

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~p.m.~~ on February 22, 1984 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~ were: Senators Pomeroy, Burke, Feleciano, Gaar, Gaines, Hein, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Senator James Franciso
John Tauhey, Clearwater Chief of Police
Senator Mike Johnston
Edwin Bideau, Neosho County Attorney
Sister Dolores Brinkel, Criminal Justice Ministry

Senate Bill 692 - Restrictions on granting diversion of criminal charges.

Senator Francisco explained this bill was introduced at the request of the Chief of Police in Clearwater. He then explained his bill. A copy of his handout is attached (See Attachment No. 1). The chairman pointed out the technical error in the bill. Committee discussion with Senator Francisco followed.

John Tauhey related a problem in Clearwater that brought this to their attention. Committee discussion with him followed.

Senate Bill 642 - Criminal procedure, conditions for release on bond.

Senator Johnston explained his bill and then introduced Ed Bideau, the Neosho County Attorney.

Mr. Bideau related that recently eight or nine persons were brought in on different drug cases relating to an undercover drug operation. The magistrate judge released all of them on their own recognizance. This created an uproar in the community and brought the focus on the bail bond statute, and it is hard to explain the statute to the community. He noted Nebraska and Iowa have a similar law. The chairman read language from Senate Bill 25, which was considered and passed by this committee and the Senate last year, and inquired if he favored that amendment? Mr. Bideau replied, he thought that would be a good idea.

Senate Bill 782 - Penalties for desecrating cemetery property.

Ed Bideau testified in support of this bill and explained vandals destroyed forty to fifty head stones in a cemetery in his community. They could not get authority to fix the head stones. They spent a lot of time trying to locate those families. They felt the need for increasing the penalty. A staff member inquired, the additional conditions on the bond, is it constitutional? Mr. Bideau replied, you are adding factors that the judge can consider. He doesn't see it as a problem.

Sister Dolores Brinkel testified she has serious reservations about this legislation. A copy of her testimony is attached (See Attachment No. 2). Committee discussion with her followed.

Hearings were concluded on Senate Bills 692, 642 and 782.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on February 22, 1984.

Senator Mulich presented a request for introduction of a bill concerning pre-judgment interest. Senator Mulich moved that the bill be introduced. Senator Gaines seconded the motion, and the motion carried.

Senate Bill 692 - Restrictions on granting diversion of criminal charges.

Senator Hein moved to amend the bill by deleting Section 2; Senator Gaines seconded the motion, and the motion carried. Senator Hein moved to amend the bill by re-lettering "e" through "j"; Senator Mulich seconded the motion. The motion carried. No further action was taken on the bill.

Senator Gaines moved that the minutes of February 7, 1984, be approved; Senator Hein seconded the motion, and the motion carried.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Donna Makepeace	P.O. Box 58 Burlington	Close Up Kansas
Lori Metzger	R.R. 3 Box 146	Close Up - Kansas
Kathy Williams	Box 1161 Rt. 420 Burlington	Close Up Kansas
Eric Smith	418 N. 5th Burlington Ks.	Close Up Kansas
Richard Greeman	RR#1 Burlington, Ks.	Close-up Kansas
July Zimmerman	RR1 Jamstown Ks	Close-up Kansas
Scott Galtner	929 E 6th Concordia Ks.	Close-up Kansas
Sydney Dixon	1112 Archer-Concordia	Close-up Kansas
Lynn Bennett	P.O. Box 283 Jamstown Ks	Close-up Kansas
Kathi Langfellow	805 W. 8th Concordia Ks.	Close-up Kansas
Curtis Barton	R.R. 1 Jamstown, Ks.	Close-up Kansas
Donna Scheweis, CSI	229 S. 8th KC, Ks	Criminal Justice Ministry
Bettina Micke	Büte 74403 Sender Westgermany	
May Ann Saen CSI	Box 1843 Saline IS 67402	
Darlene Skarns	1248 Buchanan	Correlation of Churches
Glenn Caswell	5863 SW 29th Topeka Ks. 66614	Kansas Association of Professional Societies
Maul Barber	9813 N 100th Ter.	Real Estate
Heather Williams	1829 Alabama Ln. Manhattan, Ks.	Close-up Kansas
Jada Allenheiliger	1310 Fremont Manhattan Ks	Close-up Kansas
Marnie Horn	120 E. J. Frick, Manhattan, Ks.	Close-up Kansas
Katie Wynne	2912 Karen Jurr. Manhattan Ks	Close-up Kan.
Shonda Wilson	716 Leavenworth, Manhattan Ks	Close-up Ks
Teri Nutsch	Manhattan, Ks	Close-up Ks sponsor
Jim Breachouse	Colley, Kansas	Close up Ks Sponsor
Rachelle Frazer	Wichita Ks	4-14

