

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at _____
Chairperson

1:30 a.m./p.m. on February 29, 1988 in room 526S of the Capitol.

All members were present except:

Representatives Jenkins, Long & Sifers - E
Representative Peterson

Committee staff present:

Mary Torrence, Revisor's Office
Mary Galligan, Research Department
Lynda Hutfles, Secretary

Conferees appearing before the committee:

Steve Robertson, Ombudsman for Corrections
Michael Barbara, District Judge
Dennis Moore, County & Districts Attorneys Assn;
Ann Heberger, League of Women Voters of Ks.
Ron Smith, Kansas Bar Association
Phil McGathin, Kansas Association of Court Services
Captain Rick Easter, Law Enforcement Training Commission
Jon Josserand
Jim Kaup, League of Municipalities

The meeting was called to order by Chairman Miller.

Rep. Walker made a motion, seconded by Representative Rolfs, to approve the minutes of the February 15, 16, 17, & 18 meeting. The motion carried.

HB2994 - Establishing a Kansas Criminal Justice System

Steve Robertson, Ombudsman for Corrections, gave testimony in support of the bill which establishes a commission that can provide them with recommendations to achieve a more comprehensive and coherent justice system. See attachment A.

When asked why a similar bill, SB401 referred to in his testimony, was vetoed by the former Governor, Mr. Robertson said it was due to the fact that there was no fiscal note attached to the bill. The cost of the bill had not been provided for in the bill.

Michael Barbara, District Judge, gave testimony in support of the bill. He said there is a need to create a mechanism whereby those persons and agencies who are involved in the criminal justice system can address the myriad of problems facing each component of the system and through understanding these problems, help to get them resolved. See attachment B.

Dennis Moore, Johnson County District Attorney, explained the need for establishing a sentencing commission consisting of judges, prosecutors, law enforcement officials, legislators and citizens to study Kansas' crimes and penalties and make recommendations for changes where needed. See attachment C.

Ann Heberger, League of Women Voters of Kansas, gave testimony in support of HB2994. Establishment of a Kansas Criminal Justice System would provide answers and solutions to the severe overcrowding in the prison system. See attachment D.

Ron Smith, Kansas Bar Association, expressed support of the philosophy of the bill, but was concerned with the broad guidelines. He suggested there needed to be input from attorneys and defense attorneys.

Phil McGathin, Kansas Association of Court Service Officers, expressed support of establishing a commission, but suggested that court services be represented. See attachment E.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

room 526S, Statehouse, at 1:30 a.m./p.m. on February 29, 1988, 19

When asked what he thought they would contribute to the commission, Mr. McGathin said they are charged with pre-sentencing investigations. Resources are scarce when it comes to probation system. They are one of the largest resources dealing with criminal offenders.

There was discussion about making the commission too large and getting nothing done. Either must be narrowed down or have a broad representation.

Hearings were concluded on HB2994.

SB424 - Amendments to the Kansas Law Enforcement Training Act

Captain Rick Easter, Law Enforcement Training Commission, gave testimony in support of SB424 which provides the Law Enforcement Training Commission with the authority to perform its duties. These duties consist of regulating law enforcement officers concerning their basic training and continuing education requirements in Kansas. See attachment F.

There was discussion about the time requirement for completing education and training of police officers and law enforcement personnel.

Jon Josserand testified on behalf of John Wolf in support of the bill. He said they felt this legislation would encourage law enforcement officers to complete the required training in a timely manner. See attachment G.

Jim Kaup, League of Municipalities, supports the bill. They offered several amendments on the Senate side which are now in the bill. Current language is the intent of the Senate committee. If the current language is not retained at least a grace period of 6-9 months should be provided. Mr. Kaup said that the consequences of not meeting the training and education requirement are severe - forfeiture of office. Doesn't leave room for error.

Mary Torrence explained that line 123-126 is a provision for extension.

Hearings were concluded on SB424.

HB 2957 - Pay and allowances for National Guard

Representative Eckert made a motion, seconded by Representative Rolfs, to report HB2957 favorable for passage. The motion carried.

HB2951 - Crime of aggravated vehicular homicide

Representative Rolfs made a motion, seconded by Representative Walker, to report HB2951 favorably. The motion carried.

