Legislative Research Department October 7, 1975

M I N U T E S

SPECIAL COMMITTEE ON JUVENILE MATTERS

September 29 and 30, 1975
Room 517 - State House

Members Present

Representative Dave Heinemann, Chairman
Senator Arden Booth, Vice-Chairman
Senator Bob Madden
Senator Jan Meyers
Senator Jim Parrish
Representative Mike Glover
Representative Glee Jones
Representative Fred Lorentz
Representative James Lowther
Representative Ardena Matlack
Representative Joe Norvell
Representative Neal Whitaker

Staff Present

Myrta Anderson, Legislative Research Department
Walt Smiley, Legislative Research Department
Mary Torrence, Revisor of Statutes' Office

Conferees and Others Present

Sharon Manzonares, Social and Rehabilitation Services
Mike McLain, Johnson County Juvenile Court
Ann Hebberger, League of Women Voters of Kansas
Jane Cunningham, Junior League of Topeka
Barbara Sabol, SRS
Fred Holloman, House of Representatives Staff
Charles V. Hamm, SRS
Jack Pulliam, SRS
David B. Dollam, Budget Division
Diane Simpson, KCCD
Marilyn Bradt, League of Women Voters of Kansas
Sharon Gordon, Topeka

The Chairman called the meeting to order and indicated that he would ask to be excused for personal reasons. He then turned the meeting over to the Vice-Chairman Senator Booth. Senator Booth then called for further discussion on the specific sections of the Juvenile Code.

KSA 38-814 - 1. Create an office of juvenile probation officers under the Supreme Court.

2. Prescribe standards for education and training.

3. Require all counties to have juvenile probation officers.

4. Do not allow law enforcement officers to be juvenile probation officers.

It was moved and seconded and motion carried that it be the consensus of the Committee that juvenile probation officers should be under the Supreme Court and there should be standards set for education and training. An inquiry should be sent to the Court through the Revisor's Office to determine how this action could be implemented in coordination with court reorganization.

Discussion followed on use of SRS staff as probation officers. SRS staff agreed to write a letter to probate judges reminding them SRS staff may be used in probation cases.

It was moved, seconded, and motion carried to make the change statutorily to not allow law enforcement officers to be juvenile probation officers.

KSA 38-815 - 1. Require probable cause to take child into custody.

Discussion followed on:

SRS Recommendation: Any peace officer who has reason to believe upon observation or information that any child under the age of eighteen (18) is delinquent, miscreant, wayward or deprived and by reason thereof is likely to do injury to himself or others or to be injured if not taken into custody, may take such child into custody without a warrant or court order. If he takes such child into custody when the juvenile court of the county is open for business the peace officer shall forthwith deliver the child to such court. If he takes such child into custody when such court is not open for business he shall transport such child to an emergency shelter. It shall be the duty of the peace officer to present to the juvenile court of such county a petition for determination of delinquent, miscreant, wayward, or deprived child during the office hours of the court on the first day the court is open for business following taking the child into custody.

It was moved and seconded to amend KSA 38-815 to include the new subsection. After discussion it was decided to delay action on the motion until after lunch so that further information could be obtained on probable cause provisions for adults under the criminal code.

KSA 38-815 - 2. Provide procedure for caseworker to take dependent and neglected child into custody.

No action taken. Discussion indicated that this is a matter for the courts to determine.

Discussion followed on definition of dependent and neglected and deprived child. Motion was made, seconded and carried that whenever "dependent" and "neglected" occurs that the term "deprived child" be substituted. See SRS suggested change in definition Section 38-802, and throughout code. Staff is to prepare alternative drafts for Committee to consider.

3. Provide clearly defined intake procedures for when child taken into custody. SRS staff and Committee staff to provide suggestions for alternative considerations for next meeting.

The Committee adjourned for lunch and reconvened at 1:30 p.m. After Senator Booth called the meeting to order he called on Senator Meyers to make an announcement of a meeting to be held on Thursday and Friday, October 2-3, in Kansas City, Missouri, on Juvenile Matters. On Thursday, from 5:00 to 6:30 p.m., Committee and staff had been invited to meet with Milton Lueger, newly appointed federal staff in the field of juvenile matters. Following the informal meeting, Senator Birch Bayh would address the conference.

Senator Booth then distributed Attachment No. 1, taken from the Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency, A Department of HEW publication. The material included intake procedures for probation service, etc. Senator Booth then distributed Attachment No. II, KSA 22-2401 et seq., giving the arrest procedures under the code of procedure for municipal courts.

Committee then resumed summary of Code.

KSA 38-815(e) 1. Extend 48-hour period to 72 hours or exclude Saturdays.

Motion made, seconded and carried to leave the 48-hour period as it is.

2. Provide for waiver of detention hearing. Staff agreed to consult with Senator Parrish to provide language to codify what is being done in Johnson and Shawnee Counties with respect to waiver proceedings.

3. Require probable cause to detain before detention hearing.

4. Require investigation prior to detention hearing.

Staff agreed to provide draft legislation to implement these changes.

KSA 38-815(b) 1. Allow more time for notice (page 28 draft)

2. Allow waiver of notice when parties volunteer to appear.

Discussion followed on difficulty in serving notice within twenty-four hours. If the 48-hour limit is retained, more flexibility is needed for the notice. Discussion of use of telephone notice which is not legal but often brings results. Probation Officer McClain of Johnson County and staff agreed to investigate alternatives to provide for possible discussion on this matter at the next meeting and to get more information from judges.

3. Allow temporary custody or detention for limited time only; require hearing on petition within a certain time.

SRS recommendation discussed; two weeks with one continuance to a time certain.

KSA 38-815(b) (b) Bottom of page 27 "court has appointed counsel to serve as guardian ad litem until such time as the court is notified of the name and address of counsel for the child which has been retained in lieu of guardian ad litem."

Discussion followed on guardian ad litem representation in cases where interests of parent and child not necessarily the same. It was moved, seconded and motion carried that any child be appointed a guardian ad litem in any action involving him to be certain that counsel is representing the child as well as parents. An independent guardian ad litem be required in all deprived (d and n) cases. In the event parents have guardian ad litem, court should have the right to appoint guardian ad litem to protect the interests of the child. The court should make this decision.

KSA 38-816 - 1. Provide for commitment of child to juvenile court by parent.

Discussion indicated omitting this for present.

