

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on February 23, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Becky Krahl, Legislative Research Department
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Denise Everhart, Commissioner
Kathy Porter, Office of Judicial Administration
Ron Paschal, Chief Attorney Sedgwick County

Others attending:

See Attached List.

Chairman Loyd opened the hearing on **HB 2862**.

HB 2862 - Various amendments to the juvenile justice code and criminal code concerning juveniles.

Commissioner Denise Everhart appeared before the committee in support of **HB 2862**. (Attachment 1)
With a few exceptions the bill proposes amendments to existing law, that serves to clarify and codify what is currently practiced, or serve to allow her the ability to fulfill statutory role as the Commissioner of the Juvenile Justice Authority.

Kathy Porter, Office of Judicial Administration appeared as a opponent with an amendment on the bill She requested an amendment to Section 7 of the bill in keeping practices consistent with current law helps with both training of the clerks and will help to ensure that the proper practices are followed.
(Attachment 2)

Ron Paschal, Chief Attorney Sedgwick County, appeared as neutral but with amendments on the bill.
(Attachment 3)

Chairman Loyd closed the hearing on HB 2862.

HB 2790 - Criminal Justice Coordinating Council, membership and duties.

Representative Crow made motion to pass **HB 2790** favorably. Representative Kassebaum seconded the motion.

Representative Goering presented the committee with a balloon with language change on page 1, 2 and 3. (Attachment 4)

Representative Goering made a motion to amend **HB 2790**. Representative Carter seconded the motion.

Representative Ward moved to divide the amendment into four questions. Representative Crow seconded the motion. The motion carried.

Representative Goering moved the first part on the balloon striking section e (1) and moving to Section (b) on who makes up the council. The motion did not carry.

Representative Goering moved the second question on the balloon which would add the Attorney General as an office which can request studies line 2 on page 2. The motion carried.

Representative Goering moved the third question on the balloon inserting the Attorney General as an office which can receive reports. The motion carried.

Representative Carter moved the fourth question on the balloon which would make the change effective upon publication in the register. The motion carried.

Representative Pauls made a motion to amend by readopting the balloon and adding two members of local and county government and strike language in line 33 - 40. Representative Dillmore seconded the motion. The motion did not carry.

Representative Goering made a substitute motion to pass **HB 2790** as amended. Representative Kassebaum seconded the motion. The motion carried.

HB 2869 - Preliminary examinations, admissibility of field tests for controlled substances.

A balloon was passed out by staff. (Attachment 5).

Representative Ward motion to adopt balloon to **HB 2869**. Representative Carter seconded the motion. The motion carried.

Representative Pauls motion to insert into **HB 2869** the balloon taken from **HB 2375** passed last year.(Attachment 6) Representative Goering seconded the motion. The motion carried.

Representative Goering motion to pass favorable **HB 2869** as amended. Representative Carter seconded the motion. The motion carried.

HB 2730 - Endangering a child when the child's life is endangered or child is present in a meth lab or where meth is sold is a severity level 9, person felony.

A balloon was offered which would make a new crime of endangering a child in lines 14 through 17. (Attachment 7) The bed impact is two beds in 2005 and 35 in 2014.

Representative Ward made a motion to adopt the amendment in the form presented by the revisor. Representative Dillmore seconded the motion. The motion carried.

Representative Carter moved to divide into two parts. Representative Ward seconded the motion. The motion carried.

Representative Ward moved on the first part of the balloon amendment aggravated endangerment. The motion carried.

Representative Ward moved on the second part of the balloon amendment. The motion did not carry.

Representative Ward moved the second part of the balloon be revised to read sub-section A(3) a loaded and unsecured firearm is present and readily accessible by an unattended child under the age of 14 who has not been issued a certificate of completion of an approved hunter education course. Representative Kassebaum seconded the motion. The motion carried.

Representative Dillmore motion to pass **HB 2730** as amended. Representative Owens seconded the motion. The motion carried.

HB 2742 - Child in need of care records, confidentiality

The balloon was provided by SRS and JJA. (Attachment 8)

Representative Kassebaum made a motion to adopt the balloon. Representative Dillmore seconded the motion. The motion carried to adopt the balloon.

Representative Dillmore motion to pass **HB 2742** as amended. Representative Owens seconded the motion. The motion carried.

HB 2777 - Manufacturing a controlled substance does not include compounding

The subcommittee report was reported as a substitute bill draft (Attachment 9)

Representative Owens made a motion to adopt the subcommittee report and to pass favorable **Substitute HB 2777**. Representative Kassebaum seconded the motion. The motion carried.

The Sentencing Commission bed impact is zero on substitute **HB 2777** because the Legislative intent was a Severity Level 1. In the event it is determined not to be retroactive as the committees intent was, the bed reduction is 113 in year 2004 and 835 in year 2014.

HB 2693 – Mistreatment of a dependent adult; increasing penalties if value of financial gain is over \$500

The balloon by Representative Newton was presented, which intends to clarify by inserting “aggregate amount of the value of the resources page 2 lines 10, 13, and 16 and add a new section 6 mistreatment of a dependent adult as defined in subsection (a) (2). (Attachment 10)

Representative Yoder made a motion to adopt the balloon. Representative Ward seconded the motion. The motion carried to adopt the balloon.

Representative Yoder made a motion to pass favorable **HB 2693** as amended. Representative Horst seconded the motion. The motion carried.

HB 2759 –Creating a grant program to target communities in the state with high criminal activity

Representative Dillmore made a motion to pass favorable **HB 2759**. Representative Swenson seconded the motion. The motion carried.

The meeting was adjourned at 3:04 PM. The next scheduled meeting is on February 24, 2004.

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HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

GUEST LIST

DATE 2-23-04

NAME	REPRESENTING
JEAR LOWSER	JJA
Leon Mendez	JJA
Denise Everhart	JJA
Wade Bowie	JJA
Burge Warner	JJA
Corrie Kangas	AG's Office
Rosilyn James-Martin	SRS-Children/Family Services
Julia Butler	KSC
Patricia Biggs	KSC
Brenda Nauman	KSC
Julienne Meslin	Gov. office
Lynn Copp	Governor's office
Mark Gleeson	Juvenile Judicial Branch
Kathy Purte	Judicial Branch
Kyle Smith	KBI
Tia Murray	Federico Consulting
Jill Hair	Hein Law Firm
Ernestine Krehbiel	League of Women Voters
Jill Clark	KBA

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Juvenile Justice Authority



HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

Testimony on House Bill 2862

February 23, 2004

Denise L. Everhart, Commissioner

Chairman Loyd and members of the House Corrections and Juvenile Justice Committee, thank you for the opportunity to appear today in support of House Bill 2862. This bill is the result of a request by me early in the session that this Committee carry legislative initiatives for the Juvenile Justice Authority during the 2004 session. With only a few exceptions, this bill proposes amendments to existing law that, for the most part, either serve to clarify and codify what is currently practiced, or serve to allow me the ability to fulfill my statutory role as the Commissioner of the Juvenile Justice Authority.

For clarification, I will very briefly go through the various sections of the Bill and relate their effect on the Juvenile Justice Authority.

Section 1: This section incorporates aiding a juvenile to escape from lawful custody into the Kansas criminal code, replacing an arcane provision found in Chapter 76, article 21 that only addresses aiding the escape of "boys" from juvenile correctional facilities. Enactment of this section would have the effect of ensuring that aiding the escape of a juvenile of either gender from any lawful custody--versus only "boys" from juvenile correctional facilities--would be prosecutable as a crime.

deleted
Section 2: As shown in the attached proposed technical amendment, we are requesting that this proposed change be deleted from consideration because the same statute and concerns are being addressed in HB 2639, relating to traffic in contraband.

