

Approved: 2-6-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on January 17, 1995 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Honorable Dan Mitchell, Shawnee County District Judge
Ann Henderson, Citizen's Review Board
Jim Haines, Citizen's Review Board
Elaine Riordon, Citizen's Review Board/CASA
Nancy Rumsey, CASA Volunteer

Others attending: See attached list

Chairman Emert called to order the joint meeting of the Senate Judiciary Committee and the Senate Public Health and Welfare Committee. Chairman Emert announced that there would be a series of joint meetings with Senate Judiciary Committee and the Senate Public Health and Welfare to delve into the juvenile issues. Judge Dan Mitchell was introduced to the joint Committee to present an overview of the juvenile system in this state, and to give some background on that system, also to make recommendations from his point of view on the areas of interest to these Committees.

Judge Dan Mitchell directed the Committee's attention to prepared comments (Attachment 1) which were incorporated in his presentation. Judge Mitchell addressed the current status and cited the code for the care of children and the juvenile offenders code found respectfully in Articles 15 and 16 of Chapter 38 of the Kansas Statutes Annotated. Judge Mitchell dealt with the Offender's Code and reviewed elements of that code. After Judge Mitchell presented background information, collective concerns and recommendations from Judge Mitchell and other Judges were heard. One of the concerns cited was a lack of resources within the system, both locally and state wide. Following are some of the recommendations to the legislature by those studying the juvenile justice system which include, utilization of intake and assessment upon contact with law enforcement; discussion of new resources for the most difficult youth, perhaps on a regional basis; the ability to offer a plan of rehabilitation to youth and modify the disposition imposed by virtue of the success of the plan. Judge Mitchell concluded by stating that the problems facing youth are significant and the response must be a comprehensive continuum of services, building on our past experience, with adequate resources and funding to meet the challenge.

Ann Henderson, Douglas County Citizen's Review Board briefly described the composition of review boards as community members who volunteer their time to review child in need court cases, and who make recommendations to the juvenile judge. Ms Henderson expressed the need for reliable statistical data. A data system to track the children in our court system and the ability to interface with other state agencies and systems as developed. Ms Henderson cited the lag time in placement of juveniles, as a detriment in the juvenile system. Ms Henderson encouraged the continuation of SRS family services funding to provide for services to families without court intervention. Ms Henderson suggested adopting a wait and see policy this year, citing it is too soon to tell of the effects of the ACLU lawsuit, legislative changes made last year, and the receipt of money from the Kellogg Foundation for major adoption reform. Based on the documented success of Citizen's Review Boards, Ms Henderson recommended the language in the law governing Citizen's Review Boards be changed to allow for the expansion of Citizen's Review Boards and CASA programs to serve juvenile offenders, specifically targeting younger offenders; and additional money be appropriated.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 17, 1995.

Mr. Jim Haines, Citizen Review Board Member, related to the Committee the significance and the vital role in the community of Citizen's Review Boards and CASA volunteer programs (Attachment 2). Mr Haines told of past experiences encountered as a foster parent and expressed frustration due to bureaucratic impediments. Mr. Haines related how the citizen's review board and CASA had helped to reduce some of the bureaucratic impediments.

Elaine Riordon, Douglas County Citizen Review Board/CASA Volunteer, addressed the Committee on the importance of community involvement in "children in need of care cases"(CINC). Ms Riordon stressed the relevance of local control through service organizations such as the Citizen's Review Board and CASA in providing necessary help to children in need of care. Ms Riordon stated that when a child stays in his/her own community, there is greater community response, and it is easier to access information and resources for that child. Ms Riordon recommended that Citizen's Review Boards have the opportunity to work with CASA volunteers on juvenile offense cases. Citizen's Review Boards discern community's perspective, while CASA volunteers work directly with the children to obtain needed resources.

Nancy Rumsey, CASA volunteer provided the Committee with information by relating personal experiences as a CASA volunteer in the case of a child in need of care. Ms Rumsey described how a CASA volunteer is able to intervene on behalf of a child with the local school and obtain the youth's grades for the time he spent at a Topeka shelter and was not in school.

Following the presentations, questions from Committee members were asked of the guest speakers. Discussion followed.

Chairman, Emert announced the speakers for the next meeting, District and County Attorneys. The Chairman stated that next week the Joint Committee will look at some programs and alternatives relating to juvenile justice issues.

