



WISCONSIN LEGISLATIVE COUNCIL

HIGH-RISK JUVENILE OFFENDERS

Room 412 East
State Capitol, Madison

October 21, 2008
10:00 a.m. – 3:50 p.m.

[The following is a summary of the October 21, 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; and Public Members Barbara Franks, Craig Hasting, Wendy Henderson, Devon Lee, Michael Malmstadt, Mark Mertens, Mike Moore, and Brad Schimel.

COMMITTEE MEMBERS EXCUSED: Reps. Tamara Grigsby and Roger Roth, Jr.; and Public Member Walter Dickey.

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

APPEARANCE: Vincent Schiraldi, Director, Department of Youth Rehabilitation Services, District of Columbia.

Approval of the Minutes of the Committee's September 16, 2008 Meeting

Ms. Henderson moved, seconded by Mr. Mertens, that the minutes of the September 16 meeting be approved. The motion passed by unanimous consent.

Presentations by Invited Speakers

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

Vincent Schiraldi, Director, Department of Youth Rehabilitation Services, District of Columbia.

Mr. Schiraldi began his presentation by discussing the trend in the 1990's to move more juvenile offenders into the adult criminal justice system. He described research conducted by the Campaign for Youth Justice indicating that juveniles are more likely to re-offend after being placed in adult jails and prisons; that juveniles convicted in the adult system receive little or no rehabilitative programming; and that juveniles in adult prisons are at an increased risk of abuse, sexual assault, suicide, and death.

He said that he believes there is an obligation to ask three questions about the system addressing juvenile offenders: (a) whether it works; (b) whether it is safe; and (c) whether it is fair.

Regarding whether it works, Mr. Schiraldi referenced research conducted in Florida which found that juveniles fare worse when they are tried as adults. The youth in the Florida study who were tried as adults were a third more likely to re-offend than those retained in the juvenile system. They also offended twice as quickly and were twice as likely to be arrested for serious offenses. He noted another study in New York and New Jersey with similar findings.

Regarding whether it is safe, he referenced a 2007 report by the Campaign for Youth Justice that found that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility. The report also found that juveniles in adult jails are at great risk of physical and sexual assault.

Regarding whether it is fair, Mr. Schiraldi discussed findings relating to disproportionate representation of youth of color in both the adult and juvenile justice systems. He cited a report of youth in California that demonstrates that minority juveniles experience a "cumulative disadvantage" through the process of arrest, referral of charges, adjudication, disposition or sentencing, and incarceration. He also cited a study prepared by the Pretrial Services Resource Center which was multi-jurisdictional and included Milwaukee. The study found that over 80% of juvenile cases filed in adult court in the 18 largest jurisdictions in the country involve juveniles of color.

He said that a good system balances keeping juveniles safe with ensuring public safety.

Mr. Schiraldi said that in Washington, D.C., the mission of the Department of Youth Rehabilitation Services is to improve public safety by building on the strengths of the young people in the department's care in the least restrictive environment consistent with public safety. He said the essence of positive youth development can be found in the department's motto: treat the young people

like they're your own, but never forget they're someone else's. He said the positive youth development model views juveniles as active participants in the change process instead of as clients or targets of change. The model is also designed to build on youth's strengths and assets.

He said that the department in D.C. is implementing its version of the "Missouri Model." He said that having small facilities, as in Missouri, allows more individualization and that the tension level is much lower. He said that the D.C. facilities are much safer than they ever have been by using a rehabilitative model of treatment. He also said that he is looking to the Milwaukee Wraparound Program in designing D.C.'s aftercare services.

He said that D.C. has seen a decrease in recidivism and that the system is being evaluated in depth by a professor with the University of Chicago to determine its effectiveness.

Chair Carpenter asked about issues faced in D.C. with unionized employees and asked whether union members view working in smaller facilities as more desirable. Mr. Schiraldi responded that it depends upon how workers view themselves. He said the transition to a positive youth development approach is more difficult for employees who view themselves as police officers.

Ms. Lee asked what the first steps to implementing the Missouri Model in D.C. were. Mr. Schiraldi said that he contacted several large foundations to pay for technical assistance through the Missouri Youth Services Institute. He said that the institute has trained every staff member and provides ongoing coaching. He said he also initially worked to build public support through media and outreach to legislators and judges.

Mr. Malmstadt asked how the D.C. public schools respond when the juvenile offenders return to school. Mr. Schiraldi said that many juveniles earn enough credits to graduate while they are incarcerated, but that sometimes it is a problem when offenders return to school.

Ms. Henderson asked whether structural changes could be made to larger facilities as an alternative to establishing smaller facilities. Mr. Schiraldi said that there are mixed results when breaking big facilities into smaller pieces. He said if resources are available and there is public support, he would create smaller facilities. Ms. Henderson said that she is not sure that there is the political will in Wisconsin to create smaller facilities. Mr. Schiraldi said that Missouri used existing facilities to save money and that their model of dormitory-style sleeping was initially a cost-saving measure. He said Missouri also worked to hire employees from the local community and set up local advisory boards to build support. He said that, in D.C., he hired a church located near the facility to make the food for the juveniles and that many from the church are volunteering in the facility. He also said he had juveniles do yard work in the neighborhood to build local support.

