

Approved 12-18-2010
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 9, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department

Conferees appearing before the Committee:

Natalie Gibson, Staff Attorney, Kansas Judicial Council

Others attending:

See attached list.

Natalie Gibson, Staff Attorney, Kansas Judicial Council

SB 386 - Preventing transmission of unredacted personal identifiers during discovery; repealing a statute concerning recorded statements of child victims

Chairperson Colloton Called the Committee's attention to **SB 386** and called on Jason Thompson, Office of the Revisor of Statutes, to explain the Kinzer balloon which included the amendments which were adopted during the committee meeting on March 8, 2010. (Attachment 1)

A discussion followed.

Representative Kinzer made a motion to adopt the Kinzer balloon on SB 386. Representative Brookens seconded. Motion carried.

A discussion followed regarding redacted information.

Representative Bethel made a motion to state in SB 386 that any redaction of personal identifies by the prosecuting attorney shall be by alteration or truncation of such numbers or identifiers and shall not be by removal. Representative Brookens seconded. Motion carried.

A discussion followed.

Representative Pauls made a motion to pass SB 386 out favorably as amended. Representative Roth seconded. Motion carried.

Chairperson Colloton called the Committee's attention to **SB 26**.

SB 26 - H Sub for S 26 by Committee on Corrections and Juvenile Justice- Increasing traffic fines to fund increases in alcohol and drug therapy program for DUI offenders

HB 2413 - Sub for H 2413 by Committee on Corrections and Juvenile Justice - Increasing traffic fines to fund increases in alcohol and drug therapy program for DUI offenders

Chairperson Colloton called on Jason Thompson, Office of the Revisor of Statutes, to recap what action was taken in regard to **SB 26** and **HB 2413** in the meeting yesterday, March 8, 2010. Mr. Thompson that a motion was made to reconsider **SB 26** and it passed. Then a motion was made to strike the language in **SB 26**.

Representative Brown made a motion to put Sub for HB 2413 into SB 26. Representative Bethell

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 9, 2010, in Room 144-S of the Capitol.

seconded.

A discussion followed.

Representative McCray-Miller made a motion to pass House Sub. For SB 26 out favorably. Representative Moxley seconded. Motion carried.

Chairperson Colloton announced the Committee would work as many bills as possible tomorrow and carry the rest over for Monday. She then moved the Committee's attention to **SB 459**.

SB 459 - Juvenile offenders; jury trials

Chairperson Colloton opened the hearing on **SB 459** and introduced Natalie Gibson, Staff Attorney, Kansas Judicial Council and Juvenile Offender/Child in Need of Care Advisory Committee, to give her testimony as a proponent of the bill. Ms. Gibson presented written copy of her testimony. (Attachment 2) She explained the history of the bill. The bill is relating to the revocation of the juvenile portion of a sentence and imposition of the adult portion in extended juvenile jurisdiction cases, notice regarding change in placement of juveniles along with some technical cleanup. She urged the Committee to pass the bill out of the Committee.

A discussion followed.

Chairperson Colloton called the Committee's attention on the "written only" opponent testimony of Lara Blake Bors, Assistant Finney County Attorney representing the Kansas County and District Attorneys Association. (Attachment 3)

Chairperson Colloton announced to the Committee that the hearing on **SB 459** would be continued to March 15, 2010, so that a proponent who practices juvenile law can come to testify.

Chairperson Colloton introduced former Representative Ward Wood and his wife to the Committee.

Chairperson Colloton adjourned the meeting at 3:00 p.m. with the next scheduled meeting March 10, 2010 at 1:30 p.m. in room 144-S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-9-18

NAME	REPRESENTING
Natalie Wilson	Kansas Judicial Council
Jenni Row	KCSL
Neha Pedigo	KSC
Gail Bright	Office of the Kansas Secantary Commissioner

SENATE BILL No. 386

By Committee on Judiciary

1-19

SB386-Balloon2.pdf
RS - JThompson - 03/09/10

admissibility and certification of forensic
examinations; allowing interactive video
testimony in limited instances;

and K.S.A. 2009 Supp. 22-3437

sections

10 AN ACT concerning criminal procedure; relating to discovery and in-
11 spection; amending K.S.A. 22-3212 and repealing the existing section;
12 also repealing K.S.A. 22-3433.
13

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

15 Section 1. K.S.A. 22-3212 is hereby amended to read as follows: 22-
16 3212. (a) Upon request, the prosecuting attorney shall permit the de-
17 fendant to inspect and copy or photograph the following, if relevant: (1)
18 Written or recorded statements or confessions made by the defendant,
19 or copies thereof, which are or have been in the possession, custody or
20 control of the prosecution, the existence of which is known, or by the
21 exercise of due diligence may become known, to the prosecuting attorney;
22 (2) results or reports of physical or mental examinations, and of scientific
23 tests or experiments made in connection with the particular case, or cop-
24 ies thereof, the existence of which is known, or by the exercise of due
25 diligence may become known, to the prosecuting attorney; (3) recorded
26 testimony of the defendant before a grand jury or at an inquisition; and
27 (4) memoranda of any oral confession made by the defendant and a list
28 of the witnesses to such confession, the existence of which is known, or
29 by the exercise of due diligence may become known to the prosecuting
30 attorney.

