

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 9, 2006 in Room 313-S of the Capitol.

All members were present except:

Jason Watkins- excused
Jim Ward- excused
Kasha Kelley- excused
Michael Peterson- excused

Committee staff present:

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

SB 261 - revised Kansas juvenile justice code

Representative Pauls made the motion to adopt the Kansas Judicial Council's proposed balloon, (Attachment 1) which was technical in nature. Representative Kiegerl seconded the motion. The motion carried.

Representative Pauls made the motion to report SB 261 favorably for passage, with revisors corrections. Representative Owens seconded the motion.

Representative Loyd made the substitute motion to delete reference to the amount of good-time credits a juvenile could receive. Representative Owens seconded the motion. The motion carried.

Representative Crow made the motion to amend the language on page 51, new section 57 back to it's original language in statute. Representative Kiegerl seconded the motion. The motion failed.

Representative Pauls renewed her motion. The motion carried.

SB 479 - preliminary screening tests; grounds; notice

Representative Pauls made the motion to adopt a balloon she provided to the committee that would clarify that existing law applies to one driving a commercial vehicle. (Attachment 2). Also on page 5, line 26 change "may" to "shall" so individuals are given oral notice. Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to report SB 479 favorably for passage, as amended. Representative Hutchins seconded the motion. The motion carried.

SB 451 - medicaid cards, medicaid pharmacy claim forms & criminal acts & violations

The committee felt that the bill was not necessary because everything in it was current law. They suggested a possible interim study on the issue.

SB 434 - extending Johnson County adult offender community supervision program until July 1, 2008

Staff provided the committee with a balloon that would move the language of the bill to the correct place. (Attachment 3)

Representative Loyd made the motion to adopt the balloon. Representative Owens seconded the motion. The motion carried.

Representative Loyd made the motion to report SB 434 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 9, 2006 in Room 313-S of the Capitol.

SB 408 - animal cruelty

Representative Loyd made the motion to delete the provisions in Section 1 of the bill. Representative Colloton seconded the motion. The motion carried.

Representative Kinzer made the motion to amend Section 2, line 29 to read “intentionally and maliciously, injuring, maiming, torturing, burning or mutilating any animal;” Representative Hutchins seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on March 13, 2006 in room 313-S.

SENATE BILL No. 261

By Committee on Judiciary

2-11

12 AN ACT concerning juvenile offenders; enacting the revised Kansas ju-
13 venile justice code; amending K.S.A. 8-237, 8-2117, 12-16,119, 21-
14 4633, 28-170a, 38-140, 38-1518, 39-754, 39-756, 39-756a, 39-1305, ~~60-~~
15 ~~460~~, **60-3614**, 65-516, 65-6001, 74-7335, 74-8810, 75-5229, 75-7025,
16 75-7026, 75-7028, 76-3203 and 76-3204 and K.S.A. ~~2004~~ **2005** Supp.
17 20-167, 20-302b, 21-2511, 21-3413, 21-3520, 21-3612, 21-3809, 21-
18 3810, 22-2805, 22-4701, 28-170, 28-172b, 28-176, 39-709, 39-970, 41-
19 727, ~~60-460~~, 65-1626, 65-5117, 74-5344, 75-3728e, 75-4362, 75-5206,
20 75-5220, ~~75-6102~~, 75-7023, 75-7024, 76-172, 76-381, 76-12a25 and 76-
21 3205 and repealing the existing sections; also repealing K.S.A. 38-1601,
22 38-1603, 38-1604, 38-1605, 38-1606, 38-1606a, 38-1607, 38-1608, ~~38-~~
23 ~~1610~~, 38-1612, 38-1613, 38-1614, 38-1615, 38-1616, 38-1617, 38-1618,
24 38-1621, 38-1622, 38-1623, 38-1624, 38-1625, 38-1626, 38-1627, 38-
25 1628, 38-1629, 38-1630, 38-1631, 38-1632, 38-1633, 38-1634, 38-1636,
26 38-1637, 38-1638, 38-1639, 38-1640, 38-1641, 38-1651, 38-1652, 38-
27 1653, 38-1654, 38-1655, 38-1656, 38-1657, 38-1658, 38-1661, 38-1662,
28 38-1663, 38-1664, 38-1666, 38-1667, 38-1668, 38-1671, 38-1673, 38-
29 1674, 38-1675, 38-1676, 38-1677, 38-1681, 38-1682, 38-1683, 38-1684,
30 38-1685, 38-1691, 38-16,111, 38-16,116, 38-16,117, 38-16,118, 38-
31 16,119, 38-16,120, 38-16,126, 38-16,127, 38-16,128, 38-16,129, 38-
32 16,131, 38-16,132, 38-16,133, 38-1812 and 38-1813 and K.S.A. ~~2004~~
33 **2005** Supp. 38-1602, 38-1609, ~~38-1610~~, 38-1611, ~~38-1635~~ **38-16,135**,
34 38-1665, 38-1692, 38-16,134 and 38-1635.