HB2952 - Concerning certain alcohol & drug related offenses

Representative Aylward made a motion, seconded by Representative Rolfs, to report HB2952 favorably. The motion carried.

HB2953 - Relating to alcohol ; providing suspension and/or restriction of drivers license

Representative Bryant made a motion, seconded by Representative Ramirez, to report HB2953 favorable for passage.

Representative Roy made a conceptual substitute motion, seconded by Representative Aylward, to amend the bill to make the penalty for failure of an alcohol test the same for adults and juveniles - 60 days and a penalty of 90 days restriction for refusal.

Representative Aylward made a motion, seconded by Representative Hensley, to amend

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS,
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the bill on line 108 by adding "through another law enforcement designee". The motion carried.

Staff was directed to come up with language to amend the bill accordingly.

Meeting was adjourned.

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Shari Caywood, Vice-Chairperson
Floyd Gaunt, Secretary



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Richard D. Mills
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**TESTIMONY TO HOUSE FEDERAL AND STATE
AFFAIRS COMMITTEE RE: HB 2994**

February 29, 1988

Since the beginning of Fiscal Year 1981, the inmate population in the State of Kansas has grown by an average of 464 inmates per year and is two and a half times what it was on June 30, 1980. In the same amount of time, we have seen the number of Department of Corrections' institutions double in number and have borne the expense of providing more and more bed space for inmates. For at least the last two years, the number of Kansas prisoners per one hundred-thousand population ranks second in the eleven state midwest region, second only to Michigan. This has all occurred during a time in which our crime rate has actually fallen.

We recently have had the Department of Justice investigating the over-crowding situation at the Penitentiary. Action is now pending in the U.S. District Court to modify and enforce the consent decree KSP has been operating under since May 15, 1980. The problem is obvious; however, the possible solutions are not, and therefore, we need a way in which to examine this many-headed beast we casually call our criminal justice system.

House Bill No. 2994 establishes a commission that can provide us with recommendations to achieve a more comprehensive and cohesive criminal justice system. This bill is similar in nature to Senate Bill No. 401 passed by the legislature in 1986, but subsequently vetoed by the Governor. This was indeed an unfortunate occurrence which has delayed the benefits such a commission can provide. On behalf of the Corrections Ombudsman Board, I strongly support the favorable passage of this bill.

Respectfully,

Steven A. Robinson
Ombudsman

SAR:sls

Attach A

B

TESTIMONY BY MICHAEL A. BARBARA BEFORE THE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
ON HB 2994: FEBRUARY 29, 1988

I support HB 2994 and am in complete agreement with the bill. As district judge and as secretary of corrections, I supported the creation of this kind of committee.

We need to create a mechanism whereby those persons and agencies who are involved in the criminal justice system can, through joint and cooperative effort, address the myriad problems facing each component of the system and through understanding these problems, help to get them resolved.

The problems affecting prison overcrowding can not be resolved without direct involvement of those persons listed in the bill. The problem was not created in a vacuum and it will not be solved in a vacuum. All of the ten recommendations listed in the bill will have a direct relation to prison overcrowding. The persons comprising the Kansas prison crisis commission are essential and crucial in the attempt to resolve the problem. We have been aware of this for a long time but up to this point in time there has been no mandate to these agencies to sit down together and discuss the issues and no mandate to come up with specific recommendations.

We know that prison overcrowding can be alleviated by simple arithmetics. If we reduce the number of convicted defendants who would enter the prison system, keep them for less time than presently and release them at a faster pace than presently, we will have solved the problem. But we also know that this is easier stated than accomplished. Only the judges can control the

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

H.B. 2994

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

February 18, 1988

Governor Mike Hayden
State Capitol Building
Topeka, Kansas 66612

Re: Sentencing Commission

Dear Governor Hayden:

Enclosed is a "column" I wrote for the Kansas City Star last summer regarding problems in our sentencing laws. I hope the Governor, the Attorney General, the Legislature -- somebody -- will take the lead in establishing a sentencing commission. The sentencing commission, consisting of judges, prosecutors, law enforcement officials, legislators and citizens -- including crime victims -- would study Kansas crimes and penalties and make recommendations for changes where needed. Cost to the state would be nominal -- per diem and mileage for commission members. Our crimes and penalties laws were last reviewed on a comprehensive basis eighteen years ago. Since then new crimes have been added and penalties have been adjusted. What began as a consistent whole is now a patchwork of inconsistencies which, in too many cases, delivers an unjust result. (See the attached chart and narrative.)

