Approved: 3-23-06
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 7, 2006 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused
Pat Colloton- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Karen Arnold-Burger, Municipal Court Judge, Overland Park
James Keller, Kansas Department of Revenue
Lieutenant John Eichkorn, Kansas Highway Patrol
Randy Hearrell, Kansas Judicial Council
Don Hymer, Kansas Judicial Council, Child in Need of Care Committee
Ron Paschal, Sedgwick county Office of District Attorney
Don Jordan, Acting Commissioner, Kansas Juvenile Justice Authority
Mark Gleeson, Office of Judicial Administration

Chairman O'Neal opened the hearing on **SB 432 - prosecution of juvenile traffic offenders; traffic offenses includes violation of requirement of motor vehicle liability**.

Karen Arnold-Burger, Municipal Court Judge, Overland Park, appeared as a proponent to the bill which would expand the definition of "traffic offense" to include driving without proof of insurance to allow juveniles 14 and over who violate this provision to be prosecuted as adults in municipal and district court. (Attachment 1)

The hearing on **SB 432** was closed.

The hearing on **SB 431 - expungement of DUI ordinances violations and DUI convictions including diversions; probation**, was opened.

Karen Arnold-Burger, Municipal Court Judge, Overland Park, explained that the senate added a provision to the bill which establishes a 12 year decay for driving under the influence (DUI) convictions and diversions. After 12 years, the conviction could not be counted as a prior. The original bill would have the expungement provisions mirror district court expungement statutes and eliminate the ability to expunge DUI convictions. (Attachment 2)

The hearing on **SB 431** was closed.

The hearing on **SB 479 - preliminary screening tests; grounds; notice**, was opened.

James Keller, Kansas Department of Revenue, appeared in support of the bill. Preliminary breath test are used to assist law enforcement officers in determining whether there is probable cause to arrest for DUI, or to request an evidentiary test to determine alcohol or drug in one's system. It cannot be used in any civil or criminal court. The proposed bill corrects a statute that was enacted last year making the preliminary breath test meet the same requirements for evidentiary breath test. It would require an officer to have reasonable grounds to believe a person has been operating or attempting to operate a vehicle while under the influence before requesting a preliminary breath test. (Attachment 3)

Lieutenant John Eichkorn, Kansas Highway Patrol, believed that there needs to be penalties for not taking a preliminary breath test but was concerned that the unintended consequences of the 05 legislation negated the preliminary breath test as an investigatory tool to gather evidence of a DUI. (Attachment 4)

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 7, 2006 in Room 313-S of the Capitol.

The hearing on **SB 479** was closed.

The hearing on **SB 261 - revised Kansas juvenile justice code**, was opened.

Randy Hearrell, Kansas Judicial Council, explained that the Child in Need of Care Advisory Committee began meeting in August 2000. It's goals were to simplify the code, reorganize the code in a more logical manner, and be certain all changes were consistent with the goals of the code and constitutionally permissible.

Mr. Hearrell provided the committee with a balloon amendment that would change the word "child" to "juvenile" everywhere it appears in the bill, change "in the best interest of a child" to "a juveniles best interest", and provide for an interlocutory appeal as provided for in adult criminal cases. (Attachment 5)

Don Hymer, Kansas Judicial Council, Child in Need of Care Committee, touched on the following sections of the bill:

- the statute of limitations has been changed to parallel the adult criminal code and to lengthen the statute of limitations in certain instances
- rape is added to the list of acts committed by a juvenile which can not be expunged
- Juvenile Justice Authority is added to the list of persons who may take a juvenile into custody
- the court appoints one, rather than two, licensed psychiatrists or psychologists to examine the juvenile to determine competency and the court can excuse the juvenile offender from the hearing if it would be injurious to his health to attend
- juveniles in felony cases are granted the right to a trial by jury, upon request.
- statutory requirement for designation of a state-wide sentencing risk assessment tool is eliminated
- Juvenile Justice Authority is required to adopt rules and regulations relating to good time credits
- appeals from district magistrate judges are to be trial de novo unless parties agree to a de novo review on the record of the proceedings. (Attachment 6)

Mark Gleeson, Office of Judicial Administration, explained that the Johnson County risk assessment tool was not being utilized statewide and they would like to acquire the Juvenile Services Risk Assessment Inventory, but it would require funding for training.

Ron Paschal, Sedgwick county Office of District Attorney, supported the 20% good time credit for juvenile offenders. Limiting the percentage of good time credit a juvenile offender may receive ensures the sentence served actually resembles the sentence imposed by the sentencing court. His office has found that a range of 20% - 42% has been granted as good time credit and believes that a set percentage would benefit everyone involved in the case. (Attachment 7)

Don Jordan, Acting Commissioner, Kansas Juvenile Justice Authority, requested that the good time credit be amend to 30%. This amount would be more inline with the mission established for JJA and would create an appropriate balance between punishment and rehabilitation. (Attachment 8)

Randy Hearrell explained that the Council did not address the percentage of good time to be awarded because they felt it was the JJA's call on the amount of good time to be awarded.

The hearing on **SB 261** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on March 8, 2006, in room 313-S.

SB 432
Testimony Before the House Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
March 7, 2006

My name is Karen Arnold-Burger, and I am here today to speak in support of SB 432. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

Thank you for the opportunity to address you on this important topic.

Municipal Courts in Kansas have jurisdiction over traffic offenses committed by persons 14 and over. K.S.A. §8-2117 is the statute that gives municipal court this jurisdiction. The statute defines "traffic offense" as any violation that appears in the uniform act regulating traffic (which are all the basic, traditional traffic violations) and also includes in the definition DUI, and the various driver's license violations. The one obvious omission from the list is "driving without proper proof of insurance." Since this violation is codified in Chapter 40, under the insurance provisions, it was not included in the list of traffic offenses contained in K.S.A. §8-2117. We believe this to be a mere oversight.

By excluding this provision, officers are not able to write tickets to juveniles for driving without automobile insurance, unless they want to file the case through the district court juvenile division, which is rare. By adding the insurance provision to the list of "traffic offenses" these cases can go through municipal courts just like all other traffic violations and those who choose to drive without liability insurance will be held accountable.

Thank you for your consideration.

House Judiciary
Date 3-7-06
Attachment # 1

SB 431
Testimony Before the House Judiciary Committee
Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court
March 7, 2006

My name is Karen Arnold-Burger, and I am here today to speak about SB 431. I am currently the Presiding Judge for the City of Overland Park Municipal Court. I am also a member of the Municipal Judges Education and Testing Committee and the Municipal Judges Manual Committee and have been active in the state municipal judges association.

Kansas has two "sets" of expungement statutes. One set is contained at K.S.A. 2005 Supp. §12-4516 and K.S.A. §12-4516a and deals with expungement of municipal court convictions and arrests. The other set is contained at K.S.A. 2005 Supp. §21-4619 and deals with convictions or arrests through the state district court system. These provisions have usually substantively mirrored each other.

SB 431, as it relates to expungement, simply updates the "municipal expungement" provision so that it mirrors changes that have been made over the last few years to the "district court" expungement provisions.

As additional background, initially this bill had been introduced to prohibit expungement of DUI convictions. Since lifetime convictions were counted for sentencing purposes, but DUI convictions could be expunged after just 5 years, it became very difficult for the courts and prosecutors to locate expunged convictions so that proper sentences could be administered. It was hoped that by eliminating the ability to expunge the conviction, they would become easier to locate. However, the Senate Judiciary Committee did not feel it would be appropriate to eliminate expungement for DUI. It did, however, decide to put a 12-year decay into the statute, so that lifetime convictions were no longer counted for sentencing purposes, only those occurring in the previous 12 years. I do not offer an opinion on the amendment.

Thank you for your consideration.

K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
LEGAL SERVICES

TESTIMONY

TO: House Judiciary Committee, Chair Michael O'Neal
Members of the House Judiciary Committee

FROM: James G. Keller
Deputy General Counsel
Kansas Department of Revenue

DATE: March 7, 2006

RE: Senate Bill 479

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to provide testimony today on Senate Bill 479.

Last year, in response to a decision by the Kansas Supreme Court, the Legislature enacted Section 2 of House Bill 2385. That bill provided that consent was implied by law when an officer requested a driver to submit to a preliminary breath test. However, the manner in which that provision was enacted created unintended problems which have affected the use of the preliminary breath test by law enforcement. Legislation which was intended to assist in the use of preliminary breath testing has actually led to such testing not being used.

The legislation enacted last year added language to K.S.A. 8-1001(a) to include a preliminary breath test as a test for which consent is implied by the act of operating or attempting to operate a vehicle in this state. Placing that language in K.S.A. 8-1001(a) has produced unintended results which have resulted in issues being raised which have caused many law enforcement agencies to eliminate the use of preliminary breath testing.

The preliminary breath test provided for in K.S.A. 8-1012 is limited in purpose. It can be used to assist law enforcement officers in determining whether there is probable cause to arrest for DUI or reasonable grounds to request an evidentiary test to determine alcohol or drug content under the Kansas Implied Consent Law. It cannot be used in any civil or criminal court for other purposes. Because it is simply an investigative tool, the standard for its use is not as high as that for evidentiary testing, which <u>can</u> be used as evidence in court.

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA,
Voice 785-296-2381 Fax 785-296-5213 http://www.ksrever

The problem created by last year's legislation was that placing a reference to preliminary breath testing in K.S.A. 8-1001(a) would appear to make the requirements for evidentiary breath testing also apply to preliminary breath testing. K.S.A. 8-1001(b) contains requirements which apply to "tests deemed consented to under subsection (a)."

As a result of last year's amendment, it would now appear that an officer would be required to have reasonable grounds to believe that a person had been operating or attempting to operate a vehicle while under the influence before requesting a preliminary breath test which is intended to assist the officer in determining whether such reasonable grounds exist. So, either a preliminary breath test cannot be used because the reasonable grounds standard cannot be met without it, or it is unnecessary because reasonable grounds exist prior to its administration. The result is that the effectiveness of using preliminary breath testing has been greatly reduced to the point of being eliminated altogether.

By removing the reference to preliminary breath tests from K.S.A. 8-1001(a) and replacing it with "implied consent" language in the preliminary breath statute, K.S.A. 8-1012, this bill would eliminate the unintended consequences resulting from last year's legislation.

This bill also includes a change in language as far as the basis for administering a preliminary breath test. The preliminary breath test is used to make a preliminary determination of the level of alcohol in a person's breath. It is rarely used unless an officer has a reason to suspect that the person may have been operating a vehicle while under the influence of alcohol and/or drugs, such as observing the odor of an alcoholic beverage on the person's breath. [See, *State v. Barker*, 252 Kan. 949 (1993).] The proposed change in language simply recognizes that fact and would apply the same reasonable suspicion standard to that determination that courts have determined is the proper basis for requesting field sobriety tests. It is also the same standard used as a basis for requesting preliminary breath tests in other states such as Arizona, Illinois and Pennsylvania.

The passage of this legislation is necessary to allow law enforcement officers to use the preliminary breath test, which is an important tool in combating drunk driving. Thank you for your consideration.

K A N S A S

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 479
To the
House Judiciary Committee

Presented by
Lieutenant John Eichkorn
Kansas Highway Patrol

March 7, 2006

Good afternoon, Mr. Chairman and members of the committee. My name is Lieutenant John Eichkorn and on behalf of Colonel William Seck and the Kansas Highway Patrol, I appear before you today in support of Senate Bill 479.

The 2005 Session of the Kansas Legislature amended K.S.A. 8-1001, the implied consent provision for chemical testing, and K.S.A. 8-1012, the preliminary breath testing statute. This act was in response to a Supreme Court decision [*State of Kansas v. Jarad A. Jones*] handed down in February, 2005 which called into question the "voluntariness" of the search of a person's breath under the existing statute governing preliminary breath testing.

The action of the Legislature, correctly attempted to reclassify the testing under K.S.A. 8-1012 from a voluntary search to an implied consent procedure. This was accomplished by adding preliminary breath testing to the list of tests deemed consented to under the provisions of K.S.A. 8-1001. In doing so, however, an unintended consequence of that legislation subjected the preliminary testing to the same rigors governing evidential testing. By subjecting preliminary breath testing to the stringent requirements of K.S.A. 8-1001, it was effectively negated as an investigatory tool to gather evidence of the crime of driving under the influence of alcohol.

