

Approved: 4/29/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 9:00 a.m. on March 21, 1994 in Room 522-S of the Capitol.

All members were present except: Senator Parkinson (excused)

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

Conferees appearing before the committee:

Representative Gary Haulmark  
Jim Blaufuss, Schmidt Task Force  
Gene Schmidt, Overland Park  
Petty Schmidt, Overland Park  
Kyle Smith, Kansas Bureau of Investigation  
Marty Bloomquist, Shawnee County Juvenile Detention Facility  
Ann Smith, Kansas Association of Counties  
Jolene Grabill, Corporation for Change  
Carolyn Hill, Social and Rehabilitation Services  
Larry Vardaman, Sedgwick County Youth Services  
Bill Miskell, Department of Corrections

Others attending: See attached list

HB 2660--parole and probation officers shall notify employers if employee committed a person felony  
HB 2661--amendments to habitual sexual offender registration act

Representative Gary Haulmark testified in support of HB 2660 and HB 2661 and provided written testimony (Attachment No. 1). He said HB 2660 would require probation officers to notify employers by mail if they had hired a sexually violent felon. Representative Haulmark said HB 2661 would require a felon convicted of a sexual offense to register with the county sheriff in the county where he or she would reside. He said this would have to be done after the first conviction instead of the second as current law states. This information would become public information:

Gene Schmidt, Overland Park testified in support of HB 2660 and HB 2661 and provided written testimony (Attachment No. 2). He said sex offenders should not be allowed to choose occupations that would contribute to the increased potential of recidivism. Employer notification could help eliminate placing a sex offender in an occupation to increase the potential recidivism.

Peggy Schmidt, Overland Park testified in support of HB 2660 and HB 2661 and provided written testimony (Attachment No. 2). She said the rights of individuals who obey the law should supersede the rights of those who voluntarily and openly defy and break the law. Ms. Schmidt said employers should be given the right to select their employees based on information pertinent to the work force and environment required.

Jim Blaufuss, Schmidt Task Force testified in support of HB 2660 and HB 2661 and provided written testimony (Attachment No. 3). Mr. Blaufuss said the Schmidt Task Force had investigated sex offender treatment programs and found them to be ineffective. He said statistics show there will be 50 sexual assaults for every conviction.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 522-S Statehouse, at 9:00 a.m. on March 21, 1994.

Bill Miskell testified for the Department of Corrections and provided written testimony from Secretary Gary Stotts, Department of Corrections in regard to HB 2660 (Attachment No. 4). Secretary Stotts gave comments and recommendations in regard to amendments to HB 2660.

Lisa Moots, Sentencing Commission said the language in HB 2660, page 9, lines 11-17 was placed in several bills to assure it became law. She said SB 552 contained this language and has passed both Houses and signed by the Governor and could be removed from HB 2660.

Kyle Smith, Kansas Bureau of Investigation testified in support of HB 2661 and provided written testimony (Attachment No. 5). He said HB 2661 would provide the capability to check those persons who were convicted in another county or out of state, and access to better identifier information.

Chairman Moran closed the hearings on HB 2660 and HB 2661.

SB 829--detention of juvenile offenders, transfer from local to state care

Marty Bloomquist, Shawnee County Juvenile Detention Facility testified in support of SB 829 and provided written testimony (Attachment No. 6). She said SB 829 allows the Shawnee County Commission to be reimbursed in an amount equal to that provided by the county for the maintenance of juvenile offenders. She provided the Committee a copy of a study done regarding the cost to house a juvenile offender per day in Shawnee County and a population profile of the Shawnee County Juvenile Detention Center. Ms. Bloomquist expressed concern in regard to the interpretation of K.S.A. 79-4803.

Scott Hutton, Wyandotte County Juvenile Detention Facility testified in support of SB 829. He said SB 829 was a step in the right direction in doing what was best for Kansas children.

Jolene Grabill, Corporation for Change testified in opposition to SB 829 and provided written testimony (Attachment No. 7). She said the piece of the system SB 829 attempts to address is broken. However, she said any attempt to fix that part of the system without addressing the inadequacies of the remainder of the system could have devastating results. Ms. Grabill corrected her written testimony in paragraph two, line three by adding the word "don't", to read, "If we don't want more dangerous felons..."

Carolyn Hill, Department of Social and Rehabilitation Services testified in opposition to SB 829 and provided written testimony (Attachment No. 8). She said her concern dealt primarily with the effects of SB 829. She provided for the Committee detention centers cost data information and youth centers population information (Attachment No. 8).

Ann Smith, Kansas Association of Counties provided written testimony in support of HB 829 (Attachment No. 9).

Larry Vardaman, Sedgwick Youth Services testified in support of HB 829. He said Kansas children are being cared for inappropriately in the detention facilities. Mr. Vardaman said there is lack of definition between local and state government regarding responsibilities.

Chairman Moran closed the hearings on SB 829.

HB 2990--repealing statute requiring service of process upon the secretary of state

A motion was made by Senator Emert, seconded by Senator Feleciano to pass HB 2990 favorably and place on the consent calendar. The motion carried.

Senator Bond gave a report from the Family Law Subcommittee regarding SB 693 and SB 694. He said there was no subcommittee action on SB 694. He deferred to Senator Petty to report on SB 693. Senator Petty said the amendment on page 1, lines 28-29 would be replaced with language on Attachment No. 10 and was at the request of the Department of Social and Rehabilitation Services. She said other amendments were suggested by the Office of Judicial Administration (Attachment No. 11).

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 522-S Statehouse, at 9:00 a.m. on March 21, 1994.

Carolyn Hill, Department of Social and Rehabilitation Services provided written testimony on SB 693 (Attachment No. 12).

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 21, 1994 at 12:30 p.m. in Room 522-S.



# GUEST LIST

COMMITTEE: Inmate Judiciary

DATE: 3/21/94

| NAME (Please Print) | ADDRESS                                     | COMPANY/ORGANIZATION   |
|---------------------|---|------------------------|
| Jim Blaufuss        | 7919 Westgate Ct Leawood 66215              | Schmidt Task Force     |
| Deppa Schmidt       | 3416 W. 122 <sup>nd</sup> St. Leawood 66209 | " " "                  |
| Don Schmidt         | " " " "                                     | " " "                  |
| Johnnie Martin      | Topeka                                      | AG office              |
| Jeff Sennich        | "   | HNLS                   |
| Frank Taylor        | Topeka                                      | KS Hsgn School Boards  |
| LORRAE PHILLIPS     | TOPEKA                                      | KANE                   |
| Paul Shelby         | "   | CJA                    |
| Donna McDaniel      | "   | Sen Burke's office     |
| Jim Clouse          | "   | KC DAA                 |
| Ron Smith           | "   | Ks Bar Assoc           |
| BILL MISKELL        | "   | KDOC                   |
| LARRY VARDAMAN      | Wichita                                     | Sedgewick County       |
| Mike Martin         | Wichita                                     | Sedgewick County       |
| SCOTT HUTTON        | KC  | WY-10 JAC              |
| Marty Bloomquist    | Shawnee County                              | Shawnee County         |
| George Barber       | Topeka                                      | RAFS                   |
| Tomie Corkrill      | Topeka                                      | SRS/CSE                |
| KARL FRANKS         | "   | KAK                    |
| Carolyn Kieda       | "   | SRJ                    |
| Lucy Lutz           | "   | Observer               |
| Anna Smith          | Topeka                                      | Ks. Assoc. of Counties |



**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 HB 2660 and HB 2661**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today in favor of **HB 2660 and HB 2661**.

Both pieces of legislation are part of a comprehensive package proposed by a Ad Hoc task force on sexual offenders which met throughout the the Summer and Fall in Johnson County. The task force began its work in response to the murder and rape of Stephanie Schmidt; Stephanie was a student at Pittsburg State and her family lives in Leawood. I had the priviledge of serving on the task force with many of the people in the room here today. Our final work product is for Stephanie, but more importantly our work and the work of others will hopefully prevent future tragedies. Citizens all over the state of Kansas recognize that crime has become a huge problem. It is up to us to address that problem. This is a beginning.

**HB 2660**

Very simply this bill will require probation officers to notify employers by mail if they have hired a sexually violent felon. The state probation officers are currently notifying employers by telephone when they have hired any person who is on parole. Whatever the charge.

Also, this bill protects employers from civil damages unless damages come about through gross negligence of the employer.

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*3-21-94*  
*attachment 1-1*

**HB 2661**

This bill will require a felon convicted of a sexual offense to register with the county sheriff in the county where they plan to reside. This would have to be done after the first conviction instead of the second as current law states. Also this information would become public information.

These bills will make more information available to the public in order to help protect them from a class of criminal which is very likely to repeat and repeat its crimes.

Thank you again for your time and I would be glad to stand for questions.



**Speak Out for Stephanie**

Regarding House Bill #2660 & 2661  
Notification to Employers Hiring Paroled Sex Offenders  
and Sex Offender Registration

We strongly support and advocate this bill in order to protect the citizens from violent sex-offenders, who, by error, could slip through any existing or future incarceration plan that would allow for release from prison after serving all and any portion of their sentence.

The recidivism rate of sex offenders runs upward from 95%. With each act repeated there is a preponderant for increased violence up to and not limited to death of the victim. These offenders frequently begin their life and career of violent crime in other stages of non-violent offences. They continue with their deviant behavior and escalated in violence. Evidence supports the belief that these offenders can not be rehabilitated, nor do they care to be rehabilitated. No effective program currently exists that would reduce, cure, or eliminate the rage they have.

We firmly believe that the rights of individuals who obey the law have to supersede the rights of those who voluntarily and openly defy and break the law. Furthermore, we believe that any employer should have the right to protect his business from unwanted, destructive or offensive employees, by whose actions an employers business could suffer great loss, clientele placed in danger, or co-workers lives threatened—knowingly or unknowingly.

By notifying the employer, proper action by the employer, and the employees could manifest. The employer could also be assured of not placing his clientele in harms way.

All employers should be given the right to select their employees based on information pertinent to the work force and environment required. For example, no pharmacy should have to employ convicted drug dealers; no bank should have to employ embezzlers; no day care center should be asked to employ known, convicted pedophiles. All of these examples are for the protection and betterment of the employer and the community served.

Recently, I was having breakfast where my order was brought to me after the waitress called out my name. I was to respond by raising my hand and she, in turn, would bring my order to me. As I watched others having their orders delivered by this method, I thought how fortunate that the waitress was not blind. Not hiring a blind person for this job was not discrimination, it was common sense. Hiring a blind person for this job would be unfair and detrimental to the employer, unfair and detrimental to the clientele, and even more unfair and detrimental to the employee.

How does that differ from a sex offender? Common sense would dictate they not be put in an environment detrimental to public safety, or any employment circumstance that would demonstrate prospect of harm, physical or financial, to the employer. Common sense would also recognize that we should not allow sex offenders to choose occupations that would contribute to the increased potential of their recidivism. Through employer notification we could help to eliminate this mistake.

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*attacked 2-2*



Convicted sex-offenders, regardless of their offense, should be required to notify their employer of their past record at the time of application. With concern for the offender, the state should not be released of its implied trust concerning the felon. All attempts to monitor the released felon must include written notification to the employer: for the protection of the offender as well as the employer.

Anything less puts the business, the community, co-workers, and individual at risk. The state has an explicit trust to its citizens to keep them informed so that same citizenry may take defensive action and minimize individual risk. Our society has been so infiltrated by the criminal element that the rights of privacy of a convicted felon has become paramount to the rights of law abiding citizens.

The two bills introduced today asking for employer notification and first time registration are hardly extreme reactions to a very extreme condition; nevertheless, I ask you to at least pass these minimum recommendations. The other bills pertaining to sexual predators have passed with much appreciation, but these bills here today are necessary safety nets that need to be in place for the public.

Much has been said about employer notification and emotions at times have run very high. It is also understood that the Parole Officers under the direction of the Department of Corrections do notify employers--sometimes and maybe telephone. We are asking for this procedure to be formally presented by registered mail.

In addition, I would refer you to some key pages in Monograph 109, Supervision of Federal Offenders which specifically discusses federal procedures regarding third party risk and the larger issue of risk of recidivism and guidelines for addressing this risk.

Furthermore, I would refer you to the Guide to Judiciary Policies and Procedures, Probation Manual, Chapter IV, pages 36-40, specifically discuss third party risk:  
Page 36, paragraph 3:

Probation officers have an equal obligation to control risk to the public...In meeting these obligations, the officer has a duty to warn specific third parties of a particular prospect of harm, physical or financial, which the officer "reasonably foresees" the offender may pose to them. This obligation exists whether or not the third party has solicited the information.

Furthermore in the monograph regarding supervision of Federal Offenders, it states that third-party risk should be reassessed at each change of residence or employment and at the 6-month status review.

Is this too much to ask? It is interesting to note that many citizens have faced financial setbacks and may even have been forced into various bankruptcy provisions. Financial and credit records follow these unfortunate good citizens--none of whom have committed heinous and murderous crimes--for 10 years or better. These same records are not covered under any rights of privacy, or in some cases even rights of decency.

Why do we make financial records open to any employer, lender, or agency while we hide under the rights of privacy the acts of convicted, violent, felons: rapists, murderers and pedophiles. Who are we trying to protect, and what are we trying to protect them from? Are we more afraid that a

financial setback might be repeated eventhough we have proven facts of criminal recidivism in the areas of rape.

