Approved Thomas F. Walker 17-88
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION.

The meeting was called to order by Representative Thomas F. Walker at
Chairperson

9:00 a.m./p.m. on Tuesday, February 16, 1988 in room 522-S of the Capitol.

All members were present except:

Representative Peterson

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research
Mary Galligan - Legislative Research
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Elwaine Pomeroy, Chairman, Kansas Parole Board
Becky Matin-Johns - Kansas City Outside Connections
Sister Therese Bangert - Kansas Council on Crime and Delinquency

Chairman Walker called the meeting to order. He stated the minutes would stand approved at the end of the meeting if there were no corrections or additions.

SB 372 - Kansas Parole Board

The Chairman welcomed Elwaine Pomeroy back for his second appearance before the committee. Mr. Pomeroy distributed an attachment which showed the times and locations of public comment sessions. (Attachment 1)

Mr. Pomeroy had an update on figures on paroled, passed and continued status of inmates. With 1,785 inmates, 804 were paroled (45%); 739 passed (41.4%); 242 on continued status (13.6%). A main point Mr. Pomeroy wanted to make was that the Parole Board is not responsible for reducing prison overcrowding; that is not the Board's charge. If the legislature wants to add this to the charge, he supposes it could do so. From Mr. Pomeroy's point of view, it is not proper to make this a consideration.

A problem that the Department of Corrections said it is addressing now is the coordination between SRDC and the Program Management Committee. This has been a very poorly managed area. There have been cases where an inmate has been a week or so in a program and then been transferred to another building or facility. The DOC is telling the Board that this will not happen and inmates will not be moved until a program that has been started is finished.

Discussion and questions by committee members ensued. Questions and comments regarding evaluations, clinical services reports, preliminary diagnostic processes and interviews were made. Mr. Pomeroy said the Board is not connected with community corrections at all.

The features of SB 372 and SB 456 were discussed. Mr. Pomeroy said he would like to see consideration given to some features of both bills; the Chairman and Vice-Chairman appointed by the governor and authorization for panels. Someone will have to make the decision on how the unanimous vote requirement would be handled with a 5-member Board. One of the problems with expansion might be the differences among panels; he doesn't know how to totally get away from this. He assumes the governor would want the unanimous vote to apply to all five members if the committee did expand. Mr. Pomeroy emphasized that expanding to five is not an answer to prison overcrowding. He also commented that it would be nice to occasionally have time for a few more days in the office to attend to administrative duties.

The size of the Board in respect to Class A and B felonies was discussed. If the members were raised to five a 'tyranny of one' could evolve.

Mr. Pomeroy said he would like to return and give his recommendations for addressing the prison overcrowding issue. The Chairman replied the committee would be happy to welcome him back at a future date.

Becky Matin-Johns, Kansas City Outside Connections, spoke next on the bill. She stated this organization has approximately 80 to 100 interested citizens; with relatives and families of prisoners there is approximately 600 people involved. She issued a challenged each and every member of the committee to take one case and walk it through the system. She told of problems concerning the mental health program. There are now two phases of it, but it soon will be one entire program. She told of the Form 9 and its length and depth.

It is very hard to understand and, as the average education of prisoners is at the seventh grade level, they feel defeated before they start.

Mr. Pomeroy responded that this has been a terrible frustration which is being addressed by the DOC and Deputy Secretary Reynaldo. This is a problem at the KSP maximum and minimum facilities, but not at the medium or other institutions.

Ms. Matín-Johns said that at KSP out of 240 inmates, 100 are sex offenders. They need some type of mental health program. 18 have gone through the program; at this rate it will take 10 years to get everyone through the program.

Ms. Matín -Johns cited four examples of American Corrections Associations Standards. (Attachment 2)

Sister Therese Bangert spoke next on SB 372. She represented the Kansas Council on Crime and Delinquency. This organization's membership is around 80. The Board's recent study of a systemic approach to prison overcrowding, modelled on Sentencing Guidelines established in Minnesota, would make the Commission's task a different role from that played by the Kansas Parole Board. This study was produced by Dr. Bill Arnold of Kansas University. Sister Therese stated that, due to this report, the organization is withdrawing support from SB 372. She distributed her testimony to the committee and said she would make available attachments on'Minnesota-type Sentencing Guidelines for Kansas'and 'Controlling Prison Overcrowding: The Failure of Incremental Solutions' by David Henry Barclay. (Attachments 3, 4 and 5).

Sister Therese suggested the committee visit one of the five institutions that are within ten minutes of the capital and visit with people from their areas.

The Chairman thanked the conferees and adjourned the meeting.

Subsequent attachments sent in by Kansas Court Services Officers and League of Women Voters are labeled attachments 6 and 7.

GUEST LIST

COMMITTEE: GOVERNMENTAL ORGANIZATION DATE: FEBRUARY 16, 1988

NAME	ADDRESS	COMPANY/ORGANIZATION
Don Johnson	315 S Troost Olathe Ks	Outside Connections
Jean R. Wagstaff	214 S. Chestnut "	" "
Helen S. Hundley	P.O Box 4047 KCKs	" "
Phil Magathan	Topeka, Ks	Ks. Assoc. of Ct. Services Officers
L Therese Bangert	Topeka	KCCD
B Mathis - Johns	KCK's.	K.C. Outside Connection
Karen A. Robinson	717 Kansas Ave Topeka	Ombudsman for Corrections
Tonya Jones	Topeka.	KPB
Nancy Allenbrand	Spring Hill, Ks	Outside Com-

Members

Elwaine F. Pomeroy
Chairman

Joan M. Hamilton
Vice-Chairman

Frank S. Henderson, Jr.

KANSAS PAROLE BOARD
LANDON STATE OFFICE BUILDING
900 JACKSON STREET, 4TH FLOOR
ROOM 452 S
TOPEKA, KANSAS 66612-1220
(913) 296-3469

George V. Jones
Director

February 3, 1988

ANNOUNCEMENT OF PUBLIC COMMENT SESSIONS

The Kansas Parole Board hereby announces the schedule of public comment sessions to be held in February. These public comment sessions are held so that comments can be received from any interested citizens concerning inmates who are entitled by law to a parole hearing during the month of March. The attached list of inmates who will be heard in March shows the county of convictions, which is not necessarily the inmate's home nor the county to which the inmate would return if granted parole.

Meetings will be conducted on the following dates and at the respective locations and times indicated below:

February 16, 1988 - Topeka, Kansas (9:30 a.m. - 11:00 a.m.)	Meeting Room #2, Upper Level Topeka Public Library 1515 West 10th Street
February 18, 1988 - Wichita, Kansas (9:30 a.m. - 11:00 a.m.)	Municipal Courtroom 3rd Floor - Municipal Building 455 North Main Street
February 22, 1988 - Kansas City, Kansas (10:30 a.m. - 12:30 p.m.)	Commissioner's Room, 2nd Floor Wyandotte County Courthouse 710 North 7th Street

The Parole Board is interested in knowing the views of citizens concerning the possible parole of these inmates. Any citizens who would like to express comments on these inmates but cannot attend one of the public comment sessions, can send a letter to: Kansas Parole Board, Landon State Office Building, 4th Floor, 900 Jackson Street, Topeka, Kansas 66612. We are required by law to give inmates a hearing when they become parole eligible and parole eligibility is set by Statute.

GVJ:ams
Attachment

ATTACHMENT 1
G.O. COMMITTEE 2/16/88

TOPEKA PRE-RELEASE CENTER - Topeka, Kansas

CORDELL, Rocky D.	32781	Johnson	Burglary, Manufacture, Possession, Distribution or Sale of Depressant or Hallucinogenic Drug, Theft, Unlawful Possession of Firearms (2x), Possession Distribution of Opium, Opiates or Narcotic Drug, Terroristic Threat
DELAUGHTER, Alphonso	44145	Saline	Theft
LANGFORD, Jerry W.	43776	Leavenworth	Aggravated Vehicular Homicide
MITCHELL, Ray	38669	Wyandotte	Aggravated Battery, Aggravated Assault
NOLEN, Yolanda Y.	40959	Montgomery	Forgery
RICCI, Sharon	43171	Johnson	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
SWOPES, Prinest R.	40234	Atchison/Shawnee	Attempted Aggravated Robbery, Attempted Theft, Burglary

TOPEKA CORRECTIONAL FACILITY - Topeka, Kansas

BYRD, Jerry D.	31993	McPherson/Reno	Aggravated Battery, Robbery, Kidnapping
JOHNSON, Leonard E.	31457	Leavenworth	Theft
VINCENT, Lloyd	38668	Johnson	Theft (2x), Aggravated Failure to Appear

KANSAS CORRECTIONAL VOCATIONAL TRAINING CENTER - Topeka, Kansas

ADAMS, David J.	39516	Barton	Theft, Criminal Damage to Property
BARNETT, Sonya S.	45403	Johnson	Theft
BROWN, Duane N.	35754	Thomas	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
COLE, John W.	46564	Reno	Theft
DETERDING, Clayton I.	45283	Butler	Forgery
GREENE, Traci D.	45374	Sedgwick	Forgery, Attempted Forgery
HESSLUND, Barry	46719	Mitchell	Burglary
HOBSON, Charles Jr.	45265	Morris	Burglary
HORNER, Wendell	46657	Johnson	Unlawful Use of Financial Cards
HOTCHKISS, Larry D.	45670	Cowley	Theft
LITTLETON, Joseph M.	46589	Riley	Criminal Damage to Property
MAXWELL, Pete J.	45123	Johnson	Attempted Burglary, Theft
McKINNEY, Kelly E.	46629	Montgomery	Burglary (2x), Theft
ROBINSON, Willie T.	44012	Wyandotte	Attempted Theft
SMITH, Darran D.	45260	Sedgwick	Theft
THOMAS, Clarence	9266	Geary	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
WALECKI, Frank E.	46677	Lyon	Theft
WILLIAMS, John	45847	Wyandotte	Aggravated Failure to Appear

TOPEKA HALFWAY HOUSE, INC. - Topeka, Kansas

MALLONEE, Michael	45001	Douglas	Burglary, Criminal Damage to Property
STEWART, Terry L.	44967	Wyandotte	Theft, Burglary
WILLIAMS, Theodis	43374	Geary	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug

KANSAS CORRECTIONAL INSTITUTION AT LANSING - Lansing, Kansas

CREECH, Brenda	45377	Shawnee	Attempted Possession, Distribution of Opium, Opiates or Narcotic Drug
FRANKLIN, Tanis R.	43277	Johnson	Attempted Theft, Forgery
HOGAN, Elsie L.	36608	Leavenworth	Aggravated Battery

MATHEWS, Terri L.	9878	Sedgwick/ Wyandotte	Burglary, Theft (2x), Forgery (2x), Aggravated Escape from Custody
McKINNEY, Dorice	30146	Sedgwick	Theft (4x), Aggravated Failure to Appear
MEYERS, Glenn A.	39398	Rice	Enticement of a Child
MILLER, Versey	43263	Johnson/Wyandotte	Theft, Forgery (2x)
SUMPTER, Marie A.	43173	Shawnee	Theft, Attempted Theft
WASHINGTON, Shirley	45395	Johnson	Theft

IN ABSENTIA

JEWETT, Patricia K.	36594	Shawnee	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug

KANSAS STATE INDUSTRIAL REFORMATORY - Hutchinson, Kansas

AGUILERA, John M.	42771	Morton	Burglary
ALEXANDER, Charles	35567	Sedgwick	Robbery, Aggravated Battery
ALLEN, Malcolm	46649	Cowley	Theft
ARNOLD, Tony	45719	Johnson	Giving a Worthless Check, Theft
ARTHURS, Ralph	30624	Sedgwick	Aggravated Escape, Burglary (2x), Theft (2x)
AUSTIN, Roscoe A.	46599	Sedgwick	Aggravated Escape from Custody
BARTON, Jack E.	36303	Sedgwick	Robbery, Aggravated Robbery
BATES, Michael R.	44702	Sedgwick	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
BEENEY, Charles L.Jr.	44764	Pawnee	Aggravated Juvenile Delinquency
BURNOM, Freddie	43555	Leavenworth/Wyandotte	Forgery (2x), Attempted Forgery
CABRAL, Jesse	31000	McPherson/Reno	Burglary (3x), Theft (2x)
CALLAHAN, Michael	46758	Cloud	Criminal Damage to Property
CARNES, Clifton	46867	Sedgwick	Theft (2x), Aggravated Escape
CATHEY, Clarence R.	35875	Pratt	Aggravated Assault
COLE, Maurice	37314	Sedgwick	Aggravated Assault
COLLINS, Peter N.	39453	Sedgwick	Theft (2x), Aggravated Failure to Appear
COLLINS, Roger D.	40627	Sedgwick	Burglary, Theft
CONNOR, Anthony	42889	Sedgwick	Robbery
CORTEZ, Andrew T.	37795	Shawnee	Burglary, Theft
CRISWELL, Steven D.	45739	Wyandotte	Attempted Theft
CURBOW, Paul Jr.	39500	Shawnee	Aggravated Juvenile Delinquency
CUTTER, Chris C.	37082	Riley	Burglary
DALEY, Michael	46843	Washington	Burglary (3x), Theft (2x)
DOMVILLE, Michael R.	46596	Johnson	Theft
FRAZIER, Edward E.	45170	Shawnee	Theft, Aggravated Escape from Custody
FREZQUEZ, J.L.	43419	Johnson	Aggravated Sexual Battery
GIBBS, Gary W.	45016	Mitchell	Burglary, Theft
GOINES, Carl W.	44361	Sedgwick	Theft, Burglary
GREAVES, Max E.	30435	Sedgwick	Aggravated Arson
GREINER, Paul L.	39127	Shawnee	Attempted Theft
HARRIS, Russell C.	36210	Montgomery	Burglary (2x), Theft (2x), Aggravated Robbery
HEIDEL, Paul F.	36774	Dickinson	Criminal Damage to Property, Conspiracy Aggravated Assault
HERNANDEZ, Miguel	46573	Wyandotte	Theft
HOLT, Jerry	39436	Bourbon	Theft
HOUSER, Michael D.	8010	Riley/Sedgwick	Rape, Forgery
HUGHES, Ernie R.	44927	Cloud/Dickinson	Burglary (2x), Forgery
HURST, Paul	20419	Ness	Murder 2nd
JAIMEZ, Gene	44639	Shawnee	Burglary, Aggravated Escape from Custody, Attempted Aggravated Sexual Battery, Theft
JEFFERSON, Ernest	43006	Sedgwick	Aggravated Battery (2x)

