Approved: March 12, 2007
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:32 A.M. on February 1, 2007, in Room 123-S of the Capitol.

All members were present except:
Les Donovan arrived, 9:34 A.M.
David Haley arrived, 9:34 A.M.
Julia Lynn arrived, 9:35 A.M.
Barbara Allen arrived, 9:36 A.M.
Greta Goodwin arrived, 9:39 A.M.
Donald Betts- excused

Committee staff present:
Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Kyle Smith, Deputy Director, KBI
Randy Hearrell, Kansas Judicial Council
Elizabeth Gillespie, Director, Shawnee County Department of Corrections
Hon. Daniel Dale Creitz, 31st Judicial District
David E. Pierce, Program Attorney, CASA, 31st Judicial District
Sharolyn Dugger, Co-Chair, Kansas CASA Association Legislative Committee

Others attending:
See attached list.

Approval of Minutes
Senator Bruce moved, Senator Umbarger seconded, to approve the committee minutes of January 18, 2007. Motion carried.

Bill Introductions
Senator Derek Schmidt introduced a bill that will make mandatory extensions of penalties for use of a firearm in the commission of certain felonies. Senator Umbarger moved, Senator Schmidt seconded, to introduce the bill. Motion carried.

Kathy Porter, Office of Judicial Administration, requested the introduction of a bill to amend a provision in the recently revised Kansas Code for Care of Children regarding service by publication. Senator Schmidt moved, Senator Umbarger seconded, to introduce the bill as a committee bill. Motion carried.

The hearing on **SB 64--Small claims; counter claim must be filed not less than two business days prior to the trial date** was opened.

There were no conferees present.

Written testimony in support of **SB 64** was submitted by:
Gorman Stanley (Attachment 1)

The hearing on **SB 64** was closed.

The hearing on **SB 103--Fingerprints and photos of juveniles in custody** was opened.

Kyle Smith appeared in support, providing the committee with a brief description of the current law passed in 2006, in which juvenile offenders are processed upon conviction. Mr. Smith indicated at times positive identification of a juvenile offender can be very difficult. Frequently juveniles do not have identification documents such as a drivers license, juveniles tend to lie about their identity more often than adults, and the

potential for a juvenile to be released and disappear is much greater than an adult. Also, the likeliness for misidentification is greatly increased, allowing for an innocent child to be wrongly connected to a crime. (Attachment 2).

Randy Hearrell spoke in support, agreeing with the concerns presented by Mr. Smith and urged enactment of the bill (Attachment 3).

Elizabeth Gillespie appeared as a proponent. She suggested adding language that would allow photographing of juveniles upon entrance to juvenile facilities. Ms. Gillespie stated it is in the best interest of the juveniles to provide accurate identification throughout their stay in the facility as well as provide a record of their physical condition upon entrance to the facility. Photographs are not to be disseminated to anyone or agency except to assist in apprehension after an escape (Attachment 4).

Written testimony in support of **SB 103** was submitted by:
Judy Mohler, Legislative Services Director, Kansas Association of Counties (Attachment 5)

There being no further conferees, the hearing on **SB 103** was closed.

The hearing on **SB 118–Children in need of care; CASA reports** was opened.

Randy Hearrell spoke as a proponent, identifying several inconsistencies in the Revised Kansas Code for Care of Children passed by the Legislature in 2006. Mr. Hearrell stated that K.S.A. 38-2249(b) which bars judges from reading, considering or relying on reports not properly admitted according to the rules of evidence was a problem that needed immediate attention. The Juvenile Council Offender/Child in Need of Care Advisory Committee suggested alternative language to **SB 118** which would allow CASA (Court Appointed Special Advocate) reports and other court ordered reports to be read prior to a hearing (Attachment 6).

Judge Daniel Dale Creitz appeared in support, stating judges need to be able to read reports. The law, enacted last year, is beginning to create a huge backup of cases and resulting in undue delays. Judge Creitz does not support the amendment proposed by the Judicial Council believing it will continue to cause delays (Attachment 7).

David Pierce testified in support, indicating that K.S.A. 38-2249 is being interpreted to include reports prepared by the court appointed special advocate (CASA). Mr. Pierce stated allowing judges to read and consider CASA reports are in the best interest of the child (Attachment 8).

The Chairman requested Mr. Pierce and Mr. Hearrell work out a compromise balloon amendment to exempt CASA reports.

Sharolyn Dugger spoke in favor of **SB 118** relating that CASA volunteers ensure children have a voice in the judicial process and urged enactment of the bill (Attachment 9).

Written testimony in support of SB 118 was submitted by:
Hon. Daniel Mitchell, 3rd Judicial District (Attachment 10)
Hon. James Burgess, 18th Judicial District (Attachment 11)

There being no further conferees, the hearing on **SB 118** was closed.

Final action on **SB 57--Repealing K.S.A. 20-351a, report on certain judgeships**.

The Chairman reviewed **SB 57** and indicated no amendments had been proposed during the hearing.

Senator Bruce moved, Senator Goodwin seconded, to pass **SB 57** favorably for passage. Motion carried.

The meeting adjourned at 10:31 A.M. The next scheduled meeting is February 5, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-1-07

NAME	REPRESENTING
ELIZABETH GILLESPIE	SHAWNEE COUNTY DEPARTMENT OF CORRECTIONS
Richard Kline	Shawnee Co. Dept. of Corrections
Cindy Morris	Shawnee Co. Dept. of Corrections
Brenda Hamon	KSC
Dawn M. Spence	OJA
Kathy Porter	Judicial Branch
Judge Don Reitz	District Judge 31st Jud. Dist
Mark Gleeson	Judicial Branch
DAVID E. PIERCE	CASA 31st Jd. Distrikt
Kelly M. Harrell	Judicial Council
JIM CLARK	KBA
Angie Nordhus	State Child Death Review Board
GRADY WALKER	Douglas County Youth Services
Sarah Tidwell	KSNA
MARK P. MATTAZ	VIA CHRISTI HEALTH SYSTEM
Joanna Penn	CASA - Shawnee Co.
Sherolyn Dugger	CASA of Shawnee Co 3rd
Melissa Ness	Ks CASA Association

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/1/07

NAME	REPRESENTING
Richard Sonaning	KCDAA
Ron Seeber	Klein Law Firm
Ross McCoy	
Jennifer Swartz	1st Judicial District CASA
Jeff Bo Hensley	State Farm
Bob Keller	JCSO
Marty Beeschling	Sen. Bruce
Kyle Smith	KBI
Shilia Lampe	CASA 31ST Dist

Written Testimony to the Kansas Senate Judicial Committee from Gorman Stanley, Sr.