35
36 *Be it enacted by the Legislature of the State of Kansas:*
37 New Section 1. This act shall be known and may be cited as the
38 revised Kansas juvenile justice code. The primary goals of the juvenile
39 justice code are to promote public safety, hold juvenile offenders ac-
40 countable for their behavior and improve their ability to live more pro-
41 ductively and responsibly in the community. To accomplish these goals,
42 juvenile justice policies developed pursuant to the revised Kansas juvenile
43 justice code shall be designed to: (a) Protect public safety; (b) recognize

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

8 (b) *Continuation of representation.* An attorney appointed for a ju-
 9 venile shall continue to represent the juvenile at all subsequent court
 10 hearings in the proceeding under this code, including appellate proceed-
 11 ings, unless relieved by the court upon a showing of good cause or upon
 12 transfer of venue.

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

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

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

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

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

Strike
 "section 7 6f 2005 HB 2352"

COMMENT

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

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

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

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

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

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

6 (d) The judge shall consider the local citizen review board recom-
7 mendations in issuing a sentence pursuant to section 61, and amendments
8 thereto.

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

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

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

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

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

32 (2) parties to the proceedings and their attorneys;

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

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

37 (5) any placement provider or potential placement provider as deter-
38 mined by the commissioner or court services officer;

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

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

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

3 (8) juvenile intake and assessment workers;

4 (9) the commissioner; and

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

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

14 (d) *Preservation of records.* The Kansas state historical society shall
15 be allowed to take possession for preservation in the state archives of any
16 court records related to proceedings under the Kansas juvenile justice
17 code or the revised Kansas juvenile justice code whenever such records
18 otherwise would be destroyed. The Kansas state historical society shall
19 make available for public inspection any unexpunged docket entry or of-
20 ficial file in its custody concerning any juvenile 14 or more years of age
21 at the time an offense is alleged to have been committed by the juvenile.
22 No other such records in the custody of the Kansas state historical society
23 shall be disclosed directly or indirectly to anyone for 70 years after cre-
24 ation of the records, except as provided in subsections (b) and (c). A judge
25 of the district court may allow inspection for research purposes of any
26 court records in the custody of the Kansas state historical society related
27 to proceedings under the Kansas juvenile justice code or the revised Kan-
28 sas juvenile justice code.

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

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

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

40 (2) parties to the proceedings and their attorneys;

41 (3) the department of social and rehabilitation services;

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

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

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

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

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

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

13 (9) juvenile intake and assessment workers;

14 (10) the juvenile justice authority;

15 (11) juvenile community corrections officers;

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

18 (13) as provided in subsection (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (E) the police or other law enforcement agency;

21 (F) an agency charged with the responsibility of preventing or treat-
22 ing physical, mental or emotional abuse or neglect or sexual abuse of
23 children, if the agency requesting the information has standards of con-
24 fidentiality as strict or stricter than the requirements of the Kansas code
25 for care of children or the revised Kansas juvenile justice code, whichever
26 is applicable;

