

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:40 a.m. on March 5, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes  
Doug Taylor, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Don Jordan, Secretary, SRS  
Judge Kathleen Sloan, 10<sup>th</sup> Judicial District (Johnson)  
Mark Gleeson, Family & Children Program Coordinator, Office of Judicial Administration  
Tom Laing, Interhab Inc.

Others attending:

See attached list.

The Chairman opened the hearing on **SB 92 - Child in need of care; jurisdiction on CINC proceedings** and **SB 94 - Child in need of care; placement of child in custody**.

Don Jordan spoke in support briefing the committee on the bill and recommended balloon amendments to both bills addressing concerns raised by several judges including the requirement for SRS to have a transition plan in place. (Attachments 1 & 2)

Judge Kathleen Sloan testified she is opposed to the bills as introduced but would be supportive if the proposed balloons are adopted. (Attachment 3)

Mark Gleeson presented opposition to the bills as introduced stating there are many potential problems with the bill but supports the proposed amendments. (Attachment 4 & 5)

Tom Laing spoke in opposition stating concerns regarding young people with developmental disabilities and suggested an amendment to provide additional safeguards for their protection (Attachment 6).

The Chairman recommended Mr. Laing work with Secretary Jordan and other interested parties to address his concerns and have recommendations ready for when the committee works the bill.

There being no further conferees, the hearing on **SB 92** and **SB 94** was closed.

Senator Vratil moved, Senator Schodorf seconded, to reconsider **SB 208 - Abolishing the death penalty for the purpose of sending the bill to the Judicial Council**. Senator Schmidt raised a point of order indicating a motion to reconsider must be made by member who voted on the prevailing side. The Chairman ruled the motion was not in order.

Senator Umbarger moved, as a member who voted on the prevailing side, Senator Kelly seconded, to reconsider **SB 208** with the intent to move the bill out of committee for debate on the Senate floor. Motion passed.

Senator Schmidt moved, Senator Bruce seconded, to refer **SB 208** to an interim study and if there is no interim committee refer the bill to the Judicial Council.

Senator Vratil made a substitute motion, seconded by Senator Kelly to recommend **SB 208** as amended, favorably for passage. Motion carried.

The next meeting is scheduled for March 6, 2009. The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/5/2009

NAME	REPRESENTING
Upsala Hendrickson	JJA
Jean Schults	KCSL
Ligh Kede	Mein Law Firm
Jamie Corkhill	SRS
Janis DeBoer	SRS
Joyce Grover	KCSOV
Whitney Dammann	KS Bar Assn.
Donna Schreweis	AI
Robin Clemens	Child Welfare Cos
P. Loring	Inter Hab
Juni Roe	KCSL
Steve Solomon	TFI Family Services
Bruce Linker	Children's Centers
Melissa Ness	Saint Francis Community Services
Cory Rathbun	Saint Francis Community Service
Wandra Minor	Visitor
Charles Jean-Baptiste	NAACP-State
Walter Mann	NAACP
Dusty Bued	YOUTHVILLE



DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

Don Jordan, Secretary

**Senate Judiciary Committee**  
**March 5, 2009**

**SB 92**

**Young Adults Age 18 and Older in SRS Custody**

For Additional Information Contact:  
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Senate Judiciary  
3-5-09  
Attachment 1

## Young Adults Age 18 and Older in SRS Custody

Senate Judiciary

March 5, 2009

Chairman Owens and members of the committee, I am Don Jordan, Secretary of the Kansas Department of Social and Rehabilitation Services. Thank you for the opportunity to appear in support of Senate Bill 92.

The current budget deficit requires that we examine programs and services to determine how to reduce expenses with minimum negative impact on the most vulnerable populations. Currently young adults may remain in the custody of the Secretary and the jurisdiction of the court until age 21. This bill would terminate jurisdiction when any child in need of care reached 18 or, if still in school, on the following June 1 unless there is no court approved transition plan. Further, the bill defines transition plan as an individualized provision of medical, mental health, and housing supports, and, if applicable, supports for dependants in care.

Ending jurisdiction over the young adults who remain in custody after 18 will result in a savings of \$1,532,318 SGF (\$1,687,876 All Funds). This change to the Kansas Code for the Care of Children will have minimal impact as there are extensive independent living services in place for youth and young adults. The budget includes funds to assure adequate plans and supports are in place for each young adult. Data regarding adults in the custody of the Secretary is available on the attached sheet.

Youth age 15 and older in the custody of the Secretary are supported in identifying goals to achieve self sufficiency, developing a plan to achieve those goals and in implementing that plan. Young adults who leave the custody of the Secretary are eligible for independent living services coordinated by an SRS staff person. If the 18 year old is not immediately interested in independent living services, they are free to say no and also free to contact the agency at any time prior to their 21<sup>st</sup> birthday. Based upon an approved plan for independent living, available services include:

- Basic supports for daily living skills training and career planning
- Kansas Regents tuition waiver program
- Medical Card eligibility to age 21
- Monthly Subsidy up to \$300.00 per month until age 21.
- Financial Assistance up to \$300.00 for one-time start up costs of rent or housing
- Financial Assistance up to \$500.00 for one-time start up costs of utilities, furniture or housing supplies (non-rent related expenses)
- Financial Assistance up to \$3,500 in the first year for education and training related expenses. Examples of covered expenses are tuition and fees for certification programs and non-Regents



institutions, room and board for post-secondary education, technical equipment, tutoring, books and other materials.

- o Assistance to assure safe and stable housing.

On February 20, 2009, the Secretary met with a panel of 7 juvenile court judges from across the state and Office of Judicial Administration staff to review this bill and receive input on its impact. The result of dialogue and collaboration in this meeting is reflected in balloon amendments of a court approved transition plan and corresponding definition of that transition plan. The amendments also restore original code language that any child age 18 and over can request in writing that the court cease jurisdiction. The amendments strengthen assurances of stability and support of adults released from the custody of the Secretary. A listing of Judges with whom the Secretary met is available on the attached sheet.

Thank you again for the opportunity to express my support and I stand for questions.

# Testimony Attachment 1 : Kansas Code for the Care of Children Adults Age 18 and Older

## General Information on Adults Served in SRS Independent Living Self Sufficiency Program

- In SFY 08, 646 young adults received services through the Chafee program.
- Young adults receiving services through Chafee receive a majority of funding for mentoring services (24%), transportation (17%), and one-time start up expenses (12%).
- In SFY08, 249 young adults started receiving the tuition waiver via the Kansas Foster Care Education Act . This program waives tuition and required fees for eligible youth at Kansas educational institutions which includes vocational school, area vocational-technical school, community college, Washburn University and state educational institution or technical colleges.
- 400 young adults received post-secondary educational services through Education and Training Vouchers (ETV) in SFY 08.
- 286 young adults received Independent Living Subsidy in SFY2008, with total subsidy payments totaling \$287,331.60. Independent Living Subsidy is a time limited financial plan for youth between the ages of 18 and 21. The subsidy is used to support room and board expenses.
- The majority of young adults (72%) who received Chafee and/or ETV services in SFY 08 were emancipated at age 18 and were in care for an average of 41 months.
- Of all young adults served in SFY 08 through the Independent Living/Self-Sufficiency program, 60% were placed in out of home care for reason of non abuse/neglect issues .