February 1, 2007

My name is Gorman Stanley, Sr., age 65, and father of 7 children and grandfather to 18 children. I am retired from the railroad but have been doing tree work part time for over 20 years. In September of last year an acquaintance of mine, Robert DeMaranville, whom I considered a friend of sorts in that he would on occasion come by and visit me, asked me to give him a bid on taking out a big dead elm tree next to his house. I gave him a bid of 300.00 to remove the tree. He said he didn't want to spend that much money, so I told him that I would help him get it on the ground and not charge him anything. I considered him a friend and wanted to help him out.

About a week later he came by my house and talked to me about helping him not only do some tree work but also help him work on his house. It needed a new roof as it had been leaking, and he wanted to extend the roof line, and finish putting up siding on two sides of the house. If I helped him do this work, he said, he would give me this old car he didn't drive or need. I had heard about this car from a mutual friend of ours and had been told that it was worth about a thousand dollars. I wasn't very busy at the time and since it was weekend work, I thought it would be a good way to help out a friend and pick up a car that got better gas mileage than my truck. This is the background on how I got involved with DeMaranville.

After 14 days of work and having finished with everything except a few pieces of siding on the backside of the house, he called me up one Saturday morning and asked me if I was going to be home because he wanted to bring my ladder by. He drove up in the backyard, took my ladder out of his van and started acting like a maniac. He accused me of stealing a sheetrock knife and then reached into my tool box and grabbed a couple of my crowbars. He said "I'm tired of your crap. I'm paying you off" and pulled out his checkbook and wrote a check for 542.50. I tried to talk to him but he jumped in his van and took off. All of the time we worked together he treated me like gold and we never had a cross word so you can understand how astonished I was at his behavior. I wrote him a letter and asked him for an addditional 200.00 which would pay for my gas expense and part of the cost of a roofing nailer I bought to shingle the roof. I told him if I didn't get a check for 200.00 I would see him in court.

When I didn't hear from him within the allotted time I gave him to respond, I went to Ft. Scott to the Bourbon County Courthouse and filed a Small Claims suit against him for 485.00. This was on October 26, 2006. Let me interject at this point that in all the years I have done tree work, I have never worked for anyone by the hour and always with a verbal understanding except on a few occasions. (A few people I worked for back in 2002 after the ice storm wanted something written down.) Also, in all the years I have worked for people no one has ever refused to pay me or has ever written me a bad check. Consequently, I have never been faced with the decision to take someone to court. In many instances I was paid more than what was agreed upon because the homeowner was either happy with my work or they felt I did more than what was agreed upon. Having had these kinds of good experiences working for people, I was not prepared for someone

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like Demaranville. Later I heard from others that this was typical of him and that I should be glad I got paid anything at all and that I got my tools back.

Originally the court date was set for 10:30 am on December 18th and then changed to December 22nd. I showed up an hour early for the hearing and waited outside the courtroom until I was called in. Just as we were about to be called in a clerk came over and handed me Demaransville's counter suit. I must confess I was totally caught off guard by this and tried to read it as we were walking into the courtroom. From beginning to end the counter claim was a complete lie and if I had been given this counter claim at least a few days beforehand I could have produced the documentation or evidence to prove it was a lie. For example, he said he gave me a check to go and pick up some material at the lumberyard. It was his brother-in-law who picked up the material and not me. His brother-in-law who I believe is honest and trustworthy would have testified to that fact as well as other things Demaranville lied about. Another example is that Demaranville said during the time I was supposed to be working for him, that I went to St. Joe, Mo and bought a motorcycle for my son and to Augusta, Ks to buy my son a truck. Had I been given this counter claim at least a few days beforehand, I could have brought in the bills of sale on these vehicles showing when and where they were purchased. My son who was in Iraq with the 137th Kansas Army National Guard would get on the internet with me in the evenings and together we would look at vehicles. He wanted to buy something before he got home so he would have something to drive and not have to worry about finding a vehicle when he got home. I bought the motorcycle for him in Omaha, Nebraska and the truck in Lees Summit, Mo. These examples are enough to show that had I been given the counter claim before hand, I could have produced the witnesses or evidence to show his counter claim was a lie.

The defendant in this case had almost a month to prepare for the hearing and I, the plaintiff, had no time to respond to the defendant's counter claim. Another thing that irked me about the Small Claims court is that the defendant doesn't have to pay anything to file a counter claim. If the plaintiff has to pay a fee to file a claim the defendant should also. But that aside, it is obvious that the plaintiff should have a defendant's counter claim in hand at least a few days before the court date. I hope the committee sees the wisdom of correcting this problem by allowing Senator Schmidt's bill to go forward.

Kansas Bureau of Investigation

Larry Welch
Director

Paul Morrison
Attorney General

Testimony in Support of SB 103
Before the Senate Judiciary Committee
Kyle G. Smith, Deputy Director
Kansas Bureau of Investigation
February 1, 2007

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation and as legislative chair of the Kansas Peace Officers' Association in support of immediate passage of SB 103. This legislation essentially returns the processing of juvenile offenders back to 'upon arrest' from the 'upon conviction' approach adopted last year in SB 261.

We recognize that juvenile offenders may need to be handled differently than adult criminals, in some ways, due to their younger age, limited maturity and the consequential reduced culpability. However, correct identification of the offender to the offense is just as important for juveniles as it is for adults, and in some ways, more important.

One could argue that the fingerprints and photographs of juvenile offenders are even more important to get than of adults because juveniles frequently do not have identification documents such as a drivers license. And that same lack of maturity that mitigates their culpability also leads them into lying about their identity more often than adults. The potential for a juvenile to be released and disappear is thus greater than for adults. By not having the necessary identifying information collected when the record is created, SB 261 created a dangerous disconnect that can have serious consequences.

The risk of wrongly identifying the offender to the record is greatly increased. This problem goes both ways – an offender's real record may be unknown to law enforcement and the courts, while an innocent child may be wrongly connected to crime or crimes that the child had no involvement in committing. Due to the serious nature of the criminal justice system's work, it has long relied upon the unique nature of fingerprints as the standard for identification.

It should also be noted that juvenile offender records are given exceptional confidentiality already under Kansas law. The records are sealed from the public and even within the criminal justice system they are required to be stored and marked separately from adult records, unless the offender is at least 16 years of age. There is little risk that the photographs and fingerprints will ever be seen by anyone again in a juvenile case, unless that offender commits a new crime.

However, the risks to society from waiting until incarceration are real:

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- A juvenile gang member could be arrested for a serious, violent felony and once released pending hearing 'disappear' and assume another name. Even if caught for the failure to appear, how does the state prove beyond a reasonable doubt that this is the offender who failed to appear?

