Approved: March 8, 2006
Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on February 15, 2006 in Room 313-S of the Capitol.

All members were present except:
Representative Ann Mah- excused

Committee staff present:
Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:
Representative Melody Miller
Don Jordan, Juvenile Justice Authority
Joshanna Smart, Kansas African American Affairs Commission
Joaquin Sumaya
Ron Pascal, Sedgwick County District Attorney's Office

Others attending:
See attached list

Chairman Edmonds opened the floor for bill introductions and introduced Kevin Graham appearing on behalf of the Attorney General who wished a bill introduced that would create with in the Attorney General's Office the Kansas Crime Stoppers Council.

With no objections this was accepted for introduction.

The Chair opened the public hearing on the **PROPOSED SUBSTITUTE for HB 2724** - Racial disproportionality in the juvenile justice system.

Representative Melody Miller was recognized as testifying in support of the bill. Representative Miller opined that the **PROPOSED SUBSTITUTE for HB 2724** seeks to strengthen the current statute by revisiting the collaborative, community based, community planning process, which, by design, empowers communities to develop community-based programs and to appropriately assign programs and services to prevent juvenile crime. (Attachment 1) Representative Miller also included a copy of the **PROPOSED SUBSTITUTE for HB 2724**. (Attachment 2)

Joaquin Sumaya addressed the committee to introduce written testimony from Elias Garcia, on behalf of the Kansas Hispanic & Latino American Affairs Commission. They support the **PROPOSED SUBSTITUTE for HB 2724** feeling that the bill addresses one of the most disturbing issues in their Latino community, the disproportionate contact between minority juveniles and the juvenile justice system. (Attachment 3)

Don Jordan, Acting Commissioner of the Juvenile Justice Authority, addressed the committee supporting **SUBSTITUTE for HB 2724**. The Juvenile Justice Authority is committed to the effort to reduce disproportionate minority contact in the state of Kansas. They welcome the statutory language changed proposed in the bill feeling that the strengthening language would help support their efforts in addressing disproportionate minority contact (DMC). (Attachment 4)

Next to address **PROPOSED SUBSTITUTE for HB 2724** was Joshanna Smart, Special Assistant Kansas African American Affairs Commission. They strongly support the bill as it is their opinion that one of the most pressing concerns of Kansas minority communities is the disproportionate contact between minority juveniles and the juvenile justice system. (Attachment 5)

There were no other proponents wishing to address the bill and the Chair opened the floor for opponents.

Office of the District Attorney, Wichita Kansas, was represented by Ron Pascal who reported that the District

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 15, 2006 in Room 313-S of the Capitol.

Attorney is in opposition to **SUBSTITUTE for HB 2724.** It is their opinion that this bill will create a system where a committee of whom less then half are law-trained members of the bar would decide the standards for prosecution. By adding this layer of bureaucracy to the prosecution function, it will become more cumbersome. This would mean slower reaction to various criminal activity that is occurring in our respective communities and will drain the resources of the prosecutor away from the prosecution function by requiring responses to inquiry by this committee. (Attachment 6) Mr. Pascal was given a copy of the **PROPOSED SUBSTITUTE for HB 2724** shortly before the pearing and was unable to give an opinion on the substitute language.

With no other person wishing to address the **PROPOSED SUBSTITUTE for HB 2724**, the Chair closed the public hearing.

Following committee discussion and in the absence of a fiscal note, Chairman Edmonds appointed a sub-committee of Representative Siegfreid, Representative Kelsey, Representative Kinzer, Representative Henderson and Representative Miller to further study **SUBSTITUTE for HB 2724** and return with information for the committee by March 15th.

Attention was directed to **HB 2727** - concerning state officers and employees; relating to certain payroll deductions.

*Representative Dillmore made a motion amend **HB 2727** and pass out favorable for passage. Representative Myers seconded the motion. Motion passed.*

Representative Brunk explained the balloon for **SB 62** which would change the language, age requirements and poverty percentage, as well as cap the payment amount.

*Representative Brunk made a motion to amend **SB 62** and pass out favorable for passage. Representative Kinsey seconded the motion. Motion passed.*

The Chairman directed attention to **HB 2615**.

Representative Kinzer made a motion to pass HB 2615 favorable for passage. Representative Merrick seconded the motion. Motion failed.

Chairman Edmonds withdrew **HB 2615** from consideration.

With no further business before the committee, the meeting was adjourned.

FEDERAL AND STATE AFFAIRS
GUEST LIST

Date 2-15-06

Ron Pascha	Deputy DA 18th Jud Dist.
Beth Chronister	Student
Lori Fuqua	Student
Sarah Hammar	Student
Ruth Glover	Ks. Human Rights Com.
[illegible]	KAAAC
LISA CROOK	STUDENT
LIS SOSOURUR	" "
CHRIS UEEH	" "
KARLA BYERS	" "
Taylor Gillespie	" "
Dan Murray	Federico Consulting
Melinda Lewis	El Centro, Inc.
[illegible]	NAACP
[illegible]	NAACP
KEVIN GRAHAM	A.G.
[illegible]	Stuart Little
Tim Babb	WSU Student
Joaquin Jimenez	KHLAAC
Brian D. King	WSU student
[illegible]	Student

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
FEDERAL AND STATE AFFAIRS
GOVERNMENTAL ORGANIZATION AND ELECTIONS
UTILITIES

Testimony
To
House Federal and State Committee Affairs
Proposed Substitute for House Bill # 2724
February 15, 2006

Chairman Edmonds, fellow members of the House Federal and State Committee, thank you for the opportunity to testify in support of Substitute for HOUSE BILL # 2724.

Members of the committee, there may be two questions crossing your mind, first, what is disproportionate minority contact? Simply put, when you have youth of color making up one third (33%) of the U.S. juvenile population while comprising two thirds (66%) of the juvenile detention/ correction population. Second, why do we need a law to address this issue? Please allow me to answer the question with the use of a quote: "For these are all our children. We will profit by, or pay for, whatever they become. (James Baldwin, author)"

is crafted to effectively address and reduce racial, geographic and other biases that exist in our juvenile justice system. Even though juvenile crime has decreased every year for the past decade, racial disparities within the justice system have remained a stubborn constant, creating a powerful incentive for reform. Young people of color are significantly over-represented in the justice system, due to conscious and sub-conscious racial, geographical and other biases. National data shows, judicial districts have been successful in significantly reducing racial disparities in their juvenile justice systems by incorporating these strategies: (1) Analyze data by race and ethnicity to detect disparate treatment; (2) Use objective screening instruments to eliminate subjectivity from decision-making; (3) Coordinate with police to better control who comes in the door of the juvenile justice system; (4) Increase the awareness of program providers to recognize the significance of developing culturally competent programming; and (5) Employ mechanisms to divert youth of color from secure detention. Substitute for HOUSE BILL # 2724 follows in suit with the successful strategies aforementioned.

More specifically, Substitute for HOUSE BILL # 2724 seeks to strengthen the current statute by revisiting the collaborative, community based, community planning process, which, by design, empowers communities to develop community-based programs and to appropriately assign programs and services to prevent juvenile crime. What is important to remember when

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considering the Substitute for HOUSE BILL # 2724 are the concepts of community and community planning. If the intent is to truly reduce the disparities that exist, the strategies must involve the participation of each of the stakeholders across the continuum that touch the youths and their families.

I respectfully ask the support of the committee regarding the Substitute for HOUSE BILL # 2724.

Rep. Melody C. Miller

PROPOSED Substitute for HOUSE BILL NO. 2724

By

AN ACT concerning juveniles; relating to the reduction of racial, geographic and other biases in the juvenile justice system; amending K.S.A. 75-7038, 75-7043, 75-7046 and 75-7048 and K.S.A. 2005 Supp. 75-7007, 75-7033 and 75-7056 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 75-7007 is hereby amended to read as follows: 75-7007. (a) There is hereby established the Kansas advisory group on juvenile justice and delinquency prevention, for the purposes of the federal juvenile justice and delinquency prevention act of 1974, as amended.

(b) The membership of the Kansas advisory group on juvenile justice and delinquency prevention shall be composed of members appointed by the governor. The governor shall appoint at least 20 but not more than 33 members to the advisory group. The members shall serve at the pleasure of the governor. One-third of the members shall be appointed to four-year terms; one-third of the members shall be appointed to three-year terms; and one-third of the members shall be appointed to two-year terms. Thereafter, all members shall serve four-year terms.

(c) The chairperson and vice-chairperson of the advisory group shall be appointed by the governor.

