

Approved: April 7, 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 22, 1995 in Room 313-S of the Capitol.

All members were present except: Mike O'Neal

Committee staff present: Don Cawby, Legislative Research Department
Leona Fultz, Committee Secretary

Conferees appearing before the committee:

Rep. Jim Lowther
Merlin Wheeler, 5th District Judge
Jim Clark - KS County & Dist. Att. Assoc.
David Hanson, Nat. Assoc. of Ind. Insurers and Domestic Insurance Assoc.
Rep. Dee Yoh
Perry Strasburg, Crawford County Juvenile Detention Facility

Others attending: See attached list

Chairman Adkins opened the meeting. Copies of the Committee minutes were distributed for February 3, 7, 8, 9, 14, 15, 17 and 20. All were approved.

Hearings on **HB 2197 - concerning juvenile offenders; relating to dispositions thereof; relating to restitution** were opened.

Representative Jim Lowther appeared before the committee as a sponsor of the bill. He believes that a juvenile should have to make restitution to the victim for crimes for which they have been adjudicated.

Judge Merlin Wheeler appeared before the committee as a proponent of the bill. The judges of the 5th District believe it is time for dramatic changes in the handling of juvenile crime. They would support the idea of restitution to the victim and believe that by enforcing this bill it would also help in the rehabilitation of the offender. (Attachment 1)

Jim Clark from the Kansas County and District Attorneys Association appeared before the committee as a proponent of the bill. This group believes that restitution is a good idea and, if applicable, would also like to see community service implemented as part of that restitution.

David Hanson, National Association of Independent Insurers and Domestic Insurance Association appeared before the committee as an opponent of the bill. They would support the idea of restitution but do not like the idea that this would be handled as a civil judgment. They prefer **HB 2012** that has been introduced instead of **HB 2197**.

Hearings on **HB 2197** were closed.

Hearings on **HB 2317 - Concerning expenses of care and custody of juveniles** were opened.

Representative Dee Yoh appeared before the committee as a sponsor of the bill. She believes that if a juvenile is placed in a group home outside of their home county of residence and then the juvenile commits another crime while in the county of the group home the home county should be financially responsible for the juvenile. This bill would make each county responsible for its own. (Attachment 2)

Perry Strasburg appeared before the committee as a proponent of the bill. His county, Crawford County, allows inter-city youth to be placed in their county in Group Homes and Shelters. He believes that if these youth continue to commit crimes while in the county of the group home it is a costly burden on these counties. These youth would not be in these counties unless placed there by S.R.S. (Attachment 3)

Hearings on **HB 2317** were closed.

The Committee meeting was adjourned at 10:00. The next Committee meeting will be February 23, 1995.

Fifth Judicial District Court State of Kansas

MERLIN G. WHEELER
DISTRICT JUDGE

LYON COUNTY COURTHOUSE
EMPORIA, KANSAS 66801-4095
(316) 342-4950, EXT. 3296
(316) 342-8005 FAX

February 23, 1995

House Select Committee on
Juvenile Crime
Representative David Adkins, Chairman

Re: House Bill 2197

Members of the Committee:

I appreciated the opportunity to address you on February 22, 1995 regarding the passage of House Bill 2197. This memorandum shall reflect the majority of the comments I made to you orally and as well will address some of the other concerns raised by other conferees at the hearing.

I have been a district judge since April 1990 in the Fifth Judicial District of the State of Kansas. Our case assignment system provides for a rotation of all types of cases and therefore, each of the judges in this district has a considerable case load of matters involving felony and misdemeanor criminal acts, both by adults and juveniles.

In the course of the years of handling these matters, we have concluded that it is time that dramatic changes in the handling of juvenile crime be considered. Many of the juveniles we now see are less remorseful, more frightening, and exhibit an absolute callous disregard for the rights of others. We fear that we are about to reap the fruits of generations of mishandling of juvenile criminal acts and have made it much too easy for juveniles to commit crimes and avoid the consequences of their behavior.

There are many approaches and possible adjustments to be made to the law, but we believe that restitution to the victim is one concept which should be a necessary ingredient of any change. The problem we see is that many juveniles have no concept of the value of property rights or the sacrifices that others must make to acquire property or to provide their own livelihoods. This lack of values coupled with a

Select Committee on Juvenile Crime
February 22, 1995
Attachment 1

desire for immediate gratification, without apparent consequences, results in numerous criminal acts.

