

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m. ~~p.m.~~, on March 15, 1978.

All members were present except: Senators Gaar and Gaines

The next meeting of the Committee will be held at 11:00 a. m. ~~p.m.~~, on March 16, 1978

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxx 19xx were considered, corrected and approved.~~

  
Chairman

The conferees appearing before the Committee were:

- E. J. Kuntz - Wichita Police Department
- Jim Marquez - Kansas Department of Corrections
- Ann Heberger - League of Women Voters of Kansas
- William R. Arnold - Kansas Citizens For Justice
- Devon Knoll - Kansas Adult Authority
- Gene Olander - District Attorney, Shawnee County
- Thelma Bray - Silver Lake, Kansas

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Cynthia Burch - Legislative Research Department

House Bill 2714 - Aggravated interference with parental custody. No conferees appeared in support of, or in opposition to this bill.

House Bill 2759 - Children and minors, period of minority. No conferees appeared on this bill; Representative Heinemann had previously testified with regard to the bill when he appeared before the committee on another bill.

House Bill 2712 - Sub. for HB 2712; Crimes and criminal procedure, presentence reports, sentencing, probation conditions, parole eligibility, transfer of probation and parole functions, DOC and KAA regulations. Major Kuntz, of the Wichita Police Department, testified in support of the bill, although there are still some points in the bill that he is concerned about. He stated that based on information available to his department in terms of repeat offenders of violent type crimes, the judges should have authority to make determinate sentencing. In Wichita, some 36% of the persons arrested for homicide had prior felony convictions. He stated a great number of people released in his community end up being arrested again. He feels that at the time of sentencing, the judge has sufficient information to determine what sentence should be served. This substitute bill lacks determinate sentencing;

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary March 15, 1978.HB 2712 continued -

sentences are not specific enough for specific crimes. He urged that in line 72 and 76 the word "may" be changed to "must"; also in lines 83 and 86. He said the changes made in lines 474 and 475 was really a step in right direction, as was the change made in lines 509 and 510. He stated law enforcement personnel do not believe that prisons are rehabilitating people. Courts should have the authority to determine the length of the period of incapacitation. A copy of the views on determinate sentencing of the Wichita Police Department is attached hereto.

Jim Marquez spoke in support of the bill. He related that HB 2712 was introduced by the interim Judiciary B Committee, but that in the House Judiciary Committee, five bills recommended by the interim committee on corrections were merged into this bill. The substitute bill does call for some change in sentencing structure. Courts do have types of flexibility. He stated he opposed complete determinate sentencing. He supports presentence investigations. There will be some degree of cost with regard to presentence investigations; it would be necessary to hire more parole officers. He stated that he supports a fulltime adult authority. He feels it would be helpful if the inmate does see the parole board. He stated he was not in favor of making rules and regulations dealing with security and emergency matters available to prisoners. He suggested that the bill be amended to delete the requirement that the director of each institution publish rules and regulations. He stated that in lines 56 and 57, "defendant" should be changed to "inmate". Committee discussion with him followed.

Ann Heberger spoke in support of the bill. A copy of her statement is attached hereto.

Attached hereto is a copy of a statement from the Catholic Social Service of Kansas City.

Bill Arnold spoke in support of the bill. He is pleased with the requirement for the presentence investigation. He feels the clarification of parole eligibility is good. He stated that the bill provides opportunities for flexibility. With regard to the problem of rules and regulations dealing with inmates, he suggested separation of that portion of the rules and regulations that should be kept secret, and making the other portion public.

Mr. Devon Knoll testified in support of the bill. He related that he had worked with the interim committee this summer. He stated that he generally favors the sentencing provisions of the bill, which he believes would provide for more meaningful sentencing coming from the local community. He does have a few minor reservations, particularly with regard to the impact on the population of institutions. He stated that he felt that the impact would be

## CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary March 15, 1978.

HB 2712 continued -

rather minor, and would not show up for three to five years.

Gene Olander appeared on behalf of the Kansas County and District Attorneys Association, and stated that that organization is generally in favor of the bill. He stated that he is strongly opposed to that portion of the bill which would permit a person who hired a killer to become eligible for parole in 120 days. Discussion with him followed.