It remains totally amazing to me that we will keep a check forger in for full time incarceration: no early release, no chance for parole— we must teach this person about the error of choosing crime as an alternative. Yet rapists and murders are allowed to roam free: free to pick and choose a multitude of victims that become unsolved mysteries or death tolls in our statistic books.

It is time we listened to the common sense of our citizens instead of the plea bargaining defenses of our criminal elements who have taken over our great state and country. Put common sense back into our laws.

Finally, regarding sex offender registration: we have heard a few opponents say that this proposal is dangerous because of its potential harm to innocent people who may have the same or similar names as convicted felons. When I first heard this argument I was stunned beyond belief at the illogic of the argument. I immediately recalled looking in the legal section of a newspaper to surprisingly see the names of two good friends Chris and Cindy as having filed for a divorce. Even though we had dined with them 48 hours before and nothing was mentioned, I was shocked.

Following the course of those who object to this bill, I guess I should have immediately decided who we were going to support in the divorce and make preparations to help them out. However, I followed a greater degree of common sense and simply called Chris and Cindy who immediately put my mind and frustrations to ease by reassuring us it was not them. It was simply a matter of another couple with the same names. And the mystery, worry, concern, and frustration solved: with one simple phone call.

I was further reminded that through the whole long month of July 1993, while a nation wide search was conducted for a convicted rapist, Don Gideon, Gideon Bibles suffered no decline in sales, nor were any of them considered suspect. Actually, we were made aware of a Don Gideon was getting married on July 4th in Riverton, Kansas: obviously not the convicted rapists and killer of my daughter. We were made aware of at least two other Don Gideon's who were never considered suspect, because a simple clarification phone call was made.

Bottom line to the argument for similar names, quite simply is an argument and true justification for registration of sex offenders. If there is a sex offender out there with my name, I want to be assured that HE is registered to eliminate any confusion. As a continued safety net for the sexual predator act, I urge you to pass these two provisions requiring employer notification and Sex offender registration. Thank you.

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TO: KANSAS SENATE - JUDICIARY COMMITTEE  
FROM: JIM BLAUFUSS - SCHMIDT TASK FORCE  
RE: HOUSE BILL 2660 AND HOUSE 2661

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. How does a person prove rape? Some people tell women not to 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. Therefore, the sentence should not be as severe.

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.

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*attachmk 3-1*



The State of Kansas is the first and sometimes the only one who know who these people are. It is not realistic for each employer to do a crime check on everyone hired. This may not even be legal to do for most employers. The Schmidt task force wants the State to notify each employer when they have hired a convicted sex felon. This should be done for a 10 year period after they have served their sentence. Ten years is the length of time a person carries a bankruptcy on their record.

An armored car company does not want to hire a bank robber. They are able to do a criminal record check. Do our school districts know the history of the people teaching our children, cleaning the schools, coaching our children or driving the bus?

There is no evidence that a job will change the behavior of a sex offender. For a lot of offenders a job is the opportunity to find more unsuspecting victims.

The question is, do we want our mothers, wives, sisters and daughters to know when they are working with a sex offender? Do we want to know if the people who have access to our homes have a history of sexual assault?

These bills 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 Schmidt Task Force is asking our State Legislature to pass House Bill 2660--Notification to Employers and House Bill 2661--Registration of convicted sex felons.

We know there is no way to keep all sex offenders off our streets. These two bills will help protect the people that may become their next victim.

Jim Blaufuss  
Member of the Schmidt Task Force

7919 Westgate Ct.  
Lenexa, Kansas 66215

913-492-0200

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Testimony by Secretary of Corrections Stotts  
submitted to the Senate Judiciary Committee on HB 2660  
March 21, 1994

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HB 2660 establishes procedures to notify employers of the criminal history of employees who have committed sexually violent offenses. The bill basically requires that sex offenders notify their probation or parole officer when they obtain employment, and that the probation, community corrections or parole officer must then inform the employer in writing that the offender had committed a sexually violent offense.

Currently, the department works closely with the Attorney General and the county/district attorney victim-witness programs statewide to comply with statutory responsibilities for victim notification. The department by policy also provides notice to victims or witnesses of crimes committed by any inmate when such notice is requested. In addition to victim notification practices, the department is currently mailing reports each month to approximately 290 county and local law enforcement agencies listing all offenders under supervision by Department of Corrections parole staff in their respective counties. We also have worked with the Kansas Bureau of Investigation regarding implementation of the Habitual Sex Offender Registration Act which was approved during the 1993 legislative session. Moreover, offenders are expected to inform employers of felony convictions when required to do so on employment applications and the department currently informs employers or prospective employers of an offender's criminal history in certain circumstances. Also, information regarding an offender's crime of conviction, length of sentence, and certain other information is public and is routinely provided to employers, the media and others upon request.

The Department of Corrections is prepared to implement the notification procedures established by HB 2660 for affected offenders who are under the supervision of the department. In fact, the department has begun planning to expand and enhance the effectiveness of notification procedures, regardless of the action taken on HB 2660. However, the following comments and recommendations are offered on the bill.

1. New Section 1 of the bill requires court services officers and community corrections personnel to notify within 15 days the employer of any person under their supervision who has been convicted of a sexually violent crime. Section 6 imposes the same requirement on parole officers. Neither section, however, specifies what starts the 15 day period. We suggest clarifying language that the 15-day period would start upon receiving notice of employment by the offender.
2. New Section 1 concerns court services officers and community corrections personnel, yet the Secretary of Corrections is charged in subsection (c) with promulgating regulations to define employment. Is it the intent that the

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*Testimony on HB 2660....continued*

Secretary of Corrections establish the parameters that court services officers and community corrections personnel will work under regarding this issue?

3. We suggest that Section 5 (p.16, lines 20-27) and Section 6 (p.17, lines 29 and 32) both be amended to also include conditional release offenders, as well as parolees and postrelease supervision offenders.
4. We expect that the bill's provisions will tend to make it more difficult for sex offenders to get and maintain employment, and that some increase in re-offending rates and in revocation of post-release supervision--i.e. return to prison due to violation of release conditions--may result. To address this issue, we are considering alternatives for targeting assistance to this group of offenders in job-seeking efforts upon their release from prison.
5. Some consideration should be given regarding expectations of what employers will do with criminal history information once they receive it. While the intent of the bill is to further the public safety by sharing criminal history information on offenders who have committed sexually violent offenses, the bill does not address employers' obligations to notify employees, clients or others the offender may come into contact with during the course of employment. The primary effect of the bill may in fact be to serve as a deterrent to employers to hire sex offenders, which is the reason we expect employability of this group to become more difficult. This may shift some risks from the workplace but it does not necessarily increase public safety overall. In the final analysis, we have not yet identified a practical and effective way to provide notification to all persons who will or may encounter an offender who is released from incarceration.





ROBERT B. DAVENPORT  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

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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 HOUSE BILL 2661  
March 21, 1994

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I appear today in support of HB 2661.

HB 2661 improves the Sexual Offender Registration Act by making it apply to first time sexual offenders, requiring lifetime registration for those with two convictions, and allowing concerned citizens to check their local records to determine what risks might be present in their community. Frankly, the record of conviction, if it is a local offense would already be available at the local courthouse. HB 2661 would provide the capability to check those persons who were convicted in another county or out of state, and access to better identifier information.

I would be happy to answer any questions.

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*Senate Judiciary*  
*3-25-94*  
*attachment 5-1*

MEMORANDUM

Date: February 16, 1994  
To: Shawnee County Board of Commissioners  
From: M. A. Bloomquist, Financial Administrator *MAB*  
Re: Shawnee County Juvenile Detention Facility

As mentioned in a memo to you last week, attached is a calculation provided by David M. Griffith and Associates of the average daily costs per resident to house juveniles in the above captioned facility.

Please note that the 1994 estimate to house a juvenile is \$209.11 per day but Shawnee County is reimbursed by SRS for \$49.70 per day.

MAB:gt

cc:Earl Hindman

*Senate Judiciary  
3-21-94 attached B-1*



DAVID M. GRIFFITH & ASSOCIATES, LTD.

940 N. Tyler Road • Suite 204 • Wichita, KS 67212 • 316-729-0732 • Fax 316-729-0733

February 7, 1994

Mr. Gary Bayens  
Administrator  
SHAWNEE COUNTY JUVENILE DETENTION  
2620 E. 23rd  
Topeka, KS 66605

Dear Gary:

Based upon the operating information you provided regarding the Shawnee County Youth Center, the average daily cost per resident (at facility capacity) since 1991 has been determined. This information, along with an estimate of 1994 is presented in the table below.

| <u>Year</u>     | <u>Direct<br/>Operating<br/>Costs</u> | + | <u>Indirect<br/>Costs</u> | = | <u>Total</u> | <u>Annual<br/>Capacity</u> |   | <u>Avg. Daily<br/>Cost Per<br/>Resident</u> | <u>Reimburse-<br/>ment</u> |
|-----------------|---------------------------------------|---|---------------------------|---|--------------|----------------------------|---|---|----------------------------|
| 1991            | \$1,197,352                           |   | \$101,493                 |   | \$1,298,845  | divided by 8,030           | = | \$161.75                                    | \$49.70                    |
| 1992            | \$1,497,088                           |   | \$154,179                 |   | \$1,651,267  | divided by 8,030           | = | \$205.64                                    | \$49.70                    |
| 1993            | \$1,338,884                           |   | \$127,194                 |   | \$1,466,078  | divided by 8,030           | = | \$182.58                                    | \$49.70                    |
| *1994           | \$1,533,493                           |   | \$145,682                 |   | \$1,679,175  | divided by 8,030           | = | \$209.11                                    | \$49.70                    |
| *Budgeted costs |                                       |   |                           |   |              |                            |   |   |                            |

As you can see from the table and the attached graph, the cost per resident far exceeds the level of reimbursement and has for quite some time. While the average daily cost per resident has increased since 1991, the reimbursement amount has remained constant, therefore cost recovery has actually decreased. In addition, during the period of 1991 through 1993, the County spent \$110,656 for capital improvements which are not reflected in the average daily operating cost per resident figures. In effect, since the level of reimbursement has remained fixed (at \$49.70), Shawnee County taxpayers have had the burden of funding increases in operating costs and capital improvements. This trend has placed the County in the very difficult position of meeting the expenses associated with skyrocketing service needs (required by law) with County financial resources.

Sincerely,

Jerry McKenzie

JM/lh  
Attachment  
cc: Marty Bloomquist

SHAWNEE COUNTY  
CERTIFIED TO COUNTY AUDITOR

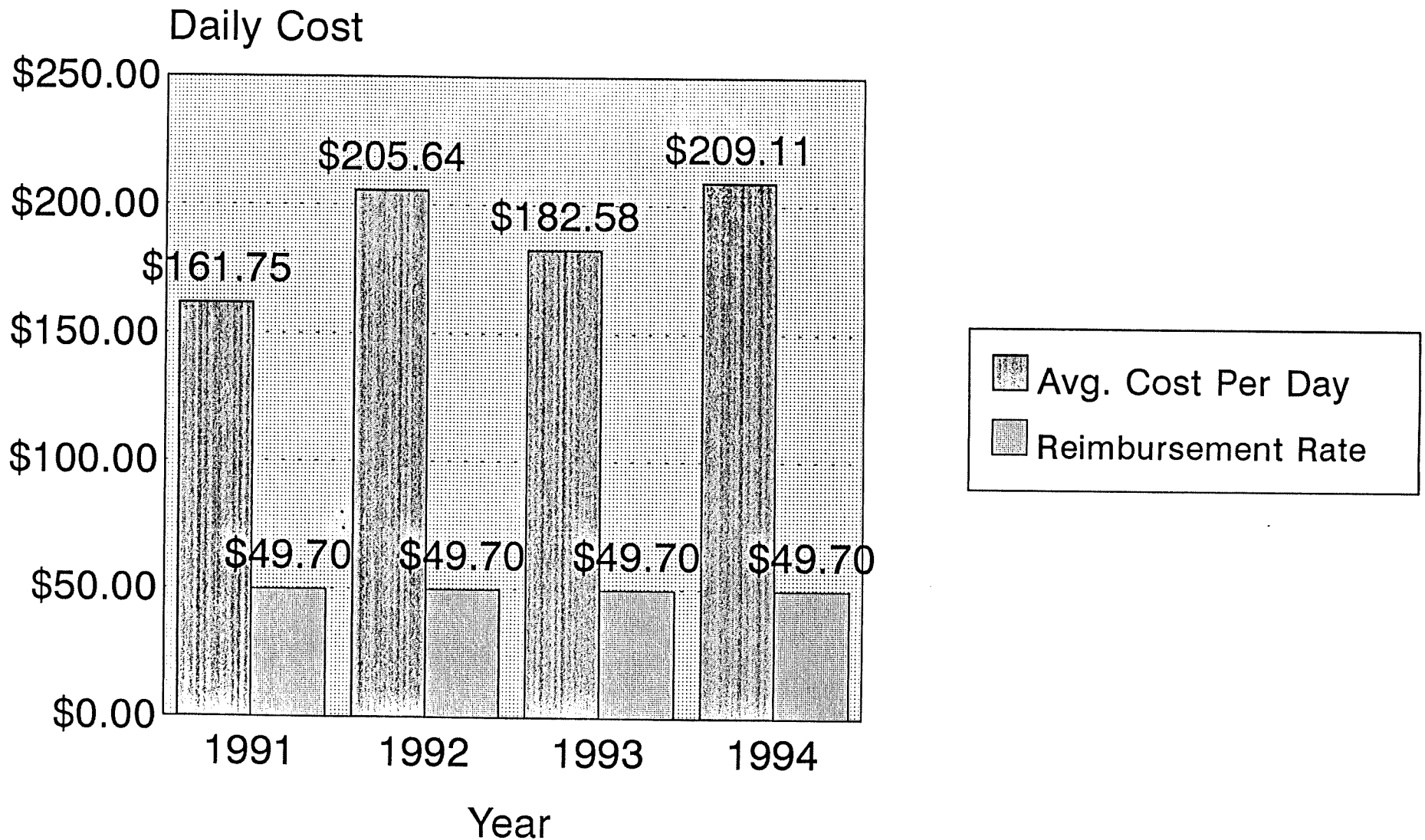
FEB 11 1994



# Shawnee County Juvenile Detention

## Average Daily Cost Per Resident

Q-3



daily cost figures calculated using facility resident capacity



the fees received under K.S.A. 79-4703 and the tax collected under K.S.A. 79-4704 in an amount sufficient for such refunds of not to exceed ten thousand dollars (\$10,000).

