

Approved: 2/4/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on January 26, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Melody Cathey, Board of Indigent Defense Services
Tito Labra, Deputy, Sedgwick County Sheriff's Dept.
Major John Douglas, Overland Park Police
Judge Dan Mitchell, Topeka
Kyle Smith, Kansas Bureau of Investigation
Helen Stephens, Kansas Peace Officers

Others attending: See attached list

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

Melody Cathey, Board of Indigent Defense Services, testified to the fiscal impact of SB 500 (Attachment No. 1). She stated the estimates were based on 1992 statistics. Ms. Cathy also testified in regard to the passage of this bill (Attachment No. 2) and answered questions from the Committee. She expressed concern that the bill be consistent with present laws.

Tito Labra, Deputy, Sedgwick County, testified in favor of SB 500 (Attachment No. 3) and answered questions from the Committee. He stated Wichita presently has 101 gangs, 20 are female gangs, with a membership of 1350. Deputy Labra stated the bill did not go far enough because a gang member will get another gun within a short period of time. He said a drivers license is not carried by most gang members, therefore, the language in the bill regarding drivers license would have no affect on them. Deputy Labra said most gang members will not pay the fine assessed to them. He stated concern that the law be tough enough to make an impression on the young juvenile. He stated some juveniles were carrying a handgun for protection. Deputy Labra stated he would add language to the bill to make jail time mandatory. He said boot camps are for juveniles who are initially getting involved in gangs. Boot camps will not help the "hardened" gang member.

Major John Douglas, Assistant Chief of Police, Overland Park provided testimony in favor of SB 500, SB 501, SB 502, SB 512, and SB 513 (Attachment No. 4). Major Douglas asked the Committee to consider New Section 1, sub-section (c) (5) of SB 500 which refers to traveling with any such firearm in any such person's possession. He recommended adding language to the bill which would allow traveling with such a firearm pursuant to Sections 1 to 4, only when that firearm is secured, unloaded, and outside the access of the juvenile.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 26, 1994.

Chairman Moran closed the hearings on SB 500. He reminded the Committee issues for discussion on SB 500 would include: additional crimes committed at the same time as the possession of hand gun and adult versus juvenile system issue; the age issue of the 10 to 13 in particular; the level of the 2nd offense if it should be something different than a level 8; possession of drivers license and obtaining; the hunting exception is overly broad; knives to be included with handguns; the criminal forfeiture issue to make certain handgun is forfeited if convicted of crime; more strictly defining how gun should be maintained in it's transportation. There was concern the bill should be broadened to include juveniles in the car. The cost issue was also of concern. SB 500 will be worked at a later date.

A motion was made by Senator Feleciano and seconded by Senator Vancrum to introduce a bill, 3RS1860, outlawing of a criminal street gang. The motion carried. It was suggested language in regard to graffiti could be amended into this bill. Conferees were requested on the issue of graffiti.

Chairman Moran announced hearings would continue January 27, 10:00 a.m. with possible action on bills previously heard. The Committee will meet upon adjournment of the Senate, January 27, to continue hearings on the Criminal Street Gang bill. There will be no meeting on Friday due to scheduling problems. There will be a Judiciary meeting on Monday.

SB 513--prosecuting 16 and 17 year olds as adult for person felonies and misdemeanors.

Judge Dan Mitchell, Topeka, testified as an opponent to SB 513. He stated he opposed the lowering of the age all inclusive to age 16 for person felonies or misdemeanors on the basis there is sufficient utilization and tools within the juvenile code to deal with those juveniles.

Kyle Smith, Kansas Bureau of Investigation provided testimony in favor of SB 513. He gave philosophical and practical reasons for passage of this bill (Attachment No. 5).

Helen Stephens provided testimony in favor of SB 513 (Attachment No. 6). She stated this was one way to send a message to 16 and 17 year olds they cannot break the rules without consequences. She suggested the Committee consider the fiscal impact of this on cities and counties.

Jim Clark, Kansas County and District Attorneys Association provided written testimony in support of SB 513 (Attachment No. 7).

Melody Cathey, Board of Indigents' Defense Services provided written testimony in regard the fiscal impact of SB 513 (Attachment No. 8). She stated the statistics she had obtained reflected there were 224 waivers of juveniles into adult court last year.

