take a juvenile into custody when . . ." HB 2270 at 33 l. 33-35.

   Because a court services officer is already in the definition of juvenile corrections officer, it seems redundant to mention court services officer in this section.

2. K.S.A. 38-1603(c) and (d) – These subsections use the term prosecution. This is not consistent with the other sections of this section, and the remainder of the code. The format used in other sections of this provision would be "proceedings under this code involving acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. _____." HB 2270 at 6 l. 34-43.

3. K.S.A. 38-1609 provides the medical records of a juvenile offender are privileged and then lists a few specific exceptions. One exception states these records may be disclosed "upon a determination by the head of the treatment facility, who has the records, that disclosure is necessary for the further treatment of the juvenile." 38-1609((a)(2). This provision has caused some confusion because treatment facility is not defined. HB 2270 at 14 l. 25-33.

4. K.S.A. 38-1665 – the proposed amendments clean up the provisions as to when a modification of sentence can be requested, an area that has been somewhat confusing for the courts. The new (d) would address the modification we have

requested in HB 2015 in which we requested an amendment to allow a motion to be filed by the Commissioner for medical reasons. HB 2270 at 81 l. 28- p. 82 l. 35.

Thank you for your time and consideration of these important juvenile issues.

Denise L. Everhart
Acting Commissioner

DLE:LS:bt

~~(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 Supp. 72-89b03, and amendments thereto.~~ *"Commissioner" means the commissioner of juvenile justice.*

(b) "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.

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

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

(e) "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.

(f) "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.

(g) "Juvenile" means a person as to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

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

(i) ~~"Juvenile correction officer"~~ means court services officer, juvenile justice authority case manager, community corrections officer or juvenile intensive supervision probation officer.

"Juvenile community correction officer"

STATE OF KANSAS

BILL GRAVES, *Governor*
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590

(785) 296-323
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OFFICE OF THE GOVERNOR

MAY 6 1999

EXECUTIVE DIRECTIVE NO. 99-279

Authorizing Certain Personnel Transactions

By virtue of the authority vested in the Governor as the head of the executive branch of the State of Kansas, the following transaction is hereby authorized:

The request of William B. McGlasson, Director of Personnel Services, to abolish the Youth Service Specialist class series, which includes the following classes: Youth Service Specialist I, II, and III, Youth Service Specialist Trainee, Youth Service Specialist I, Trainee, and Youth Service Director, is hereby approved, effective on the first day of the pay period charged to FY 2000.

The request of William B. McGlasson, Director of Personnel Services, to establish the new class series to be utilized by the Juvenile Justice Authority, which includes the following classes: Juvenile Corrections Officer I, Juvenile Corrections Officer II, Juvenile Corrections Officer III, Juvenile Corrections Director, and Juvenile Corrections Specialist, is hereby approved, effective on the first day of the pay period charged to FY 2000.

The request of William B. McGlasson, Director of Personnel Services, to establish a Juvenile Corrections Officer I lead worker and specialty unity pay differentials of 5.0 percent for eligible Juvenile Corrections Officer I employees within the Juvenile Justice Authority, in accordance with the following provisions, is hereby approved on the first day or the pay period charged to FY 2000.

A Juvenile Corrections Officer I (JCO I) lead worker pay differential of 5.0 percent is recommended to compensate JCO I employees based on the following criteria:

1. The pay differential will be paid only to JCO I employees performing lead worker duties during the absence of a supervisor. The pay differential will be paid only while the JCO I is performing the lead worker duties in the in the supervisor's absence and will end at the completion of the duties.

2. The pay differential will be provided only to JCO I employees for lead worker duties performed with other JCO I employees involving similar duties.

3. The pay differential will be provided only for a full work shift, not partial shifts.

4. Juvenile Corrections Officer I employees who satisfy the criteria for either pay differential will be eligible for either the lead worker differential or specialty unit differential, but cannot receive both pay differentials.

A Juvenile Corrections Officer I (JCO I) specialty unit pay differential of 5.0 percent is recommended to compensate JCO I employees based on the following criteria:

1. The pay differential will be paid only to JCO I employees performing work with juvenile offenders with acute or chronic behavior or psychiatric problems.

2. The pay differential will be paid only while the employee performs duties in the specialty unit and will end if the employee leaves the position in the specialty unit.

3. The pay differential will be provided only for a full work shift, not partial shifts.

4. Juvenile Corrections Officer I employees who satisfy the criteria for either pay differential will be eligible for either the lead worker differential or specialty unit differential, but cannot receive both pay differentials.

I have conferred with the Secretary of Administration, the Director of the Budget, the Director of Personnel Services, and members of my staff, and I have determined that the requested action is appropriate.

