



CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 20, 1978.

SB 909 continued -

central staff is becoming more common in appellate courts. Committee discussion with him followed.

The meeting adjourned.

These minutes were read and approved by the committee on 4-24-78.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

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Topeka

Topeka P.O.

~~Ernie B. ...~~

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Court of Appellate

J. Richard Foth

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Susan Luger

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St. Planning + Research

Jim Marquez

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Dept. of Corr.

Mac ...

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Topeka ...

Bill Army

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Governor's Office

February 20, 1978

STATEMENT BY BRADLEY J. SMOOT, GOVERNOR'S PARDON ATTORNEY

SENATE JUDICIARY COMMITTEE

RE: Senate Bill 861

The Governor asked that I communicate his support for Senate Bill No. 861 relating to our sentencing laws for repeat offenders. The Governor appreciates this opportunity to express an opinion on this subject. And after a few brief comments I would be happy to try and answer any questions you might have.

In sentencing, a district court judge is initially confronted with the current legislative mandate called the "indeterminate sentence." Under our statutes, sentences are not fixed and definite but are, instead, a broad range of time in confinement which even the court cannot fix and make certain.

In addition, rather than any confinement, the court may impose a fine, pronounce sentence and then suspend imposition of it or simply grant probation. These alternatives to confinement are frequently used as the current statistics indicate. Roughly 68% of persons convicted of felonies in Kansas are granted probation.

Finally, even the court-imposed fixed minimum sentence means little in the way of a definite term of confinement recognizing that the Kansas Adult Authority can, without court approval, parole any offender after 120 days of confinement who has achieved minimum security status and whose minimum sentence is less than twenty-nine (29) years.

Although this flexible system of sentencing is the policy of the state and would not be substantially affected by Senate Bill No. 861,

we find considerable merit in the idea of narrowing somewhat "indefinite" sentencing where repeat offenders are convicted of Class A, B, or C felonies.

Where Section 1 of this act is invoked probation and parole would no longer be options available to the criminal justice system until the court-imposed minimum has been served. This will provide both a measure of certainty and additional protection for Kansans by prolonged incapacitation of more dangerous persons.

This proposed legislation easily integrates into current law and practice and provides some flexibility in the usage of its provisions. The imposition of a term of imprisonment under Section 1 of this act results only on the motion of the district attorney and after a finding by the district court judge that the person to be sentenced has a prior conviction within the meaning of this act. Thus the provisions of the bill would offer just an additional tool for use by local prosecutors.

If there is a problem with the bill it is the problem of defining and limiting the meaning of "prior conviction." The great majority of states have provisions relating to the punishment of the habitual offender and one of the most difficult problems which exists is determining which prior offenses can be counted for purposes of habitual offender status.

For example, I would call your attention to line 23 of the printed bill and urge that you amend the bill by inserting after the word "previously" the phrase "of a felony". I think this addition is consistent with the intent of the statute and appropriately restricts application of the act only to persons twice convicted of more serious crimes.

You have or will soon receive a copy of the fiscal note on this bill. As you will see, we can provide very little information on the future costs of such legislation. Extended terms of confinement may tend to increase the prison population and thus increase the cost to the state. But this financial burden may be off-set to the extent that such penalties operate as a deterrent to criminal activity or incapacitate by confinement those persons who otherwise would have committed additional crimes.

Thank you.