2. Require a preliminary investigation.

3. Require prompt investigation of reports of dependency and neglect.

Discussion indicated this is already being done.

KSA 38-817 - Motion made, seconded and carried to amend the entire Juvenile Code to take traffic offenders out from under the code. It was also suggested the code be amended to provide that juvenile offenders be handled in the same way as adult traffic offenders are. The provision should also be made that anyone under age shall not be subject to incarceration because of a traffic offense. Such offenses as vehicular homicide and DWI cases would remain under the code, minor offenses such as running a red light and speeding would be treated as adult cases are treated.

Senator Booth read information presented to Committee from the Honorable Mike Nichols, Juvenile Judge, Ottawa, Kansas, (see Attachment No. 3). Material was also presented to the Committee indicating the reaction of Brendan Callanan to the legislation on the Interstate Compact (see Attachment No. 4). In addition, a letter from Grant County Juvenile Judge, Herbert Noyes, was presented to the Committee (see Attachment No. 5).

The meeting adjourned until 9:30 a.m., Tuesday, September 30.

September 30, 1975

Vice-Chairman Booth called the meeting to order at 9:30 a.m. The first order of business was to approve the minutes. The motion was made, seconded and carried to approve the minutes for August 28 and 29, and September 19. The suggestion was also made that the Committee go on record as approving the concept of alternative schools as a means of coping with the problems of truancy.

The Committee then resumed their review of the Code.

KSA 38-817(f) - Clarify and distinguish the procedures, kinds of testimony, reports, etc., for the adjudicatory hearing on the dispositional hearing.

KCCD and SRS recommended this. It was moved, seconded and the motion carried to include in the report that this section be one to be studied by the Judiciary Committee along with their study of court reorganization and that a study be made of the process of adjudicatory hearings. It was the Committee's decision that legal procedures should be established for these hearings which are being decided on a due process basis now.

KSA 38-819(a) - Provide exception for pre-hearing detention pursuant to 38-815(e). SRS supports the authority of the court to make a pre-hearing detention or protective custody order so long as the child will have a hearing within 72 hours.

It was moved, seconded and motion carried to have staff draft legislation which would implement the changes indicated.

KSA 38-819(b) - Allow temporary custody for a limited time only; if custody is with SRS, provide for notice of a continuance and/or the date of the hearing on the petition within a specified time or child will be released to the parents.

It was moved, seconded and motion carried to accept SRS recommendation: The court may make a temporary order not to exceed 2 weeks with provision for one continuance not to exceed 2 weeks unless requested by the guardian ad litem for the child. A hearing, showing good cause in open court and determination, would be a cause for continuance. It was moved, seconded and motion carried to adopt the recommendations listed above.

Also included in the motion is the suggestion to delete "or correction," line 21.

KSA 38-819(c) - Allow child to be held in jail if there is no alternate facility.

After considerable discussion as to the role of the Department of Health and Environment, Department of Corrections and SRS with respect to the problem of establishing guidelines, procedures for inspection, etc., of jails, it was decided to have the staff check to get material published by the Department of Corrections in the form of an information booklet to distribute to Committee. The staff is also to get information on how many counties do not have facilities other than jails, standards and guidelines for inspection, etc.

KSA 38-820 - No order or decree permanently depriving a parent of his parental rights in a dependent and neglected child under subsection (c) of Section 24 (38-824) of this act shall be made unless such parent is present in juvenile court and represented by legal counsel.

Motion made, seconded and carried to adopt the changes recommended in this section.

KSA 38-821 - Replace guardian ad litem with counsel that is independent of the court, e.g., law guardians (New York), legal aid, public defender.

SRS supports the philosophy that guardian ad litems be independent of the court.

Staff was directed to check with the Supreme Court staff to inquire as to what will be the position of the guardian ad litem in the new court reorganization system, as in the case of probation officers.

KSA 38-817(a) - Page 33, line 17, motion made, seconded and carried to change may to shall. The section now reads "Promptly upon the filing of the petition, the juvenile court shall send to the secretary of social and rehabilitation services a copy thereof.

KSA 38-823(e) - Provide time limit within which child must be placed after final disposition.

It was indicated that it was the Committee's expectation that disposition and placement would not be too far apart. Discussion followed on costs of in-state placement ($520 per month), and out-of-state placement (sometimes up to $1,200 to $1,400 per month.)

The motion was made, seconded and carried that the staff prepare draft legislation indicating that any orders committing a juvenile for out-of-state placement must have prior approval of SRS.

The Committee adjourned for lunch and reconvened at 1:30 p.m.

Mr. Adrian Farver, Director of the Governor's Committee on Criminal Administration, appeared before the Committee on behalf of Lt. Governor Shelby Smith to present information as to why an application for federal funds under P.L. 93-415, the Juvenile Justice and Delinquency Prevention Act, had not been submitted.

Lt. Governor Smith's memorandum to Mr. Farver appears in Attachment No. VI, stating the reasons why application was not made. The memorandum indicated that there was no assurance that the legislature would:

1. Provide legislation to authorize the GCCA to mandate other state agencies to cause coordination of human services to youth and their families in order to insure effective delinquency prevention and treatment programs.

2. Significantly revise the Juvenile Code of the State of Kansas to provide a statewide diversion program for status offenders.

3. Provide that status offenders would not be detained in jails or detention facilities.

4. Provide a mandatory reporting system of juvenile data.

Other factors influencing the decision were:

1. The cost to both state and local units of government.

2. Minimal originating funds ($19,000 plus $200,000) and the uncertainty of future federal funds.

3. Advisory committee expenses.

4. Potential liability of the State of Kansas to the federal government of money granted in the event the state cannot comply with the agreement.

5. Additional personnel requirements to administer the act.

Discussion indicated that although federal legislation passed in September, 1974, no assistant administrator had been named until recently. Nine other states including Alabama, Colorado, Oklahoma, Rhode Island, Utah, West Virginia, Samoa, etc., had not applied for funds. Discussion indicated that another opportunity for application for federal funds would occur when the appropriations are submitted for 1976. It was pointed out that the decision was made on August 1, 1975 not to apply for funds since this was the deadline for application. The two types of funding available were discretionary (used for research and demonstration and innovative projects and formula grant funding based on population of state or some set figure based on number of juveniles, etc.)