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

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

31 (I) any individual, or public or private agency authorized by a properly
32 constituted authority to diagnose, care for, treat or supervise a juvenile
33 who is the subject of a report or record of child abuse or neglect, specif-
34 ically including the following: Physicians, psychiatrists, nurses, nurse prac-
35 titioners, psychologists, licensed social workers, child development spe-
36 cialists, physicians' assistants, community mental health workers, alcohol
37 and drug abuse counselors and licensed or registered child care providers;

38 (J) a citizen review board pursuant to [K.S.A. 38-1812], and amend-
39 ments thereto;

40 (K) an educational institution to the extent necessary to enable such
41 institution to provide the safest possible environment for pupils and em-
42 ployees of the institution;

43 (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.

1 educator and pupils; and

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

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

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

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

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

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

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

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

22 (7) upon a determination by the juvenile justice authority that disclo-
23 sure of the records is necessary for further treatment of the juvenile; or

24 (8) upon a determination by the department of corrections that dis-
25 closure of the records is necessary for further treatment of the juvenile.

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

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

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

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

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

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

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

12 (e) In the absence of a court order to the contrary, the court or of-
13 ficials designated by the court, the county or district attorney or the law
14 enforcement agency taking a juvenile into custody shall have the authority
15 to direct the release prior to the time specified by subsection (a) of section
16 43, and amendments thereto. In addition, if an agreement is established
17 pursuant to section 46, and amendments thereto, a juvenile intake and
18 assessment worker shall have the authority to direct the release of a ju-
19 venile prior to a detention hearing after the completion of the intake and
20 assessment process if the juvenile intake and assessment worker has rea-
21 son to believe that if released the juvenile will appear for further pro-
22 ceedings and will not be dangerous to self or others.

23 (f) Whenever a person 18 years of age or more is taken into custody
24 by a law enforcement officer for an alleged offense which was committed
25 prior to the time the person reached the age of 18, the officer shall notify
26 and refer the matter to the court for proceedings pursuant to this code,
27 except that the provisions of this code relating to detention hearings shall
28 not apply to that person. If detention is necessary, the person shall be
29 detained in jail. Unless the law enforcement officer took the person into
30 custody pursuant to a warrant issued by the court and the warrant spec-
31 ifies the amount of bond or indicates that the person may be released on
32 personal recognizance, the person shall be taken before the court of the
33 county where the alleged act took place or, at the request of the person,
34 the person shall be taken, without delay, before the nearest court. The
35 court shall fix the terms and conditions of an appearance bond upon which
36 the person may be released from custody. The provisions of article 28 of
37 chapter 22 of the Kansas Statutes Annotated and K.S.A. 22-2901, and
38 amendments thereto, relating to appearance bonds and review of con-
39 ditions and release shall be applicable to appearance bonds provided for
40 in this section.

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

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

9 (B) allowing the [child] to remain in home is contrary to the wel-
 10 fare of the [child] or

11 (C) immediate placement of the [child] is in the [best interest of
 12 the child] and

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

17 (b) Except as provided in subsection (c), a juvenile may be placed in
 18 a juvenile detention facility pursuant to subsection (c) or (d) of section
 19 30 or subsection (e) of section 43, and amendments thereto, if one or
 20 more of the following conditions are met:

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

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

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

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

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

36 (6) The juvenile exhibited seriously assaultive or destructive behavior
 37 or self-destructive behavior at the time of being taken into custody.

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

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

42 (9) The juvenile has been taken into custody by any court services
 43 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.

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

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

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

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

9 (b) Upon being taken into custody, a juvenile may be detained tem-
10 porarily in a jail, in quarters with sight and sound separation from adult
11 prisoners, for the purpose of identifying and processing the juvenile and
12 transferring the juvenile to a youth residential facility or juvenile deten-
13 tion facility. If a juvenile is detained in jail under this subsection, the
14 juvenile shall be detained only for the minimum time necessary, not to
15 exceed six hours, and in no case overnight.

