Approved: May 3, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on January 24, 2006, in Room 123-S of the Capitol.

All members were present,
Les Donovan arrived, 9:37 a.m.
Barbara Allen arrived, 9:38 a.m.
Phil Journey arrived, 9:40 a.m.
Derek Schmidt arrived, 9:42 a.m.
David Haley arrived, 9:55 a.m.

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:
Randy Hearrell, Kansas Judicial Council
Don Hymer, Kansas Judicial Council
Mark Gleeson, Office of Judicial Administration
Ron W. Paschal, Deputy District Attorney, Sedgwick County

Others attending:
See attached list.

Bill Introductions

Nancy Bryant, Secretary of State Business Services Division, requested the introduction of a bill regarding reinstatement of corporate status. Senator Bruce moved, Senator Umbarger seconded, to introduce the bill as a committee bill. Motion carried.

Pat Scalia, Director, State Board of Indigent Defense requested the introduction of a bill to exempt fees for electronic access. Senator Goodwin moved, Senator Schmidt seconded, to introduce the bill as a committee bill. Motion carried.

The hearing on **SB 261–Revised Kansas juvenile justice code** was opened.

Randy Hearell spoke in support giving a brief history and overview of the bill, and providing extensive written comments on the changes recommended (Attachment 1). He indicated that this is a companion piece to the work done on the revised Kansas code for care of children and was an attempt to simplify and reorganize the existing code. The goal of the Judiciary Council was to make the bill as effective as possible which resulted in three types of changes:

- technical, which are intended to clarify the bill
- organizational changes
- substantive and procedural changes

Don Hymer took over and explained some of the more significant changes to the code, indicating that most of the changes cleaned up language but that there were thirty-one policy changes. He also requested that no one provision should hold up the total package and would rather keep *status quo* on any particular issue that is of concern.

Mark Gleeson spoke as a proponent but was concerned about Section 57, which requires a judge to hold a jury trial for any juvenile offender accused of a felony offense upon the motion of an attorney (Attachment 2). The actual fiscal impact is very difficult to determine, providing a right to jury trial has significant consequences to county budgets in the form of jury fees, available courtrooms, and increased prosecution and representation costs. Also, the increase in workload for judges and court clerks would require additional personnel.

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on January 24, 2006, in Room 123-S of the Capitol.

He also requested the committee consider the language in new Section 35 (b) which would require the court to select from four options if the court determines that reasonable efforts to prevent the removal of a juvenile were not made. He noted that one of the options would make the State ineligible for federal Title IV-E funds.

Ron Paschal spoke in support of the bill and stated concern on Section 57 and the impact it would have on the system from a fiscal standpoint (Attachment 3). It would greatly increase the cost of resolving juvenile cases and possibly delay resolution of a case.

Another point of concern was with Section 70 relating to good time credits. Mr. Paschal requested an amendment to insert "For an offense committed on or after July 1, 2006, such good time credits shall not exceed 15% of the placement sentence" (Attachment 4). This language is consistent with the language in the statutes regarding the application of good time credit in adult sentences. This provision will ensure truth in sentencing, provide uniformity in the application of law and ensure that our most dangerous offenders and offenders who have failed on community based supervision, remain incarcerated for a period of time ordered by the sentencing court.

Chairman Vratil requested the Judicial Council provide their viewpoints on the proposed amendments by Mr. Gleeson and Mr. Paschal.

There being no further conferees, the Chairman closed the public hearing on **SB 261**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is January 25, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-24-06

NAME	REPRESENTING
Donald W. Hymer Jr	Ks Jud. Council Adv. Comm/JOCDA
[illegible] M. Kearney	〃
Pat [illegible]	BIDS
Don Jordan	JJA
Lisa Mendoza	JJA
Ed Cross	KIOGA
Jim Clark	KBA
Natalie Gibson	Ks Sentencing Comm.
Brenda Harmon	〃 〃 〃
Emily Mueller	KCCI
Jeff Bottenberg	Polsinelli, Shalton
Matthew Goddard	Heartland Community Bankers Assn.
Kathy Olsen	Ks Bankers Assn.
Martha [illegible] Smith	KMHA
[illegible]	LGR
[illegible]	OSBC
Tom Bruno	EKOGA
Mark Gleeson	OJA

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-24-06

NAME	REPRESENTING
Ron Paschal	18th Jud Dist DA's office
Michael White	KCDAA

January 23, 2006

JUDICIAL COUNCIL TESTIMONY ON 2005 SB 261

THE REVISED KANSAS JUVENILE JUSTICE CODE

Senate Judiciary
1-24-06
Attachment 1

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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.

