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Legislative Research Department July 29, 1975

SPECIAL COMMITTEE ON JUVENILE MATTERS

July 11, 1975
(Room 517)

Members Present

Representative David J. Heinemann, Chairman
Senator Arden Booth, Vice-Chairman
Senator Jan Meyers
Senator Robert B. Madden
Senator Jim Parrish
Representative Fred Lorentz
Representative Michael Glover
Representative Joseph Norvell
Representative Ardena Matlack
Representative Neal Whitaker

Staff Present

Myrta Anderson, Legislative Research Department
Walt Smiley, Legislative Research Department
Mary Torrence, Revisor of Statutes Office

Others Present

Dean J. Smith, Juvenile Judge, Wyandotte County
Jack C. Pulliam, State Department of Social and Rehabilitation Services
Barbara Sabol, State Department of Social and Rehabilitation Services
Robert Harder, State Department of Social and Rehabilitation Services
Alleen Morris, KCCD, Topeka
David B. Dollam, Division of the Budget
Fred Holloman, Manhattan
Mike McLain, Johnson County Juvenile Court, Olathe
Bill Haynes, Johnson County Juvenile Court, Olathe
Ann Hebberger, L.W.V.K., Overland Park
Francis Jacobs, State Department of Social and Rehabilitation Services
Diane Simpson, KCCD, Salina

Others Present (Cont'd)

Patrick B. Augustine, Ellis
Woody D. Smith, State Department of Social and Rehabilitation Services
Charles V. Hamm, State Department of Social and Rehabilitation Services
Dr. Robert Schulman, Professor of Law, Kansas University, Lawrence
Mr. Friesen
Judge Donald Farr, Juvenile Judge, Finney County

Morning Session

Representative David Heinemann, Chairman called the meeting to order and introduced the staff and secretary and made a few introductory comments pertaining to the planning meeting, the background of the proposal, and the agenda for the day. He stated the purpose of the first meeting was to hear a background discussion of the juvenile code by Dr. Robert Schulman, Kansas University, and Judge Donald Farr, Finney County, and staff of the State Department of Social and Rehabilitation Services. Staff then presented a brief review of Proposal No. 30 - Juvenile Code. The project will include:

1. A review of the juvenile code including the role of SRS and the court, the definition of juvenile offenses, guidelines for certification to the district court and recent cases;

2. A study of the court staff including the relationship with SRS and other agencies and consideration of an office of juvenile probation under the supreme court;

3. A study of placement of juveniles including state participation in financing care; and

4. A study of the Interstate Compact on the Placement of Children.

Future meetings might include further testimony from SRS, other juvenile judges, Kansas probation officers, League of Women Voters, local law enforcement agencies, Kansas Council on Crime and Delinquency, staff of youth facilities, State Department of Education, etc. Staff gave a brief review of two articles giving background information in the area of juvenile problems. The first "Children's Liberation - Reforming Juvenile Justice," and the second "The Juvenile Court System - An Overview". In addition, a brief summary of the Attorney General's Guide to the Juvenile Code was given and copies distributed to the Committee.

Some questions to be considered by the Committee include:

1. Is court staff adequate to handle case load or should there be an office of juvenile probation under the Supreme Court?

2. What should be the role of the state with respect to placement of juveniles? To what extent is there and should there be state participation in the financing of care?

3. Consider a statewide system for standards and training of juvenile probation officers, as recommended in the 1974 interim study committee report.

4. What should be the requirements and the role of the juvenile judge? Consideration of a district rather than a county approach relative to the juvenile court.

5. Further study of the detention procedure, and adjudicatory and dispositional hearings.

6. See Attachment No. 1 for some specific suggestions from SRS as to revisions in the Juvenile Code and Interstate Compact.

Dr. Robert Harder then presented material prepared by the Social and Rehabilitation Services to the Committee, (see material under SRS in notebooks) and briefly summarized the material.

Part I

1. Background Information on Juvenile Programs Since 1966, November 18, 1974

2. Minutes of Advisory Committee to the Division of Services to Children and Youth - Relating to the Kansas Juvenile Code - February 14, 1975.

3. Guidelines of the State Department of Social and Rehabilitation Services for Working with Juvenile Courts - April 5, 1974.

