



WISCONSIN LEGISLATIVE COUNCIL

HIGH-RISK JUVENILE OFFENDERS

Room 225 Northwest
State Capitol, Madison

December 17, 2008
10:00 a.m. – 1:35 p.m.

[The following is a summary of the December 17, 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; Rep. Rich Zipperer, Vice Chair; Reps. Tamara Grigsby and Roger Roth; and Public Members Craig Hasting, Wendy Henderson, Devon Lee, Mark Mertens, and Mike Moore.

COMMITTEE MEMBERS EXCUSED: Public Members Walter Dickey, Barbara Franks, Michael Malmstadt, and Brad Schimel.

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

Approval of the Minutes of the Committee's October 21, 2008 Meeting

Representative Zipperer moved, seconded by Representative Roth, that the minutes of the October 21, 2008 meeting of the Special Committee be approved. The motion passed by unanimous consent.

<p>*ATTENTION: This was the final meeting of the Special Committee on High-Risk Juvenile Offenders. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>
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Description of Materials Distributed

Anne Sappenfield provided a brief explanation of the Special Committee's voting options. She noted that the committee could take a final vote at the committee meeting or through a mail ballot. Chair Carpenter noted that at least one committee member might be coming late. Ms. Sappenfield suggested that the committee could take a roll call vote on each bill draft. She explained that if there was consensus, then a final vote for these bill drafts could either be conducted at the end of the meeting, or placed on a mail ballot. The committee agreed to first find consensus and wait until the end of the meeting to determine if a mail ballot was necessary.

Discussion of Committee Assignment

WLC: 0043/1, relating to filing waiver petition.

Ms. Sappenfield explained that this bill draft removes a juvenile's right to petition for waiver into adult court. Chair Carpenter reminded the committee that Public Member Barbara Franks requested this draft. Representative Zipperer stated that he supported this draft as it retained power in the hands of both the district attorney and the judge. Public Member Wendy Henderson stated that she did not support this bill draft.

Representative Zipperer moved, seconded by Representative Roger Roth, that WLC: 0043/1 be approved. The motion passed by a roll call vote of Ayes, 6 (Carpenter, Zipperer, Roth, Hasting, Mertens, and Moore); Noes, 3 (Grigsby, Henderson, and Lee); and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

WLC: 0044/2, relating to assessment of waiver criteria.

Ms. Sappenfield explained that this bill draft, as amended from the last meeting, requires the juvenile court to designate a psychiatrist, licensed psychologist, or other expert to examine the juvenile prior to the waiver hearing. She noted that the difference between this redraft and the initial draft is that an examination would not be required if there was a substantially similar examination conducted within the prior six months.

There was committee discussion regarding the fiscal impact of this bill draft. Ms. Sappenfield articulated that counties would most likely pay for this examination. Public Member Mark Mertens stated that he supported the concept of this bill draft, but was concerned that this was an unfunded mandate. Representative Zipperer and Public Member Craig Hastings agreed. In response to cost concerns, Ms. Sappenfield suggested that language could be inserted directing the judge to order families, insurance companies, or the county if the family is found indigent, to pay for the examination.

The committee discussed changing the bill draft such that a court "may" order an examination, replacing the word "shall" as a compromise. In response to questions as to whether there was authority currently in the statutes for judges to request examinations, Public Member Devon Lee shared that many judges wanted this type of information prior to a waiver hearing, but did not believe that they had authority to require an evaluation. In response to questions, Ms. Sappenfield clarified that courts do

have authority to order an examination. Representative Tamara Grigsby and Public Member Mike Moore were concerned that changing “shall” to “may” would not change the status quo.

Ms. Henderson proposed limiting the scope of juveniles for whom an examination must be completed. The committee agreed to amend the bill draft to require an examination if the district attorney or juvenile alleges that the juvenile may have a mental illness, psychological or developmental condition, or alcohol or other drug abuse problem.

Representative Grigsby moved, seconded by Ms. Henderson, that WLC: 0044/2 be approved, as amended. The motion passed by a roll call vote of Ayes, 5 (Carpenter, Grigsby, Henderson, Lee, and Moore) Noes, 4 (Zipperer, Roth, Hasting, and Mertens); and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

WLC: 0045/3, relating to reverse waiver.

Ms. Sappenfield described WLC: 0045/3. Representative Zipperer expressed concern over removing the statutory requirement that juveniles address general deterrence in every reverse waiver hearing. Ms. Lee said that the U.S. Supreme Court said in *Roper v. Simmons* that research on juveniles indicates that juveniles are not generally deterrable.

Ms. Sappenfield asked if committee members would like to include the bracketed language in line 3, page 3. There was consensus to include the bracketed language in the draft.

Ms. Henderson moved, seconded by Mr. Mertens, that WLC: 0045/3 be approved, as amended. The motion passed by a roll call vote of Ayes, 6 (Carpenter, Grigsby, Henderson, Lee, Mertens, and Moore) Noes, 3 (Zipperer, Roth, and Hasting); and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

WLC: 0085/2, relating to imposition of adult sentence for certain juveniles.

Ms. Sappenfield explained that she made changes to WLC: 0085/1 after consulting with a Legislative Reference Bureau drafting attorney. In response to questions, Ms. Sappenfield stated the juvenile’s court records would be private as they were based on delinquency petitions. She also said that juveniles would be given an opportunity for a jury trial if a petition for an adult sentence was filed.

Mr. Mertens raised concern that this would create confusion to the delinquency process. Ms. Henderson added that this could create an anomaly in the process. Representative Zipperer moved rejection of this bill. There was consensus to set the bill draft aside.

WLC: 0104/1, relating to the minimum age of delinquency.