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

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

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

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

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

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

35 New Sec. 33. (a) When the juvenile is less than 14 years of age, no
36 admission or confession resulting from interrogation while in custody or
37 under arrest may be admitted into evidence unless the confession or ad-
38 mission was made following a consultation between the juvenile's parent
39 or attorney as to whether the juvenile will waive the right to an attorney
40 and the right against self-incrimination. It shall be the duty of the facility
41 where the juvenile has been delivered to make a reasonable effort to
42 contact the parent immediately upon the juvenile's arrival unless the par-
43 ent is the alleged victim or alleged codefendant of the crime under

1 investigation.

2 (b) When a parent is the alleged victim or alleged codefendant of the
3 crime under investigation and the juvenile is less than 14 years of age, no
4 admission or confession may be admitted into evidence unless the con-
5 fession or admission resulting from interrogation while in custody or un-
6 der arrest was made following a consultation between the juvenile and
7 an attorney, or a parent who is not involved in the investigation of the
8 crime, as to whether the juvenile will waive the right to an attorney and
9 the right against self-incrimination. It shall be the duty of the facility
10 where the juvenile has been delivered to make reasonable effort to con-
11 tact a parent who is not involved in the investigation of the crime im-
12 mediately upon such juvenile's arrival.

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

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

23 *(B) allowing the [child] to remain in home is contrary to the wel-*
24 *fare of the [child]; or*

25 *(C) immediate placement of the [child] is in the [best interest of*
26 *the child]; and*

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

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

36 New Sec. 35. (a) ~~The court, in the first warrant or order authorizing~~
37 ~~or requiring removal of the juvenile from the juvenile's home, shall de-~~
38 ~~termine whether reasonable efforts were made to maintain the family~~
39 ~~unit and prevent unnecessary removal of the juvenile from the home and~~
40 *The court shall not issue the first warrant or enter an order remov-*
41 *ing a [child] from the custody of a parent pursuant to this section*
42 *unless the court first finds probable cause that: (1) (A) The [child] is*
43 *likely to sustain harm if not immediately removed from the home;*

"juvenile"

"juvenile"

"juvenile"

"juvenile"

"juvenile"

"juvenile's best interest"

"juvenile"

"juvenile's"

"juvenile"

See comment on page 34.

"juvenile"

"juvenile"

1 (B) ~~allowing the [child] to remain in home is contrary to the wel-~~
 2 ~~fare of the [child]; or~~
 3 (C) ~~immediate placement of the [child] is in the [best interest of~~
 4 ~~the child]; and~~
 5 (2) ~~reasonable efforts have been made to maintain the family~~
 6 ~~unit and prevent the unnecessary removal of the [child] from the~~
 7 ~~[child's] home or that an emergency exists which threatens the safety~~
 8 ~~of the [child]. The court shall enter its determination in the warrant or~~
 9 ~~order.~~
 10 (1) (3) If the juvenile is in the custody of the commissioner, the com-
 11 missioner shall prepare a report for the court documenting such reason-
 12 able efforts.
 13 (2) (4) If the juvenile is in the custody of the secretary of social and
 14 rehabilitation services under the Kansas code for the care of children, the
 15 secretary shall prepare a report for the court documenting such reason-
 16 able efforts.
 17 (3) (5) In all other cases, the person preparing the predisposition
 18 report shall include documentation of such reasonable efforts in the
 19 report.
 20 (b) If the court determines that reasonable efforts to maintain the
 21 family unit and prevent unnecessary removal of a juvenile were not made,
 22 the court shall determine whether such reasonable efforts were unnec-
 23 essary because:
 24 (1) A court of competent jurisdiction has determined that the parent
 25 has subjected the juvenile to aggravated circumstances;
 26 (2) a court of competent jurisdiction has determined that the parent
 27 has been convicted of a murder of another child of the parent; voluntary
 28 manslaughter of another child of the parent; aiding or abetting, attempt-
 29 ing, conspiring or soliciting to commit such a murder or such a voluntary
 30 manslaughter; or a felony assault that results in serious bodily injury to
 31 the juvenile or another child of the parent;
 32 (3) the parental rights of the parent with respect to a sibling have
 33 been terminated involuntarily; ~~or~~
 34 (4) an emergency exists requiring protection of the juvenile and ef-
 35 forts to maintain the family unit and prevent unnecessary removal of the
 36 juvenile from the home were not possible; ~~or~~
 37 (5) ~~the juvenile presents a risk to public safety.~~
 38 (c) Nothing in this section shall be construed to prohibit the court
 39 from issuing a warrant or entering an order authorizing or requiring re-
 40 moval of the juvenile from the home ~~[for the safety of the community].~~
 41 (d) When the juvenile has been in foster care and has been placed at
 42 home or allowed a trial home visit for a period of six months or more and
 3 is again removed from the home, the court shall again make a determi-