(d) Each member of the advisory group shall receive compensation, subsistence allowances, mileage and other expenses as provided for in K.S.A. 75-3223, and amendments thereto.

(e) The advisory group shall participate in the development and review of the juvenile justice plan, review and comment on all juvenile justice and delinquency prevention grant applications, and

shall make recommendations regarding the grant applications.

(f) The advisory group shall receive reports from local citizen review boards established pursuant to K.S.A. 38-1812, and amendments thereto, regarding the status of juvenile offenders under the supervision of the district courts.

(g) The advisory group shall examine the effectiveness of juvenile justice programs in reducing racial, geographic and other biases that may exist in the juvenile justice system and report to the commissioner of juvenile justice annually on which programs are effective in reducing such biases in areas such as prevention, alternatives to detention, intake and assessment procedures and alternative to incarceration.

Sec. 2. K.S.A. 2005 Supp. 75-7033 is hereby amended to read as follows: 75-7033. ~~On and after July 1, 1997:~~

(a) In order to provide technical assistance to communities, help facilitate community collaboration and assist in coordinating a statewide system of community based service providers, pursuant to K.S.A. 75-7024, and amendments thereto, the commissioner of juvenile justice shall appoint a community planning team convener and a community planning team facilitator in each judicial district. The commissioner may appoint a convener and facilitator for a multiple district planning team, if, in the commissioner's opinion, such multiple district planning team best furthers the purposes of the juvenile justice reform act. The convener and facilitator may be compensated by the grant funds. Upon request of the board of county commissioners of any county, the commissioner of juvenile justice may authorize such county to cooperate as a member of a community planning team in a judicial district other than the judicial district in which such county is located. If the corporate limits of a city extend into more than one judicial district and upon request of the board

of county commissioners of any county in which such city is located, the commissioner of juvenile justice may authorize such city to participate as a member of a community planning team of and be included in the plan for the judicial district in which the majority of the population of such city is located.

(b) The community planning team convener shall invite representatives from the following groups and agencies to be a part of the community planning team: The courts, court services, public education, juvenile community correctional services, the county or district attorney, the public defender's office or private defense counsel, law enforcement, juvenile detention, prevention services, health care professionals, mental health services, juvenile intake and assessment, municipal officials, county officials, private service providers, the department of social and rehabilitation services, the business community, the religious community, youth and such other representatives as the convener and commissioner deem necessary. The community planning team convener may invite the entire membership of the corrections advisory board, as established in K.S.A. 75-5297, and amendments thereto, and the juvenile corrections advisory board, as established by K.S.A. 75-7044, and amendments thereto, to be a part of the community planning team.

(c) The commissioner, or the commissioner's designee shall serve as an ex officio member of each community planning team.

(d) All proceedings of the community planning team and any committee or subcommittee of the team shall be open to the public in accordance with and subject to the provisions of K.S.A. 75-4317 to 75-4320, inclusive, and amendments thereto. The records of the community planning team shall be open to public inspection at all reasonable times.

(e) ~~Between July 1, 1997, and June 30, 1999,~~ The community planning team shall engage

in strategic planning to develop programs, services and placement options as are necessary and appropriate for each judicial district's juvenile justice program consistent with planning guidelines developed by the commissioner. The commissioner shall design the planning process to empower communities to develop community-based programs, services and placements sufficient to address juvenile crime and to appropriately provide programs and services to prevent juvenile crime. The commissioner shall develop an action plan to guide implementation of community planning. The action plan shall establish a schedule for the planning process and shall clearly state desired outcomes of the planning process. Before implementation of the community planning process, the commissioner shall submit the proposed action plan to the ~~joint committee on corrections and~~ Kansas commission on juvenile justice ~~oversight~~ for review. The commissioner shall also provide such ~~committee~~ commission with regular progress reports on the status of the planning process. The primary purposes of the community planning process shall be to:

(1) Foster collaboration among stakeholders in the juvenile justice system;

(2) accurately assess community risk factors affecting juveniles;

(3) determine community priorities to respond to juvenile crime and the risk factors affecting juveniles;

(4) develop programs, services and placements, with sufficient capacity, to appropriately hold juvenile offenders in the community accountable for behavior which violates the law;

(5) provide communities with assistance in developing juvenile justice programs which respond to community needs and priorities and which are capable of achieving desired outcomes, and in identifying resources necessary to provide such programs;

(6) encourage the staffing of juvenile justice programs with appropriately trained personnel;

and

(7) provide communities with technical assistance, as needed, to achieve desired planning outcomes; and

(8) examine the effectiveness of juvenile justice programs in reducing racial, geographic and other biases.

(f) Each judicial district shall implement programs to reduce racial, geographic and other biases. Each district shall also submit an annual report to the judicial administrator regarding the implementation of these programs according to the commissioner's requirements. The judicial administrator shall, in consultation with the commissioner, compile this information into a single annual report to be submitted to the commissioner by August 1 annually. The Kansas bureau of investigation shall cooperate with the commissioner to produce a report by August 1 annually a report showing by jurisdiction and race, the number of juvenile arrests, prosecutions, diversions and declinations to prosecute reported to the bureau for the period July 1 through June 30 of the preceding year.

(g) The commissioner shall investigate the effectiveness of programs implemented to reduce racial, geographic and other biases in judicial districts with high levels of disproportionality. The commissioner's analysis shall indicate which programs are cost effective in racial, geographic and other biases in areas such as alternatives to detention, intake and assessment procedures, alternatives to incarceration and the prosecution and adjudication of juveniles. The commissioner shall provide a report of this analysis to the joint committee on corrections and juvenile justice by June 1 annually.

~~(f)~~ (h) The commissioner shall provide training and expertise for communities during the strategic planning process of the community planning team.

~~(g)~~ (i) On July 1, 1999, each judicial district, multiple judicial district or judicial districts and cities and counties cooperating pursuant to subsection (a) shall have developed and be prepared to implement a juvenile justice program. On or before June 30, 1999, such program shall be accredited by the commissioner pursuant to rules and regulations adopted by the commissioner.

~~(h)~~ (j) Each juvenile justice program shall include, but not be limited to, local prevention services, juvenile intake and assessment, juvenile detention and attendant care, immediate intervention programs, aftercare services, graduated sanctions programs, probation programs, conditional release programs, sanctions for violations of probation terms or programs, sanctions for violations of conditional release programs and out-of-home placements.

~~(i)~~ (k) Each juvenile justice program shall demonstrate that in the judicial district is a continuum of community based placement options with sufficient capacity to accommodate community needs.

~~(j)~~ (l) Each juvenile justice program shall participate in the juvenile justice information system, intake and assessment system and the utilization of a standardized risk assessment data.

~~(k)~~ (m) (1) There is hereby created in the state treasury a juvenile justice community planning fund. Money credited to the fund shall be used solely for the purpose of making grants to community planning teams, as established in this section, to assist with the community planning process of determining juvenile justice programs for the judicial district.

(2) All expenditures from the juvenile justice community planning fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of juvenile justice or by a person or persons designated by the commissioner.

(3) The commissioner of juvenile justice may apply for, receive and accept money from any source for the purposes for which money in the juvenile justice community planning fund may be expended. Upon receipt of any such money, the commissioner shall remit the entire amount to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the juvenile justice community planning fund.

(4) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the juvenile justice community planning fund interest earnings based on:

(A) The average daily balance of moneys in the juvenile justice community planning fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

~~(l)~~ (n) (1) There is hereby created in the state treasury a juvenile justice community initiative fund. Money credited to the fund shall be used solely for the purpose of making grants to communities to assist in supporting field services, case management services and juvenile justice programs, services and placements in the judicial district.

(2) All expenditures from the juvenile justice community initiative fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of juvenile justice or by a person or persons designated by the commissioner.

(3) The commissioner of juvenile justice may apply for, receive and accept money from any source for the purposes for which money in the juvenile justice community initiative fund may be

expended. Upon receipt of any such money, the commissioner shall remit the entire amount to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the juvenile justice community initiative fund.

(4) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the juvenile justice community initiative fund interest earnings based on:

(A) The average daily balance of moneys in the juvenile justice community initiative fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(5) The commissioner may:

(A) Refer plans back to provider in the judicial district for further study;

(B) provide technical assistance to program providers to assure that biases are addressed; or

(C) withhold the funding of a juvenile justice program if, in the commissioner's determination, the program has not implemented effective programs to reduce racial, geographic and other biases.