...NKINS, Martin E.	37764	Geary	Robbery, Theft
JOHNSON, Prentis B.	30779	Sedgwick	Aggravated Robbery
JONES, Jeffrey J.III	36151	Sedgwick	Burglary (2x), Aggravated Robbery, Theft
JORDAN, Wilford L.	37678	Sedgwick	Theft (4x), Burglary
KING, Steven K.	44418	Butler	Aggravated Incest
LAMB, Ron	42426	Montgomery/Reno	Theft, Attempted Aggravated Robbery
LLAMAS, Paul	44956	Shawnee	Attempted Burglary, Theft
MACKENZIE, Scott W.	45049	Butler	Aggravated Juvenile Delinquency
MATTHEWS, Elden L.	46730	Johnson	Theft
McCORMICK, Steven L.	44962	Pottawatomie	Burglary
MEEK, Derek A.	34100	Douglas/Shawnee	Attempted Burglary, Aggravated Assault, Attempted Aggravated Escape from Custody, Burglary
MILLINER, John	44969	Johnson	Burglary, Theft
MINCEY, Andrew L.	40558	Marshall	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
MINTON, Anthony S.	33099	Cloud/Sedgwick/ Shawnee	Theft (2x), Burglary, Aggravated Juvenile Delinquency
MITCHELL, Michael L.	42610	Thomas	Theft
MOORE, Marcus E.	42707	Reno	Attempted Aggravated Robbery
MORRISON, Carl D.	40418	Sedgwick	Aggravated Assault, Forgery, Unlawful Use of Credit Card
MOSIER, Kelly E.	33835	Reno/Sedgwick	Involuntary Manslaughter, Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
NEWMAN, Bobby J.	38816	Barton/Russell	Burglary, Attempted Aggravated Assault
NIX, Ranson, N.	44492	Johnson	Attempted Robbery
OWENS, Jeffrey M.	44966	Wyandotte	Attempted Aggravated Battery
PRICE, Bryan L.	42955	Sedgwick	Burglary, Obstructing Legal Process or Official Duty
PRICE, Timothy	44346	Morton	Attempted Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
PRICKETT, Kevin M.	44915	McPherson	Burglary (2x)
PROFITT, Herbert	39236	Lyon	Giving a Worthless Check
REED, Eric W.	46757	Sedgwick	Theft
RINGQUIST, Steven J.	38345	Saline	Habitual Violation, Unlawful Operation of Vehicle (2x)
ROBBEN, Patrick	44681	Logan/Sedgwick	Theft, Aggravated Escape
SANDERS, Charles M.	37266	Sedgwick	Aggravated Robbery
SEIBERLING, Jimmy	44670	Reno	Indecent Liberties with a Child
SHAW, John E.	44942	Johnson	Attempted Robbery
SMITH, Brian L.	40781	Barton/Lyon	Forgery, Criminal Damage to Property, Theft
STAFFORD, Troy	38963	Sedgwick/Shawnee	Theft, Aggravated Juvenile Delinquency
STEVENS, Robert O.Jr.	40280	Shawnee	Robbery
TENNIS, David	42678	Wilson/Woodson	Burglary (2x), Theft
TESKE, Roger J.	44963	Pottawatomie	Burglary
THOMAS, Harry C.	40674	Sedgwick	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug, Obstructing Legal Process or Official Duty, Burglary
WALKER, Jack J.	39306	Atchison/Shawnee	Traffic in Contraband in a Penal Institution, Aggravated Escape from Custody
WALLIN, Jim Jr.	45268	Woodson	Aiding a Felon
WARD, Leo E.	42592	Reno	Burglary
WEBB, Michael	44757	Johnson	Sale of Marijuana

WEST, Aaron L.	6766	Sedgwick	Theft (3x), Forgery, Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
WHEELER, Lloyd	45041	Sedgwick	Burglary (2x), Theft (2x)
WHITFIELD, Jonathan F.	40091	Sedgwick	Rape
WILKINS, Donald E.	46678	Johnson	Theft

HUTCHINSON WORK RELEASE CENTER - Hutchinson, Kansas

STOKESBURY, Adam F.	16319	Graham/Osborne/Rooks	Forgery (2x), Theft

LARNED STATE SECURITY HOSPITAL - Larned, Kansas

BROWN, Bobby J.	42453	Wyandotte	Robbery
CONROY, Bernard V.	42973	Sedgwick	Burglary
GRAHAM, Tory E.	39441	Douglas	Possession, Distribution of Opium, Opiate Or Narcotic Drug (2x)
GREENWOOD, Glen E.	33646	Sedgwick	Aggravated Robbery, Robbery, Attempted Robbery, Aggravated Assault
HILL, Kevin E.	36916	Sedgwick	Burglary, Theft (3x), Attempted Theft
HOLLOWAY, Talmadge	44717	Sedgwick	Terroristic Threat
HORN, Robert F.	40142	Allen/Shawnee	Burglary, Attempted Burglary (2x), Possession of Burglary Tools
LOVE, Roy L.	34083	Johnson	Aggravated Robbery
PATTERSON, Johnnie	40536	Shawnee	Aggravated Battery, Manufacture, Possession, Distribution or Sale of Depressant Stimulant or Hallucinogenic Drug, Possession, Distribution of Opium, Opiates or Narcotic Drug
PETER, Larry W.	39004	Shawnee	Enticement of a Child
PRESSLEY, Dolven D.	41229	Lyon	Theft, Burglary
SCHILLING, Joseph	37330	Butler/Sedgwick	Aggravated Battery, Theft (3x), Burglary (2x)
STILLMAN, Charles F.	44847	Sedgwick	Theft, Burglary

NORTON CORRECTIONAL FACILITY - Norton, Kansas

CANTU, Juan	43543	Sherman	Aggravated Battery
HENWOOD, Guy V.	42472	Sedgwick	Burglary, Forgery
MARSHALL, Ronald	42308	Johnson	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
MULLEN, Jeff	42562	Riley	Theft (3x)

WINFIELD PRE-RELEASE CENTER - Winfield, Kansas

BATES, Willie L.	43440	Saline	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
BROWN, Billy R.	33276	Finney	Theft
CARTER, Randall K.	39267	Crawford	Attempted Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
DAVEY, Gregory J.	36815	Sedgwick	Attempted Aggravated Robbery, Aggravated Burglary, Theft (3x), Burglary (2x)
EDWARDS, Paul E.	44811	Sedgwick	Burglary, Theft
FORREST, Ronald E.	36821	Cloud/Republic/ Saline/Sedgwick	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug, Theft, Forgery(2x)
HARGUS, Thomas L.	9560	Sumner	Theft, Murder 2nd
JONES, James S.	35752	Crawford	Murder 2nd
KRUG, Robert M.II	40069	Sedgwick	Forgery

MAUER, Robert M.	33621	Saline/Sedgwick	Aggravated Assault, Aggravated Weapons Violation, Aggravated Battery
MILLER, Charles	37292	Crawford	Burglary
PONCIL, Edward	42263	Sedgwick	Aggravated Assault
REVELS, Robert J.	38255	Wyandotte	Theft
RHYMES, Ricki A.	40036	Sedgwick	Robbery
ROBINSON, Nehemiah	36889	Lyon	Burglary (2x), Theft (2x)
ROBINSON, Wendell	43914	Sedgwick	Forgery
TUMBLESON, Carlos	34934	Woodson	Theft, Robbery
URQUIOLA, Stephen	44499	Johnson	Attempted Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug, Burglary
WIEBE, David E.	45565	Butler	Forgery

TORONTO HONOR CAMP - Toronto, Kansas

EVANS, Peter A.	42139	Saline	Conspiracy Aggravated Robbery, Aggravated Robbery

CONTRACT JAIL PLACEMENT

ARCHER, Donald J.	8417	Cowley/Sedgwick	Aggravated Assault, Burglary (Allen Count
STOLTE, David P.	38047	Wyandotte	Kidnapping (Labette County)

EL DORADO HONOR CAMP - El Dorado, Kansas

JONES, Raymond	43791	Wyandotte	Attempted Burglary, Theft
TOWLES, Marvin E.Jr.	44389	Sedgwick	Aggravated Battery

WINFIELD CORRECTIONAL FACILITY - Winfield, Kansas

BEST, Michael	42099	Allen	Burglary
BROWN, Herman L.	41298	Wyandotte	Robbery, Theft
LINK, Michael R.	32618	Rice	Forgery (2x)
THOMAS, Ronald L.	40689	Wabaunsee	Aggravated Assault

WICHITA WORK RELEASE CENTER - Wichita, Kansas

BELL, Brian A.	39990	Sedgwick	Attempted Aggravated Robbery, Aggravated Robbery
BOSTON, Albert	36313	Harvey/Sedgwick	Robbery, Aggravated Robbery
HALLUM, John L.Jr.	40245	Sedgwick	Involuntary Manslaughter (2x)
HEATH, Scott D.	42816	Sedgwick	Aggravated Vehicular Homicide
LEE, Chareama M.	36676	Wyandotte	Aggravated Robbery
NAVE, Brian E.	36961	Montgomery	Aggravated Robbery
TAYLOR, Vincent A.	40023	Sedgwick	Criminal Damage to Property, Burglary
WASHINGTON, Sandra	43093	Sedgwick	Aggravated Battery
WILLIAMS, Danny B.	37712	Sedgwick	Aggravated Robbery

KANSAS STATE PENITENTIARY - Lansing, Kansas

ANGEL, Kim D.	35299	Reno	Burglary (2x), Theft
ASHWORTH, Jeffrey L.	34907	Osage	Murder 2nd
BALDWIN, Trevor R.	43423	Sedgwick	Incitement to Riot
BALLARD, Michael	44170	Doniphan	Attempted Theft, Conspiracy to Commit Burglary
BENOIT, Wesley G.	37307	Saline/Sedgwick	Attempted Theft, Theft
BERMUDEZ, Victor	35218	Finney/Harvey	Burglary, Robbery, Aggravated Escape from Custody
BLANTON, Tilman	7436	Wyandotte	Burglary(2x),Attempted Aggravated Robber
BROWN, Phillip C.	42690	Johnson	Attempted Aggravated Battery
BROWN, Willie	45065	Stevens	Burglary
BURKE, Wilbert	37553	Sedgwick	Aggravated Robbery
BURROWS, Freddie	41971	Labette	Criminal Damage to Property, Theft

BUTLER, Larry W.	39011	Sedgwick	Theft (2x), Burglary
COMACK, Richard L.	45675	Shawnee	Aggravated Failure to Appear, Forgery
CANNON, Frederick	20566	Saline	Aggravated Robbery
CHARLES, Eldon Jr.	25433	Wyandotte	Theft
CROWLEY, James R.	41078	Nemaha	Habitual Violation, Unlawful Operation of Vehicle
CUNDIFF, Samuel E.	43946	Lyon	Burglary
CUNNINGHAM, Loren	17892	Leavenworth/ Norton/Reno/ Shawnee	Aggravated Escape from Custody (2x), Aggravated Assault, Aggravated Robbery (2x)
DAVIS, Larry L.	41108	Wyandotte	Aggravated Burglary (2x)
DEERE, Morris	33605	Sedgwick	Aggravated Battery
DUNHAM, Harold Jr.	42643	Butler	Indecent Liberties with a Child
ELLIS, Karl D.	41699	Wyandotte	Involuntary Manslaughter
EMERY, James C.	30833	Butler/Sedgwick	Forgery (2x), Burglary (2x), Aggravated Escape from Custody, Theft
GABHART, Ralph	45600	Graham	Theft
GARIBAY, Bill	42272	Stevens	Theft
GEARY, Tracy M.	19269	Pottawatomie	Theft, Forgery (2x)
GEDDES, Orville M.	41223	Seward	Manufacture, Possession, Distribution or Sale of Depressant, Stimulant or Hallucinogenic Drug
GLASGOW, Ervin	33963	Johnson/Shawnee/ Wyandotte	Forgery, Aggravated Escape from Custody, Burglary, Aggravated Burglary, Robbery
GRIFFIN, Donald O.	17380	Reno/Sedgwick	Aggravated Robbery, Obstructing Legal Process or Official Duty, Aggravated Burglary (2x)
GRISSOM, Richard Jr.	33728	Johnson	Theft (2x), Burglary
GUZMAN, Daryl S.	34556	Lyon	Aggravated Robbery, Unlawful Possession of Firearms
HAGER, Kenneth M.	44282	Lyon	Theft
HENLEY, Bennie	35383	Morton	Indecent Liberties with a Child
HENRY, Jerrold E.	25598	Wyandotte	Robbery, Aggravated Battery
HERRINGTON, Timothy	39972	Johnson	Theft
HIGGINBOTHAM, Jack	32452	Johnson	Aggravated Battery
HINSHAW, Scott D.	45552	Phillips	Driving with Licen Cancelled, Suspended, Revoked
HOWARD, Michael L.	8223	Wyandotte	Aggravated Robbery, Theft
JOHNSON, Richard D.	43031	Wyandotte	Theft
JONES, Dennis D.	34775	Johnson	Criminal Damage to Property, Robbery
JONES, Henry L.	8639	Sedgwick	Theft
JONES, Jimmy R.	35011	Cowley	Burglary, Theft
JUSTICE, Calvin M.	34713	Saline	Aggravated Failure to Appear
KNITTEL, David R.	25101	Reno	Aggravated Robbery, Criminal Damage to Property, Aggravated Escape from Custody, Rape
LAMB, James L.	41442	Sedgwick	Burglary
LANDEN, Paul W.	37046	Geary	Burglary (2x), Theft (2x)
MARRS, Oris Jr.	41392	Sedgwick	Theft, Attempted Theft, Aggravated Escape from Custody
MARTINEZ, John E.	37356	Finney	Attempted Aggravated Battery
McCONNELL, Jackie	32327	Shawnee	Aggravated Robbery
MEECHAICUM, Prasarn	41552	Finney	Theft
MILLER, Gary D.	38622	Franklin	Indecent Liberties with a Child
MILLER, Scott A.	41753	Sedgwick	Rape
MILLER, Worley	8439	Sedgwick	Criminal Damage to Property, Theft

