

Approved February 22, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael R. O'Neal at
Chairperson

3:30 a.m. on February 8, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Gomez, Jenkins, and Peterson, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Jean Schmidt, Assistant Shawnee County District Attorney
Jeffrey Moots, American Civil Liberties Union of Kansas and Western Missouri
Roy Wurtz, Shawnee County Public Defender
Cathy Leonhart, Kansas Association of Court Services Officers
Communication from Robert C. Barnum, Commissioner, Youth Services, Social & Rehabilitation Services
Communication from League of Women Voters of Kansas
Communication from James E. Rumsey, Attorney, Lawrence

CONTINUATION OF HEARING ON HB 2666 Juvenile offenders to be prosecuted as adults at 14 or 15 years of age

A letter from Robert C. Barnum, Commissioner of Youth Services, Social and Rehabilitation Services, was distributed to the Committee listing forty-six 14 and 15 year-olds placed at state youth centers after having committed A and B felony type offenses 1985 through 1989, see Attachment I.

Jean Schmidt, Assistant Shawnee County District Attorney, testified the courts should have increased authority directing the length of stay in the youth centers and conditions upon which the juveniles are released. She also recommended the courts should have added discretion and authority to certify 14 and 15 year-olds. She recommended that the juvenile system should have additional funds and resources needed for handling and rehabilitating juveniles or recognize the safety of the communities and allow 14 and 15 year-olds that commit A and B felonies to be tried as adults.

Jeffrey Moots, American Civil Liberties Union, testified against automatically certifying 16 year-olds to be tried as adults if they are charged with class A and B felonies. He was also opposed to allowing 14 and 15 year-olds to be certified and tried as adults. In regard to being able to hold juveniles beyond age 21, he recommended an interim study to consider how long juveniles can be held, see Attachment II.

Ron Wurtz, Shawnee County Public Defender, also testified on behalf of the Kansas Association of Criminal Defense Lawyers. He stated that certification should not be made mandatory and discretion should be left with the judge. The requirement that the court must find youths, 14 years old and older are not amenable to treatment in the juvenile system, should be kept. He said if 14 and 15 year olds are to be tried as adults, give them all the procedural protections that adults are entitled to, including a full preliminary hearing, see Attachment III.

Cathy Leonhart, Kansas Association of Court Services Officers, testified that transferring youth to the already overburdened adult system is not the answer. She recommended better programing for the serious youthful offenders. She said in some states when a juvenile offender who has been adjudicated of an A or B felony turns 18 or 21, administrative transfer is done from the juvenile facility to the adult facility, see Attachment IV. A position paper written by a subcommittee of the State C.S.O. Advisory Board was attached to her testimony.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 8, 1990.

In answer to Committee questions, Ms. Leonhart replied the Kansas Association of Court Services Officers were opposed to automatic certification of 16 and 17 year-olds. They did recommend lowering the age for judicial certification to age 15 for serious offenses.

Communications from the League of Women Voters and James E. Rumsey opposing HB 2666 were distributed to the Committee, see Attachment V.

There being no other conferees, the hearing on HB 2666 was closed.

The Chairman announced the hearing on HB 2668 would be continued to Monday, February 12, 1990

The Committee meeting was adjourned at 5:15 p.m.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY

DATE: Feb 8, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
MARION STUART	CLAY CENTER, KS	
Cathy Leonhart	200 SE 7 th Suite 104 ^{Topeka}	Ks. Assoc. of Court Services Officers
Tean Schmidt	200 E 7th Street 212	Assst. Dist. Atty.
Cindy Kelly	Topeka	KASB
Jimmie KUNEN	Topeka	Public Defender
Mary Kalk	Topeka	AG's office
Judene Maslin	Topeka	A.G.
Sarah O. Mays	200 SE 7th, Suite 104, Topeka	
Michelle Torres	200 SE 7th, Suite 212	Assistant Dist Atty Sn Co D.A.
Steven Schmid	Topeka	Kansas Peace Officers
Rod Bieber	Topeka	Ks Dept of Ed
Ron Schuesser	301 W. 10 th St.	Ks. Sup. Ct. - OJA
Paul Shelby	Topeka	OJA
Al Siefert	Manhattan	Riley Co. Dist. Court
Carolyn Burns	Shelburne Bend	Washburn Co. Dist Court
Doug Bowman	Topeka	Children's Youth Advisory
Chris Ross	Topeka	KDHE
Chris Butler	Lawrence	University of Kansas
Jesse Machicao	Topeka	Allen - Washburn Law
Jeffrey Moots	Topeka	ACLU



