

Approved: _____

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

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

All members were present except: Senator Oleen (excused)
Senator Feleciano (excused)

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:

Janette Sheldon, District Judge, Johnson County
Dan Mitchell, District Judge, Shawnee County
Carolyn Hill, Attorney, Kansas Department of Social and Rehabilitation Services
Jamie Corkhill, Attorney, Kansas Department of Social and Rehabilitation Services
Dennis Priest, Income Maintenance Division, Kansas Department of Social and Rehabilitation Services
Brian M. Vazquez, Attorney, Kansas Department of Social and Rehabilitation Services

Others attending: See attached list

SB 400--out of home placements

Carolyn Hill, Kansas Department of Social and Rehabilitation Services testified in favor of SB 400 as amended by a balloon provided to the Committee, which bill would amend the juvenile offender code to enable Social and Rehabilitation Services to collect Title IV-E funding and primary foster care funding from the federal government (Attachment No. 1). Ms. Hill said the annualized increase in revenue would conservatively be estimated at \$1.2 million and could be used to enhance the quantity and type of services available to juvenile offenders.

Janette Sheldon, District Judge, Johnson County testified in favor of SB 400 and answered questions from the Committee. Judge Sheldon stated SB 400 would enable Social and Rehabilitation Services to collect Title IV-E funding and primary foster care funding from the federal government which was conservatively estimated at \$1.7 million. She said there was disparity in the dollar amount she was told versus Social and Rehabilitation Services, however, the amount would make a significant impact. Judge Sheldon's recommended language changes were on page 1, line 16, the word "evidence" be stricken, "...the court shall consider ~~evidence~~ and determine that:...". Also, on page 1, lines 18-20 the language be modified to read "...need for out-of-home placement or an emergency exists threatening the *public* safety ~~of or~~ the juvenile offender...". She said her primary concern had to do with the federal mandate in its entirety.

Judge Dan Mitchell, District Judge, Shawnee County testified in favor of SB 400 and answered questions from the Committee. Judge Mitchell suggested language changes on page 1, line 16, striking the word "evidence", to read "...the court shall consider and determine that:", and page 1, line 18-20 to read, "...or an emergency exists ~~threatening the safety of the juvenile offender and requiring juvenile offender's immediate removal~~ requiring out-of-home placement." Judge Mitchell said he had four recommendations, 1) a statewide intake and assessment program, 2) a state wide program for expansion of mental health services for children and families, 3) a statewide program for intensive supervision, 4) a statewide program for increased numbers of social workers and court service officers with appropriate standards for case limitations, that are crucial for delivery and the intent behind this bill.

Jim Clark, Kansas County District Attorneys provided the Committee a copy of amended language for SB 400 (Attachment No. 2).

CONTINUATION SHEET

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

A motion was made by Senator Bond, seconded by Senator Petty to amend SB 400 with the language submitted to the Committee by the judges, which is the same as Social and Rehabilitation Services and report the bill favorably as amended. The motion carried.

Carolyn Hill, Attorney, Kansas Department of Social and Rehabilitation Services recommended that SB 452 and SB 464 be incorporated together and she would be submitting suggested language changes.

Brian Vasquez, Kansas Department of Social and Rehabilitation Services testified in favor of SB 465. He said under present statutes there is the possibility for transfer of assets by either the spouse or family member in estates that are \$10,000 or less. The affidavits can only be used for transfer of personal property, not real estate. SB 465 would allow the same ability for Social and Rehabilitation Services.

Dennis Priest, Income Maintenance Division, Social and Rehabilitation Services testified in support of SB 466 dealing with estate recovery (Attachment No. 3).

Chairman Moran reminded the Committee of the Senate Judiciary meeting at 9:00 a.m. tomorrow in Room 254-E.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February, 1994.

GUEST LIST

COMMITTEE:

DATE: _____

[illegible]

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

Senate Judiciary Committee
Testimony on Senate Bill 400

February 10, 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 amending the Kansas juvenile offenders code; relating to certain out-of-home placements; amending K.S.A. 1992 Supp. 38-1664 and repealing the existing section.