## Adults in the Custody of the Secretary on December 31, 2008

On December 31, 2008, there were 129 young adults age 18 or older into the custody of the Secretary. Of these 129 adults :

- 53% (68) were female
- The majority of the 129 adults are age 18 (89%, n= 115). Of the remaining 14 adults, 11 are age 19 and 3 age 20.
- Over Three quarter (78%) are residing either with relatives, independently or in a family foster home setting (Figure 1)
- 52% (67) have no disability or special need. Of those 62 adults with a disability, emotional disturbance is the majority disability type (Figure 2 )
- Of the 18 adults with a developmental disability, 11 receive services through the HCBS MRDD Waiver
- Of the 18 adults with a developmental disability, 11 are placed in a family foster home, 3 are living independently, 1 is placed at Parsons, 1 at Lakemary Center, and 2 in community group home settings.
- Of the 129 adults age 18 or older, 23 are in a waiver program. (11, MRDD Waiver; 5, Severe Emotional Disturbance Waiver; 7, Other Waiver)

### Placement Information:

Figure 1

	#	%
Family Foster Home	77	59.7%
Independent Living Placement	15	11.6%
Residential/Institution	11	8.5%
Runaway	11	8.5%
Relative	7	5.4%
Group Home	6	4.7%
Maternity Home	1	0.8%
Pre-adoptive Home	1	0.8%
Total	129	100%

### Disability Information\*:

Figure 2

	#	%
Emotionally Disturbed	49	53%
Developmental Disability	18	19%
Learning Disability	13	14%
Other Disability	7	8%
Physical Disability	4	4%
Hearing Impaired	1	1%
Speech Impairment	1	1%

\*An Individual may have more than 1 disability type

**SENATE BILL No. 92**

By Committee on Ways and Means

1-26

9 AN ACT concerning the Kansas code for care of children; relating to  
10 jurisdiction; amending K.S.A. 2008 Supp. 38-2203 and repealing the  
11 existing section.

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

14 Section ~~1.~~ K.S.A. 2008 Supp. 38-2203 is hereby amended to read as  
15 follows: 38-2203. (a) Proceedings concerning any child who may be a child  
16 in need of care shall be governed by this code, except in those instances  
17 when the court knows or has reason to know that an Indian child is in-  
18 volved in the proceeding, in which case, the Indian child welfare act of  
19 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may  
20 apply to: The filing to initiate a child in need of care proceeding (K.S.A.  
21 2008 Supp. 38-2234, and amendments thereto); ex parte custody orders  
22 (K.S.A. 2008 Supp. 38-2242, and amendments thereto); temporary cus-  
23 tody hearing (K.S.A. 2008 Supp. 38-2243, and amendments thereto); ad-  
24 judication (K.S.A. 2008 Supp. 38-2247, and amendments thereto); burden  
25 of proof (K.S.A. 2008 Supp. 38-2250, and amendments thereto); dispo-  
26 sition (K.S.A. 2008 Supp. 38-2255, and amendments thereto); perma-  
27 nency hearings (K.S.A. 2008 Supp. 38-2264, and amendments thereto);  
28 termination of parental rights (K.S.A. 2008 Supp. 38-2267, 38-2268 and  
29 38-2269, and amendments thereto); establishment of permanent custo-  
30 dianship (K.S.A. 2008 Supp. 38-2268 and 38-2272, and amendments  
31 thereto); the placement of a child in any foster, pre-adoptive and adoptive  
32 home and the placement of a child in a guardianship arrangement under  
33 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments  
34 thereto.

35 (b) Subject to the uniform child custody jurisdiction and enforcement  
36 act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the dis-  
37 trict court shall have original jurisdiction of proceedings pursuant to this  
38 code.

39 (c) The court acquires jurisdiction over a child by the filing of a pe-  
40 tition pursuant to this code or upon issuance of an ex parte order pursuant  
41 to K.S.A. 2008 Supp. 38-2242, and amendments thereto. When the court  
42 acquires jurisdiction over a child in need of care, jurisdiction may con-  
43 tinue until the child has: (1) ~~Attained the age of 21 years~~ *Become 18 years*

Section 1. K.S.A. 2008 Supp. 38-2202 is hereby amended to read as follows: (see attached)

2

unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21.

1 of age, or until June 1 of the school year during which the child became  
2 18 years of age if the child is still attending high school; (2) been adopted;  
3 or (3) been discharged by the court. ~~Any child 18 years of age or over  
4 may request, in writing to the court, that the jurisdiction of the court  
5 cease. The court shall give notice of the request to all parties and inter-  
6 ested parties and 30 days after receipt of the request, jurisdiction will  
7 cease.~~

Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease

8 (d) When it is no longer appropriate for the court to exercise juris-  
9 diction over a child, the court, upon its own motion or the motion of a  
10 party or interested party at a hearing or upon agreement of all parties or  
11 interested parties, shall enter an order discharging the child. ~~Except upon  
12 request of the child pursuant to subsection (c),~~ The court shall not enter  
13 an order discharging a child until June 1 of the school year during which  
14 the child becomes 18 years of age if the child is in an out-of-home place-  
15 ment, is still attending high school and has not completed the child's high  
16 school education.

Except upon request of the child pursuant to subsection (c),

17 (e) When a petition is filed under this code, a person who is alleged  
18 to be under 18 years of age shall be presumed to be under that age for  
19 the purposes of this code, unless the contrary is proved.

20 ~~Sec. 2. K.S.A. 2008 Supp. 38-2203 is hereby repealed.~~

3

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

4



ATTACHMENT

**38-2202. Definitions.** As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

(b) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) "Child in need of care" means a person less than 18 years of age who:

(1) is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 21-4204a, 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a, and amendments thereto; or

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2007 Supp. 38-2207 and 38-2208, and amendments thereto.

(f) "Court-appointed special advocate" means a responsible adult other than an attorney guardian *ad litem* who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2007 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

(g) "Custody" whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(h) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(i) "Educational institution" means all schools at the elementary and secondary levels.

(j) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and amendments thereto.

(k) "Harm" means physical or psychological injury or damage.

(l) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 2007 Supp. 38-2241, and amendments thereto.

(m) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(n) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(o) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(p) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

(q) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain

public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(r) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2007 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 2007 Supp. 38-2217, and amendments thereto.

(t) "Parent" when used in relation to a child or children, includes a guardian and every person who is by law liable to maintain, care for or support the child.

(u) "Party" means the state, the petitioner, the child and any parent of the child.

(v) "Permanency goal" means the outcome of the permanency planning process which may be reintegration, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2007 Supp. 38-2272, and amendments thereto.

(x) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

(y) "Placement" means the designation by the individual or agency having custody of where and with whom the child will live.

(z) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's designee.

(bb) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(cc) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material.

(dd) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

~~(ee) "Youth residential facility" means any home, foster home or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.~~

(ee) "Transition plan" means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently.

(ff)

March 5, 2009

Young Adults 18 and over in SRS Custody

The following is a list of Judges and respective judicial districts participating in a February 20, 2009 meeting with Secretary Jordan regarding Child In Need of Care Bills:

Hon. James Burgess, 18<sup>th</sup> Judicial District, Sedgwick County

Hon. James R. Kepple , 24<sup>th</sup> Judicial District, Ness County

Hon. Daniel Mitchell, 3<sup>rd</sup> Judicial District, Shawnee County

Hon. Maritza Segarra, 8<sup>th</sup> Judicial District, Geary County

Hon. Kathleen Sloan, 10<sup>th</sup> Judicial District, Johnson County

Hon. Tom Webb, 26<sup>th</sup> Judicial District, Haskell County

Hon. Bonnie J. Wilson, 12<sup>th</sup> Judicial District , Mitchell County

March 5, 2009

Attachment 2: Young Adults 18 and over in SRS Custody

1-11



DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

Don Jordan, Secretary

**Senate Judiciary Committee**

**March 5, 2009**

**SB 94**

**Youth Age 16 and 17 in SRS Custody**

For Additional Information Contact:  
Katy Belot, Director of Public Policy  
Docking State Office Building, 6<sup>th</sup> Floor North  
(785) 296-3271

Senate Judiciary

3-5-09

Attachment 2

## Youth Age 16 and 17 in SRS Custody

Senate Judiciary  
March 5, 2009

Chairman Owens and members of the committee, I am Don Jordan, Secretary of the Kansas Department of Social and Rehabilitation Services. Thank you for the opportunity to appear in support of Senate Bill 94.

