

Approved: 4-7-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 5:00 p.m. on **adjournment** on March 20, 1995 in Room **521-S** of the Capitol.

All members were present except: Senator Rock (excused)
Senator Moran (excused)

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:

Others attending: See attached list

The Chair called the meeting on **adjournment** to order at **5:00 p.m.**, March 20, 1995.

HB 2223--Criminal deprivation of property

The Chair briefly described **HB 2223**, explaining that this bill treats convictions for joyriding somewhat in the same nature as DUI offenses, they go off grid, there are mandatory jail sentences, but not penal imprisonment.

The Chair addressed an issue regarding securities crimes, and referring to information from Lisa Moots, pertaining to certain acts if unintentionally committed by the offender are subject to civil liabilities. The same acts if intentionally committed subject the offender to criminal charges. Last year's legislature, though an oversight repealed the provision for acts committed unintentionally from civil liability. Lisa Moots requested adopting an amendment to a criminal bill with the language, she and the Revisor developed, in agreement with the security people, that would make no policy changes, no substantive changes in the law, but would subject the acts committed unintentionally by the offender to civil liabilities and restore the intent of the law.

Motion made by Senator Feleciano, second by Senator Vancrum to amend **HB 2223** with security amendments and pass the bill out favorably. Motion carried.

HB 2287--Creating a Kansas youth authority, establishing the commissioner of youth corrections and a state youth corrections department to deal with juvenile offenders.

The Chair asked for consideration on **HB 2287** heard this morning. The Chair referred to **SB 230** and **SB 231**. Discussion followed regarding the fiscal budgeting issues if this bill was to be passed. Fiscal time line was considered by the Committee. Senator Petty referred to a handout comparing **HB 2287** and **SB 231**. (Attachment 1) Senator Petty outlined the difference in the two bills, stating that both bills provide for a year with an appointed authority which would make recommendations. The House version focus exclusively on the juvenile offender population, the Senate version focuses on children, youth and juvenile authority. Senator Petty offered a suggestion of leaving open to the Governor the target population covered by the creation of a youth authority. In speaking of **SB 231**, Senator Petty pointed out that the intent of **SB 231** contemplates a more decentralized approach.

Motion made by Senator Petty, second by Senator Feleciano to put **SB 231** into **HB 2287** and delete the current language of **HB 2287** Substitute Bill.

It was suggested by the Chair that the Governor may want to explore the content of **SB 231**.

Senator Petty stated that the questions needing addressed should be delineated. 1. Centralized or decentralized

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 521-S Statehouse, upon adjournment (5:00 p.m.) on March 20, 1995.

2. Population to be served 3. What changes are needed in the juvenile code.

Senator Petty withdrew her motion to amend.

Motion made by Senator Petty, second by to offer a substitute bill that would strip the current House bill, make an amendment that would limit it to juvenile offenders, giving the governor's commission the option to include everybody, and also add SB 230 with amendments (Attachment 2), and delete language that the head of the youth authority is cabinet level position. Motion carried.

Motion made by Senator Petty, second by Senator Feleciano to move the Substitute HB 2287 favorably. Motion carried.

Senator Petty discussed amendments drafted by the Office of Judicial Administration to SB 230 (Attachment 3) on page 1, line 27. Senator Petty referred to page 3, section 4 and stated that was objected to because it put the counties in some financial jeopardy. Senator Petty stated lines 35-37, on page one need to be double checked with Lisa Moots, to be in agreement with the Sentencing Commission's recommendations. Referring to page 2, Section 3(b) line 15, Senator Petty stated that there needs to be some language in there that states that the request for the grant is based on a community plan, and that judges have contributed to the plan in terms of their programmatic needs. Senator Petty advised that assessment programs need to be in accordance with the rules. Senator Petty stated that in Section 3 (a) on line 7, page 2 after "allocations" the whole section was deleted.

HB 2015--Private property protection act

Use of the word "substantial" for a taking as opposed to "reasonable" was discussed. Questions arose whether the word, "substantial" was necessary.

Motion was made by Senator Parkinson, second by Senator Bond to replace the word "substantially" line 4, and line 22 on page 3 with the word, "reasonably." Motion carried.

Motion was made by Senator Parkinson second by Senator Bond to move the bill favorably as amended. Motion carried-- with request of recording the "no" votes as Senator Petty, Senator Vancrum, and Senator Martin.