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Jena Whaley	1633 S Woodlawn	Achievers 4-H
Christy Reedl	6101 Danbury	Achievers 4-H club
Jemmy Fuller	959 Wilbur	Sunflower 4-H club
Cindy Seck	68515 Greenwich	Derby 4-H Club
Mindy Laughman	1218 Cramer	Wichita Sunflower 4-H club
Chris Cooper	3800 S 215 W	Goddard 4-H club
Mona Hempel	520 Homestead Dr	Colwich Hustlers 4-H Club
Virginia Rogers	10210 Harvest Lane	Sunflower 4-H club
Dana White	6030 Danbury	Eastside Eagles 4-H club
Meidi Dindsley	6221 Danbury	Eastside Eagles 4-H Club
Nathan Olson	Colby, KS	Close-Up
Doane Gartin	Colby, KS	Close-Up
George Hopper	Colby, KS	Close-up
Sr. Dolores Brunkel	229 S. 8th St. K.C.Ks.	Criminal Justice Ministry
Tom Pratt	Colby, KS	Close-Up
Harry Vernon	Colby, KS	Close-Up-

Applications Must Be Made Before Preliminary Hearing

DIVERSION PROGRAM

PROGRAM

Pursuant to K.S.A. 22-2906 et seq. the District Attorney of the Eighteenth Judicial District of Kansas has established a Diversion Program for the Eighteenth Judicial District. A copy of this Diversion Program will be furnished to each defendant upon his or her first appearance before the Court.

ELIGIBILITY

All defendants charged with non-violent crimes, except those involving the sale, possession or possession with intent to sell any drug or possession of any opiate, opium or narcotic drugs, traffic offenses, or any offense involving a death, shall be eligible to apply for Diversion if they have no prior felony convictions and have never previously been placed on Diversion in this or any jurisdiction.

PROCEDURE

The defendant shall sign the application for Diversion. The application shall be available in the District Attorney's Office. The defendant will then be required to appear for a Diversion Conference with the Diversion Coordinator. The defendant's attorney may attend this conference. The defendant shall give such information as may be necessary for the Diversion Committee to determine the suitability of the defendant for Diversion.

CONSIDERATIONS

The following factors shall be considered in determining whether Diversion of the defendant is in the best interest of justice and will be of benefit to the defendant and the community:

1. Nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances of the defendant.
3. Previous record of the defendant.
4. The probability that the defendant will cooperate with and benefit from Diversion.
5. The appropriateness of the Diversion Program for the needs of the particular defendant and the community.
6. Provisions for restitution.
7. Recommendations of the law enforcement agency involved.
8. Recommendations of the victim.
9. Recommendations of the Diversion Coordinator.
10. Any mitigating circumstances.

250
30.00
1756 0.00

Mark Owen
\$55,000 from less
10000.00
45000.00

D.A.'s OFFICE
27 Dist. Atty.

66 STAFF

Atch. 1

Wholey self sufficient
\$100.00 to \$50.00 fee

DETERMINATION

The Diversion Committee, which consists of five attorneys from the District Attorney's Office, will then meet to consider the defendant's suitability for Diversion. The defendant will be notified if Diversion is granted or denied. Once denied, an application will not be reconsidered unless material circumstances have arisen which were not initially brought to the attention of the Diversion Committee.

