

Approved: February 22, 1995
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON JUVENILE CRIME.

The meeting was called to order by Chairperson David Adkins at 9:00 a.m. on February 14, 1995 in Room 527-S of the Capitol.

All members were present except: Brenda Landwehr

Committee staff present: Don Cawby, Legislative Research Department
Gordon Self, Revisor of Statutes
Leona Fultz, Committee Secretary

Conferees appearing before the committee: William E. Kennedy, Riley County Attorney

Others attending: See attached list

David Adkins introduced William E. Kennedy III to the Committee. Mr. Kennedy would like to stress that his thoughts will emphasize that Community Corrections is a Community Vehicle. He would like to encourage the importance of the whole community working together on juvenile crime issues. He feels there is a lot of uncertainties in juvenile law and that juvenile law is too slow to react. His recommendations and suggested solutions are further explained in his written testimony. (Attachment 1).

David Adkins encouraged the Committee to begin putting thoughts together as to what might be the consensus of this Committee and where it will go from here. Thursday will be a meeting for Committee discussion and review of the bills assigned.

The Committee adjourned at 9:45. The next Committee meeting is February 15, 1995.

WILLIAM E. KENNEDY III

RILEY COUNTY ATTORNEY

BARRY R. WILKERSON
MICHAEL B. KEARNS
BRENDA M. JORDAN
Assistant Riley County Attorneys

KATHIE "KATE" SCHLEGEL
Diversion Officer



Carnegie Building, Second Floor
105 Courthouse Plaza
Manhattan, KS 66502

Victim Assistance Program
Check Collections Department
913/537-6390
FAX # 913/537-6334

TO: Select Committee on Juvenile Crime
Chair, Rep. David Adkins

TESTIMONY OF WILLIAM E. KENNEDY III, AGE 52,
RILEY COUNTY ATTORNEY SINCE 1985,
12 YEARS EXPERIENCE AS A PROSECUTOR, THREE YEARS
EXPERIENCE AS A TEACHER, FIVE YEARS EXPERIENCE AS A HIGH SCHOOL
AND JUNIOR HIGH SCHOOL PRINCIPAL, PARENT OF FIVE

JUVENILE LAW IS UNCERTAIN

Adult criminal law has put the prosecutor in the driver's seat. The courts have lost a great deal of authority because they are now basically driven by the prosecutor's charges assuming the prosecutor can prove them. The Prosecutor has the right to accept or reject a plea bargain. The Prosecutor has the right to charge as deemed appropriate. The Prosecutor, by proving his charges, has a basic right to demand a certain prison sentence. The Prosecutor has the right to appeal any modification of the basic prison sentence which the trial court deems appropriate.

By contrast, with juvenile law, the Prosecutor does not have those authorities in any way, shape or form. Only the Court has the right to grant a diversion. The Court has complete discretion over the prosecutor's suggestions at sentencing time. However, not even the Court has the discretion to set a given length of sentence. That authority rests with the Secretary of Social and Rehabilitation Services, who is budgetarily and politically driven. On the other hand, a Magistrate Court has the authority to convict and send a juvenile to the Youth Center, whereas in adult court, only a District Judge can send someone to prison. These contradictions add to uncertainties of law in an area where certainty is needed.

JUVENILE LAW IS SLOW

If a juvenile goes through court on a serious matter, and then is placed on probation, and the probation order is violated, the juvenile may be required to return to court on motion of the prosecutor, but the juvenile's rights thereafter are much higher than adult criminal rights. Specifically, the juvenile has the right to a complete trial, (see K.S.A. 38-1660) in the event that the juvenile denies the allegation of violation. This creates

Select Committee on Juvenile Crime
February 14, 1995
Attachment 1

obvious calendar problems which may stretch the matter from 30 to 60 days of the first time the juvenile appears back in court and denies the allegation of violation. In considering whether to detain the juvenile the court must consider the preamble to the juvenile code which states that juveniles are best treated in their own homes.

Probation under some conditions may very well be completely appropriate for a first time juvenile offense of even quite serious magnitude. However, the message that is sent to juveniles by the grace period between a stated violation being discovered and action against the juvenile by prosecutors and the rest of the system sends a clear message to the juvenile that the juvenile can do as he pleases. All the judge's words are only words, and the punishment, if any, is delayed so long that either the juvenile has forgotten what he is being punished for or the juvenile, seeing the writing on the wall, runs completely amok again. In either case, society is the loser.

PROBLEMS

K.S.A. 38-1671 - Entry to the Youth Center is controlled by the Secretary.

K.S.A. 38-1602(e) - Compared to K.S.A. 38-1632(e)(f) - The definition of detention center versus the definition of juvenile detention facility. No authority to hold an adjudicated juvenile in the juvenile detention facility unless the court finds the juvenile is dangerous to self or others, or the juvenile will run. There is no apparent authority to detain the juvenile who is out after being convicted of a juvenile crime and is on his way to the Youth Center.

K.S.A. 38-1673 - There is no court authority to veto the Secretary's decision to release a juvenile from the Youth Center.

K.S.A. 38-1666 - A juvenile accused of probation violation has a right to a full trial before the court finds that the violation has occurred.

Group Homes contracting with the Secretary of Social and Rehabilitation Services throw up their hands when a juvenile misbehaves. They throw him out. He wins again.

SUGGESTED SOLUTIONS

1) K.S.A. 38-1666 should be amended to reduce the burden on the prosecutor in the event of a Motion to Revoke a juvenile's probation.

2) In any case less than a felony, a District Judge should have to review a magistrate's order to commit a juvenile to the youth center.

3) More group homes are needed. As soon as there are a few empty beds, group homes, being economically challenged, will work harder to see that juveniles within them actually succeed, instead of being able throw out the hard cases.

4) Two levels of youth centers should be developed. The first level should deal with juveniles for whom there is real hope of rehabilitation. These should be locked down facilities but should emphasize high school education, qualification in various trades, appropriate social interaction and so on. The second tier of youth center should be for the lock down of violent offenders. Rehabilitation here should certainly be attempted. However, the primary thrust here should be toward containment.

5) Much has been said about the question of creating a third entity apart from SRS and Department of Corrections. I believe that this is appropriate as it is the only way that the legislature will be able to see that appropriate budgeting money goes toward the juvenile problem.