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for January 27, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 1/26/94

| NAME (Please Print) | ADDRESS | COMPANY/ORGANIZATION |
|---------------------|------------------------|------------------------|
| Mel Cathey | 304 LSOB | BIDS |
| Ann Fiach | Topeka | KWIK |
| Kyle Smith | | |
| Douglas Ruffner | 525 N. Main Wichita | Senawick County S/O |
| Tito C LABRA | 525 N. Main Wichita | Sedg Co. S/O |
| JOE TASCHLER | 616 SE. Jefferson | Topeka Capital-Journal |
| Donna McDaniel | Topeka | Sen. Burke's office |
| Lalaine McLaughlin | Pat. Topeka | |
| Wade Trauthe | Topeka | Ks Govt Consulting |
| Amy Tulach | Cap-Journal | |
| John M. Douglass | Overland Park Police | |
| Judy Prober | Legislative for Change | |
| Rene Gardner | Topeka | Governor's Office |
| John M. Smith | Topeka | KDOIC |
| Dan Mitchell | Topeka | District Court |
| Cherise Holderness | Wichita | City of Wichita |
| Jim Clem | Topeka | KCDAA |
| Gerry Ray | Overland Park | City of Overland Park |
| George W. W. | | |
| Daphy DHC | | Legal intern/Ranston |
| M. Hauer | Times | Hauer's Capital Report |
| Ron Smith | Topeka | K Bar Assoc |
| | | |

Board of Indigents' Defense Services
Fiscal Impact Statement

January 25, 1994

**Melody A. Cathey
Administrative Counsel
BIDS
304 LSOB, 900 Jackson
Topeka, Ks. 66612
(913) 296-6945**

*State Judiciary
1-26-94
attachment 1-1*

/

AGENCY SUMMARY
FISCAL IMPACT OF SENATE BILL No. 500
SHIFTING JUVENILE OFFENDERS INTO ADULT SYSTEM

Assumptions

- BIDS will retain present system of assigned counsel & public defenders.
- Juveniles committing defined offense will be consistent with 1992 KBI statistics on juveniles arrested for weapons offense¹
- Two-thirds of offenders will not be entitled to representation by BIDS²
- Costs per trial case will be \$584.00.³
- 8% of the cases will be appealed at \$750.00 each.⁴

SB 500 **\$106,080.00**

- Creates crime of criminal possession of a firearm by a juvenile.
- Knowing possession of a firearm with a barrel less than 12 inches by person less than 18 years of age.
- Prosecuted as adult.
- Misdemeanor offense if first time
- Felony offense if second time or subsequent offense

Costs of trial level defense: \$94,380.00

585 weapons offense arrests of juveniles during 1992
50/50 split assigned counsel/public defender. representation is \$585.00 average cost per case.
1/3 of offenders or 195 cases will impact BIDS.

Costs of appellate defense: \$11,700.00

8% or 16 cases will be appealed.
Appeals are limited to the regulatory \$750.00 fee each.

The Board of Indigents' Defense Services is responsible for providing defense services to adults accused of committing felonies in Kansas. Currently, persons 17 years old and younger are not served unless waived into the adult system through a court proceeding. The Senate Bill would bring 195 additional trial cases and 16 additional appeals into the adult defense system services by BIDS.

¹ Assumption #1 does not take into account the unusually high number of violent offenses by juveniles which generated legislative concern, which could easily double or triple these figures.

² Assumption #2 is based on subjective experience of former and current defense attorneys, representing both juveniles and adult offenders.

³ Assumption #3 is predicated on offenses being distributed evenly between rural counties and urban counties. It is likely that the offenses will occur primarily in public defender served urban areas, which would make the cost per case lower. However, the higher number of conflict cases even in urban counties, requiring assigned counsel, is expected to cancel most of that effect.

⁴ Assumption #4 is based on current percentage of appeal case versus trial case load.

JD510 #2

Melody A. Cathey
Administrative Counsel
Board of Indigents' Defense Services
304 LSOB (913) 296-6945

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
January 26, 1994

The Board of Indigents' Defense Services is not a proponent or opponent of this legislation. The agency's only concern is that any measures which this body passes which effect our agency are adequately funded and clearly defined.

With that in mind, I have three concerns. These concerns are shared by Ron Smith of the KBA and he has asked that I bring them to you.

The first and foremost is that this measure will increase the cost in the adult defender system. The fiscal note which I provided you with is defective. It is based on 1992 data. I listened with hope yesterday that the KBI might have newer numbers to share with us. Whatever rise in crime there may have been this last year, which was commented on by law enforcement yesterday, is not reflected in the 1992 based note. Unless that data arrives before our appropriations bill is passed this session, we can expect to be back with our hat in hand, asking for a supplemental. We were hoping to get away from that annual problem this year.

By the questions which I heard yesterday, the other two concerns are obviously shared by members of the committee. One is that you need to make the new law consistent with existing juvenile provisions, or it will be a defense nightmare. We will have people under 14 years of age, who may not be waived into the adult system, who will be facing charges under two different systems. Since they are funded by different government bodies, it is unlikely that the same attorney will be handling both actions. There is likely to be inconsistent outcomes.

