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FAX transmittal

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To: Senator VanRegenmorter
Attn. Mdrozie

Date: 10-24-95

From: Judge Nancy Francis

questions call: Lynn 971 1293 (313)

RE: SB 282 Session 2pm.

Pages: (including this one) 9

NOTES: Urgent

I am Nancy C. Francis and I am one of two Probate Judges in Washtenaw County; my primary assignment is presiding at the Juvenile Division of the Court. I am not authorized to speak for anyone but myself but I know that there are many people across the State who agree with the comments which I am about to make but believe that the legislative decision has already been made and it is pointless to try to effect this legislation..

Preliminary Comment:

Before my remarks about the general thrust and purpose of the juvenile justice bills, I would like to direct your attention to a serious oversight in our legislation which came to my attention when I read SB 282. This Bill "opens" MCL 750.316 and I am asking that the Legislature take the opportunity to change the provisions of Subsection (3) of the bill which is Subsection (2) of the present statute. This statute which mandates first degree murder charges for the murder of certain professionals and, whatever else it may be it is our policy statement about the simultaneous danger and public worth of certain occupations. I think we should be embarrassed that our policy does not recognize the danger and public worth of the work done by agents and officers in the Juvenile system. Their work is at least as hazardous as similarly-situated employees in the criminal system and is probably more dangerous because they do their work unarmed at all times, under strict guidelines of benevolence and humaneness required for dealing with other people's children and their clientele is by nature more impulsive and less inhibited than that generally handled by the criminal system. My proposal is only this: that as long as the Legislature has established a protected class of professionals through MCL 750.316 all those who are clearly within the group should be included in the statutory protection.

This committee and the public at large has been receiving anecdotal information for some time about our dangerous children; the bills before you are based on the belief that our children are so far out of control that the government must act in new ways to address them. Yet there is no concurrent recognition of the extraordinary courage, dedication and community service done by those who work with these children day and night. This is a body of public employees which works daily - personally - in the field - in institutions - one on one not only with the children the rest of the country is talking about but with their parents, neighborhoods, relatives, adherents, associates, victims and perceived victims.

1. Corrections officers: MCL 750.316 includes prison and jail guards within its protected class but does not include the staff of juvenile detention facilities, residential treatment programs or the state training schools. Serious and dangerous

youth offenders have always been held in Juvenile detention facilities and placed in state, county and juvenile court residential rehabilitative programs The 1988 legislation creating the prosecutorial waiver procedure was based on the belief that some children were so dangerous that different methods were needed to handle them in court and the door to the state prison had to be opened a little more for them. HOWEVER, these same youngsters are required to be held (pre-sentence) in juvenile detention facilities and are frequently continued in these detention facilities until placed in the State Training Schools after conviction in the Circuit Court. Ironically the statute that recognized the danger of some youth did not acknowledge the danger and worth of those who guarded, care for, taught and counseled them in residential facilities. Because the Juvenile system has always handled and housed serious and dangerous offenders and dealt with their angry and dangerous adult loyalists, our employees will continue to be at risk regardless of what happens to these bills. I am asking that you recognize their unselfishness, the great value of their work to public safety is the only avenue the State seems to have for recognizing this.

2. Probation agents: MCL 750.316 presently includes all probation agents in its protected class and there are employees of the Juvenile Courts who are 'probation agents' by statutory definition and thus may have been incidentally included but I think defense attorneys could reasonably argue that they are not because of the general exclusion of juvenile system personnel from the statute. I am asking that it be made clear in the legislation that Juvenile Court probation officers are included in that classification. I cannot convey to you the respect you would have for these men and women if you saw them at work - these are not people who spend their days in offices completing paper work and demanding that their clients come to them. There was a Wayne county Juvenile Court Probation Officer killed a few years ago while doing routine work for a Juvenile Court agent - making a home call on a client.