Sec. 3. K.S.A. 75-7038 is hereby amended to read as follows: 75-7038. ~~On and after July 1, 1997,~~ The commissioner of juvenile justice may make grants from the juvenile justice community initiative fund, created in K.S.A75-7033, and amendments thereto, to counties for the development, implementation, operation and improvement of juvenile community correctional services including, but not limited to, restitution programs, victim services programs, balanced and restorative justice

programs, preventive or diversionary correctional programs, programs to reduce racial, geographic and other biases that may exist in the juvenile justice system, and community juvenile corrections centers and facilities for the detention or confinement, care or treatment of juveniles being detained or adjudged to be a juvenile offender.

Sec. 4. K.S.A. 75-7043 is hereby amended to read as follows: 75-7043. ~~On and after July 1, 1997:~~

(a) Except as provided in K.S.A. 75-7040, and amendments thereto, no county shall be qualified to receive grants under K.S.A. 75-7038 through 75-7053, and amendments thereto, unless and until the comprehensive plan for such county, or the group of counties with which such county is cooperating, is approved by the commissioner of juvenile justice.

(b) The commissioner of juvenile justice shall adopt rules and regulations establishing additional requirements for receipt of grants under K.S.A. 75-7038 through 75-7053, and amendments thereto, standards for the operation of the correctional services described in K.S.A. 75-7038, and amendments thereto, and standards for performance evaluation of the correctional services described in K.S.A. 75-7038, and amendments thereto. In order to remain eligible for grants the county or group of cooperating counties shall substantially comply with the operating standards established by the commissioner of juvenile justice.

(c) The commissioner of juvenile justice shall review annually the comprehensive plans submitted by a county or group of cooperating counties and the facilities and programs operated under such plans. The commissioner of juvenile justice is authorized to examine books, records, facilities and programs for purposes of recommending needed changes or improvements.

(d) In reviewing the comprehensive plan or any annual recommendations or revisions

thereto, the commissioner of juvenile justice shall limit the scope of the review of the juvenile corrections advisory board's statement of priorities, needs, budget, policies and procedures, to the determination that such statement does not directly conflict with rules and regulations and operating standards adopted pursuant to subsection (b) and K.S.A. 75-7038 through 75-7053, and amendments thereto, and includes provisions to implement programs designed to reduce racial, geographic and other biases that may exist in the juvenile justice system.

(e) When the commissioner of juvenile justice determines that there are reasonable grounds to believe that a county or group of cooperating counties is not in substantial compliance with the minimum operating standards adopted pursuant to this section, at least 30 days' notice shall be given the county or to each county in the group of cooperating counties and a hearing shall be held in accordance with the provisions of the Kansas administrative procedure act to ascertain whether there is substantial compliance or satisfactory progress being made toward compliance. If the commissioner of juvenile justice determines at such hearing that there is not substantial compliance or satisfactory progress being made toward compliance, the commissioner of juvenile justice may suspend all or a portion of any grant under K.S.A. 75-7038 through 75-7053, and amendments thereto, until the required standards of operation have been met.

Sec. 5. K.S.A. 75-7046 is hereby amended to read as follows: 75-7046. ~~On and after July 1, 1997,~~ Juvenile corrections advisory boards established under the provisions of K.S.A. 75-7038 through 75-7053, and amendments thereto, shall actively participate in the formulation of the comprehensive plan for the development, implementation and operation of the juvenile correctional services described in K.S.A. 75-7038, and amendments thereto, in the county or group of cooperating counties, and shall make a formal recommendation to the board or boards of county commissioners

at least annually concerning the comprehensive plan and its implementation and operation during the ensuing year. The formal recommendation concerning the comprehensive plan shall include provisions to address racial, geographic and other biases that may exist in the juvenile justice system.

Sec. 6. K.S.A. 75-7048 is hereby amended to read as follows: 75-7048. ~~and after July 1, 1997.~~

(a) The comprehensive plan submitted to the commissioner of juvenile justice for approval shall include those items prescribed by rules and regulations adopted by the commissioner, which may require the inclusion of the following:

(1) A program for the detention, supervision and treatment of persons under pretrial detention or under commitment;

(2) delivery of other correctional services defined in K.S.A. 75-7038, and amendments thereto; and

(3) proposals for new facilities, programs and services, which proposals must include a statement of the need, purposes and objectives of the proposal and the administrative structure, staffing pattern, staff training, financing, degree of community involvement and client participation which are planned for the proposal.

(b) The comprehensive plan submitted to the commissioner of juvenile justice for approval shall also include provisions for implementation of programs to reduce racial, geographic and other biases that may exist in the juvenile justice system.

(c) In addition to the foregoing requirements made by this section, each county or group of counties shall be required to develop and implement a procedure for the review by the juvenile corrections advisory board and the board or boards of county commissioners of new program

applications and other matters proposed to be included under the comprehensive plan and for the manner in which juvenile corrections advisory board action shall be taken thereon. A description of this procedure shall be made available to members of the public upon request.

Sec. 7. K.S.A. 2005 Supp. 75-7056 is hereby amended to read as follows: 75-7056. (a) In order to establish a mechanism for community prevention and graduated sanctions service providers to participate in the juvenile justice authority annual budget planning process, the commissioner of the juvenile justice authority shall establish a community advisory committee to identify new or enhanced community graduated sanctions and prevention programs.

(b) Such advisory committee shall consist of 10 members. The commissioner shall appoint eight members from the four geographical regions of the state as described in this subsection with one member from each region representing prevention programs and one member representing graduated sanctions programs. The four regions shall correspond to the southeast community corrections association region, the northeast community corrections association region, the central community corrections association region and the western community corrections association region. The commissioner shall appoint two community corrections association members from the state at large. The committee shall reflect the diversity of juvenile offender community services with respect to geographical location and average daily population of offenders under supervision.

(c) Each member shall be appointed for a term of three years, except that the terms of the initial appointments shall be staggered as determined by the commissioner. Each member shall continue in such capacity until a successor is appointed. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term.

(d) (1) The committee, in cooperation with the ~~deputy~~ commissioner ~~of contracts and~~

~~community programs~~ or the commissioner's designee, shall routinely examine and report to the commissioner on the following issues: (A) Efficiencies in the delivery of community supervision services including prevention and graduated sanction programs;

(B) effectiveness and enhancement of existing prevention and interventions and graduated sanctions; ~~and~~

(C) identification of new interventions; and

(D) effectiveness of juvenile justice prevention, intervention and graduated sanctions programs in reducing racial, geographic and other biases that may exist in the juvenile justice system.

(2) Such report shall address measurable goals and objectives, projected costs, the impact on public safety and the valuation process.

(e) The advisory committee shall submit its report to the commissioner annually on or before July 15 in order for the enhanced or new interventions to be considered for inclusion within the juvenile justice authority's budget request for local and community services or in the juvenile justice authority's enhanced services budget request for the subsequent fiscal year.

Sec. 8. K.S.A. 75-7038, 75-7043, 75-7046 and 75-7048 and K.S.A. 2005 Supp. 75-7007, 75-7033 and 75-7056 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

House Federal and State Affairs Committee

Testimony HB 2724

Elias L. Garcia, Exec. Director
Kansas Hispanic & Latino American Affairs Commission (KHLAAC)

Chairman Edmonds and Members of the Committee, I appreciate this opportunity to testify before you today on behalf of the Kansas Hispanic & Latino American Affairs Commission (KHLAAC) in support of HB 2724, a bill that addresses one of the most disturbing issues in our Latino community, the disproportionate contact between minority juveniles and the juvenile justice system.

First let me explain to you what I mean by "disproportionate minority contact". This is when Latino and other minority youth come into contact with the juvenile justice system at a higher rate than their mainstream main-stream Caucasian counterparts. Disproportionate minority contact is not unique to our Kansas communities. Unfortunately, disproportionate minority contact is an issue that is prevalent at our local, state and national levels.

In researching and reviewing the national statistics, they clearly demonstrate that there has been a significant increase in the disproportionate contact between juvenile minorities and the juvenile justice system compared to their main-stream Caucasian counterparts over the years. Between 1979 and 1995 Hispanic youth went from representing 9% of all youth in juvenile facilities, to representing 17%. This is more than twice the total percentage of Hispanic youth in the general population. African American youth went from representing 28% of all youth in juvenile facilities, to representing 40%, while making up a constant 15% of the general juvenile population. Between 1987 and 1996 delinquency cases involving detention increased 71% for African American youth. The 18% increase for Caucasian youth during the same time period is strikingly lower.

