

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 24, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office  
Jerry Ann Donaldson, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Nicoletta Buonasera, Legislative Research Department  
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Others attending:

See Attached List.

**HB 2639 - Traffic in contraband while inmate is outside the DOC institution**

Chairman Loyd asked for final action on **HB 2639**

A balloon by DOC and JJA was passed out to review. The Bed Impact in 2005 was 12 for providers and 30 for receivers which is the inmate for a total of 42. In 2014 providers 29 and receivers is 63 for a total 92.

Representative Owens made a motion to adopt the balloon. Representative Goering seconded the motion. (Attachment 1)

The Chairman commented that the Secretary's idea behind the tobacco issue was two fold:

- Long term health impact and the cost the state incurs in treatment.
- The experience is if you make cigarettes the contraband then if there is any focus to get the contraband in to the prison the focus will be on cigarettes instead of drugs. This has been the case in other states.

The motion carried.

Representative Owens made the motion to report **HB 2639** favorably for passage, as amended. Representative Carter seconded the motion. The motion carried.

**HB 2636 - Allowing SRS and law enforcement agencies access to victim information.**

Representative Owens made the motion to report **HB 2636** favorably for passage. Representative Carter seconded the motion. The motion carried.

**HB 2727 - Exercising the state's option to provide an exemption to disqualification for public assistance to certain drug offenders**

Representative Pauls made the motion to report **HB 2727** favorably for passage. Representative Kassebaum seconded the motion. The motion carried.

**HB 2638 - Amendments to the community corrections act**

Representative Owens made the motion to report **HB 2638** favorably for passage. Representative Carlin seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE at 1:30 p.m. on February 24, 2004 in Room 241-N of the Capitol.

**HB 2595 - State pays costs of litigation in civil commitment of sex predator cases**

Representative Carlin made the motion to report HB 2595 favorably for passage. Representative Kassebaum seconded the motion.

The committee discussed that the fiscal note on this bill.

A substitute motion by Representative Ward to amend line 30 adding subject to appropriation. The motion carried.

Representative Carter made a substitute motion to line 31 strike the defense attorneys fees. Representative Ward seconded the motion. The motion did not carry.

Representative Owens made the motion to report HB 2595 favorably for passage as amended. Representative Carlin seconded the motion. The motion carried.

**HB 2778 - If the sentence of offender remanded, criminal history is that of original sentence.**

Representative Owens made a motion to adopt the balloon. Representative Goering seconded the motion. The motion carried. (Attachment 2)

Representative Owens made the motion to report HB 2778 favorably for passage as amended. Representative Goering seconded the motion. The motion did not carry.

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

A balloon from Office of Judicial Administration (Attachment 3) and proposed amendments from the Juvenile Justice Authority. (Attachment 4)

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

Representative Crow made a motion to remove the balloon language and to restore the italicized language on page 14 and 15. Representative Kassebaum seconded the motion. The motion did not carry.

Representative Ward made a motion to strike the 1<sup>st</sup> and 3<sup>rd</sup> sentences leaving the 2<sup>nd</sup> sentence in the balloon. Representative Crow seconded the motion. The motion carried.

Representative Ward made a motion to strike the original language on from 3 days to 5 days excluding week ends and legal holidays on page 12 line 31. Motion to amend was withdrawn.

Representative Carlin made a motion to adopt the language of the OJA. Representative Horst seconded the motion. Motion to amend was withdrawn.

Representative Carlin made a motion to amend the language in line 31 of the balloon to substitute 3 business days for the term 5 business days and weekends and holidays. Motion died for lack of a second.

Representative Dillmore made a motion to adopt the OJA balloon language on page 12, not striking the word "forthwith". Representative Owens seconded the motion. The motion carried.

Representative Pauls made a motion to strike trial and sentence on page 12 line 33. Representative Carter

CONTINUATION SHEET

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE at 1:30 p.m. on February 24, 2004 in Room 241-N of the Capitol.

seconded the motion. The motion carried.

Representative Carter made a motion to recommend **HB 2862** favorable for passage as amended. Representative Huntington seconded the motion. The motion carried.

**HB 2649 - Unlawful use of a controlled substance.**

There were three amendments requested by Representative Decker, (Attachment 5) Kansas Highway Patrol, (Attachment 6) and Jan Satterfield, Bulter County Attorney. (Attachment 7)

Staff explained the three amendments. Representative Decker's original intent to include domestic battery when a person was requested to submit to a test, line 31 21-3412a and delete reference to KSA 65-4160 or 65-4162. The Highway Patrol amendment deletes section 1 reference to KSA 21-4160 and section 1 reference to KSA 65-4160 or 65-4162. The Satterfield amendment would establish blood and urine levels with a specific list for both as used by the state of Nevada.

The fiscal note and bed impact that there is a history of this crime and would have an impact on the Sentencing Commission and would probably have to build a new prison for bed impact.

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

Representative Dillmore made a motion to adopt Kansas Highway Patrol balloon as consisted with the Decker amendment striking section 1. Representative Horst seconded the motion. The motion was withdrawn.

Representative Carter made a motion to adopt the Satterfield balloon. Representative Pauls seconded the motion. The motion did not carried.

The KBI has testified that their labs and equipment aren't qualified to do this type of testing at this time.

Representative Dillmore made a motion to report **HB 2649** favorable as amended . Representative Crow seconded the motion. The motion carried.

**HB 2815 - New crime of absconding from parole; aggravated indecent solicitation child, severity level 3, person felony; new felony while incarcerated or on post-release supervision, mandatory imprisonment for new conviction.**

Representative Goering made a motion to adopt the balloon submitted by the Attorney General as a substitute bill, deleting sections 1 and 3 leaving section 2. Representative Dillmore seconded the motion. The motion carried. (Attachment 8)

Representative Goering made a substitute motion to report **Substitute HB 2815** favorably for passage. Representative Carter seconded the motion. The motion carried.

The meeting was adjourned at 2:54 pm. The next scheduled meeting is March 3, 2004.



