

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 18, 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: Mark Knight, Douglas District Attorney
Shelley Diehl, Assistant District Attorney
Chris Biggs, Geary County Attorney

Others attending: See attached list

The joint meeting of the Senate Judiciary Committee and the Senate Public Health and Welfare Committee was called to order by Senate Judiciary Chair, Emert at 10:05 a.m. Chairman Emert described the speakers as a group within the court system that see cases and juvenile offenders from their initial encounter to the case's conclusion or until juvenile offenders are removed from the jurisdiction of the juvenile court system.

Juvenile Justice System

Mark Knight, District Attorney, Douglas County stated that there are many intervention services that communities can provide that would benefit youth and youthful offenders. Mr. Knight stated that community involvement and coordination of community services, both public and private would better serve the youth, and provide accountability within the community.

Shelley Deihl, Juvenile Prosecutor, Douglas County, discussed the demographics of Douglas County and her function and experience as a Juvenile Prosecutor. Ms Diehl explained that the reduction of placement slots available in Youth Centers results in compensatory community involvement. The role and the need of Alternative Schools was explained by Ms Diehl, as was the need for an increase in vocational education programs. Recommendations offered by Ms Diehl were: increase summer jobs programs for juvenile offenders; expanded day reporting programs for juvenile offenders; local half-way housing within the community for those juveniles returning from Youth Centers. Other items mentioned included funding for additional juvenile offender ISP officer and funding for additional juvenile offender SRS worker (Attachment 1). Questions from Committee members included comments regarding the difficulty of getting a youth into a Youth Center and the problems with early release. Other issues discussed dealt with identifying common factors among juvenile offenders.

Gary Biggs, Geary County Attorney, described information contained in a report prepared for the Koch Crime Commission by The Mayor's Task Force on Juvenile Crime, comprised of members of the Junction City and Geary County community (Attachment 2). Mr. Biggs delineated each item on the report. Mr. Biggs contended that juvenile crime is a community problem and that the solutions rest in the community provided adequate resources and information are available. Some of the recommendations listed in the report included: the need for flexibility within the community; the need for enforcement of city ordinances and county resolutions; the need to reinstitute a mandatory deadline by which SRS must transfer incarcerated juvenile offenders or assume the full cost of their local detention; the need to limit SRS in conducting contracts with detention facilities; the need of veto power by the court over SRS placement decisions; the need to make payment of restitution a civil judgement upon release; holding liable the parents of a juvenile offender for restitution; and finally to remove the administration of juvenile offenders from the Kansas SRS and possibly creating an independent agency. Mr. Biggs discussed the age of majority and proposed tying certification to the crime rather than age specifically or number of offenses. Descriptions of deferment programs within local

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 18, 1995.

communities were discussed (Attachment3).

After questions from Committee members, Mr. Biggs stated that the statutes should allow for an admission of guilt by a juvenile offender thus making available court services.

Chairman Emert thanked the conferees and announced that Judge White will appear before the joint Committee tomorrow.

Meeting adjourned 11:00 a.m.

The next meeting is scheduled for January 19, 1995.

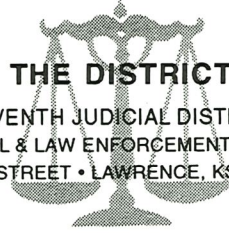
SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/18/95

NAME	REPRESENTING
Mark Gleason	Office of Judicial Admin.
Jan Johnson	Dept of Corrections
Christy Bailey	Senator Karr
Heather Gray	Senator Karr
Chris Biggs	Geary County Attorney
Pete Olivencus	Juvenile Diversion Coordinator Geary County Attorney's office
Stacy Friend	Geary County Attorney's office
Robin Grahame	Geary Co. Attorney
DAVID BEALE	PUBLIC
J. Martin	Sulgwick Co.
Gerry Ray	Johnson Co / City of Overland Park
Nelen Stephens	KPOA / KSA
Michelle Peterson	Ks Gov Consulting
Karen Coulter	Senator James Lee
Paula Long	Kansas City Kansas

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January 18, 1995

**Senate Judiciary Committee
Public Health and Welfare Committee**

SRS REDUCTION OF PLACEMENT BEDS AT ALL LEVELS INCLUDING YOUTH CENTERS.
Emphasis on to be placed on Community Programs and Services.

