

CORRECTED
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**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2588**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2588 would create new law and amend existing statutes relating to juvenile placement, the Revised Kansas Juvenile Justice Code, and the Revised Kansas Code for Care of Children.

Alternative Adjudication Procedure

The bill would create a new section in the Revised Kansas Juvenile Justice Code establishing an alternative adjudication procedure for misdemeanor-level juvenile offenses.

The bill would state the Legislature's findings that certain circumstances may lead to offenses by juveniles who are a minimal threat to public safety, and in such cases it would further the interests of society and the juvenile to use an adjudication approach with less formal procedures, appropriate disciplinary sanctions, and provision of necessary services. The bill would declare its purpose is to provide prosecutors with an alternative means of adjudication for juvenile offenders who are a minimal threat to public safety, for the benefit of the juvenile and society.

The bill would allow a county or district attorney with jurisdiction over a misdemeanor-level offense to designate

*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>

the alleged offender for the alternative adjudication either through the original complaint or by written notice filed with the court and services on the juvenile, juvenile's counsel, and juvenile's parent or legal guardian within 14 days of filing the complaint. Filing of a written application for diversion would toll the running of the 14-day period and resume upon written denial of diversion.

The bill would specify that the Revised Juvenile Justice Code would apply in the adjudication, with the following exceptions:

- If the court determines during the proceeding that there is probable cause to believe the child is a child in need of care (CINC), the court shall refer the matter to the county or district attorney, who shall file a CINC petition. The court also must refer the family to the Department for Children and Families (DCF) for services. If the court finds the juvenile should be removed from the home, the court would be allowed to place the juvenile in the temporary custody of the Secretary for Children and Families or any person willing to accept temporary custody, other than the child's parent. If the CINC case is presided over by a different judge, the county or district attorney would be required to notify the court presiding over the proceeding under this section of pertinent orders in the CINC case;
- The court could not commit the juvenile to a juvenile correctional facility for the offense or for a violation of a term or condition of disposition;
- The adjudication or violation of the terms and conditions of disposition, including placement failure, could not be used against the juvenile in a proceeding for a subsequent juvenile or adult offense. "Used against the juvenile" would be defined;

- Upon completion of the case and termination of the court's jurisdiction, the court would be required to order the adjudication expunged, the adjudication would not be subject to provisions for retention in court files or law enforcement records, and other expungement requirements, limitations, and disclosure provisions would not apply.
- The juvenile could not be required to register as an offender as a result of the adjudication;
- The juvenile could not be prosecuted as an adult or under extended jurisdiction juvenile provisions;
- Limitations on continued out of home placement would not apply; and
- Trial under the alternative adjudication procedure would be to the court and the right to trial by jury would not apply.

The county or district attorney could withdraw the designation for alternative adjudication proceedings at any time prior to the beginning of a hearing at which the court could enter an order adjudicating the child as a juvenile offender, by providing notice to the court, the juvenile, the juvenile's attorney and guardian *ad litem*, if any, and the juvenile's parent or legal guardian. The section would no longer apply, the case would proceed, and the court would be able to grant a continuance upon request.

An adjudication under this procedure would be an appealable order under the Code.

Placement in Juvenile Detention Centers

The bill would create new law within the Revised Kansas Code for Care of Children prohibiting a child alleged or found to be a child in need of care from being placed in a juvenile detention facility unless such placement is necessary to

protect the safety of the child and is authorized under certain sections of the Code, or the child is also alleged to be a juvenile offender and such placement is authorized by certain provisions within the Revised Kansas Juvenile Justice Code.

Youth Residential Centers

The bill would create new law requiring the Secretary of Corrections to take certain actions and report on such actions to the House Committee on Corrections and Juvenile Justice, the Senate Committee on Federal and State Affairs, and the Joint Committee on Corrections and Juvenile Justice Oversight by January 15, 2015. The required actions would include:

- Conducting a cost study analysis of all youth residential centers (YRCs) for juvenile offenders under contract with the Department of Corrections (KDOC), including detailed analysis of allowable expenses necessary to meet certain minimum requirements and identification of costs associated with program or other expenses that add value to services provided to juvenile offenders by YRCs beyond minimum requirements;
- Evaluating program needs within YRCs, comparing these needs with availability, and proposing modifications to align availability with needs;
- Developing a fee schedule for youth residential services, including daily payment rates for base services and rates for additions to base services;
- Developing a plan for performance-based incentive payment opportunities and a plan for integration of these payment opportunities into the fee schedule described above; and

- Developing a plan to measure performance and evaluate effectiveness of juvenile offender service providers.