Upon questioning, Mr. Farver indicated that counties or local units of government could still apply for funding, although the state could not. The motion was made, seconded and passed to set aside some time at the next meeting on October 16 and 17 to hear from the Division of Children and Youth and KCCD as to their reaction to Lt. Governor Smith's memorandum, consideration of whether

or not there is time to bring the Code into compliance before applying for funding, what other states have done with respect to this matter, how far is Kansas from meeting federal guidelines, etc.

Mr. Farver contacted the Regional Office of LEAA in Kansas City and reported back to the Committee that local groups can still make application through Washington. The Regional Office does not yet have the guidelines for such applications which were to be available on September 30 but had not been received as yet. He also confirmed that funds would be available for Fiscal 1976, that these would be matching funds (90-10). A Committee member agreed to contact Lt. Governor Smith to obtain further information as to the role of GCCA in the federal funding process, with respect to application by local units of government.

Further discussion of the Code followed:

KSA 38-824 - Recommendation: Deprived child, wayward, truant; commitment; deprival of parental rights; placement or adoption; conservators; hospital; medical or surgical care. (a) The provisions of this section shall apply to any child under the age of eighteen years found to be deprived, wayward, or truant, within the meaning of this act, either at the initial hearing or any subsequent hearing.

Motion was made, seconded and carried to implement the change indicated in the above section.

Committee discussion indicated that most major changes in the draft legislation had been made up to page 42. Some recommendations existed on the SRS draft following page 42 which would be considered at the next meeting. Meeting adjourned.

Prepared by Myrta Anderson

Approved by Committee on:

October 17, 1975
(Date)

Attachment I
Sept 29, 5-

LEGISLATIVE GUIDE FOR DRAFTING STATE-LOCAL PROGRAMS ON JUVENILE DELINQUENCY.
DHEW Pub.(SRS)72-260

Sec. 16. INTAKE BRANCH OF PROBATION SERVICE - FUNCTIONS, POWERS, AND DUTIES.

The Intake Branch of the Probation Service shall, in accordance with the provisions of this (Act) and of the (Family and Juvenile Court Act), exercise the following functions, powers, and duties:

(a) authorize or provide detention or shelter care for any child lawfully taken into custody and brought to the Intake Branch whom it finds, in accordance with the provisions of Section 24 of this (Act), requires such care;

(b) initially receive all complaints referred to the court alleging that a child is delinquent, or in need of supervision;

(c) Upon the receipt of such complaint, conduct a preliminary inquiry to determine whether the best interests of such child or of the public require that a petition should be filed in accordance with the provisions of the (Family and Juvenile Court Act), Provided, That such preliminary inquiry shall not extend for a period beyond thirty (30) days from the date on which such complaint is made, Provided Further, That during such period, it may conduct conferences for the purpose of effecting adjustments which would obviate the necessity for filing a petition;

(d) If, on the basis of such preliminary inquiry, it determines that a petition should be filed, so recommend to the (Note #1), Provided, That if the (Note #1) determines that a petition should not be filed and the child is in detention or shelter care, such child shall be released therefrom immediately;

(e) If, on the basis of such preliminary inquiry, it determines that a petition should not be filed, notify the complainant of its decision and that the complainant has the right to have such decision reviewed by the (Note #1), and may:

(1) refer the case to the appropriate public or private agency and shall, thereupon, close its file with respect to such case; or,

Comments on Section 16: *Note #1: Insert title of appropriate prosecuting official. These suggestions should be carefully coordinated with existing laws relating to the provision of probation services to juveniles and appropriate changes made in those laws.*

It should be noted that the authority to recommend *the filing of a complaint is vested in the Intake Branch, with the* decision *as to the filing of the complaint being vested in the appropriate prosecuting official.*

The provisions relating to referral contained in Subsection (e) are designed to divert, where possible, juveniles from the juvenile justice system.

Sec. 17. GENERAL DUTIES OF PROBATION OFFICERS - SUPERVISION.

Probation Officers shall perform such duties and functions as may be assigned to them pursuant to the provisions of this (Act) or of the (Family and Juvenile Court Act), including the provision of supervision and assistance to children placed by order of the court on probation or otherwise under the supervision of the Division of Probation.

Sec. 18. LIMITATIONS ON POLICE POWERS OF PROBATION OFFICERS.

A duly appointed and qualified Probation Officer shall not be authorized to exercise any duties or functions of a police officer other than those specifically set forth in this (Act).

Comments on Section 18: *A Probation Officer is neither a police officer nor a prosecuting official. His police powers should be specifically spelled out, as here, in the statutory language defining the powers and duties of a Probation Officer. In these materials Section 21 spells out the police powers of the Probation Officer in terms intended to circumscribe clearly those powers. Although the person in charge of the Intake Branch is given responsibility for determining whether a child shall be placed in a detention or shelter care facility, the actual arrest of the child - an exercise of police powers - took place prior to the child being brought to the Intake Branch.*

Sec. 19. PREDISPOSITION STUDY OF CHILD.

When a petition has been filed with the court alleging a child to be delinquent or in need of supervision and (a) the child has been so adjudicated by the court, or (b) there has been filed with the court a written statement by the child or by such child's attorney expressing an intent to admit the allegations contained in such petition and consenting to the making of a predisposition study, the (Department) shall make a

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inal Code," Keith G. Meyer, 20 K. L. R. 685, 692, 695 (1972).

22-2306. Defective warrant. A warrant shall not be quashed or abated nor shall any person in custody for a crime be discharged from such custody because of any technical defect in the warrant. [L. 1970, ch. 129, § 22-2306; July 1.]

Judicial Council, 1969: This is a new statutory provision in Kansas. However, it states a rule that is commonly applied to pleadings.

Law Review and Bar Journal References:

Cited in "Notes on the Code of Criminal Procedure," Richard H. Seaton and Paul E. Wilson, 39 J. B. A. K. 97, 98 (1970).

Cited in "Arrest Under the New Kansas Criminal Code," Keith G. Meyer, 20 K. L. R. 685, 693 (1972).

Article 24.—ARREST

Cross References to Related Sections:

Arrest procedures under code of procedure for municipal courts, see 12-4201 et seq.