Section 3: This section does not change existing practice but, for the sake of clarity, details in more specific terms when jurisdiction over an alleged or adjudicated juvenile offender terminates.

Section 4: This section adds language implementing the requirement to fingerprint and photograph juveniles taken into custody pursuant to K.S.A. 38-1624 during processing at juvenile intake and assessment offices. (See **Section 11** below.)

The agency has an ongoing problem with identification of youth within the Juvenile Justice Information System. Utilizing demographic information for identification is and will continue to be a problem. When youth enter the system through intake and assessment centers, the majority of the information is self-reported. This information has been subject to question when checked for accuracy, and has led to information concerning the same youth being entered into the system under multiple names and identifiers. Without this change, the agency will be required to invest considerable staff time to locate errors, confirm duplications and consolidate offender records. The accuracy of the system will be greatly enhanced if the agency could link youth identifier information with their fingerprints. This would be a major improvement in JJIS recordkeeping, and would ensure that youth in the juvenile justice system would be accurately identified throughout the State of Kansas.

Section 5: As shown in the attached proposed technical amendment, we are requesting that this proposed change be deleted from consideration during this session. As part of an ongoing collaboration with county juvenile detention centers, it is anticipated that an amendment to K.S.A. 38-1616 will be submitted next year.

Section 6: This section adds clarifying language to the existing code to make it clear that a juvenile offender who is directly committed to a juvenile correctional facility is also committed to the custody of the Commissioner, JJA. The clarification is necessary, in part, to facilitate the transfer of supervision of a juvenile offender during the aftercare portion of the sentence to a foreign jurisdiction under the terms of the Interstate Compact on Juveniles. Some district courts have also questioned the implied grant of custody to the Commissioner when a juvenile offender is directly committed to a juvenile correctional facility.

Section 7: This section details when and how juvenile offenders are transported from a juvenile detention center to a juvenile correctional facility upon direct commitment. This amendment conforms the less specific terminology of the existing code to more specific language, and will reduce or eliminate the uncertainty and confusion that exist under the present code.

Section 8: This section has the effect of limiting the authority that now exists to hold a juvenile in an adult lockup provided there is a motion on file seeking prosecution of the juvenile as an adult and the juvenile has been afforded a detention hearing. The proposed change adds a requirement that the juvenile also have waived a hearing on the motion to prosecute as an adult. Until a court has ruled affirmatively on the motion to waive to adult status, the juvenile remains a "juvenile" for purposes of the federal Juvenile Justice Delinquency Prevention Act (JJDP) and cannot be held in an adult facility.

Section 9: This section proposes to eliminate the "floor" on the award of good time and to add a provision that in the event the offender does not successfully complete aftercare, the amount of good time earned during the period of incarceration must be served, day for day, and the term of incarceration on the prior good time credit shall be served consecutively to any other sentence of incarceration, and no good time credit can be earned on any period of incarceration serving the good time.

Section 10: This section conforms existing law to implement the provisions proposed in Section 9 above.

There is a tremendous need for changes to the good time code as proposed in sections 9 and 10. Under current law, offenders sentenced to a correctional facility are not able to earn good time below the minimum term specified in the sentencing matrix for the category under which the juvenile offender was sentenced. Because of this, offenders who are sentenced above the minimum term benefit for good time in a greater proportion than those sentenced to terms at or slightly above the minimum term authorized. A similar disparity occurs between categories of offenders. Furthermore, the present limitation inhibits or completely removes the value and purpose of awarding good time at all, that is, behavior management. The proposed changes maximize the behavior management value of good time to two ends: (1) it provides valuable incentive to diligently work towards completion of the treatment and habilitation program while in the juvenile correctional facility; and, (2) since it would preserve the good time credits to be served if the juvenile offender fails on conditional release, it serves as an added incentive to be successful on conditional release. If an offender is not able to earn good time credit because the sentence is at the minimum term, there is little incentive for any form of positive behavior.

Section 11: This section adds language to the existing statute to facilitate the identification of juveniles through the Juvenile Justice Information System by authorizing intake and assessment offices to fingerprint and photograph juveniles taken into custody pursuant to K.S.A. 38-1624 during the intake and assessment process. (See **Section 4** above.)

Section 12: This section repeals the appropriate statutes related to Sections 1 through 11 above.

Section 13: This section establishes the effective date of the legislation if enacted.

I support the changes proposed in this Bill. I believe they are very important to the effectiveness and efficiency of juvenile justice operations. Specifically, JJA operations will benefit in the following ways:

- More effective and credible management of juvenile offenders.
- Greater and improved control over operation of the juvenile correctional facilities.
- More efficient, effective and reliable juvenile intake and assessment system and juvenile justice information system.
- Establishes clarity for the counties and JJA about the process for transferring a juvenile sentenced to a juvenile correctional facility.

Your favorable consideration of House Bill 2862 for passage is very much appreciated. I would be happy to respond to any questions you may have.

Session of 2004

HOUSE BILL No. 2862

By Committee on Corrections and Juvenile Justice
2-12

9 AN ACT concerning juveniles; amending K.S.A. 38-1604, 38-1616, 38-
10 1663, 38-1671, 38-1691, 38-16,130 and 38-16,133 and K.S.A. 2003
11 Supp. 21-3811, 21-3826, 38-1611 and 75-7023 and repealing the existing
12 sections; also repealing K.S.A. 76-2111.
13

14 *Be it enacted by the Legislature of the State of Kansas:*
15

16 Section 1. K.S.A. 2003 Supp. 21-3811 is hereby amended to read as
17 follows: 21-3811. Aiding escape is:

18 (a) Assisting another who is in lawful custody on a charge or conviction
19 of crime, on a charge or adjudication of *as a juvenile offender, as*
20 *defined in K.S.A. 38-1602, and amendments thereto, where the act, if*
21 *committed by an adult, would constitute a misdemeanor or felony, or on*
22 *a commitment to the state security hospital as provided in K.S.A. 22-3428*
23 *and amendments thereto based on a finding that the person committed*
24 *an act constituting any crime, to escape from such custody; or*
25 (b) supplying to another who is in lawful custody on a charge or conviction
26 of crime, on a charge or adjudication of *as a juvenile offender, as*
27 *defined in K.S.A. 38-1602, and amendments thereto, where the act, if*
28 *committed by an adult, would constitute a misdemeanor or felony, or on*
29 *a commitment to the state security hospital as provided in K.S.A. 22-3428*
30 *and amendments thereto based on a finding that the person committed*
31 *an act constituting any crime, any object or thing adapted or designed for*
32 *use in making an escape, with intent that it shall be so used; or*
33 (c) introducing into an institution in which a person is confined on a
34 charge or conviction of crime, on a charge or adjudication of *as a juvenile*
35 *offender, as defined in K.S.A. 38-1602, and amendments thereto, where*
36 *the act, if committed by an adult, would constitute a misdemeanor or*
37 *felony, or into the state security hospital if such person is confined on a*
38 *commitment to the state security hospital as provided in K.S.A. 22-3428*
39 *and amendments thereto based on a finding that the person committed*
40 *an act constituting any crime, any object or thing adapted or designed for*
41 *use in making any escape, with intent that it shall be so used.*

42 Aiding escape is a severity level 8, nonperson felony.

43 ~~Sec. 2. K.S.A. 2003 Supp. 21-3826 is hereby amended to read as~~

1 follows: 21-3826. (a) Traffic in contraband in a correctional institution is
2 introducing or attempting to introduce into or upon the grounds of any
3 correctional institution or taking, sending, attempting to take or attempting
4 to send from any correctional institution or any unauthorized possession
5 while in any correctional institution or distributing within any correctional
6 institution, any item without the consent of the administrator of
7 the correctional institution.