STATE OF KANSAS

MIKE HAYDEN, Governor

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Docking State Office Building, Topeka, Kansas 66612-1570

(913) 296-3271

Youth Services
Smith-Wilson Building
300 S.W. Oakley
Topeka, Kansas 66606
(913) 296-3284

WINSTON BARTON
Secretary

February 8, 1990

THELMA HUNTER GORDON
Special Assistant

TIM OWENS
General Counsel

ANN ROLLINS
Public Information
Director

Administrative
Services

J. S. DUNCAN
Commissioner

Adult Services
JAN ALLEN
Commissioner

Alcohol and Drug
Abuse Services
ANDREW O'DONOVAN
Commissioner

Income Maintenance/
Medical Services
JOHN ALQUEST
Commissioner

Mental Health/
Retardation Services
AL NEMEC
Commissioner

Rehabilitation
Services
GABE FAIMON
Commissioner

Youth Services
ROBERT BARNUM
Commissioner

The Honorable Michael R. O'Neal
State Representative
Chairman, House Judiciary Committee
State Capitol
Topeka, Kansas 66612

Dear Representative O'Neal:

Following is information regarding House Bill 2666. Listed are the fourteen (14) and fifteen (15) year-olds placed at state youth centers after having committed A or B felony type offenses. The data covers 1985 through 1989.

Table with 5 columns: Category, YCAA, YCAB, YCAT, Total. Rows include A Felonies (Aggravated Kidnapping, Murder, First Degree), B Felonies (Aggravated Arson, Aggravated Criminal Sodomy, Aggravated Robbery, Kidnapping, Murder, Second Degree), and a TOTAL row.

Please contact me at 296-3284 if additional information is needed.

Sincerely,

Robert C. Barnum
Commissioner

Handwritten signature and date: 2/8/90 H. Jud Com.

RCB:RBH:bss

Attachment I

Testimony Before the House Judiciary Committee

February 7, 1990

Juvenile Offenders Bill, HB 2666

Chairman O'Neal, members of the committee, good afternoon. My name is Jeffrey Moots, and I am here on behalf of the American Civil Liberties Union of Kansas and Western Missouri. First of all, I would like to thank you for the opportunity to present this testimony and express some of the concerns the ACLU has regarding HB 2666.

There are several ramifications of this bill which we believe the Committee needs to address.

First, Section 1 subsection b.7 of the bill makes 16-17 year olds automatically tried as adults once the prosecutor has charged them with a class A or B felony. In effect, all authority to decide whether to try them as adults or juveniles would then be in the hands of the prosecutor and none in the judge's, thus taking away the discretion of the court. By way of illustration: the felony counts which would automatically put the teenager in the adult system include attempt to commit murder, which, depending on the interpretation of the prosecutor, could be considered no more than battery or even attempt at battery. Even a 16 year old who had never been in trouble before could suddenly be tried as an adult. If the juvenile justice system is working correctly, the judge can at the present time waive those juveniles who need to be treated as adults. Why make it automatic?

This bill discounts the long history Kansas has of recognizing the value of treating children in less onerous ways than adults. Present law does give some flexibility to the judge in how the 16- or 17- year old should be charged.

Section 2 of this bill allows 14 and 15 year olds to be tried as adults. This assumes that the state is willing and able to incarcerate a 14 year old with adult offenders in prison, and

*2/8/90
J. Jud Com*

Attachment II

willing to risk possible 8th amendment challenges to such treatment. If you agree that 14 or 15 year olds should not be put in adult prisons, but you want to try them as adults, then where would they be jailed? Are separate facilities to be built? What is the fiscal note on this bill? In times of significant budget problems and prison overcrowding, we should be worrying about how to feed the 14 and 15 year olds in Kansas, not how to imprison them.

In regard to the question of what to do about violent juvenile offenders who are still a danger to society at age 21, but now required by statute to be released at that time: We would recommend strongly that an interim study be authorized to consider how long juveniles can be held. In certain circumstances, they could be held longer than age 21. The system as it stands needs to be studied, and the merits vs. the problems of the present juvenile justice system need to be researched. We urge you not to pass legislation which gets at the problem of release at age 21 by prosecuting more and younger juveniles as adults. Also, considering the budgetary restraints you are presently working under, the fiscal note should be closely monitored.