22-2401. Arrest by law enforcement officer. A law enforcement officer may arrest a person when:

(*a*) He has a warrant commanding that such person be arrested; or

(*b*) He has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein; or

(*c*) He has probable cause to believe that the person is committing or has committed

(1) A felony; or

(2) A misdemeanor, and the law enforcement officer has probable cause to believe that:

(*i*) Such person will not be apprehended or evidence of the crime will be irretrievably lost unless such person is immediately arrested; or

(*ii*) Such person may cause injury to himself or others or damage to property unless immediately arrested; or

(*d*) Any crime has been or is being committed by such person in his view. [L. 1970, ch. 129, § 22-2401; July 1.]

Judicial Council, 1969: This section confers somewhat broader powers than the former law. Under subsection (*b*) an officer may arrest under the authority of a warrant not in his possession if he has probable cause to believe it has been issued. Also, arrests for misdemeanors may be made on probable cause in certain emergency situations.

Cross References to Related Sections:

Issuance of written traffic citation at scene of traffic accident, see 8-2106.

Law Review and Bar Journal References:

Discussed in "Notes on the Code of Criminal Procedure," Richard H. Seaton and Paul E. Wilson, 39 J. B. A. K. 97, 99 (1970).

Discussed in "Arrest Under the New Kansas Criminal Code," Keith G. Meyer, 20 K. L. R. 685 (1972).

CASE ANNOTATIONS

1. Mentioned; reasonable suspicion required under 22-2402 does not rise to level of probable cause required hereunder. State v. Jackson, 213 K. 219, 225, 515 P. 2d 1108.

22-2402. Stopping of suspect. (1) Without making an arrest, a law enforcement officer may stop any person in a public place whom he reasonably suspects is committing, has committed or is about to commit a crime and may demand of him his name, address and an explanation of his actions.

(2) When a law enforcement officer has stopped a person for questioning pursuant to this section and reasonably suspects that his personal safety requires it, he may search such person for firearms or other dangerous weapons. If the law enforcement officer finds a firearm or weapon, or other thing, the possession of which may be a crime or evidence of crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person. [L. 1970, ch. 129, § 22-2402; July 1.]

Judicial Council, 1969: This section substantially follows the language of the New York "stop and frisk" law, N. Y. Code Crim. Proc. § 180-a which was before the Supreme Court of the United States in *Sibron v. New York*, 88 S. Ct. 1889. While the Supreme Court declined to approve expressly the language of the New York statute, it found that in the particular case the conduct of an officer acting within the statute was not offensive to the Fourth and Fourteenth Amendments.

In the absence of legislation of this kind, it may be argued that a police officer has no power to search a suspect for weapons until an arrest has actually been made. And it is basic that the minimum condition that will justify an arrest is probable cause that a crime has been committed. The section will clarify the power of the investigating officer to make a preliminary search for weapons prior to the actual arrest. The justification and limitations applicable to such powers are expressed by the Supreme Court in *Terry v. Ohio*, 88 S. Ct. 1868, a companion case to *Sibron v. New York*, supra:

"We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence,

0, ch. 129, § 22-2806;

apted from Rule 46 (*e*)

al References:
; discussed in symposium
rt L. Looney, 18 K. L. R.

e. (1) If there is a an appearance bond ond is deposited shall the bail.
irect that a forfeiture conditions as the court ars that justice does nent of the forfeiture. re has not been set motion enter a judg- execution may issue re has been decreed amount of the bond e civil jurisdiction of feiture shall be certi- to the district court judgment of default ion. By entering into mit to the jurisdiction ver to enter judgment vocably appoint the eir agent upon whom ieir liability may be may be enforced on essity of an indepen- n and notice thereof erk of the court, who ies to the obligors to ses. No default judg- gainst the obligor in il more than 10 days s provided herein.
h judgment, the court or in part under the the setting aside of (2) of this section. 2807; July 1.]

2, 62-631, 62-1221, 62-

ipted from Rule 46 (*f*),

TATIONS

rrenders, motion to set . State v. Midland Insur- 888, 890, 891, 494 P. 2d

ion. When the condi- ond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release them from liability. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody. [L. 1970, ch. 129, § 22-2808; July 1.]

Source or prior law: 62-1218, 62-1219.

Judicial Council, 1969: Adapted from Rule 46 (*g*), F. R. Cr. P.

CASE ANNOTATIONS

1. Where defendant surrenders, motion to set aside bond forfeiture will lie. State v. Midland Insurance Co., 208 K. 886, 887, 888, 494 P. 2d 1228.

22-2809. Surrender of obligor by surety. Any person who is released on an appearance bond may be arrested by his surety or any person authorized by such surety and delivered to a custodial officer of the court in any county in the state in which he is charged and brought before any magistrate having power to commit for the crime charged; and at the request of the surety, the magistrate shall commit the party so arrested and indorse on the bond, or a certified copy thereof, the discharge of such surety; and the person so committed shall be held in custody until released as provided by law. [L. 1970, ch. 129, § 22-2809; July 1.]

Source or prior law: 62-1220.

Judicial Council, 1969. Adapted from 18 U. S. C. 3142.

CASE ANNOTATIONS

1. Where surety redelivers defendant to sheriff at its own expense, motion to set aside bond forfeiture will lie. State v. Midland Insurance Co., 208 K. 886, 887, 888, 889, 494 P. 2d 1228.

Article 29.—PROCEDURE AFTER ARREST

Law Review and Bar Journal References:

Discussed in "Notes on the Code of Criminal Procedure," Richard H. Seaton and Paul E. Wilson, 39 J. B. A. K. 97, 164 (1970).

22-2901. Appearance before the magistrate. (1) When an arrest is made in the county where the crime charged is alleged to have been committed, the person arrested shall be taken without unnecessary delay before a magistrate of the court from which the warrant was issued. If the arrest has been made on probable cause, without a warrant, he shall be taken without unnecessary delay before the nearest available magistrate and a complaint shall be filed forthwith.

(2) When an arrest is made in a county other than where the crime charged is alleged to have been committed, the person arrested may be taken directly to the county wherein the crime is alleged to have been committed without unnecessary delay or at the request of the defendant he shall be taken without unnecessary delay before the nearest available magistrate. Such magistrate shall ascertain the nature of the crime charged in the warrant and the amount of the bond, if any, endorsed on the warrant. If no warrant for the arrest of the person is before the magistrate he shall make use of telephonic, telegraphic or radio communication to ascertain the nature of the charge and the substance of any warrant that has been issued. If no warrant has been issued, a complaint shall be filed and a warrant issued in the county where the crime is alleged to have been committed, and the nature of the charge, the substance of the warrant, and the amount of the bond shall be communicated to the magistrate before whom the defendant is in custody. Upon receipt of such information, the magistrate shall proceed as hereinafter provided.