8 (b) For purposes of this section, "correctional institution" means any
9 state correctional institution or facility, conservation camp, state security
10 hospital, juvenile correctional facility, community correction center or
11 facility for detention or confinement, juvenile detention facility or jail.

12 (c) (1) Traffic in contraband in a correctional institution of firearms,
13 ammunition, explosives or a controlled substance which is defined in subsection
14 (e) of K.S.A. 65-4101, and amendments thereto, is a severity level
15 5, nonperson felony.

16 (2) Traffic in any contraband, as defined by rules and regulations
17 adopted by the secretary or the commissioner of juvenile justice, in a
18 correctional institution by an employee of a correctional institution is a
19 severity level 5, nonperson felony.

20 (d) Except as provided in subsection (c), traffic in contraband in a
21 correctional institution is a severity level 6, nonperson felony.

22 Sec. 3. K.S.A. 38-1604 is hereby amended to read as follows: 38-

23 1604. (a) Except as provided in K.S.A. 38-1636, and amendments thereto,
24 proceedings concerning a juvenile who appears to be a juvenile offender
25 shall be governed by the provisions of this code.

26 (b) The district court shall have original jurisdiction to receive and
27 determine proceedings under this code.

28 (c) When *Except as provided in subsection (d)*, once jurisdiction is
29 acquired by the district court over an alleged juvenile offender it may
30 continue until: (1) Sixty days after sentencing, if the juvenile is committed
31 directly to a juvenile correctional facility; (2) the juvenile has attained the
32 age of 23 years, if committed to the custody of the commissioner pursuant
33 to subsection (c) of K.S.A. 38-1665, and amendments thereto, unless an
34 adult sentence is imposed pursuant to an extended jurisdiction juvenile
35 prosecution. If such adult sentence is imposed, jurisdiction shall continue
36 until discharged by the court or other process for the adult sentence; (3)
37 the juvenile has been discharged by the court; or (4) the juvenile has been
38 discharged under the provisions of K.S.A. 38-1675, and amendments
39 thereto. , *jurisdiction shall continue until whichever of the following first*
40 *occurs:*

41 (1) *The complaint is dismissed;*

42 (2) *the juvenile is adjudicated not guilty at trial; or*

43 (3) *the juvenile, after being adjudicated guilty and sentenced:*

1 (d) Fingerprints or photographs of a juvenile may be furnished to
2 another juvenile justice agency, as defined by K.S.A. 38-1617 and amendments
3 thereto, if the other agency has a legitimate need for the fingerprints
4 or photographs.

5 (e) Any fingerprints or photographs of a juvenile taken under the
6 provisions of subsection (a)(2) as it existed before the effective date of
7 this act may be sent to a state or federal repository on or before December
8 31, 1984.

9 (f) Any law enforcement agency that willfully fails to make any report
10 required by this section shall be liable to the state for the payment of a
11 civil penalty, recoverable in an action brought by the attorney general, in
12 an amount not exceeding \$500 for each report not made. Any civil penalty
13 recovered under this subsection shall be paid into the state general fund.

14 (g) (f) The director of the Kansas bureau of investigation shall adopt
15 any rules and regulations necessary to implement, administer and enforce
16 the provisions of this section, including time limits within which fingerprints
17 shall be sent to a state or federal repository when required by this
18 section.

19 (h) (g) Nothing in this section shall preclude the custodian of a juvenile
20 from authorizing photographs or fingerprints of the juvenile to be
21 used in any action under the Kansas parentage act.

22 ~~Sec. 5. K.S.A. 38-1616 is hereby amended to read as follows: 38-~~
23 ~~1616. (a) *How paid.* (1) If a juvenile accused of being or adjudicated to~~
24 ~~be a juvenile offender *subject to this code* is not eligible for assistance~~
25 ~~under K.S.A. 39-709 and amendments thereto, expenses for the care and~~
26 ~~custody of the juvenile shall be paid out of the general fund of the county~~
27 ~~in which the proceedings are brought *initiated. Upon entry of a written*~~
28 ~~*order pursuant to K.S.A. 38-1605, and amendments thereto, transferring*~~
29 ~~*venue, expenses shall be paid by the receiving county.* For the purpose of~~
30 ~~this section, a juvenile who is a nonresident of the state of Kansas or~~
31 ~~whose residence is unknown shall have residence in the county where the~~
32 ~~proceedings are instituted *initiated.*~~

33 ~~(2) When a law enforcement officer has taken a juvenile into custody~~
34 ~~as authorized by subsection (a) of K.S.A. 38-1624 and amendments~~
35 ~~thereto and delivered the juvenile to a person or facility, other than a~~
36 ~~juvenile detention facility, designated by the commissioner or when custody~~
37 ~~of a juvenile is awarded to the commissioner, the expenses of the~~
38 ~~care and custody of the juvenile may be paid by the commissioner, subject~~
39 ~~to payment or reimbursement as required in subsection (b), even though~~
40 ~~the juvenile does not meet the eligibility standards of K.S.A. 39-709 and~~
41 ~~amendments thereto.~~

42 ~~(3) When the custody of a juvenile is awarded to the commissioner,~~
43 ~~the expenses for the care and custody of the juvenile from the date of~~

1 eustody forward shall not be paid out of the county general fund, except
2 as provided in subsection (d) or *K.S.A. 38-1671, and amendments thereto.*
3 In no event shall the payment authorized by this subsection exceed the
4 state approved rate.

5 ~~(4) (3) Nothing in this section shall be construed to mean that any
6 person shall be relieved of legal responsibility to support a juvenile.~~

7 ~~(b) Reimbursement to county general fund. (1) When expenses for
8 the care and custody of a juvenile accused of being or adjudicated to be
9 a juvenile offender subject to this code have been paid out of the county
10 general fund of any county in this state, the court may assess the expenses
11 to the person who by law is liable to maintain, care for or support the
12 juvenile and shall inform the person assessed the expenses of such person's
13 right to a hearing. If a hearing is requested, it shall be granted and the
14 court shall fix a time and place for hearing on the question of requiring
15 payment or reimbursement of all or part of the expenses by a person who
16 by law is liable to maintain, care for or support the juvenile.~~

17 ~~(2) The court, After notice to the person who by law is liable to maintain,
18 care for or support the juvenile, the court, if requested, may hear
19 and dispose of the matter and may enter an order relating to payment of
20 expenses for care and custody of the juvenile. If the person willfully fails
21 or refuses to pay the sum, the person may be adjudged in contempt of
22 court and punished accordingly.~~

23 ~~(3) Any county which makes payment to maintain, care for or support
24 an accused or adjudicated juvenile offender may bring a separate action
25 against a person who by law is liable to maintain, care for or support such
26 juvenile for the reimbursement of expenses paid out of the county general
27 fund for the care and custody of the juvenile.~~

28 ~~(c) Reimbursement to the commissioner. When expenses for the care
29 and custody of a juvenile accused of being or adjudicated to be a juvenile
30 offender subject to this code have been paid by the commissioner, the
31 commissioner may recover the expenses as provided by law from any
32 person who by law is liable to maintain, care for or support the juvenile.
33 The commissioner shall have the power to compromise and settle any
34 claim due or any amount claimed to be due to the commissioner from
35 any person who by law is liable to maintain, care for or support the juvenile.
36 The commissioner may contract with a state agency, contract with
37 an individual or hire personnel to collect the reimbursements required
38 under this subsection.~~

39 ~~(d) When a county has made an interlocal agreement to maintain,
40 care for or support juvenile offenders juveniles subject to this code who
41 are residents of another county and such other county is a party to the
42 interlocal agreement with the county which performs the actual maintenance,
43 care and support of the accused or adjudicated juvenile offender~~

1 ~~juveniles subject to this code, such county of residence may pay from its~~
2 ~~county general fund to the other county whatever amount is agreed upon~~
3 ~~in the interlocal agreement irrespective of any amount paid or to be paid~~
4 ~~by the juvenile justice authority. The juvenile justice authority shall not~~
5 ~~diminish the amount it would otherwise reimburse any such county for~~
6 ~~maintaining, caring for and supporting any such accused or adjudicated~~
7 ~~juvenile offender because of any payment under such an interlocal~~
8 ~~agreement.~~

9 Sec. 6. K.S.A. 38-1663 is hereby amended to read as follows: 38-
10 1663. (a) When a respondent has been adjudicated to be a juvenile offender,
11 the judge may select from the following alternatives:

12 (1) Place the juvenile offender on probation for a fixed period, subject
13 to the terms and conditions the court deems appropriate based on the
14 juvenile justice programs in the community, including a requirement of
15 making restitution as required by subsection (d).