Representative Zipperer asked about the costs of transitioning to smaller facilities. Mr. Schiraldi said that the consulting costs are \$400,000 per year, and half is paid with foundation money. He said that there are \$46 million in capital costs that were appropriated before he was hired. In addition, he estimates there will be a cost of \$350,000 in overtime pay as juveniles are gradually transitioned to the new facilities while the old facilities are still operational.

Representative Zipperer noted that juvenile crime rates have dropped since the 1990's. Mr. Schiraldi said that it is hard to know what decreased the crime rate. He also said that, in some states, the crime rate began decreasing before there were legislative changes to treat more juveniles as adults.

Mr. Hasting asked what arguments Mr. Schiraldi would make to the Legislature regarding establishing smaller facilities. Mr. Schiraldi said that one aspect of the Missouri system that is appealing is that it has very little bureaucracy. He also said that he believes that smaller facilities are safer and no more costly. He said that the concept of smaller facilities intuitively seems to make sense because they provide an environment where youth can interact with staff and live in a healthier environment than a large facility provides.

Chair Carpenter said that he is interested in establishing a pilot program to establish two to three small facilities after the next legislative session. He asked Mr. Schiraldi about available foundation money. Mr. Schiraldi said that there may be funding available through the JEHT Foundation and other sources.

Chair Carpenter asked how many beds a smaller facility should have. Mr. Schiraldi said that Missouri recommends 40-bed facilities with 10-bed units. He said a facility of this size can have a flatter organizational structure and that there is better communication within the facility.

Discussion of Committee Assignment

Ms. Sappenfield described **WLC: 0043/1**, which eliminates the authority of a juvenile to petition for waiver of juvenile court jurisdiction. Ms. Franks said that brain development research shows impaired decision making, and that many juveniles who request waiver do so to have better short-term outcomes without considering the long-term consequences of a criminal conviction.

Mr. Malmstadt said that he does not think the draft is a good idea. He said that the issues relating to a juvenile's decision-making skills would be better addressed by improving the waiver statute, in general.

Ms. Lee said that the only time she would advise a juvenile to request a waiver is in the narrow circumstance where she believes the juvenile would benefit from a jury trial. She and other committee members also raised concerns that judges may not thoroughly consider all of the waiver criteria in cases in which the juvenile petitions for or stipulates to waiver.

Chair Carpenter suggested that the draft be set aside and considered at the next meeting. There was consensus to consider the draft at the next meeting.

Ms. Sappenfield described **WLC: 0044/1**, which requires the court to order an assessment of a juvenile's physical, mental, or developmental condition; alcohol or other drug abuse problems; and maturity before a waiver hearing is held. She noted that she had received a cost estimate of \$1,500 per assessment from the Office of the State Public Defender.

Chair Carpenter stated that the draft could be modified so that the assessment is discretionary. Ms. Henderson reported that the Wisconsin Council on Children and Families strongly supports the draft. She said that instead of modifying the draft so that the court may order an assessment, the draft could be modified to require an assessment unless a similar assessment had been conducted within the prior six months.

Mr. Mertens noted the letter from the Wisconsin Counties Association which was distributed at the meeting and which raised concerns about the cost to counties if the draft were enacted. He said that the draft would have a significant fiscal impact on counties. Mr. Schimel said that the Waukesha Department of Human Services has the same concerns and considers it to be an expensive overkill.

Ms. Lee said that she thinks the assessment requirement would make the waiver process more thoughtful.

There was consensus to consider the draft at the next meeting.

Ms. Sappenfield described **WLC: 0084/1, 0144/1, and 0145/1**, all relating to the criteria the juvenile court must consider in a waiver proceeding.

Regarding WLC: 0084/1 which would require the court to consider as a waiver criterion the estimated costs to the county if juvenile court jurisdiction is retained, Mr. Moore said he knows that cost is considered informally in waiver proceedings, but that he feels it should not be considered at all. Mr. Malmstadt said that because it is considered now, so it should be considered on the record.

Ms. Lee said that it is inappropriate to talk about the costs of services to a child in front of the child and the child's family. Mr. Mertens agreed.

There was consensus to set aside WLC: 0084/1.

Regarding WLC: 0144/1 which creates a primary purpose of waiver, Ms. Henderson said that the purpose was drafted too narrowly. Mr. Malmstadt said that he did not see the necessity of the draft as there is a general purpose statement for the Juvenile Justice Code.

There was consensus to set aside WLC: 0144/1.

The committee then discussed WLC: 0145/1, which creates two sets of waiver criteria: (a) criteria that favor waiver; and (b) criteria that favor retention of juvenile court jurisdiction. Mr. Hasting said that he likes the draft and believes it strikes a good balance.