HOUSE BILL No. 2639

By Committee on Corrections and Juvenile Justice

1-28

Proposed amendment  
Requested by DOC and JJA  
February 22, 2004

9 AN ACT concerning crimes and punishment, relating to traffic in con-  
10 traband; amending K.S.A. 2003 Supp. 21-3826 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. 2003 Supp. 21-3826 is hereby amended to read as  
15 follows: 21-3826. (a) Traffic in contraband ~~in a correctional institution~~ is:  
16 (1) Introducing or attempting to introduce into or upon the grounds of  
17 any correctional institution or taking, sending, attempting to take or at-  
18 tempting to send from any correctional institution or any unauthorized  
19 possession while in any correctional institution or distributing within any  
20 correctional institution, any item without the consent of the administrator  
21 of the correctional institution; or

22 (2) ~~providing to or attempting to provide to a person known to be an~~  
23 ~~inmate in the custody of a department of corrections' correctional insti-~~  
24 ~~tution while such inmate is outside such correction institution for the~~  
25 ~~inmate's use or consumption, irrespective of whether the item is intended~~  
26 ~~to be brought into or upon the grounds of such correctional institution;~~

or a juvenile offender in the custody of a juvenile justice authority's correctional institution, [Requested by JJA]

27 (A) Alcohol;

; or possessing, attempting to possess, using or attempting to use by an inmate or juvenile offender [Requested by DOC, with juvenile offender added]

28 (B) tobacco;

29 (C) controlled substances;

or juvenile offender [Requested by JJA]

30 (D) firearms, ammunition or explosives;

31 (E) currency, but not including compensation forwarded to the cor-  
32 rectional institution for deposit in an inmate's institution account;

or juvenile offender's [Requested by JJA]

33 (F) tools and equipment except as required in the performance of the  
34 inmate's approved work assignment;

35 (G) cellular telephone;

36 (H) internet access; or

37 (I) communication equipment or devices, other than cellular tele-  
38 phones and internet access, except as required in the performance of the  
39 inmate's approved work assignment.

40 (b) For purposes of this section: (1) "Correctional institution" means  
41 any state correctional institution or facility, conservation camp, state se-  
42 curity hospital, juvenile correctional facility, community correction center  
43 or facility for detention or confinement, juvenile detention facility or jail.

1 (2) "Controlled substance" shall have the meaning ascribed thereto  
2 by subsection (c) of K.S.A. 65-4101, and amendments thereto.

3 (c) (1) Traffic in contraband ~~in a correctional institution~~ of firearms,  
4 ammunition, explosives or a controlled substance ~~which is defined in sub-~~  
5 ~~section (c) of K.S.A. 65-4101, and amendments thereto,~~ is a severity level  
6 5, nonperson felony.

7 (2) Traffic in any contraband ~~as defined by rules and regulations~~  
8 ~~adopted by the secretary,~~ in a correctional institution by an employee of  
9 a correctional institution is a severity level 5, nonperson felony.

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

12 Sec. 2. K.S.A. 2003 Supp. 21-3826 is hereby repealed.

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

[Deletion requested by DOC; if not adopted JJA requests adding the  
commissioner's rules and regs.; in line 8, following "secretary" by inserting "or  
commissioner of juvenile justice"]

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3 **HOUSE BILL No. 2778**

4  
5 By Committee on Corrections and Juvenile Justice

6  
7 2-10

8  
9 AN ACT concerning crimes and punishment, relating to sentencing;  
10 amending K.S.A. 21-4710 and repealing the existing section.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 21-4710 is hereby amended to read as follows: 21-  
14 4710. (a) Criminal history categories contained in the sentencing guide-  
15 lines grid for nondrug crimes and the sentencing guidelines grid for drug  
16 crimes are based on the following types of prior convictions: Person felony  
17 adult convictions, nonperson felony adult convictions, person felony ju-  
18 venile adjudications, nonperson felony juvenile adjudications, person mis-  
19 demeanor adult convictions, nonperson class A misdemeanor adult con-  
20 victions, person misdemeanor juvenile adjudications, nonperson class A  
21 misdemeanor juvenile adjudications, select class B nonperson misde-  
22 meanor adult convictions, select class B nonperson misdemeanor juvenile  
23 adjudications and convictions and adjudications for violations of municipal  
24 ordinances or county resolutions which are comparable to any crime clas-  
25 sified under the state law of Kansas as a person misdemeanor, select  
26 nonperson class B misdemeanor or nonperson class A misdemeanor. A  
27 prior conviction is any conviction, other than another count in the current  
28 case which was brought in the same information or complaint or which  
29 was joined for trial with other counts in the current case pursuant to  
30 K.S.A. 22-3203 and amendments thereto, which occurred prior to sen-  
31 tencing in the current case regardless of whether the offense that led to  
32 the prior conviction occurred before or after the current offense or the  
33 conviction in the current case.

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

37 (c) Except as otherwise provided, all convictions, whether sentenced  
38 consecutively or concurrently, shall be counted separately in the of-  
39 fender's criminal history.

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

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

Proposed amendment  
Requested by Randall Hodgkinson  
February 22, 2004

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

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

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

10 (5) For convictions of crimes committed before July 1, 1993, a ju-  
11 venile adjudication which would constitute a class A, B or C felony, if  
12 committed by an adult, will not decay. For convictions of crimes com-  
13 mitted on or after July 1, 1993, a juvenile adjudication which would con-  
14 stitute an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony,  
15 or a drug severity level 1, 2 or 3 felony, if committed by an adult, will not  
16 decay.

17 (6) All juvenile adjudications which would constitute a person felony  
18 will not decay or be forgiven.

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

23 (8) Unless otherwise provided by law, unclassified felonies and mis-  
24 demeanors, shall be considered and scored as nonperson crimes for the  
25 purpose of determining criminal history.

26 (9) Prior convictions of a crime defined by a statute which has since  
27 been repealed shall be scored using the classification assigned at the time  
28 of such conviction.

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

32 (11) Prior convictions of any crime shall not be counted in determin-  
33 ing the criminal history category if they enhance the severity level or  
34 applicable penalties, elevate the classification from misdemeanor to fel-  
35 ony, or are elements of the present crime of conviction. Except as oth-  
36 erwise provided, all other prior convictions will be considered and scored.

37 (12) *Notwithstanding any other provision of law, if a conviction or*  
38 *sentence or both are set aside by any court, upon resentencing or upon*  
39 *sentencing after reconviction, the criminal history of the offender shall*  
40 *not include any convictions that were not established at the original sen-*  
41 *tencing hearing.*

This subparagraph shall apply to all resentencing and sentencing after reconviction proceedings occurring on and after the effective date of this act.

42 Sec. 2. K.S.A. 21-4710 is hereby repealed.



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Sec. 3. This act shall take effect and be in force from and after its  
publication in the ~~statute book~~ ~~\_\_\_\_\_~~ Kansas register

**Proposed Amendment to Section 7, HB 2862 – Office of Judicial Administration**

parent already is subject to an order to pay support for the respondent. If the parent currently is not ordered to pay support for the respondent and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-16,117, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-16,119, and amendments thereto. The parent also shall be informed that, after registration, the income withholding order may be served on the parent’s employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

- (i) Any order issued by the judge pursuant to this section shall be in effect immediately upon entry into the court’s journal.
- (j) In addition to the requirements of K.S.A. 38-1671, and amendments thereto, if a person is under 18 years of age and convicted of a felony or adjudicated as a juvenile offender for an offense if committed by an adult would constitute the commission of a felony, the court shall forward a signed copy of the journal entry to the commissioner within 30 days of final disposition.
- (k) The sentencing hearing shall be open to the public as provided in K.S.A. 38-1652, and amendments thereto.

