

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m. ~~xxx~~, on March 13, 19 78.

All members were present except: Senators Steineger, Gaar and Mulich

The next meeting of the Committee will be held at 1:30 ~~xxx~~ p. m., on March 13, 19 78.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxx 19xxx were considered, corrected and approved~~


Chairman

The conferees appearing before the Committee were:

- Lawrence D. Penny - Superintendent, Youth Centers at Topeka and Atchison
- Kathleen Sebelius - Kansas Trial Lawyers Association
- Lynn Johnson - Kansas Trial Lawyers Association
- Jack Euler - Kansas Bar Association
- L. M. Cornish - Ks. Assoc. of Property & Casualty Insurance Cos., Inc.
- Steve Starr - Topeka Police Department
- Russell Hill - Topeka Police Department
- Joseph W. Zima - Shawnee County Sheriff's Department
- Charles Hamm - Department of Social and Rehabilitation Services

Staff present:-

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Cynthia Burch - Legislative Research Department

House Bill 2710 - Liability of parents for certain torts by their child. There were no conferees concerning this bill. Mr. Griggs explained the purpose of the bill.

House Bill 2709 - Crimes, contributing to misconduct or deprivation of a child and aggravated juvenile delinquency. Mr. Griggs distributed ballooned copies of the bill with the amendments discussed by the committee earlier. He raised the question as to which age group new section 3 should apply, or should it apply to all age groups.

Mr. Hamm appeared, and stated the bill would cause many problems. He introduced Mr. Penny. A copy of Mr. Penny's statement is attached hereto. He stated he feels this would be a real problem.

House Bill 2299 - Less than unanimous jury verdicts in certain civil cases. Kathleen Sebelius appeared in support of the bill, and introduced Lynn Johnson, the president elect of the Kansas Trials Lawyers Association, who spoke in support of the bill. He stated the American Bar Association studied this subject and the commission came out in favor of it. The Kansas Association

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary March 13, 19 78.

HB 2299 continued -

of District Court Judges also favor the concept; a survey indicated that 49 judges favored it while seven opposed it. Forty-one of those answering the survey indicated that in their opinion it would lead to a more just result in a civil action. He stated rather than doing away with the jury system, it is time to modify and improve it so that it will work more efficiently. This bill can help the backlog situation in the courts. Committee discussion with him followed.

Mr. Jack Euler appeared in support of the bill. He stated the Kansas Bar Association endorses the bill. In response to a question, he stated that he does not feel that the bill would give plaintiffs more advantage over the defendants.

Mr. Bud Cornish appeared in opposition to the bill. He stated insurance companies feel the bill would increase the number of plaintiff's verdicts; it would also increase total amount of plaintiff verdicts. These effects would make themselves felt in the rate making system. Committee discussion with him followed.

Senator Everett inquired if the bill would apply to trial such as those of mental illness cases; Mr. Euler replied that he thought it would. Committee discussion followed. The staff was requested to check on the point as to whether the bill would apply to such actions.

Senate Bill 951 - Crimes and punishments, arrest warrants, unlawful disclosure. Mr. Steve Starr testified in support of the bill. He stated that the Johnson County Sheriff's Department had experienced difficulties with the current interpretation of the statute, since a recent opinion from the attorney general. He explained this interpretation would cause a large burden on law enforcement personnel to serve outstanding warrants. The interpretation presently given would cause the procedure to be stopped whereby persons are notified that there is a warrant outstanding against them; he stated that in Johnson County, approximately 6,000 traffic summons are issued annually on warrants, and approximately 5,000 of those are contacted by telephone. If the attorney general's opinion was followed, it would be necessary to personally contact a person at home or at work.

Major Hill testified in support of the bill. He stated that there would be a serious problem with regard to the costs of personal services on all warrants.

Mr. Joe Zima appeared in support of the bill. He stated the Shawnee County Sheriff's Department, upon receiving a warrant for a minor

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary March 13, 1978.

SB 951 continued -

offense such as a traffic ticket, sends out a letter, requesting the person to contact the department. Committee discussion with him followed.