HB 2331--Repealing not guilty by reason of insanity; creating the defense of lack of mental state.

The Chair explained HB 2331 would change the pleading under current law. This law would change from the possible pleas of: guilty, not guilty, not guilty by reason of insanity.

Senator Parkinson explained that according to a published piece, that when states offer pleas of guilty, not guilty the instances of not guilty by reason of insanity go way down. If someone truly is insane that can be argued. These pleas seem to work in reducing false claims of insanity. This shifts the focus to more of a capacity issue.

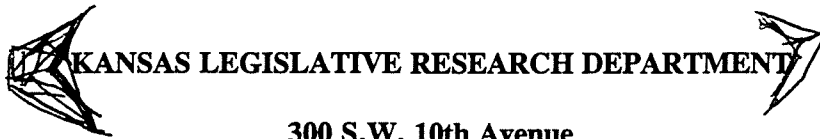
Motion was made by Senator Parkinson, second by Senator Bond to amend SB 329 into HB 2331 and pass out favorably with different implementation dates for each bill. Motion carried.

HB 2299--Giving worthless checks and causing an unlawful prosecution for worthless checks.

In explaining a proposed amendment to HB 2299, the Chair stated that the legislature provided civil damages for worthless checks. The Chair explained the problem of check collectors collecting triple damages for worthless checks and the judges under current law do not have discretionary powers. The Chair recommended an amendment that would allow the court some discretion as to when to levy these triple damages and attorney fees plus additional damages of \$100. The bill is best amended by stating that they "may" be liable for these damages.

Motion made by Senator Bond, second by Senator Parkinson that HB 2299 be amended conceptually and passed out favorably. Motion carried.

Meeting adjourned at 6:25 p.m.
The next meeting is scheduled for March 21, 1995.



300 S.W. 10th Avenue
Room 545-N – Statehouse

Phone 296-3181

March 20, 1995

TO: Senator Tim Emert

Office No. 143-N

RE: Comparison of S.B. 231 (Kansas Children and Youth Authority)
and H.B. 2287 (Kansas Youth Correctional Authority)

S.B. 231 creates a Kansas Children and Youth Authority and a separate State Department of Children and Youth. The Department would have responsibility for children in need of care, foster care children, and juvenile offenders. The bill designates that the Secretary shall be a member of the Governor's cabinet. (The Governor's cabinet is not statutorily created. Historically, the Governor designates those whom he wants to be part of his cabinet.)

H.B. 2287 creates a Kansas Youth Correctional Authority and a separate State Youth Corrections Department. The Department would have responsibility for juvenile offenders and the operation of state youth centers.

Both bills provide for the appointment of a five-member authority to develop policies relating to the scope each department cited above and both authorities have the ability to hire an executive director. Under S.B. 231 the appointment of the executive director expires on June 30, 1995 (a mistake apparently, it should be 1996), and under H.B. 2287 the appointment expires December 31, 1996. Both authorities become advisory after the department is created.

In S.B. 231, the Department Secretary shall be appointed on July 1, 1996 by the Governor. The Secretary becomes responsible on July 1, 1996 for juvenile offenders (and on July 1, 1997 for children in need of care). In H.B. 2287, the Department is created and the Commissioner appointed on January 1, 1997.

Under S.B. 231, the State Department of Children and Youth has the following duties in regard to juvenile offenders:

1. control and manage the operation of the state youth centers;
2. evaluate the rehabilitation of juveniles committed to the Department and prepare and submit periodic reports to the committing court for the purposes of: evaluating the effectiveness of institutional treatment; making recommendations for release where appropriate, and recommending terms and conditions; and reviewing the placement of juveniles and recommending alternative placements such as supervised release into

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the community, out-of-home placement, or community services work where appropriate;


3. be responsible for directing state moneys to providers in local communities of alternative placements such as supervised release into the community, out-of-home placement, community services work or other community-based service; provide assistance to such providers; and evaluate and monitor the performance of such providers relating to the provision of services; (Apparently this is intended to be a major thrust of this bill, *i.e.*, spending less money at the state level and directing more money be spent at the local level. There is not a similar provision in H.B. 2287.)
4. consult with the schools and courts on the development of programs for the reduction and prevention of delinquency and the treatment of juvenile offenders;
5. cooperate with other agencies whose services deal with the care and treatment of juvenile offenders;
6. advise local, state, and federal officials, public and private agencies, and lay groups;
7. assemble and distribute information relating to delinquency; and
8. assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community program for combating juvenile delinquency and crime.