The juvenile justice system does have problems; however, the way to approach them is not just to automatically treat our teenagers as adults in terms of punishment and incarceration. Thank you.

2/8/90
J. Jud Com
Att II

Testimony Against House Bill 2666
Juvenile Offenders to be Prosecuted as Adults
at 14 or 15 Years of Age
16 and Older Tried as Adult

Ron Wurtz, Director
Shawnee County Public Defender

Jessica R. Kunen
Chief Appellate Defender

38-1602(b)7 - a juvenile does not include a person 16 years of age or over who is charged with a class A or B felony

38-1636(a)(1) - District Attorney may request certification of a juvenile 14 or 15 years of age prior to entry of an order of adjudication

1. The Present System Works:

* Leave discretion with judge - any 16 or 17 year old can be certified as an adult if statutory factors are met

* Need to continue to require State to prove the juvenile is not amenable to treatment

* Automatic certification of all 16 and 17 year olds is an overreaction - bad facts make bad law

2. This bill will include 16 and 17 year old that should not be in adult system.

* Example: 17 year old led on by an adult to participate in robbery. Under new law, judge would have no discretion to leave him in juvenile system.

3. If system is to be changed:

* Leave discretion with judge - don't make certification mandatory

* Keep requirement that court must find that youths, 14 years old and over, are not amenable to treatment in the juvenile system

* If 14 and 15 year old are to be tried as adults, give them all the procedural protections that adults are entitled to, including a full preliminary hearing

4. Both the Kansas Association of Criminal Defense Lawyers and the Public and Appellate Defender Offices are opposed to the bill

2/8/90
Jud Com

Attachment III

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS



MEMORANDUM

TO: Judiciary Committee

FROM: Cathy Leonhart, Legislative Chairperson

DATE: February 8, 1990

RE: House Bill No. 2666 - - An act re: Prosecuting
14 and 15 year old
offenders as adults

Executive Board

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Michael Patterson
Topeka

Vice President

Mary Kadel
Independence

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Sue Froman
Wichita

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Mark Bruce
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Nomination / Membership

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Olathe

Legislative Chairperson

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Topeka

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Lisa Parrett
Olathe

Parliamentarian

Becky Topliff
Abilene

Public Relations Chairperson

Shirley West
Wichita

Immediate Past President

Karen Dunlap
Concordia

3940
5788
Court Services Officers in Kansas supervise approximately 5,045 juvenile offenders. Many jurisdictions also supervise juveniles on conditional release from Youth Centers. The majority of these youth have had jurisdiction extended to their 21st birthday for the purpose of collecting restitution and providing supervision.

It is evident to us that we are dealing with a more difficult population than ever before. However, we do not feel that transferring youth to the already overburdened adult system is the answer. We feel that it is a great deal more appropriate to emphasize better programming for the serious youthful offenders in the juvenile system than to create a whole new program in the adult system. The key being that we feel appropriate programming is a necessity for this population regardless of which system has the responsibility.

I am enclosing a position paper written by a sub-committee of our State CSO Advisory Board. I hope that it will be useful to the Committee as you gather information regarding this serious problem. One piece of information not included in this paper is that some states have addressed this problem through a cooperative relationship between state agencies responsible for youth and adult facilities. When the juvenile offender, who has been adjudicated of A or B felonies, turns 18, or in some states, 21, administrative transfer is done from the juvenile to the adult facility. This has been one way to address the public concern that serious juvenile offenders are not incarcerated long enough.

We would be happy to provide additional information or testimony at any time. Thank you for your attention to this issue.

2/9/90
J. Paul Corn

COURT SERVICES - POSITION PAPER NO. 6

SERIOUS AND REPETITIVE OFFENDERS/SECURE SETTINGS/AGE ISSUES

TOPIC: The Serious and Repetitive Offenders/Juvenile Secure Settings (Expansions, Admission, Length of Stay)

BACKGROUND: The juvenile justice system in the State of Kansas is in crisis as a result of the influx of serious and repetitive offenders and as a result of a significant increase in the adolescent CINC population needing services. These dramatic increases have lead to extreme overcrowding at the Youth Centers and a near "non-access" condition relative to level IV and level V facilities. The response by the facilities is a high rejection rate of this clientele by the private providers and an overflow of placements at the youth centers. In addition, there is an inability by the youth centers to address the various levels of offenders they receive. For example, many times non-urban areas are forced to make a youth center referral based more on a lack of resources than on the seriousness of the charge. Urban areas generally reserve the youth center for their most serious offenders. The youth center is consequently responsible for working with wide varieties and levels of offender needs. The youth centers have, in turn, responded by reducing their length of stay and releasing youth with minimal intervention and/or treatment (i.e. 90 day program at YCAT). The end result is that the most serious youth offenders in Kansas many times are receiving fewer consequences and shorter lengths of supervision than lower level offenders placed on probation.