History: L. 1977, ch. 341, § 12; July 1.

#### Article 48.—STATE GAMING REVENUES

##### Attorney General's Opinions:

State gaming revenues fund; creation; effective date. 86-35.

Lottery and parimutuel wagering; enabling legislation. 86-50.

State gaming revenue fund; authorized uses. 88-87.

**79-4801.** State gaming revenues fund; authorized uses; limitation on amounts credited thereto; transfers to state general fund. There is hereby created the state gaming revenues fund in the state treasury. All moneys credited to such fund shall be expended or transferred only for the purposes and in the manner provided by this act and all expenditures from the state gaming revenues fund shall be made in accordance with appropriation acts. All moneys credited to such fund shall be allocated and credited monthly to the funds and in the amounts specified by this act except that the total of the amounts credited to such funds in any one fiscal year pursuant to this act shall not exceed \$50,000,000. All amounts credited to such fund in any one fiscal year which are in excess of \$50,000,000 shall be transferred and credited to the state general fund on July 15 following such fiscal year.

History: L. 1986, ch. 365, § 1; July 1.

**79-4802.** Same; transfers to county reappraisal fund; authorized uses; termination of county reappraisal fund and transfers. (a) An amount equal to 30% of all moneys credited to the state gaming revenues fund shall be transferred to the county reappraisal fund, which is hereby created in the state treasury, for the purpose of paying a portion of the costs incurred by counties in carrying out the program of statewide reappraisal of real property as authorized and provided by K.S.A. 1987 Supp. 79-1478 and amendments thereto. No such transfer shall be made after June 30, 1990.

(b) On August 1, 1988, the director of accounts and reports shall transfer from the lottery operating fund to the county reappraisal fund, for the purpose of paying part of the costs of reappraisal, the amount equal to the amount of any unencumbered balance as of June 30, 1988, less \$2,750,000.

(c) On or after July 1, 1988, the director of accounts and reports shall transfer from the

lottery operating fund to the county reappraisal fund, for the purpose of paying part of the costs of reappraisal, the amount remaining of each amount which is encumbered for the fiscal year ending June 30, 1988, after the encumbrance is liquidated.

(d) On June 30, 1990, the director of accounts and reports shall transfer the entire unencumbered balance of moneys in the county reappraisal fund to the state general fund for the purpose of reimbursing the state general fund for payments made by the state for costs incurred by counties in carrying out the program of statewide reappraisal of real property.

(e) On July 1, 1990, the county reappraisal fund is hereby abolished. The provisions of this section shall expire on July 1, 1990.

History: L. 1986, ch. 365, § 2; L. 1988, ch. 392, § 2; July 1.

**79-4803.** Same; transfers to juvenile detention facilities fund and correctional institutions building fund; authorized uses. (a) An amount equal to 10% of all moneys credited to the state gaming revenues fund shall be transferred and credited in accordance with the following:

(1) A portion of such amount, which shall be specified by appropriations act, shall be credited to the juvenile detention facilities fund; and

(2) the remainder of such amount shall be credited to the correctional institutions building fund created pursuant to K.S.A. 76-6b09, and amendments thereto, to be appropriated by the legislature for the use and benefit of state correctional institutions as provided in K.S.A. 76-6b09 and amendments thereto.

(b) There is hereby created in the state treasury the juvenile detention facilities fund. All expenditures from the juvenile detention facilities fund shall be for the construction, renovation or remodeling of facilities for the detention of juveniles.

History: L. 1986, ch. 365, § 3; July 1.

**79-4804.** Same; transfers to state economic development initiatives fund; authorized allocations and uses, accounts created; investment by pooled money investment board, disposition of proceeds; transfers of moneys to state water plan fund. (a) An amount equal to 60% of all moneys credited to the state gaming revenues fund shall be transferred and credited to the state economic development initiatives fund which is hereby

Senate Judiciary 3-21-94 attached 64



created in the state treasury. Expenditures from the state economic development initiatives fund shall be made in accordance with appropriations acts for the financing of such programs supporting and enhancing the existing economic foundation of the state and fostering growth through the expansion of current, and the establishment and attraction of new, commercial and industrial enterprises as provided by this section and as may be authorized by law and not less than  $\frac{1}{2}$  of such money shall be distributed equally among the five congressional districts. On and after July 1, 1990, an amount equal to 90% of all moneys credited to the state gaming revenues fund shall be transferred and credited to the state economic development initiatives fund created by this section. Except as provided by subsection (g), all moneys credited to the state economic development initiatives fund shall be credited within the fund, as provided by law, to an account or accounts of the fund which are created by this section.

(b) There is hereby created the Kansas capital formation account in the state economic development initiatives fund. All moneys credited to the Kansas capital formation account shall be used to provide, encourage and implement capital development and formation in Kansas.

(c) There is hereby created the Kansas economic development research and development account in the state economic development initiatives fund. All moneys credited to the Kansas economic development research and development account shall be used to promote, encourage and implement research and development programs and activities in Kansas and technical assistance funded through state educational institutions under the supervision and control of the state board of regents or other Kansas colleges and universities.

(d) There is hereby created the Kansas economic development endowment account in the state economic development initiatives fund. All moneys credited to the Kansas economic development endowment account shall be accumulated and invested as provided in this section to provide an ongoing source of funds which shall be used for economic development activities in Kansas, including but not limited to continuing appropriations or demand transfers for programs and projects which shall include, but are not limited to, specific community infrastructure projects in Kansas that stimulate economic growth.

(e) Except as provided in subsection (f), the pooled money investment board may invest and reinvest moneys credited to the state economic development initiatives fund in obligations of the United States of America or obligations the principal and interest of which are guaranteed by the United States of America or in interest-bearing time deposits in any commercial bank located in Kansas, or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. All moneys received as interest earned by the investment of the moneys credited to the state economic development initiatives fund shall be deposited in the state treasury and credited to the Kansas economic development endowment account of such fund.

(f) Moneys credited to the Kansas economic development endowment account of the state economic development initiatives fund may be invested in government guaranteed loans and debentures as provided by law in addition to the investments authorized by subsection (e) or in lieu of such investments. All moneys received as interest earned by the investment under this subsection of the moneys credited to the Kansas economic development endowment account shall be deposited in the state treasury and credited to the Kansas economic development endowment account of the state economic development initiatives fund.

(g) In each fiscal year beginning on and after July 1, 1990, the director of accounts and reports shall make transfers in equal amounts on July 15 and January 15 which in the aggregate equal \$2,000,000 from the state economic development initiatives fund to the state water plan fund created by K.S.A. 82a-951. No other moneys credited to the state economic development initiatives fund shall be used for: (1) Water-related projects or programs, or related technical assistance; or (2) any other projects or programs, or related technical assistance, which meet one or more of the long-range goals, objectives and considerations set forth in the state water resource planning act.

**History:** L. 1986, ch. 365, § 4; L. 1987, ch. 295, § 16; L. 1988, ch. 392, § 3; L. 1989, ch. 48, § 102; L. 1989, ch. 186, § 32; July 1.

**Attorney General's Opinions:**

State gaming revenue fund; authorized uses. 88-87.

#### Article 49.—RESERVED

#### Article 50.—AGGREGATE TAX LEVY LIMITATIONS

**Law Review and Bar Journal References:**

Former law (ch. 79, art. 44) discussed in note on municipal taxing powers, 22 K.L.R. 151 (1973).

##### 79-5001.

**History:** L. 1973, ch. 393, § 1; L. 1977, ch. 342, § 1; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4401.

##### 79-5002.

**History:** L. 1973, ch. 393, § 2; L. 1983, ch. 333, § 1; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4402.

##### 79-5003.

**History:** L. 1973, ch. 393, § 3; L. 1977, ch. 342, § 2; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4403.

##### 79-5004, 79-5005.

**History:** L. 1973, ch. 393, §§ 4, 5; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4403, 79-4410.

##### 79-5006.

**History:** L. 1973, ch. 393, § 6; L. 1983, ch. 333, § 2; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4404.

##### 79-5007.

**History:** L. 1973, ch. 393, § 7; L. 1974, ch. 445, § 1; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4405.

##### 79-5008, 79-5009.

**History:** L. 1973 ch. 393, §§ 8, 9; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4406, 79-4432.

##### 79-5010.

**History:** L. 1973, ch. 393, § 10; L. 1976, ch. 429, § 1; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4407.

##### 79-5011.

**History:** L. 1973, ch. 393, § 11; L. 1974, ch. 278, § 3; L. 1986, ch. 378, § 3; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4408.

##### 79-5012.

**History:** L. 1973, ch. 393, § 12; L. 1976, ch. 430, § 1; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4409.

##### 79-5013.

**History:** L. 1973, ch. 393, § 13; L. 1981, ch. 173, § 80; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

##### 79-5014, 79-5015.

**History:** L. 1973, ch. 393, §§ 14, 15; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

**Source or prior law:**  
79-4411, 79-4412.

##### 79-5016.

**History:** L. 1973, ch. 393, § 16; L. 1988, ch. 356, § 347; Repealed L. 1988, ch. 393, § 8; Repealed, L. 1989, ch. 305, § 1; July 1.

##### 79-5017.

**History:** L. 1973, ch. 393, § 27; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

##### 79-5018.

**History:** L. 1977, ch. 67, § 1; Repealed, L. 1988, ch. 393, § 8; Jan. 1, 1989.

##### 79-5019.

**History:** L. 1982, ch. 388, § 1; Repealed, L. 1983, ch. 334, § 2; July 1.

**79-5020.** Authority to levy taxes in addition to aggregate levy limit, when. The governing body of any township, city or county which has eliminated the tax on intangible personal property pursuant to an election authorized by K.S.A. 79-3109, and amendments thereto, is authorized to offset the resulting loss in revenue by the imposition and levying of any other taxes as may be authorized by law or by increasing its ad valorem tax levy for the

#6

POPULATION PROFILE: Shawnee County Juvenile Detention Center  
March 5-11, 1994

1. Resident Population (Licensed capacity of 17 males and 5 females).

|                |          |           |
|----------------|----------|-----------|
| March 5, 1994  | 27 males | 4 females |
| March 6, 1994  | 28 males | 4 females |
| March 7, 1994  | 29 males | 4 females |
| March 8, 1994  | 27 males | 4 females |
| March 9, 1994  | 29 males | 4 females |
| March 10, 1994 | 27 males | 3 females |
| March 11, 1994 | 28 males | 3 females |

2. Length of Stay at the Juvenile Detention Center for the 28 males and 3 females who were being detained on March 11, 1994.

|         |                  |
|---------|------------------|
| Male #1 | 170 days at SCYC |
| #2      | 137 days at SCYC |
| #3      | 120 days at SCYC |
| #4      | 117 days at SCYC |
| #5      | 114 days at SCYC |
| #6      | 92 days at SCYC  |
| #7      | 86 days at SCYC  |
| #8      | 83 days at SCYC  |
| #9      | 70 days at SCYC  |
| #10     | 65 days at SCYC  |
| #11     | 55 days at SCYC  |
| #12     | 51 days at SCYC  |
| #13     | 50 days at SCYC  |
| #14     | 46 days at SCYC  |
| #15     | 39 days at SCYC  |
| #16     | 37 days at SCYC  |

|          |                 |
|----------|-----------------|
| Male #17 | 32 days at SCYC |
| #18      | 29 days at SCYC |
| #19      | 26 days at SCYC |
| #20      | 25 days at SCYC |
| #21      | 23 days at SCYC |
| #22      | 19 days at SCYC |
| #23      | 15 days at SCYC |
| #24      | 11 days at SCYC |
| #25      | 8 days at SCYC  |
| #26      | 4 days at SCYC  |
| #27      | 2 days at SCYC  |
| #28      | 2 days at SCYC  |

|           |                 |
|-----------|-----------------|
| Female #1 | 25 days at SCYC |
| #2        | 17 days at SCYC |
| #3        | 5 days at SCYC  |

3. Status of the Resident Population on March 11, 1994.

- A. Residents awaiting adjudication by the juvenile court: 8 males
- B. Residents adjudicated but awaiting disposition by court: 5 males 1 female
- C. Residents with disposition but awaiting placement by S.R.S.:  $\frac{15 \text{ males}}{2 \text{ females}}$

4. Residents awaiting placement by S.R.S. on March 11, 1994.

Males      7 males awaiting opening at Y.C.A.T.  
             8 males awaiting opening in less restrictive environment.