Foster care services are provided when the court finds a child to be in need of care and the parents are unable to meet the safety needs of the child. The current budget deficit required a thoughtful examination of programs and services to determine reductions with minimum negative impact on the most vulnerable populations. This bill proposes that, unless determined to be abused or neglected or without parental or family resources, youth 16 and over be served in their own homes and communities. Youth with circumstances such as truancy, out of control behavior or running away will be addressed through in-home services and will not be placed in the custody of the Secretary. Youth age 16 and older will still be placed in the custody of the Secretary for reasons of maltreatment or absence of parental or family resource. This change benefits youth and families by addressing youth's behavior and interactions while maintaining them at home.

Providing services to youth in their own home will net a savings in FY2010 of \$2,280,052 SGF (\$2,561,769 All Funds). Total savings in this program of \$3,056,199 is offset by an increase of \$494,430 in the GBR funding for in-home services of Family Services and Family Preservation. Data about youth age 16 and older removed into the custody of the Secretary for reasons other than maltreatment is available on the attached sheet.

Over the years, there has been a progression of effort and in home services to support families with older youth who are in conflict or present challenging behaviors. SRS proposed in 1992 that the Kansas Code for the Care of Children distinguish between children who are abused or neglected and those in conflict with adults in their home, school or community. We have long recognized that the needs of these two populations are not the same. We believe the response should not be the same. The renewed effort in 2000 again failed but progress was made with the creation of the family services and community intervention fund currently set out at K.S.A. 38-2281. Over time we've learned a great deal but remain convinced that out of home placement doesn't solve the conflict, rather it diverts energy from solving the problem.

Today we have the opportunity to move beyond these past efforts and to create statutory distinction between youth who are out of control and those who are more vulnerable due to age or actual abuse or neglect.

The logo for the Kansas Department of Social and Rehabilitation Services features the word "KANSAS" in a bold, sans-serif font. Above the letters "A", "N", and "S" is a stylized graphic of a star with a curved line trailing behind it, suggesting a path or a star in the sky. Below "KANSAS" are the words "DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES" in a smaller, all-caps, sans-serif font.

**KANSAS**  
DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

For issues that do not involve maltreatment or safety threats, behavioral and cognitive interventions with youth while they reside at home are effective. Alternate resources when the youth's safety is not an issue including engaging extended family, Family Preservation referrals, family services and the targeted use of community service funds for programs that support youth remaining in the family home. Family service dollars may be used for respite care or emergency shelters for youth and family in crisis and emergency flex fund granted to supplement Juvenile Intake and Assessment Center's short term case management service. Targeted community service dollars will foster proven service strategies designed by the community for the youth/family to access in the community. Family Preservation will be available for those families in need of intensive services in order to work through the adolescent/parent conflict that goes beyond the norm. We are asking that you close off only one option, custody to the Secretary, and provide the opportunity to create more effective community based solutions for this population.

On February 20, 2009, I met with a panel of 7 juvenile court judges from across the state and Office of Judicial Administration staff to review this bill and receive input on its impact. The result of dialogue and collaboration in this meeting is reflected in balloon amendments that youth may be placed in the custody of the Secretary if there is no identifiable parental or family resource. The amendment assures care of older youth who might otherwise be without shelter or support. A listing of Judges in the meeting is available on the attached sheet.

Thank you again for the opportunity to express my support, and I will stand for questions.

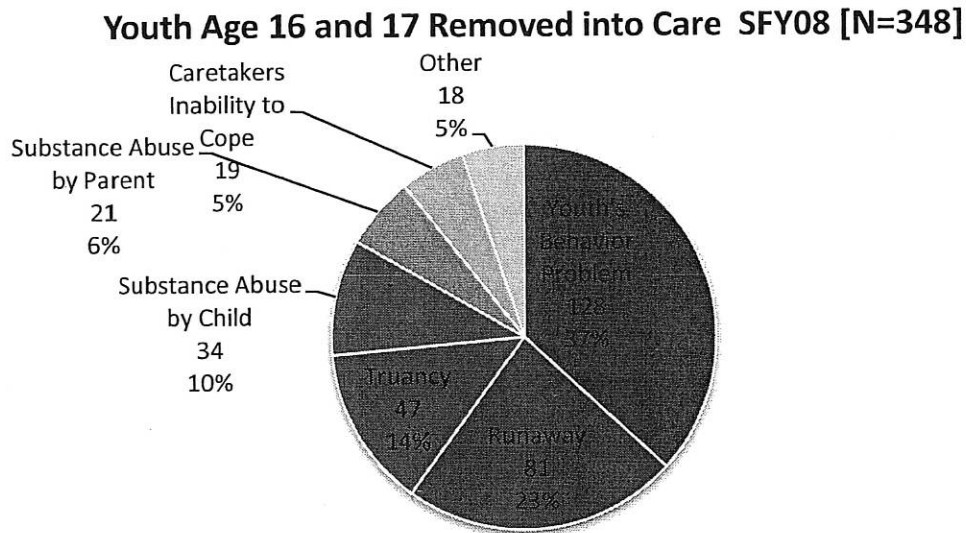


Attachment 1: Youth age 16 and 17 Removed for Reason Other Than Maltreatment

In SFY 2008, there were 348 youth age 16 or 17 removed into the custody of the Secretary for reasons other than maltreatment. Of these 348 youth:

- 59% (204) were female
- 87% (303) were not removed as part of a sibling group into the Secretary's custody
- Majority reasons for removal into care are youth's behavior (37%), runaway (23%) and truancy (14%). [ Figure 1]
- Three quarter (75%) are residing either with relatives, independently or in a family foster home setting (Figure 2)
- 72% (262) have no disability or special need. Of those 86 youth with a disability, emotional disturbance is the majority disability type (Figure 3)

Figure 1



Other includes child's disability (4); death, incarceration, or relinquishment of a parent (11); or inadequate housing (3)

Current Placement Information: (N=348)

	#	%
Family Foster Home	125	36%
Placed at Home	106	30%
Residential/ Institution	31	9%
Relative	30	9%
Runaway	26	7%
Independent Living	13	4%
Group Home	12	3%
Maternity Home	5	1%
<b>Total</b>	<b>348</b>	<b>100%</b>

Disability Information: (N= 86)

Emotionally Disturbed	76.1%
Other Disability	6.5%
Developmental Disability	5.4%
Physical Disability	5.4%
Learning Disability	4.3%
Hearing Impaired	2.2%

## SENATE BILL No. 94

By Committee on Ways and Means

1-26

9 AN ACT concerning the Kansas code for care of children; relating to  
10 placement of children into custody; amending K.S.A. 2008 Supp. 38-  
11 2232, 38-2242, 38-2243 and 38-2255 and repealing the existing  
12 sections.  
13

