

2009 SENATE JUDICIARY

SB 2159

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2159

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6985

Committee Clerk Signature

Diane Davis

Minutes: **Senator Nething, Chariman**

Relating to the detention of a child participating in a juvenile drug court program.

Terry Traynor – Assistant Director, ND Association of Counties – See written testimony. He is for a do pass.

Senator Olafson – Asks if there should be an emergency clause.

Traynor – Discusses as long as the law is changed they will be compliant when an audit is done. So he does not feel there needs to be an emergency clause.

Senator Nething - Asks if this relates to 2 areas, youth charged with a delinquent offense and the unruly youth which is a status offender.

Traynor – Right now a drug court can place any juvenile in their jurisdiction in detention for up to 4 days, this would say they can still do that with delinquent youth but not with status youth, which is called unruly youth, someone hasn't committed a crime that you and I would be charged with. Something unique to a juvenile. The other is that we are talking about detention in juvenile facility and not an adult jail.

Cory Pederson – Deputy Director ND Department of Corrections and Rehabilitation of

Juvenile Services – Recommends do pass – See written testimony.

Senator Nething closes the hearing on 2159

Senator Olafson motions a do pass, **Senator Schneider** seconds

Pass -6 yes- 0 no

Senator Schneider will carry

Date: 1/14/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2159
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Sen. Olafson Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) _____

Absent _____

Floor Assignment Sen. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 14, 2009 9:56 a.m.

Module No: SR-07-0277
Carrier: Schneider
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2159: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2159 was placed on the
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2159

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2159

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/9/09

Recorder Job Number: 10427, 10436

Committee Clerk Signature

R. Kinose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2159.

Sen. Stan Lyson: Sponsor, support, explained the bill. This is a short and simple bill. With this bill, the court can order a child into detention for a certain period of time. My

understanding in sponsoring the bill that this was necessary to keep the drug courts operational.

Chairman DeKrey: Thank you. Further testimony in support.

Terry Traynor, ND Association of Counties: Support (attachment).

Chairman DeKrey: Does this bill need an emergency clause.

Terry Traynor: I don't think so. Our big concern is that we are facing a federal audit as a state this spring and the fact that the Legislature has made a move to correct the situation that has put us in violation, will probably be sufficient. The court has assured us that they are no longer doing that. They, voluntarily, said they will not put status juveniles in detention as a sanction; but that won't be good enough for the auditors. They want to see a change in the law.

Chairman DeKrey: Thank you. Further testimony in support.

Lisa Bjergaard, Director, Division of Juvenile Services, ND DOCR: Support (attachment).

Rep. Delmore: I believe you testified last time as well.

Lisa Bjergaard: I did.

Rep. Delmore: I believe there can be incorrigible children, would they be the only thing left of the statute.

Lisa Bjergaard: Make no mistake, I run a juvenile detention center. There is a place for juvenile detention. Detention plays a role when public safety is at risk. Detention as a sanction is a different matter.

Rep. Koppelman: Would you define what detention as a sanction means to you.

Lisa Bjergaard: Detention as a pre-adjudication, holding mechanism when public safety is at risk is detention's purpose. Sanction, however, is after you have heard the matter, and it would be like a sentence.

Rep. Koppelman: You're objection is that if this is used to lock someone up before their court appearance and sentencing it is okay, but not afterwards.

Lisa Bjergaard: When you are ensuring public safety after the commission of an offense, and the matter has not been heard, you are in a different set of circumstances than you are post-adjudication. Post-adjudication means that the juvenile has been seen and sentenced provided. I do believe we have a wide array of dispositional options for youth that can be very effective; a very effective juvenile justice system in ND. The drug courts in ND are also very effective, and if the judges tell us that they want to continue to be able to take delinquent children and use detention, I don't have an issue with that; however, I just want the committee to be aware that, in general, all the research that's been done on taking these delinquent kids and sentencing them to a term in detention center has very adult consequences. Once you open the door, we never have the ability in ND to sanction all of these in detention, and I think that is a door that we have to open cautiously. I would encourage us to think long and hard

about this. I would be remiss in terms of my other responsibilities as director of the Juvenile Correction system in ND if I didn't point out that this is a relatively risky practice if it extends beyond that point.