- An offender escapes from a juvenile detention center. How would we find or recognize an escapee without a photograph?

- What about a child that has the misfortune to look like an offender and is picked up by mistake? He may claim we have the wrong child but without fingerprints it may be much more difficult or even impossible to straighten out the misidentification.

- Automatic Fingerprint Identification System (AFIS) is a computerized system that can scan fingerprints of arrestees against crime scene fingerprints as well as the entire database of fingerprint cards. Every year in Kansas around 300 cases are solved by 'cold hits' – where fingerprints from booking identifies that person as a suspect in an unsolved crime. About 10% of these cases are juveniles.

    - By not taking fingerprints at arrest, those crimes, sometimes rapes and murders, will go unsolved.
    - AFIS also allows positive identification at processing. What if the juvenile arrested on a minor charge turns out to be someone else with an extensive record?
        - Maybe two prior serious felonies that transfers them to adult court?
        - An adult posing as a juvenile in an effort to increase his chance to escape or avoid identification?

- Without fingerprints to identify a juvenile offender to the record, the system would be unable to report a record that might give the judge a better understanding of the offender's problems and needs. While not as indicative as adjudication, two prior drug arrests might suggest a substance abuse evaluation is in order as part of sentencing.

- A couple priors of arrests for concealed weapons or aggravated battery of a Law Enforcement Officer is the kind of information that the officer on the street needs to know when handling a juvenile in a car full of friends.

- Last year's legislature also passed HB 2554, requiring DNA samples taken at arrest, even from some serious juvenile offenders, but section 13 doesn't allow the taking of fingerprints to properly tie the sample to a case or the juvenile.

- The Kansas Criminal Justice Information System, KCJIS, is an award-winning computerized system, but it, like any system, is dependant upon the information that it is given. The system assigns a 'transaction number' whenever an offender, adult or juvenile, is apprehended and 'booked' into a facility. While SB 261 contemplates reconnecting fingerprints to an offender after conviction, there is a substantial chance that will simply not happen in a substantial number of cases – without the transaction number to tie the case together from beginning to end, the system will break down. The sentencing grid is supposed to take into consideration a person's prior convictions, but without fingerprints to confirm identification to a transaction number, the reliability of the records suffer. Since January 1st of this year, when SB 261 went into effect, we have no reliable way of connecting a juvenile offender to a case. Remember we are being forced to rely on names and date of births from a population that may not have any documents proving either.

At last week's hearing on the house version addressing this problem, a concern was raised about the Judicial Council's original intent in last year's SB 261 regarding when juvenile offenders should be processed. Randy M. Hearrell, Executive Director of the Judicial Council, explained the council's original position and graciously invited me to attend the upcoming meeting of the council, last Friday, January 23rd.

I did attend that meeting, explained the concerns of law enforcement and we had a productive discussion. The Judicial Council, the drafters of last year's SB 261, agreed to reverse their position and not oppose the changes we are proposing in HB 2074. The house judiciary has not yet acted upon HB 2074.

We would like to recommend some minor amendments clarify two matters: that juveniles that are committed to juvenile correctional facilities would also be subject to fingerprinting and photographing and a technical amendment reflecting that there is only one state repository. The amendments would also basically make the bills identical in meaning if not wording. See attached balloon with our amendments in bold italics.

The longer that section 13 of SB 261 is allowed to be the law of Kansas, the worse our records will be and the greater danger of miss and wrong identification of juvenile offenders. While well-intentioned, the unintended consequences of this section of SB 261 are major problems with both local law enforcement and maintaining accurate records of arrests by the KBI.

Therefore we respectfully request prompt action on this bill, both by this committee and the entire chamber.

Thank you for your prompt attention and consideration.

SENATE BILL No. 103

By Senators V. Schmidt, Hensley and Kelly

1-17

AN ACT concerning juveniles; relating to fingerprints and photographs; amending K.S.A. 2006 Supp. 38-2313 and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 38-2313 is hereby amended to read as follows: 38-2313. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) after adjudication, fingerprints and photographs shall be taken of all juvenile offenders adjudicated because of commission of an offense which if committed by an adult would constitute the commission of a felony or any of the following misdemeanor violations: K.S.A. 21-3424, and amendments thereto, criminal restraint, when the victim is less than 18 years of age, subsection (a)(1) of K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3507, and amendments thereto, adultery, when one of the parties involved is less than 18 years of age, K.S.A. 21-3508, and amendments thereto, lewd and lascivious behavior, subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, promoting prostitution, when one of the parties involved is less than 18 years of age, K.S.A. 21-3517, and amendments thereto, sexual battery, and including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a violation of any of the offenses specified in this subsection *a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined by K.S.A. 21-3408, and amendments thereto*;

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been*: (A)* Prosecuted as an adult pursuant to K.S.A. 2006 Supp. 38-2347, and amendments thereto; and *or (B) taken into custody for an offense described in subsection (n)(1) or (n)(2) of K.S.A. 2006 Supp. 38-2302, and amendments thereto;*

(4) fingerprints or photographs ~~may~~ ***shall*** be taken of any juvenile admitted to a juvenile correctional facility.*; and*

(5) photographs may be taken of any juvenile placed in a juvenile detention facility.

(b) Fingerprints and photographs taken under subsection (a)(1) *or (a)(2)* shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsections ~~(a)(2),~~ (a)(3) and (a)(4) may be kept in the same manner as those of

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persons of the age of majority. *Photographs taken under subsection (5) shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person or agency.*

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

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

(2) *a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to a state or federal repository if taken under subsection (a)(2* ***or (a)(4)****); and*

(3) fingerprints or photographs taken under ~~subsections (a)(2),~~ ***subsection*** (a)(3) ~~and (a)(4)~~ shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2006 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of subsection (a)(2) of K.S.A. 38-1611, prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

Sec. 2. K.S.A. 2006 Supp. 38-2313 is hereby repealed.

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

KANSAS JUDICIAL COUNCIL

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Topeka, Kansas 66612-1507

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Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us
www.kscourts.org/council

MEMORANDUM

TO: **Senate Judiciary Committee**

FROM: **Kansas Judicial Council - Randy M. Hearrell**

DATE: **January 30, 2007**

RE: **2007 SB 103 - Juvenile Fingerprints and Photographs**

Last session the Legislature passed the Revised Kansas Juvenile Justice Code. While the Judicial Council Juvenile Offender/Child in Need of Care Committee was aware of a few problems, and did plan a clean up bill for next year (after there has been a year of experience under the Code). It now appears that K.S.A. 38-2313 should be amended this session.

The Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee met Friday, January 26, 2007, and at that meeting heard a presentation from Kyle Smith, of the K.B.I., on the problems with current K.S.A. 38-2313. After discussions with Mr. Smith, the Committee agreed that it did not intend to make the work of law enforcement more difficult and returning to the previous law is the best course of action. The Judicial Council JO/CINC Advisory Committee does not oppose the passage of SB 103.

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Attachment 3

Shawnee County
Department of Corrections
501 S.E. 8th Street - Topeka, Kansas 66607
Elizabeth Gillespie, Director

Adult Detention Facility - 501 SE 8th - Topeka, Kansas 66607 - (785) 291-5000 - FAX (785) 291-4924
Youth Detention Facility - 401 SE 8th - Topeka, Kansas 66607 - (785) 233-6459 - FAX (785) 291-4963

DATE: February 1, 2007

TO: Honorable Chairman Vratil and Members of the Committee
Senate Judiciary Committee

FROM: Elizabeth Gillespie, Director
Shawnee County Department of Corrections

SUBJECT: **Senate Bill No. 103**

On behalf of Shawnee County, I am testifying in support of Senate Bill No. 103 as introduced by Shawnee County Senators Schmidt, Hensley, and Kelly. This bill will correct the current conflict that exists between two bills that were passed during the last Legislative session: Senate Bill 261 and House Bill 2554. Basically, Senate Bill 261 prohibits the fingerprinting of juveniles at admission to juvenile detention facilities until after a juvenile is adjudicated for certain offenses. House Bill 2554 requires DNA collection of juveniles during the admission fingerprinting process for certain offenses. Senate Bill 103 corrects the conflict between the two bills and requires fingerprinting at intake/arrest for the same offenses identified for DNA samples.

Unfortunately, Senate Bill 261 also prohibits the photographing of juveniles in juvenile detention facilities, effective January 1, 2007. While I certainly understand the need to treat juvenile offenders differently than adult offenders, I believe that the photographing of juveniles upon entrance to juvenile detention facilities is extremely important and in the best interests of the state's 13 juvenile detention facilities and the juveniles assigned to them. Senate Bill 103 authorizes these facilities to take photographs of any juvenile that is assigned to them. Most juvenile detention facilities in this state have been taking photographs of all juveniles entering the facilities for many years. These photographs are utilized for accurate identification of the juveniles throughout their stays in the facilities. The photographs assist in keeping security and order and serve as protection for the staff and juveniles. In the latter case, the photographs provide records of the physical condition in which the juveniles entered the facilities. SB 103 also protects the juveniles by prohibiting the centers from disseminating the photographs and using them for anything other than internal security, identification, and protection purposes.

House Bill 2074 (see attached copy) as introduced by the House Judiciary Committee this month also corrects the conflict between Senate Bill 261 and House Bill 2554 regarding fingerprinting and DNA collection. It does not, however, include authorization for the photographing of any juvenile placed in a juvenile detention facility. Kyle Smith, Deputy Director of the KBI, testified before the House Judiciary

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Committee last week during the hearing for HB 2074 and requested that the Committee amend HB 2074 to include authorization for photographing of juveniles. The amendment that he requested will resolve the photographing issue for juvenile detention centers. (See copy of the amendment proposed.) His proposed amendment, however, also allows for the dissemination of juvenile photographs after an escape and necessary to assist in apprehension. The "escape" language seems to be a wise addition to the bill, and I am asking that similar language be added to the last sentence of SB 103 Section 1(b).

> *Photographs taken under subsection (5) shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person, except after an escape and necessary to assist in apprehension.*

Obviously, I am hoping that the bill that is finally passed during this session ultimately includes both the fingerprinting and the photographing changes.

Thank you for your time and consideration.

EG:eg

Attachment (2)

Session of 2007

HOUSE BILL No. 2074

By Committee on Judiciary

1-16

AN ACT concerning juveniles; relating to fingerprints and photographs; amending K.S.A. 2006 Supp. 38-2313 and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 38-2313 is hereby amended to read as follows: 38-2313. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) ~~after adjudication, fingerprints and photographs shall be taken of all juvenile offenders adjudicated because of commission of an offense which if committed by an adult would constitute the commission of a felony or any of the following misdemeanor violations: K.S.A. 21-3424, and amendments thereto, criminal restraint, when the victim is less than 18 years of age, subsection (a)(1) of K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3507, and amendments thereto, adultery, when one of the parties involved is less than 18 years of age, K.S.A. 21-3508, and amendments thereto, lewd and lascivious behavior, subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, promoting prostitution, when one of the parties involved is less than 18 years of age, K.S.A. 21-3517, and amendments thereto, sexual battery, and including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a violation of any of the offenses specified in this subsection~~ *a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by an adult, would constitute the commission of a felony, a class A or B misdemeanor or assault, as defined by K.S.A. 21-3408, and amendments thereto*;

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been: *(A)* Prosecuted as an adult pursuant to K.S.A. 2006 Supp. 38-2347, and amendments thereto; *or (B) taken into custody for an offense described*

in subsection (n)(1) or (n)(2) of K.S.A. 2006 Supp. 38-2302, and amendments thereto; and

(4) fingerprints or photographs may be taken of any juvenile admitted to a juvenile correctional facility.

(b) Fingerprints and photographs taken under subsection (a)(1) *or (a)(2)* shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsections ~~(a)(2),~~ (a)(3) and (a)(4) may be kept in the same manner as those of persons of the age of majority.

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

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

(2) *a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to the state and federal repository if taken under subsection (a)(2) or (a)(4); and*

(3) fingerprints or photographs taken under ~~subsections (a)(2),~~ *subsection* (a)(3) ~~and (a)(4)~~ shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2006 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of subsection (a)(2) of K.S.A. 38-1611, prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding $500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

Sec. 2. K.S.A. 2006 Supp. 38-2313 is hereby repealed.

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

Proposed Amendments to HB 2074

Page 2, lines 3-4:

(4) fingerprints or photographs ~~may~~ ***shall*** be taken of any juvenile admitted to a juvenile correctional facility.

(5) photographs may be taken of any juvenile placed in a juvenile detention facility. Photographs taken under this section shall be used solely by the juvenile detention facility for the purposes of identification, security and protection and shall not be disseminated to any other person or agency except after an escape and necessary to assist in apprehension.