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

15 Section 1. K.S.A. 2008 Supp. 38-2232 is hereby amended to read as  
16 follows: 38-2232. (a) To the extent possible, when any law enforcement  
17 officer takes into custody a child under the age of 18 years without a court  
18 order, the child shall forthwith be delivered to the custody of the child's  
19 parent or other custodian unless there are reasonable grounds to believe  
20 that such action would not be in the best interests of the child. Except as  
21 provided in subsection (b), if the child is not delivered to the custody of  
22 the child's parent or other custodian, the child shall forthwith be delivered  
23 to a facility or person designated by the secretary, a shelter facility des-  
24 ignated by the court, court services officer, juvenile intake and assessment  
25 worker, licensed attendant care center or other person or, if the child is  
26 15 years of age or younger, or 16 or 17 years of age if the child shows  
27 signs of physical, mental, emotional or sexual abuse, to a facility or person  
28 designated by the secretary. If, after delivery of the child to a shelter  
29 facility, the person in charge of the shelter facility at that time and the  
30 law enforcement officer determine that the child will not remain in the  
31 shelter facility and if the child is presently alleged, but not yet adjudicated,  
32 to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10)  
33 of K.S.A. 2008 Supp. 38-2202, and amendments thereto, the law enforce-  
34 ment officer shall deliver the child to a juvenile detention facility or other  
35 secure facility, designated by the court, where the child shall be detained  
36 for not more than 24 hours, excluding Saturdays, Sundays and legal hol-  
37 idays. No child taken into custody pursuant to this code shall be placed  
38 in a juvenile detention facility or other secure facility, except as authorized  
39 by this section and by K.S.A. 2008 Supp. 38-2242, 38-2243 and 38-2260,  
40 and amendments thereto. It shall be the duty of the law enforcement  
41 officer to furnish to the county or district attorney, without unnecessary  
42 delay, all the information in the possession of the officer pertaining to the  
43 child, the child's parents or other persons interested in or likely to be

has no identifiable parental  
or family resources or

1 interested in the child and all other facts and circumstances which caused  
2 the child to be taken into custody.

3 (b) When any law enforcement officer takes into custody any child as  
4 provided in subsection (b)(2) of K.S.A. 2008 Supp. 38-2231, and amend-  
5 ments thereto, proceedings shall be initiated in accordance with the pro-  
6 visions of the interstate compact on juveniles, K.S.A. 38-1001 et seq., and  
7 amendments thereto, or K.S.A. 2008 Supp. 38-1008, and amendments  
8 thereto, when effective. Any child taken into custody pursuant to the  
9 interstate compact on juveniles may be detained in a juvenile detention  
10 facility or other secure facility.

11 (c) Whenever a child under the age of 18 years is taken into custody  
12 by a law enforcement officer without a court order and is thereafter  
13 placed as authorized by subsection (a), the facility or person shall, upon  
14 written application of the law enforcement officer, have physical custody  
15 and provide care and supervision for the child. The application shall state:

16 (1) The name and address of the child, if known;

17 (2) the names and addresses of the child's parents or nearest relatives  
18 and persons with whom the child has been residing, if known; and

19 (3) the officer's belief that the child is a child in need of care and that  
20 there are reasonable grounds to believe that the circumstances or con-  
21 dition of the child is such that the child would be harmed unless placed  
22 in the immediate custody of the shelter facility or other person.

23 (d) A copy of the application shall be furnished by the facility or  
24 person receiving the child to the county or district attorney without un-  
25 necessary delay.

26 (e) The shelter facility or other person designated by the court who  
27 has custody of the child pursuant to this section shall discharge the child  
28 not later than 72 hours following admission, excluding Saturdays, Sundays  
29 and legal holidays, unless a court has entered an order pertaining to tem-  
30 porary custody or release.

31 (f) In absence of a court order to the contrary, the county or district  
32 attorney or the placing law enforcement agency shall have the authority  
33 to direct the release of the child at any time.

34 (g) When any law enforcement officer takes into custody any child as  
35 provided in subsection (d) of K.S.A. 2008 Supp. 38-2231, and amend-  
36 ments thereto, the child shall forthwith be delivered to the school in  
37 which the child is enrolled, any location designated by the school in which  
38 the child is enrolled or the child's parent or other custodian.

39 Sec. 2. K.S.A. 2008 Supp. 38-2242 is hereby amended to read as  
40 follows: 38-2242. (a) The court, upon verified application, may issue ex  
41 parte an order directing that a child be held in protective custody and, if  
42 the child has not been taken into custody, an order directing that the  
43 child be taken into custody. The application shall state for each child:

1 (1) The applicant's belief that the child is a child in need of care;  
2 (2) that the child is likely to sustain harm if not immediately removed  
3 from the home;  
4 (3) that allowing the child to remain in the home is contrary to the  
5 welfare of the child; and  
6 (4) the facts relied upon to support the application, including efforts  
7 known to the applicant to maintain the family unit and prevent the un-  
8 necessary removal of the child from the child's home, or the specific facts  
9 supporting that an emergency exists which threatens the safety of the  
10 child.

11 (b) (1) The order of protective custody may be issued only after the  
12 court has determined there is probable cause to believe the allegations  
13 in the application are true. The order shall remain in effect until the  
14 temporary custody hearing provided for in K.S.A. 2008 Supp. 38-2243,  
15 and amendments thereto, unless earlier rescinded by the court.

16 (2) No child shall be held in protective custody for more than 72  
17 hours, excluding Saturdays, Sundays and legal holidays, unless within the  
18 72-hour period a determination is made as to the necessity for temporary  
19 custody in a temporary custody hearing. The time spent in custody pur-  
20 suant to K.S.A. 2008 Supp. 38-2232, and amendments thereto, shall be  
21 included in calculating the 72-hour period. Nothing in this subsection  
22 shall be construed to mean that the child must remain in protective cus-  
23 tody for 72 hours. If a child is in the protective custody of the secretary,  
24 the secretary shall allow at least one supervised visit between the child  
25 and the parent or parents within such time period as the child is in pro-  
26 tective custody. The court may prohibit such supervised visit if the court  
27 determines it is not in the best interest of the child.

28 (c) (1) Whenever the court determines the necessity for an order of  
29 protective custody, the court may place the child in the protective custody  
30 of:

31 (A) A parent or other person having custody of the child and may  
32 enter a restraining order pursuant to subsection (e);

33 (B) a person, other than the parent or other person having custody,  
34 who shall not be required to be licensed under article 5 of chapter 65 of  
35 the Kansas Statutes Annotated, and amendments thereto;

36 (C) a youth residential facility;

37 (D) a shelter facility; or

38 (E) the secretary, if the child is 15 years of age or younger, or 16 or has no identifiable parental  
39 17 years of age if the child shows signs of physical, mental, emotional or or family resources or  
40 sexual abuse.

41 (2) If the secretary presents the court with a plan to provide services  
42 to a child or family which the court finds will assure the safety of the  
43 child, the court may only place the child in the protective custody of the

1 secretary until the court finds the services are in place. The court shall  
2 have the authority to require any person or entity agreeing to participate  
3 in the plan to perform as set out in the plan. When the child is placed in  
4 the protective custody of the secretary, the secretary shall have the dis-  
5 cretionary authority to place the child with a parent or to make other  
6 suitable placement for the child. When the child is presently alleged, but  
7 not yet adjudicated, to be a child in need of care solely pursuant to sub-  
8 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments  
9 thereto, the child may be placed in a juvenile detention facility or other  
10 secure facility pursuant to an order of protective custody for a period of  
11 not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

12 (d) The order of protective custody shall be served pursuant to sub-  
13 section (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on  
14 the child's parents and any other person having legal custody of the child.  
15 The order shall prohibit the removal of the child from the court's juris-  
16 diction without the court's permission.