31 (b) Upon request, the prosecuting attorney shall permit the defend-
32 ant to inspect and copy or photograph books, papers, documents, tangible
33 objects, buildings or places, or copies, or portions thereof, which are or
34 have been within the possession, custody or control of the prosecution,
35 and which are material to the case and will not place an unreasonable
36 burden upon the prosecution. Except as provided in subsections (a)(2)
37 and (a)(4), this section does not authorize the discovery or inspection of
38 reports, memoranda or other internal government documents made by
39 officers in connection with the investigation or prosecution of the case,
40 or of statements made by state witnesses or prospective state witnesses,
41 other than the defendant, except as may be provided by law. *Except as*
42 *provided in subsection (e), this section does not require the prosecuting*
43 *attorney to provide unredacted vehicle identification numbers or personal*

2-1

1 *identifiers of persons mentioned in such books, papers or documents. As*
 2 *used in this subsection, personal identifiers include, but are not limited*
 3 *to, birthdates, social security numbers, taxpayer identification numbers,*
 4 *drivers license numbers, account numbers of active financial accounts,*
 5 *home addresses and personal telephone numbers of any victims or ma-*
 6 *terial witnesses. If the prosecuting attorney does provide the defendant's*
 7 *counsel with unredacted vehicle identification numbers or personal iden-*
 8 *tifiers, ~~the prosecuting attorney shall request and the court shall enter~~*
 9 *a protective order prohibiting the transmission of the unredacted numbers*
 10 *or identifiers to the defendant or any other person, directly or indirectly,*
 11 *except as authorized by further order of the court.*

the defendant's counsel
shall not further disclose

Strike "further"

12 (c) If the defendant seeks discovery and inspection under subsection
 13 (a)(2) or subsection (b), the defendant shall permit the attorney for the
 14 prosecution to inspect and copy or photograph scientific or medical re-
 15 ports, books, papers, documents, tangible objects, or copies or portions
 16 thereof, which the defendant intends to produce at any hearing, and
 17 which are material to the case and will not place an unreasonable burden
 18 on the defense. Except as to scientific or medical reports, this subsection
 19 does not authorize the discovery or inspection of reports, memoranda or
 20 other internal defense documents made by the defendant, or the defend-
 21 ant's attorneys or agents in connection with the investigation or defense
 22 of the case, or of statements made by the defendant, or by prosecution
 23 or defense witnesses, or by prospective prosecution or defense witnesses,
 24 to the defendant, the defendant's agents or attorneys.

If the prosecuting attorney provides books, papers or documents to the defendant's counsel with vehicle identification numbers or personal identifiers redacted by the prosecuting attorney, the prosecuting attorney shall provide notice to the defendant's counsel that such books, papers or documents had such numbers or identifiers redacted by the prosecuting attorney.

25 (d) The prosecuting attorney and the defendant shall cooperate in
 26 discovery and reach agreement on the time, place and manner of making
 27 the discovery and inspection permitted, so as to avoid the necessity for
 28 court intervention.

29 (e) Upon a sufficient showing the court may at any time order that
 30 the discovery or inspection be denied, restricted, *enlarged* or deferred or
 31 make such other order as is appropriate. Upon motion, the court may
 32 permit either party to make such showing, in whole or in part, in the form
 33 of a written statement to be inspected privately by the court. If the court
 34 enters an order granting relief following such a private showing, the entire
 35 text of the statement shall be sealed and preserved in the records of the
 36 court to be made available to the appellate court in the event of an appeal.

37 (f) Discovery under this section must be completed no later than 20
 38 days after arraignment or at such reasonable later time as the court may
 39 permit.

40 (g) If, subsequent to compliance with an order issued pursuant to this
 41 section, and prior to or during trial, a party discovers additional material
 42 previously requested or ordered which is subject to discovery or inspec-
 43 tion under this section, the party shall promptly notify the other party or

1 the party's attorney or the court of the existence of the additional material.
 2 If at any time during the course of the proceedings it is brought to the
 3 attention of the court that a party has failed to comply with this section
 4 or with an order issued pursuant to this section, the court may order such
 5 party to permit the discovery or inspection of materials not previously
 6 disclosed, grant a continuance, or prohibit the party from introducing in
 7 evidence the material not disclosed, or it may enter such other order as
 8 it deems just under the circumstances.