4-6

KANSAS
ASSOCIATION OF
COUNTIES

Kansas Association of Counties
Written Testimony in Support of **SB 103**
Before the Senate Judiciary
By Judy A. Moler, Legislative Services Director
February 1, 2007

The Kansas Association of Counties supports SB 103. During the 2006 Legislative Session two conflicting bills were passed. SB 261, as passed last year, prohibits fingerprinting of juveniles during the admission process at juvenile facilities until the juvenile is adjudicated. The second bill which passed would require DNA collection of juveniles during the admission process. The bill before you would correct the conflict. In addition, however, the Senate bill passed last year would also prohibit photographing of juveniles in juvenile detention facilities. This is a serious problem for the 13 juvenile facilities across the state. Photographs of juveniles had been taken for some time prior to the passage of last year's bill. These photographs are used for security reasons as well as to document the well being of the juveniles

This bill, SB 103, introduced last week by Shawnee County Senators Schmidt, Hensley and Kelly is remedy for this problem. It would be the hope of the Kansas Association of Counties that when Senate Judiciary examines this bill and hears testimony regarding the problems incurred by the 2006 legislation , they will look upon SB 103 favorably.

Thank you for allowing the Kansas Association of Counties to offer testimony on this issue.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Judy Moler (785) 272-2585.

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KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: **Senate Judiciary Committee**
FROM: **Kansas Judicial Council - Randy M. Hearrell**
DATE: **February 1, 2007**
RE: **2007 Senate Bill 118**

Last session the Legislature passed the Revised Kansas Code for Care of Children. After enactment of the bill, the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee reviewed HB 2352 and identified several problems with the bill. Some were inconsistencies, some required more precise language, and others were caused by amendments. The Committee planned to wait for a year's experience under the Code and request a comprehensive bill to fix any problems next session. It now appears two problems may need immediate attention, one of them being K.S.A. 38-2249.

The problem with K.S.A. 38-2249 was caused by an amendment. As introduced section 44(b) of the bill read:

> **(b) The judge presiding at the adjudicatory hearing shall not consider, read or relay on any report not properly admitted according to the rules of evidence, except as provided by section 14, and amendments thereto.**

In the House Committee, the section was amended to read as follows:

> **(b) The judge presiding ~~at the adjudicatory hearing~~ at all proceedings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence, except as provided by Section 14, and amendments thereto.**

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In the Senate Committee, the word "proceedings" was changed to "hearings," and that word is currently contained in the section.

At its meeting last Friday, the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee reviewed SB 118 and agreed that K.S.A. 38-2249(b) should be amended. The proposal of the Committee is that it be amended to read as follows:

> **(b) ~~The~~ Up to and including the entry of an order of adjudication or the entry of an order of informal supervision the judge presiding at all hearings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence~~, except as provided by K.S.A. 2006 Supp. 38-2219, and amendments thereto~~. After adjudication or the entry of an order of informal supervision the judge presiding at all hearings under this code may read all reports submitted, but shall not rely on any report not properly admitted according to the rules of evidence.**

The reason the Committee is of the opinion the above language is preferable to the language contained in SB 118 is because the proposed amendment only includes CASA reports and court-ordered evaluations. The language does not include reports from SRS, contractors and others trying to work with the family and child. A problem is that sometimes these reports are voluminous and judges need to read these reports prior to the hearing, so the hearing is not delayed. The judges do not rely on the reports unless they are admitted into evidence.

Senate Judiciary Committee
Thursday, February 1, 2007

Testimony in Support of SB 118

Judge Daniel Dale Creitz, District Judge, 31st Judicial District
(Allen, Wilson, Neosho, and Woodson Counties)

I am Judge Daniel Dale Creitz. I am a District Court Judge of the Thirty-First Judicial District. The Thirty-First Judicial District includes the counties of Allen, Neosho, Wilson and Woodson. I am on the Advisory Board for CASA of the Thirty-First Judicial District. CASA is the Court-Appointed Special Advocate Program for children in courts of the Thirty-First Judicial District. I, along with many others, were instrumental in forming CASA for the Thirty-First Judicial District.

I have read Senate Bill 118, and the testimony of Professor David Pierce.

I concur with the testimony of Professor Pierce. I also support Senate Bill 118.

I will be available to answer questions. Thank you for considering this matter.

Hon. Daniel Dale Creitz
District Judge
Courthouse, P. O. Box 630
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SENATE BILL NO. 118
SUMMARY OF TESTIMONY OF PROPONENT DAVID E. PIERCE

I. THE PROBLEM

K.S.A. § 38-2249(b) of the Revised Kansas Code for Care of Children states:

> **"The judge presiding at all hearings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence . . . ."**

- Original language enacted in 1982 as K.S.A. § 38-1554(b).
- Concerned with reports filed by "interested parties" in the proceedings; the guardian *ad litem*.
- When enacted in 1982 the court appointed special advocate (CASA) concept had not been statutorily recognized in Kansas.
- In 1985 K.S.A. § 38-1505a was adopted providing for court appointment of "a volunteer special advocate for the child . . . whose primary duties shall be to advocate the best interests of the child and assist the child in obtaining permanent, safe and homelike placement."
- *In re D.D.P.* (1991) Kansas Supreme Court holds the CASA is not an interested party in the proceedings, is not entitled to legal representation, and discharges its duties by filing reports with the court.
- Supreme Court Rule 110 provides "A CASA volunteer . . . should . . . Submit a written report to the court prior to each regularly scheduled court hearing involving the child . . . ."
- The CASA volunteer communicates with the court through the report.
- K.S.A. § 38-2249(b) unnecessarily impairs the court's ability to read, consider, and rely upon the CASA report.

II. THE SOLUTION

Amend K.S.A. § 38-2249(b) so CASA reports are not included in the reference to "any report." Senate Bill No. 118 does this with the following language:

> **"The judge presiding at all hearings under this code shall not consider, ~~read~~ or rely upon any report not properly admitted according to the rules of evidence, except ~~as~~ *this requirement shall not apply to:***
> ***(1) Any report prepared by a court-appointed special advocate;"***

III. PROCEDURAL RIGHTS OF PARTIES TO CINC PROCEEDINGS ARE NOT ADVERSELY AFFECTED BY THIS CHANGE

(Detailed Discussion of the Issues Attached)

Senate Judiciary
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BEFORE THE KANSAS SENATE JUDICIARY COMMITTEE
TESTIMONY OF DAVID E. PIERCE
IN SUPPORT OF:

SENATE BILL NO. 118

I am David Pierce. I am employed as a Professor of Law at Washburn University School of Law where I am an associate with Washburn's Children and Family Law Center. I also serve *pro bono* as the program attorney for CASA of the 31st Judicial District, the court appointed special advocate program for children in the courts of Allen, Neosho, Wilson, and Woodson Counties, Kansas. I appear here today to support Senate Bill No. 118. The observations I am making are my own and not made on behalf of any other individual, organization, or interest group.