Alternative Junior High School. Alternative Educational Programs for Junior High age Juvenile Offenders, Similar to Lawrence Alternative High School.

* School created and designed to meet the needs of youth who are at risk of not completing high school for a myriad of reasons including a chronic lack of success in high school. JTPA is housed and operated through Lawrence Alternative High School. Douglas County Community Corrections has nine full slots for Juvenile Offenders in the Lawrence Alternative High School. Kansas Department of Corrections Extended Services has funded a full-time teacher to handle Juvenile Offenders in the Lawrence Alternative High School.

Increase Vocational Education Programs.

Increase Summer Jobs Programs for Juvenile Offenders.

Expanded Day Reporting Programs for Juvenile Offenders.

* To address Juvenile Offenders suspended from school. What is needed is an extra level of supervision with staff to assist with school work.

Local Half-way House.


*To assist Juvenile Offenders returning from Youth Centers or Treatment Facilities with the transition from highly supervised and structured environments back into the community. Emphasis on developing independent living skills, employment skills, etc. Supervised, but less supervision than level IV group placement.

Funding for Additional Juvenile Offender ISP Officer.

Funding for Additional Juvenile Offender SRS Worker.

Respectfully Submitted,


Mark A. Knight
District Attorney
Douglas County, Kansas


Shelley J. Diehl
Assistant District Attorney
Douglas County, Kansas

*Senate Judiciary Comm.
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Attachment 1*

September 19, 1994

The Mayor's Task Force on Juvenile Crime, comprised of members of the Junction City, Geary County community, from education, church, law enforcement, mental health, business, and youth activity backgrounds, urge you, representatives of the Koch Commission, to propose or support the following initiatives in future sessions of the Kansas legislature:

1. *Amend K.S.A. 38-1635 to authorize court-ordered or administrative, "prefiling" diversion even for minors who have been previously adjudicated as juvenile offenders, or, alternatively, exclude from these programs only those whose prior record includes a level [x] or worse felony.* The mayor's committee wishes to sponsor a "deferred prosecution" program which will involve the support and active participation of the community. This program is tailored for youth who may have gone seriously awry, perhaps even committed a felony offense (e.g. burglary, theft or criminal damage to property), but can still be "salvaged" with strong intervention from volunteers and professionals. Our deferred prosecution requires an admission in open court to the offense, but withholding of the actual adjudicatory order pending completion of the diversion program. The program may run for as long as twelve months, and require regular community service, payment of restitution, counseling and/or participation in youth activities. The leverage needed to encourage offender compliance comes, of course, from the threat of the court entering its judgment and saddling the juvenile with a criminal record. The sentencing guidelines'

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strengthened emphasis on criminal history, as well as stricter rules for adult certification, should encourage many juveniles to avail themselves of this program. But the current version of K.S.A. 38-1635 places diversion beyond the reach of those very children who could benefit most. A first-time offender would probably not require this type of community attention; but a repeat offender whose conduct has become troublesome, but not yet lethal, might appreciate our help.

2. *Amend the definition of "juvenile offender" to include minors who violate city ordinances and county resolutions.* Current city ordinances aimed at curbing illegal juvenile activity are ineffective because the definition of "juvenile offender" does not include one who violates such an ordinance. A juvenile can disregard these ordinances (e.g. curfew) with impunity, knowing the arresting officer can do little more than call the parent(s) and send him home. City attorneys, who can prosecute violation of the applicable ordinance, do not have jurisdiction to handle juvenile cases; and county attorneys, who do have jurisdiction to file juvenile complaints, cannot enforce municipal ordinances!