9 (h) For crimes committed on or after July 1, 1993, the prosecuting
 10 attorney shall provide all prior convictions of the defendant known to the
 11 prosecuting attorney that would affect the determination of the defend-
 12 ant's criminal history for purposes of sentencing under a presumptive
 13 sentencing guidelines system as provided in K.S.A. 21-4701 et seq. and
 14 amendments thereto.

15 (i) The prosecuting attorney and defendant shall be permitted to in-
 16 spect and copy any juvenile files and records of the defendant for the
 17 purpose of discovering and verifying the criminal history of the defendant.

18 Sec. 2. K.S.A. 22-3212 and 22-3433 are hereby repealed.

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

Sec. 2. Amend K.S.A. 2009 Supp. 22-3437
 as shown in SB 458 (as amended by Senate
 Committee).

← Renumber remaining sections.

← and K.S.A. 2009 Supp. 22-3437



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TO: Representative Pat Colloton,
Chair, House Corrections and Juvenile Justice Committee

From: Natalie Gibson, Staff Attorney, Juvenile Offender and Child in Need of Care
Committee, Kansas Judicial Council

Re: Testimony in support of 2010 Senate Bill 459

Date: Tuesday, March 9, 2010

TESTIMONY OF THE JUDICIAL COUNCIL JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE ON 2010 SENATE BILL 459

In 2009, while reviewing aspects of the Revised Kansas Code for Care of Children (CINC code), the Revised Kansas Juvenile Justice Code (JO code) and 2008 HB 2820, the Juvenile Offender / Child in Need of Care Advisory Committee (JO/CINC committee) determined that certain child in need of care orders or juvenile offender orders should take priority over similar orders in other domestic cases such as divorce, paternity, protection from abuse, and guardianship or conservatorship. This has been the practice generally, but it has not been clarified by statute. The JO/CINC committee had also been asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. In

addition, in June, 2008, the Kansas Supreme Court issued its opinion in *In re L.M.*, 186 P.3d 164 (Kan 2008) and held that juveniles 14 years of age or older who are charged with a felony have the right to a jury trial under the Kansas Constitution. Therefore, the JO/CINC committee submitted legislation to the 2009 Legislature to address these issues. That proposed legislation became 2009 Senate Bill 88.

2009 SB 88 received a hearing on two separate dates in the Senate Judiciary Committee. The Senate Judiciary Committee eventually set the bill aside for interim study; however, it was not approved for study after the 2009 session. Therefore, the JO/CINC committee continued work on the proposed legislation to address issues that were raised during the 2009 legislative session and introduced 2010 SB 459 this session. SB 459 was in essence a redraft of the juvenile offender portions of 2009 SB 88 and included all of the balloon amendments proposed in 2009 and those that were going to be proposed in 2010 as a result of the JO/CINC committee's review.

During the Senate Judiciary hearing on the bill in February, 2010, the Kansas County and District Attorneys Association provided written testimony in opposition to sections 1 and 2 of 2010 SB 459 which dealt with the juvenile jury trial issue. After reviewing their testimony, the Judicial Council requested a balloon amendment to strike those sections from the bill and asked that they be referred back to the Judicial Council for additional study. The Senate subsequently approved the bill including this balloon amendment and the result is the bill you have before you now. The remaining portions of the bill contain amendments relating to the revocation of the juvenile portion of a sentence and imposition of the adult portion in extended juvenile jurisdiction cases, notice regarding change in placement of juveniles, and a couple purely technical amendments.

COMMITTEE'S COMMENTS TO PROPOSED JO LEGISLATION – as amended by Senate Committee

- ~~Section 1: Amends K.S.A. 38-2344 to make technical corrections which address a juvenile's right to a jury trial as set forth in *In re L.M.*, 186 P.3d 164 (Kan 2008). (Stricken at the request of the Judicial Council so that the issue may be studied further.)~~
- ~~Section 2: Amends K.S.A. 38-2357 to clarify the methods of trial in juvenile offender cases. The proposed language is a combination of language taken from three statutes in the Kansas adult criminal code. (See K.S.A. 22-3403, 22-3404 and 22-3421) Most of the language is identical to that of the adult statutes. The difference is that a juvenile must request the jury trial in writing within 30 days from the entry of the juvenile's plea. (Stricken at the request of the Judicial Council so that the issue may be studied further.)~~
- Section 3 I: Amends K.S.A. 38-2364(b) to allow the court some discretion when determining, under extended juvenile jurisdiction cases, whether violations of conditions of the juvenile's sentence are sufficient to require revocation of the juvenile portion of a sentence and imposition of the adult portion of the sentence. A finding of a single curfew violation, for instance, may not be sufficient to warrant imposition of the adult sentence. However, under current law the court would be required to revoke the juvenile sentence and impose the adult sentence. Replacing the word "shall" with "may" on page 3, line 33 would provide the court discretion in this instance to avoid such a harsh result.

