

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 5, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Office of Revisor
Mitch Rice - Office of Revisor
Jerry Ann Donaldson - Legislative Research Department
Bev Renner - Committee Secretary

Conferees appearing before the committee:

Jeremy Anderson, Governmental Policy Director for Governor Sebelius
Derrick Sontag, Director of Legislative Affairs-Attorney General's Office
Senator David Adkins
Representative Kathe Decker
Denise Everhart, Acting Commissioner-Juvenile Justice Authority
James Frazier, Deputy Commissioner-Juvenile Justice Authority

Chairperson Loyd recognized Jeremy Anderson, Governmental Policy Director for Governor Sebelius and Derrick Sontag, Director of Legislative Affairs-Attorney General's Office for the purpose of issuing bill requests for introduction of joint legislation to strengthen penalties. The legislation will focus on: 1) requiring a mandatory 40-year prison sentence for criminal predators convicted twice of committing rape, 2) correct the jurisdictional problem associated with the 60-day time frame for convicted sexually violent predators, 3) increasing the penalty for those who promote prostitution of a minor under age 16 and change from a level 6 felony to a level 5 felony allowing for probation after conviction, 4) intentionally exposing a child to the sale, distribution, or manufacture of meth would be added as a violation of the Endangering a Child, and, 5) closing the loophole that allows a criminal predator to seek out, locate and batter an off-duty law enforcement officer which is currently a level 6 felony as opposed to a level 3 felony if on duty and make it a level 3 felony to seek out, locate and batter an off-duty officer. (Attachment 1)

Ranking Minority Member Jim Ward made a motion to accept these requests as committee bills. Vice-Chairperson Tim Owens seconded the motion. The motion carried.

Representative Marti Crow made a motion to introduce legislation on the children's advocate act creation to investigate complaints and problems with the foster care system. Representative Janice Pauls seconded the motion. The motion carried.

Representative Ed O'Malley requested introduction of a bill on behalf of District Attorney Paul Morrison making it a class B misdemeanor for knowingly allowing underage drinking on private property.

Vice-Chairperson Tim Owens made a motion to accept the request as a committee bill. Representative Bill Kassebaum seconded the motion. The motion carried.

Chairperson Loyd introduced Senator David Adkins to the committee for the purpose of presenting a briefing on the Juvenile Justice Authority. He presented the history of Juvenile Justice Reform; how it was initiated in Kansas, what some of the outcomes of that reform effort were as embodied in the laws passed and some of the challenges that remain to be dealt with. Several criteria formed the basis for the need for reform; 1) There is a cohort of serious, chronic and violent juvenile offenders, but a small percentage of all juvenile offenders, 2) The most chronic re-offenders were concentrated in a very small group of the overall offender population, and, 3) 60-70% of first-time male offenders would be only-time offenders; for female offenders, the rate might be as high as 80%. With these facts in evidence, it was realized that front end options needed to be created to remove the large number of offenders that would need off-ramps early so that state resources would not be spent on those who did not need to be in the system. Several new capacities required investment beginning with "prevention." Effective early intervention in the lives

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 5, 2003, in Room 526-S of the Capitol.

of young people coupled with brain research that showed investments in early childhood development showed promising returns for inoculating young people from entering into a life of delinquency. The "Communities that Care" model led those studying reform to look to the community level rather than the state to provide identification of the risk and protective factors. The empowering of local planning units was the next step to engage in outcomes-based, research-driven measures. The Intake and Assessment Center holds promise in the evaluation of juvenile offender behavior and the needs required by individuals that can be met on a community level.

A Placement Matrix was devised to prevent judges from sending every youth to the "Youth Centers"; essentially, sentencing guidelines for juvenile offenders. These centers were appropriately renamed, Juvenile Correctional Facilities. Aftercare was deemed necessary. Sentencing options were changed and "dual" sentencing was created. The most serious and violent offenders were often 16-17 years old. Under the previous law juveniles aged out at 18. The age was extended to 23 so that jurisdiction could be continued to meet the needs of those older juveniles who committed a serious offense, but maybe it was their first offense. Also, it gave judges and prosecutors a greater flexibility. The court has the power to impose a sentence as a juvenile and as an adult. If the juvenile sentence is successfully completed, the adult sentence is not imposed. If there are problems in meeting the juvenile sentence, the court has the power to invoke the adult sentence. Anyone can be tried as an adult in Kansas after the age of 10.