Senate Bill 479 appropriately removes the preliminary breath test from the requirements of K.S.A. 8-1001, returning that statute to its former language, and amends K.S.A. 8-1012, making the preliminary breath test an implied consent test. This amendment will effectively remove the litigated issue of the preliminary breath test being a *voluntary* test. In addition, SB 479 protects the preliminary breath test as being preliminary to an arrest, by clarifying that the officer only need a reasonable suspicion at this point in the investigation.

It is for these reasons that the Kansas Highway Patrol supports the amendments contained in SB 479, and would ask the committee to approve this bill to assist law enforcement officers in their efforts to remove alcohol impaired drivers from our streets and highways. I appreciate the opportunity to address you today, and I will be happy to answer any questions you may have.

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122 SW 7th Street, Topeka, Kansas 66603
Voice 785-296-6800 Fax 785-296-5956 www.KansasHighwa

House Judiciary
Date 3-7-06
Attachment # 4

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 261

By Committee on Judiciary

2-11

AN ACT concerning juvenile offenders; enacting the revised Kansas juvenile justice code; amending K.S.A. 8-237, 8-2117, 12-16,119, 21-4633, 28-170a, 38-140, 38-1518, 39-754, 39-756, 39-756a, 39-1305, ***60-460, 60-3614,*** 65-516, 65-6001, 74-7335, 74-8810, 75-5229, 75-7025, 75-7026, 75-7028, 76-3203 and 76-3204 and K.S.A. ~~2004~~ ***2005*** Supp. 20-167, 20-302b, 21-2511, 21-3413, 21-3520, 21-3612, 21-3809, 21-3810, 22-2805, 22-4701, 28-170, 28-172b, 28-176, 39-709, 39-970, 41-727, ~~60-460,~~ 65-1626, 65-5117, 74-5344, 75-3728e, 75-4362, 75-5206, 75-5220, ~~75-6102,~~ 75-7023, 75-7024, 76-172, 76-381, 76-12a25 and 76-3205 and repealing the existing sections; also repealing K.S.A. 38-1601, 38-1603, 38-1604, 38-1605, 38-1606, 38-1606a, 38-1607, 38-1608, ~~38-1610,~~ 38-1612, 38-1613, 38-1614, 38-1615, 38-1616, 38-1617, 38-1618, 38-1621, 38-1622, 38-1623, 38-1624, 38-1625, 38-1626, 38-1627, 38-1628, 38-1629, 38-1630, 38-1631, 38-1632, 38-1633, 38-1634, 38-1636, 38-1637, 38-1638, 38-1639, 38-1640, 38-1641, 38-1651, 38-1652, 38-1653, 38-1654, 38-1655, 38-1656, 38-1657, 38-1658, 38-1661, 38-1662, 38-1663, 38-1664, 38-1666, 38-1667, 38-1668, 38-1671, 38-1673, 38-1674, 38-1675, 38-1676, 38-1677, 38-1681, 38-1682, 38-1683, 38-1684, 38-1685, 38-1691, 38-16,111, 38-16,116, 38-16,117, 38-16,118, 38-16,119, 38-16,120, 38-16,126, 38-16,127, 38-16,128, 38-16,129, 38-16,131, 38-16,132, 38-16,133, 38-1812 and 38-1813 and K.S.A. ~~2004~~ ***2005*** Supp. 38-1602, 38-1609, ***38-1610,*** 38-1611, ~~38-1635~~ ***38-16,135,*** 38-1665, 38-1692, 38-16,134 and 38-1635.

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

New Section 1. This act shall be known and may be cited as the revised Kansas juvenile justice code. The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community. To accomplish these goals, juvenile justice policies developed pursuant to the revised Kansas juvenile justice code shall be designed to: (a) Protect public safety; (b) recognize

House Judiciary
Date 3-7-06
Attachment # 5

venile is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform the juvenile and the juvenile's parent of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile, the parent, or both, as part of the expenses of the case.

(b) *Continuation of representation.* An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) *Attorney fees.* An attorney appointed pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in section 14, and amendments thereto.

New Sec. 7. (a) In addition to the attorney appointed pursuant to section 6, and amendments thereto, the court at any stage of a proceeding pursuant to this code may appoint a volunteer court-appointed special advocate for a juvenile who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the juvenile and assist the juvenile in obtaining a permanent, safe and appropriate placement. The court-appointed special advocate shall have such qualifications and perform such specific duties and responsibilities as prescribed by rule of the supreme court.

(b) Any person participating in a judicial proceeding as a court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

(c) The supreme court shall promulgate rules governing court-appointed special advocate programs related to proceedings in the district courts pursuant to this code.

New Sec. 8. (a) The local citizen review board created pursuant to ~~K.S.A. 38-1812~~, and amendments thereto, shall have the duty, authority and power to:

(1) Review each case of a child who is a juvenile offender referred by the judge, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been toward rehabilitation for the juvenile offender; and

(3) make recommendations to the judge regarding further actions on the case.

Strike "section 7 of 2005 HB 2352"

COMMENT

K.S.A. 38-1812 is stricken because it is repealed by this bill. The correct reference is inserted.

5-8

(b) The initial review by the local citizen review board may take place any time after adjudication for a juvenile offender. A review shall occur within six months after the initial disposition hearing.

(c) The local citizen review board shall review each referred case at least once each year.

(d) The judge shall consider the local citizen review board recommendations in issuing a sentence pursuant to section 61, and amendments thereto.

(e) Three members of the local citizen review board must be present to review a case.

(f) The court shall provide a place for the reviews to be held. The local citizen review board members shall travel to the county of the family residence of the child being reviewed to hold the review.

New Sec. 9. (a) *Official file.* The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;

(4) the juvenile's court appointed special advocate;

(5) any placement provider or potential placement provider as determined by the commissioner or court services officer;

(6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or

alleged victim of any sex offense shall not be disclosed pursuant to this subsection;

(8) juvenile intake and assessment workers;

(9) the commissioner; and

(10) any other person when authorized by a court order, subject to any conditions imposed by the order.

(c) *Social file.* Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates and juvenile community corrections officers or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

New Sec. 10. (a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of

5-4

a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under section 26, and amendments thereto;

(9) juvenile intake and assessment workers;

(10) the juvenile justice authority;

(11) juvenile community corrections officers;

(12) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(13) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the

juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the commissioner thereunder.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency having the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian *ad litem*, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to ~~K.S.A. 38-1812~~, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

(L) any educator to the extent necessary for the protection of the

Strike
"section 7 of 2005 HB 2352"

COMMENT

K.S.A. 38-1812 is stricken because it is repealed by this bill. The correct reference is inserted.

5-4

educator and pupils; and

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

New Sec. 11. (a) When the court has exercised jurisdiction over any juvenile the diagnostic, treatment or medical records shall be privileged and shall not be disclosed except:

(1) Upon the written consent of the former juvenile or, if the juvenile is under 18 years of age, by the parent of the juvenile;

(2) upon a determination by the head of the treatment facility, who has the records, that disclosure is necessary for the further treatment of the juvenile;

(3) when any court having jurisdiction of the juvenile orders disclosure;

(4) when authorized by section 16, and amendments thereto;

(5) when requested orally or in writing by any attorney representing the juvenile, but the records shall not be further disclosed by the attorney unless approved by the court or presented as admissible evidence;

(6) upon a written request of a juvenile intake and assessment worker in regard to a juvenile when the information is needed for screening and assessment purposes or placement decisions, but the records shall not be further disclosed by the worker unless approved by the court;

(7) upon a determination by the juvenile justice authority that disclosure of the records is necessary for further treatment of the juvenile; or

(8) upon a determination by the department of corrections that disclosure of the records is necessary for further treatment of the juvenile.

(b) Intentional violation of this section is a class C nonperson misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the juvenile has been placed in the custody of the secretary of corrections.

New Sec. 12. (a) Except as provided in subsection (b), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, and amendments thereto, murder in the first degree, K.S.A. 21-3402, and amendments thereto, murder in the

listed in subsection (b) of section 31, and amendments thereto. If the juvenile meets one or more of such criteria, the officer shall first consider whether taking the juvenile to an available nonsecure facility is more appropriate.

(2) It shall be the duty of the officer to furnish the county or district attorney and the juvenile intake and assessment worker if the officer has delivered the juvenile to the worker, with all of the information in the officer's possession pertaining to the juvenile, the juvenile's parent or other persons interested in or likely to be interested in the juvenile and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.

(e) 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 prior to the time specified by subsection (a) of section 43, and amendments thereto. In addition, if an agreement is established pursuant to section 46, 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.

(f) 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.

New Sec. 31. (a) If no prior order removing a juvenile from the juvenile's home pursuant to section 34 or 35, and amendments thereto, has been made, ~~before ordering the juvenile into a juvenile detention facility,~~

~~the court shall determine whether: (1) Reasonable efforts have been made to maintain the juvenile in the juvenile's family or an emergency exists making reasonable efforts unnecessary, and (2) it is contrary to the welfare of the juvenile to remain in the home.~~ ***the court shall not enter an order removing a ~~child~~ from the custody of a parent pursuant to this section unless the court first finds probable cause that : (1) (A) The ~~child~~ is likely to sustain harm if not immediately removed from the home;***

(B) allowing the ~~child~~ to remain in home is contrary to the welfare of the ~~child~~; or

(C) immediate placement of the ~~child~~ is in the ~~best interest of the child~~; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the ~~child~~ from the ~~child's~~ home or that an emergency exists which threatens the safety of the ~~child~~ The court shall state the basis for each finding in writing.

(b) Except as provided in subsection (c), a juvenile may be placed in a juvenile detention facility pursuant to subsection (c) or (d) of section 30 or subsection (e) of section 43, and amendments thereto, if one or more of the following conditions are met:

(1) There is oral or written verification that the juvenile is a fugitive sought for an offense in another jurisdiction, that the juvenile is currently an escapee from a juvenile detention facility or that the juvenile has absconded from a placement that is court ordered or designated by the juvenile justice authority.

(2) The juvenile is alleged to have committed an offense which if committed by an adult would constitute a felony or any crime described in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(3) The juvenile has been adjudicated for a nonstatus offense and is awaiting final court action on that offense.

(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 or self-destructive behavior at the time of being taken into custody.

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

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

(9) The juvenile has been taken into custody by any court services officer, juvenile community corrections officer or other person authorized

"juvenile"
"juvenile"
"juvenile"
"juvenile"
"juvenile"
"juvenile's best interest"
"juvenile"
"juvenile's"
"juvenile"

COMMENT

In the Juvenile Offender Code, the reference is always to the "juvenile". (In the CINC Code reference is always to "child".) The phrase "best interest of the child" is replaced with "juvenile's best interest".

When the Senate decided to use the same A.S.F.A. language in the JO Code as the CINC Code, it did not change "child" to "juvenile". These amendments make that change.

to supervise juveniles subject to this code pursuant to subsection (b) of section 30, and amendments thereto.

(10) The juvenile has violated probation or conditions of release.

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

New Sec. 32. (a) No juvenile shall be detained or placed in any jail pursuant to the revised Kansas juvenile justice code except as provided by subsections (b), (c) and (d).

(b) Upon being taken into custody, a juvenile may be detained temporarily in a jail, in quarters with sight and sound separation from adult prisoners, for the purpose of identifying and processing the juvenile and transferring the juvenile to a youth residential facility or juvenile detention facility. If a juvenile is detained in jail under this subsection, the juvenile shall be detained only for the minimum time necessary, not to exceed six hours, and in no case overnight.

