



WISCONSIN LEGISLATIVE COUNCIL

HIGH-RISK JUVENILE OFFENDERS

Room 411 South
State Capitol, Madison

September 16, 2008
10:00 a.m. – 2:40 p.m.

[The following is a summary of the September 16, 2008 meeting of the Special Committee on High-Risk Juvenile Offenders. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Carpenter called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Tim Carpenter, Chair; Reps. Rich Zipperer, Vice Chair, Tamara Grigsby, and Roger Roth; and Public Members Walter Dickey, Barbara Franks, Craig Hasting, Wendy Henderson, Michael Malmstadt, Mark Mertens, Mike Moore, and Brad Schimel.

COMMITTEE MEMBER EXCUSED: Public Member Devon Lee.

COUNCIL STAFF PRESENT: Anne Sappenfield, Senior Staff Attorney; and Melissa Schmidt, Staff Attorney.

APPEARANCE: Sarah Hammond, Program Principal, Criminal Justice, National Conference of State Legislatures (NCSL), Denver.

Approval of the Minutes of the Committee's August 6, 2008 Meeting

Rep. Zipperer moved, seconded by Mr. Mertens, that the minutes of the August 6 meeting be approved. The motion passed by unanimous consent.

Description of Materials Distributed

Anne Sappenfield, Legislative Council Staff Attorney, highlighted the materials distributed at the meeting. This included Memo No. 6, Memo No. 7, a memorandum written by Silvia Jackson, Assistant Director, Department of Corrections (DOC), Division of Juvenile Corrections (DJC), a press release from the Wisconsin Council on Children and Families dated August 19, 2008, a report by Wendy Henderson addressing Wisconsin's policy on trying 17-year olds as adults, a report from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on juvenile transfer laws. Ms. Sappenfield explained that these materials would be discussed after the presentation by Sarah Hammond from NCSL.

Presentations by Invited Speakers

[Note: PowerPoint presentations and other documents referred to by the speakers are posted on the committee's Internet site.]

Sarah Hammond, Program Principal, Criminal Justice, NCSL.

Ms. Hammond began her presentation by highlighting the history of the juvenile justice system and state laws regarding jurisdiction over juvenile offenders. She explained that there are two themes driving the nation's juvenile justice system: (1) the welfare of young offenders; and (2) the protection of the public. She said that until the mid-1980s, the system's goal was to divert juvenile offenders away from punishment in the adult criminal court system and into a rehabilitative environment instead.

She then highlighted the trends in juvenile justice laws over the last 20 years. She said that the juvenile justice system historically provided more protection than the adult system but the overarching trend has been to treat them more like adults. She noted that this trend followed the rise in juvenile violence from the mid-1980s and peaking in the mid-1990s. She said that the maximum age for juvenile court jurisdiction is 17 in 38 states, 16 in 10 states (including Wisconsin), and age 15 in two states (New York and North Carolina). She said that in 23 states there is no minimum age and in all other states, the minimum age is between 10 and 15 years.

She noted that disposition options also changed nationwide. Currently 45 states have judicial waiver laws transferring jurisdiction over juveniles to adult courts; 26 states have blended sentencing options; and 24 states have extended jurisdiction, where juvenile courts can monitor adjudicated delinquents until their early 20s. She explained that the policy pendulum of juvenile justice appears to be swinging toward treating young offenders less like adults and more like juveniles, as the rate of juvenile offenses has been decreasing over the last decade.

Ms. Hammond said that recent advancements in adolescent brain development research are also impacting policy decisions regarding juvenile offenders. She reported that current research funded by

the MacArthur Foundation Research Network suggests that adolescents may be more susceptible to peer pressure and committing crimes in the heat of the moment than adults. Ms. Hammond mentioned the U.S. Supreme Court case *Roper v. Simmons* (2005), where the Court acknowledged the general view in society that juveniles lack culpability required for criminal prosecution.

Ms. Hammond reported on studies researching juveniles in the adult criminal court system. She said that the Campaign for Youth Justice found that it is more difficult to keep juveniles safe in adult jails. The report said that juveniles are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility. She said that it is also harder for juveniles to receive mental health care in the adult system; two million juveniles arrested each year in the U.S. have a mental health disorder.

Another problem she noted was recidivism. She said that researchers compared New York juvenile court data, where at age 16 juveniles are treated as adults, with New Jersey data, where juveniles are not sent to the adult system until age 18. She said they found that over an eight-year period, the adolescents in New York were more likely to be re-arrested more often and more quickly for serious offenses than the New Jersey youth.

One area of change Ms. Hammond reported was a movement to consider the upper age limit of juvenile court jurisdiction. She reported on Connecticut's experience. Connecticut has amended its statutes to both 16- and 17-year olds to the juvenile court system. It is estimated that this will cost \$100 million in the short term, but will cost less in the long run. Other states reforming the age of juvenile court jurisdiction are Rhode Island, New Hampshire, Illinois, Missouri, New York, and North Carolina. Ms. Hammond shared that Virginia has also narrowed its "once an adult, always an adult" law so that it only applies to juveniles with an adult conviction. She said that CO has taken a unique approach to age by reducing first-degree murder to a Class 2 felony if the defendant was under age 18, allowing the juvenile to be eligible for a blended sentencing option.