(3) The magistrate shall fix the terms and conditions of the appearance bond upon which the defendant may be released. If the first appearance is before a magistrate in a county other than where the crime is alleged to have been committed, the magistrate may release the defendant on an appearance bond in an amount not less than that endorsed on the warrant. The defendant shall be required to appear before the magistrate who issued the warrant or a magistrate of a court having jurisdiction on a day certain, not more than 10 days thereafter.

(4) If the defendant is released on an appearance bond to appear before the magistrate in another county, the magistrate who accepts the appearance bond shall forthwith transmit such appearance bond and all other papers relating to the case to the magistrate before whom the defendant is to appear.

(5) If the person arrested cannot provide an appearance bond, or if the crime is not bailable, the magistrate shall commit him to jail pending further proceedings or shall order him delivered to a law enforcement officer of the county where the crime is alleged to have been committed.

(6) The provisions of this section shall not apply to a person who is arrested on a bench warrant. Such persons shall without unnecessary delay be taken before the magistrate who issued the bench warrant. [L. 1970, ch. 129, § 22-2901; July 1.]

specified by the court against the need for the child to be protected against arbitrary, capricious or petty enforcement of such terms and conditions, which can become so onerous as to make the attainment of the objectives of probation difficult.

Where there is no emergency (subsection (a)), but it is determined that the terms and conditions of probation are not being substantially observed and further action by the court may be needed, action should be taken in normal course through the Intake Branch.

On the other hand, where there is need for immediate action on the part of the Probation Officer, this section authorizes, with safeguards, the immediate detention of the child.

Sec. 22. TERMINATION OF (DEPARTMENT'S) RIGHT TO SUPERVISE CHILD ON PROBATION OR AFTER-CARE SUPERVISION.

(a) The authority of the (Department) to supervise the conduct of a child who has been placed on probation or on after-care supervision, unless such authority shall be sooner terminated pursuant to the provisions of this (Act) or of the (Family and Juvenile Court Act), shall cease:

(1) when such child reaches the age of twenty-one years;

(2) at the expiration of twelve (12) months from the date on which the order of probation or after-care supervision was issued unless the (Department) has, prior to such expiration date, sought and obtained from the court an extension of such order, pursuant to the provisions of the (Family and Juvenile Court Act);

(3) at the expiration of any extension date obtained pursuant to Paragraph 2 of this Subsection;

(4) whenever the (Department), prior to the termination otherwise of such order, determines that the purposes of such order have been achieved and so notifies the court.

(b) The (Department) shall, in each case described in Subsection (a) of this Section, immediately notify the child and his parent or guardian of the termination of its supervision over such child.

Comments on Section 22: *It is essential that, when probation or aftercare supervision ends, as definitive a termination be provided as possible to obviate any chance that the child will continue - at least in his own mind - in "limbo" without a clear conception of his legal status. The same can also be said for the situation which should exist with respect to the child's parent or guardian.*

Sec. 23. DEVELOPMENT OF STATEWIDE SYSTEM OF APPROVED DETENTION AND SHELTER CARE FACILITIES.

The (Department) shall develop a statewide system of approved facilities for the provision of detention and shelter care for children referred to or under the jurisdiction of the court.

Sec. 24. PROVISION OF DETENTION OR SHELTER CARE FOR CHILDREN.

The (Department) shall, subject to the limitations and prohibitions of Sections 33, 34, and 35 of this (Act), and except as may be permitted pursuant to the provisions of Section 65 of this (Act), provide detention or shelter care for any child lawfully taken into custody and brought to the Intake Branch, Provided, That no such child shall be detained in a detention or shelter care facility by the (Department) unless it:

(a) is ordered to do so by the court pursuant to the provisions of the (Family and Juvenile Court Act); or,

(b) finds that such detention or shelter care is required:

(1) to protect the person or property of the child or of others;

(2) because such child has no parent, guardian, custodian, or other person able and willing to provide supervision and care for such child; or,

(3) to secure the presence of the child at the next court hearing with respect to such child.

Sec. 25. NOTICE THAT DETENTION OR SHELTER CARE IS BEING PROVIDED TO A CHILD.

Whenever the (Department) determines, pursuant to the provisions of Section 24 of this (Act), and except as may be permitted pursuant to the provisions of Section 65 of this (Act), that a child requires detention or shelter care, it shall:

(a) notify the parent, guardian, or other legal custodian of such child of such fact forthwith in the most expeditious manner possible; and,

Attachment #4 - Sept 29, 1975

Page 1.

1. K.S.A. 38-815(e) and 38-819.

A. Inconsistency. 819 states that a temporary detention order can issue only after a detention hearing held pursuant to 815(b). 815(e), however, implies that the juvenile judge or the juvenile officer can order the detention of a juvenile for a period up to 48 hours without such a hearing.

(1) If the latter is the intent of the statutes, can such detention take place without the filing of a petition under 816?

B. Can the police hold a juvenile for 48 hours in detention on a weekend without a directive from the juvenile officer or the juvenile judge?

(1) If not, can such a directive be effectively made orally by the juvenile officer? By the juvenile judge? Does a written detention order have to follow? What criteria for such a directive?

C. Why do the provisions of 819 regarding detention hearings apply to the issuance of a temporary "custody" order in a dependency and neglect and/or child abuse situation, i.e., why must the court wait at least 24 hours to get an abused, mistreated, or neglected child out of the house?

Recommendation:

1. A & B. The statutes should state that a juvenile can be held in detention for a a period of up to 48 hours if it is determined that probable cause exists to believe that the juvenile is a wayward child or has committed an act which would be a crime if committed by an adult and if the temporary detention would be in the best interest of the juvenile or the community. Such decision may be made by the juvenile officer or the juvenile judge and the directive to the police may be made orally. No petition under 816 need ever be filed.

The 48 hour rule should apply if a juvenile is taken into custody on Monday, Tuesday or Wednesday; otherwise a 96 hour limitation should be established. Computation of time should not include Sundays for the 96 hour period.

To hold a juvenile for a longer period should require a detention hearing pursuant to 815(b). Notice should be given 24 hours in advance of the detention hearing.