Thelma Bray inquired as to who would do the presentence investigation, and what would be done with the investigation. Committee discussion with her followed.

The meeting adjourned.

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

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Bret Pierson	RR2 Holton.	HHS
Ray Beasterfield		
Eugene Kranz	RR1 Whiting	HHS
Kent Chambers	RR 2 Holton	HHS
Dan Starkson	210 Ohio	HHS
Chad Douppe	617 Idm	HHS
Dvon Henton	313 Nebraska	HHS
Wanda BOWSER	Rt. 2 Mayetta	HHS
Rene Ladusch	401 E. 5 <sup>th</sup>	HHS
Laurie Kutina	517 Arizona	HHS
Steve Lukert	721 Colo. Holton	Holton KNEA
Steven Bowers	RR2 Mayetta	HHS
Jeff Lane	306 Kansas Street	Holton High School
Delaine Smith	R. R. 1 Holton	Holton High School
Judy Hallauer	RR3 Holton	HHS
Dianne Hollandec	RR3 Holton	HHS
Leylee Brown	400 Iowa	HHS
Helma Bray	422 Rice, Silverlake	HHS
B. J. Kuntz	Wichita, KS	POLICE DEPT
Leth Bandy	Box 2 Weir, KS	Page
Tamela Thompson	Box 292 Weir, KS	Page

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Rob Mackey	Gege Apartments	KEWI Radio
J. J. Hendrix	Lawrence, Ks	Shawnee Co Ct Justice
<i>Wm. R. Arnold</i>	" "	<i>Kans. Citizens for Justice</i>
Brock Everett	Manhattan Ks.	
Fredda Everett	Manhattan, Ks	
EVERETT		
Ellen Richardson	Box 5314 Topeka	Ks. Children's Service League
Susan Lueger	Topeka	St. Planning + Research
W. L. L. L.	Topeka	KAA
Lucy L.	Topeka	T.P.D.
Ernie Foerster	Manhattan	L.W.V. of Kansas
Ann Heiberger	Oakland Park	L. W. V. K.
deptearns	Topeka Ks	Coop of Churches
Marilyn Braett	Lawrence	League of Women Voters
Ruth C. Dickinson	Topeka	St. Planning + Research

# LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

STATEMENT TO THE SENATE JUDICIARY COMMITTEE CONCERNING SUBSTITUTE H.B. 2712

March 15, 1978

I am Ann Hebberger, speaking for the League of Women Voters of Kansas, expressing our support of Substitute H.B. 2712.

In past Sessions, the League has taken positions against mandatory or fixed sentencing. However, because the bill allows the court discretion under most circumstances, we are not opposed to Sections 1 through 3.

Mandatory pre-sentence investigation, in Section 4, of all convicted felons has been strongly supported by League members for several years. We believe such investigations not only divert those who are needlessly incarcerated, but elements of violent or other abnormal behavior can be discovered as well. We also think that the above is a necessary ingredient to make the concept of community corrections work.

The inclusion of more alternatives to conditions of probation in Section 7, such as community treatment centers, day fines and community service, allows more opportunity for probationers to participate in helping themselves and/or others.

It appears to the League that decisions made by the members of the Kansas Adult Authority are important enough to inmates and society to warrant a full-time Board, and therefore, we support Section 9.

The League concurs strongly with Section 10 that a 60 day limitation be placed on the initial hearing of most incarcerated felons before the KAA, and that if parole is not granted, the KAA shall notify the inmate of the reasons in writing.

In view of our position of support of the Community Corrections Act, the need for good probation staff to carry out much of the program, and the creation of state guide-lines, as well as adequate financing, we are supporting New Section 11.

The League supports Sections 16, 17 and 18, which provides that trial and conviction records, reports, etc. accompany each offender to an institution, and that all rules and regulations and orders re: institutions shall be published and made available to all inmates. The only exceptions being those of emergency or security procedures.

We are in complete agreement with New Section 20 which states that the secretary of corrections and the Kansas Adult Authority shall prepare and file all rules

and regulations pertaining to those agencies. We believe that all state agencies should be accountable to the Legislature as well as open to public view.

