Approved:_____
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:00 p.m. on March 21, 1994 in Room 313-S of the Capitol.

All members were present except:
Representative Tom Bradley - Excused
Representative Candy Ruff - Excused
Representative Elaine Wells - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Others attending: See attached list

SB 525 - Civil commitment of persons who commit sexually violent offenses, (see attachments 1-15)

Chairman O'Neal explained that the sub-committee approved an amendment that would require a separate building to be segregated from the other mentally ill or developmentally disable population, (see attachment 16).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Substitute SB 608 - Sentencing for persons who commit any felony for a criminal street gang, (see attachments 17-20).

The Chairman explained that this bill would increase the penalty for street gangs. The sub-committee recommended adding language that the courts could take into consideration that the defendant committed a felony violation for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members. Also included is the definition of what a criminal street gang would be comprised of, (see attachment 21).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Mays seconded the motion. The motion carried.

SB 607 - Increasing the penalties for stalking, (see attachment 22).

The Chairman commented that the sub-committee reworked the definition of stalking to read that stalking is an intentional and malicious following or course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose. Also the severity levels were changed and the definition of harassment was stricken because it included the term harass in the definition, (see attachment 23).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

SB 656 - Battery against a youth center employee, (see attachment 24).

Chairman O'Neal explained that the sub-committee recommended that the bill be passed favorably. The Senate had added juvenile detention employees and the sub-committee felt that this was appropriate.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

SB 670 - Crimes and punishment related to arson and aggravated arson, (see attachment 25).

The Chairman commented that the sub-committee recommended that no action be taken on the bill.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Robinett seconded the motion. The motion carried.

SB 671 - Certain crimes relating to explosives, (see attachment 26).

Chairman O'Neal commented that the sub-committees recommendation was that the bill be passed.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Robinett seconded the motion. The motion carried.

SB 629 - Increase in court docket fees for deposit in law enforcement training center fund, (see attachments 27-32).

Chairman O'Neal explained that the sub-committee recommended going back to the original language which would increase the docket fee $4.00, (see attachment 33).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Mays seconded the motion. The motion carried.

SB 742 - Jurisdiction of certain law enforcement officers to execute a valid search warrant.

The Chairman explained that this would extend the arrest powers to search warrant powers in Johnson County. The Senate amendment added Sedgwick County and the sub-committee recommended striking Sedgwick County from the bill, (see attachment 34).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

SB 743 - Allowing county or district attorney to collect administrative handling cost from maker or drawer of bad checks, (see attachment 35).

Chairman O'Neal explained that the sub-committee was concerned that district attorneys offices were being used by merchants as a collection agency. In many cases the district attorneys office would collect the debt and there would be no prosecution, so there would be no docket fee or any money received for their services. The sub-committee proposed that the county or district attorneys office may collect from the payee administrative handling cost if no charges are filed, (see attachment 36).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Goodwin seconded the motion. The motion carried.

SB 794 - Administration of and expenditures from the juvenile detention facilities fund, (see attachments 37-41).

Chairman O'Neal explained that the Senate amendment would take away funds from SRS and move the funds to the attorney generals office. The sub-committee heard testimony from Kansas Development Finance Association which pointed out the difficulty in doing this, in view of the fact that KDFA currently has title to juvenile detention facilities under bond issues in which the lessee is the Department of SRS. There is a non assignment clause in the contract which makes it impossible to make the type of transfer that the Senate proposed. The sub-committee recommended letting the whole committee work the bill. The decision that needs to be made is should part of the fund be left with SRS to service the bonds with the rest of the money going elsewhere.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Scott seconded the motion. The motion carried.

SB 657 - Notification to local law enforcement agencies and school districts of juvenile offenders being released

Chairman O'Neal commented that this bill as originally introduced would have required the county & district attorneys office to notify law enforcement agency and school districts of a release of a juvenile from the detention center. The Senate amendment would require notification to SRS & school district prior to release. The sub-committee recommend striking the Senate amendment, (see attachment 42).

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Carmody seconded the motion. The motion carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on March 21, 1994.

SB 661 - Revocation of driving privileges for persons convicted of crimes and person adjudicated as juvenile offenders

Chairman O'Neal explained that this would allow courts discretion in juvenile cases to have as an additional penalty the revocation of driving privileges. The sub-committee recommended the bill be passed.

Chairman O'Neal made a motion to adopt the sub-committee report. Representative Carmody seconded the motion. The motion carried.

SB 525 - Civil commitment of persons who commit sexually violent offenses

The Chairman explained that this was essentially the Washington State concept. What was missing in the proposed bill was the assurance that those that are civilly committed after a period of incarceration would be kept separate from the other mentally ill population.

Representative Adkins made a motion to report **SB 525** favorably for passage as amended. Representative Robinett seconded the motion.

Representative Garner commented that section 5 does not track with the Washington language and made a substitute motion to strike "based on the petition" on page 4, line 4. Representative Robinette seconded the motion. This would allow the judge to consider all evidence before him rather than the evidence before him in the petition. The motion carried.

Representative Garner stated the bill includes the right to a 6 person jury trial for the determination of if the person is a sexual predator. He made a motion to have the reference to the right to trial by a jury on page 4, line 32-33 be changed to the right to a jury trial provision under Chapter 22 in the criminal code where the make-up of the jury is 12 unless there is a stipulation from both for a jury less than 12. Representative Carmody seconded the motion. The motion carried.

Representative Garner made a motion to insert language in section 7 that the court order would be an appealable order. Representative Macy seconded the motion. The Chairman stated that this is probably an appealable order but making this clear wouldn't present a problem. The motion carried.

Representative Wagnon questioned if this would require a totally separate facility or would they be placed in one of the mental hospitals. Chairman O'Neal commented that this bill proposes a separate facility but in the end it may not necessarily be a separate facility but a restricted wing. It is estimated that there would be 25-30 individuals in the first year. There is currently space in Larned, but it wouldn't be a separate building. There has been no separate building identified at this time. This is a way of dealing with those who are in the system now that DOC are afraid that they will be released on the streets, because they would commit another sexually act if they were released. By having a pre-release hearing to determine if the person ought to be civilly committed, the procedure is civil commitment.

Representative Garner questioned if this would apply to those who are already in the system. Chairman O'Neal replied that it could apply to anyone who is released after the effective date of the bill. Representative Carmody stated that a "reachback" would not be able to recapture those that have already been released on post-release supervision.

Representative Adkins made a motion to report **SB 525** favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.

SB 629 - Increase in court docket fees for deposit in law enforcement training center fund

Representative Pauls made a motion to report **SB 629** favorably for passage as amended. Representative Macy seconded the motion. Representative Heinemann commented that he would like to see .50 cents rounded up to dollar amounts. Representative Goodwin commented that it would cause other programs to compete for the additional .50 cent docket fee. The motion carried.

SB 743 - Allowing county or district attorney to collect administrative handling cost from maker or drawer of bad checks

Representative Mays made a motion to report **SB 743** favorably for passage as amended. Representative Pauls seconded the motion.

Representative Macy questioned if the language "takes any action" means that there hasn't been anything filed. Chairman O'Neal stated that before charges are filed the prosecutor would send a letter stating that the check should be paid or action would be taken.

Representative Carmody understood the bill to say that the county or district attorney could collect the fee before they sent the letter. This seem to say that this would shift the burden over to those they are collecting the bad check for. Chairman O'Neal explained that merchants have successfully used the district attorneys office as a free collection agency, where they collect on a check for the merchant and no charges are filed. The incentive would be that the district attorneys office should only be used when there is prosecution for writing a bad check. This would charge the merchant a fee for having the district attorneys office collect bad checks for them. Representative Garner stated that there are check collecting agencies for the collection of bad checks, but as long as the district attorney is doing it for free, they are going to get used.

Representative Adkins stated that he was against the amendments in the sub-committee report. If the district attorneys office are going to be in this business, they need to do it and not shift the burden to the payee, otherwise they should get out of the business of collecting bad checks. He made a substitute motion to restore the Senate language. Representative Carmody seconded the motion. Chairman O'Neal stated that he opposed the amendment because the district attorney really doesn't have a choice. He can prosecute charges on every check that is turned over, try to get payment on the check before charges have to be filed. District attorneys shouldn't be encouraged to file criminal charges on every check they receive. However, they also shouldn't be used by merchants as a collection agency when the district attorneys office doesn't get any compensation. If the drawer of the check would pay if an action is brought about in civil court, it would have the merchants thinking twice about using a public prosecutor office to do something that they should access through the civil courts. Representative Adkins stated that if this is a problem the job description of the district attorneys office needs to be redefined. Representative Carmody stated that the practice of the Johnson County district attorneys office is that they won't collect on a bad check unless it is in exchange for services. The motion failed.

Representative Mays made a motion to report **SB 743** favorably for passage as amended. Representative Goodwin seconded the motion. The motion carried.

SB 607 - Increasing the penalties for stalking

Representative Everhart made a motion to report **SB 607** favorably for passage as amended. Representative Goodwin seconded the motion. The motion carried.

Substitute SB 608 - Sentencing for persons who commit any felony for a criminal street gang

Representative Carmody made a motion to report **Substitute SB 608** favorably for passage as amended. Representative Robinett seconded the motion.

Representative Macy questioned if this would apply to any age. Chairman O'Neal commented that it would be anyone who is tried as an adult.

Representative Wagnon questioned what the definition of "street gang" was. Chairman O'Neal commented that there is a specific definition in the bill.

The motion carried.

SB 794 - Administration of and expenditures from the juvenile detention facilities fund

Chairman O'Neal explained that this bill was originally introduced to cure a problem where release of juvenile detention facility funds were being held up by SRS. These funds were identified by the advisory commission which recommended how they were to be distributed. SRS did not distribute the money on the theory that the funds were not funds that were expected to be received, therefore the Secretary wanted to hold the funds until the legislature determined if another disbursement should be made other than the advisory commissions recommendation. This bill would resolve that issue in line 33. The Senate decided to take the juvenile detention facility fund away from SRS and put the attorney generals office in charge of the funds, because he serves as a member of the advisory committee. The sub-committee heard testimony from Kansas Development Finance Association which pointed out the difficulty in doing this, in view of the fact that KDFA currently has title to juvenile detention facilities under bond issues in which the lessee is the Department of SRS. There is a non assignment clause in the contract which makes it impossible to make the type of transfer that the Senate suggested.

Chairman O'Neal commented that if the Committee was interested this would be a good bill to amend in **HB 2707** - Creating the Kansas Youth authority; establishing a youth commissioner and a state department of youth to be responsible for juvenile offenders. He stated that the fate of **SB 794** really depends on what the Committee does with the juvenile authority. If the operations are being moved somewhere else, that is probably where the juvenile detention fund should end up, with the exception of making sure the debt is serviced.

Representative Wagnon explained that this would repeal the language on the Juvenile Offender Advisory Commission and create a 5 member Kansas Youth Correctional Authority to design the policies. At the end of the first year they would make a recommendation to the legislature and transfer the juvenile detention center funding and SRS functions dealing with juvenile offenders into a separate agency which would be the Youth Corrections Department and the Kansas Youth Correctional Authority would stay intact and become an advisory committee.

Chairman O'Neal questioned what happens to the funds from the juvenile detention center. Representative Wagnon stated that it would go to the 5 member Kansas Youth Correctional Authority who would have control of the money. They plan for the conversion and development of a juvenile corrections department.

Representative Everhart stated that instead of appointing a new 5 member board the Sentencing Commission could look at the juvenile offenders. This would be a way to keep the cost down. Representative Wagnon commented that some planning should occur this session for moving the juvenile offenders out of SRS and a process should start to look at the juvenile offenders code to see what changes need to be made. She stated that she isn't opposed to having the Sentencing Commission look into this, but there are several places where changes need to be made; SRS, the county level and juvenile detention centers. Chairman O'Neal stated that **SB 21** - Creating a Criminal Justice Coordinating Council, could possibly look at those issues. Representative Wagnon commented that two options are better than one and again suggested that the legislature start the process of getting people together to start the conversion.

Representative Plummer questioned what the effective date would be and what would happen to the 10% of funds that were supposed to be divided between adult corrections and juveniles. The juvenile portion has never been paid over and the statute reads that it shall be distributed to them. Chairman O'Neal commented that this was brought up in sub-committee and would be taken up.

Representative Heinemann questioned what the current appropriated amount that the juvenile detention funds has. Chairman O'Neal commented that the fiscal note shows that the year end balance for '95 Juvenile Detention Fund $2.3 million, Juvenile Detention Capital Improvement Fund $500 thousand. All of this money comes from docket and court fees. There is already a commitment as to how the money in Saline & Reno counties are to be spent and the Committee needs to make sure the it doesn't do anything to interfere.

Chairman O'Neal questioned who would get the Juvenile Detention Fund as of July 1, 1994. Representative Wagnon stated that it was her intent that it go to the Kansas Youth Correctional Authority.

Representative Carmody commented that he was concerned that if the Committee amended in **HB 2707** into **SB 794** it would kill both of them.

Representative Garner commented that something needed to be done to create a youth authority or it would be dead for this session. **SB 794** has already passed one House and is very much alive. However, if the Committee desires to deal with the issue of a youth authority this the opportunity.

Representative Wagnon made a motion to insert the provisions of **HB 2707** into **SB 794** and strike the transfer of Juvenile Detention Facility Fund to the Attorney General's office in **SB 794** and have it transferred to the Kansas Youth Correctional Authority upon July 1, 1994. Representative Mays seconded the motion. Representative Pauls questioned if the funds for Saline & Reno County juvenile detention centers commitments would be carried out. Kay Farley, Office of Judicial Administration, commented that $500 thousand for Reno County commitments have already been approved and the money for Saline County funds is currently under consideration, so the funding for these commitments would still happen. The motion carried.

Chairman O'Neal stated that the debt service bonds need to be paid off by SRS. Jill Wolters stated that an amendment would need to be made that would allow funding to go to SRS in order to pay off the debt service bonds, and the rest of the money could go to the Kansas Youth Correctional Authority.

Representative Wagnon made a motion to adopt the proposed amendment by staff. Representative Everhart seconded the motion. The motion carried.

Representative Plummer questioned who approves the bonds, and would this be limited to just this one bond issue. Kay Farley replied the Secretary of SRS approves the bonds.

Chairman O'Neal made a motion to limit the scope of the amendment to the existing lease agreement and not include future bonds. Representative Wagnon seconded the motion. The motion carried.

Chairman O'Neal commented that some of the money going to the juvenile funds comes from gaming revenues. The first part of **SB 794** contains the current law that an amount equal to 10% of gaming revenues shall be transferred to the following: Juvenile Detention Facility Fund and anything leftover would go to the Correctional Facility Building Fund. Since this was created all the money has gone to the Correctional Facility Building Fund. As a matter of law, some of the money should have gone to the Juvenile Detention Facility Fund. The Chairman's proposal was that the Committee increase the percentage take from gaming revenues funds for correctional facilities. The 90% EDIF funds has been used for whatever we define as economic development, or "the issue of the day". In 1994, the issue of the day is crime and if the State enacts new legislation to combat crime it needs to be prepared to pay for them. The proposal would be that it be changed from 10% to 15% and have 5% credited to the Juvenile Detention Facility Fund. In fiscal year 1994 the estimate at 10% was $5 million and for fiscal year 1995 $4.3 million.

Chairman O'Neal made a motion to increase the 10% currently taken from gaming funds to 15% and have 5% credited to the Juvenile Detention Facility Fund. Representative Everhart seconded the motion.

Representative Heinemann stated that this has been tried before. The legislature has allocated gaming revenues in Kansas for economic development. The question is how does one tap the general fund. Once the revenues from gaming has reached $50 million the rest of the revenues goes into the general fund. It might be easier to leave it at 10% and state that any money in excess of $50 million that goes in to the general fund would get an extra 5%.

Chairman O'Neal stated that the gaming revenues are capped at $50 million and questioned how much over the $50 million has the State collected that went into the general fund. Jerry Donaldson, Legislative Research, stated that no money has been collected over the $50 million mark.

With permission of the second, Chairman O'Neal requested that his motion be divided. On the motion to increase the 10% currently be taking from gaming revenues to 15%. The motion carried. Representative Everhart commented that she supported both amendments because the funds could be used for operations and if there was any excess the funds could be used towards other juvenile programs. On the motion that of the 15% collected 5% of the funds collected shall go toward Juvenile Detention Facility Funds and 10% go to Correctional Institution Building Fund, the motion carried.

Representative Wagnon made a motion to report **SB 794** favorably for passage as amended. Representative Mays seconded the motion. The motion carried.

SB 500 - Creating the crime of criminal possession of a firearm by a juvenile

Representative Garner made a motion to strike the language in **SB 500** that deals with the taking of the drivers licenses as a penalty. Representative Everhart seconded the motion. The motion carried.

Representative Garner made a motion to insert the provisions of **SB 661** into **SB 500**. Representative Everhart seconded the motion. The motion carried.

Representative Adkins made the motion to identify and accept the all exclusions from liability in the bill but require the defendant to raise those as an affirmative defense. Representative Robinett seconded the motion. The motion carried.

Representative Everhart made a motion to include "in the presence of parent or legal guardian ", on page 4. Representative Wagnon seconded the motion. Representative Everhart stated that this would clarify that the only way this exemption would be available is if an adult is present. Representative Carmody questioned if this means that the parents would have to take their guns with them every time they leave the house. Representative Everhart stated that the parents should have the guns locked away from the children. The motion carried.

Representative Wagnon made a motion to report **SB 500** favorably for passage as amended. Representative Everhart seconded the motion. The motion carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on March 21, 1994.

SB 656 - Battery against a youth center employee

Representative Everhart made a motion to report **SB 656** favorably for passage. Representative Heinemann seconded the motion. The motion carried.

SB 657 - Notification to local law enforcement agencies and school districts of juvenile offenders being released

Representative Everhart stated that in adult court an order is effective upon its issuance. In juvenile court an order is not effective until it is journal entry. Representative Everhart made a motion to have orders effective upon pronouncements. Representative Macy seconded the motion. The motion carried.

Representative Robinett made a motion to amend in the provisions of **HB 2925** into **SB 657.** Representative Macy seconded the motion. Representative Robinett explained that this bill would add a $1.50 in docket fees to fund a pilot mentor program for juveniles in Johnson County. SRS would be developing this mentor program. The motion carried.

Chairman O'Neal made a motion to amend in the provisions of **SB 501** into **SB 657** and incorporate Judge Tom Graber's suggested amendments (see attachment 43). Representative Wagnon seconded the motion.

Representative Everhart stated she was concerned with the language in section (d) which states that "Nothing in this section shall be construed to create a right for any juvenile to have such juvenile's parent or guardian present at any proceeding at which the juvenile is present" and questioned what this language is needed when section (e) states the same thing. Chairman O'Neal stated that purpose of section (d) was that a juvenile not be allowed to raise the absence of a parent or guardian to put off the disposition hearing. The judges want this to be a tool for the judges and not a defense for the juvenile. Representative Everhart stated that the practice in Shawnee County is that if the parent isn't there the judge will delay the hearings for a week or more. Section (e) states that they can proceed, and is concerned that section (d) means that a parent isn't ever required to appear. With permission of the second, Chairman O'Neal amended the motion to include Judge Graber's suggested amendments except for section (d). The motion carried.

Representative Wagnon made a motion to amend **SB 501** as amended into **SB 657**. Representative Everhart seconded the motion. The motion carried.

Representative Everhart made a motion to amend **SB 502** into **SB 657**. Representative Wagnon seconded the motion. Representative Garner asked if all court records for those age 14 and older would be opened. Chairman O'Neal stated this was correct.

Representative Carmody made a motion to make **SB 502** effective upon the statute book. Representative Adkins seconded the motion. The motion carried.

Representative Wagnon made a motion to amend in **SB 502** as amended into **SB 657**. Representative Everhart seconded the motion. The motion carried.

Representative Everhart made a motion to report **SB 657** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

The Committee meeting adjourned at 6:30. The next meeting is scheduled for March 22, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE March 21, 1994

NAME	ADDRESS	ORGANIZATION
Kyle Smith	Topeka	KBI/AG.
Helen Stephens	✓	KPOA
EDWARD C. ROWE	EMPORIA	LEAGUE OF WOMEN VOTERS/KS
Elaine Mann	Overland Park	LWVK
Marty Vainer	Manhattan	KS Ag Alliance
BRT Brown	TOPEKA	KS. Equip. Dealers
Diane Gruner	Topeka	KS Co-op Council
PHILIP HURLEY	TOPEKA	PATRICK J. HURLEY & CO.
Chuck Stone	"	KBA
Don Schnacker	"	SRS/mH+RS
Ben Coates	"	KPA
Martha Crow	Leavenworth	KDHE
Ray Farley	Topeka	OJA
Paul Shelby	"	OJA
Mike Beam	Topeka	Ks. Youth Auth.
Jim Clark	"	KCDAA
Gerry Ray	Overland Park	Overland Park
Anne Smith	Topeka	Ks. Assoc of Counties

STATE OF KANSAS

BOB VANCRUM
SENATOR, ELEVENTH DISTRICT
OVERLAND PARK, LEAWOOD,
STANLEY, STILWELL, IN
JOHNSON COUNTY
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609

TOPEKA

SENATE CHAMBER
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(913) 296-7361

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES
MEMBER: WAYS AND MEANS
JUDICIARY
MEMBER: COMMERCE, LABOR AND REGULATIONS
COMMITTEE, NATIONAL CONFERENCE ON
STATE LEGISLATURES
MEMBER: ENVIRONMENTAL TASK FORCE,
COUNCIL ON STATE GOVERNMENTS

TESTIMONY FROM SENATOR BOB VANCRUM TO THE HOUSE JUDICIARY COMMITTEE

RE: SB 525

The Sexual Predator Act (SB 525) serves to protect our communities from those offenders who pose the greatest danger to society by providing for treatment and commitment of sexually violent predators until they are no longer a danger. Based on a 1990 Washington law which authorizes the civil commitment of sexually violent predators to the custody of the Department of Social and Rehabilitative Services for control, care and treatment. The bill requires a civil trial in which the court or jury finds beyond a reasonable doubt that a person is a sexually violent predator based on a psychological profile showing a mental abnormality or personality disorder making him likely to engage in predatory acts of sexual violence. Furthermore there is an opportunity for regular review of the issue of whether the offender remains a danger to society.

The bill is narrowly tailored to focus on the small number of habitual sex offenders who, because of their psychological makeup, pose an immediate danger to the public as soon as they are released from prison. According to the *Seattle Times*, for example, **about 25 commitment petitions** have been filed since Washington state's law was passed in 1990. Of those, **12 people** were committed and several others are pending.

Although the original fiscal note for SB 525 places the cost of implementing the Act in Kansas at more than $8.6 million, it should be noted that this figure assumes a commitment rate of 90% of the maximum number of individuals meeting the criteria for sexually violent offenders.

House Judiciary
Attachment 1
3-21-94

A more realistic figure is $898,000, which assumes a commitment rate of 10% of the persons who might be committed under the bill or 33 people. Please **carefully** review the attached material from George Vega of the SRS showing ranges of cost with different assumptions as to numbers committed. Moreover, the planned changes under mental health reform likely will provide the state with space to house those found to be sexually violent predators, further reducing the cost of implementation.

The real life tragedies of families like the Schmidts are reason enough to pass this bill, to ensure that these few sex predators are provided treatment and not released back into society until they no longer pose a danger to the community. Moreover, the bill accomplishes this through a scheme that has been held to the constitutional:

The bill meets the requirements for civil commitment set forth by the U. S. Supreme Court in Foucha v. Louisiana in that it:

1) is narrowly tailored to serve a compelling state interest
2) requires proof the detainee suffers from a mental illness or severe personality disorder
3) places the burden of proof as to dangerousness on the state.

