

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Elwaine F. Pomeroy at  
Chairperson12:30 ~~am~~/p.m. on March 29, 1984 in room 529-S of the Capitol.~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Gaines, Hein, Hess, Mulich, Steineger and Werts.Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

## Conferees appearing before the committee:

Ann Heberger, League of Women Voters of Kansas  
Phil Magathan, Kansas Association of Court Services Officers  
Jim Clark, Kansas County and District Attorneys Association  
Frances Kastner, Kansas Food Dealers Association  
Shirley Atteberry, Research & Data, Inc.  
Manuel Baraban, Olathe Businessman

Senate Bill 858 - Penalties and sentencing for certain crimes.

Ann Heberger testified her organization is very pleased this bill, concerning sentencing and its relationship to prison overcrowding, is finally getting the attention it deserves. A copy of her statement is attached (See Attachment No. 1).

Phil Magathan testified on the bill and stated their concern is if presumptive probation is expanded, they would propose consideration be given to expanding court services programs. A committee member inquired if there has been any change in the type of client that you have seen since House Bill 3104 was passed two years ago. Mr. Magathan replied, their probation population has been increasing. We are sensitive to presentencing recommendations. Intensive probation supervision is the most popular program now, and they have had success with the program.

Jim Clark testified he served on the prison overcrowding committee, and he also represents the group that represents the public and is calling for getting tougher on crime. He attended the hearings and heard about the prison population problem that we have. He does think overcrowding in prisons is a terrible problem at this time. He commented the secretary is taking the most responsible route, first to increase bed space, and if that is not working, the other alternative is to reduce sentences. It doesn't mean we can support this bill. With the emergency situation, this bill does undermine the time tested criminal code system in terms of sentencing. The two concepts they do support are, the economics, the need to raise distinction between felons and misdemeanors, but don't need to raise as it is in this bill. Two, they like utilizing the section penalty phrases with the regular theft. As to the thrust of the bill, there are a number of problems. The bill actually covers more than sentencing. It re-evaluates our criminal code. It is changing the forgery statute. It is a new element to crime in Kansas. The presumptive probation is a problem on E felons, even with the exceptions, most members feel it will encourage a jury trial in all class E felony cases. Mr. Clark stated the professional fences are the cases that are hard to deal with. That is a major problem with traffic in stolen property. They think that this bill is inconsistent with earlier measures passed out of the Senate. In Senate Bill 648, it made it a felony for repeat theft offenders; they feel that is inconsistent. In Senate Bill 692, the diversion runs contrary to this bill. The changes in the general penalty statutes is inconsistent. They are aware of the overcrowding problem in the state, but we think this bill is not the way to solve the problem with prison overcrowding. They support more bed space and community corrections. He said this is undermining the present criminal code. A committee member inquired, what do you think as a member of that committee,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 529-S, Statehouse, at 12:30 a.m./p.m. on March 29, 1984

Senate Bill 858 continued

without being bound representing your group? Mr. Clark replied, I think the public does expect to have serious punishment; property crime is very serious concern. Burglary is the biggest problem area that we have; should send people to prison over a period of time, but at the same time don't want to see overcrowding and a riot in prison because of overcrowding. We support community corrections, and I'm not certain it is reaching areas where it could help. The membership reflects various sides. A committee member inquired, from a public policy standpoint, we have no alternative. Mr. Clark replied, maybe amnesty would be better rather than gutting the code.

Frances Kastner testified in opposition to the bill She stated, I am certain you have all heard me testifying against any type of legislation which gives the criminals a cost of living increase. We believe this is just what Senate Bill 858 will do, and at the expense of the honest consumers who do not write bad checks, nor steal. A copy of her statement is attached (See Attachment No. 2).

Shirley Atteberry testified in opposition to the bill. Copies of a statement from her organization and a copy of a statement from the Duckwall-Alco Stores, Inc., in opposition to the bill are attached (See Attachments No. 3). She read the statement from Duckwall-Alco Stores, Inc., to the committee.

Manuel Baraban testified in opposition to the bill. He stated the larger loss to business today, which adds to increase cost, is shoplifting, bad checks and illegal use of credit cards. The person has to have four to five convictions before going to jail. Fifty percent of all the people sentenced to jail are from four counties.

The meeting adjourned.

3-29-84  
12:30 PM  
529-5

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Alan Hebbiger	6703 Hadley	L.W.V.K.
Marian Harner	Lawrence	L.W.V.K.
Mom Barber	Olath	Medical Equip Co
Shirley Atberry	Topeka	Research & Data
Mark Roberts	Topeka	Office Judicial Admin.
Phil Magaha	( / / )	K.A.C.S.
Adelous Brinkel	KC Ks.	© JM
Jim Clark	Topeka	KCOAA
Charles Simms	Topeka	DOC
Janet Miller	KU	
Michael A. Barber	Topeka	DOC
David Barclay	"	"

3-29-84  
P. 1.  
attach # 1

# LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

909 Topeka Boulevard-Annex

913/354-7478

Topeka, Kansas 66612

March 29, 1984

STATEMENT TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 858.