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.

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.

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.

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."

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.

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.

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

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.

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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State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

Testimony to Senate Judiciary Committee

Re: Senate Bill 261

January 24, 2006

Mr. Chairman and members of the committee, thank you for the opportunity to share some concerns regarding the jury provisions in New Section 57 and a technical amendment to New Section 35. My name is Mark Gleeson and I am the Family and Children Program Coordinator for the Office of Judicial Administration.

Senate Bill 261 makes numerous technical and substantive changes to the Kansas Juvenile Offender Code. The Judicial Council is to be commended for their effort to protect the philosophy and, in almost every instance, the day to day application of the Kansas Juvenile Offender Code.

New Section 57, however, gives us a great deal of concern. Section 57 would require a judge to hold a jury trial for any juvenile offender accused of a felony offense upon the motion of an attorney. Presently, a jury trial may be provided at the discretion of the judge, and under current law a juvenile jury trial is not a common occurrence. We fully understand and support the Judicial Council's rationale that juveniles facing adjudications later used to enhance adult sentences should be afforded the same constitutional rights as adults facing the same or similar charges. We should also point out that this section does not confer the same right to juveniles charged with Class A or B misdemeanors, even though three convictions of a Class A or Class B misdemeanor constitutes a felony for the purpose of computing sentencing as an adult convicted of a felony.

The actual fiscal impact of this provision is very difficult to determine. In fiscal year 2005, 14,113 juvenile offender cases were filed in the State of Kansas. We do not know how many of those were cases involving offenses that would have been felonies if committed by an adult. Following discussions with several judges, it appears a reasonable estimate would be that 14%, or 1,976, of those cases would have been eligible for jury trials. If only one-half of those cases resulted in jury trials, 988 jury trials would have taken place. Of course, one-half of the cases could well prove to be a conservative estimate. Were this provision to remain intact and if SB 261 were to be enacted by the 2006 Legislature, the Judicial Branch would be forced to ask for an additional four district judges with associated staff, two additional senior judge contracts, and 6.5 trial court clerk positions at a total cost of $1,078,877 to carry out this jury trial provision. This does not reflect the additional mileage and jury fee costs that would be borne by the counties.

Senate Judiciary
1-24-06
Attachment 2

The impact of this increase in jury trials on judges and court clerks would be considerable. Generally, judges block off an average of two to three days for jury trials in non-major civil and criminal matters. We estimate it requires at least 12 hours of time for the clerk of the district court to notify potential jurors and take care of the people and paperwork processing necessary to empanel a jury. This increase in jury trials would have a significant workload impact on every judicial district and some jurisdictions would require additional judicial and non-judicial personnel to cope with this new requirement.

Providing a right to jury trial also has significant consequences to county budgets in the form of jury fees and, in some cases, the need to redesign courtrooms which currently do not accommodate juries. The biggest cost to counties, however, would come in the form of increased costs to prosecute and represent juvenile offenders. The prosecution and representation of juvenile offenders is the sole obligation of the county and most counties struggle to meet this statutory responsibility.

New Section 35 is more of a technical problem. Language in New Section 35 (b) requires the court to select from four options if the court determines that reasonable efforts to prevent the removal of the juvenile were not made. This list of options does not include a finding that reasonable efforts were not necessary due to the risk the juvenile poses to the public safety. Including this as an option in New Section 35 (b) would make the statute consistent with recently issued form orders "Approving Removal from Home for a Juvenile Offender."