Meeting adjourned at 11:00 a.m.

Next meeting scheduled for January 18, 1995.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-17-95

NAME	REPRESENTING
Ann Henderson	Director, Citizen Review Board Lawrence, KS.
Elaine Jordan	Douglas Co. CRB/CFAA
Paul Shelby	OJA
Stacey Empson	Hon. Bert Weir, Ctld
Egypt Quigg	KDOC
Jan Johnson	KDOC
Katni Sparks	DOB
Philip D. Knapp	Youth Center Operations Division - SRS
Hannon Peterson	KBA
Matt Jordan	KBA
Duan Waterworth	Division of the Budget
TK Shively	Kansas Legal Services
Mark Gleason	OJA
Dan Mitchell	District Judge
Eva Pereira	Ks Ad. Com. on Hispanic Affairs
Mike Leyba	" " "
Mark Malus	Sen. Lee

JANUARY 17, 1995

**TESTIMONY BEFORE THE JOINT COMMITTEE HEARING
OF THE SENATE JUDICIARY COMMITTEE AND THE
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE**

Senator Emert, Senator Praeger, distinguished members of the Senate Judiciary Committee and the Senate Public Health and Welfare Committee, my name is Dan Mitchell and I am a District Court Judge here in Shawnee County, whose primary assignment is juvenile court. I practiced in the area of juvenile law for several years while in private practice and since my appointment to the bench in 1985, I have been continuously assigned to the juvenile division.

When Senator Emert called last week and asked me to appear at this joint committee hearing, I was greatly honored and somewhat overwhelmed with his request. You see, Senator Emert asked me to give a brief statement of the current status of the juvenile system and thereafter, presume I had a blank sheet of paper upon which to create.

As to the current status, the juvenile system is divided into two separate areas, the code for the care of children and the juvenile offenders code, found respectively in Articles 15 and 16 of Chapter 38 of the Kansas Statutes Annotated. The Code for the Care of Children deals with those young people from birth to age 21 who are considered abused or neglected. The child may opt out of the jurisdiction of the court at age 18 if the child so chooses. This arena also includes truants and those children under the age of 10 who commit acts that would constitute felonies or misdemeanors if done by adults.

The Juvenile Offenders Code deals with those young people between the ages of 10 and 18 who commit offenses that would constitute felonies or misdemeanors if committed by an adult. I presume that the primary interest of these hearings deals with the offenders code.

To further address the issue at hand, we should consider the construction of the code as set forth in K.S.A. 38-1601 which states in pertinent part that the code **"shall be liberally construed to the end that each juvenile coming within its provisions shall receive the care, custody, guidance, control, and discipline, preferably in the juvenile's own home, as will best serve the juvenile's rehabilitation and the protection of society."**

Generally speaking, a juvenile progresses through the system of juvenile justice in graduated degrees or levels commencing with diversion or simple probation and ending with commitment to a state youth center. The levels of progression may include intensive supervised probation, foster care, or group home placements, keeping in mind that the least restrictive environment is to be utilized to effectuate rehabilitation and the protection of society. When a child is placed outside the home, the State Department of Social and Rehabilitative Services (SRS) is generally awarded the temporary care, custody, and control of

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Attachment 1*

the youth to effectuate the placement. Placement in a state youth center may be by direct committment by the court or by administrative placement by SRS.

Youth under the age of 18 may be waived from the jurisdiction of the juvenile court by virtue of a motion to waive pursuant to K.S.A. 38-1636; or by virtue of having a previous adjudication for an offense which would constitute a felony if committed by an adult, being at least 16 years of age, and being charged with an act which would constitute a felony if committed by an adult.

Juvenile proceedings are generally closed to the public but for the adjudicatory hearing for a respondent 16 years old or older and the legal file is open as of 14 years of age. The social file remains closed.

Perhaps some discussion of terminology is called for at this juncture. The juvenile system distinguishes itself from the adult criminal system not only by maintaining a civil status for its functions but also by terminology, that is, a juvenile is a respondent, not a defendant; a juvenile enters a stipulation, not a plea of guilty; a juvenile has disposition, not sentencing. The use of these terms helps facilitate an intended distinction between the juvenile and adult systems.