Sec. 7. K.S.A. 38-1671 is hereby amended to read as follows: 38-

1671. (a) *Actions by the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall deliver to the **officer having the offender in charge forthwith, within three days, notify the commissioner of the commitment, and provide the commissioner with** a certified copy of the complaint, the journal entry of the trial and the sentence *adjudication and the disposition*.

The court shall also forward those items from the social file which could relate to a rehabilitative program. **Within three business days of receipt of the order of commitment and the judgement form or journal entry, the officer having the offender in charge shall forward certified copies to the commissioner.** If the court wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the recommendation shall be included in the sentence. After the court has received notice of the juvenile correctional facility designated as provided in subsection (b),

(2) It shall be the duty of the court or the sheriff of the *committing* county to deliver the juvenile offender to the facility at the time designated

HOUSE BILL No. 2862

By Committee on Corrections and Juvenile Justice

2-12

Proposed amendments  
February 24, 2004

House Corr & JJ  
Attachment 4  
2-24-04

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, ~~21-3926~~, 38-1611 and 75-7023 and repealing the ex-  
12 isting 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 convic-  
19 tion 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 con-  
26 viction 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~~

4-2

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 attempt-~~  
4 ~~ing to send from any correctional institution or any unauthorized posses-~~  
5 ~~sion while in any correctional institution or distributing within any cor-~~  
6 ~~rectional 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 sub-~~  
14 ~~section (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 employe 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 (e) 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;~~

Renumber remaining sections accordingly. [Requested by JJA]

1 (A) Is discharged by the court pursuant to K.S.A. 38-1667, and  
2 amendments thereto;

3 (B) is discharged by the commissioner pursuant to K.S.A. 38-1675,  
4 and amendments thereto; or

5 (C) the juvenile reaches 21 years of age and no exceptions apply that  
6 extend jurisdiction beyond 21 years of age.

7 (d) Once jurisdiction is acquired by the district court over an alleged  
8 juvenile offender, jurisdiction shall continue when the juvenile offender  
9 reaches 21 years of age but no later than when the juvenile offender  
10 reaches 23 years of age if either or both of the following conditions apply:

11 (1) The juvenile offender is sentenced pursuant to K.S.A. 38-16.129,  
12 and amendments thereto, and the term of the sentence including successful  
13 completion of aftercare extends beyond the juvenile reaching 21 years of  
14 age; or

15 (2) the juvenile offender is sentenced pursuant to an extended juris-  
16 diction juvenile prosecution and continues to successfully serve the sen-  
17 tence imposed pursuant to the Kansas juvenile justice code.

18 ~~44~~ (c) (1) If a juvenile offender, at the time of sentencing, is in an  
19 out of home placement in the custody of the secretary of social and re-  
20 habilitation services under the Kansas code for care of children code, the  
21 sentencing court may order the continued placement of the juvenile as a  
22 child in need of care unless the offender was adjudicated for a felony or  
23 a second, or subsequent, misdemeanor. If the adjudication was for a fel-  
24 ony or a second, or subsequent misdemeanor, the continued placement  
25 cannot be ordered unless the court finds there are compelling circum-  
26 stances which require, in the best interest of the juvenile, that the place-  
27 ment should be continued. In considering whether compelling circum-  
28 stances exist, the court shall consider the reports and recommendations  
29 of the foster placement, the contract provider, the secretary of social and  
30 rehabilitation services, the presentence investigation and all other rele-  
31 vant factors. If the foster placement refuses to continue the juvenile in  
32 the foster placement the court shall not order continued placement as a  
33 child in need of care.

34 (2) If a placement with the secretary of social and rehabilitation serv-  
35 ices is continued after sentencing, the secretary shall not be responsible  
36 for any costs of sanctions imposed under this code.

37 (3) If such a juvenile offender is placed in the custody of the juvenile  
38 justice authority, the secretary of social and rehabilitation services shall  
39 not be responsible for furnishing services ordered in the child in need of  
40 care proceeding during the time of the placement pursuant to the Kansas  
41 juvenile justice code. Nothing in this subsection shall preclude such ju-  
42 venile offender from accessing services provided by the department of  
43 social and rehabilitation services or any other state agency if such juvenile

Termination of jurisdiction pursuant to this section shall have no effect on the juvenile offender's continuing responsibility to pay restitution pursuant to subsection (d) of K.S.A. 38-1663, and amendments thereto.

[Requested by Rep. Pauls]

4-2-21

1 is eligible for such services.

2 ~~++(f)~~ The Kansas code for care of children shall apply when neces-  
3 sary to carry out the provisions of subsection (d) of K.S.A. 38-1664, and  
4 amendments thereto.

5 ~~+(g)~~ The provisions of this code shall govern with respect to offenses  
6 committed on or after July 1, 1997.

7 Sec. 4. K.S.A. 2003 Supp. 38-1611 is hereby amended to read as  
8 follows: 38-1611. (a) Fingerprints or photographs shall not be taken of  
9 any juvenile who is taken into custody for any purpose, except that:

10 (1) Fingerprints or photographs of the juvenile may be taken if au-  
11 thorized by a judge of the district court having jurisdiction;

12 (2) a juvenile's fingerprints shall be taken, and photographs of a ju-  
13 venile may be taken, immediately upon taking the juvenile into custody  
14 or upon first appearance or in any event before final sentencing, before  
15 the court for an offense which, if committed by a person 18 or more years  
16 of age, would make the person liable to be arrested and prosecuted for  
17 the commission of a felony as defined by K.S.A. 21-3105 and amendments  
18 thereto, a class A or B misdemeanor or assault, as defined by K.S.A. 21-  
19 3408, and amendments thereto; ~~and~~

20 (3) fingerprints or photographs of a juvenile may be taken under  
21 K.S.A. 21-2501 and amendments thereto if the juvenile has been:

22 (A) Prosecuted as an adult by reason of K.S.A. 38-1636, and amend-  
23 ments thereto; or

24 (B) ~~convicted of aggravated juvenile delinquency as defined by K.S.A.~~  
25 ~~21-3611 and amendments thereto; or~~

26 ~~—(C) taken into custody for an offense described in subsection (b)(1)~~  
27 ~~or (2) of K.S.A. 38-1602 and amendments thereto; and~~

28 ~~(4) fingerprints or photographs of a juvenile may be taken under sub-~~  
29 ~~section (d)(9) of K.S.A. 75-7023, and amendments thereto.~~

30 (b) Fingerprints and photographs taken under subsection (a)(1) ~~or~~,  
31 (2) shall be kept readily distinguishable from those of persons of the age  
32 of majority. Fingerprints and photographs taken under subsection (a)(3)  
33 may be kept in the same manner as those of persons of the age of majority.

or (4)

[technical amendment]

34 (c) Fingerprints and photographs of a juvenile shall not be sent to a  
35 state or federal repository, except that:

36 (1) Fingerprints and photographs may be sent to a state or federal  
37 repository if authorized by a judge of the district court having jurisdiction;

38 (2) a juvenile's fingerprints shall, and photographs of a juvenile may,  
39 be sent to a state or federal repository if taken under subsection (a)(2);  
40 and

41 (3) fingerprints or photographs taken under subsection (a)(3) shall be  
42 processed and disseminated in the same manner as those of persons of  
43 the age of majority.