The district judges of the Fifth Judicial District as a whole are very committed to the concept of restitution. We believe that restitution functions not only to make the victim whole but to demonstrate to the wrongdoer that cost and sacrifice is a necessary fact of life. We also believe that restitution is one of only a few contacts that a victim has with the criminal justice system and the success or failure of the courts in achieving restitution in large part determines the feelings that our community and state have with regard to its criminal justice system.

I have encountered numerous occurrences of victims having very cynical approaches to dealing with our criminal justice system, especially when it involves juvenile offenders, because of prior occurrences where juveniles have reached the age requiring discharge from supervision and restitution has not been paid or even adequately addressed. Juveniles especially learn quickly how to deal with the present system and that there is little effective way of forcing payment or sacrifice while the offender is under the age of majority. House Bill 2197 will permit some juveniles to ultimately have to face the consequences of their behavior as well as placing the victims in greater control of their own destiny insofar as the payment of restitution is concerned.

We believe that allowing victims to have some control over the restitution process may also enhance the belief that a criminal justice system can and will work for the benefit of the victims. Therefore we endorse this legislation.

House Bill 2197 makes a very simple change to the provisions of K.S.A., 1994 Supp., 38-1663. It simply provides that a restitution order may be enforced as a judgment for payment of money in civil cases. There have been no real objections lodged to the concept advanced by House Bill 2197. In fact, what objections I have heard are based more upon form than substance and really deal with the administration of the enforcement procedure and not whether or not it should exist. This is not a concern which should effect passage of House Bill 2197.

Among the objections which have been orally expressed to this Bill are that it will result in an increased case load to the courts. If House Bill 2197 is passed in its present form, the Office of Judicial Administration along with the District Court Clerk's Advisory Board will make certain decisions with regard to the administration of the provisions of this Act. Among the options are the filing of the judgment as a new case or perhaps even retaining the judgment in the same juvenile case files. We do not believe that even if a new case is initiated because of a restitution order that this will be a significant factor for the courts. We do not expect a flood of cases to occur because many victims fail or refuse to participate in efforts to obtain a restitution order. We also expect that this legislation would be prospective only and therefore the filings would occur only periodically as new orders are entered. For these reasons, the problem of new case filings is more imagined than real.

Like the citizens of this state and the Kansas Legislature, judges do not like mandates to do more with less and we continually ask our staff to perform their duties in excess of reasonable levels. Even though we recognize that passage of this legislation may require additional efforts, the query we have asked ourself is whether we are more interested in the rights of victims or are more concerned with those who are serving the victims. When considering this query, we believe that we are there to serve the public and that we will do the best we can to do so. We believe that House Bill 2197 is an effective tool and that even though it may require additional efforts on the part of ourselves and our staff, we are prepared to undertake those responsibilities.

One of the second objections we have heard is expressed by abstractors or others who are concerned with the reporting of liens which might arise as a result of a civil judgment. This concern is expressed because of the confidentiality of juvenile offender files and that they are not subject to public disclosure. We would remind the committee that juvenile offender cases involving children age 14 and over are already subject to public disclosure. The question of confidentiality of a file really therefore only arises when we are dealing with the problem of crimes committed by juveniles age 11 to 13. This appears to be again a relatively minor problem and a problem of simply the administration of the recording of these judgments rather than a serious concern which should effect the ability of a judgment to be entered.

Representatives of the insurance industry have also expressed concerns about the *res judicata* effect of such judgments upon potential subrogation claims or claims of individuals for what would normally be considered to be future damages or non-pecuniary damages such as pain and suffering. Crime victims have always been free to seek recourse for their losses independent of the criminal justice system by filing their own civil action. This legislation is not intended to affect the ability of the victims to seek redress on their own, independent of the juvenile justice system. I do not believe that there have been any rulings to indicate that a restitution order in favor of a victim would preclude a victim from raising additional damages in a separate civil action or preclude an insurance company from filing a separate action on a subrogation claim. Again, I think this concern is more imagined than anything else and there are various tools available to us should individuals or insurance companies express a concern as to these matters on a timely basis where we can protect the rights of those parties.

One of the biggest problems we have in this jurisdiction insofar as restitution orders are concerned is a failure of the victim and their insurance companies to timely provide information to us, particularly with regard to property damage cases. For some reason, insurance companies particularly seem either incapable or unwilling to provide information with regard to claims already paid so that we can address these during the sentencing or disposition phase of adult and juvenile criminal matters. Consequently, many of the claims that insurance companies have could be addressed except for the fact that the insurance companies simply refuse to respond to the requests of our staff and the prosecutor's staff for information necessary to complete a restitution order. I cannot emphasize any more than already noted that if

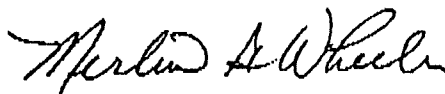
these parties now raising concerns would cooperate with the court and the prosecutors in providing timely information, many of their concerns would not now be raised.

