

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY-B

November 18, 1977

Room 528, State House

Members Present

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

Staff Present

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

Morning Session

The meeting was called to order by the Chairman, who directed the Committee's attention to the minutes for the August 24, 29 and 30, and September 12 and 13 meetings. He noted that the minutes had been mailed previously to members. It was moved by Representative Ben Foster and seconded by Representative Mike Glover that they be approved. The motion carried.

Proposal No. 12 - LEAA Requirements Re: Criminal
History Records

Attention was called to the Committee Report concerning Proposal No. 82 dealing with criminal history records. It was moved by Representative Glover and seconded by Representative Roth that the report be adopted. The motion carried.

Proposal No. 42 - Sale of Franchises

The Chairman noted that with regard to Proposal No. 42, concerning the sale of franchises, it had been the decision not to recommend any legislation. He also said that during the last session the Attorney General's office had been interested in such legislation but had later suggested a different approach. It was moved by Representative Glover and seconded by Representative Roth that the Committee Report be adopted. The motion carried.

Proposal No. 41 - Death With Dignity

The Chairman directed the Committee's attention to the report on Proposal No. 41 and reminded members that the Committee had made no recommendations, and that appropriate legislation might be desirable but that there was not adequate time to give the subject proper attention. Representative Roth pointed out that the subject touches legal niceties

that need a great deal more consideration. The Chairman suggested that the report might indicate that appropriate legislation should be carefully designed to avoid problems with euthanasia. It was moved by Representative Roth and seconded by Representative Glover that this language be added to the report and that the report be adopted. The motion carried.

Proposal No. 43 - "Child Grabbing" (or Child Custody)

With regard to Proposal No. 43, the Chairman reminded members that the Committee had made some amendments to the Uniform Act, and that a separate bill dealing with interference with parental custody had been drafted. He explained that this crime is a misdemeanor unless aggravated, and it is aggravated only by a second offense, and that the bill will probably accomplish nothing at all because it is not an extraditable offense. He suggested that perhaps if a child is taken across the state line it should be a felony thereby making extradition available, and that perhaps thought should be given to cases of failure to return a child in accordance with an agreement. Another suggestion was language to cover removing a child from the jurisdiction of the court or the noncustodial parent's refusal to return the child after a visit.

It was moved by Representative Glover and seconded by Representative Foster that language to this effect be drafted by staff and approved. Representative Roth asked if the word "done" could be changed to "committed" and there was no objection. The motion carried.

It was moved by Representative Foster and seconded by Representative Roth that with appropriate changes in the Committee Report, it be approved. The motion carried.

Proposal No. 38 - Lien Laws

The Committee then reviewed the proposed report concerning Proposal No. 38 dealing with lien laws. Representative Roth inquired who has the burden of proof to show that a warning was issued, and the Chairman explained the way the bill is drafted it would be the subcontractors. He noted that there may be some occasions when it is difficult to locate the property owner, and he asked about the provision which allows posting of the notice on the property whose owner cannot be identified.

It was moved by Representative Lorentz and seconded by Representative Glover that the Committee Report be adopted. The motion carried.

Proposal No. 39 - Expungement and Annulment

With regard to the Committee Report for Proposal No. 39, the Chairman pointed out that the distinction between expungement and annulment has been eliminated; the period has been extended to two years for misdemeanors and class D and E felonies, and a period of five years established for A, B, and C felonies. He noted there is an exception that records are to be available to prospective employers in the law enforcement field.

Senator Norvell expressed concern about the validity of the statement concerning higher insurance premiums. Representative Roth stated he felt two years was an excessive time and that probably 60 days is long enough. The Chairman pointed out that this Committee is not the Insurance Committee, and such matters should probably be brought to the attention of that Committee.

It was moved by Representative Roth and seconded by Senator Norvell that the two year period be changed to 60 days. After discussion, the motion lost.

Senator Parrish noted there is a federal law dealing with restriction on firearms, and that the expungement bill conflicts with it. Representative Foster stated there are many areas where such conflicts exist. Representative Lorentz stated that this particular problem could be handled by adding an exception.

The Chairman suggested that the report reflect the Committee's problem with the "legislative lie" aspect, and urge future legislators and committees to continue to examine the concept and possible solutions.