Removal of Secretary for Children and Families as a Permanent Custody Option

The bill would amend the Revised Kansas Code for Care of Children to remove the Secretary for Children and Families as a permanent custody option upon the relinquishment of parental rights.

Amendments to the Revised Juvenile Justice Code

The bill would require that when a presentence investigation and report from a court services officer is ordered by a court after adjudication, such report would be required to include a summary of the results from a standardized risk assessment tool or instrument, in addition to the contents required under current law. The statute within the Kansas Criminal Code establishing the Correctional Supervision Fund would be amended to allow moneys from the Fund to be used for the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument for juveniles adjudicated to be juvenile offenders and for juvenile offender supervision programs.

The placement matrix category of serious offender II would be amended to include only offenders adjudicated for an offense which would constitute a nondrug severity level 7, person felony with one prior felony adjudication. Under current law, this category also includes severity levels 8, 9, and 10. The bill would place severity levels 8, 9, and 10 within a new category designated “serious offender III.”

The placement matrix options for the category of serious offender III would be the same as those for serious offender II, except offenders within the category of serious offender III

could be committed to a juvenile correctional facility only if the judge conducts a departure hearing and finds substantial and compelling reasons to impose a departure sentence. The bill would amend the placement matrix options for all levels of chronic offenders to include the same departure provision.

Finally, provisions excluding juvenile offenders serving minimum-term placement sentences imposed under the placement matrix from the “good time” system would be removed.

Background

HB 2588 was introduced by the House Committee on Judiciary at the request of the Kansas Judicial Council. As introduced, and passed by the House, the bill contained the provisions establishing an alternative juvenile adjudication procedure and removing the Secretary for Children and Families as a permanent custody option.

In the House Committee on Corrections and Juvenile Justice, a representative of the Kansas Judicial Council testified in support of the bill, explaining the new juvenile adjudication procedure and noting the removal of the Secretary for Children and Families as a permanent custody option would resolve a statutory conflict. A representative of DCF testified as a neutral conferee.

The House Committee amended the bill to remove the term “low-risk” from the findings and purpose subsection.

In the Senate Committee on Judiciary, the same conferees testified. The Senate Committee recommended a substitute bill containing the language of HB 2588 as it passed the House, with technical amendments, as well as modified language from Sub. for HB 2633, as described below in the background of that bill. The Senate Committee also added a provision restricting placement of a child in need of care in a juvenile detention facility.

According to the fiscal note prepared by the Division of the Budget on HB 2588, as introduced, DCF indicates the bill would shift some youth from juvenile services to DCF custody, although there is no estimate of the number of youth that might be shifted. Each child shifted to DCF custody would cost \$17,676 per year. The Department of Corrections indicated it would transfer the funding associated with any youth shifted to DCF to offset such costs. This funding transfer would result in a net fiscal effect of zero. The elimination of DCF as a possible permanent custodian would have no fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.

There is no fiscal note available for the substitute bill, but information regarding the fiscal note on HB 2633, as introduced, is included below.

Background of Sub. for HB 2633

The House Committee on Corrections and Juvenile Justice held an informational hearing in January 2014 on Juvenile Justice Reform Initiatives. Testifying at this hearing were representatives of the Kansas Appleseed Center for Law and Justice, the National Campaign to Reform State Juvenile Justice Systems, and Right on Crime and the Kansas Department of Corrections (KDOC) Deputy Secretary who oversees the Juvenile Services Division.

Following the informational hearing, the chairperson of the House Committee appointed a subcommittee to explore proposals that could reduce juvenile recidivism and lead to better systems of rehabilitation along with cost savings to the state. The subcommittee was directed to make recommendations regarding legislation and policy changes that could be implemented during the 2014 Legislative Session as well as longer-term recommendations.

