

Summary of 2005 State Juvenile Justice Legislation

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Introduction

This is a brief summary of the state legislation introduced in 2005 that impacts juvenile justice systems and the youth in those systems. This summary is based on the legislation compiled in the document entitled “2005 State Juvenile Justice Legislation.” This summary does not include each bill that is included in that compilation, but rather points out some of the more notable legislation (both positive and negative) and notes trends within and across states. Generally, all bills that were introduced in 2005 have been assigned to one particular category for the sake of organization and analysis; naturally, some of the categories will overlap and bills could have been appropriately assigned to one or more other categories. The categories are as follows:

- Aftercare & Reentry
- Competency
- Conditions of Confinement
- Detention
- Disproportionate Minority Contact
- Diversion, Community-Based, & Rehabilitative Services
- Drugs & Alcohol – Treatment & Penalties
- Due Process: Indigent Defense Systems & Funding
- Due Process: Procedural Issues
- Expungement, Privacy & DNA Databases
- Female Offenders
- Funding, Administration & Organization
- Mental Health Treatment
- Sex Offender Registrations & Restrictions
- Transfer & Sentencing
- Truancy & Schools
- Victims & Restitution
- Miscellaneous

Aftercare & Reentry

There were a limited number of bills related to aftercare and reentry after incarceration for juvenile offenders. Only Virginia (HB 2245), California (SB795), New York (HB7220) and Oklahoma (SB439) considered bills that would provide for comprehensive aftercare services for certain juvenile offenders (although the New York bill would have only created two pilot projects in two secure facilities). Virginia was the only state to enact such legislation, requiring the Department of Juvenile Justice to consult with other agencies to ensure juveniles reentering the community have sufficient support. (Note that California SB795 did pass but only after the provisions regarding aftercare had been deleted.) Bills were introduced in Oklahoma (HB1831) and Mississippi (HB536/HB544) that would allow for an assessment of the home environment to which a juvenile would be returning prior to juvenile’s release in order to ensure that returning to the home environment is in the child’s best interest. Finally, included in part of a juvenile justice reform bill enacted in Texas (HB1575) was a provision providing for procedures to continue aftercare services even if a child moves to a different county from the one in which he was adjudicated.

Competency

Both Colorado (HB1 1034) and Maryland (HB 802) passed positive legislation addressing the issue of juvenile competency. Both bills allow multiple parties, including the court, prosecution, and defense counsel, to raise the issue of competency, and both bills outline procedures that must then be followed to make a determination regarding a juvenile's competency to stand trial. A similar bill was introduced in Connecticut's (SB 1078) legislature, but it failed to pass.

Louisiana (HCR 179) extended the existence of its Juvenile Competency Task Force; expect legislative recommendations from the Task Force in 2006. Finally, legislation was introduced in Michigan (HB 4214/HB 4213) to make rules for determining competency in adult court apply in juvenile court as well.

Conditions of Confinement

The states that have recently come under fire for abuses and poor conditions in juvenile facilities, e.g., California, Hawaii, Louisiana, Maryland, Mississippi, were the states where most of the legislation addressing conditions of confinement was introduced. Much of the legislation to improve conditions failed to pass. At the date of this summary, the California General Assembly is still in session, so it remains to be seen whether AB 314 and/or SB 609 will pass. SB 609 was a particularly strong bill, as it outlined specific standards that each youth facility must meet (e.g., daytime staff ration of 8:1, elimination of all "23 and 1" confinement). However, it was gutted in Committee and now only calls for a general redesign of youth facilities. Hawaii, which came under fire of the ACLU in 2003 for its youth facilities, failed to make any legislative reforms this year regarding conditions at these facilities. Maryland (HB 1178) and Montana (HB 696) enacted legislation to improve the programs at facilities; Maryland addressed educational programming and Montana addressed programming sensitive to the cultural and religious heritage of youth. While legislation was introduced in Louisiana (SB 321) to close two large youth correctional facilities, the Mississippi legislature enacted legislation to construct a massive new facility that will house up to 1,000 juvenile offenders. However, another bill (SB 2894) does improve conditions at Mississippi juvenile facilities, and is discussed more thoroughly in the Diversion section of this summary. Finally, several states – e.g., Hawaii (SR 9/HR 16), Maryland (HB 1342), Nevada (AB 580), Texas (HB 1315) – introduced bills to implement regular inspection of juvenile facilities to ensure they are meeting set standards. While the Nevada bill passed, the Maryland bill (which actually would have simply continued the existence of the Office of the Independent Juvenile Justice Monitor) was vetoed by the Governor.