Females    1 female awaiting opening at Y.C.A.B.  
             1 female awaiting opening in less restrictive environment.



SUNDAY, March 20, 1994

# Opinion

THE KANSAS CITY STAR

## JUVENILES WHO COMMIT CRIMES

*What's the best way to  
handle young offenders?*

By JEAN HALEY  
Of the Editorial Staff

**A**re they misunderstood kids or hardened criminals in children's clothing? Some of the 100 proposed laws dealing with the juvenile justice system filed during the current session of the Missouri General Assembly seem to frame the issue of youth crime in those simplistic terms. The answer will determine the state's policy toward youthful lawbreakers. Consequently, new statutes may emphasize getting tough on crime or more money for juvenile offender rehabilitation.

Juvenile crime, whether violent drive-by shootings or less serious offenses, is not so simple. That's why either choice — in the opening quiz — is wrong.

When the General Assembly returns from spring break, the shape of proposals that survive will show Missouri's philosophy of handling juvenile offenders: to favor rehabilitation and treatment or retribution and imprisonment. That stance could be a bow to the loudest, most strident demands of an angry and frightened public that insists society should "lock 'em up and throw away the key."

It would be a mistake.

This state can do better. Moreover, more than a few statistics indicate that lifting certain special considerations traditionally given to juveniles could make matters worse, not better. Child advocates in Missouri are lobbying for a balance. They hope society's justified alarm at the increase in teen-age crime and the violence of so many of those crimes don't blind lawmakers.

Certifying juveniles to stand trial as adults is one concept favored by those who lean toward tougher consequences for breaking laws. The hope is that vicious young hoodlums will be convicted of their crimes, sentenced to prison and have to serve long sentences in severe jails. Such certification, however, can backfire.

About 50 percent of those now certified are never even charged in adult court. Officials decide evidence is inadequate to proceed with prosecution. However, there are indications many of those youths freed would be put in Division of Children and Youth Services, if the agency had any space. On any given day, between 50 and 60 juveniles are on a waiting list for services.

Ann Peterson Jones, executive director of the Court Appointed Special Advocates or C.A.S.A., offered one of the best

See RETURNING, L-5, Col. 1





# Returning lawmakers must responsibly address juvenile crime

Continued from L-1

admonitions against "throwing away the key." C.A.S.A. is a statewide organization of volunteers who work with abused and neglected juveniles.

"We strongly believe juveniles should be accountable for what they do," Jones said, "but we have to keep in mind juveniles are redeemable. There should be a look at preventive services."

The state's Youth Services is caught in the middle now, often forced to make a destructive choice. It doesn't have enough beds and buildings to hold serious offenders long enough for either punishment or rehabilitation even though the courts are sending increasing numbers of juvenile offenders to its jurisdiction.

On the other hand, juveniles certified as adults "walk" more often than they're convicted. Officials agree that many juveniles hope and pray they'll be certified as adults because they know it's likely nothing will happen to them.

Whether new laws favor harsher sentences or more realistic rehabilitation, Missouri will have to commit adequate funds for programs and detention facilities.

Three juvenile crime bills are predominant. House Bill 1479 has passed the House and has been sent to the Senate. Still being debated are Senate Bill 660, that focuses on processing juvenile offenders, and House Bill 1476 that focuses on violence prevention. Both have made enough progress

that they'll probably be taken up not long after legislators return to Jefferson City.

Under H.B. 1479:

■ If the accused has a previous felony conviction, a youth between 14 and 17 years of age could be charged as an adult for murder, rape or robbery.

■ The juvenile court judge would have the option of sending a first-time juvenile offender to adult court for a "dangerous felony."

Under S.B. 660:

■ Juvenile records would be a little more open than now, including letting juvenile officials report to a prosecutor when a juvenile is certified as an adult.

■ Disposition of juvenile proceedings (the sentences) would be open to the public.

■ Does not create automatic certification of juveniles as adults but broadens it, particularly if the juvenile has had prior juvenile adjudications for crimes that would have been felonies if committed by adults.

■ Division of Youth Services would keep jurisdiction of youths until they are 21 instead of 18. This would eliminate such anomalies as a 17-year-old charged with murder being sent to a facility and released a few weeks later because he or she observed an 18th birthday anniversary. Under the law now, a subject is not automatically sent to the adult system, regardless of the seriousness of the crime.

House Bill 1476:

■ Goals are well summarized in

this proposal's title, "Youth Opportunities and Violence Prevention Act." Rep. Pat Dougherty and Rep. Nancy Farmer, both of St. Louis, are lead sponsors.

■ Through business tax credits and grants, the law aims to create programs of work, education and recreation. A boot-camp operation could be one of them.

■ Among alternatives to street life and crime the bill might promote, its sponsors say, are jobs and training for them, programs to get high school dropouts back into school, aiding or creating youth clubs, establishing apprenticeship and mentor projects.

House Joint Resolution 46:

■ Authorization of a constitutional amendment for \$250 million in general obligation bonds for capital improvements. It will require a majority vote in a statewide public election that probably would be held in August or November. The House is expected to begin hearings this week on allocation of bond money among youth services, adult corrections and higher education.

■ In recommending the capital improvement package, Gov. Mel Carnahan urged that \$20 million be allocated to youth services. The money would build 200 high-security beds (divided among Kansas City, St. Louis, Southwest Missouri and Central Missouri) to house juveniles with violent or other serious crimes.

Mark Steward, director of the Missouri Division of Children and Youth Services, points to statistics as to why juveniles in-

volved in truly serious crimes appear to be neither punished nor rehabilitated.

"Twenty years ago, Youth Services had about 650 beds. We have 450 now," Steward said. "We're so backed up, it's almost a revolving door."

"We need to have some safe facilities, not prison type, but places

where we can work with kids coming in," he added. "The commitment might be for stealing, but their problems might be more serious. The indeterminate sentence lets them get help."

The agency takes care of programs for all youths committed by the juvenile court to state custody. It started losing beds in the 1970s when the Boonville Correctional Center was turned into an adult corrections facility. The concept was admirable. Instead of throwing all kids together, Missouri replaced the huge prison with smaller centers closer to home that were tailored to needs: something separate for teenagers who got caught passing bad checks, for example, from those who committed murders. It worked for a while.

Then budget cuts in the 1980s hit youth services. The state didn't accumulate funds to build the little units envisioned in the deinstitutionalization. To make matters worse, juvenile convictions began to rise. Commitments have increased about 50 percent in the past five years, Steward said. Weapons charges and other more serious crimes are particularly noticeable, making critical

the need for sufficient secure facilities to keep juvenile inmates long enough.

"Half the young men we have are victims of sexual abuse; two-thirds of them are victims of sexual or physical abuse," Steward explained. "About 95 percent of the girls are victims of sexual abuse."

"There's anger, rage a lot of these kids have when they come into these programs," he continued. "These kids have 20 strikes against them. Not that some of them aren't dangerous to society or themselves as well. But it's our feeling we should keep them in the juvenile system if there's any chance of saving them."

When it returns from spring break, the General Assembly will make a decision on whether the state will continue focus on the redeemability of juveniles. It will decide whether it's worth the extra work and money to design a program for the truly dangerous juvenile without tossing away the key on all the other youths funneled through the juvenile justice system.

If it does nothing, the legislature will set a course by perpetuating current flaws in the child safety net: Ensuring that those on waiting lists stay there, that too many will continue to rush through revolving doors and that others with serious personal problems will be sent back to the streets too soon.

That could postpone some state financial pain, but it won't prevent it in the long run. Moreover, it won't do anything about juvenile violence.



# THE CORPORATION FOR CHANGE

## A Partnership for Investing in The Future of Kansas Children and Families

Draft Testimony on Senate Bill 829  
Senate Judiciary Committee Senator Jerry Moran, Chairperson  
March 21, 1994

I am here today to testify against Senate Bill 829. My message is a systemic one. **The piece of the system this bill attempts to address is broken. However, any attempt to fix this part of the system without addressing the inadequacies of the remainder of the system, may have devastating results.**

To approve this bill will be the equivalent of removing patients from state institutions without developing the necessary community services and alternatives. *don't* If we want more dangerous felons on the street we must develop more dispositional alternatives first and then make the corrections outlined in this bill that may be necessary later.

The potential outcome of such a change should be understood. The actual result of last summer's initiatives to implement such a policy on a county basis in Sedgwick county was the release of a convicted felon known to be an active gang member in Wichita, back onto the streets. The system lost track of him and therefore lost control of him. Without a systemic solution to the problems of juvenile offenders, the likely result of the state policy outlined in SB829 will be a repetition of that experience.

The attached documents reflect the actual composition of the detainees at a county juvenile detention center last week. Perhaps this snapshot of the detention center population will assist you in understanding the seriousness of the issues raised in SB 829.

Finally, kids are not "state kids" or "county kids" or "SRS kids". They are all our responsibility, whether they are in a state youth center, a county detention center, or the streets of their home communities. Any successful systemic solution to the problem of juvenile crime will address that fundamental fact.

The Corporation for Change is a non-profit corporation organized by the State of Kansas to coordinate and implement reform of children's services in Kansas. To accomplish this mission, the Corporation builds partnerships between government, business, parents, children's advocacy and service groups to develop a comprehensive and coordinated strategy for investing in the future of Kansas children and families.

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03/18/94  
JDYR2050

DETENTION REPORT AS OF 0700 ON 03/18/94

CODES: DT-DETENTION, TR-TRIAL, IA-INITIAL APPEARANCE, DS-DISPO, MT-MOTION  
CD-COURTESY DETENTION, IC-INTERSTATE COMPACT, AP-ADULT PROSECUTION  
TT-TRAFFIC HEARING, RE-TRAFFIC RELEASE DATE, RV-REVIEW, \*-TIME BREAK

PENDING COURT ACTION - MALES: 16 FEMALES: 2 TOTAL: 18  
PENDING PLACEMENT - MALES: 23 FEMALES: 3 TOTAL: 26  
GRAND TOTALS - 39 5 45  
43

| NAME | AGE | ADMIT DATE | TOT DYS | CHARGE | CASE WRKR | PENDING ACTION | PENDING PLACEMENT |
|------|-----|------------|---------|--------|-----------|----------------|-------------------|
|------|-----|------------|---------|--------|-----------|----------------|-------------------|

\*\*\*\*\*  
JUVENILES RECEIVED AND DETAINED DURING REPORTING PERIOD:

|       |    |          |   |             |           |  |           |
|-------|----|----------|---|-------------|-----------|--|-----------|
| SLY   | 12 | 03/17/94 | 2 | BURG. DWELL | DT-03/18  |  |           |
| JULIA | 12 | 03/17/94 | 2 | RUNAWAY     | TO BE REL |  |           |
| ANDRE | 14 | 03/17/94 | 2 | PROB. VIOL. | SRS       |  | SRS-03/17 |

\*\*\*\*\*  
MALES DETAINED:

|             |    |          |      |              |     |          |           |
|-------------|----|----------|------|--------------|-----|----------|-----------|
| CASEY       | 14 | 03/05/94 | 14   | REV CON REL  | PKJ |          | SRS-03/07 |
| ED          | 16 | 02/17/94 | 30   | CRIM DEP PRO | DSJ |          | DCY-02/25 |
| CORRIE      | 17 | 03/03/94 | 16   | MURDER-1ST   |     | TR-04/01 |           |
| NICHOLAS    | 16 | 02/12/94 | 35   | CONC. WEAPON | SRS |          | SRS-03/03 |
| TIMOTHY     | 13 | 03/04/94 | 15   | BURG. DWELL  | SRS |          | SRS-03/08 |
| CHRISTOPHER | 17 | 03/14/94 | 5    | AGG. IND. LI | 683 |          | DCY-03/15 |
| CHAD        | 17 | 03/03/94 | 16   | PROB. VIOL.  | SRS |          | SRS-03/04 |
| JOSHUA      | 17 | 12/26/93 | 83   | AGG ASSAULT  | SRS |          | DCY-03/02 |
| LESLI       | 16 | 02/10/94 | 37   | PROB. VIOL.  | SRS |          | SRS-02/11 |
| COREY       | 15 | 03/08/94 | 11   | CARRY WEAPON | CRJ |          | DCY-03/09 |
| AD          | 17 | 01/16/94 | 62   | PROB. VIOL.  | CRJ |          | DCY-01/18 |
| JARMAL      | 15 | 02/24/94 | 23   | BURG. M.V.   | SRS |          | DCY-02/24 |
| BRIAN       | 16 | 02/22/94 | 29*  | THEFT-<500   |     | DS-04/07 |           |
| SEAN        | 15 | 03/17/94 | 2    | PROB. VIOL.  | TH  | DT-03/18 |           |
| LARVAR      | 16 | 03/03/94 | 16   | MURDER-1ST   |     | TR-04/01 |           |
| CHAN        | 15 | 03/16/94 | 3    | BATTERY      | SRS | DT-03/18 |           |
| CHRISTOPHER | 17 | 03/16/94 | 3    | CRIM. DAMAGE | SRS |          | DCY-03/16 |
| KEITH       | 14 | 01/12/94 | 46*  | ROBBERY      | SRS |          | DCY-03/08 |
| JAMES       | 14 | 03/16/94 | 3    | BOND REVOC   | MW  | DT-03/18 |           |
| GAVIN       | 16 | 01/04/94 | 80*  | THEFT        | SRS |          | SRS-02/28 |
| ADRIAN      | 15 | 02/11/94 | 36   | THEFT        | PKJ |          | SRS-02/14 |
| CURTIS      | 17 | 11/04/93 | 125* | THEFT        | SWJ |          | DCY-01/28 |
| DAVID       | 13 | 03/09/94 | 10   | CRIM. DAMAGE | CRJ | DT-03/18 |           |
| MATTHEW     | 13 | 03/07/94 | 12   | CONC. WEAPON | DSJ |          | SRS-03/09 |
| PREVIN      | 16 | 03/16/94 | 3    | MURDER-2ND   |     | IA-03/18 |           |
| JEFFERY     | 14 | 11/18/93 | 65*  | CRIM DEP PRO | DSJ |          | DCY-02/22 |
| GEORGE      | 16 | 03/15/94 | 4    | BURG. M.V.   | SRS |          | SRS-03/16 |
| DAMIEN      | 17 | 03/15/94 | 4    | ROBBERY AGG  |     | MT-04/29 |           |
| DWIGHT      | 16 | 03/15/94 | 4    | ROBBERY      |     | MT-04/29 |           |
| GREGORY     | 13 | 02/11/94 | 24*  | CRIM DEP PRO | SRS |          | DCY-03/09 |
| JASON       | 14 | 03/03/94 | 16   | BURG. M.V.   | SRS |          | SRS-03/04 |
| DEAN        | 15 | 03/16/94 | 3    | POSS COCAINE |     | DT-03/18 |           |
| JEROME      | 15 | 10/13/93 | 157  | AGG. BATTERY | CRJ |          | DCY-01/04 |
| BRIAN       | 16 | 02/27/94 | 20   | CRIM DEP PRO | SRS | TR-04/15 |           |
| CARL        | 17 | 03/17/94 | 2    | DISCH FIREAR |     | DT-03/18 |           |