It should be noted that choosing this option means the State will not be eligible for federal Title IV-E funds should the youth ever be placed in foster care or a group home. This option is generally reserved for the most serious offender and it is unlikely juveniles convicted of serious crimes would be placed in foster care or group home settings. A balloon amendment and a copy of the form order are attached.

Mr. Chairman, thank you for your time and attention. I will stand for questions.

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

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

January 23, 2006

Opposition Testimony
Senate Bill 261
Ron W. Paschal, Deputy District Attorney on behalf of
Nola Tedesco Foulston District Attorney
Eighteenth Judicial District

Dear Chairman and Members of the Committee:

The Office of the District Attorney for the Eighteenth Judicial District provides the attached testimony in opposition to **New Section 57 of Senate Bill 261.** This section of the bill amends the jury trial provision of K.S.A. 38-1656 and would make jury trials mandatory upon motion of the respondent in juvenile cases in which a felony offense is charged.

Attached to this letter, is written testimony in opposition to similar language that was presented in the 2003 session in House Bill 2270. The concerns of this office relative to the impact this would have on the system from a fiscal standpoint and the negative impact it would have on our ability to serve youth in this community remain the same.

Upon review of the written testimony previously submitted in the 2003 legislative session, I would urge members of the committee to disapprove the provision in Senate Bill 261 granting juveniles the right to jury trials in felony cases.

Respectfully Submitted,

Ron W. Paschal
Deputy District Attorney

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Senate Judiciary
1-24-06
Attachment 3

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

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

House Bill No. 2270
Opponent Testimony
Ron W. Paschal, Chief Attorney on behalf of
Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District

Chairman Loyd and Members of the Committee:

The following testimony is provided in opposition to the amendment in House Bill 2270 which amends the jury trial provision of K.S.A. 38-1656. The proposed amendment states:

> **38-1656. Jury trials in certain cases.** In all cases involving offenses committed by a juvenile which, if committed by an adult, would make the person liable to be arrested and prosecuted for the commission of a felony, *upon motion*, the judge *shall* order that the juvenile be afforded a trial by jury. Upon the juvenile being adjudicated to be a juvenile offender, the court shall proceed to sentencing.

Should this amendment become law, it will greatly increase the cost of resolving juvenile cases to the state of Kansas and the citizens of Sedgwick County. The amendment presents other practical concerns as well such as a delay in the resolution of the case.

Kansas law has long granted district court judges the discretion to allow a juvenile offender a jury trial. As reflected in the **Comment** to this amendment, the proposed bill is a policy change. Neither our Supreme Court or the United States Supreme Court has ever overruled a ruling of the trial court denying a juvenile offender's request for a jury

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trial. The proposed amendment ignores many years of jurisprudence including cases which occurred prior to and after the enactment of the Kansas Sentencing Guidelines.

It has long been the law that a juvenile offender has no federal constitutional right to a jury trial, **McKeiver v. Pennsylvania, 403 U.S. 528, 29 L.Ed. 2nd 647, 91 S.Ct. 1976 (1971)** and in Kansas, no state constitutional right to a jury trial, ***In the matter of Findlay, a Minor Child, Appellant, V. State of Kansas, Appellee,* 235 Kan 462 (1984).**

The jurisprudence in this state and in this nation regarding this issue is grounded in common sense and sound legal reasoning. The goals with respect to juvenile offenders and criminal defendants are different. With a juvenile offender, we focus on the rehabilitation and education of the offender. We also focus on the prevention of future unlawful acts. The overwhelming majority of available research indicates the reformation of a juvenile offender can be best accomplished when the consequences for unlawful behavior follows closely on the heels of the wrongful conduct. The key to success is to expeditiously move the offender's case through the legal system so that consequences can be imposed and the rehabilitation and educational process can begin. Clearly, the prevailing philosophy in juvenile justice indicates the quicker a juvenile offender accepts responsibility for his action and the quicker the system addresses the wrongful conduct, the greater the likelihood of success for the juvenile offender. In fact, House Bill 2270 itself, acknowledges the validity of this position as it states:

> .....juvenile justice policies developed pursuant to the Kansas juvenile justice code shall be designed to : (a) Protect public safety; (b) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the *implementation of effective prevention and early intervention programs.* **HB2270 Section 1 KSA 38.1601.** *(emphasis added)*

The proposed amendment requiring jury trials, will not aid in the implementation of effective prevention or assist in implementation of early intervention programs for juvenile offenders, it will create delay.