The other problem is the possibility of conflicting judicial interpretation of how people under 18, previously convicted of a misdemeanor or felony adult offense under this code provision, are to be treated in subsequent offenses. I would ask that you clarify the language, so that a year from now the Supreme Court isn't reviewing the transcript of this hearing to determine what was your true intent.

Returning for a moment to the fiscal impact, if you give us 10 year olds to defend, we will probably have to hire a different type of support personnel than we use in most of our offices. We would need social workers or some type of personnel trained in dealing with the understanding of how young people think. Our current public defenders are more terrified of dealing with kids than they are of the most vicious career hardened criminals they represent..

Ron Smith
1-26-94
attachment 2-1

JB SP 4513

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| Wichita Police Dept., Gang Intelligence Unit, Gang Crimes Report 1993 | | | | | | | | | | | | | Total |
|---|-----|-----|-------|-------|-----|------|------|-----|------|-----|-----|-----|-------|
| Crimes | Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec | |
| Murder | 0 | 0 | 2 | 2 | 4 | 1 | 2 | 2 | 3 | 3 | 0 | 3 | 23 |
| Rape | 0 | 2 | 0 | 1 | 1 | 3 | 2 | 3 | 0 | 0 | 2 | 1 | 15 |
| Robbery | | | | | | | | | | | | | |
| Highway | 7 | 4 | 8 | 9 | 5 | 14 | 17 | 11 | 8 | 4 | 9 | 7 | 103 |
| Residential | 0 | 0 | 1 | 1 | 1 | 0 | 5 | 6 | 3 | 3 | 3 | 3 | 26 |
| Other | 7 | 2 | 3 | 1 | 4 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 13 |
| Arson | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 3 |
| Burglary | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 1 | 5 | 4 | 1 | 2 | 16 |
| Kidnapping | 1 | 1 | 0 | 0 | 2 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 5 |
| Agg. Assault | | | | | | | | | | | | | |
| Firearms | 14 | 16 | 50 | 27 | 57 | 51 | 61 | 59 | 58 | 67 | 52 | 63 | 575 |
| Stabbing | 1 | 1 | 1 | 0 | 3 | 3 | 1 | 0 | 1 | 2 | 2 | 0 | 14 |
| Clubbing | 3 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 2 | 0 | 0 | 6 |
| Drive-by | 12 | 8 | 28 | 16 | 30 | 24 | 25 | 16 | 29 | 19 | 29 | 31 | 267 |
| Injuries | 4 | 1 | 9 | 1 | 10 | 3 | 9 | 9 | 7 | 4 | 5 | 5 | 67 |
| Weapons Arrest | 15 | 9 | 12 | 8 | 17 | 24 | 13 | 29 | 30 | 24 | 15 | 14 | 199 |
| Probation Arrest | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 1 | 0 | 1 | 1 | 2 | 9 |
| Narc. Sale/Poss | 8 | 11 | 9 | 8 | 10 | 16 | 17 | 15 | 15 | 25 | 20 | 14 | 168 |
| Agg. Ass. LEO | 0 | 0 | 4 | 1 | 7 | 0 | 0 | 0 | 1 | 3 | 0 | 0 | 16 |
| Battery LEO | 0 | 0 | 1 | 0 | 0 | 2 | 1 | 0 | 0 | 0 | 3 | 1 | 8 |
| Shooting Injuries | | | | | | | | | | | | | |
| Non-injuries | | | | | | | | | | | | | |
| Totals | 81 | 47 | 124 | 94 | 151 | 136 | 146 | 145 | 157 | 162 | 142 | 146 | 1532 |

Wichita Police Dept.
1-26-94
Attache #3

#4
TESTIMONY OF SENATE BILLS 500, 501, 502, 512 AND 513

**TO THE MEMBERS OF THE
SENATE JUDICIARY COMMITTEE**

BY JOHN M. DOUGLASS

**ASSISTANT CHIEF OF POLICE
OVERLAND PARK POLICE DEPARTMENT**

I am here today on behalf of the City of Overland Park and in support of Senate Bills 500, 501, 502, 512 and 513. As you know, these Bills represent legislation whose purpose is to address the ever growing problem of juvenile crime in the state. As Kansans, we often disagree on many issues and problems facing our state. We are, however, universally in agreement in our concern for the health and well being of our children. Because of our deep concern for our children, it is particularly troubling to see a steady increase in the amount of juvenile crime and the severity of violence brought about by juveniles. It is most troubling when this violence is carried out against other juveniles.