The bill is consistent with Due Process in serving a compelling state interest and in placing upon the state the burden of proving the detainee is both dangerous and suffering from a severe personality disorder or mental illness.

Finally, like the statute upheld by the Washington Supreme Court, the bill does not serve any punitive goal. It is civil in nature and thus does not offend the double Jeopardy clause, which applies to criminal matters.

STATE OF KANSAS

BOB VANCRUM
SENATOR, ELEVENTH DISTRICT
OVERLAND PARK, LEAWOOD,
STANLEY, STILWELL, IN
JOHNSON COUNTY
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609

TOPEKA

SENATE CHAMBER
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(913) 296-7361

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES
MEMBER: WAYS AND MEANS
JUDICIARY
MEMBER: COMMERCE, LABOR AND REGULATIONS
COMMITTEE, NATIONAL CONFERENCE ON STATE LEGISLATURES
MEMBER: ENVIRONMENTAL TASK FORCE, COUNCIL ON STATE GOVERNMENTS

IN RESPONSE TO THE TESTIMONY FROM THE ASSOCIATION OF COMMUNITY MENTAL HEALTH CENTERS OF KANSAS:

1. SB 525 does not decriminalize sexual offenses, as the Association claims. It provides for civil commitment of sexually violent predators who, under the statute, already are serving criminal sentences for their acts.

The Association rightly says that civil commitment should be used only to commit individuals determined to be dangerous to themselves or others because of their mental illness. The state of Washington, for example, has sought to classify only 3% of its 1500 sex offenders as sexually violent predators. There seems little doubt that this narrow class of the most dangerous sexual offenders presents a danger to others once they have served their time. This being the case, civil commitment and treatment of these individuals is altogether appropriate.

2. The Association's safety concerns are legitimate and protection of those currently in state mental hospitals will be addressed, with the cooperation of SRS, if the bill becomes law.

3. The bill seeks to place no stigma on those with mental illness. Rather, its goal is the treatment of sexually violent predators and the protection of the community. Those found to be sexually violent predators are, by definition, individuals with mental abnormalities or personality disorders and as such, need treatment for mental illness. Indeed, evidence shows that the prognosis for rehabilitating sexually violent offenders in a prison setting is poor.

4. As the association recognized, the treatment of sexually violent offenders will cost money. But SB 525 is not an attempt to "syphon" resources from SRS, nor is it an attempt to use the mental health system as a "dumping ground", for sexually violent predators.

As the Washington state experience shows, this bill targets a very small group of only the most violent offenders. Washington has filed cases under its law in only 28 cases in more than 3 years.

5. Finally, the association claims the bill does not completely solve the problems of treatment and sentencing of sexual offenders. Admittedly, SB 525 is no cure-all. It is but one step - but an important one nonetheless - in a larger effort. The state has neither the financial resources nor the facilities to impose criminal sentences of life imprisonment on sexual offenders, as the association suggests. Practical reasons aside, criminal life sentences present constitutional questions that no doubt would result in years of litigation and more tragedies for families like the Schmidts. The practical reality is that sex offenders eventually return to the community. This bill, which is civil and not criminal in nature, aims to protect the community from the most dangerous sexually violent predators.

House Judiciary
Attachment 2
3-21-94

JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

March 1, 1994

The Honorable Robert Vancrum
Statehouse--Room 449-N
Topeka, KS 66612

Dear Senator Ranson:

Senate Bill 525 establishes civil commitment procedures for the long-term care and treatment for persons determined to be sexually violent predators.

Section 1 of SB 525 suggests legislative intent to very narrowly apply these procedures to only those sexually violent offenders deemed to be the most dangerous. This section also states the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons.

Given these assumptions, we should anticipate an initial need for a secure facility with the capacity of roughly one hospital ward (20-30 beds) if SB 525 were enacted. However, since the prognosis for cure is poor and treatment needs are very long term, future planning should accommodate the probability of increasing demand for secure beds. Although estimates are difficult to establish at this time, it is not unrealistic to anticipate the need for an additional secure ward every two to three years.

Finally, since the target group of SB 525 is extremely dangerous and the treatment modalities very different, the secure facility where sexually violent predators are committed needs to be carefully designed and managed. From a treatment perspective, the more self-contained or autonomous the residential sex-offender program setting, the greater the benefits to both staff and residents, and the more likely it is the program goals will be met. Sexually violent predators should not be co-mingled with the psychiatric patients in our State Hospitals. SRS also maintains the Department of Corrections is better able to manage a secure facility of this type with MHRS providing treatment services. The secure nature of this facility is qualitatively different than the typical management structure and expertise of the State psychiatric hospitals.

Sincerely,

Donna L. Whiteman
Secretary

DLW:GDV:RP:MH:bb

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

2-2

JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

January 28, 1994

The Honorable Robert Vancrum
The State Senate
State Capitol Building, Rm. 449-N
Topeka, Kansas 66612

Dear Senator Vancrum:

Senate Bill 525 proposes to provide a system of civil commitment to a facility operated by SRS for persons completing a prison sentence for specified violent, sexual offenses. Determining annual costs for a new program is difficult without a full understanding of the specific goals of the proposed legislation.

We contacted the Department of Corrections and determined there were 331 individuals released during FY 1993 who met the criteria stated in Section 2 of this bill. We are not able to make an accurate estimate on how many of these individuals would be committed to SRS custody. The projected annual cost for each resident of the State Security Hospital for FY 1995 is $57,966. The first year costs could range from (assuming an average stay of 6 months for new admissions) $898,473 for 10% of the released population to $9,593,373 for 100%.

Currently, the State Security Hospital at Larned, Ks. has approximately 30 available beds. The first year of Mental Health Reform downsizing closed 30 adult beds, which allowed us to correct overcrowding on the Security Behavior Ward, but created no new available beds. The final two years of reform could make from 40 to 60 beds available, assuming appropriate remodeling. Should the expected bed need created by SB 525 exceed 70 to 90 beds a new facility would be required. The Attachment provides construction estimates for various sized secure facilities. These estimates were based upon the costs of construction of the Correctional Mental Health Facility in Larned, Ks.

Please do not hesitate to contact George D. Vega at 296-3773 if you need any additional information.

Sincerely,

Donna L. Whiteman
Secretary

DLW:DAJ:hb

cc: Senators Bogina, Bond, Burke, Corbin, Emert, Feleciano, Frahm, Hardenburger, Harris, Kerr, Langworthy, Lawrence, Martin, Morris, Oleen, Papay, Parkinson, Ramirez, Ranson, Reynolds, Rock, Salisbury, Sallee, Steffes, Tiahrt and Vidricksen

SENATE BILL 525 CARE AND TREATMENT

10% ANNUAL COMMITMENT RATE

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
ANNUAL COST	57,966	59,705	61,496	63,341	65,241	67,198
CENSUS:						
BEGINNING	0	33	63	90	114	136
ADMISSIONS	33	33	33	33	33	33
DISCHARGES	0	3	6	9	11	13
ENDING	33	63	90	114	136	156
TOTAL ANNUAL COST	898,473	2,865,839	4,704,454	6,460,783	8,155,155	9,810,978

100% ANNUAL COMMITMENT RATE

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
ANNUAL COST	57,966	59,705	61,496	63,341	65,241	67,198
CENSUS:						
BEGINNING	0	331	629	897	1,138	1,355
ADMISSIONS	331	331	331	331	331	331
DISCHARGES	0	33	63	90	114	136
ENDING	331	629	897	1,138	1,355	1,551
TOTAL ANNUAL COST	9,593,373	28,655,405	46,918,779	64,459,584	81,348,886	97,653,114

STATE OF KANSAS

GARY HAULMARK
REPRESENTATIVE, 30TH DISTRICT
JOHNSON COUNTY
8709 GALLERY
LENEXA, KANSAS 66215
(913) 894-2035

ROOM 181-W, CAPITOL BLDG.
TOPEKA, KANSAS 66612-1504
(913) 296-7636

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIR: ECONOMIC DEVELOPMENT
MEMBER: TRANSPORTATION
RULES & JOURNAL
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

Testimony in Support of S.B. 525

Thank you Mr. Chairman and members of the committee for the opportunity to testify today in favor of S.B. 525, otherwise known as the Sexual Predator Act.

As you may know, this bill was one of five pieces of legislation designed this past fall by an Ad Hoc Sexual Offender Task Force in Johnson County. The task force was composed of legislators, law enforcement officials, parole board members, probation officers, concerned citizens and of course, Gene and Peggy Schmidt. This legislation was based on currrent law in the state of Washington. It seems to be serving it's purpose there and has been found constitutional.

Lines 25 to 29 get to the heart of the matter; sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The Sexual Predator Act would go after anyone convicted of, or charged with a sexually violent crime and who suffers from a mental abnormality or personality disorder. Our task force saw statistic after statistic which indicated these people will re-offend 50% to 90% of the time if allowed the opportunity.

House Judiciary
Attachment 3
3-21-94

Very simply, the bill would allow the prosecuting attorney to file a petition before the release of the inmate, alleging that this person is a "sexually violent predator. Upon filing of the petition the judge would determine if probable cause exists and an evaluation would be conducted by a qualified professional. Then within 45 days, the court would conduct a trial to determine if the person was a sexual predator. If the court determines that the person is a predator, they would be committed to the custody of SRS for control, care and treatment.

Mr. Chairman, it is time for us to step up to the plate and do something about an obviously serious problem. Lee Iacocca said, "Lead, follow or get the hell out of the way". Well, we can not just get out of the way and I do not think we want to be followers. Let's be leaders and begin to deal with a problem that will not be swept under the rug.

I'll be glad to stand for any questions.

STATE OF KANSAS

JAMES E. LOWTHER
REPRESENTATIVE, 60TH DISTRICT
LYON COUNTY
1549 BERKELEY ROAD
EMPORIA, KANSAS 66801

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: LEGISLATIVE POST AUDIT COMMITTEE
SUBCOMMITTEE CHAIRMAN: APPROPRIATIONS
MEMBER: EDUCATION
TAXATION

March 14, 1994

To: Members of House Judiciary Committee

From: James E. Lowther

Subject: SB 525 by Senator VanCrum and all other 26 Republican Senators:
"Civil commitment of persons who commit sexually violent offenses"

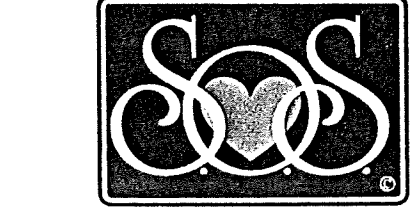
The Sex Predator bill passes the Senate 40 to 0 and the hearing is set for today (3/14) in the House Committee. After a visit with Dr. Mani Lee, Superintended at Larned State Hospital, I became concerned that the bill might pass in its present form.

Dr. Lee pointed out some problems with the bill that he is very concerned about over staff training and materials and equipment. Currently, there is no Larned State Hospital staff with the expertise to be involved in treatment activities of sexually violent predators. New staff hired for this purpose need to be given special training in facilities outside of Kansas. Also, he states that new equipment and treatment materials need to be purchased. There is no provision in the bill for all this.

Dr. Lee, working with Dr. Stuart Fager, Chief Psychologist at Topeka State Hospital, estimates the minimum number of staff recommended is 41 FTE at an estimated cost of $1.4 million for a program of 25 beds. Having just worked on the budget for the hospital, there is no way these costs can be absorbed. (In fact, under the House Appropriations, the hospital is slated to close two wards and $555,000 was cut from the budget).

There is concern,also, over the fact that in order for the treatment of these offenders to be carried out successfully, the program must have control over whoever is admitted. Dr. Lee and Dr. Fager say that SB 525 does not allow for control over who is admitted. These were some of the main problems with the bill that were pointed out to me. I hope you will try to address them in committee.

House Judiciary
Attachment 4
3-21-94



3/14/94
Kansas House Judiciary Committee
RE: Senate Bill 525
The Stephanie Schmidt Sexual Predator Act

Mr. Chairmain and members of the committee:

Good afternoon, I am Gene Schmidt, father of Stephanie Schmidt. Those are words that continue to bring pride to my heart and tears to my eyes. Not because of what she accomplished in her life, but because of what has been denied by her death.

Because of my daughter's death, I along with many others worked on a task force to develop proposed changes in our laws. Changes that would put brakes on the runaway crime of repeat sex offenders. We have proposed 5 very good bills. And, we have turned the process over to very capable and honorable elected officials.

I felt very comfortable with the process. I knew that it would take some time. I knew it would have some opposition. But, I knew my government would not let me down again. Not this time.

But then, I pick up the newspaper and read how some representatives feel we should really take it slow. We shouldn't move to fast. Others have commented that my wife and I are too emotional about this subject, that we are exploitive and reactionary. Others have gone as far as saying our task force was a vigilante group.

Let me assure everyone of a few things: one, I am emotional about this subject, yet I have used every ounce of courage and self control to hold back my tears and my anger. Emotional, yes; illogical, no! As for being exploitive and reactionary, there is no personal advantage in this campaign. Nothing can change the past, we are only trying to save the future for others like Stephanie. How can the desire to do what is right for others be reactionary? Finally, we strongly propose vigilance, not vigilantism.

But then I turn on television and hear how a senator feels about all the proposed crime bills. Some have said these bills would get passed to please the people, but the bills would have no effect. Others say we need more education not incarceration. Yes, we need improved education for sure! But we must close this revolving door of justice before we can offer early preventive methods. Let us put out the fire before we start to rebuild the barn.

In addition to changes in our laws we must change attitudes. We have to change attitudes toward rape, toward criminals, and toward our broken justice system. We have to remove this criminal cancer from our society and we must do it swiftly, boldly,

GENE & PEGGY SCHMIDT • P.O. BOX 7829 •

House Judiciary
Attachment 5
3-21-94

and with the sincere desire to save our society. Even with tougher laws in place, we feel that public safety and awareness have to be paramount to any sexual predators release.

Keep in mind, these are not accidental criminals. Pediphilies and rapist are not criminals of mistake. These people want to hurt women and children. For us to continue to turn them loose on the unsuspecting communities and employers is an injustice to everything our country believes in.

The bills we have proposed are good bills. And, they have built in safety devices. The sexual predator acts will keep the repeat sex offenders in--maybe! The rest of the elements: registration, public and employer notification are the safety nets. Some of these predators will slip through, because we keep turning our most violent criminals loose on the public. The same criminals who hide behind our justice system and abuse the judicial process.

My daughter received the death penalty by one of these "released" criminals. She had done no wrong; she had not violated any law; she just accepted a ride home with a friend– a friend who by the choice of my government was protected by right of privacy and from revealing he was a rapist. He did not have to register; his employer did not have to know about his past; and he did not worry about lying on his application. Worst of all, he should never have been released.

I have been told that the wheels of justice move slowly, but I never understood why. It's because citizens like myself have to drag these same wheels with governmental brakes in place. How much longer are we going to wait? How many more rapists and pediphiles are going to be released before you act on this bill? How many more innocent lives will be shattered while we debate?

Our task force met numerous times and researched the proposal with great detail. Our proposal was not only based on a tried and tested law from another state, but also on the availability of space in institutions like Larnard, Kansas: a mental institution that was about to close down a wing for the criminally insane. We do have space: space that would not require additional funding, nor would it require co-mingling of patients with other mental disorders.

In preparing this bill, we constantly measured its effectiveness by one burning question: Who could possibly oppose this bill? In the end, we found our answer: No right thinking person could oppose this bill. We can not continue to experiment on the public. Now is the time for Kansas to show the world its true leadership abilities. Pass Senate Bill 525.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony Before House Judiciary
Senate Bill 525
By Robert T. Stephan, Attorney General
March 14, 1994

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to rise in support of Senate Bill No. 525.

From your therapeutic perch as legislators, you have an opportunity to pass what might be the most significant preventive criminal justice legislation to be presented in this 1994 Session of the Kansas Legislature. Most new laws against criminal conduct tend to provide punishment after the victimization has occurred. Senate Bill 525 will act prospectively and be preventative of criminal conduct and not just punitive. You have a rare opportunity to pass a law that will keep dangerous sex offenders confined past their scheduled prison sentence. As I am convinced none of them should ever be released, I believe you, as legislators, have an obligation to enact laws that will protect our citizens through incapacitation of dangerous offenders.

Under the provisions of the sentencing and parole system in effect prior to July 1, 1993, a violent sex offender could serve the full sentence and be released without any relevant safeguards for the public. In the same manner under the sentencing guidelines, a violent sex offender will be released at the end of the sentence imposed. With either system, there has been no adequate legal provision to continue incarceration of violent sexual predators past the period of mandatory incarceration. Senate Bill 525 fills the void and provides for the continued incapacitation of sex offenders through an appropriate constitutional incarceration of persons who commit sexually violent offenses and continue to be a sexually violent predator at the expiration of their period of imprisonment.

If there was ever a law which should be passed unanimously by the Legislature, this is the one.

House Judiciary Subcommittee
March 14, 1994
Re: SB 525

Chairman O'Neal and other Committee Members;

On behalf of the Kansas Coalition Against Sexual and Domestic Violence (KCSDV), and Safehouse, which provides services to sexual assault victims in Southeast Kansas, I want to thank you for considering this bill. Both KCSDV and Safehouse urge you to give Kansans necessary protection from sexual predators. I would like to remind you of several things I hope you consider:

1) When considering the cost of enactment, the cost of taking no action must also be reviewed. The cost of these preventable crimes to the victim and family members is great, often resulting in irreparable damage, long-term psychiatric hospitalizations, or loss of life. Additionally, this type of trauma can be devastating to whole communities. The shock waves from the news of Stephanie Schmidt's trauma and death were devastating to many Southeast Kansans. Suddenly, many rape victims who had done fine for many years were back in crisis; flashbacks, nightmares, and other symptoms emerged, causing them to miss work and become dysfunctional in many ways. Our hotline was "hotter" than it has ever been with this type of call. Furthermore, even those who had never been victimized were traumatized. Suddenly, no one felt safe. I repeatedly was called by members of the community who would say they could hardly work without bursting into tears, fearing for their own daughter's safety, terrified that it would happen to a loved one of theirs. The loss of productivity, damage and cost of repair to the victim and family members, and to the whole community must be considered.

2) This bill is essentially not new. A similar bill was introduced by Senator Dave Kerr and worked by the Senate Judiciary Committee a few years ago, under the direction of Wint Winter. I can't help but think that all of us might very well have been spared the senseless Stephanie Schmidt tragedy, had that bill been passed.

3) This bill is very similar to a Washington State law, which has withstood judicial challenges to its constitutionality.

As you work this bill, we urge you consider its benefits to potential victims, family members, and communities. We believe there is an ethical consideration to protect society from this type of known predator. Thank you for your consideration of our concerns.

Dorthy Miller, Executive Director,
Safehouse, Inc.

House Judiciary
Attachment 7
3-21-94

KANSAS ALLIANCE FOR THE MENTALLY ILL

112 S.W. 6th, Ste. 305 • P.O. Box 675
Topeka, Kansas 66601
913-233-0755

Testimony on SB525
March 14, 1994

My name is Howard Snyder, and I live in Prairie Village. I am speaking today on behalf of the Kansas Alliance for the Mentally Ill, a state wide organization of families and friends of Kansans who suffer from mental illness.

It should be stated up front we strongly support the "why" behind HB 525. It addresses a problem that must be solved. But we are in opposition, yes even in shock, at the "how". On page 4, line 27, it states that these very dangerous people are to be turned over to the custody of the secretary of SRS to be held in a secure facility. There is no definition of a "secure facility", so it is conceivable that a secure faciliy could be any one of the state psychiatric hospitals. This means that these people could be mixed in with our very vunerable mentally ill family members. This is like putting the fox in the hen house.

I have a 34 year old son who suffers from Schizophrenia, which is a no-fault nonecureable brain disease. From time to time, for the rest of his life he may require hospitalization as his symptoms recur. As a poor person with a pre-existing lifetime disease, he is uninsurable in the private system, therefore, he will only have access to the state hospitals. I do not want (nor do you) my son raped by a dangerous sexual predator who has been placed in a state hospital because of SB525.

We already have in front of us the tragedy of the young staff member at Topeka State who was murdered by a dangerous person who had been placed in the general hospital population after the closing of the Awle unit two years ago. We in Kansas AMI stated publically it was not right to expose the ill people in Topeka State to those dangerous persons. We were told that everything would be alright, and now we all have to live with the consequences. Have you forgotten so soon? The bill should be revised to require that sex offenders be held in a facility away from all state hospitals, preferably by the Department of Corrections which has the facilities and the expertise for holding long term high security inmates.

Another major concern of the families and friends of those Kansans who suffer from mental illness is financial. What is the cost? Where is the fiscal note? We understand that the cost has been estimated at $8 million for the first year, but we have seen nothing in writing.

We understand that the experience in other states has been that only a few sex offenders respond to treatment (the treatment technology in this area is primitive), and that those only responded after very long term very expensive treatment. Page 7, line 3 states that the secretary of SRS is responsibile for <u>all</u> cost of evaluation and treatment of offenders in custody. Where does the money come from for this new responsibility?

Unless new funds are made available, the new responsibility can only be paid for from existing SRS or DOC funds. If paid from the SRS budget, then it will be paid for by a few- those whose SRS services are cut. If the general population is pushing SB525 then that's who should pay for it. Any dilution of services to the mentally ill to pay for sex offenders is the equivalent of a selective tax on disabled Kansans who are already poor. What has my disabled son done to be saddled with the cost of providing care to a sexual predator?

In conclusion, consider this. The way SB525 is written, my son is put at risk of being the victim of a sexual predator while he is hospitalized, and having to pay for the predator to be there to prey on him.

Howard W. Snyder
Affiliated with the National Alliance for the Mentally Ill

Howard W. Snyder

House Judiciary
Attachment 8
3-21-94

The Public Policy Council

of The Mental Health Associations in Kansas

1333 South 27th Street, Kansas City, Kansas 66106-2124
(913) 722-1115 *FAX (913) 362-8250*

TO: Members of the KS House Judiciary Subcommittee #1

FROM: Betty K. Meyers, Legislative Liaision
Public Policy Council, Mental Health Associations in Kansas

RE: Senate Bill 525 - Sex Predators

DATE: March 14, 1994

I am here today to register the opposition of the Public Policy Council of the Mental Health Associations in Kansas to Senate Bill 525.

We believe that over the long term the placement of sex predators in the custody of SRS will mean a shift in resources away from the treatment of the mentally ill to a group for whom successful treatment strategies do not currently exist. A shift in state dollars to a population for whom treatment does not currently exist away from a population for whom treatment has been shown to be effective makes no sense to our organization.

We also believe that this bill will only serve to endanger the lives of the persistently and severely mentally ill population and place this very vulnerable at further high risk for being taken advantage of as well as physical and psychological abuse.

Until such time as effective treatment strategies become known and are shown to have positive outcomes, we believe that sexual predators should be in the custody of the Department of Corrections. To do otherwise will ultimately mean that this population will most likely end up in mental health centers where there is no capability to handle them, or state hospitals where, until the introduction of this piece of legislation, there has been an effort to close wards and reduce beds (passing these savings along to the local level for the development of services for the mentally ill). We ask you to report this bill adversely.

House Judiciary
Attachment 9
3-21-94

TO REPRESENTATIVE MIKE O'NEAL AND COMMITTEE MEMBERS

TESTIMONY OF JIM BLAUFUSS FOR SENATE BILL 525 "THE SEXUAL PREDATOR ACT"

The most effective way to protect women and children from sex offenders is to send them to prison for the rest of their life. At this time a life sentence without parole is not possible.