We urge your favorable consideration of Substitute H.B. 2712. Thank you for the opportunity to appear before you today.

League of Women Voters of Kansas

909 Topeka Blvd.

Topeka, Kansas 66612

354-7478

March 15, 1978

To: Senate Judiciary Committee

From: Sister Dolores Brinkel, Criminal Justice Ministry Office,

Re: Substitute H.B. 2712 Amending the criminal code, conditions of probation, parole.

Thank you for the opportunity to present this testimony before the Judiciary Committee today.

I speak as a citizen who served on the Special Committee on Corrections during the 1977 interim. You are probably aware that this committee held some twenty-five days of hearings and deliberations.

I wish to address four issues which were considered by the Special Committee and which appear in Substitute HB 2712.

First, this office supports a mandatory presentence investigation of all convicted felons, to be rendered in the local community where possible. The presentence investigation will be most useful to the sentencing judge, the local correctional authorities, and the Department of Corrections in making meaningful decisions for the convicted. Under this legislation the present duplication of individual assessments would be avoided.

Second, this legislation will strengthen probation services. It will provide additional alternatives, such as residential community services, public or community service and day fines. Probation services should be placed under the jurisdiction of the district court in conjunction with the development of a Unified Court System which renders local services.

Third, parole functions should continue to be administered under the Department of Corrections. Regarding parole process, I would support Mutual Agreement Programming wherein the Kansas Adult Authority, the Secretary of Corrections and the prisoner would agree to a three-way contractual agreement. This process would shift responsibility for planning and the successful completion of an individualized program to the inmate.

Fourth, the rules and regulations of the Department of Corrections and the Kansas Adult Authority should be subject to review, the same as other agencies of government.

This office believes that the forgoing are steps toward a more positive and humane approach to corrections.





## VIEWS ON DETERMINATE SENTENCING

Richard E. LaMunyon  
Wichita Police Department

The Wichita Police Department began, a little over a year ago, directed efforts to identify and analyze some of the primary contributing factors to the city's crime picture. Focusing our attention on factors which we felt were realistically within the control of the criminal justice system, we found that repeat offenses by previously convicted felons topped the list.

Provided as Attachment I to this report is a summary of study data which shows substantial evidence of a high level of recidivism. Briefly, the data shows that during 1976, within the city of Wichita, 36% of the individuals arrested for homicide had previous felony arrests. Approximately 54% of those arrested for rape had previous felony records and there were prior felony arrests on 53% of the persons arrested on robbery charges.

These figures are especially significant when supplemented with Wichita's 85% overall felony conviction rate for the same period.

To many law enforcement agencies, the above information may not be too astounding. For quite some time now it has been generally recognized that a very small percent of the population is responsible for a comparatively large percent of the crime.

According to noted Criminologist Marvin Wolfgang, 6% of the population commit more than half of all offenses and approximately two-thirds of the violent crimes. Such a situation necessarily reflects a tremendously high rate of recidivism.

I sincerely feel that recidivism is a factor over which society, through the criminal justice system, has potentially more control than any other recognized contributor to crime. But to be effective, this control must be exercised.

Identifying the habitual offenders is no real problem; as a rule, we know who they are. Again, the problem isn't identifying them; its dealing with them effectively. I contend that it is quite obvious that the system is not doing all that can and should be done in this regard.

All too often crimes are committed by previously convicted felons who are on parole from state institutions. In attempt to substantiate this statement, my office began, a few months ago, a program to closely review Wichita pre-parole reports and to record our recommendations on each case. An additional aspect of the program was to then monitor parole hearing results for comparison to our recommendations. Later, we matched the names of released individuals to our automated arrest file and produced some interesting results. A summary is provided as Attachment 2.

Figures from the study indicate that approximately 24% of the parolees released to Wichita since last May have since been arrested on numerous felony and misdemeanor charges. Note that this figure does not represent arrests of Wichita placements elsewhere nor does it include parolees from other cities who are arrested locally. Also of special significance is the fact that the time since their release is, in some cases, less than a month and, at most, an eight month period.