Rep. Delmore: You have some national information here; have you any information here for ND, that show us that we should be concerned about this in any form.

Lisa Bjergaard: I have researched the risks...

Rep. Delmore: I am asking about abuse in North Dakota.

Lisa Bjergaard: I don't think there is research in North Dakota. I just want to point out that there are risks associated with detention.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the session.)

Chairman DeKrey: We will take a look at SB 2159. What are the committee's wishes?

Rep. Griffin: I move a Do Pass.

Rep. Wolf: Second.

11 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 3/9/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2159

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning			Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2159: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2159 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2159

**Testimony To The
SENATE JUDICIARY COMMITTEE
Prepared January 14, 2009 by the
North Dakota Association of Counties
Terry Traynor – Assistant Director**

*Same
given to
House.*

REGARDING SENATE BILL No. 2159

Chairman Nething and members of the Committee, the North Dakota Association of Counties requested the introduction of this bill and urges your support.

Until 2007, North Dakota law was consistent with the laws of many states and national standards regarding detention. Prior to last Session, North Dakota law did not allow local detention facilities to be used as a sanction – a practice that research suggests is seldom effective and quite often counter-productive. While opposed by this association and others, the broad rewrite of the Juvenile Court Act included a specific exception to the general prohibition of this practice. This exception allows Drug Courts to place juveniles in detention twice in a 12-month period for a maximum of 4 days. In response to the concerns raised, this Committee was informed that the exception would be used in conformance with federal law. Unfortunately, its use this past biennium has, in several instances, violated the federal Juvenile Justice and Delinquency Prevention (JJDP) Act, and placed a number of counties as well as the State of North Dakota in a difficult position.

In this bill, we do not propose a repeal of last Session's action, as the judiciary has indicated they wish to retain the use of such sanctions in some situations. We do however propose a limitation of the exception – to youth charged with delinquent offenses – and that these delinquent youth are sanctioned only in facilities currently certified by the State as juvenile detention. From the counties' perspective, detaining non-delinquent or "unruly" youth (youth the JJDP Act terms "status offenders") is the practice of greatest concern.

The federal JJDP Act clearly prohibits the detention of status offenders in a secure facility, as both state and federal courts have held a youth's civil rights may be violated by removing their liberty for an action that is not considered a crime for an adult.

While a JJDP Act violation, on the surface, is a financial issue for the State – jeopardizing federal funds used for a variety of county, court, and corrections

programming – noncompliant incidents increase both state and local government liability.

In 1977, the West Virginia Supreme Court of Appeals ruled in *Harris v. Caledine* that the secure detention of status offenders violated their State constitution.

In 1988, the Tennessee Supreme Court ruled in *Doe v. Norris* that secure detention of status offenders violated the due process and equal protection clauses of the State and U.S. Constitutions.

The federal court ruled for the first time in 1987 (*Hendrickson v. Griggs*) that individual juveniles have rights under the JJDP Act which are enforceable in Federal courts. The court cited a U.S. Supreme Court decision in 1980 providing for a private cause of action for individuals arising from “*the deprivation of any rights, privileges or immunities securing by the Constitution and [federal] laws*”. Thus, individuals who violate the mandates of the Act, and are receiving monies under the Act, (the State) have a legal duty to act in accordance with the Act. Also, jailers, police, juvenile intake officers, and others possess no absolute immunity from damages, and may suffer personal economic loss in event of a judgment against them.

For these reasons, we believe it is imperative that the North Dakota Century Code, as well as juvenile justice practice, be restored to compliance with federal law and national standards by passage of this bill. Please give SB2159 a “Do Pass” recommendation.