MIMS, Anthony L.	42397	Wyandotte	Theft, Unlawful Possession of Firearms, Attempted Theft, Criminal Damage to Property
MUNYON, Larry K.	41664	Harvey	Aggravated Indecent Liberties with a Child
NEWTON, Kevin L.	44566	Johnson	Theft, Burglary
ORNDORFF, John F.	42291	Leavenworth	Burglary
PANICK, Oland	38798	Sedgwick	Voluntary Manslaughter
PARKER, George F.	35250	Sedgwick	Aggravated Escape from Custody, Aggravated Battery
PAUL, James L.	45574	Johnson	Attempted Burglary, Theft
PEDERSON, Carl W.	35748	Reno	Aggravated Battery, Rape, Attempted Arson
REED, Cleveland	8190	Cowley/Harvey/ Sedgwick	Forgery (2x), Attempted Forgery, Aggravated Robbery, Unlawfull Possession of Firearms (2x), Aggravated Failure to Appear
RIDGEWAY, Richard P.	19581	Shawnee	Aggravated Battery, Burglary
RITCHEY, Mark E.	7594	Sedgwick/ Wyandotte	Traffic in Contraband in a Penal Institution, Theft, Murder 2nd, Aggravated Robbery
ROBERTS, Walter J.	31895	Johnson	Theft of Services, Giving a Worthless Check (2x), Forgery
RODRIGUEZ, Robert	43513	Barton	Aggravated Sexual Battery
RUSSELL, George R.	42947	Sheridan	Aggravated Incest
SANCHEZ, Paul	37868	Sedgwick	Burglary, Theft (2x)
SCILAGYI, Jerry L.	37688	Reno	Theft, Burglary
SCOLES, Rick D.	46602	Barton	Criminal Damage to Property, Burglary
SHAVERS, Robert	44640	Sedgwick	Forgery, Theft, Unlawful Possession of Firearms
SMITH, Dewey R.	13327	Saline	Indecent Liberties with a Child
SPENCE, Dennis G.	20972	Ottawa/Reno/ Sedgwick	Indecent Liberties with a Child, Aggravated Battery, Burglary
STEELE, Ricky J.	36172	Sedgwick	Unlawful Use of Financial Cards, Habitua. Violation, Unlawful Operation of Vehicle, Theft, Forgery
TAYLOR, Bill	9326	Wilson	Giving a Worthless Check
TOLON, Kenneth E.	41462	Wyandotte	Aggravated Robbery
VANHOOZIER, Kenneth	33775	Coffey	Aggravated Robbery
WALKER, Leland W.	31311	Wyandotte	Aggravated Robbery, Burglary (2x), Attempted Theft (2x), Aggravated Assault
WARF, Donald	39970	Leavenworth	Aiding, Abetting Aggravated Robbery
WHITE, Jim	8490	Johnson	Giving a Worthless Check
WILLIAMS, David A.	40281	Pottawatomie/Shawnee	Burglary (5x)
WILLIAMS, Randy L.	41532	Douglas	Aggravated Battery
WOODS, William A.	36469	Ford	Burglary, Criminal Damage to Property
WRIGHT, Kennon	9096	Shawnee	Theft (3x), Burglary, Aggravated Assault Law Enforcement Officer

INTERSTATE COMPACTS/CONTRACTS

BENTLEY, Robert D.	20711	Leavenworth	Murder 2nd, Aggravated Robbery (4x), Aggravated Burglary (4x), Theft (2x), Aggravated Escape from Custody (2x), Attempted Aggravated Escape from Custody, Rape, Aggravated Sodomy, Aggravated Battery Against Law Enforcement Officer, Kidnapping, Criminal Damage to Property

INTERSTATE COMPACTS/CONTRACTS

BOYD, Michael E.	19060	Sedgwick	Aggravated Robbery (2x), Murder 1st

IN ABSENTIA

GREENBLOT, Jack H.	45673	Wyandotte	Forgery
GREY, Garry D.	43318	Sedgwick	Arson, Burglary
RAMSEY, Rickey Lee	43742	Wyandotte	Criminal Damage to Property

FORT SCOTT CONTRACT WORK RELEASE CENTER - Fort Scott, Kansas

BRINSON, Phillip W.	43405	Labette/Lyon	Burglary (2x), Theft

OSAWATOMIE CORRECTIONAL FACILITY - Osawatomie, Kansas

ASHLOCK, Terry	37486	Butler/Greenwood/ Montgomery	Burglary, Vehicle ID Number Offense, Theft
CLYBORNE, Randy W.	37904	Harper/Sedgwick	Forgery, Burglary, Theft
TOBUREN, Doug	33876	Douglas/Lyon	Criminal Damage to Property, Burglary

KANSAS CITY OUTSIDE CONNECTIONS

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

February 16,1988

My name is Becky Matin-Johns. I am Project Director of the Kansas City Outside Connection,Inc. I am here today to speak to Senate Bill 372

We are aware of the immense responsibility that is placed in our parole board. In some sense the safety of our streets and homes lies in their vote. The decisions made by the parole board are not simple business ones--they impact profoundly the future lives of each inmate, their families, and eventually their entire community.

During the 1987 Legislative Session S.B. 372 was introduced and our group came out strong in support of it. During the past year we have monitored the parole process and studied various means of improvement. One major course of study for us has been the American Corrections Associations Standards for Paroling Bodies. As we reviewed those standards we found that while the Kansas Parole Board does not operate completely within those standards, their work load alone would make it difficult at best, it not impossible to do so. I would like to give a few examples of ACA Standards.

2-1015 The parole authority has sufficient staff to perform its responsibilities efficiently and without accumulating work backlog.

2-1074 Prior to a hearing, parole authority members review information available in writing about an offender's prior history, current situation, events in the case since any previous hearings. Information about the offender's future plans, and relevant conditions in the community

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2-1092 Parole hearings are conducted with careful attention to the inamte, and with ample opportunity for the expression of his or her views.

2-1081 The person conducting the hearing is responsible for the recording and preservation of a summary of the major issues and findings in the hearing.

In FY 87 the parole board recorded over 3000 parole decisions, along with all their other job responsibilities. This number has increased significantly over the past three years. FY 85 saw 2325 decisions, FY 86-2718 and FY 87 was 3072. We can only assume this figure will continue to climb as the prison population increases. With new facilities such as Stockton, Norton, and Ellsworth coming on line the parole board will be even more taxed as they attempt to cover the entire stste.

While we strongly support increasing the parole board to five members, we do not believe that alone will effect the desired changes. SB 372 would provide: 1) A broad base of information regarding readiness for parole. 2)A sharing of responsibility in decision making by a greater variety of persons. 3) Hopefully, increase objectivity and decrease subjective decision making.

There are additional issues that we feel should be considered along with SB 372.

1) The five member board should be allowed to divide into three member panels in order to more evenly divide the work load and provide more time for review as stated by the American Corrections Association Standards.

2.) We believe there is a desperate need for the development of criteria for parole. The system needs a plan for an objective multi-disciplinary screening for potential parolees. Such a plan will provide both support, guidance and a balance of power for our parole board. If there is a failed parole and a new crime committed, there will be shared responsibility , and no one person can be blamed.

3.) Another option that has been suggested is that the parole board enter into a contractual agreement with the inmate at the beginning of his or her sentence. That agreement would state that if necessary programs, determined by the Department of Corrections,are completed, behavior is without incident, and time served has been productive; then baring any major problem they would be paroled after they have served their minimum sentence less good time.

While we strongly support the sharing of responsibility by the three members now on the parole board with an additional two members, making a total of five, we are convinced that alone will not have a significant impact. We urge you to consider the additional suggestions we have made today.

KANSAS COUNCIL ON CRIME AND DELINQUENCY

80 members

Testimony on SB 372

From Kansas Council on Crime and Delinquency
represented by Sister Therese Bangert

KCCD is an organization of people across the state who are interested in correction issues that concern adults and juveniles. The membership is around 80.

We have continued to be concerned about the severity of prison overcrowding in Kansas.
Our board's recent study led by Dr. Bill Arnold of KU has led us to support a systemic approach to prison overcrowding that would be modelled on Sentencing Guidelines established in Minnesota.

This systemic approach to prison population would have a Guidelines Commission. This Commission's task would be quite distinct from the role of our present parole board.

Therefore we withdraw our support from SB 372.

Thank YOU!

Sister Therese Bangert

ATTACHMENT 3
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January 23, 1988

Kansas Council on Crime and Delinquency

Favors

Minnesota-type Sentencing Guidelines for Kansas

At its meeting on October 30, 1987 the Board of Directors of the Kansas Council on Crime and Delinquency went on record favoring Minnesota-type sentencing guidelines for Kansas. The key elements of such guidelines are the appointment of a sentencing guidelines commission which develops guidelines for narrow-range presumptive sentences, requirements that judges set sentences within these ranges unless there are compelling reasons for departing from them, explicit provision for the appeal of sentences, and the continuing operation of the guidelines commission to adjust the guidelines so that prison populations do not substantially exceed the optimum capacity of existing prison facilities. A parole board is no longer needed under this system.

This position was adopted as a more systemic, comprehensive solution to Kansas' prison overcrowding than has been explicitly advocated by the 1984 and 1987 commissions on overcrowding. This position appears to be a departure from past KCCD positons which were oriented toward rehabilitation and maximum use of the least restrictive alternatives for law violators. Actually, however, the position signals only the rejection of indeterminate sentencing which currently leads to overloading our prison facilities.

The Problem

The June 30th population of Kansas prisons began a precipitous rise in FY 1981 resulting in an increase from 2183 persons at the end of FY 1980 to 4585 persons at the end of FY 1987. This is well beyond the "maximum" capacity of our institutions. The vast majority of our prison cells, including the forty-square-foot ones at KSIR, now house double the number considered ideal. This has taken place while the number of index crimes (there is no count of the number of felonies) in Kansas has been falling most years since 1981. The ratio of index crime arrests to index crimes has risen since 1981, but only to the level it was in the early 1970's when prison populations were low. The ratio of felony convictions to index crimes has gone down since 1982, and the proportion of convicted felons sent to prison has been quite steady at about 20% ever since it became possible to compute this figure readily (1977). The number of probation violators which is sent to prison has risen most years since 1979, but this is the only indication of greater judicial "toughness" during the period of rapid prison population increase. The proportion of those on parole who are re-admitted to prison each year has not changed substantially since the mid-1970s.

The data are clear, on the other hand, that the rise in prison population (at least from 1982 to the present) is a result of decreased rates of parole release. The percent of the previous year end population that is released in a given year has fallen from a high of 52% in 1981 to a low of 25.3% in FY 1986. This change is almost entirely a change in the proportion of parole

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hearings resulting in parole, a drop from over 80% from 1980-1982 down almost steadily to 43.6% for FY 1987. We understand that this changed pattern of paroling activity results from the parole board's insistence that a number of different rehabilitation programs be provided and that certain evaluations be completed before inmates are released. Because the Department of Corrections can not now provide these programs and tests, at least not for the number who need them in the Board's view, passes and continuances are the principal causes of our present overcrowded prisons. The state has responded by building one new prison, adapting a number of facilities for prison use, developing several smaller facilities (such as work release and pre-release centers), and strengthening the community corrections program. Still, however, the prison population grows faster than the facilities and programs can be expanded. The potentials for violence in the prisons and federal court action to force sudden releases of inmates must be put alongside equally serious but less shocking problems, such as the several hundred inmates in each of the larger institutions who have no work assignment available.

The Minnesota Sentencing System

Each of the elements of the Minnesota Sentencing System is essential if the system is to work.

1. The sentencing commission which is open to a variety of public and agency advocates in the process of setting up prescriptive (not descriptive of the present system of sentencing) sentences with many gradations but narrow ranges of discretion in each range.
2. The guidelines which are based solely on severity of present offense and on criminal history of the offender cross-tabulated to produce the grid attached to this proposal.
3. The law which stipulates the guidelines sentences as presumptive unless "substantial and compelling" reasons are provided in writing to justify a departure from the guidelines.
4. An emphasis on imprisoning violent offenders and an emphasis on not imprisoning property offenders.
5. An explicit provision that sentences may be appealed. This is the key difference between the Minnesota guidelines and "voluntary" guidelines.
6. An interpretation by the commission of, "...an ambiguous statutory injunction that it take correctional resources into 'substantial consideration' as a mandate that its guidelines not increase prison population beyond existing capacity constraints. This meant that the Commission had to make deliberate trade-offs in imprisonment policies. If the Commission decided to increase the lengths of prison terms for one group of offenders, it had either to decrease prison terms for another group or to shift the 'in/out' line and divert some group of prisoners from prison altogether." (Tonry, 1987: 48) Doing this on a continuing basis is the key to preventing prison overcrowding.
7. An explicit exclusion from judges' considerations in sentencing of personal factors such as race, sex, living arrangements, etc.

The Minnesota Sentencing Commission also made a deliberate decion that the purpose of prison sentences was "just deserts" or retribution. This reflects a rejection of rehabilitation, to which Kansas, in several places in its statutes, is committed. It does not appear necessary to reject the rehabilitative ideal to reject the indeterminate sentence. The relation of

We support the expansion of drug + mental health program

rehabilitation and the indeterminate sentence was clear; inmates were to be released whenever they were rehabilitated. The ability to identify such a point, or even the existence of such a point, has long been problematic. Thus, we advocate only the rejection of the indeterminate sentence, not the whole rehabilitative approach.

Certainly sentencing commissions and their resulting guidelines are no panacea for the world of corrections, but Tonry's recent review of the impacts of these agencies in several states indicates that judges do follow such guideline systems, that sentencing patterns are changed, that sentence disparity is reduced, that those who are sent to prison get slightly longer sentences than under the old sentencing system, and that there were no, "...significant increases in trial rates or case processing times under guidelines; sentence appeals were filed in only one percent of cases." (1987: 60) Tonry does note, however, that, "...prosecutors in Minnesota have changed charging and bargaining practices in an effort to circumvent the guidelines, with some success, and there are indications this may be happening in Pennsylvania and Washington." (ibid.) Barclay adds that the guidelines changed the emphasis of sentencing to the seriousness of the present offense rather than the criminal history record (1985: 53-54). Barclay chronicles varied legislative and judical acts which affected the operation of the guidelines and the Sentencing Commission's responses to these acts. The overall effect was a rise (through a series of rises and falls) in prison population from 2,020 when the guidelines were adopted (and prison capacity was 2,072) to a projected figure within their "program capacity" of 2,355 (by which time prison capcity had increased to 2,440) by 1986. (1985: 54-58) When Tonry draws his conclusions about what kinds of reforms seem best able to attain the goals of sentencing reforms (which, for him, do not include controlling prison population), he advocates the Minnesota system plus some controls on bargaining. Controls on bargaining are not included in present KCCD positions.

What Are the Alternatives?

It appears that all the alternatives we know of for reducing prison overcrowding are less desirable that the commission/guidelines model presented above.

1. First, we could undertake to provide the programs in the scope called for by our parole board and, in the meantime, keep adding to our prison capacity as needed. Quite apart from the costliness of this course of action (surely in excess of $60,000 per bed by the time the called-for program costs are added in), it may not be wise policy. While the general rejections of rehabilitation characteristic of the late 1970's and early 1980's seem to have been more drastic than the facts called for, the facts are that certain programs work for some inmates and not others, that adding a particular program to a general type of correctional operation (such as prison) changes the effect of the general type of operation very little, and that we can not now predict program effects or the future dangerousness of offenders with much accuracy. (Tonry, 1987: 96; Glaser, 1978, 269; Lipton, Martinson, and Wilks, 1975: Ch. 1) In view of the further fact that the population in the high-crime years (15-25) will be increasing the next few years, we likely can not afford to maintain a high-imprisonment policy.