The Juvenile Justice Authority was created with the finding that SRS would no longer have the authority or custody of juvenile offenders. It was felt that a stand-alone agency was needed since there was no other organization appropriate for this state responsibility. Consolidation with Department of Corrections was rejected. When dealing with youthful offenders a pure corrections model was ineffective. JJA was seen as a cooperative agency working with private contractors as a catalyst to bring together community groups public, private and non-profit that would serve as a thought leader promoting and brokering research to local entities for application. They would be in control of state juvenile correctional facilities and actively engaged in prevention initiatives. A Joint Committee on Corrections and Juvenile Justice Oversight was appointed to provide meaningful oversight so that the legislature could remain engaged in the process.

HB 2017 - Joint committee on corrections and juvenile justice oversight, extending sunset two years.

Chairperson Loyd opened the hearing on HB 2017.

Representative Kathe Decker appeared before the committee in support of HB 2017 (Attachment 2). She called the attention of the committee to a letter signed by Representative Pauls, Senator Goodwin, Senator Adkins and Representative Decker (Attachment 3). Representative Decker stressed the importance of maintaining the Joint Committee on Corrections and Juvenile Justice Oversight. The committee has worked hand-in-hand with the agency to develop ideas and interpret legislative intent of the JJA.

Chairperson Loyd closed the hearing on HB 2017.

HB 2015 - Modification of sentence of juvenile offender by the court based on medical condition.

Chairperson Loyd opened the hearing on HB 2015.

Denise Everhart, Acting Commissioner of JJA was welcomed to the committee to speak in support of HB 2015 (Attachment 4). This bill will allow modification of the sentence imposed on a juvenile offender incarcerated in a juvenile correctional facility based on a serious medical condition. The process would allow the commissioner to petition through the sentencing judge for release of an offender who is functionally incapacitated. Commissioner Everhart proposed an amendment to make a new section (d) for the new language.

Chairperson Loyd closed the hearing on HB 2015.

The meeting was adjourned at 2:45 p.m. The next scheduled meeting will be on February 6, 2003.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST

DATE Feb. 5, 2003

NAME	REPRESENTING
Randell McEwen	Self
Joe McEwen	USIS BIZ - Page
Michael White	KCDA
XXXXXXXXXX	
Chris Thompson	Federico consulting
Robert Chomansh	
Keith Bradshaw	Budget
Dan M. Zper	OJA
Roslyn Jones-Martin	SRS



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GOVERNOR SEBELIUS AND ATTORNEY GENERAL KLINE INTRODUCE PUBLIC SAFETY INITIATIVES

Governor Kathleen Sebelius and Attorney General Phill Kline announced today the introduction of legislation designed to significantly impact public safety in our state. The legislative initiatives, which will be introduced in the Senate Judiciary and House Corrections and Juvenile Justice committees, are the first of several planned initiatives to strengthen the penalties for crimes committed by sexual predators, criminals who target law-enforcement officers, and those who commit crimes against children.

The legislation will focus on:

Sexual Predators:

- Require a mandatory 40-year prison sentence for criminal predators convicted twice of committing rape.
- Correct the jurisdictional problem associated with the 60-day time frame for convicted sexually violent predators.

Children:

- Increase the penalty for those who promote prostitution of a minor under age 16. This legislation would change that from a level 6 to a level 5 felony allowing for probation after conviction.

Meth. Labs:

- Intentionally exposing a child to the sale, distribution, or manufacture of meth would be added as a violation of the Endangering a Child statute K.S.A. 21-3608.

Law Enforcement:

- Close the loophole that allows a criminal predator to seek out, locate, and batter an off-duty law enforcement officer which is currently a level 6 felony as opposed to a level 3 felony if on-duty. The bill will make it a level 3 felony to seek out, locate and batter an off-duty officer.