Mr. Chairman, the Department previously provided testimony in favor of Senate Bill 400 on January 19, 1994. I thank you for the opportunity to provide these revised remarks which respond to issues raised in previous testimony. We have attached a balloon which amends the bill to clarify no additional evidentiary hearing will be required and clarify the court may consider the protection of the community when determining whether an emergency exists requiring an out-of-home placement of a juvenile offender.

Senate Bill 400 requires a court to determine reasonable efforts have been made to prevent or eliminate the need for out-of-home placement or an emergency exists threatening the safety of the juvenile offender or the public and requiring the offender's immediate removal. Periodic hearings are required for juvenile offenders placed outside their homes. These changes would result in more youth being eligible for Title IV-E reimbursement.

PURPOSE

There are two primary purposes for this bill, one fiscal and one in support of the SRS Family Agenda for Children and Families. Passage of S.B. 400 will allow the department to receive federal financial participation through Title IV-E for juvenile offenders who are otherwise eligible but do not meet the requirement for a judicial determination reasonable efforts were made to prevent or eliminate the need for out of home placement. The additional revenue will provide for improved services.

It is the intent of the department to provide with any funds realized:

- o Improved Intake and assessment services.
- o Intensive supervision statewide and setting standards of quality and caseloads
- o Expansion of mental health services for children and families through purchase of services from privat providers.
- o Increase staff to achieve manageable caseload levels.

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The proposed amendment supports the goals of the SRS Family Agenda for Children and Families by ensuring a judicial review to identify youth who can be provided services in their own communities and homes. Youth who require out-of-home placement for their safety or the safety of the public will still receive appropriate placement services.

BACKGROUND

Juvenile offenders in the custody of the Department and in out-of-home care have not been included in claims for Title IV-E match for the cost of care as they did not meet the eligibility requirement of a judicial determination of reasonable efforts to avoid out-of-home placement. The juvenile code does not require such judicial finding. The proposed change would require the court to determine (1) if reasonable efforts have been made to prevent or eliminate the need for out of home placement of the offender or that an emergency exists threatening the safety of the offender or the public, and (2) if out of home placement is in the best interest of the offender.

EFFECT OF PASSAGE

The requested changes in the Kansas Juvenile Offender's Code would enable offenders receiving community-based services to be eligible for Title IV-E funding when they meet the eligibility criteria. Currently, Juvenile offenders do not qualify for any federal funding, forcing the use of all state general funds to meet their needs, including staff costs. The Department recently completed a study of a representative sample of juvenile offender cases and found 40 percent would clearly have been eligible for IV-E funding if the statutes had mandated judicial review. This compares to approximately 15 percent who are now eligible, primarily due to dual adjudication as a juvenile offender and a child in need of care. The annualized increase in revenue is conservatively estimated at \$1.2 million which could be used to enhance the quantity and type of services available to juvenile offenders.

The reasonable efforts requirement of this bill is modeled after similar requirement in the Child in Need of Care (CINC) code. The bill does not, however, extend any of the requirements of the CINC code to juvenile offenders nor does it in any way limit the department in providing services to habilitate juvenile offenders or protect the public.

RECOMMENDATION

With suggested amendments, the Department of Social and Rehabilitation Services recommends favorable consideration of S.B. 400.

Donna L. Whiteman
Secretary
Department of Social and
Rehabilitation Services

(913) 296-3271

Kansas Department of Social and Rehabilitation Services
Testimony on S.B. 400
February 10, 1994

Balloon:

Section 1. K.S.A 1992 Supp. 38-1664 is hereby amended to read as follows:
38-1664. (a) Prior to placing a juvenile offender in the custody of the
secretary and recommending out-of-home placement, the court shall consider
evidence and determine that, where consistent with the need for protection of
the community:

(1) Reasonable efforts have been made to prevent or eliminate the need for
for out of home placement or an emergency exists threatening the safety of the
juvenile offender or the community and requiring the juvenile offender's
~~immediate-removal~~ out-of-home placement; and

(2) out-of-home placement is in the best interest of the juvenile offender.

SENATE BILL No. 400

By Committee on Ways and Means

3-2

AN ACT amending the Kansas juvenile offenders code; relating to certain out-of-home placements; amending K.S.A. 1992 Supp. 38-1664 and repealing the existing section.