THE GOVERNOR'S OFFICE

By the Governor _____

_____
Date

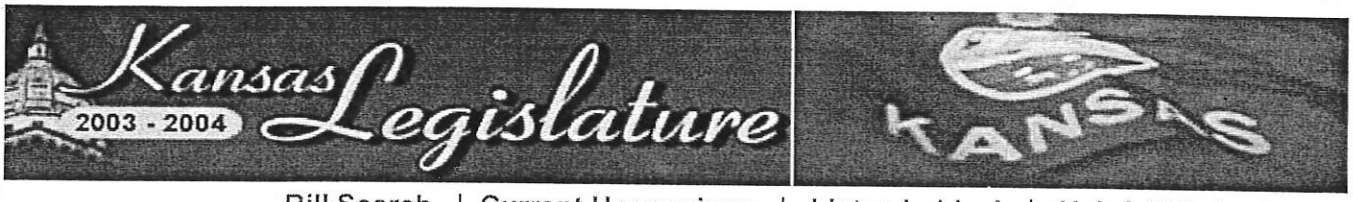
Ron Thornburgh
Secretary of State

by _____
Assistant Secretary of State

FILED

MAY 05 1999

RON THORNBURGH
SECRETARY OF STATE



75-7055

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERSAND EMPLOYEES
Article 70.--JUVENILE JUSTICE AUTHORITY

75-7055. Juvenile corrections officers, requirements. All juvenile corrections officers and those employees within the juvenile corrections officer series first employed on and after July 1, 2000, shall be required to be at least 21 years of age, shall possess no felony convictions, and shall meet such physical agility requirements as set by the commissioner.

History: L. 2000, ch. 150, § 35; June 1.

I-7

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on
HB 2270
Before the
House Corrections and Juvenile Justice Committee

by

Donna L. Whiteman
Assistant Executive Director/Attorney
Kansas Association of School Boards

February 20, 2003

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear and offer a suggested amendment to H.B. 2270 relating to the courts' ability under K.S.A. 38-1663 to order educational services when a juvenile is adjudicated to be a juvenile offender.

Current law, on page 64, lines 3-5, states the court may order the "(C) juvenile offender to participate in a program of education offered by a local board of education including placement in an alternative education program approved by a local board of education."

H.B. 2270, p. 69, lines 4-7 omits the current law language "offered by a local board of education."

Reinserting this language would reflect current law and the legislative intent that school districts are not required to provide juvenile offenders with special educational programs outside of the programs currently offered by the local school districts. School finance dollars are very scarce and reinserting this language "offered by a local board of education" will reflect current law and ensure schools do not have to provide educational programs outside of what they currently offer.

Thank you for the opportunity to appear before you today.

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2-20-03
Attachment 2

(b) If the court orders the juvenile offender to attend counseling, educational, mediation or other sessions, or to undergo a drug evaluation pursuant to subsection (a)(3), the following provisions apply:

(1) The court may order the juvenile offender to participate in counseling or mediation sessions or a program of education including placement in an alternative educational program approved by a local school board. The costs of any counseling or mediation may be assessed as expenses in the case. No mental health center shall charge a fee for court-ordered counseling greater than what the center would have charged the person receiving the counseling if the person had requested counseling on the person's own initiative. No mediator shall charge a fee for court-ordered mediation greater than what the mediator would have charged the person participating in the mediation if the person had requested mediation on the person's own initiative. Mediation may include the victim but shall not be mandatory for the victim; and

offered by a local board of education,

(2) if the juvenile has been adjudicated to be a juvenile by reason of a violation of the uniform controlled substances act, K.S.A. 8-1599, 41-719 or 41-727, and amendments thereto, or any other offense, the court may order the juvenile offender to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. The court may waive the evaluation if the court finds that the juvenile offender has completed successfully an alcohol and drug evaluation, approved by the community-based alcohol and drug safety action program, within 12 months before sentencing. If the evaluation occurred more than 12 months before sentencing, the court shall order the juvenile offender to resubmit to and complete the evaluation and program as provided in this section. If the court finds that the juvenile offender and those legally liable for such juvenile offender's support are indigent, the fee may be waived. In no event shall the fee be assessed against the commissioner or the juvenile justice authority.

(c) If the court orders suspension or restriction of a juvenile offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state pursuant to subsection (a)(4), the following provisions apply:

(1) The duration of the suspension ordered by the court shall be for a definite time period to be determined by the court. Upon suspension of a license pursuant to this subsection, the court shall require the juvenile offender to surrender the license to the court. The court shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has

DISTRICT COURT OF KANSAS

CHAMBERS OF
DAVID W. BOAL
JUDGE OF THE DISTRICT COURT
DIVISION FIFTEEN

COURTHOUSE
KANSAS CITY, KANSAS 66101-3076
(913) 573-4193

WYANDOTTE COUNTY

February 27, 2003
Testimony Regarding HB 2270
House Corrections and Juvenile Justice Committee

HB 2270, Section 55, would grant a right to a jury trial to juveniles charged with a felony. For most judges and lawyers the proposal is a surprise and there is by no means any consensus that it's a good idea under any circumstances. Both the Kansas and United States Supreme Court have held that juveniles have no constitutional right to a jury trial. I'm not here to advocate either the passage or rejection of the change, but to raise concerns about the ramifications of creating the right.

I understand that two propositions have been advanced to support the change. First, there is concern that, because we afford no right to a jury trial to juveniles charged with felonies, but use the resulting adjudications as convictions when scoring criminal histories for adult sentences, those adult sentences may some day be found to be unconstitutional. Secondly, that since the law now permits the court to grant jury trials and since few are sought and fewer tried, not much will change if a jury trial becomes a right.

As to the first issue – whether there must be a jury trial offered if an adjudication is to be used as a conviction in determining an adult sentence - my brief opportunity to consult with colleagues has drawn differing opinions. But as to the second proposition, I believe creating a right to a jury trial for juveniles will result in an entirely new way of doing business in juvenile offender cases. For the same reasons that adults want a jury trial, so will juveniles. Attorneys who represent the juveniles will have the obligation to explain the right and recommend what's in their clients best interest. If there's to be a trial, it'll be a jury trial.