The chairman announced that there would be a working session of the committee at 1:30 this afternoon in room 522.

The meeting adjourned.

These minutes were read and approved by the committee on 4-24-78.

GUESTS

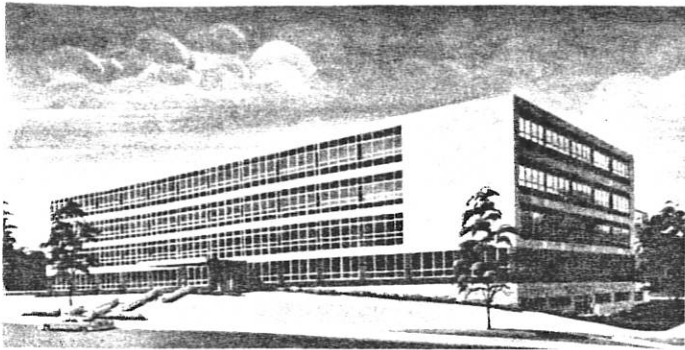
SENATE JUDICIARY COMMITTEE

| NAME | ADDRESS | ORGANIZATION |
|-------------------|---------------|--|
| Ken Klein | Topeka | Ks. Bar Assn |
| Jack Auler | " | " " " |
| L. M. CORNISH | " | Ks Assoc of Property & Casualty Companies |
| Russell Hill | Topeka | Topeka Police Dept. |
| Kathleen Seelien | Topeka | KTLA |
| Lawrence A. Penny | Topeka | Youth Centers at Topeka and Atchison. |
| Joseph W. Zinner | Topeka | Shawnee County Sheriff's Dept. |
| Bill H. Melton | " | " |
| Charles V. Haman | State H. Bldg | SRS |
| Ellen Beckardson | Topeka | Ks Children's Service League |
| Ruth C. Dickinson | " | St. Hummingbird Pres. |
| Emorgan | Hugoton | Retired Dist Judge |
| Lynna P. Johnson | Kansas City | KTLA |
| Bob Hartsog | Topeka | KTLA |
| 97 N. Ash | Topeka | KTLA |
| Judy Tensink | Topeka | KWPC |
| Searson-Seppeck | Lawrence | Lawrence School District |
| O. Marston | Lawrence | District 497-Teacher |

GUESTS

SENATE JUDICIARY COMMITTEE

| NAME | ADDRESS | ORGANIZATION |
|--------------------|--------------------------------|--------------------------------|
| Janae Schaeffer | Lawrence, KS | USD 497 |
| Steve Slark | Topeka | T.P.D. |
| Darle Ratner | Wichita | — |
| KEVIN Porter | THE WAY COLLEGE EMPORIA, KS | THE WAY INTERNATIONAL |
| Ken Figliozzi | " | " |
| Anne Morris | Emporia, KS. | The way college |
| Darlene, Berger | Emporia KS | The Way College of Emporia |
| Connie Shaffer | " | " |
| Jouise Conn | " | " |
| Steve Morrison | Emporia KS | The Way Corps |
| Beth Almon | " | " |
| Richard Yancy | Emporia KS. | The Way College |
| Ken Fonda | Emporia KS | The Way College |
| TED STRATIS | EMPORIA KS | The Way College |
| Scott & Cathy Eide | " | " |
| Jeff Davis | Emporia, KS | The Way College |
| Nancy Beach | Emporia, KS | Way College |
| Cindy Walker | Emporia, KS | Way College |
| Nancy Manuel | Emporia KS | The Way Corps |
| Patrice Blessing | The Way College of Emporia, KS | The Way International |
| Steven C. Lyon | Emporia, KS. | The Way College, of Emporia |
| Craig & Annas | Emporia, KS. | " |



SHAWNEE COUNTY SHERIFF'S DEPT.