16 (2) Place the juvenile offender in the custody of a parent or other
17 suitable person, subject to the terms and conditions the court orders
18 based on the juvenile justice programs in the community, including a
19 requirement of making restitution as required by subsection (d).

20 (3) Place the juvenile offender in the custody of a youth residential
21 facility or, in the case of a chronic runaway youth, place the youth in a
22 secure facility, subject to the terms and conditions the court orders.

23 (4) Place the juvenile offender in the custody of the commissioner,
24 as provided in K.S.A. 38-1664, and amendments thereto.

25 (5) Commit the juvenile offender to a sanctions house for a period
26 no longer than seven days. Following such period, the court shall review
27 the placement. The court may continue to recommit the juvenile offender
28 to a sanctions house for a period no longer than seven days followed by
29 a court review. Commitment to a sanctions house shall not exceed 28
30 total days for the same act or transaction. If in the adjudication order, the
31 court orders a sanctions house placement for a verifiable probation violation
32 and such probation violation occurs, the juvenile may immediately
33 be taken to a sanctions house and detained for no more than 48 hours,
34 excluding Saturdays, Sundays and holidays, prior to court review of the
35 placement. The court and all other interested parties shall be notified of
36 the sanctions house placement. An offender over 18 years of age or less
37 than 23 years of age at sentencing may be committed to a county jail, in
38 lieu of a sanctions house, under the same time restrictions imposed by
39 this paragraph. No offender may be committed under this paragraph unless
40 such offender has violated the terms of probation.

41 (6) Commit the juvenile offender to a community based program
42 available in such judicial district subject to the terms and conditions the
43 court orders.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

February 23, 2004

Testimony Regarding Section 7 of HB 2862
Kathy Porter

I am requesting an amendment to Section 7 of HB 2862 to make the practice in juvenile commitments consistent with the practice when an adult offender is sentenced to the custody of the Secretary of Corrections. The practice with adult offenders is that the clerk of the district court provides to the sheriff the necessary paperwork, and the sheriff brings that paperwork with the offender when the offender is transported to the correctional facility. Keeping practices consistent with current law helps with both training of the clerks and will help to ensure that the proper practices are followed.



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

District Attorney Nola Fedesco Foulston
Chief Deputy Kim T. Parker

Comments to House Bill 2862
February 23, 2004

Honorable Members of the Committee:

The following comments are offered to House Bill 2862 which proposes amendments to several statutes in the juvenile justice code.

I.

On page ten of the bill, K.S.A. 38-1663(d) sets forth the parameters for ordering restitution. On line 31, the bill states: "The restitution shall be made either by payment of an amount fixed by the court or by working for the persons in order to compensate for the loss." The intent of this sentence is fine as it gives the court some flexibility in ordering restitution to be made either by payment for loss or by the offender working off the amount of restitution he owes. The problem is that the statute as proposed gives the victim no control over the matter. Frequently there will be times when the victim will not want an offender working for them in any capacity. It wouldn't appear fair that a victim would be subject to having an offender to mow his lawn or paint his house to compensate for losses the victim suffered as a result of the offender burglarizing his house. Moreover, the victim shouldn't be liable for any personal injury an offender might suffer while the offender is working for him to comply with a restitution order. Accordingly, our office submits the sentence in quotations above should read as follows: **The restitution shall be made either by payment of an amount fixed by the court, or upon approval of the victim as set forth in the journal entry, by working for the persons in order to compensate for the loss at the prevailing statutory rate of minimum wage.**

Friendly Gables - 1001 South Minnesota - Wichita, Kansas 67211
Telephone (316) 660-9700 Facsimile (316) 383-7738
1 (800) 432-6878

House Corr & JJ
Attachment 3

2-23-04

II.

Section 7 K.S.A. 38-1671 on page 12 of the bill sets forth a time frame for the delivery of court documents from the clerk of the court to the commissioner which is completely unrealistic and unworkable. This section requires the clerk of the court to deliver to the commissioner a certified copy of the complaint and journal entry of adjudication and disposition within three days of the court committing a juvenile to a juvenile correctional facility. Compliance with this provision will be impossible in counties with large caseloads.

A typical docket day in the Eighteenth Judicial District will include 4 to 5 trial settings, 1 to 2 pretrial hearings, 0 to 12 detention hearings, several probation violation hearings and from 5 to 16 dispositional hearings. All of these hearings require the preparation of journal entries or typed court orders. The simple fact we rely on the United States Postal Service to transmit these documents will expend a minimum of one day unless the hearing occurs on a day prior to a federal holiday. In that situation an additional day will be lost unless the holiday occurs on a Friday in which case 3 days will be lost due to the weekend.

This committee must also understand the process that occurs in preparing the journal entry the commissioner wants on her desk within three days of the hearing. The following is a summary of what occurs. Several dispositional hearings occur on a daily basis in the Eighteenth Judicial District. Once these hearings have concluded, the Assistant District Attorney handling the docket takes the files back to the office. This usually occurs in the late afternoon. The journal entry typist retrieves the files and prepares the actual journal entry, which typically occurs the following day (unless the hearing occurs on a Friday afternoon). Upon completion of the journal entry the file is returned to the Assistant District Attorney who handled the matter in court for his review and approval. This may not occur immediately as this attorney may be in court handling another matter. Once this attorney reviews the journal entry the file is returned to the journal entry typist who takes the file to court for the judge to review and approve. The judge may not immediately review the file as he may be in court on other matters. Once the court approves the journal entry, his administrative aide contacts our journal entry typist who retrieves the journal entry, makes the appropriate copies and files the document with the clerk of the court.

We submit Section 7 K.S.A. 38-1671(a)(1) should read as follows: **When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall within five days excluding weekends and legal holidays notify the commissioner of the commitment and provide the commissioner with a certified copy of the complaint and the journal entry of the adjudication and the disposition.**

III.

House Bill 2862 sets forth changes to K.S.A. 38-1,130 which affect the calculation of good time credit. The amendment suggested on page 14 of the bill should be disapproved. This provision gives too much authority to the commissioner of juvenile justice, will result in disparate sentences among juvenile offenders and is dangerous to members of our community. The District Attorney for the Eighteenth Judicial District will offer an amendment to this particular statute for the reasons articulated below.

The amendment proposed to K.S.A. 38-1,130 (as does the current law) gives the commissioner of juvenile justice complete discretion to determine the amount of good time credit to award a juvenile offender. The proposed amendment extends this discretion to allow an offender to receive good time credit which would result in the offender serving less than the minimum sentence prescribed by law for the offense. This allows the commissioner to completely usurp the intent of the sentencing court and gives the commissioner absolute control in manipulating an offender's release date. Family members to the victim of a serious offense such as murder can sit in court and hear the judge pronounce a sentence that is totally meaningless.