In Wyandotte County, I'm advised, we've averaged a little over 50 criminal trials a year the last couple of years. We have an average of 450 juveniles charged with felonies each year. I fully expect that if this law is implemented juvenile jury trials will equal or surpass in number those in adult court. Last year we spent $178,000.00 on jury service fees and mileage. That would at least double. The county spent approximately

H. Corr & J.J.
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$115,000.00 on attorneys for juvenile offenders. If attorneys are doing jury trials that amount will increase dramatically. None of the juvenile courtrooms are designed to accommodate juries. If I'm presiding over jury trials another judge would have to hear the other cases and daily detention hearings. Meanwhile our local judicial budget has been cut by 6.9 % because expected State payments to local government have been cancelled due to the State's own budgetary woes. I'll leave it to OJA to calculate what additional judicial and court personnel will be necessary to meet this influx of jury cases but OJA has no resources to meet the cost of these additional responsibilities.

In short, the creation of this right will result in it being exercised. In Kansas City, our current resources and facilities are not sufficient to support it.

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 2270

February 20, 2003

Mr. Chairman, members of the committee, thank-you for the opportunity to testify in support of HB 2270. My name is Mark Gleeson and I am the Family and Children Program Coordinator for the Office of Judicial Administration.

House Bill 2270 makes numerous technical and substantive changes to the Kansas Juvenile Offender Code. The Judicial Council is to be commended for their persistence and effort in what appears to be a comprehensive edit of the Kansas Juvenile Offender Code without changing the critical aspects of the law. Since the Juvenile Justice Reform Act of 1996, Kansas has often been the focus of national attention for having constructed a juvenile offender code which holds offenders accountable, places an emphasis on community and family involvement, provides reasonable and flexible mechanisms for trying our most serious offenders in the adult court. The Judicial Council has carefully protected the philosophy and practice that has made the Kansas Juvenile Offender Code a very workable collection of statutes for victims, the courts, communities and for youth and their families.

For a bill that spans 101 pages, there is very little on which I will comment. Section 55 amending K.S.A. 38-1656, would, however, give us reasons for concern if it is enacted. Section 55 would require a judge, upon the motion of an attorney, to hold a jury trial for any juvenile offender accused of a felony offense. Presently, a jury trial may be provided at the discretion of the judge. Under current law, juvenile jury trials are not often requested and few of those requests are granted except in the most serious cases.

In fiscal year 2002, 15,829 juvenile offender cases were filed in the State of Kansas. We do not know how many of those were felony cases. Not knowing the number of felony cases filed makes it difficult to determine the number of potential eligible cases. However, after discussion with a number of judges, we estimate there would be approximately 2,220 eligible cases. If one half of these request a jury trial, there will be 1,110 jury trials. Generally, judges block off an average of two to three days for jury trials in non-major civil and criminal matters. We estimate it requires at least 12 hours of time for the clerk of the district court to notify potential jurors and take care of the people and paperwork processing necessary when a case involves a jury. Most jury trials would be in the urban districts and we estimate needing an additional 4 judges, one for each urban district as well as additional senior judges to hear jury trials in other districts. Additional staff would be needed in the clerk's offices to perform duties necessary to impanel juries. The total cost is estimated to be $1,078,887. This information has been provided in more detail to the Division of Budget.

H. Corr & J.J.
2-20-03
Attachment 4

Following Judge Lorenz's review of HB 2270 last week, I sent a brief survey to judges requesting information about the number of requests they have had for jury trials over the past two years, the number of jury trials granted, and their best guess as to how Section 55 of HB 2270 would impact their district. Sixteen judges responded. One judge agreed with Judge Lorenz and the members of the Judicial Council's Juvenile Offender/Child in Need of Care Advisory Committee and did not believe there would be a significant impact on the workload in her court. The remaining judges did not disagree with the principle behind the proposal but all were extremely concerned about the workload impact for the court, the impact on the county or district attorney's office and on the attorneys who represent juvenile offenders. Virtually all of the judges indicated they rarely received requests for jury trials because the defense attorneys know the request will be denied. These judges also believe defense attorneys would have an ethical obligation to request jury trials in many cases if the juvenile has a right to a jury trial.

Another matter of concern is the shift of responsibility from magistrate judges to district judges. Currently, magistrate judges hear most of the juvenile offender cases in the non-urban districts. While they are currently permitted and often hear contested cases, it is the general belief that jury trials will be heard by district judges to avoid the risk of holding a second jury trial if the juvenile appeals a decision to the district judge.

Judge Graber, district judge in Sumner County, reported a cost of impaneling a jury to be approximately $1000 per day. Judge Graber also asked how many other states provided this right to a jury trial and, for those that provided such a right, what was their experience with attorneys making such a request.

Judge Vieux, Chief Judge of the 25th Judicial District, also asked the committee to reconsider changes proposed in Section 12 amending K.S.A. 38-1611 regarding fingerprints and photographs. Judge Vieux suggested fingerprints and photographs are essential to the identification of a transient population of offenders in his district and questions the necessity of changing this section of the juvenile code.