Under H.B. 2287, the State Youth Corrections Department, which has very similar duties to those listed in S.B. 231, with the exception noted above, shall:

1. control and manage the operation of the state youth centers;
2. evaluate the rehabilitation of juveniles committed to the Department and prepare and submit periodic reports to the committing court for the purposes of: evaluating the effectiveness of institutional treatment; making recommendations for release where appropriate, and recommending terms and conditions for release; and reviewing the placement of children and recommending alternative placements such as supervised release into the community, out-of-home placement, or community services work where appropriate;
3. consult with the schools and courts of this state on the development of programs for the reduction and prevention of delinquency and the treatment of juvenile offenders;
4. cooperate with other agencies whose services deal with the care and treatment of juvenile offenders;
5. advise local, state, and federal officials, public and private agencies, and lay groups on the needs for and possible methods of the reduction and prevention of delinquency, and the treatment of juvenile offenders;

6. assemble and distribute information relating to delinquency and report on studies relating to community conditions which affect the problem of delinquency; and
7. assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community program for combating juvenile delinquency and crime.

I hope this information is useful to you.


Mike Heim
Principal Analyst

MH/jl

This is
QJA's proposal

Session of 1995

SENATE BILL No. 230

By Senators Petty, Bond, Brady, Downey, Emert, Feleciano, Gooch, Hardenburger, Hensley, Jones, Karr, Kerr, Langworthy, Lawrence, Lee, Martin, Morris, Oleen, Papay, Parkinson, Praeger, Rock, Salisbury, Tillotson, Walker and Wisdom

2-6

12 AN ACT concerning juvenile offenders; relating to community programs
13 and services; providing for allocations to local juvenile intake and as-
14 sessment programs for that purpose; ~~requiring reimbursement of costs~~
15 ~~to the state for certain juvenile offenders.~~

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. As used in this act:

19 (a) "Fund" means the juvenile offender community intensive sanc-
20 tions fund created by section 2.

21 (b) "Juvenile offender" has the meaning provided by K.S.A. 38-1602
22 and amendments thereto.

23 Sec. 2. (a) There is hereby created in the state treasury the juvenile
24 offender community intensive sanctions fund.

25 (b) Moneys shall be credited to the fund as provided by law.

in accordance with
rules

26 (c) Moneys in the fund shall be allocated to local juvenile intake and
27 assessment programs ~~established within guidelines~~ established by the
28 Kansas supreme court for the following purposes:

29 (1) To pay costs related to the training, treatment, rehabilitation, early
30 intervention or other programs or services created in response to a plan
31 outlined regarding needs for various juvenile sanctions to be provided in
32 each judicial district for juvenile offenders; and

33 (2) to provide programs and services for the training, treatment or
34 rehabilitation of juvenile offenders that are alternatives to commitment
35 of such offenders to the secretary, including, but not limited to, com-
36 munity residential care, day reporting or treatment centers, intensive su-
37 pervision, services within the home, house arrest programs and electronic
38 monitoring.

39 (d) All expenditures from the fund shall be made in accordance with
40 appropriation acts upon warrants of the director of accounts and reports
41 issued pursuant to vouchers approved by the chief justice of the Kansas
42 supreme court or by a person designated by the chief justice for the
43 purposes provided by this section.

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1 (e) The chief justice may designate another person to carry out any
2 or all of the responsibilities prescribed by any provision of sections 1
3 through 7.

4 Sec. 3. (a) The chief justice shall be authorized to adopt rules and
5 regulations establishing a formula for allocation of moneys in the fund to
6 such local juvenile intake and assessment programs participating in such
7 allocations. ~~The formula shall be based on the number of juvenile of-~~
8 ~~fenders adjudicated in the judicial district in which such local juvenile~~
9 ~~intake and assessment program is located and, the severity level of the~~
10 ~~offenses committed by such juvenile offenders and the number of juve-~~
11 ~~niles who have entered into a diversion agreement in lieu of being adju-~~
12 ~~dicated as a juvenile offender.~~