17 (e) If the court issues an order of protective custody, the court may  
18 also enter an order restraining any alleged perpetrator of physical, sexual,  
19 mental or emotional abuse of the child from residing in the child's home;  
20 visiting, contacting, harassing or intimidating the child, other family mem-  
21 ber or witness; or attempting to visit, contact, harass or intimidate the  
22 child, other family member or witness. Such restraining order shall be  
23 served by personal service pursuant to subsection (a) of K.S.A. 2008 Supp.  
24 38-2237, and amendments thereto, on any alleged perpetrator to whom  
25 the order is directed.

26 (f) (1) The court shall not enter an order removing a child from the  
27 custody of a parent pursuant to this section unless the court first finds  
28 probable cause that: (A)(i) the child is likely to sustain harm if not im-  
29 mediately removed from the home;

30 (ii) allowing the child to remain in home is contrary to the welfare of  
31 the child; or

32 (iii) immediate placement of the child is in the best interest of the  
33 child; and

34 (B) reasonable efforts have been made to maintain the family unit  
35 and prevent the unnecessary removal of the child from the child's home  
36 or that an emergency exists which threatens the safety to the child.

37 (2) Such findings shall be included in any order entered by the court.  
38 If the child is placed in the custody of the secretary, the court shall provide  
39 the secretary with a written copy of any orders entered upon making the  
40 order.

41 Sec. 3. K.S.A. 2008 Supp. 38-2243 is hereby amended to read as  
42 follows: 38-2243. (a) Upon notice and hearing, the court may issue an  
43 order directing who shall have temporary custody and may modify the

1 order during the pendency of the proceedings as will best serve the child's  
2 welfare.

3 (b) A hearing pursuant to this section shall be held within 72 hours,  
4 excluding Saturdays, Sundays and legal holidays, following a child having  
5 been taken into protective custody.

6 (c) Whenever it is determined that a temporary custody hearing is  
7 required, the court shall immediately set the time and place for the hear-  
8 ing. Notice of a temporary custody hearing shall be given to all parties  
9 and interested parties.

10 (d) Notice of the temporary custody hearing shall be given at least  
11 24 hours prior to the hearing. The court may continue the hearing to  
12 afford the 24 hours prior notice or, with the consent of the party or  
13 interested party, proceed with the hearing at the designated time. If an  
14 order of temporary custody is entered and the parent or other person  
15 having custody of the child has not been notified of the hearing, did not  
16 appear or waive appearance and requests a rehearing, the court shall  
17 rehear the matter without unnecessary delay.

18 (e) Oral notice may be used for giving notice of a temporary custody  
19 hearing where there is insufficient time to give written notice. Oral notice  
20 is completed upon filing a certificate of oral notice.

21 (f) The court may enter an order of temporary custody after deter-  
22 mining there is probable cause to believe that the: (1) Child is dangerous  
23 to self or to others; (2) child is not likely to be available within the juris-  
24 diction of the court for future proceedings; or (3) health or welfare of the  
25 child may be endangered without further care.

26 (g) (1) Whenever the court determines the necessity for an order of  
27 temporary custody the court may place the child in the temporary custody  
28 of:

29 (A) A parent or other person having custody of the child and may  
enter a restraining order pursuant to subsection (h);

31 (B) a person, other than the parent or other person having custody,  
32 who shall not be required to be licensed under article 5 of chapter 65 of  
33 the Kansas Statutes Annotated, and amendments thereto;

34 (C) a youth residential facility;

35 (D) a shelter facility; or

36 (E) the secretary, *if the child is 15 years of age or younger, or 16 or*  
37 *17 years of age if the child shows signs of physical, mental, emotional or* has no identifiable parental  
38 *sexual abuse.* or family resources or

39 (2) If the secretary presents the court with a plan to provide services  
40 to a child or family which the court finds will assure the safety of the  
41 child, the court may only place the child in the temporary custody of the  
42 secretary until the court finds the services are in place. The court shall  
43 have the authority to require any person or entity agreeing to participate

1 in the plan to perform as set out in the plan. When the child is placed in  
2 the temporary custody of the secretary, the secretary shall have the dis-  
3 cretionary authority to place the child with a parent or to make other  
4 suitable placement for the child. When the child is presently alleged, but  
5 not yet adjudicated to be a child in need of care solely pursuant to sub-  
6 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments  
7 thereto, the child may be placed in a juvenile detention facility or other  
8 secure facility, but the total amount of time that the child may be held in  
9 such facility under this section and K.S.A. 2008 Supp. 38-2242, and  
10 amendments thereto, shall not exceed 24 hours, excluding Saturdays,  
11 Sundays and legal holidays. The order of temporary custody shall remain  
12 in effect until modified or rescinded by the court or an adjudication order  
13 is entered but not exceeding 60 days, unless good cause is shown and  
14 stated on the record.

15 (h) If the court issues an order of temporary custody, the court may  
16 also enter an order restraining any alleged perpetrator of physical, sexual,  
17 mental or emotional abuse of the child from residing in the child's home;  
18 visiting, contacting, harassing or intimidating the child; or attempting to  
19 visit, contact, harass or intimidate the child, other family members or  
20 witnesses. Such restraining order shall be served by personal service pur-  
21 suant to subsection (a) of K.S.A. 2008 Supp. 38-2237, and amendments  
22 thereto, on any alleged perpetrator to whom the order is directed.

23 (i) (1) The court shall not enter an order removing a child from the  
24 custody of a parent pursuant to this section unless the court first finds  
25 probable cause that: (A)(i) the child is likely to sustain harm if not im-  
26 mediately removed from the home;

27 (ii) allowing the child to remain in home is contrary to the welfare of  
28 the child; or

29 (iii) immediate placement of the child is in the best interest of the  
30 child; and

31 (B) reasonable efforts have been made to maintain the family unit  
32 and prevent the unnecessary removal of the child from the child's home  
33 or that an emergency exists which threatens the safety to the child.

34 (2) Such findings shall be included in any order entered by the court.  
35 If the child is placed in the custody of the secretary, upon making the  
36 order the court shall provide the secretary with a written copy.

37 (j) If the court enters an order of temporary custody that provides  
38 for placement of the child with a person other than the parent, the court  
39 shall make a child support determination pursuant to K.S.A. 2008 Supp.  
40 38-2277, and amendments thereto.

41 Sec. 4. K.S.A. 2008 Supp. 38-2255 is hereby amended to read as  
42 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-  
43 position, the court shall give consideration to:

- 1 (1) The child's physical, mental and emotional condition;  
 2 (2) the child's need for assistance;  
 3 (3) the manner in which the parent participated in the abuse, neglect  
 4 or abandonment of the child;  
 5 (4) any relevant information from the intake and assessment process;  
 6 and  
 7 (5) the evidence received at the dispositional hearing.
- 8 (b) *Placement with a parent.* The court may place the child in the  
 9 custody of either of the child's parents subject to terms and conditions  
 10 which the court prescribes to assure the proper care and protection of  
 11 the child, including, but not limited to:  
 12 (1) Supervision of the child and the parent by a court services officer;  
 13 (2) participation by the child and the parent in available programs  
 14 operated by an appropriate individual or agency; and  
 15 (3) any special treatment or care which the child needs for the child's  
 16 physical, mental or emotional health and safety.
- 17 (c) *Removal of a child from custody of a parent.* The court shall not  
 18 enter an order removing a child from the custody of a parent pursuant  
 19 to this section unless the court first finds probable cause that: (1)(A) The  
 20 child is likely to sustain harm if not immediately removed from the home;  
 21 (B) allowing the child to remain in home is contrary to the welfare  
 22 of the child; or  
 23 (C) immediate placement of the child is in the best interest of the  
 24 child; and  
 25 (2) reasonable efforts have been made to maintain the family unit  
 26 and prevent the unnecessary removal of the child from the child's home  
 27 or that an emergency exists which threatens the safety to the child.
- 28 (d) *Custody of a child removed from the custody of a parent.* If the  
 29 court has made the findings required by subsection (c), the court shall  
 30 enter an order awarding custody to a relative of the child or to a person  
 31 with whom the child has close emotional ties, to any other suitable person,  
 32 to a shelter facility, to a youth residential facility or, *if the child is 15 years*  
 33 *of age or younger, or 16 or 17 years of age if the child shows signs of*  
 34 *physical, mental, emotional or sexual abuse,* to the secretary. Custody  
 35 awarded under this subsection shall continue until further order of the  
 36 court.
- 37 (1) When custody is awarded to the secretary, the secretary shall con-  
 38 sider any placement recommendation by the court and notify the court  
 39 of the placement or proposed placement of the child within 10 days of  
 40 the order awarding custody.
- 41 (A) After providing the parties or interested parties notice and op-  
 42 portunity to be heard, the court may determine whether the secretary's  
 43 placement or proposed placement is contrary to the welfare or in the best

has no identifiable parental  
or family resources or



1 interests of the child. In making that determination the court shall con-  
2 sider the health and safety needs of the child and the resources available  
3 to meet the needs of children in the custody of the secretary. If the court  
4 determines that the placement or proposed placement is contrary to the  
5 welfare or not in the best interests of the child, the court shall notify the  
6 secretary, who shall then make an alternative placement.

7 (B) The secretary may propose and the court may order the child to  
8 be placed in the custody of a parent or parents if the secretary has pro-  
9 vided and the court has approved an appropriate safety action plan which  
10 includes services to be provided. The court may order the parent or par-  
11 ents and the child to perform tasks as set out in the safety action plan.

12 (2) The custodian designated under this subsection shall notify the  
13 court in writing at least 10 days prior to any planned placement with a  
14 parent. The written notice shall state the basis for the custodian's belief  
15 that placement with a parent is no longer contrary to the welfare or best  
16 interest of the child. Upon reviewing the notice, the court may allow the  
17 custodian to proceed with the planned placement or may set the date for  
18 a hearing to determine if the child shall be allowed to return home. If  
19 the court sets a hearing on the matter, the custodian shall not return the  
20 child home without written consent of the court.

21 (3) The court may grant any person reasonable rights to visit the child  
22 upon motion of the person and a finding that the visitation rights would  
23 be in the best interests of the child.

24 (4) The court may enter an order restraining any alleged perpetrator  
25 of physical, mental or emotional abuse or sexual abuse of the child from  
26 residing in the child's home; visiting, contacting, harassing or intimidating  
27 the child, other family member or witness; or attempting to visit, contact,  
28 harass or intimidate the child, other family member or witness. Such  
29 restraining order shall be served by personal service pursuant to subsec-  
30 tion (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on any  
31 alleged perpetrator to whom the order is directed.

32 (5) The court shall provide a copy of any orders entered within 10  
33 days of entering the order to the custodian designated under this  
34 subsection.

35 (e) *Further determinations regarding a child removed from the home.*  
36 If custody has been awarded under subsection (d) to a person other than  
37 a parent, a permanency plan shall be provided or prepared pursuant to  
38 K.S.A. 2008 Supp. 38-2264, and amendments thereto. If a permanency  
39 plan is provided at the dispositional hearing, the court may determine  
40 whether reintegration is a viable alternative or, if reintegration is not a  
41 viable alternative, whether the child should be placed for adoption or a  
42 permanent custodian appointed. In determining whether reintegration is  
43 a viable alternative, the court shall consider:

1 (1) Whether a parent has been found by a court to have committed  
2 one of the following crimes or to have violated the law of another state  
3 prohibiting such crimes or to have aided and abetted, attempted, con-  
4 spired or solicited the commission of one of these crimes: Murder in the  
5 first degree, K.S.A. 21-3401, and amendments thereto, murder in the  
6 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,  
7 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.  
8 21-3403, and amendments thereto, or a felony battery that resulted in  
9 bodily injury;

10 (2) whether a parent has subjected the child or another child to ag-  
11 gravated circumstances;

12 (3) whether a parent has previously been found to be an unfit parent  
13 in proceedings under this code or in comparable proceedings under the  
14 laws of another state or the federal government;

15 (4) whether the child has been in extended out of home placement;

16 (5) whether the parents have failed to work diligently toward  
17 reintegration;

18 (6) whether the secretary has provided the family with services nec-  
19 essary for the safe return of the child to the home; and

20 (7) whether it is reasonable to expect reintegration to occur within a  
21 time frame consistent with the child's developmental needs.

22 (f) *Proceedings if reintegration is not a viable alternative.* If the court  
23 determines that reintegration is not a viable alternative, proceedings to  
24 terminate parental rights and permit placement of the child for adoption  
25 or appointment of a permanent custodian shall be initiated unless the  
26 court finds that compelling reasons have been documented in the case  
27 plan why adoption or appointment of a permanent custodian would not  
28 be in the best interests of the child. If compelling reasons have not been  
29 documented, the county or district attorney shall file a motion within 30  
30 days to terminate parental rights or a motion to appoint a permanent  
31 custodian within 30 days and the court shall hold a hearing on the motion  
32 within 90 days of its filing. No hearing is required when the parents  
33 voluntarily relinquish parental rights or consent to the appointment of a  
34 permanent custodian.

35 (g) *Additional Orders.* In addition to or in lieu of any other order  
36 authorized by this section:

37 (1) The court may order the child and the parents of any child who  
38 has been adjudicated a child in need of care to attend counseling sessions  
39 as the court directs. The expense of the counseling may be assessed as  
40 an expense in the case. No mental health provider shall charge a greater  
41 fee for court-ordered counseling than the provider would have charged  
42 to the person receiving counseling if the person had requested counseling  
43 on the person's own initiative.

1 (2) If the court has reason to believe that a child is before the court  
2 due, in whole or in part, to the use or misuse of alcohol or a violation of  
3 the uniform controlled substances act by the child, a parent of the child,  
4 or another person responsible for the care of the child, the court may  
5 order the child, parent of the child or other person responsible for the  
6 care of the child to submit to and complete an alcohol and drug evaluation  
7 by a qualified person or agency and comply with any recommendations.  
8 If the evaluation is performed by a community-based alcohol and drug  
9 safety program certified pursuant to K.S.A. 8-1008, and amendments  
10 thereto, the child, parent of the child or other person responsible for the  
11 care of the child shall pay a fee not to exceed the fee established by that  
12 statute. If the court finds that the child and those legally liable for the  
13 child's support are indigent, the fee may be waived. In no event shall the  
14 fee be assessed against the secretary.

15 (3) If child support has been requested and the parent or parents  
16 have a duty to support the child, the court may order one or both parents  
17 to pay child support and, when custody is awarded to the secretary, the  
18 court shall order one or both parents to pay child support. The court shall  
19 determine, for each parent separately, whether the parent is already sub-  
20 ject to an order to pay support for the child. If the parent is not presently  
21 ordered to pay support for any child who is subject to the jurisdiction of  
22 the court and the court has personal jurisdiction over the parent, the court  
23 shall order the parent to pay child support in an amount determined  
24 under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for  
25 good cause shown, the court shall issue an immediate income withholding  
26 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for  
27 each parent ordered to pay support under this subsection, regardless of  
28 whether a payor has been identified for the parent. A parent ordered to  
29 pay child support under this subsection shall be notified, at the hearing  
30 or otherwise, that the child support order may be registered pursuant to  
31 K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall  
32 also be informed that, after registration, the income withholding order  
33 may be served on the parent's employer without further notice to the  
34 parent and the child support order may be enforced by any method al-  
35 lowed by law. Failure to provide this notice shall not affect the validity of  
36 the child support order.