Senator Hein made a conceptual motion that language be added to cover the exception suggested by Representative Lorentz. The motion was seconded by Senator Parrish. Representative Lorentz suggested something to the effect that "whenever that expunged conviction is an element of a subsequent crime." The motion carried.

It was moved by Representative Roth that language be added in Section 2(a) to provide "it in no way authorizes the possession of a firearm within five years." The motion was seconded by Senator Parrish and carried.

Representative Martin expressed concern about provisions in (2) on page 3 allowing a sheriff or police officer to secure such records for the benefit of someone else. It was moved by Representative Lorentz and seconded by Senator Hein that the words "with said agency" be added after the word "employment." The motion carried.

It was moved by Senator Parrish and seconded by Representative Glover that the language of the Report be amended and that it be adopted.

Representative Glover suggested that the same changes should be made on page 5, Section 2, regarding records and prospective employers. The Chairman directed staff to make this additional change.

Senator Hein stated there is another problem regarding diversion and offered a substitute motion that the information be made available to prosecuting attorneys prior to trial. The motion was seconded by Representative Lorentz. After discussion, the substitute motion failed. The original motion then carried.

The Chairman stated that the Committee had dealt with everything except Proposal No. 40 and Proposal No. 37. He stated that he had requested an opinion from the Attorney General as to the constitutionality of the proposed revisions to the Juvenile Code, and he distributed copies of the opinion. He also distributed copies of a letter from a District Magistrate Judge in Sherman County, which contains remarks and suggestions with regard to the Juvenile Code bill.

Proposal No. 37 - Juvenile Code

The Chairman asked staff to review 7 R.S. 1727. Mr. Griggs explained that Section 1 is designed to replace the present provision in the Juvenile Code covering the prosecution of adults who contribute to the delinquency of juveniles, and New Section 2 would be a part of the Criminal Code. The provisions of 38-830 prescribe prosecution of an adult even though the child has not been adjudged an offender, and the crime is to be a misdemeanor.

Representative Lorentz stated there might be cases where a prosecutor would want to punish the adult but not the juvenile. Representative Roth expressed the opinion that it and 21-3607 are redundant. Mr. Griggs agreed there is some overlap with dependent and neglected children and waywards, but if the concern is with misdemeanors or felonies, the prosecutor could charge either. He stated he felt that New Section 2 clearly covers all juvenile offenses, but that 21-3611 could be repealed. The Chairman stated he would like to see New Section 1 replace 21-3607. It was the consensus that this be done. It was moved by Representative Lorentz and seconded by Representative Roth that the requirements for conviction in Section 1 be removed. The motion carried.

Representative Glover expressed concern about the description "any person before 16 years of age" and suggested deleting the words "any person before 16." Mr. Griggs stated that then a wayward or traffic offender could not be prosecuted. It was moved by Representative Glover that the deletion be made. Motion was seconded by Representative Martin and carried.

Senator Parrish suggested eliminating subsection (d) and the Chairman said that the youth would know he would be put back in the same place with the same supervisor and just be held a little longer, and he did not feel this would be an effective tool.

Afternoon Session

Proposal No. 37 Continued

Mr. Griggs reviewed the letter from Judge Konkel of Sherman County.

It was the consensus that a judge should have access to juvenile records if a juvenile becomes an adult offender.

Representative Martin stated that he is opposed to deleting subsection (d) as previously suggested because he felt it would cause chaos in the youth centers and that it would do harm to all educational or rehabilitation programs.

Senator Parrish stated that he objected to the severity of sanctions imposed on a juvenile who has done nothing more than run away. The Chairman asked if it would be more acceptable to set a limit such as two or three times before elevating the offense. Senator Parrish expressed the opinion that there should be programs from which they will not want to run away, and to threaten them with becoming a felon is no solution. He said he would prefer seeing them put in the county jail temporarily, instead of making them a felon.

Senator Parrish moved that (d) be stricken from the section and be reinserted somewhere else. The motion was seconded by Representative Glover.

Representative Martin stated that, if there is not some kind of tool available, the kids who run away become a hero to the others and then all the rest will emulate the runaway and that it will totally do away with any kind of program. Upon vote, the motion lost.

Senator Parrish moved that subsection (d) be changed to read "two or more times". The motion was seconded by Senator Norvell, and lost.