I am Ann Heberger, speaking for the League of Women Voters of Kansas in support of SB 858.

The League is very pleased that SB 858, concerning sentencing and its' relationship to prison overcrowding, is finally getting the attention it deserves.

We agree that a presumptive sentence for a class E felony crime should be established by statute, and that it is time for consideration of changing the dollar value of various kinds of theft as purposed in this bill.

We strongly support changes that would rescind 1982 HB 3104 as it relates to D and E sentences. (Section 9.) We think that it is more fiscally responsible to cut sentences by a few months, than spending millions of dollars on construction of new facilities.

Frustration will only continue about the lack of beds in prisons, until some of the sentencing patterns are reduced or changed. In our opinion, passage of SB 858 would be the fastest way to start reducing the numbers in prison. I have heard many legislators asking for solutions. The proposals in this bill are certainly good ones.

As far as public safety is concerned, under present conditions, we fear not only for the inmates, but certainly for the staff. Many of the same types of people are on straight probation, and many are now in community corrections programs. We do not think that any of us are any safer by shoving these people in prison for longer periods of time. We think that we are probably less safe when they get out. Punishment is being locked up, not being crammed in like animals in cages for long periods of time.

We do question one section of the bill, Section 9, line 0205 on page 6, (a) Class A, the sentence for which shall be imprisonment for life. If that really means for life, we strongly oppose it.

The League is sure that our concerns are really no different than those of you who serve on this committee. We can only hope that you will consider what we believe to be at least a practical solution to a really terrible problem of prison overcrowding. We also believe that a sentencing

Atch. 1

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commission should be established as recommended by the Committee on Prison Overcrowding, to look at other ways to change sentencing patterns.

We urge your support of HB 858.

Thank you for the opportunity to speak to you today.

*Ann Heberger*

Ann Heberger, Lobbyist  
League of Women Voters of Kansas

3-29-84  
12:30 pm  
Attach. #2



# Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

March 29, 1984

## SENATE JUDICIARY COMMITTEE

OPPOSING SB 858

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JIM SHEEHAN  
SHAWNEE MISSION

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JOE WHITE  
KINGMAN

VICE-PRESIDENT  
CHUCK MALLORY  
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SYRACUSE

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### DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

Thank you Mr. Chairman, and members of this committee. I am certain you have all heard me testifying against any type of legislation which gives the criminals a cost of living increase. We believe this is just what SB 858 will do, and at the expense of the honest consumers who do not write bad checks, nor steal.

Statistics given to us by a four-store corporation in a metropolitan area, shows they have to plan to set aside \$45,000 each year to use for covering bad checks. That amount is designated for cash flow until the face value of the bad checks can be collected by their collection agency.

Even then, they had to write off over \$17,000 in 1983 for bad checks which were not collectable. This amount had to be added to their cost of doing business, and in turn passed on to the honest customers of that corporation.

Usually the retailer does not have the time to try to recover the amount due him when a bad check is sent back to his business. Some collection agencies keep up to 50% of the face value of the check that they collect. This was NOT done in the case we used above, but if it had, we would then add another \$22,500 onto the \$17,000 figure for a loss of nearly \$40,000 for just that one corporation.

Shoplifting is also a problem for our members, and we have consistently asked that the minimum amount for a theft being classified as a Misdemeanor be LOWERED to \$50 -- and certainly we would oppose any legislation that would increase that amount.

Changing the amounts of money involved before the criminals are sent to a state prison is a poor way to alleviate over-crowded prisons, if this is the reason the bill was introduced. Regardless of the reason for introduction, we OPPOSE SB 858, and ask that this committee NOT recommend SB 858 for passage. Thank you.

Attch. 2

# Research & Data, Inc.

Attach. # 3

3-29-84  
200 WEST 30TH  
VAN BUREN BLDG. R: 30 P: 11  
SUITE 204  
TOPEKA, KAN. 66611

PHONES  
TOPEKA, KAN. (913) 267-4931  
LAWRENCE, KAN. (913) 841-3902  
LELAND W. ATTEBERRY, President

3-29-84

To: Senate Judiciary Committee

RE: SENATE BILL 858 concerning crimes and punishments--raising the felony limits on many crimes to the starting of \$300.