Detention

The legislature of Vermont (HB 515) passed an act to require a court to make written finding when they detain a child out-of-home, explaining why there was no other viable alternative. Tennessee (SB 1770/HB 1292) introduced similar legislation, discouraging detention in secure facilities if at all possible. Both bills failed to make it out of committee. New York (AB 4211) established a home detention program for juveniles posing minimal risk. Florida (SB 1932) introduced a bill to require electronic monitoring of juveniles in their existing home detention program. Finally, both Kansas (HB 2328) and Maryland (HB 979) considered bills to decrease the amount of time that juveniles spend in detention. The Kansas bill requires notification by the detention facility to the juvenile justice authorities within three days of adjudication assigning a youth to an out-of-home placement. The Maryland bill allows no more than 25 days post-

adjudication (under normal circumstances) for the detention facility to transfer the juvenile to the facility where he has been assigned; this bill was passed but vetoed by the Governor.

Disproportionate Minority Contact

Only three states – Connecticut, Kansas, and Tennessee – considered legislation specifically addressing the overrepresentation of minority youth in their juvenile justice systems. Connecticut considered several pieces of legislation including a bill (HB 6848) that would implement a one-year pilot project to develop culturally competent programs and ensure that children of all races have equal access to rehabilitative services; yet, no bills regarding DMC were passed in Connecticut. Kansas considered a piece of legislation that would have required the Attorney General to implement guidelines for prosecutors that would reduce racial disproportionality in juvenile cases; the bill did not make it out of committee. Tennessee was the only state to successfully address DMC by creating a task force to determine causes of DMC and make legislative recommendations.

Diversion, Community-Based & Rehabilitative Services

The Florida legislature passed a piece of legislation (SB 1978) reinstating a minimum-risk, non-residential level of commitment, requiring a youth to attend day treatment programs five days a week, that had been repealed by the 2000 legislature. Florida also enacted a law (HB1935) to implement a teen court program. Virginia (HB 2149) and Mississippi (HB 1511) considered similar measures endorsing or expanding the use of informal adjudications in teen court programs. There was also a lot of activity in Mississippi surrounding conditions of confinement and the use of smaller community facilities that focus on rehabilitation. Ultimately the two bills that were enacted (SB 2894 and SB 2366) improved conditions at existing facilities, e.g., phasing out boot camp programs and requiring mental health screening, but also emphasized individualized, rehabilitative treatment for youth and the use of the least-restrictive placement possible. Bills to increase individualized treatment plans with multidisciplinary cooperation for committed youth were fairly common, e.g., Massachusetts (SB940), New Jersey (SB 711), South Dakota (SB 178, enacted), and Wyoming (SF 39, enacted). Finally, Maine (LD1376) and Louisiana (HB 637) considered assigning guardians ad litem to juveniles in out-of-home placements to ensure they are receiving proper rehabilitative services; the Maine bill was enacted.

Drugs & Alcohol – Treatment & Penalties

While drug and alcohol treatment was included in many of the bills in the Diversion category that provided for individualized rehabilitative treatment, Florida also considered a bill (HB 1777) specifically related to drug treatment through an existing drug court program. There were no other major bills introduced – just bills increasing or decreasing penalties for drug and alcohol possession. Notably, Wisconsin considered a bill (AB 255) to make possession of a small amount of marijuana by a juvenile a civil law violation rather than a delinquent act. And, West Virginia enacted a bill (SB268) to change consumption of alcohol by a juvenile a status offense rather than a misdemeanor.

Due Process: Indigent Defense Systems & Funding

Connecticut (SB 144) and Hawaii (SB 1317) considered bills to increase the fees of court-appointed attorneys in juvenile matters. Florida enacted a law to create an “indigent for costs” category, so that persons eligible to be represented by a public defender but who are instead represented by private counsel, *pro bono* counsel or *pro se*, can have fees for experts and other fees paid by the state. Florida also considered a bill that would have required each child taken into custody – for a felony, misdemeanor, or criminal contempt and not just those facing delinquency proceedings – to be represented by a public defender. Wyoming enacted a law (HB 314) requiring the reimbursement of guardians ad litem in delinquency cases, who may be appointed in addition to the actual defense counsel. Montana’s indigent defense reform legislation (SB 146) provides that every juvenile alleged delinquent, regardless of financial situation, will be appointed counsel.

Georgia considered a bill (HB 316) that would have provided for a juvenile public defender in each judicial district; after being reported favorably out of committee, the bill was not acted upon. The Louisiana legislature restructured the Louisiana Indigent Defense Assistance Board (SB323); the new membership includes at least one of two members appointed by the chief justice be a “juvenile justice advocate.” Finally, North Dakota (HB 2027) created a Commission on the Legal Counsel for Indigents to administer and develop indigent defense programs.

