

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY-B

July 25 and 26, 1977

Room 528, State House

Members Present

Representative E. Richard Brewster, Chairman  
Senator Ron Hein  
Senator Joe Norvell  
Senator Jim Parrish  
Representative Ben Foster  
Representative Mike Glover  
Representative Fred Lorentz  
Representative Phil Martin  
Representative Kent Roth

Staff Present

Art Griggs, Revisor of Statutes Office  
Phill Jones, Kansas Legislative Research Department  
Paul Purcell, Kansas Legislative Research Department

Others Present

Senator Elwaine Pomeroy, Chairman of the Special Committee on Judiciary-A

July 25, 1977

Morning Session

Chairman Brewster called the meeting to order at 10:00 a.m. and directed the Committee's attention to Proposal No. 82.

Proposal No. 82 - LEAA Requirements: Criminal  
History Records

Colonel William Albott, Director, and Mr. Carey Brown and Mr. Dwayne Sackman of the Kansas Bureau of Investigation were the conferees on this proposal. Colonel Albott stated that Senate Bill No. 406 would have solved most of the problems as far as privacy and security are concerned. He stated that conviction information is now available without limit and that non-conviction information is restricted to the criminal justice community unless state law or court order says otherwise. A summary of additional comments by Colonel Albott are contained in Exhibit 1.

Proposal No. 39 - Expungement and Annulment

Colonel William Albott said that the use of two different words is confusing and that the word "seal" would be a better word to use. He feels that a lie is a lie but that expungement and annulment statutes say it is not. He pointed out that those whose records are expunged or convictions annulled can become police officers or lawyers. He said that a person who was arrested but not convicted has less recourse than a person

convicted. He said that even though expungement and annulment were available, the knowledge of a crime cannot be erased from people's minds. He believes that if a person is old enough to commit a crime he or she is old enough to take the rap for it and that a young man needs an incentive to walk the straight and narrow path.

Dwayne Sackman pointed out that even though records can be expunged an investigator can find out that there was a conviction because the records would reflect a progression toward conviction and then at a certain point there would be a wall blocking out further information. The only logical conclusion would be that an expungement or annulment had taken place.

Colonel Albott explained that if you are not a member of the National Crime Information Center you do not get any information out of that system nor do you put any information in. He also noted that the federal government treats expungement and annulment differently. Additional comments are contained in Exhibit 2.

Mr. Jim Wallace, Independent Insurance Agents of Kansas, discussed the annulment of driving violation convictions and its application to insurance rates. The statute in question is K.S.A. 1976 Supp. 12-4515. It was noted that expungement of these types of convictions were being done summarily and, as a result, insurance companies can no longer separate good drivers from bad drivers. Because of this, safe driver plans would have to be discontinued. Mr. Wallace suggested that annulments continue to be authorized but only after the expiration of three years from the date of conviction.

#### Afternoon Session

#### Proposal No. 40 - Determinate Sentencing

Staff reviewed a memorandum on determinate sentencing, a copy of which is in Committee notebooks.

The first conferee was Representative Loren Hohman who reviewed House Bill No. 2506. He said that the main purposes of the bill were the deterrence of juvenile offenders, the protection of society, and possible rehabilitation. He stated the bill does not address the problem of plea bargaining. It does, however, have both determinate and mandatory sentencing aspects.

Mr. Gene Obley, adult probation officer with the Shawnee County Court Services, said that the bill will triple the number of inmates in an already crowded prison. He believes that few people will plead guilty under H.B. 2506 and, as a result, the court docket will triple and the county or district attorney's staff will have to be increased. He said that H.B. 2506 will not leave the judge any option in sentencing. He stated that it costs about \$10,000 per prisoner per year whereas the cost per person on probation is \$500 per year.

Captain Dale Collie of the Topeka Police Department, representing the Fraternal Order of Police of the State of Kansas, said that mandatory sentencing for the career criminal is a must. He said that the juvenile offender should be subject to mandatory sentencing and that H.B. 2506 does not do this. He noted that over one-half of the crimes being committed are juvenile crimes. He said that the Habitual Criminal Act only gives larger sentences but the criminal is still eligible for parole at the same time as one not sentenced under that act. He believes there is a need for mandatory sentences for repeaters. He said there is too much probation and plea bargaining occurring in the current system.