The current status of the law and the law as set forth in the amendment allows each individual correctional facility to set a policy for the amount of good time credit an offender could receive while incarcerated at the facility. This can result in disparate sentencing among offenders. Because each correctional facility has the ability to set a policy determining the amount of good time credit to award a juvenile offender, two offenders adjudicated of committing the same offense and serving their sentence at different juvenile correctional facilities may serve vastly different sentences.

By far the greatest problem with the proposed amendment in House Bill 2862 and the current status of the law as set forth in K.S.A. 38-1,130 is the manner in which the superintendent's of the juvenile correctional facilities utilize the authority granted to them by the commissioner of juvenile justice in awarding good time credit.

Most juvenile offenders who find themselves subject to a direct commitment to a youth correctional facility have committed very serious crimes or have a violent history. Quite simply it is in society's best interest to incapacitate them for a while as they mature. Their offenses and history quite frankly suggest they should not be rehabilitated while in our communities nor are they worthy of being rehabilitated in our community. I think part of what is lost on us here is the fact that in some instances with juvenile offenders ***punishment through incarceration*** should be part of the rehabilitation process. The amendment as proposed, gives the commissioner total discretion as to who should be in the juvenile correctional facilities and total discretion as to the length of time the offender should serve, thus invading the purview of the court and doing extreme injustice to the victims of their crimes while putting the community at risk.

The superintendent of the Youth Correctional Facility at Topeka recently gave a juvenile offender adjudicated of committing second-degree murder a 57% reduction of his sentence for good time behavior pursuant to K.S.A. 38-1,130. The offender in this particular case was sentenced to a maximum sentence which was until he reached 22 years and six months of age followed by six months of conditional release. The offender was 17 years of age when committed. After serving 1016 days of his sentence the superintendent at YCAT awarded the offender 820 days of good time credit. Accordingly, the offender served less than half of his sentence for murdering another human being.

The facts of this case were particularly troubling as the commissioner, pursuant to statute is required to give the district attorney 20 days notice prior to releasing an offender on conditional release. In this particular case, the commissioner mailed the Notice of Release approximately 7 days after they dated and prepared the release. Further delays were incurred in obtaining the release as it came to our office just prior to a federal holiday.

The facts in this case are highly summarized as follows. The offender was a 17 year old who fired two shots from a rifle at an occupied vehicle after chasing it down the road. The offender was accompanied by his father who put the loaded rifle into the car they used as the chase vehicle. The offender and his father were chasing the vehicle (a car load of juveniles) because the occupants of the vehicle had smashed their rural mailbox. At some point during the chase, the fleeing vehicle was attempting to turn around in the road when the juvenile offender got out of his vehicle, fired two shots into the carload of kids, striking the victim in the head, killing him. There had been at least one, possibly two prior incidents when the juvenile offender had fired a gun at an occupied vehicle either with the parents' consent or knowledge.

Our office had approximately 12 days to notify members of the victim's family the juvenile offender was going to be released back into the community after having served less than half of his sentence.

The current system for determining good time credit for juvenile offenders is unfair to victims of violent crime. Accordingly, the District Attorney proposes the following amendment to K.S.A. 38-1,130.

(a) This section remains the same.

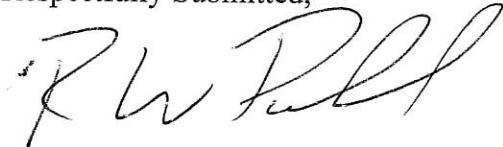
(b) The commissioner of juvenile justice is hereby authorized to adopt rules and regulations to carry out the provisions of this section regarding good time calculations. (omit the italicized portion of the sentence above and end the sentence at "section"). Such rules and regulations shall provide circumstances upon which a juvenile offender may earn good time credits through participation in programs which may include, but not be limited to, education programs, work

participation, treatment programs, vocational programs, activities and behavior modification. Such good time credits may also include the juvenile offender's willingness to examine and confront the past behavior patterns that resulted in the commission of the juvenile's offense.

(c) The initial paragraph remains the same and add the following language to this section: *The maximum amount of good time credit a juvenile offender may receive is 15% of the sentence imposed by the court. The juvenile offender shall receive no good time credit that operates to release the offender prior to what would be the minimum sentence for the primary offense of adjudication. Any statute, administrative regulation or agency policy to the contrary is hereby repealed.*

For the foregoing reasons, the Office of the District Attorney for the Eighteenth Judicial District respectfully requests the committee amend K.S.A. 38-1,130 as set forth above limiting the total amount of good time credit to a total of 15% of the sentence imposed by the court.

Respectfully Submitted,



Ron W. Paschal
Chief Attorney

For: Nola Tedesco Foulston
District Attorney for the Eighteenth Judicial District

HOUSE BILL No. 2790

By Committee on Corrections and Juvenile Justice

2-10

AN ACT concerning the criminal justice coordinating council; amending K.S.A. 74-9501 and repealing the existing section.

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

Section 1. K.S.A. 74-9501 is hereby amended to read as follows: 74-9501. (a) There is hereby established the Kansas criminal justice coordinating council.

(b) The council shall consist of the governor or designee, the chief justice of the supreme court or designee, the attorney general or designee, the secretary of corrections, the secretary of social and rehabilitation services superintendent of the highway patrol, the commissioner of juvenile justice and the director of the Kansas bureau of investigation.

[, the state victims rights coordinator, a chief of police designated by the Kansas association of chiefs of police, a sheriff designated by the Kansas sheriff's association, and a county or district attorney designated by the Kansas count and district attorneys association.]

(c) The director and all existing employees of the Kansas sentencing commission shall serve as designate staff to the Kansas criminal justice coordinating council while continuing to serve at the will of the Kansas sentencing commission pursuant to K.S.A. 74-9106 and amendments thereto in the performance of its duties as outlined in K.S.A. 74-9101, 74-9106 and 21-4725 and amendments thereto. The director shall attend all meetings of the council, be responsible for keeping a record of council meetings, prepare reports of the council and perform such other duties as directed by the council.

(d) The council shall elect a chairperson and vice-chairperson from among the members of the council.

(e) The council shall:

(1) ~~Appoint a standing local government advisory group to consult and advise the council concerning local government criminal justice issues and the impact of state criminal justice policy and decisions on local units of government. The advisory group shall consist of a sheriff, chief of police, county or district attorney, a member of a city governing body and a county commissioner. Appointees to such advisory group shall serve without compensation or reimbursement for travel and subsistence or any other expenses.~~

(2) define and analyze issues and processes in the criminal justice system, identify alternative solutions and make recommendations for improvements;

1 ~~(3)~~ perform such criminal justice studies or tasks as requested by
 2 the governor, the legislature or the chief justice, as deemed appropriate
 3 or feasible by the council;

4 ~~(4)~~ oversee development and management of a criminal justice
 5 database including assuming the designation and functions of the state
 6 statistical analysis center currently assigned to the Kansas bureau of in-
 7 vestigation pursuant to K.S.A. 75-712a and amendments thereto. All crim-
 8 inal justice agencies as defined in subsection (c) of K.S.A. 22-4701 and
 9 amendments thereto and the ~~department of social and rehabilitation serv-~~
 10 ~~ices juvenile justice authority~~ shall provide any data or information, in-
 11 cluding juvenile offender information which is requested by the council,
 12 in a form and manner established by the council, in order to facilitate the
 13 development and management of the criminal justice council database;
 14 and

15 ~~(5)~~ develop and oversee reporting of all criminal justice federal
 16 funding available to the state or local units of government including as-
 17 suming the designation and functions of administering the United States
 18 bureau of justice assistance grants currently administered through the law
 19 enforcement antidrug abuse program of the department of administra-
 20 tion. On the effective date of this act any bureau of justice assistance
 21 antidrug abuse federal fund balances in any account and all unclassified
 22 positions authorized for the law enforcement antidrug abuse program of
 23 the department of administration shall be transferred to and budgeted
 24 with the Kansas sentencing commission.