In a sample review of statistics from larger Kansas counties, one can see that they also demonstrate significant increases in disproportionate contact between minority youth and the juvenile justice system. For example, in Sedgwick County the percentage of Hispanic youth admitted to juvenile correctional facilities increased from 13% to 26% between 2004 and 2005. This is based on the percentage of youth at risk within the population which is between ages 10 and 17.

In Riley County 6,104 youth were considered at risk between 2003 and 2004. Out of the 6,104 youth, 5,222 were Caucasian, 474 African American, 254 Hispanic or Latino, 125 Asian, and 11 Native Hawaiian or other Pacific Islander. During this time period less than 6% of the Caucasian youth were arrested while nearly 15% of the African American youth population, 9% of the Asian youth population, and 7% of the Hispanic youth population were arrested. 9% of the Asian youth population in Riley County Kansas was arrested while making up only 2.5% of the total at risk youth population.

In 2002, congress reauthorized The Federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA). This act provides federal dollars to states under JJDPA Title II funds, and Title V grant funds. However, if Kansas is to receive these funds, we must comply with the four core protections of the Federal Juvenile Justice and Delinquency Prevention Act. One of these core protections is addressing statewide disproportionate minority contact.

Under JJDPA, Kansas is required to address juvenile delinquency prevention and system improvement efforts designed to reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system. Not only must we assess the representation of minority youth in the juvenile justice system we must develop strategies to address the disparity where the disparity exists.

Per JJDPA, Kansas has established a State Advisory Group to administer the program. The next step is to ensure that the 31 districts throughout the State are consistently gathering the required data and tackling the issue of disproportionate minority contact. This initiative requires statewide support and implementation in order to effectively address this issue.

Ladies and gentlemen of this committee, we must act now and take all requisite actions to ensure that our youth are given every opportunity to succeed in life and given the opportunity to turn their lives around when they come into contact with the juvenile justice system. Their interactions with the JJA should not be the end of their productive lives, it should be a reality check that affords them a new beginning. We encourage your support of HB 2724.

Juvenile Justice Authority

House Federal and State Affairs
Testimony for Disproportionate Minority Contact
February 15, 2006

Don Jordan
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Heather Morgan
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FEDERAL AND STATE AFFAIRS
Date 2-15-06
Attachment 4

The Juvenile Justice Authority is committed to the effort to reduce disproportionate minority contact (DMC) in the state of Kansas. Disproportionate minority contact is a critical area of concern within the criminal justice system. Reducing DMC is one of the four core requirements mandated by the federal Office of Juvenile Justice Delinquency and Prevention (OJJDP). OJJDP provides formula grants to states for improvement of the juvenile justice system. To be eligible for these grants, states must have a plan in place to reduce DMC.

Kansas currently is in the 2nd year of a 3-year federal grant to examine the issue of DMC in three pilot sites. These sites were selected to ensure geographic and population differences were taken into account during the study. These districts are diverse and selected for their ability to yield sets of data that would reflect the state. The pilot programs are located in the 18th Judicial District (Sedgwick County), 25th Judicial District (Greeley, Wichita, Scott, Kearney, Hamilton, and Finney Counties), and the 21st Judicial District (Riley and Clay Counties). Using criteria set by the OJJDP, the pilot sites have located where minority overrepresentation is taking place in the system.

The Juvenile Justice Authority's Kansas Advisory Group on Juvenile Justice (KAG) also has a sub-committee, which continually examines the effectiveness of juvenile justice programs in reducing racial, geographic, and other biases that may exist in the juvenile justice system. This group reports annually to the Commissioner which programs are effective in reducing disproportionality. These programs are then examined to determine "best practices" in reducing DMC in Kansas.

The Juvenile Justice Authority is also examining the community planning process and identifying additional criteria, which will be required of communities when their

comprehensive plans are submitted. DMC information will be a new requirement for updated community plans. The comprehensive plan submitted to the Commissioner of juvenile justice will also be required to address the provisions of programs within the community aimed at reducing biases. We welcome the statutory language changes proposed in House Substitute for HB 2724. The strengthened language would help support our efforts to address DMC.

JJA is committed to addressing DMC to determine where it may exist and to developing programs to reduce any biases found within the system. We fully support the concept of reducing racial disproportionality and will continue to work to ensure all youth within the juvenile justice system are treated with fairness and respect.

State of Kansas
House Committee on Federal and State Affairs
Testimony in Support of House Bill 2724
Joshanna L. Smart, Special Assistant
Kansas African American Affairs Commission
February 15, 2006

Chairman Edmonds and Members of the Committee, I appreciate this opportunity to appear before you to offer views on behalf of the Kansas African American Affairs Commission regarding House Bill 2724 . The Kansas African American Affairs Commission strongly supports House Bill 2724.

Members of the African American Affairs Commission represent African American communities from all corners of the state. We have the responsibility for addressing many issues in the African American community. Today we are addressing an issue that affects all minorities in Kansas. One of the most pressing concerns of Kansas minority communities is the disproportionate contact between minority juveniles and the juvenile justice system.

Disproportionate minority contact takes place when minority youth come into contact with the juvenile justice system at a higher rate than their Caucasian counterparts. Disproportionate minority contact is both a statewide and nationwide issue. The national statistics presented to our office by JJA clearly show the disproportionate contact between juvenile minorities and the juvenile justice system compared to their Caucasian counterparts. Between 1979 and 1995 African American youth went from representing 28% of all youth in juvenile facilities, to representing 40%, while making up a constant 15% of the general juvenile population. During the same time period Hispanic youth went from representing 9% of all youth in juvenile facilities, to representing 17%. This is more than twice the total percentage of Hispanic youth in the general population. Between 1987 and 1996 delinquency cases involving detention increased 71% for African American youth. The 18% increase for Caucasian youth during the same time period is strikingly lower.

As far as Kansas statistics are concerned, in Sedgwick County the percentage of Hispanic youth admitted to juvenile correctional facilities increased from 13% to 26% between 2004 and 2005. This is based on the percentage of youth at risk within the population which is between ages 10 and 17. Between 2003 and 2004 50% of African American youth in Sedgwick County were admitted to juvenile correctional facilities while making up 12% of the population. In Riley County 6,104 youth were considered at risk between 2003 and 2004. Out of the 6,104 youth, 5,222 were Caucasian, 474 African American, 254 Hispanic or Latino, 125 Asian, and 11 Native Hawaiian or other Pacific Islander. During this time period less than 6% of the Caucasian youth were arrested while nearly 15% of the African American youth population, 9% of the Asian youth population, and 7% of the Hispanic youth population were arrested. 9% of the Asian youth population in Riley County Kansas was arrested while making up only 2.5% of the total at risk youth population.

The Federal Juvenile Justice and Delinquency Prevention Act of 1974 was reauthorized in 2002. In order to be eligible to receive JJDPA Title II funds, and Title V grant funds, Kansas must comply with the four core protections of the Federal Juvenile Justice and Delinquency Prevention Act. One of the four core protections is addressing statewide disproportionate minority contact. Kansas is required to address juvenile delinquency prevention and system improvement efforts designed to reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system. Not only must we assess the representation of minority youth in the juvenile justice system we must develop strategies to address the disparity where the disparity exists. As required by JJDPA, Kansas established a State Advisory Group to administer the program. The next step is to ensure that the 31 districts throughout the State are consistently gathering the required data and tackling the issue of disproportionate minority contact. This has to be a statewide initiative in order to truly address this issue.

I am pleased to report that our previous meetings with JJA leadership have established that we are on the same page when it comes to Kansas youth. In fact, many African American community leaders share the JJA Vision of "a safer Kansas through reduction of juvenile crime." We also share the vision of a system that adjudicates in a fair and nonbiased way across the state of Kansas.

Thank you again for the opportunity to support HB 2724.

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

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

February 15, 2005

Opposition Testimony
House Bill 2724
Ron W. Paschal, Deputy District Attorney on behalf of
Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District

Dear Chairman and Members of the Committee:

The Office of the District Attorney for the Eighteenth Judicial District provides the following testimony in opposition to House Bill 2724.