2. Second, parole guidelines might reasonably be used, as previous commissions on overcrowding have proposoed. These generally do produce accurate application, reduce sentence disparity, and reduce paroling disparity. Paroling guidelines have not widely been expected to reduce prison population, so their capacity to do so has not been measured as far as we can tell. Using paroling guidelines to reduce prison population would necessarily involve making inmates eligible for parole earlier and/or the criteria for release more generous. This is what happens when prison population caps are set and inmates are released early. Further, and most important, changing parole guidelines affects only imprisoned felons and has no impact on any inequities involved in who is sent to prison.

3. Third, we could set a cap on prison population by, perhaps, manipulating parole eligibility dates or the award of good time. Certainly this can be done with little or no increase in the post-incarceration offenses committed by those released (Lane, 1986; Austin, 1986; Gibbons, 1986), although the loss of the incapacitation effect produces some small increase in crime. Our chief reason for rejecting this alternative, as for rejecting the second alternative, is that it affects only felons sent to prison and does not address the whole sentencing structure. While both the cap/release system and the commission/guidelines system can introduce sentencing disparity by virtue of <u>when</u> one is sentenced (before or after the guidelines are changed or when the prisons are or are not overcrowded), such disparity seems to be introduced more often with the cap/release system than with the commssion/guideline system. (Compare Barclay, 1985: 38-44 and 53-58)

4. Fourth, we could adopt fully determinate sentencing. In this model (not really followed in most states said to have adopted it), the legistlature sets sentences. Where the legislature sets specific limits, prison sentence length has been made more uniform, but the type of sentence imposed is still quite unpredictable. In some states, the length of prison terms imposed and the proportion of offenders sent to prison increased, while in other states one or both of these decreased after determinate sentence laws were adopted. (Tonry, 1987: Ch. 6) Further, the positive effects that determine sentence laws are supposed to have on inmates, such as improved attitudes and reductions of stress, have not occurred. (Goodstein and Hepburn, 1985: 138-163) On the other hand, the supposed advantage of indeterminate sentencing, encouraging program involvement to advance one's parole date, did not produce its intended effect, either. The number of programs engaged in by determinate and indeterminate sentenced prisoners did not differ, and prisoners with determinate sentences engaged in more of the clearly rehabilitation-oriented programs than did the indeterminate sentenced prisoners. Not only does determinate sentencing not affect offenders not sent to prison, but it, in general, does not seem to reduce overcrowding.

<u>Conclusion</u>

It appears we must do something about Kansas' overcrowded prisons. We have reviewed the effectiveness of the commission/guidelines model as developed in Minnesota for achieving this end. We find this model more effective than its alternatives.

Prepared by William R. Arnold

Table 4

Minnesota Sentencing Guidelines Grid*

SECURITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12	12	12	13	15	17	19 18-20
Theft Related Crimes ($250-$2500) Aggravated forgery ($250-$2500)	II	12	12	13	15	17	19	21 20-22
Theft Crimes ($250-$2500)	III	12	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential Burglary Theft Crimes (over $2500)	IV	12	15	18	21	25 24-26	32 30-34	41 37-45
Residential Burglary Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Criminal Sexual Conduct. 2nd Degree (a) & (b) Intrafamilial Sexual Abuse. 2nd Degree subd. 1(1)	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Criminal Sexual Conduct 1st Degree Assault, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 80-101	113 106-120	132 124-140
Murder, 3rd Degree Murder, 2nd Degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree (with intent)	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

*Cells below the heavy line receive a presumptive prison sentence. Cells above the heavy line receive a presumptive non-prison sentence which may include jail time. The numbers in cells above the line refer only to duration of confinement if probation is revoked. Presumptive sentence lengths are shown in months. Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. First degree murder is excluded from the guidelines and carries a mandatory life sentence.

Note: From The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation (p. 2) by the Minnesota Sentencing Guidelines Commission, 1984, St. Paul, Minnesota.

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CONTROLLING PRISON OVERCROWDING:

THE FAILURE OF INCREMENTAL SOLUTIONS

by

DAVID HENRY BARCLAY
M.P.A., University of Kansas, 1985

Submitted to the Edwin O. Stene Graduate Program in Public Administration, Political Science Department in partial fulfillment of the Masters in Public Administration degree

for the Program

for the Department

ATTACHMENT 5
G.O. COMMITTEE 2/16/88

For Lynn
and those who have tried.

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CHAPTER I

Introduction

The leaders of the nation's criminal justice system are in agreement that the most important issue facing them today is overcrowding in prison and jail facilities (Gettinger, 1984). Prison populations have increased dramatically in recent years, far in excess of the ability of available correctional resources to adequately handle them. America's prisons are overflowing with inmates.

Between 1978 and 1983, state prison populations grew by 50% (122,317)--roughly 24,000 per year (Bureau of Justice Statistics, [BJS], 1984). Forty-four states now have prison populations exceeding 117% of design capacity. Double celling in cells designed for one inmate is commonplace. Eighteen states have been forced to use local jails to house some 8,000 state inmates (BJS, 1984).

The American Civil Liberties Union's (ACLU) National Prison Project and, more recently, the U.S.

Department of Justice have filed suits challenging the constitutionality of overcrowding and prison conditions. Forty states and the District of Columbia are now under federal court order or have litigation pending to relieve prison overcrowding and/or unconstitutional conditions in state prisons (BJS, 1984). "Right now prisons are bursting at the seams," Alvin Bronstein, director of the ACLU's National Prison Project said recently. "It creates idleness, which leads to violence. An inmate doesn't have anything to do all day except get angry" (USA Today, June 19, 1984, p. 2A).

States estimate that they will expand their collective prison capacity to 419,869 by 1990. But by that time, states project that the inmate population will have risen to 528,193. If this occurs, "state prisons and correctional institutions will experience a prison bedspace deficit of 108,324 and an overcrowding rate of 25.8 percent in 1990" (U.S. General Accounting Office, 1984, p.2).

Prison overcrowding occurs when increases in the number of offenders sent to prison and their sentence lengths produce more inmates than there are prison beds to house them. Attempts to manage prison populations and reduce prison overcrowding must

therefore take one or some combination of the following steps:

1. Reduce the number of offenders sent to prison.

2. Reduce their length of stay.

3. Increase prison capacity.

Caught between public demands for harsher sanctions and limited fiscal and correctional resources, states are struggling to find solutions to prison overcrowding.

This field project report examines the root causes of prison overcrowding within the criminal justice system, reviews the experience of three states that have taken unusually aggressive steps to control their prison populations and analyses the ability of states to manage prison overcrowding using incremental and systemic solutions.

This paper contends that prison overcrowding is primarily the result of systemic problems within the criminal justice system, and that systemic problems require systemic solutions. Said differently, attempts to solve systemic problems using incremental efforts will at best be only partially successful and may fail altogether.

CHAPTER II

The Criminal Justice System: Coping With Stress

Ideal Systems

A discussion of the factors at work in ideal political systems helps explain why prison overcrowding is a product of America's criminal justice system. In his two 1965 pioneer works on systems analysis--A Framework for Political Analysis and A Systems Analysis of Political Life--David Easton describes the environmental influences upon political systems, the ways that systems regulate and cope with stress, and the capacity of systems to persist in the face of stress by feeding back information to their actors so that practices can be modified and stresses reduced.

The environmental influences of principal interest are those which create sufficient stress to prevent a system from functioning as it has in the past. There are two primary types of stress: demand and support stress (Easton, 1965). Demand stress has two subcategories: output failure and demand-input overload. Output failure refers to the failure of a system to produce results that are desired. Demand-input overload occurs when too many

demands are made or their content and variety creates such conflict that they take too long to process.

Support stress occurs when support for the system itself falls to an uncomfortably low level (Easton, 1965).

System outputs are the formal and informal policy decisions and actions taken by political authorities (Easton, 1965). They are an authoritative allocation of values and resources. Outputs work to increase support when the demands of system members are met by changing environmental or intrasystem conditions so that the original circumstances which gave rise to demands no longer exist or steps are taken to create this impression (even though no actual changes may have occurred).

Feedback occurs as system actors are made aware of environmental and system conditions, the supportive state of mind of system members and the demands being voiced, and the impact of prior outputs (Easton, 1965). This information begets new responses as the system in turn tries to regulate stress by modifying or redirecting its behavior. Ideally, the dynamic functioning of a political system is a vast conversion process, capable of goal setting, self transforming and creative adaptivity. The members of healthy systems "are able to regulate, control, direct, modify, and innovate with respect to

all aspects and parts of the processes involved" (Easton, 1965, p. 133).

Structural Flaws

Two fundamental structural problems within the criminal justice system lie at the root of the prison overcrowding problem.

Actor Independence. The first is the virtually unbridled independence of the system's principal actors. The criminal justice system is "a conglomeration of municipal, county, and state agencies, each with different responsibilities and publics, tied together by a complex web of interrelationships" (Nardulli, 1984, p. 366). The parts of the system that significantly affect prison overcrowding are prosecutors and the defense bar, judges, departments of corrections and parole boards. Of these five, judges and parole boards have by far the greatest impact. Despite their functional interdependence, each acts independently and exercises considerable discretion.

The system's organizational chart is flat. No one agency or authority is in charge. Moreover, the parts of the system often work against one another. Patrick D. McManus, the federal court-appointed master overseeing the Tennessee prison system and former secretary of corrections in Kansas, puts it

this way: "We operate without benefit of common goals, lack a real awareness of what each other is doing and often attempt things that are at cross purposes with each other" (McManus, 1979, p. 5).

Prosecutors seek a high percentage of convictions. Judges and parole boards see their overall goal as protecting the public by minimizing risk. All produce higher inmate populations. Departments of corrections are most directly affected by growing inmate populations. Yet they have traditionally viewed their role as custodial, as being responsible for providing appropriate housing and programs for the convicted felons they receive. No part of the system perceives controlling prison overcrowding as its responsibility (McManus, 1979). Even if the objectives of the various parts of the system were the same, the system lacks a forum for coordination and thoughtful planning. "It should not be surprising, then," says McManus, "that the sum total of our combined, but uncoordinated efforts, is less than impressive." (McManus, 1979, p. 5).

Misalignment of Responsibilities. The second structural aspect of the criminal justice system that contributes to prison overcrowding is a basic misalignment of responsibilities between counties and the state on penal matters (Nardulli, 1984). Local prosecutors and judges have essentially unrestricted

discretion to prosecute, convict and incarcerate offenders as long as sentences comply with broad state statutes. However, it is the responsibility of state government to provide prison beds for every incarcerated person. Local governments can "spend" correctional resources without regard to their cost or scarcity and state governments must foot the bill. (This misalignment also exists in states where local courts are part of a unified state court system. In such cases, the misalignment of responsibility is between the judicial branch on one hand and the executive and legislative branches on the other hand.) This misalignment distorts what Nardulli calls the benefit-cost calculus and violates a fundamental tenet of fiscal federalism: "a jurisdiction will effectively produce optimal levels of public goods only when that jurisdiction captures the benefits of a service and bears the full cost of providing the services. In such circumstances, strong incentives exist for decision makers to weigh carefully the benefits versus the costs of their actions" (Nardulli, 1984, p. 367). The independence of judges allows localities to reap the benefits but bear almost none of the cost of incarceration.

There is an unusually strong incentive for local governments to consume penal resources (Nardulli, 1984). First, most local governments do not pay a

user fee of any type for the consumption of prison space. Second, the alternative to incarcerating an offender is to place him or her in a local program (probation, diversion, local detention, work release, community service) often at county expense. Third, local officials have been faced with simultaneous public demands to get tough and to hold or reduce public spending. Together, these three factors exacerbate the misalignment and help push prison populations to the breaking point.

One could argue that the courts should not have to take correctional capacity into account when making sentencing decisions. "No price can be put on justice," the argument goes, "especially when issues of public safety are paramount in the minds of citizens" (Nardulli, 1984, p. 370). This logic ignors more persuasive arguments. First, it fails to recognize the difference between fact finding and sentencing. No one questions the need for the judiciary to be insulated in its determination of whether a defendant is guilty of a criminal act. Politics and resource limitation issues have no place here. However, sentencing is a different matter.

> Insulating the sentencing decision from legimate political considerations. . . is less sound, for no widely accepted notion exists of what a "just" sentence is. No

> substantial agreement even exists on the purposes to be achieved in punishing criminals. . . .In lieu of a concrete, widely shared, operational theory of a "just" sentence, why should legitimate political considerations not play a role? Why should not the demand for prison spaces explicitly compete for scarce dollars with the demand for other public goods and services (Nardulli, 1984, p. 370-71)?

Second, states have a legal and moral obligation to avoid placing incarcerated persons in conditions that are inhumane (Minnesota Sentencing Guidelines Commission [MSGC], 1982; von Hirsch, 1984). Overcrowded prisons inherently foster unconstitutional and inhumane conditions. To the extent that a state ignores the obvious impact of its sentencing and release laws on prison populations, it is arguably that state's intent to operate its prisons beyond their capacity. "The sentencing policy of a civilized society cannot be one which involves committing offenders to institutions which lack room for them" (von Hirsch, 1984, p. 177).

Environmental Influences

The two structural weaknesses discussed above--actor independence and the misalignment of

responsibilities--have made the criminal justice system vulnerable to two powerful environmental influences.

Concern About Crime. First, increasing public concern about crime has resulted in a harsher public policy regarding the use of incarceration. The law and order outcry of the late 1960's and early 1970's was based on a belief that America was experiencing a crime wave. Between 1971 and 1981, the U.S. Department of Justice's Uniform Crime Reports (UCR) showed an overall increase of 39% in UCR reported crimes (BJS, 1983).

The UCR crimes include four violent crimes (homicide, rape, robbery, and aggravated assult) and four property offenses (burglary, larceny, motor vehicle theft and arson.) Reported violent crimes showed a 46% overall increase and some categories of non-violent crimes reflected similar increases. For example, reported larceny-theft increased 46% and burglary 40%.

There is a strong underlying assumption that increased use of incarceration will reduce crime. This attitude is epitomized in a recent statement by a Kansas state legislator during a committee hearing: "If we really wanted to reduce crime, we'd deal with the issue of overcrowding in our prisons and have the courage to raise the money needed to build a place to

put criminals." (Myers, 1985, p. 8). Together, the reported rise in the crime rate and the common belief that the solution lies in the increased use of incarceration has created great pressure on elected and appointed officials to be more punitive.

The increasing pressure can be seen in a national opinion poll conducted for the U.S. Department of Justice. The survey asked, "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?"

Table 1

Attitudes Toward Severity of Courts, 1972 & 1982

Year	Too Harshly	Not Harshly Enough	About Right	Don't Know
1972	6%	66%	16%	11%
1982	3%	86%	8%	4%

Note. From Sourcebook of Criminal Justice Statistics -1983 (p. 256-257) by Edward J. Brown, Timothy J. Flanagan, and Maureen McLoed, eds., Bureau of Justice Statistics, 1983, Washington, D.C.: U.S. Government Printing Office.