This Sexual Predator Bill is a reasonable solution that can be used to stop rapist and pedophiles from destroying the lives of women and children. I do not believe anyone is willing to sacrifice a loved one in the hope that a sex offender should have another chance to start a new life.

These are sex felons who have already destroyed the lives of their victims. Sex offenders are a unique group of criminals who prey on women and children. There is no known treatment that will change the behavior of these violent felons.

Pedophiles and rapists can only be stopped by the State of Kansas. These people can not be stopped by their victims, they can not be stopped by their own families and they can not stop themselves

Most sexual assaults have no witnesses and there is little or no evidence that can be used to get a conviction. How does a person prove rape? Some people tell women to not fight. Submitting to the attack might help their chances of living. In a trial, the jury wants to see photos of a badly bruised body or a dead body. If Stephanie Schmidt, killed in July by Donald Gideon, had lived, how would she have been able to prove that she had been raped?

Most victims do not report a rape. They do not dial 911. We are talking about a crime so heinous that the victims do not want anyone to know it happened and sometimes would rather be dead than live with the memory of the attack. During the sentencing hearing for Gideon, his attorney said the State of Kansas does not consider rape and sodomy as doing great bodily harm. The harm done to a victims mind and soul by a rape is far greater than any physical harm.

House Judiciary
Attachment 10
3-21-94

The Schmidt Task Force, formed by Stephanie's parents, Gene and Peggy Schmidt, found there are many sex offender treatment programs. This task force did not find a single treatment program that is effective. The fact that the State wants to spend money on these programs sends a false message that somehow there is a solution that the citizens of this state can feel secure.

We teach our children to not trust strangers. Most assaults are by men known by their victims. Most sex offenders repeat their crimes until they are caught. The only way to stop them, is to lock them up and keep them from the people they will hurt. The rapes and murders involving sexual assaults that we see on the news daily are usually committed by men with a sex felony record.

Statistics show there will be 50 sexual assaults for every conviction. The cost of letting these people go free is much greater than locking them in prison. We were told the reason this bill did not pass two years ago was money. This bill could save money and lives. Repeat offenders go through our court system over and over at a great cost to taxpayers. Many times the tax payers are paying for the prosecution and the public defender, such as the case of Donald Gideon.

Because there is no effective treatment for sex offenders, this Bill may mean a life sentence for a felon that is considered a risk to women and children. SO BE IT! This Bill may cause some hardship for the convicted sex felon, but we know their many victims will live with the effects of the attack the rest of their lives.

The most common statement we have heard from rape victims is: "I wish I could be the person I was before this happened to me".

The Schmidts and I have had many visits with members of the current Parole Board. They all agree that everything possible should be done to keep these people off our streets. We know it is not possible to keep all sex offenders locked in prison, but this Bill will go a long way toward making Kansas a safer place for women and children.

Jim Blaufuss
Member of the Schmidt Task Force

7919 Westgate Ct.
Lenexa, Kansas 66215

913-492-6801

TESTIMONY OF CARLA J. STOVALL

HOUSE JUDICIARY COMMITTEE

SB 525

MARCH 14, 1994

The sexually violent predator bill -- a bill that would keep still sexually violent inmates off the streets after their criminal sentence has been served. Not passing this bill would allow convicted rapists and child molesters to walk through prison gates and back into our communities to rape and molest again.

And rape and molest they will. One study of 126 rapists that I recently read indicated that they had an average of 7 victims each. An F.B.I. study of serial rapists showed an average of over 20 rapes each in their histories.

The statistics on child sexual abuse offenses is absolutely staggering. A study funded by the National Institute of Mental Health reported on 453 sexual offenders who had abused an average of 52 girls or 150 boys each. The same study indicated that the typical offender begins molesting children when he is 15 and molests an average of 117 children--most of whom do not report the molestation.

Because of the nature of sexually violent crimes and the psychological makeup of those who are prone to commit them, we must take extraordinary precautions to protect society from them. This means enacting this bill into law across the state of Kansas. We cannot open our prison doors and let these animals back into our communities. If we do -- we are accomplices to the atrocities which they will surely commit.

Let me share with you for a moment the utter frustration I experienced as a member of the Kansas Parole Board. I would routinely see sexual offenders and pass them as long as possible (which was usually one year). I would see them each year and deny release again and again. But when the inmates reached their conditional release date (which was one-half of their maximum sentence), they had to be set free.

The file would come to the Board only for the purpose of setting conditions for their release. We would establish requirements such as: Report to the parole officer. Maintain employment. Have no contact with the victim or victim's family. Attend sexual offender treatment.

As I would write out those conditions, a knot would always grow in my stomach. I knew the rapists or child molesters were being turned loose on an unsuspecting public to reoffend. I knew there was at least one woman or one child, but probably more, who were going to fall victim to this animal. It was as certain as the sun rising the next morning. And there was nothing I could do to prevent it. That was the sickening thing. We were condoning the future victimization -- permitting it -- allowing it. Because we couldn't stop it.

Donald Gideon is the despicable individual who has caused the heightened awareness of the desperate need for this bill. Gideon was a convicted rapist and was in our Kansas prisons while I was on the Parole Board. I saw him 3 times and denied him release 3 times because of his prior rape conviction and because of his demeanor and behavior. And yet he was given his freedom after serving all of his sentence. He was not given his freedom one day early -- he served all the time the state had sentenced him to. But we gave him his freedom. The freedom he needed to rape a young woman in April and the freedom to then rape and murder Stephanie in July. Had a bill like this become law when it was first introduced a few years ago, I am certain Donald Gideon would never have been released. He would have been found to be sexually violent. You must do everything within your power to ensure this bill becomes law. Do not lose interest in it and let it languish like your predecessors.

The situation in Kansas now is no better with sentencing guidelines than under indeterminate sentencing. There are a total of 24 sexual crimes under current Kansas law and only 4 carry longer sentences under guidelines **when using the worst criminal history** (which most inmates do not have) and that is because all 4 were misdemeanors under the old system. In addition, 13 of the 21 child sexual abuse crimes carry presumed probation unless the inmate has a substantial criminal history.

The lesson is that under guidelines fewer child sexual abuse crimes will result in incarceration because of the high number which carry presumed probation. For those that do go to prison, the sentences are shorter than what could have resulted under the old system. For example, an inmate convicted of raping an adult woman or a child, who has no prior criminal history and earns all his good time, will only spend 4 years and 7 months behind bars. Those particular crimes carried a possible maximum of life imprisonment under the old system and the inmate did not ever have to be released. Our streets are much less safe now. The sexually violent predator bill is absolutely critical!!

This bill would allow us to stop the sure and certain victimization. It would allow us to keep the sexually violent offenders locked up indefinitely. This is our obligation to provide for public safety in this way.

TESTIMONY

SENATE BILL 525

MARCH 14, 1994

Members of the Committee:

Thank you for the opportunity to speak before this committee. My name is Kelly McCaffrey, and I am speaking today as a student of the law, a woman of this community, and a citizen of this state. And I am speaking today of personal tragedy, public outrage, and unspeakable cruelty.

And I am speaking out for Stephanie in support of Senate Bill 525.

In anticipation of this legislation, I have spent the last few months extensively researching the implications of civilly committing sexually violent predators. My findings will be published this Spring in the University of Kansas Law Review. Ultimately, I believe that the Task Force has presented the legislature with a balanced, sensitive and constitutional solution. Today, however, I would like to address an argument that I anticipate opponents of SB 525 will present to this Committee, if past years serve as any indication.

Inevitably, several terms and definitions used in SB 525 will be a source of great consternation for some opponents of the bill, particularly those in the field of psychiatry. Such terms include "sexually violent predator," "mental abnormality," and "personality disorder." The argument is that such terms are merely legal, with no clinically significant meaning and no recognized diagnostic use.

Aside from the fact that such terms have been upheld as constitutional, I would urge this Committee to look beyond the language of the law, to the story that gave rise to the bill in the first place. Here, the story is that of the brutal and senseless rape and murder of a 19-year-old girl. It is a story told by her parents, her sister, her friends and her community, and it is filled with grief, anger and frustration. That tragic story is before you today as SB 525.

The problem lies in translating the language of life into the language of law. Inevitably, much is lost in that translation. We are forced to cast the story of Stephanie into another form, that of a statute. Unfortunately, the violence, the pain, and the outrage do not lend themselves very well to the generalized and categorizing language of the rule. This difficulty emanates from that fact that "legal rules are a specialized form of language that must respond to the human experiences that gave rise to them in the first place. Yet legal rules must also structure that response in a way that allows them to

be applied consistently and reliably."
(J. Christopher Rideout, *So What's in a Name? A Rhetorical Reading of Washington's Sexually Violent Predators Act*, 15 U. Puget Sound L. Rev. 781 (1992)).

In the real-life story of Stephanie's murder, the nature of a man like Don Gideon is defined by his actions, by his words, by his cruelty. His nature is defined by the tremendous loss that Gene, Peggy, and Jeni Schmidt have suffered at his hands. The voices of the people in this community can tell you that Don Gideon should not have been free to commit this heinous crime.

In a statute like SB 525, on the other hand, the nature of a man like Gideon is defined by overt definitions and categories like "sexually violent predator." Although the words themselves are common enough and have ordinary meanings, they are combined into a phrase whose usage is somewhat different from what actual usage would be in an ordinary speech community.

And so we are faced with the arduous task of translating the passion and pain of Stephanie's death, the story underlying the statute, into the "objective, voiceless language" of the statute itself. In ordinary society, the type of person who would constitute a sexually violent predator is readily understood. Most would agree that Don Gideon is a sexually violent predator. But, statutes cannot rely on the collective beliefs of ordinary society. The overriding demands of the language of the rule have silenced the story behind that rule.

Stephanie has told her story. How many more stories need to be told before the legislature will listen?

TESTAMONY ON SB 525

I congratulate the legislature for attempting to rid the community of repeat sexual predators via the so-called "Stephanie Schmidt Bill". We would rather have these repeat offenders in the crimimal justice system, because that is what they are - criminals.

However, if they must be placed in the mental health system, we have two requests.

1. After the phrase "held in a secure facility", add "in a building separate from the rest of the Mentally Ill or Developmentally Disabled population". Once before the SRS Administration had the responsibility of keeping violent inmates in a "secure facility"; in this case a locked ward in the Topeka State Hospital. They failed this responsibility and the tragic death of employee, Stephanie Uhlrig followed. Senator Vancrum wants to place these predators in a to-be vacated ward of the old Dillon building at Larned, a building designed to house the criminally insane. We concur. SRS is interested, but has yet to formally agree.

The Senator insists the the "intent" of this bill is not to jeopardize the present Mental Health population or staff, but the road to you know where is filled with good intentions. Please place this guarantee in the bill!

2. Incarceration of these dangerous predators will cost an undetermined amount of money. To carve this expense out of the present Mental Health budget hurts people who cannot fight back, the Mentally Ill, and could nullify at least part of Mental Health Reform. Please place enough "new" money in the budget to care for this new class of inmates.

I beg you to think thru the ramifications of this bill before it becomes law. Thank you for your consideration.

Sincerely,

Hugh T. Moore

Hugh T. Moore, DDS
Advocacy Chairman, Mental Health Assn.
of Johnson County

House Judiciary
Attachment 13
3-21-94

COMMENTS TO MEMBERS OF HOUSE JUDICIARY COMMITTEE

RE: SEXUAL PREDATOR ACT - SENATE BILL #525

MARCH 14, 1994

I'm here today to testify in support of Senate Bill Number 525. Much attention has been given recently to the question of how best to keep the public safe from sex offenders. As we struggle with this question, one fact becomes absolutely clear; a small number of offenders commit the vast majority of criminal activity.

As can be seen from the attached article from the September, 1991, Journal of Interpersonal Violence, active sex offenders commit an incredibly high number of crimes in comparison to their arrests. For example, the 1985 study by Freeman-Longo of self-reporting of sex offenders in a forensic mental health program indicated that the 53 offenders reported a total of over 25,000 sex offenses that they had perpetrated. While the child molesters in the group average 1.5 arrests per man, their self-reports yielded over 20,000 sex offenses. Other studies have buttressed these findings.

I feel the best way to deal with this small but persistent group of offenders is through a civil commitment procedure such as the Sexual Predator Act. This act is designed to apply to very few offenders. However, those offenders, once incarcerated, should make a big difference in victimization rates. In the State of Washington, where this has been law since 1990, approximately 30 people are in various stages of the program. In August of 1993, the Supreme Court of Washington approved the

constitutionality of this law.

The advantages of this bill are that it incapacitates those who truly oppose the greatest danger to society. As such, it is much less expensive than massive across the board sentence increases for sex offenses. This is the new type of legislation which "targets" specific offenders for removal from society. The down side, however, is that because it is so new it is largely untested nationally. As such, as in Washington, there is some risk of legal problems. It is, however, a step forward. I truly believe it is a good piece of legislation that needs to be passed by this body.

Attachments:

1. Excerpt from the Journal of Inter-Personal Violence, September, 1991
2. Confiscated letter from an inmate serving time with the Kansas Secretary of Corrections for attempted child molestation to another inmate discussing their plans upon release.

Thank you for your time.

Paul J. Morrison, District Attorney
Johnson County, Kansas

A:LEGISLATION:#SB525.WP

6-2-93

Hi Dude;

Hey man, I don't mean to be harsh, but, don't ever address mail to me by _____ always use my name. You stated an investigation as to why I never told these assholes what my nickname is!? I know you didn't realize what you were doing; just don't let it happen again, okay?

Anyway, enough of that. I'm glad you were interested in that book I read. Here's some more of what he did. After he had kidnapped this young girl, he slowly trained her to be his own personal wife. He taught her to suck his dick exactly the way he liked it done. And how to fuck him by showing her porno flicks everyday and slowly working her into it until she thought of nothing else. When he first got her he put her in a room and never turned on the lights, total darkness. He would go into the room and eat her pussy and slide his fingers into her cunt & asshole until she got used to it. Then he started showing her the porno flicks. Everyday, since he first snatched her, he told her in a gentle caring voice, time after time, that he was her husband and that she had to please him and satisfy his desire until she was old enough to live by herself. And that is pretty much how the whole book went. There were some other little tricks he used with her that I'll tell you about later. I am going ask you some questions. As you can see they are numbered & I want you answer in your letter, don't do anything except write the # then your answer, & then answer. I've got a copy of the questions. The reason I'm making these questions is so I can start planning as to what type of 'wife' to find for you and how to train her.

I sure hope you are tearing these letters up. Any time you see a black dot • after your name on the envelope, you have to make sure no one reads that letter and make sure you tear it up. Like this-Ken • Anyway the questions start on the back, answer them truthfully and it will be alot easier to get what you want when it comes t

(14-3)

All that is a little ways into the future. The first thing is business. When you get out, there are a few things you need to do and get. A supervisors van and Rent a trailer or a small house in [redacted], or out of state, somewhere out in the country or rural area. Don't rent in town and don't buy a trailer. After 1 year we will be moving either to another state or into a 30-40 foot mobile home. Maybe to Canada. I will train you on exactly how to get your wife. Don't do anything before I get out. They are going to be watching you because you already have a record of approaching & enticing strange children. Be very careful of what you do, go to work then go home. No "business" either. Just relax and take it easy, when I get out, we will start on getting what we both want. The real thing. Many I love that tight hot young pussy. I think I'll even show you how to "watch" them in their school lockerroom showers. You know, I'd better quit now, I'm working myself up!

Anyway, answer these questions and I get started. I'll write more later. You can write me questions just be damn careful what you write.

Sincerely
Your Partner

P.S. My name is
Not
OKay?

2. Blonde

1. [illegible] B., G.,

#	Question	Your Answer - Follow the codes given.
1.	What age - write a youngest age and an oldest age example 7 -- 10	
2.	what color hair -	
3.	what race - white, black, Vietnamese, etc.	
4.	Boy or girl - B., G.,	
5.	pubic hair or None - yes, NO	
6.	Do you like to eat pussy, Finger them or fuck - eat., f.t., F.	
7.	anal or pussy - A., P.,	
8.	Forced or cooperation - F., C.,	
9.	Do you like to watch someone else - yes, NO	
10.	Three people ways - yes NO - you and me and her?	
11.	watch porn flicks - yes, NO	
12.	Have you ever fucked one before? -	

Listen, I know these are really explicit but using the codes, tear this up and no-one will catch on. Unfortunately they read my incoming mail so don't ask me anything about this, okay? Here are my likes & dislikes.

1. 7-12
2. Blonde, or BROWN
3. any but black
4. G.
5. yes
6. all - eat., f.t., F.
7. A., P.,
8. C.
9. yes
10. sometimes
11. yes
12. yes I [illegible] of them

answer just like this, okay? Don't call any attention to us or when we do it they can get wise for pre meditation which adds 10 yrs!! I need to know this information so I can get started.

As for any questions you have, when you write them down, act like you read it in a book. Just like I did, "I read this book and this guy did this or that, what do you think." When this is happening, please listen to what I tell you, this isn't the first time I've done this. There is a lot of psychology involved and it has to be done just right or she will go off and possibly get away. Also, she will be the

Using a computer-administered interview, self-reports of past criminal behavior were obtained from 99 institutionalized sex offenders. The sample contained both rapists and child molesters who had been mandated to receive specialized treatment. Offenders disclosed an enormous amount of undetected sexual aggression, a finding consistent with other self-report studies. Also striking was the high rate and variety of nonsex offenses. According to interview responses, nearly 20,000 nonsex crimes were committed during the year prior to institutionalization, with rapists contributing a disproportionate share. Still, child molesters, including those whose only known crime was incest, were very active in assault and property crime. The potential for utilizing sex offender self-reports in empirical research is discussed. Preliminary evidence of validity is presented.

Self-Report of Crimes Committed by Sex Offenders

MARK R. WEINROTT
Oregon Social Learning Center
MAUREEN SAYLOR
Western State Hospital

Although crime statistics and victim surveys can be useful in evaluating overall trends in the amount and reporting of crime, they provide no dependable information about the distribution of crimes among known offenders. It is a foregone conclusion that in the realm of sexual aggression, the number of offenses committed by most perpetrators exceeds those documented in law enforcement files. Indeed, it has been shown that many rapists and child molesters are chronic perpetrators and have avoided apprehension for dozens —and in some cases, hundreds—of sex crimes (Abel et al., 1987; Freeman-Longo, 1985; Groth, Longo, & McFadin, 1982).

This finding is based on perpetrator self-report, a promising method of obtaining offense histories. Intuitively, it seems unlikely that anyone would disclose illegal acts that have gone undetected. However, when individuals know that the information is obtained anonymously or held confidential from legal authorities, self-report has often proved to yield valid measures, initially

Authors' Note: Correspondence regarding this manuscript should be addressed to Mark R. Weinrott, RiverPlace, Suite 307, 0305 SW Montgomery Street, Portland, OR 97201.

JOURNAL OF INTERPERSONAL VIOLENCE, Vol. 6 No. 3, September 1991 286-300

14-6

lf-reports of past criminal behavior were obtained sample contained both rapists and child molesters zed treatment. Offenders disclosed an enormous ding consistent with other self-report studies. Also nsex offenses. According to interview responses, during the year prior to institutionalization, with Still, child molesters, including those whose only n assault and property crime. The potential for al research is discussed. Preliminary evidence of

rt of Crimes Sex Offenders

WEINROTT
Learning Center
N SAYLOR
ate Hospital

n surveys can be useful in evaluating rting of crime, they provide no depend- n of crimes among known offenders. It ealm of sexual aggression, the number etrators exceeds those documented in been shown that many rapists and child have avoided apprehension for dozens ex crimes (Abel et al., 1987; Freeman- din, 1982).

or self-report, a promising method of , it seems unlikely that anyone would ndetected. However, when individuals nonymously or held confidential from roved to yield valid measures, initially

his manuscript should be addressed to Mark R. tgomery Street, Portland, OR 97201.

6 No. 3, September 1991 286-300

with juvenile delinquents, and more recently, with adults. Several methods have been used to ascertain the validity of self-reported criminal activity: (a) official record checks to see whether documented arrests and convictions are self-reported (Erickson & Empey, 1963; Gibson, Morrison, & West, 1970; Hardt & Peterson-Hardt, 1977; Hirschi, Hindelang, & Weiss, 1980; Reiss & Rhodes, 1961); (b) the known group method that examines self-reports of two or more groups that can be expected to differ in criminal activity (Erickson & Empey, 1963; Farrington, 1973; Hirschi, Hindelang, & Weiss, 1980); (c) comparison of self-report with reports from peer informants (Gold, 1966, 1970) or treatment staff (Jones, Weinrott, & Howard, 1981); (d) polygraph examinations of respondents answering self-report questions (Clark & Tifft, 1966); (e) retest stability of self-report results (Dentler & Monroe, 1961; Farrington, 1973); and (f) lie scales or internal consistency within self-reports (Clark & Tifft, 1966; Hardt & Peterson-Hardt, 1977; Nye & Short, 1957). Based on these studies, the criticism that large numbers of offenders will either under- or overreport criminal behavior appears to be false.

Following the pioneering efforts of Porterfield (1946) and Wallerstein and Wyle (1947), favorable psychometric appraisal of delinquency self-report inventories has resulted in their widespread use in epidemiological and etiological studies (Elliott, Huizinga, & Ageton, 1985; Erickson, Gibbs, & Jensen, 1977; Farrington, 1973; Gold, 1966; Mann, Friedman, & Friedman, 1976; Nye & Short, 1957; Patterson, Capaldi, & Bank, in press). The technique has subsequently been applied to evaluation of legal dispositions (Dunford, Osgood, & Weichselbaum, 1982; Lincoln, Teilmann, Klein, & Labin, 1977) and treatment programs (Jones, Weinrott, & Howard, 1981; Weinrott, Jones, & Howard, 1982).

Three self-report studies of adult sex offenders have all shown a much higher frequency of sex crime than might ordinarily be predicted on the basis of official records. Groth, Longo, and McFadin (1982) surveyed 83 rapists and 54 child molesters, all of whom were incarcerated. Responding to a brief, anonymous questionnaire, the rapists admitted to a mean of 5.2 rapes per man as compared to only 2.8 that were documented. The average child molester had been convicted only once, yet the self-reported mean was 4.7 sexual assaults per man. For reasons that are not well explicated, the 9 subjects who self-reported the highest frequency of sexual assault were omitted from the group summary. Therefore, the discrepancy between known and unknown offenses may actually have been higher.

Using the same data collection procedure, Freeman-Longo (1985) obtained self-reports from 23 rapists and 30 child molesters in an institutional forensic mental health program. For the rapists, the total number of arrests

14-7

for a sex crime was 48, or about 2 per man. The same men reported a total of 5,090 sex crimes (or about 221 per man), including 319 child molestations and 178 rapes. The child molesters averaged about 1.5 arrests per man whereas their self-reports yielded over 20,000 sex offenses, including nearly 6,000 sexual assaults of children and a surprising 213 rapes of adult females.[1]

In the most comprehensive self-report study to date, Abel et al. (1987) assessed 561 mixed sex offenders who had "voluntarily" sought evaluation or treatment at two outpatient psychiatric clinics. Structured clinical interviews of 1-5 hours followed presentation of a videotape on confidentiality safeguards. As in the aforementioned studies, questions were confined solely to sexual misconduct. Over a quarter-million sex offenses were reported, with 23.5% of these involving direct physical contact with a victim. There were over 900 rapes disclosed by 126 self-described rapists. The mean number of rapes (and victims) was about 7 per man, and the median was 1. The 371 self-avowed child molesters (some of whom admitted to rape as well) confessed to 38,671 acts involving illicit contact. The mean number of victims was 150.2 for nonincest homosexual pedophiles, 19.8 for nonincest heterosexual pedophiles, and about 1.8 for incest offenders. The corresponding medians were 4.4, 1.3, and 1.3. The investigators found that the probability of being arrested for a sex crime that included touching was only about 3%.