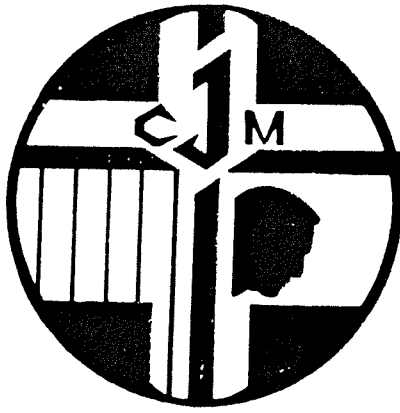
AGREEMENT

If the Diversion Committee determines that the defendant is an acceptable candidate for the Diversion Program, a written Agreement for Pretrial Diversion shall be entered into by the parties with the approval of the Court. This written agreement may contain:

1. A waiver of all rights to a speedy trial.
2. A specified term of Diversion not to exceed two (2) years.
3. An agreement that the defendant shall not violate any laws of the United States or any State, or ordinances of any City, or resolutions of any County.
4. An agreement that the defendant shall report to the Diversion Program Coordinator or to any other person at a time he or she may be ordered to do so by the Court, or anyone so designated by the Court.
5. Payment of all court costs of his or her proportionate share thereof within a specified period.
6. Any special conditions agreed to by the parties which may include any of the following:
 - a) Full restitution to the victim.
 - b) Residence in a specified facility.
 - c) Maintenance of gainful employment.
 - d) Participation in any recommended program.
 - e) Counseling.
 - f) Payment of Diversion Program costs.
 - g) Other conditions as determined by the Diversion Coordinator.

EFFECT

Upon the defendant entering into an Agreement for Pretrial Diversion, the criminal proceeding shall be suspended by appropriate order of the Court. When the defendant successfully fulfills the terms and conditions of Diversion, the District Attorney shall move to have the criminal charges dismissed with prejudice. If the defendant fails to fulfill the terms and conditions of the Agreement for Pretrial Diversion, the District Attorney will request that Diversion be terminated. After an appropriate hearing the Court, upon finding that the defendant has failed to fulfill the terms of the Agreement for Pretrial Diversion, shall order Diversion terminated and resumption of the criminal proceedings on the original complaint.



2-22 84
Attach. # 2

Criminal Justice Ministry

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

Sister Dolores Brinkel, S.C.L.
DIRECTOR

TO: Senate Judiciary Committee
FROM: Sister Dolores Brinkel, Criminal Justice Ministry
DATE: February 22, 1984
RE: SB 642 Conditions for release on bond

On behalf of Criminal Justice Ministry of Catholic Charities for the Archdiocese of Kansas City in Kansas, I wish to speak on this bill.

I have serious reservations about this legislation. First, predicting behavior is, at present, not sufficiently accurate. My concern is that the criteria used to predict future criminal activity might be subtly weighted, for instance against certain racial and income groups. Second, there are constitutional questions with restricting release before trial. New York's juvenile preventive detention statute was found unconstitutional by the Second Circuit Court of the U.S. Court of Appeals in the case Martin v. Strasburg. "On the present state of knowledge concerning predictions of criminal behavior, only the foolhardy would deny that even with carefully circumscribed decision-making, a significant risk of erroneous prediction remains . . . In my judgment, the Due Process Clause forbids the . . . (infliction of) a deprivation as serious as loss of liberty in advance of trial on the basis of a highly uncertain prediction of future criminal behavior." 689 F. 2d at 376-377 (1982)

According to the Toborg study, anywhere from eight to twenty-two percent of released defendants are rearrested. We need to address the issue, but the solution must be one that is protective of community safety and of constitutional rights.

Therefore, I wish to reiterate that I have serious reservations about this bill.

Attch. 2