

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY - B

August 24, 1977
Governor's Room
University of Kansas Student Union
Lawrence, Kansas

Members Present

Representative Dick Brewster, Chairman
Senator Ron Hein
Senator Joe Norvell
Senator Jim Parrish
Representative Mike Glover
Representative Fred Lorentz
Representative Phil Martin
Representative Kent Roth

Staff Present

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

Others Present

Steve Millstein

Chairman Brewster called the meeting to order at 7:30 p.m. and directed the Committee's attention to Proposal No. 40.

Proposal No. 40 - Determinate Sentencing

Mr. Ken Schoen, Commissioner, and Mr. Patrick McManus, Assistant Commissioner of the Minnesota Department of Corrections were the conferees on this proposal.

Mr. Schoen said that Minnesota did not have determinate sentencing at the present time and that a bill had been before the Legislature but had failed to pass. He said that the Department of Corrections desires sentencing guidelines similar to a federal bill which would give guidance as to who should go to prison and who should not. He noted that there is a terrific disparity in sentencing from one county to the next and he said he was not sure what was going to come up in the next session but he felt if there was determinacy, it would be in the form of sentencing guidelines.

He discussed the use of a matrix by the parole board as well as the parole board itself. He stated that a fulltime parole board was begun in 1974 and that the matrix was a response to the needs of inmates who need an idea of how long they will be in prison. The matrix takes into consideration crime, previous record and a number of other things, and the prisoner can determine the number of months he will be serving but there is always the possibility for the prisoner to work himself out of the matrix. He noted that the parole board is an agency separate from the Department of Corrections. The Chairman of the Parole Board is appointed by the Commissioner of Corrections and serves at his pleasure. The four other members are appointed by the Governor.

In Minnesota, the Department of Corrections does not determine who gets to see the parole board and who does not. The parole board, itself, makes this determination.

Mr. Schoen stated that the parole board has determinacy by virtue of its own rules. He said that there had been very little criticism of their bad decisions and that the board was doing a good job. He said that he favored determinacy in the sense that an inmate needs to know when he is going to get out. He also favors having a parole board which operates a system which gives the maximum and the minimum and lets measurable deeds reduce a person's term.

He described the Mutual Agreement Program (MAP) as a program allowing a prisoner to enter into a legal contract with the parole board whereby the prisoner is required to do certain things. If he fulfills his contract, his prison term will be reduced according to the terms of the contract. He said this program has the potential for better enabling a person to do good when he gets out.

He noted that sentencing is a lawless practice now in many states, that it is wide open and different from the entire criminal justice process up to the time of sentencing. He said that when people are incarcerated, justice has to be the simple theme. The prisoner must know why he is going to prison and after he is there, why he is being kept there.

Mr. Schoen noted that in Minnesota the court is allowed to reduce the maximum below that set by statute. If the court does this the parole board has no authority to increase the maximum. The prisoner is treated as though he has a lower sentence.

If a prisoner has contracted to do a particular thing and he doesn't, his sentence is not reduced and he is treated as if he never entered into a contract.

With regard to community based corrections he said that this is under the Commissioner of Corrections and that the ultimate goal is for the Department of Corrections to operate institutions only for residual offenders. He said that the concern is with dangerous criminals.

He noted that the Minnesota parole board makes an objective determination of when a prisoner can be released. If the prisoner wants to reduce that time he must talk with the caseworker. Otherwise, he has to be satisfied with a target release date. The parole board, though, can deviate from the original target release date but only for a very good reason. There are guidelines as to how far they can deviate, but any deviation requires written reasons to be given the prisoner.

The role of pre-sentence reports was next discussed. Mr. Schoen noted that an inmate can challenge before the parole board, anything inaccurate in the pre-sentence report. All the evidence in the file is available to the inmate and there are self-imposed restraints on the parole board as to what will and will not be considered from the pre-sentence report. Mr. Schoen reported that because files were shown to inmates, the staff in institutions are more honest and accurate in the reports being filed than was the case before. He felt that where the system was open and where inmates had access to letters, telephone conversations, files, etc., the entire system was more honest and ultimately would be a better system to manage.

He said that the number of persons who need to stay longer than the target release date could be determined because one researcher follows this whole process.

Minnesota also has an institutional industries program and a prisoner can get credit for completing this program. The industry personnel director does the hiring and firing and not the institution. Mr. Schoen pointed out that private industry in the institutions is increasing because of the cost of operating institutional industries. The goal, of course, is to have the industries support themselves and not have to receive supplemental state funding. There is no subsidy to private industry at the present time. Each industry pays the inmate what they pay outside the walls. The Department of Corrections leases space within the walls to the various industries. Inmates apply to work just as if they were in the labor market.

Proposal No. 37 - Juvenile Code

Mr. Schoen said that Minnesota's system of dealing with juveniles was typical of most states. Treatment is under the Department of Corrections depending on what the judge does. The judge has a lot of power but once commitment occurs it is to the Department of Corrections. The Commissioner of Corrections then has the authority

to determine when the juvenile will be released. He said that the length of stay for juveniles is now very short and that the primary emphasis is rehabilitation. Minnesota has found that there is little difference between a six week stay and a six month stay.

Mr. McManus stated that status offenders tend to be females in Minnesota. He said there were problems with juvenile prostitution but that it is looked at as if the juvenile were a victim. He said that one who typically gets committed as a status offender is a bad actor.

There is no placement-funding problem in Minnesota because the Department of Corrections is not the contracting agent for federal funds. The local welfare department in Minnesota is the contracting agency. The state is not involved in federal reimbursement at all.

In Minnesota, once the court commits the juvenile to the Department of Corrections, the court is out of the picture entirely. Mr. Schoen said that the Department of Corrections had conducted a research study on juvenile recidivism with two groups of juveniles. One group was released early and the other later and the results with regard to recidivism were the same.

He noted that the Legislature plays a big role by not allowing schools to select which kids they want and which kids they do not want. The courts also will repeatedly send a problem juvenile back to school and so they, too, are helping to eliminate this route of extrusion. He said that this has become a statement to the schools that they exist to educate everybody and not just those who cause no problem.

In Minnesota, a court is allowed to certify as an adult, a non-amenable juvenile over 14 years of age.

The Chairman adjourned the meeting at 10:00 p.m.

Prepared by Paul Purcell

Approved by Committee on:

November 18, 1977
(Date)