3. *Amend K.S.A. 38-1671(b) to reinstitute a mandatory deadline by which Kansas SRS must transfer incarcerated juvenile offenders to their age-appropriate youth center, or assume the full cost of their local detention.* This proposal speaks for itself. Ever since the seventy-two (72) hour rule was abolished by the legislature, Kansas SRS has (predictably) warehoused serious offenders in our regional detention facility for weeks, or even months, while its

bureaucratic machinery whittles away at the waiting list. This practice not only impedes the offender's rehabilitation, but deprives our community of the bedspace needed for other juveniles who truly require detention pending court proceedings. Worst of all, the county must foot the bill for SRS' incompetence. Recent Kansas appellate decisions suggest that, absent clearly stated legislative intent to the contrary, SRS cannot be forced to pay for housing and support of a child not specifically placed in agency custody. Thus, the secretary has everything to gain, and nothing to lose, by allowing a committed offender to simply wallow in jail until a transfer becomes convenient. Some (preferably financial) disincentive for this practice must be included in the statute.

4. *Open all juvenile records to victims and school administrators, and require notification to law enforcement and school officials of the release of offenders from youth correctional facilities into the community.* Instead of following the current trend of opening to the public all of these records concerning very young offenders, victims and school officials alone should possess the discretion to examine a juvenile's court and social file, so long as they in turn cannot disclose the information to a third party.

5. *Enact legislation which will specifically forbid Kansas SRS from executing contracts with group homes and other high level facilities which permit the latter to refuse or expel "undesirable" juveniles.* Our juvenile court is regularly hamstrung with the problem of juveniles who must be returned to

foster care, despite their critical need for greater daily structure, because SRS cannot find a placement for them. The agency typically states that "no facility will accept [him/her]." Why the department boxes itself into this predicament by allowing independent contractors to take taxpayer money and then pick and choose their patients is mystifying. If Kansas SRS is paying these facilities to treat needy children, then SRS should possess the exclusive power to dictate which child goes in which facility.

6. Amend K.S.A. 38-1563(e)(1) and 38-1664(a) to invest the court and "interested parties" in a child in need of care or juvenile offender action with the power to veto an SRS placement decision upon unanimous agreement. K.S.A. 38-1544, which outlines the procedure for implementing preadjudicatory, informal supervision of a child in need of care case, requires all interested parties (i.e. county attorney, guardian *ad litem* & parents) and the court to agree that informal supervision, versus the time-consuming adjudicatory procedure, will serve a child's best interests. The proposed amendments would likewise permit these parties and the court to unanimously prohibit Kansas SRS from making a specific placement - whether the parental home, foster care or an institution.

7a. Amend K.S.A. 1993 Supp. 21-4603d(a)(1) and K.S.A. 38-1663(d) to permit the sentencing or juvenile court to order, at the outset, payment of restitution in conjunction with an order of commitment to the secretary of corrections or state youth center.

7b. Amend K.S.A. 1993 Supp. 22-3718 and K.S.A. 38-1675 to require the amount of restitution owed at expiration of probation, parole, conditional release or direct discharge to be entered as a civil judgment against the defendant or respondent.

7c. Amend 38-120 and 38-1663(d) to hold a juvenile offender and his/her parent(s) jointly and severally liable for restitution ordered at a dispositional hearing.

These self-explanatory restitution proposals are designed to streamline the civil process by which victims must obtain compensation from liable parties. They eliminate the far too commonplace scenario whereby a youthful offender is discharged from the court's jurisdiction while still hundreds (or thousands) of dollars in arrears on restitution payments. By holding parents of offenders equally liable from the moment of disposition, and automatically entering any final arrearage as a civil judgment, the victim need not hire counsel and instigate a duplicative civil proceeding in order to study the dizzying intricacies of parental liability for wilful and malicious torts of their minors.