This also would tie in nicely to the Legislature's attempt to address the prison overcrowding problem in Kansas. For example, the classification of felony and range of sentences is the same for a person who possesses one gram of cocaine as for the person who sells pounds of cocaine and makes thousands of dollars each year selling illegal drugs. Under present law, both crimes are a class C felony which carries a minimum sentence of three to five years in prison. I believe most people would agree that large scale drug dealers should be treated much differently than those persons who possess small quantities of drugs for their personal use. This does not in any way condone possession of illegal drugs but only recognizes the differences in how those people should be treated.

If the Legislature wants to reduce the number of commitments to our state institutions, perhaps consideration should be given to reducing the penalty for possession of small quantities of an illegal drug, such as cocaine, from a C felony to a D (or E) felony. (Under federal law, possession of cocaine

Attach c

is a misdemeanor.) This would make the convicted person eligible for services through a local Community Corrections Program. On the other hand, I would like to see large scale drug dealers who deal more than threshold amounts of certain drugs, such as cocaine, and adults who sell any quantity of drugs to a minor be subject to a mandatory prison sentence without opportunity for probation or parole. An ounce of cocaine has a street value of approximately \$2,000. In my judgment, people who deal ounces of cocaine are not casual users and may be classified as dealers for whom we want to get tough. I do not have figures, but I suspect the number of persons who fall in this category are relatively small and would not substantially impact the number of prison commitments if this law were in place.

Changes in Kansas law to treat a little less harshly the person who possesses a small quantity of cocaine and to really get tough with the person who sells large quantities of cocaine would be politically acceptable, I believe, and is really the right thing to do.

The proposal for a sentencing commission to suggest reforms in our sentencing laws is a long-term project but something that our state needs to undertake as soon as possible. People have little respect for a system which does not deliver a just result and in too many cases that is what happens under current Kansas law.

Please give me a call if you would like to discuss this or if you have questions.

Very truly yours,



Dennis W. Moore

DWM:JH
enclosure
Kansas Senators
Kansas Representatives
Attorney General Robert Stephan
Secretary of Corrections Roger Endell
District Attorney Nick Tomasic
District Attorney Gene Olander
District Attorney Clark Owens
District Attorney Jim Flory
KCDAA Executive Director Jim Clark

It's not difficult to understand why the public's respect for our criminal justice system has reached an all-time low. If you steal \$150 you can be sentenced to a minimum of one to two years in prison. But did you know that if you embezzle \$250,000 the sentence is still the same? And the real kicker is that in both cases, Kansas law says the convicted person is presumed entitled to probation. This law was the legislature's response in 1984 to overcrowded prisons. But if that seems incredible to you, consider this: If you are convicted of stealing less than \$150, you are not presumed entitled to probation and the judge can send you to jail.

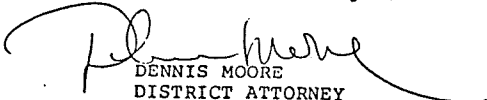
And there is more: a person convicted of possession of one gram of cocaine (a small quantity) can receive the same prison sentence as a large scale drug dealer who is convicted of selling twenty-five pounds of cocaine -- a minimum three to five years. And a person who shoots and causes permanent injury to another but doesn't kill the other person is sentenced the same as the person who gets into a fight, stabs and kills the other person-- as long as he didn't plan the killing. Again, both of those sentences are the same as the person who possesses a small quantity of cocaine. And who really is more dangerous? The person who drives under the influence of alcohol (a misdemeanor) or the person who steals more than \$150 (a felony)?

This is not to suggest that those who possess and use cocaine should not be prosecuted. But shouldn't somebody who makes a good living selling large quantities of illicit drugs be treated more harshly by our sentencing laws? And shouldn't the

employee who violates a trust relationship with an employer and embezzles thousands of dollars be treated differently than the mother who shoplifts \$200 worth of clothes for her children?

I could give you more examples, but the point is that our Kansas Sentencing Code is full of inconsistencies and disparities in the way it treats convicted persons. Sometimes it seems there is little relationship between the injuries or losses suffered by a victim and the penalty imposed on the criminal. The Kansas Sentencing Code was enacted by the legislature eighteen years ago. At that time, the penalties for crimes were part of a consistent whole. Since then, in response to various pressures, the legislature has changed crimes and penalties to the point that they no longer seem consistent with one another or, in some cases, even fair.