Those of you with children may recognize from your own experiences, the importance of this philosophy. When your teenage child comes in two hours after the curfew you have set – you don't wait until next month to penalize him – you do it the next day. If your ten-year-old son hits your three-year-old daughter during a dispute – you don't send him "time out" the following week – you do it immediately.

With adult criminal defendants the goals are often different. At times the goal is focused more sharply on punishment. The liberty interests of an adult criminal defendant are much more frequently at stake. Consequently, the right to a jury trial is very important.

The proposed jury trial amendment will create delay in the administration of justice in the juvenile system. In Sedgwick County during 2001 and 2002, the court system handled an average of 415 felony juvenile offender cases each year. With the proposed amendment,

we will have the potential for 415 jury trial settings per year. These cases will need to be set on a special docket so potential jurors may be summoned. As requests for jury trials are made and the docket becomes filled, the cases will be set later in the year as time permits. If the offender elects to waive his right to a jury trial on the day it is scheduled, his case will very likely be set over thirty days and returned to the bench trial docket, creating additional delay.

The logistics of presenting a juvenile offender jury trial in Sedgwick County will not go unrecognized. We currently have 26 district court judges on the bench, four of whom are assigned to the juvenile division. The juvenile court building is located at 1015 South Minnesota. The juvenile detention facility is attached to the juvenile courthouse. The juvenile division for the district attorney's office is located directly to the north of the juvenile courthouse. All support staff for the judges assigned to the juvenile courts are located on the premises at 1015 South Minnesota. There are three courtrooms in the juvenile department of the district court. None are equipped with facilities for jury trials. There is no waiting room for potential jurors, no jury deliberation room and no jury box in any of the three courtrooms. There is inadequate parking for jurors or potential jurors.

A juvenile jury trial would have to occur at the district court, criminal department in the Sedgwick County Courthouse located at 525 North Main. This would require many people to travel the approximately 6 miles downtown to conduct the trial. Included in this group would be the judge, his administrative aide, his court reporter, the assistant district attorney assigned to the case and the juvenile offender. Additional problems are presented when the offender is in custody. Arrangements will need to be made to ensure his timely transportation to the court proceedings. This will require the resources of the sheriff and the detention facility to accommodate the transportation needs. Moreover, the juvenile will need to be transported back to the juvenile detention facility during court recesses and lunch as there exists no facility in the courthouse at 525 North Main where the juvenile can be housed in a manner wherein he is segregated from the adult inmate population. ***See HB2270 Section 2 KSA 38-1602 (f)(2).*** The costs and potential safety risks associated with transporting all of the personnel and the offender between the facilities is unnecessary when we focus on the goals of the juvenile justice system.

Jury trials typically last several days. Ultimately the state will need to remodel the facilities at 1015 South Minnesota to accommodate juvenile jury trials. This would include the expansion of the facility to include a waiting room for potential jurors, jury deliberation rooms, courtrooms with seating for the jury, additional parking and a cafeteria. Jurors are paid for their services. Their parking in the parking garage at the courthouse is paid for. They are fed at taxpayer expense during their deliberations. All of these costs should go into consideration before this amendment is passed. Indeed House Bill 2270 states the goals and policies developed pursuant to the Kansas juvenile justice code should:

> (g) *be cost-effectively implemented and administered to utilize resources wisely.*
> **HB2270 Section 1 KSA 38-1601** *(emphasis added)*

By requiring a jury trial upon motion of the respondent in a felony case, the goals of the Kansas juvenile justice code will not be cost effectively implemented or administered so as to utilize resources wisely. It will cost money to summons jurors for trial, to feed them, pay for their parking and to transport parties to and from the district courthouse at 525 North Main or in the alternative, upgrade the juvenile facilities at 1015 South Minnesota.