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 amend-  
 3 ments thereto, if the other agency has a legitimate need for the finger-  
 4 prints 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) 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 finger-~~  
 17 ~~prints 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 ju-~~  
 20 ~~venile 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 cus-~~  
 37 ~~tody 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 ]~~

By striking all on Page 6.

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.~~

Renumber remaining sections accordingly. [Requested by JJA]

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 of-  
 11 fender, 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 vio-  
 32 lation 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 un-  
 40 less 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.



4-7

1 cense which shall indicate on its face that conditions have been imposed  
 2 on such juvenile offender's privilege of operating a motor vehicle and that  
 3 a certified copy of the order imposing such conditions is required to be  
 4 carried by the juvenile offender for whom the license was issued any time  
 5 such juvenile offender is operating a motor vehicle on the streets and  
 6 highways of this state. If the juvenile offender is a nonresident, the court  
 7 shall cause a copy of the order to be transmitted to the division and the  
 8 division shall forward a copy of it to the motor vehicle administrator of  
 9 such juvenile offender's state of residence. Such court shall furnish to any  
 10 juvenile offender whose driver's license has had conditions imposed on  
 11 it under this section a copy of the order, which shall be recognized as a  
 12 valid Kansas driver's license until such time as the division shall issue the  
 13 restricted license provided for in this subsection. Upon expiration of the  
 14 period of time for which conditions are imposed pursuant to this subsec-  
 15 tion, the licensee may apply to the division for the return of the license  
 16 previously surrendered by such licensee. In the event such license has  
 17 expired, such juvenile offender may apply to the division for a new license,  
 18 which shall be issued immediately by the division upon payment of the  
 19 proper fee and satisfaction of the other conditions established by law,  
 20 unless such juvenile offender's privilege to operate a motor vehicle on  
 21 the streets and highways of this state has been suspended or revoked  
 22 prior thereto. If any juvenile offender shall violate any of the conditions  
 23 imposed under this subsection, such juvenile offender's driver's license  
 24 or privilege to operate a motor vehicle on the streets and highways of this  
 25 state shall be revoked for a period as determined by the court in which  
 26 such juvenile offender is convicted of violating such conditions.

27 (d) Whenever a juvenile offender is placed pursuant to subsection  
 28 (a)(1) or (2), the court, unless it finds compelling circumstances which  
 29 would render a plan of restitution unworkable, shall order the juvenile  
 30 offender to make restitution to persons who sustained loss by reason of  
 31 the offense. The restitution shall be made either by payment of an amount  
 32 fixed by the court or ~~by working for the persons in order to compensate~~  
 33 for the loss. If the court finds compelling circumstances which would  
 34 render a plan of restitution unworkable, the court may order the juvenile  
 35 offender to perform charitable or social service for organizations perform-  
 36 ing services for the community.

37 Nothing in this subsection shall be construed to limit a court's authority  
 38 to order a juvenile offender to make restitution or perform charitable or  
 39 social service under circumstances other than those specified by this sub-  
 40 section or when placement is made pursuant to subsection (a)(3) or (4).

41 (e) In addition to or in lieu of any other order authorized by this  
 42 section, the court may order a juvenile offender to pay a fine not exceed-  
 43 ing \$250 for each offense. In determining whether to impose a fine and

, upon approval by the victim as set forth in the journal entry,  
 [Requested by SG County D.A.'s Office]

1 parent already is subject to an order to pay support for the respondent.  
 2 If the parent currently is not ordered to pay support for the respondent  
 3 and the court has personal jurisdiction over the parent, the court shall  
 4 order the parent to pay child support in an amount determined under  
 5 K.S.A. 38-16.117, and amendments thereto. Except for good cause  
 6 shown, the court shall issue an immediate income withholding order pur-  
 7 suant to K.S.A. 23-4.105 *et seq.*, and amendments thereto, for each parent  
 8 ordered to pay support under this subsection, regardless of whether a  
 9 payor has been identified for the parent. A parent ordered to pay child  
 10 support under this subsection shall be notified, at the hearing or other-  
 11 wise, that the child support order may be registered pursuant to K.S.A.  
 12 38-16.119, and amendments thereto. The parent also shall be informed  
 13 that, after registration, the income withholding order may be served on  
 14 the parent's employer without further notice to the parent and the child  
 15 support order may be enforced by any method allowed by law. Failure  
 16 to provide this notice shall not affect the validity of the child support  
 17 order.

18 (i) Any order issued by the judge pursuant to this section shall be in  
 19 effect immediately upon entry into the court's journal.

20 (j) In addition to the requirements of K.S.A. 38-1671, and amend-  
 21 ments thereto, if a person is under 18 years of age and convicted of a  
 22 felony or adjudicated as a juvenile offender for an offense if committed  
 23 by an adult would constitute the commission of a felony, the court shall  
 24 forward a signed copy of the journal entry to the commissioner within 30  
 25 days of final disposition.

26 (k) The sentencing hearing shall be open to the public as provided in  
 27 K.S.A. 38-1652, and amendments thereto.

28 Sec. 7. K.S.A. 38-1671 is hereby amended to read as follows: 38-  
 29 1671. (a) *Actions by the court.* (1) When a juvenile offender has been  
 30 committed to a juvenile correctional facility, the clerk of the court shall  
 31 ~~forthwith, within three days, notify the commissioner of the commitment~~  
 32 ~~and provide the commissioner with a certified copy of the complaint, the~~  
 33 ~~journal entry of the trial and the sentence adjudication and the disposi-~~  
 34 ~~tion. The court shall also forward those items from the social file which~~  
 35 ~~could relate to a rehabilitative program. If the court wishes to recommend~~  
 36 ~~placement of the juvenile offender in a specific juvenile correctional fa-~~  
 37 ~~cility, the recommendation shall be included in the sentence. After the~~  
 38 ~~court has received notice of the juvenile correctional facility designated~~  
 39 ~~as provided in subsection (b).~~

40 (2) It shall be the duty of the court or the sheriff of the committing  
 41 county to deliver the juvenile offender to the facility at the time desig-  
 42 nated by the commissioner as provided in subsection (b).

