

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 261**

As Agreed to March 29, 2006

Brief*

SB 261 would recodify the Kansas Juvenile Justice Code. A number of policy changes would be contained in the proposed recodification. A majority of the differences between the current Kansas Juvenile Justice Code and the proposed Revised Kansas Juvenile Justice Code, however, would be technical changes. These changes include changes in style, language, grammar, terminology, cross-references and other similar changes.

Finally, the proposed act would contain a number of organizational changes which are intended to implement the goal of reorganizing the code in a more logical manner.

The following is a brief description of the policy changes, with the section or sections of the code in which the policy changes are found.

Statute of Limitations

- The statute of limitations would be changed generally to parallel the adult criminal code and to lengthen the statute of limitations in certain instances.

Restitution

- Termination of jurisdiction would have no effect on the juvenile offenders continuing responsibility to pay restitution. (Section 4)

Court Records

- As to court records of juveniles:
 - Court appointed special advocates and juvenile community

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corrections officers are added to the list of persons who may inspect the social file;

- There would be certain time and age changes with respect to records in the custody of the Kansas State Historical Society;
- There would be a limitation on the victim's records going to the Kansas Racing Commission. (Section 9)
- Juvenile community correction officers would be added to the list of persons who may obtain law enforcement and municipal court records of juveniles under 14 years of age. (Section 10)
- Disclosure of diagnostic, treatment or medical facilities records of juvenile offenders by the Juvenile Justice Authority and the Department of Corrections would be authorized to the extent necessary for treatment of the juvenile. (Section 11)

Rape-No Expungement

- Rape would be added to the list for acts committed by a juvenile which may not be expunged. (Section 12)

Sexually Violent Crimes-School Attendance Center

- If a juvenile commits a sexually violent offense, the juvenile may not attend the same school (attendance center) as the victim. In school districts where there is only one attendance center available for both the juvenile offender and the victim, a court hearing would be required to determine what school the juvenile offender shall attend.

Fingerprinting and Photos

- Fingerprinting and photographing of alleged juvenile offenders would be allowed, but would be allowed under more limited circumstances than under current law. (Section 13)

Care Reimbursement

- Reimbursement of expenses of care or custody of juveniles would be changed to state that when a county has paid

expenses for an alleged or adjudicated juvenile offender, those expenses may be assessed to the person legally responsible for the care of the juvenile. The hearing for challenging such an assessment is no longer automatic, but must be requested. (Section 15)

Insurance Portability

- Language would be inserted to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). (Section 16)

AIDS Testing

- Parents of minor victims would be added to the list of persons who get notice of availability of AIDS testing and are given the right to request the person charged be tested. (Section 17)

Alibi or Mental Disease

- The time requirement for giving notice of alibi or mental disease or defect would be changed from within five days of the initial appearance, to not less than 10 days prior to the adjudicatory hearing. (Section 29)

Taking into Custody

- Juvenile Justice Authority supervising officers would be added to the list of persons who may take a juvenile into custody. (Section 30)

Adoption and Safe Families

- Language implementing the Adoption and Safe Families Act of 1997 would be inserted throughout the code. (Sections 31, 34, 35, 61, 67 and 68)

Self-Destructive Behavior

- The current requirement that if a juvenile is taken into custody for exhibiting assaultive or destructive behavior, such behavior must continue after the juvenile is taken into custody for the juvenile to be placed in a detention facility, would be removed and self-destructive behavior would be added to the list of behaviors. (Section 31)

Service of Process

- The service of process section would be changed to refer to service of process under the Code of Civil Procedure. This would be a slight expansion of present authority but would simplify service and keep the code consistent with future changes in the Code of Civil Procedure. (Section 38)

Name of Hearing

- The name of the hearing held under the current KSA 38-1633 would be changed from "pre-trial hearing" to "first-appearance." (Section 44)

Law Officer-Issue Summons

- Law enforcement officers would be allowed to issue a summons under the immediate intervention program statutes if the local prosecutor has adopted policies and guidelines giving that authority. (Section 46)

Prosecution as Adult

- The designee of the county or district attorney (not just the county or district attorney) would be authorized to file a motion for prosecution as an adult. If the juvenile is not convicted, the authorization for prosecution as an adult would not automatically apply to future prosecutions. (Section 47)

Competency

- The court would appoint one, rather than two, licensed psychiatrists or psychologists to examine a juvenile to determine competency and the court would be allowed to excuse the alleged juvenile offender from the hearing if it would be injurious to his or her health to attend. (Section 48)