I. INTRODUCTION: THE PROBLEM

As part of my work with CASA of the 31st Judicial District I have studied what has been codified as K.S.A. § 38-2249 of the Revised Kansas Code for Care of Children, which was passed by the Legislature in 2006. 2006 Kan. Sess. Laws ch. 200, § 44 at p. 1517. I also focused on these changes for a continuing legal education presentation made September 25, 2006 to the Allen County Bar Association in Iola, Kansas titled: "Professional Responsibility Demands When Representing the Kansas Child." From my discussions with judges responsible for the administration of child-in-need-of-care ("CINC") proceedings, discussions with attorneys representing participants in CINC proceedings, discussions with Jane Brophy, the Executive Director of CASA of the 31st Judicial District, and my own independent study, it is apparent that K.S.A. § 38-2249(b) creates serious problems for the proper administration of CINC and related proceedings where a court-appointed special advocate is involved.

The provision at issue is subsection (b) of 38-2249 which provides:

> The judge presiding at all hearings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence, except as provided by K.S.A. 38-2219, and amendments thereto.

The exception "as provided by K.S.A. 38-2219" refers to court-ordered evaluations of the psychological or emotional development needs of the child and does not address the problems that are the focus of this proposal.

The problem is that K.S.A. § 38-2249 is being interpreted to include reports prepared by the court appointed special advocate ("CASA") as one of the reports that cannot be read or relied upon until it has been "properly admitted according to the rules of evidence . . . ." Prior to this enactment, judges routinely read the CASA report before each hearing; the CASA was available at the hearing in the event the judge or any of the parties wished to examine the CASA concerning their report.

II. ORIGIN OF K.S.A. § 38-2249(b)

The origin of K.S.A. § 38-2249(b) comes from identical language that was previously codified at K.S.A. § 38-1554(b). The history of this statute reveals that it was first enacted in 1982 when the guardian *ad litem* for the child routinely filed a "report" with the court recommending how the court should proceed. The guardian *ad litem* is an attorney and an interested party in CINC proceedings and therefore it is reasonable to require that they offer their reports into evidence like any other party to the proceeding.

It is particularly revealing that in 1982, when the term "any report" was used in the statute, *the CASA concept did not exist in Kansas*. It was not until 1985 that K.S.A. § 38-1505a was passed providing:

> In addition to the guardian *ad litem* appointed pursuant to K.S.A. 38-1505 and amendments thereto, the court at any stage of a proceeding pursuant to this code may appoint a volunteer special advocate for the child who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the child and assist the child in obtaining a permanent, safe and homelike placement. . . .

Therefore, the "report" referenced in K.S.A. §38-1554 could not have been referring to reports prepared by the CASA. However, when the 2006 Legislature re-enacted § 38-1554, which is now found at § 38-2249(a) & (b), it is now unclear whether the same "any report" language is intended to encompass the CASA report.

Although the original 1982 law was directed at the guardian *ad litem*'s report, the Kansas Supreme Court, in 1995, changed its guidelines to prohibit guardians *ad litem* from filing "reports." Supreme Court Administrative Order No. 100, Guidelines for Guardians *Ad Litem* ("A guardian *ad litem* should: . . . (4) *Not submit reports* and recommendations to the court . . . . The guardian *ad litem* should submit the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents a case on behalf of a client: by calling, examining and cross-examining witnesses, submitting and responding to other evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.") (emphasis added).

The reason the Legislature enacted the original 1982 law, and the reason the Supreme Court eliminated the guardian *ad litem*'s report, is that the guardian *ad litem* is an attorney representing a statutory interest in the case and therefore should be treated like any other party to the proceeding. In Kansas the guardian *ad litem* must be an attorney. K.S.A. § 38-2205(a) ("Upon the filing of a petition, the court *shall appoint an attorney* to serve as guardian *ad litem* for a child . . . .") (emphasis added).

III. THE UNIQUE LEGAL STATUS OF THE CASA IN KANSAS

The guardian *ad litem* rationale cannot be applied to the CASA because the Kansas Supreme Court has made it clear, and the Revised Kansas Code for the Care of Children supports the Court's position, that the CASA is *not* an interested party in the CINC proceeding. It is also clear the CASA is *not* entitled to legal representation to do the sorts of things a lawyer would do for their client in a CINC proceeding: such as "calling, examining and cross-examining witnesses, submitting and responding to other evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented." Instead of acting like a party litigant, the CASA serves as a statutorily authorized non-party fact finder that communicates their findings to the court. The CASA's sole means of communication is the report that is expressly required by Supreme Court Rule 110, which states, in relevant part:

> Court-appointed special advocate (CASA) volunteer programs shall embrace the following:
>
> (a) . . . . A CASA volunteer, additionally, should:
> . . . .
>
> (5) Submit a written report to the court *prior to each regularly scheduled court hearing* involving the child; . . . .

(Emphasis added).

Supreme Court Rule 110 should be given special emphasis because it was in effect prior to the 2006 Legislature adopting K.S.A. §38-2206 of the Revised Code, which states: "The court-appointed special advocate shall . . . perform such specific duties and responsibilities *as prescribed by rule of the supreme court.*" (Emphasis added). As noted above, the Supreme Court Rule requires the CASA to submit their written report "to the court prior to each regularly scheduled court hearing . . . ."

Section 38-2249(b) of the Revised Code creates the anomalous situation where a report must be filed with the court prior to the hearing, but the report cannot be considered by the judge unless, and until, it is admitted into evidence. This requirement is wholly unworkable when the precise role of the CASA, as it has been defined by the Kansas Supreme Court, is fully understood.

The Kansas Supreme Court defines the role of the CASA in *In the Interest of D.D.P., Jr., T.P., and B.J.P.*, 249 Kan. 529, 819 P.2d 1212 (1991). In discussing the CASA interested party issue, the Supreme Court provides useful guidance for what a CASA is, and is not:

(1) The CASA is intended to serve the role of "advocate for the child, and advisor to the court" and is not a litigant. 249 Kan. at 537, 819 P.2d at 1219.

(2) The CASA fulfills its advisory role to the court by filing written reports.

(3) Supreme Court Rule 110(a)(5) expressly authorizes and directs the CASA to file reports with the court:

> "A CASA volunteer . . . should: . . . (5) Submit a written report to the court prior to each regularly scheduled court hearing involving the child . . ."

(4) This reporting function is relied upon by the Supreme Court as a major distinguishing factor in defining the CASA as a non-party assistant to the court:

> "The whole concept of filing a written report with the judge prior to a hearing is inconsistent with, and alien to, party litigant status. If one is a party litigant, there is no reason for written reports relative to what has transpired among the various parties and agencies since the last hearing. Litigants file memorandums and briefs–they do not file *ex parte* reports with the judge on how other litigants and involved agency personnel have been performing their respective roles. The value of the written report is that of an aid to the court in evaluating what has transpired, keeping the case moving, and in arriving at a proper disposition or modifying a prior order."