I believe a sentencing commission should be appointed at the state level consisting of prosecutors, judges, law enforcement officials, defense attorneys and, most importantly, real citizens -- some of whom were victims of crime -- to recommend needed changes in our laws; to tell the legislature what crime means to them and what is appropriate punishment. The commission should draft a new sentencing code to be submitted to the legislature with the intent of assuring that crimes and penalties are consistent, fair and just. After all, justice should be the goal of our criminal justice system - not just an afterthought.


DENNIS MOORE
DISTRICT ATTORNEY

<u>STATUTE</u>	<u>FELONY CRIME</u>	<u>EXAMPLE</u>	<u>CLASS</u>	<u>RANGE OF MINIMUM SENTENCE</u>
21-3403	Voluntary manslaughter	stabbing and killing somebody in a fight, (in heat of passion)	C	3 - 5 years
21-3414	Aggravated battery	shooting and wounding but not killing a person	C	3 - 5 years
65-4127	Possession of cocaine	possession of one <u>gram</u>	C	3 - 5 years
65-4127a	Sale of cocaine	sale of 25 <u>pounds</u>	C	3 - 5 years
21-3405	Aggravated vehicular homicide	getting drunk, driving a car and killing somebody	E	1 year
21-3707	Worthless check	writing a bad check for \$151	E	1 year
21-3701	Felony theft	stealing \$151	E	1 year
21-3701	Felony theft	embezzling \$275,000	E	1 year

COMMENT: The above chart indicates various crimes and the range of minimum penalties which can be imposed by a judge after conviction. Under Kansas sentencing laws, for example, the person who intentionally kills another "in the heat of passion" is treated the same as a person who possesses less than a gram of cocaine (who is treated the same as the person who makes \$300,000 per year selling cocaine). The person who gets drunk, drives his car and kills somebody may be treated the same under our laws as a person who writes a \$155 bad check. And that person may be treated the same as a person who embezzles \$250,000 (except the embezzler and the bad check writer are entitled to a presumption in favor of probation).

Dennis Moore
District Attorney
February 18, 1988

D

LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

February 29, 1988

STATEMENT TO THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
IN FAVOR OF HB 2994.

Mr. Chairman and Members of the Committee:

I am Ann Heberger speaking for the League of Women Voters of Kansas in favor of HB 2994.

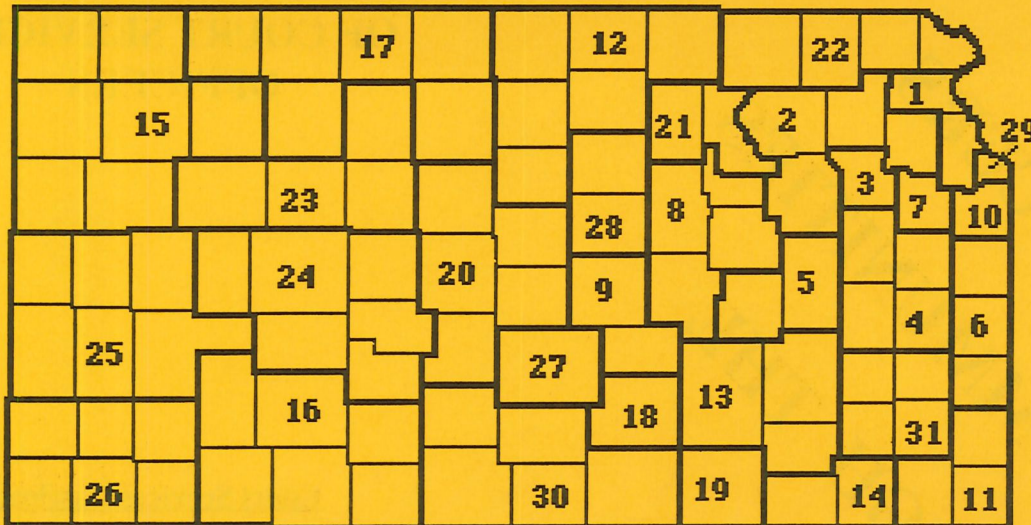
We believe that a Kansas criminal justice commission would provide answers and solutions to the severe overcrowding in our prisons.

