

Approved April 27, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at  
Chairperson

3:30 ~~xxx~~/p.m. on March 23, 1989 in room 313-S of the Capitol.

All members were present except:

Representative Peterson, who was excused

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Tom Sloan, Special Assistant to Secretary of Department of Corrections  
Edwin A. VanPetten, Deputy Attorney General  
Elwaine F. Pomeroy, Chairman, Kansas Parole Board  
Mark Matese, Director, Douglas County Community Corrections, Lawrence  
John Burchill, Advisory Board, Saline County Community Corrections, Salina  
Ann Heberger, President, League of Women Voters, Overland Park  
Ken Hales, Shawnee County Community Corrections  
Jim Flory, Douglas County District Attorney, Lawrence  
Paul Morrison, Johnson County District Attorney, Olathe  
Nola T. Foulston, Sedgwick County District Attorney, Wichita  
Gene Porter, Barton County Attorney, Great Bend  
Mick Cox, Sheriff, Wabaunsee County, Alma; Sheriff's Association  
Clifford F. Hacker, Sheriff Lyon County, Emporia; Kansas Peace Officers Association  
Gene Olander, Shawnee County District Attorney  
Bill Kennedy III, Riley County Attorney, Manhattan  
John Torbet, Association of Counties  
Nick Tomasic, Wyandotte County District Attorney, Kansas City  
Representative Norman Justice  
Judge Richard Walker, District Court Judge, Newton  
Representative Anthony Hensley  
Neil Woerman, Chief of Staff, Attorney General's office, (submitted written testimony)  
Phil Magathan, Kansas Association of Court Services Officers  
Terry Crowder, Concerned Citizens for Equal Justice  
Sandra Lassiter, Concerned Citizens for Equal Justice  
Celso Ramirez, Kansas Advisory Committee on Hispanic Affairs

**HEARING ON SUB.S.B. 49-Corrections, community corrections, participation by counties**

Tom Sloan, Special Assistant to the Secretary of Department of Corrections, presented testimony from Roger V. Endell, Secretary of Corrections. Mr. Sloan explained Sub. S.B. 49 offers the state the opportunity to expand community corrections. The Community Corrections Advisory Board established by this measure will alleviate the conflicts between the Department and the local programs. He suggested two clarifying amendments in regard to conservation camps. Insert in line 101, after the word "defendant" the words "on the same basis as community corrections act programs". This would clarify that persons directly committed to the camp are not assigned to the Department of Corrections custody. This also clarifies that the Department is not the operating organization of the camps and that conservation camps, as do community correction act programs, may, with justification, reject court-assigned persons. The second amendment, to delete "and the Secretary of Corrections" in line 161 would clarify that persons directly committed to the conservation camps remain under the control of the sentencing judge and are assigned to the camps as a condition of probation, see Attachment I.

Edwin A. VanPetten, Deputy Attorney General, testified the Attorney General is supportive of Sub. S.B. 49. He requested the bill be amended to exclude class C felons from the presumption for community corrections, as well as all violent offenders and drug offenders, see Attachment II.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
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Elwaine Pomeroy, Chairman, Kansas Parole Board, testified in support of Sub. S.B. 49. He supported the expansion of community corrections and the concept of boot camps. He expressed concern regarding the expansion of the callback period from 120 days to 180 days. He recommended the 180 day callback be limited to boot camps, otherwise it could cause confusion with parole eligibility, programs and preparation for parole, see Attachment III.

Mark A. Matese, Director, Douglas County Community Corrections, recommended that the important role of Advisory Boards, as spelled out in H.B. 2435, be included in Sub. S.B. 49. He also recommended including specific language identifying at a minimum, one Community Corrections Act Advisory Board member and one Community Corrections Act Director in New Sec. 14 (1), see Attachment IV.

John Burchill, Saline County Community Corrections Advisory Board, requested that the role of the Advisory Board be reinforced in the bill, due to its mandatory nature on a statewide basis. He expressed concern over the funding mechanism and the ability of expanding from a single county to a multi-county community correction. He suggested hearing appeals from Advisory Boards in particular counties. He opposed the presumptive across the board class C felonies.

Ann Heberger, President, League of Women Voters, stated the League is strongly committed to Sub. S.B. 49 because they believe that the time has come to require the 31 judicial districts to develop community corrections programs. They support the provision for presumptive sentencing of class C felons. This will give judges more sentencing alternatives at their disposal. She expressed concern whether the funding was adequate. She also expressed concern about the funding of conservation camps, see Attachment V.

Ken Hales, Shawnee County Community Corrections, suggested new language for New Sec. 14 (c), which would make clear that appeals could be initiated by the Director of any local program. He also suggested the addition of the duty that the board shall review appeals from local programs on determinations of compliance, non-compliance or granting of waivers related to Standard Compliance Audits. Changing to a new funding structure as prescribed in the bill may reduce the flexibility local programs have. Also changing from the entitlement formula to a per capita cost formula may be less attractive to local communities and not be an incentive for participation, see Attachment VI.

Jim Flory, Douglas County District Attorney, testified in opposition to the provision the presumptive sentence for a person convicted of a class C felony shall be assigned to a community correctional services program, in New Sec. 13. Article 34 crimes should be excluded from presumption. He encouraged the Committee to incorporate in Sub. S.B. 49 the provisions of H.B. 2435 which insures local control.

Gene Olander, Shawnee County District Attorney, stated he was appearing on behalf of the Kansas County and District Attorneys Association in opposition to Sub. S.B. 49 basically because of the provisions in New Sec. 13. He testified in favor of the original S.B. 49. New Sec. 13 in Sub. S.B. 49 is a radical departure from previous community corrections policy, see Attachment VII. He distributed a list of C felony crimes, see Attachment VIII.

Paul Morrison, Johnson County District Attorney, testified the class C felony provision for presumption is extremely irresponsible. This would not be in the best interest of public safety. In addition to exempting Article 34, 35 and 36 crimes, he recommended exempting attempt crimes.

Nola T. Foulston, Sedgwick District Attorney, testified she supported the concept of community corrections as a viable and appropriate sentencing alternative for nonviolent offenders. She was opposed to New Sec. 13. She said the community might reject the theory of community corrections in its entirety should New Sec. 13 become law, see Attachment IX.

Gene Porter, Barton County Attorney stated the Barton County Board of Commissioners view New Sec. 15 as a cap as opposed to a floor on which this legislation is funded by the state. The Legislature should make it clear what they mean in this bill. He suggested an amendment should be prepared stating the the state of Kansas would fund the programs.

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Nick Tomasic, Wyandotte County District Attorney, agreed with the testimony given by the County and District Attorneys. He also expressed opposition to conservation camps.