H. Corr's J.J.
2-5-03
Attachment 1

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HOUSE OF
REPRESENTATIVES

REPRESENTATIVE, SIXTY-FOURTH DISTRICT
CLAY, DICKINSON, GEARY,
AND RILEY COUNTIES

STATE CAPITOL
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COMMITTEE ASSIGNMENTS
CHAIR: EDUCATION
MEMBER: EDUCATION BUDGET

Testimony in support of HB2017

Thank you Mr. Chairman and committee members. As a past President and current Vice President of the Corrections/Juvenile Justice Oversight Committee I am supporting the continuation of the Joint Committee for two years.

Myself, as well as Sen. Adkins, Sen. Goodwin and Rep. Pauls have submitted a letter stating our collective support. With a change in leadership in the agency as well as a new Governor I believe it is very important for the oversight to continue because the legislature will have tough decisions in the next few years in regards to both agencies. The Juvenile Justice Authority is relatively new as State Agencies go and the intent of the legislature is important to be carried out. I believe with oversight from legislators gives them guidance.

Rep. Kathe Decker
64th District

H. Corr & JJ
2.5.03
Attachment 2



TOPEKA

Testimony in Support of House Bill 2017

To the members of the House Committee on Corrections and Juvenile Justice:

As past leaders of the Kansas Legislature's Joint Committee on Corrections and Juvenile Justice we are writing to express our support for House Bill 2017 which, if enacted, would extend the sunset date for the committee from December 31, 2001 to December 31, 2005. The bill was recommended favorably by the Joint Committee on Corrections and Juvenile Justice.

We believe the joint committee has significantly contributed to the investigation and resolution of a number of key public safety issues. Originally created to monitor the implementation of juvenile justice reform and correctional system programming and capacity issues, the committee now serves as a valuable venue for the discussion of a wide range of correctional issues.

In the near future the Juvenile Justice Authority will be opening two new facilities and recent population projections in our adult correctional facilities demonstrate the state will need additional prison capacity in the near future. The legislature in addressing these issues will benefit from the scrutiny that the joint committee is well positioned to give.

We urge your favorable consideration of this bill and your support for continuing the life of the committee for another two years. We appreciate your consideration of this legislation.

Respectfully submitted,

Kathe Decker

Representative Kathe Decker

Janice S. Pauls

Representative Jan Pauls

David Adkins

Senator David Adkins

Greta Goodwin

Senator Greta Goodwin

H. Corr & J.J.
2-5-03
Attachment 3

Commissioner of Juvenile Justice: Powers/Duties/Functions.

1. The Commissioner shall administer the juvenile justice system utilizing several core functions including:
 - a. Operations: Through this function the commissioner shall oversee intake and assessment, provide technical assistance and facilitate community collaboration, license youth correctional facilities, programs and providers, assist in coordinating a statewide system of community based service providers and operate youth correctional facilities.
 - b. Research: Through this function the commissioner shall generate, analyze and utilize data to develop new program initiatives, restructure existing programs and assist communities in risk assessment and effective resource utilization. Particular focus would be given to the identification or development of effective preventions programs.
 - c. Contract: Through this function the Commissioner would secure the services of direct providers. It is not anticipated that the Commissioner will oversee a large staff of correctional officers or social workers. Rather, the Commissioner shall, when appropriate, contract with non-profit, private or public agencies to perform functions or provide services necessary to operate the state's portion of the juvenile justice system. The contract function could also be utilized in the administration of state programs funded by grants to local communities.
 - d. Performance Audit. Through this function the Commissioner would audit contracts to determine that service providers were performing as required. This function would grant the Commissioner regulatory authority to administer programs to be performed pursuant to contracts.
 - e. Personnel Services. Through this function the Commissioner would provide appropriate training opportunities and administer the employees that answer to the Commissioner.
2. Other Duties. In addition to the above-noted functions, the Commissioner shall:
 - a. Administer all state and federal funds appropriated within the executive branch for juvenile justice.
 - b. Administer the development and implementation of appropriate information systems.
 - c. Administer the transition to and implementation of system reforms.