25 ~~(6)~~ The council shall appoint a standing local government advisory
 26 group to consult and advise the council concerning local government
 27 criminal justice issues and the impact of state criminal justice policy and
 28 decisions on local units of government. The advisory group shall consist
 29 of a sheriff, chief of police, county or district attorney, city governing body
 30 and a county commissioner. Appointees to such advisory group shall serve
 31 without compensation or reimbursement for travel and subsistence or any
 32 other expenses.

33 ~~(7)~~ The council shall form a task force to study the consolidation of
 34 probation, parole and community corrections services.

35 ~~(8)~~ When analyzing criminal justice issues and performing criminal
 36 justice studies, the council shall:

37 (6) form such task groups as necessary and shall appoint individuals
 38 who appropriately represent law enforcement, the judiciary, legal profes-
 39 sion, state, local, or federal government, the public, or other professions
 40 or groups as determined by the council, to represent the various aspects
 41 of the issue being analyzed or studied. *When analyzing criminal justice*
 42 *issues and performing criminal justice studies.* Members of the legislature
 43 may be appointed ex officio members to such task groups. A member of

[, the attorney general,]

1 the council shall serve as the chairperson of each task group appointed
2 by the council. The council may appoint other members of the council
3 to any task group formed by the council; *and*

4 ~~The council shall~~ review reports submitted by each task group
5 named by the council and shall submit the report with the council's rec-
6 ommendations pertaining thereto to the governor, ~~chief justice of the~~ → [, the attorney general,]
7 supreme court, the chief clerk of the house of representatives and the
8 secretary of the senate.

9 Sec. 2. K.S.A. 74-9501 is hereby repealed.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the ~~statute book~~ → [register.]
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HOUSE BILL No. 2869

By Committee on Corrections and Juvenile Justice

2-13

Proposed amendment
KBI, Kyle Smith
February 19, 2004

House Corr & JJ
Attachment 5
2-23-04

9 AN ACT concerning criminal procedure; relating to preliminary
10 examinations.

11

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

13 Section 1. At any preliminary examination pursuant to K.S.A. 22-
14 2902, and amendments thereto, the results of a field test for controlled
15 substances or substances used in the production of methamphetamine
16 ~~that is generally recognized in the forensic scientific community to be~~
17 ~~reliable~~ shall be admissible into evidence in the preliminary examination
18 and deemed sufficient for the probable cause belief that such substances
19 are controlled substances or substances used in the production of
20 methamphetamine. ~~▲~~

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.

approved by the director of the Kansas bureau of investigation

for

are

The director of the Kansas bureau of investigation shall adopt by rules and regulations the approved field tests.

HOUSE BILL No. 2869

By Committee on Corrections and Juvenile Justice

2-13

Proposed amendment
Representative Pauls
February 19, 2004

House Corr & JJ
Attachment 6
2-23-04

9 AN ACT concerning criminal procedure; relating to preliminary
10 examinations.

11

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

13 Section 1. At any preliminary examination pursuant to K.S.A. 22-
14 2902, and amendments thereto ~~the~~ results of a field test for controlled
15 substances or substances used in the production of methamphetamine,
16 that is generally recognized in the forensic scientific community to be
17 reliable shall be admissible into evidence in the preliminary examination
18 and deemed sufficient for the probable cause belief that such substances
19 are controlled substances or substances used in the production of
20 methamphetamine.

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.

: (a) The

; and

(b) physical evidence with a completed evidence custody receipt showing that such evidence has been continuously held in the possession or custody of law enforcement officers, law enforcement agencies, forensic laboratories or the United States postal service since the evidence was seized, shall be admissible into evidence in the preliminary examination in the same manner and with the same force and effect as if all law enforcement officers, evidence custodians and forensic examiners involved in the chain of custody had testified in person.

Proposed amendment
Chairman Loyd
February 17, 2004

HOUSE BILL No. 2730

By Committee on Corrections and Juvenile Justice

2-5

AN ACT concerning crimes and punishment; relating to endangering a child ~~[amending K.S.A. 21-3608 and repealing the existing section]~~

aggravated

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

Section 1. ~~[K.S.A. 21-3608 is hereby amended to read as follows. 21-3608. (a) Endangering a child is:~~

~~(1) Intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered;~~

(a) Aggravated endangering a child is endangering a child, as defined in K.S.A. 21-3608, and amendments thereto, and permitting such child to be unattended and in an environment where:

~~(2) intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life may be endangered; or~~

~~(3) knowingly and intentionally causing or permitting a child under the age of 18 years to be present where:~~

~~(A) A person is selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or~~

(1)

~~(B) drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine as defined by subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or~~

(2)

~~(C) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.~~

; or

~~(c) Endangering a child as defined by subsection (a)(1) is a class A person misdemeanor. Endangering a child as defined by subsection (a)(2) or (a)(3) is a severity level 9, person felony.~~

- (3) a loaded firearm is present and readily accessible by the child.
- (b) Aggravated endangering a child is a severity level 9, person felony.
- (c) This section shall be part and supplemental to the Kansas criminal code.

~~(d) As used in this section, "manufacture" shall have the meaning ascribed to that term in K.S.A. 65-4101, and amendments thereto, and "drug paraphernalia" shall have the meaning ascribed to that term in~~

1 *K.S.A. 65-4150, and amendments thereto.*

2 Sec. 2. ~~K.S.A. 21-3601 is hereby repealed.~~

3 ~~Sec. 2.~~ This act shall take effect and be in force from and after its
4 publication in the statute book

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HOUSE BILL No. 2742

By Committee on Corrections and Juvenile Justice

Proposed amendments
SRS and JJA
February 22, 2004

2-6

9 AN ACT concerning the code for care of children; relating to records
10 and reports; amending K.S.A. 38-1506 and 38-1508 and K.S.A. 2003
11 Supp. 38-1507 and 75-4319 and repealing the existing sections; also
12 repealing K.S.A. 38-1507b.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) *Confidentiality requirements.* In order to protect
16 the privacy of children who are the subject of a child in need of care
17 record or report, the records identified in this section shall be confidential
18 and shall not be disclosed except as provided in section 2, and amend-
19 ments thereto, and K.S.A. 38-1506, 38-1507 and 38-1508, and amend-
20 ments thereto. Confidential records that are disclosed pursuant to section
21 2, and amendments thereto, and K.S.A. 38-1506, 38-1507 and 38-1508,
22 and amendments thereto, shall not be further disclosed except to persons
23 or entities authorized to receive them as provided in those sections, or
24 by being presented as admissible evidence.

25 (1) Court records. Court records include both the official file and the
26 social file.

27 (A) Official file. The official file of proceedings pursuant to this code
28 shall consist of the pleadings, process, service of process, orders, writs
29 and journal entries reflecting hearings held and judgments and decrees
30 entered by the court. The official file shall be kept separate from other
31 records of the court.

32 (B) Social file. The social file of proceedings pursuant to this code
33 shall consist of reports and information received by the court, other than
34 the official file. The social file shall be kept separate from other records
35 of the court.

36 (2) Agency records. Agency records shall consist of all records and
37 reports in the possession or control of the secretary or any agent of the
38 secretary or of a juvenile intake and assessment agency concerning chil-
39 dren alleged or adjudicated to be in need of care.