The table shows that between 1972 and 1982, the number of people believing that courts were not punitive enough grew by 20% from an already high percentage of 66% to 86%. In response, elected and appointed judges have become increasingly reluctant to use non-prison punishment options. When confronted with a marginal case, judges have shifted their sentencing practice from giving probation or some local jail time to giving some local jail time or some prison time (Nardulli, 1984).

Parole boards have taken a similar position. They have tended to hold offenders in prison longer in response to perceived public pressure. Crimes committed by released offenders make parole boards vulnerable to claims that they release offenders too soon. Given the political sensitivity of the job, parole boards often opt to delay release of offenders, thereby increasing the prison population.

State legislatures have compounded the overcrowding crisis by enacting determinate sentencing laws (BJS, 1983). These laws establish fixed prison terms usually requiring significantly longer prison stays with no chance of early parole. Their passage came on the heels of increasing disillusionment with indeterminate sentencing, a sentencing scheme in which judges select a minimum and a maximum sentence from statutorily established

ranges and state parole boards determine the actual time of release. Research found that rehabilitation programs, once hailed as the most appropriate correctional model, were not working as predicted. Other research concluded that no one is able to predict with reasonable certainty who is dangerous and who is not. The public was becoming more and more aware that the sentence served was generally much shorter than the maximum sentence imposed (because of parole release) and a wide disparity in sentencing for similar offenses was revealed (D. Barclay, 1983). At the same time, reported crime rates were rising.

In 1976, Maine passed the first determinate sentencing scheme and abolished its parole board. Since 1976, at least eight other states have enacted some form of determinate sentencing and nine have adopted some form of sentencing guidelines. Forty-three states have passed one or more types of mandatory prison terms and removed the courts discretion over whether a convicted felon goes to prison (BJS, 1983).

Demographic Changes. The second major environmental factor affecting prison populations is a change in America's age structure caused by the aging of the post World War II baby boom generation. As the population in the crime prone age group--15 to

21 years old--has begun to drop, so has the crime rate. Significant decreases have occurred across the country each year since 1981 (Wall Street Journal, April 20, 1983, p. 21). The baby boom generation has essentially begun to outgrow crime. However, these lower crime rates do not immediately ease prison overcrowding:

> The same demographic shift that bodes well for crime rates bodes ill for prison crowding. This shifting age mix that should generate a lower crime rate over the 1980s can be expected to generate larger prison populations. The seeming paradox results from the difference between the peak crime ages and the peak imprisonment ages. The peak arrest rates occur from the ages of 16 to 18, whereas the peak imprisonment ages are the mid-twenties (Blumstein, 1983).

This demographic phenomenon works to aggravate the preexisting system weaknesses of the criminal justice system.

The public perception that the criminal justice system was not dealing harshly enough with law breakers is, in Easton's terms, an output failure. It diminished support for the system and created demands for policy changes. Although the degree of the response to these demands obviously varied by

jurisdiction and actor, nearly every part of the system appears to have responded by becoming more punitive. The resulting dramatic increase in the prison population created a demand-input overload. Prisons are bulging at the seams, some so severely that they have been declared unconstitutional. The system is now attempting to cope with stress from two conflicting demands: an increased emphasis on punitiveness and a need to control the prison population.

Traditional Responses to Prison Overcrowding

Until a few years ago, it was widely believed that prison populations were the uncontrollable end product of demographic factors and the crime rate (Knapp, 1983). Prison overcrowding was seen as a corrections problem, not the problem of the criminal justice system. Consequently, attempts to control the growth of inmate populations have been almost entirely incremental rather than systemic. Today, criminal justice practitioners are coming to perceive overcrowding as the result of explicit policy decisions by actors in the criminal justice system and recognize that "many of the factors which people feel are causing the crisis are issues the corrections subsystem **alone** cannot resolve" (Gottfredson & Taylor, 1983, p. vii).

Departments of corrections have traditionally maintained a passive custodial role. They have perceived their responsibility as providing appropriate housing and programs for whomever is incarcerated, whatever the number. Not surprisingly then, the first option traditionally used to manage the prison population has been to construct additional prison facilities. As the number of inmates sent to prison has grown, fiscal pressures have also increased. "State expenditures in the area of corrections increased a startling 14.5 percent from 1982 to 1983, nearly double the rate of growth for all other functions supported with state general revenues" (National Criminal Justice Association, 1985, p. 1). In fiscal year 1983, "State correctional systems reported capital expenditures totalling more than $358 million and bond issues and/or other financing mechanisms totalling nearly $1.3 billion to support capital improvements" (BJS, 1984, p.6).

In an effort to hold down construction costs, states have begun to convert non-correctional facilities (such as mental health or mental retardation hospitals) to prisons and to experiment with temporary modular trailer-house-type buildings. States are also examining lease/purchase arrangements where a private entity or local government will build

a correctional facility and lease it to the state. While these arrangements usually cost more (sometimes much more) in the long run, the periodic installment payments are less expensive year-to-year than outright purchase.

Ironically, there is an increasing belief that attempts to manage and control population growth by expanding prison capacity may be counter productive. Many correctional practioners now believe that the criminal justice system is at least partially capacity driven; that is, judges tend to incarcerate offenders in relation to available prison beds. In short, if prison spaces are available, judges will fill them. To the extent that this is the case, trying to alleviate prison overcrowding by expanding capacity only insures that these beds will be filled as nearly as fast as new beds can be brought on line.

One such study (Nagel, 1977) compared states that pursued capacity expansion to those that did not over the 20 year period from 1955 to 1975. As shown in Table 2, the study concluded that those 15 states that significantly expanded their prison capacity experienced a prison population growth in excess of their expansion. The 15 states that did not expand actually experienced a decrease in their prison population.

Table 2

Changes in Prison Capacity and Population by State Grouping, 1955 to 1975

State Grouping	Percent Increase in Prison Capacity	Percentage Change in Prison Population
The 15 states with the most active prison construction programs	56%	57% increase
The 15 states with limited prison construction programs	4%	9% decrease

Note. From "On Behalf of a Moritorium on Prison Construction", by William Nagel, 1977, Crime and Delinquency.

There is a growing feeling that prison construction is not the solution to prison overcrowding. A spokesman for the Mississippi Department of Corrections, one of the brick and mortar states, recently told a reporter: "As soon as judges find out that there are available beds, they send people to fill them. We still have the same backlog no matter how much we build" (Corrections Magazine, 1981, p.18). "No one can point to an active prison building state that is not overcrowded...states cannot build their way out of the problem" (Kansas Advisory Committee on Prison Overcrowding [ACPO], 1984, p. 16).

Other methods of population control and management have included alternatives to incarceration, early release mechanisms and some sentencing changes. Almost all have been incremental. In the context of controlling prison populations, alternatives to incarceration refer to a variety of community based sanctions intended for offenders who would otherwise go to prison. A few of these programs have been quite successful, but most have failed to divert a significant number of offenders. Instead, "people who previously would have gotten probation are being placed in community corrections" (State Government News, July 1981, p. 5). This phenomenon, called widening the net, occurs because judges are reluctant to divert the target population from prison short of a requirement that they do so and there is a natural tendency to provide more structure for non-prison bound offenders if it is available.

Early release mechanisms refer to statutes that release felons before their statutory parole eligibility date as a means of controlling prison populations. These mechanisms are usually triggered when the prison population reaches a certain percent of capacity.

The principal sentencing change believed to be capable of controlling prison overcrowding is sentencing guidelines. This sentencing scheme establishes a presumed sentence for each crime usually based on its severity and the offender's prior criminal record. Sentencing guidelines adopted to date give judges varying degrees of discretion in the sentencing of offenders and may or may not control prison populations.

CHAPTER III

Case Histories: A Review of Three States' Efforts To Manage Their Prison Populations

This chapter describes the efforts of three states to manage and control their prison populations. They were selected because their initiatives stand out in some unique way. The Kansas attempt to reduce the number of nonviolent offenders sent to prison and their length of stay appears to be the broadest such effort in the United States. Michigan was the first state to pass an emergency release act to release offenders when the state's prison population exceeds a predetermined limit. The act has been used as a model by other states that have since adopted similar statutes. Minnesota was the first state to adopt statewide sentencing guidelines and the only state to use an absolute limit on prison capacity. Sentencing guidelines have since been replicated in varying degrees by several other states. The Kansas and Michigan initiatives are both incremental attempts to control prison overcrowding. Minnesota's sentencing guidelines attempt to control the prison population systemically.

Kansas Case History

Background. The Kansas incarceration rate has grown steadily from 76 per 100,000 in 1975 to 173 per 100,000 in 1983 (ACPO, 1984; BJS, 1985).

The 4,305 inmates in the prison system on March 18, 1985 compares to an optimum management capacity of 2,858 and a maximum capacity of 4,069 (Kansas Department of Corrections [KDOC], 1985). Optimum management capacity is the Department's desired operating capacity and translates to one inmate per one single cell. Maximum capacity is defined as the greatest number of inmates that the system can tolerate without significant risk and is two inmates per cell containing 56 or more square feet (KDOC, 1984).

The sharp rise in the Kansas inmate population can be attributed to public officials mirroring citizen concern about crime. A study of legislative changes in Kansas sentencing and parole statutes from 1976 to 1983 found that virtually all the changes during the period resulted in more offenders being sent to prison and increased their length of stay (Barclay & Simmons, 1983). Other research by the Department of Corrections found that judges significantly lengthened minimum sentences on their own initiative beyond that required by statutory

changes (KDOC, 1983). Similarly, a review of the release practices of the Kansas Adult Authority (the state's parole board) found a significant reduction in the number of paroles granted (ACPO, 1984).

The natural tendency to reflect the public mood and impose harsher sanctions is likely to have been compounded by a particular widely publicized crime. In May 1982, the Adult Authority released Nathaniel "Yorkie" Smith from Kansas State Penitentiary. Smith had been convicted of second degree murder in 1975 and received a 12 year to life sentence (KDOC, 1985). In December 1982, Smith was arrested and charged with killing three people and beating and sodomizing a teenage boy. The killings occurred within three months of Smith's release. The Attorney General reviewed Smith's prison records and learned of his aggressive behavior in prison which included the rape of another male inmate. The Attorney General repeatedly criticized the Adult Authority in public for its decision to release Smith. There appears to be little doubt that the continuing criticism affected not just the harshness of the Adult Authority's subsequent parole decisions but the attitudes of other actors in the criminal justice system and their willingness to take risks.

By the end of the 1983 legislative session, there was a general consensus that prison overcrowding was a serious problem, but little agreement on how it should be solved. In May, following the session, the Secretary of Corrections (a former district court judge and law professor) announced the establishment of a 15-member Advisory Committee on Prison Overcrowding. He charged the Committee with analyzing the problem and making recommendations on how it should be solved. Great care was taken when selecting the members to include prominent representatives from each part of the criminal justice system, including law enforcement, prosecution and the defense bar, judges, the Attorney General, the Adult Authority and citizens. The Committee met throughout the remainder of 1983 and released its report in January of 1984.

The Committee concluded that "Kansas has adopted a pattern of incarceration it can neither afford nor sustain. The solution to overcrowding must lie principally with changes in sentencing practices and statutes" (ACPO, 1984, p.1). The Committee's recommendations included changes in sentencing statutes designed to reduce the number of offenders sent to prison and their length of stay, greater use of community alternatives to incarceration, the

establishment of a sentencing commission to review sentencing practices, the adoption of a prison population cap and an early release mechanism, a moderate expansion of minimum custody space, and a moritorium on the addition of any medium or maximum custody space (ACPO, 1984).

Several key issues shaped the Committee's recommendations. The first was information about the types of offenders sent to Kansas prisons. The Committee's report states that "Contrary to public perceptions, Kansas prisons are not filled with serious violent offenders. Forty-five percent of incarcerated inmates are convicted of non-violent Class D and E offenses. Even more surprising is (the fact) that 35% of inmates have no prior felony record, not even felony probation. An additional 24% have only one prior felony conviction.... Kansas uses the harshest and most expensive sanction it has available to punish large numbers of first time lessor felons" (APCO, p. 18). This information led the Committee to conclude that many incarcerated offenders could be made to accept responsibility for their actions in non-prison settings.

Second, the Committee concluded that there appears to be little if any relationship between incarceration and the crime rate (APCO, 1984).

Popular wisdom suggests that an increase in the use of incarceration should result in a corresponding decrease in the crime rate. The Committee reviewed the results of an analysis comparing crime rates and incarceration rates in other states. The study found that states with high incarceration rates were as likely to have high crime rates as low crime rates and vice versa (L. Barclay, 1983.) In short, the Committee could find no evidence that a significant relationship exists. A related issue was whether, once incarcerated, the public is best served by longer sentences. The Committee's report cites a Michigan analysis that inmates released on or before serving their minimum sentences do much better on parole than felons released later (ACPO, 1984). This information suggests that longer sentences may actually be counter productive.

Finally, the Committee perceived the cost of prison construction to be so high that prison capacity should only be expanded as a last resort. The cost of incarcerating an offender in Kansas is approximately $11,000 per year (KDOC, 1984). Construction of medium security prison beds is estimated to cost $75,000 apiece, bringing the capital cost of a 500 bed prison to $35 million. This high initial cost--which represents 10% of total

costs over the facility's life cycle--is soon dwarfed by operational costs which represent 90%. Without using bonds to finance construction (which make the cost even higher), the total true cost of such a facility exceeds $350 million over its life cycle.

The large number of property offenders in prison and the apparent myth that more incarceration results in less crime convinced the Committee that incarceration should be reserved for the most serious offenders. Inexpensive community alternatives should be used for most property offenders (ACPO, 1984).

Enactment. The Governor felt very strongly that the political sensitivity of the Committee's sentencing proposals required a special strategy. He insisted that his staff and the Department of Corrections describe the seriousness of the problem, but avoid making any recommendations to the Legislature on how it should be solved. The Secretary of Corrections and his staff presented legislative committees with detailed analyses of the projected population growth and the cost of constructing the facilities required to house the increase (Kemp, 1984; KDOC, 1984). The potential for violent disruption and possible federal court intervention was also explained.

The legislative consensus on the seriousness of the problem gradually expanded to include a consensus that sentencing changes would have to be made. Ultimately, a Republican legislator proposed in frustration that a bill containing the Advisory Committee's sentencing recommendations be introduced.

The legislation that passed was very similar to that proposed by the Committee and in some ways more progressive. The bills (SB 858, SB 829, SB 495, and SB 882), contained the following provisions:

1. A presumptive sentence of probation was established for first-time class E property offenders, the lowest felony class.
2. The minimum sentence for class D felonies was reduced from a range of two to three years to a range of one to three years. The minimum sentence for class E felonies was reduced from a range of one to two years to one year. These new minimum terms were applied retroactively as well.
3. Four theft related class D felonies were reduced to class E felonies.
4. The dollar threshold at which six theft and property related crimes become felonies was increased to $150. Previously, the

threshold had been $50 or $100 depending upon the crime.