37 Sec. 5. K.S.A. 2008 Supp. 38-2232, 38-2242, 38-2243 and 38-2255  
38 are hereby repealed.

39 Sec. 6. This act shall take effect and be in force from and after its  
40 publication in the statute book.

March 5, 2009

Young Adults 18 and over in SRS Custody

The following is a list of Judges and respective judicial districts participating in a February 20, 2009 meeting with Secretary Jordan regarding Child In Need of Care Bills:

Hon. James Burgess, 18<sup>th</sup> Judicial District, Sedgwick County

Hon. James R. Kepple , 24<sup>th</sup> Judicial District, Ness County

Hon. Daniel Mitchell, 3<sup>rd</sup> Judicial District, Shawnee County

Hon. Maritza Segarra, 8<sup>th</sup> Judicial District, Geary County

Hon. Kathleen Sloan, 10<sup>th</sup> Judicial District, Johnson County

Hon. Tom Webb, 26<sup>th</sup> Judicial District, Haskell County

Hon. Bonnie J. Wilson, 12<sup>th</sup> Judicial District , Mitchell County

March 5, 2009

Attachment 2: Young Adults 18 and over in SRS Custody

2-15



STATE OF KANSAS  
TENTH JUDICIAL DISTRICT

KATHLEEN L. SLOAN  
DISTRICT JUDGE, DIVISION 10  
JOHNSON COUNTY COURTHOUSE  
OLATHE, KANSAS 66061  
(913) 715-3842  
FAX (913) 715-3849

March 5, 2009

Mr. Chairman and Members of the Committee,

Thank you for allowing me to submit my thoughts on, and voice my opposition to, SB 92 and SB 94 as they are currently written. I appreciate your time today.

I have served as a District Judge for the Tenth Judicial District (Johnson County) for the past four and a half years. My docket is the Child in Need of Care docket.

As you know, SB 92, as written, would automatically terminate SRS custody when a child turns 18 or on June 1 of the school year during which the child becomes 18 if they are still attending high school. It deletes the language in the current law which states that when a child turns 18 they can ask the Court for release from SRS custody, and upon that request the Court must grant it.

I realize that this legislation is being proposed in an effort to save money. However, I am opposed to it - again, as it is currently written. As a judge who handles the Child in Need of Care docket for the Tenth Judicial District, I see children every day who would flounder and fail if they were automatically released from SRS custody. Some children, when they turn 18, recognize that they need the additional help, a place to live, and someone to take care of them so they choose to remain in SRS custody. I have never been in favor of the mandatory language of the current statute which allows an 18-year-old to mandate their release from SRS custody. I think it should depend on their needs.

My opposition to SB 92 is based upon the way it is written now. Secretary Jordan recently met with me and other CINC judges, together with OJA representatives, to discuss a possible compromise and possible amendment to the proposed legislation. That compromise would require a court-approved, written transition plan for the child - an "individualized strategy for the provision of medical, mental health, and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently." While the mandatory

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language requiring a release of SRS custody of the 18-year-old remains (with the added protection that release cannot happen if the child is still attending high school), the transition plan requirement, in my opinion, is a big improvement to the current legislation in that it protects the child/adult. The fact that court jurisdiction would remain until the transition plan was approved by the court or upon the child reaching the age of 21 is an additional protection.

I am also opposed to SB 94 as it is currently written. SB 94 would eliminate the ability to place a 16 or a 17-year-old child in SRS custody unless there was physical, mental, emotional or sexual abuse. One reason I am opposed to this legislation is that it would have a detrimental effect on truancy cases involving this age group. Having the ability to at least threaten that truant child with SRS custody, not to mention utilizing it, can be a very useful tool. While I recognize, again, that this legislation is designed as a cost saving measure for SRS in an extremely difficult budget environment, this population of 16 and 17-year-old children still needs and deserves State services when deemed necessary and appropriate by the Court, whether there is abuse or neglect.

When Secretary Jordan met with a group of us to discuss possible compromises to SB 92, there was also discussion about this bill. I am in favor of the proposed modification to SB 94 which would authorize SRS custody for a 16 or a 17-year-old child if the child had no identifiable parental or family resources or show signs of physical, mental, emotional or sexual abuse.

I appreciate the opportunity to speak today. Thank you for your time.

Sincerely,



Kathleen L. Sloan  
District Judge



State of Kansas

**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary Committee  
March 5, 2009

Testimony in Opposition to Senate Bill 92 As Introduced

Mark Gleeson, Family and Children Program Coordinator  
Office of Judicial Administration

Thank you for the opportunity to testify on SB 92, which would terminate SRS custody of a child at the age of 18. First, I appreciate the efforts of SRS to reduce foster care costs. Admittedly, parents are not legally obligated to support a young adult who is 18 years of age. A parent could, without consequence from the state, inform a child that the child is no longer welcome at home effective on the child's 18<sup>th</sup> birthday. At least one reason why this doesn't often happen is obvious. Few 18 year olds, even with the full benefits most of us provide to our children way past their 18<sup>th</sup> birthday, are prepared to meet the demands of housing, food, education, employment, and productive life styles.

SRS has outlined a number of support services designed to mitigate the potential harm inflicted by the passage of this bill. Current law gives every 18-year-old in custody the opportunity to require the court to terminate SRS custody. A simple letter or verbal request to the judge serves as a demand notice that SRS custody be terminated. For those youths, SB 92 serves no purpose. They will ask for release from SRS custody and it will be granted. SB 92 impacts only those youths who want to remain in custody and who are concerned about the absence of support provided by being in custody for just a short time longer.

Eliminating the option of releasing from SRS custody a youth who is 18 years old is particularly threatening to a youth who will not graduate from high school by June 1, after his or her 18<sup>th</sup> birthday. Many youths in custody are behind in credits and will not graduate with their peers. For those youths who desire a high school diploma, removing the supportive features of state custody seems to be a particular disservice. If this bill goes forward, I urge your review of this language.

A balloon amendment has been offered by the Kansas Department of Social and Rehabilitation Services. This balloon was created in consultation with judges serving on the Court/SRS/Education/JJA Liaison Committee, a group organized over 25 years ago to discuss common issues and find solutions to common problems. The agreement on this bill is one example of different sections of government working together to the benefit of children and their families and to the state child welfare system.

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In brief, the balloon returns language struck in the original bill and adds a provision that would allow a young adult to remain in custody until the age of 21. The balloon also suggests that each youth who chooses to stay in the state's custody past the age of 18 have a transition plan that addresses the medical, mental health, and housing supports as needed for the youth's independent living. The transition plan will also be applicable to the needs of any minor child of the young adult.

It is also important to note that SB 92 retains current language that allows any youth 18 years of age or older the right to demand release from SRS custody and the court's jurisdiction simply by putting the request in writing.

In closing, I urge your very careful consideration of this bill. If this bill moves forward, I strongly encourage you to advance it favorably only with the SRS balloon amendment.