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

Section 1. K.S.A. 1992 Supp. 38-1664 is hereby amended to read as follows: 38-1664. (a) *Prior to placing a juvenile offender in the custody of the secretary and recommending out-of-home placement, the court shall consider evidence and determine that:*

(1) *Reasonable efforts have been made to prevent or eliminate the need for out-of-home placement or an emergency exists threatening the safety of the juvenile offender and requiring juvenile offender's immediate removal; and*

(2) *out-of-home placement is in the best interests of the juvenile offender.*

(b) When a juvenile offender has been placed in the custody of the secretary, the secretary shall notify the court in writing of the initial placement of the juvenile offender as soon as the placement has been accomplished. The court shall have no power to direct a specific placement by the secretary, but may make recommendations to the secretary. The secretary may place the juvenile offender in an institution operated by the secretary, a youth residential facility or a community mental health center. If the court has recommended an out-of-home placement, the secretary may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(c) During the time a juvenile offender remains in the custody of the secretary, the secretary shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile offender. *If the juvenile offender is placed outside the juvenile offender's home, a hearing shall be held not more than 18 months after the juvenile offender is placed outside the juvenile offender's home and every 12 months thereafter.* If the juvenile offender is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the juvenile offender's adjustment, progress and condition.

1. or the safety of others
2. or the protection of the public
3. or the safety of members of the public

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attaches 2-1*

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

Senate Judiciary Committee
Testimony on Senate Bill 466

February 10, 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 and members of the committee, thank you for this opportunity to address you on Senate Bill 466. The bill would permit transfers of property by the spouse of a medical assistance recipient who is subject to the State's estate recovery provisions to be voided. The Department of Social and Rehabilitation Services requested this bill to help prevent dissolution of a person's estate prior to death and we support passage of this bill.

Under the current provisions of K.S.A. 39-709(g)(2) a claim is now established against the estate of a deceased recipient or the deceased recipient's spouse to recover medical assistance paid to either or both. Such recovery occurs only upon the death of the individual or, if there is a surviving spouse, the death of the spouse and encompasses the estate of both spouses. This process is referred to as the estate recovery program and was established during the 1992 legislative session. The law became effective July 1, 1992. It affects those persons who were 55 years of age and older or were institutionalized while on medical assistance. The program is based on federal law and regulations and, based on passage of the Omnibus Budget Reconciliation (OBRA) of 1993, is now mandated for all states. In the first year of implementation the Department successfully recovered almost \$200,000 and we expect this amount to more than double in the current year.

The estate recovery program provides a fair and equitable means by which the Department can partially or fully recover the amount of medical expenditures incurred while an individual was on assistance where property remains upon the death of that individual. It does not impact the person's current eligibility or coverage for services in any way. No claims or liens are filed prior to death and neither will the Department seek recovery if the individual's spouse is still living or if the individual has children who are disabled or are below the age of 21. If there is a surviving spouse, recovery will occur only after the death of that spouse.

The program is only successful if the estate is not otherwise disbursed prior to death. While it is appropriate for the recipient or spouse to use their assets to help meet their needs, there may be instances in which an effort is made to transfer the estate property to avoid recovery. It is this issue that the proposed legislation seeks to address.

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Under current federal law, a transfer of assets by an individual or his or her spouse can be penalized if the individual or spouse is seeking coverage of long term institutional care. However, if the person is not seeking such care and lives independently there are no transfer penalties and he or she can give away all of the available assets. Because the estate recovery law applies to persons age 55 and older whether they are institutionalized or not, a provision was included in the original law which permitted the Department to take action to void transfers of property by the medical assistance recipient. It did not allow transfers by the recipient's spouse to also be potentially voided and this bill was proposed to include that person as well. In this way, if action was taken by either the husband or wife to intentionally divest their assets to avoid estate recovery, the Department would have the authority to challenge such transfers.

Action to void a transfer would require the agency to challenge the transfer in court and seek to have the property returned to the recipient or the spouse. As such, the agency would only take such action on a limited basis and in situations where there appears to be a transfer done only to deplete the potential estate. While action to void a transfer has not been taken since implementation of the law, the provision has helped to avert several transfers over the past year.

SRS believes this legislation will provide a protective measure to prevent efforts by a small number of recipients to avoid the agency's estate recovery effort and allow for continued success in our recovery efforts.

Donna L. Whiteman
Secretary
February 10, 1994