Officer Will Dickey of the Topeka Police Department said the sentences set forth in H.B. 2506 were almost identical to the sentences under the new California determinate sentencing law. He indicated that the bill would aid the willingness of witnesses to testify because it would eliminate a prospective witness's fear of reprisal. He felt that law enforcement personnel want mandatory sentences for the crimes listed in H.B. 2506 and that their main concern is for the victims of crime.

Mr. Ira Kirkendoll, Public Defender of Shawnee County, stated that the sentences set out in H.B. 2506 are excessive. He suggested that a better approach would be community correction through intensive probation services. The use of fines is also a valuable and

viable alternative to imprisonment. He believes that the amount of time a criminal spends in prison should be kept to a minimum if rehabilitation is a goal of the correctional system. He said that at the present time little rehabilitation was taking place. He noted that it was really the Secretary of Corrections and not the Kansas Adult Authority who determines who gets parole and who does not.

July 26, 1977  
Morning Session

Proposal No. 40 (Cont'd)

Mr. Devon Knoll, Director, Kansas Adult Authority, said two of the issues were whether determinate sentencing offered sufficient public protection and whether it has the ability to recognize certain treatment programs. He suggested that offenders convicted of felonies A through C be required to serve a mandatory minimum term less earned good behavior credits. He also suggested that Kansas establish realistic maximum sentences which, in turn, would allow better parole selectivity. He said that it is the Adult Authority that established good time credits at the present time, but it is the institutional staff that administers the awarding and revocation of credits.

Mr. Leo Jenkins and Mr. Leo Taylor, Deputy Secretaries of Correction, were the next conferees. Mr. Jenkins pointed out that indeterminate sentencing results in sentencing disparity and that mandatory sentencing will cause persons to serve longer periods of time which will increase the prison population. Mr. Taylor said that there is a tendency to overrestrain persons when they are incarcerated. He believes that flexibility and judicial discretion need to be preserved especially where there are mitigating or aggravating circumstances.

Dr. Karl Targownik, Clinical Director of the Kansas Reception and Diagnostic Center, said that flexibility was needed and that indeterminate sentences were preferable. The cost of testing a person at KRDC is \$45.80 per day and the average stay is 20 to 23 days. He stated that whenever a person is deprived of his or her liberty, it is perceived as punishment and not rehabilitation. He pointed out that the behavioral sciences are never exact sciences and, as a result, no universal formula will be found.

Mr. Kenneth Oliver, Warden, Kansas State Penitentiary, said there is no way of telling which program changed an inmate. With regard to good time credits he said that the philosophy was to have credits as a primary means of insuring compliance with rules and regulations but, as a practical matter, inmates think good time credits are a matter of right and that due process is required to revoke credits. He said that the credits actually narrow the discretion of prison officials. He felt that fixed sentences would drastically reduce the ability of the staff to motivate the prisoners. On the other hand, he believes that indeterminate sentences and the unit team approach are strong motivators. He pointed out that the parole eligibility system is only two years old and that more time is needed to adequately evaluate it and also to observe the workings of similar systems in other states.

Dr. Carlos Estrada, child psychiatrist at the Topeka State Hospital, said that he favors the availability of a pre-sentence evaluation as to dangerousness and whether the criminal behavior is chronic. He stated that in order to make sentencing conducive for treatment the emphasis must be on amending what the person had done rather than on punishment and that fines and retribution are feasible alternatives for many crimes where the criminal is not dangerous and the behavior not chronic. He believes that prisoners, themselves, are concerned with fairness and retribution. He said that determinate sentencing would fit the need for fairness and the concept of good time could be used to maintain discipline. Treatment should be voluntary and not required as part of the sentence.