43 ~~(3) When (3) Whenever a juvenile offender that is residing in a ju-~~

In line 31, strike "three days" and insert "five days excluding weekends and legal holidays". [Requested by SG County D.A.'s Office]

which imposed such commitment

following the order of the commitment to the commissioner

The clerk shall deliver to

[Previous three amendments requested by OJA]

1 juvenile correctional facility and is required to ~~go back to appear in court~~  
 2 for any reason, the county demanding the juvenile's presence shall ~~give~~  
 3 ~~the commissioner timely notice of the requirements and shall~~ be respon-  
 4 sible for ~~the~~ transportation, detention, custody and control of such of-  
 5 fender ~~for the entire period the offender is absent from the juvenile cor-~~  
 6 ~~rectional facility.~~ In these cases, the county sheriff shall be responsible  
 7 for all transportation, detention, custody and control of such offender.

8 (b) ~~Actions by the commissioner.~~ (1) ~~Within three days after receiving~~  
 9 ~~the notice of commitment as provided in required by subsection (a), the~~  
 10 ~~commissioner shall give notify the committing court notice designating~~  
 11 ~~the juvenile correctional of the facility to which and on what date the~~  
 12 ~~juvenile offender is to be admitted and the date of the admission should~~  
 13 ~~be conveyed. The date thus provided shall be no later than five business~~  
 14 ~~days after the commissioner is notified of the commitment unless the com-~~  
 15 ~~missioner and committing county mutually agree to a later date. The~~  
 16 ~~transportation, detention, custody and control of a juvenile offender sen-~~  
 17 ~~tenced to a direct commitment to a juvenile correctional facility shall be~~  
 18 ~~the responsibility of the committing county until the offender is delivered~~  
 19 ~~to the facility designated by the commissioner.~~

20 (2) Except as provided by K.S.A. 38-1691, and amendments thereto,  
 21 the commissioner may make any temporary out-of-home placement the  
 22 commissioner deems appropriate pending placement of the juvenile of-  
 23 fender in a juvenile correctional facility, and the commissioner shall notify  
 24 the court, local law enforcement agency and, ~~if the juvenile is still required~~  
 25 ~~to attend a secondary school, the school district in which the juvenile will~~  
 26 ~~be residing if the juvenile is still required to attend a secondary school of~~  
 27 ~~that temporary placement.~~

28 (c) ~~Transfers.~~ During the time a juvenile offender remains committed  
 29 to a juvenile correctional facility, the commissioner may transfer the ju-  
 30 venile offender from one juvenile correctional facility to another.

31 Sec. 8. K.S.A. 38-1691 is hereby amended to read as follows: 38-  
 32 1691. (a) ~~On and after January 1, 1993, No juvenile shall be detained or~~  
 33 ~~placed in any jail pursuant to the Kansas juvenile justice code except as~~  
 34 ~~provided by subsections (b), (c) and (d).~~

35 (b) Upon being taken into custody, ~~an alleged juvenile offender may~~ a  
 36 be detained temporarily in a jail, in quarters with sight and sound separa-  
 37 tion from adult prisoners, for the purpose of identifying and processing  
 38 the juvenile and transferring the juvenile to a youth residential facility or  
 39 juvenile detention facility. If a juvenile is detained in jail under this sub-  
 40 section, the juvenile shall be detained only for the minimum time nec-  
 41 essary, not to exceed six hours, and in no case overnight.

42 (c) The provisions of this section shall not apply to detention of a  
 43 juvenile:

[technical amendment]

4-05

1 (1) (A) Against whom a motion has been filed requesting prosecution  
 2 as an adult pursuant to K.S.A. 38-1636, and amendments thereto; ~~and~~  
 3 (B) who has received the benefit of a detention hearing pursuant to K.S.A.  
 4 38-1640, and amendments thereto; *and (C) who, on the record, has*  
 5 *w waived the right to a hearing on the motion pursuant to K.S.A. 38-1636,*  
 6 *and amendments thereto, requesting prosecution as an adult;*

7 (2) whose prosecution as an adult or classification as an extended  
 8 jurisdiction juvenile has been authorized pursuant to K.S.A. 38-1636, and  
 9 amendments thereto; or

10 (3) who has been convicted previously as an adult under the code of  
 11 criminal procedure or the criminal laws of another state or foreign  
 12 jurisdiction;

13 (d) The provisions of this section shall not apply to the detention of  
 14 any person 18 years of age or more who is taken into custody and is being  
 15 prosecuted in accordance with the provisions of the Kansas juvenile jus-  
 16 tice code.

17 (e) The Kansas juvenile justice authority or the authority's contractor  
 18 shall have authority to review jail records to determine compliance with  
 19 the provisions of this section.

20 (f) This section shall be part of and supplemental to the Kansas ju-  
 21 venile justice code.

22 Sec. 9. K.S.A. 38-16.130 is hereby amended to read as follows: 38-  
 23 16.130. ~~On and after July 1, 1999.~~ (a) For purposes of determining re-  
 24 lease of a juvenile offender for an offense committed on or after July 1,  
 25 1999, a system shall be developed whereby good behavior by juvenile  
 26 offenders is the expected norm and negative behavior will be punished.

27 (b) The commissioner of juvenile justice is hereby authorized to  
 28 adopt rules and regulations to carry out the provisions of this section  
 29 regarding good time calculations. Such rules and regulations shall provide  
 30 circumstances upon which a juvenile offender may earn good time credits  
 31 through participation in programs which may include, but not be limited  
 32 to, education programs, work participation, treatment programs, voca-  
 33 tional programs, activities and behavior modification. Such good time  
 34 credits may also include the juvenile offender's willingness to examine  
 35 and confront the past behavior patterns that resulted in the commission  
 36 of the juvenile's offense.

37 (c) ~~If the placement sentence established in K.S.A. 38-16.129, and~~  
 38 ~~amendments thereto, is used by the court, the juvenile offender shall~~  
 39 ~~serve no less than the minimum term authorized under the specific cat-~~  
 40 ~~egory of such placement sentence. The total number of days a juvenil-~~  
 41 ~~offender's sentence is reduced because of good time credits shall be re-~~  
 42 ~~served and, if the offender is sentenced to a correctional facility because~~  
 43 ~~of any conditional release violation, the number of days of good time~~

4-11

1 ~~Credits thus received shall be served in addition and consecutively to the~~  
 2 ~~term of incarceration to which the offender is sentenced for the conditional~~  
 3 ~~release violation including a sentence in a new case which was committed~~  
 4 ~~while the offender was on conditional release. Good time shall not be~~  
 5 ~~awarded for the period of incarceration the offender is serving the term~~  
 6 ~~of the previously awarded good time.]~~