The present research differs from other self-report studies of sex offenders in several important respects. First, it employs an automated interview rather than a personal interview with a researcher. Binik, Westbury, and Servan-Schreiber (1989) have shown that individuals may be more willing to disclose sensitive sexual information when interviewed by a computer than in face-to-face situations. Ultimately, some variation of the interview might constitute a useful criterion measure for evaluating sex offender treatment programs because reliance on official recidivism measures is replete with flaws (Furby, Weinrott, & Blackshaw, 1989). Second, an attempt was made to incorporate modest validity checks. Other surveys of sex offenders have failed to appraise the psychometric integrity of the measures extracted from their questionnaires or interviews. Third, it sought information on both sex and nonsex offenses. Fourth, inquiries were made about the use of force, weapons, and substance abuse in connection with sex offenses. Finally, the present study critically examined the common practice of classifying sex offenders on the basis of their commitment (or instant) offense, given that those who have committed multiple types of sex offenses might be more the rule than the exception (Abel et al., 1987).

Respondents and Set

Respondents were
Western State Hospital
selected because the p
self-disclosure of prior
general psychiatric hos
175 men, typically co
Approximately two thi
this study, men were
proceeding. All sex of
chopathy petition has
90-day observation per
ment. Briefly, "sex p
specialize in sexual m
control, and who would
cial Personality Disorde
criminal history do no
responsibility of the co

Recruiting

All residents were g
stration of the compute
were assured that their
so that their self-report
For each respondent, a
a bonus for each group
days.

At the time of recru
who admitted difficulty
from participating. Ano
group's scheduled admi
were eligible; 130 (87%
pressive given that (a) t
(b) men were granting
Interest in the items the
contributed to the high

14-8

TESTIMONY ON S.B. 525

PRESENTED TO:

1994 HOUSE JUDICIARY COMMITTEE

PRESENTED BY:

GEORGE D. VEGA, COMMISSIONER
SRS MENTAL HEALTH & RETARDATION SERVICES

ON BEHALF OF:

DONNA L. WHITEMAN, SECRETARY
SOCIAL AND REHABILITATION SERVICES

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of fullcitizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

Testimony on S.B. 525
Presented to the Senate Judiciary Committee
March 14, 1994

The Department of Social and Rehabilitation Services (SRS) opposes S.B. 525 in its present form. We strongly agree with the need to protect society from dangerous sexual predators.

SB 525 represents one step toward addressing a major society problem. The mental health system wants to do its part. We want to state up front mental health treatment may assist a very small number of sexual predators if sufficient resources are provided, but the numbers are extremely small in comparison to the number of people labeled a sexual predator or convicted of a sex-related crime. The mental health system also will resist doing anything which threatens services to the most vulnerable Kansas citizens we are currently serving.

Mental health treatment will not fix the problem. We strongly agree with the opening statements in the bill which advise sexual predators are extremely dangerous and:

- Do not have a mental disease or defect which would allow them to be treated by the current mental health system.

- Generally have antisocial personality features which are:
  - not treatable with today's mental health technology, and
  - make them likely to engage in sexually violent behavior.

- Are likely to repeat acts of violence.

- The treatment needs of this population are very long term.

Mental health professionals have told us:

- Keep this population separate from people with serious mental illness; either in general psychiatric hospital settings or in the state security hospital.

- Focus only on those who <u>volunteer</u> to participate; people who want to participate represent those most likely to respond to treatment.

- Control admissions through rigorous screening; keep the numbers within capacity for reasons related to treatment and security.

- If the process requires professionals to state a sexual predator is cured or not likely to repeat acts of violence before a person is discharged, the professionals will not make such statements which might place their reputations and licenses on the line. This means the patients may never be released.

- Successful treatment programs require long-term treatment, usually at least three to five years. The Washington program is four years old, too early to measure its success or failure.

Safety of Those With Mental Illness

The bill requires commitment to a secure facility but does not define or identify the facility. Even though State Security Hospital patients are prisoners or defendants, they are generally seriously mentally ill and thus are vulnerable. These individuals, therefore, would be subject to exploitation and harm from the predators.

Hospital Vs. Security

The Larned State Hospital has, for some time, been faced with accreditation difficulties with the Joint Commission on Accreditation of Hospital Organizations (JCAHO) because of the Security Hospital. Essentially, JCAHO has indicated the Security Hospital appears to be more of a prison than a hospital. Security is more of a priority than the therapeutic environment. As a result of this finding, the hospital has had to take steps to enhance the environment by such things as gradually unlocking bedroom doors at night.

This accreditation difficulty only would be heightened if the sexual predator program is housed in the Security Hospital because there is a substantial need for security with such a program.

It is noted the statute governing the sexual predator program in the state of Washington specifically states: "The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population." Housing of the program at the Security Hospital becomes a paradox. If security needs are met, accreditation is threatened. If the therapeutic environment is addressed, security is threatened. It also is noted that the ward housing the sexual predator program cannot be excluded from the JCAHO process. There is no **distinct part** provision like there is with HCFA certification.

Space, Education, Training

According to research conducted by the chief psychologist at one of the state hospitals, one of the required characteristics of a successful program is adequate funding for staff, materials, staff training as well as having adequate space to implement the program. Currently, program space at the Security Hospital is less than adequate even for existing programs. Further, there are no staff at Larned State Hospital with the expertise to be involved with treatment activities of sexually violent predators. Larned experiences severe difficulty in recruiting appropriately-trained employees such as psychiatrists, psychologists, and other professionals. Training, educational materials, and equipment is estimated to be in excess of $60,000.

Protection of Society

Clearly, the intent of this bill is to protect society from violent sexual predators. However, as I also understand, the intent is to limit the number of persons involved in the program to approximately the same number as those involved in the program in the state of Washington (20-30). If the number is limited, then protection of society is not achieved except for the limited number who are involved in the program. We note 331 individuals who meet the criteria of the bill were released in FY 1993 from the Department of Corrections.

Although Section 1 of the bill suggests legislative intent to very narrowly apply civil commitment procedures, there is no mechanism to limit the number or kind of individual who can be committed. As a result, there are likely to be a significant number of individuals who are committed who are not amenable to treatment and for whom treatment is not appropriate. Warehousing these individuals would be the result, and the treatment program would be ineffective.

Furthermore, if the commitment procedures are applied more liberally than the intent to narrowly apply them, the fiscal note will be substantial. As I mentioned earlier, there were 331 individuals released from the Department of Corrections in FY 1993 who met the criteria for commitment under the provisions of this bill. If 90 percent of the individuals were committed, the estimated cost for the first year would be approximately $8.6 million. Since treatment is long term with little guarantee of success, discharges would be few, and the cost would escalate as the number of commitments increase.

Participation in the Washington sexual predator program is voluntary. Implied in the voluntary criterion is the notion of cooperation on the part of the participant, and it can be assumed uncooperative individuals are excluded, and these individuals are likely to be more antisocial and more dangerous. Thus, it cannot be guaranteed that committing the more cooperative individuals will protect society from the most dangerous of sexual predators.

Targeted Populations

Assuming responsibility for a new population increases the possibility of diverting resources from the established targeted populations of adults with severe and persistent mental illness and children/adolescents with serious emotional disturbances. We are concerned the needs of these most vulnerable of individuals will not be met.

Civil Commitment

Civil commitment is not intended for individuals who choose, of their own will, to commit violent sexual crimes. Civil commitment is intended for those who are unable, because of a thought disorder, to make reasoned decisions about the reality and effects of their illness.

Aftercare

Another essential characteristic of a successful, comprehensive treatment program for sexual predators is the adequate provision of aftercare. Presently, there is a paucity of community programs for this population.

Recommendations

Like you, we want the safety of society protected, and we want to work with you to accomplish this goal. In this light, I urge you to consider a joint effort between the Department of Corrections and SRS to address this problem. This approach seems consistent with the initiative in the state of Washington. We would suggest language be added to the bill in Section 7 (a) to have the facility operated by the Department of Corrections with custody of the individual remaining with the Secretary of SRS. The Secretary of SRS would then contract with the Department of Corrections for the facility, perimeter security, meals, laundry and barber services, and medical and dental services. The Secretary could retain responsibility for the treatment program.

I also would recommend a section be added to allow for screening of individuals by a mental health professional when there is an intent to file a petition for commitment. Such a provision would allow the intent to narrowly apply commitment procedures to be maintained. Such screening could be conducted by program staff.

If the program is housed in the State Security Hospital or the Department of Corrections, we would recommend a separate funding stream and budget specifically for this program.

Fiscal Note

One ward at State Security Hospital - estimated $434,745 first year assuming five commitments per year and ten evaluations...annual cost to increase to $2,183,951 by FY 2000. However, a full staff would be necessary for the program even if only five individuals were admitted. Thus a beginning figure is estimated to be $1,400,000.

Training, education, equipment - $65,000

With no mechanism to limit those committed using FY 1993 individuals who meet criteria of bill released from Department of Corrections - $8,607,899.

Program housed in Department of Corrections (using State of Washington data for FY 1994) - $2,688,904.

KANSAS MENTAL ILLNESS AWARENESS COUNCIL INC.

House Judiciary Subcommittee #1

March 14, 1994

Executive Director
Associate Director
P.O. Box 12546
Kansas City, Kansas 66112
Office: (913) 432-4544
(913) 432-8682

Good Afternoon Members of the House;

I would like to thank you for this opportunity to speak with you today.

This is a very serious issue for those of us with mental illness, let alone those not mentally ill and even for families and friends it is like a nightmare. That someone who may have abused one of us, may be put in the same hospital or Community Mental Health Center as us. Some of the memories it would bring back, would be a living hell, setting us back to square one and to work through all those issues again.

We realize these people need help too but why can't the Dept. of Correction's put into place, their own mental health centers and hospital buildings, away from us who have a hard time just dealing with our own illnesses. If not, this would cause great havoc for us and for what it will cost in additional medicine and hospitalization time.

With a well organized program you could put things in proper order, to take care of the abusers and those like them, separately from us. As a rule, those of us with a mental illness do not want to hurt anyone or have anyone hurt us. Sometimes it is awful difficult just to take care of ourselves, let alone to have to worry about who is next to us.

We realize everyone has rights, but taking away a secure, safe hospital is not the way to do this either.

We believe, the Dept. of Corrections System could set in place a special, secure but separate, care facility for these sexually violent predators.

We believe, that you need specially trained professionals and staff to care for these abusers, which is not the same kind of training as for mental illness. We are different but we are dealing with this. We, the mentally ill, can't deal with the past abusers, even as well as the average person, because so many of us have been abused by just such people as these and are hypersensitive and fearful about this issue. Even as a previously wounded animal is "gun shy" we are "abuse shy" particularly of sexual perpetrators. If you mix these sexually violent predators with the mentally ill, you will add greatly to our burden. We are not against the intent of this bill but against how it attempts to do it, with no guarantees. We fear without other guarantees in place that, there should be some way, the Dept. of Corrections could set things in place for control, care and treatmentof these people and by putting such persons in a secure separate facility.

15-6

Due to the above reasons, KMIAC strongly opposes this bill. No one in the mental health system as professionals, needs this with the rest they have to deal with. We voice opposition to this unless;

1. Full funding is guaranteed.
2. No dollars intended to benefit the general psychiatric population (in the hospital or in the community) are diverted now or in the future.
3. All mental health cuts in the Governors budget are fully reinstated.
4. Separate facilities are guaranteed.

Thank you for listening,

Esther M. Fitzgerald

Esther Fitzgerald
President - KMIAC

KANSAS MENTAL ILLNESS AWARENESS COUNCIL INC.

Executive Director
Associate Director
P.O. Box 12546
Kansas City, Kansas 66112
Office: (913) 432-4544
(913) 432-8682

House Judiciary Subcommittee #1

March 14, 1994

Good Afternoon Members of the House;

I thank you for the opportunity to speak to you today. I am Lonny Lindquist, Executive Director of the Kansas Mental Illness Awareness Council (K.M.I.A.C.), which is the recognized state consumer organization of Kansas. I am also the coordinator of the Ottawa, Ks. based #1 local consumer run organization, Support Program for Independent Responsible Individuals in Transition Inc. (SPIRIT). I have been a consumer of mental health services since 1970 and in Kansas since 1985.

About this bill, #SB525, which authorizes civil commitment to our state hospitals for convicted sex abusers after serving their prison terms. I don't think anyone can be against keeping them off our streets, possibly getting them some help in a better, yet controlled, environment.

I do think it is unrealistic to consider this bill without <u>first</u> including, at least, the following guarantees;

1. Guarantee that this said population gets separate housing facilities with specialized care. (<u>Guaranteed</u> not to be mixed with the present population of those mentally <u>ill</u>)
2. Guarantee that you provide full funding, separate and apart from those present mentally ill funds, so as not to drain off those limited mental health system moneys or be diverted to sexually violent predators. Thus operating with less, as the mental health system is forced to take on a greater number of population, especially since they would be mandated to do so and the court ordered, it is assumed, will take budget priority over other populations.
3. Guarantee all mental health cuts in the Governors' budget are fully reinstated.

I and those I represent are not against the intent of this bill, <u>but how it attempts to do it</u>, and <u>at who's expense</u> with no guarantees.

Thank you for your time and consideration in hearing what I have to say, I hope this will help in your decision making.

Sincerely yours,

Lonny Lindquist

Lonny Lindquist
Executive Director

Subcommittee #1
Recommendation: Be passed as am.

House Judiciary
Attachment 16
3-21-94

As Amended by Senate Committee

Session of 1994

SENATE BILL No. 525

By Senators Vancrum, Bogina, Bond, Burke, Corbin, Emert, Feleciano, Frahm, Hardenburger, Harris, Kerr, Langworthy, Lawrence, Martin, Morris, Oleen, Papay, Parkinson, Ramirez, Ranson, Reynolds, Rock, Salisbury, Sallee, Steffes, Tiahrt and Vidricksen

1-19

AN ACT concerning persons who commit sexually violent offenses; relating to such person's civil commitment; evaluation, care and treatment; allegation of sexual motivation in criminal cases.

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

Section 1. The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment act for mentally ill persons defined in K.S.A. 59-2901 et seq. and amendments thereto, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under K.S.A. 59-2901 et seq. and amendments thereto, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities and those features render them likely to engage in sexually violent behavior. The legislature further finds that ~~sex offenders'~~ *sexually violent predators'* likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure pursuant to the treatment act for mentally ill persons defined in K.S.A. 59-2901 et seq. and amendments thereto is inadequate to address the risk ~~to reoffend because during confinement these offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the treatment act for mentally ill persons defined in K.S.A. 59-2901 et seq. and amendments thereto for continued confinement~~ *these sexually violent predators pose to society*. The legislature further finds that the prognosis for ~~curing sexually violent offenders~~ *rehabilitating sexually violent predators in a prison setting* is poor, the treatment needs of this population are very long

section 3, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

Sec. 5. Upon filing of a petition under section 4, the judge shall determine whether probable cause exists, based on the petition, to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody and the person shall be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

Sec. 6. Within 45 days after the filing of a petition pursuant to section 4, the court shall conduct a trial to determine whether the person is a sexually violent predator. At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under this act, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The person, the county or district attorney or attorney general, or the judge shall have the right to demand that the trial be before a jury. ***Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 59-2917 and amendments thereto.*** If no demand is made, the trial shall be before the court.

Sec. 7. (a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. ***If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury.*** If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary of social and rehabilitation services in a secure facility in a separate building segregated from the other mentally ill or developmentally disabled population for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person

16-9

is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of social and rehabilitation services. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(b) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to K.S.A. 22-3305 and amendments thereto, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

Sec. 8. Each person committed under this act shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The secretary of the department of social and rehabilitation services shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with

3-9

TESTIMONY ON SENATE BILL 608

TO THE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

BY JEFFERY R. DYSART

CAPTAIN, INVESTIGATIONS DIVISION
OVERLAND PARK POLICE DEPARTMENT

During the past decade, the United States has seen a steady increase in crimes committed by street gangs. Additionally, the State of Kansas has had to face the reality that such gangs are now in existence in several Kansas cities. Street gangs first made their presence known in Overland Park during the summer of 1986. Various groups of teens were observed walking the streets in groups of up to 15. They were easily distinguished from other groups because of their similar style of dress. Police contacts with these gangs became frequent and the crimes they committed were then investigated on an individual basis, however, there were no concentrated efforts to investigate gang crimes. Gang members were viewed as individual criminals, however the police department's view rapidly changed to where these persons were viewed as members of an organized crime group. From 1989 through 1991, the total number of juvenile assaults in Overland Park increased from 100 to 135. County-wide, the cases received by the Johnson County District Attorney's Office from 1985 through 1991 increased from 71 to 213 incidents. Many

other types of crimes were also committed by street gangs. These gang members have been responsible for perpetrating many felony crimes against persons and property to supplement the financing of their activities. Additionally, they have engaged in major drug activities in several jurisdictions throughout the state. In Overland Park, gang members comprise less than 1/10 of 1% of the population, yet they have been responsible for more than 50% of the juvenile crime. For this reason, the Overland Park Police Department supports Senate Bill number 608 relating to sentencing for the commission of any felony by a criminal street gang or its members. We believe that Senate Bill number 608 contains effective legislation to ensure constructive use of the sentencing guidelines when dealing with street gangs. Also, Senate Bill number 608 provides a great deal of flexibility to the court in handling gang offenders. In particular, this bill provides the court the ability to sentence an offender to a term double the maximum duration of the imprisonment term for the underlying felony violation when the offender has committed any felony for the benefit of or at the direction of or in association with any criminal street gang with the specific intent to promote or assist any criminal conduct by gang members. Such legislation sends a clear and unparalleled message to members of street gangs that their activities will not be tolerated or taken lightly.

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612
(913) 296-8200
FAX: 296-6781

ROBERT B. DAVENPORT
DIRECTOR

ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE CRIMINAL LAW SUBCOMMITTEE
OF THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SUBSTITUTE SENATE BILL 608
March 14, 1994

Mr. Chairman and Members of the Subcommittee:

I appear today on behalf of Attorney General Robert T. Stephan and the Kansas Bureau of Investigation in support of the substitute SB 608. The original goal of this bill was to counter the glamour, excitement and financial lures of street gangs by this simple proposition. If, for a gang, you do a crime, you go to jail for twice the time.

I don't need to remind this committee of all the havoc and damage that street gangs are creating in our communities and among our children. By being organized, street gangs can create much more damage than an individual criminal would be capable of, particularly through the ability to intimidate witnesses when one of their members has been arrested. What was surprising on the Senate side was the testimony from officers in street gang units that belonging to a street gang had a certain glamour to it and the kids willingly and pridefully would flash their color, signs and membership.

Besides the occasional actual use of these provisions if they became law and the consequential ability to put a gang member away for a longer period of time, I think the message and deterrent factor that this bill creates is of even more worth. Gangs will not be so open if their members

know that committing a crime for the gang, be it selling dope, a driveby shooting or threatening a witness; could result in doubling their time.

Further, by this provision being a discretionary motion on the part of the prosecutor, you are placing in the hands of the state a very effective tool along the lines of the old habitual criminal act in obtaining information, cooperation and pleas of guilty, by the mere threat of invoking the violent street gang rule.

Since the provisions of this bill would require mandatory incarceration for considerable lengths of time, the ability of the county or district attorney to exercise some discretion as to when it is appropriate, is equally appropriate.

Two amendments were added on the Senate floor, the second of which I think effectively guts the usefulness of this bill except for re-election campaign literature. The first amendment makes this act inapplicable to offgrid murders. Originally, this substitute would create a mandatory Hard 40 for murders that were carried out on behalf of a violent street gang. That section has been stricken. Given the use of the Hard 40 under current law and the potential use of the death penalty, I don't believe we have any problem with that particular change.

However, the Senate also changed the burden of proof and made this the only sentencing provision that has to be proven beyond a reasonable doubt, not just preponderance of the evidence. Many of you will remember K.S.A. 21-4618, which was a mandatory sentencing provision for individuals who used firearms during the commission of a felony. The presence of a firearm was proven only at sentencing, not at trial, and by a preponderance of the evidence. That statute was affirmed on appeal and survived every challenge as to its constitutionality. See State v.

Mack, 228 Kan. 83 (1980); State v. Mullins, 223 Kan. 798 (1977); State v. Freeman, 223 Kan. 361 (1977).

At sentencing, the prosecutor would need to show that:

(A) the defendant is a member of a criminal street gang;

(B) the criminal street gang has:

(1) three or more people;

(2) one of its primary activities is the commision of a person or drug felony;

(3) the common name or symbol

(4) committed two or more person or drug felonies:

(a) one of which after the effective date of this act;

(b) the last one of which was in three years of the prior offense on separate occasions or by two different people;

(c) the defendant committed the felony for which he is being sentenced at the direction of, for the benefit of, or in association with the criminal street gang and that there was specific intent to help the gang's criminal conduct.

If the burden is beyond a reasonable doubt, as inserted by the Senate floor amendment, the prosecutor would essentially, after having convicted the criminal of the felony, have six new trials, proving each of these provisions beyond a reasonable doubt. Basically, retrying the two prior person or drug felonies committed by the street gang all over again as well as the other various prerequisites before the motion can be granted. No prosecutor is going to move to multiply his trials by six. I can honestly say that if the current language is kept, this anti-gang tool will never be used.

I frequently come before this committee asking that you consider a bill because of its impact on the street, that it will provide a deterrent affect once the word gets out about it. I can also assure you that if we have statutes which sound tough, but are toothless, that word on the street will also get out and the respect or fear of the law, which is tenuous at best on the streets, will suffer even more. I would urge you to strike the floor amendments, requiring a beyond a reasonable doubt standard, thus making this sentencing provision like every sentencing provision, one that is established by preponderance of the evidence and could on occasion actually be used.

I would rather see this bill die here in committee than to have the public's faith in our efforts undermined by passing bills that are full of sound and fury but signify nothing.

Finally, I would note that this bill amends the same two statutes amended in SB 603 which creates sentencing special rules for using juveniles to commit crimes and using firearms. If both bills are viewed favorably I would suggest they be combined.

I would be happy to answer any questions.

#157

State of Kansas
KANSAS SENTENCING COMMISSION

Senate Bill 608
House Judiciary Committee
March 14, 1994
Comments of Lisa Moots

While I am obviously sympathetic with the concerns about gang activity sought to be addressed by this bill, I do not think that the approach it takes to the problem is appropriate.

This is not the first of the Senate bills you are considering which create special rules establishing exceptions to the dispositional and durational presumptions of the sentencing guidelines as a means to address certain crime problems. Rather than relying on the existing departure mechanism that is available to the sentencing court in *any* case involving substantial and compelling circumstances calling for imposition of a sentence outside the guidelines presumptions, these special rules mandate the imposition of an enhanced prison sentence when, for example, an adult involves a juvenile in the commission of a crime (See SB 603). Senate Bill 608 creates another such special rule, requiring a term of imprisonment that is double the maximum term of imprisonment otherwise provided for a felony committed in furtherance of criminal street gang activity as defined in the bill. Only if the court makes a finding that community safety interests would be served by imposition of less than the doubled prison term may a lesser sentence be imposed.

The guidelines already allow a judge to impose a doubled prison term as a departure, and I have no doubt that a finding that a crime was committed in furtherance of criminal gang activity would be upheld on appeal as a substantial and compelling reason for a departure sentence. Even if you see the need to address the gang problem in more specific statutory terms, you could accomplish this by simply adding the fact that a crime was committed as part of gang activity to the list of nonexclusive aggravating departure factors that are presently listed in the statute.