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

(1) (A) Against whom a motion has been filed requesting prosecution as an adult pursuant to subsection (a)(2) of section 47, and amendments thereto; and (B) who has received the benefit of a detention hearing pursuant to section 31, and amendments thereto;

(2) whose prosecution as an adult or classification as an extended jurisdiction juvenile has been authorized pursuant to section 47, and amendments thereto; or

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

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

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

New Sec. 33. (a) When the juvenile is less than 14 years of age, no admission or confession resulting from interrogation while in custody or under arrest may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile's parent or attorney as to whether the juvenile will waive the right to an attorney and the 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 immediately upon the juvenile's arrival unless the parent is the alleged victim or alleged codefendant of the crime under

5-10

investigation.

(b) When a parent is the alleged victim or alleged codefendant of the crime under investigation and the juvenile is less than 14 years of age, no admission or confession may be admitted into evidence unless the confession or admission resulting from interrogation while in custody or under arrest was made following a consultation between the juvenile and an attorney, or a parent who is not involved in the investigation of the crime, as to whether the juvenile will waive the right to an attorney and the 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 who is not involved in the investigation of the crime immediately upon such juvenile's arrival.

(c) After an attorney has been appointed for the juvenile in the case, the parent may not waive the juvenile's rights.

New Sec. 34. (a) ~~The court, in the first warrant or order authorizing or requiring placement of the juvenile outside the home, shall determine whether permitting the juvenile to remain in the home would be contrary to the juvenile's welfare and~~ ***The court shall not issue the first warrant or enter an order removing a*** ~~child~~ ***from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The*** ~~child~~ ***is likely to sustain harm if not immediately removed from the home;***

(B) allowing the ~~child~~ ***to remain in home is contrary to the welfare of the*** ~~child~~***; or***

(C) immediate placement of the ~~child~~ ***is in the*** ~~best interest of the child~~***; and***

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the ~~child~~ ***from the*** ~~child's~~ ***home or that an emergency exists which threatens the safety of the*** ~~child~~***. The court shall*** enter its determination in the warrant or order.

(b) When a juvenile has been in foster care and has been placed at home or allowed a trial home visit for a period of six months or more and is again removed from the home, the court shall again make a determination pursuant to subsection (a).

New Sec. 35. (a) ~~The court, in the first warrant or order authorizing or requiring removal of the juvenile from the juvenile's home, shall determine whether reasonable efforts were made to maintain the family unit and prevent unnecessary removal of the juvenile from the home and~~ ***The court shall not issue the first warrant or enter an order removing a*** ~~child~~ ***from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The*** ~~child~~ ***is likely to sustain harm if not immediately removed from the home;***

"juvenile"

"juvenile"

"juvenile"

"juvenile"

"juvenile"

"juvenile's best interest"

"juvenile"

"juvenile's"

"juvenile"

"juvenile"

"juvenile"

See comment on page 34.

(B) allowing the ~~child~~ to remain in home is contrary to the welfare of the ~~child~~; or — "juvenile"

(C) immediate placement of the ~~child~~ is in the ~~best interest of the child~~; and — "juvenile" / "juvenile's best interest"

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the ~~child~~ from the ~~child's~~ home or that an emergency exists which threatens the safety of the ~~child~~. The court shall enter its determination in the warrant or order. — "juvenile" / "juvenile's" / "juvenile"

~~(1)~~ *(3)* If the juvenile is in the custody of the commissioner, the commissioner shall prepare a report for the court documenting such reasonable efforts.

~~(2)~~ *(4)* If the juvenile is in the custody of the secretary of social and rehabilitation services under the Kansas code for the care of children, the secretary shall prepare a report for the court documenting such reasonable efforts.

~~(3)~~ *(5)* In all other cases, the person preparing the predisposition report shall include documentation of such reasonable efforts in the report.

(b) If the court determines that reasonable efforts to maintain the family unit and prevent unnecessary removal of a juvenile were not made, the court shall determine whether such reasonable efforts were unnecessary because:

(1) A court of competent jurisdiction has determined that the parent has subjected the juvenile to aggravated circumstances;

(2) a court of competent jurisdiction has determined that the parent has been convicted of a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the juvenile or another child of the parent;

(3) the parental rights of the parent with respect to a sibling have been terminated involuntarily; ~~or~~ — "or"

(4) an emergency exists requiring protection of the juvenile and efforts to maintain the family unit and prevent unnecessary removal of the juvenile from the home were not possible; ~~or~~ — Strike

~~*(5) the juvenile presents a risk to public safety.*~~ — "if the juvenile presents a risk to public safety"

(c) Nothing in this section shall be construed to prohibit the court from issuing a warrant or entering an order authorizing or requiring removal of the juvenile from the home ~~for the safety of the community~~.

(d) When the juvenile has been in foster care and has been placed at home or allowed a trial home visit for a period of six months or more and is again removed from the home, the court shall again make a determi-

See Comment on page 34.

COMMENT

This amendment utilizes the language the Senate adopted, but places the amendment in subsection (c) where it belongs.

5-12

nation pursuant to subsections (a) and (b).

New Sec. 36. Upon the filing of a complaint under this code, the court shall proceed by one of the following methods:

(a) At any time the juvenile is not being detained, the court may issue summons with copies of the complaint attached stating the place of the hearing and time at which the juvenile is required to appear and answer the offenses charged in the complaint. The hearing shall be within 30 days of the date the complaint is filed. The summons and the complaint shall be delivered to a law enforcement agency or a person specially appointed to serve them.

(b) If the juvenile is being detained for a detention hearing as provided in section 43, and amendments thereto, at the detention hearing a copy of the complaint shall be served on the juvenile and each parent or other person with whom the juvenile has been residing who is in attendance at the hearing and a record of the service made a part of the proceedings. The court shall announce the time that the juvenile is ordered to appear again before the court for further proceedings. If no parent appears at the hearing, the court shall summon the parent or parents as provided in subsection (a).

(c) If the court is without sufficient information to accomplish service of summons, the court may issue a warrant pursuant to section 42, and amendments thereto.

New Sec. 37. (a) *Persons upon whom served.* The summons and a copy of the complaint shall be served on the juvenile; if the juvenile's whereabouts are known, any person having legal custody of the juvenile; the person with whom the juvenile is residing; and any other person designated by the county or district attorney.

(b) *Form.* The summons shall be issued by the clerk, dated the day it is issued, contain the name of the court, the caption of the case and be in a form that complies with the code.

New Sec. 38. (a) Summons, notice of hearing or other process may be served pursuant to K.S.A. 60-303, and amendments thereto, or as provided in subsection (b).

(b) Service may be made by first-class mail, addressed to the individual to be served at the usual place of residence of the person with postage prepaid, and is completed upon the person appearing before the court in response thereto. If the person fails to appear when served by first-class mail, the summons, notice or other process shall be pursuant to K.S.A. 60-303, and amendments thereto.

New Sec. 39. Proof of service shall be made as follows:

(a) *Personal or residential service.* (1) Every officer to whom summons or other process shall be delivered for service within the state shall make written report of the place, manner and date of service of the

subsection shall not apply to an offender who: (1) Is under 16 years of age at the time of the sentencing; (2) has been prosecuted as an adult or under extended juvenile jurisdiction; and (3) has been placed in the custody of the secretary of corrections, requiring admission to a juvenile correctional facility pursuant to subsection (a).

New Sec. 67. (a) At any time after the entry of an order of custody or placement of a juvenile offender, the court, upon the court's own motion or the motion of the commissioner or parent or any party, may modify the sentence imposed. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as established in subsection (b), after the hearing, if the court finds that the sentence previously imposed is not in the best interests of the juvenile offender, the court may rescind and set aside the sentence, and enter any sentence pursuant to section 61, and amendments thereto, except that a child support order which has been registered under section 21, and amendments thereto, may only be modified pursuant to section 21, and amendments thereto.

(b) If the court determines that it is in the best interests of the juvenile offender to be returned to the custody of the parent or parents, the court shall so order.

(c) The court shall rescind an order granting custody to a parent only ~~upon finding that: (1) Reasonable efforts have been made to maintain the juvenile in such juvenile's family or an emergency exists making reasonable efforts unnecessary; and (2) it is contrary to the welfare of the juvenile to remain at home.~~ ***if the court first finds probable cause that:***

(1) (A) The [child] is likely to sustain harm if not immediately removed from the home; "juvenile"

(B) allowing the [child] to remain in home is contrary to the welfare of the [child]; or "juvenile" "juvenile"

(C) immediate placement of the [child] is in the [best interest of the child]; and "juvenile" "juvenile's best interest"

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the [child] from the [child's] home or that an emergency exists which threatens the safety of the [child]. "juvenile" "juvenile's" "juvenile"

The court shall state the basis of each finding.

(d) Any time within 60 days after a court has committed a juvenile offender to a juvenile correctional facility the court may modify the sentence and enter any other sentence, except that a child support order which has been registered under section 21, and amendments thereto, may only be modified pursuant to section 21, and amendments thereto.

(e) Any time after a court has committed a juvenile offender to a juvenile correctional facility, the court may, upon motion by the com-

See comment on page 34.

missioner, modify the sentence and enter any other sentence if the court determines that:

(1) The medical condition of the juvenile justifies a reduction in sentence; or

(2) the juvenile's exceptional adjustment and habilitation merit a reduction in sentence.

New Sec. 68. (a) If it is alleged that a juvenile offender has violated a condition of probation or of a court-ordered placement, the county or district attorney, the victim of the offense committed by the offender, the assigned court services officer or the current custodian and placement of the juvenile offender may file a report with the court describing the alleged violation. The court shall provide copies of the report to the parties to the proceeding. The court, upon the court's own motion or the motion of the commissioner or any party, shall set the matter for hearing and may issue a warrant pursuant to section 42, and amendments thereto. Upon receipt of the motion, the court shall fix a time and place for hearing and provide notice to the movant and to the current custodian and placement of the juvenile offender and to each party to the proceeding. Except as set out in subsection (b), if the court finds ~~at the hearing~~ ***by a preponderance of the evidence*** that the juvenile offender violated a condition of probation or placement, the court may extend or modify the terms of probation or placement or enter another sentence pursuant to section 61, and amendments thereto, except that a child support order which has been registered under section 21, and amendments thereto, may only be modified pursuant to section 21, and amendments thereto.

(b) ~~The court shall enter an order removing custody from a parent only upon finding: (1) Reasonable efforts have been made to maintain a juvenile in such juvenile's family or an emergency exists making reasonable efforts unnecessary; and (2) it is contrary to the welfare of the juvenile to remain at home.~~ ***The court shall not enter an order removing a*** ~~child~~ ***from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The*** ~~child~~ ***is likely to sustain harm if not immediately removed from the home;***

(B) allowing the ~~child~~ ***to remain in home is contrary to the welfare of the*** ~~child~~***; or***

(C) immediate placement of the ~~child~~ ***is in the*** ~~best interest of the child~~***; and***

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the ~~child~~ ***from the*** ~~child's~~ ***home or that an emergency exists which threatens the safety of the*** ~~child~~. The court shall state the basis of each finding in writing.

"juvenile"
"juvenile"
"juvenile"
"juvenile"
"juvenile"
"juvenile's best interest"
"juvenile"
"juvenile's"
"juvenile"

New Sec. 69. (a) For the purpose of committing juvenile offenders to a juvenile correctional facility, the following placements shall be ap-

5-15

plied by the judge in felony or misdemeanor cases. If used, the court shall establish a specific term of commitment as specified in this subsection, unless the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence as provided in section 71, and amendments thereto.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(B) The violent offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 4, 5 or 6 person felony or a severity level 1 or 2 drug felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(B) The serious offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 person felony with one prior felony adjudication. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months.

(3) *Chronic Offenders.* (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present nonperson felony adjudication and two prior felony adjudications; or

(ii) one present severity level 3 drug felony adjudication and two prior

felony adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication;

(ii) one present felony adjudication and two prior severity level 4 drug adjudications;

(iii) one present severity level 3 drug felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication; or

(iv) one present severity level 3 drug felony adjudication and two prior severity level 4 drug adjudications.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.

(C) The chronic offender III, escalating misdemeanant is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute:

(i) One present misdemeanor adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures;

(ii) one present misdemeanor adjudication and two prior severity level 4 drug felony adjudications and two placement failures;

(iii) one present severity level 4 drug felony adjudication and either two prior misdemeanor adjudications or one prior person or nonperson felony adjudication and two placement failures; or

(iv) one present severity level 4 drug felony adjudication and two prior severity level 4 drug felony adjudications and two placement failures.

Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.

(4) *Conditional Release Violators.* Upon finding the juvenile violated a requirement or requirements of conditional release, the court may:

(A) Subject to the limitations in subsection (a) of section 66, and

amendments thereto, commit the offender directly to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender shall be a minimum of two months and a maximum of six months, or the length of the aftercare originally ordered, which ever is longer.

(B) Enter one or more of the following orders:

(i) Recommend additional conditions be added to those of the existing conditional release.

(ii) Order the offender to serve a period of sanctions pursuant to subsection (f) of section 61, and amendments thereto.

(iii) Revoke or restrict the juvenile's driving privileges as described in subsection (c) of section 61, and amendments thereto.

(C) Discharge the offender from the custody of the commissioner, release the commissioner from further responsibilities in the case and enter any other appropriate orders.

(b) As used in this section: (1) "Placement failure" means a juvenile offender in the custody of the juvenile justice authority has significantly failed the terms of conditional release or has been placed out-of-home in a community placement accredited by the commissioner and has significantly violated the terms of that placement or violated the terms of probation.

(2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if committed by an adult would constitute the commission of a felony is a felony in another state, it will be deemed a felony in Kansas. The state of Kansas shall classify the offense, which if committed by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, reference to comparable offenses shall be made. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) All appropriate community placement options shall have been exhausted before a chronic offender III, escalating misdemeanant shall be placed in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been pursued and no such option is appropriate.

(d) The commissioner shall work with the community to provide ongoing support and incentives for the development of additional community placements to ensure that the chronic offender III, escalating misdemeanant sentencing category is not frequently utilized.

New Sec. 70. (a) For purposes of determining release of a juvenile

(c) *Priority.* Appeals under this section shall have priority over other cases except those having statutory priority.

New Sec. 81. An appeal may be taken by the prosecution from an order dismissing proceedings when jeopardy has not attached, ~~from an order~~ denying authorization to prosecute a juvenile as an adult, or upon a question reserved by the prosecution. An appeal upon a question reserved by the prosecution shall be taken within 10 days after the juvenile has been adjudged to be a juvenile offender. Other appeals by the prosecution shall be taken within 10 days after the entry of the order appealed.

New Sec. 82. (a) An appeal from a district magistrate judge shall be to a district judge. The appeal shall be by trial *de novo* unless the parties agree to a *de novo* review on the record of the proceedings. The appeal shall be heard within 30 days from the date the notice of appeal was filed.

(b) Appeals from a district judge shall be to the court of appeals.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 83. (a) Pending the determination of an appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) While an appeal is pending, the district court may modify the order appealed from and may make temporary orders concerning the care and custody of the juvenile as the court considers advisable.

New Sec. 84. When an appeal is taken pursuant to this code, fees of an attorney appointed to represent the juvenile offender shall be fixed by the district court. The fees, together with the costs of transcripts and records on appeal, shall be taxed as expenses on appeal. The court on appeal may assess the fees and expenses against the appealing party or order that they be paid from the county general fund. When the court orders the fees and expenses assessed against the appealing party:

(a) The fees and expenses shall be paid from the county general fund, subject to reimbursement by the appealing party; and

(b) the county may enforce the order as a civil judgment, except the county shall not be required to pay the docket fee or fee for execution.

New Sec. 85. (a) The commissioner may adopt rules and regulations establishing standards of training and provisions for certifying juvenile corrections officers.

(b) Except as provided in subsection (c), no person shall receive a permanent appointment as a juvenile corrections officer unless awarded a certificate by the commissioner which attests to satisfactory completion of a basic course of instruction. Such course of instruction shall be approved by the commissioner and shall consist of not less than 160 hours of instruction. The certificate shall be effective during the term of a person's employment, except that any person who has terminated employ-

: (1)

(2)

(3) quashing a warrant or a search warrant

(4) suppressing evidence or suppressing a confession or admission;

(5)

COMMENT

New Sec. 81 as contained in the current version of SB 261 is exactly the same as the language presently in K.S.A. 38-1682 and has been in effect without modification at least since July 1, 1997. The proposed change is necessary to provide the prosecution the same authority for an interlocutory appeal as provided pursuant to K.S.A. 22-3603 in adult criminal cases. Under the current version of both the existing juvenile code and the code as proposed in SB 261, an appeal may be taken only if quashing the warrant or search warrant or suppressing evidence or suppressing a confession or admission necessitates dismissing the case. See *In re R.L.C.*, 267 Kan. 210 at 213 which, in effect, holds "[t]he Kansas Juvenile Offenders Code contains no provision similar to K.S.A. 22-3603 which authorizes an interlocutory appeal from suppression rulings... Thus, the only manner in which the State may appeal a suppression ruling under the Kansas Juvenile Offenders Code is when that suppression results in the dismissal of the case."

5-19

March 7, 2006

JUDICIAL COUNCIL TESTIMONY ON 2005 SB 261

THE REVISED KANSAS JUVENILE JUSTICE CODE

House Judiciary
Date 3-7-06
Attachment # 6

TABLE OF CONTENTS
FOR
2005 SB 261

Pleadings, Process and Preliminary Matters

Adjudicatory Procedure

Appeals

Miscellaneous

General Comments to
Revised Kansas Juvenile Justice Code

BACKGROUND

Near the end of the 2000 Legislature the Senate passed Senate Resolution No. 1862 which was a resolution establishing a study group to make recommendations as to the Kansas Juvenile Offenders Code and the Kansas Code for Care of Children.

The Legislative leadership subsequently decided that rather than establish the group contemplated by the resolution, that it would request that the Judicial Council undertake a study of the Kansas Juvenile Offender's Code and the Kansas Code for Care of Children. The Judicial Council agreed to undertake the study and appointed the Juvenile Offender/Child in Need of Care Advisory Committee to conduct the study. The members of the Juvenile Offender/Child in Need of Care Advisory Committee are:

Honorable Jean F. Shepherd, Lawrence, Chair. Judge Shepherd is a district judge and member of the Judicial Council.

Charles H. Apt, III, Iola. Mr. Apt is a practicing lawyer who practices in the juvenile area and has extensive experience as a guardian ad litem.

Wade H. Bowie, Jr., Topeka. Mr. Bowie is an assistant district attorney in Douglas County and former attorney for the Kansas Juvenile Justice Authority.

Honorable Kathryn Carter, Jamestown. Judge Carter is a former district magistrate judge.

Senator Greta Goodwin, Winfield. Senator Goodwin is a state senator and ranking minority member of the Senate Judiciary Committee.

Donald W. Hymer, Olathe. Mr. Hymer is an assistant district attorney in Johnson County and practices exclusively in the area of juvenile law. He is a frequent presenter at continuing legal education programs on juvenile law and related subjects.

William E. Kennedy, III, Manhattan. Mr. Kennedy is former County Attorney in Riley County and handled the juvenile matters in that office.

Representative Brenda Landwehr, Wichita. Representative Landwehr is state representative from Wichita and Chair of the Joint Committee on Children's Issues.

Michael E. Lazzo, Wichita. Mr. Lazzo is an attorney who specializes in representing parents in CINC proceedings.

Professor Richard E. Levy, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

Sue Lockett, Topeka. Mrs. Lockett is former Executive Director of C.A.S.A. of Shawnee County.

Roberta Sue McKenna, Topeka. Mrs. McKenna is Assistant Director for Legal Services for the Department of Social and Rehabilitation Services.

Lisa Mendoza, Topeka. Ms. Mendoza is an attorney and is General Counsel for Kansas Juvenile Justice Authority.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

Senator Edward W. Pugh, Wamego. Senator Pugh is an attorney and former state senator. Senator Pugh is the sponsor of the resolution that led to the creation of the committee.

Honorable Steven M. Roth, Westmoreland. Judge Roth is an attorney and is a district magistrate judge in Pottawatomie County.

Donavon Rutledge, Topeka. Mr. Rutledge is the retired Director of Evaluation and Program Improvement for the Kansas Department of Social and Rehabilitation Services. Previously Mr. Rutledge taught in the School of Social Work at Wichita State University.

Sarah Sargent, Topeka. Ms. Sargent is an attorney for The Farm, Inc. Family Services.

The Committee also acknowledges the contributions of Senator Barbara Allen, Representative Kathe Decker, Michael George, Judge C. Fred Lorentz and Helen Pedigo, who served on the Committee but are no longer members.

METHODOLOGY

The Committee began its meetings in August of 2000 and has met nearly monthly since that time. The meetings have included consideration of both the Kansas Juvenile Justice Code and consideration of the Kansas Code for Care of Children.

The Committee agreed that its goals were to simplify the code, reorganize the code in a more logical manner and be certain that all changes are consistent with the goals of the code and are constitutionally permissible.

In 2003, the Committee introduced 2003 HB 2270 which extensively amended the Kansas Juvenile Justice Code. Hearings were held on the bill in the House Corrections and Juvenile Justice

Committee. The bill was later withdrawn from further consideration, at the request of the Judicial Council, because the new staff at the Juvenile Justice Authority had a number of suggestions it requested the Judicial Council Advisory Committee to consider. The Committee has completed its consideration of those suggestions and the proposed bill reflects the additional changes that were adopted.

The 2005 bill proposed by the Judicial Council differs from the previous proposal in that the bill proposes repeal of the existing Kansas Juvenile Justice Code and its replacement with the "Revised Kansas Juvenile Justice Code". The 2003 bill amended the existing code.

CHANGES IN THE REVISED CODE

Technical changes. A majority of the differences between the current Kansas Juvenile Justice Code and the proposed Revised Kansas Juvenile Justice Code are technical changes. These changes include changes in style, language, grammar, terminology, cross-references and other similar changes. Some of these technical changes may be discussed in the comments to the individual sections, but most are not because the changes clarify the sections, but are not generally significant.

Reorganization. The proposed act contains a number of organizational changes which are intended to implement the Committee goal of reorganizing the code in a more logical manner. Sections are moved within the code, material is reorganized within sections and material from two or more sections is combined. These changes themselves do not alter the law, but are merely a reorganization of the order in which the code is presented. Most of these changes are identified in the comments to the individual sections.

Policy Changes. A number of policy changes are contained in the proposed code. Most of the policy changes are minor. The Committee's proposal that juveniles in felony cases be granted the right to trial by jury, upon request, is a significant policy change. It is discussed in the comment to section 57 of the proposed act.

The following is a brief description of the policy changes, with the section or sections of the code in which the policy changes are found noted. Most of the policy changes listed are discussed more fully in the comments to the individual sections of the proposed code.