40 (3) Law enforcement records. Law enforcement records shall consist
41 of all records and reports in the possession of a law enforcement agency
42 concerning children alleged or adjudicated to be in need of care and shall,
43 to the extent practical, be kept separate from other records held by a law

1 (g) A county or district attorney with responsibility for filing a petition
2 pursuant to K.S.A. 38-1510, and amendments thereto.

3 (h) A court services officer who has taken a child into custody pur-
4 suant to K.S.A. 38-1527, and amendments thereto.

5 (i) An intake and assessment worker.

6 (j) Any community corrections program which has the child under
7 court ordered supervision.

8 (k) The department of health and environment or persons authorized
9 by the department of health and environment pursuant to K.S.A. 65-512,
10 and amendments thereto, for the purpose of carrying out responsibilities
11 relating to licensure or registration of child care providers as required by
12 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
13 thereto.

14 Sec. 3. K.S.A. 38-1506 is hereby amended to read as follows: 38-
15 1506. (a) *Access to the official file.* The following persons or entities shall
16 have access to the official file of ~~proceedings~~ *a child in need of care pro-*
17 *ceeding* pursuant to this code shall consist of the petition, process, service
18 of process, orders, writs and journal entries reflecting hearings held and
19 judgments and decrees entered by the court. The official file shall be kept
20 separate from other records of the court. The official file shall be privi-
21 leged and shall not be disclosed directly or indirectly to anyone except:

22 (1) ~~A judge of the district court and members of the staff of the court~~
23 ~~designated by a judge of the district court.~~ *The court having jurisdiction*
24 *over the proceedings, including the presiding judge and any court per-*
25 *sonnel designated by the judge.*

26 (2) ~~the guardian ad litem and~~ The parties to the proceedings and their
27 attorneys.

28 (3) *The guardian ad litem for a child who is the subject of the*
29 *proceeding.*

30 (4) *A court appointed special advocate for a child who is the subject*
31 *of the proceeding or a paid staff member of a court appointed special*
32 *advocate program.*

33 (5) Any individual, or any public or private agency or institution, hav-
34 ing custody of the child under court order or providing educational, med-
35 ical or mental health services to the child ~~or a court approved advocate~~
36 ~~for the child~~ or any placement provider or potential placement provider
37 as determined by the secretary or court services officer ~~and~~.

38 ~~(6) A citizen review board.~~

39 (7) ~~Any other person when authorized by a court order, subject to~~
40 ~~any conditions imposed by the order.~~

41 (b) *Access to the social file.* Reports and information received by the
42 ~~court, other than the official file, shall be privileged and open to inspec-~~
43 ~~tion only by the guardian ad litem or an attorney for an interested party~~

The commissioner of juvenile justice or any agents designated by the
commissioner.

(8)

[Requested by JJA]

1 or upon court order. The reports shall not be further disclosed by the
2 guardian *ad litem* or attorney without approval of the court or by being
3 presented as admissible evidence. The following persons or entities shall
4 have access to the social file of a child in need of care proceeding pursuant
5 to this code:

6 (1) The court having jurisdiction over the proceeding, including the
7 presiding judge and any court personnel designated by the judge.

8 (2) The attorney for a party to the proceeding.

9 (3) The guardian *ad litem* for a child who is the subject of the
10 proceeding.

11 (4) A court appointed special advocate for a child who is the subject
12 of the proceeding or a paid staff member of a court appointed special
13 advocate program.

14 (5) A citizen review board.

15 (6) The secretary.

16 (7) ~~Any other person when authorized by a court order, subject to~~
17 ~~any conditions imposed by the order.~~

18 (c) *Preservation of records.* The Kansas state historical society shall
19 be allowed to take possession for preservation in the state archives of any
20 court records related to proceedings under the Kansas code for care of
21 children whenever such records otherwise would be destroyed. No such
22 records in the custody of the Kansas state historical society shall be dis-
23 closed directly or indirectly to anyone for ~~50~~ 70 years after creation of
24 the records, except as provided in subsections (a) and (b). Pursuant to
25 subsections ~~(a)(1) and (b)~~ (a)(7) and (b)(7), a judge of the district court
26 may allow inspection for research purposes of any court records in the
27 custody of the Kansas state historical society related to proceedings under
28 the Kansas code for care of children.

29 Sec. 4. K.S.A. 2003 Supp. 38-1507 is hereby amended to read as
30 follows: 38-1507. (a) Except as otherwise provided, in order to protect
31 the privacy of children who are the subject of a child in need of care
32 record or report, all records and reports concerning children in need of
33 care, including the juvenile intake and assessment report, received by the
34 department of social and rehabilitation services, a law enforcement
35 agency or any juvenile intake and assessment worker shall be kept con-
36 fidential except: (1) To those persons or entities with a need for infor-
37 mation that is directly related to achieving the purposes of this code, or
38 (2) upon an order of a court of competent jurisdiction pursuant to a
39 determination by the court that disclosure of the reports and records is
40 in the best interests of the child or are necessary for the proceedings
41 before the court, or both, and are otherwise admissible in evidence. Such
42 access shall be limited to in camera inspection unless the court otherwise
43 issues an order specifying the terms of disclosure.

The commissioner of juvenile justice or any agents designated by the
commissioner.

(8)

[Requested by JJA]

1 without malice under the provisions of this section shall have immunity
2 from any civil liability that might otherwise be incurred or imposed. Any
3 such participant shall have the same immunity with respect to participa-
4 tion in any judicial proceedings resulting from providing or receiving
5 information.

6 — (1) No individual, association, partnership, corporation or other entity
7 shall willfully or knowingly disclose, permit or encourage disclosure of
8 the contents of records or reports concerning a child in need of care
9 received by the department of social and rehabilitation services, a law
10 enforcement agency or a juvenile intake and assessment worker except
11 as provided by this code. Violation of this subsection is a class B
12 misdemeanor.

13 (e) *Court order.* Notwithstanding the provisions of this section, a
14 court of competent jurisdiction may order disclosure of confidential
15 agency records pursuant to a determination that the disclosure is in the
16 best interests of the child who is the subject of the reports or that the
17 records are necessary for the proceedings of the court and otherwise ad-
18 missible as evidence.

, after in camera inspection,
[Requested by SRS]

19 ~~(1) If the court determines that disclosure is in the best interests of
20 the child, the court shall impose appropriate limitations.~~

21 (2) Upon application of a party for access to confidential records the
22 court shall conduct an in camera inspection and if the court finds the
23 records are necessary for the proceedings the court shall issue an order
24 ~~specifying the terms of disclosure.~~ A

The court shall specify the terms of disclosure and impose appropriate limitations.
[Requested by SRS]

25 Sec. 5. K.S.A. 38-1508 is hereby amended to read as follows: 38-
26 1508. All records and reports concerning child abuse or neglect received
27 by law enforcement agencies shall be kept separate from all other records
28 and shall not be disclosed to anyone except:

29 — (a) The judge and members of the court staff designated by the judge
30 of the court having the child before it in any proceedings;

31 — (b) the guardian *ad litem* and the parties to the proceedings and their
32 attorneys, subject to the restrictions imposed by subsection (a)(2)(C) of
33 K.S.A. 38-1507 and amendments thereto;

34 — (c) the department of social and rehabilitation services;

35 — (d) (a) *Principle of limited disclosure.* Information contained in con-
36 fidential law enforcement records concerning a child alleged or adjudi-
37 cated to be in need of care may be disclosed as provided in this section.
38 Disclosure shall in all cases be guided by the principle of providing access
39 only to persons or entities with a need for information that is directly
40 related to achieving the purposes of this code.

41 (b) *Free exchange of information.* Pursuant to section 2, and amend-
42 ments thereto, a law enforcement agency shall participate in the free
43 exchange of information concerning a child who is alleged or adjudicated

1 to be in need of care.