New Section 1 states as follows:

> (a) There is hereby established the Kansas commission on juvenile justice.
> (b) Subject to appropriations therefor, the commission shall:
> (1) Develop standards and criteria to be considered in the **adjudication of juvenile cases**; including arrest, **prosecution, detention,** release and probation of juveniles in the state. The standards and criteria shall apply when making decisions regarding juvenile intake and assessment, **juvenile detention,** and attendant care, immediate intervention programs, aftercare services graduated sanction, probation, conditional release, **sanctions for violations of probation, terms or program, sanctions for violations of conditional release programs or out of home placement. The standard shall be based on fairness and equity and shall provide a mechanism for linking justice with efforts to educate, rehabilitate and redirect juveniles. The standards shall establish rational and consistent criteria which reduce disparities in the adjudication of juveniles, including but not limited to racial and regional biases which may exist.** (*emphasis added*).

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There is no mention in this bill that the intent of this law should be carried out and balanced against the public safety interests of the community. Moreover, this bill as written has the effect of redefining legal terms of art that have been well established in our system of jurisprudence and codified in the existing statutes. For example the bill seeks to "develop standards and criteria" to be considered in the "adjudication" of juvenile cases stating further that these standards shall be based on fairness and equity with criteria which reduce disparities in the adjudication of juveniles specifically as it relates to race and region. This mandate ignores the fact the term "adjudication" has an assigned legal meaning set forth in case law and specifically in statute located at K.S.A. 38-1654 which states the burden of proof at adjudication shall be "proof beyond a reasonable doubt" and K.S.A. 38-1655 states: "If the court finds that the respondent committed the offense charged ... the court shall adjudicate the respondent to be a juvenile offender." We shouldn't be altering the standards developed by experts and many years of jurisprudence, we should be expanding services for youth most likely to come into contact with the system.

The bill indicates these standards shall apply to the detention process as well with the apparent intent that these new standards will somehow ensure racial neutrality in the detention process. State law already spells out detention factors the court must adhere to in determining whether to detain a juvenile offender. They are located at K.S.A. 38-1624(d), K.S.A. 38-1632(e) & (f) and K.S.A.38-1640. (Ex. A-copies attached). All factors currently set forth in state law are race neutral. The Eighteenth Judicial District has in existence a grant funded program designed to ensure that minorities have vigorous representation at detention hearings and have at their disposal programs tailored to provide pretrial alternatives to detention for minorities. The program is known as Detention Advocacy Service and is a contracted service provided by Kansas Legal Services. Dr. Delores Craig, in her annual report stated: "This program is a solid resource in the effort to address disproportionate minority contact." During the last fiscal year this particular program as well as other graduated sanction/intervention programs faced the reality of being extinguished due to drastic shortfalls in the availability of grant money. *This office aggressively went to bat and launched an effort to procure funding for DAS which was ultimately successful.* (Ex. B-copies of correspondence attached.) Unfortunately, the legislature was unable to assist us in procuring funds to secure the future of these programs due to the many other state-wide budget issues if faced, however stakeholders were able to successfully secure a promise for funding from the Board of County Commissioners such that continued funding would flow to these key programs.

The bill also states the new standards and criteria shall apply when making decisions about the violation of probation. If the language in this bill is not succinctly drafted in this regard, the state could end up with a different set of applied standards for different juveniles at probation violation hearings.

Subparagraph 6 of the bill states the commission shall:

Develop prosecutorial standards and criteria to govern the conduct of prosecutors when charging juveniles with crimes and when considering diversion, probation, restitution or other related resolutions to juvenile cases;

This provision suggests that prosecutors as a whole throughout the state are incapable of making the decisions and exercising the judgment with which the voting public has entrusted them. As district attorney, you are elected to enforce the laws of the state in your jurisdiction. You conduct your business in a very public forum subject to the scrutiny of the community you serve.

As a practical matter, I do not know where the commission could find members to "establish standards and criteria to govern the conduct of prosecutors..." who are more experienced than those already serving in the capacity of prosecutor in their respective jurisdiction. In the Eighteenth Judicial District, the two charging attorneys in the juvenile division have a combined total of approximately 36 years of experience and have tried every type of case from misdemeanor battery to first degree murder.

Several sets of standards are already in existence which provides guidance to the prosecution function. For example, the American Bar Association Standards on the Prosecution Function, The National Prosecution Standards (second addition) as adopted by the National District Attorneys Association, and the Kansas Rules of Professional Conduct. The Office of the District Attorney for the Eighteenth Judicial District, like many other District/County Attorneys, has its own exhaustive set of standards developed specifically for the office. It should be noted that this office adheres to all the aforementioned standards.

ABA standards 3-2.1 and 3-2.2 clearly state the prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional discipline. And, local authority and responsibility for prosecution is properly vested in a district, county, or city attorney. ABA standard 3-3.1 states a prosecutor should not invidiously discriminate against or in favor of any person on the basis of race, religion, sex, sexual preference or ethnicity in exercising discretion to investigate or prosecute. Clearly, the standards to which the ABA prescribes already require race neutral prosecution.

National Prosecution Standard 42.1 states the decision to initiate or pursue criminal charges should be within the discretion of the prosecutor. National Prosecution Standard 42.2 states the prosecutor should establish, maintain, and follow guidelines in the exercise of the discretion in screening criminal charges.

The Kansas Rules of Professional Conduct 3.8 pertains to the functions of a prosecutor and makes it unethical for a prosecutor to go forward on charges where the charges are not supported by probable cause. This is consistent with ABA rule 3-3.9.

New Section 2 of the bill calls for the creation of a commission consisting of 17 members, and specifically designates the panel shall consist of one public defender, one

private defense counsel and one county or district attorney. The make up of the 17 member commission whose charge it is to develop prosecutorial standards will only consist of one prosecutor, while having the input of two defense attorneys on a topic that is clearly within the purview of the prosecutor whose sworn obligation is to uphold the law and protect the safety of the community. The conflict created by this mandate should be obvious. The process in which juvenile justice is administered and determined in a court of law is adversarial and as such, entities that typically represent one party in the process should not have the ability to manipulate the other.

Lastly, section 6 (b) calls for the inclusion of the public defenders office in the community planning team. This bill fails to recognize that the public defender is a state agency that in the Eighteenth Judicial District does not practice in juvenile court and therefore has no expertise or experience in this area of law.

Much of the work contemplated to be performed by the community planning team as set forth is Section 6 (e) (1through 6) of the bill is duplicitous of the work presently being performed by Team Justice in Sedgwick County. Team Justice is the official entity that serves as an advisory board to the Board of County Commissioners on issues pertaining to Juvenile Justice. It goes without saying that funding will be an issue in this endeavor. Available funds from JJA and the federal government for intervention/graduated sanctions programs and prevention has been steadily declining the past several years.

This bill is an attempt to address disproportionate minority contact within the juvenile justice system. The effort is misplaced. It is more akin to amputating the arm, when it is the leg that is injured. We are addressing the issue at the wrong place. By manipulating the process after the juvenile has come into contact with law enforcement and charged with an offense, we are being intellectually dishonest. The efforts exerted on this important issue can be better addressed at the prevention level *before* youth come into contact with law enforcement and the court system. Our efforts should be focused on mentoring programs for children from single parent families, education and community activities designed to reduce the possibility of criminal conduct from disadvantaged youth and by exploring why it is minorities come into contact with law enforcement at a disproportionate rate.

On September 10, 2005, I attended a seminar, **Equal Justice For Our Youth: Partnering for Their Success,** sponsored by the DMC Northeast Community Advisory Group and Sedgwick County. One of the presenters quoted the following statistics: Twenty – six percent of African American youth are arrested while nine percent of Caucasian youth are arrested. An African American youth is 3.6 times more likely to be arrested than is a Caucasian youth and 1.7 times more likely to be admitted to secure detention pending case resolution. An African American youth is *.73 times less likely to be charged with an offense.*

These statistics show disproportionate minority contact with law enforcement; however, this occurs prior to a case ever being presented to the district attorney for formal charging. Accordingly, the appropriate place to address the disproportionality is certainly

prior to the charging decision and arguably prior to the decision to arrest. This can best be done by investing time and money into the *prevention of juvenile delinquency.* Our efforts should be focused as a *community* in areas designed to ensure *at-risk youth* are attending school, receiving appropriate tutoring, provided appropriate adult guidance (such as through mentoring programs) and provided community activities that occupy the spare time of at - risk youth.

By focusing on disproportionate minority contact *after* youth have come into contact with law enforcement and the judicial system, we are not *addressing* the issue; we are *masking* it. This is a disservice to our youth and to our community as a whole.