The statute of limitations has been changed to generally parallel the adult criminal code and to lengthen the statute of limitations in certain instances. (Section 3)

Termination of jurisdiction has no effect on the juvenile offenders continuing responsibility to pay restitution. (Section 4)

As to court records, there is a limitation on the victim's records going to the Kansas Racing Commission; court appointed special advocates and juvenile community corrections offices are added to the list of persons who may inspect the social file and

there are certain time and age changes with respect to records in the custody of the Kansas State Historical Society. (Section 9)

Juvenile community correction officers are added to the list of persons who may obtain law enforcement and municipal court records of juveniles under 14 years of age. (Section 10)

Disclosure of diagnostic, treatment or medical facilities records of juvenile offenders by the Juvenile Justice Authority and the Department of Corrections is authorized to the extent necessary for treatment of the juvenile. (Section 11)

Rape is added to the list of acts committed by a juvenile which may not be expunged. (Section 12)

Fingerprinting and photographing of alleged juvenile offenders is allowed in more limited circumstances than under current law. (Section 13)

Reimbursement of expenses of care or custody of juveniles is changed to state that when a county has paid expenses for an alleged or adjudicated juvenile offender, those expenses may be assessed to the person legally responsible for the care of the juvenile. The hearing for challenging such an assessment is no longer automatic, but must be requested. (Section 15)

Language has been inserted to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). (Section 16)

Parents of minor victims are added to the list of persons who get notice of availability of AIDS testing and are given the right to request the person charged be tested. (Section 17)

The time requirement for giving notice of alibi or mental disease or defect is changed from within five days of the initial appearance, to not less than 10 days prior to the adjudicatory hearing. (Section 29)

Juvenile Justice Authority supervising officers are added to the list of persons who may take a juvenile into custody. (Section 30)

Language implementing the Adoption and Safe Families Act of 1997 is inserted throughout the code. (Sections 31, 34, 35, 61, 67 and 68)

The current requirement that if a juvenile is taken into custody for exhibiting assaultive or destructive behavior, such behavior must continue after the juvenile is

taken into custody for the juvenile to be placed into a detention facility, is removed and self-destructive behavior is added to the list of behaviors. (Section 31)

The service of process section was changed to refer to service of process under the civil code. This is a slight expansion of present authority but will simplify service and keep this code consistent with future changes in the Civil Code. (Section 38)

The name of the hearing held under current K.S.A. 38-1633 is changed from "pre-trial hearing" to "first-appearance". (Section 44)

Law enforcement officers are allowed to issue a summons under the immediate intervention program statutes if the local prosecutor has adopted policies and guidelines giving that authority. (Section 46)

The designee of the county or district attorney (not just the county or district attorney) is authorized to file a motion for prosecution as an adult and if the juvenile is not convicted, the authorization for prosecution as an adult does not automatically apply to future prosecutions. (Section 47)

The court appoints one, rather than two, licensed psychiatrists or psychologists to examine the juvenile to determine competency and the court is allowed to excuse the alleged juvenile offender from the hearing if it would be injurious to his or her health to attend. (Section 48)

The best interests of the victim may be considered in deciding if a hearing should be closed. Currently, only the best interests of the alleged juvenile offender are mentioned in the statute. (Section 53)

Juveniles in felony cases are granted the right to trial by jury, upon request. This is a significant policy change. Under current law, a juvenile may receive a jury trial at the discretion of the court. The comment following section 56 discusses the reasons for the change and quotes extensively from the Louisiana Supreme Court case of *State v. Brown.* (Section 57)

The statutory requirement for designation of a state-wide sentencing risk assessment tool is eliminated and the statute is changed to allow the court to address expenses with reference to all four information gathering tools, not just psychological evaluations. (Section 60)

Several policy changes are made in the sentencing area. Restitution orders are declared to be judgements, which may be enforced by civil process, even after termination of the court's jurisdiction over the juvenile; the maximum amount of a fine has been increased from $250 to $1000 and a fine is a judgement against a

juvenile offender that may be enforced by civil process, even after termination of the court's jurisdiction. (Section 61)

The term for the initial commitment to a sanctions house is increased from 7 to 28 days. (Section 61)

The provisions relating to foster parent reporting are made discretionary. (Section 65)

The requirement that a hearing automatically be held on an alleged probation or placement violation is changed. The hearing will be held only if requested by the commissioner, a parent, one of the parties or on the court's own motion. (Section 68)

Prior person or nonperson felonies will now be counted the same as two misdemeanors. (Section 69)

The Juvenile Justice Authority is required, rather than authorized, to adopt rules and regulations relating to good time credits. (Section 70)

The date of admission to a Juvenile Justice Authority facility is required to be no more than five days after the notice to the committing court. (Section 73)

Non-drug crimes ranked a severity level 4 or 5 and drug crimes ranked at severity level 3 are added to the list of crimes which, if committed by the juvenile offender, require the commissioner to give notice to certain persons, if the juvenile is still required to attend school and his or her release is nearing. In addition, the victim is added to the list of persons who receive notice of discharge. (Section 77)

Appeals from district magistrate judges are to be by trial *de novo* unless parties agree to a *de novo* review on the record of the proceedings. The right of the juvenile to call witnesses on appeal is eliminated. (Section 82)

COMMENT

Section 1 relating to citation of and the goals of the code is nearly identical to current K.S.A. 38-1601. The name of the code is changed to the "The Revised Kansas Juvenile Justice Code" to distinguish it from the current code. The section continues to contain the goals of the code and lists policies contained in the code to accomplish the goals.

COMMENT

Section two relating to definitions is substantially similar in content to current K.S.A. 38-1602. The section has been reorganized by placing it in alphabetical order.

No current definitions are deleted. A definition of "conditional release" in subsection (b) is new because the term is used in the code and has not previously been defined.

The current definitions of several terms are changed.

In subsection (f) the definition of "institution" is changed to include the Kansas juvenile correctional complex.

In subsection (i) the definition of "juvenile" is broadened to be consistent with its current usage and to lessen the need to frequently use a longer descriptive phrase to be technically correct.

In subsection (j), "juvenile correctional facility," the phrase "the commitment of" is added.

In subsection (l), the definition of "juvenile detention facility" is clarified by the addition of the phrase "licensed pursuant to article 5 of the Kansas Statutes Annotated."

In subsection (n), the definition of "juvenile offender" is changed to be consistent with the change in the definition of "juvenile."

In subsection (p) the definition of "parent" is changed by striking the term "conservator" because conservators deal only with financial matters.

In subsection (t), the definition of "youth residential facility" is changed by inserting reference to article 70 of chapter 75 of K.S.A. as a second source for licensing.

COMMENT

New Section 3, relating to statute of limitations, is similar to current K.S.A. 38-1603. The section has been changed to generally parallel the adult criminal code and to lengthen the statute of limitations in certain instances. The changes add lewd and lascivious behavior under K.S.A. 21-3508 and unlawful voluntary sexual relations under K.S.A. 21-3522 to a list of crimes that, if the victim is less than 16 years of age, have a 5 year statute of limitations. This section is further changed so rape and aggravated sodomy have a 5 year statute of limitations regardless of the age of the victim.

The changes add a one year extension to the statute of limitations from the date of identity, if the identity of the suspect is conclusively established by DNA testing. The statute is also changed to add language similar to K.S.A. 21-3106(f), extending the statute of limitations to age 28, if certain qualifying circumstances exist.

COMMENT

Section 4 relates to jurisdiction, is substantially similar to current K.S.A 38-1604 and in subsection (c) contains former K.S.A. 38-1615.

Subsection (d) contains language that was previously in K.S.A. 38-1667, requiring designation of a date of termination. Changes in the section clarify that the court's jurisdiction ends at age 21 unless other provisions apply and that termination of jurisdiction pursuant to this section has no effect on the juvenile offender's continuing responsibility to pay restitution pursuant to Section 60 of this act [(formerly K.S.A. 38-1663(b)].

COMMENT

Section 5 relates to venue and is substantially similar to current K.S.A. 38-1605.

In subsection (b), reference to where the "adjudication occurred" replaces reference to where the "offense was committed"; provisions are made to send both the official file and social file to the sentencing court; the complainant is stricken as a person who may make a venue motion and, in instances where a juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the standard for holding the sentencing hearing in the county of adjudication has been changed from "best interest of the juvenile offender and community" to "interest of justice".

COMMENT

Section 6, relating to right to an attorney, is nearly identical to current K.S.A 38-1606.

COMMENT

Section 7, relating to court appointed special advocates, is nearly identical to current K.S.A 38-1606a. The word "homelike" was stricken and replaced with the word "appropriate" because in some instances it is in the best interests of the juvenile to be in a more structured placement and "homelike" placements are not always an option in juvenile offender cases.

COMMENT

Section 8, relating to the powers and duties of citizen review boards is similar to current K.S.A. 38-1813 but is drafted to only apply to the duties of citizen review boards in juvenile offender cases. The Revised Kansas Code for Care of Children also contains a section similar to current K.S.A. 38-1813. That section has been drafted to apply only to duties of citizen review boards in child in need of care cases.

COMMENT

Section 9, relating to court records, is similar to K.S.A 38-1607. In subsection (b)(4), the correct term "court appointed special advocate" is inserted. In subsection (b)(7), there is a limitation on the content of the victim's records going to the Kansas racing commission.

In subsection (c), court appointed special advocates and juvenile community corrections officers are added to the list of persons who may inspect the social file.

In subsection (d), relating to records in the possession of the Kansas state historical society, the lowering of the age of confidentially from 16 years to 14 years is consistent with previous legislative action. The change of 80 years after creation to 70 years after creation, as to when the records may be disclosed, is constant with K.S.A. 45-221(f).

COMMENT

Section 10, relating to law enforcement and municipal court records of juveniles, is substantially similar to current K.S.A 38-1608. Subsection (a) is changed to add juvenile community corrections officers to the list of persons who may obtain records of juveniles under 14 years of age.

Changes in subsections (e)(2)(K) and (L) utilize language similar to K.S.A 38-1507(d)(11) and (12), relating to disclosure to educational institutions and educators.

COMMENT

Section 11, relating to the records of diagnostic, treatment or medical facilities of juvenile offenders is substantially similar to current K.S.A. 38-1609. Subsections (a) (7) and (8) have been added to allow disclosure of the records by the juvenile justice authority and department of corrections, to the extent necessary for treatment of the juvenile.

COMMENT

Section 12, relating to expungement, is substantially similar to K.S.A. 38-1610.

In subsection (b), the crime of rape, K.S.A. 21-3502, is added to the list of acts committed by a juvenile, which may not be expunged. The change is consistent with K.S.A 21-4619(c), which relates to crimes adults may not expunge, and includes rape. Reference to K.S.A. 21-3509, which was repealed in 1993, is omitted.

COMMENT

Section 13, relating to fingerprints and photographs, is changed from current K.S.A. 38-1611, which relates to the same subject. The section was amended to allow fingerprinting and photographing of an alleged juvenile offender in more limited circumstances than under current law.

Subsections (a)(2), which currently provides for mandatory fingerprinting and permissive photographing, was amended to limit the taking of fingerprints and photographs to juvenile offenders, but to require that both fingerprints and photographs be taken after adjudication, if any felony or certain other crimes were committed. The list of crimes was taken from K.S.A. 21-2511 and is the same list of crimes that requires those adults who commit them to submit specimens for DNA testing.

Subsection (a)(3) and (4), which provide for permissive fingerprinting and photographing, were changed so that they apply only to an alleged juvenile offender who has previously been prosecuted as an adult, or to a juvenile who has been admitted to a juvenile corrections facility. Subsections (b) and (c) were changed to allow fingerprints and photographs taken pursuant to subsection (a)(2) (felony cases), (a)(3) (juvenile offender who has been prosecuted as an adult) and (a)(4) (juvenile who has been admitted to a juvenile corrections facility) to be kept and designated in the same manner as those of adults.

Subsection (e) is changed to allow fingerprints on file prior to the effective date of this act to be sent to a state or federal repository.

COMMENT

Section 14, relating to docket fee and expenses, is substantially similar to current K.S.A. 38-1613. Subsection (c) is changed to provide that the docket fee and expenses may no longer be assessed against the complaining witness or person initiating the prosecution. This reflects actual practice. The Committee notes that if proceedings are filed in a frivolous manner, the civil statutes relating to filing a frivolous lawsuit apply.

Subsection (d) is rewritten to allow the court to order payment of restitution occur first.

COMMENT

Section 15, relating to the expense of care and custody of juveniles, is similar to current K.S.A 38-1616. Subsection (a) is changed to clarify that expenses for the care and custody of the juvenile are to be paid by the county in which proceedings are initiated. However, if venue of the case is transferred, those expenses are to be paid by the receiving county. Current 38-1616(a)(2) was deleted because it has no current application.

Subsection (b), which deals with reimbursement of expenses, was changed to state that when a county has paid the expenses of a person accused of being, or adjudicated to be, a juvenile offender the court may assess those expenses to the person legally responsible for the care of the juvenile. The court must also inform the person assessed the expenses of the right to a hearing and shall grant such hearing, if requested. Currently the hearing is automatic.

COMMENT

Section 16, relating to health services, is similar to current K.S.A. 38-1614. In subsection (a)(2) language has been inserted to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996. The subsection also clarifies that the juvenile justice authority, as custodian, may consent to medical treatment for a juvenile prosecuted as an adult who has committed a felony, is under 16 years of age, is in the legal custody of the department of corrections, but because of his or her age was placed in a juvenile justice authority facility.