I would, however, suggest two clarifications to House Bill 2197. The first would be that this legislation is intended to operate prospectively only and that specific language be included noting that it is intended to apply to restitution orders entered only after the effective date of the bill.

Secondly, I would suggest that there may be a problem with enforcement of restitution orders during the period that a juvenile remains under court supervision. This problem would arise when prosecutors attempt to enforce a restitution order, but unbeknown to the prosecutors, the victims would also be undertaking enforcement of the restitution order. This problem may be avoided by providing that during the period of court supervision of the juvenile offender, the victim may not undertake independent enforcement of the restitution order. This provision should, however, not apply to any case in which court supervision is no longer involved or which has terminated by reason of the child reaching the appropriate age.

As I offered at the hearing of February 22, 1995, I would be more than willing to assist the committee in whatever way necessary to see that this concept is carried out and made a part of the laws of the State of Kansas. Should you need further information, please do not hesitate to contact me.

Very truly yours,



Merlin G. Wheeler
District Judge

MGW:kls

cc: File

Representative James Lowther
Judge Francis Towle

DEE YOH
REPRESENTATIVE, SECOND DISTRICT
2802 E 12TH
PITTSBURG, KANSAS 66762



COMMITTEE ASSIGNMENTS
GOVERNMENTAL ORGANIZATION AND ELECTIONS
HEALTH AND HUMAN SERVICES
JUDICIARY

STATE CAPITOL
RM 174-W
TOPEKA, KANSAS 66612-1504
913-296-7655

TOPEKA

HOUSE OF
REPRESENTATIVES

February 22, 1995

Chairman Adkins, Members of the Committee, thank you for allowing me to testify in support of HB 2317.

This bill is simply a matter counties taking responsibility for their youth. Many counties did not want to have youth shelters in their counties and Crawford County was willing to accommodate with two shelters. We house juvenile delinquents from all over the state. At the time Crawford county took this responsibility, they were unaware they would become financially liable if a juvenile in their custody committed another crime. Currently, if a juvenile commits a crime while in one our youth shelters, Crawford County becomes responsible for their bill at the detention center. I believe this is wrong. If this is not a Crawford County juvenile, the taxpayers of Crawford County should not be penalized. Any county who takes in juveniles from other counties runs this same risk.

This bill makes the home county responsible for its own. With the

Select Committee on Juvenile Crime
February 22, 1995
Attachment 2

passage of this bill, Crawford county and other counties with youth shelters will not be forced to close their doors to out of county delinquents, or at the very least begin screening youth for the potential risk.

This is a matter of responsibility and accountability. I encourage your support of HB2317

Rep Dee Yoh

WRITTEN TESTIMONY BY:

Perry Strasburg
Executive Director
Southeast Kansas Regional
Juvenile Detention Center
P. O. Box 218
Girard, KS 66743

Testimony is given in support of passage for House Bill #2317

Placement of youth in Residential Facilities throughout the state is necessary to provide homes and treatment for youth who have been placed in SRS custody. These placements allow inter-city youth to be removed from counteractive environments such as hard core gang areas or other violent/unsuitable places.

I am testifying specifically on behalf of rural counties who are hosts to much needed Residential Youth Homes and Shelters. Ex.: Crawford County -- home to Residential Center for Youth and Elm Acres youth home for Boys; Cherokee County -- home to Elm Acres youth home for Girls; and Labette County -- home to Youth Crisis Shelter Inc.

The problem for rural counties is that many times when youth are placed in these homes and shelters, they continue to commit crimes which result in their detention in Regional Juvenile Detention Centers. Current payment for these youth in regional detention comes from the county in which the crime was committed. This practice obligates the host county with the costly burden of detention of juveniles who would not even be in that county unless placed there by the S.R.S.

Through passage of this bill, rural counties who are host to these necessary placements, will be relieved of the expense of detaining juvenile offenders coming from other jurisdictions. The Originating counties of these youth would become wholly responsible for the youth as long as the resulting S.R.S. placement stemmed from the offense originally committed in their jurisdiction. This same payment responsibility should also apply to originally non-offender youth who have fallen into S.R.S. custody from other jurisdictions.

Passage would also simplify the billing process of the Detention Centers as well as helping to obtain proper housing placement agreements by compelling responsibility by the placing jurisdiction.