If this bill becomes law, we will have prosecution by committee, specifically as it relates to the charging function. This would be contrary to the applicable standards and rules which already govern the prosecution function and which recognize the need for independence in the prosecution function. Moreover, the courts have rejected the notion that they supervise the prosecution function. In ***United States v. Redondo, 955F.2nd1296(9th Cir.1992)*** the California appellate court addressed the issue of prosecutorial discretion in charging and plea negotiation. The defendant claimed he was the victim of gender bias where female defendants who were charged as "mules" in drug cases seemed to get a "better deal" from the US Attorney. The court stated that prosecutorial charging and plea bargaining decisions are particularly ill suited for broad judicial oversight. It commented that such decisions are normally made as a result of careful professional judgment as to the strength of the evidence, the availability of resources, the visibility of the crime and the likely deterrent effect on the particular defendant and others similarly situated. If the court were to involve itself in this process, it would have to consider the validity of various rationales advanced for particular charging decisions, which would enmesh it deeply into the policies, practices and procedures of the United States Attorney. The court went on to find that such judicial entanglement in the core decisions of another branch of government…is inconsistent with the division of responsibilities assigned to each branch of government.

Our Supreme Court has stated: "In our criminal justice system, the Government retains "broad discretion" as to whom to prosecute. ***United States v. Goodwin, 457 U.S. 368,380, n. 11(1982); accord, Marshall v. Jerrico Inc., 446 U.S. 238,248 (1980).*** " [So] long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." ***Bordenkircher v. Hayes, 434 U.S.357,364 (1978).***

As to the issue of disproportionate minority contact, the Supreme Court has held the decision to prosecute may not be "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification," ***Bordenkircher v. Hayes, supra, at 364,***quoting ***Oyler v. Boles, 368 U.S. 448,456 (1962),*** including the exercise of protected statutory and constitutional rights. *See* ***United States v. Goodwin, supra, at 372. 470 U.S. at 607-608.***

Passage of this bill will create a system of prosecution by committee. A committee of whom less than half are law-trained members of the bar. These individuals will be ignorant of the evidentiary and ethical standards that must be considered in determining whether charges will be filed. Further, it will be a committee of whom two of the law trained individuals are defense lawyers and only one of whom will be a prosecutor. This is in direct conflict of the prosecution function for it is the prosecutor who is responsible for ensuring the safety of the community, ensuring that appropriate charges are filed, and ensuring that violent offenders are held accountable for their actions, while it is the duty of defense counsel to *zealously advocate the interests of their clients.*

By adding this layer of bureaucracy to the prosecution function, it will become more cumbersome. This will mean slower reaction to various criminal activity that is occurring in our respective communities. It will drain the resources of the prosecutor away from the prosecution function by requiring responses to inquiry by this committee, most of whom are not law trained and most of whom are not prosecutors.

Based on the foregoing, the Office of the District Attorney for the Eighteenth Judicial District respectfully requests disapproval of this bill.

Respectfully Submitted,

Ron W. Paschal
Deputy District Attorney

guardian or attorney as to whether the juvenile will waive such juvenile's right to an attorney and right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make a reasonable effort to contact the parent or guardian immediately upon such juvenile's arrival unless such parent or guardian is the alleged victim or alleged codefendant of the crime under investigation.

(B) When a parent or guardian is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no in-custody or arrest admission or confession may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile and a parent or guardian who is not involved in the investigation of the crime, or an attorney as to whether the juvenile will waive such juvenile's right to an attorney and right against self-incrimination. It shall be the duty of the facility where the juvenile has been delivered to make reasonable effort to contact a parent or guardian who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

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

(e) *Person 18 or over taken into custody; detention and release.* Whenever a person 18 years of age or more is taken into custody by a law enforcement officer for an alleged offense which was committed prior to the time the person reached the age of 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code, except that the provisions of this code relating to detention hearings shall not apply to that person. If detention is necessary, the person shall be detained in jail. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the court and the warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before the court of the county where the alleged act took place or, at the request of the person, the person shall be taken, without delay, before the nearest court. The court shall fix the terms and conditions of an appearance bond upon which the person may be released from custody. The provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901 and amendments thereto relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

History: L. 1982, ch. 182, § 78; L. 1983, ch. 140, § 37; L. 1984, ch. 157, § 6; L. 1986, ch. 156, § 2; L. 1986, ch. 162, § 3; L. 1986, ch. 163, § 1; L. 1993, ch. 291, § 275; L. 1996, ch. 229, § 61; L. 1996, ch. 229, § 62; L. 1998, ch. 187, § 4; L. 1999, ch. 156, § 13; May 27.

Cross References to Related Sections:
Criteria for detaining juvenile in detention facility, see 38-1640.

Research and Practice Aids:
Infants ⇐ 192.
C.J.S. Infants §§ 42, 53, 54, 55.

Law Review and Bar Journal References:
"Juvenile Informants - A Necessary Evil?" Darci G. Osther, 39 W.L.J. 106 (1999).
"Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Court," Trey Meyer, 47 K.L.R. 1035 (1999).

CASE ANNOTATIONS

1. Under facts, SRS responsible for reimbursing county for cost of detention of juvenile. In re J.L., 21 K.A.2d 878, 881, 908 P.2d 629 (1995).

38-1625. Proceedings upon filing of complaint. Upon the filing of a complaint under this code, the court shall proceed by one of the following methods:

(a) The court may issue summons stating the place and time at which the respondent is required to appear and answer the offenses charged in the complaint, which shall be within 30 days of the date the complaint is filed, and deliver it with copies of the complaint attached to the sheriff or a person specially appointed to serve it.

(b) If the respondent is being detained for a detention hearing as provided in K.S.A. 38-1632, a copy of the complaint shall b
tention hearing on the respon

38-1624(2)

Ex. A 6-7

Name	Relationship	Date	Time	Method of Communication (in person or telephone)

I advised each of the above named persons that:

(1) The hearing is to determine if the above named juvenile shall be detained;

(2) each parent or person having legal custody should be present at the hearing;

(3) they have the right to hire an attorney of their own choice for the juvenile;

(4) if an attorney is not hired, the court will appoint an attorney for the juvenile;

(5) the juvenile, parent or other person having custody of the juvenile may be required to repay the court for the expense of the appointed attorney; and

(6) the court may order one or both parents to pay child support.

(Signature)

(Name Printed)

(Title)

(e) *Hearing, finding, bond.* At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney for the juvenile, and may recess the hearing for 24 hours to obtain attendance of the attorney appointed unless the juvenile is detained in jail pursuant to subsection (b)(1) of K.S.A. 38-1691 and amendments thereto. At the detention hearing, if the court finds the juvenile is dangerous to self or others, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained in a juvenile detention facility or youth residential facility which the court shall designate or may be released upon the giving of an appearance bond in an amount specified by the court and on the conditions the court may impose, in accordance with the applicable provisions of article 28 of chapter 22 of the Kansas Statutes Annotated and amendments thereto. In the absence of either finding, the court shall order the juvenile released or placed in temporary custody as provided in subsection (f).

In determining whether to place a juvenile in a juvenile detention facility pursuant to this subsection, the court shall consider all relevant factors, including but not limited to the criteria listed in K.S.A. 38-1640 and amendments thereto. If the court orders the juvenile to be detained in a juvenile detention facility, the court shall record the specific findings of fact upon which the order is based.

If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

(f) *Temporary custody.* If the court determines that it is not necessary to detain the juvenile but finds that release to the custody of a parent is not in the best interests of the juvenile, the court may place the juvenile in the temporary custody of a youth residential facility or some other suitable person willing to accept temporary custody.

(g) The court may enter an order removing a juvenile from the custody of a parent and placing the child in the temporary custody of the commissioner pursuant to K.S.A. 38-1664, and amendments thereto.

(h) *Audio-video communications.* Detention hearings may be conducted by two-way electronic audio-video communication between the alleged juvenile offender and the judge in lieu of personal presence of the juvenile or the juvenile's counsel in the courtroom from any location within Kansas in the discretion of the court. The juvenile may be accompanied by the juvenile's counsel during such proceedings or counsel may be personally present in court as long as a means of communication between the juvenile and the juvenile's counsel is available for consultation between the juvenile and the juvenile's counsel in confidence.

History: L. 1982, ch. 182, § 86; L. 1986, ch. 162, § 4; L. 1990, ch. 150, § 1; L. 1992, ch. 312, § 19; L. 1996, ch. 229, § 64; L. 1997, ch. 156, § 54; L. 2000, ch. 150, § 23; June 1.

Revisor's Note:

Section was also amended by L. 1992, ch. 312, § 18, effective July 1, 1992, but such amendment was repealed by L. 1992, ch. 312, § 42, effective Jan. 1, 1993.