Furthermore, this bill requires that the state file a motion and show beyond a reasonable doubt that the crime was committed in furtherance of gang activity before the doubled prison sentence can be imposed. This is a much higher burden of proof or standard than would apply if the departure procedure were used to accomplish the same purpose instead.

Furthermore, the language of the bill is vague in that it is unclear whether the doubled prison sentence is required only in presumptive prison cases or even in presumptive probation cases as well. No time frame is provided for the filing of the motion by the state seeking imposition of

Jayhawk Tower 700 Jackson Street - Suite 701
[illegible]

the doubled sentence. Questions about appeals are also left unanswered; for example, if the court finds that community safety interests would be promoted by not imposing the doubled prison sentence, is that decision appealable by the state?

In the big picture, I would always discourage the creation of special rules and guidelines exceptions to address every crime problem, particularly when the guidelines departure procedure can serve the same purpose more effectively.

AMERICAN CIVIL LIBERTIES UNION
OF KANSAS AND WESTERN MISSOURI
706 West 42nd Street, Kansas City, Missouri 64111 (816) 756-3113

Testimony on Substitute for SB 608
House Judiciary Committee, Rep. Michael O'Neal, Chair
Submitted Monday, March 14, 1994
by Carla Dugger, Associate Director

The American Civil Liberties Union of Kansas opposes SB 608 for the following reasons:

-- This bill establishes heightened sentences for crimes committed by "criminal street gang"members. There is plenty of room under the existing code to adequately punish criminals for their actions without increasing the penalties for their association with a "gang."

-- The definition of "criminal street gang" provides prosecutors with a dangerous weapon which can be used at their discretion against undesirables on the basis of race and class.

-- Persons should be punished on the basis of their own criminal actions, not the actions of a group whose identity is impossible to define with complete certainty.

-- How are we to be sure the person cited under this language is indeed a "member" of a gang? Identifying clothing may be mimicked by fringe hangers-on. Los Angeles Raiders jackets, a symbol associated with "gangs," are available for purchase at any mall. How will a prosecutor view a young, poor, black person who wears such a jacket in the commission of a crime? What if the "gang" does not consider this person a member? How is actual "membership" to be established? Mere accidental association and coincidental appearance would seem to be all that is needed for a prosecutor to charge such an offender with a "Hard 40" sentence.

-- We believe the new language of Section 3 (i) which defines "criminal street gang" to be unconstitutionally vague and violative of the First Amendment protection of freedom of association.

House Judiciary
Attachment 20
3-21-94

[As Amended by Senate Committee of the Whole]

Session of 1994

Substitute for SENATE BILL No. 608

By Committee on Judiciary

2-23

AN ACT concerning crimes and punishment; relating to sentencing; commission of any felony for criminal street gang; amending K.S.A. 1993 Supp. ~~21-4704 and 21-4705~~ 21-4716 and repealing the existing ~~sections~~ section.

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

~~Section 1. K.S.A. 1993 Supp. 21-4704 is hereby amended to read~~ as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions; subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a ~~result of good time and the period of postrelease supervision at the~~

Subcommittee #1
Recommendation: Be passed as amended

By striking all of pages 2-6

House Judiciary
Attachment 21
3-21-94

~~sonable doubt] at sentencing that the offender committed any felony~~ *violation for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender shall be sentenced to imprisonment for a term double the maximum duration of the imprisonment term for the underlying felony violation.*

(1) The court may impose a reduced prison term only upon making a finding on the record that the reduced prison term will serve community safety interests by promoting offender reformation.

(2) For purposes of this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto, provided at least one of those offenses occurred after the effective date of this act and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons.

New Sec. 3. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Sec. 4. K.S.A. 1993 Supp. 21-4704 and 21-4705 are hereby repealed.

insert attached section

Sec. 5. This act shall take effect and be in force from and after its publication in the ~~Kansas register~~

statute book

8-1-94

Section 1. K.S.A. 1993 Supp. 21-4716 is hereby amended to read as follows: 21-4716. (a) The sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) (1) Subject to the provisions of subsection (b)(3), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (b)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant committed any felony violation for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members.

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction

may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(c) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report;

(3) written briefs and oral arguments of either the state or counsel for the defendant; and

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(d) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, provided at least one of those offenses occurred after July 1, 1994, and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons.

Sec. 2. K.S.A. 1993 Supp. 21-4716 is hereby repealed.

And by renumbering sections accordingly;

House Judiciary Subcommittee
March 14, 1994
Re: SB 607

Chairman O'Neal and other Committee Members;

On behalf of the Kansas Coalition Against Sexual and Domestic Violence (KCSDV), and Safehouse, the agency which provides services to victims of abuse in Southeast Kansas, I want to thank you for considering this bill.

Both KCSDV and Safehouse urge increasing the Kansas penalties for stalking. Current penalties are inadequate. Unfortunately there are many cases similar to this recent Parsons case:

A domestic violence victim's perpetrator in Parsons was convicted twice for battery, and then again for stalking. On the stalking charge he was fined $85.00, and was back to stalking his victim that same day. This required her to leave her job as a nurse, her home, and her community and seek shelter at Safehouse for 3 weeks. Although she is now back on the job, he has attempted to obtain her new phone number from others, and continues to drive by repeatedly, which terrifies her. Yet, further documentation of his continued stalking would at best give him another fine.

Another difficulty with the stalking law is in reference to enforcement. The victim is often required to document, with witnesses, five or six incidents before law enforcement will consider the behavior as meeting the definition of stalking within the statute. We would recommend an amendment that would change page 1, line 16 to read "repeated following or harassment of another person", and a definition be added for "repeated", as 2 or more times.

Passage of Senate Bill #607 with these amendments could offer much better protection to stalking victims in Kansas. We therefore urge you to take action on this immediately.

Thank you for your consideration of our concerns.

Dorthy Miller,
Executive Director
Safehouse, Inc.

House Judiciary
Attachment 22
3-21-94

Subcommittee #1
Recommendation: Be passed as amended

House Judiciary
Attachment 23
3-21-94

As Amended by Senate Committee

Session of 1994

SENATE BILL No. 607

By Committee on Judiciary

1-26

AN ACT concerning crimes and penalties; relating to stalking; amending K.S.A. 1993 Supp. 21-3438 and repealing the existing section.

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

Section 1. K.S.A. 1993 Supp. 21-3438 is hereby amended to read as follows: 21-3438. (a) Stalking is ~~the~~ intentional ~~and~~ malicious ~~and repeated following and harassment of another person~~ following or course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose

Stalking is a class B person misdemeanor *severity level 6, person felony.*

(b) Any person who violates subsection (a) when there is a temporary restraining order or an injunction, or both, in effect prohibiting the behavior described in subsection (a) against the same person, is guilty of a class A person misdemeanor *severity level 7, person felony.*

(c) ~~Any person who has a second or subsequent conviction occurring against such person, within seven years of a prior conviction under subsection (a) involving the same victim, is guilty of a class A person misdemeanor.~~

(c) Any person who has a second or subsequent conviction occurring against such person, within seven years of a prior conviction under subsection (a) involving the same victim, is guilty of a severity level 8, person felony.

(d) ~~(c)~~ (d) For the purposes of this section:

~~(1) "Harassment" means a knowing and intentional course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person; and~~

(2) "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(e) ~~(d)~~ This section ~~shall not apply to conduct which occurs~~

an

and

10

9

8

,

and which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person

~~during labor picketing.~~

Sec. 2. K.S.A. 1993 Supp. 21-3438 is hereby repealed.

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

23-2

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

House Judiciary

March 14, 1994

****

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

****

Mr. Chairman, members of the committee, I am submitting today my written support for Senate Bill 656 and I am also attaching for your information our Department's initiatives related to juvenile programming. Senate Bill 656 which includes the staff of state youth centers in the crime of battery against a law enforcement officer, amending K.S.A. 1991 Supp. 21-3413. The potential for injury to the staff of the state youth centers is a reality which has been experienced several times in the recent past.

By enacting this legislation I believe youth who would batter staff will be punished and held appropriately accountable for their actions through charges of a severity level seven, person felony. The youth centers are implementing Aggression Replacement Training, a model for intervention in conflictual circumstances which is non-aggressive and de-escalating to the potential for attacks to staff as well as between youth. I believe the implementation of Aggression Replacement Training in combination with a greater level of charge for battery to staff will reduce the threat of attacks on staff at state youth centers.

I do have a concern about those youth placed in state youth centers with misdemeanor only offenses. In the adult system, the sentencing guidelines call for presumptive probation unless two, person felony convictions have been committed prior to the commission of a severity level seven, person felony.

Thank you for considering this testimony.

Submitted by:

Carolyn Risley Hill
Commissioner, Youth and Adult Services

CRH:VLA

House Judiciary
Attachment 24
3-21-94

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

Attachment to Written Testimony on SB 656

****

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others".

****

****

YAS Mission Statement

Youth and Adult Services creates conditions for family members and communities to safely care for and nurture one another by responding to social conditions that threaten individual well-being and public safety.

****

JUVENILE OFFENDER ISSUES

We continue to be concerned about the number and seriousness of juvenile offenses and are working to strengthen the Department's response to public safety and habilitation of young offenders. Outlined below are a number of initiatives we are pursuing or supporting which include statutory change, community resource development, and improvement in the work of our state Youth Centers. As we develop initiatives we need to consider ourselves a partner with others responsible for the juvenile system particularly courts, prosecutors and law enforcement.

COMMUNITY RESOURCES

Community based services for juvenile offenders are delivered by the Department, Court Services and in a few Community Corrections programs. Services include family treatment, mentoring, mental health services, drug treatment, and a variety of monitoring and supervision.

- Continue to build a continuum of services of community based programs that provide both safety for the public and habilitative program elements directed at changing the behavior of assigned youth. Day reporting, mentorship, electronic monitoring, and linkages between community agencies are examples of elements in this initiative.
- Coordinate the delivery of services and to allocate resources to communities to develop a range or continuum of services for juvenile offenders.
- These services should be driven by the values of the community and targeted for the types of juvenile offenders in each community.

- Resources are needed for juvenile offender supervision and screening for pre and post incarcerated juvenile offenders. This should include resources for job training, educational and counseling type programs as well as drug and mental health treatment.

Expected Outcomes

- Community ownership and coordinated service planning.
- Reduced reliance on Youth Centers and more community protection.

Day Reporting Center

Day Reporting Centers provide alternatives for juvenile offenders to reduce placement in the custody of SRS and in state Youth Centers. These Centers provide a high level of structure and activities for youth screening, supervision, crisis intervention, family involvement, educational and vocational training, and independent living and recreational programming. Youth in the program have daily schedules and report to the center daily for classes, drug testing, and verification of activities. Some youth are monitored with the additional structure of an electronic monitoring device. There are three centers located in Kansas City, Wichita, and Pittsburg. Kansas City and Wichita have the capacity of 50 youth and Pittsburg has the capacity of 20. During FY 1993, 82 youth were served by these programs and during FY 1994 to date they have served 114. This is resource on the continuum of services for juvenile offenders and should continue to be expanded to provide services across the state.

Estimated cost to expand day reporting by 200 slots would be $3,000,000.

Expected Outcomes

- Reduced custody or commitment to the Department.
- Reduced criminal activity and increased participation in school and work.

Juvenile Intake

Juvenile Intake Services are the "gatekeeper" for the juvenile justice system. Such service provides twenty four hour, on-call screening of youth who have been arrested or who come into contact with law enforcement. The purpose is to make the best placement possible for the youth. Historically, intake services were provided by Court Services and then by the Department. Currently, there are five intake programs funded through the Juvenile Justice and Delinquency Prevention Formula Grants program. This service should be expanded statewide.

Estimated cost to expand Juvenile Intake services would be $1,900,000 as estimated by the Office of Judicial Administration.

Expected Outcomes

- Timely effective decisions which result in appropriate intervention for the juvenile and protection of the community.
- Appropriate placement decisions which work in tandem with the detention facilities.

Community Corrections Services

Community Correction Services provide a variety of interventions to prevent repeat offenses. These include house arrests, electronic monitoring and daily supervision. The availability of such services tailored to the juvenile and his/her circumstances are important for a continuum of services for Juvenile Offenses.

Estimated cost for Community Corrections program in major counties would be 2,300,000 million. If SB 400 becomes law federal funds could be matched to $1,760,000 SGF to meet total program needs.

Expected Outcomes

- Fewer repeat offenses
- Reduce the need for out-of-home placement without compromising community safety.

Transition Services

Transition Services are provided to youth and family prior to and upon release from a Youth Center to aid in a successful transition back into the home and community.

Estimated cost for Transition Services for all youth released from youth center would be $2,300,000.

Expected Outcomes

- Successful completion of conditional release.
- Fewer repeat offenses.

YOUTH CENTERS

The mission of our state Youth Centers is to provide juvenile correctional programs with a blended mission of care, habilitation, treatment and public safety, which assures:

- Protection of the safety of youth, staff and the public.
- Youth come to understand the predictable connections between behavior and consequences and that they can control what happens to them by controlling their behavior.
- Realistic treatment and programming for youth and their families.
- Protection of the legal and civil rights of youth.
- Spiritual, moral, physical, intellectual and social needs of youth are met.
- Constructive training aimed at habilitation and re-establishment of youth in society.

Length of Stay

The four state Youth Centers should be reserved to address the needs of only the most serious and habitual Juvenile Offenders and the length of stay at the Youth Center extended. The Kansas Juvenile Offenders Code makes essentially no dispositional differences for different levels or types of offense. Youth Center census has been managed by the department partially through releases. In an effort not to crowd the Youth Centers youth have been released to accommodate new admissions. Increased length of stay at the state Youth Centers means serving fewer youth in these institutions and more in other settings.

Expected Outcomes

- Reduce the number of youth entering the state Youth Centers by limiting the ability of the court to place youth in state custody to felony type offenders only and by limiting direct commitments to A,B, and C felony type offenses.
- Continued refinement of the departments efforts to operate a classification system to limit department placements in Youth Centers based on adjudicated serious and habitual offenses.

Admission

The Kansas Juvenile Offenders Code make no dispositional differences for different levels or types of offense. This creates a situation where youth are placed in Youth Centers for a variety of reasons beyond their adjudicated offenses. The department has begun to centrally screen Youth Center referrals through a new screening process that considers current offenses, offense history and prior attempts to intervene. The process also requires that a community staffing team attempt to develop community options prior to placement in a Youth Center.

- Screening referrals is a method of reducing Youth Center admissions through the application of objective criteria and professional judgement toward the end of reserving the Youth Centers for the most serious and habitual offenders.

- Continue to refine the screening instrument toward a more standard classification system that depends less on judgement and more on objective items such as current offense, offense history, and risk to the community.

- Develop more opportunities for the community to respond to youth being considered for state custody by requiring the court to convene a community staffing team made up of representatives of the community agencies that serve youth and families prior to giving custody to the state.

Expected Outcomes

- The Youth Centers would serve only the most serious and repeat offenders and do so for the length of time required to make a difference.
- Communities assume greater responsibility for misdemeanor offenders and develop responses through community consensus.

STATUTORY CHANGES

Senate Bill 584, amends K.S.A. 38-1663, relating to authorized dispositional alternatives. Companion bill is HB 2441.

- authorizes direct commitment to a state Youth Center as a dispositional alternative by district court only for A, B, C felonies.

Expected Outcomes

- To increase the average length of stay and program benefit at our state Youth Centers.
- To limit placements at state Youth Centers to only the most serious offenders
- To enhance protection of the public
- To reduce over use of state Youth Centers for misdemeanor offenders

Senate Bill 656, amends K.S.A. 21-3413, increase penalty for battery against an officer or employee of a state Youth Center:

- Make battery against a state Youth Center officer or employee engaged in the performance of such officer's duty a class A person misdemeanor.
- Make battery against a state Youth Center officer or employee by a person confined in such a Youth Center while such officer or employee is engaged in the performance of such officer's or employee's duty a severity level 7, person felony.

Expected Outcomes

- To punish and structure youth who batter staff of state Youth Centers
- To enhance staff safety at state Youth Centers
- To enhance the safety of youths at state Youth Centers

Senate Bill 579, authorizes the Secretary of the Department of Social and Rehabilitation Services to release the name, likeness and other information of a juvenile offender in SRS custody, to assist in the apprehension of an offender who has escaped custody.

Expected Outcomes

- To protect the public from juvenile offenders who have escaped from custody
- To protect the juvenile from delinquent activity and falling victim to abuse while on escape status

House Bill 2205, authorizes district court judges to order parents into counseling, much as the Children in Need of Care Code allows the court to issue an order of informal supervision.

Expected Outcomes

- To enhance community responsibilities for families and offenders
- To define juvenile offenders as families with problems needing family solutions.

Senate Bill 400, modifies the juvenile offender code to allow federal financial participation in juvenile offender programs.

Expected Outcomes

- To expand federal funding directed to community based juvenile offender programs
- To reduce reliance on all state general funds for community based juvenile offender programs
- Reinvestment of federal funds to juvenile offender programs will support expansion of programs.

OTHER CONSIDERATIONS

- Make the Youth Center at Beloit, a coeducational program to include young male offenders.

Revised March 1994

Kansas State Fire Marshal Department
700 Jackson, Suite 600
Topeka, Kansas 66603-3714
Phone (913) 296-3401
FAX (913) 296-0151

"Where Fire Safety Is A Way Of Life"

Joan Finney
Governor

Edward C. Redmon
Fire Marshal

TESTIMONY OF
JIM CODER
ASSISTANT ATTORNEY GENERAL
KANSAS STATE FIRE MARSHAL'S OFFICE
BEFORE HOUSE JUDICIARY COMMITTEE

MARCH 14, 1994
SENATE BILL 670

On behalf of the State Fire Marshal, I want to thank this committee for holding this hearing. We proposed the original increases in the arson and aggravated arson sentences.

As it stands now, Senate Bill 670 increases the sentencing levels for arson, eliminates the three sentencing levels based on amount of property damage and replaces it with a two tiered approach based on residence versus non residence. It also increases the statute of limitations from 2 to 5 years. Finally, it changes arson from a nonperson to a person felony. The last change in no way affects the sentence that arsonist convicted in a case receives. It only affects any future sentences received by that individual. However, this change is more important for perception than anything else. Unlike other "property" crimes like theft, theft of services, forgery and the like, there is an immediate emergency response. Every time those red lights and sirens are used on those big red trucks, public servants the vast majority of which are volunteers, put their lives in danger. Despite what some people think, firefighters are people too. The last two years of data we have available from our K-FIRS system is as follows: in 1992 there were 2,445 identified incendiary fires, and every fire official in the state will tell you that that is an extremely underreported figure. These fires caused 35 firefighter injuries, 7 civilian injuries and 2 civilian deaths. For 1993 the figures are 2101 incendiary fires causing 36 firefighter injuries, 16 civilian injuries, and 9 civilian deaths. The 1993 figures are not entirely complete. Due to a computer problem, one of the largest departments data isn't included yet. Off the top of our head we know that the civilian death rate will increase by at least 4 and we assume the injury rate for both firefighters and civilians will increase as well.

There has also been a perception problem perpetuated by the classification of arson as a nonperson felony. Nationwide arson costs over $1.5 billion. However for some

reason, arson has historically been viewed as something between the perpetrator and the insurance company. The latest figures I have seen indicate that for every $1.00 you spend on fire insurance premiums, 25 cents goes to pay for fraudulent arson claims. How is that different or any less serious than if someone robbed a bank and got away with cash amounting to 1/4 of your savings account?

We would propose one amendment to this bill. Part of the original proposal would have added sentence levels for firefighter injury or death which occurred during an arson or aggravated arson fire. After some discussions it was determined that that approach probably wasn't the most appropriate. We would therefore propose making injuries to fire officials that occurred while fighting or investigating arsons or aggravated arsons comparable to aggravated battery on a law enforcement officer. Besides providing punishment for those whose acts cause injuries to public servants, it would also help with perception problems that I discussed earlier. Arson is a dangerous crime. I have attached the proposed amendment to this testimony.

Finally, I would like to relate just a few of the horror stories that the fire marshal's office has worked to go a little further in explaining why we are asking for these changes. The first happened in Melrose in May of 1992. A man couldn't sell his house so he decided to burn it for the insurance money. In the process of trying to burn it down he ended up making it act like a big bomb. The explosion directly burned the house next door and damaged every building in the community. All told he was convicted of just one count of arson. **AND HE GOT PROBATION!** Although that was under the old system, under currents sentencing guidelines he still would have received probation. I've provided some of the pictures that were taken of that scene which indicates just how much damage and how many people can be affected by just one arson.

A second horror story is as follows. A woman and her four children were in a house. To keep this man who had been bothering her out, she padlocked the back door from the outside. The man, knowing the back door was padlocked started a fire on the front porch and broke a window there so the fire could spread into the house. The man plead this aggravated arson down to an arson and received probation. He would have received probation under the current sentencing guidelines too.

On behalf of the State Fire Marshal, the fire service and the law enforcement agencies who investigate arsons, I urge you to support SB 670 which makes arson a crime where the penalty matches the significant harms that the crime can cause.

Sec 4. Battery against a fire official. (a) Battery against a fire official is battery as defined in K.S.A. 21-3412 and amendments thereto committed against any fire official involved in the suppression, overhaul or investigation of any fire which is an arson as defined in K.S.A. 21-3718 or aggravated arson as defined in K.S.A. 21-3719. (b) Battery against a fire official is a class A person misdemeanor.

Sec 5. Aggravated battery against a fire official. (a) Aggravated battery against a fire official is aggravated battery as defined in K.S.A. 21-3414 and amendments thereto committed against a fire official involved in the suppression, overhaul or investigation of any fire which is an arson as defined in K.S.A. 21-3718 or aggravated arson as defined in K.S.A. 21-3719, in which the fire official either:

(1) the fire official received serious and permanent injury from the defendant's conduct.

(2) the fire official received serious injury from the defendant's conduct; or

(3) the fire official could have received serious and permanent injury from the defendant's conduct.

(b) Aggravated battery against a fire official as provided in subsection (a) (1) is a severity level 3 person felony. Aggravated battery against a fire official as provided for in subsection (a) (2) is a severity level 5 person felony. Aggravated battery of a fire official as provided for in subsection (a) (3) is a severity level 6 person felony.

City of Olathe

TESTIMONY OF
W. KENT HARRIS
FIRE MARSHAL/HAZARDOUS DEVICES TECHNICIAN
OLATHE FIRE DEPARTMENT
HOUSE JUDICIARY COMMITTEE ON CRIMINAL LAW

MARCH 14, 1994
SENATE BILL 671

On behalf of all Fire and Law Enforcement personnel in the State of Kansas, I would like to thank the Kansas Fire Marshal's Office for their efforts in the areas of Arson & Explosives prosecution.

I am before this committee as a Fire Marshal and Law Enforcement officer. Why I am here today is simple. The explosive prosecution laws of this state are inadequate for the protection of the citizen as well as the emergency responder.

As a bomb technician, I now want to take you on a few calls and, if you will, place you in an enforcement position. This call is to a reported house fire, and first arriving units advise fire showing and numerous explosions. This house is located one block from the Johnson County Court House, Olathe. Once the fire is extinguished, you investigate the crew's reports of large quantities of ammunition stored in the house. After securing the search waiver, you find not only ammunition, but hand grenades and live fuzes, pipe bomb components, and enough powder to fill all devices. Then there is the marijuana growing room.

Under Kansas Law, I can not file any charges for the hand grenades, fuzes, or pipe bomb components. This person will be placed on probation for the controlled substance only. The fire department and bomb squad was placed in life threatening danger to extinguish the blaze, and to render the devices safe as not to hurt any citizen or ourselves.