It was moved by Representative Glover and seconded by Senator Hein that 7 R.S. 1727 as previously amended be recommended for introduction. The motion carried.

The Chairman asked for comments concerning 7 R.S. 1605 which prohibits a law enforcement officer from serving as a probation officer at the same time. Representative Lorentz noted he had always opposed that concept, and pointed out that most counties now have full-time probation officers or at least a shared probation officer. It was moved by Representative Glover and seconded by Representative Martin that the draft be adopted. The motion carried.

The Chairman asked Mr. Griggs to discuss 7 R.S. 1611 dealing with the appointment of a guardian ad litem. Mr. Griggs explained that the proposal would require such appointment in every juvenile case, but that there is no prohibition against retained counsel. It was moved by Representative Roth and seconded by Representative Glover that this be recommended favorably to the standing Committee. The Chairman noted he had serious reservations about cost. Upon vote the motion carried with Representative Martin voting in opposition. The Chairman also expressed opposition.

The Chairman asked that the Committee Report reflect the concern about cost.

The Chairman called attention to Section 6 of 7 R.S. 1606, which allows the prosecutor to make the decision whether a 17 year old should be tried as an adult or treated as a juvenile. He noted that this is in line with the opinion of the Attorney General. It was moved by Representative Lorentz that the concept be adopted. There was no second.

Representative Lorentz noted that this item was arrived at through compromise at previous meetings, and that it makes a 17 year old subject to adult jurisdiction without being subject to the Juvenile Code, and that he felt it would be a starting point. The Chairman pointed out that he could be certified down to the Juvenile Code. It was moved by Representative Roth and seconded by Senator Hein that Section 6 be deleted. The motion carried by a majority, with Representative Lorentz voting no.

Mr. Griggs discussed changes made in the draft since the Committee had last reviewed it. He noted on page 2 there had been some clarifying language. He pointed out that Judge Konkel had a question regarding traffic offenders and suggested that the exceptions include driving without consent or with suspended or no driver's license.

It was moved by Senator Parrish and seconded by Representative Glover to include driving with a suspended license or no license. The motion carried.

Mr. Griggs called attention to the matter of deprived children, as defined on page 4, and pointed out that it refers to lack of financial ability. It was moved by Representative Glover and seconded by Senator Parrish to remove Section 4, page 4. The motion carried.

Mr. Griggs stated that subsection 5 on page 5 authorizes the court to disclose convictions for the purpose of sentencing in subsequent actions. He noted that subsection 6 had already been eliminated.

On page 15 (5), regarding law enforcement officers, the phrase "under such conditions as the judge may prescribe" has been added, which relates to who may look at the records. In addition the section on page 5 regarding subsequent convictions was removed.

Section 13 has previously authorized language regarding "sealing" and "expunging." Mr. Griggs noted that Judge Konkel mentioned waiver of the 24-hour period as shown on page 18. It was moved by Senator Hein and seconded by Representative Glover that this change be made. The motion carried.

Mr. Griggs called attention to previous Committee authorization to make changes on page 19 (e) regarding who can waive a detention hearing. There is new language at the top of page 25, which was previously authorized by the Committee. A new paragraph was added at the bottom of page 26 in line with the Attorney General's opinion. New subsection (e) on page 32 allows the court to order counseling. He noted that (a) spells out seven things the court can do, whereas (d) says that when commitment is made to S.R.S. the child can be placed anywhere the Secretary desires. After discussion, it was moved by Senator Parrish and seconded by Representative Roth that the seven items should also be included in (d). There were questions about cases of referral where there might not be space, and also if there would be any effect on federal funds. Senator Hein offered a substitute motion that S.R.S. authority be deleted. The motion was seconded by Representative Glover and carried.

Mr. Griggs stated there were some internal references which would need changing, and the Committee authorized this be done.

Senator Parrish raised the question of specific power for restitution which is not currently in the Juvenile Code, and moved that appropriate language be inserted to allow authority to prescribe work services or restitution. Motion was seconded by Senator Hein and carried.

There was discussion about liability of parents for acts of vandalism committed by their children. The Chairman said it was up to \$1,000 for public property and Representative Glover expressed the opinion it should be on private property as well. The Chairman noted that Representative Jones has a bill on restitution, and perhaps some of that language could be combined into the draft. There was no objection and staff was directed to incorporate the proper language.