The make-up of the Commission is extremely important to its success, and we are very pleased with it. We would like to suggest another person, such as someone from the Kansas Police Association. If there is no association, a chief of police. Even though law enforcement is amply represented, the police also play a very important role in the criminal justice system, and we think should have a representative.

The League has been a strong supporter of a commission, and we know that most legislators have also supported such a commission. With Governor Hayden's support, we believe that the time has come to establish one.

Thank you for your consideration of HB 2994.

KANSAS JUDICIAL DISTRICTS (31)



The Kansas Court System

In 1979, the 105 district courts in Kansas joined together to form the KANSAS UNIFIED COURT SYSTEM. Kansas courts are divided into 31 judicial districts that range in size from one to seven counties. An administrative judge is assigned in each district to carry out the administrative functions of the court.

Court Services Officers

Formerly known as probation officers, Court Services Officers work closely with and for the judges of the Kansas Court System. Currently there are 280 Court Services Officers supervising approximately 5,302 juvenile and 14,511 adult offenders in the State of Kansas. Court Services Officers also provide investigative and domestic services for the court.

Mission Statement for Kansas Court Services

Under the authority of the Kansas Court System and laws of the State of Kansas, the purpose of Court Services is to continue the judicial process in a timely, professional and ethical manner consistent with community interests.

This is fulfilled by completion of the responsibilities of supervision, court reports and client services designed to promote public safety.

*Kansas Court Services Officers
are serving the communities
of Kansas through the
district courts*

Why Probation and not Prison?

Probation, with the conditions set by the Courts and monitored by Court Services Officers, is allowing the offender the opportunity to be a responsible, law-abiding citizen.

Probation is a cost-effective alternative to a prison sentence. In Kansas, it costs the taxpayers about \$11,000 per year to keep an inmate in a Kansas prison. The cost associated for Court Services to supervise one client per year is about \$400.

However, if the offender does not follow conditions set by the Court, the alternative is incarceration. In Fiscal-Year 1986, there were 1,132 Adult and 163 juvenile probationers revoked for some violation of their probation conditions, a total of 1,295. At the same time, 10,764 clients successfully completed probation.

Additional Benefits of Probation

An offender on probation is usually able to maintain a job and is then able to support a family which often keeps the family from relying on welfare assistance.

Probation allows the offender access to available resources in the community such as drug, alcohol and mental health counseling.

Restitution

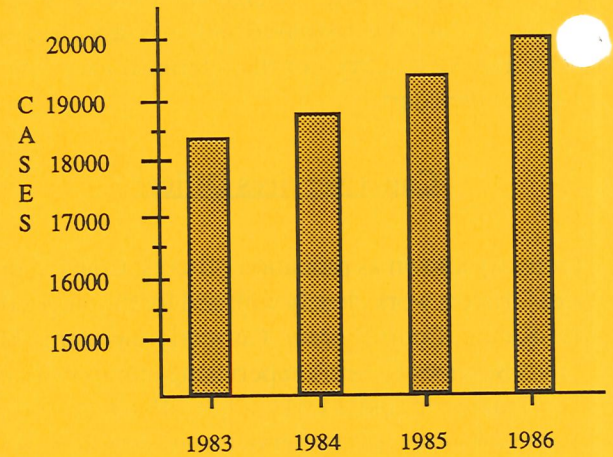
As a condition of probation, offenders are usually required to repay the victims of crimes. In fiscal-year 1986 a random sample of five judicial districts showed over \$900,000 was paid back to crime victims in those districts. Offenders may also be required to pay fines, court costs, and supervision fees and to complete a community service requirement.

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

KANSAS
COURT SERVICES OFFICERS
ARE SERVING THE COMMUNITIES
OF KANSAS THROUGH THE
DISTRICT COURTS

Court Services Caseload
Fiscal Years 1983-1986

Probation caseloads in Kansas have increased every year since court unification in 1979. Recent statistics are as follows:



Attach E

STATE OF KANSAS
LAW ENFORCEMENT TRAINING COMMISSION

TESTIMONY

re

Senate Bill 424

before

House Committee

Federal & State Affairs

by

Rick L. Easter
Sub-committee Chairman
Law Enforcement Training Commission

24 February 1988

Mr. Chairman, Representatives, on behalf of the Governors Law Enforcement Training Commission, I want to thank you for the opportunity to speak to you today in support of Senate Bill 424. The purpose of this bill is to provide the Law Enforcement Training Commission with the authority to perform it's duties. These duties consist of regulating law enforcement officers concerning their basic training and continuing education requirements in the state of Kansas.