13 (b) On or before July 1, 1995, any such local juvenile intake and
14 assessment program may apply to the chief justice to participate in allo-
15 cation of moneys in the fund for the fiscal year ending June 30, 1996, and
16 thereafter. On or before January 1, 1996, the chief justice shall solicit
17 applications from any such local juvenile intake and assessment program
18 to participate in such allocations for the fiscal year ending June 30, 1997,
19 and thereafter. On or before January 1, 1997, the chief justice shall solicit
20 applications from any such local juvenile intake and assessment program
21 to participate in such allocations for the fiscal year ending June 30, 1998,
22 and thereafter. On or before January 1, 1998, the chief justice shall solicit
23 applications from all remaining any such local juvenile intake and assess-
24 ment programs to participate in such allocations for the fiscal year ending
25 June 30, 1999, and thereafter.

26 (c) On and after July 1, 1998, all such local juvenile intake and as-
27 sessment programs of the state shall participate in allocation of moneys
28 in the fund.

29 (d) The chief justice shall remit payments to such local juvenile intake
30 and assessment program in accordance with allocations to such local ju-
31 venile intake and assessment program from the fund. All such payments
32 received by such local juvenile intake and assessment program shall be
33 deposited in a separate account ~~established in a bank in the judicial dis-~~
34 ~~trict in which such local juvenile intake and assessment program is located~~
35 ~~designated by the pooled money investment board for deposit of state~~
36 ~~agency accounts.~~ Such account shall be used only for the purposes de-
37 scribed in subsection (c) of section 2, ~~and for reimbursements required~~
38 ~~by section 4.~~ All expenses paid from the account shall be paid by ~~issuance~~
39 ~~of checks~~ by such local juvenile intake and assessment program in accor-
40 ~~dance with procedures established by the director of accounts and re-~~
41 ~~ports.~~

42 (e) Accounts established under this section and moneys to be depos-
43 ited in such accounts under this section shall be subject to ~~post audit~~

in the county treasury of
the county in which the
juvenile intake and
assessment system is
administered.

audit pursuant to
K.S.A. 12-150.

1 under the legislative post audit act.

2 ~~Sec. 4. (a) Except as provided by subsection (b), each such local ju-~~
 3 ~~venile intake and assessment program shall be required to reimburse the~~
 4 ~~state in an amount equal to 75% of the costs for any juvenile offender~~
 5 ~~who is provided services described in subsection (c) of section 2 by such~~
 6 ~~local juvenile intake and assessment program under order of such local~~
 7 ~~juvenile intake and assessment program entered on or after the first day~~
 8 ~~of the fiscal year when such local juvenile intake and assessment program~~
 9 ~~first participates in allocation of moneys in the fund.~~

10 ~~(b) The provisions of subsection (a) shall not apply to juvenile of-~~
 11 ~~fenders adjudicated for an act which, if committed by an adult, would~~
 12 ~~constitute murder in the first degree, murder in the second degree, vol-~~
 13 ~~untary manslaughter, involuntary manslaughter, rape or aggravated crim-~~
 14 ~~inal sodomy.~~

4

15 ~~Sec. 5.~~ (a) In accordance with rules and regulations promulgated by
 16 the chief justice, each such local juvenile intake and assessment program
 17 shall:

18 (1) File with the chief justice a plan pertaining to the use, ~~upon an~~
 19 ~~order of the district court,~~ of the moneys allocated to such local juvenile
 20 intake and assessment program under this act for specified programs and
 21 services or purchase of such programs and services for juvenile offenders
 22 described in subsection (c) of section 2. The plan shall include, ~~but not~~
 23 ~~be limited to:~~

24 ~~(A) A centralized and integrated intake system; and~~
 25 ~~(B) a method of ensuring equal access for minority youth to the pro-~~
 26 ~~grams and services.~~

27 (2) On or before July 31, 1996, and each year thereafter, file with the
 28 chief justice a report containing all of the statistical and other information
 29 for each month of the prior fiscal year that will permit the chief justice
 30 to prepare the report described in subsection (b).