The Order for a youth to be placed at the youth center has become the easy way out and many juvenile offenders know this. In Johnson County, a harsher response to the inadequate juvenile system has transpired. In 1989, approximately 100 juveniles have been waived to adult status in this jurisdiction. In many cases, the lack of a long-term program for the older offender has been a primary factor in the waiver decision.

Transferring youth to the adult system is not the answer. This is only creating more havoc on the already over-burdened adult system. In addition, placing youth with adult offenders is not the most appropriate way to make changes with a youthful offender. In many situations, the adult system is not equipped to deal with the more immature and emotionally needy adolescent.

RECOMMENDATIONS: It is strongly recommended that the juvenile justice system be restructured to better address the needs of the serious and/or repetitive juvenile offender. It is specifically recommended that the State:

1. Extend the jurisdiction of the juvenile justice system to the age of 25 for juveniles who have committed A, B, and C felonies and who are placed in the youth centers to allow for a reasonable length of treatment for the older and more serious offender.

2/9/90
L. J. Com
Att IV

2. Establish a review Board outside of the youth centers to determine appropriateness of release of "felony offenders". The Board would have authority to override the youth centers decision to release. If this idea is rejected, then we recommend that the Committing Court be given authority to deny release of serious offenders. Only with this kind of a check mechanism can the juvenile justice system be accountable to the community.
3. Create a separate facility for those unique, older, or more serious juvenile offenders to meet the treatment needs of the offender and the security needs of the community. It is suggested that private contracting be investigated for these services.
4. Lower the age for judicial certification to age 15 for serious offenses such as A, B, and C felonies.
5. After expansion of secure juvenile resources occurs, the current policy of no youth under age 13 being accepted by the youth center be discarded and that all juvenile offenders be eligible for youth center commitment (if they otherwise meet commitment criteria). If this is rejected, then expansion of level V and level VI beds must occur.

COMMENT: It is felt that broadening the services of the juvenile system in the above manner will better meet the needs of the youth and the community. It also retains the youth in a system better suited to their needs, rather than passing them on to the already unsuccessful adult system. It is strongly believed that impacting a youth at this stage can have dramatic affects on the adult prison population that is heavily comprised of juvenile system graduates.

The juvenile system has long been given the reputation of being "kiddie court". In reality, the system is no longer just slapping the hands of shoplifters, but instead is being plagued with youth who commit murder, serious sex crimes and have deep involvement in the drug culture. It is time to give the court the means to deal with such offenders and the opportunity to restore credibility to juvenile justice in Kansas. It is believed the above recommendations can provide such a means.

2/9/90
H. Jnd Crm
Att IV

LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

919 1/2 South Kansas Avenue
Topeka, Kansas 66612

February 7, 1990

Representative Michael O'Neal, Chairman
House Committee on Judiciary
Room 426-S
State Capitol
Topeka, Kansas 66612

Dear Chairman O'Neal and Members of the Committee:

The League of Women Voters of Kansas is opposed to H.B.2666 because we believe that juvenile refers to all children under the age of 18, and that all juveniles who come before the Court for allegedly committing a crime should be treated as juveniles and not as adults.

We believe that lowering the age to 14 or 15, for whatever reason, is a knee-jerk reaction to one particular case. Because of the confidentiality law involved, we don't know the merits of the case, nor should anyone else. We think you would agree, however, that very few children gun down their family without a reason or underlying cause.

There was a Juvenile Offender Policy Conference September 7-8, 1989 in Topeka. Over 200 people took an active part in the two day conference. Representatives from the legislature, probation, courts, law enforcement, schools, service providers, volunteers like myself, and others attended. Of all the policy recommendations for improving the non-system of juvenile justice proposed, none mention lowering the age of juveniles. The recommended policies instead indicate a rehabilitative mode rather than punitive.

