

Approved: 2-1-95
Date

MINUTES OF THE JOINT MEETING OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE AND SENATE JUDICIARY.

The meeting was called to order by Chair Tim Emert at 10:00 a.m. on January 19, 1995 in Room 514-S of the Capitol.

All members were present except:

Public Health and Welfare Committee staff present:

Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

John White, District Judge from Allen County

Daniel L. Mitchell, District Judge from Shawnee County

Others attending: See attached list

Juvenile Justice System

John White, District Judge from Allen County, opened his remarks by stating that the juvenile justice system in Kansas is not working, and that when we talk about juvenile justice, it's hard to separate the difference between adult criminal justice and juvenile criminal justice, because basically what we're talking about is difference in age. The consequence to the victim is the same, and the question arises then how are we going to treat that criminal. He noted that the adults he has prosecuted almost uniformly had a prior juvenile record-- they did not become criminals at age 18 except by definition, they became what they were much earlier. One of the major problems he sees in the juvenile justice system is the float of the juvenile through the system -- the juvenile is either waived into the adult criminal system when SRS is through with him or he becomes 18 and moves into the criminal justice system. It's difficult to separate adult crime from juvenile crime because adult crime is merely an extension of what goes on at an earlier age as far as that individual is concerned. The adult criminals are the graduates of our juvenile justice system. (Attachment 1)

In response to questions, Judge White felt that the Citizen Review Board does have a positive presence in the juvenile offender area, and that we need to develop programs that provide for dispositional alternatives other than probation back to the parents or incarceration with YCAT. He noted that the adult system is better than the juvenile system, because the courts have more alternatives available to them such as work release programs. He also felt boot camps would be an alternative disposition for juveniles short of a youth center, the need to educate the public on the juvenile problem, the need for preventive programs, the continuum of services for the juvenile before he gets into the system, and the need for better communication and coordination between entities in the community -- agencies, schools, SRS, courts and mental health -- which would eliminate confidentiality roadblocks. It was suggested that the courts may be the best opportunity to bring these entities together and provide early intervention when controversy first starts in a family.

Judge Mitchell addressed the Committee and commented that rehabilitation should be the direction the Juvenile Offenders Code should be looking at, and resources to get around the "magical" age of 21 whether it be by dispositional alternatives and extending jurisdiction under the juvenile system or taking a certain classification of young people and putting them in the adult system. He noted that such action would afford them all of the rights and protection of the adult criminal system including preliminary hearings and trial by jury, then at the time of sentencing, affording that defendant in the adult system the opportunity to apply for a rehabilitative program within the juvenile system subject to a hearing at age 21 to determine whether rehabilitation has been effective. If so, subject that person to parole -- if not, transfer that person to the Department of Corrections for the balance of the sentence as would have originally been imposed as an adult. Judge Mitchell recommended juvenile community corrections as an appropriate course to look at, intensive supervised probation within the community, day reporting within the community, educational opportunities within the community for those children who are expelled or excluded from school because of behavior, and the family court concept be explored in order to address the needs of the family for early intervention. A study on family courts made by The Corporation for Change was also discussed.

CONTINUATION SHEET

MINUTES OF THE JOINT MEETING OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE AND SENATE JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 19, 1995.

In response to a question on extending jurisdiction beyond age 21, Judge Mitchell commented it could be made more like the adult system and afford the criminal protection, extend the jurisdiction beyond, or artificially pick an age other than 21 for the court's dispositional alternatives to address it. He noted that perhaps the more appropriate course would be to consider the prospects of affording more of the criminal protections because custody of that person would be maintained for a considerable amount of time. Judge White also noted that more protection of constitutional rights for the juvenile was needed because of the sentencing guidelines. Under the sentencing guidelines, juvenile crimes are not treated in the same manner as adult crimes -- and for future sentencing and criminal history, it is imperative that the same rights be provided to juveniles as adults when charged with those crimes.

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for January 24, 1995.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 1-19-95

NAME	REPRESENTING
<i>John White</i> Edward Rowe	X5. Judiciary - Solo League of Women Voters/KS
<i>Jim Cleve</i>	KCVAA
<i>Mary Ellen Dinn</i>	L.G. of Women Voters
<i>Matt Jordan</i>	KBA
<i>Gene Johnson</i>	Ks Alliance Alcohol & Drug
<i>Matt Thuell</i>	AP
<i>Candace Byrne</i>	Messenger
<i>Susan Chase</i>	KNEA
<i>Chris Boss Bge</i>	KDHE
<i>Emma Knight</i>	
<i>Candice Ward</i>	Attorney General Office
<i>Julene Masler</i>	Attorney General's office
<i>Diane Gjerstad</i>	USD 259
<i>Jan Johnson</i>	KDOC
<i>Dan Mitchell</i>	District Judge
<i>Mark Gieser</i>	OSA
<i>Larry Kuse</i>	Stacy
<i>M. Shields</i>	Harris News

JUVENILE JUSTICE

Presentation to

State of Kansas

SENATE JUDICIARY COMMITTEE

Sen. Tim Emert, Chair

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

Sen. Sandy Praeger, Chair

Thursday, Jan. 19, 1995

Room 514-S, Statehouse

Topeka, Kansas

10:00 a.m.