COMMENT

Section 17, relating to AIDS testing and counseling, is substantially similar to current K.S.A. 38-1692. A change is made in subsection (a)(1) for clarification. The only change of substance was made to include parents of minor victims in the list of those who get notice of availability of AIDS testing and to give minor victim's parents the right to request AIDS testing of the person charged.

The section is moved from it's current location near the end of the code because it more logically follows section 15 which relates to health services for juveniles.

COMMENT

Section 18, relating to determination of parentage, is substantially similar to current K.S.A.38-16,116. The section is moved to this location in the revised code because it is a more logical placement for the subject matter. Subsection (b) is stricken because authority to consent is contained in the parentage act, which is referenced in subsection (a).

COMMENT

Section 19, relating to determination of child support under the code, is similar to current K.S.A. 38-16,117.

Subsection (b) of K.S.A. 38-16,117 is omitted because the child support guidelines are adequate to cover the situations in the stricken language. The Committee placed the section at this location in the revised code because it is a more logical place for the subject matter.

The Senate amendment removed the authority of the county or district attorney to determine child support. The Court should determine the amount of child support by applying the child support guidelines.

COMMENT

Section 20, relating to journal entry for child support under code, is identical to current K.S.A.38-16,118. The section was placed at this location in the revised code because it is a more logical place in the code for the subject matter.

COMMENT

Section 21, relating to the withholding order for child support under the code, is nearly identical to current K.S.A. 38-16,119. The only changes are technical, the section was moved to this location in the revised code because it is a more logical place for the subject matter.

COMMENT

Section 22, relating to the child support remedies, is nearly identical to current K.S.A. 38-16,120 and appears at this location in the revised code because it is a more logical place in the code for the subject matter.

COMMENT

Section 23, relating to assignment of support rights when a juvenile is placed under the juvenile justice code, is nearly identical to current K.S.A. 38-16,127. The only changes are technical and the section was moved to this location the revised code because it is a more logical place for the subject matter.

COMMENT

Section 24, relating to liability of parent or guardian for assistance provided child, is nearly identical to current K.S.A. 38-16,128 and is placed at this location in the revised code because it is a more logical place for the subject matter.

COMMENT

Section 25, relating to the juvenile offender information system, is nearly identical to the current K.S.A 38-1617. The only changes are technical.

COMMENT

Section 26, relating to establishment and maintenance of the juvenile justice information system, is nearly identical to K.S.A. 38-1618. The only changes are technical.

COMMENT

Section 27, relating to commencement of proceedings, is nearly identical to current K.S.A. 38-1621, with an added second sentence relating to the duty of the county and district attorney, which was previously K.S.A. 38-1612.

COMMENT

Section 28, relating to pleadings, is substantially similar to current K.S.A 38-1622. Subsection (a)(1) was amended by deleting requirements regarding who may file the complaint. Subsection (a)(2) was amended to delete "respondent" from the title of juvenile proceedings and replaced it with "a juvenile". Subsection (a)(3) was amended to provide that the complaint must notify the parents that they may be required to pay child support if the child is removed from the home.

Subsection (b) was changed to provide that the same motions available in civil and criminal proceedings are available under the juvenile justice code. The existing code is silent on this matter and the amendment reflects current practice.

COMMENT

Section 29, relating to notice of alibi or mental disease or defect, is substantially similar to current K.S.A. 38-1623, but was changed to require an alleged juvenile offender whose defense is alibi or mental disease or defect, to give written notice thereof to the prosecutor not less than 10 days prior to the adjudicatory hearing. This is a change from the current law that requires the notice within 5 days of the initial appearance. The change acknowledges present practice because such notices are seldom, if ever, given within 5 days of the initial appearance.

COMMENT

Section 30, relating to juvenile taken into custody, is similar to current K.S.A 38-1624. Subsection (a) was amended by adding a new subsection (6) which refers to the written statement discussed in subsection (c).

Subsection (b) was amended to allow probation officers as well as juvenile justice authority supervising officers to issue arrest and detain orders on probation violators as they do with adults. Because not all juvenile justice authority supervising officers are community correction officers, the language is broadened to juvenile community corrections officer.

Subsection (c)(3)(A) and (B), relating to the admission of evidence of a confession made while in custody were stricken and will appear at section 33, which deals with custodial interrogation.

COMMENT

Section 31, relating to criteria for detention of juveniles in detention facility, is substantially similar to current K.S.A 38-1640. The section was moved from its current location in the code because it more logically follows section 30, which deals with taking a juvenile into custody. The section sets out the criteria for detaining a juvenile in a detention facility.

Subsection (a) is the first occurrence of language implementing the Adoption and Safe Families Act of 1997. Compliance with the act is required to qualify for federal financial participation, under section IV-B of the social security act, in the cost of juvenile offender programs. Similar language is included, where appropriate, throughout the code.

Subsection (b)(2) was changed to delete all references to crimes committed prior to 1993. Those references are no longer necessary because if the crime was committed by a juvenile prior to 1993, the offender would now be over 18 years of age and may not be held in a juvenile detention center. Subsection (b)(6) is amended to not require that assaultive, destructive or self-destructive behavior continue after the juvenile is taken into custody for the juvenile to be placed in a juvenile detention center.

The Senate amended the ASFA language in this section to be consistent with the language it amended into the CINC code.

COMMENT

Section 32, relating to probation of placement or detention of a juvenile in a jail, is nearly identical to current K.S.A. 38-1691. The change is technical.

The section is moved from it's current location near the end of the code because it more logically follows section 31 which relates to detention of juveniles in a detention facility.

COMMENT

Section 33, relates to admission of confession of juvenile less than 14 years of age. Language in subsection (a) and (b), is nearly identical to existing K.S.A 38-1624(c)(3)(A) and (B). The language was moved to this location by the Committee because it is of the opinion that a separate section on the subject of custodial interrogation is appropriate at this location in the code.

Subsection (c) is new language to clarify that after an attorney has been appointed for the juvenile, the parents may not waive his or her rights.

COMMENT

Section 34, initial placement of juvenile outside the home, is a new section which is drafted to comply with the Adoption and Safe Families Act of 1997. Compliance with the act is required to qualify for federal participation under section IV-B of the social security act in the cost of juvenile offender programs.

The Senate amended the ASFA language in this section to be consistent with the language it amended into the CINC code.

COMMENT

Section 35, relating to initial removal from juvenile's home, is a new section drafted to comply with the Adoption and Safe Families Act of 1997. Compliance with the act is required to qualify for federal participation under section IV-B of the social security act in the cost of juvenile offender programs.

The Senate amended the ASFA language in this section to be consistent with the language it amended into the CINC code.

The amendment relating to the risk the juvenile presents to public safety was requested by the Office of Judicial Administration.

COMMENT

Section 36, relating to proceedings upon filing a complaint, is substantially similar to current K.S.A. 38-1625. The changes in the section are technical.

COMMENT

Section 37, relating to summons, is substantially similar to current K.S.A. 38-1626. Subsection (a) was rewritten and changed by deleting the requirement that the summons be served on a parent "who may be ordered to pay child support" because at the initial summons stage, child support is not generally a concern and it is unlikely that those causing the issuance of the summons would know who would be liable for a support order. Other changes are technical.

COMMENT

Section 38, relating to service of process, is similar to current K.S.A. 38-1627. The section

was changed to refer to the civil code, which will simplify service and keep this code consistent with future amendments to the civil code. The authority granted under K.S.A. 60-303 is a slight expansion of the authority presently granted.

COMMENT

Section 39, relating to proof of service, is nearly identical to current K.S.A. 38-1628. The only changes are technical.

COMMENT

Section 40, relating to service of other pleadings, is nearly identical to current K.S.A. 38-1629. The only changes are technical.

COMMENT

Section 41, relating to subpoenas and witness fees. It is substantially similar to current K.S.A. 38-1630.

Subsection (b) is changed to clarify that the court has the power to compel attendance of witnesses from out of state for proceedings under the juvenile justice code. Currently, there is a difference in how courts handle out of state witnesses. The change is consistent with K.S.A. 22-4202 and 22-4203 of the code of criminal procedure.

COMMENT

Section 42, relating to issuance of warrant, is substantially similar to current to K.S.A. 38-1631. The changes in the section are not policy changes but rather clarify the circumstances in which a court may issue a warrant.

COMMENT

Section 43, relating to detention hearing, is substantially similar to current to K.S.A. 38-1632. The changes in the section are for clarification or are technical changes. The current subsections relating to juveniles being held in jails are omitted because that is no longer an option at this stage of the proceeding.

COMMENT

Section 44, relating to first appearance, is substantially similar to current K.S.A. 38-1633. The policy change contained in this section is the reference to this hearing as "first appearance" instead of the previous term "pre-trial hearing".

COMMENT

Section 45, relating to *nolo contendere*, is nearly identical to current K.S.A. 38-1634. The only differences in the sections are technical.

COMMENT

Section 46, relating to immediate intervention programs, is substantially similar to current K.S.A. 38-1635. In subsection (a)(2), a policy change now allows law enforcement officers to issue summons if a local prosecutor has adopted appropriate policies and guidelines.

COMMENT

Section 47, relating to prosecution as an adult, is similar to current K.S.A. 38-1636.

This section differs from current K.S.A 38-1636 in subsection (a) by including language which allows, not only the county or district attorney, but his or her designee to file a motion for prosecution as an adult. Subsection (a)(2) adds severity level 3 drug felonies to a list of offenses for which a juvenile is presumed to be an adult or presumed to be subject to an extended juvenile jurisdiction prosecution.

Subsection (a)(4) and (f)(1)and (2) clarify that when a juvenile is presumed to be an adult or presumed to be subject to an extended jurisdiction juvenile prosecution that the juvenile has the burden to rebut the presumption by a preponderance of the evidence.

In subsection (h), language is included to provide that if the juvenile is not convicted, the authorization for prosecution as an adult shall not attach and shall not automatically apply to future prosecutions.

COMMENT

Section 48, relating to proceeding to determine competency, is similar to current K.S.A 38-1637. The section contains two policy changes. In subsection (b)(2)(A), the change allows the court to appoint one, rather than two, licensed psychiatrists or psychologists to examine the juvenile.

In subsection (b)(3), a policy change allows the court to excuse the presence of the alleged juvenile offender if attendance at the proceedings would be injurious to the juvenile's health.

Subsection (d) was changed to clarify that even if an alleged juvenile offender is found to be incompetent, he or she remains subject to the court's jurisdiction.

COMMENT

Section 49, relating to commitment when the juvenile is found incompetent, is similar to current K.S.A. 38-1638. This section is reorganized. Use of the term "public" in subsection (a) is intended to broaden the number of available facilities. The section has also changed the obligation of who files the Chapter 59 proceeding from the secretary of social and rehabilitation services to the county or district attorney.

COMMENT

Section 50, relating to proceedings when the alleged juvenile offender is not a mentally ill person, is substantially similar to current K.S.A. 38-1639. The section addresses the situation when an incompetent juvenile is no longer subject to involuntary care and treatment as a mentally ill person under K.S.A. 59-2946(f). This situation may arise because the standard for competence as defined in section 48 of this act, refers a juvenile offender's ability to understand the proceedings and assist in his or her defense, while the standard for mentally ill persons excludes certain untreatable conditions such as mental retardation. The changes in this section are in style or are technical.

COMMENT

Section 51 is substantially similar to current K.S.A. 38-1641, relating to the duty of parents to appear at proceedings. This section differs from current statute by deleting the term "guardian" in several places because the term is already included in the definition of "parent" in section 2 and deleting the definition of "parent" that appears in this section also because the term is defined in section 2.

COMMENT

Section 52, relating to time of hearing, is nearly identical to current K.S.A. 38-1651. The only change is technical.

COMMENT

Section 53, relating to hearings, is similar to current K.S.A. 38-1652. Subsection (a) contains a policy change that allows a hearing for an alleged juvenile offender, who is less than 16 years of age at the time of the offense, to be closed if the judge determines it is in the best interests of the victim or the juvenile to close the hearing. Currently, only the best interests of the alleged juvenile offender are cited in the statute.