- d. Have authority to enter into contracts with other public agencies or private entities.
 - e. Shall coordinate functions with the Judicial branch and serve as a resource to legislators and other policy makers.
3. Access to Records. To ensure maximum access to records the juvenile justice authority shall be designated a criminal justice agency and an educational agency, and the commissioner shall be a member of the Criminal Justice Coordinating Council. The commissioner shall have access to all existing and historical Kansas juvenile justice records.
4. Accept Custody of Juveniles. The Commissioner shall be authorized to accept custody of juveniles so assigned by a court.
5. Date of Appointment. Although current law calls for the appointment of a commissioner July 1, 1997, the Youth Authority recommends the hiring of a commissioner at least by January 1, 1997, with appropriate staff, to facilitate the creation of the juvenile justice authority and the transition of responsibilities to the commissioner. July 1, 1997 would remain the date upon which transfer of authority would become effective.
6. Kansas Youth Authority Subsequent to 1997. The Kansas Youth Authority members shall serve staggered terms of four years. The authority shall control its own agenda and shall meet at the call of its chair. The seven statutory members may be augmented by ex-officio appointments to serve at the pleasure of the Governor. The Attorney General and the Chief Justice of the Supreme Court or their designees shall be permanent ex-officio members.

System Nomenclature.

The terms used in the juvenile justice system shall be changed to avoid confusion and to clarify procedure. For example, the following terms shall be used:

- “trial” not “adjudication”
- “guilty” or “not guilty” not “admit” or “deny”
- “sentence” not “disposition”
- “juvenile correctional facility” not “youth center”
- “immediate intervention” not “diversion”
- “juvenile justice code” not “juvenile offender code”.

However, some distinctions will remain. For example,

- “juvenile proceedings” not “criminal proceedings”
- “offense” not “crime”

Intake and Assessment.

1. Commissioner to Oversee Intake and Assessment.

Intake and Assessment functions shall be conducted by the Commissioner of Juvenile Justice.

2. Intake and Assessment Model: State Mandates/Local Options.

The Commissioner shall contract with local service providers, when available, to provide 24-hour a day intake and assessment services. Local providers will be required by the state to provide a basic package of intake and assessment services but may provide additional services as determined by local authorities. Local innovation will be encouraged through the funding of pilot programs and through the utilization of facilitators from the Commissioner's office. Programs operating collaboratively, encouraging local interagency cooperation directly in the intake and assessment process are to be pursued. In such communities where need justifies such a model, representatives of law enforcement, education, mental health agencies, substance abuse programs and other key agency representatives will jointly staff the intake and assessment center.

3. Immediate Intervention Options.

The state shall allow each judicial district, at its option, to develop and implement immediate intervention programs. Pursuant to agreement between the District Attorney and Court and Intake and Assessment Center local programs may be developed to allow:

- a. Direct referral of cases by the prosecutor and/or intake and assessment worker to youth courts.
- b. Allow intake and assessment workers to issue a summons to appear, requiring a court appearance at a date certain.
- c. Develop restorative justice centers and allow direct referrals by intake and assessment workers and/or prosecutors.
- d. Allow direct referral of cases by the prosecutor or intake and assessment worker to citizen review boards or hearing officers for determination.
- e. Intake and assessment centers to directly purchase services for youth and their families.

Immediate Intervention Programs shall be utilized pursuant to specific authorization by the court and prosecutor. State law shall prohibit the use of any such programs for persons who commit felonies or crimes committed while in possession of a deadly weapon.

4. Statutory Clarification.

The juvenile offender code shall be revised to more clearly define the role of intake and assessment. Intake and assessment workers shall be granted specific authority to set conditions for release, be listed as mandatory reports of alleged child abuse, be authorized to take custody of a juvenile from law enforcement and be granted authority to assist juveniles in accessing services.

Information System Reform.

1. Computerized Records System.

The KBI shall develop and maintain an information system which is computerized, accurate, current and integrated to provide all agencies and individuals involved in the juvenile justice system with easy and appropriate access to records.

2. Shared Information.

All barriers to information sharing shall be removed and individuals and agencies involved with juveniles shall share information. Schools, law enforcement agencies, non-profit/private service providers, state agencies and others shall share and have access to appropriate information regarding a juvenile.

3. Open Records.

The official court file of a juvenile shall be open to the public unless access is restricted by the court upon a finding that opening the file to the public is contrary to the best interests of the child. Absent such a finding, public access to file information shall be permitted subsequent to charges being filed with the court.