INTRODUCTION

I am John White, District Judge from Allen County. I appreciate being asked to talk with you about the Kansas juvenile justice system. I wish to express my thanks to you for devoting some of your time to an examination of the juvenile system, and I congratulate you for doing so. It is my belief that an examination

of the juvenile justice system is long overdue.

I have been a member of the Advisory Commission on Juvenile Offender Programs since 1986. I have been Vice-Chair of the Commission for the past year or so.

I was a member of the Court/Education/ SRS Liaison Committee from 1987 to 1992. I was chair of the court delegation during the years I served on the committee. I was chair of the committee for two one-year terms.

My interest in the juvenile court system began more than 25 years ago. A short time after I graduated from law school I was elected county attorney of Neosho county. While prosecuting criminal cases I noticed that in nearly every criminal case I prosecuted the presentence investigation report indicated that the defendant had a prior juvenile record. I soon developed the opinion that if we wanted to decrease the rate of adult crime we would have to rehabilitate the juvenile offenders. I also noticed that in prosecution of juvenile cases the system was having little success in rehabilitating juvenile offenders. Then, as now, one of our problems was not having enough resources--the dispositional options were limited to probation or a youth center. We had very few beds available in the youth centers.

ADULT CRIMINAL JUSTICE SYSTEM

To the victim of a crime it doesn't make much difference whether the person who pulled the trigger was 14 or 40, whether the burglar was 13 or 30, the result is the same regardless of the age of the person who committed the crime. I would like to spend just a minute or two discussing the adult criminal justice system.

A few months ago I made a statement to a civic organization in Iola that "the criminal justice system is working perfectly." I'm sure you can imagine the reaction I received from that remark. However, put that statement in this context--"Every organization is perfectly designed for the results it achieves."

Twenty-five years ago our prison population was less than two thousand inmates. Now the number in prison exceeds six thousand and is growing. This number does not include the thousands of people who are on parole, probation, in community corrections, or are in pre-release or halfway houses.

To the extent that we are designed to put people in jail or prison we are succeeding. To the extent that we want to achieve a reduction in the crime rate we have failed. I'm sure we all agree that our goal is a reduction in crime making our cities and our state a safer place to live. At the present time there is no indication we are achieving that goal.

I wanted to mention the adult criminal problem because most of the people we are seeing in the adult criminal system are the graduates, the alumni of the juvenile justice system. Before sentencing guidelines we received a presentence investigation report on the criminals that we sentenced. The report detailed the defendant's prior criminal record, juvenile record, work history, education, marital history, medical and mental history, and many other factors. All too often the report described a scenario that we know exists:

1. a student becomes a problem for the schools, the schools work with the student until his behavior is such that he is referred to the court system;
2. The court system, seeing the student for the first time, treats him with some leniency; then after seeing the juvenile for the third or fourth time the court refers him to SRS custody;
3. SRS is now seeing him for the first time and they treat him with some leniency, much to the chagrin of school and court officials;
4. finally, the juvenile enters the adult system, by waiver or by reaching age 18.

I brought a presentence report that portrays what I have just described. I thought you might find it interesting. It describes the background in one of our Allen County cases. (Charlie Dill PSI)

Most of our teachers can identify our future juvenile offenders and adult criminals at an early age. We know who these children are that need treatment of one form or another but we aren't doing anything about it.

While we are on the subject of schools and identifying children with problems there is one specific subject that I want to discuss. According to the media publicity given to your work Senator Emert expressed his concern with truancy matters. Truancy is an issue that is often given less attention than it deserves. NO longer is truancy a matter of Tom Sawyer and Huck Finn skipping school to go fishing.

Truancy is often a symptom of a more significant family problem. A few years ago, while I was serving on the Court/Education/SRS committee, I was engaged in discussion with an administrator from Topeka's USD 501. I asked him about his biggest problem with SRS and the courts. To my surprise his response was "failure to enforce the truancy laws." He went on to explain some of his experiences with students who were often truant. My county attorney says that the school's and SRS attitude toward truancy is very frustrating to her. She is considering trying to hire a truant officer if possible. Her opinion is that SRS should be left out of the process and reports should be made directly to the county attorney.

ADULT CRIMINAL/JUVENILE OFFENDER-COURT PROCEDURES

I now want to discuss with you some personal opinions I have concerning juvenile court procedures.

Confidentiality-I question that confidentiality of juvenile court proceedings has been of any benefit to the public or the juvenile. Of course, much of the confidentiality requirement has been removed by recent legislation. I do believe that the juvenile's social file should remain confidential. I would suggest to you that public scrutiny of official acts, whether the act of a judge, attorney, SRS, or anyone involved in the system, tends to promote the public and the individual's interests; and that secrecy of the proceedings does not.