7 Sec. 10. K.S.A. 38-16,133 is hereby amended to read as follows: 38-  
 8 16,133. In any action pursuant to the Kansas juvenile justice code in which  
 9 the respondent is adjudicated upon a plea of guilty or trial by court or  
 10 jury or upon completion of an appeal, the judge, if sentencing the re-  
 11 spondent to confinement, shall direct that, for the purpose of computing  
 12 respondent's sentence and release, eligibility and conditional release dates  
 13 thereunder, that such sentence is to be computed from a date, to be  
 14 specifically designated by the court in the sentencing order. Such date  
 15 shall be established to reflect and shall be computed as an allowance for  
 16 the time which the respondent has spent incarcerated pending the dis-  
 17 position of the respondent's case. In recording the date of commence-  
 18 ment of such sentence, the date as specifically set forth by the court shall  
 19 be used as the date of sentence and all good time calculations authorized  
 20 by law are to be allowed on such sentence from such date as though the  
 21 defendant were actually incarcerated in a juvenile correctional facility.  
 22 ~~Such credit shall not reduce the minimum term of incarceration author-~~  
 23 ~~ized by law for the offense of which the respondent has been adjudicated.~~

24 Sec. 11. K.S.A. 2003 Supp. 75-7023 is hereby amended to read as  
 25 follows: 75-7023. (a) The supreme court through administrative orders  
 26 shall provide for the establishment of a juvenile intake and assessment  
 27 system and for the establishment and operation of juvenile intake and  
 28 assessment programs in each judicial district. On and after July 1, 1997,  
 29 the secretary of social and rehabilitation services may contract with the  
 30 commissioner of juvenile justice to provide for the juvenile intake and  
 31 assessment system and programs for children in need of care. Except as  
 32 provided further, on and after July 1, 1997, the commissioner of juvenile  
 33 justice shall promulgate rules and regulations for the juvenile intake and  
 34 assessment system and programs concerning juvenile offenders. If the  
 35 commissioner contracts with the office of judicial administration to ad-  
 36 minister the juvenile intake and assessment system and programs con-  
 37 cerning juvenile offenders, the supreme court administrative orders shall  
 38 be in force until such contract ends and the rules and regulations con-  
 39 cerning juvenile intake and assessment system and programs concerning  
 40 juvenile offenders have been adopted.

41 (b) No records, reports and information obtained as a part of the  
 42 juvenile intake and assessment process may be admitted into evidence in  
 43 any proceeding and may not be used in a child in need of care proceeding

If the placement sentence established in K.S.A. 38-16,129, and amendments thereto, is used by the court, the juvenile offender shall serve no less than the minimum term authorized under the specific category of such placement sentence. The maximum amount of good time credit a juvenile offender may receive is 15% of such placement sentence imposed by the court. The juvenile offender shall receive no good time credit that operates to release the offender prior to the minimum term for the primary offense of adjudication.

[Requested by the SG County D.A.'s Office]

4-12

1 to such child's parents, other legal guardian or another appropriate adult  
2 without imposing the conditions. The conditions may include, but not be  
3 limited to:

- 4 (A) Participation of the child in counseling;
- 5 (B) participation of members of the child's family in counseling;
- 6 (C) participation by the child, members of the child's family and other  
7 relevant persons in mediation;
- 8 (D) provision of inpatient treatment for the child;
- 9 (E) referral of the child and the child's family to the secretary of social  
10 and rehabilitation services for services and the agreement of the child and  
11 family to accept and participate in the services offered;
- 12 (F) referral of the child and the child's family to available community  
13 resources or services and the agreement of the child and family to accept  
14 and participate in the services offered;
- 15 (G) requiring the child and members of the child's family to enter  
16 into a behavioral contract which may provide for regular school attend-  
17 ance among other requirements; or
- 18 (H) any special conditions necessary to protect the child from future  
19 abuse or neglect.

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

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

29 (5) Make recommendations to the county or district attorney con-  
30 cerning immediate intervention programs which may be beneficial to the  
31 juvenile.

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

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

39 Sec. 12. K.S.A. 38-1604, ~~38-1616~~, 38-1663, 38-1671, 38-1691, 38-  
40 16,130, 38-16,133 and 76-2111 and K.S.A. 2003 Supp. 21-3811, ~~21-3826~~  
41 38-1611 and 75-7023 are hereby repealed.

42 Sec. 13. This act shall take effect and be in force from and after its  
43 publication in the statute book.

**HOUSE BILL No. 2649**

By Representative Decker

1-29

Proposed amendment  
Representative Decker  
February 17, 2004

House Corr & JJ  
Attachment 5  
2-24-04

AN ACT concerning crimes, punishment and criminal procedure: relating to the unlawful use of controlled substances.

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

Section 1. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to use any controlled substance prohibited in K.S.A. 65-4160 or 65-4162, and amendments thereto.

(b) Except as otherwise provided, any person who violates this section shall be guilty of a class A nonperson misdemeanor. If any person has a prior conviction under this section, a conviction for a substantially similar offense from another jurisdiction or a conviction of a violation of an ordinance of any city or resolution of any county for a substantially similar offense, then such person shall be guilty of a drug severity level 4 felony.

(c) As used in this section, "use" means to inject, ingest, inhale or otherwise introduce into the human body, any controlled substance. Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the person's body or from other circumstantial evidence.

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

Sec. 2. Following arrest for a violation of section 1, K.S.A. 21-3609, 21-3410, 21-3412, ~~65-4160 or 65-4162~~ and amendments thereto, the law enforcement officer shall request a person to submit to a test or tests if the officer has probable cause to believe the person used a controlled substance. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the arrest. Such tests shall comply with the provisions of K.S.A. 8-1001, and amendments thereto. If the person refuses, the person's refusal shall be admissible in evidence against the person at any trial on a charge of section 1, ~~K.S.A. 65-4160 or 65-4162~~ and amendments thereto.

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

**HOUSE BILL No. 2649**

By Representative Decker

1-29

Proposed amendment  
Kansas Highway Patrol  
February 22, 2004

AN ACT concerning crimes, punishment and criminal procedure; relating to the unlawful use of controlled substances.

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

Section 1. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to use any controlled substance prohibited in K.S.A. 65-4160 or 65-4162, and amendments thereto.

(b) Except as otherwise provided, any person who violates this section shall be guilty of a class A nonperson misdemeanor. If any person has a prior conviction under this section, a conviction for a substantially similar offense from another jurisdiction or a conviction of a violation of an ordinance of any city or resolution of any county for a substantially similar offense, then such person shall be guilty of a drug severity level 4 felony.

(c) As used in this section, "use" means to inject, ingest, inhale or otherwise introduce into the human body, any controlled substance. Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the person's body or from other circumstantial evidence.

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

Sec. 2. Following arrest for a violation of ~~Section 1,~~ K.S.A. 21-3609, 21-3410, 21-3412, 65-4160 or 65-4162, and amendments thereto, the law enforcement officer shall request a person to submit to a test or tests if the officer has probable cause to believe the person used a controlled substance. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the arrest. Such tests shall comply with the provisions of K.S.A. 8-1001, and amendments thereto. If the person refuses, the person's refusal shall be admissible in evidence against the person at any trial on a charge of ~~Section 1,~~ K.S.A. 65-4160 or 65-4162, and amendments thereto.