4. Open Proceedings.

All juvenile court proceedings shall be open to the public to the extent allowed in adult criminal proceedings, unless closed by the court upon a finding that open proceedings would be contrary to the best interests of the child.

5. Operational Deadline.

By July 1, 1997, the juvenile justice computerized information system shall be operational and functioning in conjunction with the adult criminal justice information system as implemented by the Criminal Justice Coordinating Council. This deadline may be extended by official action of the Criminal Justice Coordinating Council.

6. Current Information.

Incentives shall be developed to encourage the timely entry of records into the juvenile justice information system database.

7. Scope of Information Database.

Information available to system users shall include information collected at intake and assessment centers. Such information shall include:

- a. Information collected by utilizing a standardized risk assessment tool (for example, the POSIT, a Problem Oriented Screening Instrument for Teens).
- b. Criminal (Delinquency) history; including indications of criminal gang involvement.
- c. Abuse history.
- d. Substance abuse history.
- e. History of prior services/treatments provided.
- f. Educational history.
- g. Medical history.
- h. Family history.

Additional information may be collected/utilized at local option. The commissioner shall monitor the collection and utilization of information to ensure that information is current and accurate. Further, the commissioner shall determine if all information listed above is being utilized and, if not, determine if modification of the list is appropriate to achieve efficiencies.

Parental Responsibility.

1. Financial Accountability: To enhance financial recovery for the costs of services provided, the following shall be enacted:

- a. Private insurance companies may not exclude coverage for treatment when a juvenile is in custody.
- b. A judge may order reimbursement by parents to pay for services provided to a juvenile in an amount determined by the court but not to exceed the actual cost of such services. Parents would be allowed to request a hearing to challenge such an order.
- c. Any financial obligation imposed on a parent shall be enforced as a civil judgment or pursuant to the court's contempt powers. Failure to satisfy any such obligation may result in revocation of professional licenses or driving privileges, or state set off against tax refunds.
- d. The court may allow any financial obligation imposed on a parent to be fulfilled through the performance of community service should the parent be financially unable to pay.

2. Positive Parental Participation. To encourage parental assistance in the enforcement of court orders, terms of probation and treatment plans, the following shall be enacted:

- a. Expand the scope of K.S.A. 21-3612 to include adult conduct which assists or participates in the violation of the terms of a juvenile's probation within the crime of contributing to a child's misconduct or deprivation.
- b. Amend K.S.A. 38-1668 to authorize courts to require that parents report probation violations.
- c. A court shall be authorized to require parental participation in treatment programs or to attend parenting classes/programs in juvenile offender cases to the extent now authorized in children in need of care proceedings.
- d. The commissioner shall be authorized to require parental cooperation and participation as a condition of release or as an element of post-release programming.
- e. A parent may be made a party to any contract for immediate intervention.

3. School Attendance. Absent parental consent, a child shall be required to attend school until the age of 18. The court may revoke driving privileges for anyone less than eighteen years of age who is not regularly enrolled in school, including those suspended or expelled.

Placement.

1. Placement Options. Reforms shall be implemented to create a full continuum of placement options from immediate intervention programs to maximum security incarceration. In building this system the state and local communities (by judicial district) shall share responsibilities. The following shall guide our development of a statewide system.

- a. A placement matrix shall be developed to promote uniformity in placement and efficient use of resources. Thresholds will be established to govern access to state provided placements (youth centers, maximum security). These thresholds will be defined by a juvenile's offense, offense history and risk factors. The state would establish minimum and maximum placement lengths.
- b. The jurisdiction for juvenile court placements shall be expanded from age 21 to age 23.
- c. The Commissioner shall assist local communities in developing community based placement options and programs. By blending a community matrix with a state matrix a full range of placement options, tailored to the needs of each community, will be available.