Best Interests of Victim

- The best interests of the victim would be added to factors to consider in deciding whether a hearing should be closed. Currently, only the best interests of the alleged juvenile offender are mentioned in the statute. (Section 53)

Sentencing Risk Assessment

- The statutory requirement for designation of a statewide sentencing risk assessment tool would be eliminated and the statute would be changed to allow the court to address expenses with reference to all four information gathering tools, not just psychological evaluations. (Section 60)

Restitution Orders-Judgements

- Several policy changes would be made in the sentencing area. Restitution orders would be declared to be judgements, which may be enforced by civil process, even after termination of the court's jurisdiction over the juvenile; the maximum amount of a fine would be increased from \$250 to \$1000 and a fine would be considered a judgement against a juvenile offender that may be enforced by civil process, even after termination of the court's jurisdiction. (Section 61)

Sanctions' House

- The term for the initial commitment to a sanctions' house would be increased from 7 to 28 days. (Section 61)

Foster Parents

- The provisions relating to foster parent reporting would be made discretionary. (Section 65)

Probation or Placement Violation Hearings

- The requirement that a hearing automatically be held on an alleged probation or placement violation would be changed. The hearing will be held only if requested by the commissioner, a parent, one of the parties or on the court's own motion. (Section 68)

Prior Criminal History

- Prior person or nonperson felonies would be counted the same as two misdemeanors. (Section 69)

Rules and Regulations Required

- The Juvenile Justice Authority would be required, rather than

authorized, to adopt rules and regulations relating to good time credits and good time credits would be limited to 20 percent of the sentence length. (Section 70)

Admission Date

- The date of admission to a Juvenile Justice Authority facility would be required to be no more than five days after the notice to the committing court. (Section 73)

Notification Changes

- Non-drug crimes ranked a severity level 4 or 5 and drug crimes ranked at severity level 3 would be added to the list of crimes which, if committed by the juvenile offender, would require the Commissioner to give notice to certain persons, if the juvenile is still required to attend school and his or her release is nearing. In addition, the victim would be added to the list of persons who are to receive notice of discharge. (Section 77)

Appeals from Magistrate

- Appeals from district magistrate judges would be by trial *de novo* unless parties agree to a *de novo* review on the record of the proceedings. The right of the juvenile to call witnesses on appeal would be eliminated. (Section 82)

Good Time Credits

- Good time credit calculations would be calculated according to procedures contained in rules and regulations adopted by the Commissioner.

Conference Committee Action

The Conference Committee agreed to all House amendments. In addition, the Conference Committee agreed to add a provision now contained in HB 2576 dealing with criminal penalties for sex offenders to provide that if the sex offender who commits a sexually violent crime is a juvenile, the court shall issue an order prohibiting the respondent from attending the school (attendance center) that the victim attends. If there is only one attendance center in the school district, a hearing must be held in district court to determine the appropriate attendance center for the juvenile offender.

Background

SB 261 incorporates the recommendations of the Juvenile Offender/Child in Need of Care Advisory Committee of the Kansas Judicial Council for the recodification of the Kansas Juvenile Offenders Code. The recodification study was begun in 2000 after the Legislative Leadership requested the Kansas Judicial Council undertake the study.

Conferees who testified in favor of SB 261 included representatives of the Kansas Judicial Council and its Juvenile Offender/Child in Need of Care Advisory Committee and the Kansas Juvenile Justice Authority.

Suggestions for amendments were made by a district judge from Sedgwick County; the Office of Judicial Administration; a representative of the Sedgwick County District Attorney's Office; and the Kansas County and District Attorneys Association.

The Senate Committee amended the bill to make the jury trial provisions permissive instead of mandatory (Section 57); limit good time credit for juvenile offenders to 15 percent of the placement sentence for offenses committed on or after July 1, 2006 (Section 70); add a fifth option (due to the risk the juvenile presents to public safety) for the court to choose when determining if reasonable efforts to prevent the removal of the juvenile from his or her home are not necessary; change language in several sections dealing with findings a judge would need to make when dealing with removal of a child from custody of parents to comply with the federal Adoption and Safe Families Act of 1997. Sections 31; 34; 35; and 68 delete the authority of the county or district attorney to establish child support in certain instances and return this duty to the court (Section 19); clarify that the standard of proof would be preponderance of the evidence regarding the determination of whether conditions of probation or placement have been violated (Section 68); change the effective date of the bill to January 1, 2007; and make a number of other technical changes.

The Senate Committee of the Whole increased the amount of good time credit from 15 percent to 20 percent.

The House Committee deleted the entire provision regarding specific amounts of good time credits. Other changes would be technical and clarifying.