F. T. "JIM" CHAFFEE
Sheriff
(Home Phone) 235-8456
295-4047

MAJOR ED SMITH
Undersheriff
(Home Phone) 235-9963
295-4061

SENATE COMMITTEE ON FEDERAL & STATE AFFAIRS

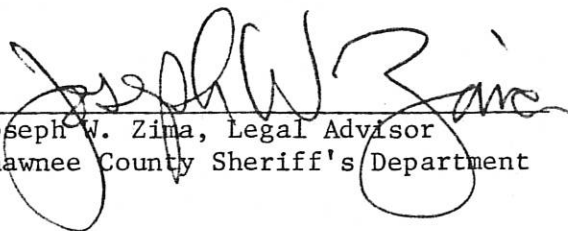
SENATE BILL NO. # 951

The Shawnee County Sheriff's Department favors the passage of Senate Bill #951. The Warrant's Division of this department has made it a practice for years to notify citizens of this county of outstanding traffic and misdemeanor warrants by letter as they are received. This practice has been fairly successful in causing these citizens to surrender themselves, thus saving a considerable amount of manpower.

Attorney General Opinion #78-44, a copy of which is attached, seems to hold that this practice is in violation of K.S.A. 21-3827. If this is so, our department will suffer a severe setback if Senate Bill #951 is not passed.

Our Warrant's Division is staffed with the letter procedure in mind. The Warrant's Division is receiving more and more warrants and is having to direct their time and attention toward the arrests of persons under the more serious felony warrants. If we are prohibited from advising citizens of the existance of misdemeanor and traffic warrants by letter, such warrants will most likely go unserved.

For example: In January, 1977, 411 warrants of all kinds were received - while in January, 1978, 430 traffic warrants alone were received. This increase is due to the addition of several new K.H.P. officers in Shawnee County and a Traffic Division within this department. We anticipate that our back log of unserved warrants will get worse if this Bill is not passed.


Joseph W. Zima, Legal Advisor
Shawnee County Sheriff's Department

JZ:jl
Attachments

SENATE BILL No. 951

By Committee on Federal and State Affairs

3-1

0014 AN ACT amending the Kansas criminal code; relating to unlaw-
0015 ful disclosure of a warrant; amending K.S.A. 21-3827 and
0016 repealing the existing section.

0017 *Be it enacted by the Legislature of the State of Kansas:*

0018 Section 1. K.S.A. 21-3827 is hereby amended to read as fol-
0019 lows: 21-3827. An unlawful disclosure of a warrant is ~~revealing or~~
0020 making public in any way, ~~not necessary for~~ *except for the*
0021 *purpose of assisting in* the execution of such warrant, the fact that
0022 a search warrant or warrant for arrest has been applied for or
0023 issued or the contents of the affidavit or testimony on which such
0024 warrant is based, prior to the execution thereof.

0025 An unlawful disclosure of a warrant is a class B misdemeanor.

0026 Sec. 2. K.S.A. 21-3827 is hereby repealed.

0027 Sec. 3. This act shall take effect and be in force from and after
0028 its publication in the statute book.



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

January 31, 1978

ATTORNEY GENERAL OPINION NO. 78- 44

Mr. Dennis W. Moore
Johnson County District Attorney
Johnson County Courthouse
Post Office Box 728
Olathe, Kansas 66061

Re: Criminal Law--Arrest Warrants--Disclosure

Synopsis: A law enforcement officer may not contact certain defendants by telephone in order to inform them that a warrant is outstanding for their arrest. Such disclosures violate the prohibition of K.S.A. 21-3827.

Dear Dennis:

As Johnson County District Attorney, you request my opinion regarding the application of K.S.A. 21-3827. Specifically, you ask whether an authorized law enforcement officer may legally contact defendants by telephone in order to inform them that a warrant is outstanding for their arrest.

The question is raised in light of K.S.A. 21-3827, which states as follows:

"An unlawful disclosure of a warrant is ~~revealing or making public~~ in any way, ~~not necessary for the execution of such~~ warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such

TO ASSIST IN

Mr. Dennis W. Moore
Page Two
January 31, 1978

warrant is based, prior to the execution thereof. An unlawful disclosure of a warrant is a class B misdemeanor."