2. Dual Sentencing. Juvenile courts shall be allowed to impose both a juvenile sentence and an adult criminal sentence on an offender regardless of age at time of offense. Based on a Minnesota law, if a juvenile successfully completes a rehabilitative program pursuant to the juvenile sentence the court may release the offender. However, if the offender is not amenable to rehabilitation in the juvenile system, the adult sentence can be imposed. The commissioner would have authority to move the court for an order of release or seek transfer to the Secretary of Corrections. All juveniles dually sentenced would be subject to an automatic court hearing at age 18. If retained in the juvenile system at age 18, the court would be required to establish a date to review the case again at least within 36 months. Juvenile Court jurisdiction would extend to age 23.

3. Waiver to the Adult Criminal System.

No "automatic" waivers of juveniles to the adult criminal system shall occur. The waiver of juveniles to the adult criminal justice system shall occur pursuant to the following:

- a. A juvenile, subject to the offender code, may be waived to adult status, regardless of age or offense, upon the court granting a motion brought by the state. The offender shall be presumed a juvenile unless good cause is shown to justify prosecution as an adult. Juvenile court jurisdiction for actions arising under the juvenile offender code commences at age 10.
- b. Upon a motion by the prosecutor, a juvenile, age 14, 15, 16 or 17 accused of an offense for which incarceration would be presumed pursuant to adult sentencing guidelines if the juvenile were convicted as an adult shall be presumed to be an

adult and shall be tried as such unless the presumption is rebutted. The juvenile is not automatically waived to adult status, but the burden of proof shifts to the juvenile to prove why he should not be tried as an adult.

- c. Upon a motion by the prosecutor, a juvenile age 14, 15, 16 or 17 accused of an offense committed while in possession of a firearm shall be presumed to be an adult and shall be tried as such unless the presumption is rebutted. The juvenile is not automatically waived to adult status, but the burden of proof shifts to the juvenile to prove why he should not be tried as an adult.
- d. Upon a motion by the prosecutor, a juvenile, regardless of age, accused of the equivalent of a felony that has previously been found to have committed a felony shall be presumed an adult and may be tried as such unless the presumption is rebutted. The juvenile is not automatically waived to adult status, but the burden of proof shifts to the juvenile to prove why he should not be tried as an adult.
- e. As an alternative to waiver to adult status the prosecutor may seek dual sentencing of a juvenile accused of an offense, regardless of age. The juvenile shall be presumed to be subject to dual sentencing under the same circumstances that a presumption of adult status would arise if the prosecutor sought to waive the juvenile to adult status.
- f. The prosecutor retains the discretion in all cases to seek juvenile adjudication, seek dual adjudication or seek waiver to adult status. The court must determine the juvenile's status in all cases.

Youth Centers.

Our state youth centers shall be administered with the following reforms recommended:

1. Immediate Reforms.

- a. Immediate reforms will be enacted to upgrade security at existing facilities including secure perimeter fencing.
- b. A rigid grooming code, with appropriate regard for religious beliefs, shall be enforced and offenders shall be issued appropriate uniforms to be worn while in custody.
- c. No passes, furloughs or leaves shall be granted except to accommodate reintegration into the community and as necessary to obtain medical services. Any such activity outside the facility shall be directly supervised by an appropriate adult.
- d. Each youth, to the extent allowed by law, shall be assigned a work assignment as a condition of placement. State laws which prohibit such assignments shall be repealed.

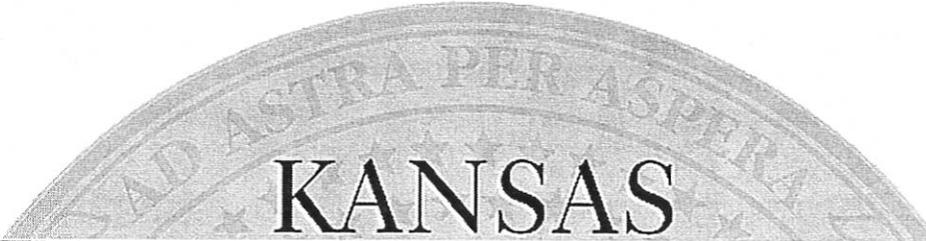
2. Intermediate/Long-Term Reforms.