Actually we did not initially expect to reveal such a significant rate of parolee recidivism in such a short study period. Continued monitoring of the arrests file will, with all indications, increase these figures even further.

As an example of the type of individuals who are, not only being considered for, but all too often, being released on parole. I relate the following situation.

About a week ago my office received a "pre-parole" report on an individual considered parole eligible. Our function is to review the case, and make recommendations concerning release. In this particular case, the offender had served only about 14 months of multiple sentences of two 1 to 5 year terms, a 5 to 10, a 5 to 20, a 15 to life, and a 3 to 10. The offenses for which he was last convicted were burglary, larceny, possession of a firearm, three counts of aggravated burglary, aggravated robbery and two counts of rape. To me this information alone provides evidence enough to recommend against any early release. Let me, however, continue.

This individual was convicted of burglary in 1967. He served four months in prison, and was then paroled. He was convicted, two years later (1969) of burglary and larceny, was confined for sixteen months, then again paroled. Less than four months after his release, he was arrested for burglary, aggravated burglary (3 counts), battery, rape, attempted rape and parole violation. He was again convicted and imprisoned for approximately four years. In December of 1974, he was still again paroled; in February of 1975, less than two months later, he was arrested for aggravated robbery and auto theft. Then, a few months later, he was arrested, sentenced, and confined for the term he is now serving.

With such a history, it seems more than ridiculous that such a person would ever be considered for any form of parole.

Of further interest on this particular case, was that an institutional evaluation of this offender states that he is qualified for release into society because he has, while incarcerated, acquired and developed a skill in waxing floors. Such rationale is astounding.

The case related above has been used here primarily because it was a recently reviewed one. It is, to some extent, typical of the cases which we review. It is, in general, not an exception to the rule, but rather the rule itself.

In further support of this point, the October, 1977 Statistical Report from the Kansas Department of Corrections (P.B-8, Attachment 3) illustrates that, of all the persons evaluated at the Kansas Rehabilitation and Diagnostic Center during the first six months of 1977, 26.4% had been previously confined in some state institution. Over 54% of these repeat offenders had been out for less than two years. Approximately 62% were back in again for repeating crimes for which they had been previously confined. Nearly one-fourth (24.8%) were on parole or probation at the time they committed the new violation.

These figures indicate to me that these individuals were released into society prematurely. The abbreviated prison terms evidently fail to instill desired deterrence toward recurring criminal behavior. I contend that prisons, under existing practices, provide very little rehabilitative function and, with the exceedingly lenient parole practices, the deterrent value is likewise especially low.

Determinate sentencing with more rigid paroling practices would probably not appreciably increase the rehabilitative effect of the institutions but would provide a stronger deterrent value. I am confident that stiffer sentences with determinate terms for repeat offenders and offenders of violent crimes would produce increased discouragement toward such activities. In support of this, I offer a quote from James Q. Wilson, Harvard government professor and noted authority on the issue. He states that "the rate of serious crime would be only one-third what it is today if every person convicted of a serious offense were imprisoned for three years."

At the present time, a very small percent of the convicted violent offenders ever complete the court imposed minimum of their sentence. With exception of the violators serving sentences with one-year minimums, virtually all prisoners are released short of the minimum of their court imposed term. Additionally, a significant percent of individuals convicted on felony charges never even actually serve time in the state institutions. The diagram on Attachment 4 shows that for KDOC's fiscal year 1976 only approximately 28% of the felony convictions in the state resulted in actual institutional confinement. The remaining 72% received suspended sentences or were released on court probation or after KDOC evaluation. The same 72% figure can be derived from fiscal year 1977 figures.

I contend that the above statistics further uphold the need for reformed sentencing and paroling practices.

In attempt to clarify my stand on the issue of determinate sentencing, the following summary is provided.

- 1) The law should provide for specific sentences for specific crimes with relative latitude granted to the courts alone.
- 2) The parole program should apply to only first-time property offenders. Violent and repeat offenders should be exempt from parole consideration.
- 3) While, obviously, I do support the concept of determinate sentencing, I oppose House Bill No. 2712 based on the fact that it does not satisfy the above stated items.
- 4) House Bill No. 2506, introduced in the 1977 session, has considerably more merit, and, with some slight modification could more conceivably accomplish an improved situation.