Due Process: Procedural Issues

Several states considered legislation addressing children’s waiver of the right to counsel. Illinois actually enacted a law (SB 1953) that prohibits a minor from waiving the right to counsel. Florida (SB 1218) also considered a bill allowing the right to counsel to be waived only after conferring with counsel. Alternatively, the Virginia legislature enacted a law (HB 2670) that restricts prohibitions against juvenile’s waiver of counsel to felony cases only. Regarding speedy trial, Georgia almost passed a bill (SB 135) that would require a child in the jurisdiction of the adult court to have the charges brought against him within 180 days, but ultimately the bill died. As far as interrogation procedures are concerned, several states, e.g., Arizona (HB 2614), Nebraska (LB 112), and Texas (SB 662), considered legislation to require the electronic recording of custodial interrogations of either juveniles or all persons. Connecticut (HB 6360), Florida (SB 2582), and Vermont (HB 306) considered legislation to restrict the use of shackles on children during transport and in court; none of the bills made it out of committee though. Finally, Alaska enacted a bill (SB 154) allowing juveniles to waive the right to be present at arraignment, adjudication, disposition, and probation revocation, and allowing for telephonic or video participation in some hearings.

Expungement, Privacy & DNA Databases

Much of the legislation affecting privacy of juvenile records simply allowed for record sharing among state agencies and authorities, e.g., Alabama (HB 477/SB 264), California (AB 1198), Kansas (HB 2130, enacted). Overall, there were more bills expanding the amount of information collected, stored, and shared regarding juvenile offenders than bills enhancing the protection of their privacy. For example, West Virginia enacted a law (SB 585) to make criminal court proceedings involving juvenile offenders open to the public, and one piece of Rhode Island legislation (HB 5244) went so far as to make public the identity of juvenile offenders found delinquent of two or more offenses. Alaska (HB 124) and Ohio (HB 525) passed laws to expand

the collection of DNA samples from juvenile offenders, and Hawaii (HB 590/SB 699), Iowa (HF 713), Nevada (AB 382), New Hampshire (HB 556), New York (AB 5474/SB 2959), and North Carolina (SB 746) considered such bills. Indiana (SB 594) considered creating a database, similar to a sex offender database, for violent juvenile offenders whose victims were over the age of 65, and Maine (LD 1550) considered an arsonist registration database. However, there were several examples of legislation providing for meaningful expungement of juvenile records and/or privacy protection. For example, Tennessee enacted a bill authorizing complete expungement of a juvenile record at age 21 if juvenile has not committed subsequent offenses. Massachusetts (SB 1076) considered similar legislation to facilitate expungement of juvenile records. A bill was introduced in Massachusetts (HB 647), although it did not make it out of committee, requiring juvenile records to immediately expunged when a case is dismissed or juvenile is acquitted.

Female Offenders

The Connecticut legislature considered two bills (HB 6359 & HB 6355) that would have provided for gender-specific programming that takes the unique needs of female offenders into account. One bill was reported favorably out of both the House and Senate Judiciary Committees, but died in Appropriations. Similarly, a Hawaii bill (HB 245/SB 467) and a New Mexico bill (HB 821) providing for gender-specific programming for female offenders were reported favorably out of the respective judiciary committees but died in each legislature's appropriations committees.

Funding, Administration, & Organization

Many of the funding and administration bills in this category are state-specific. For instance, California had extensive administrative reforms. California enacted a bill (SB 737) reorganizing their corrections systems for both youth and adults. Under SB 737, the Department of Corrections and California Youth Authority are merged under the new Department of Corrections and Rehabilitation (DCR). The juvenile facilities and programs will be housed in their own division of DCR and overseen by the new Chief Deputy Secretary for Juvenile Justice. Maryland will also be undergoing administrative change of their juvenile justice system. The legislature failed to pass a bill extending the existence of the Office of Children Youth and Families (OCYF), and the office therefore ceased to exist on June 30, 2005. The legislature then passed a bill to keep the Independent Monitor position, which had been effective at exposing abuses and shortcomings of juvenile facilities in the past, by moving it from OCYF to the Attorney General. The Governor, however, vetoed this bill.

Mental Health Treatment

The success of several pieces of legislation providing for mental health treatment for juvenile offenders is evidence of a growing awareness that oftentimes juvenile offenders have a need for such services. A bill in California (SB 570) that has passed the Senate and is being considered in the Assembly mandates education on mental health issues for juvenile justice system players, e.g., police and prosecutors. Idaho (HB 334) created a Mental Health Court, similar in function to a drug court, for providing mental health assessments, treatment and supervision. Idaho also enacted a law (SB 1165) allowing a judge to order a mental health assessment at any stage of a delinquency proceeding if she has reason to believe that the child is suffering from a mental illness or emotional disturbance and to order mental health treatment. Both houses of the Oregon (SB 232) legislature have approved a measure to allow an affirmative defense of insanity in juvenile proceedings and to provide for the disposition of juveniles who use such a defense

successfully. Finally, Washington enacted a law (HB 2073) providing that any juvenile who comes before the court may be eligible for the Mental Health Dispositional Alternative, which provides for a suspended sentence and mental health treatment.