8. Remove the administration of juvenile offenders from the list of responsibilities allocated to Kansas SRS and create an independent agency which must:

- a. oversee a comprehensive system for the adjudication, incarceration and rehabilitation of juvenile offenders including the use of "boot camps";

- b. assess current juvenile facilities, with an emphasis on creating a maximum security facility to house violent offenders;*
- c. provide a community corrections program for juvenile offenders comparable to that now existing for adults; and*
- d. mandate postrelease supervision comparable to adult parole.*

This task force believes much of the juvenile problem in our state arises when one agency, Kansas SRS, tries to serve two types of youth (*i.e.* children in need of care and juvenile offenders) with the same, exclusively rehabilitative philosophy - even when problems posed by the latter demand an increasing emphasis on accountability or even societal retribution. The agency has proven itself incapable of adjusting its mindset to cope with the unique difficulties presented by the bitterly violent, 15-17 year-old offender who is not interested in rehabilitation except to the extent that playing along will earn him an earlier release. There are enough important distinctions between the code for care of children (K.S.A. 38-1501, *et seq.*) and juvenile offenders code (K.S.A. 38-1601, *et seq.*) to warrant their assignment to different agencies.

9. *Amend K.S.A. 38-1602(b)(3) to replace automatic referral with "presumed" adult prosecution of a 16-17 year-old juvenile for any offense which would require presumptive imprisonment if perpetrated by an adult. This proposal constitutes a compromise between those who would lower the age of majority to sixteen (16) years, and those who prefer the status quo. It is also more flexible than the 1994 amendment, which requires adult prosecution for this age group when the offender has any kind of felony on his/her record and*

a new felony is committed - no matter how comparatively harmless the prior (or current) offense may be. Under the task force proposal, any 16 or 17 year-old minor would be considered subject to presumed adult prosecution if his offense falls within the imprisonment range of the new sentencing guidelines grids. Additionally, both the prosecutor (at the initial charging stage) and the court (following a "reverse" certification hearing) would possess the discretion to authorize proceeding under the juvenile offenders code if substantial and compelling mitigating circumstances presented themselves.

10. *Classify possession or sale of narcotics by a 16 or 17 year-old minor on unified school district property as an offense requiring adult prosecution.* This measure is obviously designed to better protect our students who wish to receive an education at public schools. There seems little justification to award a 17 year old cocaine dealer, who thrives on trafficking contraband in schools, the protection of our juvenile offenders code.

11. *Amend K.S.A. 1993 Supp. 21-3718 to classify arson as a severity level 4, person felony where the resultant damage exceeds 25K, or where the building is a dwelling; and classify arson as a severity level 6, person felony where the building is a nondwelling and the resultant damage is less than 25K.* This proposal recognizes the inherently deadly threat that fire, as opposed to other tools of property crime, presents to law enforcement, firefighters and laypersons alike. The bifurcation of severity levels based on "dwelling" status corresponds to the new burglary statute at K.S.A. 1993 Supp. 21-3715.

1/18/95

DEFERRED PROSECUTION OF JUVENILE OFFENDERS
(Pursuant to K.S.A. Chapter 38, Article 16)

Preamble. This policy accommodates in part the growing need for community intervention in the juvenile crime problem. Although implemented by the county attorney in the normal course of his duties as the chief law enforcement officer in this jurisdiction, the program itself represents a joint effort by community leaders and citizens to address the needs of young offenders who still present the potential for rehabilitation. It enlists the aid of local youth organizations, churches, schools and public agencies, all of whom participate with the minors on an individualized basis during the deferment period. It also requires the offender to make restitution to his victim, and participate in counseling if necessary.

An eligible child who wishes to avail himself of the deferment program informs the prosecutor in advance through his attorney, and then appears in court for first appearance like any other charged offender. He enters an admission to the complaint, at which time both parties move the court to refrain from entering judgment for the appropriate deferment period. The admission also includes a stipulation to the police reports and any exhibits deemed necessary to supply a factual basis.

If the minor successfully completes the deferment program, the complaint is permanently dismissed and he is relieved of any further obligation in the matter. If he fails to abide by program terms, the county attorney files a motion to revoke the deferment and enter

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judgment against him based upon on his earlier admission. The court then conducts a due process hearing to determine if the prosecutor's allegations are true. It may thereafter grant the state's revocation motion and permit the state to proceed on the original complaint if it finds, by a preponderance of the evidence, that the deferment terms have been violated.