Mick Cox, Sheriff of Wabaunsee County; and representing the Kansas Sheriff's Association, concurred with the testimony presented by the County and District Attorneys.

Clifford F. Hacker, Sheriff of Lyon County; and Chairman, Kansas Peace Officers Association, agreed with the testimony presented in regard to New Sec. 13. He stated the local communities should have input in how the program is set up. He supported voluntary participation. January 1, 1990 was, he said, too soon to expect a proper program to be instituted.

Bill Kennedy III, Riley County Attorney, testified the effect of this legislation would remove court services from the probationary scene almost completely. He expressed concern over the composition of the State Board and local access to the State Board. He was opposed to New Sec. 13, as well as changing the callback period from 120 days to 180 days, except for conservation camps, see Attachment X.

John T. Torbet, Executive Director, Kansas Association of Counties, testified in support of the concept of community corrections. He recommended amending Sub. S.B. 49 to remove presumptive sentencing for class C felons and exempt counties from the application of the mandate if a three year average of D and E felony admissions was five or fewer per year, see Attachment XI.

Phil Magathan, Kansas Association of Court Services Officers, approved of expanding community corrections but opposed mandating community corrections statewide. He indicated it was not cost effective.

Representative Norman Justice informed the Committee he supported the testimony that had been presented on Sub. S.B. 49 and that he also supported community corrections programs that were operating. He said the Committee should not try to fix something that didn't need fixing.

HEARING ON S.B. 50-Establishing the Kansas Sentencing Commission

Representative Norman Justice stated there are few black judges, police officers, jurors, etc. in relation to the number of black people in the state correctional institutions. He recommended the Kansas Sentencing Commission should have more representation from minorities. He referred to an amendment that will be presented as Attachment XIII.

Phil Magathan, Kansas Association of Court Services Officers, recommended that a Chief Court Services Officer (CCSO) be included as a member of the Kansas Sentencing Commission. The CCSO could be appointed by the Chief Justice of the Supreme Court and would require the amendment of Section 2(a), see Attachment XII.

Representative Anthony Hensley appeared and recommended an amendment to S.B. 50. His amendment would strike the "at least one of whom shall be a member of a racial minority group" from lines 56 and 57. The amendment also strikes "(not more than 4 members of the commission appointed by the Governor shall be of the same political party)" from lines 66 and 67. Added to Sec. 2, (11), line 63, "Not more than four members of the commission appointed by the Governor shall be of the same political party. The racial composition of the commission shall be representative of the racial composition of the inmate population of state correctional institutions and the authorities appointing members to the commission shall consult each other to accomplish such representative composition.", see Attachment XIII. He informed the Committee the percentages indicate the 15 members of the Commission should be 9 white members, 5 black members and 1 member a Hispanic, Indian or Asian. He suggested an amendment that a specific date should be stated in the bill when the racial composition would be decided.

Judge Richard Walker, District Court Judge, explained S.B. 50 was drafted and introduced at the request of the Criminal Justice Coordinating Council. The Criminal Justice Coordinating Council believes that Kansas needs a Sentencing Commission to facilitate the development of a rational sentencing system which addresses the levels of punishment crime should receive, disparity in sentences between individual judges, and correlates these findings with prison resources available.

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He recommended an amendment on page 3, line 93, which would strike the words "and recommended guidelines". He explained at the end of only six months at work, the Commission should be required to give the Legislature a progress report, but could hardly be ready to give an intelligent set of guidelines. The guidelines should be submitted along with the final report in 1991, see Attachment XIV. He strongly recommended the Commission be adequately staffed and funded.

Elwaine Pomery, Chairman, Kansas Parole Board, testified the Commission should be fully funded and staffed by capable, knowledgeable people. He said Kansas should not copy another state. The Commission members must feel they are a part of the development of the sentencing guidelines and they should be respected representatives of their groups and be willing to dedicate a lot of time and energy, see Attachment XV.

Neil Woerman, Chief of Staff, Attorney General's Office, submitted written testimony in support of S.B. 50, see Attachment XVI.

Ann Heberger, President, League of Women Voters, testified in support of the concept of Uniform Sentencing Guidelines for the judiciary. Such guidelines should provide for fewer incarcerations by providing more sentencing alternatives to judges, such as programs provided by community corrections, house arrest, treatment for drug and alcohol abuse, intensive supervision, work release, job and other counseling, restitution, community service and others, see Attachment XVII.

Terry Crowder, Concerned Citizens for Equal Justice, testified that fairness in sentencing guidelines will decrease the great disproportion of people of color and especially Blacks in prison. The Black population at large should be considered as part of the opportunity to solve the problem of racial disparity in the justice system, see Attachment XVIII.

Sandra Lassiter, Concerned Citizens for Equal Justice, expressed support for S.B. 50 with the proposed amendment which addresses the racial composition of the Commission. She said her group is greatly concerned with the disproportionate number of minorities in prison, as well as the disparity in sentencing, see Attachment XIX.

Charlene Cassidy, Concerned Citizens for Equal Justice, supported the amendment to have the Commission consist of at least 4 Blacks and 1 Hispanic which would more closely represent the current inmate population, see Attachment XX.

Celso L. Ramirez, Kansas Advisory Committee on Hispanic Affairs, supported S.B. 50 if amended to have ethnic minority representation on the Commission. He said he could provide names of people who could serve on the Commission, see Attachment XXI.

The hearing was closed on S.B. 50. The Committee meeting was adjourned at 6:30 p.m.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY

DATE: March 23, 1989

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<i>[Signature]</i>	<i>[Signature]</i>	K.C. CPAs
<i>[Signature]</i>	<i>[Signature]</i>	KC DAA
NOLA FOLLSTON	WICHITA	DISTRICT ATTORNEY SEDGWICK COUNTY
Bill Kennedy	Manhattan	Riley County Attorney
Jim Flory	Lawrence	Douglas County Dist Atty
NICK TOMASIC	WY CO	WY CO DAA
GENE PORTER	GREAT BEND	BARTON COUNTY ATTY
HELEN C. JONES	PARSONS	LABETTE Co. Comm. Comm. Advisory Committee
Lonie Q. Addis	Oswego, Ks.	Labette Co. Commissioner
Paul Morrison	Olney, Ks.	D.A. - Johnson County
John K. Burchill	419 W. Ash, Salina	Saline County Community Corrections ADMINISTRATIVE COORDINATOR DIST. ATTY - SEDG. CTY.
JUDITH HATTAN	WICHITA	DIST. ATTY - SEDG. CTY.
Blenda Finko	Russell	Prison Task Force
Mike Leighton	Great Bend	Barton Co. Adm.
Frank G. Mc Coy	Manhattan	Riley County Comm. Comm.
Tom Wells	Topeka	Sn. Cty Corrections
Paul Shelby	Topeka	OJA
PAT McGRATH	Overland Park, Ks	Kansas Law School
Woerman	Topeka	Atty Gen
ED VAN PETERSEN	TOPEKA	A.G.
MARION L. COX	ALMA	SHERIFF KSA
CLIFFORD F. HACKER	Lyon Co. EMPORIA	SHERIFF / Ks. PEACE OFFICERS
John R. Williams	Topeka	DAAS
E L Broadway	Topeka	
Lontena Sentry	Topeka	Concerned Citizens



STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building  
900 S.W. Jackson—Suite 400-N  
Topeka, Kansas 66612-1284  
(913) 296-3317

Mike Hayden  
Governor

Roger V. Endell  
Secretary

March 23, 1989

TO: House Judiciary Committee  
**ATTENTION: Representative Michael O'Neal, Chairman**

FROM: Roger V. Endell, Secretary of Corrections

SUBJECT: Senate Bills 49 and 50

**SENATE BILL 49**

The Department of Corrections strongly supports the community corrections act and programs. We believe that S.B. 49 offers the state the opportunity to expand community corrections and believe further that the Community Corrections Advisory Board established by this measure will alleviate the conflicts between the Department and the local programs.

We suggest two technical clean-up amendments to clarify the operation of the conservation camps.

On line 101 after the word "defendant" insert the following language: "on the same basis as community corrections act programs".

This language clarifies that persons directly committed to the camp are not assigned to the Department of Corrections custody. This clarifies that the Department is not the operating organization of the camps, anymore than of community corrections programs in existing communities. It also clarifies that conservation camps, as do community correction act programs, may, with justification, reject court-assigned persons.

On line 161 delete the following language: "and the secretary of corrections".

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*Attachment I*

Deletion of this language clarifies that persons directly committed to the conservation camps remain under the control of the sentencing judge and are assigned to the camps as a condition of probation.

Both proposed language changes reflect the Department of Corrections' position that the legislative intent in creating conservation camps is to divert people from Department institutions, not increase the number of state institutions.

**SENATE BILL 50**

The Department also strongly supports passage of S.B. 50. This offers the best long-term means of controlling the population growth of correctional institutions.

RVE:dja

*H. J.  
3/23/89  
att<sup>2</sup> I*





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
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STATEMENT OF  
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN  
BEFORE THE HOUSE JUDICIARY  
RE: S.B. 49  
MARCH 23, 1989

The Attorney General is generally supportive of the premise espoused in Senate Bill 49, especially the implementation of the Community Corrections program. We would however request that class C felons be excluded from the presumption for community corrections.

We feel that class C felons are simply too great of a risk to place into the Community Corrections program. This classification would include for instance someone convicted of aggravated battery or voluntary manslaughter.

Experience will have to show us how such programs succeed. However, the Attorney General has long supported the principle of community corrections for non-violent and non-drug offenders and is confident this is a positive move if restricted and managed appropriately.

We ask that you support Senate Bill 49 with the suggested amendment.

*House Judiciary*  
*3/23/89*  
*Attachment II*

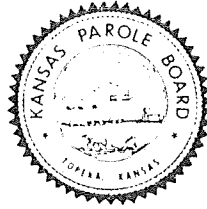
Elaine F. Pomeroy  
Chairman

Frank S. Henderson, Jr.  
Vice-Chairman

Joan M. Hamilton  
Member

Carla J. Stovall  
Member

George Rogers  
Member



Micah A. Ross  
Director

Sandra K. Smith  
Assistant Director

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

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OUTLINE OF REMARKS

By Elwaine F. Pomeroy

Chairman, Kansas Parole Board

House Judiciary Committee

March 23, 1989

Substitute for Senate Bill No. 49

Supplemental note is slightly incorrect

Requested by Coordinating Council on Criminal Justice

Supportive of expansion of community corrections

Bill expanded to include boot camps

We must continue multi-faceted approach

Supportive of boot camp concept

Concerned about expansion of callback

Suggest 180 day callback only for boot camps

Otherwise, confusion on parole eligibility

Confusion on programs

Confusion on preparation for parole

*House Judiciary*  
*3/23/89*  
*Attachment III*

# Douglas County

Department of Community Corrections  
Administration  
Community Services  
Intensive Supervision Probation  
11th and Massachusetts, 3rd Floor  
Lawrence, Kansas 66044  
913/842-8414

TO: House Judiciary Committee  
FROM: Mark A. Matese, Director  
Douglas County Community Corrections  
RE: Testimony on SB49 and recommendations on HB2435  
DATE: March 23, 1989

It is my opinion that SB49 presents a solid foundation for expansion of Community Corrections Act Programs and allows for long-term planning. As you may be aware, there are areas that need some fine tuning. It is our recommendation that the important role of Advisory Boards, as spelled out in HB2435, be included in SB49.

Another recommendation is to include specific language identifying, at minimum, one Community Corrections Act Advisory Board member and one Community Corrections Act Director in new section 14, paragraph 1, p. 17.

I believe these adjustments will assist SB49 in paving the way for Community Corrections Acts to address their part in the crisis in corrections. It is important that any solutions to crowding lock in local involvement. The local involvement will provide the partnership necessary to focus on the source of correctional issues - local communities.

*House Judiciary*  
*3/23/89*  
*Attachment IV*

# LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

919½ South Kansas Avenue Topeka, KS 66612 (913) 234-5152

March 23, 1989

## STATEMENT TO THE HOUSE COMMITTEE ON JUDICIARY IN SUPPORT OF SUBSTITUTE SB 49.

Mr. Chairman and Members of the Committee:

I am Ann Heberger, President of the League of Women Voters of Kansas, speaking on behalf of the League in support of Substitute SB 49.

As many of you are aware, the League has long supported the concept of community corrections, and worked for the passage of the Act in 1978. We have continued to request from the Legislature adequate funding, expansion of the program, and urging that control remain within the local Advisory Boards as described in the Act. In fact, I don't believe a year has gone by that the League has not included community corrections in its Legislative Advocacy Agenda.

The evaluation of the Kansas Community Corrections Act, requested by the Legislature, funded by the Edna McConnell Clark Foundation and conducted by Temple University, resulted in generally positive findings. Reporting in October, 1987, "That in a field riddled with assertions that 'nothing works', community corrections was relatively successful in reaching the population intended, saving money, and dealing with offenders constructively outside of prison walls without compromising public safety. The report also stated that the programs had gained substantial support at the local level, and that 'confidence' in the programs and support for their continuation and expansion generally is high."