4. Points of Agreement Between a Representative Group of Juvenile Judges and SRS - June 13, 1974.

5. Juvenile Judges and SRS Meetings (March and April, 1975).

6. Letter of Invitation to Judges to Review Proposed "Services to the Courts" Section of the Service Manual, March 20, 1975.

7. Services to Courts Manual Section.

Part II

1. Dr. Harder's Letter to Juvenile Judges Regarding Method of Payment - June 6, 1975.

2. Statistics by Counties Number of ADC-FC (Aid to Dependent Children - Foster Care),GA-NC (General Assistance - Needy Child), GA (General Assistance) Child Cases by County.

3. Referral Statistics from Court to the Department of Social and Rehabilitation Services Institutions.

4. Youth Placement Capacity (Institutional , Residential Centers, Group Homes).

5. Out-of-State Placement Policy - July, 1975.

6. Placement Recommendation from Diagnostic Unit, Youth Center at Atchison, June, 1974 - June, 1975.

7. Follow-up Study - Osawatomie Youth Rehabilitation Center Students Outside OYRC - June 21, 1975.

8. Juvenile Crime Statistics.

Part III

1. Statewide Addendum - Senate Bill No. 577 - July, 1975.

2. Priority of Need Survey.

3. Grant Solicitation Announcement for Fiscal Year 1976 Funds.

4. Listing of Senate Bill No. 577 Projects Funded for Fiscal Year 1974 and Fiscal Year 1975.

5. Budget Appeal Including Summary of Evaluation of Senate Bill No. 577 Projects.

Dr. Harder also presented two large maps of the State of Kansas illustrating material prepared by his agency, including density of juvenile cases per county, placement, etc.

Dr. Robert Schulman, Professor of Law, Kansas University, then made some introductory comments about the Juvenile Code. He said there is increasing interest in the area of juvenile problems and outlined some of the problems with respect to detention and custody. He discussed the role of the probation officer and how his function differs from that of the peace officer. He outlined some of the problems that arise in dependent and neglected child cases, the length of time that a child can be held before a hearing

is held, the need for care and treatment facilities for 16 and 17 year old children under SRS and not under the corrections system, and the role that law school students are performing in the juvenile court systems as interns. He made further comments on the article, "The Juvenile Court System - An Overview" by Hartley, mentioning that he is now head of the Young Lawyers Association. With respect to the relationship between SRS institutions and correctional institutions, he felt children should not be incarcerated until necessary.

In response to a question concerning the role of the probation officer and his relationship to the juvenile judge, he stated that the probation officer functions at the discretion of the judge and many times his role depends on what the judge determines it should be. He pointed to the conflict in the role of the juvenile judge who is sometimes presented with difficulties in performing two functions. He must first hear the case and then make judgement on it. Sometimes these are conflicting roles. He performs investigatory functions but also functions as a prosecutor.

A brief summary of the question and answer period followed.

Q: Can status offenses be handled in some other way rather than through the court system?

A: The judge should be allowed to consider the juvenile as a person and how he will fit into the juvenile court system. He should consider what kind of juvenile he is and focus on that consideration rather than the offense. In a sense this question raises the issues presented in Kent v. State (1966). The Court stated that a state's functioning in a parental relationship is not an invitation to procedural arbitrariness. This case was concerned with the inadequacy of procedural safeguards in the certification process. During the certification process, an investigation is made to determine whether or not jurisdiction should be waived and the juvenile tried as an adult. The procedure for making this investigation has a great impact on the youth's opportunity to prevent his removal to the criminal court. The court must hold a hearing and the youth is entitled to have counsel at such proceedings.

Q: In what sense is the problem of wayward children influenced by the vagueness of the statutes? If you handle these cases outside the court system what procedure do you follow?

A: You might want to work out some informal procedure for handling these cases and in the future you might want to consider formalizing what is now an informal procedure. A "wayward child" means a child less than 18 years of age (1) whose behavior is injurious to his welfare; (2) who has deserted his home without good or sufficient cause; or (3) who is habitually

disobedient to the reasonable and lawful commands of his parent, guardian or other lawful custodian. The definition of wayward is important because the adjudication of waywardness three times and of miscreancy three times forces the juvenile to become a delinquent. Sometimes the problem of the wayward child can be handled by an informal probation period. Both the Kent and Gault decisions have been concerned with what constitutional rights should be accorded juveniles. In a sense the role of the court is changing. At one time the court functioned as a social agency and was wearing two hats. The court cannot perform both of these roles and is now functioning as a court.