In another case, a report of an explosion occurs and crews find a male and two female occupants of a duplex severely injured. Upon investigation, a pipe bomb factory is found by fire crews in the garage. The bomb squad responds and works sixteen hours to make the duplex safe. Over seventy

pounds of explosives are recovered and stored. The investigation shows complete records of all sales and where chemicals were purchased to make these devices. When it comes time to file our hopeful felony charges, there is no Kansas Statute that will allow any prosecution. Again, endangered are emergency responders as well as the bomb squad while they render the devices safe for removal.

The most recent event is the Federal Court House bombing in Topeka, and the bombing in Oskaloosa, Kansas which was related. At the end of this day, the Olathe Fire Department Bomb Squad had rendered seven pipe bombs safe in Oskaloosa, and the Topeka area squads had attacked numerous devices in the court house.

We as Fire and Law Enforcement emergency response teams, are urging changes in Kansas Statutes that allow us to prosecute persons, that use fire and explosives for criminal acts. We urge you to make the mere possession of these devices a serious crime and allow us the chance to make the public safe.

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL NO. 629

The Kansas County and District Attorneys Association appears in Support of SB 629, which raises the docket fee for the law enforcement training center from $5 to $9 (reduced to $8 by Senate Judiciary Committee). As a member of the committee that set up law enforcement standards and training, I have a personal as well as professional sense of pride in LETC.

Due to recent changes in the policy of the Kansas Highway Patrol, there has been a decline in the number of traffic tickets issued by that agency, to the economic detriment of those entities funded by docket fees on traffic tickets. An example of its effect on KCDAA members is attached. In response to this decline in funding, a delegation of KCDAA Board members and officers met with Superintendent McCollum and his staff to discuss KHP policies. The Colonel was very open and honest with us regarding changes in these policies, and it was apparent to KCDAA that these changes will enhance public safety in Kansas, even at the economic detriment of docket fee funding.

Our Association has resolved to seek other avenues of funding for our members, one of which is to attempt to conduct more joint training with law enforcement officers, through LETC. Such planning is in the works for a domestic violence program this fall. This type of training, of course, demands that funding for LETC remain at its current level, and SB 629 is an effort to meet that goal.

House Judiciary
Attachment 27
3-21-94

March 14th, 1994

To: Chairman O'Neal and members of the House Judiciary Committee

Good afternoon. I would like to thank the chairman and the members of the committee for hearing my testimony.

I am Jim Daily, President-Elect for the Kansas Peace Officers Association.

The KPOA supports Senate Bill 629.

The Kansas Law Enforcement Training Center has been the main stay of Law Enforcement training since it's beginning in 1969.

The staff is responsible for basic training of approximately three hundred and sixty new law enforcement officers each year, and the continuing education concerns of approximately forty five hundred officers across this state.

Funding for a monumental task of this kind is of paramount concern. KLETC is being funded by a state legislated docket fee from the district and municipal courts. Currently that combined fee is nine dollars. The amount of money this fee generates has fallen short of the needs to keep pace with the necessary fiscal and physical changes needed at KLETC.

We have seen, because of the insufficient amount of funding, the cancelation of one basic training class last summer. The reduction of basic training classes is certainly counter productive. The back log of officers waiting to be trained is critical. Law Enforcement agencies can ill afford the prolonged waiting period caused by the lack of funding and facility. Current state statute provides that a new officer must receive three hundred and twenty hours of certified basic training within the first twelve months of employment. The back log now makes this almost impossible.

The KPOA believes that an increase of four dollars in the district court docket fee will allow for the completion of the master plan. Providing the necessary expansion of classrooms, dormitory space, kitchen/dining spaces, staff offices and equipment needed to reduce the back log in training. Thus allowing for a more effective and efficient training facility, better serving the officers and citizens of our state.

Respectfully submitted

Jim Daily

Jim Daily, KPOA President - Elect

House Judiciary
Attachment 28
3-21-94

KANSAS ASSOCIATION K.A.C.P. CHIEFS OF POLICE

March 15, 1994

Representative Michael O'Neal
Chairman
House Judiciary Committee
State Capitol Building
Topeka, KS 66612

Dear Representative O'Neal & Committee Members:

As President of Kansas Association of Chiefs of Police, I am writing to inform you of the Association's support of SB 629, District Court Docket Fee.

It is **vital** to the continuing operation of the Kansas Law Enforcement Training Center that the increase in docket fees be approved.

The current docket fee surcharge was set by the legislature in 1986. Since that time costs have increased, plus there has been a decline in the amount of revenue coming from District Court. It is important to remember that the monies generated come from those individuals who violate the laws of the State of Kansas. Law-abiding citizens **do not pay** for Law Enforcement training.

The passage of this bill will allow the KLETC staff to work towards eliminating the back log of recruit training that now exists. Example: My department hired two Officers early 1994. Due to back log, my Officers cannot attend the Academy until October 1995.

This does not meet the training requirements as mandated in the Law Enforcement Training Act, K.S.A. 74-5601 et.seq. The Kansas Association of Chiefs of Police support the passage of SB 629.

Sincerely,

Ronald G. Jackson

Ronald G. Jackson, President
Kansas Association of Chiefs of Police
Newton, Kansas

House Judiciary
Attachment 29
3-21-94

WINFIELD POLICE DEPARTMENT

812 Millington
Winfield, KS 67156

Ronald K. Gould, Chief of Police

Office (316) 221-3344
Fax (316) 221-1326

March 14, 1994

House Judiciary Committee Members:

I would like to speak in support of the Kansas Law Enforcement Training Center's request for increasing District Court docket fees. The law enforcement community of Kansas was very grateful when the original docket fees were implemented in support of the training program at KLETC. It is a fact; however, that the money derived from the current docket fee is no longer meeting the needs of law enforcement training in Kansas due to the decline in tickets being processed through District Court and the increase in operating costs of the Center.

The new classroom and administrative building at KLETC is a wonderful facility and an important step toward making Kansas law enforcement training some of the best in the country. It is; however, important and even fundamental to continue with improvements in the facilities as delineated by Director Larry Welch and his staff in the KLETC multi-phase master plan.

KLETC currently has a long backlog of recruits awaiting training from around the state. Our department currently waits approximately one year to get a recruit into the Training Center. We, of course, do our best to provide local on-the-job training and other training as available but this is in no way a viable substitute for the eight weeks intensive training provided at KLETC. It would be very beneficial to our department, as well as other departments, to reduce the waiting period from one year to three months or even less.

Crime is at the forefront of everyone's thoughts in these days of drug abuse and violence and thus law enforcement is under greater than normal scrutiny. One of the many needs of law enforcement is advanced and intensive training to respond effectively and efficiently to the demands of society. In my 15 years of law enforcement experience, I have witnessed tremendous improvements in law enforcement training and education and the benefits are incalculable. This is not the time to falter in our efforts to improve quality law enforcement.

I am not an advocate of solving problems simply by spending greater sums of money; however, I cannot imagine this particular request being mistaken as frivolous. The dormitory buildings to be replaced are of World War II vintage and have been well used for generations. At this time; however, they are not only in poor condition but inadequate in size. Additionally, equipment to be used for training should continually be upgraded to remain current with ever changing technologies. Unfortunately criminals never seem to have difficulty finding necessary funding to keep abreast of the latest technological advances. It is imperative that we do likewise.

In conclusion, I would like to say that KLETC has made great strides in providing quality training to Kansas law enforcement and we enthusiastically and energetically support efforts to increase funding for the Training Center. The method of funding suggested is in a sense a user fee and what better source of funding than court docket fees. Law enforcement training is one area in which the state should make every effort to support and encourage in order to help reduce crime and provide better service, safety, and security to the citizens of Kansas.

Thank you for your consideration of this measure.

Ronald K. Gould

Ronald K. Gould
Chief of Police
Winfield, Kansas

RKG/reb

HEARING ON S.B. 629
HOUSE JUDICIARY COMMITTEE
MARCH 15, 1994

TESTIMONY OF DELBERT FOWLER, CHIEF OF POLICE, DERBY, KS

Chairperson O'Neal and other members of the committee:

I am Delbert Fowler, Chief of Police for the City of Derby. I apologize for not being able to attend this hearing in person. I had another commitment in another area of the State.

I have been told by the staff at the Kansas Law Enforcement Training Center, there is a substantial shortfall of funds that are received from the docket fees. Since this is the only source of revenue for KLETC, it is obvious we have a problem that needs to be fixed.

The majority of the Basic Law Enforcement training for cities, counties and some State agencies is given at the Kansas Law Enforcement Training Center. We also rely on them to help with the mandated 40 hours per year of training after graduation form basic training. Unfortunately, due to the decrease in funds available, classes have had to be postponed and the building has had to be postponed. The postponement of these classes has created a back log resulting in our officers not receiving their basic training in a timely manner.

Most departments in the State are of a small to medium size. They usually do not have the luxury of sending a new officer to a basic academy until they have been on the job for several months. The longer the wait, the more the potential for liability exists because of a lack of training.

Our department currently has two officers waiting to attend KLETC to receive their basic training. When we called to make arrangements for them to attend, we were told we would have to wait approximately 14 months to get them in. Kansas Law mandates that officers receive their basic training within their first year of employment. Although the Director can extend this time due to unexpected circumstances, the need is very real to cut this time as short as possible.

It is unfortunate that we have to come back to you so soon after asking for your support in 1992 to add costs to Municipal Court Dockets. No one at that time could foresee a decrease in funds from the Court Docket Fees.

It is my understanding after talking to the Staff at KLETC, they feel a $4.00 additional District Court docket fee should be sufficient to give them the needed funding to continue. I urge your support to add the additional $4.00 fee.

Please remember, this funding is not paid by the normal taxpayer but by persons violating the laws of the State.

Thank you for taking the time to listen to our very real needs.

Sincerely Yours,

Delbert E. Fowler

Delbert E. Fowler
Chief of Police
Derby, Kansas

Senate Bill 629 - $4 Docket Fee Increase for Kansas Law Enforcement Training Center

Trains approximately 360 full-time and part-time officers per year;
continuing education reaches approximately 4500

User fee - not a taxpayer or state burden

PRESENT FUNDING:	**USED FOR**:
$5 District Court Docket Fee (set in 1986)	General Operating Budget Equipment Replacement Phase I & II of master plan
$4 Municipal Court Docket Fee (set in 1992) *In 1997 - goes to $2*	Final phase of construction *Operating Budget*

PROBLEM:

1. FY 94, a shortfall of approximately 25% in District Court Docket Fee collections, borrowed from funds identified for construction to complete 1993 operations.
2. Municipal Court docket produced only $811,587 in 1993 versus an expected $1.4 million.
3. Third and last phase of construction plan ($5.4 million) has been delayed 18 months and is in jeopardy due to shortfalls in the municipal court docket fees.
4. Must replace lost operating revenue, replace funds diverted from "construction moneys", complete final phase of construction, and replace equipment.

SOLUTIONS STUDIED (attached sheet):

$5 increase - generated too much money -- discounted immediately.

$3 increase - delays construction considerably, increases construction costs, would be unable to decrease backlog or replace equipment. If docket fees continued to fall, would have to return to legislature.

$4 increase - poses slight delay in construction; would have sufficient dollars for future, if estimates on district and municipal court docket fees are correct. If estimates not correct, $4 could be made to fit without return to legislature.

Were other funding sources looked at?	No.
Why not	Docket fees were legislature's choice in 1986. User fee - not a state or taxpayer burden

RECOMMENDED SOLUTION: $4 increase appeared to be the "best fit" for the long term.

KLETC GOALS with funding of $9 District Court and $4 Municipal Court

General operations

Phase III of Master Plan - $5,436,000 for new dormitory space, kitchen/dining spaces; renovation of instructor office space.

Long range capital improvements include rebuilding of driving course, resurfacing parking lot, FATS II, and physical fitness equipment.

Other equipment replacement

House Judiciary
Attachment 32
3-21-94

Kansas Law Enforcement Training Center
New Fee Income Estimates

The following table assumes that a $3 Increment is placed on the district court docket fee in perpetuity

FY	Income District Courts	Income Municipal Courts	Total Projected Income	Operating Budget	Capital Improvements	Total Projected Costs	Annual Projected Balance	Reserved For Construction	Cumulative Balance
Balance Forward								543,136	0
1993	1,121,819*	811,587*	1,933,406	1,170,600	366,000	-1,536,600	396,806	396,806	0
1994	985,000*	990,793*	1,975,793	1,314,393	109,000	-1,423,393	552,400	552,400	0
1995	1,576,000	944,000	2,520,000	1,380,112	2,525,167	-3,905,279	-1,385,279	-1,492,342	107,063
1996	1,576,000	944,000	2,520,000	1,724,117*	543,667	-2,267,784	252,216		359,279
1997	1,576,000	944,000	2,520,000	1,810,323	1,370,666	-3,180,989	-660,989		-301,710
1998	1,576,000	472,000	2,048,000	1,900,839	521,500	-2,422,339	-374,339		-676,049
1999	1,576,000	472,000	2,048,000	1,995,881		-1,995,881	52,119		-623,929
2000	1,576,000	472,000	2,048,000	2,095,675		-2,095,675	-47,675		-671,604
					5,436,000				

The following table assumes that a $4 Increment is placed on the district court docket fee in perpetuity

FY	Income District Courts	Income Municipal Courts	Total Projected Income	Operating Budget	Capital Improvements	Total Projected Costs	Annual Projected Balance	Reserved For Construction	Cumulative Balance
Balance Forward								543,136	0
1993	1,121,819*	811,587*	1,933,406	1,170,600	366,000	-1,536,600	396,806	396,806	0
1994	985,000*	990,793*	1,975,793	1,314,393	109,000	-1,423,393	552,400	552,400	0
1995	1,773,000	944,000	2,717,000	1,380,112	2,525,167	-3,905,279	-1,188,279	-1,492,342	304,063
1996	1,773,000	944,000	2,717,000	1,724,117*	543,667	-2,267,784	449,216		753,279
1997	1,773,000	944,000	2,717,000	1,810,323	1,370,666	-3,180,989	-463,989		289,290
1998	1,773,000	472,000	2,245,000	1,900,839	521,500	-2,422,339	-177,339		111,951
1999	1,773,000	472,000	2,245,000	1,995,881		-1,995,881	249,119		361,071
2000	1,773,000	472,000	2,245,000	2,095,675		-2,095,675	149,325		510,396
					5,436,000				

The following table assumes that a $5 Increment is placed on the district court docket fee in perpetuity

FY	Income District Courts	Income Municipal Courts	Total Projected Income	Operating Budget	Capital Improvements	Total Projected Costs	Annual Projected Balance	Reserved For Construction	Cumulative Balance
Balance Forward								543,136	0
1993	1,121,819*	811,587*	1,933,406	1,170,600	366,000	-1,536,600	396,806	396,806	0
1994	985,000*	990,793*	1,975,793	1,314,393	109,000	-1,423,393	552,400	552,400	0
1995	1,970,000	944,000	2,914,000	1,380,112	2,525,167	-3,905,279	-991,279	-1,492,342	501,063
1996	1,970,000	944,000	2,914,000	1,724,117*	543,667	-2,267,784	646,216		1,147,279
1997	1,970,000	944,000	2,914,000	1,810,323	1,370,666	-3,180,989	-266,989		880,290
1998	1,970,000	472,000	2,442,000	1,900,839	521,500	-2,422,339	19,661		899,951
1999	1,970,000	472,000	2,442,000	1,995,881		-1,995,881	446,119		1,346,071
2000	1,970,000	472,000	2,442,000	2,095,675		-2,095,675	346,325		1,692,396
					5,436,000				

32-2

As Amended by Senate Committee

Session of 1994

3/15/94

SENATE BILL No. 629

By Committee on Judiciary

1-31

AN ACT concerning docket fees; disposition thereof; law enforcement training center fund; amending K.S.A. 28-172a and K.S.A. 1993 Supp. 20-362 and repealing the existing sections.

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

Section 1. K.S.A. 1993 Supp. 20-362 is hereby amended to read as follows: 20-362. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to $10 for each docket fee paid pursuant to K.S.A. 60-2001 and 60-3005, and amendments thereto, during the preceding calendar month;

(2) a sum equal to $10 for each $36.50 or $61.50 docket fee paid pursuant to K.S.A. 61-2501, 61-2704 or 61-2709, and amendments thereto; and

(3) a sum equal to $5 for each $16.50 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preceding calendar month.

(b) To the board of trustees of the county law library fund, for deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month for cases filed in the county.

(d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to $.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and

Subcommittee #1
Recommendation: Be Passe
asamended

House Judiciary
Attachment 33
3-21-94

credit to the law enforcement training center fund, a sum equal to ~~$5~~ ~~$9~~ [$8] for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month. $9

(f) To the state treasurer, for deposit in the state treasury and distribution according to K.S.A. 1993 Supp. 20-367 *and amendments thereto*, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d) and (e).

Sec. 2. K.S.A. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

Murder or manslaughter	~~$153.50~~ ~~*$157.50*~~	[~~$156.50~~]	$157.50
Other felony	~~123.50~~ ~~*127.50*~~	~~126.50~~	127.50
Misdemeanor	~~93.50~~ ~~*97.50*~~	~~96.50~~	97.50
Forfeited recognizance	~~53.50~~ ~~*57.50*~~	~~56.50~~	57.50
Appeals from other courts	~~53.50~~ ~~*57.50*~~	~~56.50~~	57.50

(b) In actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of ~~$37~~ ~~*$41*~~ [~~$40~~] shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~$37~~ ~~*$41*~~ [~~$40~~] $41

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, *the emergency medical services operating fund* and the judiciary technology fund shall be paid from the docket fee. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of

33-2

3/15/94

As Amended by Senate Committee

Session of 1994

SENATE BILL No. 742

By Committee on Judiciary

2-9

AN ACT concerning criminal procedure; relating to jurisdiction of certain law enforcement officers; search warrants; amending K.S.A. 22-2401a and repealing the existing section.

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

Section 1. K.S.A. 22-2401a is hereby amended to read as follows: 22-2401a. (1) Law enforcement officers employed by consolidated county law enforcement agencies or departments and sheriffs and their deputies may exercise their powers as law enforcement officers:

(a) Anywhere within their county; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers:

(a) Anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(3) University police officers employed by the chief executive officer of any state educational institution may exercise their powers as university police officers anywhere on:

(a) Property owned or operated by the state educational institution, by a board of trustees of the state educational institution, an endowment association, an athletic association, a fraternity, sorority or other student group associated with the state educational institution; and

(b) the streets, property and highways immediately adjacent to the campus of the state educational institution. When there is reason to believe that a violation of a state law, a county resolution, or a city ordinance has occurred on property described in this subsection, such officers with appropriate notification of, and coordination with, local law enforcement agencies or departments, may investigate and

Subcommittee #1
Recommendation: Be passed as a

House Judiciary
Attachment 34
3-21-94

arrest persons for such a violation anywhere within the city where such property, streets and highways are located. Such officers also may exercise such powers in any other place when in fresh pursuit of a person. University police officers at the university of Kansas medical center shall also have authority to transport persons in custody to an appropriate facility, wherever it may be located, and to make emergency transportation of medical supplies and transplant organs.

(4) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within ~~a county designated an urban area by K.S.A. 19-3524 and amendments thereto~~ *Johnson* [~~or Sedgwick~~] *county* may exercise their powers as law enforcement officers in any area within ~~such~~ *the respective* county when executing a valid arrest warrant *or search warrant*, to the extent necessary to execute such ~~warrant~~ *warrants*.

(5) In addition to the areas where university police officers may exercise their powers pursuant to subsection (3), university police officers may exercise the powers of law enforcement officers in any area outside their normal jurisdiction when a request for assistance has been made by law enforcement officers from the area for which assistance is requested.

(6) As used in this section:

(a) "Law enforcement officer" has the meaning ascribed thereto in K.S.A. 22-2202 and amendments thereto.

(b) "University police officers" means university police officers employed by the chief executive officer of any state educational institution under the control and supervision of the state board of regents.

(c) "Fresh pursuit" means pursuit, without unnecessary delay, of a person who has committed a crime, or who is reasonably suspected of having committed a crime.

Sec. 2. K.S.A. 22-2401a is hereby repealed.

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

34-2

COMMENTS TO MEMBERS OF HOUSE JUDICIARY COMMITTEE

RE: SENATE BILL #743

MARCH 14, 1994

I'm here today in support of Senate Bill Number 743, which allows for county or district attorney's offices to impose a handling fee for bad checks processed through the county district attorney's office.

As you are probably aware, the handling of bad check cases is a significant part of the prosecution business in Kansas today. For example, in 1993 the Johnson County District Attorney's Office took in over $600,000 in bad checks. This took the form of just under 6,000 checks turned over to us for prosecution. The Bad Check Division of my office collected almost one-quarter of a million dollars in restitution for individuals and merchants. The Johnson County District Attorney's Office expends well in excess of $100,000 per year in providing these services to the community.

As of the present time, Kansas law is silent as to whether a county or district attorney's office can recover part of their costs by assessing an administrative processing fee for each bad check collected. Currently, several other states, such as Missouri, have legislation that allows for the levying of a processing fee to be paid by the defendant. Senate Bill 743 allows a modest fee to be collected to go into the county general fund to help recoup our costs. It is reasonable. It is fair. It is paid by the party who writes the bad check. It's good legislation that is over due.

Thank you for your time.

Paul J. Morrison, District Attorney
Johnson County, Kansas

A:LEGISLATION:#SB743.WP

Subcommittee #1
Recommendation: Be passed as am

House Judiciary
Attachment 36
3-21-94

Session of 1994

SENATE BILL No. 743

3/15/94

By Committee on Judiciary

2-9

AN ACT concerning crimes and punishment; relating to giving a worthless check; providing for administrative handling cost for collection of worthless checks; amending K.S.A. 1993 Supp. 21-3707 and repealing the existing section.

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

Section 1. K.S.A. 1993 Supp. 21-3707 is hereby amended to read as follows: 21-3707. (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(b) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding $10 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order.

(c) It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated; or

(2) was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that

the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation.

(d) Giving a worthless check is a severity level 7, nonperson felony if the check, draft or order is drawn for $25,000 or more. Giving a worthless check is a severity level 9, nonperson felony if the check, draft or order is drawn for at least $500 but less than $25,000. Giving a worthless check is a class A nonperson misdemeanor if the check, draft or order is drawn for less than $500, except that giving a worthless check, draft or order drawn for less than $500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times.

(e) In addition to all other costs and fees allowed by law, each county or district attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost. The administrative handling cost shall be set by the county or district attorney and shall not exceed $10 for checks written in an amount equal to or less than $25, and $25 for checks written in an amount greater than $25. The administrative handling cost collected pursuant to this section shall be deposited in the county general fund.

Sec. 2. K.S.A. 1993 Supp. 21-3707 is hereby repealed.

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

and the issuer pays the amount due on such check, order or draft payment prior to crimina charges being filed

payee

36-2

KANSAS ASSOCIATION OF COUNTIES

"Service to County Government"

215 S.E. 8th
Topeka, Kansas 66603-3906
(913) 233-2271
FAX (913) 233-4830

TO: House Judiciary Committee
Chairman Mike O'Neal

FROM: Anne Smith
Director of Legislation

DATE: March 15, 1994

RE: SB 794

The Kansas Association of Counties asked for the introduction of SB 794 because of continued problems with the funding of the operational costs of juvenile detention facilities. We want to thank the Committee and Representative O'Neal for hearing the bill.

We have provided testimony delivered by SRS Secretary Donna Whiteman in January of 1992 on juvenile detention facilities. The Secretary's testimony does a good job of summarizing the actions taken over the last few years regarding the juvenile detention issue.