3/18/94  
JDYR2050

DETENTION REPORT AS OF 0700 ON 03/18/94

PA

| NAME  | AGE | ADMIT DATE | TOT DYS | CHARGE          | CASE WRKR | PENDING ACTION | PENDING PLACEMENT |
|---|-----|------------|---------|-----------------|-----------|----------------|-------------------|
| *****   |     |            |         |                 |           |                |                   |
| MALES DETAINED:   |     |            |         |                 |           |                |                   |
| SHAUN   | 17  | 03/15/94   | 4       | BURG. NO DWE    |           | TR-04/26       |                   |
| *****   |     |            |         |                 |           |                |                   |
| FEMALES DETAINED:   |     |            |         |                 |           |                |                   |
| CHAR  | 15  | 03/16/94   | 3       | OBSTR.LG PRO MH | DE-03/18  |                |                   |
| TAHLIA  | 14  | 03/11/94   | 8       | THEFT-<500      | CRJ       |                | DCY-03/15         |
| JUANITA   | 14  | 03/02/94   | 17      | COURTESY        | 677       |                | DCY-03/02         |
| DALY  | 14  | 03/16/94   | 3       | BATTERY         |           | DS-04/04       |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES DETAINED BUT NOT IN YOUTH RESIDENCE HALL:               |     |            |         |                 |           |                |                   |
| MICHELE   | 14  | 01/14/94   | 17*     | PROB. VIOL.     | PS        | 01/31/94       | R.A.P.            |
| KELLY   | 17  | 02/06/94   | 16*     | POSS COCAINE    |           | DS-04/04       |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILE AWOL FROM THE YOUTH RESIDENCE HALL                       |     |            |         |                 |           |                |                   |
| CASEY   | 18  | 01/08/94   | 41*     | POSS COCAINE    |           | 03/01/94       |                   |
| VAL   | 15  | 12/09/93   | 3*      | THEFT           | PS        | - /            |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILE AWOL FROM HOME BASED SUPERVISION                         |     |            |         |                 |           |                |                   |
| NATHAN  | 15  | 02/03/94   | 24*     | THEFT-<500      |           | DS-03/31       |                   |
| BRYAN   | 17  | 03/14/93   | 22*     | PROB. VIOL.     | DM        | 04/05/93       |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES RELEASED DURING REPORTING PERIOD                        |     |            |         |                 |           |                |                   |
| DANIEL  | 16  | 03/10/94   | 7       | WITNESS         | SRS       | 03/17/94       | YCAT              |
| KEVIN   | 13  | 03/16/94   | 1       | BURG. NO DWE    | JC        | 03/17/94       | PARENT/GUA        |
| ALAN  | 16  | 03/10/94   | 7       | PROB. VIOL.     | SRS       | 03/17/94       | PARENT/GUA        |
| LESTER  | 17  | 03/16/94   | 1       | THEFT-<500      |           | 03/17/94       | DRUG TREAT        |
| TIMOTHY   | 16  | 02/24/94   | 21      | POSS COCAINE    |           | 03/17/94       | PARENT/GUA        |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES RECEIVED AND NOT DETAINED DURING THE REPORTING PERIOD   |     |            |         |                 |           |                |                   |
| FREDERICK   | 17  | 03/17/94   | 1       | UNLA POSS FI    |           | 03/17/94       | PARENT/GUA        |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES IN HOME BASED SUPERVISION DURING REPORTING PERIOD       |     |            |         |                 |           |                |                   |
| MICHAEL   | 15  | 03/04/94   | 3*      | PROB. VIOL.     | DM        | DS-03/28       |                   |
| JUDSON  | 16  | 03/17/94   | 1*      | PROB. VIOL.     |           | DS-04/01       |                   |
| MINH  | 15  | 01/25/94   | 37*     | CRIM DEP PRO    | TVJ       |                |                   |
| JACOB   | 16  | 02/19/94   | 14*     | BURG. DWELLI    | TVJ       |                |                   |
| ABDUL   | 15  | 02/22/94   | 5*      | AFFIDAVIT       | SRS       |                |                   |
| BRIAN   | 16  | 01/03/94   | 4*      | BURGLARY AGG    |           | DS-03/22       |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES IN ELECTRONIC MONITORING DURING REPORTING PERIOD        |     |            |         |                 |           |                |                   |
| PRENTIS   | 14  | 01/28/94   | 9*      | BURG. DWELLI    |           | DS-04/05       |                   |
| TY  | 16  | 03/01/94   | 3*      | BURG. DWELLI    |           | TR-03/24       |                   |
| GEORGE  | 18  | 02/11/94   | 6*      | BURG. M.V.      | SW        |                |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES ON PRIORITY RELEASE SUPERVISION DURING REPORTING PERIOD |     |            |         |                 |           |                |                   |
| JARVIS  | 17  | 02/21/94   | 22*     | PROB. VIOL.     | MH        | TR-04/07       |                   |
| JASON   | 17  | 02/14/94   | 5*      | UNCON WEAPON    |           | DS-03/29       |                   |
| ADAM  | 12  | 03/07/94   | 8*      | AGG. BATTERY    | DM        | TR-04/08       |                   |
| SHAWN   | 16  | 01/03/94   | 27*     | BURGLARY AGG    |           | DS-04/15       |                   |
| *****   |     |            |         |                 |           |                |                   |
| JUVENILES ON PRIORITY RELEASE EMS DURING REPORTING PERIOD         |     |            |         |                 |           |                |                   |
| MICHAEL   | 17  | 02/07/94   | 40      | THEFT           | MW        | DS-04/14       |                   |

#8

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Donna L. Whiteman, Secretary

Senate Judiciary Committee  
Testimony on Senate Bill 829

March 20, 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 offenders; relating to care and custody thereof, expenses; transfer from local to state care; amending K.S.A. 38-1616, 38-1663, and 38-1664 and repealing the existing sections.

Mr. Chairman, on behalf of the Secretary of SRS, I am pleased to provide you with this testimony in opposition to Senate Bill 829.

PURPOSE

Senate Bill 829 transfers responsibility for detention care from local to state government and expands SRS responsibility for payment of detention care to any person in SRS custody as a Child In Need of Care or as a Juvenile Offender as a result of an adjudication or commitment to a state youth center. The bill requires SRS reimbursement in an amount equal to that paid by the county for the care of juvenile offenders.

The bill provides an additional dispositional alternative of placement of a adjudicated offender in a juvenile detention facility when custody has been placed with a youth residential facility, the secretary of SRS, or committed to a youth center.

The Secretary is authorized to place a youth in custody in a juvenile detention facility but requires the Secretary not permit a juvenile offender to remain in for more than 72 hours, excluding Saturdays, Sundays and legal holidays.

EFFECT OF PASSAGE

The requirement SRS not permit an offender to remain detained in a juvenile detention facility for more than 72 hours after the Secretary has received the written order of the court placing the juvenile offender in SRS custody severely limits the Department's ability to make goal-directed case plans which account for the safety and security needs of the youth and the public. The limit would preclude any case planning to develop community based services and would both overcrowd the youth centers and cause more youth to be inappropriately placed.

*Senate Judiciary*  
*3-21-94*  
*attachment 8-1*

The only placement resources currently under the direct control of the Secretary are a fixed number of beds at the screening units and youth centers. It is reasonable to anticipate, at least in the short run, it would become necessary for the department to make "emergency" placements from detention facilities to the screening units and the youth centers which would result in these resources being unable to carry out the program they are intended to provide. For example, the Kansas City Area currently has had 10 to 12 youth awaiting placement at a youth center for about 8 weeks. The Wichita Area has 20 to 25 youth in detention who have been awaiting placement for 6 to 8 weeks. The areas are concerned a 72-hour removal from detention mandate would cause youth at youth centers to be released early, despite concerns for community safety. The last attachment to this testimony identifies the capacities and populations at each of the youth centers late last week.

Because these beds are filled to capacity we would be faced with one of three poor options: (1) overcrowding the facilities which endangers the health, welfare and safety of youth in care and staff; (2) moving youth out whether or not they have obtained maximum benefit from the program to make room for the unplanned admissions; or (3) developing and operating a new juvenile receiving center. The current state operated facilities cannot carry out their mission and also serve as a receiving center for juvenile offenders needing to leave detention within 72 hours. It is estimated that an additional 100 bed facility would be required.

Clearly, constructing and operating a new facility would be an expensive proposition but preferable than either of the other two options available.

The Department also purchases care and services for most children in custody through private agencies which meet applicable licensing regulations and contract standards. Before accepting a child or youth into care, the provider requires a considerable amount of information about the youth and family, including health status, behavioral, social, intellectual and academic functioning. Gathering the information needed for a referral for placement can, and usually does, exceed the 72 hour removal requirement. The problem is not limited to private agencies. The Youth Center at Beloit reports a lack of adequate information about youth upon admission and believes a 72-hour time limit would cause the intake information to be even less adequate, especially school records and medical and social information.

Senate Bill 829 would disrupt Department efforts to concentrate services on juveniles who commit more serious offenses. Department initiatives related to juvenile offenders calls for increased lengths of stay in youth centers for violent and repeat offenders and the development of community-based alternatives for minor and non-violent offending youth.

The placement of only the most serious and repeat offenders at state youth centers requires the Department to plan with communities and families for a variety of community based and wraparound services. Meeting the stringent timelines for the mandatory removal from detention in 72 hours required by this

8-4



bill will divert agency efforts to achieve the longer range goal for youth. Additionally, it would prohibit planning for offenders with multiple needs such as offenders who are usually diagnosed and/or have serious emotional disorders. The Youth Center at Larned, for example, is especially concerned about the inability of area staff and the regional interagency planning councils to establish wraparound services within a 72 hour period for youth who are both offenders and mentally ill.

The Department is concerned SB 829 would worsen its ability to control costs of out-of-home care for youth. Currently, the Department has little or no advance knowledge of a significant number of children placed in the custody to the department. A recent study of children placed in the custody of the department revealed that SRS did not receive notice of the hearing granting custody to the Department in 77% of the juvenile offender cases. That is understandable given the current Juvenile Offender Code, but is something which must be changed if SRS is to have any opportunity to prevent custody or out-of-home placement.

Currently, detention payment is a community responsibility with some exceptions. Under this bill the costs for the majority of the youth in detention would be borne by the department. Moreover, the cost per youth would also triple since reimbursement for care would be at the rate established by the county rather than established by the Department. Daily costs at detention facilities now range from \$54.00 to \$244.23 per day based on cost data the facilities provided to SRS for their FY 92 fiscal years. The Department reimburses detention care at \$49.70 per day. An average of the range of current rates is \$145.26 or three times the current payment per day per youth at Department rates.

Given the range of costs which are identified in the attachments to this testimony, the Department believes an independent study of detention costs ought to be undertaken. Should the state just pay the cost charged by a given county when other counties are able to provide the same service at less cost? Should we not limit the cost in which the state will participate as is done with other services and other providers?

Additional cost would be incurred for staff required to manage the 72 hour limitation on detention placement in area offices and in the state operated facilities. Because managing unplanned and emergency placements is a very staff intensive activity a minimum of 16 area office FTE's would be required. This would cost \$688,112 for salary and wages, other operating expenses and capital outlay.

We ask the committee to consider that new subsection (8) of Sec. 2 (a) (page 3 line 28-30) allows the court to place a youth in a detention facility while in the custody of the Secretary (see Sec. 2 (a) (4)). This is in apparent conflict with existing statutes which prohibit the court from directing placement of a child in the custody of the Secretary (Sec. 3. (a) (page 7, line 1-6)).