Considering the budget crisis facing the State, and therefore the Judicial Branch, this is not the year to pass this provision. Without a promise of significant new funding for the district courts, this provision alone would seriously impact all judicial districts and would create serious delays in other types of cases. The budgetary impact to counties, which must pay for the juries and attorney fees, is also of concern. Many counties have already found it necessary to cut local court budgets, and this would impose an even greater financial burden on the counties.

The rationale expressed in the comment section of the Kansas Judicial Council's Proposed Amendments to the Kansas Juvenile Justice Code suggests the intent of this amendment is to protect the rights of juvenile offenders, who could find a juvenile conviction enhancing a prison sentence when the juvenile conviction is counted in the criminal history on a subsequent adult conviction. This rationale is well-intentioned. However, the Judicial Council also acknowledges that, "Neither the United States Supreme Court nor the Kansas Supreme Court has afforded a juvenile the right to jury trial."

Although I am confident this amendment is well-intentioned, I am also confident that this is not a year in which the Judicial Branch will receive additional resources to implement the provisions of the amendment to K.S.A. 38-1656. I urge that you delete this proposed amendment from the bill and carefully consider the impact of Section 12 amending K.S.A. 38-1611. I would have no problem with further consideration of this issue at a time when the fiscal impact of this provision stands a better chance of being funded.

Mr. Chairman, thank you for your time and attention. I will stand for questions.

Office of the District Attorney
Juvenile Division
Eighteenth Judicial District of Kansas

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

House Bill No. 2270
Opponent Testimony
Ron W. Paschal, Chief Attorney on behalf of
Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District

Chairman Loyd and Members of the Committee:

The following testimony is provided in opposition to the amendment in House Bill 2270 which amends the jury trial provision of K.S.A. 38-1656. The proposed amendment states:

> **38-1656. Jury trials in certain cases.** In all cases involving offenses committed by a juvenile which, if committed by an adult, would make the person liable to be arrested and prosecuted for the commission of a felony, *upon motion,* the judge *shall* order that the juvenile be afforded a trial by jury. Upon the juvenile being adjudicated to be a juvenile offender, the court shall proceed to sentencing.

Should this amendment become law, it will greatly increase the cost of resolving juvenile cases to the state of Kansas and the citizens of Sedgwick County. The amendment presents other practical concerns as well such as a delay in the resolution of the case.

Kansas law has long granted district court judges the discretion to allow a juvenile offender a jury trial. As reflected in the **Comment** to this amendment, the proposed bill is a policy change. Neither our Supreme Court or the United States Supreme Court has ever overruled a ruling of the trial court denying a juvenile offender's request for a jury

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trial. The proposed amendment ignores many years of jurisprudence including cases which occurred prior to and after the enactment of the Kansas Sentencing Guidelines.

It has long been the law that a juvenile offender has no federal constitutional right to a jury trial, **McKeiver v. Pennsylvania, 403 U.S. 528, 29 L.Ed. 2nd 647, 91 S.Ct. 1976 (1971)** and in Kansas, no state constitutional right to a jury trial, ***In the matter of Findlay, a Minor Child, Appellant, V. State of Kansas, Appellee,* 235 Kan 462 (1984).**

The jurisprudence in this state and in this nation regarding this issue is grounded in common sense and sound legal reasoning. The goals with respect to juvenile offenders and criminal defendants are different. With a juvenile offender, we focus on the rehabilitation and education of the offender. We also focus on the prevention of future unlawful acts. The overwhelming majority of available research indicates the reformation of a juvenile offender can be best accomplished when the consequences for unlawful behavior follows closely on the heels of the wrongful conduct. The key to success is to expeditiously move the offender's case through the legal system so that consequences can be imposed and the rehabilitation and educational process can begin. Clearly, the prevailing philosophy in juvenile justice indicates the quicker a juvenile offender accepts responsibility for his action and the quicker the system addresses the wrongful conduct, the greater the likelihood of success for the juvenile offender. In fact, House Bill 2270 itself, acknowledges the validity of this position as it states:

> .....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.* **HB2270 Section 1 KSA 38.1601.** *(emphasis added)*

The proposed amendment requiring jury trials, will not aid in the implementation of effective prevention or assist in implementation of early intervention programs for juvenile offenders, it will create delay.

Those of you with children may recognize from your own experiences, the importance of this philosophy. When your teenage child comes in two hours after the curfew you have set – you don't wait until next month to penalize him – you do it the next day. If your ten-year-old son hits your three-year-old daughter during a dispute – you don't send him "time out" the following week – you do it immediately.

With adult criminal defendants the goals are often different. At times the goal is focused more sharply on punishment. The liberty interests of an adult criminal defendant are much more frequently at stake. Consequently, the right to a jury trial is very important.

The proposed jury trial amendment will create delay in the administration of justice in the juvenile system. In Sedgwick County during 2001 and 2002, the court system handled an average of 415 felony juvenile offender cases each year. With the proposed amendment,

we will have the potential for 415 jury trial settings per year. These cases will need to be set on a special docket so potential jurors may be summoned. As requests for jury trials are made and the docket becomes filled, the cases will be set later in the year as time permits. If the offender elects to waive his right to a jury trial on the day it is scheduled, his case will very likely be set over thirty days and returned to the bench trial docket, creating additional delay.