Subsection (c) is clarified to state that even if a hearing is open to the public, the court may still order witnesses sequestered.

COMMENT

Section 54, relating to rules of evidence, is nearly identical to current K.S.A. 38-1653. The only change is technical.

COMMENT

Section 55, relating to degree of proof, is nearly identical to current K.S.A. 38-1654. The only changes are technical.

COMMENT

Section 56, relating to adjudication, is nearly identical to current K.S.A. 38-1655. The only changes are technical.

COMMENT

Section 57, relating to jury trials in certain cases, contains a substantial change from current K.S.A. 38-1656. This section contains a policy change which grants juveniles in felony cases the right to trial by jury upon request. Under current law, a juvenile may receive a jury trial at the desecration of the court. Neither the United States Supreme Court nor the Kansas Supreme Court has afforded juveniles the right to trial by jury. However, because juvenile adjudications are included in adult criminal history, it is believed to be appropriate to give juveniles the right to jury trials in felony cases.

The Louisiana Supreme Court recently held in the case of State v. Brown, 879 So2d 1276 (2004) that it is not constitutionally permissible to use a juvenile adjudication, in which the juvenile had not been afforded the right to a trial by jury, to enhance a sentence committed by an adult. The

Committee is of the opinion that language from the Louisiana case is of interest to persons considering the proposed changes in this section.

The Louisiana Supreme Court stated that it has well established that juvenile adjudications are sufficiently reliable, even without a jury trial, to support dispositions within the juvenile justice system. However, *Apprendi* raised the issue of whether such adjudications, rendered without the right to a jury trial are sufficiently reliable to support enhanced sentencing for adults. The Louisiana Supreme Court found they are not for the following reasons:

> "Under the guise of *parens patriae,* juvenile courts emphasize treatment, supervision, and control rather than punishment. The hallmark of special juvenile procedures is their non-criminal nature.
>
> Louisiana's juvenile system was founded upon the premise that retributive punishment was deemed inappropriate and the juvenile system dispositions should be individually tailored to address the needs and abilities of the juvenile in question.
>
> Because of the unique nature of the juvenile system manifested in its non-criminal or 'civil' nature, its focus on rehabilitation and individual treatment rather than retribution, and the state's role as *parens patriae* in managing the welfare of the juvenile in its custody, the United States Supreme Court held, despite disappointments, failures and shortcomings in the juvenile court system, juveniles were not constitutionally entitled to jury trials.
>
> Even though it was argued that because (1) the juvenile justice system had taken on more of the trappings of the criminal justice system; (2) the role of punishment had increased in the juvenile system; and (3) the legislative amendments opening the proceedings to the public and allowing juvenile adjudications to serve as predicate offenses for adult felony sentence enhancement, due process required juveniles receive a jury trial, the Louisiana Supreme Court continued to uphold that the State Constitution does not afford a juvenile the right to a jury trial in a juvenile proceeding.
>
> Among the state high court's reasons for its continued holding is that even with the changes in the juvenile justice system, there remains a great disparity in the severity of penalties faced by a juvenile charged with delinquency and an adult defendant charged with the same crime. To allow these adjudications to serve as "prior convictions" for purposes of sentence enhancement for adult felony offenses would lessen this disparity and contribute to blurring the distinction between juvenile and adult procedures.
>
> The Louisiana Supreme Court finds there is a difference between a "prior conviction" and a prior juvenile adjudication. A prior conviction must itself have

been established through procedures satisfying the fair notice, reasonable doubt and jury trial guarantees.

The Louisiana Supreme Court's prior holdings that due process does not require juveniles be afforded all the guarantees afforded adult criminals under the constitution have been premised upon the "civil nature" of a juvenile adjudication, its focus on rehabilitation and the state's role as *parens patriae.*

If a juvenile adjudication, with its lack of a right to a jury trial which is afforded to adult criminals, can then be counted as a predicate offense the same as a felony conviction for purposes of Louisiana's Habitual Offender Law, then the entire claim of *parens patriae* becomes a hypocritical mockery.

A juvenile adjudication is not a conviction of any crime. Therefore, this adjudication should not be counted as a "prior conviction for *Apprendi* purposes.

The determination that a jury trial was not constitutionally required in juvenile adjudications was predicated upon the non-criminal treatment of the adjudicated juvenile delinquent.

It would be incongruous and illogical to allow the non-criminal adjudication of a juvenile delinquent to serve as a criminal sentencing enhancer.

To equate this adjudication with a conviction as a predicate offense for purposes of the Habitual Offender Law would subvert the civil trappings of the juvenile adjudication to an extent to make it fundamentally unfair and thus, violative of due process.

In order to continue holding a trial by jury is not constitutionally required, the state high court cannot allow these adjudications, with their civil trappings, to be treated as predicate offenses the same as felony convictions.

It seems contradictory and fundamentally unfair to provide youths with fewer procedural safeguards in the name of rehabilitation and then to use adjudications obtained for treatment purposes to punish them more severely as adults.

It is inconsistent to consider juvenile adjudications civil for one purpose and therefore not constitutionally entitled to a jury trial, but then to consider them criminal for the purpose of classifying them as "prior convictions," which can be counted as predicate offenses for purposes of the Habitual Offender Law.

The Louisiana Supreme Court does not agree that because the procedures of juvenile adjudications are sufficiently reliable for juvenile dispositions, they are

therefore reliable to justify the much harsher consequences of their use as criminal sentence enhancements.

The Louisiana Supreme Court finds that recidivism is distinct as a sentencing factor and therefore as an exception to the general rule that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt, because unlike virtually any other consideration used to enlarge the possible penalty for an offense, a prior conviction must itself have been established through procedures satisfying the fair notice, reasonable doubt, and jury trial guarantees.

Because a juvenile adjudication is not established through a procedure guaranteeing a jury trial, it cannot be excepted from *Apprendi's* general rule; the use of these adjudications to increase the penalty beyond the statutory maximum violates the defendant's Due Process right guaranteed by the Fourteenth Amendment of the United States Constitution."

The Senate amended this section to change the language back to current law. This gives the judge discretion in granting the motion for a jury trial.

COMMENT

Section 58, related to the admissibility of the recorded statement of a child, is nearly identical to current K.S.A. 38-1657. The only change is technical.

COMMENT

Section 59, relating to admissibility of video taped testimony of a child, is nearly identical to current K.S.A. 38-1658, with the exception of the last two sentences of subsection (a)(2), which adds the language of the counterpart of the section in the adult code, K.S.A. 22-3434(b).

COMMENT

Section 60, relating to post adjudication orders and hearings, replaces current sections K.S.A. 38-1661, relating to pre-sentencing and 38-1662, relating to evaluation of development or needs. Because both of the current statutory sections refer to information gathering tools used for sentencing, the Committee combined the contents of those sections into section 60.

Section 60 also eliminates the statutory requirement for designation of a state-wide sentencing risk assessment tool because the current tool was designated for use by court services

officers and not intended for judges to use in sentencing. In addition, the Committee was concerned with language in current K.S.A 38-1661(a), which makes use of sentencing reports discretionary and seems to conflict with language in subsection (b), which can be interpreted as making the use of the sentencing risk assessment tool mandatory.

This section also allows the courts to address expenses with reference to all four information gathering tools, as opposed to the current statute, which only provides for expenses relating only to psychological evaluations. The Committee uses the term "post-adjudication" as opposed to "pre-sentencing" to allow the court more flexibility in use of the information gathering tools.

COMMENT

Section 61, relating to sentencing alternatives, replaces current K.S.A 38-1663. Subsection (a) has been rewritten to provide a master list of sentencing alternatives, roughly in the order of increasing severity of sanctions. In addition, subsection (a) cross-references provisions requiring findings related to Adoption and Safe Families Act of 1997.

Provisions of subsections (b) and (e) and all of subsection (g) and (h) have been moved to a new section 62 of this act, which combines orders relating to parents into one section.

Subsection (d) includes language that states a restitution order represents a judgement against the juvenile offender and may be enforced by civil process, even after termination of the court's jurisdiction over the juvenile.

Subsection (e) has also been changed to increase the maximum amount of a fine to $1,000 and provide that a fine is a judgement against a juvenile offender and may be enforced by civil process, even after termination of the court's jurisdiction.

Subsection (f) changes the initial commitment to a sanctions house, for up to the entire 28 day maximum, subject to review every seven days. This is a change from current law, which permits commitment for only increments of seven days or less, up to the 28 day maximum. In addition, the section allows the judge, in the original sentence, may provide for immediate sanctions house placement.

COMMENT

Section 62, concerning orders relating to parents, is a new section. It consolidates various provisions found in current K.S.A. 38-1663 concerning orders relating to parents into a separate stand-alone section.

Subsection (a) addresses the court's authority to order parental participation in counseling,

mediation, drug and alcohol evaluation sessions, or parenting classes. It contains relevant provisions of current K.S.A. 38-1663(b)(1) and (2) and (f).

New subsection (b) addresses orders imposing financial responsibility on parents, including costs of house arrest and child support. The provisions are carried forward from current K.S.A. 38-1663(g) and (h).

COMMENT

Section 63, relating to duty of parents and others to aid in enforcement of court orders, is nearly identical to current K.S.A. 38-1668. The only changes are technical.

COMMENT

Section 64, relating to extended jurisdiction juvenile prosecution, is nearly identical to current K.S.A.38-16,126. The only changes are technical.

COMMENT

Section 65, relating to juvenile offenders placed in the custody of the commissioner, replaces current K.S.A. 38-1664. This section omits the Adoption and Safe Families Act requirements because those now appear in new sections 31, 34 and 35.

The provisions relating to permanency planning are rewritten for clarification and incorporate the written requirements and limitations currently found in K.S.A. 38-1565 of the Kansas Code for Care of Children, rather than simply referring to them by citing the CINC Code section. This should do away with the need to refer to the CINC Code when reviewing the requirements and limitations involved in permanency planning.

The entire section was reorganized for further clarification by placing those general provisions dealing with the actual placement of the juvenile with the commissioner at the beginning of this section, rather than after the portion dealing with permanency planning. This is because permanency planning would not take place until after placement with the commissioner. The section also allows the commissioner reasonable time to make a placement once a juvenile is placed in JJA custody.

The provisions setting out the requirements for foster parent reporting and forms of the reports were made discretionary. It is the experience of the Committee members that those reports were rarely received by the court and that if a party wishes to hear from a foster parent, they may subpoena that person.

COMMENT

Section 66, relating to juveniles in the custody of department of corrections, is substantially similar to K.S.A. 38-16,111. The only changes are technical.

COMMENT

Section 67, relating to modification of sentence, is similar to current K.S.A 38-1665. The section contains no substantiative changes

Subsection (b) states that if the court determines it is in the best interests of the juvenile offender to be returned to the custody of the parents, it shall make such an order.

Subsection (c) contains language implementing the Adoption of Safe Families Act of 1997. The Senate amended the ASFA language in this section to be consistent with the language it amended into the CINC code.

Subsection (e) is a modification of language currently found at K.S.A. 38-16,131 and adds an exception for exceptional behavior.

COMMENT

Section 68, relating to violation of condition of probation or placement, is similar to current K.S.A. 38-1666.

This section was changed and rather than requiring an automatic hearing on the alleged probation or placement violation, the hearing will be held only if requested by the commissioner, a parent, one of the parties, or on the court's own motion.

The Senate inserted the phrase "by a preponderance of the evidence" which clarifies that the standard of proof for determining if a juvenile offender has violated a condition of protection or placement is a preponderance of the evidence, which is the same standard that applies in adult proceedings.

Subsection (b) contains language implementing the Adoption of Safe Families Act of 1997.

The Senate amended the ASFA language in this section to be consistent with the language it amended into the CINC code.