Cross References to Related Sections:

Criteria for detaining juvenile in detention facility, see 38-1640.

Research and Practice Aids:

Infants ⇐ 203.

C.J.S. Infants §§ 51, 52, 62 to 67.

Attorney General's Opinions:

Confinement of juveniles in adult jails; potential liability of local officials. 90-63.

CASE ANNOTATIONS

1. The hearing referred to in 38-1652 as meaning only adjudicatory hearings for those over 15 determined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 493, 789 P.2d 1153 (1990).

38-1632(e)(f)

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competent for hearing shall be committed for evaluation and treatment to any appropriate state, county or private institution for a period of not to exceed 90 days. Within 90 days of the respondent's commitment to the institution, the chief medical officer of the institution shall certify to the court whether the respondent has a substantial probability of attaining competency for hearing in the foreseeable future. If the probability does exist, the court shall order the respondent to remain in an appropriate state, county or private institution until the respondent attains competency for hearing or for a period of six months from the date of the original commitment, whichever occurs first. If the probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated.

(b) If a respondent who was found to have a substantial probability of attaining competency for hearing, as provided in subsection (a), has not attained competency for hearing within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated.

(c) When reasonable grounds exist to believe that a respondent who has been adjudged incompetent for hearing is competent, the court in which the case is pending shall conduct a hearing in accordance with K.S.A. 38-1637, and amendments thereto, to determine the respondent's present mental condition. Reasonable notice of the hearing shall be given to the prosecuting attorney, the respondent and the respondent's attorney of record, if any. If the court, following the hearing, finds the respondent to be competent, the proceedings pending against the respondent shall be resumed.

History: L. 1982, ch. 182, § 92; L. 1996, ch. 229, § 69; July 1, 1997.

Research and Practice Aids:
Infants ⇐ 227.
C.J.S. Infants §§ 42, 53, 54, 57, 69 to 85.

38-1639. Same; procedure when respondent not civilly committed. (a) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 38-1638, and amendments thereto, and the respondent is not committed to a treatment facility as a patient, the respondent shall remain in the institution where committed pursuant to K.S.A. 38-1638, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the involuntary commitment proceedings. The court shall then proceed pursuant to subsection (c).

(b) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 38-1638, and amendments thereto, and the respondent is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, the respondent shall remain in the institution where committed pursuant to K.S.A. 38-1638, and amendments thereto. The head of the treatment facility shall promptly notify the court in which the proceedings are pending that the respondent is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Within five days after receiving notice pursuant to subsection (a) or (b), the court shall order the respondent to be discharged from commitment and shall dismiss without prejudice the charges against the respondent. The period of limitation for the prosecution for the crime charged shall not continue to run until the respondent has been determined to have attained competency.

History: L. 1982, ch. 182, § 93; L. 1996, ch. 229, § 70; July 1, 1997.

Research and Practice Aids:
Infants ⇐ 227.
C.J.S. Infants §§ 42, 53, 54, 57, 69 to 85.

38-1640. Criteria for detention of juvenile in detention facility. (a) Except as provided in subsection (b), the following are criteria for determining whether to place a juvenile in a juvenile detention facility pursuant to subsection (c) of K.S.A. 38-1624 or subsection (e) of K.S.A. 38-1632, and amendments thereto:

(1) There is oral or written verification that the juvenile is a fugitive sought for an offense in another jurisdiction or that the juvenile is currently an escapee from a juvenile detention facility.

(2) The juvenile is alleged to have committed an offense which if committed by an adult would constitute a class A, B or C felony if committed prior to July 1, 1993, or would constitute an off-

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grid felony, a nondrug severity level 1, 2, 3, 4, 5, 6 or 7 felony or drug level 1, 2 or 3 felony if committed on or after July 1, 1993, or would constitute a crime described in article 35 of chapter 21 of the Kansas Statutes Annotated.

(3) The juvenile is awaiting court action on another offense which if committed by an adult would constitute a felony.

(4) The juvenile has a record of failure to appear in court or there is probable cause to believe that the juvenile will flee the jurisdiction of the court.

(5) The juvenile has a history of violent behavior toward others.

(6) The juvenile exhibited seriously assaultive or destructive behavior at the time of being taken into custody and continued such behavior after taken into custody.

(7) The juvenile exhibited self-destructive behavior at the time of being taken into custody and continued such behavior after taken into custody.

(8) The juvenile has a record of adjudication or conviction of one or more offenses which if committed by an adult would constitute felonies.

(9) The juvenile is a juvenile offender who has been expelled from placement in a nonsecure facility as a result of the current alleged offense.

(10) The juvenile has been arrested by any court services officer or juvenile community correction officer pursuant to subsection (b) of K.S.A. 38-1624 and amendments thereto.

(b) No person 18 years of age or more shall be placed in a juvenile detention center.

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

History: L. 1986, ch. 162, § 2; L. 1996, ch. 185, § 4; L. 1997, ch. 156, § 59; L. 1998, ch. 187, § 6; L. 1999, ch. 156, § 15; May 27.

Revisor's Note:

Section was also amended by L. 1996, ch. 229, § 71, but that version was repealed by L. 1997, ch. 156, § 115.

Research and Practice Aids:

Infants ⇐ 192.

C.J.S. Infants §§ 42, 53, 54, 55.

38-1641. Duty of parents and others to appear at all proceedings involving juvenile offender; failure, contempt. (a) Any parent, guardian, or person with whom a juvenile resides who is served with a summons as provided in K.S.A. 38-1626, and amendments thereto, shall appear with the juvenile at all juvenile proceedings concerning the juvenile, unless excused by the court having jurisdiction of the matter.

(b) Any person required by this act to be present at all juvenile proceedings who fails to comply, without good cause, with the provisions of subsection (a) may be proceeded against for indirect contempt of court pursuant to the provisions of K.S.A. 20-1204a *et seq.*, and amendments thereto.

(c) As used in this section: (1) "Good cause" for failing to appear includes, but is not limited to, a situation where a parent or guardian:

(A) Does not have physical custody of the juvenile and resides outside of Kansas;

(B) has physical custody of the juvenile, but resides outside of Kansas and appearing in court will result in undue hardship to such parent or guardian; or

(C) resides in Kansas, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(2) "Parent" means and includes a natural parent who has sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or an adoptive parent. Parent does not include a person whose parental rights have been terminated pursuant to law.

(d) If the parent or guardian of any juvenile cannot be found or fails to appear, the court may proceed with the case without the presence of such parent or guardian.

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

History: L. 1994, ch. 282, § 6; L. 1994, ch. 337, § 4; L. 1996, ch. 229, § 72; July 1, 1997.

38-1642 to 38-1650. Reserved.

ADJUDICATORY PROCEDURE

Law Review and Bar Journal References:

"Juvenile Justice: Procedural Safeguards for Delinquents at the Adjudicatory Stage—Not for Adults Only," Joanna V. Billingsley, 21 W.L.J. 175, 311, 312 (1982).

"Juvenile Law: Juvenile Involuntarily Absent from a Waiver Hearing is Not Denied Due Process [State v. Muhammad, 237 Kan. 850, 703 P.2d 835 (1985)]," Daniel J. Gronniger, 25 W.L.J. 598, 606 (1986).

38-1651. Time of hearing. All cases filed under this code shall be heard without unnecessary delay. Continuances may be granted to either party for good cause shown.

History: L. 1982, ch. 182, § 94; Jan. 1, 1983.

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

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

Senator Carolyn McGinn
District 31
Kansas Senate
Room 513B-S
Kansas State Capitol
300 South West Tenth Street
Topeka, KS 66612

February 28, 2005

Re: JJA Grant Funding

Dear Senator McGinn:

I am writing to request any assistance you may be able to offer in obtaining an increase in funding from JJA for the Intervention and Graduated Sanctions programs here in Sedgwick County. As a former county commissioner in Sedgwick County, I am sure through your contact with Team Justice that you are aware of the vital services that are provided to troubled youth through the expenditure of grant funds in the intervention/graduated sanctions arena.

By way of review, the following core programs are funded with intervention/graduated sanctions funding: Juvenile Intensive Supervision Probation, Juvenile Case Management and the Juvenile Intake and Assessment Center. In addition to those programs, Detention Advocacy and the District Attorney Diversion program are funded through the same grant channels.

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

Ex. B

The three core programs set forth above are facing extreme budget shortfalls effective July 1, 2005. This is in part due to the severe cutback of federal JABG funding, the reduction of interventions/graduated sanctions funding at the JJA level and the simple increase of the cost of doing business.