HOUSE JUDICIARY COMMITTEE
Representative Duane DeKrey, Chairman
March 09, 2009

*Same
testimony +
handout given
to Senate
1-14-09.*

North Dakota Department of Corrections and Rehabilitation
Division of Juvenile Services

Lisa Bjergaard, Director
Presented Testimony concerning SENATE BILL 2159

Chairman DeKrey and members of the Committee, the North Dakota Division of Juvenile Services is here today to encourage you to consider the following information relative to SB2159.

While the Division of Juvenile Services supports the juvenile drug court programs and the work that they do, it is important that this committee be aware of the research findings related to the use of detention as a sanction.

Research compiled by the Justice Policy Institute indicates that use of detention increases recidivism. Although the precise mechanism that increases recidivism is not yet known, research has repeatedly shown that when a detention placement occurs, youth are far more likely within the next year to move deeper into the juvenile justice system. In fact, prior detention is shown to be a greater predictor of recidivism than carrying a weapon, gang membership or poor parental relationships.

The Annie E. Casey Foundation, the organization that funds Kids Count, has as its flagship initiative the Juvenile Detention Alternatives Initiative. Their research recommends that jurisdictions avoid detaining

low risk, non violent juvenile offenders because the use of secure confinement increases recidivism and does not improve public safety.

The dangers of using detention as a sanction have been part of the evidence base for a long time. The National Juvenile Detention Association issued a position statement decrying the use of detention as a sanction in 1997. I have attached a copy of that position statement for you, in order to provide you with further information.

The Division of Juvenile Services supports SB2159 as it takes a step towards limiting the use of detention as a sanction, as well as restores North Dakota to compliance with federal law and national standards related to the Juvenile Justice and Delinquency Prevention (JJDP) Act. Please give SB2159 a "Do Pass" recommendation.

JUVENILE DETENTION AS A DISPOSITION

STATEMENT OF THE ISSUE:

The purpose of juvenile detention has historically been for "the temporary and safe custody of juveniles who are *accused* of conduct subject to the jurisdiction of the court who require a restricted environment for their own or the community's protection." (Definition of Juvenile Detention, adopted by NJDA Executive Board on 10-31-90). However, use of juvenile detention by the court as a sentence has increased in recent years. This increase has been accompanied in many jurisdictions with statutory changes authorizing such use. This shift in detention use has resulted from the court's desire for additional sanctions which may be imposed on youth who violate the law or a court order.

NATURE OF THE ISSUE:

- Use of juvenile detention as a dispositional option emphasizes punishment over behavior change.
- Use of juvenile detention as a dispositional option mixes populations and may adversely affect treatment or programming.
- Use of juvenile detention as a dispositional option may aggravate overcrowding in juvenile detention centers.
- Use of juvenile detention as a dispositional option is often utilized simply because other, more preferable, alternatives are not available.
- Use of juvenile detention as a dispositional option discourages the development of more appropriate, less costly alternatives.
- Use of juvenile detention as a dispositional option may result in the negative influence of institutionalization and deny the opportunity for positive experiences in the community (i.e. school, religious activities, sports, family involvement).

POSITION STATEMENT:

In accordance with the Definition of Juvenile Detention adopted by the Executive Board of NJDA, the National Juvenile Detention Association supports the prohibition of the use of juvenile detention as a dispositional option. The NJDA supports the development of more appropriate and less costly alternatives in order to eliminate the use of juvenile detention as a disposition.

Some states refuse to follow federal juvenile guidelines

By MEAD GRUVER
Associated Press Writer

CHEYENNE, Wyo. — When Erica Olivares ran away from home at age 16, the penalty was not a stern lecture — it was a month in Laramie County jail. Soon, under the tutelage of adult criminals, she was addicted to drugs.

"Methamphetamine, I'd never even heard about that. And I heard about that in there," said Olivares, now 26.

Legally, she should never have been in position to learn such harsh lessons. Runaways are not supposed to be put in jail, let alone meet adult lawbreakers on the inside, under a 34-year-old federal law called the Juvenile Justice and Delinquency Prevention Act.

Yet year after year, some states disregard key parts of the law with little consequence, an Associated Press examination has found. Those states included Wyoming, Mississippi, South Carolina and Washington in 2006, according to documents obtained by The Associated Press under the Freedom of Information Act.