Melissa Schmidt, explained that this bill draft raises the minimum age of delinquency from 10 to 12 years, but retains delinquency jurisdiction for juveniles 10 or 11 years of age for attempted first-degree intentional homicide, first- or second-degree intentional homicide, and first-degree reckless homicide.

Ms. Henderson said that the number of 10- and 11-year olds adjudicated delinquent is not the problem; the concern is arresting 10- and 11-year olds. Mr. Mertens added that this impact is disproportionate in minority populations. In response to questions, Ms. Schmidt said that 10- and 11-year olds not considered delinquent would be treated as juveniles in need of protection or services (JIPS), and that they would receive JIPS services.

Ms. Lee moved, seconded by Ms. Henderson, that WLC: 104/1 be approved. The motion failed by a roll call vote of Ayes, 4 (Grigsby, Henderson, Lee, and Mertens); Noes, 5 (Carpenter, Zipperer, Roth, Hasting, and Moore); and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

WLC: 0143/1, relating to excluding energy costs from daily rate.

Mr. Moore explained that this bill draft was prepared at his request. He said he withdrew his request at the October meeting but that because Mr. Mertens expressed interest in it, the bill draft was not removed from consideration. Mr. Moore again withdrew his request. The committee agreed to set this bill draft aside.

WLC: 0145/1, relating to waiver criteria.

Ms. Sappenfield provided a brief explanation of the bill draft. Ms. Henderson reminded the committee of Public Member Michael Malmstadt's concern that judges have difficulty in determining if the criteria for waiver are aggravating or mitigating. Representative Zipperer proposed the draft be amended to add "the juvenile's prior treatment history indicates that the juvenile will not respond to future treatment" to the list of criteria in favor of waiver. Ms. Henderson proposed also deleting SECTION 8 from the bill draft. She argued that adult court jurisdiction over someone alleged to be an associate of juveniles should not be held against the juvenile.

Representative Roth moved, seconded by Mr. Mertens, that WLC: 0145/1 be approved, with both Representative Zipperer's and Ms. Henderson's amendments. The motion passed by a roll call vote of Ayes, 9 (Carpenter, Zipperer, Grigsby, Roth, Hasting, Henderson, Lee, Mertens, and Moore); Noes, 0; and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

Ms. Henderson proposed having language drafted to provide that, in a waiver proceeding, there is a rebuttable presumption that the juvenile court shall retain jurisdiction unless there is a prior delinquency adjudication. Representative Zipperer stated that he would not support this as an amendment to WLC: 0145/1.

Ms. Henderson moved, seconded by Mr. Mertens, to approve a bill draft creating a rebuttable presumption that juvenile courts retain jurisdiction when a juvenile has not been previously adjudicated. The motion passed by a roll call vote of Ayes, 5 (Grigsby, Henderson, Lee, Mertens, and Moore); Noes, 4 (Carpenter, Zipperer, Roth, and Hasting); and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

WLC: 0183/1, relating to funding to counties to cover increase in juvenile corrections costs.

Ms. Sappenfield briefly explained that this bill draft would increase state funding to counties for the cost of juvenile correctional placements proportionately with daily rate increases. Mr. Moore stated that while this was one part of his proposal to decrease the cost of juvenile corrections placements, the draft was not what he intended. Mr. Mertens stated that he supported this bill draft as youth aids allocations have not kept pace with the increase in placement costs to counties.

Ms. Schmidt stated that the Legislative Fiscal Bureau (LFB) conducted an initial fiscal estimate of this bill draft. She said that LFB estimates an increase of \$2,208,300 in fiscal year 2010 and \$2,789,000 in fiscal year 2011. She said that the combined increase in spending for the next biennium is estimated to be \$4,997,300. Representative Zipperer reminded committee of its charge to reduce recidivism and said that he did not think the bill draft is consistent with the committee's charge.

Mr. Mertens moved, seconded by Ms. Henderson, that WLC: 0183/1 be approved. The motion passed by a roll call vote of Ayes, 5 (Carpenter, Grigsby, Henderson, Lee, and Mertens); Noes, 4 (Zipperer, Roth, Hasting, and Moore); and Absent, 4 (Dickey, Franks, Malmstadt, and Schimel).

WLC: 0263/1, relating to community-based juvenile correctional pilot program.

Chair Carpenter expressed his interest in creating a pilot program in Wisconsin based upon the concept of Missouri's secure and moderately secure juvenile residential facilities. He shared his concern regarding Milwaukee juveniles being sent to facilities too far for families to be involved in their treatment. He said that he liked how Missouri's facilities were placed in locations that encourage familial involvement. He reported that support for this concept was lacking and that he thought it would be too difficult to continue with this bill draft at this time. He withdrew this bill draft, but indicated he wanted to continue working on this idea. Representative Grigsby and Ms. Henderson offered their support on continuing efforts to create a pilot program.

Other Business

Ms. Sappenfield listed the options for packaging the committee's proposals. She said that the committee could keep bill drafts separate, or combine some or all of the bill drafts. Representative Zipperer proposed combining WLC: 0043/1 and WLC: 0145/1, as amended, together and keep WLC: WLC: 0044/2, 0045/3, WLC: 0183/1, WLC: 0145/1, and Ms. Henderson's proposal as separate bill drafts. There was consensus to package the committee's proposals in this manner. Ms. Sappenfield reported that committee members would receive a total of five bill drafts in a mail ballot.

Ms. Sappenfield then described the legislative process after the mail ballot was conducted. Chair Carpenter thanked committee members and Legislative Council staff for their hard work.

Plans for Future Meetings

This was the last meeting of the Special Committee on High-Risk Juvenile Offenders.

Adjournment

The meeting adjourned at 1:35 p.m.

MS:ksm