At this time, I would like to look toward the blank sheet of paper previously mentioned. Before I make some observations, let me inform you that I took the liberty of conferring with some of my colleagues in juvenile justice, including Lee Nusser, Magistrate Judge from St. John; Tom Graber, District Court Judge from Wellington; Jean Shepherd, District Court Judge from Lawrence; Jim Burgess, District Court Judge from Wichita; and John White, District Court Judge from Iola, who I believe you will be hearing from later this week. Although our districts are diverse as to population, resources, and location, we share some common concerns.

I wish to address some of those concerns in no particular order of importance as each of my colleagues would probably consider an individual concern most important depending on their circumstances.

There is agreement that there is a lack of resources within the system, both locally and statewide. Our facilities are overcrowded, understaffed, and under pressure to move residents prematurely in the course of rehabilitation. For those young people who have emotional problems which preclude them from foster care and group homes, who happen to reside in areas where in-home services are non-existent or ineffectual, there are no resources or placements except Level 6 beds or state youth centers. There are only 46 Level 6 beds available in the state and there is a waiting list for placement. The estimated delay in placement ranges from 6 months upward. The alternative of a state youth center with its varied population and inconsistent delivery of therapeutic intervention at a level sufficient to meet the needs of these troubled youth is no answer. Their offenses may not be of such magnitude to support a youth center placement, yet no other options are available. Ideally, in addition to such a facility, or in conjunction therewith, a facility for youth of similar nature to the adult facility at Larned which would utilize committment for appropriate treatment as opposed to confinement, is needed.

To be screened

*Judge Nussler lack of
equipment available
a need called for
youth of similar nature
to the adult
facility at Larned*

The state youth centers are not as effective as they could and should be for many reasons, not the least of which is the period of confinement. Although experts may disagree as to a minimum time of programming and each youth may respond to such programming at a different level, no one truly believes much can be accomplished toward lasting rehabilitation in less than 12 months and many professionals have indicated to me that 18 months is more appropriate. These youth did not reach their level of dysfunction overnight and modification of their behavior will likewise take time. Additionally, classification of young people for youth center placement based upon age as opposed to behavior or offense creates at least two areas of concern. The mixture of violent and non-violent habitual offenders in the same institution does not bode well for the students nor for efficient programming to meet the needs of those students. The level of security and the structure of the programs could better meet the needs by revision of the classification of young people committed or administratively placed in state youth centers.

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There is a consensus that lowering the age of juvenile jurisdiction to 15 years of age and younger, or any modification of age jurisdiction, does not solve the problem of youth crime and violence. It simply shifts the responsibility for dealing with those youth to the Department of Corrections and in effect eliminates any viable attempt at rehabilitation. I question whether society is truly protected by virtue of early incarceration without rehabilitation. Is society likely to benefit from a young person attaining adulthood in the confines of the adult penal system and then coming back to the streets without education, socialization, and vocational training that will afford him the ability to support himself or a family? Is this young person likely to reoffend by virtue of his exposure to adult convicts and the pressures of reentering society without skills? Is the failure to rehabilitate or attempt rehabilitation truly protecting society? Certainly there is a population of young people who are sociopaths and psychopaths who must be separated and segregated from society. But by virtue of psychiatric evaluation and psychological profile, we can predict with some degree of certainty the likelihood of rehabilitation and repeat offending. Don't we, as a civilized society, have an obligation to attempt rehabilitation when viable? Is incarceration without rehabilitation only an immediate response without lasting affect? How many prisons can we build and support?

while

Perhaps these questions can be better addressed by developing a new system of juvenile justice which provides a continuum of care while building on our past experience. We don't need to reinvent the wheel. Perhaps we need to fix the flat. There are a number of groups studying the issues of juvenile violence and crime, including, but not limited to the Governor's Criminal Coordinating Council and the Juvenile Task Force of that Council. They are working on recommendations to be made to the legislature during the session which include, but are not limited to, utilization of intake and assessment upon contact with law enforcement; discussion of new resources for the most difficult youth, perhaps on a regional basis; the ability to offer a plan of rehabilitation to youth and modify the disposition imposed by virtue of the success of the plan.