The logistics of presenting a juvenile offender jury trial in Sedgwick County will not go unrecognized. We currently have 26 district court judges on the bench, four of whom are assigned to the juvenile division. The juvenile court building is located at 1015 South Minnesota. The juvenile detention facility is attached to the juvenile courthouse. The juvenile division for the district attorney's office is located directly to the north of the juvenile courthouse. All support staff for the judges assigned to the juvenile courts are located on the premises at 1015 South Minnesota. There are three courtrooms in the juvenile department of the district court. None are equipped with facilities for jury trials. There is no waiting room for potential jurors, no jury deliberation room and no jury box in any of the three courtrooms. There is inadequate parking for jurors or potential jurors.

A juvenile jury trial would have to occur at the district court, criminal department in the Sedgwick County Courthouse located at 525 North Main. This would require many people to travel the approximately 6 miles downtown to conduct the trial. Included in this group would be the judge, his administrative aide, his court reporter, the assistant district attorney assigned to the case and the juvenile offender. Additional problems are presented when the offender is in custody. Arrangements will need to be made to ensure his timely transportation to the court proceedings. This will require the resources of the sheriff and the detention facility to accommodate the transportation needs. Moreover, the juvenile will need to be transported back to the juvenile detention facility during court recesses and lunch as there exists no facility in the courthouse at 525 North Main where the juvenile can be housed in a manner wherein he is segregated from the adult inmate population. ***See HB2270 Section 2 KSA 38-1602 (f)(2).*** The costs and potential safety risks associated with transporting all of the personnel and the offender between the facilities is unnecessary when we focus on the goals of the juvenile justice system.

Jury trials typically last several days. Ultimately the state will need to remodel the facilities at 1015 South Minnesota to accommodate juvenile jury trials. This would include the expansion of the facility to include a waiting room for potential jurors, jury deliberation rooms, courtrooms with seating for the jury, additional parking and a cafeteria. Jurors are paid for their services. Their parking in the parking garage at the courthouse is paid for. They are fed at taxpayer expense during their deliberations. All of these costs should go into consideration before this amendment is passed. Indeed House Bill 2270 states the goals and policies developed pursuant to the Kansas juvenile justice code should:

> (g) *be cost-effectively implemented and administered to utilize resources wisely.*
> **HB2270 Section 1 KSA 38-1601** *(emphasis added)*

By requiring a jury trial upon motion of the respondent in a felony case, the goals of the Kansas juvenile justice code will not be cost effectively implemented or administered so as to utilize resources wisely. It will cost money to summons jurors for trial, to feed them, pay for their parking and to transport parties to and from the district courthouse at 525 North Main or in the alternative, upgrade the juvenile facilities at 1015 South Minnesota.

The overwhelming majority of juvenile offenders are represented by court-appointed counsel. Due to the fact jury trials typically last longer than bench trials and require greater preparation, the legislature should anticipate increase compensation for court appointed attorneys when billings and vouchers are presented for payment.

The **Comment** to the proposed amendment indicates the reason for the policy change to allow juvenile offenders jury trials in felony cases is based on the fact that juvenile adjudications are scored in adult criminal history. The concept of using juvenile adjudications to enhance adult criminal sentences is not unique to the post sentencing guidelines era.

K.S.A. 21-4606(a) (1993 supp.) 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. 21-4606(b) (1993 supp.) used similar language when enacted in 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 adjudicated to have have committed, while a juvenile, an offense which would constitute a felony if committed by an adult."

There has been appellate litigation in Kansas challenging the inclusion of juvenile adjudications in adult criminal cases. Defendant's have typically relied on ***Apprendi v. New Jersey*, 530U.S. 466 (2000)** which held that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. The ***Apprendi*** decision did not address the specific issue of the juvenile adjudications being included in criminal history scores as prior convictions. Our appellate courts have rejected this argument. ***See State v. Lamunyon*, 259 Kan 54 (1996) and *State v. Hatt*, ____KA2nd____, 38 P3d 738 (2002).** A criminal defendant's reliance on ***Apprendi*,** in support of his position on this issue is misplaced. First, our Supreme Court and the United States Supreme Court have held that a juvenile offender has no constitutional right to a jury trial, therefore a juvenile adjudication that occurred as the result of a bench trial is not constitutionally infirm. ***See McKeiver and Findlay supra.*** Second, the mere inclusion of an adjudication does not necessarily lead to the imposition of an adult sentence outside the prescribed statutory maximum and therefore would not trigger an ***Apprendi*** analysis. Typically, the result would be the defendant would be sentenced in a higher criminal history grid box *within the statutorily prescribed maximum sentence.*

Based on the foregoing, I would urge members of the committee to disapprove the provision granting juvenile offenders the right to a jury trial in felony cases.

> ***"If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it."***
>
> ***McKeiver v. Pennsylvania,* 403 U.S. 528, 550-551 (1971)**

Respectfully Submitted,

Ron W. Paschal
Chief Attorney
Office of the District Attorney
Eighteenth Judicial District