The League is strongly committed to Substitute SB 49 because we believe that the time has come to require the 31 judicial districts to develop community corrections programs. By adding the provision for presumptive sentencing of C and D felonies to existing law, we believe that judges will have a lot more sentencing alternatives at their disposal.

We still have some concern that some of the district court judges are not overly enthusiastic about the programs, and we think that it is necessary that the program be used to their full potential to help reduce prison overcrowding. We can only hope that all of the judges will come to be truly supportive of the Community Corrections Act as so many already are.

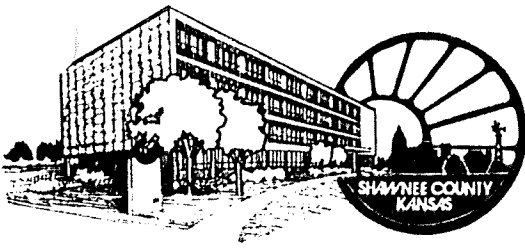
We also want to be certain that adequate funding is included with this bill. We hope that the formula described in Substitute SB 49 is the answer.

Secretaries of Corrections come and go, but we believe that community corrections is here to stay. The League agrees with the provision for a 5-member state community corrections board. We think that this could provide the continuity that seems to be lacking at times.

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3/23/89  
Attachment V*

We are not overly enthusiastic about camps, whatever they are called, to be included as part of community corrections. We prefer that such camps be included in another part of the budget so that they will not be able to drain funds from Act monies.

Thank you for the opportunity to speak before you today and I urge your consideration of Substitute SB 49.



## Shawnee County Community Corrections

712 Kansas Ave.-Suite 3E Topeka, KS 66603 Ph. (913) 233-8856

### ADVISORY BOARD

March 23, 1989

BILL BEIGHTEL

JAMES BUCHELE

FARRELL FOUTS

ANN B. GARVIN

TED HEIM  
Chairman

KAY HOUSER

LEE KINNEY

CHARLES D. McATEE

CAMILLE NOHE

DON ODEN

GENE OLANDER, D.A.

DEAN STRICKLAND

### PROGRAM ADMINISTRATOR

J. KENNETH HALES

Representative Michael O'Neal, Chairman  
House Judiciary Committee

RE: Senate Bill 49

On behalf of Earl Hindman and the Shawnee County Department of Corrections, I thank the Committee for this opportunity to comment on Senate Bill 49. My comments relate to specific concerns on current language of the Bill and the general issue of continued funding. First, in new Section 14, Subsection C (page 17, line 258) specifies that the board shall hear appeals from the Secretary of Corrections. In actuality, the appeals would not be coming from the Secretary but from local programs appealing the decisions of the Secretary. If the board is to take action only if an appeal is forwarded by the Secretary, the Secretary simply need not make an appeal and the disputes of the local programs would not be heard. It is my understanding that the intent of this measure was for the local programs to have a vehicle to appeal the decisions of the Secretary. Therefore, I

*House Judiciary*  
*3/23/89*  
*Attachment VI*

urge that new language be specified which would make clear that appeals could be initiated by the director of any local program.

Also identified in new Section 14 is a list of duties to be performed by this board. I would suggest the addition of one duty. That duty being that the board shall review appeals from local programs on determinations of compliance, non-compliance or granting of waivers related to Standard Compliance Audits.

Lastly, we recognize and support the Senate Judiciary Committee's sincere and comprehensive efforts to make those legislative changes necessary to allow community corrections to expand. We appreciate the Committee's commitment to local programs and the measures the Committee took to help insure that the local programs would not be damaged, but be allowed to expand through Senate Bill 49. We do have reservations concerning the departure from the entitlement system. The new funding mechanism does allow for programs to expand beyond its entitlement, however, this is possible now. Changing to a new funding structure as prescribed in the Bill may reduce the flexibility local programs have. We believe changing from the entitlement formula to a per capita cost formula may be less attractive to local communities and not be an incentive for participation. How the new funding structure is to be implemented remains unclear. The determination of the funding amounts for local programs and the total fiscal impact places a special burden on the Department of Corrections. With the change in funding the success of community corrections becomes increasingly dependent on the Department of Corrections; its support of the Act, the local programs and the effectiveness of the new State Community Corrections Board.

Thank you for your time in this matter.

*H. J. 13/23/89*  
*Att. VI*  
*Pg. 2*

James Puntch, Jr., President  
 Terry Gross, Vice-President  
 Rodney Symmonds, Sec.-Treasurer



Daniel L. Love  
 James Flory  
 Gene Porter  
 Randy Hendershot

## Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

### Testimony in Opposition to

### Substitute for SENATE BILL No. 49

The Kansas County and District Attorneys Association appears in opposition to Substitute for Senate Bill 49 because of the provisions of New Section 13 of the bill.

Our Association has supported the concept of community corrections, and many of our members are actively involved with their local advisory boards. The Association is also supportive of the principal thrust of SB 49, to expand the use of community corrections to include all Kansas counties.

We are opposed to New Section 13 because it expands the eligibility pool of offenders to include those convicted of violent crimes and sex crimes. Not only does the bill force counties into community corrections, but it also forces dangerous offenders into the programs. This appears to be a major policy change, and one which the Association is opposed to.

When community corrections was first adopted in 1978, the use of "chargebacks" in K.S.A. 75-52,104 established a de facto classification system for community corrections programs. Since there was no chargeback for A, B and C felons who had a maximum sentence of 20 years or more, it was assumed that A, B, and C felons would be committed to the Secretary of Corrections, and all other offenders would be eligible for community corrections. This scheme was then altered in 1979, when the 20-year sentence requirement was deleted, thereby eliminating chargebacks on all A, B and C felons. The system was changed much more extensively in 1980, when chargebacks were eliminated on D and E felons with a prior felony conviction; convictions of aggravated assault under K.S.A 21-3410; convictions of sex offenses under chapter 21; and sentences under K.S.A. 21-4618 (the firearm sentencing statute). Because of the chargeback system, then, these offenders were presumed to be ineligible for community corrections, and most community corrections programs, and community support for them, operated on this presumption.

New Section 13 of SB 49 is a radical departure from previous community corrections policy, which alone deserves careful study and debate. More importantly, the effect of this section is to mandate acceptance of dangerous offenders through the presumptive sentence language. The aggravating factors contained in subsection 2 are no comfort, as they do not preclude or exempt such offenders from community corrections programs.