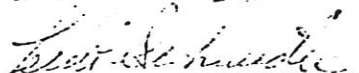
You advise that the Johnson County sheriff has indicated his view that the personal execution of arrest warrants in many instances, largely involving misdemeanor and lower-grade felony offenses, entails excessive demands upon the manpower of his office, and unnecessary expenses. He has proposed the institution of a procedure whereby, in appropriate cases, the subject would be notified by telephone of the existence of the warrant and asked to appear voluntarily. The question is raised whether such telephone notification would violate the cited provision.

The purpose of the provision, of course, is to prohibit any disclosure of the existence of a warrant which is "not necessary for the execution" thereof, thus avoiding instances in which the accused may learn of the outstanding warrant and take flight in order to avoid prosecution. However, in many instances involving misdemeanor and lesser felony charges, there is little likelihood that the accused will flee in order to avoid the charges.

Nonetheless, K.S.A. 21-3827 prohibits disclosure of the existence of a warrant in any way "not necessary for the execution" of the warrant. Under K.S.A. 22-2305, a warrant is executed by the arrest of the defendant. A telephone request to a defendant that he or she appear and surrender voluntarily may certainly be convenient, it is neither legally nor actually necessary to execution of the warrant, and the cited statute prohibits disclosure in any way which is "not necessary" for the execution of the warrant. In effect, this mandates that there be no disclosure of the existence of the warrant until the defendant is taken into custody.

I suggest that in those instances in which the defendant is deemed likely to appear upon request, that a summons be issued pursuant to K.S.A. 22-2392 and -2303 rather than a warrant. The issuance of a summons would in those instances relieve the sheriff of the necessity of dispatching officers to seek out those defendants who are deemed likely to respond voluntarily to a request to appear and surrender.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:BEW:jj

STATEMENT

March 13, 1978

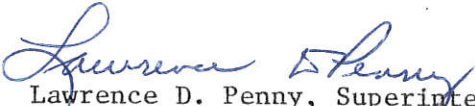
At a time when most of our juvenile facilities are operating at maximum capacities and commitments are being made in ever increasing numbers, it seems ill advised for the legislature to pass a bill (such as House Bill 2709) that prohibits the admission of certain youth who cannot be contained in juvenile facilities into our adult correctional system. From the Youth Center at Topeka alone, escape charges have been filed on 49 youth in the last 20 months. These are youth that the Youth Center, with its limited number of security beds (32) had no way whatever of containing. Each of these youths had run away at least twice and many had run far more times than that. Precipitating the filing of charges (a decision made by the District Attorney, not the Youth Center) on many, if not most, of these youth was the fact that, in addition to their running away, they were involved in continuing acts of vandalism, car thefts, break-ins, thefts, etc., between the time of their running away and their apprehension within or without the state. Many had been in and exhausted the resources of the community group homes and both the private and public institutions available to the courts prior to their commitment to the Youth Center. Their running away and continued acts of delinquency can be interrupted only by placement in closed facilities. Such facilities (except for the two sixteen bed detention cottages at YCAT) are almost non-existent in our juvenile facilities.

The Youth Center at Topeka during the last two fiscal years has handled an average of 384 boys per year. The average daily census for those years has been 174 boys per day (176 in Fiscal 1977 and 172 in Fiscal 1976) and the average number of runaways has been 181 per year (162 in Fiscal 1977 and 199 in Fiscal 1976). Each of these figures appears destined to be exceeded during the current fiscal year. The year was begun with 186 boys on campus (plus 9 who were AWOL) and during the first eight months of the year, the total number of new admissions (122) has exceeded each of the previous six years on which I have kept monthly records. Releases, obviously,

have had to keep pace with the admissions in order for the Center to continue admitting youth. Sadly, in order to keep this balance between admissions and releases (the Center has a rated bed capacity of 198), less than half (47.4%) of the youth released during this period have completed their prescribed training program.