Research & Data represents a number of various businesses who are prime targets for crime. Statistics show that 85% of crimes involving money are done against businesses. These losses constitute a major cause of bankruptcy in many businesses. We have found that TOUGH criminal laws are a deterrent to crimes. "They didn't do anything to me", "They don't put me in jail" is a continual excuse that many criminal repeaters and first time offenders see from other offenders, therefore using this as an excuse to commit more crimes.

Senate Bill 858 would appear to be of great help to the CRIMINAL in making his crimes less expensive and a whole lot easier. The punishment element would lessen and the offenses would rise increasingly higher because "they didn't do any punishment to me", so "Why should I quit my career in crime, I know how to get away with it, costing me very little"

Few misdemeanors are fingerprinted and photoed at the time of the arrest for the crimes, so it would be so easy to county "hop" or state "hop" and the other counties and states would not know where the offender had broken the law. Again that would be to the advantage of the criminal, making his crimes more profitable.

We are definitely against this Senate Bill 858. Sure, it would lessen the population in the penitentiary, and the statistics on FELONY crimes would show a decrease-- BUT THE TOTAL LOSSES WOULD INCREASE & MORE VICTIMS would have losses--the victims NOT just these businesses, but from most every walk of life including the losses from home burglaries and other individual losses. These are losses from tax PAYERS.

It appears that this bill was made more for the benefit of the CRIMINAL--to help him stay OUT of the pen, and keep his "record" looking better. It does not appear to be of an additional aid to the HONEST CITIZEN--the tax payer. Many businesses do not hire convicted "felons" and this "Have you ever been convicted of a felony?" is on many applications where TRUST is important to that business for that business to survive. Again this bill would be helpful to the criminal..

We appreciate the opportunity to voice our opinion on this bill.

We do sincerely appreciate the attention you gave to Senate Bill 648 and in getting it passed in the Senate. We are sorry that the House Judiciary Committee did not let it be heard because of the problem of overpopulation and conditions in the prisons and jails. We do NOT feel this Senate Bill 858 is the answer to the prison problems.

Leland Atteberry

Shirley Atteberry  
Research & Data, Inc.

Attch. 3

3-29 4  
12:30 pm

Attach. #3

# DUCKWALL-ALCO STORES, INC.

401 Cottage Street • Abilene, Kansas 67410 • [913] 263-3350

DATE: March 28, 1984

SUBJECT: Senate Bill #858--to raise felony limits across the board to \$300.

To: Whom It May Concern

I strongly oppose this Bill. In my opinion, it would be the most irresponsible action taken toward the problem of crime since the felony limit was raised to \$100.

Last year, we made 119 shoplifting arrests in my store. Only two of these were felony arrests because these shoplifters are not stupid and they were very careful not to cross over that felony dollar amount. They know that they can walk with a misdemeanor. Of the two felonies we caught, one was pleaded down to a misdemeanor because it was the first time she had been caught and she was put on diversion. The other case involved an already two time felony loser on probation so the courts decided that they should put him away and did finally.

Even with 119 arrests, my store lost over \$77,000 last year to theft. I am but one retailer in this city and if the total dollars lost to shoplifters were known for the entire community it would stagger even your imaginations. I've heard the District Attorney's office say it costs alot of money to prosecute felons. I propose it costs the community more money not to procecute but to plea bargin felonies down to misdemeanors and set the criminal free to have another chance at it.





# DUCKWALL-ALCO STORES, INC.

401 Cottage Street • Abilene, Kansas 67410 • [913] 263-3350

If the only reason the felony limits should be raised to \$300.00 is to control the prison populations then your not confronting the issues but side-stepping them. This law could serve only those with a criminal mind or a criminal in mind. I cannot imagine how it could possibly serve me as a law abiding citizen. By Webster's definition, a citizen is a person who owes allegiance to a government and is entitled to government protection. You have my allegiance plus a heck of alot of my tax dollars, so when are you going to offer some protection. You need to put more criminals behind bars not less. If you need more prison space than build it! Don't treat me like an idiot and tell me that I'll be better protected with this bill because the crime statistics will improve with fewer reported felonies. Improve your statistics by putting the criminal behind bars the first time instead of excusing them by making more of what they do excusable.

To give you just an example of what shoplifters are doing in my store already this year, I have lost 6 Canon AE-1 cameras at a value of \$1770., two 13 inch color TV's at a value of \$600., and a multitude of drills, sanders, paint sprayers, power saws, and no one can guess at the clothing because they leave no evidence behind except empty hangers. As a business-man I know what I pay in taxes to this state. I also know that theft is a leading cause of business failure. A Bill like #858 will make more failures happen and you cannot afford to lose a tax payer like me. Thank You !

Respectfully,  
*Donn W. Medeck*  
 Donn W. Medeck  
 General Manager, ALCO Store #109  
 2009 East 29th.  
 Topeka, Kansas