Ms. Henderson raised several concerns about specific criteria. Ms. Lee said that the criteria in the draft do not address what is known about adolescent brain research.

There was consensus for staff to work with several committee members to modify the draft to reflect discussion concerning whether waiver criteria could be created that reflect what is known about adolescent brain research and what the public expects the waiver statute to achieve. Mr. Hasting also suggested clarifying in the waiver statute that the court must consider all of the factors for waiver.

Mr. Mertens said it may be worthwhile to consider drafts narrowing waiver, permitting sentences that blend a juvenile delinquency disposition and an adult sentence, and expanding eligibility for the Serious Juvenile Offender Program. There was consensus for staff to work with several committee members on these topics.

Ms. Sappenfield described **WLC: 0085/1**, which would replace the waiver procedure with a procedure under which the juvenile court could impose an adult sentence. Mr. Malmstadt said that he

supports the draft because the current system does not give the court enough information regarding whether to waive jurisdiction. Ms. Henderson said she is concerned that the draft does not really change the process. Ms. Lee said that she was also concerned that the draft does not address concerns relating to brain development and whether a young person is as culpable as an adult, but she thinks the draft is better than current law because a jury trial can be advantageous.

Ms. Henderson said that the first section of the draft should be modified to require the Director of State Courts, instead of the Department of Corrections (DOC), collect and report data relating to waiver and imposition of an adult sentence.

There was consensus to consider the draft at the next meeting.

Ms. Sappenfield described **WLC: 0045/2**, relating to the criteria for reverse waiver. Ms. Henderson said that she would like the court to consider whether retaining jurisdiction in the adult court is necessary because the longer period of incarceration available in the adult system is necessary to protect the public. Mr. Mertens agreed.

There was consensus to consider the draft at the next meeting.

Ms. Schmidt described **WLC: 0104/1**, which would increase the minimum age of delinquency from 10 years to 12 years except for 10- and 11-year olds who are alleged to have committed a serious homicide offense. Mr. Schimel said that, practically speaking, he does not believe the draft would make a big change.

Ms. Franks said that there are a number of 10- and 11-year olds on her caseload who are out of control at school. Mr. Mertens said that a delinquency referral is often the only way for a school to get services for a 10- or 11-year old. He said he would rather see those juveniles treated as juveniles in need of protection and services.

There was consensus to consider the draft at the next meeting.

Ms. Sappenfield described **WLC: 0143/1**, which would appropriate general purpose revenue to DOC for energy costs in juvenile correctional facilities and prohibit these costs from being considered when setting the daily rate counties pay for placement of a juvenile in a juvenile correctional facility. Mr. Moore said it is not realistic to move the draft forward. Mr. Mertens said that he understands that state funding is limited but said that counties have budget constraints, as well.

There was consensus to consider the draft at the next meeting.

Ms. Sappenfield described **WLC: 0183/1**, which would create an appropriation to counties to increase the youth aids appropriation at the same rate at which the daily rate is increased. The funding would be distributed to counties based upon their proportionate use of corrections services. Committee members requested more information on the fiscal impact of the draft. Ms. Henderson raised concerns that distributing funds based upon the proportional use of correctional services potentially punishes counties who create programs to keep more juveniles in the community.

There was consensus to consider the draft at the next meeting.

Ms. Schmidt described **Memo No. 8**, which includes a memorandum from Silvia Jackson, Assistant Administrator, Division of Juvenile Corrections, DOC, that compares aspects of Missouri's juvenile correctional services to Wisconsin's. Mr. Moore encouraged committee members to read a report written by state corrections officials in Ohio that is cited in the memo.

Other Business

Chair Carpenter said that he would like the committee to consider a draft to move 17-year olds who commit less serious offenses, such as misdemeanors and Class G, H, and I felonies, into the juvenile system. Mr. Moore said the proposal would not affect the number of placements in juvenile correctional facilities. Mr. Malmstadt said that he was not comfortable determining the system where a juvenile is treated based upon the charge because he believes it will result in more discrimination. Mr. Mertens requested additional information on the levels of offenses 17-year olds are charged with.

Chair Carpenter said that he is attempting to develop a proposal that may be successful in the Legislature. Ms. Henderson said that she understands that the proposal represents a political middle ground, but that she thinks that there are adequate safeguards in the juvenile system.

Chair Carpenter said that he would also like the committee to consider a draft to create a pilot program that would require the establishment of two or three small juvenile correctional facilities during the 2011 biennium. He said that he would like the facilities to have 40 beds and that the daily rate for the smaller facilities should not exceed the daily rate for juvenile correctional facilities.

Plans for Future Meetings

The next meeting of the Special Committee will be *Wednesday, December 17, 2008, at 10:00 a.m., in Room 225 Northwest, State Capitol, Madison.*

Adjournment

The meeting adjourned at 3:50 p.m.

AS:ksm