"juvenile"

"juvenile"

"juvenile"

"juvenile's best interest"

"juvenile"

"juvenile's"

"juvenile"

See Comment on page 34.

"or"

Strike

"if the juvenile presents a risk to public safety"

COMMENT

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

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

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

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

11 (b) If the juvenile is being detained for a detention hearing as pro-
12 vided in section 43, and amendments thereto, at the detention hearing a
13 copy of the complaint shall be served on the juvenile and each parent or
14 other person with whom the juvenile has been residing who is in attend-
15 ance at the hearing and a record of the service made a part of the pro-
16 ceedings. The court shall announce the time that the juvenile is ordered
17 to appear again before the court for further proceedings. If no parent
18 appears at the hearing, the court shall summon the parent or parents as
19 provided in subsection (a).

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

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

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

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

34 (b) Service may be made by first-class mail, addressed to the individ-
35 ual to be served at the usual place of residence of the person with postage
36 prepaid, and is completed upon the person appearing before the court in
37 response thereto. If the person fails to appear when served by first-class
38 mail, the summons, notice or other process shall be pursuant to K.S.A.
39 60-303, and amendments thereto.

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

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

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

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

19 (b) If the court determines that it is in the best interests of the ju-
20 venile offender to be returned to the custody of the parent or parents,
21 the court shall so order.

22 (c) The court shall rescind an order granting custody to a parent only
23 upon finding that: (1) Reasonable efforts have been made to maintain the
24 juvenile in such juvenile's family or an emergency exists making reason-
25 able efforts unnecessary, and (2) it is contrary to the welfare of the ju-
26 venile to remain at home. ***if the court first finds probable cause that:***

27 ***(1) (A) The [child] is likely to sustain harm if not immediately re-***
28 ***moved from the home;***

"juvenile"

29 ***(B) allowing the [child] to remain in home is contrary to the wel-***
30 ***fare of the [child]; or***

"juvenile"

"juvenile"

31 ***(C) immediate placement of the [child] is in the [best interest of***
32 ***the child]; and***

"juvenile"

"juvenile's best interest"

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

"juvenile"

"juvenile's"

"juvenile"

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

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

See comment on page 34.

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

3 (1) The medical condition of the juvenile justifies a reduction in sen-
4 tence; or

5 (2) the juvenile's exceptional adjustment and habilitation merit a re-
6 duction in sentence.