Afternoon Session

Proposal No. 40 (Cont'd)

Mr. Jim Reardon of the County and District Attorneys Association said that it was important to distinguish between mandatory sentencing and determinate sentencing and

that the capacity of the prisons should be kept in mind in deciding whether to change to a determinate sentencing structure. He recommended a book by James Q. Wilson entitled Thinking About Crime.

After Committee discussion, Representative Foster moved that the Committee take no action until the next meeting and that before the next meeting Committee members think about the testimony they had heard in the past two days and decide what would be the best course of action to pursue. Senator Parrish seconded the motion and it carried.

The Committee then agreed to recommend passage of Senate Bill No. 406 after some technical changes are suggested.

The Chairman adjourned the meeting at 4:00 p.m.

Prepared by Paul Purcell

Approved by Committee on:

9-12-77  
(Date)

SB406 - SECURITY AND PRIVACY

Most importantly, the actions described by SB406 will take place in Kansas even if the bill does not pass. The Federal Regulations require that all these things happen. SB406 is designed only to make the process easier to implement and establish more uniformity in the approach used for Kansas.

SB406 will recognize the KBI as the agency responsible for this activity, by statute. The KBI is now performing this function at the direction of the Governor and the Attorney General, under the authority of the Federal Regulations, which required that an agency be designated by the Governor.

Local agencies in Kansas badly need additional direction and assistance in planning their activities in this area. Their need is more one of coordination and uniformity rather than direction, and the KBI's approach to date has been one of counseling and interpreting the Federal Regulations rather than one of directing agencies to take a specific action. However, some agencies resist even this softened approach, and their non-conformity makes operation extremely difficult for the remaining agencies that are trying to meet their responsibilities.

SB406 includes an advisory body that is badly needed in Kansas. Presently, there are in existence or contemplated a plethora of overlapping boards and committees. We would like to see a single board created that could address the concerns of Security and Privacy as well as other activities that are developing in the area of criminal justice information systems. It is our hope that the board created by this bill could serve as the coordinating board for all the activities, and a large amount of duplication can be avoided.

If SB406 should be scrapped, the KBI would probably have to perform the identical functions as described in the bill, on our own. We would probably form an ad hoc committee to help us coordinate activities in this area, and would issue policy statements about the methods we think will be the most appropriate in the operation of criminal justice information systems. The only difficulty we would encounter with this approach would be that our only means of "enforcement" would be heavy-handed coercion. We would have to rely on our ability to cut off records access by agencies, or on the auditing process, coupled with our interpretation of the Federal Regulations. This approach would be oppressive and very difficult to perform, and would doubtless cause extremely bad relations between the state and local units of government. However, with no action at all being taken, the KBI could be charged with not meeting its own responsibilities as the agency charged with implementing the Regulations in Kansas.

EXPUNGEMENTS/ANNULMENTS

The use of the two terms is confusing, and both terms in use are not easily understood by laymen, especially when they are supposed to accomplish the same purpose. We would suggest that the term "seal" be used instead, in all three statutes.

The use of three statutes (12-4515, 21-4616, 21-4617) to accomplish basically the same thing is also confusing. A single statute, with a uniform description of what is expected, would be preferable.

The statute does not contain any implementation information. Although some arrangements have been worked out between the parties involved in these processes, the difficulty of interfacing two branches of government and keeping the information straight is extremely difficult. Supreme Court Rule 184 is some help, but many courts ignore it.

Most lawyers in the state, when drafting the orders for the court, neglect to include essential information, cite the wrong statute, or use incorrect terms. If the statute were more descriptive of the process, many hours of wasted effort could be eliminated throughout the state.

Some concern has been voiced about the fact that the statutes allow convicted persons to hold elective office at the highest levels, obtain firearms legally, become criminal justice employees, practice medicine and law, or work in positions involving great trust. We recognize the difficulty of establishing classes of individuals that do not enjoy the protection of the statutes, but feel that this is a legitimate concern that should be considered.

The statutes do not allow for the removal of non-conviction dispositions. If a subject is found not guilty, or if the charges are dismissed, the subject actually has less recourse or protection than a convicted subject.