Q: Who makes the decision as to whether a case will be handled in a formal or informal manner?

A: Sometimes this discretion is given to the county attorney or district attorney and sometimes this decision is made by the juvenile court. The statistics reported on juvenile cases are related to the discretion that the court uses in determining whether or not a hearing is formal or informal. In many cases the decision is made on an informal basis and the case is not reported. Some counties handle fewer official cases as a result.

Q: How do you feel about the progression of statutory cases, i.e., three times wayward adjudication and of miscreancy three times forces juveniles to become delinquent?

A: Basically I am opposed to this, being adjudicated as a wayward five or six times should not mean that the person is escalated to miscreant. Related to this problem is the fact that girls are more likely to be involved in status offenses and boys in those offenses that are definable by the criminal code.

Q: Isn't there a protection for this problem in the juvenile code in that the guardian ad litem can appeal the case?

A: There is some question as to whether or not this provides enough protection. Under the appointed system of attorneys the procedure sometimes turns out to be inadequate. It varies from county to county and in many places attorneys will not take the cases. In some cases the guardian ad litem is too attached to the court and due process is denied. Related to this is the problem of uniformity in fees paid to the guardian ad litem. This is an area that the Bar Association should become more interested in and there needs to be further

education of the Bar in this field. A possible solution is the establishment of a law guardian system as in New York and in some areas the Legal Aid Society handles these problems. Related to this is the fact that in Kansas around 80% of the juvenile judges are not attorneys but lay judges. There is some question as to whether or not the constitutional rights of juveniles are being adequately safeguarded under the lay judge system.

Q: Please comment on the problem of termination of parental rights and the child who is too difficult to handle at the Youth Center, is a runaway, etc.

A: The child who is a runaway should be handled very carefully. As I said previously this is related to the age problem and to the fact that every person should be considered individually. It could happen to a 13 or 14 year old child who might then end up in Hutchinson, if the case is not handled properly.

As far as parental rights and the severance issue are concerned this is a two-step process. First, the child is declared as a dependent and neglected child and then the parents are declared unfit. There is not a good definition of parental unfitness in the statutes. Sometimes this is defined as "moral turpitude", "unsuitability for intended purpose" and, in addition, a parent might be found to be fit for one child and not for another.

Another factor to consider is temporary custody pending a hearing and holding a detention hearing within 48 hours. Both of these procedures need to be reviewed.

Q: What do you do about the judge who puts a juvenile in jail to teach him a lesson, etc.?

A: I don't believe this procedure is a very good idea; the problem goes back to the qualifications of the judge and informing the juvenile of his rights.

Further discussion followed as to the role of the social worker in appealing cases, requesting a writ of habeas corpus, role of field attorneys, time limits for detention hearings and possible waiver in detention hearings. In addition the confidentiality of juvenile records was discussed and the possibility of juveniles being harassed for identification.

A member of the Committee suggested excluding Saturday, Sunday and legal holidays regarding the 48-hour holding period. The judges present did not indicate this to be a problem. Judge

Smith, Wyandotte County, spoke regarding the detention hearing. He stated they have created a waiver of detention which must be signed by the guardian ad litem. In Wyandotte County no child is removed from home without a court order. Judge Haynes of Johnson County indicated the waiver of detention would be a favorable asset to the juvenile courts.

Afternoon Session

The Chairman called the meeting to order at 1:30 p.m.

Judge Donald Farr, Juvenile Judge, Finney County, presented information on the juvenile code and the role of the courts. He said it had been proposed that a juvenile probation office be set up under the control of the Kansas Supreme Court. In many of the counties with juvenile courts there is no probation officer available.

Judge Farr outlined the court procedure for juvenile cases. He said that in detention hearings it is sometimes difficult to get an attorney to represent someone as guardian ad litem. He suggested that instead of the 24 hour period that a 36 hour period be considered as the time limit for detention hearings including Saturday, Sunday and holidays. After the petition is signed and the guardian is present the juvenile court is no longer functioning in a civil capacity. With the advent of the Gault and Kent decisions the juvenile court has become a criminal court. He said there is a conflict in the roles of the court functioning in both civil and criminal areas.