With the above figures as a backdrop, the passage of HB-2709 places those youth running away from the Youth Center at a point virtually beyond the capability of either the Youth Center or their home communities to control their actions until they reach their eighteenth birthdate. Additionally, it is anticipated that the passage of Senate Bill 761 will increase commitments to the juvenile facilities. Whereby courts have had the ability to certify youth with long and extensive histories of juvenile crime to the adult courts after they reach their sixteenth birthdate, the passage of SB 761 removes that capability from the courts except in certain prescribed instances and leaves them with no recourse but to commitment to juvenile facilities. These facilities, as stated above, are already running at capacity and will have little capability of dealing with those who will not stay in the facilities on a voluntary basis.

In summary, the passage of HB 2709 that all but removes all penalties from youth who run away from youth facilities, practically places those youth "beyond the capability of the law" in that no facilities are now available to contain them from repeatedly running away and continuing those acts that resulted in their commitment to the facilities in the first place. It might be well to restate that only 32 long term security beds are currently available at the Youth Center at Topeka to hold youth who will not remain on the campus voluntarily. Another 16 bed cottage is in the construction stage. During the past 20 months, those security beds that are available have been maintained at an occupancy rate of 31.12 boys or 97.2% of capacity. We did not have the beds to house those 49 boys upon whom escape charges were filed and will have severe difficulty in housing the additional ones who are prime candidates to run when the readily observable deterrents are removed from such running.


Lawrence D. Penny, Superintendent
Youth Center at Topeka
Youth Center at Atchison

As Amended by House Committee

Session of 1978

HOUSE BILL No. 2709

By Special Committee on Judiciary—B

Re Proposal No. 37

12-7

0018 AN ACT relating to crimes involving children; defining the crime
0019 of contributing to the misconduct or deprivation of a child;
0020 concerning the crime of aggravated juvenile delinquency;
0021 amending K.S.A. 1977 Supp. 21-3611 and repealing the exist-
0022 ing section; also repealing K.S.A. 21-3607 and K.S.A. 1977
0023 Supp. 38-830.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 New Section 1. (1) Contributing to a child's misconduct or
0026 deprivation is causing or encouraging a child under eighteen (18)
0027 years of age:

0028 (a) To become a delinquent, miscreant, wayward or deprived
0029 child or a traffic offender or truant, as defined by K.S.A. 1977
0030 Supp. 38-802, and any amendments thereto; or

0031 (b) to commit an act which, if committed by an adult, would
0032 be a felony or misdemeanor.

0033 Contributing to a child's misconduct or deprivation is a class A
0034 misdemeanor, except that if the defendant caused or encouraged
0035 the child to be a delinquent child or to commit an act which, if
0036 committed by an adult, would be a felony, the offense is a class E
0037 felony.

0038 (2) A person may be found guilty of this section even though
0039 no prosecution of the child, whose misconduct or deprivation the
0040 defendant caused or encouraged, has been commenced pursuant
0041 to the juvenile code or code of criminal procedure.

0042 (3) This section shall be a part of and supplemental to the
0043 Kansas criminal code.

0044 Sec. 2. K.S.A. 1977 Supp. 21-3611 is hereby amended to read

and the crime of unauthorized leave from a
juvenile facility

0045 as follows: 21-3611. (1) Aggravated juvenile delinquency is any of
0046 the following acts committed by any person confined in the youth
0047 center at Topeka or in the youth center at Beloit or by any
0048 delinquent child or miscreant child, as such terms are defined by
0049 K.S.A. 1976 1977 Supp. 38-802, and any amendments thereto,
0050 who is sixteen (16) years of age or over and is confined in any
0051 training or rehabilitation facility under the jurisdiction and control
0052 of the department of social and rehabilitation services:

0053 (a) Willfully burning or attempting to burn any building of
0054 any of such institutions or facilities, or setting fire to any com-
0055 bustible material for the purpose of burning such buildings;

0056 (b) Willfully burning or otherwise, destroying or otherwise
0057 damaging property of belonging to the state of Kansas, and the
0058 damage exceeds the value of more than one hundred dollars
0059 (\$100) belonging to the state of Kansas;