COMMENT

Section 69, relating to sentencing juvenile offenders, is similar to current K.S.A. 38-16,129. The section was changed to include a prior person or nonperson felony as counting the same as two misdemeanors. Under the current code, the court may directly commit an offender to a juvenile correctional facility when the juvenile is newly adjudicated for a misdemeanor, if the juvenile has two prior misdemeanors adjudications and two placement failures. However, if the same newly adjudicated offender has two placement failures, one or more prior felony adjudications and none or one prior misdemeanor adjudications, the court cannot commit the juvenile to a juvenile correctional facility. Thus, under the present law, the court has fewer options in sentencing a juvenile with a more serious criminal history. It is the Committee's view that, when calculating criminal history, each prior, felony adjudication should be comparable to two misdemeanors.

The section relating to conditional release violators has been clarified and the definition of "placement failure" has been expanded to include a juvenile offender who was placed in the custody of the juvenile justice authority and has significantly failed the terms of conditional release. In addition, a placement matrix chart was prepared as a part of the statute.

COMMENT

Section 70, relating to good time credits, is substantially similar to current K.S.A 38-16,130. The section contains a policy change that requires, rather than authorizes, the juvenile justice authority to adopt rules and regulations. The Committee is of the opinion that such rules and regulations should be available to a juvenile offender entering a juvenile correction facility.

At the request of the Kansas County and District Attorney's Association, the Senate amended subsection (b) to insert language to limit good time credits to 20% of the placement sentence.

COMMENT

Section 71, relating to departure sentences, is nearly identical to current K.S.A. 38-16,132. The changes are technical.

COMMENT

Section 72, relating to computation of sentences, is nearly identical to current K.S.A 38-16,133. The changes are technical.

COMMENT

Section 73, relating to commitment to a juvenile correction facility, is similar to current K.S.A. 38-1671. In subsection (b), within three days after receiving notice of commitment, the commissioner is required to notify the court of the facility to which the juvenile offender should be conveyed, and when to effect the transfer. The amendment also states that the date of admission to a JJA facility shall be no more than five days after the notice to the committing court and clarifies that until received at the designated facility, the detention, physical custody, control and transport of the juvenile offender is the responsibility of the committing county.

COMMENT

Section 74, relating to conditional release, is nearly identical to current K.S.A. 38-1673. The only changes are technical.

COMMENT

Section 75, relating to conditional release, failure to obey, is similar to current K.S.A. 38-1674. The section has been amended to provide a copy of the report of the juvenile's failure to obey the specified conditions of the release be provided to the parties and allows the court upon the court's own motion or the motion of the county or district attorney to set the matter for hearing.

COMMENT

Section 76, relating to discharge from commitment and notification, is similar to current K.S.A. 38-1675. There is no substantive change in this section, but language deleted from the last half of subsection (b) was moved to new section 79.

COMMENT

Section 77, relating to release of juvenile offenders for acts committed before July 1, 1999, is similar to current K.S.A. 38-1676. Subsection (a) is reorganized and changed to require notice if the juvenile offender committed a non-drug crime ranked a severity level 4 or 5, or a drug crime ranked at severity level 3. In addition, the reference to section 79 adds the victim to a list of persons who receive notice of discharge. The other changes are technical.

COMMENT

Section 78, relating to school district involvement in release or discharge of a juvenile offender, is similar to current K.S.A. 38-1677. The section is changed to clarify that a educational plan must be made for the juvenile and that the juvenile's educational records and notice of the offense that the juvenile committed must be sent to the school district that the juvenile will be attending.

COMMENT

Section 79. This is a new section relating to written notice by county or district attorney. The section was drafted to replace identical provisions, which were previously contained in sections K.S.A. 38-1673(f) and K.S.A. 38-1675(b). There is no substantive change from current law.

COMMENT

Section 80, relating to orders appealable by a juvenile, is similar to current K.S.A 38-1681. Subsection (a)(1)(B), which gives a juvenile who is acquitted an appeal from the order authorizing prosecution as an adult, is not included in new section 80 because section 47(h) provides the authority for prosecution as an adult does not attach if the juvenile is not convicted.

The other changes made in this section are not substantive.

COMMENT

Section 81, relating to appeals by prosecution, is nearly identical to current K.S.A. 38-1682. The changes are technical.

COMMENT

Section 82, relating to procedure for appeals, replaces current K.S.A. 38-1682. The section contains a policy change which provides that appeals from a district magistrate judge are to be by trial *de novo* unless parties agree to a *de novo* review on the record of the proceedings. Currently, the appeal is on the record if a record is made. In addition, the section was changed to eliminate the right of only the juvenile offender to call additional witnesses on appeal, that were not called at the original proceeding.

COMMENT

Section 83, relating to temporary orders pending appeal and the status of orders appealed from, is substantially similar to current K.S.A. 38-1684. The changes are technical.

COMMENT

Section 84, relating to fees and expenses of appeals, is nearly identical to current K.S.A. 38-1685. The changes are technical.

COMMENT

Section 85, relating to juvenile corrections officers, is nearly identical to current K.S.A. 38-16,134.

COMMENT

Section 86, relating to law enforcement powers, is nearly identical to current K.S.A. 38-16,135.

COMMENT

Sec. 87. This section was prepared by the Revisor of Statutes to provide statutory guidance during the transition from the existing code to the new code.

COMMENT

Secs. 88 - 139 are conforming amendments to existing K.S.A. sections.

COMMENT

Sec. 141. Effective date is January 1, and should be amended to 2007.

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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

March 7, 2006
Proponent Testimony
Senate Bill 261
Ron W. Paschal Deputy District Attorney on behalf of
Nola Foulston District Attorney

Dear Members of the Legislature:

The Office of the District Attorney for the Eighteenth Judicial District offers the following testimony **in support of** Senate Bill 261.

The bill in its present form is representative of a lot of hard work by people dedicated to the safety of our communities while ensuring we are looking after the best interests of our children.

In particular, I would like to comment on New Section 70 which limits the award of good time credit to 20% of the placement sentence for juvenile offenders committed to a juvenile correctional facility. This is good policy. By limiting the amount of good time credit a juvenile offender may receive, we are ensuring the sentence served actually resembles the sentence imposed by the sentencing court. Thus the juvenile has an expectation of the punishment he will receive for his actions and the victim is assured of the amount of time the offender will be incapacitated. This furthers the philosophy of Truth In Sentencing. The current status of the law allows the commissioner of the Juvenile Justice Authority to determine the amount of good time credit an offender may receive. This has resulted in liberal and inconsistent amounts of good time credit being awarded to juvenile offenders, many of who are violent. The range observed by our office is anywhere from 20% to 30% and sometimes as high as 42 % good time credit being awarded.

Recent history indicates very few juvenile offenders are ever committed to a correctional facility as a part of their original sentence. This is indicative of the court system's efforts to explore opportunities to manage juvenile offenders within the

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community. Those offenders who are committed to a correctional facility are typically those who have failed to perform successfully on community based supervision programs or are among those who commit violent crimes.

In fiscal year 2000, 1,812 juvenile offender cases were filed in Sedgwick County. In fiscal year 2005, that number decreased, with a total of 1,754 juvenile offender cases being filed in Sedgwick County. During fiscal year 2000, judges in Sedgwick County directly committed 270 juveniles to correctional facilities. In fiscal year 2005, the number of direct commitments to juvenile correctional facilities from Sedgwick County decreased to a total number of 86 commitments.

The activity with regards to juvenile offender case filings and the number of commitments in Sedgwick County is consistent with numbers throughout the state.

In the year 2000, 17,927 juvenile offender cases were filed throughout the state. In the year 2004 the number of juvenile offender cases being filed in the state of Kansas had decreased to 14,719. A similar trend can be seen in regard to the number of commitments to juvenile correctional facilities. During the year 2000, 979 juvenile offenders were committed to juvenile correctional facilities in the state of Kansas. During the year 2004, the number of commitments to correctional facilities decreased to a total of 551 commitments.

Establishing a limit of twenty percent to the award of good time credit has been endorsed by the Kansas County and District Attorneys Association this legislative session.

Finally, I would like to comment on New Section 57. This provision gives the court the *discretion* to grant a juvenile offender a jury trial in certain circumstances. The section as written is consistent with long-standing law in Kansas and consistent with our philosophy in handling juvenile offender matters. Our office supports the current status of the law and New Section 57, which leaves *discretion* with the court in determining whether to grant a jury trial. Prior to the final draft of SB 261 being presented today, there had been some discussion of *requiring* jury trials upon motion of the juvenile offender in cases where a felony had been charged.

The effect of mandatory jury trials in juvenile cases would not have gone unnoticed in the Eighteenth Judicial District and other districts similarly situated. Making jury trials mandatory in certain cases would have greatly increased the cost of resolving juvenile cases and would have created greater delays in the resolution of juvenile cases.

In a jurisdiction as large as the Eighteenth Judicial District mandatory jury trials would have required the addition of at least one judge, additional court personnel and additional building space. Substantial additional costs would also be incurred in issuing summons to prospective jurors, paying the jurors for their service, ensuring adequate facilities for jurors to eat during deliberations and additional funds for attorney fees. Conservatively, we estimate this would create an entirely new court docket which would handle at least 415 jury trials each year.

Based upon the above and foregoing the District Attorney for the Eighteenth Judicial District offers her support for SB 261 as written.

Respectfully Submitted,

Ron W. Paschal
Deputy District Attorney

Juvenile Justice Authority

House Judiciary Committee
SB 261
March 7, 2006

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House Judiciary
Date 3-7-06
Attachment # 8

Thank you for the opportunity to testify today on SB 261. With one exception, the Juvenile Justice Authority (JJA) supports SB 261, which revises the juvenile justice code. The senate amendment to Section 70(b) that would impose a cap of 20% on the award of good time to youth in the custody of the Commissioner, JJA believes that amount allowed should be 30%. This amount would be more inline with the mission established for JJA and create the appropriate balance between punishment and rehabilitation. In reference, Adult inmates in the custody of the Secretary of Corrections may earn 15% good time off their sentence.

The current statute, K.S.A. 38-16,130, requires the Commissioner to develop a good time system where good behavior is the expected norm and negative behavior is punished. The Commissioner is authorized to adopt rules and regulations to carry out the provisions of this statute. This statute also provides that under no circumstances can a youth serve less than the minimum term authorized under the placement matrix.

In keeping with these statutory requirements, the Juvenile Justice Authority has drafted good time regulations, which are ready to begin the formal review and adoption process. These proposed regulations are consistent with the dual mission of JJA to promote public safety and hold youth accountable for their actions. In addition, they recognize and take into account the fact that the juvenile justice system is designed to be more rehabilitative and less punitive than the adult system. The goal of the proposed regulations is to make the award and withholding of good time consistent from facility to facility, and to emphasize rewarding good behavior and positive program participation.

As proposed, these regulations would require that a youth serve at least 70% of their court imposed sentence, and be eligible to be awarded no more than 30% good time. In determining whether or not a youth should be awarded good time, the facility will consider the following: the youth's participation and performance in education; treatment and vocational/work programs, the youth's disciplinary record, and any other factors related to the youth's general adjustment, performance, behavior, attitude, including overall demonstration of the his or her willingness to examine and confront the past behavior patterns that resulted in the commission of the offense, which resulted in their placement in a juvenile correctional facility. Following implementation of these regulations, it is expected that most youth will serve more than seventy percent (70%) of their imposed sentence.

In addition, the regulations provide that good time credits forfeited in a disciplinary proceeding cannot be restored. There are also mandatory withholdings for conviction of certain disciplinary offenses, failure to work constructively or participate in programs, and assist in acceptable release planning.

Kansas law still provides adequate remedies to deal with youth who commit the most serious and violent offenses, including waiving the youth to adult court and trying him as an adult, with all the associated adult penalties.

Good time is an important behavior modification and management tool that acknowledges and rewards good behavior, and promotes internal discipline. It also assures steps are taken to promote and favor rehabilitation over the institutionalization of youth.

Because JJA deals with youth and not adults, it believes that allowing youth to earn just 5% more good time than adults is not appropriate. JJA recommends youth be able to earn up to 30% off their sentence through good time credits. JJA believes this will challenge youth to be productive in the facility and change behavior patterns; enabling the youth to leave the facility and become successful citizens.

Thank you for the opportunity to testify on SB 261. I would be happy to respond to any questions from the Committee.