*Recommendations
from various
task force groups
include*

The concept here is to impose a determined disposition and if the respondent does not respond favorably, he or she may be transferred, after hearing, to the Department of Corrections to complete a term of confinement. This would afford an attempt at rehabilitation and yet protect society from a premature release by virtue of an artificial termination of jurisdiction by attaining a certain age.

Suffice it to say that the problems facing youth are significant and your response must be a comprehensive continuum of services, building on our past experience, with adequate resources and funding to meet the challenge.

Thank you for your attention to and concern for the youth of our state.

DANIEL L. MITCHELL
DISTRICT COURT JUDGE

Statement of James Haines

Good morning. My name is Jim Haines. Based on my experience as a current member of the Douglas County Citizen Review Board and, with my wife Margie, as a former foster parent to four children, Ann Henderson has asked me to supplement her statement dealing with bureaucratic impediments to the State's treatment of children in need of care.

My experience in this regard is entirely anecdotal. There may well be credible and comprehensive studies of this question. I am not aware of any and I've made no effort to determine if any exist. As a volunteer, always dealing with one child at a time, my concern has been to get the best care available for a particular child at a point in time. Stated a little differently, it has never been my purpose to change or even criticize the system, my efforts have been exclusively focussed on the needs of individual children.

Having said that, I could talk for hours about the paperwork, the approval processes, the meetings and hearings which Margie and I encountered in Sedgwick County with our four children. And now, as a member of a citizen review board, I'm participating in a process which adds still another layer of bureaucracy which I could also spend hours talking about. But the question is, is any of this an impediment to the treatment of children in need of care?

In my experience, I have found that good administrators, good social workers, good judges, and good volunteers are always able to make the system work. When children are burdened with uncaring, lazy, burnt-out, or incompetent people, the system - the bureaucracy - doesn't work and only compounds the people problems. I'm certainly not trying to make the case that there is nothing wrong with the system. Frankly, I'm agnostic on that point. What I am pretty sure of though is that, within reason, good people can make about any system work and without good people the best system doesn't have a chance.

Margie and I are both lawyers and, while we were foster parents from early 1984 until mid-1990, Margie's practice was almost exclusively as a guardian *ad litem*, so we were in a very good position to know what the system was supposed to be doing for our children and what to do when it slipped. On balance, I believe the system did a good job with our children.

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Attach. 2

We have kept in regular contact with them and their adoptive families and they are great kids - excelling in school and church activities and doing all the things that any of us would hope for.

Margie and I alone could not have gotten those kids back on the right track. It took a huge effort from every part of the system and from their new families. Still, left on its own, I'm not confident that the system would have made that effort. Margie and I did a lot of pushing and prodding, attended a lot of agency meetings and court hearings, and gently made it clear that we would accept nothing less than everyone's and every agency's best effort. In addition to being foster parents, we functioned as a sort of quality control check.

Unless and until you have pretty reliable analysis which shows that the system in fact is plagued with bureaucratic impediments to the treatment of children in need of care, I believe it would be a mistake for you to start legislating changes. Based on my experience, I do not jump to a conclusion that there are such impediments. Sure, there are imperfections, probably some very serious imperfections. But we are talking about a large, state-wide program which has to address some of the most difficult problems in our society. Don't let perfect become the enemy of good.

If I were in your position, I would want to see more than anecdotal evidence and, if suitable evidence were not available, I would direct that that question be studied. In the meantime, I would encourage the creation of quality control checks within the existing system. And I would look for ways to encourage and reward outstanding performance. Based on my experience, I have the impression that within SRS professional compensation is not strongly linked to performance and that performance expectations are not well defined in terms of productivity and expected results.

I believe that a citizen review board is an excellent model for an effective means of assuring quality in the treatment of children in need of care. In many of the cases that have come in front of my panel of the Douglas County Citizen Review Board, we have found that the system has performed just fine and, arguably, we have added nothing. Unless, perhaps, the mere fact of our existence has had a prophylactic effect. But, we also run into cases in which the system has not performed well and then, if we are doing our job, we can **help** get things back on the right track. I say

"help" because we are not the only source of quality control. Court appointed special advocates (CASA) provide a very effective quality control check, as can a guardian *ad litem*, parents and other family members, foster parents, school counselors, therapists, etc. Still, an effective citizen review board serves as the vehicle to bring all these folks together in a spirit of cooperation and action in the best interests of the children.

Thank you. I will be happy to answer your questions.

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