Several months ago, it was brought to our attention that we did not possess the proper wording in the state statute to enforce the law. With the assistance of the State Attorney Generals Office, we requested the statute be amended.

The Senate Judiciary Committee amended the bill that sets in front of you now. After careful review, it is the opinion of the Governors Commission, that I serve on, that Senate Bill

424 should be amended in one area before it is passed. Please direct your attention to page 3 line number 0089, subsection (b). (Read first sentence.) Please direct your attention to page 3 line 0118, subsection (2). (Read entire paragraph.)

We believe the wording of line 0120, "within one year from the date", should be changed to read, "by the date". We believe subsection (2) should read, "Any police officer or law enforcement officer who does not complete the education or training required by subsection (b) by the date such education or training is required to have been completed shall forfeit the officer's office or position.

As the statute stands now, it gives the officers an extra year to comply with the law and is in direct conflict with the statute starting on line 0089. The Commission is unanimous on the need for this change.

Thank you for your time and consideration on this bill.

The Law Enforcement Training Commission

Chairman - Al Naes

K.B.I. Director - Dave Johnson

Kansas Highway Patrol Superintendent - Don Pickert

Leavenworth County Sheriff - Terry Campbell

Ellis County Sheriff - Bruce Hertel

Stanton County Sheriff - James Garrison

Lawrence, Kansas Police Detective - David Reaves

Wyandotte County District Attorney - Nick Tomasic

Chief of Police Kingman, Kansas - Paul Kalmar

Chief of Police North Newton, Kansas - Ray Classen

Commander of Training Wichita Police Department - Rick Easter

The University of Kansas

COPY

Division of Continuing Education
Administrative Services

19 February 1988

The Honorable Robert H. Miller, Chairman
House Committee on Federal and State Affairs
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Miller:

Thank you very much for informing me of the scheduled hearing for SB 424 which is scheduled for Wednesday, 24 February at 1:30 p.m. I hope that this letter will contain the information which you requested from me.

As I told you on the telephone, the University of Kansas supports this legislation in that we feel that it will encourage law enforcement officers to complete the training required by K. S. A. 5607a on a timely basis, thereby reducing the amount of time that it is now necessary to spend tracking those officers who are delinquent in their training. I am sorry that university business will not permit me to attend the hearing next week.

The members of the Kansas Law Enforcement Training Commission discussed this bill at their meeting on 15 February 1988. I believe that one or more members of the commission will be present at the hearing to testify in favor of the bill.

We would, however, wish to propose one amendment to the bill. The language in lines 118-122, inclusive, permits an officer who is delinquent in training a year of grace before having to forfeit his or her position as a law enforcement officer. We do not feel that this language is consistent with the original spirit of the law enforcement training act. Nor do we feel that it would emphasize sufficiently the importance that the State of Kansas wishes to place on the training requirement for its law enforcement officers.

Specifically, we propose that this language should be changed by deleting from line 120 the words "within one year from" and substituting therefor the word "by."

Thus the revised text would read:

"(2) Any police officer or law enforcement officer who does not complete the education or training required by subsection (b) **by** the date such education or training is required to have been completed shall forfeit the officer's office or position."

Finally, as I was reading the bill, I noticed three minor typographical errors as follows:

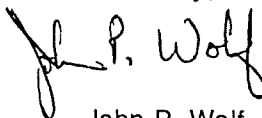
In line 202, "*fo*" should be "*of*"

In line 216, "*compliant*" should be "*complaint*"

In line 234, "*proveded*" should be "*provided*"

Thank you very much for the opportunity to present our opinions on this important legislative matter. I hope that the Committee on Federal and State Affairs will report this bill with a favorable recommendation for passage to the full House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "John P. Wolf". The signature is written in a cursive style with a large initial "J" and "W".

John P. Wolf
Assistant Dean

cc: Ann Victoria Thomas
James Bibb

88-050