HOMICIDE, RAPE, AND ROBBERY ARRESTS  
DURING 1976

Homicide Arrests

<u>No. of Arrests</u>	<u>Prior Felony Arrests</u>	<u>Prior Juvenile Arrests</u>	<u>Prior Misdemeanors</u>
14	5 36%	2 14%	2 14%
	} 57% Have prior police record 43% No police record		

Rape Arrests

<u>No. of Arrests</u>	<u>Prior Felony Arrests</u>	<u>Prior Juvenile Arrests</u>	<u>Prior Misdemeanors</u>
41	22 54%	6 15%	13 32%
	} 71% Have prior police record 29% No police record		

Robbery Arrests

<u>No. of Arrests</u>	<u>Prior Felony Arrests</u>	<u>Prior Juvenile Arrests</u>	<u>Prior Misdemeanors</u>
147	79 53%	43 29%	77 52%
	} 78% Have prior police record 22% No police record		

Source: Wichita Police Department, Planning & Research Section

Pre-parole Review/Follow-up  
Study Summary

(Since May 1, 1977)

303 Pre-parole reports reviewed by Wichita Police Department.

Nearly 2 paroles granted for every 1 approved by WPD (59 vs. 113).

130 Individuals released to Wichita (Full Parole, Halfway House, Work Release).

24% of these parolees have since been arrested in Wichita (31 of 130).

14 Felony Arrests

64 Misdemeanor Arrests

Approximately 2/3 of the arrested parolees were released against the recommendations of Wichita Police Department. (21 of 31)

Over 1/2 of the arrested parolees had multiple arrests during this period. (16 of 31)

Approximately 1/4 of the arrested parolees were Work Release or Halfway House type participants. (8 of 31)

Source: WPD, Planning & Research Section (Jan. 1978)

## KANSAS DEPARTMENT OF CORRECTIONS

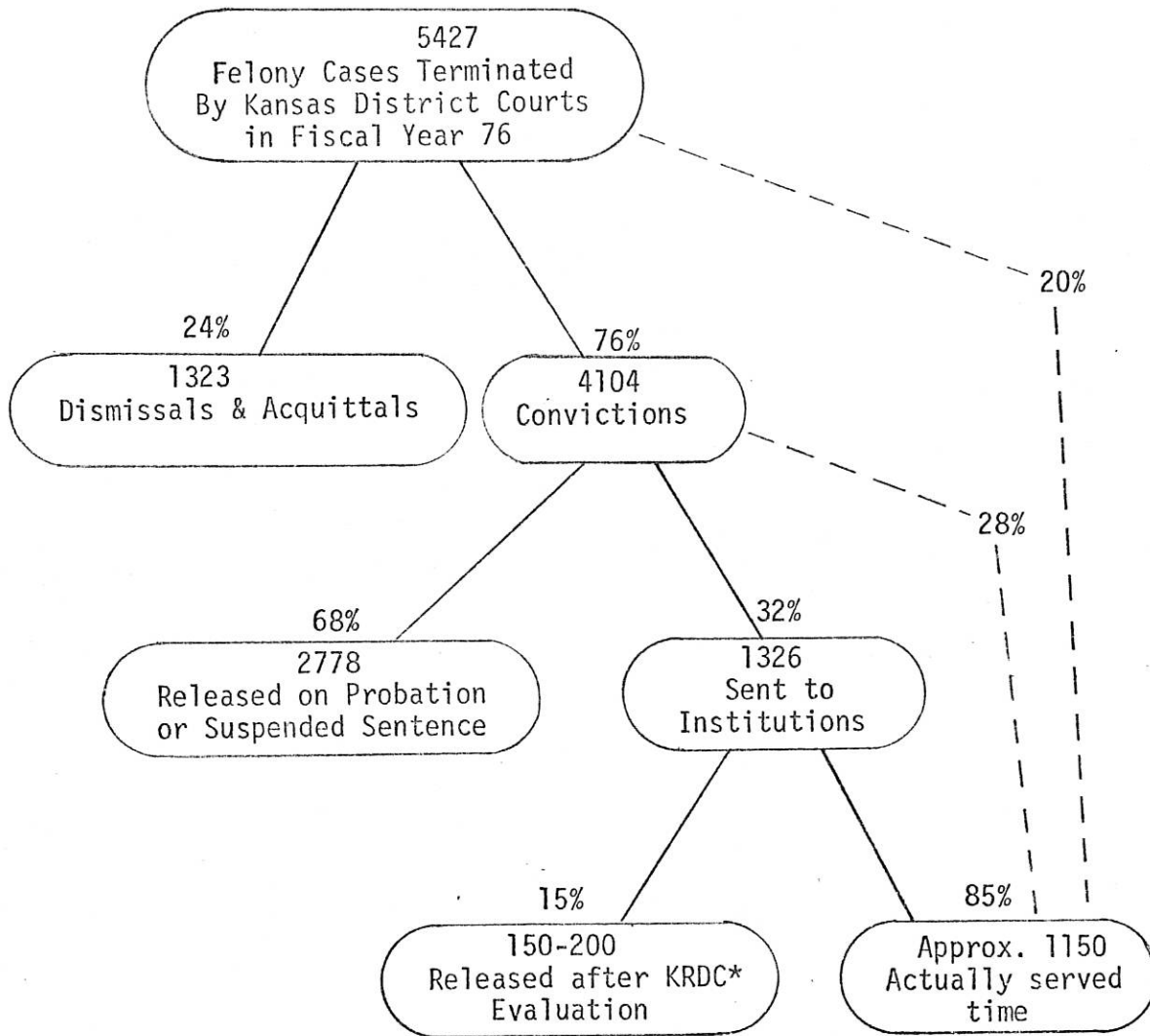
ANALYSIS OF PERSONS EVALUATED  
AT KRDC 1977\*