3. Non-probation agents: The Juvenile Court is different from the adult court and purposefully so. For example, Juvenile Courts - unlike adult courts - provide supervision, surveillance, counseling and many services as soon as a child is charged, not just after conviction. These jobs are done by people who are not labelled or considered "probation officers". However, they have the same kind of personal contact and position of authority - and thus the same degree of peril - as the probation agent but because of job title will not be included within the protected class of MCL 750.316. Further, regardless of title, these employees - intake, In-Home Detention, county agents, probation officers, etc. - are authorized to take children into custody under the Code and this aspect of the job places them in the same jeopardy as law enforcement agents (who are within the protected class).

I am NOT proposing that children charged under the prosecutorial waiver statute be removed from Juvenile detention, rehabilitative or training school facilities. I am NOT asking that Juvenile Court and DSS agents be armed. I am asking that Michigan enlarge its existing policy statement to recognize the daily peril of these employees and the value of their work to this State.

Testimony on Juvenile Justice reform.

I support reform of the Michigan Juvenile Justice system; the bills before you are not about reform of the Juvenile system they are about expanding the adult criminal system . I seek the kind of reform that many probate judges and officials have discussed for years in Michigan: That is reform which continues to recognize (1) the real differences in the character and needs of the clientele we serve from most of those served by the criminal system; (2) the continuing appropriateness of Juvenile Court theory and philosophy to children and (3) the need to have the Juvenile Court options and procedures change as society changes. I have only been a Judge for six years but from talking to veteran judges I have come to realize that the Probate Judges have been hungering for reform within the Juvenile system for a long time...they want the tools to allow them to deal with all of the situations which come before them, including the serious underage offender. Sadly, it appears from reading these bills that they will, once again, be denied these resources.

I strongly endorse a major change in the perspective of the bills which are before you now. I ask you to revise the Juvenile Code to enable Probate Courts to handle the kinds of cases which are addressed in these bills and which are properly within the Probate Court jurisdiction.

First, I propose that the Department of Social Services be required to structure its existing Training School programs to provide a much longer program which allows the opportunity to internalize, routinize, test and perfect the changes and gains they have made within the program before they go home and try to fend off the lures and persuasions of their communities. The Training School experience makes a marked difference in most of the children who attend it but they are not there long enough nor given enough time to stabilize their changes before they are discharged. This means an increase in the number of Training School beds.

Second, I propose that you amend the Juvenile Code to provide for the Prosecutor to file a petition against a 15 or 16 year old (14 , if you must) for certain specified offenses and request commitment to the Department of Corrections for the statutory sentence. In those cases the Juvenile Court would be required to provide a Preliminary Examination and a 12 person jury. A dispositional alternative should be added to Section 18 of the Code allowing the Juvenile Court to commit youth convicted on such a petition to a locked genuine Youth Rehabilitative Facility

operated by the Department of Social Services. The commitment could extend until age 21; if, after the youth reached the age of 20.5 the court found that the public would be at risk if the youth were released, the court could commit that person to the Department of Corrections according to criminal sentencing guidelines with credit for time spent in the Youth facility. Prior to commitment to the Department of Corrections between ages 20 and 21, the Juvenile Court would continue concurrent jurisdiction and required and permissive reviews. The Juvenile Court jurisdiction would be extended to age 22 to allow for a one-year parole component of the Youth Facility to monitor and support the released youth and allow sentencing to the Department of Corrections as a consequence.

- first, it is possible to achieve your public safety objectives without further eroding the exclusive jurisdiction of the Juvenile Court and without expanding the confusing, inefficient, cumbersome patchwork of the three courts that was created by the 1988 legislation;

- second, these bills undermine the effectiveness and authority of the Juvenile Court in dealing with the remainder of its clientele;

- third, this legislative solution sends a highly counter-productive challenge to the young people whom it seeks to deter and

- fourth, because the Juvenile rehabilitative system works and if given the tools which it has heretofore been denied, the Juvenile Courts and Department of Social Services can effect change in the most seriously damaged children who are such a risk to our communities..