The proposed amendments in lines 18 and 31-32 on page 3 clarify that one or more condition violations may be sufficient for revocation of the juvenile sentence and imposition of the adult sentence.

The proposed amendment in lines 30-31 on page 3 change the burden of proof for finding such violations from "substantial evidence" to a "preponderance of the evidence" which is a more legally recognized standard.

- Section 4 2: Amends K.S.A. 38-2365(a) to require the commissioner to notify a juvenile's attorney of record, in addition to the juvenile's parents, of any changes in placement of the juvenile and to make a technical correction in line 15 on page 6.
- Section 5 3: Amends K.S.A. 38-2373(b) to correct a technical error by replacing the word "study" with the intended word "custody" in line 27 on page 7.



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TO: Representative Pat Colloton, Chair
House Corrections and Juvenile Justice Committee

From: Lara Blake Bors, Assistant Finney County Attorney

Re: Written Testimony in Opposition to Senate Bill 459

Date: March 9, 2010

I thank the Chair for allowing me the opportunity to supplement the record on Senate Bill 459 with this written testimony. My written testimony is presented on behalf of the Kansas County and District Attorneys Association and is offered as an opponent of this bill in its present form.

The primary purpose of Senate Bill 459 is amending K.S.A. 38-2364 dealing with Extended Juvenile Jurisdiction Prosecution (EJJP). Currently, when a juvenile prosecuted under EJJP is found to be in violation of their juvenile sentence the adult sentence shall be imposed by the court. This language has been upheld twice by the Kansas Court of Appeals. *In re: J.H., Jr.*, 40 Kan.App.2d 643, 197 P.3d 467 (2007) and *In re: E.F.*, 41 Kan.App.2d 860, 205 P.3d 787 (2009). Other states have similarly written statutes requiring the court to impose the adult sentence including Minnesota (M.S.A. 260B.130), Illinois (705 ILCS 405/5-810) and many others.

*Corrections and Juvenile
Justice Committee
3-9-2010
Attachment 3*

Generally EJJP is used in one of two situations – either the crime is serious or heinous enough to warrant more than just juvenile prosecution, or the juvenile has utilized virtually all resources the juvenile justice system can provide. The decision to utilize EJJP is not one which is made lightly but with caution and deliberation. For example, a few years ago I prosecuted a juvenile offender who, along with two other boys, grabbed a girl in the hallway of a local 5th and 6th grade school, threw her to the ground and began molesting her. He was convicted of Aggravated Indecent Liberties with a Child with regard to that incident. He was placed on probation with a suspended juvenile correctional facility sentence and ordered to complete sex offender treatment. While this case was pending, this same juvenile rode his bike up to a 9-year-old girl and exposed himself to her. He was convicted of Lewd and Lascivious Behavior for this incident. Approximately one year after the bike incident and while on probation for the first incident, this same juvenile grabbed a 3-year-old neighbor girl who was playing outside. He took her to his yard and began molesting her. This juvenile had not yet turned 15. What is a prosecutor to do in this type of situation? All resources have not been used because he has not yet been to a juvenile correctional facility. But, he is becoming more and more predatory, with younger victims and more serious crimes. Yet, he is also still young being only 14. The decision our office reached was EJJP. This juvenile has considerable criminal history and due to the nature of the charge, Aggravated Indecent Liberties with a Child, has quite a prison sentence hanging over his head; however, he received treatment at a juvenile correctional facility and ongoing treatment during his conditional release. Do juveniles in similar circumstances deserve fourth or fifth chances to re-offend and harm more individuals?

The use of this tool sends a very clear message to a juvenile that this is their last chance. By changing the mandatory language to discretionary language, a juvenile will be in virtually the

same position he or she has been throughout their time in the juvenile system with a series of chances, and leaving a prosecutor no other choice but certification. If modified, EJJP will lose any benefit that could be derived from it.

I appreciate the opportunity to present this written testimony to the committee and for your time and attention to both my views and the views of my organization, the Kansas County and District Attorneys Association.

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