0060 (c) Willfully and forcibly resisting the lawful authority of any
0061 officer of any of such institutions or facilities;

0062 (d) Committing an aggravated assault or aggravated battery
0063 upon any officer, attendant, employee or person confined to any
0064 such institutions or facilities;

0065 (e) Exerting a dangerous and pernicious influence over other
0066 persons confined in any of such institutions or facilities by gross
0067 or habitual misconduct;

0068 (f) ~~(d) Running away or escaping from any of such institu-~~
0069 ~~tions or facilities after having previously run away or escaped~~
0070 ~~therefrom one or more times.~~

0071 (2) Aggravated juvenile delinquency is a class E felony.

0072 (3) ~~Persons~~ charged with aggravated juvenile delinquency, as
0073 defined by this section, shall ~~not~~ be prosecuted pursuant to the
0074 Kansas juvenile code ~~[such persons shall be prosecuted under the~~
0075 ~~general criminal laws of the state.]~~

0076 Sec. ~~37~~ K.S.A. 21-3607 and K.S.A. 1977 Supp. 21-3611 and
0077 38-830 are hereby repealed.

0078 Sec. ~~4~~ This act shall take effect and be in force from and after
0079 its publication in the statute book.

Subject to the provisions of K.S.A. 1977 Supp. 38-808, persons

New Sec. 3. (1) Unauthorized leave from a juvenile facility is the running away or escaping from any training or rehabilitation facility under the jurisdiction and control of the department of social and rehabilitation services by any delinquent or miscreant child, as defined by K.S.A. 1977 Supp. 38-802, and any amendments thereby, who is sixteen (16) years of age or older and has been lawfully placed in, or committed to, such a facility.

(2) Unauthorized leave from a juvenile facility is a class C misdemeanor.

(3) Subject to the provisions of K.S.A. 1977 Supp. 38-808, persons charged with the crime of unauthorized leave from a juvenile facility shall be prosecuted pursuant to the Kansas juvenile code.

4

5

STATEMENT

March 13, 1978


At a time when most of our juvenile facilities are operating at maximum capacities and commitments are being made in ever increasing numbers, it seems ill advised for the legislature to pass a bill (such as House Bill 2709) that prohibits the admission of certain youth who cannot be contained in juvenile facilities into our adult correctional system. From the Youth Center at Topeka alone, escape charges have been filed on 49 youth in the last 20 months. These are youth that the Youth Center, with its limited number of security beds (32) had no way whatever of containing. Each of these youths had run away at least twice and many had run far more times than that. Precipitating the filing of charges (a decision made by the District Attorney, not the Youth Center) on many, if not most, of these youth was the fact that, in addition to their running away, they were involved in continuing acts of vandalism, car thefts, break-ins, thefts, etc., between the time of their running away and their apprehension within or without the state. Many had been in and exhausted the resources of the community group homes and both the private and public institutions available to the courts prior to their commitment to the Youth Center. Their running away and continued acts of delinquency can be interrupted only by placement in closed facilities. Such facilities (except for the two sixteen bed detention cottages at YCAT) are almost non-existent in our juvenile facilities.

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In summary, the passage of HB 2709 that all but removes all penalties from youth who run away from youth facilities, practically places those youth "beyond the capability of the law" in that no facilities are now available to contain them from repeatedly running away and continuing those acts that resulted in their commitment to the facilities in the first place. It might be well to restate that only 32 long term security beds are currently available at the Youth Center at Topeka to hold youth who will not remain on the campus voluntarily. Another 16 bed cottage is in the construction stage. During the past 20 months, those security beds that are available have been maintained at an occupancy rate of 31.12 boys or 97.2% of capacity. We did not have the beds to house those 49 boys upon whom escape charges were filed and will have severe difficulty in housing the additional ones who are prime candidates to run when the readily observable deterrents are removed from such running.


Lawrence D. Penny, Superintendent
Youth Center at Topeka
Youth Center at Atchison