249 Kan. at 537-38, 819 P.2d at 1219.

(5) As the Supreme Court observes: "Under our concept of the CASA program, the CASA role is that of serving as an aide to the court in making an appropriate resolution of the proceedings." 249 Kan. at 538, 819 P.2d at 1219.

IV. CONCEPTUAL AND PRACTICAL PROBLEMS DUE TO THE CASA's UNIQUE LEGAL STATUS

If the CASA report cannot be considered unless it is in evidence, who will offer the report into evidence? The Supreme Court established in the *D.D.P.* case that because the CASA is not an interested party there is no right to be represented by counsel in the litigation. There may be cases, such as the *D.D.P.* case, where the parties are aligned against the CASA and unwilling to sponsor the CASA report into evidence. In those cases applying K.S.A. § 38-2249 to the CASA report may prevent the court and the parties from having the benefit of the CASA's work.

As a practical matter most CINC proceedings are not adversary proceedings. If the judge cannot read the report before it is submitted at the hearing, the judge will either have to continue the hearing to read the report, or proceed without having the opportunity to read and reflect on the contents of the CASA's report.

The rights of all interested parties can be fully protected by making the report available to counsel for the parties at the same time it is filed with the court. This means the judge will have

the same opportunity to study the contents of the report that the other parties to the proceeding enjoy. The parties' counsel can review the report in advance of the hearing and prepare, if necessary, to challenge the report. The CASA who prepared the report can be made available for questions and cross examination at the hearing.

V. SENATE BILL NO. 118 OFFERS A SIMPLE SOLUTION

Senate Bill No. 118 offers a simple solution to this problem by excluding the CASA report from the prohibition that the "judge presiding at all hearings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence . . . ."

VI. THE PROCEDURAL RIGHTS OF PARTIES TO CINC PROCEEDINGS WILL NOT BE ADVERSELY AFFECTED BY THIS CHANGE

Whenever procedures are being addressed, the Legislature must be attuned to the rights of all parties involved in the matter. For example, the Kansas Supreme Court has made it clear that "child custody is a fundamental right of a parent, protected by the due process clause of the Fourteenth Amendment." *In the Interest of M.M.L.*, 258 Kan. 254, 267, 900 P.2d 813, 821 (1995). Therefore, the procedures applied in CINC hearings must treat all parties fairly as the court seeks to ascertain and pursue the best interests of the child.

One concern that has been raised by the Kansas Supreme Court is the use of hearsay evidence. The Court in *In re Johnson*, 214 Kan.780, 522 P.2d 330 (1974), found it was improper, as a matter of statutory law, to consider evidence that is not encompassed by an exception to K.S.A. § 60-460, the basic hearsay statute. K.S.A. § 60-460 provides, in part: "Evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is hearsay and inadmissible except [when it comes within 31 categorical exceptions to the rule]."

The issues involved in *In re Johnson* were not addressed as a matter of constitutional law but rather as a matter of statutory law: the psychiatrist's report and the social welfare worker's report were not covered by any exception to the hearsay rule. However, the real issue of concern in the case was the parents' inability to cross examine the persons making the reports because they were out of state.

Allowing judges to read and consider the CASA's report will not limit the ability of an interested party to challenge the contents of the report or cross examine the CASA. In the normal course of events the CASA's report will be filed with the court in advance of any hearing and the judge, and all interested parties, will have an equal opportunity to review the contents of the report and prepare for subsequent hearings. If during the hearing any party raises an issue regarding the CASA's report, the CASA can be examined on the matter. If any party believes a statement in the report is inaccurate or unsupported, they can urge the judge to disregard that portion of the report to ensure that the ultimate order of the court is supported by the evidence.

In the vast majority of cases, there will be no objection to the CASA report and the parties will use the information, in conjunction with all other available information, to try and arrive at a solution that will best serve the interests of the child. Senate Bill 118 provides a fair and workable process by which the full benefits of the CASA's work can be fully utilized by the court.

This concludes my testimony. Thank-you for giving this matter your attention.

Submitted February 1, 2007.

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SUPPLEMENTAL TESTIMONY OF DAVID E. PIERCE URGING REJECTION OF JUDICIAL COUNCIL'S PROPOSED AMENDMENT TO SENATE BILL NO. 118

I have reviewed the Judicial Council's proposal to amend Senate Bill No. 118. The proposed amendment does not solve the underlying problems associated with K.S.A. § 38-2249 regarding the court-appointed special advocate ("CASA"). First, it only applies "[a]fter adjudication . . . ." This would prevent judges from reading and using CASA reports at one of the most critical stages of the proceedings, the adjudication stage. This is in conflict with K.S.A. § 38-2206(a) which states: "The court ***at any stage of a proceeding*** pursuant to this code may appoint a special advocate . . . ." The effectiveness of the CASA is destroyed if the court cannot read or use the CASA's report at all stages of the child-in-need-of-care ("CINC") proceeding, including adjudication.

According to the "guiding principles" established by the National Court-Appointed Special Advocate Association ("NCASAA")[1] the CASA "should be appointed to the case ***at the earliest possible time*** . . . ."[2] Consistent with the "any stage" language of K.S.A. § 38-2206(a), judges must have the flexibility to appoint a CASA, and use the CASA's reports, even at the adjudication stage of the CINC proceeding.

The proposed amendment also perpetuates the problem of having the CASA report "admitted according to the rules of evidence" before a court can "rely" upon the report. This fails to account for the special status of the CASA:

(1) The CASA performs his or her duties, which includes preparing a report, pursuant to court order.
(2) The CASA report is prepared and filed with the court pursuant to Supreme Court rule.
(3) The CASA does not have "party" status in the proceeding.
(4) The CASA is not entitled to legal representation during the proceeding.
(5) The CASA is a volunteer, non-professional, sanctioned by statute to provide specific information to the court.

The CASA has a status unlike any other participant in the CINC proceeding. The CASA cannot perform their intended role unless their reports can be read and used by the court.

The CASA is not equipped to do battle in CINC proceedings over the rules of evidence.

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[1]NCASAA partners with the U.S. Department of Justice Office of Justice Programs which provides federal funding to state CASA programs pursuant to the Victims of Child Abuse Act of 1990, 42 U.S.C. §§ 13011 to 13014.