The overwhelming majority of juvenile offenders are represented by court-appointed counsel. Due to the fact jury trials typically last longer than bench trials and require greater preparation, the legislature should anticipate increase compensation for court appointed attorneys when billings and vouchers are presented for payment.

The **Comment** to the proposed amendment indicates the reason for the policy change to allow juvenile offenders jury trials in felony cases is based on the fact that juvenile adjudications are scored in adult criminal history. The concept of using juvenile adjudications to enhance adult criminal sentences is not unique to the post sentencing guidelines era.

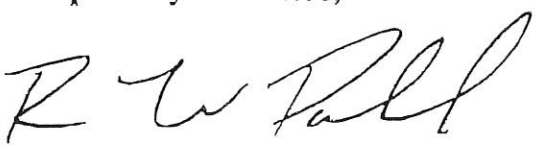
K.S.A. 21-4606(a) (1993 supp.) has provided since its enactment in 1984 that in determining whether the presumption for probation applies for certain offenders, " the court shall consider any prior record of the person's having been convicted or having been adjudicated to have committed, while a juvenile, an offense which would constitute a felony if committed by an adult." Likewise, K.S.A. 21-4606(b) (1993 supp.) used similar language when enacted in 1989 for determining whether presumptive assignment to community corrections applied to certain offenders by requiring the court to consider, "any prior record of the person's having been convicted of a felony or adjudicated to have have committed, while a juvenile, an offense which would constitute a felony if committed by an adult."

There has been appellate litigation in Kansas challenging the inclusion of juvenile adjudications in adult criminal cases. Defendant's have typically relied on ***Apprendi v. New Jersey*, 530U.S. 466 (2000)** which held that other than the fact of a prior conviction, 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. The ***Apprendi*** decision did not address the specific issue of the juvenile adjudications being included in criminal history scores as prior convictions. Our appellate courts have rejected this argument. *See* ***State v. Lamunyon*,259 Kan 54 (1996) and *State v. Hatt*, ____KA2nd____, 38 P3d 738 (2002).** A criminal defendant's reliance on ***Apprendi*,** in support of his position on this issue is misplaced. First, our Supreme Court and the United States Supreme Court have held that a juvenile offender has no constitutional right to a jury trial, therefore a juvenile adjudication that occurred as the result of a bench trial is not constitutionally infirm. *See* ***McKeiver and Findlay supra.*** Second, the mere inclusion of an adjudication does not necessarily lead to the imposition of an adult sentence outside the prescribed statutory maximum and therefore would not trigger an ***Apprendi*** analysis. Typically, the result would be the defendant would be sentenced in a higher criminal history grid box *within the statutorily prescribed maximum sentence.*

Based on the foregoing, I would urge members of the committee to disapprove the provision granting juvenile offenders the right to a jury trial in felony cases.

> ***"If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it."***
>
> ***McKeiver v. Pennsylvania*, 403 U.S. 528, 550-551 (1971)**

Respectfully Submitted,



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January 24, 2006

Request for Amendment to
Senate Bill 261 New Section 70 (b)

Ron W. Paschal
Deputy District Attorney
Eighteenth Judicial District
On Behalf of The Kansas County and District Attorneys Association

Dear Chairman and Members of the Committee:

Senate Bill 261 is the bill regarding the Kansas Juvenile Justice Code. The Kansas County and District Attorneys Association respectfully requests the following amendment to New Section 70 (b) by inserting the following language to line 32 pg. 68 of the bill after the sentence which ends in the word *offense.*:

> *For an offense committed on or after July 1, 2006, such good time credits shall not exceed 15% of the placement sentence.*

This language is consistent with the language in the statutes regarding the application of good time credit in adult sentences. This provision is necessary to ensure truth in sentencing, provide uniformity in the application of law and to ensure that our most dangerous offenders, and offenders who have previously failed on community based supervision, remain incarcerated for a period of time ordered by the sentencing court.