State of Kansas

## Office of Judicial Administration

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Topeka, Kansas 66612-1507

(785) 296-2256

Senate Judiciary Committee  
Thursday, March 5, 2009

Testimony in Opposition to Senate Bill 94 As Introduced

Mark Gleeson, Family and Children Program Coordinator  
Office of Judicial Administration

Thank you for the opportunity to testify on SB 94, restricting the placement of certain children in need of care. Before joining the Office of Judicial Administration nearly 15 years ago, I spent over 15 years as a Court Services Officer, working with law enforcement in the middle of the night conducting intakes and assessments on youths who would have met the definition of child in need of care non-abuse and neglect. I can tell you that, without question, these youths were our greatest challenge. Too often, they were our most frequent failure. In my opinion, the original SB 94 is an official acknowledgment of this failure.

SB 94 would eliminate SRS custody as an option for children alleged or adjudicated to be children in need of care if the child is 16 or 17 years old and has been adjudicated under any provision of the Kansas Code for the Care of Children (the CINC code), other than physical, sexual, or emotional abuse or neglect. Typically, these are truants, runaways, or children with significant drug or alcohol problems.

Admittedly, these are often the most challenging youths brought to the attention of the court. For these children, there is often the feeling that nothing anyone does makes any difference. For too many, if they are placed in the custody of the Secretary, placements disrupt and the youth is back on the street or, at best, moved to another placement.

Despite the difficulties these youths present to SRS, to the court, to schools, and to their parents and the community, eliminating one of the few options available to the court does not make sense. SRS has developed a plan and reports that they will provide services to these youths and their families in the home. The inability of youths to remain in the home is, however, precisely the reason retaining the safety net of SRS custody is so important. If SRS has tools that can keep a youth at home, these tools would be welcomed by judges and the community. SRS should provide those services even if this bill is not passed into law. When those services fail, and in my optimistic moments I would like to believe that they would not, we should not be surprised to find the youth in detention for an offense, in the hospital after having been abused by a violent boyfriend, or worse.

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These are often youths who have not been provided the structure and guidance necessary to feel safe in their own homes. They are sometimes youths who have been abused but for whom the abuse has not been reported. They are almost always youths who believe their families, their schools, the courts, and even their friends have washed their hands of them. By eliminating SRS custody for CINCs alleged to be truant or runaway, HB 2211 removes an alternative that might be a youth's last best hope for a productive future.

A balloon amendment has been offered by the Kansas Department of Social and Rehabilitation Services. This balloon was created in consultation with judges serving on the Court/SRS/Education/JJA Liaison Committee, a group organized over 25 years ago to discuss common issues and find solutions to common problems. The agreement on this bill is one example of different sections of government working together to the benefit of children and their families and to the state child welfare system.

In brief, the balloon makes it clear that a child who has no identifiable parental or family resources is not excluded from the definition of a child in need of care regardless of the child's age. This was, without question, the major objection judges had with the bill. If this bill is amended using language in the balloon, children who have a family would be served in the home along with the family. Children who, for whatever reason, do not have an identifiable parental or family resource would be eligible for services in the state foster care system.

Thank you again for the opportunity to testify.



INTERHAB

WWW.INTERHAB.ORG

March 5, 2009

TO: Senate Judiciary Committee  
FR: Tom Laing, Executive Director, InterHab  
RE: Senate Bill 92

Thank you Mr. Chair and Members of the Committee:

InterHab opposes SB 92 as written. We recommend that stakeholders have additional time to review this bill, and offer further amendments as needed to address the issues herein. We understand that budget concerns hasten such legislation, but we suggest that no amount of budget pressure should cause us to ignore the interests of these young persons – children in “our” custody – whose already challenged lives may be further challenged by this proposal.

Preserve the court’s discretion:

SB 92 as introduced would mandate dismissal from custody at age 18 whether or not it is in the best interest of the young adult. Current law allows judicial discretion, and we oppose eliminating that discretion. Each young person experiences a unique rate of development. For many with developmental disabilities they experience a more time-consuming developmental process, which delays their readiness to transition into independent living settings. The State’s amendments address this issue by requiring transition plans to be in place, but we will ask for additional safeguards for these young adults.

Recognize the unique needs of each young adult:

For young persons with disabilities in foster care, their readiness for transition is often impaired by the very circumstances that led to their assignment into state custody, and/or by their treatment while in foster care in some cases. Their mental health and behavioral challenges can be significant, complicated and dangerous. This further heightens the potential risks involved with expedited (and inadequately planned) transitions, and makes such short-cut/budget-cut policies even more inappropriate for many young adults with significant disabilities.

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Do not disrupt the right to an appropriate education:

Unlike most young adults who graduate or leave school at or around age 18, many young persons with disabilities stay in school until the age of 21, as is their Federally protected right, to receive extra time within which to maximize their educational experience. Under this bill, a young person could be removed from their foster care placement, as much as three years ahead of their graduation from high school. This early separation from their foster home, occurring in the last years of their schooling, seems certain to be disruptive.

Require adequate and well-defined transition plans:

The unimaginably disjointed placement histories of many young persons with developmental disabilities in foster care heightens their behavioral and emotional challenges and works against the development of basic living skills. Transition planning often is not effectively undertaken when a child has been in multiple homes and different schools. Such a nomadic life limits the consistent involvement of service networks that would ideally assist in the development and implementation of a successful transition plan for the child.

Those with the greatest challenges are in the most restrictive settings in the foster care system, psychiatric residential treatment facilities and other youth residential facilities. There are no easy transitions for these young people. Foster care facilities for those with severe behavior challenges are equipped with the necessary programs and facilities to exercise limitations and restrictions. When these same young persons are suddenly thrust into the open environment of community services, they will face a complex and foreign set of challenges, as will the service networks with whom they interact.

Recognize the capacity needed in adult services for persons with challenging behavioral issues:

Without an appropriate and well developed transition plan the community developmental disability system cannot effectively serve such young adults.

Poorly planned transitions for these young adults will set up many for failure. The cost of failure is great for both the individual and for the community. If we are to avoid such failures, then we must start transition planning years earlier to better prepare for their success.

This cannot be accomplished on the same certain date for every child.

Require the State and its community partners to develop effective and compassionate protocols for transition:

The stated goal of Senate Bill 92 is to save money, but it will certainly cost us more in the long run, if those with the most challenging needs are dealt with, as in this bill, as if they were typical of all other children in foster care.

We appreciate that SRS has taken steps in the proposed amendments to allow the courts' discretion to reject unplanned transitions, but in order that such discretion is adequately informed discretion, we request the committee to add the following concept to the bill's proposal as follows:

That the proposed definition for transition (which is identified in the balloon amendment as the new "(ee)") should be rewritten written as follows in KSA 38-2202:

(ee) "Transition plan" means ... ."

Proposed new language:

**and if the youth in the custody of the Secretary has a developmental disability and is qualified for and is, or will be, enrolled for services provided by (a) community (developmental disability) service provider(s), that such transition plan shall only be accepted by the court if it is submitted by the Secretary; and if it has been approved by the community developmental disability organization serving the community in which the youth intends to reside; and, if the State certifies to the court that full funding will be provided for the developmental disability service plan of care which has been written to implement the transition plan**

This language would provide better protection for the young adult and assurances to the court that the transition plan is achievable, and has been adequately developed in conjunction with the service entities which will be assisting the young person, and will be State-approved for funding as may be needed.

Summary:

We still believe this matter would be better addressed with more time for discussion with community disability organizations and other stakeholders as to how best to meet the needs of these young persons. However, if in the judgment of the State and the legislature, the budget of the State does not allow for a more careful approach in addressing the needs of children for whom the State is acting as parent, then at a minimum, we urge the protections above be added to the bill before it is sent to the floor.