In conclusion, Substitute for Senate Bill No. 49 already advances a major change, broadening the scope of community corrections to include all counties. The broadening of the type of offenders to be placed in community corrections programs is simply too drastic. The presumptive sentence for C, D, and E felons should be replaced with exemption of felons in the former categories listed in the now-repealed K.S.A. 75-52,104(a), which have been previously discussed.

*House Judiciary*  
*3/23/89*

*Attachment VII*



Voluntary Manslaughter  
Involuntary Manslaughter  
Aggravated Vehicular Homicide  
Aggravated Assault  
Aggravated Assault on a LEO  
Aggravated Battery  
Robbery  
Attempted Aggravated Robbery  
Attempted Rape  
Indecent Liberties with a Child  
Abuse of a Child  
Aggravated Burglary  
Arson  
Attempted Aggravated Arson

*House Judiciary*  
*3/23/89*  
*Attachment VIII*

OUTLINE OF TESTIMONY BEFORE  
HOUSE JUDICIARY COMMITTEE WITH REGARD TO SENATE BILL 49  
BY NOLA T. FOULSTON, SEDGWICK COUNTY DISTRICT ATTORNEY

I am the District Attorney for Sedgwick County. I previously was an Assistant District Attorney in Sedgwick County for four (4) years before entering private practice. I returned to the District Attorney's Office after my election as District Attorney in November 1988.

As a member of the Sedgwick County Community Corrections Advisory Board, I whole heartedly support the concept of community corrections and believe it to be a viable and appropriate sentencing alternative for nonviolent offenders. After review of revised Senate Bill 49, I strongly feel that Section 13 thereof should not be allowed to become law. My reasons in opposition to this Section of the Bill are as follows:

For nearly six (6) years Sedgwick County has participated in a community corrections program which is designed to work with nonviolent offenders while still in the community. The program, because of its good work, has expanded and now has outgrown its present facilities. The Sedgwick County Commission was recently asked to approve a lease that would allow the program to move to a larger facility. This request drew immediate negative response from the community in the area where the project was planned, and in fact resulted in a moratorium on the project because of community fear, dissatisfaction, and dissent. The difficulty in locating this facility with the current mix of offenders, who are by and large first time D and E nonviolent felons, is but a precursor to the devastating effect that our community corrections program would face if possible inmates at those facilities would include violent criminals, sex offenders, and people involved in narcotics trafficking. It is my belief that the community might well reject the theory of community corrections in its entirety should Section 13 become law.

Community corrections when first proposed was promoted to the public as an alternative to incarceration for nonviolent offenders. Section 13 of the proposed Act refutes this basic premise of community corrections.

The community does not want nor does it need dangerous criminals housed in local facilities which cannot have the security of a more protected penal institution.

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*3/23/89*  
*Attachment IX*

A partial list of the types of crimes for which a person would presumptively committed to community corrections includes the following:

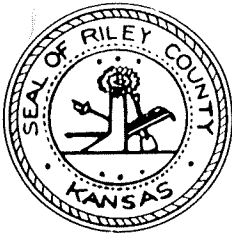
- conspiracy to commit 1st degree murder;
- conspiracy to commit aggravated kidnapping;
- attempted 2nd degree murder;
- attempted kidnapping;
- attempted aggravated robbery;
- attempted aggravated arson;
- attempted aggravated battery of a law enforcement officer;
- attempted rape;
- attempted aggravated criminal sodomy;
- voluntary manslaughter;
- aggravated assault;
- aggravated battery;
- attempted poisoning;
- robbery;
- indecent liberties with a child;
- attempted aggravated indecent liberties with a child;
- enticement of a child;
- aggravated indecent solicitation of a child;
- sexual exploitation of a child;
- aggravated sexual battery;
- promoting sexual performance by a child;
- abuse of a child;
- aggravated burglary;
- arson; and
- sale of drugs.

By my objection to this portion of the proposed Bill, I do not mean to suggest that other sections as contained therein might not be appropriate. There are portions of the Bill that are laudatory, including proposals for conservation camps and extension of time periods in order to evaluate offenders. Contrary to the assertions of some members of the Legislature that there is a lack of understanding on the part of prosecutors, or attributing our opposition to Section 13 as an attempt to "sabotage" the program, I reaffirm my support for community corrections. However, as a law enforcement officer, I must strictly uphold community safety standards which I believe will not be realized by inclusion of Section 13 in this Act. We need to concern ourselves with promoting community corrections rather than defeating the concept by tainting the public's belief that community corrections is a necessary and viable alternative for nonviolent first offenders to become productive members of our community.

Respectfully submitted,

*Nola Foulston*  
Nola Foulston, District Attorney

*H. J. 3/23/89*  
*Pg. 2*  
*Att IX*



GABRIELLE M. THOMPSON  
MICHAEL J. BARTEE  
Assistant Riley County Attorneys

## Office of the Riley County Attorney

WILLIAM E. KENNEDY III  
Riley County Attorney

Carnegie Building  
105 Courthouse Plaza  
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GENIECE A. WRIGHT  
Legal Specialist

March 23, 1989

House Judiciary Committee  
Michael R. O'Neil, Chairperson  
Kansas House of Representatives  
Topeka, KS

I am William E. Kennedy III. I have been the Riley County Attorney for four (4) years. I have been a full-time prosecutor since May, 1983. I am the Chairperson of the Board of Riley County Community Corrections. I have been a member of the Board of the Riley County Community Corrections for four (4) years.

I am opposed to the presumptive sentencing proposal as written in substitute for Senate Bill No. 49 for the following reasons:

1. Community corrections was originally designed for D and E felons only and has been presented as such to the communities of approximately 67% of the population of the State of Kansas. The proposed New Section 13 creates a presumption that community corrections should handle, among other things, persons convicted of attempted rape, attempted aggravated robbery, aggravated burglary, attempted aggravated sodomy, attempted aggravated indecent liberties with a child, attempted second degree murder, voluntary manslaughter, aggravated assault on a law enforcement officer, aggravated assault, aggravated battery, and attempted kidnapping.

2. The proposed statute as written directs the Court to consider whether the conviction is a drug violation, or a sex violation, or whether the convict has a prior felony conviction, or has been adjudicated a juvenile offender for an offense which would constitute a felony if committed by an adult. Consider is a vague word. Further, one convicted of an E felony gets a second bite of the apple if his presumptive probation pursuant to K.S.A. 21-4606a, has been denied because he then has to be compared with the balance of section 13.

Please bear in mind that not all community corrections organizations have residential programs, and that you are legislating that newly formed community corrections organizations, pursuant to the balance of Senate Bill 49, will be dealing directly and constantly with the persons convicted of the above-listed crimes with little time to lay the groundwork to do so. More time is needed to bring the balance of our counties up to speed.