	TOTAL	
No. of Inmates Evaluated . . . . .	740	
Type of Offense		
Person . . . . .	223	30.1%
Property . . . . .	371	50.2%
Other. . . . .	146	19.7%
No. With Previous Confinement**		
Kansas Institutions. . . . .	134	18.1%
Other State's Institutions . . . . .	45	6.1%
Both . . . . .	16	2.2%
Total . . . . .	195	26.4%
Time Since Last Confinement		
0-24 Mos. . . . .	106	54.4%
25-60 Mos. . . . .	51	26.1%
Over 60 Mos. . . . .	38	19.5%
Current vs. Previous Offense		
Repeating Same Type of Offense		
Person . . . . .	39	16.3%
Property . . . . .	95	39.8%
Other. . . . .	14	5.9%
From person to property. . . . .	16	6.7%
From person to other . . . . .	7	2.9%
From property to person. . . . .	24	10.0%
From property to other . . . . .	16	6.7%
From other to person . . . . .	8	3.3%
From other to property . . . . .	20	8.4%
Total. . . . .	239	100.0%
Community Treatment		
Alcohol. . . . .	34	4.6%
Drug . . . . .	21	2.8%
Mental . . . . .	139	18.8%
Total. . . . .	194	26.2%
Status Before Confinement		
On Parole-New Crime		
Kansas . . . . .	83	11.2%
Other State. . . . .	19	2.6%
On Probation-New Crime . . . . .	48	6.5%
Total. . . . .	150	20.3%
On Probation-Violation . . . . .	33	4.5%
No Correctional Supervision. . . . .	557	75.3%

\*Based on evaluations during January through June

\*\*Other than 120 days for evaluation

Prepared June, 1977, by Kansas Department of Corrections, Research  
and Planning Section



\* Kansas Reception & Diagnostic Center

Summary:

Overall Kansas District Courts conviction rate: 76%  
 2/3 of convictions were released outright on probation or suspended sentence  
 Only approximately 28% of those convicted serve 120 days or more

Data Source: KDOC 1976 Statistical Report  
 Diagram by WPD, Planning & Research Section