31 (b) On or prior to October 1 of each year, the chief justice shall
 32 submit to the legislature a report on the operation of this act during the
 33 preceding fiscal year. Such report shall include but not be limited to:

34 (1) A description of the programs and services that were financed
 35 under this act in each judicial district;

36 (2) the number of felony juvenile offenders and other juvenile of-
 37 fenders served by the programs and services in each judicial district;

38 (3) the total number of felony juvenile offenders adjudicated in each
 39 judicial district;

40 ~~(4) the total number of felony juvenile offenders who were commit-~~
 41 ~~ted to such local juvenile intake and assessment program by the district~~
 42 ~~court in each judicial district; and~~

43 ~~(5) a breakdown of the felony juvenile offenders described in sub-~~

1 ~~section (b)(1) on the basis of the types and severity levels of felonies~~
2 ~~committed, the ages of the felony juvenile offenders at the time they~~
3 ~~committed the felonies and the sex and race of the felony juvenile of-~~
4 ~~fenders.~~

5 ~~Sec. 6. On and after July 1, 1996, the duties and responsibilities pro-~~
6 ~~vided by this act for the chief justice of the supreme court and the local~~
7 ~~juvenile intake and assessment programs shall be transferred to the sec-~~
8 ~~retary of children and youth and the department of children and youth~~
9 ~~or similar entity upon creation of any such entity that is given the re-~~
10 ~~sponsibility related to the care, custody and control of juvenile offenders~~
11 ~~by an act of the legislature of the state of Kansas.~~

12 ~~Sec. 7. The chief justice may adopt rules and regulations to admin-~~ 5
13 ~~ister the provisions of this act.~~

14 ~~Sec. 8. This act shall take effect and be in force from and after its~~ 6
15 ~~publication in the statute book.~~

Suggested Revisions to Senate Bill 230
 Provided by the Office Judicial Administration
 February 27, 1995

The following is a narrative description of suggested revisions to senate bill 230 which establishes the juvenile offender community intensive sanctions fund. In general, the revisions bring the bill into a format which is closer to the judicial branch operating procedures, removes the requirement for local programs to reimburse the state, and clarifies the role of the fund and juvenile intake and assessment system. The revisions also suggest that the judicial branch not be required to administer this fund if, after a period of one year, responsibility for this act is transferred to a yet to be created department of children and youth or similar entity. This proposal is submitted by the Office of Judicial Administration at the request of Senator Marge Petty.

Page # Line #	Rationale for Suggested Modification
pg. 1 14 -15	A policy which defines the relationship between the state and local governments has not been established. In addition, local programs have not been established and, therefore, should not be subject to reimbursement requirements until such time as they can develop a level of expertise and experience in the provision of services.
pg. 1 27	The Kansas Supreme Court operates under a system of rules as opposed to guidelines
pg. 2 4 - 5	Eliminates language referring to regulations
pg. 2 7 - 12	Allows the Supreme Court to establish the formula as authorized in the first sentence of Sec. 3. (a)
pg. 2 33 - 36	Allows the Supreme Court to use the same process for distribution of funds as is being used for the juvenile intake and assessment system.

<p>pg. 2 43 and pg. 3 1</p>	<p>Eliminates duplication of audit process. Counties are subject to audit under K.S.A. 12-150. Requiring an audit through the legislative post audit act would be a duplication of services.</p>
<p>pg. 3 2 - 14</p>	<p>Eliminates requirement for reimbursement as discussed earlier. Also eliminates list of crimes for which reimbursement would not be required. If reimbursement is required through this act or at a later date, this list may need to be revisited.</p>
<p>pg. 3 18 - 19</p>	<p>Clarifies that chief justice will approve the plan pertaining to use of the moneys allocated to local juvenile intake and assessment programs.</p>
<p>pg. 3 23 - 25</p>	<p>A centralized and integrated intake system has previously been authorized.</p>
<p>pg. 3 40 - 43 and pg. 4 1 - 4</p>	<p>Juvenile offenders are not committed to local juvenile intake and assessment programs by the district court.</p>
<p>pg. 4 5 - 11</p>	<p>Suggesting that the administration of this fund be transferred to the secretary of children and youth or similar entity after a period of one year creates two significant problems for the judicial branch. First, placing this responsibility with the judicial branch will create a significant increase in the workload for the office of judicial administration and the district courts. Given our experience with juvenile intake and assessment, as well as other programs, it will take approximately one year to achieve what this bill seeks to accomplish. While this is acceptable if the fund administration is to continue under the judicial branch, requiring this expenditure of time and effort, only to have it transferred after one year, is problematic. Second, if a department of children and youth is created, it is presumed that administrators within that new department would make changes to fit within the new agency's rules and regulations. These changes would, quite naturally, complicate program implementation and the delivery of services.</p>