Judge Farr then discussed placement of juveniles. He said some are kept in the home, some under probation at home, some under care, custody and control of the SRS, group care homes, etc. Sometimes the county may refuse to finance the care and the child is institutionalized. Judge Farr outlined the institutionalization procedure, i.e., offenses require facilities available, age considerations, relationship to courts, etc. He said Kansas was in compliance with the requirements of the Gault case before it came up. He suggested that other judges might be considered for testimony in future meetings.

Further discussion focused on the issue of guardian ad litem, i.e., who is considered for such cases, problems of fees, etc. In response to questioning concerning reporting of juvenile cases, it was brought out that SRS requests annual reports from judges, however, as previous testimony indicated, many cases are handled on an informal procedure and are not reported.

With respect to qualifications of juvenile judges, Judge Farr said he thought it was up to the individual judge to train himself, that frequently it is a problem of salary in getting

judges to take a position at the salary offered. In a number of counties the judge also performs other functions and serves as probate, county and juvenile judge. It was pointed out that the time spent on juvenile cases varies. In some cases attorneys spend as little as 20 minutes on a case and in others as long as three hours; it depends on the case, the attorney and the juvenile.

Another area of questioning involved the problem of truancy law, (K.S.A. 72-1113) which outlines the procedure for reporting to the juvenile court. It was suggested that this procedure presents a conflict for dispensation of juvenile cases.

In response to a question concerning whether social workers need more jurisdiction, it was pointed out by SRS staff that social workers have been concerned about this area. They are also concerned about the problems of professional liability insurance.

The question was brought up as to how specific the juvenile code should be and how much discretion should be left to the judge. It was suggested that there should be specific guidelines as to how the court should operate up to adjudicating with respect to delinquency, miscreant and wayward cases. SRS staff indicated they had objections to the judge writing specific directions in journal entries spelling out the direction of the treatment process. It was suggested that this pointed up the unresolved relationship between SRS (as a social agency) and the courts (as an arm of the judicial system).

The question was raised as to how it is determined whether or not to have a formal hearing. The example was given of 11 and 12 year old boys involved in minor theft as an example of a case that might be handled outside the court system, rather than put them in the criminal records system. Usually the determination is made on a case-by-case basis. Thursday and Friday arrests are hard to be adjudicated by Monday; this problem is related to the accessibility of attorneys.

Additional information was distributed to the Committee by Dr. Harder of SRS (see Attachment No. 2). The question was asked as to whether there is any problem with having a provision in the juvenile code for not allowing the social worker to remove a child from a home. It was stated that there is now more hesitation because of the emphasis on individual rights. The immunity provision passed in the last session helps but there is still hesitation on the part of the social worker. Dr. Harder stated that SRS had responded within 24 hours on 50% of filed complaints but that professional liability is a great concern.

Discussion followed on a study developed recently which indicated that the executive branch had been encroaching on the judicial and legislative branches. Dr. Harder said he interpreted the code to say to the judge -- here are a number of possibilities -- SRS is one with respect to placement, and financing. He said he felt the judges were saying the other possibilities were not working out. Parents are too hard to get money out of and commissioners and the county general fund are also too difficult a

source for funds, so they come to SRS to seek partial payment but keep court control.

Further discussion involved the subject of care, treatment and placement alternatives, role of provider groups, problems of financing, relationship to welfare system, etc. It was suggested that the terms, jurisdiction, custody and commitment be specifically defined in the statutes. The question was raised as to when a child is committed to SRS whether this means complete jurisdiction or partial jurisdiction.

The Committee decided that for the meeting on July 22 and 23 that the first day be devoted to testimony by juvenile judges and SRS on the juvenile code and the second day be devoted to the general question of establishing an office of juvenile probation under the Supreme Court.