It was moved by Representative Glover that recovery be allowed for personal injury. The motion was seconded by Senator Parrish who asked that it merely be for actual expenses for personal injury, which suggestion was agreed to by Representative Glover. There was a substitute motion to raise the amount to \$2,000. There was no second. Upon vote, the original motion carried by a majority, with the Chairman asking to be recorded as being in opposition.

Representative Glover distributed copies of a model bill for termination of parental rights. Mr. Griggs explained this is basically the Oregon law, and that the first part is generally what the Juvenile Judges desire. There was discussion about the advisability of introducing such a bill. It was generally agreed that it was too late to give such a far-reaching subject adequate attention. Representative Glover stated that he is looking at the five or six million dollars invested in foster care, and that he would like to see guidelines set up so parents can earn the right to get their children back, but that if they fail to make such effort there should be a mechanism to sever rights and make the children adoptable. Senator Parrish stated he would like to see the adoption procedure made easier as well. The Chairman suggested the proposal will need more work than the Committee has time to devote, but that he would have no objection to including in the Report that the matter should have some attention.

The Chairman inquired about the waiver provision in 7 R.S. 1606, and Representative Lorentz said that Section 6 should not have been deleted. He then moved that the draft be recommended for introduction. The motion was seconded by Senator Hein.

Representative Glover asked where the proposal would be introduced, and the Chairman stated that it was the recommendation that it start in the Senate.

Senator Parrish stated he felt a lot of the problems would not exist if S.R.S. had more money to spend for facilities, and urged that the Committee Report recommend that Ways and Means take a look at the funds available to S.R.S. and the courts for the treatment of juveniles. Representative Martin urged that the report not only make that recommendation, but include alternate systems as well. Upon vote, the motion to recommend the draft for introduction carried.

Proposal No. 40 - Determinate Sentencing

The Chairman called for discussion on Proposal No. 40, relating to determinate sentencing, and stated he would like to see on page 2, the words "not his wife, and" stricken because he felt it would make clear that where there is a physical separation of the parties or where there is a legal proceeding on file, the crime could be committed. Senator Parrish noted there is a bill which addresses the problem by using a "restraining order" approach and that this approach might be proper.

Mr. Griggs pointed out that there are some changes which were previously authorized. Page 12 authorizes the court to order restitution. The Chairman asked if "full or partial restitution as the court deems appropriate" might be better. Senator Parrish stated he felt the language should coincide with the language of the Juvenile Code. It was suggested that the language read "such other conditions as the judge deems appropriate" for both C and D offenses.

Mr. Griggs noted that the language on page 14 (3) was requested at the previous meeting. On page 18, the change was to "earned" good time. On page 19, (3) was changed to "determined by rules and regulations."

Senator Parrish noted that the Department of Corrections would like a full-time Adult Authority. The Chairman suggested the report make it clear that the Committee thinks it is necessary.

Mr. Griggs stated that, in line with Mr. Knoll's letter, the draft on page 18 says that D and E felons "are to have a hearing within one year after sentencing." He pointed out that the way the courts work they may not see the inmate until he has about seven or eight months' time to his credit. It was suggested adding the words "or set" after the word "held."

Mr. Griggs pointed out that on page 20, the word "may" has been changed to "shall", and that (6) regarding restitution is new language. On page 21, (20) was previously authorized and is all new language.

New Section 20 on page 22 takes into account the possibility of K.R.D.C.'s being full. On the last page regarding notice to inmates, the words "may" and "but" were added in line with Committee instructions.

The Chairman called attention to a proposed amendment which was suggested by Justice Prager, regarding A, B, and C felons convicted of aiding and abetting. He pointed out that it proposed eligibility for parole after the 120 days without serving the minimum. It was moved by Senator Hein and seconded by Representative Glover that this amendment be adopted. Motion carried.

It was moved by Representative Glover and seconded by Representative Roth that the bill be recommended for introduction. Motion carried.

There being no further business, the Chairman adjourned the meeting at 4:50 p.m.

Prepared by Paul Purcell

Approved by Committee on:

December 16, 1977
(Date)

PP/jsf