I chair the Team Justice subcommittee whose responsibility it is to recommend which program to fund and at what level. It was an overwhelming task at our last meeting. For example, the adjusted budget showed a short fall of $259,617.00 to the three core programs of Juvenile Intensive Supervision Probation, Juvenile Case Management and the Juvenile Intake and Assessment Center. The combined budget for Detention Advocacy and Diversion totals $270,527.00. In order to fund the three core programs set forth above, the subcommittee discussed taking funds from Detention Advocacy and Diversion at our last subcommittee meeting. This is problematic and of great concern as to fully fund the core programs, it would mean that we essentially wipe out Detention Advocacy and Diversion.

The diversion program accepts between 400 and 500 offenders every year for supervision. The recidivism rate for these offenders is very low, averaging about two percent. Dr. Craig's Benchmark reports repeatedly indicate the high value of service and outcomes of the diversion program here in Sedgwick County. Moreover, the diversion program significantly impacts the court system by reducing the number of cases that must be processed through the court system. In effect, this program relieves the court of the necessity of hearing about 400 cases per year. Additionally, each offender we are able to place on diversion is one less offender that must be supervised by probation, JJA or community corrections. Accordingly, the existence of a diversion program impacts the entire juvenile justice system favorably. Offenders that are accepted on diversion also receive much more individualized supervision than they would ordinarily receive on standard probation due to the difference in the size of caseload.

Detention Advocacy is a program here in this district which has proven itself to reduce the number of detention days for certain at risk youth in our community. They have a program set up to monitor accused youth while on supervised release pending resolution of their case. This has the effect of saving taxpayer money as fewer dollars are spent for bed space on these individuals. Also, as you are aware, there is currently a study being conducted which is reviewing the issue of disproportionate minority contact. The value of the Detention Advocacy project cannot be overlooked in this endeavor.

In short, I am very concerned that the diversion program and detention advocacy program will be negatively impacted if we do not find a way to fully fund the core programs that does not involve taking funds away from diversion and detention advocacy. Both of these programs are beyond the experimental stage with regards to their positive impact on the administration of juvenile justice in this district. In fact, both of these programs should be considered part of the foundation of the continuum of care for at risk youth in our community.

Any assistance you could provide would be greatly appreciated. Do not hesitate to contact me if you have additional questions. I may be reached at (316) 660 – 9700.

Sincerely,

Ron Paschal
Chief Attorney

This letter drafted by Ron Paschal

Team Justice

Sedgwick County Juvenile Corrections Advisory Board

Members:

Karen Langston, Chair

Judge James L. Burgess

Marilyn Cook

Pat Hanrahan

Jeannine Lane

Ron Paschal

Shawna Mobley

Frances Ervin

Deputy Chief Terri Moses

Undersheriff John Green

Dr. Ralph Teran

Ron Terzian

Pat Beckemeyer

Kathleen Kaiser

Senator Donald Betts

March 16, 2005

David Unruh, Chair
Sedgwick County Board of County Commissioners
Third Floor, Sedgwick County Courthouse
535 North Main
Wichita, KS 67203

Re: Request for funding

Dear Chairman Unruh and Members of the Board of County Commissioners:

As the Juvenile Corrections Advisory Board to the Board of County Commissioners, we are writing to request assistance to address the funding shortfall in the intervention/graduated sanctions arena of juvenile justice.

By way of review, the following core programs fall under the umbrella of intervention/graduated sanctions: Juvenile Intensive Supervision Probation, Juvenile Case Management, and the Juvenile Intake and Assessment Center. In addition to these programs, Detention Advocacy Service and the District Attorney Juvenile Diversion Program are funded through the same grant funds. A primary source of funding for these programs in the past has included significant amounts of grant money from JJA and their interventions/graduated sanctions funds together with federal money provided by the Juvenile Accountability Block Grant.

The intervention/graduated sanctions funding reductions of the past few years, together with the lack of increased funding from that source this year, in addition to severe cuts in federal grant funding from the Juvenile Accountability Block Grant, *means the local programs set forth above will be hit very hard effective July 1, 2005.*

All five of the programs set forth above are steps on the local continuum of services to at risk youth in our community. Moreover each of these programs are legitimate opportunities to serve juvenile offenders at a cost *far less costly than out of home placements.*

For state fiscal year 2006, the three core programs face a budget shortfall of $309,162.00. By eliminating funding for some programs funded by the federal Juvenile Accountability Block Grant, Team Justice was able to make available $49,545.00 of the federal money to cover part of the shortage. Accordingly, with regards to the three core programs, we now have an adjusted shortfall of $259,617.00.*(See Ex. A)*

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The two additional programs are Detention Advocacy Service and the District Attorney's Juvenile Diversion Program. Detailed descriptions of these two programs and their positive impact on the juvenile justice system are set forth in Exhibit B and Exhibit C. The combined amount of funding requested for Detention Advocacy and Juvenile Diversion for state fiscal year 2006 is $270,527.00. *(See Ex. A) This* amount is almost the exact amount needed to cover the adjusted shortfall of the three core programs.

Attempts to locate alternate funding sources and explore other options to make up the shortfall have been exhausted. During Team Justice Sub-Committee meetings held on February 8, 2005 and February 22, 2005, the budgets of all programs were examined in detail. The consensus of the sub-committee was that any attempt to trim the individual budgets would result in reductions insignificant to the amount the programs are short. Simply put, the three core programs are already operating at a level that minimally ensures they meet their obligations to youth and provide for public safety.

Karen Langston, Chair of Team Justice, Ron Paschal, Chair of the Team Justice Sub-Committee and Mark Masterson, Corrections have all contacted members of the Senate Ways and Means Committee in an attempt to procure additional JJA funding for these important programs. *(See Ex. D and Ex. E)* We are doubtful assistance is forthcoming.

Due to the budget shortfall for the three core programs, it is evident funds must be taken from the Detention Advocacy and Juvenile Diversion budgets. This action will essentially eliminate both programs. The Honorable James Burgess, Presiding Judge, Juvenile Division for the Eighteenth Judicial District is very concerned about the negative impact that the citizens of Sedgwick County will experience if Detention Advocacy and Juvenile Diversion is eliminated. It must be stressed that the negative impact of the loss of these two programs will be a *financial loss* as well as a loss of *valuable services to youth on a carefully constructed continuum of care* here in Sedgwick County. As fully set forth in his letter, Judge Burgess explains the increase case backlogs on the court's docket, the increase caseload for probation officers and the additional money expended on bed space if these two programs are eliminated. *(See Ex. F)*

As an advisory board, we know the longer intervention is delayed, the more costly it becomes. Both Detention Advocacy and Juvenile Diversion are *early intervention programs.* Since 1999, the Sedgwick County Board of County Commissioners, acting on the advice of Team Justice has made Juvenile Diversion and Detention Advocacy a foundation of the continuum of services available to at risk youth in our community. Yearly scrutiny of these programs clearly indicates they are very successful. The recidivism rate for an offender who successfully completes diversion is about 2 percent, far lower than comparable rates for other types of community based supervision. Dr. Delores Craig-Moreland in her **SFY01 Cost Analysis of Sedgwick County JJA Funded Programs** points out the costs for serving delinquents are much higher than programs designed to *prevent or intervene.* Moreover in the same study, Dr. Craig indicates the District Attorney's Diversion Program *compares favorably* with probation costs.

At this point Team Justice respectfully requests that the Board of County Commissioners approve funding to address the shortfall in state funding for the five programs that constitute our intervention and graduated sanctions continuum. Given the declining trend in state and federal funding for juvenile justice, we expect this shortfall to gradually increase each year, requiring supplemental funding to maintain the necessary current level of services. Johnson County reached this point two years ago and currently contributes a similar amount to maintain their core services. Another approach to funding could embrace the Detention Advocacy Service and Juvenile Diversion programs as a permanent part of the county

budget. If this approach is taken, it will likely be followed with a request to supplement the core program budgets as the amount of state funding remains flat or goes down.

Time is of the essence as the impact of these shortfalls will be experienced July 1, 2005. The loss of programs would be a great setback to our community in all the efforts we have made to build a successful continuum of care for at risk youth in our community, which clearly benefits our community as a whole. Team Justice will gladly appear before the Commission to provide additional information and to stand for questions.

Sincerely,

Karen L. Langston
Chair, Team Justice

Terri Moses
Vice Chair

Patrick J. Hanrahan
Secretary

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