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

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**HOUSE BILL No. 2649**

By Representative Decker

1-29

Proposed amendment  
Jan Satterfield, Butler County Attorney  
February 22, 2004

AN ACT concerning crimes, punishment and criminal procedure; relating to the unlawful use of controlled substances.

; amending K.S.A. 8-1005 and K.S.A. 2003 Supp. 8-1567 and repealing the existing sections

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

Section 1. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to use any controlled substance prohibited in K.S.A. 65-4160 or 65-4162, and amendments thereto.

(b) Except as otherwise provided, any person who violates this section shall be guilty of a class A nonperson misdemeanor. If any person has a prior conviction under this section, a conviction for a substantially similar offense from another jurisdiction or a conviction of a violation of an ordinance of any city or resolution of any county for a substantially similar offense, then such person shall be guilty of a drug severity level 4 felony.

(c) As used in this section, "use" means to inject, ingest, inhale or otherwise introduce into the human body, any controlled substance. Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the person's body or from other circumstantial evidence.

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

Sec. 2. Following arrest for a violation of section 1, K.S.A. 21-3609, 21-3410, 21-3412, 65-4160 or 65-4162, and amendments thereto, the law enforcement officer shall request a person to submit to a test or tests if the officer has probable cause to believe the person used a controlled substance. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the arrest. Such tests shall comply with the provisions of K.S.A. 8-1001, and amendments thereto. If the person refuses, the person's refusal shall be admissible in evidence against the person at any trial on a charge of section 1, K.S.A. 65-4160 or 65-4162, and amendments thereto.

Sec. 4. K.S.A. 8-1005. [see attached]  
Sec. 5. K.S.A. 2003 Supp. 8-1567 [see attached]  
Sec. 6. K.S.A. 8-1005 and K.S.A. 2003 Supp. 8-1567 are hereby repealed.  
Renumbering Sec. 3 as Sec. 7.

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

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Sec. 3. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005. Except as provided by K.S.A. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(a) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol, or both alcohol and drugs.

(b) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that renders the person incapable of driving safely.

(c) If the drug concentration is less than the levels established in subsection (a)(6) or (a)(7) of K.S.A. 8-1567, and amendments thereto, that fact may be considered with other competent evidence to determine if the defendant was under the influence of drugs, or both alcohol and drugs.

(d) If the drug concentration is at or more than the levels established in subsection (a)(6) or (a)(7) of K.S.A. 8-1567, and amendments thereto, it shall be prima facie evidence that the defendant was under the influence of drugs, or both alcohol and drugs to a degree that renders the person incapable of driving safely.

(e) Except as provided in subsection (c) or (d), if there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapable of safely driving a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that renders the defendant incapable of driving safely.

Sec. 4. K.S.A. 2003 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; ~~or~~

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle;

(6) the drug concentration in the person's urine, as measured within two hours of the time of operating or attempting to operate a vehicle, is at or more than the following levels of nanograms per milliliter :

(A) Amphetamine, 500.

(B) Methamphetamine, 500.

(C) MDMA (methylenedioxymethamphetamine), 500.

(D) Cocaine, 150.

(E) Benzoylecgonine (Cocaine metabolite), 150.

(F) Morphine, 5,000.

(G) Codeine, 5,000.

(H) 6-acetylmorphine (Heroin metabolite), 10.

(I) Lysergic acid diethylamide (LSD), 25.

(J) THC (active ingredient MJ), 10.

(K) Carboxy-THC (MJ metabolite), 500.

(L) Phencyclidine (PCP), 25; or

(7) the drug concentration in the person's blood, as measured within two hours of the time of operating or attempting to operate a vehicle, is at or more than the following levels of nanograms per milliliter :

- (A) Amphetamine, 100.
- (B) Methamphetamine, 100.
- (C) MDMA (methylenedioxyamphetamine), 100.
- (D) Cocaine, 50.
- (E) Morphine, 150.
- (F) Codeine, 150.
- (G) 6-actylmorphine (Heroin metabolite), 10.
- (H) Lysergic acid diethylamide (LSD), 10.
- (I) THC (active ingredient MJ), 1 whole blood or 2 serum/plasma.
- (J) Phencyclidine (PCP), 10.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this

subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or

immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(l) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(m) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(o) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of

impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining. (q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(r) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(s) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-4165, and amendments thereto.

(t) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

## Proposed Amendment to H.B. 2815

1. New Section 1 of the bill is deleted.
2. Section 2 of the bill is unchanged. (Increased penalty for the crime of Aggravated Indecent Solicitation of a Child.)
3. Section 3 of the bill is deleted.
4. Section 4 of the bill is deleted.
5. Section 5 of the bill remains unchanged. (Amendment to KSA 22-3303 necessitated by change in law made in Section 2 of the bill; Revisor.)
6. Section 6 of the bill remains, amended only to show the deletions of Section 3 and Section 4.
7. Section 7 of the bill is unchanged.

The remaining bill language is attached.

## HOUSE BILL No. 2815

By Committee on Corrections and Juvenile Justice

2-11

9 AN ACT concerning crimes, punishment and criminal procedure;  
10 amending K.S.A. 21-3511 and K.S.A. 2003 Supp. 21-4603d, 21-4704  
11 and 22-3303 and repealing the existing sections.  
12

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

14 ~~New Section 1. (a) Absconding from parole is intentionally failing to~~  
15 ~~appear for any appointment, meeting, treatment or other lawful commit-~~  
16 ~~ment with an offender's parole officer, or with a person designated by~~  
17 ~~the parole officer, by an offender who has been released from the de-~~  
18 ~~partment of corrections on parole, conditional release or postrelease~~  
19 ~~supervision.~~

20 ~~(b) For the purposes of this section, an appointment, meeting, treat-~~  
21 ~~ment, or other lawful commitment means any date set for a personal~~  
22 ~~appearance by the parole officer communicated orally or in writing to the~~  
23 ~~offender under supervision.~~

24 ~~(c) A parole officer upon a violation of this section, may immediately~~  
25 ~~seek or cause an arrest warrant to be issued pursuant to K.S.A. 75-5217,~~  
26 ~~and amendments thereto.~~

27 ~~(d) Absconding from parole is a severity level 7, nonperson felony if~~  
28 ~~the offender was on release for the conviction of a nonperson felony.~~  
29 ~~Absconding from parole is a severity level 6, person felony if the offender~~  
30 ~~was on release for the conviction of a person felony.~~

31 ~~(e) This section shall be part of and supplemental to the Kansas crim-~~  
32 ~~inal code.~~

33 ~~Sec. 2. K.S.A. 21-3511 is hereby amended to read as follows: 21-~~  
34 ~~3511. Aggravated indecent solicitation of a child is:~~

35 ~~(a) Enticing or soliciting a child under the age of 14 years to commit~~  
36 ~~or to submit to an unlawful sexual act; or~~