Please bear in mind that the effect of this legislation is to remove court services from the probationary scene almost completely, as very few convicts of A

*House Judiciary*  
*3/23/89*  
*Attachment X*

or B felonies get probation. This leaves most felony convicts placed on probation with community corrections and leaves misdemeanor convictions with court services.

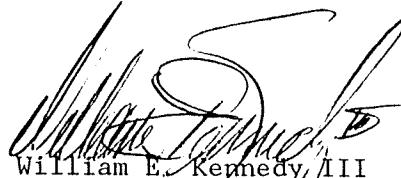
Please bear in mind that the legislation potentially triples the number of programs in existence while covering only a 33% increase in population covered.

Reference Proposed New Section 14(a)(1) - Why is a representative of SRS on the State Community Corrections Board? Why doesn't the composition of the State Community Corrections Board reflect generally the composition of the local boards? Clearly the "community" is not represented there.

Reference Proposed New Section 14(c) - There is no clear route for an aggrieved local board to approach the State Community Corrections Board. The intent of the section should be clarified to the extent that aggrieved local boards may approach the state board.

Thank you for the opportunity to share my ideas with you.

Sincerely,



William E. Kennedy, III  
Riley County Attorney

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Att X



"Service to County Government"

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**Executive Director**  
John T. Torbert

Testimony  
March 23, 1989

To; House Judiciary Committee

From; John T. Torbert  
Executive Director

Subject; Senate Bill 49- Community Corrections

The Kansas Association of Counties has long been a supporter of the concept of community corrections. We recognize it as a valuable and effective alternative to incarceration in state institutions. The counties that have community corrections programs now have them due to the fact that they believe in the concept. They do not make money from community corrections. As a matter of fact, they usually have to devote additional financial resources and support services at the county level to make sure the program is functioning smoothly. That is one reason that the existing programs work so well. They are in place because people want them there, not because of a legislative or court ordered mandate.

When the senate judiciary committee studied this legislation, there were privileged enough to receive considerable input for Kay Harris, associate professor in the Department of Criminal Justice at Temple University in Philadelphia. She is nationally recognized for her work and background in this area and has done extensive study of the Kansas system. You will note that some of Professor Harris' comments are noted on pages four and five of the supplemental note on this bill. However, she also made some other comments about the concept of community corrections that I think should be noted. These comments included;

- 1) Pure symmetry among county programs is not necessary or even desirable. One of the nice things about community corrections is that the programs can be shaped to meet local needs and concerns.

*House Judiciary*  
*3/23/89*  
*Attachment XI*

2) A state mandate for a statewide system would be "clearly inefficient."

3) Keep the programs on a volunteer basis. Forced participation usually does not achieve the desired results.

The legislation you have before you is well intentioned. It is also understandable in light of the situation the state is facing with respect to dealing with a prison overcrowding problem. The main point I want to make however is that a mandate for a statewide program is not necessary to accomplish your goals.

For example, I reviewed statistics that show a county by county breakdown of total felony admissions to Kansas prisons from 7/1/86 through 6/30/87. I then designated counties that had five or fewer felony admissions for class C, D and E felonies since those are the types of crimes for which community corrections would be an alternative under this legislation. The results are shown on the attached county outline map. Fifty-eight counties had five or fewer felony admission in the C, D and E class. In those counties, the total felony admissions in the classes mentioned were 137. That is only 7.4% of the statewide total of 1,840 felony admissions in those classes. Numerically, those 58 counties had about the same number of admissions as Shawnee County alone.

✓ Another problem with this legislation is that it is no longer community corrections. Under the program envisioned in this legislation, what you would have in probably a majority of counties would be a regional corrections system. That totally gets away for the strengths of the community corrections concept, as does the concept of a state imposed mandate.

There have been two problems with getting counties interested in becoming involved with community corrections. The first problem was the funding charge-back situation which was remedied by legislation passed last year. The second problem was the Department of Correction's hostile attitude towards the program. It appears that we may have solved that problem this year with personnel changes that have been made in the department. With those two impediments out of the way, I sincerely believe that you could do nothing legislatively this year and still have a number of counties that would come into the program- and do so in such a fashion that the programs would not lose the special characteristics that are essential to their success.

However, if you are determined to pass legislation, we would suggest the following modifications to the bill:

*7/9. 3/23/89*  
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*att 51*

- 1) Remove presumptive sentencing for C felons
- 2) Exempt counties from the application of this mandate if a three year average of D & E felony admissions was five or fewer/year.

These two amendments gives you a much stronger and cleaner piece of legislation that would allow you to access more than 90% of your target population while still maintaining the elements that makes community correction work.

Finally, our other main concern is that when programs are required for the first time or are significantly expanded, that there be an ironclad commitment for the state to provide the necessary funds. We are in the midst of a two year reappraisal budget freeze and a great deal of uncertainty with regard to the property tax system. This is not a time for significant new programs or mandates at the local level.

TSJHJUDC

*N.J. 3/23/89  
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Att XT*





# KANSAS ASSOCIATION OF COURT SERVICES OFFICERS



## M E M O R A N D U M

Executive Board

TO: Committee on Judiciary and Members of the  
Kansas Legislature

President  
Michael Patterson  
Topeka

FROM: Phil Magathan, Legislative Chairperson

Vice President  
John Steelman  
Ottawa

RE: Senate Bill No. 50 -- An Act establishing the Kansas  
Sentencing Commission; providing for the recommendation  
of sentencing guidelines and other matters relating to  
criminal justice.

Secretary  
Sue Froman  
Wichita

Treasurer  
Mark Bruce  
Parsons

DATE: February 1, 1989

Nomination/Membership  
Donna Hoener  
Olathe

Legislative Chairperson  
Phil Magathan  
Topeka

The Kansas Association of Court Services Officers (KACSO) represents probation professionals throughout Kansas who supervise both adult and juvenile, felony and misdemeanor, offenders. We supervise approximately 25,000 criminal offenders on probation (approximately 9,000 are adult felons).

Training Chairperson  
Lisa Parrett  
Olathe

Parliamentarian  
Mary Kadel  
Independence

Public Relations Chairperson  
Shirley West  
Wichita

Immediate Past President  
Karen Dunlap  
Concordia

A number of the Court Services Officer responsibilities are mandated by statute and encompass a number of dispositional areas. A significant part of the statutory responsibilities of Court Services Officers in Kansas relates to the preparation of dispositional reports. In adult criminal cases, presentence investigation reports are completed by Court Services Officers which include recommendations relating to a disposition to be imposed by the Court. A recommendation is typically based on an assessment of risk which the offender may pose to the community, the needs of the offender, the availability of local services to provide specialized services, the background and prior record of the offender, and the impact of the offense on an identifiable victim. A similar report is prepared by Court Services Officers in juvenile offender cases prior to a dispositional hearing.