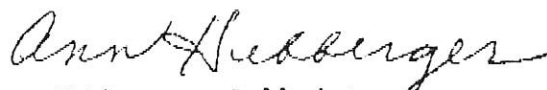
Many attending the conference mentioned that 16 and 17-year-olds want to go to "adult" court because many are put on probation or in community corrections. If this is the case, the crime cannot be that bad....can it?

Do we know how many 14, 15, or 16 and 17-year-olds fit the description as written in H.B.2666? Where are these children to be incarcerated? Is there a secure facility for out-of-control juveniles, or do they do time in overcrowded adult prisons?

Rather than lower the age, we would support changes in the law to allow jurisdiction over ABC felons to at least age 25, and require that each juvenile confined under such a proposal shall receive annual judicial review to determine further incarceration. If the public appears to want some juveniles to receive more time, we believe the above is a better solution.

Please vote NO on H.B.2666, and thank you for your consideration.

Sincerely,



Ann Heberger, Lobbyist
League of Women Voters of Kansas

2/8/90
H. Jud Com.

Attachment V



James E. Rumsey
Attorney at Law

1031 Vermont - P.O. Box 612
Lawrence, Kansas 66044
(913) 841-9950

February 6, 1990

Representative Mike O'Neil
Chairman of the House Judiciary Committee
State Capitol
Topeka, Kansas 66612

RE: House Bill No. 2666
14 and 15-year-old Juvenile Offenders

Dear Chairman O'Neil:

I am a sole practitioner in Lawrence, Kansas who is also a member of the Kansas Association of Criminal Defense Lawyers and the Criminal Defense Section of the Kansas Bar Association. A great deal of my practice is centered around criminal defense and I am the only attorney who is certified by the National Board of Trial Advocacy in criminal litigation in the State of Kansas. I have been both a prosecuting attorney (in the District Attorney's Office in Sedgwick County), and a criminal defense practitioner and have been involved in criminal litigation since 1972.

I am writing you and your committee regarding proposed House Bill No. 2666 which proposes to allow 14 and 15-year-olds to be prosecuted for committing Class A and Class B felonies. I am writing in opposition to this bill.

It seems to me that this bill misses the real problem with juvenile offenders, namely what happens to them when they reach age 21. Under the current bill and the current status of Kansas law, when a juvenile offender reaches the age of 21, whatever punishment has been decreed and whatever crimes they have committed they are set free. It seems to me that an appropriate way of responding to the need perceived for HB 2666 would be to pass some type of legislation that looks at the disposition phase of a convicted juvenile offender and allows a court to review the juvenile's sentencing status at the time the youth reaches the age of 21. This would give the court the option of continuing the juvenile sentence beyond age 21 or granting him parole. There would be some requirements regarding double jeopardy and giving the juvenile

2/8/90
J. Jud Com

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Representative O'Neil
February 6, 1990
Page Two

credit for time served as a juvenile, but would seem to me to be a more effective way of dealing with the perceived problem that HB 2666 seeks to solve; namely what do you do about 14 and 15-year-old children who commit premeditated homicides.

I might also point out that if you add 14 and 15-year-olds to the criminal prosecution population, you are going to add a certain number of defendants to an already overburdened criminal justice system. This will eventually require the hiring of more lawyers to prosecute and defend these cases, not to mention the attendant court staff to handle the increase of cases being prosecuted.

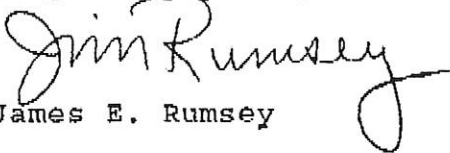
Since the juvenile system now deals with 14 and 15-year-olds that are charged with these type of offenses, the only additional cost in the solution I have suggested would be the additional time spent at the time the juvenile reaches 21 in determining whether or not his sentence should be continued or parole granted.

Although I can appreciate the effort that has been placed into the drafting of the proposed legislation, it seems to me that it provides only a static solution to a dynamic problem and will, in the long run, not solve the problem of what happens when the offender reaches the age of 21.

I would respectfully request that your committee not recommend passage of the bill in its current form and that when the legislature is out of session, some serious consideration be given to addressing the problems that I have described above so that more appropriate legislation can be proposed for the next session.

Thank you very much for your consideration.

Very truly yours,


James E. Rumsey

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