Prepared by Myrta Anderson

Approved by Committee on:

August 29, 1975
(Date)

Juvenile Code

1. Define parental unfitness.
2. Define and spell out or distinguish procedures, kinds of testimony, reports, etc., for:

    a. Ajudicatory hearing
    b. Dispositional hearing

3. Temporary custody pending a hearing--need stronger requirements for a hearing as soon as possible in order to forestall its misuse in keeping children in custody indefinitely without a hearing.
4. The detention hearing within 48 hours--according to some of the juvenile judges this is so impractical and impossible to follow that it seems there needs to be some changes to correct the current defects.
5. It is hoped that the Juvenile Code can be revised to require that journal entries specify reasons or give the actual evidence for the finding of dependency and neglect and parental unfitness.
6. It is hoped that there can be a provision included in the Juvenile Code to the effect that when SRS receives temporary custody pending a hearing that SRS receive notice of a continuance and/or the date of the hearing and that if we receive no such notice that within a specified period of time, we shall return the child to the parents.
7. It is hoped that the Juvenile Code can be revised to specify that there shall be no general continuances.
8. It is hoped that the Juvenile Code will be revised to clarify the legal status of a child when he reaches age 18.

The Interstate Compact on the Placement of Children

The model act does not have a provision for a penality for failure to comply.

A. Booth -

Attachment No. II

INTRODUCTION

Recent amendments to the Kansas Juvenile Code as set forth in Chapter 38 of K.S.A. 1974 Supp. have raised procedural issues. These issues should be discussed in order to arrive at a proper construction of the new statutes or in the alternative to ask the legislature to clarify the statutes.

QUESTION PRESENTED

Prior to filing a petition pursuant to K.S.A. 38-816, what is the proper procedure for taking temporary custody of a child who appears to be dependent and neglected?

Discussion

K.S.A. 38-815, 1974 Supp. states:

> (b) When any peace officer takes into custody a child under the age of 18 years, with or without a warrant or court order such child ... shall be delivered into the custody of the Probation Officer or be taken forthwith before the Juvenile Judge...
>
> (e) Whenever a child under the age of eighteen (18) is taken into custody by a peace officer and is thereafter taken before or referred to the Juvenile Court as required by this section, such child shall not reamin in any detention or custody, other than the custody of the parent, guardian or other person having legal custody of the child for more than forty-eight (48) hours excluding Sundays and legal holidays, from the time the initial custody was imposed by a peace officer, unless a determination is made, within such forty-eight (48) hour period, as to the necessity for any further detention or custody in a detention hearing as provided in Section 4 [38-815(b)] of this act.

Arguably, the answer to the question concerning temporary custody, pending the filing of a petition is found in this code section.

To develop the argument, it is necessary to assume that dependency and neglect actions can be intitiated under this section in cases requiring immediate action. I point out this assumption since reading

K.S.A. 38-815, 1974 Supp. en toto gives the impression the section was conceived by the revisors as a set of guidelines for the process of detaining youth who have committed acts of delinquency, miscreancy, waywardness or traffic offenses and did not contemplate the inclusion of dependency and neglect actions.

Making the above assumption the argument is as follows: Code Section K.S.A. 38-815(b), 1974 Supp., implies that peace officers are persons authorized to take a child into custody with or without a warrant or court order. K.S.A. 38-815(a) defines a peace officer to include Sheriff's and their deputies, Marshals, members of the police force of cities, highway patrolmen and other officers whose duty it is to enforce the law and preserve the peace.

Consequently, if a protective service worker, teacher, probation officer, doctor or other person who works with children should encounter what appears to be a dependent and neglected child and there are concomitant circumstances which call for immediate action the proper procedure is to call a "peace officer" who will take custody of the child and deliver the child to the Juvenile Court. Once detained by the "peace officer" the Juvenile Court will then have forty-eight (48) hours to decide the propriety of continued detention.

While this seems a proper and orderly procedure there may be Juvenile Courts which will be reluctant to implement such a procedure.

A primary reason for this is that very few law enforcement agencies have juvenile divisions. Consequently, many officers may be reluctant to take custody of a child on recommendation of someone other than a superior officer.

Furthermore, social workers and Juvenile Court workers are normally more experienced and better trained than peace officers to determine when a child appears dependent and neglected and should be detained. Arguably, these are the people who should be empowered to detain children in dependency and neglect actions.

Finally, if a law enforcement vehicle must be dispatched to take custody of a child, community knowledge of the families problems may be increased and any accompanying malevolence exacerbated.