Based on the nature of statutory involvement by Court Services Officers in the presentence and predisposition process, we strongly recommend that a Chief Court Services Officer (CCSO) be included as a member of the Kansas Sentencing Commission. The CCSO could be appointed by the Chief Justice of the Supreme Court and would require the amendment of Section 2(a) of S.B. 50.

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*Attachment XII*

(2) two district court judges appointed by the chief justice of the supreme court;

49 (3) *the attorney general or the attorney general's designee;*

50 (4) one public defender appointed by the governor;

51 ~~(4)~~ (5) one county attorney or district attorney appointed by the  
52 governor;

53 ~~(5)~~ (6) the secretary of corrections or the secretary's designee;

54 ~~(6)~~ (7) the chairperson of the Kansas parole board or such chair-  
55 person's designee;

56 ~~(7)~~ ~~three~~ (8) *four* members of the general public, ~~at least one~~  
57 ~~of whom shall be a member of a racial minority group,~~ appointed  
58 by the governor;

59 ~~(8)~~ (9) a sheriff appointed by the attorney general;

60 ~~(9)~~ (10) a director of a community corrections program appointed  
61 by the governor; and

62 ~~(10)~~ (11) the commissioner of youth services of the department  
63 of social and rehabilitation services.

64 (b) The governor shall appoint a chairperson. The commission  
65 shall elect any additional officers from among its members necessary  
66 to discharge its duties ~~not more than 4 members of the commission~~  
67 ~~appointed by the Governor shall be of the same political party.~~

68 (c) The commission shall meet upon call of its chairperson as  
69 necessary to carry out its duties under this act.

70 (d) Each appointed member of the commission shall be appointed  
71 for a term of two years and shall continue to serve during that time  
72 as long as the member occupies the position which made the member  
73 eligible for the appointment. Each member shall continue in office  
74 until a successor is appointed and qualifies. Members shall be eligible  
75 for reappointment, and appointment may be made to fill an unex-  
76 pired term.

77 (e) Each member of the commission shall receive compensation,  
78 subsistence allowances, mileage and other expenses as provided for  
79 in K.S.A. 75-3223, and amendments thereto, except that the public  
80 members of the commission shall receive compensation in the  
81 amount provided for legislators pursuant to K.S.A. 75-3212, and  
amendments thereto, for each day or part thereof actually spent on  
commission activities.

(b) Not more than four members of the commission appointed by the governor shall be of the same political party. The racial composition of the commission shall be representative of the racial composition of the inmate population of state correctional institutions and the authorities appointing members to the commission shall consult each other to accomplish such representative composition.

Reletter remaining subsections accordingly

*House Judiciary*  
*3/23/89*  
*Attachment VIII*

**RICHARD B. WALKER**

District Court Judge  
Harvey County Courthouse  
Newton, Kansas 67114

JUDGES OF THE NINTH JUDICIAL DISTRICT  
Harvey and McPherson Counties

ADMINISTRATIVE JUDGE  
CARL B ANDERSON, JR.

DISTRICT JUDGES  
THEODORE B. ICE, Division I  
RICHARD B. WALKER, Division II

TELEPHONE  
(316) 283-6900

March 23, 1989

Chairman O'Neal and members of the House Judiciary Committee:

I appear here today in support of Senate Bill 50, which would create the Kansas Sentencing Commission. This bill was drafted and introduced at the request of the Criminal Justice Coordinating Council, which was created in mid-1988 by Governor Hayden, and includes among its members Chairman O'Neal, Representative Kathleen Sebelius, Senator Dave Kerr and Senator Frank Gaines. I am appearing here today as the designated representative of the CJCC to explain the bill and why it is needed.

This bill is quite similar to House Bill 3125 which was introduced in the 1984 legislative session and blends portions of that bill with some provisions used by the State of Minnesota in their sentencing commission legislation.

The Criminal Justice Coordinating Council believes that Kansas needs a sentencing commission to facilitate the development of a rational sentencing system which addresses the levels of punishment crime should receive, disparity in sentences between individual judges, and correlates these findings with prison resources available. The commission would have a broadly based membership, and should be tied to a capable staff which can bring the immense amount of information available under control in time to meet the short reporting deadlines set in the bill (interim report by January, 1990; final report by January, 1991).

In perhaps no other area does the Kansas Legislature currently commit so many resources, for judges, prosecutors and defense lawyers, probation officers, correctional officers, parole officers, without stepping back to see how the whole thing fits together. You are expected to make critically important multimillion dollar decision on this system without any real overview on the many pieces of the sentencing puzzle. The task of the sentencing commission would be to give you concrete recommendation on who should go to prison, and for approximately how long. It should also make you better predictors of how changes will affect the system. While it cannot promise instant relief from crowded prisons, it can give you a rational basis for deciding who should be in prison. What you ultimately adopt will then send a much clearer message to judges and correctional officials as to who you expect to be incarcerated.

The Criminal Justice Coordinating Council believes this work is so important and urgently needed that it should not be delegated to an existing agency, but assigned to a newly created commission as its primary task. Several other states and the federal government have already created similar commissions.

Attached to this page is one minor recommended amendment which I believe will help clarify the legislation. Since the CJCC did not review a final draft of the bill before its introduction, this recommendation should be considered mine alone.

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*Attachment XIV*

Suggested amendment to Senate Bill 50:

On page 3, line <sup>93</sup>~~80~~, strike the words "and recommended guidelines"

Rationale: At the end of only six months at work, the commission should be required to give the legislature a progress report, but could hardly be ready to give you any intelligent set of guidelines. These should be submitted along with the final report in 1991.