1. C. Nothing whatsoever should be required for a temporary custody order in a dependency and neglect case. The juvenile judge should have discretion to summarily remove children from a particular home if he believes it is necessary. Thereupon, a parent or guardian should be allowed to petition for the return of the children, and upon a "temporary custody hearing" (if the judge finds it to be in their best interest) he could order the children back to the home pending the D&N hearing.

Moreover, the judge should be allowed to summarily order temporary custody for a certain period, e.g., 48 hours without any D&N petition ever being filed.

2. Under 817(a), when an investigation report is made by the SRS must the report be submitted during the hearing (and comply with the rules of evidence) or may the report be received and examined by the judge before the hearing? How formal was the procedure intended to be?

3. Recommendation: 817 should be changed to state that a notice and summons

may immediately issue upon the filing of a petition..

4. Recommendation: 826(c)(1) should provide that either the juvenile traffic offender or his parents may be fined. The parents failure to pay the fine should result in contempt of court proceedings.

5. After a miscreant or delinquent child is committed to the SRS under 38-826(a)(5), does the SRS have authority to transfer the child temporarily to the juvenile detention portion of the county jail under authority of 826(e) pending transfer to an SRS institution?

6. What are the limits of conditions of probation as authorized by 826(1) or (2)? Can the judge or juvenile officer direct the juvenile to sweep the streets, paint curbs, etc.? See Attorney General's opinion at 19 (A Guide to the Juvenile Code, 1975 ed.).

7. When a juvenile is declared to be a miscreant or delinquent can the judge order him placed in the juvenile section of the county jail pending final disposition (not to exceed 30 days from the date of adjudication)? 826(a)(4) is somewhat ambiguous. See Attorney General's opinion at 18. what criteria?

8. Once custody of a juvenile is given to the SRS under 826(a)(5) and the juvenile is placed on probation by an SRS institution, if the juvenile returns to the community and commits another "crime," can the SRS summarily revoke probation and return him to the institution or must a new petition be filed in the juvenile court for the new offense (with the resultant guardian ad litem fees and costs to the county)? See Attorney General's opinion at 19.

Recommendation: No new court proceedings should be required. However, the SRS could be required to have a revocation hearing similar to school suspension proceedings.

(1). If the SRS can summarily revoke probation, can it place a juvenile in the juvenile section of the county jail pending his return to the institution? Again see 826(e).

Recommendation: Yes. 826(e) should define "any institution".

9. In a dependency and neglect case, can the court sever rights of a parent incarcerated in a state penitentiary outside of Kansas if summons has been served (820) but the parent is not allowed to come to the hearing?

10. In re Gault (USSC, 1966) held that the constitutional privilege against self-incrimination is applicable to an adjudicatory hearing where commitment to a state institution might follow (an admission by the juvenile can not be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent - if counsel is not present when an admission is obtained, the court must take great care to find that the admission was voluntary).

The rule set forth in Gault is an exclusionary rule of evidence, nothing more. 38-839 was apparently an attempt to codify the Gault rule. However, the statute is ambiguous, overly restrictive, and does not adequately reflect the case law.

Recommendation: 38-839 should be repealed.

11. When a miscreant or delinquent child is committed to the SRS under 826(a)(5), are any further "orders" by the court effective? The SRS presently requests various orders and authorizations after commitment under the above section which would seem to be unnecessary and without statutory authority (unless arguably falling under 809(f)). The internal policies of the SRS would seem to need no legitimization by the juvenile court once custody is given under 826(a)(5).

12. K.S.A. 38-826(a)(6) requires a "space available" check before direct commitment of a juvenile 16 or 17 years of age. The provision, however, is effective only through July 1, 1975. No similar provision has been made in the 1975 session laws. Is there no longer any need by the institutions involved for such checks? If such checks are still necessary for the efficient operation of the institutions, the code section should amend the 1975 limitation.

Attachment XVI
Sept 29, 75

AMERICAN PUBLIC WELFARE ASSOCIATION

1155 Sixteenth Street, N.W., Suite 201
Washington, D.C. 20036

Telephone: (202) 833-9250

Edward T. Weaver, Executive Director

September 11, 1975

Representative David Heinemann
Chairman
Special Committee on Juvenile Matters
The Legislative Research Department
Room 551-N, Statehouse
Topeka, Kansas 66612

Dear Chairman Heinemann:

First of all, I would like to express my appreciation to you and your colleagues for allowing me to testify before your Committee in behalf of the Interstate Compact on the Placement of Children.

As you requested, I have reviewed House Bill No. 2561. No doubt, the draftsman of this bill consulted the language of the Juvenile Compact of which Kansas is already a member. This approach has raised several problems.

First, lines 13-14 on page 1 of H.B. 2561 identify the purpose of the bill as to enact the Interstate Compact on Juveniles. Since the Kansas Legislature enacted the Juvenile Compact some years ago this language should be deleted and in its place inserted the Interstate Compact on the Placement of Children.

Second, line 19 on page 1 and lines 1-2 on page 2 of H.B. 2561 provide for gubernatorial execution of the Compact. While this is the language used in the Juvenile Compact it is not necessary nor desirable as a way of executing the Interstate Compact on the Placement of Children.

Article IX of the Interstate Compact on the Placement of Children provides that it goes into effect when enacted. While this contradiction is of a technical character, it must be resolved in order to have the Compact go into effect as the Kansas Legislature already intends that it should. The problem is that normally an execution of a legal document is by all of the parties. Since the Compact is a contract among states, this would lead one to expect that the execution would be by the Governors of all of the present thirty-three Compact states and by others as they join. None of these states have followed the route of gubernatorial execution rather they have adhered to the language of Article IX of the Compact. Consequently, these states would have nothing to execute with Kansas.

I recognize the constraints on the Committee's time and resources and so I have taken the liberty of rewriting House Bill No. 2561 and am enclosing it for your consideration.

The two sections of the Code which I have taken for the Interstate Compact on the Placement of Children and its supplemental provisions are very well situated with respect to other sections dealing with placement of children. The 1973 supplement to the Kansas Statutes shows them to be available because sections by the same number are shown to have been repealed. Of course, I am not able to ascertain from a local law library here whether the 1975 session has enacted something which occupies these particular section numbers. If so, I am sure that your Legislative Research Department can select other appropriate and available places in your Code.

I would be pleased to meet with you at any time to discuss my suggested revisions or answer any additional questions the Committee may have.