The testimony (see Attachment B) also clearly indicates that SRS was aware of the Advisory Committee on Juvenile Offender Programs (ACJOP) recommendations. In the testimony, ACJOP recommended to SRS "...that the balance of funds in the Juvenile Detention Facilities Fund should be made available for operational purposes only to the counties named in this recommendation and to Johnson, Saline, Sedgwick, Shawnee and Wyandotte Counties, which currently have licensed juvenile detention facilities." There can be no doubt that the Secretary understood these directives, but has delayed the release of the monies from the Juvenile Detention Facilities Fund.

The Kansas Association of Counties lobbying staff met with Secretary Whiteman two years ago to discuss her intentions with the juvenile detention facilities issue. She stated that her philosophy centered on alternative programs for juvenile offenders, and that she was concerned about juvenile incarceration. We clearly stated to her that if that was her concern she should get the counties out of the plans to build juvenile detention facilities.

House Judiciary
Attachment 37
3-21-94

The last thing KAC wanted was for counties to be mid-point in building these facilities and have the state come in and say they no longer supported the project then redirect monies earmarked for it.

The statute regarding the juvenile detention facilities fund, K.S.A. 79-4803 subpart (b), clearly states that the funds are to be used for construction, renovation, remodeling, operational costs, and retirement of debt of facilities for the detention of juveniles.

We urge the legislature to pass SB 794 as we feel it makes a strong statement not to impound these monies in the Juvenile Detention Facilities Fund and to proceed in a timely fashion in getting funds to the counties trying to meet this mandate.

We thank the Committee for its consideration of this bill. We are very willing to work with the legislature in getting this issue resolved.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of Julene L. Miller
Deputy Attorney General
Before the House Committee on Judiciary
Re: Senate Bill No. 794
March 15, 1994

Mr. Chairman, Members of the Committee:

I am here on behalf of Attorney General Stephan to address Senate Bill No. 794 and the circumstances leading to its introduction.

The juvenile detention facilities fund, created by K.S.A. 79-4803, consists of docket fees remitted to the state treasurer by each district court in accordance with K.S.A. 20-362 and 20-367. There is approximately 2.3 million dollars in the fund at this time.

In June of 1993 the Advisory Committee on Juvenile Offender Programs met to discuss the best way to utilize money that had accumulated in the juvenile detention facilities fund. The committee concluded that the money should be allocated to all facilities on a per bed basis to be expended for the

purposes authorized by K.S.A. 79-4803, i.e. construction, renovation, remodeling, operational costs or retirement of debt of facilities for the detention of juveniles. This recommendation was forwarded to the Secretary of Social and Rehabilitation Services for consideration. On July 21, 1993, Secretary Whiteman responded indicating that she preferred the money be used for programs and new community services to be provided by the juvenile detention facilities rather than for operational or other costs listed in K.S.A. 79-4803. The Advisory Committee met again on August 5 and determined, based on advise provided by the Attorney General's office, that funding programs and community services was not an appropriate use of the money in the juvenile detention facilities fund. The Committee again voted to recommend that the money be distributed by grant on a per bed basis. The Committee then received a letter from Secretary Whiteman, dated October 5, 1993, advising that she planned to delay allocation and release of the money in the fund so that she could receive guidance from the legislature "to specifically identify the purposes of these funds and to clarify budget authority for appropriations."

Attorney General Stephan believes the existing law is very clear regarding the authorized uses of money in the juvenile detention facilities fund. The statute provides that expenditures from the fund shall be for the construction,

renovation, remodeling, operational costs or retirement of debt of facilities for the detention of juveniles. The Legislature further expressed its intent for the expenditure of money in this fund through its appropriation to SRS for this purpose. With the approval of approximately half of the counties of this state, a lawsuit has been filed in the district court of Shawnee county to compel the Secretary to release these funds to the counties for the purposes for which they were intended. However, the parties have agreed to delay discovery in the case in order to give the Legislature an opportunity to speak to the issue.

In the Senate committee on judiciary, the Attorney General recommended passage of a bill to reassure the Secretary of the Legislature's intent to provide the expeditious monetary support needed by the counties in their attempt to comply with the federal and state mandates regarding the detention of juveniles. The committee determined that the best way to resolve the problem was to put responsibility for the fund in the Attorney General's office. While Attorney General Stephan is happy to do whatever the Legislature decides is appropriate in this matter, his only concern remains the expeditious release of the unencumbered money in the fund to the counties, and continued administration of the fund as directed by law. He would support any method the Legislature chooses to accomplish that goal.

KANSAS

acjop

Advisory Committee on
Juvenile Offender Programs

Testimony to the House Judiciary on SB 794
From Sue W. Lockett, Chr-Advisory Committee on Juvenile Offender Programs

The need for secure detention beds and the need to stop putting our youth in adult jails has been a focus of the ACJOP for longer than we would would have liked. ACJOP would like to spend its time and monies on prevention strategy and become more proactive on Juvenile Justice issues but this issue keeps occupying our time.

After legislation was passed that addressed the prohibition of putting youth in adult jails the ACJOP commissioned a study to determine the need for secure detention beds in Kansas. The study recommended six regional centers providing 61 beds. These centers were in addition to the existing 150 beds.

The two detention funds were created by the legislature. One fund states that it is to be used for construction. The second fund states that it can be used for construction, renovation.The funds grew because the state and the regional centers took approximately a year longer than anticipated to come to an agreement on the contract. The committee did not address the distribution of these funds because we were focused on getting the centers started.

The following is a chronological outline of decisions of the ACJOP:

June 17th-The ACJOP voted to recommend the distributtion $6500 per bed -one time only -210 beds- to existing facilities. New facilities would be limited to the bed numbers stated in the SRS contract. This recommendation vote followed a meeting with representatives from all the existing and proposed centers as to their needs.

July 21st
The ACJOP received a letter from Secretary Whiteman stating that she wanted to not distribute the funds at that time but tie them to new community services.

July 22nd
The committe, while supportive of the community services concept, did not feel that this was the intent nor possible under the statutes and asked for an Attorney General's opinion.

July 28th
AG opinion -See attached

House Judiciary
Attachment 39
3-21-94

August 5th

1. The ACJOP voted to recommend that the following be sought: that there be no limitations on expenditure limits or that the limitation be raised to 1.5 m or 70% of the fund balance whichever is greater.

2. ACJOP relooked at the situation and because of the late opening of several of the new facilities voted to recommend the awarding of $3800 per bed-one time only-158 beds.

September

Because of the late opening of some of the regional centers the state Rescue plan was instituted. $250,000 was earmarked-$10,000 to facilities that agreed to take youth, an additional $50 per day per diem and transportation.

October 5th

Secretary Whiteman sent a letter to the committee stating that she wanted to delay the distribution of the JDFF to the counties. She wanted the legislature to review the purposes of the funds and to clarify the budget authority.

After considerable discussion, the committee voted to recommend to the Attorney General that he pursue legal action to gain the release of the funds. A letter was sent to the Governor to suggest that she intervene and help in the solution to this problem.

It is our understanding that the SRS legal staff and AG staff met and could not come to a resolution of the problem. The Governor declined to intervene. The Attorney General filed a suit in Shawnee County.

Policy Issues Created by Funds

A state and local partnership in providing secure detention has been established for new regions by the state providing 90% funding for the new centers.

A regional philosophy was adopted but not put into statute.

The state needs to consider the equitable distribution of these funds for all centers.

Should new beds be needed how is that determined?

How much does the state want to invest in secure detention beds?

There are two classes of youth held in detention-SRS custody youth and law enforcement youth. SRS pays $49.70 per day and the counties pay approximately $150 per day.

In conclusion, the ACJOP feels that these funds are a necessary part of the operation of detention centers in the state and should be distributed to the counties for detention costs.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751
TELECOPIER 296-6296

July 28, 1993

MEMO

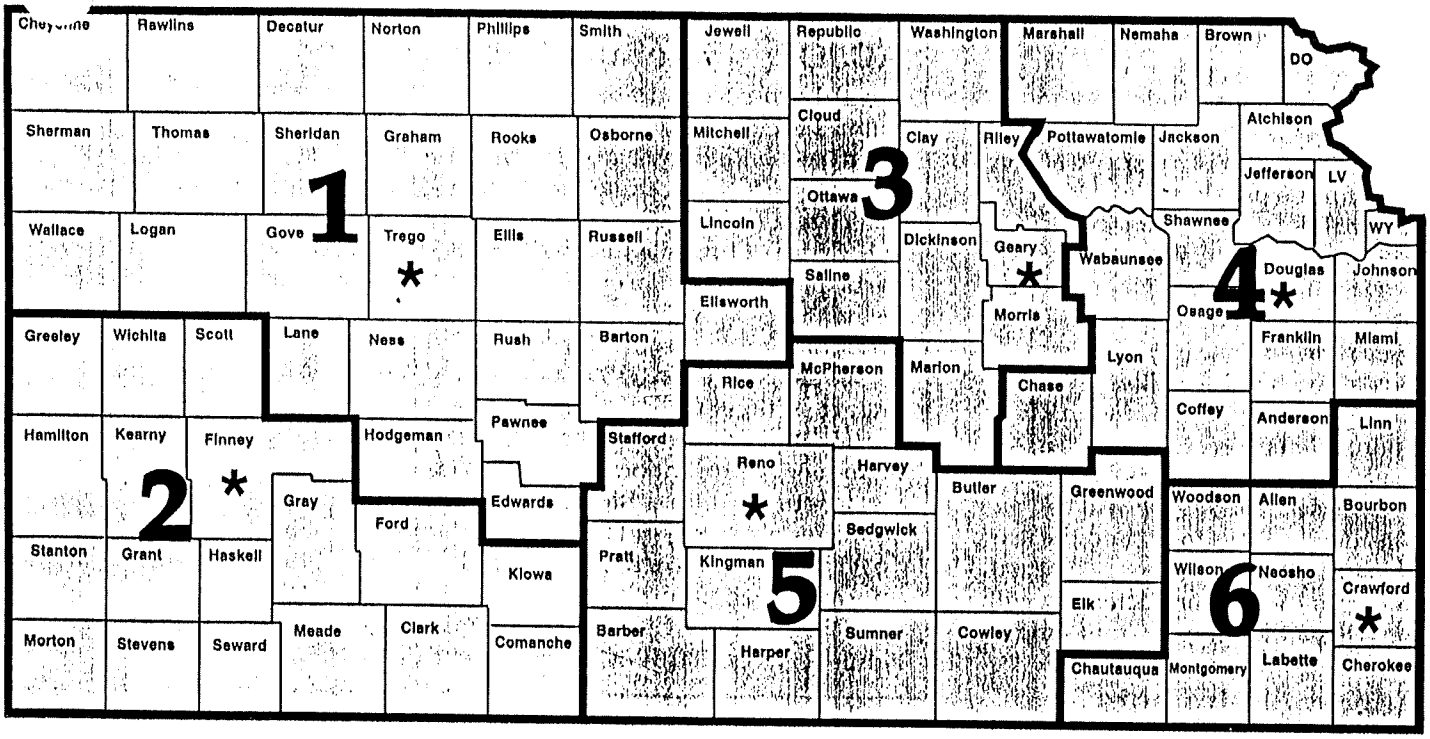
To: Nancy Lindberg
From: Mary Feighny
Subject: interpretation of the term "operational costs" in K.S.A. 1992 Supp. 79-4803(b)

Pursuant to your request, I reviewed the legislative history of this statute to try and determine what the legislative intent was in using the term "operational costs" in 79-4803(b) and found nothing which would illuminate the reasoning behind this choice of words.

In general, operational costs in the context of a juvenile detention facility are the costs needed to run the facility which could include the costs associated with paying the phone bill and the various utilities as well as employee salaries. In short, whatever expenses are involved in operating the facility fall under the "operational costs" language used in the statute.

During our discussion with General Stephan on July 26, he concurred with this analysis and rejected any interpretation of the language which would allow SRS to use the funds to operate programs.

39-3



Kansas Detention Centers Current Status, August, 1993

These existing and developing facilities (below) are an important part of the continuum of services for juveniles in Kansas. These services will play an integral role in the counties and regions they serve and can be the "hub" for other less costly alternatives to detention.

Existing Facilities

Reno County (Southcentral Region 5)
- capacity of 12
- approximate costs $150/day
- contracts with 26 counties (14 in Southcentral region)

Johnson County
- capacity of 30 (expanding to 70 by 1995)
- approximate costs $140/day, not including indirects
- serves Johnson County

Saline County
- capacity of 5 (expanding to 8; seeking funds for expansion)
- approximate costs $90/day
- serves Saline County

Sedgwick County
- capacity of 33
- approximate costs $148/day
- serves Sedgwick County

Shawnee County
- capacity of 22
- approximate costs $130/day
- serves Shawnee County

Wyandotte County
- capacity of 48
- approximate costs/day unknown
- serves Wyandotte County

Total licensed capacity: 150

New Regional Detention Facilities

Region 1
Northwest (Trego County)
Opened June 21,1993
- capacity of 10 (expansion to 14)
- approximate costs $100/day
- serves 26 counties

Region 2
Southwest (Finney County)
Opening June 1994
- capacity of 21 (expansion to 42)
- approximate costs/day unknown
- serves 18 counties

Region 3
Northcentral (Geary County)
Opening December 1993
- capacity of 12 (expansion to 24)
- approximate costs/day unknown
- serves 15 counties

Region 4
Northeast (Douglas County)
Opening July 1994
- capacity of 15-16 (expansion to 22-23)
- approximate costs/day unknown
- serves 18 counties

Region 6
Southeast (Crawford County)
Opening May 1994
- capacity of 14 (expansion to 28)
- approximate costs/day unknown
- serves 11 counties

Total licensed capacity: 70
Combined licensed capacity: 220
(Total contracted capital city capacity: 60)

For more information contact:
Mark A. Matese
Juvenile Justice Specialist
Youth and Adult Services
300 SW Oakley, West Hall
Topeka, KS 66606 Ph. (913) 296-2017

39-4

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

House Judiciary Sub Committtee # 2
Testimony on Senate Bill 794

Marach 15, 1994

****

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

****

TITLE

An Act concerning juvenile detention facilities; relating to the juvenile detention facilities fund; administration and expenditures; amending K.S.A. 1993 Supp. 79-4803 and repealing the existing section.

Mr. Chairman, members of the committee, thank you for the opportunity to share with you my opposition to Senate Bill 794 as currently proposed.

BACKGROUND

It is my position the appropriate use and budgetary authority for the juvenile detention facilities fund should be clarified by the legislature.

When the legislature passed the measures which ended the practice of holding juveniles in adult jails it created the Juvenile Detention Facilities Fund (JDFF) and the Juvenile Detention Facilities Capital Improvement Fund (JDFCIF) to provide the basis for the state's participation in the construction of regional detention centers as secure settings for the detention of juveniles in rural counties.

On the basis of income from these funds SRS and the regionally designated counties entered into an agreement with the Kansas Development Finance Authority to issue the $8,000,000 in bonds to finance the construction of the regional detention centers. SRS agreed to pay the debt service on the bonds over a 20 year period from receipts deposited into the two funds. The bonds were sold in December 1992 based on the availability of funding through SRS from the two detention facilities funds.

The Juvenile Detention Facilities Fund which is based on monies received from a percentage of all docket fees can be used for construction, renovation or operating expenses of detention facilities.

The Juvenile Detention Facilities Capital Improvement Fund, generated from certain drivers' license reinstatement fees, is restricted to construction of detention facilities.

Since the funds were established, two regional facilities have opened and three are in various stages of construction. We are anticipating the remaining three will be opened by the fall of 1994. Due to delays in establishing the original financing terms for the regional facilities, the funds have accumulated in excess of two million dollars on $850,000.

Of available funds, $250,000 has been obligated for an interim assistance plan for the regions with facilities under construction. This plan provides for existing detention centers to take youth from the regions without facilities, provide transportation, and additional daily cost of care.

Additional allocations may be needed from the fund. The Saline County detention facility has requested $166,000 for renovations to meet licensing requirements. An as yet undetermined amount may be required to formalize Reno County detention center as the host for the sixth regional detention area. Staff estimate the cost for the Reno County facility to be between $500,000 and $600,000.

I have suggested some alternative uses for the funds you may wish to consider.

- Provide electronic monitoring, the use of electronic equipment to determine that a youth remains at home or pre-approved site as per the court ordered in home detention plan, to more youth. See attachment for current expenditures for electronic monitoring.

- Establish grant programs for the development of community based services such as alternatives to detention, or to establish additional day reporting programs to reduce the need for detention or correctional beds.

- Provide a one-time grant for capital improvements and base on going operating grants on uncommitted monies remaining after annual debt services are paid.

The Juvenile Detention Facilities Capital Improvement Fund is currently generating $132,468 per year from various driver's license reinstatement fees and the Juvenile Detention Facilities Fund is generating $592,920 per year from docket fees. The total annual receipts are $725,388 which is close to the annual lost of debt service of $719,290.

The Department also recommends a provision requiring facilities which receive these funds to not limit the availability of beds based on reimbursement rates. As the state takes on a greater burden of funding detention services, it is advisable to look at options for funding operations and the disbursement of funds based on performance versus cost per bed.

EFFECT OF PASSAGE

The Department does not support the amendment which transfers the administration of the juvenile detention facilities fund to the attorney general's office. The removal of the juvenile detention facilities fund from the administration of the Department would create problems for the Department in meeting it's debt repayment obligations to he Kansas Development Finance Authority and the bond holders. This would impact upon the credit worthiness of the state.

Senate Bill 794 addresses only the transfer of the administration of the Juvenile Detention Facilities Fund to the Attorney General, but does not address the transfer of the bond debt. Without clarification the transfer could create a situation in which the Department would be unable to meet it's contractual obligations to the Kansas Development Finance Authority for the bonds issued for the construction of the regional detention centers.

RECOMMENDATIONS

We recommend that this bill, as it now reads not be passed.

Donna L. Whiteman, Secretary
Department of Social and
Rehabilitation Services
296-3271

JUVENILE DETENTION FUNDING, MARCH 1994

			1/31/94 actual cumulative	6/30/94 estimated cumulative
	ANNUAL ESTIMATED INCOME:	$725,388		
COLLECTIONS:	JDFCIF (Restricted to Construction) ($11,039 per month average)		$423,688	$478,883
	JDFF(Unrestricted) ($49,410 per month average)		$1,928,839	$2,175,889
	TOTAL:		$2,352,527	$2,654,772
	Obligations: FY 1993 — Rescue Plan		$250,000	
	Saline County		$166,000	
	Reno County		$500,000	
	FY 1993 Obligations liquidated			($916,000)
	TOTAL AFTER OBLIGATIONS:		$1,436,527	$1,738,772

Due Date	Estimated Net Debt Service	Gross Debt Service	Estimated Income	Balance: Net Debt Service	Balance: Gross Debt Service
FY 1995	$675,773	$719,290	$725,388	$49,615	$6,098
1996	$672,813	$716,330	$725,388	$52,575	$9,058
1997	$669,313	$712,830	$725,388	$56,075	$12,558
1998	$665,273	$708,790	$725,388	$60,115	$16,598
1999	$665,693	$709,210	$725,388	$59,695	$16,178
2000	$665,303	$708,820	$725,388	$60,085	$16,568
2001	$664,103	$707,720	$725,388	$61,285	$17,668
2002	$661,463	$704,980	$725,388	$63,925	$20,408
2003	$662,488	$706,005	$725,388	$62,900	$19,383
2004	$661,838	$705,355	$725,388	$63,550	$20,033
2005	$659,638	$703,155	$725,388	$65,750	$22,233
2006	$660,848	$704,365	$725,388	$64,540	$21,023
2007	$660,326	$703,843	$725,388	$65,062	$21,545
2008	$658,046	$701,563	$725,388	$67,342	$23,825
2009	$658,983	$702,500	$725,388	$66,405	$22,888
2010	$658,046	$701,563	$725,388	$67,342	$23,825
2011	$655,233	$698,750	$725,388	$70,155	$26,638
2012	$655,546	$699,062	$725,388	$69,842	$26,326
2013	$453,671	$697,188	$725,388	$271,717	$28,200
2014	$12,418	$563,125	$725,388	$712,970	$162,263

NOTE: THE FY 1994 LEGISLATIVE EXPENDITURE LIMITATION ON THESE ACCOUNTS FOR THE PERIOD ENDING JUNE 30,1994 IS $850,000. OBLIGATIONS ALREADY EXCEED THAT AMOUNT. THE REQUESTED EXPENDITURE LIMITATION FOR FY 1995 IS $1,500,000

ELECTRONIC MONITORING

AMOUNT	GRANTEE	TIME PERIOD
$15,000	Wyandotte Co	6-1-92/5-31-93
$ 7,095	Trego Co	6-1-92/5-31-93
$ 7,680		1-1-94/12-31-94
$ 7,475	Riley Co	6-1-92/5-31-93
$30,000	Johnson Co	Same
$ 6,660	Geary Co	Same
$10,000	Finney Co	6-1-92/5-31-93
$ 7,200		1-1-94/12-31-94
$ 7,667	Cloud Co	6-1-92/5-31-93
$17,200	Allen Co	6-1-92/5-31-93
$21,600		1-1-94/12-31-94
$ 5,000	Cowley Co	1-1-94/12-31-94
$17,850	Gray, Ford, Kiowa, Clark, Commanche, Meade	1-1-94/12-31-94
$ 6,000	Douglas Co	1-1-94/12-31-94
$ 1,380	Miami Co	1-1-94/12-31-94
$ 4,050	Sumner Co	1-1-94/12-31-94

JUVENILE INTAKE

$43,500	Wyandotte Co	10-1-87/9-30-88
$49,767	Lyon & Chase Co	3-1-88/2-18-89
$33,178		6-1-89/5-31-90
$16,589		6-1-90/5-31-91
$36,613	Douglas	2-1-88/1-1-89
$23,742		10-1-89/9-30-90
$11,871		10-1-90/9-30-91
$22,443	Shawnee	7-1-88/6-30-89
$24,000		7-1-89/9-30-89
$38,400		7-1-89/6-30-90
$14,400		10-1-89/9-30-90
$25,334		10-1-90/9-30-91
$16,890		10-1-91/9-30-92
$ 8,455		10-1-92/9-30-93

$30,000	Cowley Co	10-1-88/9-30-89
$25,031		10-1-89/9-30-90
$16,688		10-1-90/9-30-91
$ 8,478		10-1-91/9-30-92
$13,300		1-1-94/12-31-94
$36,967	Finney Co	10-1-88/9-30-89
$33,410		10-1-89/9-30-90
$24,571		10-1-90/9-30-91
$12,286		10-1-91/9-30-92
$14,485		1-1-94/12-31-94
$27,150	Gray, Ford, Kiowa, Meade, Clark, Commanche	1-1-94/12-31-94
$32,522	Leavenworth/Atchison	3-1-92/2-28-93
$48,590		3-1-93/2-28-94
$60,475	Butler, Greenwood, &	10-1-91/9-30-92
$45,356	Chautauqua Co	4-1-93/3-31-94
$30,238		1-1-94/12-31-94
$10,321	Douglas Co	1-1-94/12-31-94
$ 6,000	Thomas Co	1-1-94/12-31-94
$ 8,295	Trego Co	1-1-94/12-31-94
$ 3,140	Clay Co	1-1-94/12-31-94
$13,620	Miami Co	1-1-94/12-31-94
$51,534	Bourbon, Linn &	10-1-89/9-30-90
$38,651	Miami Co	10-1-90/9-30-91
$25,768		10-1-91/9-30-92
$12,884		10-1-92/9-30-93
$14,937		1-1-94/12-31-94
$35,950	Sumner Co	1-1-94/12-31-94
$28,512	Franklin Co	7-1-91/6-30-92
$21,384		10-1-92/9-30-93
$14,256		10-1-93/9-30/94
$15,000		10-1-93/12-31-94
$18,500	Labette	10-1-88/9-30-89
$10,475		10-1-89/9-30-90
$34,865	Crawford Co	11-1-88/9-30-89
$26,150		10-1-89/9-30-90
$17,433		10-1-90/9-30-91
$ 4,358		10-1-90/12-31-90
$ 8,717		10-1-91/9-30-92

$33,790	Riley Co	10-1-89/9-30-90
$25,043		10-1-90/9-30-91
$15,552		10-1-91/9-30-92
$55,792	Ellis,Gove,Trego Co	7-1-91/6-30-92
$41,884		9-1-92/8-31-93
$27,896		9-1-93/8-31-94

Detention Centers
Cost Data

Provider	Period	Client Days	Direct Costs	Add: Indirects	Total Costs	Rate	Non-Allowables	Audit Adjust.	Allowable Costs
Reno Co. Juvenile Detention	12/31/92	3,727	$426,049	$31,500	$457,549	$129.77	($10,560)	$0	$446,98
Johnson Co. Juvenile Hall	12/31/92	12,715	$1,343,400	$0	$1,343,400	$105.65	($9,452)	$2,092	$1,336,04
Shawnee Co. Youth Center	12/31/92	7,942	$1,580,539	$0	$1,580,539	$199.01	($197,323)	$0	$1,383,21
Youth Residence Hall	12/31/92	9,051	$2,210,541	$0	$2,210,541	$244.23	($381,600)	$0	$1,828,94
Wyandotte Co. Juvenile Det.	12/31/92	14,600	$787,410	$0	$787,410	$53.93	($1,019)	$7,849	$794,24
			(3)			(4)	(5)	(6)	

(1) Rate Paid Limited to SRS Maximum
(2) Rate Paid includes added inflation
(3) As reported
(4) Total Costs Reported/Client Days
(5) Includes Non-allowable costs and revenue offsets
(6) Additions to reported costs (allowable costs not reported)
(7) Allowable Costs/Client Days
(8) Audit not Final

Filed Rate	Rate Paid	
$119.93	$49.70	(1)
$105.08	$49.70	(1), (8)
$174.16	$49.70	(1)
$202.07	$49.70	(1)
$54.40	$49.70	(1), (8)

(7)

KANSAS

KANSAS DEVELOPMENT FINANCE AUTHORITY

Joan Finney
Governor

Wm. F. Caton
President

TESTIMONY ON SB 794
HOUSE JUDICIARY COMMITTEE HEARING
BY LINDA WOOD, KDFA
MARCH 15, 1994

Thank you for this opportunity to testify before you concerning the above captioned bill. Attached is a copy of an excerpt from a lease agreement between the Kansas Development Finance Authority ("KDFA") and the Secretary of Social and Rehabilitation Services ("SRS"). The highlighted language on this copy specifies that payments from the juvenile detention facilities fund established at K.S.A. 79-4803(b) may be appropriated to pay certain "Lease Payments." The Lease Payments referred to are those payments necessary to service the debt on an $8,000,000 series of bonds issued for SRS by KDFA in 1992 to fund construction of five regional juvenile detention facilities in the counties of Crawford, Douglas, Finney, Geary and Trego.