37 ~~(b) inviting, persuading or attempting to persuade a child under the~~  
38 ~~age of 14 years to enter any vehicle, building, room or secluded place~~  
39 ~~with intent to commit an unlawful sexual act upon or with the child.~~

40 ~~Aggravated indecent solicitation of a child is a severity level 6 3, person~~  
41 ~~felony.~~

42 ~~Sec. 3. K.S.A. 2003 Supp. 21-4603d is hereby amended to read as~~  
43 ~~follows: 21-4603d. (a) Whenever any person has been found guilty of a~~



1 presumptive nonprison term shall be presumed imprisonment and shall  
 2 be double the maximum duration of the presumptive imprisonment term.  
 3 Except as otherwise provided in this subsection, as used in this subsection,  
 4 "persistent sex offender" means a person who: (1) Has been convicted in  
 5 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and  
 6 amendments thereto; and (2) at the time of the conviction under subsection  
 7 (1) has at least one conviction for a sexually violent crime, as defined  
 8 in K.S.A. 22-3717 and amendments thereto in this state or comparable  
 9 felony under the laws of another state, the federal government or a foreign  
 10 government. The provisions of this subsection shall not apply to any  
 11 person whose current convicted crime is a severity level 1 or 2 felony.

12 (k) If it is shown at sentencing that the offender committed any felony  
 13 violation for the benefit of, at the direction of, or in association with any  
 14 criminal street gang, with the specific intent to promote, further or assist  
 15 in any criminal conduct by gang members, the offender's sentence shall  
 16 be presumed imprisonment. Any decision made by the court regarding  
 17 the imposition of the optional nonprison sentence shall not be considered  
 18 a departure and shall not be subject to appeal. As used in this subsection,  
 19 "criminal street gang" means any organization, association or group of  
 20 three or more persons, whether formal or informal, having as one of its  
 21 primary activities the commission of one or more person felonies or felony  
 22 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,  
 23 and amendments thereto, which has a common name or common identifying  
 24 sign or symbol, whose members, individually or collectively engage  
 25 in or have engaged in the commission, attempted commission, conspiracy  
 26 to commit or solicitation of two or more person felonies or felony viola-  
 27 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and  
 28 amendments thereto, or any substantially similar offense from another  
 29 jurisdiction.

30 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715  
 31 and amendments thereto when such person being sentenced has a prior  
 32 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-  
 33 3716 and amendments thereto shall be presumed imprisonment.

34 (m) *The sentence for a violation of section 1, and amendments thereto,*  
 35 *shall be presumed imprisonment.*

36 Sec. 5. K.S.A. 2003 Supp. 22-3303 is hereby amended to read as  
 37 follows: 22-3303. (1) A defendant who is charged with a felony and is  
 38 found to be incompetent to stand trial shall be committed for evaluation  
 39 and treatment to the state security hospital or any appropriate county or  
 40 private institution. A defendant who is charged with a misdemeanor and  
 41 is found to be incompetent to stand trial shall be committed for evaluation  
 42 and treatment to any appropriate state, county or private institution. Any  
 43 such commitment shall be for a period of not to exceed 90 days. Within

1 90 days after the defendant's commitment to such institution, the chief  
2 medical officer of such institution shall certify to the court whether the  
3 defendant has a substantial probability of attaining competency to stand  
4 trial in the foreseeable future. If such probability does exist, the court  
5 shall order the defendant to remain in an appropriate state, county or  
6 private institution until the defendant attains competency to stand trial  
7 or for a period of six months from the date of the original commitment,  
8 whichever occurs first. If such probability does not exist, the court shall  
9 order the secretary of social and rehabilitation services to commence in-  
10 voluntary commitment proceedings pursuant to article 29 of chapter 59  
11 of the Kansas Statutes Annotated, and any amendments thereto. When a  
12 defendant is charged with any off-grid felony, any nondrug severity level  
13 1 through 3 felony, or a violation of K.S.A. 21-3504, ~~21-3511~~, 21-3518,  
14 21-3603 or 21-3719, and amendments thereto, and commitment pro-  
15 ceedings have commenced, for such proceeding, "mentally ill person sub-  
16 ject to involuntary commitment for care and treatment" means a mentally  
17 ill person, as defined in subsection (e) of K.S.A. 2003 Supp. 59-2946, and  
18 amendments thereto, who is likely to cause harm to self and others, as  
19 defined in subsection (f)(3) of K.S.A. 2003 Supp. 59-2946, and amend-  
20 ments thereto. The other provisions of subsection (f) of K.S.A. 2003 Supp.  
21 59-2946, and amendments thereto, shall not apply.

22 (2) If a defendant who was found to have had a substantial probability  
23 of attaining competency to stand trial, as provided in subsection (1), has  
24 not attained competency to stand trial within six months from the date  
25 of the original commitment, the court shall order the secretary of social  
26 and rehabilitation services to commence involuntary commitment pro-  
27 ceedings pursuant to article 29 of chapter 59 of the Kansas Statutes An-  
28 notated, and any amendments thereto. When a defendant is charged with  
29 any off-grid felony, any nondrug severity level 1 through 3 felony, or a  
30 violation of K.S.A. 21-3504, ~~21-3511~~, 21-3518, 21-3603 or 21-3719, and  
31 amendments thereto, and commitment proceedings have commenced,  
32 for such proceeding, "mentally ill person subject to involuntary commit-  
33 ment for care and treatment" means a mentally ill person, as defined in  
34 subsection (e) of K.S.A. 2003 Supp. 59-2946, and amendments thereto,  
35 who is likely to cause harm to self and others, as defined in subsection  
36 (f)(3) of K.S.A. 2003 Supp. 59-2946, and amendments thereto. The other  
37 provisions of subsection (f) of K.S.A. 2003 Supp. 59-2946, and amend-  
38 ments thereto, shall not apply.

39 (3) When reasonable grounds exist to believe that a defendant who  
40 has been adjudged incompetent to stand trial is competent, the court in  
41 which the criminal case is pending shall conduct a hearing in accordance  
42 with K.S.A. 22-3302 and amendments thereto to determine the person's  
43 present mental condition. Reasonable notice of such hearings shall be

1 given to the prosecuting attorney, the defendant and the defendant's at-  
2 torney of record, if any. If the court, following such hearing, finds the  
3 defendant to be competent, the proceedings pending against the defend-  
4 ant shall be resumed.

5 (4) A defendant committed to a public institution under the provi-  
6 sions of this section who is thereafter sentenced for the crime charged at  
7 the time of commitment may be credited with all or any part of the time  
8 during which the defendant was committed and confined in such public  
9 institution.

10 Sec. 6. K.S.A. 21-3511 and K.S.A. 2003 Supp. 21-4603d, 21-4704 and  
11 22-3303 are hereby repealed.

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