It is the position of the KCDAA that the sentencing court is in the best position to determine the most appropriate sentence to impose upon an offender.

Senate Judiciary
1-24-06
Attachment 4

The current status of the law authorizes the commissioner of juvenile justice to establish procedures to grant good time credit to juvenile offenders. The statute does not limit the amount of good time credit that can be awarded to an offender. Liberal amounts of good time credit have been awarded to violent offenders ranging from 20% to 30% and in one instance as high as 42%. It has also been observed that certain facilities tend to award greater amounts of good time credit than other facilities. Under the current status of the law, with no limit on the amount of good time credit that can be awarded by the commissioner, the practical reality is that any sentence rendered by the court is merely advisory.

It is anticipated JJA may oppose this requested amendment stating they need the ability to award good time credit as a management tool to encourage good conduct of the offender while serving his commitment. Please note, this requested amendment *does not* prohibit the use of good time credit as a management tool. The requested amendment simply limits the percentage of credit that can be awarded. This amendment will ensure that good time credit does not result in an actual sentence served that bears little resemblance to the sentence imposed by the court. Moreover, the proposed amendment will ensure that juvenile offenders in different facilities will receive good time credit in amounts that are more consistent among the different juvenile facilities. Finally, this amendment will ensure that what a victim sees handed down in court at sentencing actually bears some resemblance to the sentence that will actually be served by the offender. With an amendment such as this in place, prosecutors are enabled to actually inform a victim how much time the offender will spend locked up minus a set maximum amount of good time credit. Additionally, defense counsel will be able to more accurately advise an offender of the actual amount of time he is likely to serve on a commitment.

It is also anticipated that JJA may argue the proposed amendment would burden the system. The facts do not support this contention. As a practical matter, very few juvenile offenders are directly committed to a juvenile correctional facility at sentencing, even on offenses for which the juvenile offender is eligible for a direct commitment under the sentencing matrix. In fiscal year 2000, 1,812 juvenile offender cases were filed in Sedgwick County. *See attachment A.* In fiscal year 2005, that number decreased, with a total of 1,754 juvenile offender cases being filed in Sedgwick County. *See attachment A.*

During fiscal year 2000 judges in Sedgwick county directly committed 270 juvenile offenders to juvenile correctional facilities. *See attachment B.* In fiscal year 2005, the number of direct commitments to juvenile correctional facilities from Sedgwick County decreased to a total number of 86 commitments. *See attachment B.*

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. *See attachment C.*

The trends set forth in the numbers above are generally consistent with the philosophy of juvenile justice within this state. The trend is also indicative of the efforts of the court system to explore opportunities to manage juvenile offenders within the community. The conclusion that should be reached by the legislature is this: When a court directly commits an offender to a juvenile correctional facility it is because the offender has: 1. Failed on community based supervision and no other means of rehabilitation are available, or; 2. The offender has committed a serious enough offense that the safety of the community can only be assured by incapacitation of the offender. Further, vindication of the victim and direct deterrence to the offender cannot be overlooked by having the offender actually serve the sentence imposed by the court.

Based on the above, the Kansas County and District Attorneys Association respectfully requests the legislature adopt the proposed amendment to Senate Bill 261, new section 70(b).