First: Contrary to the myths which abound, the Juvenile Court was not established in the 1950's nor was it established to deal with a particular type of youthful behavior. The Juvenile Court has existed for a century in the United States and it was established to handle children regardless of the nature of their behavior. The idea was to provide a system of justice and a public disciplinary response suitable to the vulnerability, the impetuousness, the ignorance and the educability of children. The theory behind the juvenile court was never that some children would be in the adult system because they were serious offenders it was that all children would be in a system appropriate to children because children are not just small adults - they are vastly different creatures. That is the reason for the exclusive jurisdiction; the due process is the same, the response to criminal behavior is different because children can learn and change. It is not necessary to erode that jurisdiction in order to address the tiny number of cases in which a minor is so dangerous and predatory that long-term incarceration is the proper response because the statutory adjustments which I have suggested would make that much

needed adjustment in the juvenile system, itself.

As a result of the 1988 legislation inserting the adult courts into the Juvenile process we have, at least, the following problems:

- Children on prosecutorial waivers are backed up in Juvenile Detention facilities and the Juvenile Court has to overcrowd the facilities when Juveniles on petitions need to be detained. The primary reason for this is that everything has to happen faster in the Juvenile Court (for example, the Juvenile Court must start trials on detained youth within two months of detention but the Circuit Court can commence such a trial within three months and there are many more allowable justifications for delay in the adult system than in the Juvenile Court. More time is also allowed between conviction and sentencing/disposition in the Circuit than in the Juvenile Court. Because commitment to the State is the only Juvenile system option open to the Circuit Judge detainees are backed up in Juvenile detention facilities for the long long wait for acceptance by the State.

- By its dispositional decisions, the Circuit Court is forced to make major inroads into the budget of the Juvenile Court without having any accountability for the state of the budget or for providing for the rest of the children in the Court.

- District and Circuit Judges are typically unaware of the many corrective and rehabilitative efforts that can be made even before adjudication and unable to use the full spectrum of juvenile court services to enhance a probation.

- Court unification will not answer these concerns because court reorganization, if it happens, will not change the legal codes.

2. The insertion of the criminal courts into juvenile court jurisdiction is unnecessary to the provision of public safety because the necessary changes can be made in the Juvenile Court. I fear that such proposals have been and are palliatives for a frightened, angry and partially-informed electorate and that would be alright if they did not also undermine an effective existing institution and demean and discourage an arm of this government which works unheralded miracles throughout this State on an almost daily basis. With the passage of these bills, the Legislature will once again be sending the very invalid message to the public that the Juvenile Court system is an worthless, mickey mouse set up, that its judges and staffs are inept and that if we want anything meaningful to happen we need to get the District and Circuit Courts to do it. Not only does this strike an undeserved and belittling blow to the personnel of juvenile courts and the Department of Social Services it undermines our authority and dignity with those many many children and families who remain in our system. The more the Legislature thumbs its collective nose at

the juvenile system, the more the public will -- the institution needs to be strengthened by the Legislature not weakened.

3. The 1988 legislation and these bills before the Senate make major crime a rite of passage in the minds of many of the very young people whom you wish to deter. Legislators do not see the new swagger, the peer admiration and rise in esteem that attaches to the young person who has made it to the adult system and is going to prison - but I (and other Judges) do. I am very troubled that we have created yet another entryway into adulthood in the warped view of some of our children. For too many of our children adulthood has nothing to do with maturity or even chronological age; adulthood means being sexually active, drinking alcohol, driving cars, and most importantly doing whatever you want to do whenever you want to do it and now it also means going to adult court and going to prison. We are now going to given children this sick opportunity at age 14 on the premise that they are committing adult crimes. In truth, however, if adulthood means responsibility, thoughtfulness and self-discipline then the more heinous an act and the more sustained a pattern of criminality, the more child-like the offender is.
The single most devastating and startling thing that I say to the children in the delinquency jurisdiction of my court is: you are a child and your parents are in charge of you. This is a completely foreign and unwelcome concept because these children are usually in charge of their parent. In order for our society to resume control of its children, we need to give them the message in every possible way - including this legislation - that they are children and that provocative and outrageous behavior does not make them adults. The changes in the legislation which I am proposing will put a damper on this incentive; even if a young offender is committed to the Department of Corrections under my proposal it will be done by a children's court to a children's facility. The Legislature can achieve the benefits of long term rehabilitative incarceration without making major crime a right of passage.