We also ask the committee to take note there are a number of bills under consideration which would place a variety of mandates (some of them conflicting) on the Department related to juvenile offenders, especially Senate Bill 657 which requires the Department to include participation and input from school districts relating to out of home placement of certain juvenile offenders prior

to such placement. Senate Bills 829 and 657 pull the agency in two very different policy directions and at considerable added cost to the state for little or no improvement in services.

We estimate the total cost of SB 829 to be between 14 and 22 million, based on a number of variables. If the state is to invest these additional funds, we believe they are better spent developing intermediate sanctions in the communities, enabling us to serve only serious and repeat offenders in the youth centers and to keep them long enough to make a difference.

#### RECOMMENDATION

The Department of Social and Rehabilitation Services requests the committee not recommend Senate Bill 829 for passage.

Carolyn Risley Hill, Commissioner  
Youth and Adult Services  
Department of Social and  
Rehabilitation Services

(913) 296-3284

Detention Centers  
Cost Data

| <u>Provider</u>             | <u>Period</u> | <u>Client<br/>Days</u> | <u>Direct<br/>Costs</u> | <u>Add:<br/>Indirects</u> | <u>Total<br/>Costs</u> | <u>Rate</u> | <u>Non-<br/>Allowables</u> | <u>Audit<br/>Adjust.</u> | <u>Allowable<br/>Costs</u> | <u>Historic<br/>Rate</u> | <u>Rate<br/>Paid</u> |
|-----------------------------|---------------|------------------------|-------------------------|---------------------------|------------------------|-------------|----------------------------|--------------------------|----------------------------|--------------------------|----------------------|
| Reno Co. Juvenile Detention | 12/31/92      | 3,727                  | \$426,049               | \$31,500                  | \$457,549              | \$122.77    | (\$10,560)                 | \$0                      | \$446,989                  | \$119.93                 | \$49.70 (1)          |
| Johnson Co. Juvenile Hall   | 12/31/92      | 12,715                 | \$1,343,400             | \$0                       | \$1,343,400            | \$105.65    | (\$9,452)                  | \$2,092                  | \$1,336,040                | \$105.08                 | \$49.70 (1), (8)     |
| Shawnee Co. Youth Center    | 12/31/92      | 7,942                  | \$1,580,539             | \$0                       | \$1,580,539            | \$199.01    | (\$197,323)                | \$0                      | \$1,383,216                | \$174.16                 | \$49.70 (1)          |
| Lincoln Residence Hall      | 12/31/92      | 9,051                  | \$2,210,541             | \$0                       | \$2,210,541            | \$244.23    | (\$381,600)                | \$0                      | \$1,828,941                | \$202.07                 | \$49.70 (1)          |
| Wood County Juvenile Det.   | 12/31/92      | 14,600                 | \$787,410               | \$0                       | \$787,410              | \$53.93     | (\$1,019)                  | \$7,849                  | \$794,240                  | \$54.40                  | \$49.70 (1), (8)     |
|                             |               |                        | (3)                     |                           |                        | (4)         | (5)                        | (6)                      |                            | (7)                      |                      |

(1) Rate Paid Limited to SRS Maximum

(2) Rate Paid includes added inflation

(3) As reported

(4) Total Costs/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



---

## Youth Center Populations

March, 1994

|      | Capacity | Available<br>Beds | Census | Scheduled | Waiting |
|------|----------|-------------------|--------|-----------|---------|
| YCAA | 100      | 100               | 107    | 2         | 7       |
| YCAB | 84       | 84                | 83     | 2         | 4       |
| YCAL | 60       | 60                | 78     | 1         | 1       |
| YCAT | 219      | 195 *             | 208    | 0         | 19      |

\* Beds reduced for approximately six months due to cottage closures for remodeling. Will return to 219 beds upon completion of remodeling.

DATA\WP51\BPI\YC-HEAR\YC-POPU

---



"Service to County Government"

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

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Salina, KS 67401  
(913) 826-6500

**Executive Director**

John T. Torbert, CAE

TO: Senate Judiciary Committee  
Chairman Jerry Moran

FROM: Anne Smith  
Director of Legislation

DATE: March 21, 1994

RE: SB 829

The Kansas Association of Counties is in support of SB 829. There have been continued problems for counties when juveniles are placed by SRS in county detention facilities. This bill will help address some of those concerns.

Our Association has repeatedly heard complaints from county officials regarding SRS' placement of juveniles in county detention facilities. Apparently, SRS is overloading county detention facilities and not paying the full costs the county charges for taking a juvenile into their facility. Then, to the frustration of our officials, the county receives a fine for the overcrowding in their juvenile detention facilities from the Kansas Department of Health and Environment.

We feel that SB 829 will help with some of these problems being experienced by our county officials. We asked for your favorable consideration of this bill.

*Senate Judiciary*  
*3-21-94*  
*attacked 9-1*



# SENATE BILL No. 693

By Senators Petty, Downey, Gooch, Jones, Karr, Lee, Martin,  
Parkinson and Walker

2-4

9 AN ACT concerning children; relating to adoption assistance; con-  
10 cerning children in need of care; relating to temporary custody  
11 and termination of parental rights; amending K.S.A. 38-1501, 38-  
12 1502, 38-1503, 38-1505, 38-1502, 38-1503, 38-1504, 38-1505 and  
13 38-1591 and repealing the existing sections; also repealing K.S.A.  
14 38-1543a.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 38-324 is hereby amended to read as follows:  
18 38-324. A prospective parent seeking adoption support hereunder  
19 shall be a person who has the character, judgment, sense of re-  
20 sponsibility and disposition which makes him or her the person  
21 suitable as an adoptive parent under the provisions of K.S.A. 59-  
22 2101 *et seq.*; and amendments thereto and who lacks the financial  
23 means fully to care for such child. Factors to be considered by the  
24 secretary in setting the amount of any payment or payments to be  
25 made pursuant to this act shall include: The size of the family,  
26 including the adoptive child; the usual living expenses of the family;  
27 the special needs of any family members; and the family income.  
28 *In no case shall payments be less than payments would be if the*  
29 *child were placed in a foster home.* Whenever it appears to the  
30 secretary that the adoptive parents are no longer in need of adoption  
31 support, such support shall be terminated.

32 Sec. 2. K.S.A. 38-1502 is hereby amended to read as follows:  
33 38-1502. As used in this code, unless the context otherwise indicates:

34 (a) "Child in need of care" means a person less than 18 years of  
35 age who:

36 (1) Is without adequate parental care, control or subsistence and  
37 the condition is not due solely to the lack of financial means of the  
38 child's parents or other custodian;

39 (2) Is without the care or control necessary for the child's physical,  
40 mental or emotional health;

41 (3) has been physically, mentally or emotionally abused or ne-  
42 glected or sexually abused;

43 (4) has been placed for care or adoption in violation of law;

To Replace Lines 28 and 29

If resources are an impediment to adoption, then  
assistance payments shall be no less than payments  
would be if the child were placed in a foster home.

Walter Parkinson  
3-21-94  
attest 10-1

## SENATE BILL No. 693

By Senators Petty, Downey, Gooch, Jones, Karr, Lee, Martin,  
Parkinson and Walker

2-4

AN ACT concerning children; relating to adoption assistance; concerning children in need of care; relating to temporary custody and termination of parental rights; amending K.S.A. 38-324, 38-1502, 38-1543, 38-1565, 38-1582, 38-1583, 38-1584, 38-1585 and 38-1591 and repealing the existing sections; also repealing K.S.A. 38-1543a.

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

Section 1. K.S.A. 38-324 is hereby amended to read as follows: 38-324. A prospective parent seeking adoption support hereunder shall be a person who has the character, judgment, sense of responsibility and disposition which makes ~~him or her~~ *the person* suitable as an adoptive parent under the provisions of K.S.A. 59-2101 ~~et seq., and amendments thereto~~ and who lacks the financial means fully to care for such child. Factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to this act shall include: The size of the family, including the adoptive child; the usual living expenses of the family; the special needs of any family members; and the family income. ~~In no case shall payments be less than payments would be if the child were placed in a foster home.~~ Whenever it appears to the secretary that the adoptive parents are no longer in need of adoption support, such support shall be terminated.

Sec. 2. K.S.A. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

Senate Judiciary  
3-27-94  
attch to index 11-1

1 (5) has been abandoned or does not have a known living parent;  
2 (6) is not attending school as required by K.S.A. 72-977 or 72-  
3 1111, and amendments thereto;

4 (7) except in the case of a violation of K.S.A. 41-727 or subsection  
5 (j) of K.S.A. 74-8810, and amendments thereto, does an act which,  
6 when committed by a person under 18 years of age, is prohibited  
7 by state law, city ordinance or county resolution but which is not  
8 prohibited when done by an adult;

9 (8) while less than 10 years of age, commits any act which if  
10 done by an adult would constitute the commission of a felony or  
11 misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

12 (9) is willfully and voluntarily absent from the child's home with-  
13 out the consent of the child's parent or other custodian;

14 (10) is willfully and voluntarily absent at least a second time from  
15 a court ordered or designated placement, or a placement pursuant  
16 to court order, if the absence is without the consent of the person  
17 with whom the child is placed or, if the child is placed in a facility,  
18 without the consent of the person in charge of such facility or such  
19 person's designee; or

20 (11) has been residing in the same residence with a sibling or  
21 another person under 18 years of age, who has been physically,  
22 mentally or emotionally abused or neglected, or sexually abused.

23 (b) "Physical, mental or emotional abuse or neglect" means the  
24 infliction of physical, mental or emotional injury or the causing of  
25 a deterioration of a child and may include, but shall not be limited  
26 to, failing to maintain reasonable care and treatment, negligent treat-  
27 ment or maltreatment or exploiting a child to the extent that the  
28 child's health or emotional well-being is endangered. A parent le-  
29 gitimately practicing religious beliefs who does not provide specified  
30 medical treatment for a child because of religious beliefs shall not  
31 for that reason be considered a negligent parent; however, this ex-  
32 ception shall not preclude a court from entering an order pursuant  
33 to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

34 (c) "Sexual abuse" means any act committed with a child which  
35 is described in article 35, chapter 21 of the Kansas Statutes Annotated  
36 and those acts described in K.S.A. 21-3602 or 21-3603, and amend-  
37 ments thereto, regardless of the age of the child.

38 (d) "Parent," when used in relation to a child or children, in-  
39 cludes a guardian, conservator and every person who is by law liable  
40 to maintain, care for or support the child.

41 (e) "Interested party" means the state, the petitioner, the child,  
42 any parent and any person found to be an interested party pursuant  
43 to K.S.A. 38-1541 and amendments thereto.

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1 (f) "Law enforcement officer" means any person who by virtue  
2 of office or public employment is vested by law with a duty to  
3 maintain public order or to make arrests for crimes, whether that  
4 duty extends to all crimes or is limited to specific crimes.

5 (g) "Youth residential facility" means any home, foster home or  
6 structure which provides 24-hour-a-day care for children and which  
7 is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes  
8 Annotated.

9 (h) "Shelter facility" means any public or private facility or home  
10 other than a juvenile detention facility that may be used in accor-  
11 dance with this code for the purpose of providing either temporary  
12 placement for the care of children in need of care prior to the  
13 issuance of a dispositional order or longer term care under a dis-  
14 positional order.

15 (i) "Juvenile detention facility" means any secure public or private  
16 facility used for the lawful custody of accused or adjudicated juvenile  
17 offenders which must not be a jail.

18 (j) "Adult correction facility" means any public or private facility,  
19 secure or nonsecure, which is used for the lawful custody of accused  
20 or convicted adult criminal offenders.

21 (k) "Secure facility" means a facility which is operated or struc-  
22 tured so as to ensure that all entrances and exits from the facility  
23 are under the exclusive control of the staff of the facility, whether  
24 or not the person being detained has freedom of movement within  
25 the perimeters of the facility, or which relies on locked rooms and  
26 buildings, fences or physical restraint in order to control behavior  
27 of its residents. No secure facility shall be in a city or county jail.

28 (l) "Ward of the court" means a child over whom the court has  
29 acquired jurisdiction by the filing of a petition pursuant to this code  
30 and who continues subject to that jurisdiction until the petition is  
31 dismissed or the child is discharged as provided in K.S.A. 38-1503  
32 and amendments thereto.

33 (m) "Custody," whether temporary, protective or legal, means  
34 the status created by court order or statute which vests in a cus-  
35 todian, whether an individual or an agency, the right to physical  
36 possession of the child and the right to determine placement of the  
37 child, subject to restrictions placed by the court.

38 (n) "Placement" means the designation by the individual or  
39 agency having custody of where and with whom the child will live.

40 (o) "Secretary" means the secretary of social and rehabilitation  
41 services.

42 (p) "Relative" means a person related by blood, marriage or adop-  
43 tion but, when referring to a relative of a child's parent, does not

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3

1 include the child's other parent.

2 (q) "Court-appointed special advocate" means a responsible adult  
3 other than an attorney guardian *ad litem* who is appointed by the  
4 court to represent the best interests of a child, as provided in K.S.A.  
5 38-1505a and amendments thereto, in a proceeding pursuant to this  
6 code.

7 (r) "Multidisciplinary team" means a group of persons, appointed  
8 by the court or by the state department of social and rehabilitation  
9 services under K.S.A. 38-1523a and amendments thereto, which has  
10 knowledge of the circumstances of a child in need of care.