REFERENCED SECTIONS
TO
HOUSE BILL
2270

Session of 2003

HOUSE BILL No. 2270

By Committee on Corrections and Juvenile Justice

2-11

AN ACT concerning the Kansas juvenile justice code; amending K.S.A. 38-1601, 38-1602, 38-1603, 38-1604, 38-1605, 38-1606, 38-1606a, 38-1607, 38-1608, 38-1609, 38-1610, 38-1613, 38-1614, 38-1615, 38-1616, 38-1617, 38-1618, 38-1621, 38-1622, 38-1623, 38-1624, 38-1625, 38-1626, 38-1627, 38-1628, 38-1629, 38-1630, 38-1631, 38-1632, 38-1633, 38-1634, 38-1635, 38-1636, 38-1637, 38-1638, 38-1639, 38-1640, 38-1641, 38-1651, 38-1652, 38-1653, 38-1654, 38-1655, 38-1656, 38-1657, 38-1658, 38-1661, 38-1663, 38-1664, 38-1665, 38-1666, 38-1668, 38-1671, 38-1673, 38-1674, 38-1675, 38-1676, 38-1677, 38-1681, 38-1682, 38-1683, 38-1684, 38-1685, 38-1691, 38-16,111, 38-16,116, 38-16,117, 38-16,118, 38-16,119, 38-16,120, 38-16,126, 38-16,127, 38-16,128, 38-16,129, 38-16,130, 38-16,132 and 38-16,133 and K.S.A. 2002 Supp. 38-1611 and 38-1692 and repealing the existing sections; also repealing K.S.A. 38-1612, 38-1662, 38-1667 and 38-16,131.

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

Section 1. K.S.A. 38-1601 is hereby amended to read as follows: 38-1601. *The provisions of this act as contained in* 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~~ *goals* of the juvenile justice code ~~is~~ *are* to promote public safety, hold juvenile offenders accountable for ~~such juvenile's~~ *their* behavior and improve ~~the~~ *their* ability ~~of juveniles~~ to live more productively and responsibly in the community. To accomplish ~~this goal~~ *these goals*, 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 admin-

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istered 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.

Sec. 2. 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.~~

~~(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 Supp. 72-89b03, and amendments thereto.~~ *"Commissioner" means the commissioner of juvenile justice.*

(b) "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.

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

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

(e) "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.

(f) "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.~~

(g) "Juvenile" means a person as to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

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

(i) "Juvenile correction officer" means court services officer, juvenile justice authority case manager, community corrections officer or juvenile intensive supervision probation officer.

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amendments thereto.

(d) A copy of the court's order shall be sent to the school district in which the juvenile offender is enrolled or will be enrolled.

Sec. 55. K.S.A. 38-1656 is hereby amended to read as follows: 38-1656. In all cases involving offenses committed by a juvenile which, if done by an adult, would make the person liable to be arrested and prosecuted for the commission of a felony, *upon motion,* the judge ~~may~~ *shall* order that the juvenile be afforded a trial by jury. Upon the juvenile being adjudged to be a juvenile offender, the court shall proceed with sentencing.

Sec. 56. K.S.A. 38-1657 is hereby amended to read as follows: 38-1657. (a) In any proceeding pursuant to the Kansas juvenile justice code in which a child less than 13 years of age is alleged to be a victim of the offense, a recording of an oral statement of the child, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

(8) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript is provided to the parties; and

(9) the child is available to testify.

(b) If a recording is admitted in evidence under this section, any party to the proceeding may call the child to testify and be cross-examined, either in the courtroom or as provided by K.S.A. 38-1658, and amendments thereto.

~~(c) This section shall be part of and supplemental to the Kansas juvenile justice code.~~

Sec. 57. K.S.A. 38-1658 is hereby amended to read as follows: 38-1658. (a) On motion of the attorney for any party to a proceeding pursuant

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Written Testimony on HB 2270
Submitted by Judge James Burgess
18th Judicial District (Sedgwick County)

House Corrections and Juvenile Justice Committee
February 20, 2003

In 2001 and 2002, Sedgwick County averaged 430 felony filings per year. Even if the majority of these cases eventually were to plead out, requiring judges to grant jury trials in juvenile offender cases upon motion would still pose a potentially huge increase in trial time.

In Sedgwick County, this proposal would create several problems in addition to the actual time involved. For purposes of discussion, please assume we are attempting to schedule only approximately 50 jury trials, although there could be many more than this resulting from this bill. First, there are no facilities for jury trial in the juvenile building, which is in a separate facility from the courthouse. Our juvenile courtrooms don't have jury boxes, and the one small room that could have been used as a jury room is now full of computer servers. This means that the juvenile offender felony trial would have to be heard at the downtown courthouse. Our adult criminal department could not absorb 50 more trials, and I don't think we would want them to if they could. These are still juveniles, and there might be issues that are particular to juvenile law. We have four judges who are experienced in juvenile law who should be handling these trials.

The lack of courtrooms means we would have to move the trial downtown. Moving a trial downtown is already an issue for us, because we have four judges and three courtrooms in our building. When all four of us are scheduled to be in a courtroom, we have to try to find an empty courtroom downtown. It is often a problem finding that courtroom.

It is likely the more serious felonies would be going to trial, and that means those juveniles would be the most likely to be in detention. That means we would have to be involved in transporting juveniles downtown. Once we get them downtown, we would have difficulty finding places to hold the juveniles when they weren't in court. We can't put them in any area in which adults are being held. This means that we would probably have to have deputies or detention staff taken away from other duties to monitor the juvenile 100% of the time.

Our juvenile offender dockets are full as it is. On Monday, Tuesday, Thursday, and Friday, we do sentencings, detention hearings, pretrials, and trials. On a normal day, the judge handling juvenile offender matters will have eight to ten sentencings, anywhere from three to six detention hearings (my personal record for detention hearings in one day is 14), and three to four trials. On Wednesdays, we do first appearances and detention hearings. There are usually around 40 cases set for initial appearances each Wednesday. Obviously, we would have to pull another judge in to help with the jury trials. Our judges handle juvenile offender cases every fourth week. The other three weeks of the month they are handling child in need of care cases. If we dedicate a second judge to juvenile offender cases, that judge will be pulled off hearing child in need of care cases, which are extremely time sensitive in terms of trying to achieve permanency as quickly as possible.