Ms. Hammond described how Pennsylvania, Illinois, Washington, and Louisiana are reforming juvenile justice with the use of MacArthur Foundation "Models for Change" grant funding. The goal of the grant is to create nationwide reform by sponsoring reform in individual states and using these states as models for juvenile justice systems. She shared that some of areas of state changes include aftercare services, transfer laws, increased judicial discretion to provide more treatment services, disproportionate minority contact, evidence-based best practices, and mental health. She noted that Rock County has received funding from the MacArthur Foundation to address disproportionate minority contact.

Ms. Hammond stated that she had a lot of information on the Missouri Model, but did not cover it as the committee plans on having presentations on it. In response to questions, she said that she can provide a time line on how the four states adopting the Missouri Model have implemented it. In response to another question, she said that the idea of providing juvenile services to those sentenced to an adult prison has not been implemented as it is too costly and because it is easier to provide in a separate environment. Ms. Hammond will also provide follow-up information on recidivism definitions, mandating the use of evidence-based juvenile disposition options, and how Connecticut is funding the change in age of juvenile court jurisdiction.

Discussion of Committee Assignment

Memo No. 6

Ms. Sappenfield explained that she compiled areas for legislation suggested during the previous two meetings into Memo No. 6. The first option was changing the criteria for waiver into adult court. Numerous committee members expressed concern over the difficulty in applying the waiver criteria as they are vague and overly broad. Two examples of ambiguity listed were “mental illness” and “pattern of living,” with uncertainty if these factors point towards or against waiver. The following is a list of suggestions: (1) clarify the waiver criteria; (2) provide for a fact-finding hearing before the waiver hearing; (3) include a purpose statement; and (4) add cost as a factor. Because there was not consensus as to specific suggestions, Ms. Sappenfield said various bill drafts would be prepared.

The second option addressed the juvenile’s ability to petition for waiver. Committee members expressed concern over children’s ability to make thoughtful, educated decisions. Ms. Sappenfield said that a bill draft removing the juvenile’s authority to make this request would be prepared.

The third option included various ways juvenile correctional placement costs could be decreased. Ms. Sappenfield said that these three ideas were proposed by Mr. Moore. Rep. Zipperer raised concern that these options did not decrease the cost, just shifted them to another agency or to the school districts. There was consensus to consider these proposals at a future meeting. Ms. Sappenfield said that she would prepare bill drafts or provide further information for all three ideas.

The fourth option addressed the minimum age a juvenile may be adjudicated delinquent. Numerous members expressed concern that 10-year olds, are too young to be found delinquent. Rep. Grigsby expressed her concern that this law exposes 10 year-olds to the adult court system through original adult court jurisdiction. Other committee members stated that any changes must consider how to handle cases at the extremes. Ms. Sappenfield said that bill drafts would be prepared to address these concerns.

The fifth option addressed recidivism rates. Ms. Sappenfield explained that there is no universal recidivism rate as each state gathers its own data and measures it differently. Ms. Henderson shared the difficulty in comparing DOC data with DJC data. Mr. Schimel suggested that because DOC measures recidivism over a five-year period, the DJC rate could continue to measure two- and three-year reports but also include a five-year report. Ms. Sappenfield said that staff would work with DOC regarding options to address these concerns.

The sixth option was to remove legislation authorizing secured residential care centers, as there has never been a facility operating under this category. Committee members suggested postponing a decision regarding this option until more information about the Missouri Model has been presented at the October 8 meeting.

Discussion of Memo No. 7

Melissa Schmidt explained that this Memo was designed as a starting point to help the committee determine what information about the Missouri Model it would find useful. She noted that she enclosed the pamphlet *Programs and Services*, distributed by Missouri’s Division of Youth Services

(DYS), for the committee to read how DYS defines itself. She highlighted the various levels of security among the residential facilities. She reported that Missouri's maximum age of juvenile court jurisdiction is 16 years of age, like Wisconsin. She explained that juveniles may be sent to DYS facilities for status offenses, as well as misdemeanors and felonies. Ms. Sappenfield said that this may be why DYS has a continuum of facilities, compared to Wisconsin, where counties provide non-secure residential options. Ms. Schmidt also highlighted the DYS Advisory Board and its role in regulating services provided by the Missouri DYS.

The committee asked for further information regarding DYS's recidivism rate, vocational training and other educational services, daily rate for DYS placements, and waiver criteria.

Other Business

Mike Moore asked whether the committee was going to address raising the maximum age of jurisdiction from age 16 to 17 years. Chair Carpenter explained that the committee's charge from the Joint Legislative Council (JLC) did not include this issue. Rep. Grigsby expressed her desire to address this issue. Rep. Zipperer shared his concern proposing any legislation addressing this issue as it will be divisive and make it hard to pass any other legislation recommended by the committee. Chair Carpenter explained the process of bringing committee recommendations to JLC and said that he would talk with the JLC co-chairs.

Plans for Future Meetings

The next meeting of the Special Committee will be *Wednesday, October 8, 2008, at 10:00 a.m., in Room 412 East, State Capitol, Madison.*

Adjournment

The meeting adjourned at 2:40 p.m.

MS:kms