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

26 (b) ~~The court shall enter an order removing custody from a parent
27 only upon finding: (1) Reasonable efforts have been made to maintain a
28 juvenile in such juvenile's family or an emergency exists making reason-
29 able efforts unnecessary, and (2) it is contrary to the welfare of the ju-
30 venile to remain at home.~~ **The court shall not enter an order removing**

31 ~~a [child] from the custody of a parent pursuant to this section unless~~
32 ~~the court first finds probable cause that: (1) (A) The [child] is likely~~
33 ~~to sustain harm if not immediately removed from the home;~~

34 ~~(B) allowing the [child] to remain in home is contrary to the wel-~~
35 ~~fare of the [child]; or~~

36 ~~(C) immediate placement of the [child] is in the [best interest of~~
37 ~~the child]; and~~

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

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

"juvenile"

"juvenile"

"juvenile"

"juvenile"

"juvenile"

"juvenile's best interest"

"juvenile"

"juvenile's"

"juvenile"

1 plied by the judge in felony or misdemeanor cases. If used, the court shall
2 establish a specific term of commitment as specified in this subsection,
3 unless the judge conducts a departure hearing and finds substantial and
4 compelling reasons to impose a departure sentence as provided in section
5 71, and amendments thereto.

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

14 (B) The violent offender II is defined as an offender adjudicated as
15 a juvenile offender for an offense which, if committed by an adult, would
16 constitute a nondrug level 1, 2 or 3 felony. Offenders in this category may
17 be committed to a juvenile correctional facility for a minimum term of
18 24 months and up to a maximum term of the offender reaching the age
19 22 years, six months. The aftercare term for this offender is set at a min-
20 imum term of six months and up to a maximum term of the offender
21 reaching the age of 23 years.

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

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

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

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

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

1 felony adjudications.

2 Offenders in this category may be committed to a juvenile correctional
3 facility for a minimum term of six months and up to a maximum term of
4 18 months. The aftercare term for this offender is set at a minimum term
5 of six months and up to a maximum term of 12 months.

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

9 (i) One present felony adjudication and either two prior misde-
10 meanor adjudications or one prior person or nonperson felony
11 adjudication;

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

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

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

19 Offenders in this category may be committed to a juvenile correctional
20 facility for a minimum term of six months and up to a maximum term of
21 18 months. The aftercare term for this offender is set at a minimum term
22 of six months and up to a maximum term of 12 months.

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

26 (i) One present misdemeanor adjudication and either two prior mis-
27 demeanor adjudications or one prior person or nonperson felony adju-
28 dication and two placement failures;

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

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

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

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

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

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

1 amendments thereto, commit the offender directly to a juvenile correc-
2 tional facility for a minimum term of three months and up to a maximum
3 term of six months. The aftercare term for this offender shall be a min-
4 imum of two months and a maximum of six months, or the length of the
5 aftercare originally ordered, which ever is longer.

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

7 (i) Recommend additional conditions be added to those of the exist-
8 ing conditional release.

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

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

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

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

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

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

39 (d) The commissioner shall work with the community to provide on-
40 going support and incentives for the development of additional commu-
41 nity placements to ensure that the chronic offender III, escalating mis-
42 demeanant sentencing category is not frequently utilized.

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

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

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

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

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

15 (c) Procedure on appeal shall be governed by article 21 of chapter
16 60 of the Kansas Statutes Annotated, and amendments thereto.

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

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

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

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

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

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

37 (b) Except as provided in subsection (c), no person shall receive a
38 permanent appointment as a juvenile corrections officer unless awarded
39 a certificate by the commissioner which attests to satisfactory completion
40 of a basic course of instruction. Such course of instruction shall be ap-
41 proved by the commissioner and shall consist of not less than 160 hours
42 of instruction. The certificate shall be effective during the term of a per-
43 son'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."

SENATE BILL No. 479

By Committee on Judiciary

1-31

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to alcohol and drugs; preliminary screening tests; amending K.S.A.
11 2005 Supp. 8-1001 and 8-1012 and repealing the existing sections.