We in Overland Park believe that this legislation is a much needed attempt to deal with this danger. Senate Bill 500 is of particular note. This Bill takes a major step towards removing weapons of violence from the hands of our children. It recognizes that handguns and other firearms with a barrel length of less than 12 inches are often used as the means of this violence. Ironically, the most effective measure contained in this Bill, the ability to revoke a juvenile's drivers

*Senate Judiciary
1-26-94
attached # 4-1*

license, may best describe why we so desperately need this type of legislation. I believe it is ironic to note that the loss of a juvenile's drivers license may very well be more important, and therefore, a greater deterrent than the fines or possible jail sanctions in the eyes of our juvenile offenders. The juvenile logic demonstrated here is exactly why persons under 18 should be restricted from possessing a handgun outside of the exemptions expressed in this Bill.

While the City of Overland Park is in support of this Bill as written, we would ask your consideration be given to Section C5, which refers to traveling with any such firearm in any such person's possession. We would recommend and ask that you consider adding language to the Bill which would allow traveling with such a firearm pursuant to Sections 1 to 4, only when that firearm is secured, unloaded, and outside the access of the juvenile. We believe that adding this language will close all possible loopholes in pertaining to those Sections.

The additional Senate Bills, 501, 502, 512 and 513 are equally important as they force the juvenile to recognize the serious consequences of their actions. With the enactment of these Bills, juvenile offenders can no longer hide from the consequences of their offenses and parents can no longer divorce themselves from the actions of their juvenile children. It is our firm conviction that the first line of defense is the strong interaction between parent and child. By

making both more accountable for their actions, we are sending a strong message which demands that we all act as responsible citizens.

Finally, we believe that we can no longer dismiss random violence and property destruction as only immature childish behavior. The consequences for failing to curtail these actions are too serious and the costs too high. As a result, we urge the passage of all five Senate Bills.

I would be glad to answer any questions that you might have.



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

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ROBERT T. STEPHAN
ATTORNEY GENERAL

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 513
JANUARY 26, 1994

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am here today in support of SB 513. There are three main reasons for passage of this bill: one philosophical reason and two practical reasons.

The philosophical reason is the recognition that 15 and 16 year olds of today are all too often less like Wally Cleaver than the teenagers in Clockwork Orange. According to KBI statistics in 1992, 16 and 17 year olds were arrested for 7 murders, 17 rapes, 115 robberies, 380 aggravated assaults, and 21 arsons. Certainly, a large percentage of them were already treated as adults either under waiver procedures or due to prior records, but the point is these children are committing very adult crimes.

SB 513 recognizes a change in the sophistication and maturity of children, and provides that if they are going to commit crimes of violence and crimes against persons - adult crimes - they will be treated as adults.

The first of two practical reasons deals with the concern that as other states lower their age of majority for criminal prosecution, Kansas will become a magnet for gang activity. Gangs recognize their members can

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attachment #5-1

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operate for an additional two years here in Kansas under the reduced threat of the over taxed juvenile system. Last year there was testimony by representatives of the Junction City Police Department of that in fact happening, where members of street gangs from Detroit were apprehended for drug dealing in Junction City. They had been sent to Kansas after repeated brushes with the law in Michigan to extend their useful life to the gang.

The third reason, also practical in nature, is that by removing these 16 and 17 year olds from the juvenile system we ease that over-burdened system. By using 1992 statistics this would be about 1,400 arrests no longer going through the personnel intensive juvenile system. This would free up sources within the juvenile system for the younger, less hardened children who are more receptive to the rehabilitation efforts within the juvenile system. Similarly, the demand for bed space at juvenile detention facilities, and transportation demands put on sheriff's offices would be less. There will obviously be more demands on the adult system, but bonding procedures will handle most without intake officers and custody hearings currently in place with juvenile offenders. As to actual time from sentences, very few offenders will get more time than are currently being held.

I have been a prosecutor in this state for 13 years. In the adult criminal system I have seen all types of defendants, some sociopath, serial murder types, some who, while chronologically adults, are emotionally and mentally children. The adult criminal system has the

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ability and flexibility to deal with these varying degrees of maturity and I feel that will also be true with these additional criminals and their varying levels of maturity.

Thank you.