11 (s) "Jail" means:

12 (1) An adult jail or lockup; or

13 (2) a facility in the same building or on the same grounds as an  
14 adult jail or lockup, unless the facility meets all applicable standards  
15 and licensure requirements under law and there is (A) total separation  
16 of the juvenile and adult facility spatial areas such that there could  
17 be no haphazard or accidental contact between juvenile and adult  
18 residents in the respective facilities; (B) total separation in all juvenile  
19 and adult program activities within the facilities, including recreation,  
20 education, counseling, health care, dining, sleeping, and general  
21 living activities; and (C) separate juvenile and adult staff, including  
22 management, security staff and direct care staff such as recreational,  
23 educational and counseling.

24 (t) "Kinship care" means the placement of a child in the home  
25 of the child's relative or in the home of another adult with whom  
26 the child or the child's parent already has a close emotional at-  
27 tachment.

28 Sec. 3. K.S.A. 38-1543 is hereby amended to read as follows:  
29 38-1543. (a) Upon notice and hearing, the court may issue an order  
30 directing who shall have temporary custody and may modify the  
31 order during the pendency of the proceedings as will best serve the  
32 child's welfare.

33 (b) A hearing hereunder shall be held within 48 hours, excluding  
34 Saturdays, Sundays and legal holidays, following a child having been  
35 taken into protective custody.

36 (c) Whenever it is determined that a temporary custody hearing  
37 is required, the court shall immediately set the time and place for  
38 the hearing. Notice of a temporary custody hearing shall be in sub-  
39 stantially the following form:

40 (Name of Court)

41 (Caption of Case)

42 NOTICE OF TEMPORARY CUSTODY HEARING

43 TO:

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| (Names) | (Relationship) | (Addresses) |
|---------|----------------|-------------|
|         |                |             |
|         |                |             |
|         |                |             |

On \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_m. the court  
(day) (date)

will conduct a hearing at \_\_\_\_\_ to determine if the above named child or children should be in the temporary custody of some person or agency other than the parent or other person having legal custody prior to the hearing on the petition filed in the above captioned case. *The court may order one or both parents to pay child support.*

\_\_\_\_\_, an attorney, has been appointed as guardian *ad litem* for the child or children. Each parent or other legal custodian has the right to appear and be heard personally, either with or without an attorney. An attorney will be appointed for a parent who can show that the parent is not financially able to hire one.

Date \_\_\_\_\_, 19\_\_\_\_ Clerk of the District Court  
by \_\_\_\_\_

(Seal)

#### REPORT OF SERVICE

I certify that I have delivered a true copy of the above notice to the persons above named in the manner and at the times indicated below:

| Name | Location of Service<br>(other than above) | Manner of Service | Date | Time |
|------|---|-------------------|------|------|
|      |   |                   |      |      |
|      |   |                   |      |      |
|      |   |                   |      |      |

Date Returned \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay.

(e) Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice in substantially the following form:

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(Name of Court)

(Caption of Case)

## CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at \_\_\_\_\_ o'clock \_\_\_\_\_ m.  
on \_\_\_\_\_, 19\_\_\_\_\_, to the persons listed, in the manner  
and at the times indicated below:

| Name  | Relationship | Date  | Time  | Method of Communication<br>(in person or telephone) |
|-------|--------------|-------|-------|---|
| _____ | _____        | _____ | _____ | _____   |
| _____ | _____        | _____ | _____ | _____   |
| _____ | _____        | _____ | _____ | _____   |

I advised each of the above persons that:

- (1) The hearing is to determine if the above child or children should be in the temporary custody of a person or agency other than a parent;
- (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or children named above;
- (3) each parent or legal custodian has the right to appear and be heard personally either with or without an attorney; and
- (4) an attorney will be appointed for a parent who can show that the parent is not financially able to hire an attorney; and
- (5) *the court may order one or both parents to pay child support.*

(Signature)

(Name Printed)

(Title)

(f) The court may enter an order of temporary custody after determining that: (1) The child is dangerous to self or to others; (2) the child is not likely to be available within the jurisdiction of the court for future proceedings; or (3) the health or welfare of the child may be endangered without further care.

(g) Whenever the court determines the necessity for an order of temporary custody the court may place the child in the temporary custody of: (1) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (h); (2) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated; (3) a youth residential facility; or (4) the secretary. When the child is placed in the temporary custody of the secretary, the secretary shall have the discretionary authority to place the child with a parent or to make other suitable placement for the child. When circumstances require, a child may be placed

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1 in a juvenile detention facility or other secure facility, but the total  
2 amount of time that the child may be held in such facility under  
3 this section and K.S.A. 38-1542 and amendments thereto shall not  
4 exceed 24 hours, excluding Saturdays, Sundays and legal holidays.  
5 The order of temporary custody shall remain in effect until modified  
6 or rescinded by the court or a disposition order is entered *but not*  
7 *exceeding 60 days* ^

, unless good cause shown and  
stated on the record.

8 (h) If the court issues an order of temporary custody, the court  
9 may enter an order restraining any alleged perpetrator of physical,  
10 sexual, mental or emotional abuse of the child from residing in the  
11 child's home; visiting, contacting, harassing or intimidating the child;  
12 or attempting to visit, contact, harass or intimidate the child.

13 (i) The court shall not enter an order removing a child from the  
14 custody of a parent pursuant to this section unless the court first  
15 finds from evidence presented by the petitioner that reasonable ef-  
16 forts have been made to prevent or eliminate the need for removal  
17 of the child or that an emergency exists which threatens the safety  
18 of the child and requires the immediate removal of the child. Such  
19 findings shall be included in any order entered by the court.

20 Sec. 4. K.S.A. 38-1565 is hereby amended to read as follows:  
21 38-1565. (a) If a child is placed outside the child's home and no plan  
22 is made a part of the record of the dispositional hearing, a written  
23 plan shall be prepared which provides for reintegration of the child  
24 into the child's family or, if reintegration is not a viable alternative,  
25 for other placement of the child. If the goal is reintegration into the  
26 family, the plan shall include measurable objectives and time sched-  
27 ules for reintegration. The plan shall be submitted to the court not  
28 later than 60 days after the dispositional order is entered. If the  
29 child is placed in the custody of the secretary, the plan shall be  
30 prepared and submitted by the secretary. If the child is placed in  
31 the custody of a facility or person other than the secretary, the plan  
32 shall be prepared and submitted by a court services officer.

33 (b) A court services officer or, if the child is in the secretary's  
34 custody, the secretary shall submit to the court, at least every six  
35 months, a written report of the progress being made toward the  
36 goals of the plan submitted pursuant to subsection (a). If the child  
37 is placed in foster care, the foster parent or parents shall submit to  
38 the court, at least every six months, a report in regard to the child's  
39 adjustment, progress and condition. The department of social and  
40 rehabilitation services shall notify the foster parent or parents of the  
41 foster parent's or parent's duty to submit such report, on a form  
42 provided by the department of social and rehabilitation services, at  
43 least two weeks prior to the date when the report is due, and the

1 name of the judge and the address of the court to which the report  
2 is to be submitted. Such report shall be confidential and shall only  
3 be reviewed by the court and the child's guardian ad litem. The  
4 court shall review the progress being made toward the goals of the  
5 plan and the foster parent report and, if the court determines that  
6 progress is inadequate or that the goals are *the plan* is no longer  
7 viable, the court shall hold a hearing pursuant to subsection (c). If  
8 the secretary has custody of the child, such hearing shall be held  
9 no more than 18 12 months after the child is placed outside the  
10 child's home and at least every 12 months thereafter. If the goal of  
11 the plan submitted pursuant to subsection (a) is reintegration into  
12 the family and the court determines after 18 12 months from the  
13 time such plan is first submitted that progress is inadequate, the  
14 court shall hold a hearing pursuant to subsection (c) to determine  
15 whether proceedings shall be commenced pursuant to this code  
16 to terminate the parental rights of either or both parents. Noth-  
17 ing in this subsection shall be interpreted to prohibit termination of  
18 parental rights prior to the expiration of 18 12 months.

19 (c) Whenever a hearing is required under subsection (b), the  
20 court shall notify all interested parties and hold a hearing regarding  
21 the adequacy of the plan submitted pursuant to subsection (a);  
22 progress toward the goals of such plan and the viability of such  
23 goals to determine whether proceedings shall be commenced pur-  
24 suant to this code to terminate the parental rights of either or both  
25 parents. If, after hearing, the court determines that the child's needs  
26 are not adequately being met, the plan is inadequate or the goals  
27 are not viable the court shall order commencement of proceedings  
28 pursuant to this code to terminate the parental rights of either or  
29 both parents unless the court finds good cause why the plan should  
30 be modified or a new plan adopted. If the court finds good cause  
31 why the plan should be modified or a new plan adopted, the court  
32 may rescind any of its prior dispositional orders and enter any dis-  
33 positional order authorized by this code; may order commencement  
34 of proceedings pursuant to this code to terminate the parental  
35 rights of either or both parents or may order that a new plan for  
36 the reintegration, or an alternative plan for the child's placement,  
37 be prepared and submitted to the court.

38 Sec. 5. K.S.A. 38-1582 is hereby amended to read as follows:  
39 38-1582. (a) Upon receiving a petition or motion requesting termi-  
40 nation of parental rights the court shall set the time and place for  
41 the hearing on the request.

42 (b) (1) The court shall give notice of the hearing: (A) As provided  
43 in K.S.A. 38-1533 and 38-1534 and amendments thereto; and (B) to

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1 all the child's grandparents at their last known addresses or, if no  
2 grandparent is living or if no living grandparent's address is known,  
3 to the closest relative of each of the child's parents whose address  
4 is known, which notice shall be given by restricted mail not less  
5 than 10 business days before the hearing.

6 (2) The provisions of subsection (b)(1)(B) shall not require ad-  
7 ditional notice to any person otherwise receiving notice of the hearing  
8 pursuant to K.S.A. 38-1536 and amendments thereto.

9 (3) Prior to the commencement of the hearing the court shall  
10 determine that due diligence has been used in determining the  
11 identity of the interested parties and in accomplishing service of  
12 process.

13 (c) In any case in which a parent of a child cannot be located  
14 by the exercise of due diligence, service shall be made upon the  
15 child's nearest blood relative who can be located and upon the person  
16 with whom the child resides. Service by publication shall be ordered  
17 upon the parent.

18 (d) Prior to a hearing on a petition or a motion requesting ter-  
19 mination of parental rights, the court shall appoint an attorney to  
20 represent any parent who fails to appear and may award a reasonable  
21 fee to the attorney for services. The fee may be assessed as an  
22 expense in the proceedings.

23 Sec. 6. K.S.A. 38-1583 is hereby amended to read as follows:  
24 38-1583. (a) When the child has been adjudicated to be a child in  
25 need of care, the court may terminate parental rights when the court  
26 finds by clear and convincing evidence that the parent is unfit by  
27 reason of conduct or condition which renders the parent unable to  
28 care properly for a child and the conduct or condition is unlikely to  
29 change in the foreseeable future.

30 (b) In making a determination hereunder the court shall consider,  
31 but is not limited to, the following, if applicable:

32 (1) Emotional illness, mental illness, mental deficiency or physical  
33 disability of the parent, of such duration or nature as to render the  
34 parent unlikely to care for the ongoing physical, mental and emo-  
35 tional needs of the child;

36 (2) conduct toward a child of a physically, emotionally or sexually  
37 cruel or abusive nature;

38 (3) excessive use of intoxicating liquors or narcotic or dangerous  
39 drugs;

40 (4) physical, mental or emotional neglect of the child;

41 (5) conviction of a felony and imprisonment;

42 (6) unexplained injury or death of a sibling another child or  
43 stepchild of the parent;

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1 (7) reasonable efforts by appropriate public or private child caring  
2 agencies have been unable to rehabilitate the family; and

3 (8) lack of effort on the part of the parent to adjust the parent's  
4 circumstances, conduct or conditions to meet the needs of the child.

5 (c) In addition to the foregoing, when a child is not in the physical  
6 custody of a parent, the court, in proceedings concerning the ter-  
7 mination of parental rights, shall also consider, but is not limited to  
8 the following:

9 (1) Failure to assure care of the child in the parental home when  
10 able to do so;

11 (2) failure to maintain regular visitation, contact or communica-  
12 tion with the child or with the custodian of the child;

13 (3) failure to carry out a reasonable plan approved by the court  
14 directed toward the integration of the child into the parental home;  
15 and

16 (4) failure to pay a reasonable portion of the cost of substitute  
17 physical care and maintenance based on ability to pay.

18 In making the above determination, the court may disregard in-  
19 cidental visitations, contacts, communications or contributions.

20 (d) The rights of the parents may be terminated as provided in  
21 this section if the court finds that the parents have abandoned the  
22 child or the child was left under such circumstances that the identity  
23 of the parents is unknown and cannot be ascertained, despite diligent  
24 searching, and the parents have not come forward to claim the child  
25 within three months after the child is found.