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

14 Section 1. K.S.A. 2005 Supp. 8-1001 is hereby amended to read as
15 follows: 8-1001. (a) Any person who operates or attempts to operate a
16 vehicle within this state is deemed to have given consent, subject to the
17 provisions of this act, to submit to one or more tests, ~~including, but not~~
18 ~~limited to, a preliminary screening test pursuant to K.S.A. 8-1012, and~~
19 ~~amendments thereto,~~ of the person's blood, breath, urine or other bodily
20 substance to determine the presence of alcohol or drugs. The testing
21 deemed consented to herein shall include all quantitative and qualitative
22 tests for alcohol and drugs. A person who is dead or unconscious shall be
23 deemed not to have withdrawn the person's consent to such test or tests,
24 which shall be administered in the manner provided by this section.

25 (b) A law enforcement officer shall request a person to submit to a
26 test or tests deemed consented to under subsection (a) if the officer has
27 reasonable grounds to believe the person was operating or attempting to
28 operate a vehicle while under the influence of alcohol or drugs, or both,
29 or to believe that the person was driving a commercial motor vehicle, as
30 defined in K.S.A. 8-2,128, and amendments thereto, ~~or~~ was under the
31 age of 21 years while having alcohol or other drugs in such person's sys-
32 tem; and one of the following conditions exists: (1) The person has been
33 arrested or otherwise taken into custody for any offense involving oper-
34 ation or attempted operation of a vehicle while under the influence of
35 alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amend-
36 ments thereto, or involving driving a commercial motor vehicle, as de-
37 fined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
38 or other drugs in such person's system, in violation of a state statute or a
39 city ordinance; or (2) the person has been involved in a vehicle accident
40 or collision resulting in property damage, personal injury or death. The
41 law enforcement officer directing administration of the test or tests may
42 act on personal knowledge or on the basis of the collective information
43 available to law enforcement officers involved in the accident investiga-

while having alcohol or other drugs in such person's system,

House Judiciary
Date 3-9-06
Attachment # 2

SENATE BILL No. 434

By Committee on Judiciary

1-24

Proposed amendment
Requested by OJA
March 9, 2006

9 AN ACT concerning corrections; relating to community supervision;
10 amending K.S.A. 2005 Supp. 75-5291 and repealing the existing
11 section.

21-4714 and

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

sections

13 Section 1. K.S.A. 2005 Supp. 75-5291 is hereby amended to read as
14 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
15 counties for the development, implementation, operation and improve-
16 ment of community correctional services that address the criminogenic
17 needs of felony offenders including, but not limited to, adult intensive
18 supervision, substance abuse and mental health services, employment and
19 residential services, and facilities for the detention or confinement, care
20 or treatment of offenders as provided in this section except that no com-
21 munity corrections funds shall be expended by the secretary for the pur-
22 pose of establishing or operating a conservation camp as provided by
23 K.S.A. 75-52,127 and amendments thereto.

24 (2) Except as otherwise provided, placement of offenders in com-
25 munity correctional services programs by the court shall be limited to
26 placement of adult offenders, convicted of a felony offense:

27 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
28 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F,
29 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes. In
30 addition, the court may place in a community correctional services pro-
31 gram adult offenders, convicted of a felony offense, whose offense is clas-
32 sified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the
33 sentencing guidelines grid for nondrug crimes;

34 (B) whose severity level and criminal history score designate a pre-
35 sumptive prison sentence on either sentencing guidelines grid but receive
36 a nonprison sentence as a result of departure;

37 (C) all offenders convicted of an offense which satisfies the definition
38 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
39 which is classified as a severity level 7 or higher offense and who receive
40 a nonprison sentence, regardless of the manner in which the sentence is
41 imposed;

42 (D) any offender for whom a violation of conditions of release or
43

House Judiciary

Date 3-9-06

Attachment # 3

1 assignment or a nonprison sanction has been established as provided in
2 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting
3 in the offender being required to serve any time for the sentence imposed
4 or which might originally have been imposed in a state facility in the
5 custody of the secretary of corrections;

6 (E) ~~any offender who is~~ determined to be "high risk or needs, or
7 both" by the use of a statewide, mandatory, standardized risk assessment
8 tool or instrument ~~validated for community correctional placements;~~

9 (F) placed in community correctional services programs as a condi-
10 tion of supervision following the successful completion of a conservation
11 camp program; or

12 (G) who has been sentenced to community corrections supervision
13 pursuant to K.S.A. 2005 Supp. 21-4729, and amendments thereto.