4. The Juvenile system works; it is a myth that it does not work and given necessary tools it can work in the tiny number of cases these bills address. The Juvenile Court begins work immediately upon a child coming into the court, it ferrets out cause of criminal behavior and applies a wide variety of methods to eliminate those causes and teach social responsibility and provide some solace and compensation to the victim. Further, the Juvenile Court has a much broader jurisdiction that the Circuit or District Court in order to achieve its goals. As a person with a long experience in the criminal system I wonder why the Legislature thinks that the adult system is so successful that we should turn to it for our serious youthful offenders. I realize that what the criminal system has is time. It can put - and, if it wants to, keep a dangerous offender out of society for a long period of time. However, as I have indicated earlier, the Juvenile Court can be given that

same capacity by adding a few provisions to the Code but allowing the court to apply any of the proven benefits of juvenile system as appropriate. I believe that we need a longer term locked facility for certain youth but I believe that it should be operated by the Department of Social Services so that rehabilitative, educational work will really go on there. The Department, through many partisan leadership changes, has maintained its capacity for affecting the current and future behavior of many serious offenders but its programs are not long enough to solidify those changes. The proposal which I make will leave youth rehabilitation in the hands of the experts but give the court the opportunity to protect the public with Corrections commitment if those efforts do not take or hold.

I would like to make a comment about prevention. We must take effective action regarding children who are predatory in their communities however, we must simultaneously engage in real crime prevention or our society will continue to grow and develop children with no consciences who will prey upon the rest of us. We cannot do one without the other. It is my opinion, formed and reinforced through 17 years of the practice of criminal law and 6 years on the Juvenile bench that the major cause of delinquency and crime is child abuse and neglect from its narrowest to its broadest forms and if we want to prevent criminal behavior we have to be willing to take serious, sometimes expensive steps to thwart criminal behavior from its earliest origin which is child abuse and neglect. Many of these children have had life experiences and treatment at the hands of adults that most of us are unable to contemplate. There are many who have been left to raise and supervise themselves from an extremely early age because parents have other priorities that range from jobs to drugs, church activities to romantic interests.

Some people have asked that a brighter line be drawn between the Juvenile Court's delinquency jurisdiction and its child protective jurisdiction as if these were different children. They are the same children, they just come into the juvenile Court through a different door and usually at different ages. As our Referee said when one of our former clients was accused of the ambush and vicious, near-fatal stabbing of a stranger: "that's what happens when you break every bone in your child's body before he is two years old". I am asking the Legislature to look at one crime prevention step that will entail a major statutory change in our child abuse standards. Many many of the children whom we see in the juvenile Court are children whose emotional stability and self-discipline have been seriously and permanently impaired because of the parent's use of alcohol or other mind or mood altering substances during pregnancy. These children are born or at risk of being born with an irrevocable organic condition that underlies criminal and other anti-social behavior and restricts the quality of life of the children. The Legislature should amend MCL 712A.2(b) to include within the definition of child abuse consumption of alcoholic beverages and certain drugs during pregnancy and give

Juvenile Courts the authority to order the pregnant substance abuser into residential treatment programs where parenting skills can be taught while the fetus is kept healthy and the mother is given the opportunity to escape from chemical addiction or dependency. I am sure that both sides of the abortion contest and other vocal votes will weigh in on such a proposal but it is time for us to think about some non-voters and let them, at least, start their earthly experience with a healthy mind and body.