26 (e) The existence of any one of the above standing alone may,  
27 but does not necessarily, establish grounds for termination of parental  
28 rights. The determination shall be based on an evaluation of all factors  
29 which are applicable. In considering any of the above factors for  
30 terminating the rights of a parent, the court shall give primary  
31 consideration to the physical, mental or emotional condition and  
32 needs of the child. If presented to the court and subject to the  
33 provisions of K.S.A. 60-419, and amendments thereto, the court shall  
34 consider as evidence testimony from a person licensed to practice  
35 medicine and surgery, a licensed psychologist or a licensed social  
36 worker expressing an opinion relating to the physical, mental or  
37 emotional condition and needs of the child. The court shall consider  
38 any such testimony only if the licensed professional providing such  
39 testimony is subject to cross-examination.

40 (f) A termination of parental rights under the Kansas code for  
41 care of children shall not terminate the right of the child to inherit  
42 from or through the parent. Upon such termination, all the rights  
43 of birth parents to such child, including their right to inherit from

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1 or through such child, shall cease.

2 Sec. 7. K.S.A. 38-1584 is hereby amended to read as follows:  
3 38-1584. (a) *Purpose of section.* The purpose of this section is to  
4 provide stability in the life of a child who must be removed from  
5 the home of a parent, to acknowledge that time perception of a child  
6 differs from that of an adult and to make the ongoing physical, mental  
7 and emotional needs of the child the decisive consideration in pro-  
8 ceedings under this section. The primary goal for all children whose  
9 parents' parental rights have been terminated is placement in a  
10 permanent family setting.

11 (b) *Notice of dispositional hearing.* After terminating pa-  
12 rental rights and before granting custody of the child for adop-  
13 tion proceedings or long-term foster care, the court shall require  
14 notice of the time and place of the hearing on custody to be  
15 given to all the child's grandparents at their last known ad-  
16 dresses or, if no grandparent is living or if no living grand-  
17 parent's address is known, to the closest relative of each of the  
18 child's parents whose address is known. Such notice shall be  
19 given by restricted mail not less than 10 business days before  
20 the hearing. The provisions of this subsection shall not require  
21 additional notice to any person otherwise receiving notice of  
22 the hearing pursuant to K.S.A. 38-1536 and amendments  
23 thereto.

24 (c) (b) *Actions by the court.* (1) *Custody for adoption.* When  
25 parental rights have been terminated and it appears that adoption  
26 is a viable alternative, the court shall enter one of the following  
27 orders:

28 (A) An order granting custody of the child, for adoption pro-  
29 ceedings, to a reputable person of good moral character, the secretary  
30 or a corporation organized under the laws of the state of Kansas  
31 authorized to care for and surrender children for adoption as provided  
32 in K.S.A. 38-112 *et seq.* and amendments thereto. The person,  
33 secretary or corporation shall have authority to place the child in a  
34 family home, be a party to proceedings and give consent for the  
35 legal adoption of the child which shall be the only consent required  
36 to authorize the entry of an order or decree of adoption.

37 (B) An order granting custody of the child to proposed adoptive  
38 parents and consenting to the adoption of the child by the proposed  
39 adoptive parents.

40 (2) *Custody for long-term foster care.* When parental rights have  
41 been terminated and it does not appear that adoption is a viable  
42 alternative, the court shall enter an order granting custody of the  
43 child for foster care to a reputable person of good moral character,

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1 a youth residential facility, the secretary or a corporation or asso-  
2 ciation willing to receive the child, embracing in its objectives the  
3 purpose of caring for or obtaining homes for children.

4 (3) *Preferences in custody for adoption or long-term foster care.*

5 In making an order under subsection ~~(e)(1)~~ (b)(1) or (2), the court  
6 shall give preference, to the extent that the court finds it is in the  
7 best interests of the child, first to granting such custody to a relative  
8 of the child and second to granting such custody to a person with  
9 whom the child has close emotional ties.

10 ~~(d)~~ (c) *Guardian and conservator of child.* The secretary shall  
11 be guardian and conservator of any child placed in the secretary's  
12 custody, subject to any prior conservatorship.

13 ~~(e)~~ (d) *Reports and review of progress.* After parental rights have  
14 been terminated and up to the time an adoption has been accom-  
15 plished, the person or agency awarded custody of the child shall  
16 within 60 days submit a written plan for permanent placement which  
17 shall include measurable objectives and time schedules and shall  
18 thereafter not less frequently than each six months make a written  
19 report to the court stating the progress having been made toward  
20 finding an adoptive or long-term foster care placement for the child.  
21 Upon the receipt of each report the court shall review the contents  
22 thereof and determine whether or not a hearing should be held on  
23 the subject. In any case, the court shall notify all interested parties  
24 and hear evidence regarding progress toward finding an adoptive  
25 home or the acceptability of the long-term foster care plan within  
26 18 months after parental rights have been terminated and every 12  
27 months thereafter. If the court determines that inadequate progress  
28 is being made toward finding an adoptive placement or establishing  
29 an acceptable long-term foster care plan, the court may rescind its  
30 prior orders and make other orders regarding custody and adoption  
31 that are appropriate under the circumstances. Reports of a proposed  
32 adoptive placement need not contain the identity of the proposed  
33 adoptive parents.

34 ~~(f)~~ (e) *Discharge upon adoption.* When the adoption of a child  
35 has been accomplished, the court shall enter an order discharging  
36 the child from the court's jurisdiction in the pending proceedings.

37 Sec. 8. K.S.A. 38-1585 is hereby amended to read as follows:  
38 38-1585. (a) It is presumed in the manner provided in K.S.A. 60-  
39 414 and amendments thereto that a parent is unfit by reason of  
40 conduct or condition which renders the parent unable to fully care  
41 for a child, if the state establishes by clear and convincing evidence  
42 that:

43 (1) A parent has previously been found to be an unfit parent in

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1 proceedings under K.S.A. 38-1581 *et seq.* and amendments thereto,  
2 or comparable proceedings under the laws of another state, or the  
3 federal government;

4 (2) a parent has twice before been convicted of a crime specified  
5 in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated,  
6 or comparable offenses under the laws of another state, the federal  
7 government or any foreign government, or an attempt or attempts  
8 to commit such crimes and the victim was under the age of 18 years;  
9 or

10 (3) on two or more prior occasions a child in the physical custody  
11 of the parent has been adjudicated a child in need of care as defined  
12 by subsection (a)(3) of K.S.A. 38-1502 and amendments thereto;

13 (4) *the parent has been convicted of causing the death of another*  
14 *child or stepchild of the parent;*

15 (5) *the child has been in an out-of-home placement, other than*  
16 *kinship care, under court order for a cumulative total period of one*  
17 *year or longer and the parent has substantially neglected or willfully*  
18 *refused to carry out a reasonable plan, approved by the court,*  
19 *directed toward reintegration of the child into the parental home;*  
20 *or*

21 (6) (1) *the child has been in an out-of-home placement, other*  
22 *than kinship care, under court order for a cumulative total period*  
23 *of two years or longer; (2) the parent has failed to carry out a*  
24 *reasonable plan, approved by the court, directed toward reintegration*  
25 *of the child into the parental home; and (3) there is a substantial*  
26 *probability that the parent will not carry out such plan in the near*  
27 *future.*

28 (b) The burden of proof is on the parent to rebut the presump-  
29 tion. In the absence of proof that the parent is presently fit and  
30 able to care for the child or that the parent will be fit and able to  
31 care for the child in the foreseeable future, the court shall now  
32 terminate the parents parental rights in proceedings pursuant to  
33 K.S.A. 38-1581 *et seq.* and amendments thereto.

34 Sec. 9. K.S.A. 38-1591 is hereby amended to read as follows:  
35 38-1591. (a) An appeal may be taken by any interested party from  
36 any adjudication, disposition, termination of parental rights or order  
37 of temporary custody in any proceedings pursuant to this code.

38 (b) An appeal from an order entered by a district magistrate judge  
39 shall be to a district judge. The appeal shall be heard ~~de novo~~ within  
40 30 days from the date the notice of appeal is filed. A

41 (c) Procedure on appeal shall be governed by article 21 of chapter  
42 60 of the Kansas Statutes Annotated.

43 (d) *Notwithstanding any other provision of law to the contrary,*

If no record was made of the  
proceedings, the trial shall be *de*  
*novo*.

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1 appeals under this section shall have priority over *all* other cases  
2 except those having statutory priority.

3 New Sec. 10. (a) Before placement of a child with a person other  
4 than the child's parent pursuant to this code, the secretary or a  
5 representative of the secretary may convene a conference of the  
6 child's grandparents, aunts, uncles, siblings, cousins and other rel-  
7 atives determined by the secretary or the secretary's representative  
8 to have a potential interest in determining a placement which is in  
9 the best interests of the child. The secretary or the secretary's rep-  
10 resentative shall provide for the child's relatives to be given any  
11 information relevant to the determination of the placement of the  
12 child, including the needs of the child and any other information  
13 that would be helpful in making a placement in the best interests  
14 of the child. After presentation of the information, the relatives of  
15 the child shall be permitted to discuss and decide, outside the pres-  
16 ence of any other persons, the family member or members with  
17 whom it would be in the child's best interest to be placed. The  
18 relatives shall make their recommendation to the secretary or the  
19 secretary's representative. Unless the secretary determines that there  
20 is good cause to place the child with a person other than the relative  
21 recommended by the child's relatives, the child shall be placed in  
22 accordance with the recommendations of the relatives.

23 (b) Before placement of a child with a person other than the  
24 child's parent pursuant to this code, the court or a court services  
25 officer at the direction of the court may convene a conference of the  
26 child's grandparents, aunts, uncles, siblings, cousins and other rel-  
27 atives determined by the court or court services officer to have a  
28 potential interest in determining a placement which is in the best  
29 interests of the child. The court or the court services officer shall  
30 provide for the child's relatives to be given any information relevant  
31 to the determination of the placement of the child, including the  
32 needs of the child and any other information that would be helpful  
33 in making a placement in the best interests of the child. After  
34 presentation of the information, the relatives of the child shall be  
35 permitted to discuss and decide, outside the presence of any other  
36 persons, the family member or members with whom it would be in  
37 the child's best interest to be placed. The relatives shall make their  
38 recommendation to the court or court services officer. Unless the  
39 court determines that there is good cause to place the child with a  
40 person other than the relative recommended by the child's relatives,  
41 the child shall be placed in accordance with the recommendations  
42 of the relatives.

43 (c) A person participating in a conference pursuant to this section

1 shall have immunity from any civil liability that might otherwise be  
2 incurred or imposed as a result of the person's participation.

3 (d) This section shall be part of and supplemental to the Kansas  
4 code for care of children.

5 Sec. 11. K.S.A. 38-324, 38-1502, 38-1543, 38-1543a, 38-1565, 38-  
6 1582, 38-1583, 38-1584, 38-1585 and 38-1591 are hereby repealed.

7 Sec. 12. This act shall take effect and be in force from and after  
8 its publication in the statute book.

5/15

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

Senate Judiciary Committee  
Testimony on Senate Bill 693

March 14, 1994

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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."

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TITLE

An Act concerning children; relating to adoption assistance; concerning children in need of care; relating to temporary custody and determination of parental rights.

Mr. Chairman, I am pleased to provide you with this testimony in general support of Senate Bill 693 which amends the adoption support laws and the Kansas Code for Care of Children. We suggest amendment to Section 1. which provides adoption subsidy not be less than for foster care.

BACKGROUND

Senate Bill 693 amends the adoption support laws by providing that no adoption support payment may be less than reimbursement for foster care. The current procedure is that payments made to adoptive parents are negotiated and are not to exceed the foster care payment.

The bill also amends the Kansas Code for Care of Children with the following provisions: 1) an order of temporary custody of a child may not exceed 60 days; 2) a hearing must be held regarding the progress on a reintegration plan 12 months after a child's out of home placement (the current time frame is 18 months); 3) the hearing shall determine whether parental rights of either or both parents are to be terminated; 4) notices to grandparents are confined to the termination of parental rights hearings (such notice is now also required for the dispositional hearing); and 5) conviction of a parent for causing the death of a child, having a child in reintegration, or in out-of-home placement for a total of two years or more with inadequate progress are added to the statutes regarding presumption of unfitness of a parent.

*Senate Judiciary*  
*3-21-94*  
*attachment 12-1*



#### EFFECT OF PASSAGE

The prevailing foster care reimbursement is to provide for ordinary daily cost of rearing a child. Foster parents who care for children who present special needs may be eligible for additional reimbursement under therapeutic foster care rates. Medical cards are provided for all eligible children.

Parents who adopt with subsidy support are now eligible for all these supports. The actual rate of subsidy is negotiated with the adopting parents depending on the child's needs and the wishes of the parents. Most adopting parents are able and willing to absorb the daily cost of care but are unable to meet extraordinary costs of counseling or medical or surgical care. These parents request only a token payment to make them eligible for medical care. They do not want additional reimbursement.

The current language of the bill would eliminate this option.

It is anticipated that this provision will necessitate an increase in the cost of adoption subsidy in order to bring subsistence payments up to the foster care payment resulting in an additional \$1.6 million annual cost to the state.

The child in need of care provisions could have the effect of having children in the custody of the Department for a shorter period of time. It would have an offsetting effect of requiring more intensive services to families in order to provide reasonable efforts to reunite the child and family. Any savings realized by having children in SRS custody for a shorter time would offset by increased cost of more intensive services to the families in order to meet shortened deadlines.

#### RECOMMENDATION

The Department of Social and Rehabilitation Services recommends favorable consideration of Senate Bill 693 if amended to delete the provision for adoption subsidy not less than the foster care rate.

Donna L. Whiteman  
Secretary  
Social and Rehabilitation Services  
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