KDFA is concerned that proposed amendments contained in SB 794 will jeopardize the security of our lease agreement, possibly resulting in default on debt service payments to be made from the juvenile detention facilities fund. Our agreement is with the Secretary of SRS; consequently, legislative action to relieve the Secretary of administration of this fund raises the question whether debt service payments will continue to be secured by and made with moneys deposited into this fund.

Also attached is a copy of Section 10.2 of the Lease Agreement which specifies "The Secretary may not assign its interest in this Lease for any reason." In order to alter this provision, one of two options exist: (1) refund the existing issue and issue new bonds with new documents, including a different lease; or (2) obtain the consent of the Bond Insurer, the Secretary, **and** a majority of the Bond Owners. Either option would be costly and time consuming.

KDFA understands the controversy concerning the moneys which have accrued to this fund and whether some portion of those moneys should be distributed to fund the operations of juvenile detention facilities and programs. Our agency is entirely neutral on that issue. However, we would offer the following facts and figures for your consideration.

A schedule of the gross debt service for the Series H, 1992 bonds is attached. In the fiscal year total column, you will see the total gross debt service required to be paid with moneys from the juvenile detention facilities fund, plus moneys from the juvenile detention facilities capital improvements fund. You will notice the fiscal year 1995 gross debt service total is $719,290.

700 S.W. JACKSON, SUITE 1000 / TOPEKA, KANSAS 66603-3758

Based on an inquiry through the STARS system, we understand the balance in the juvenile detention facilities fund today is $1,952,277.01. In the juvenile detention facilities capital improvements fund, today's balance is $440,787.35. This total of $2,393,064.36 is available for debt service on the Series H, 1992 bonds. As a matter of fact, the $719,290 fiscal year 1995 gross debt service has already been appropriated from those funds by House Bill 2759. Assuming that appropriations bill is not appreciably altered, that leaves a balance of nearly $1.7 million in those two funds.

A simplistic projection of future revenues into **both** funds estimates $725,376 flowing in annually. That is only slightly more than the average annual gross debt service of about $700,000. So we assume the moneys being disputed today are the $1.7 million balance mentioned above, and the annual estimated "extra" $25,000.

As I stated, KDFA is neutral as to the disposition of these "excess" moneys. KDFA's primary interest is in assuring the continuing credit worthiness of bonds issued on behalf of State agencies. To that end, we would like to offer a suggestion which is based on other KDFA bond issues secured in a similar manner to the one for the regional juvenile detention facilities.

If it please the legislature, administration of the juvenile detention facilities fund could be left with the Secretary of SRS, with the proviso that expenditures from the juvenile detention facilities fund be **only** for the purpose of servicing debt incurred, or to be incurred, to construct, renovate or remodel juvenile detention facilities. Any moneys not necessary to service such debt could be deposited in a **separate** special revenue fund, which could be administered and expended as the legislature designates.

Perhaps this compromise will satisfy legislative intent while upholding the covenants established with the issuance of the Series H, 1992 bonds. If you have any questions, or if I can be of any assistance, please do not hesitate to contact me.

Respectfully submitted,

Linda Wood

Linda Wood
Financial Analyst
Kansas Development Finance Authority

Section 3.2. Lease Term.

(a) This Lease shall become effective upon its delivery, and subject to earlier termination pursuant to the provisions hereof, shall terminate upon occurrence of the earlier of June 1, 2014 (the "Lease Term"), or when the Bonds are no longer Outstanding under the Indenture; provided, however, that if any Bonds or Additional Bonds are outstanding on June 1, 2014, the Lease shall not terminate until all Bonds are no longer Outstanding. Notwithstanding the foregoing, continuation of the Lease is subject to annual appropriation by the Kansas Legislature and the Secretary shall be obligated only to pay Lease Payments and Additional Payments pursuant to the Lease as may lawfully be made from (1) funds budgeted and appropriated for that purpose by the Kansas Legislature from any lawfully available source, including but not limited to the juvenile detention facility fund established at K.S.A. 79-4803(b) and the juvenile detention facilities capital improvement fund established at K.S.A. 38-556 and any successors thereto and substitutions therefor during the State's current budget year (July 1 to June 30 of each year) (the "Fiscal Year"), or (2) funds made available from any lawfully operated revenue producing source including Sublease Payments from the Counties.

duties and obligations imposed upon the Authority hereby, with the exception of administrative duties and those duties and obligations relating directly to the acquisition, construction and equipping of the Facilities, shall, after the Completion Date, be deemed to be duties of the Trustee and not the Authority; provided, however, that the Trustee shall have no obligation to operate any of the Facilities.

Section 10.2. Assignment and Subleasing by the Secretary. The Secretary may not assign its interest in this Lease for any reason. The Secretary will sublease each Facility to the applicable County. The Secretary may further sublease the Facilities as a whole or in part, with the consent of the Authority, subject, however, to each of the following conditions:

(a) The Facilities may be further subleased only to a political subdivision of the State and only if, in the opinion of Bond Counsel, such sublease will not impair the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(b) This Lease and the obligations of the Secretary hereunder, shall, at all times during any Lease Term, remain obligations of the Secretary, and the Secretary shall maintain its direct relationship with the Trustee, notwithstanding any sublease; and

(c) Each sublease or assignment shall (i) not extend for longer than the Lease Term, or (ii) not allow the assignee or sublessee to in any way encumber or dispose of the Facilities, or (iii) be cancelable by the Trustee upon an Event of Default or an Event of Nonappropriation.

Section 10.3. Assignment of Revenues by the Authority. The Authority shall, pursuant to the Indenture, assign and pledge any rents, revenues and receipts receivable by it under the Lease, to the Trustee as security for payment of the principal of, interest and premium, if any, on the Bonds and the Secretary hereby consents to such pledge and assignment.

Section 10.4. Restrictions on Sale or Mortgage of Facilities by the Authority. The Authority agrees that, except as set forth in Article XI hereof or in other provisions of the Lease or the Indenture, it will not sell, convey, mortgage, encumber or otherwise dispose of the Facilities or any part thereof during the Lease Term.

State of Kansas
Juvenile Detention Facilities Project
ries H, 1992
emo C-172

Total Principal 8,000,000.00
Total Interest 6,733,218.33

Pmt No	DATE	FY	PRINCIPAL	RATE	INTEREST	PAYMENT	FISCAL YR TOTAL	PRINCIPAL BALANCE
Dated	11/01/92	1993						
1	06/01/93	1993			279,585.83	279,585.83	279,585.83	8,000,000.00
2	12/01/93	1994			239,645.00	239,645.00		
3	06/01/94	1994			239,645.00	239,645.00	479,290.00	8,000,000.00
4	12/01/94	1995			239,645.00	239,645.00		
5	06/01/95	1995	240,000.00	5.400	239,645.00	479,645.00 FY 95	719,290.00	7,760,000.00
6	12/01/95	1996			233,165.00	233,165.00		
7	06/01/96	1996	250,000.00	5.400	233,165.00	483,165.00 FY 96	716,330.00	7,510,000.00
8	12/01/96	1997			226,415.00	226,415.00		
9	06/01/97	1997	260,000.00	5.400	226,415.00	486,415.00	712,830.00	7,250,000.00
10	12/01/97	1998			219,395.00	219,395.00		
11	06/01/98	1998	270,000.00	5.400	219,395.00	489,395.00	708,790.00	6,980,000.00
12	12/01/98	1999			212,105.00	212,105.00		
13	06/01/99	1999	285,000.00	5.400	212,105.00	497,105.00	709,210.00	6,695,000.00
14	12/01/99	2000			204,410.00	204,410.00		
15	06/01/2000	2000	300,000.00	5.400	204,410.00	504,410.00	708,820.00	6,395,000.00
16	12/01/2000	2001			196,310.00	196,310.00		
17	06/01/2001	2001	315,000.00	5.600	196,310.00	511,310.00	707,620.00	6,080,000.00
18	12/01/2001	2002			187,490.00	187,490.00		
19	06/01/2002	2002	330,000.00	5.750	187,490.00	517,490.00	704,980.00	5,750,000.00
20	12/01/2002	2003			178,002.50	178,002.50		
21	06/01/2003	2003	350,000.00	5.900	178,002.50	528,002.50	706,005.00	5,400,000.00
22	12/01/2003	2004			167,677.50	167,677.50		
23	06/01/2004	2004	370,000.00	6.000	167,677.50	537,677.50	705,355.00	5,030,000.00
24	12/01/2004	2005			156,577.50	156,577.50		
25	06/01/2005	2005	390,000.00	6.100	156,577.50	546,577.50	703,155.00	4,640,000.00
26	12/01/2005	2006			144,682.50	144,682.50		
27	06/01/2006	2006	415,000.00	6.150	144,682.50	559,682.50	704,365.00	4,225,000.00
28	12/01/2006	2007			131,921.25	131,921.25		
29	06/01/2007	2007	440,000.00	6.200	131,921.25	571,921.25	703,842.50	3,785,000.00
30	12/01/2007	2008			118,281.25	118,281.25		
31	06/01/2008	2008	465,000.00	6.250	118,281.25	583,281.25	701,562.50	3,320,000.00
32	12/01/2008	2009			103,750.00	103,750.00		
33	06/01/2009	2009	495,000.00	6.250	103,750.00	598,750.00	702,500.00	2,825,000.00
34	12/01/2009	2010			88,281.25	88,281.25		
35	06/01/2010	2010	525,000.00	6.250	88,281.25	613,281.25	701,562.50	2,300,000.00
36	12/01/2010	2011			71,875.00	71,875.00		
37	06/01/2011	2011	555,000.00	6.250	71,875.00	626,875.00	698,750.00	1,745,000.00
38	12/01/2011	2012			54,531.25	54,531.25		
39	06/01/2012	2012	590,000.00	6.250	54,531.25	644,531.25	699,062.50	1,155,000.00
40	12/01/2012	2013			36,093.75	36,093.75		
41	06/01/2013	2013	625,000.00	6.250	36,093.75	661,093.75	697,187.50	530,000.00
42	12/01/2013	2014			16,562.50	16,562.50		
43	06/01/2014	2014	530,000.00	6.250	16,562.50	546,562.50	563,125.00	
			8,000,000.00		6,733,218.33	14,733,218.33	14,733,218.33	

Average Interest Rate 6.118790%

Underwriter's Discount 80,000.00

Net Interest Cost 6.191490%

Accrued Interest 41,272.19

Subcommittee #1
Recommendation: Be passed as am.

House Judiciary
Attachment 42
3-21-94

As Amended by Senate Committee

Session of 1994

SENATE BILL No. 657

By Senators Petty, Brady, Downey, Emert, Feleciano, Gooch, Hensley, Jones, Karr, Lee, Martin, Moran, Oleen, Parkinson, Ranson, Rock, Salisbury, Walker and Wisdom

2-2

AN ACT concerning juvenile offenders; relating to notification of local law enforcement agencies and school districts of such offender's release; amending K.S.A. 38-1671, 38-1673, 38-1675 and 38-1676 and repealing the existing sections.

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

Section 1. K.S.A. 38-1671 is hereby amended to read as follows: 38-1671. (a) *Actions by the court.* When a juvenile offender has been committed to a state youth center, the clerk of the court shall forthwith notify the secretary of the commitment and provide the secretary with a certified copy of the complaint, the journal entry of the adjudicatory hearing and the dispositional order. The court shall also forward those items from the social file which could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile offender in a specific state youth center, the recommendation shall be included in the dispositional order. After the court has received notice of the state youth center designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the juvenile offender to the facility at the time designated by the secretary.

(b) *Actions by the secretary.* (1) After receiving notice of commitment as provided in subsection (a), the secretary shall give the committing court notice designating the state youth center to which the juvenile offender is to be admitted and the date of the admission.

(2) Except as provided by K.S.A. 38-1691, *and amendments thereto,* the secretary may make any temporary out-of-home placement the secretary deems appropriate pending placement of the juvenile offender in a state youth center, and the secretary shall notify the court, *local law enforcement agency and school district in which the juvenile will be residing if the juvenile is still required to attend a secondary school* of that placement. ~~*Prior to making any such temporary out-of-home placement, for a juvenile offender who is still required to attend a secondary school, the secretary shall*~~

include participation and input by such school district relating to such juvenile offender's out-of-home placement. Prior to any such juvenile offender attending such secondary school, the secretary shall send to such school district the educational records of the juvenile and notice of the offense the juvenile committed which resulted in the juvenile being adjudicated as a juvenile offender.

(c) *Transfers.* During the time a juvenile offender remains committed to a state youth center, the secretary may transfer the juvenile offender from one state youth center to another.

Sec. 2. K.S.A. 38-1673 is hereby amended to read as follows: 38-1673. (a) When a juvenile offender has satisfactorily completed the program at the state youth center to which the juvenile offender was committed or placed, the person in charge of the state youth center shall have authority to release the juvenile offender under appropriate conditions and for a specified period of time.

(b) At least 15 days prior to releasing a juvenile offender as provided in subsection (a), the person in charge of the state youth center shall notify the committing court of the date and conditions upon which it is proposed the juvenile offender is to be released.

(c) Upon receipt of the notice required by subsection (b), the court shall review the proposed conditions of release and may recommend modifications or additions to the conditions.

(d) If, during the conditional release, the juvenile offender is not returning to the county from which committed, the person in charge of the state youth center shall also give notice to the court of the county in which the juvenile offender is to be residing.

(e) To assure compliance with conditions of release from a state youth center, the secretary shall have the authority to prescribe the manner in which compliance with the conditions shall be supervised. When requested by the secretary, the appropriate court may assist in supervising compliance with the conditions of release during the term of the conditional release.

(f) The department of social and rehabilitation services shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the release of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony *before July 1, 1993, or an off-grid felony, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993,* if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the release of the juvenile offender to: *(1)* Any victim of the juvenile offender's crime who is

42-2

alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; *(2) the local law enforcement agency; and (3) the school district* ~~where the offender was attending school prior to being adjudicated a juvenile offender~~ *in which the juvenile offender will be residing if the juvenile is still required to attend a secondary school.* ~~*Prior to releasing such juvenile offender, for a juvenile offender who is still required to attend a secondary school, the secretary shall include participation and input by such school district relating to such juvenile offender's release. Prior to any such juvenile offender attending such secondary school, the secretary shall send to such school district the educational records of the juvenile and notice of the offense the juvenile committed which resulted in the juvenile being adjudicated as a juvenile offender.*~~ Failure to notify pursuant to this section shall not be a reason to postpone a release. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

Sec. 3. K.S.A. 38-1675 is hereby amended to read as follows: 38-1675. When a juvenile offender has reached the age of 21 years or has successfully completed the program at a state youth center together with any conditional release following the program, the superintendent in charge of the state youth center shall discharge the juvenile offender from any further obligation under the commitment. The discharge shall operate as a full and complete release from any obligations imposed on the juvenile offender arising from the offense for which the juvenile offender was committed. The department of social and rehabilitation services shall notify at least 45 days prior to the discharge of the juvenile offender the county or district attorney of the county where the offender was adjudicated a juvenile offender of the discharge of such juvenile offender, if such juvenile offender's offense would have constituted a class A, B or C felony *before July 1, 1993, or an off-grid felony, a nondrug crime ranked at severity level 1, 2, 3, 4 or 5 or a drug crime ranked at severity level 1, 2 or 3, on or after July 1, 1993,* if committed by an adult. The county or district attorney shall give written notice at least 30 days prior to the discharge of the juvenile offender to: *(1)* Any victim of the juvenile offender's crime who is alive and whose address is known to the court or, if the victim is deceased, to the victim's family if the family's address is known to the court; *(2) the local law enforcement agency; and (3) the school district* ~~where the offender was attending school prior to being adjudicated a ju-~~

42-3

~~venile~~ *in which the juvenile offender will be residing if the juvenile is still required to attend a secondary school.* ~~*Prior to discharging such juvenile offender, for a juvenile offender who is still required to attend a secondary school, the secretary shall include participation and input by such school district relating to such juvenile offender's discharge. Prior to any such juvenile offender attending such secondary school, the secretary shall send to such school district the educational records of the juvenile and notice of the offense the juvenile committed which resulted in the juvenile being adjudicated as a juvenile offender.*~~ Failure to notify pursuant to this section shall not be a reason to postpone a discharge. Nothing in this section shall create a cause of action against the state or county or an employee of the state or county acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section.

Sec. 4. K.S.A. 38-1676 is hereby amended to read as follows: 38-1676. (a) If a juvenile offender has committed an act which, if committed by a person 18 years of age or over, would constitute a class A or B felony, *if the offense was committed before July 1, 1993, or an off-grid felony, a nondrug crime ranked at severity level 1, 2 or 3 or a drug crime ranked at severity level 1 or 2, if the offense was committed on or after July 1, 1993,* and such juvenile offender is to be released, 30 days before release, the secretary of social and rehabilitation services shall notify the county attorney or district attorney ~~and~~, the court, *the local law enforcement agency, and the school district* ~~where the offender was adjudicated a juvenile offender,~~ *in which the juvenile offender will be residing if the juvenile is still required to attend a secondary school,* of such pending release. ~~*Prior to releasing such juvenile offender, for a juvenile offender who is still required to attend a secondary school, the secretary shall include participation and input by such school district relating to such juvenile offender's release. Prior to any such juvenile offender attending such secondary school, the secretary shall send to such school district the educational records of the juvenile and notice of the offense the juvenile committed which resulted in the juvenile being adjudicated as a juvenile offender.*~~ The county attorney, district attorney or the court on its own motion may file a motion with the court for a hearing to determine if the juvenile offender should be retained in the custody of the secretary, pursuant to K.S.A. 38-1675, and amendments thereto. The court shall fix a time and place for hearing and shall notify each party of the time and place.

(b) Following the hearing if the court authorizes a dispositional

order for the secretary to retain custody, the juvenile offender shall not be held in a state youth center for longer than the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which the juvenile offender has been adjudicated to have committed.

(c) As used in this section, "maximum term of imprisonment" means the greatest maximum sentence authorized by K.S.A. 21-4501 and amendments thereto, applying any enhanced penalty which would be applicable under K.S.A. 21-4504 and amendments thereto and computing terms as consecutive when required by K.S.A. 21-4608 and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas juvenile offenders code.

Sec. 5. K.S.A. 38-1671, 38-1673, 38-1675 and 38-1676 are hereby repealed.

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

42-5

SUGGESTED CHANGES TO SENATE BILL NO. 501

Submitted by Judge Thomas H. Graber

AN ACT concerning the juvenile offenders code: relating to presence of parent or guardian at juvenile proceedings; failure to appear; orders to aid in enforcing terms and conditions of probation and other orders of the court.

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

Section 1. (a) Any parent, guardian, or person with whom a juvenile resides who is served with a summons as provided in K.S.A. 38-1626 shall appear with the juvenile at all juvenile proceedings concerning the juvenile, unless excused by the court having jurisdiction of the matter.

(b) Any person required by this act to be present at all juvenile proceedings who fails to comply, without good cause, with the provisions of subsection (a) may be proceeded against for indirect contempt of court pursuant to the provisions of K.S.A.20-1204(a) et seq.

(c) For purposes of this section: (1) "Good cause" for failing to appear includes, but is not limited to, a situation where a parent or guardian:

(A)Does not have physical custody of the juvenile and resides outside of Kansas;

(B) has physical custody of the juvenile, but resides outside of Kansas and appearing in court will result in undue hardship to such parent or guardian; or

(C) resides in Kansas, but is outside of the state at the

House Judiciary
Attachment 43
3-21-94

time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(2) "Parent" means and includes a natural parent who has sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or an adoptive parent. Parent does not include a person whose parental rights have been terminated pursuant to law.

(d) Nothing in this section shall be construed to create a right for any juvenile to have such juvenile's parent or guardian present at any proceeding at which such juvenile is present.

(e)If the parent or guardian of any juvenile cannot be found or fails to appear, the court may proceed with the case without the presence of such parent or guardian.

Sec. 2. A parent, guardian or person with whom a juvenile resides may be ordered by the court to aid in enforcing terms and conditions of probation and/or other orders of the court. Any person placed under an order to aid in enforcing terms and conditions of probation and/or other orders of the court who fails to do so may be proceeded against for indirect contempt of court as provided in K.S.A. 20-1204(a) et seq..

Sec. 3. The provisions of this act shall be part of and supplemental to the juvenile offenders code.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.