- a. The mission of the youth centers shall be restructured to allow greater specialization. Instead of assigning juveniles based on age and sex a more appropriate classification model would be developed for each institution. A military corps model might be utilized in one facility and a substance abuse focus might characterize another.
- b. Assignment to a specific state custody facility would be made based on information collected at intake and assessment and at a juvenile reception and diagnostic center and information contained in the court's presentence report.
- c. A reception and diagnostic function shall be created and utilized to effectively administer placements at all state youth correctional facilities.
- d. Community corrections services for juveniles and aftercare transition services for juvenile offenders released from a state juvenile correctional facility shall be available in each judicial district.

3. Maximum Security Facility. To augment our state's juvenile placement options, a maximum security youth correctional program shall be developed pursuant to the following:

- a. Federal funds to assist with construction costs shall be sought and cost-efficient conversion of existing state facilities shall be considered.

- b. The program would be designed to house chronic, serious and violent juvenile offenders.
- c. A capacity of 150 beds is required to meet existing needs.
- d. The Department of Corrections shall have responsibility, with appropriate appropriations, to develop a plan to construct a facility or facilities to house 150 offenders.
- e. Ideally, three 50 bed facilities would be built, dispersed geographically throughout the state with flexibility of expansion or future conversion to other uses. Facilities should also be planned to accommodate the possible co-location of other functions such as detention or intake and assessment centers, or reception and diagnostic services.
- f. It is anticipated that the maximum security facilities would be administered by the Department of Corrections pursuant to a contract with the commissioner.



KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, ACTING COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE FEBRUARY 4, 2003

Testimony on House Bill 2015

House Bill 2015 will allow sentence modification, based on a serious medical condition, of the juvenile offender sentenced to a juvenile correctional facility. The intent is similar to that of SB 339, passed last session, which provides for the Secretary of Corrections to make application to the Kansas Parole Board for release of an inmate who is functionally incapacitated (see attached). This bill will allow for the Commissioner to petition through the sentencing judge for similar action.

Currently, courts may modify a sentence of an offender committed to a juvenile correctional facility in only two circumstances.

1. K.S.A. 38-1665 allows for the modification of a sentence within 60 days after the commitment. This provision could be used to apply for a sentence modification if an offender is seriously ill and or functionally incapacitated within the first 60 days after commitment. If the illness occurs later, this provision cannot be used.
2. K.S.A. 38-16, 131 provides for a mechanism for the Commissioner to file a motion to modify the sentence but only if the offender has served the minimum term under the placement matrix and only based on good behavior.

As our staff have had additional time to review the language of the bill we would note that it is our opinion the new language should be set forth as a separate subsection of K.S.A. 38-1665. As currently written, the language

*H. Corr & J.J.
2-5-03*

HB 2015

February 4, 2003

Page two

could be construed as being limited to the first 60 days of a sentence and this would not accurately address the issue we face.

This bill will allow for the Commissioner to apply through the sentencing judge for a sentence modification based on a serious medical condition at any time during an offender's incarceration in a juvenile correctional facility.

While the savings in cost of medical services to the agency for an individual case could be substantial, the number of such occurrences is expected to be very few. Therefore the overall impact on JJA operations and budget is expected to be minimal

I respectfully request passage of this bill. Thank you for your attention and for your consideration.

DE:JF:bt

4-2

Substitute for SENATE BILL No. 339

By Committee on Judiciary

3-7

AN ACT concerning crimes, criminal procedure and punishment; relating to persons in the custody of the secretary of corrections; early release of the functionally incapacitated.

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

Section 1. (a) (1) Upon application of the secretary of corrections, the Kansas parole board may grant release to any person deemed to be functionally incapacitated, upon such terms and conditions as prescribed in the order granting such release.

(2) The Kansas parole board shall adopt rules and regulations governing the procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to be functionally incapacitated. Such rules and regulations shall include criteria and guidelines for determining whether the functional incapacitation precludes the person from posing a threat to the public.

(3) Subject to the provisions of subsections (a)(4) and (a)(5), a functional incapacitation release shall not be granted until at least 30 days after written notice of the application has been given to: (A) The prosecuting attorney and the judge of the court in which the person was convicted; and (B) any victim of the person's crime or the victim's family. Notice of such application shall be given by the secretary of corrections to the victim who is alive and whose address is known to the secretary, or if the victim is deceased, to the victim's family if the family's address is known to the secretary. Subject to the provisions of subsection (a)(4), if there is no known address for the victim, if alive, or the victim's family, if deceased, the board shall not grant or deny such application until at least 30 days after notification is given by publication in the county of conviction. Publication costs shall be paid by the department of corrections.