Again, thank you for the opportunity to appear before your Committee.

Sincerely,

Brendan V. Callanan

Brendan Callanan
Project Director

Enclosure

cc: Mr. Charles V. Hamm
General Counsel
Kansas SRS

Attachment II

AN ACT

relating to public welfare; adopting the Interstate Compact on the Placement of Children; amending the Kansas Statutes Annotated, Chapter 75, Article 33 by adding two new sections, 75-3331 and 75-3332.

BE IT ENACTED BY THE LEGISLATURE OF KANSAS:

Section 1. Chapter 75, Article 33 of the Kansas Statutes Annotated is hereby amended by adding thereto a new section 75-3331 to read as follows:

75-3331. Interstate compact on the placement of children. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of

children will be promoted.

ARTICLE II. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similiar control.

(b) "Sending Agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the

receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does

not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a

claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction: and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the

same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 2. Chapter 75, Article 33 of the Kansas Statutes Annotated is hereby amended by adding thereto a new section 75-3332 to read as follows:

75-3332. Interstate compact on the placement of children--supplementary provisions. (a) Financial responsibility for any child placed pursuant to the provisions of the interstate compact

on the placement of children shall be determined in accordance with the provisions of article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of K.S.A. 23-451 to 23-491 and any other applicable laws also may be invoked.

(b) The "appropriate public authorities" as used in article III of the interstate compact on the placement of children shall, with reference to this state, mean the department of social and rehabilitation services and said department shall receive and act with reference to notices required by said article III.

(c) As used in paragraph (a) of article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of social and rehabilitation services.

(d) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(e) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under Chapter 75, Article 33 shall be deemed

to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of article V of the interstate compact on the placement of children.

(f) Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in article V thereof.

(g) As used in article VII of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

Attachment IV
Sept 30, 75

GRANT COUNTY
OFFICE OF
PROBATE, COUNTY & JUVENILE JUDGE
ULYSSES, KANSAS 67880

HERBERT NOYES BOX 338

September 26, 1975

Representative David J. Heinemann
Chairman - Committee on Juvenile Code
Room 545 N. Statehouse
Topeka, Kansas 66612

Dear Representative Heinemann:

Since appearing before your committee in July and submitting some written opinions to our Judges Legislative Committee, I have had several frustrating experiences that I wish to relate to substantiate my position in regard to our relationship with the State Department of Social Rehabilitation Service.

I have a 17 year old boy at Larned Youth Rehabilitation Center who has passed his G.E.D. and was looking forward to receiving Vocational training. He was turned down by Vo-Rehab because he could not receive a "grounds pass" from LYRC. He currently is scheduled to receive training to be a janitor at Larned, far below his abilities. This does not indicate to me the proper use of their (SRS) expartese "in the best interest of the child."

This week, I was advised by our regional SRS office that their new policy was not to pay for indigent drug abusers care and treatment in a private facility if there were openings at State institutions, even though the examining Doctor and Area Mental Health Counselors objected to commitment to Larned. At the same instance, an SRS caseworker told me that drugs were easier to procure in Larned Hospital than on the outside. Such information makes decisions "in the best interest of the patient" very difficult.

A recent request by this court for the assignment of an SRS caseworker for Grant County brought an inquiry asking if Grant County would be interested in a combination probation officer-SRS caseworker funded under GCCA on the 25% 1st year 50% 2nd year 75% 3rd year - full county support 4th year and after basis. The reason given for such inquiry was the need to reduce the number of caseworkers and SRS budget. Our present caseworker is in Grant County two days per week, serving as SRS representative to <u>all</u> of their programs. She has a case load of about 200 cases, seven or eight times the recommended level, for the three or four counties she serves. How could added services and fewer workers be an improvement?

I am attaching two letters recently received.

The June 6th letter from Dr. Harder would indicate a diffenence of basic philosophy between SRS and the judges. In the best interest of the child VS. In the best interest of the budget. It may be possible that the State can not feasibly finance the Juvenile Code as it now stands.

The letter of September 24th from Dr. Haines and Jack Pulliam indicates the shortage of state operated facilities in existance. Also, the advisability of the Juvenile Courts to retain its jurisdiction over the handling of its wards and not vest it blanketly with SRS.

I write this from sheer frustration as I ponder what to do with three youngster.

May I respectfully submit that we should have facilities to match the needs of our Juvenile Code, or change the Juvenile Code to match our facilities and abilities to rehabilitate.

Sincerely,

Hubert Dyer

Grant County Juvenile Judge

KANSAS

BENNETT, Governor

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

State Office Building
TOPEKA, KANSAS 66612
ROBERT C. HARDER, *Secretary*

Division of Social Services | Division of Vocational Rehabilitation | Division of Mental Health and Retardation | Division of Children and Youth

June 6, 1975

The Honorable Herbert Noyes
District Judge, Grant County
Grant County Courthouse
Ulysses, Kansas 67880

Dear Judge Noyes:

It has come to my attention that the meeting I held with one of the judges concerning a possible grant and the state department's interest in trying to straighten out questions related to payment for kids through General Assistance Needy Child and Regular General Assistance has triggered some unhappy thoughts related to Social and Rehabilitation Services.

I want to go on record as officially stating that this department has no intention of pre-empting the powers and authority of the juvenile judges. Our concern has been that of the involvement of Social and Rehabilitation Services in the financial arrangements related to the children and youth being served by the courts. Over the past two years, the department has extended itself in setting up meetings and putting our staff on the road in the interest of having better lines of communication with the juvenile judges throughout the state and in providing better service to Kansas youth. We have made the assumption that the judges as well as Social and Rehabilitation Services staff are vitally interested in providing good services to the youth of our state. We have not developed any kind of list of individuals with whom the department has a personal vendetta. The only issue to which we have been trying to direct our attention is the manner in which the department has been called upon to reimburse for the kids in various kinds of care throughout the state. We are not interested in any kind of personal entanglement with any of the judges in the state. We are interested in trying to resolve some of the age-old problems which have confronted the judges as well as the department. We would like to meet and confer in the interest of resolving some of these problems.