5. The Community Corrections Act funding formula was modified in two ways to encourage the expansion of community based alternatives to incarceration.
6. Funds were appropriated to expand prison space by 522 optimum management capacity beds and 610 maximum capacity beds.

In addition, the Legislature appropriated $150,000 to study the space needs of the Department of Corrections before the 1985 legislative session. The sentencing changes alone were estimated to prevent a rise in the prison population of roughly 1,100 Class D and E felons (Kemp, 1984).

Implementation. During the summer of 1984, the courts reviewed the sentences of incarcerated class D and E felons and retroactively applied the shorter minimum sentences where they believed it to be appropriate. This resulted in a reduction of the controlling minimum sentences of 213 felons (Kemp & Shirley, 1985).

In the first months after the passage of the population control bills in the 1984 session, the inmate population remained reasonably stable and

actually dropped in one month (KDOC, 1985). In November, the population began to climb again until in January the Department had the largest net increase ever experienced in a single month--106 inmates.

Table 3

Kansas Prison Population: Net Change From Previous Month

Date	Net Change From Previous Month	Cumulative Growth
1-31-84	88	88
2-29-84	56	144
3-31-84	88	232
4-30-84	32	264
5-31-84	12	276
6-30-84	32	308
7-31-84	5	313
8-31-84	-8	305
9-30-84	24	329
10-31-84	23	352
11-30-84	47	399
12-31-84	80	479
1-31-85	106	582
2-28-85	-28	557
3-31-85	60	617

Note. From the "Kansas Department of Corrections End of Month Population Report", Kansas Department of Corrections, December, 1984 and March, 1985.

The continuing rise in the inmate population is caused by two factors. First, the release rate of the parole board dropped sharply in 1984 and early 1985 to an all-time low of 39% of all inmates who received parole release hearings. This compares to

an FY 1983 release rate of 80% and an FY 1984 rate of 64% (Kemp, 1985). Analysis by the Department of Corrections (1985) found that 88% of the population increase in FY 1985 was due to changes in the release practices of the Kansas Adult Authority. (The commitment rate by judges has remained constant since the end of the 1984 session.)

Second, the rate of parole revocations initiated by the Department of Corrections parole section for technical violations crept back up to 20-22 per month after June 1984, twice the rate during the previous three month period (Kemp, 1985). This factor accounted for the remaining 12% of the population growth. During the 1984 legislative session, the Secretary of Corrections reviewed the Department's own practices to be sure that it was doing everything administratively possible to control the prison population. He concluded that parole field units could reduce the number of individuals for which the Department initiated revocation proceedings for technical violations of their conditions of parole. Technical violations are administrative in nature and do not include new crimes. Examples include excessive consumption of alcoholic beverages, failing to report to a parole officer as required, and failure to participate in a treatment program. At

the Secretary's direction, the deputy secretary of community services and the parole administrator met in March 1984 with the heads of the regional parole offices and asked that they only initiate revocation proceedings against technical violators as an absolute last resort. The revocation rate was reduced by half, from 20-22 per month to 10-12 per month. This reduction lasted for three months.

The changes in the release practice of the parole board and revocation practice of the parole units occurred despite descriptions of the extent of overcrowding by the Department of Corrections and the Legislature's difficult decision to reduce sentences rather than commit the financial resources necessary to signficantly expand capacity. By failing to follow the policy lead of the Legislature, these independent actions resulted in an even more rapid increase in the prison population than projected.

In his 1985 legislative message, the Governor pointed out that the population was still climbing and asked the Legislature to work with his staff and the Department of Corrections to develop mutually agreeable solutions to prison overcrowding. Legislative leaders appointed an ad hoc working group of four legislators to study the overcrowding problem. As a result of the persistent urging of the

Secretary of Corrections, the Legislature may appropriate funds for a limited expansion of prison capacity. However, numerous legislators have expressed great reluctance to spend the money required for a major expansion of prison beds. No more changes in sentencing or release policies have been considered.

The Department of Corrections inmate population reached 4,212 by the end of February, 1985, 371 in excess of maximum capacity (KDOC, 1985). The medium security prison currently being constructed will be full virtually as soon as it is opened in the summer of 1985. The facility will expand capacity by 378 optimum beds and 696 maximum beds in 1985.

The major gains in holding down the prison population made in 1984 have been largely overshadowed by the unanticipated change in the release practices of the parole board. The prison population continues to rise rapidly, leaving the Department's institutions overflowing. Any expansion of capacity funded by the Legislature in the 1985 session will provide only minimal relief in the immediate future.

Michigan Case History

Background. The Michigan prison population has grown dramatically in recent years, nearly doubling between 1973 and 1982 (Michigan Department of Corrections [MDOC], 1984). For most of the 1970's, the prison population exceeded available capacity by as many as 2,500 inmates. The rapid growth is attributed to judges giving longer sentences, legislative adoption of mandatory sentencing laws and a public initiative that removed the ability of most prisoners to earn time off their sentences for good behavior (Mathias & Steelman, 1982). As the population grew, overall prison conditions deteriorated and the tension level of inmates and staff increased.

Prior to 1980, the federal district court had taken what policy-makers felt was an activist role on conditions of confinement issues and a new lawsuit had been filed in Michigan (Boyd & Padden, 1984). The Governor and legislative leaders increasingly felt that court intervention was imminent. Both wanted to retain control over the prison system and believed that it was preferable for the state, rather than the federal court, to determine criminal justice policy.

In January 1980, the Governor appointed a nine member Joint Executive-Legislative Task Force on Prison Overcrowding to analyze the problem and make recommendations (Boyd & Padden, 1984). The Task Force was composed of six legislators and three representatives of the executive branch. Despite severe difficulties in reaching consensus, the Task Force completed its work in six months. It made a variety of generally moderate recommendations ranging from an expansion of community alternatives to additional prison construction. Among the recommendations was a proposal to enact a Prison Overcrowding Emergency Powers Act (EPA) as a relief valve of last resort. The mechanism, which would release inmates when the prison population exceeded a predetermined number for a specified length of time, was intended to avert a major inmate disruption or federal court intervention.

Enactment. As passed, the Michigan Emergency Powers Act (1980 Public Act 519) contained the following provisions:

1. A newly created corrections commission must request the Governor to declare a state of emergency when the prison population exceeds the system's rated design capacity for 30 consecutive days.

2. Upon receiving such notice, the Governor must declare a state of emergency and the minimum sentences of all eligible prisoners must be reduced by 90 days by the Director of the Department of Corrections. The reduction will create a new pool of parole-eligible inmates. The parole board will then screen and release inmates from the pool.
3. If these actions do not reduce the population of the prison system to 95% of rated design capacity within 90 days, the minimum sentence of all eligible prisoners will again be reduced by 90 days.
4. Once the prison population is reduced to 95% of rated capacity, the Governor is required to rescind the state of emergency.

Most serious offenders, that is, those with life terms (about 1,600 persons) and those who have already been kept past their minimum sentence by the parole board are not eligible for a sentence reduction (Mathias & Steelman, 1982).

Passage of the EPA was relatively easy because the Governor, Director of Corrections and key legislative leaders all supported the proposal. Furthermore, Michigan's severe budget crunch "made

massive prison construction an unthinkable luxury" (Mathias & Steelman, 1982, p. 5) and the spectre of an impending riot and federal takeover of the prison system "made the Emergency Powers Act an unavoidable necessity" (Mathias & Steelman, 1982, p. 5). The state's financial straits were compounded in November 1980 by voter rejection of a referendum to fund prison construction through a tax increase.

The passage of the EPA represented the first time that any state adopted an early release mechanism to control its prison population. The legislation served as the model for 14 more states which have followed Michigan's pioneer effort (M. Hyler, personal communication, January 12, 1984).

Implementation. Following enactment in December 1980, the law was challenged on constitutional grounds. The initial trial court upheld the Act, but it was declared unconstitutional by the state appeals court. In May 1981, the Michigan Supreme Court ruled that "the Act was a legitimate expression of the legislature's constitutional authority to provide for indeterminate sentences" (Boyd & Padden, 1984, p. 16).

Between the time the Act's constitutionality was upheld and January 1985, emergencies have been declared six times. For the last five times, the

initial round of sentence reductions was not sufficient to reduce the population below 95% of capacity, thereby causing the Act to be retriggered an additional five times for a total of eleven population reductions (Boyd & Padden, 1984; MDOC, 1985).

The first emergency declaration was on May 20, 1981, just a few days after the Act's constitutionality was upheld (Boyd & Padden, 1984). The population of the prison system had reached 13,111 with a capacity of 12,874. One 90 day sentence reduction was required to reduce the population below 95% of capacity. At the same time, capacity was increased to 13,285 by the opening of a new prison. When the emergency was terminated in August 1981, the inmate population had been reduced to 12,407, 93% of capacity. Overall, the net effect was to reduce the inmate count by approximately 700 inmates.

The second emergency declaration was made on May 14, 1982 (Boyd & Padden, 1984). The inmate population had grown to 13,426 with a capacity of 13,251. Ninety days later, the population had dropped to only 99% of capacity. This triggered a second sentence reduction and the population was ultimately reduced

by about 900 prisoners to below 95% of capacity. The declaration ended in September 1982.

The third state of emergency was declared on December 17, 1982 (Boyd & Padden, 1984). The population was 13,212 and the capacity was 13,047. Two succeeding sentence reductions failed to draw the population down below 95% of capacity. The lowest population level reached was 12,781, some 390 prisoners greater than 95% of capacity. The Attorney General ruled that failure to drop below 95% after two tries fulfills the statutory requirement and in effect rescinds the emergency. Once this has occurred, a new emergency must be declared.

On October 1, 1983, the fourth overcrowding emergency was declared by the Governor (Boyd & Padden, 1984). Again, two sentence reductions were required with the second declared in January 1984.

In 1983, the Emergency Powers Act was amended to separate the male and female prison systems for the purposes of the Act (Boyd & Padden, 1984). Prior to the amendment, the two systems were combined in the capacity computation. This practice gave no relief to the state's only female facility, which was generally more overcrowded than the men's facilities, until the total system population exceeded its capacity for 30 consecutive days. The amendment

allowed an emergency declaration in either system as their respective populations required.

An emergency was declared for the women's system on May 7, 1984 (MDOC, 1985). At the end of 90 days, the female population dropped to 524, still 47 over the capacity of 477. The Governor declared another emergency on August 4, 1984. This also failed to result in a reduction to 95% of capacity.

On May 17, 1984, another state of emergency was declared for the men's system. By August 1984, the population had still not fallen below the 95% mark (Corrections Digest, 1984). A second emergency was declared on August 14, 1984 (MDOC, 1985). It too was unsuccessful.

Increasingly, the EPA was unable to reduce the population below 95% of capacity. This occurred for two reasons. First, during the time that the EPA was being used there is no evidence that prosecutors or the courts modified their charging and sentencing practices to alleviate prison crowding. In fact, despite considerable publicity regarding the need to reduce crowding, there was "a marked increase in commitments to prison during 1983" (Boyd & Padden, 1984, p. 27). This increase is cited by the Michigan Department of Corrections as a major reason for the limited effectiveness of the Act. In addition, the

average length of stay increased from 4.02 years in 1982 to 4.34 years in 1983 (MDOC, 1984). While this appears to be only a slight increase, it generates a need for 1,800 additional prison beds. Not only has the Department's research indicated that judges have been more punitive, but there are indications that they purposely compensated for EPA reductions and the increased use of community residential programs by lengthening sentences.

Second, there were a large number of inmates who were not eligible to have their sentences reduced because of the seriousness of their offense or the fact they they had already passed their parole eligibility date at the time an emergency was declared (Boyd & Padden, 1984). The eligibility criteria could have been changed by the Legislature to increase the size of the potential parole eligible pool, but this was not done.

Conditions of confinement litigation continued in Michigan during the period that the Emergency Powers Act was being used. On June 22, 1984, the state entered into a consent decree in federal district court and agreed to improve living conditions for 7,400 inmates in three Michigan prisons (Corrections Digest, 1984). These improvements are estimated to cost approximately $30

million over six years. The suit, filed by the U.S. Justice Department following riots at the three prisons in 1981, charged the Michigan Department of Corrections with cruel and unusual punishment. If the state fails to comply with the conditions of the decree, the suit can be reactivated.

At the time of the final retriggering of the Act for both the male and female systems in August 1984, the Director of Corrections issued a statement that "unless the people of Michigan are willing to pursue an aggressive prison construction program over the balance of this decade, the state will be forced to continuously reduce the prison population through early release programs such as the Emergency Powers Act" (Correctional Digest, 1984, p. 2). Capacity expansion is the best long term solution, he said.

When the mechanism failed to reduce the prison population to 95% of capacity for both systems by December 1984, Michigan Governor James J. Blanchard refused to declare another emergency, saying that he did not intend to use the Emergency Powers Acts again (J.J. Blanchard, personal communication, December 14, 1984). He called the Act a threat to public safety and directed the Michigan Department of Corrections to find housing options for the state's inmates by

manipulating the way capacity is counted and planning for the construction of additional prison beds.

If Michigan had not adopted the Emergency Powers Act, the Michigan Department of Corrections believes that the inmate population would be 2,000 to 3,000 higher than it is today (MDOC, 1985). However, the frequent use of the Act, concern about public safety and the continuing rise in commitments led to its rejection by the Governor.

Minnesota Case History

Background. Throughout the 1970's, a number of incremental attempts were made to reduce Minnesota's prison population. Chief among the reforms was the adoption of the Minnesota Community Corrections Act of 1973. The Act established financial incentives for community alternatives to incarceration and became the nation's model community corrections statute (Mathias & Steelman, 1982).

Major interest in sentencing reform surfaced in the 1975 legislative session and debate continued until 1978, when the Legislature established the Minnesota Sentencing Guidelines Commission (MSGC, 1982). The basis of concern was the state's highly indeterminate sentencing structure embodied in the Minnesota Criminal Code of 1963. The Code set the

minimum penalty for most felony offenses at zero and the statutory maximum at five, ten or twenty years. "Aside from a relatively few mandatory minimum sentences, judicial discretion to imprison or not to imprison was without limit in law. For those imprisoned without mandatory minimum sentences, the Minnesota Corrections (parole) Board had complete discretion to grant parole at any time" (MSGC, 1982, p. 3). The Code, grounded in a rehabilitation model, provided near total discretion for criminal justice practitioners so that sentences could be tailor-made to fit the unique circumstances of individual offenders.