Also, the family may become very uncooperative because of the increased adversity of the proceedings. Under most circumstances a court worker or social worker can talk the parents into relinquishing temporary custody. Peace officers can always be called by a worker as a last resort.

Considering the above, it may be that alternatives should be investigated. Perhaps a separate section should be placed in the code to deal with the question in a more definitive manner or possibly the definition of "peace officer" could be expanded to include workers who deal with dependency and neglect cases. On the other hand, possibly we should push for Juvenile divisions within our law enforcement agencies in an attempt to implement the alleged intent of the legislature.

Another possible solution to the question is found in a combination of K.S.A. 38-823, 38-819 and 38-815(b), 1974 Supp.

K.S.A. 38-823, 1974 Supp. states:

> (a) Prior to or during the pendency of a hearing on a petition filed pursuant to K.S.A. 38-816, the juvenile court may allow the child named in such petition to remain in his own home ... or order temporary detention or custody as provided in K.S.A. 38-819, as amended.

If a juvenile court receives information that a child is dependent and neglected the court could begin a detention proceeding by relying on

this section. Before the amendment, section 38-823 was worded "pending a hearing" instead of "Prior to or during the pendency of a hearing on a petition". It is arguable that "pending a hearing or during the pendency of a hearing" means that a petition must be filed since a hearing could not be pending unless a petition were on file. It is further arguable that the added wording "prior to", in the amendment must be construed as prior to a petition being filed since any other construction would render the added wording meaningless.

Such a construction assumes the legislative intent to allow temporary custody prior to the filing of the petition. The opposing argument is that a petition must be filed before K.S.A. 38-823, 1974 Supp., can come into play. The alternative construction would be based on the argument that if "pending a hearing" means that a petition must be on file then "prior to a hearing" must also mean that a petition must be on file. The reason being that both phrases contemplate a hearing and a hearing can only occur if a petition is on file. Proponents of this approach fortify their argument by pointing out that under 38-823 the juvenile court can order temporary custody of "the child named in such petition". [emphasis added]. This is another implication that a petition must be on file.

By initiating the temporary detention procedure under 38-823 the court is referred to K.S.A. 38-819, 1974 Supp. This section states:

> (a) Prior to or during the pendency of a hearing on a petition to declare a child to be ... dependent and neglected, filed pursuant to K.S.A. 38-816, the juvenile court may order that such child be placed in some form of temporary detention or custody ... but only after a determination is made as to the necessity thereof in a detention hearing as provided in section 4 [38-815b] of this act.

K.S.A. 38-815(b) states:

> (a) Whenever there is required to be a determination as to the need for any detention or custody of a child in a detention hearing under this act, the juvenile court shall immediately set the time and place for such hearing and shall appoint a guardian ad litem for the child ...
>
> (b) Notice of the detention hearing setting forth the time, place and purpose of such hearing and of the appointment of a guardian ad litem shall be given immediately to the child, to the guardian ad litem, and, if he can be found, to the parent ... Written notice of the detention hearing ... shall be served at least twenty-four (24) hours prior to the time set for the detention hearing ...
>
> (c) The juvenile court may order temporary custody ... under this section after determining that: (1) The child is dangerous to himself or others (2) The child is not likely to appear at a hearing for adjudication ... or (3) The health or welfare of the child may be endangered without further care.

Capsulized, the proper procedure is that 38-823 authorizes temporary custody prior to filing a petition if K.S.A. 38-819, 1974 Supp. is complied with by the court. K.S.A. 38-819, 1974 Supp., empowers the court to order temporary custody of a dependent and neglected child if it is determined in a detention hearing pursuant to 38-815(b) that the child is dangerous to himself or others, not likely to appear or may in some way be endangered without further care.

The problem presented by this procedure for the court is as follows:

Under 38-815(b) notice of the hearing time and the reason for the hearing must be served on the parents and the child at least 24 hours prior to the detention hearing. If the child is not likely to appear at a hearing for adjudication it seems highly unlikely that he will appear at a hearing to determine the necessity for temporary custody.

This risk is compounded in dependency and neglect cases where parents who are ashamed or angry at being scrutinized by the court take the children and leave the jurisdiction.

Possible solutions to the problem are (1) to initiate a detention hearing pursuant to 38-815; or (2) have a law enforcement agency surveil the family until the hearing.

Prepared by Larry Vernon.