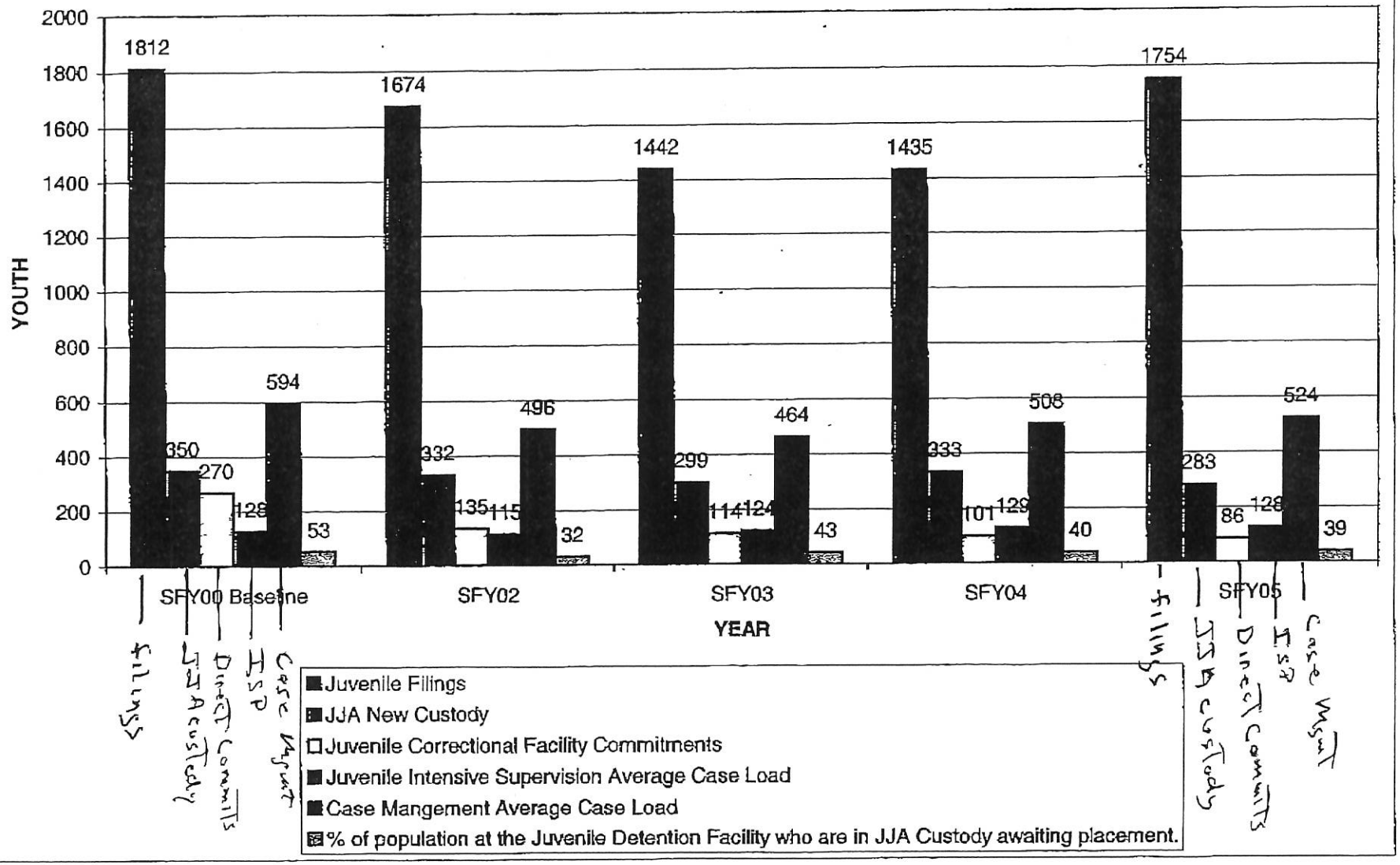
Respectfully Submitted,

Ron W. Paschal
Deputy District Attorney
Eighteenth Judicial District

Sedgwick Cty	SFY99	SFY00	SFY01	SFY02	SFY03	SFY04	SFY05
Juvenile Offender Filings	1426	1812	1707	1674	1442	1435	1754

Attachment A

SEDGWICK COUNTY JUVENILE SYSTEM ACTIVITY CHART



Attachment B

Kansas Juvenile Justice System Activity					
	2000	**2001**	**2002**	**2003**	**2004**
Juvenile Court Filings	17927	17191	15829	14625	14719
New JJA Custody Admissions	1520	1209	1208	1142	1335
Juvenile Correctional Facility / Commitments	979	651	650	587	551
Juvenile Intensive Supervision / Case Load	1087	1145	1134	1203	1238
Juvenile Case Management / Case Load	1824	1629	1612	2029	2097
Juvenile Correction Facility / Population	569	480	491	495	489