Criticisms of the indeterminate model included sentence disparity, doubts about the success of rehabilitation, and a concern that it was too lenient (MSGC, 1982). There was general agreement among policy-makers, that reform should "(1) emphasize increased uniformity in sentencing; (2) base sanctions on factors related to a justice model of sentencing such as crime committed instead of on the utilitarian goal of rehabilitation; and (3) provide a structure to reflect these changes in goals and philosophy--that is, eliminate parole and establish determinate sentences" (MSGC, 1982, p. 3-4). The first determinate (fixed) sentencing bill was

introduced during the 1975 session but met considerable opposition. Resistance was based on a concern that sentencing must take into account available correctional resources and a recognition of the potential for sentence severity to be increased by repeated amendments during legislative consideration (Mathias & Steelman, 1982).

Enactment. A compromise was reached in 1978 after three years of legislative debate on several proposals. The Minnesota Legislature created the Sentencing Guidelines Commission to determine both dispositions and duration of confinement. The legislation (Minn. Stat. Sec. 244, Laws, 1978) charged the Commission with:

1. Promulgating sentencing guidelines for the district court based on reasonable offense and offender characteristics. The guidelines were to set out the circumstances under which imprisonment is proper and recommend a presumptive fixed sentence for those incarcerated.
2. Taking into substantial consideration current sentencing and release practices and existing correctional resources, including but not limited to the capacities of local and state correctional facilities.

The legislation also directed the Minnesota Corrections Board to review the sentences of offenders already in prison who, if sentenced under guidelines, would receive shorter sentences. The Board was to take the new presumptive sentence into consideration in determining whether to release the offender.

The Commission, composed of representatives of the criminal justice system and citizens, was to complete its work by January 1, 1980. The statute provided that the proposed guidelines would become effective automatically at the end of the 1980 legislative session unless the Legislature took affirmative steps to change them.

Guidelines Development. The legislation left three issues unresolved (MSGC, 1982). First, although the Legislature directed the Commission to take available correctional resources into substantial consideration, it left the interpretation of this provision to the Commission. The prison population had increased significantly since 1974, suggesting an imbalance between available resources on the one hand and sentencing and parole practices on the other. Ultimately, the Commission opted to interpret the legislation as requiring an absolute limit on future prison populations that was equal to current

capacity. This proved to be a very important decision:

> There is widespread feeling that the eventual success of the Minnesota Commission in providing feasible guidelines was their decision to interpret the mandate to consider correctional resources as an **absolute** limit on future prison populations, which made their task one of allocating scarce resources, and selling the guidelines they produced as the only responsible and practical option under the circumstances (Mathias & Steelman, 1982, p. 16).

The second unresolved issue was the purpose of sentencing within the guidelines framework. Sentencing goals fall into two categories: utilitarian, in which the sentence is a means of achieving some other end such as rehabilitation, incapacitation or the deterrence of others from committing similar crimes; and retribution or simple punishment, which is an end in itself. The highly utilitarian sentencing practices in place prior to sentencing guidelines resulted in considerable disparity in the sentences given for offenders with similar crimes and criminal histories (MSGC, 1982).

After extended discussion, the Commission settled on retribution as the primary sentencing goal. It reasoned that rehabilitation should not be pursued because it was discouraged by the Act when it directed the Commission to promulgate fixed sentences. Deterrence was not adopted because the Commission felt "there was little understanding as to what sort of sentencing structure would best support the goal of deterrence" (MSGC, 1982, p. 10). Incapacitation was rejected for practical and ethical reasons: (1) property offenders are more likely than many violent offenders to be recidivists, a situation which would result in property offenders receiving longer sentences than person offenders; (2) in order to incapacitate those violent offenders who may be recidivists, it is necessary to overpredict recidivism, thereby unfairly confining people who would not repeat violent crimes; and (3) it may be viewed as unfair to incarcerate offenders for crimes they have not yet committed (MSGC, 1982).

The Commission also concluded that its goal of retribution could be achieved without long prison sentences in most cases and, in many cases, without any prison sentence at all. Despite the logic of these conclusions, the Commission's choice of retribution as the only appropriate sentencing goal

and the nature of the guidelines that resulted from that choice have been widely viewed across the country as a radical departure from past criminal justice practice (MSGC, 1984).

The third unresolved issue was the extent of determinancy and uniformity to be provided by the guidelines. The legislation allowed the Commission to provide a 15% increase or decrease in the presumed sentence--in effect, a range--within which the judge could select a length of stay without departing from the guidelines. The Commission decided to narrow this 30% overall range to 15% (plus or minus 7% or 8%) which represents approximately two to four months for most crimes. Judges wishing to sentence an offender to more or less time in prison than the guidelines allowed would have to meet a "substantial and compelling" (MSGC, 1982, p. 13) reason test in order to depart from the guidelines.

At the outset of its work, the Commission examined current sentencing and release practices, and developed a population projection model to determine the impact of various guidelines proposals on prison population.

A sentencing grid was designed that combined offense severity on one axis and criminal history (prior record) on the other axis. The guidelines

model developed by the Commission built in an assumption that sentence length should increase more rapidly due to offense seriousness than due to criminal history (MSGC, 1982). The guidelines grid is shown in Table 4. The dark line that zig-zags across the grid is called the dispositional line. Offenders whose crime and criminal history place them in one of the cells above the line do not go to prison. Those falling below the line are incarcerated for the number of months indicated in their cell on the grid. Throughout the development of the guidelines, options that would lead to prison overcrowding were rejected (Mathias & Steelman, 1982).

Most guidelines developed in other jurisdictions prior to 1980 were descriptive in that they provided a summary of current practice and did not attempt to change sentencing behavior (Rich, Sutton, Clear, & Saks, 1982). The Minnesota guidelines were prescriptive in that they represented a new and different state policy on who should be incarcerated and for how long.

Table 4

Minnesota Sentencing Guidelines Grid*

SECURITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12	12	12	13	15	17	19 18-20
Theft Related Crimes ($250-$2500) Aggravated forgery ($250-$2500)	II	12	12	13	15	17	19	21 20-22
Theft Crimes ($250-$2500)	III	12	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential Burglary Theft Crimes (over $2500)	IV	12	15	18	21	25 24-26	32 30-34	41 37-45
Residential Burglary Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Criminal Sexual Conduct. 2nd Degree (a) & (b) Intrafamilial Sexual Abuse. 2nd Degree subd. 1(1)	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Criminal Sexual Conduct 1st Degree Assault, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 80-101	113 106-120	132 124-140
Murder, 3rd Degree Murder, 2nd Degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree (with intent)	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

*Cells below the heavy line receive a presumptive prison sentence. Cells above the heavy line receive a presumptive non-prison sentence which may include jail time. The numbers in cells above the line refer only to duration of confinement if probation is revoked. Presumptive sentence lengths are shown in months. Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. First degree murder is excluded from the guidelines and carries a mandatory life sentence.

Note: From The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation (p. 2) by the Minnesota Sentencing Guidelines Commission, 1984, St. Paul, Minnesota.

The Commission recognized from the start that it would need to cultivate the support of many interest groups. It developed an aggressively open approach (MSGC, 1982). Commission members served as liaisons with their respective constituencies. Input from criminal justice practitioners was actively solicited and public hearings were held around the state before and after implementation. Special efforts were made to cultivate press contacts. Although not all groups agreed with or supported the guidelines, none could claim that it had been denied an opportunity to provide input. No substantial opposition developed and the Legislature allowed the guidelines to go into effect in May 1980.

Implementation. As planned, the guidelines significantly altered the basis used to determine which offenders would go to prison and the duration of their incarceration. Before the guidelines were adopted, a majority of offenders with very limited criminal histories were not incarcerated regardless of the seriousness of the current offense. Conversely, most offenders with low severity crimes were incarcerated if they had extensive prior records. The guidelines changed the emphasis from prior record to severity of current offense. The most striking change can be seen in this example:

before adoption of the guidelines, 45% of offenders with high crime severity levels and low criminal history scores were sent to prison. After guidelines, 78% of these offenders were imprisoned--a 73% increase. In contrast, 54% of offenders with low severity levels and high criminal history scores were imprisoned. After guidelines, only 15% were imprisoned--a 72% reduction (MSGC, 1984).

In addition to changing who went to prison, the guidelines also changed the duration of confinement. Offenders convicted of violent crimes received slightly longer sentences than previously and property offenders sent to prison received shorter sentences (Mathias & Steelman, 1982).

At the time the guidelines were adopted in May 1980, the prison population was 2,020 and it was not projected to rise beyond 2,033 over the coming five year period (MSGC, 1984). The transition period between indeterminate sentencing and sentencing guidelines had essentially passed by April 1981, and the prison population was 1,942. (The slight drop is attributable to judges sentencing fewer property offenders to prison in accordance with the guidelines **before** they actually took effect, and the release of 95 inmates under the Act's retroactive provision.)

A higher commitment rate during 1982 and changes in prosecutorial charging practices significantly increased the prison population. Prosecutorial manipulation of criminal history scores "pushed" offenders horizontally across the guidelines grid, yielding higher criminal history scores and heavier sanctions. A minor change in charging practices has a major impact on prison commitments (MSGC, 1984).

However, the biggest impact came as a result of the 1981 Legislature's decision to triple the mandatory minimum sentences for use of a firearm and to increase the minimum sentences for second or subsequent offenders by two-thirds (MSGC, 1984).

As yet unaffected by the mandatory sentencing law, the population increased from 1,936 at the end of 1981 to 2,015 at the end of 1982. Prison population projections indicated that it would rise to 2,738 by the end of 1987 (MSGC, 1984). A maximum security prison was completed in 1981 which boosted the state's cell capacity from 2,072 to 2,440 (MSGC, 1984).

To counteract the rise in the population, the Commission began to develop legislative and administrative remedies. Three legislative proposals were prepared for submission to the 1983 Legislature. All three were adopted. The proposals included

provisions to allow good time to be earned on mandatory minimum sentences, make reductions in sentence durations promulgated by the Commission retroactive, and reverse the effect of a recent state supreme court decision which increased length of stay for violent offenders through a new interpretation of the definition of prior felony record (MSGC, 1984). "Judges immediately began resentencing inmates who were eligible under the retroactivity provision" (MSGC, 1984, p. 95) and this "resulted in prison population reductions for several months" (MSGC, 1984, p. 95).

The Commission recognized that the passage of its legislative proposals would not in itself be sufficient to bring the growing inmate population under control. Several modifications to the guidelines were considered (MSGC, 1984). Since the growth in commitments was primarily due to increases in the number of property offenders sent to prison, some of the ideas focused on ways to reduce the commitments of property offenders. The Commission discussed moving the dispositional line down the grid, thereby sending fewer offenders to prison. Another option would have given prior property offenses less weight than prior violent offenses. Changes in length of stay were also discussed (MSGC,

1984). Because of the already short prison stays for the least serious offenders, "the durational reductions needed to compensate for the increased commitments for property offenses had to come primarily from the area of serious person offenses" (MSGC, 1984, p. 92).

After much debate, the Commission opted to delay action on increased commitments of property offenders and concentrated on durational changes. Two proposals were prepared. The first allowed offenders who serve jail time as a condition of probation to receive credit for that time against a prison term if probation is revoked. This was estimated to shorten length of stay by four to five months for qualifying offenders. The second proposal provided "substantial reductions in grid durations, particularly in the high severity, high criminal history portion of the grid" (MSGC, 1984, p. 92). The proposal would have reduced sentences for 1,000 inmates convicted of personal and property crimes, and prevented the Minnesota system from reaching its capacity in January 1985 as projected (Criminal Justice Newsletter, 1983).

The reaction to the proposed modifications at the public hearing was "sharply critical of reducing sentence durations for offenders of serious person

crimes" (MSGC, 1984, p. 92). Consequently, the Commission chose not to make durational changes for violent offenders and instead modified the guidelines by shortening prison sentences for property offenders effective November 1, 1983. However, at the same time, the Commission increased the severity level of residential burglary from four to five on the grid, resulting in more commitments and longer prison stays for this offense.

Prison populations increased to a high of 2,143 by the end of July 1983, then dropped off. In October 1983, the Commission's modifications to the guidelines and the legislative changes became effective. In February 1984, the population began rising again and reached 2,078 by the end of May 1984 (MSGC, 1984).

The full impact of the increased penalty for residential burglary on the prison population will not be felt until 1985 and 1986. However, even with this increase, the prison population is projected to stay within the 2,335 program capacity for the near future (MSGC, 1984).

CHAPTER IV

Rehabilitating the Criminal Justice System: An Analysis and Prescription

Review of Case Histories

Each of the three states described in the case histories was experiencing similar problems. Their prison populations were rising and each questioned the wisdom of the traditional and costly brick and mortar solution. The parts of their criminal justice systems were functionally interdependent, and yet acted without common goals. All three states (as throughout the nation) had criminal justice systems that vested responsibility for prosecution and sentencing with one group of officials and the responsibility for bearing the cost of confinement with another group. All found that prison populations did or would exceed the correctional resources available to safely and humanely house them.

Kansas and Michigan attempted to control their prison populations using incremental options. Upon the urging of the Department of Corrections and the Governor, the Kansas Legislature slightly reduced

the number of offenders coming to prison and significantly reduced minimum sentence ranges for a number of property offenses. These changes, called "front door" options, focused the efforts to control the prison population on judges. No action was taken to control the release practices of the state's parole board. Suggestions to establish a limitation on the use of correctional resources and develop a statewide incarceration policy were not pursued (DOC, 1984). Acting independently, the parole board dramatically modified its release practices and forced the prison population to rise sharply over projections.

The Michigan Emergency Powers Act, intended to be reserved as a safety valve, became the state's principal population control mechanism. Its apparent initial success led to its adoption in other states as a key population control mechanism (M. Hyler, personal communication, January 12, 1984). This "back door" option focused on releases and no significant effort was made to control judicial commitments or statutorily determined length of stay provisions. Consequently, offenders continued to come in through the front door largely unchecked. The increase in judicial commitments and the technical problems associated with the operation of

the Act made it increasingly ineffective even as a safety valve. While the Act represented an attempt to establish a link between correctional resources and prison population, it treated only the symptom (overcrowding), not the cause of the problem (the lack of an incarceration policy consistent with available resources). A similar conclusion was drawn in a study of Washington's early release mechanism: "The early release of inmates results in only a temporary reduction in prison overcrowding...[it is] not the answer to long-term prison overcrowding given the underlying trend of sharply increasing prison populations" (Sims & O'Connell, 1985, p. 3).

In contrast, Minnesota chose to use a genuinely systemic approach to controlling prison population growth. The Commission members were guided in their efforts by their conclusion that the purpose of incarceration should be simple retribution. The decision to adopt an absolute limit on capacity established specific resource parameters. It defined the task before the Commission as one of resource allocation, of reserving the state's limited prison space for the worst offenders. The sentencing guidelines grid is a specifically articulated state incarceration policy that controls who goes to prison and how long they stay.