(4) All applications for functional incapacitation release shall be referred to the board. The board shall examine each case and may approve such application and grant a release. An application for release shall not be approved unless the board determines that the person is functionally incapacitated and does not represent a future risk to public safety. The board shall determine whether a hearing is necessary on the application.

SESSION OF 2002

**SUPPLEMENTAL NOTE ON SENATE
SUBSTITUTE FOR SENATE BILL NO. 339**

As Amended by Senate Committee on
Judiciary

Brief*

Senate Sub. for SB 339 would establish a procedure for the early medical release of persons in the custody of the Secretary of Corrections.

The bill provides that upon application of the Secretary of Corrections, the Kansas Parole Board may grant release to any person deemed to be functionally incapacitated, upon terms and conditions prescribed in the Board's order granting release.

A functional incapacitation release shall not be granted until at least 30 days after written notice of the application has been given to: the prosecuting attorney and the judge of the court in which the person was convicted; and any victim of the person's crime or the victim's family. Notice of the application shall be given by the Secretary to the victim who is alive and whose address is known, or if the victim is deceased, to the victim's family if the family's address is known. If there is no known address for the victim or the victim's family, the Board shall not grant or deny the application until at least 30 days after notification is given by publication in the county of conviction. Publication costs shall be paid by the Department of Corrections.

In determining whether a person is functionally incapacitated, the Board shall consider: the person's current condition as confirmed by medical or mental health care providers, including whether the condition is terminal; the person's age and personal history; the person's criminal history; the person's length of sentence and time he or she has served; the nature and circumstances of the current offense; the risk or threat

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/cgi-bin/fulltext/bills.cgi>

PROPOSED AMENDMENT

Session of 2003

HOUSE BILL No. 2015

By Joint Committee on Corrections and Juvenile Justice Oversight

1-14

AN ACT concerning the Kansas juvenile justice code; relating to modification of sentence; amending K.S.A. 38-1665 and repealing the existing section.

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

Section 1. K.S.A. 38-1665 is hereby amended to read as follows: 38-1665. (a) When a juvenile offender has been placed in a youth residential facility or in the custody of a person other than a parent, the court may cause the juvenile offender to be brought before it, together with the person or persons in whose custody the juvenile offender may be. If it appears that a continuance of the custody or placement is not in the best interests of the juvenile offender, the court may rescind and set aside the order giving custody and make a further order for the custody of the juvenile offender as is appropriate, except that a child support order which has been registered under K.S.A. 38-16,119 and amendments thereto may only be modified pursuant to K.S.A. 38-16,119 and amendments thereto.

(b) At any time after the entry of an order awarding custody of a juvenile offender to a person other than a parent, the court on its own motion, or the commissioner, the attorney for the juvenile offender or any party or parent may file a motion with the court for a rehearing on the issue of custody. Upon receipt of the motion, the court shall fix a time and place for hearing and shall notify each party of the time and place. After the hearing, the court may enter any sentence, except that a child support order which has been registered under K.S.A. 38-16,119 and amendments thereto may only be modified pursuant to K.S.A. 38-16,119 and amendments thereto. If the court determines that it is in the best interests of the juvenile offender to be returned to the custody of the parent or parents, the court shall so order.

(c) Any time within 60 days after a court has committed a juvenile offender to a juvenile correctional facility the court may modify the sentence and enter any other sentence, except that a child support order which has been registered under K.S.A. 38-16,119 and amendments thereto may only be modified pursuant to K.S.A. 38-16,119 and amendments thereto. Such modification of sentence of the juvenile offender may

1 ~~be based on the medical condition of the juvenile offender.~~

2 Sec. 2. K.S.A. 38-1665 is hereby repealed.

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

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(d) Any time after a court has committed a juvenile offender to a juvenile correctional facility the court, upon motion by the commissioner, may modify the sentence and enter any other sentence based on the medical condition of the juvenile.