[2]National Court-Appointed Special Advocate Program, U.S. Department of Justice Office of the Inspector General, Audit Division, Audit Report 07-04, at page 5 (December 2006); see http://www.usdoj.gov/oig/reports/OJP/a0704/final.pdf

Testimony on SB 118
Re: Children in Need of Care – Access to reports
Presented by: The Kansas CASA Association
February 1, 2007

Good Morning Mr. Chairman and Members of the Committee

Thank you Mr. Chairman for the opportunity to speak on behalf of SB 118. As a member of the Kansas CASA Association, I am here to express our support for the passage of this bill. SB 118 allows information valuable to the disposition of a case involving a child and his or her family to be accessible in a timely fashion to the judge. We believe that as soon as critical information is available it should be accessible, thereby expediting actions and decisions that positively impact the lives of children.

Specifically we ask that you strike the word "read" on line 21 of the bill.

It is CASA's experience that the earlier a CASA volunteer is appointed to a case and that the information obtained is presented to the court, the potential for finding a permanent solution *sooner* for the child increases. Consequently, it could reduce social service provider costs and the trauma to children who must be placed in temporary care outside of their home. We believe judges need to hear as much relevant information as soon as possible to aid in developing an objective view of often very difficult and complex cases in order to help make the best ruling possible on behalf of the child. Again, being able to read reports prior to the adjudication hearing increases the potential of reducing the time a child spends out of their home at great expense to the child and to the taxpayers supporting the system of care.

Given the language and intent of this bill, we believe that it is not necessary to "specifically" address CASA reports as a special category as long as it is understood that the bill gives CASA reports equal status with other reports considered necessary and accessible earlier in the process in order to move the case forward.

Court Appointed Special Advocate volunteers provide an invaluable role as part of the range of resources that ensure children, in particular, have a voice in the judicial process. We hope that the committee understands this value in a way that allows them to lend their support to a bill that would reinforce how important information from all venues is in determining the future for children and their families.

Respectfully submitted,
Sharolyn Dugger, Co-Chair
Kansas CASA Association Legislative Committee

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Senate Judiciary Committee
Testimony in Support of SB 118
Honorable Daniel L. Mitchell
District Court Judge
Third Judicial District

As I am in trial today, I appreciate the opportunity to present testimony before this committee in writing. I wish to address Senate Bill 118 which amends K.S.A. 2249 (b).

It is my understanding that Senate Bill 118 strikes the word "read" from the current statute, which became effective January 1, 2007. It is also my understanding that the Kansas Judicial Council is recommending that the current language apply up to the point of adjudication or Order of Informal Supervision, but that post adjudication, judges be permitted to read but not consider or rely upon reports until such time as they are admitted into evidence.

I support passage of Senate Bill 118 as written, but would suggest that the amendment recommended by the Judicial Council would be an improvement over current law if Senate Bill 118 is not passed with its original language.

I handle the Child in Need of Care cases in Shawnee County, which is a high volume district as are Sedgwick, Johnson and Wyandotte counties. In high volume courts, the ability to read reports prior to their admission into evidence is a critical factor in the conservation of time and the advancement of permanency. All parties have the opportunity to review the reports prior to the formal court hearing and determine whether they wish to object to the report or stipulate to its admission into evidence. If there is an objection to the report, an evidentiary hearing concerning its admission will be held. If there is a stipulation to the report, the Court would, without the benefit of Senate Bill 118, not have had the opportunity to review the report and its contents to be able to appreciate the positions taken by the various parties, and delay in the proceedings would undoubtedly occur, which would likely be up to sixty (60) days.

Judges frequently must disregard information presented that is heard but not subject to admission into evidence. Judges hear motions to suppress, motions in limine, and testimony in open court which may need to be disregarded as inadmissible. Judges can discern that which they can consider and that which they can not. To preclude the reading of reports until admission into evidence is to facilitate an unnecessary delay in the timely pursuit of permanence for children.

JAMES L. BURGESS
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COMMENTS IN SUPPORT OF SB 118 AND IN OPPOSITION TO THE KANSAS JUDICIAL COUNCIL'S PROPOSED AMENDMENTS TO SB 118

The amendment to SB 118 proposed by the Judicial Council really doesn't help Sedgwick County (and I would presume other districts as well) at all. The language of this statute creates a huge problem for our district which can be easily resolved by striking the word "read" from current law (K.S.A. 38-2249). This is essentially accomplished by the version of SB 118 which is before you. The language specific to Court-Appointed Special Advocate (CASA) reports included in SB 118 is not needed, but its inclusion is not harmful.)

In Sedgwick County, we have an adjudication/disposition docket every Thursday afternoon and at that docket well over 90% of the cases either stipulate or the parents elect not to contest the petition. At that point, we move immediately to disposition. The way this amendment reads, we will not be able to do that.

Since we have not read the reports, there is no way that we will know what is going on in the case. We just cannot make any dispositional decisions in any kind of an informed matter. We might be able to proceed to immediate disposition and let each party argue to the court what they believe is in the reports and what is vital information in those reports. That would take forever and when you have a ton of hearings to get through on one of these dockets, you just can't do it. There are always at least 10 cases to be heard in one afternoon and 15 cases are not unheard of by any means. (By the way, due to the new 72 hour law and the 60 day adjudication law, Judge Flaigle ended up with over 20 cases on his next adjudication docket. But that is another memo for another day.) We cannot schedule more adjudications on that day because the morning is filled with review hearings. We cannot schedule more days for adjudications because the rest of our week is filled with trials on termination of parental rights, truancy dockets, permanency hearings, etc.

The end result would be that rather than trying to do adjudications and dispositions on the same day, we would have to set the case for another hearing. That will probably be at least 45 days down the road due to volume, the new 72 hour law, the new requirement for adjudication within 60 days, etc. The result is 3 hearings be scheduled instead of 2 (TC + adjudication + disposition) and a delay toward achieving permanency.

This is another instance where juvenile law is being treated outside the norm of the judicial system. Judges hear motions in limine

on a regular basis but yet they are still permitted to hear a trial. Judges hear motions to suppress on a very frequent basis but being aware of suppressed evidence doesn't prohibit the judge from hearing the trial. In jury trials every day, comments are made or evidence is offered that a judge feels the jury should disregard. We can ask a jury of 12 persons to disregard evidence but yet we can't trust judges in juvenile cases to do the same when necessary?

The bottom line is this language results in no discernable benefit to anyone. A party's rights can be protected without this language and it is in everyone's interest to expedite these cases through the system. This type of language can only hurt the goal of achieving permanency in an as efficient and timely manner as possible. The ultimate answer is to strike the word "read" from K.S.A. 2006 Supp. 38-2249. Certainly no report will be considered prior to adjudication unless properly admitted as evidence but allowing judges to read reports in anticipation of disposition has a tremendously positive effect.

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