The sentencing guidelines concept, while systemic in nature, was not foolproof. Criminal history scores were manipulated by prosecutors and the Legislature enacted a limited number of stiffer penalties on its own initiative. However, the guidelines statute enabled the Commission to compensate for these changes and keep the prison population below capacity. Overall, the systemic approach taken by Minnesota has provided reasonably tight control of all three determinates of prison overcrowding: the number of offenders sent to prison, their length of stay and capacity.

Key Ingredients of Systemic Remedies

The problems encountered in Kansas and Michigan and the success in Minnesota indicate that systemic problems must be treated with systemic remedies. Incremental efforts are unlikely to be successful because they fail to resolve the inherent structural problems of the criminal justice system that drive the prison population and make it vulnerable to other pressures. The key ingredients of an effective systemic remedy to prison overcrowding would seem to be these three:

1. A determination of the state's purpose for sending felons to prison.

2. A specific determination of the limits of available prison capacity (correctional resources), both now and in the future.
3. A state incarceration policy that is specific in its articulation of who goes to prison and how long they stay.

Sentencing Purpose. Determination of the state's objective in sentencing an offender can have a significant effect on who should be sent to prison and the duration of confinement. For example, if a felon is to stay in prison until he or she is rehabilitated, the duration of confinement could be much longer or shorter than if they are simply being punished for their offense. Efforts to develop sentencing guidelines in other jurisdictions prior to the adoption of the Minnesota sentencing guidelines

> ...tended not to debate philosophical issues or goals of sentencing, but rather developed standards for sentences without developing standards for determining the bases of sentencing. That atheoretical or aphilosophical approach avoided the conflict that is an inevitable part of important and fundamental issues, and also resulted in sentencing standards that were

> too ambiguous to significantly reduce disparity (MSGC, 1982, p. 9).

Asked during an interview how important the articulation of retribution as the purpose of incarceration was to the development of Minnesota's guidelines, the Chief Justice of the Minnesota Supreme Court and an original Commission member replied emphatically: "You've got to have a purpose. If you don't have a purpose, all you have is a big pile of mush" (D. Amdahl, personal communication, August 1983).

Establishing Limits on Capacity. The determination of the limits of available prison capacity, both now and in the future, is crucial to a systemic solution. It forces the problem to be viewed as one of allocating scarce resources. By setting a limit

> ...it becomes clear that the choice is one of whom it is **most important** to imprison among the various possible candidates for confinement: one can imprison those whose crimes are serious, or else those who have previous criminal records, but not all of both groups.... When someone objects that the Guidelines generally would not imprison recidivist car thieves and other lesser

> felons, the response becomes: If you confine this group, then you have to release some other class of offenders in order to stay within available resources. It would mean, for example, releasing first offenders convicted of more serious crimes. Is that a tradeoff you are willing to make (von Hirsch, 1982, p. 177-78)?

However, von Hirsch argues that the strongest reason to adopt a limit on the prison population is ethical:

> It is simply wrong to sentence people to overcrowded prisons. As studies and recent court cases suggest, overcrowding renders prison conditions intolerable: the daily discomforts of prison life become much worse; frictions among inmates that can lead to violence are exacerbated; and the institution's ability to insure prisoners' safety diminishes (von Hirsch, 1982, p. 177-178).

It would appear, he concludes, that a population constraint like Minnesota's is required by common sense.

State Incarceration Policy. A state incarceration policy that is specific in its

articulation of who goes to prison and how long they stay is central to controlling prison populations. First, "most situations of prison overcrowding result from the collective, but unguided, actions of judges and parole boards, i.e., the product of an absence of overall sentencing policy" (MSGC, 1982, p. 14). The development and implementation of a specific incarceration policy forces the parts of the criminal justice system to work in concert at least when it comes to deciding who will occupy the state's finite prison beds. It limits the opportunity for the conflicting goals of the parts of the system and the misalignment of penal responsibilities to result in the incarceration of offenders in excess of available resources.

Second, as a practical matter, it is not possible to reliably calculate whether a particular prison capacity will be exceeded unless a state's incarceration policy is specific, thereby minimizing the discretion available to judges and parole boards (von Hirsch, 1982). The policy is, in effect, the formula that controls the size of a state's prison population. If a clear and definitive policy cannot be articulated, resources cannot be used effectively.

Implementing Systemic Remedies

Unfortunately, the political forces at work within the criminal justice system make it unlikely that its actors will be able to reach an amiable consensus on how to control the prison population on their own. This is because of their independence and because, inherently,

> Conflicts of interest...spring from differences in the explicit goals which officials pursue, and in their modes of perceiving reality. In any organization, no two members have exactly the same explicit goal.... Differences in modes of perceiving reality spring from the value structures implicit in the trained outlooks associated with various technical specialties (Downs, 1967, p. 50).

Downs' statement, intended to apply to intraorganizational systems, applies equally well to larger systems composed of multiple organizations. If these conflicts are allowed to flourish unchecked, Downs says, "the actions of some members will offset those of others" and diminish the system's ability to achieve desired objectives. In these situations, some hierarchical authority must be used to settle conflicts. Victor H. Vroom (1976) drew a similar

conclusion in an article on decision making. He argues that when actors within a system do not share organizational goals and when conflict is likely, a higher authority should solicit their ideas and suggestions and then make the decision itself.

No such higher authority exists within the criminal justice system. Its parts act independently and no one agency or part oversees the work of the rest of the system. Only state legislatures have the power to provide the direction needed to align system goals and resolve conflicts that result in largely unchecked prison overcrowding. Legislatures have two basic options: they can tackle the task themselves or they can create a separate entity and empower it with the authority to design and implement a systemic solution. Neither approach insures success.

State legislators have been a major cause of prison overcrowding themselves. Individually and collectively, local legislators have mirrored and championed the "get tough" cause. "In short, local politicians have funded law and order campaigns at state expense" (Nardulli, 1984, p. 368). It is therefore difficult to imagine a state legislature crafting a specific systemic solution to prison overcrowding. It must resist pressures from both

criminal justice system actors (whose discretion must be restricted to be effective) and from the public.

However, each of the critical elements have been adopted in varying degrees by state legislatures in the past. In the late 1960's and early 1970's, many states adopted statutes declaring rehabilitation the principal purpose of incarceration. Kansas statutes still contain an explicit statement to this effect. Emergency release acts that trigger releases when a certain prison population is reached are one way of recognizing a limit to available prison capacity. Comprehensive determinate sentencing laws can be an articulation of a specific state sentencing policy. (Unfortunately, they have been passed in most states without adequate consideration for correctional resources and have resulted in drastic increases in prison populations.) Despite these initiatives, no state legislature has yet put these three elements together to systemically deal with prison overcrowding. While still possible, there are many pressures that work against success.

The second option available to legislatures is to establish a body charged with crafting a systemic remedy to overcrowding. This mechanism was used in Minnesota and with varying degrees of success in the states that have followed suit (BJS, 1984). This

approach has the theoretical advantage of enabling a state's sentencing policy to be developed independent of political considerations. In Minnesota, the method of approving the guidelines was specifically designed to minimize the opportunity for legislators to amend the Commission's recommendations (Mathias & Steelman, 1982). Instead of requiring that the Legislature approve the guidelines, the Act provided that they would go into effect automatically unless rejected by the Legislature. Also, the Commission made it clear that the lengthening of any particular sentence would require an offsetting adjustment elsewhere in the guidelines. These factors, together with the Commission's aggressive efforts to solicit input and willingness to make some concessions prior to submission to the Legislature, avoided legislative tinkering.

But this approach also has shortcomings. For example, in Pennsylvania, the second state to develop sentencing guidelines, the Commission's recommendations were rejected by the Legislature as not tough enough (Mathias & Steelman, 1982). The guidelines which were ultimately adopted do not control who goes to prison, leave relatively wide discretion to judges in setting sentence lengths and significantly increased the prison population.

Regardless of whether the legislature or some appointed body develops the specific proposals, it would seem that all three of the critical elements must be present for a systemic remedy to succeed.

Summary

Controlling state prison populations is very difficult. The independence of the actors in the criminal justice system and the misalignment of responsiblility on penal matters are fundamental systemic problems. The tendency of the system to produce more offenders then there are prison beds is magnified by demographic factors and public fears. If states desire to control their prison populations, they must control the factors that determine its size. They must control who goes to prison and their length of stay.

Incremental remedies are unable to control prison populations because they fail to address all the fundamental systemic problems that cause overcrowding. Moreover, they generally focus on only one part of the system. This fails to take into account the discretion that exists elsewhere throughout the system and that seems inevitably to undermine the incremental change.

The three elements of a systemic remedy to prison overcrowding--a clear purpose in sentencing, a specific limit on prison capacity, and a state incarceration policy--cannot be achieved without extensive thought, planning and deliberation. Not until policy makers come to view prison overcrowding as a systemic problem and apply systemic remedies will it be solved. Until then, the nation's prisons are likely to remain overcrowded.

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KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

February 16, 1988

Representative Thomas Walker
State Capital Building
Topeka, Kansas 66612

Dear Representative Walker:

The Kansas Association of Court Services Officers represents professionals throughout the State of Kansas who work with both adult and juvenile offenders. Our legeslative committee recently reviewed Senate Bill 456.

The State of Kansas has shown a considerable increase in the number of offenders placed on probation and/or incarcerated in our state penal institutions. This increase in the overall offender population is putting a considerable strain on various criminal justice agencies including the Kansas Parole Board. In recognization of this, our organization would request favorable passage of legislation to increase the Kansas Parole Board from three members to five members.

Sincerely,

Phil Magathan

Phil Magathan
Legislative Chairman

PM/gmm

ATTACHMENT 6
G.O. COMMITTEE 2/16/88

LEAGUE OF WOMEN VOTERS OF KANSAS
919½ South Kansas Avenue, Topeka, Kansas 66612
(913) 23405152

February 14, 1988

The Honorable Thomas E. Walker
Chairman, House Governmental Organization Committee
Room 115-S
State Capitol
Topeka, Kansas 66612

Dear Mr. Chairman:

I am writing to you to offer the comments of the League of Women Voters of Kansas with regard to the Kansas parole system. The League has studied all aspects of the corrections system and has followed its progress for a good many years.

I regret that my schedule makes it impossible for me to testify in person before your committee, and I ask that you will consider these written remarks and share them with the other members of the committee.

Yours truly,

Linda R. Johnson
Legislative Action Chairman
Corrections Specialist
133 N. Dartmouth Drive
Manhattan, Kansas 66502
(913) 776-2276

ATTACHMENT 7
H.O. Comm. 2/16/88

LEAGUE OF WOMEN VOTERS OF KANSAS
919½ South Kansas Avenue, Topeka, Kansas 66612
(913) 234-5152

STATEMENT TO THE HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE
by Linda R. Johnson
Legislative Action Chairman, Corrections Specialist
February 16, 1988

In Reference to Senate Bill 372

The League of Women Voters of Kansas supports an increase in the membership of the Kansas Parole Board from three to five, as envisioned in the bill under discussion, Senate Bill 372. We would, however, prefer to see the provision that parole decisions be by majority vote reinstated in the bill. Certainly any requirement for unanimity would be most unwieldy with a five-member board.

The Kansas Parole Board should be composed of five full-time professionals; by that we do not mean there should be a requirement that they all be lawyers or corrections professionals, but that they be professionals in their service on the Board.

The League does not support the concept of the Parole Board's working in panels of three. While that suggestion might on the face of it appear to enhance efficiency, we fear it could lead to inequities in the treatment of inmates and a situation in which an inmate's future might be determined by the make-up of the particular panel he faced at his parole hearing.

We do believe, however, that there should be some changes in the way the Parole Board operates. We would like to see the Board return to the policy of meeting individually with inmates soon after they are admitted to prison, in order to offer advice on a plan of action which could lead to the inmate's parole when he or she becomes eligible. If certain programs are to be required of the inmate, that should be made clear before the inmate becomes eligible for parole. (If I understood Parole Board Chairman Elwaine Pomeroy correctly at the hearing on Friday, February 12, he said that since the parole eligibility date was now determined by statute rather than set by the Parole Board, the Parole Board could not by law meet with inmates before they were eligible for parole. If this is true, perhaps that law needs to be changed.)

Another area of concern is the very brief time given to any individual parole hearing. League members have heard from a number of sources, including Mr. Pomeroy, that parole hearings usually last from three to fifteen minutes. If that is the case, we must question how the Board can possibly have time to consider the six factors outlined by Mr. Pomeroy in his testimony on Friday. We do agree that those are elements the Board should take into consideration in making parole decisions. Also, it appears to us that if the Board members are able to review carefully an inmate's file, consider the crime, the inmate's criminal history, disciplinary record, program participation, and parole plan, and gather public input where appropriate, then it should be possible for them to make decisions by majority vote with less fear of making a mistake.

With regard to the method of selection of the chairperson and vice-chairperson of the Parole Board, we believe that should be left to the Board itself. All of the Board members are named by the Governor in the first place. We believe it makes sense to let the Board organize itself, based on the members' best judgment as to who has the experience, ability, and the confidence of the other Board members.

The League agrees with Mr. Pomeroy and Secretary of Corrections Roger Endell that there is a need for more programs within the prisons. It is apparent that there are not now the funds or the staff to provide the programs needed by the inmates. Whether or not you believe in the efficacy of attempts to rehabilitate criminals, the fact is that nearly all of the criminals now in our prisons will be getting out sooner or later, and it behooves us to do the best we can to enable them to lead the life of a law-abiding citizen after their release.

The League of Women Voters supports implementation of the recommendations of the Advisory Committee on Prison Overcrowding, issued in January, 1987. I was privileged to serve on that committee, which studied a wide range of options and suggested many actions the state should take rather than embark on expensive prison construction projects. Chairman Pomeroy was also a member of the committee, and he has listed many of its recommendations in the outline of his testimony to this committee under "possible legislative prison overcrowding approaches."

Clearly it will take a variety of steps to reduce the overcrowding in Kansas prisons. According to the Kansas Department of Corrections Annual Report for the year ending June 30, 1987, the average length of stay in correctional facilities for inmates granted parole has been steadily increasing for all classes of offenses. At the same time, the percentage of parole-eligible inmates granted parole has decreased. This may be due in part to actions or policies of the Parole Board, to the lack of programs and other resources available to the inmates, and to sentencing legislation enacted by the Kansas Legislature.

Regardless of what steps the Legislature and the Department of Corrections might take to reduce prison overcrowding, the League of Women Voters of Kansas believes that the changes we have suggested in the composition and operation of the Kansas Parole Board would be in the best interests of both inmates and the public.

To summarize, the League of Women Voters supports the increase to five members provided for in Senate Bill 372, but recommends amending the bill as passed by the Senate to remove the provision that the chairperson and vice-chairperson be designated by the Governor and to reinstate the provision that all decisions of the Board shall be by majority vote.