2 (c) Access to information in law enforcement records. In order to
3 discharge their official duties, the following persons or entities shall have
4 access to confidential law enforcement records concerning a child alleged
5 or adjudicated to be in need of care.

6 (1) The court having jurisdiction over the proceedings, including the
7 presiding judge and any court personnel designated by the judge.

8 (2) The secretary.

9 (3) ~~The juvenile justice authority~~

commissioner of
[Requested by JJA]

10 (4) Law enforcement officers or county or district attorneys or their
11 staff.

12 (5) Any juvenile intake and assessment worker.

13 (6) Members of a court-appointed multidisciplinary team.

14 (7) Any other federal, state or local government entity, or any agent
15 of such entity, having a need for such information in order to carry out
16 such entity's responsibilities under law to protect children from abuse and
17 neglect.

18 (d) Necessary access. The following persons or entities shall have ac-
19 cess to information from law enforcement records when reasonably nec-
20 essary to carry out their lawful responsibilities, to maintain their personal
21 safety and the personal safety of individuals in their care, or to educate,
22 diagnose, treat, care for or protect a child alleged or adjudicated to be in
23 need of care. Information authorized to be disclosed in this subsection
24 shall not contain information which identifies a reporter of a child alleged
25 or adjudicated to be a child in need of care.

26 (1) Any individual, or public or private agency authorized by a prop-
27 erly constituted authority to diagnose, care for, treat or supervise a child
28 who is the subject of a report or record of child abuse or neglect ~~and~~
29 ~~specifically includes the following:~~ including physicians, psychiatrists,
30 nurses, nurse practitioners, psychologists, licensed social workers, child
31 development specialists, physician assistants, community mental health
32 workers, alcohol and drug abuse counselors, and licensed or registered
33 child care providers. ~~Teachers, administrators and school~~
34 ~~paraprofessionals~~

35 (2) School administrators shall have access to but shall not copy ma-
36 terials in the file.

37 ~~(e) Law enforcement officers or county or district attorneys or their~~
38 ~~staff when necessary for the discharge of their official duties in investi-~~
39 ~~gating or prosecuting a report of known or suspected child abuse or~~
40 ~~neglect.~~

41 ~~(f) Any member law enforcement records and may disclose informa-~~
42 ~~tion to teachers, paraprofessionals and other school personnel as neces-~~
43 ~~sary to meet the educational needs of the child or to protect the safety of~~

9

Substitute for HOUSE BILL No. 2777

By Committee on Corrections and Juvenile Justice

AN ACT concerning controlled substances; relating to manufacturing; amending K.S.A. 65-4161 and 65-4163 and repealing the existing sections.

WHEREAS, the Kansas Supreme Court in State v. McAdam, no. 88,139, filed January 30, 2004, has noted a conflict and ambiguity in the relationship of statutes, legislative intent and criminal acts covered by K.S.A. 65-4159 and 65-4161; and

WHEREAS, the Legislature finds that additional clarification will be helpful to the courts and improve public safety: Now, therefore,

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

Section 1. K.S.A. 65-4161 is hereby amended to read as follows: 65-4161 . (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; or dispense ~~or compound~~ any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d) (1), (d) (3) or (f) (1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b), (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(f) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(g) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

Sec. 2. K.S.A. 65-4163 is hereby amended to read as follows: 65-4163.

(a) Except as authorized by the uniform controlled substances act, it shall be

unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, deliver or distribute; cultivate; prescribe; administer; deliver; distribute; or dispense ~~or compound~~:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto or designated in subsection (g) of K.S.A. 65-4109 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

Except as provided in subsection (b), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (a) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 and such person is 18 or more years of age, such person shall be guilty of a drug severity level 2 felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(c) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(d) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(e) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

New Sec. 3. On or before the effective date of this act, any person violating the provisions of K.S.A. 65-4159, and amendments thereto, upon conviction, is guilty of a drug severity level 1 felony. Such sentence shall not be reduced to violating the provisions of K.S.A. 65-4161 or 65-4163, and amendments thereto, because prior to this act, such statutes prohibited the identical conduct.

New Sec. 4. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

Sec. 5. K.S.A. 65-4161 and 65-4163 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

HOUSE BILL No. 2693

By Representatives Newton and Davis

2-3

Proposed amendment
Representative Newton
February 16, 2004

House Corr & JJ
Attachment 10
2-23-04

9 AN ACT concerning crimes and punishment; relating to mistreatment
10 of a dependent adult; amending K.S.A. 21-3437 and repealing the ex-
11 isting section.
12

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

14 Section 1. K.S.A. 21-3437 is hereby amended to read as follows: 21-
15 3437. (a) Mistreatment of a dependent adult is knowingly and intention-
16 ally committing one or more of the following acts:

17 (1) Infliction of physical injury, unreasonable confinement or cruel
18 punishment upon a dependent adult;

19 (2) taking unfair advantage of a dependent adult's physical or financial
20 resources for another individual's personal or financial advantage by the
21 use of undue influence, coercion, harassment, duress, deception, false
22 representation or false pretense by a caretaker or another person; or

23 (3) omitting or depriving treatment, goods or services by a caretaker
24 or another person which are necessary to maintain physical or mental
25 health of a dependent adult.

26 (b) No dependent adult is considered to be mistreated for the sole
27 reason that such dependent adult relies upon or is being furnished treat-
28 ment by spiritual means through prayer in lieu of medical treatment in
29 accordance with the tenets and practices of a recognized church or relig-
30 ious denomination of which such dependent adult is a member or
31 adherent.

32 (c) For purposes of this section: "Dependent adult" means an indi-
33 vidual 18 years of age or older who is unable to protect their own interest.
34 Such term shall include:

35 (1) Any resident of an adult care home including but not limited to
36 those facilities defined by K.S.A. 39-923 and amendments thereto;

37 (2) any adult cared for in a private residence;

38 (3) any individual kept, cared for, treated, boarded or otherwise ac-
39 commodated in a medical care facility;

40 (4) any individual with mental retardation or a developmental disa-
41 bility receiving services through a community mental retardation facility
42 or residential facility licensed under K.S.A. 75-3307b and amendments
43 thereto;

1 (5) any individual with a developmental disability receiving services
2 provided by a community service provider as provided in the develop-
3 mental disability reform act; or

4 (6) any individual kept, cared for, treated, boarded or otherwise ac-
5 commodated in a state psychiatric hospital or state institution for the
6 mentally retarded.

7 (b) (1) Mistreatment of a dependent adult as defined in subsection
8 (a)(1) is a severity level 6, person felony.

9 (2) *Mistreatment of a dependent adult as defined in subsection (a)(2)*
10 *is a severity level 7, person felony if the ~~value of the financial gain~~ is*
11 *\$25,000 or more.*

aggregate amount of the value of the resources

12 (3) *Mistreatment of a dependent adult as defined in subsection (a)(2)*
13 *is a severity level 9, person felony if the ~~value of the financial gain~~ is at*
14 *least \$500 but less than \$25,000.*

15 (4) *Mistreatment of a dependent adult as defined in subsection (a)(2)*
16 *is a class A misdemeanor if the ~~value of the financial gain~~ is less than*
17 *\$500.*

person

18 (5) Mistreatment of a dependent adult as defined in subsection ~~(a)(2)~~
19 ~~and (a)(3)~~ is a class A person misdemeanor.

20 Sec. 2. K.S.A. 21-3437 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.

(6) Mistreatment of a dependent adult as defined in subsection (a)(2)
is a severity level 9, person felony if the aggregate amount of the value of the
resources is less than \$500 and committed by a person who has, within five
years immediately preceding commission of the crime, been convicted of
mistreatment of a dependent adult two or more times.