The federal law provides funds for compliance, money that can be withheld for failure to comply, just as millions in federal highway funds can be lost by states not setting a drinking age of 21. But the Juvenile Justice and Delinquency Prevention Act provides far less grant money — from \$600,000 to about \$7.5 million annually per state. This is less than the cost of building juvenile lockups and hiring guards trained to work with juveniles. States feel less public pressure to comply, juvenile advocates say.

The U.S. Department of Justice, which administers the act, has a policy of not naming publicly the noncompliant states, and not disclosing how those states have run afoul of the law. As a result, many kids become victims, advocates say.

"Kids' lives are literally at stake," said Liz Ryan, executive director of the Campaign for Youth Justice, a Washington, D.C.-based group that lobbies to keep youths out of jail. "They can be harmed in adult jail, they can be harmed in juvenile correctional facilities."

The Senate Judiciary Committee began debating renewal of the Juvenile Justice and Delinquency Prevention Act in 2008. The process bogged down, but is expected to resume in the new Congress. Ryan said she's hopeful that the Obama administration will be on board to improve the law significantly and release to the public more information gathered under the act.

Advocates say the law's renewal is a good time to open up procedures, require every state to have a full-time compliance monitor and reverse steep cuts in federal funding for juvenile justice programs.

The law contains four core areas:

- First, juveniles generally should not be held in adult jail.

- Second, if they are put in an adult jail — for an adult felony or if space isn't immediately available at a juvenile facility — they must be separated from adult inmates.

- Third, juveniles should not be locked up for age-specific crimes, such as running away or possessing alcohol.

"Kids' lives are literally at stake. They can be harmed in adult jail, they can be harmed in juvenile correctional facilities."

Liz Ryan, executive director of the Campaign for Youth Justice

- Finally, states should not lock up minority youth at a higher rate than other kids.

The states in violation have remained largely unknown over the years — to advocates and even elected officials. U.S. Sen. Edward Kennedy, D-Mass., a member of the Judiciary Committee, has said he's had trouble obtaining information.

"Congress does not receive reports on whether a state has met the standards in the act, and states are not required to publish their state plans. The result has been a serious lack of transparency and accountability in compliance," Kennedy said in a statement to the AP.

It was only after a six-month, back-and-forth process under FOIA that the AP obtained records of states' compliance from the Justice Department's Office of Juvenile Justice and Delinquency Prevention.

The office said it doesn't routinely name noncompliant states because it doesn't want to embarrass them.

"I don't think it's ever a good customer-friendly service to embarrass somebody, do you?" said Greg Thompson, an office administrator who works with states to comply with the law. "I think we achieve more by working collegially with the states rather

than trying to work adversarially with them."

Records released to the AP show Mississippi has complied with fewer areas of the law than any other state — except perhaps Wyoming, which hasn't participated in the law since 1993.

In 2006, Mississippi locked up nearly twice as many youths for crimes related to their age, and sent eight times as many youths to adult jails as the federal standard allows. In addition, Mississippi has run into trouble year after year for jailing too many minority youths.

Sheila Bedi, former director of the Mississippi Youth Justice Project who now heads the Justice Policy Institute in Washington, D.C., said for years, Mississippi wasn't committed to developing a modern approach to juvenile justice.

For not complying, the federal government annually reduces part of Mississippi's federal juvenile justice funding by 20 percent for each area in violation. For fiscal year 2007, the state received \$240,000 instead of \$600,000.

"It all comes down to resources," Bedi said. "They're not getting resources because they're not in compliance. They can't get in compliance without the resources."

Mississippi officials said they're working to get the state back on board. They're hoping to

Continued on 2C

Assignment To bur



Above, Erica Olivares laughs while helping her niece, Deandrea Olivares, 6, write a story about her life at the Casey Family Programs building. Olivares has helped raise her niece since she was 4 months old.



Left, Deandrea laughs with her aunt, Erica, while playing together.

SB2159

MONDAY, FEBRUARY 9, 2009

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