14 (3) Notwithstanding any law to the contrary and subject to the avail-
15 ability of funding therefor, adult offenders sentenced to community su-
16 pervision in Johnson county for felony crimes that occurred on or after
17 July 1, 2002, but before July 1, ~~2006~~ 2008, shall be placed under court
18 services or community corrections supervision based upon court rules
19 issued by the chief judge of the 10th judicial district. The provisions con-
20 tained in this subsection shall not apply to offenders transferred by the
21 assigned agency to an agency located outside of Johnson county. The
22 provisions of this section shall expire on July 1, ~~2006~~ 2008.

23 (4) Nothing in this act shall prohibit a community correctional serv-
24 ices program from providing services to juvenile offenders upon approval
25 by the local community corrections advisory board. Grants from com-
26 munity corrections funds administered by the secretary of corrections
27 shall not be expended for such services.

28 (5) The court may require an offender for whom a violation of condi-
29 tions of release or assignment or a nonprison sanction has been estab-
30 lished, as provided in K.S.A. 22-3716, and amendments thereto, to serve
31 any time for the sentence imposed or which might originally have been
32 imposed in a state facility in the custody of the secretary of corrections
33 without a prior assignment to a community correctional services program
34 if the court finds and sets forth with particularity the reasons for finding
35 that the safety of the members of the public will be jeopardized or that
36 the welfare of the inmate will not be served by such assignment to a
37 community correctional services program.

38 (b) (1) In order to establish a mechanism for community correctional
39 services to participate in the department of corrections annual budget
40 planning process, the secretary of corrections shall establish a community
41 corrections advisory committee to identify new or enhanced correctional
42 or treatment interventions designed to divert offenders from prison.

43 (2) The secretary shall appoint one member from the southeast com-

on and after July 1, 2007, for offenders who are expected to be subject to supervision in Kansas, who are

which shall be specified by the Kansas sentencing commission;

community corrections region, one member from the northeast community corrections region, one member from the central community corrections region and one member from the western community corrections region. The deputy secretary of community and field services shall designate two members from the state at large. The secretary shall have final appointment approval of the members designated by the deputy secretary. The committee shall reflect the diversity of community correctional services with respect to geographical location and average daily population of offenders under supervision.

(3) Each member shall be appointed for a term of three years and such terms shall be staggered as determined by the secretary. Members shall be eligible for reappointment.

(4) The committee, in collaboration with the deputy secretary of community and field services or the deputy secretary's designee, shall routinely examine and report to the secretary on the following issues:

- (A) Efficiencies in the delivery of field supervision services;
- (B) effectiveness and enhancement of existing interventions;
- (C) identification of new interventions; and
- (D) statewide performance indicators.

(5) The committee's report concerning enhanced or new interventions shall address:

- (A) Goals and measurable objectives;
- (B) projected costs;
- (C) the impact on public safety; and
- (D) the evaluation process.

(6) The committee shall submit its report to the secretary annually on or before July 15 in order for the enhanced or new interventions to be considered for inclusion within the department of corrections budget request for community correctional services or in the department's enhanced services budget request for the subsequent fiscal year.

Sec. 2. K.S.A. 2005 Supp. 75-5291 is hereby repealed.

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

Sec. 2. KSA 2005 Supp. 21-4714
See attached.
Renumber remaining sections.

21-4714 and

are

Sec. 2. K.S.A. 2005 Supp. 21-4714 is hereby amended to read as follows: 21-4714. (a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, and meet the requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto, the drug and alcohol assessment as provided in K.S.A. 2005 Supp. 21-4729, and amendments thereto.

(c) The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220 and amendments thereto to the warden of the state correctional institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence report.

(e) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports

and drug and alcohol reports.

(f) The court can take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.