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There would be increased costs in terms of jury costs and I'm sure we would have to spend more on attorneys for those trials. We have attorneys who handle the regular dockets, but to add 50 or so jury trials to their duties would necessitate more money or more attorneys.

From what I understand, the concern was that since these juvenile convictions count in the adult sentencing grid, juvenile should be afforded the choice of jury trials. The reality is the more serious cases which would have a big impact on the adult sentencing grid are the most likely to have motions for adult prosecution filed. In that case, they would receive a jury trial any way.

I can't speak for other districts (although I believe they would have some of the same issues, particularly increased costs) but I know that this law would create a terrific load on this district. I'm not sure how we could handle the increased workload.

Thank you for the opportunity to address this issue.

State of Kansas
Office of the Attorney General
120 S.W. 10th Avenue, 2nd Floor, Topeka, Kansas 66612-1597

Phill Kline
Attorney General

Main Phone: (785) 296-2215
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To: House Corrections and Juvenile Justice Committee
From: Attorney General Phill Kline

Re: HB 2390, Sexually Violent Predators

Chairman Loyd and Members of the Committee:

I want to thank you for the opportunity to address the committee on this important piece of legislation. HB 2390 was requested in order to address a problem regarding the Kansas Sex Predator Act and its' interpretation by the courts.

Enactment of the sex predator statutes in 1994 has led to the identifying of 104 individuals as sexual predators. These individuals represent the worst of the worst and have been committed to Larned State Hospital for treatment. Unfortunately, because of a flaw in the sex predator statute, some of these individuals have been released and allowed to roam the neighborhoods of our communities. It is time for us to join efforts to prevent this from happening again.

Kansas courts have held that the language contained in K.S.A. 59-29a06 regarding a proposed patient's right to have a speedy trial is mandatory and thereby jurisdictional. The statute sets forth that a trial shall be conducted within 60 days of a probable cause hearing. Being that it's mandatory to comply with the 60 day time period, failure to do so results in it being a jurisdictional issue.

In 1999, the legislature amended K.S.A. 59-29a03 and K.S.A. 59-29a04, to include language making provisions set forth therein non-jurisdictional. These amendments were made as a result of decisions handed down by the Kansas Court of Appeals. I support amending K.S.A. 59-29a06 to set forth that the provisions are not jurisdictional and that it was never the intent of the Legislature that the provisions of the statute be jurisdictional. This would provide a retroactive element that would circumvent this argument both in those cases currently being considered for dismissal by the courts, as well as those cases in which the issue has yet to be raised.

K.S.A. 59-29a10 contains some language that was previously removed by the legislature

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in 1999, regarding the use of the term "predatory". In order to be consistent throughout the Act, I recommend that K.S.A. 59-29a10 be amended to remove the term predatory.

I ask that the committee support the passage of HB 2390. Currently, the number of predators that have potential claims is 12. Passage of this legislation will assist in keeping these dangerous criminals where they belong.

Thank you for your time. I'll stand for questions.

K A N S A S

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony on House Bills 2390 and 2391

MATTHEW D. ALL
Chief Counsel to the Governor

Before the HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
February 20, 2003

Mr. Chairman and members of the Committee:

The most fundamental purpose of government is to ensure the safety of its citizens. I am, therefore, pleased and honored to testify today in support of House Bills 2390 and 2391. These bills target some of the worst, most heinous, most insidious crimes in our society and treat them with the seriousness and outrage they deserve. Read together, these bills do the following:

- Raise the severity classification of a second or subsequent rape to an off-grid person felony.
- Authorize the Hard 40 sentence for second and subsequent rapes.
- Raise the severity classification of prostitution of a child from a severity level 6, person felony to a severity level 5, person felony.
- Expand the definition of endangering a child to include knowingly and intentionally causing a child to be present where methampetamines are being manufactured, sold, or possessed with intent to sell, and reclassifies such endangerment as a severity level 9, person felony.
- Expand the definition of aggravated battery against a law enforcement officer to include violent acts against off-duty officers when the offender knows the victim is a law enforcement officer.
- Clarify the process and order for annual review of a convicted sexual predator's mental condition.

I hope we can all agree that the crimes these bills address merit the punishment we ask for here. There is no room in a free but secure society for repeat sexual offenders, for those who victimize or irresponsibly endanger children, or for those who seek out and inflict violence on law enforcement officers.

H. Corr. & J.J.
2-20-03
Attachment 8

Capitol, 300 SW 10th Ave., Ste. 212S, Topeka, KS 66612-1590

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The Governor is pleased with the collaboration her staff has had with the Attorney General's. It is always heartening when Kansans of different backgrounds and viewpoints can come together to protect our citizens, and to make Kansas a safer, better place to live.

Thank you for this opportunity to testify. I hope you will join the Governor and the Attorney General in support of House Bills 2390 and 2391.