To give an indication of the magnitude of the problem, we ran a sample survey of one month of the children for whom payments were made in 13 counties. We found that in that survey there were 1,261 youths being cared for under Aid to Dependent Children Foster Care. The total cost of their care was $341,768. We found that we had 446 youths being cared for in General Assistance Needy Child at a cost of $135,665 or a per unit cost of $304. In addition, we found that we had 1,715 General Assistance children. The average individual payment for General Assistance was $97. The exact dollar figure is not computed, but if we took the regular per person General Assistance payment of $97 and multiplied that times 1,715, it equals $166,355. If we add together that figure plus the $135,665 from General Assistance Needy Child, we get a total figure of $302,020. Multiply this by 12 and the total expenditure is $624,240. In this instance, the money related to General Assistance is total

state dollars. If the majority of these children could have been placed in the custody of Social and Rehabilitation Services and found eligible for Aid to Dependent Children Foster Care, then the federal government would have participated in payments on a percentage of 55% federal and 45% state. We recognize that there would still be certain children that would continue to be eligible only for General Assistance. Even so, a conservative estimate would indicate that we might make a savings as high as $1.5-2 million in state funds if we were able to fund these children from Aid to Dependent Children Foster Care monies, provided other factors remain stable.

It is with real regret that we are not able to effectively communicate these cost differentials. Through the various cooperative agreements we have arrived at throughout the state, we have given clear indication that we are willing to make reports back concerning the manner in which the department is handling the kids. At any time as you know, the judge is free to have another hearing. We would like very much to get this problem resolved.

It is my understanding that the Special Judges Association has called for the creation of a special committee to study some of these matters. Our department is willing and interested in participating with the special committee if the judges are so inclined in the interest of getting a resolution to these particular problems.

Again, let me say as Secretary I have in no way meant to affront any of the judges within the state. I feel as if I have a particular responsibility, and that is standing accountable for welfare expenditures within our state. In view of the fact that our General Assistance budget will be over-expended by $900,000, it leads us to think that a part of that increase is related to the number of children being funded through General Assistance Needy Child and General Assistance. For that reason, I am concerned because of questions which are directed to me as to the manner in which we are exercising control over the program.

Again, let me state we are interested in cooperation. We want to work with the judges. We will go to any lengths to meet and to confer with you in the interest of resolving some of these dilemmas. Please let us hear from you.

Sincerely yours,

Robert C. Harder

Robert C. Harder
Secretary

RCH:pa

OF KANSAS

ROBERT F. BENNETT, *Governor*

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

State Office Building
TOPEKA, KANSAS 66612
ROBERT C. HARDER, *Secretary*

Division of Social Services | Division of Vocational Rehabilitation | Division of Mental Health and Retardation | Division of Children and Youth

September 24, 1975

Dear Judge:

This letter is an effort to advise you of some of the actions being taken by the Department of Social and Rehabilitation Services to provide additional facilities for the more recalcitrant delinquent youth of the state and to enlist your continued support and cooperation in making the best use of these facilities.

As of July 1, 1975, the capacity of the Osawatomie Youth Rehabilitation Center was increased from 20 beds to 45 beds. This was made possible by the reduction of mental hospital patients at Osawatomie State Hospital. Space formerly used by the hospital and staff from the hospital's personnel allocation were used to add a 25-bed unit to the OYRC. Twenty-three boys have been admitted there since July 1, so the unit is rapidly approaching its new capacity.

There are currently vacancies in the programs at the other four state facilities Topeka, Beloit, Atchison and Larned. Each of them is nearing capacity as the fall increase of commitments continues.

I know you are making efforts to find alternative placements for as many youth as possible. In view of the possiblity that our expanded facilities may again be at capacity, I would like to ask that you redouble your efforts to find alternative placements, especially for those 16 and 17-years old, so we may always be in a position to accept those under sixteen you believe need institutional care.

I will be in touch with you later to bring you up to date on conditions as they develop.

Thank you for your continued cooperation.

Very truly yours,

R. A. HAINES, M. D., Director
Mental Health and Retardation Services

Jack C. Pulliam

Jack C. Pulliam
Coordinator of Children's Services

JCP:eh

Attachment VI
Sept 30, 75

STATE OF KANSAS

Office of the Lieutenant Governor

TOPEKA, KANSAS 66612

Shelby Smith
LIEUTENANT GOVERNOR

STATE CAPITOL BUILDING
(913) 296-2213

September 26, 1975

M E M O R A N D U M

RECEIVED
SEP 29 1975

Mr. Adrian Farver, Director
Governor's Committee on Criminal Administration
535 Kansas Avenue
Topeka, Kansas 66603

Dear Adrian:

Legislative Research has contacted me for an appearance next Tuesday, September 30, before the Interim Committee on Juvenile Matters. It is my understanding that they want to know why we turned down federal funds. I would appreciate it if you would represent me and tell them that I did not like the strings attached, to wit:

1. I could not, in good faith, enter into a contract that could not be fulfilled because of the limited amount of time and federal dollars given to achieve the requirements of the act and without any assurance at the present time that the Legislature will:

   a. Provide legislation to authorize the Governor's Committee on Criminal Administration to mandate other state agencies to cause coordination of human services to youth and their families in order to insure effective delinquency prevention and treatment programs.

   b. Significantly revise the Juvenile Code of the state of Kansas which will also provide a state-wide diversion program for status offenders.

   c. Provide that status offenders will not be detained in jails or detention facilities.

   d. Provide a mandatory reporting system of juvenile data.

2. Also, there were too many unknown factors at this time which include:

   a. The cost to both state and local units of government.

   b. Minimal originating funds ($19,000 plus $200,000) and the uncertainty of future federal funds.

   c. Advisory Committee expenses.

   d. Potential liability of the state of Kansas to the federal government of money granted in the event the state cannot comply with the agreement.

3. You might also point out to them that there were additional personnel requirements to administer the act which include the following:

   a. Advisory Committee consisting of not less than twenty one (21) and not more than thirty three (33) members to be appointed by the Chief Executive of the State.

   b. Four (4) to six (6) additional personnel in the agency of the Governor's Committee on Criminal Administration.

   c. Also, there will be a need for assurance of employment of any displaced personnel employed under any program funded by this Act.

Sincerely,

SHELBY SMITH
Lieutenant Governor

SS:bab

P.S. In all candor, it appears to me, there would have been no meaningful work product to the criminal justice system by entering into this program, at that time, but rather "another plan, another committee, an increased staff and a report for bureaucrats to prepare and audit". Please feel at liberty to share with the Committee my complete feelings on this matter if they are interested.

SS