Sex Offender Registrations & Restrictions

Four states have passed laws either expanding sex offender registration requirements for juveniles or the public's access to registries that include juveniles. Wisconsin's law (AB 99) simply provides that juvenile sex offenders will be treated like adult sex offenders for registration purposes. Bills enacted in Nevada (SB 341) and Virginia (HB 2318) allow for inclusion of juveniles in sex offender registries yet outline factors that the court ought to consider in determining whether a juvenile should be included, e.g., ages of the offender and victim, nature of the offense, etc. Finally, a bill in Colorado grants the public greater access to existing sex offender registries, which may include certain juvenile offenders. About ten other states considered bills that would either require certain juvenile sex offenders to be included in registries, or expand public access to juvenile sex offender records. Another type of bill that was considered, but not enacted, in at least three states (i.e., Delaware (HB 43), Maine (LD 1321), Ohio (HB 227)) provides for the civil commitment of violent sex offenders, including juveniles considered violent sex offenders.

Transfer & Sentencing

While several states (e.g., Illinois (SB 458), Michigan (HB 4851), Missouri (HB 572), New Hampshire (HB 627), Wisconsin (AB 82)) introduced legislation to change the jurisdiction of the juvenile court from under 17 years of age to under 18 years of age, none of these bills were enacted. Additionally, Georgia (HB 607) and Washington (HB 1187) considered bills to prohibit mandatory minimum sentences from applying to offenders under the age of 18; the Washington bill was enacted. Colorado (HB 1109) considered legislation that would have prevented offenders under age 18 from being sentenced to life without parole; however, that provision was struck and the bill that passed simply called for a task force to study transfer. On the other hand, the New York legislature considered at least ten bills that would increase the types of offenders transferred to adult court or increase sentences for juvenile offenders. Because legislation in this category can have either a very positive or very negative impact on juvenile offenders, much of the transfer legislation has been divided into two categories, "Legislation Restricting Transfer & Decreasing Sentence Severity" and "Legislation Increasing Transfer and Increasing Sentence Severity," in a table accompanying this summary as Appendix A.

Truancy & Schools

At least fifteen states considered legislation related to compulsory school attendance and related penalties. Several such bills simply take away driving privileges (e.g., Alabama (HB 673/SB 386)) or require community service (e.g., Connecticut (HB 5524)), and others consider raising the mandatory attendance age from 16 to 18 (e.g., Florida (HB 1115/SB 1506)). Some, however, are more serious. Iowa (SF 295) considered a bill that states that a truant child who violates a mediation agreement or refuses to participate in mediation commits a delinquent act. A bill in Kentucky (HB 408) would allow law enforcement to take into custody a student of compulsory school age who is not on school property during school hours. Also included in this category are bills that enhance sentences for certain crimes – usually weapons possession or drug offenses – when committed on school property. Alaska (HB 88, enacted), New Hampshire (HB 208), New

Jersey (AB 2863), New York (SB 2147/SB 4119) considered such bills. Several states also considered legislation requiring school authorities to report to law enforcement certain drug and alcohol offenses that occurred on school grounds, e.g., Pennsylvania (SB 355), Washington (SB 5171).

Victims & Restitution

Arizona enacted four bills enhancing “victims’ rights” in delinquency proceedings this legislative session. Together, the bills require judges to advise victims of their rights in delinquency proceeding (SB 1267), allow victims to exercise rights despite any plea agreement (SB 1433), state that restitution payments do not expire until paid in full (SB 1152), and require the juvenile to reimburse law enforcement for expenses incurred as a result of the false reporting of a bomb or fire (SB 1031). Other victims’ rights legislation includes Connecticut’s enacted bill (HB 6579) prohibiting courts from excluding any victim from a juvenile court proceeding without good cause. Georgia (HB 172) also enacted a comprehensive “Crime Victims Restitution Act of 2005” that applies to juvenile delinquency cases as well as criminal court.

Conclusion

Overall, this summary reveals the contradictory nature of reforms impacting the treatment of juvenile offenders, even within a single state legislature. While there is a movement to punish juvenile crime more severely with increased sentences and transfers, harsh sex offender penalties, and greater restitution for victims, the legislation that has been introduced presents evidence of many legislators’ belief that juveniles have a great propensity for rehabilitation if the state provides appropriate and adequate treatment facilities, ensures that their mental health issues and substance addictions are addressed, and ensures competent counsel is advocating on their behalf.