After hearing further testimony, the subcommittee recommended legislation be introduced in the 2014 Legislative Session making minor-in-possession a status

offense, prohibiting certain placement options for misdemeanants and status offenders, requiring risk assessment as part of the predisposition investigation, establishing presumptive probation for certain areas of the placement matrix, and making the good time system available for all offenders. The subcommittee recommended a separate bill raising the minimum age at which juveniles may be tried as adults from 10 years of age to 14 years of age.

Accordingly, the House Committee introduced HB 2634, containing the prosecution as an adult recommendation, and HB 2633, containing the remaining subcommittee recommendations.

In the House Committee hearing on HB 2633, the KDOC Deputy Secretary of Juvenile Services and representatives of the Office of Judicial Administration and Kansas Appleseed Center for Law and Justice testified in support of the bill. A representative of the Kansas Community Corrections Association submitted written testimony supporting the bill. A DCF representative and the presiding judge of the Sedgwick County District Court Juvenile Department testified as neutral conferees. Representatives of the Johnson County District Attorney, the Wyandotte County District Attorney, and the Kansas Association of Court Services Officers testified in opposition to the bill.

The House Committee recommended a substitute bill be adopted containing the provisions related to risk assessment, language derived from the “presumptive probation” concept to allow placement in a juvenile correctional facility for certain placement matrix categories only after a departure hearing, and the “good-time” provision, as well as the language of HB 2634 prohibiting adult prosecution of juveniles under the age of 14.

The House Committee of the Whole amended the bill to add a new section containing study, planning, and report requirements for the Secretary of Corrections with regard to youth residential centers and services.

In the Senate Committee on Judiciary, representatives of the Office of Judicial Administration, the Kansas Appleseed Center for Law and Justice, the Kansas Community Corrections Association, and M+R Strategic Services testified in support of the bill. A representative of the KDOC testified as a neutral conferee. Representatives of the Kansas County and District Attorneys Association and the Wyandotte County District Attorney testified in opposition to the bill. A representative of the Sedgwick County District Attorney submitted written testimony opposing the bill.

The Senate Committee modified the language of Sub. for HB 2633 by striking the prohibition on adult prosecution of juveniles under 14 years of age and adding language separating the category of juvenile offender II from the new category of juvenile offender III so that the new departure hearing provisions would apply only to the categories of juvenile offender III and all levels of chronic offenders. The Senate Committee also made technical changes and placed the modified language into the substitute bill for HB 2588.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the DCF estimates the bill would require additional funding totaling \$1,830,539 and 27 additional FTE positions in FY 2015. \$1,817,197 of this amount would be from the State General Fund and \$13,342 would be from federal funds. This estimate is based on 3,000 additional reports and investigations of child abuse and neglect, the additional administrative and social worker specialists required to respond to these reports, and the cost of preventative family services and foster care. Total costs for the bill are estimated at \$1,810,302 for FY 2016 and \$1,829,515 in FY 2017.

According to the Office of Judicial Administration (OJA), the amendments making juvenile alcohol offenses status offenses in the original bill would have required an additional 35 court service officer FTE positions at a cost of \$1,799,805 in FY 2015. The establishment of presumptive probation for juvenile offenders also would require additional programming

and services, but an estimate of the cost to increase services is not available. OJA estimates there is sufficient existing funding to begin implementing the risk assessment tool.

The Department of Corrections indicates it would transfer any funding associated with a juvenile offender transferred to the custody of another state agency to offset the costs of each child.

Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.

There is no fiscal note available for the substitute bill.

Further Background on HB 2634

In the House Committee on Corrections and Juvenile Justice, the KDOC Deputy Secretary of Juvenile Services and representatives of the Kansas Appleseed Center for Law and Justice and the Kansas Association of Court Services Officers testified in support of the bill. A representative of the Kansas Community Corrections Association submitted written testimony supporting the bill. The presiding judge of the Sedgwick County District Court Juvenile Department testified as a neutral conferee. Representatives of the Johnson County District Attorney and the Wyandotte County District Attorney testified in opposition to the bill.

The fiscal note prepared by the Division of the Budget on HB 2634 indicates the bill would have no fiscal effect on the KDOC or on the Judicial Branch and no effect on adult and juvenile bed space figures.