#130

116
F HACKER, President
Lyon County Sheriff
Emporia, Kansas 66801

LARR' HAN, President-Elect
Kansas Highway Patrol
Wichita, Kansas 67212

JIM DAILY, Vice President
Barton County Sheriff
Great Bend, Kansas 67530

ALVIN THIMM
Secretary-Treas
Kansas Peace Officers' Association
Wichita, Kansas 67201

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Kansas Dept. of Wildlife and Parks
Pratt, Kansas 67124

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Great Bend, Kansas 67530
DICK BURCH
Kansas Law Enforcement Training Center
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RON GOULD
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Winfield, Kansas 67156
BOB ODELL
Cowley County Sheriff
Winfield, Kansas 67156
LARRY WELCH
Ks. Law Enforcement Training Center
Hutchinson, Kansas 67504

DISTRICT 8

ALLEN FLOWERS
Chief of Police
Coffeyville, Kansas 67337
LOWELL PARKER
Greenwood County Sheriff
Eureka, Kansas 67045
TINY WILNERD
Ks. Dept. of Wildlife and Parks
Howard, Kansas 67349
SERGEANT - AT-ARMS
KENNETH McGLASSON
Kansas Highway Patrol
Wakeney, Kansas 67672

Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-7030
FAX 316-729-0655
P.O. BOX 2592 • WICHITA, KANSAS 67201



January 25, 1994

Re: Senate Bill No. 513

Mr. Chairman and Members of the committee:

I am Helen Stephens, representing the 3,500 members of the Kansas Peace Officers Association. We are here to express our support for Senate Bill No. 513.

Although passage of this bill will keep more dangerous juveniles off the streets, we do request you consider the fiscal impact of this on cities and counties.

Thank you for your consideration. I stand for questions.

In Unity There Is Strength

*Senate Judiciary
1-26-94
attachment 6-1*

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL 513

The Kansas County and District Attorneys Association appears in support of SB 513, which removes offenders age 16 and over from the juvenile offender code if they are charged with a person crime. The bill concerns a major policy decision, but in reality may effect few cases. The present law recognizes that persons under 18 are juvenile offenders, then creates numerous exceptions to allow for prosecution as adults. This bill recognizes the proliferation of exceptions and makes a uniform rule concerning crimes against persons committed by offenders 16 and over.

While the Committee heard testimony from juvenile court prosecutors in Sedgwick County that they do not see a need for such legislation, their remarks were premised on the fact that their juvenile court judges routinely allow waivers. In other jurisdictions, such waiver is not so routinely made, causing considerable diversity in the way violent crimes by juveniles are handled.

The beneficent concern about the kid next door who has a lapse of judgment and goes joyriding, or the student athlete who goes shoplifting, is dealt with by leaving property crimes in the juvenile offender code, subject to judicial discretion.

Steve Judiciary
1-26-94
attached 7-1

Board of Indigents' Defense Services
Fiscal Impact Statement

January 25, 1994

Melody A. Cathey
Administrative Counsel
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Senate Judiciary
1-26-94
attachment 8-1

AGENCY SUMMARY
FISCAL IMPACT OF SENATE BILL No. 513
SHIFTING JUVENILE OFFENDERS INTO ADULT SYSTEM

Assumptions

- BIDS will retain present system of assigned counsel & public defenders.
- Juveniles committing defined offenses will be consistent with 1992 KBI statistics on juveniles arrested for offenses¹
- 10% of felony offenders are already represented by BIDS²
- **Costs per trial case will be \$584.00.**³
- 8% of the cases will be appealed at \$750.00 each.⁴

SB 513 **\$815,678.00**

- Persons 16 years and older committing person offenses are prosecuted as adults.

Costs of trial level defense: \$739,928.00

1408 person felony arrests of 16 & 17 year olds during 1992.

50/50 split assigned counsel/public defender representation is \$585.00 average cost per case.

90% or 1267 cases will impact BIDS.

Costs of appellate defense: \$75,750.00

8% or 101 cases will be appealed.

Appeals are limited to the regulatory \$750.00 fee each.

The Board of Indigents' Defense Services is responsible for providing defense services to adults accused of committing felonies in Kansas. Currently, 16 and 17 year olds are not served unless waived into the adult system through a court proceeding. It is estimated that 10% of the relevant cases filed are currently waived into the adult system. The Senate Bill would bring 1267 additional trial cases and 101 additional appeals into the adult defense system services by BIDS.

1

Assumption #1 does not take into account the unusually high number of violent offenses by juveniles which generated legislative concern, which could easily double or triple these figures.

2

Assumption #2 is based on subjective experience of former and current defense attorneys, representing both juveniles and adult offenders.

3

Assumption #3 is predicated on offenses being distributed evenly between rural counties and urban counties. It is likely that more offenses will occur in public defender served urban areas, which would make the cost per case lower, however, offenses related to gang activity, requiring more conflict counsel than usual will be used, canceling out the effect.

4

Assumption #4 is based on current percentage of appeal case versus trial case load.

f-4