Standards. The state will *not* offer deferment to any minor who:

1. has been previously committed to a state youth center, subjected to a suspended youth center placement, or placed on a deferment, diversion or felony probation; or

2. has been previously adjudicated, or now faces pending charges, as a juvenile offender for committing acts which, if perpetrated by an adult, would constitute:

- (a) a person felony;
- (b) a violation of K.S.A. 1993 Supp. 65-4127a;
- (c) an offense involving a firearm;
- (d) an act which, if perpetrated by an adult and proven, would require presumptive imprisonment on the adult sentencing grid; or
- (e) an anticipatory crime associated with any of the above (*i.e.* attempt, conspiracy or solicitation)

Preliminary Requirements. A candidate for this program, who otherwise meets the above standards, must accomplish the following tasks before the county attorney will consider deferment:

- (a) completion of the attached application;
- (b) completion of a screening evaluation at Pawnee Mental Health Services, 814 Caroline, Junction City, KS 66441 (felony and person misdemeanors only); and
- (c) submission of a restitution plan, if the victim has suffered tangible monetary loss due to property damage or personal injury.

Deferment Requirements. Any juvenile whose application is accepted by the county attorney, and whose deferment is granted by the juvenile court, must make full restitution during the deferment period, and perform community service to the extent dictated by the severity of the offense. One hundred (100) hours of service shall be imposed in felony cases, forty (40) hours for person misdemeanors, and fifteen (15) hours for all other offenses. The minor must also refrain from committing any new offense, as well as from any conduct described by K.S.A. 38-1502(a)(2), (6), (7), (9) or (10) (e.g. home disruption or disobedience, running away, truancy and curfew violation).

The county attorney may, upon noting areas of concern identified in the screening evaluation, require compliance with some or all of these additional programs as a condition of successful deferment:

- (a) individual and/or family counseling;
- (b) active participation in a civic or church youth group, or community organization (not a street gang!);
- (c) attendance by the juvenile's custodian at parenting classes;
- (d) participation in a special school district program, including tutoring, and/or an extra-curricular activity;
- (e) enrollment in Big Brothers/Big Sisters program;
- (f) acceptance of a C.A.S.A. or other assigned volunteer in a regular, supervisory capacity;
- (g) participation in the C.O.J.O.P. or J.A.I.L. program;
- (h) letter of apology to victim; and
- (i) no unexcused tardiness, absence or suspension from school.

The period of deferment shall run twelve (12) months in felony cases, nine (9) months for person misdemeanors, and six (6) months for all other offenses.

Effective Date. This deferment program shall become effective upon approval and publication by the juvenile court and administrative district judge.

Chris E. Biggs
Geary County Attorney
County Courthouse
Junction City, KS 66441
(913) 762-4343

Stipulation. I hereby enter my admission to the complaint filed in Case No. ___-JV-___, and agree that a factual basis exists for my admission. I realize the judge will accept this admission if he believes it is voluntary and accurate, but that he will withhold judgment in order to give me a chance to comply with the county attorney's deferment program. I also understand the nature of the charges facing me, and dispositional alternatives the court may impose if I am adjudicated as a juvenile offender. I have decided to give up the following rights:

- (a) entitlement to presumption of innocence;
- (b) prompt trial without unnecessary delay;
- (c) confrontation and cross-examination of state's witnesses;
- (d) subpoena power to compel the appearance of defense witnesses on my own behalf; and
- (e) right to remain silent without penalty, or alternatively, to testify on my own behalf.

I further stipulate to the material facts contained in any written or recorded documents associated with the investigation of this case, including police reports, laboratory tests, video or audio cassettes and witness statements, and hereby agree to their absolute admissibility in any judicial proceeding to which I may be a party. I also agree to waive any evidentiary objection which might normally hinder or prevent their introduction at said proceeding, regardless of its purpose.

Execution of the Agreement. The following parties understand
this contract and agree to comply with its terms.

James L. Daniels #16278
Assistant Geary County Attorney
County Courthouse
Junction City, KS 66441
(913) 762-4343

Counsel for Respondent

Parent/Guardian

Respondent

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF
_____, 1994.

Notary Public
Geary County, Kansas