State of Kansas
Office of the Attorney General
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PHILL KLINE
ATTORNEY GENERAL

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To: House Corrections and Juvenile Justice Committee
From: Attorney General Phill Kline

Re: HB 2391

Chairman Loyd and Members of the Committee:

Thank you for the opportunity to address your committee and for your diligent efforts on behalf of the citizens of Kansas.

We must stand together to protect the safety of Kansas children, law enforcement officers and to prevent additional victims of crime. This requires all of us to recognize our common desire for sentences that are appropriate for the gravity of the crime.

I am honored to join with Governor Sebelius in offering the recommendations contained in HB 2391.

HB 2391 addresses serious issues by strengthening penalties against sexual predators, protecting our children from exposure to harmful materials and increasing penalties against those who intentionally seek out and batter our brave law enforcement officers.

Hard 40 for Second Time Rape Convictions

Kansas law enforcement agencies have reported 3,210 rapes the last three reporting years, 1999-2001. That equates to one rape in Kansas every 8.18 hours. This is unacceptable.

Next to murder, rape is the most invasive crime in existence. A victim of the act of rape bears physical and emotional scars that are unique in nature. While it is our hope and prayer that through therapy and support, victims can find physical and emotional healing rape inflicts emotional scars that last a lifetime.

Yet, Kansas law allows rapists to commit their crimes again and again. We should not give rapists, who have repeatedly demonstrated their flagrant disregard for human dignity and lack of respect for the law, an opportunity to create new victims.

H. Corr & J.J.
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Of the 3,210 rapes mentioned above, all but five were perpetrated by criminals 65 and under. Only 14 rapes were perpetrated by rapists between the ages of 60 and 64 and 29 by rapists between the ages of 55 and 59. Accordingly, of all reported rapes in Kansas in the three years from 1999 through 2001, only 1.4% were committed by those over the age of 55.

Current law allows a two time rapist to be out on the street after having served approximately 11 years on the first offense and 18 years on the second offense, if good time credit is applied. This allows a two time convicted rapist to be walking the streets in his middle to late 30's seeking another victim. When it comes to rape, two times is enough strikes to call an out.

Battery of an Off-Duty Law Enforcement Officer

Perhaps no group of individuals deserve more praise for the sacrifices they make, than our law enforcement officers. Day after day, our state, city and county officers lay their lives on the line while protecting our communities. These brave men and women accept this risk knowing that it comes with the job. I know you are mindful of their sacrifice. We often forget, however, the sacrifice of their families - constant concern and fear and under current Kansas law, an incentive for thugs and criminals to perpetrate crimes at the homes of law enforcement officers.

Currently, if an officer is in his or her uniform and suffers an aggravated battery, then the criminal faces a level 3 felony and prison time. If the officer is not in his uniform, however, and even if the criminal is attacking the officer for his work in the line of duty, an aggravated battery is only a level 6 felony resulting in presumptive probation.

Kansas law currently provides criminals the incentive to attack our state's law enforcement personnel at their homes, diminishing the value we place on lives of law officers and placing their families in grave danger. This is wrong.

Furthermore, the dedicated agents of the Kansas Bureau of Investigation do not wear uniforms, yet their work is no less dangerous and no less critical to our state's well-being than the work of other law enforcement officers. Currently, the aggravated battery of a KBI agent is a level 6 felony because they are not in uniform.

The threat of becoming a target does not end upon the completion of a work day. Individuals who intentionally seek out and batter an off-duty law enforcement officer and who have knowledge that the victim is a law enforcement officer, should be penalized in the same manner as if they had committed the crime while the victim was on-duty.

Children's Issues

As the State's chief law enforcement officer, the Attorney General has the responsibility to ensure that all Kansans are safe. Perhaps the greatest responsibility a society has is to protect its children from harm.

That is why I support increasing the penalty for the promotion of prostitution of a minor and adding a violation for the intentional exposing of a child to the sale, distribution, or manufacture of methamphetamine's.

The bill changes the penalty for promotion of prostitution of a minor from a level 6 to a level 5, person felony. The increase in the severity level reflects our commitment to severely punish those who prey upon our children.

The addition to the Endangering a Child Statute K.S.A. 21-3608, addresses the situation where adults intentionally expose children to toxic chemicals. Children who are exposed to these substances suffer from serious short- and long-term health problems including damage to the brain, liver, kidneys, lungs, eyes and skin. In addition, children who inhabit homes where the production of methamphetamine's exist, often are subject to neglect and abuse, causing the development of emotional and behavioral problems. The exposure of these chemicals to children should not be taken lightly and parents who allow exposure should be subject to severe penalties.

I am aware of situations where one parent may be a victim of domestic abuse and faces a choice of staying in the situation where abuse occurs or departing the home and possibly face even more severe actions. I am sensitive to these cases and want to work with organizations such as, the Kansas Coalition Against Sexual and Domestic Violence in finding a remedy that doesn't further endanger the victim of abuse. I greatly appreciate the dedicated efforts of victims' shelters across this state.

Current Kansas law allows for a necessity defense and also defenses to women who are in such dependent or abusive relationships that they cannot form the requisite intent required for the criminal act contained in the bill. The current statute regarding child endangerment requires that the parent act in an unreasonable fashion. Adding the unreasonable requirement to the requirement that the act be with knowledge and intent contemplates such difficult cases.

In the near future you will also receive language for a bill strengthening penalties on on-line predators - those who use the internet to exploit our children. My office will soon be announcing several initiatives to stop such exploitation and I look forward to working with you in that regard.