Parens Patriae and Due Process- The parens patriae concept is the foundation for the juvenile court system and has for decades provided the basis for treating juveniles different than adults. I question that the practice in some of our juvenile courts meets the requirements of due process. In a leading U.S. Supreme Court case, *In re Gault*, the court held that the unbridled discretion perpetuated by the parens patriae doctrine is often a poor substitute for procedure-"neither, the Fourteenth Amendment nor the Bill of Rights

is for adults alone."

In another case the U.S. Supreme Court held " There is much evidence that some juvenile courts lack the personnel, facilities, and techniques to perform adequately as representatives of the State in a parens patriae capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."

I have serious concerns that our children are receiving the worst of both worlds. (Describe Joshua Reynolds case from Sedgwick county) I have no reason to believe that the denial of due process to this juvenile was due to anything other than the lack of resources as described by the Supreme Court.

Sentencing Guidelines-Related to the parens patriae/ due process issue is another problem I believe will arise in another year or so. The sentencing guidelines make juvenile convictions a part of the defendant's criminal history for sentencing purposes. Juvenile described above would have a severity level one conviction as part of his prior criminal record-the equivalent of a second degree murder conviction. When sufficient time elapses

that adults begin realizing the impact of a prior juvenile conviction I would expect challenges to the sufficiency of juvenile court proceedings.

As an example to this, how many of you have been involved in or even are aware of a juvenile case tried to a jury-not a juvenile waived to adult jurisdiction, but a juvenile jury case. I recently ran a quick computer search of juvenile cases appealed to the Kansas appellate courts and found one appeal involving a juvenile jury trial.

Alternative Dispositions- Courts dispositional alternatives are limited, often to a choice of commitment to a youth home or probation back to the family. When the choice is limited to probation or YCAT, the juvenile is often given probation on two, three, or more offenses before any other punitive action is taken. It is difficult to enforce the terms of a probation if there are no consequences to violating it. Juveniles do know what will happen in juvenile court!--or more appropriately stated, they know what will not happen.

Parental Responsibility-A popular concept is to require that more responsibility be placed on parents for controlling the actions of their children. While I would like to see this accomplished it is much easier to

discuss than it is to legislate such responsibility.

Age 21 Jurisdiction-I have never understood the law limiting juvenile jurisdiction to age 21, especially in cases of serious crimes. The release at age 21 should be discretionary based on the suitability of the juvenile for release.

I would submit to you that if juvenile proceedings were made more comparable to adult proceedings the public and the juvenile would benefit by that change. Of course there are certain exceptions. Let's compare a juvenile proceeding with an adult proceeding.

Adult Felony-

First Appearance, bond set, appointed counsel if indigent, set preliminary hearing

Preliminary Hearing- Adversary hearing; state must show crime committed and probable cause to believe defendant committed crime;

Diversion-

Arraignment-plea not guilty

Pretrial motions- directed to discovery, protection of the defendant's constitutional rights,

Trial-trial by jury; effective assistance of counsel

Appeal-right to counsel

Sentencing alternatives-incarceration, probation, work-release, community corrections, boot camp,

Post release supervision-parole officer supervises and monitors defendant's conduct.

Juvenile has some of above rights but those rights are not being exercised to the extent that such rights would be safeguarded for an adult. Virtually no dispositional alternatives-probation or youth center. The juvenile is not subject to post-release supervision.

PREVENTION

Prevention of crime, juvenile or adult, is our goal. Unfortunately, it is much easier to talk about than to accomplish. The public wants a reduction in the crime rate, but how much are

they willing to pay for it. You certainly know, better than I, what the public wants and what they will pay for. The problem with preventive programs is that the results are not immediately recognized.

During a K.U. conference on juvenile issues a speaker related this story. (Fishermen story).

Concepts for prevention:

1. Improve cooperation between various service providers. Stop the scenario of juvenile passing through school, then court, then SRS, into adult criminal system. Provide services when need is identified.
2. Provide incentive for establishing community-based services; possibly mandate a juvenile community corrections plan similar to manner in which adult plan was mandated.
3. Provide more services for juvenile with emphasis on prevention at early stages; provide discretionary use of secure settings for juveniles requiring a structured environment.
4. Provide resources for evaluation of juvenile, transition out of system, and aftercare.

5. Provide adequate facilities, personnel, etc. for appropriate legal proceedings.

6. Establish separate cabinet level position for children's issues.

DIVORCE/CINC

I have not discussed two other areas concerning children-children in need of care and domestic cases (divorce). Certainly, these areas of concern also need to be addressed.

CONCLUSION

I would like for you to consider one more quote-"Insanity is doing the same thing over and over and expecting a different result." Obviously, our present system is not achieving our goal. We cannot continue as we are, and have been for decades, and expect a different result. Without change we will continue graduating juveniles into the adult criminal system, and we will need to build more and more prisons to house them.