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*Att XIV*

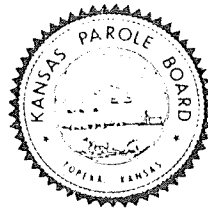
Elwaine F. Pomeroy  
Chairman

Frank S. Henderson, Jr.  
Vice-Chairman

Joan M. Hamilton  
Member

Carla J. Stovall  
Member

George Rogers  
Member



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Micah A. Ross  
Director

Sandra K. Smith  
Assistant Director

---

OUTLINE OF REMARKS

By Elwaine F. Pomeroy

Chairman, Kansas Parole Board

House Judiciary Committee

March 23, 1989

Senate Bill No. 50

We must consider many approaches

Sentencing commission is viable option

Guidelines were considered in 1982

Two-year study by Kansas Judicial Council

1984 legislation vetoed, in part, because no funding

Commission must be fully funded

Research will be complicated

One state can not copy that of another state

Kansas has "generic" crimes

Criminal Law Advisory Committee study

Commission staff must be capable, knowledgeable

Members must have a sense of ownership

Members should be respected, representatives of their groups

Members must be willing to dedicate time and energy

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*3/23/89*  
*Attachment XV*

Do not look upon this as a panacea

There is no magic wand

No simple solution to complex problems

1988 legislature wisely took multi-faceted approach

Some changes are just beginning

Program agreements will be great improvement

KPB workload increasing:

Inmate-Decisions:	
FY 1985	2,325
FY 1986	2,718
FY 1987	3,072
FY 1988	3,945
Half FY 1989	2,414

L.G. 3/23/89  
Att XV  
pg 2.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

STATEMENT ON BEHALF OF  
ATTORNEY GENERAL ROBERT T. STEPHAN  
DELIVERED BY  
NEIL A. WOERMAN, CHIEF OF STAFF  
TO THE HOUSE COMMITTEE ON JUDICIARY  
RE: SENATE BILL 50, ESTABLISHING A SENTENCING COMMISSION  
MARCH 23, 1989

Mr. Chairman and Members of the Committee:

Attorney General Stephan regrets that he is unable to appear before you personally today to support Senate Bill 50, which would establish a sentencing commission to recommend a new sentencing model for the State of Kansas.

Attorney General Stephan was indeed pleased with the introduction of Senate Bill 50. The bill calls for the commission to develop a sentencing guideline model or grid based on fairness and equity. It calls for the establishment of rational and consistent sentencing standards which reduce disparity; it calls for identification of circumstances under which imprisonment is appropriate and where appropriate the presumed sentence.

In 1980, Attorney General Stephan first proposed a similar presumptive sentencing plan. His goals were to reduce disparity in

*House Judiciary*  
*3/23/89*  
*Attachment XVI*



sentencing and establish a clear demarcation between violent or dangerous offenders requiring confinement in maximum security institutions and non-violent offenders, the same as the goals of this bill.

Under either approach, instead of the broad sentencing range now available, sentences would be flattened out, presumably with variance for specified aggravating and mitigating circumstances. Multiple and repeat offenses would be treated appropriately. Consideration would be given to changing the role of parole.

This approach also resembles that taken through federal sentencing guidelines, with the exception that the legislature has maintained final approval of commission recommendations. Federal guidelines have passed constitutional muster.

The Attorney General urges you to approve Senate Bill 50. Serious consideration of this approach to our criminal justice system, to sentencing and to correction's policy has been a long time in coming. Attorney General Stephan pledges his full personal support and assistance to the efforts of the sentencing commission which would be created by Senate Bill 50 and of which he would be a member.

Thank you for this opportunity to express the Attorney General's support for this bill.

*A.G. 3/23/89*  
*Att XVI*  
*Pg 2*

# LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

919½ South Kansas Avenue Topeka, KS 66612 (913) 234-5152

March 23, 1989

STATEMENT OF ANN HEBBERGER, LWVK PRESIDENT, TO THE HOUSE COMMITTEE ON JUDICIARY IN SUPPORT OF SB 50: ESTABLISHING A SENTENCING COMMISSION TO RECOMMEND SENTENCING GUIDELINES AND OTHER MATTERS.

Mr. Chairman and Members of the Committee:

I am Ann Heberger, President of the League of Women Voters of Kansas, speaking on behalf of the League in support of SB 50.

The LWVK adopted a study of Sentencing Alternatives in Kansas in 1981, and announced its position in December, 1982.

Although we support the present criminal code, a mix of indeterminate and mandatory-minimum sentencing, we believe that changes are needed to make the system more effective, consistent, and fair in dealing with both offenders and victims of crime. We therefore support the concept of Uniform Sentencing Guidelines for the judiciary. Such guidelines should provide better protection of society from violent behavior and repetition of criminal acts by requiring incarceration of repeat offenders.

Guidelines should have more structure and uniformity, yet some flexibility in individual cases. One problem with indeterminate sentencing is the function of parole boards. Parole is based on the theory that a relationship exists between a prisoner's response to prison and treatment programs, and his eventual behavior in the community. Training for freedom in a state of captivity is not an easy task. Far more difficult is predicting future behavior. For many prisoners, the uncertainty of their release is the most punitive of punishments, and, we think, the most frustrating to victims.

Such guidelines should provide less disparity in sentencing although disparity is not necessarily unjust. A first offender should not receive as long a sentence as a second-or third-time offender. Injustice occurs when the sentence length for similar defendants committing similar crimes varies by months, even years. Variations can occur within a state and even within a judicial district. The factors which predict a sentence depend upon the offender's age, sex, prior record, race, the judge's individual bias and state of mind, guilty pleas or plea bargaining versus a jury's finding of guilt and good or poor legal counsel.

Such guidelines should provide for fewer incarcerations by providing more sentencing alternatives to judges, such as programs provided by community corrections, house arrest, treatment for drug and alcohol abuse, intensive supervision, work release, job and other counseling, restitution, community service and others.

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*Attachment XVIII*

In order to establish sentencing guidelines, the League supports:

1. The establishment of a commission representative of the criminal justice system, the legislature and lay persons to draft the guidelines for legislative approval.
2. A requirement that judges provide written justification for appellate review when a sentence deviates from the guidelines.
3. The use of community-based alternatives to incarceration be included that would allow for more services such as restitution to victims and individual treatment of offenders.

Sentencing guidelines developed by a commission could be considered a drastic change in the criminal justice system in Kansas. However, the biggest plus is being able to control prison population overcrowding.

The Legislature defines what crime is, and what the punishment shall be. The Criminal Code as a whole has not been recodified since 1971. At this point it would most likely be astounding to find out what crimes and punishments have been added since that time. To make a point, I found a bill locator, dated March 16, 1988, and looked under Crimes, Criminal Procedure and Punishment, pages 16, 17 and 18. I counted at least 105 bills that had been in or out of the hopper since the Session started. The range was from eavesdropping and smoking in public to the buying and selling of human bodies. Many other bills in all sections of this particular book had punishments or some sort attached. Obviously, every time a new crime is added, it upsets the balance of the system. Since there is no way to enforce all of the laws on the books, we end up with selective law enforcement.

The League believes that money can be better spent by developing a good sentencing guideline model or grid using it, rather than building more and more facilities to house prisoners. Our tax dollars should be spent for more preventive services including education, drug and alcohol treatment, counseling, job training, and of course for victim compensation.

Sentencing guidelines are the answer. An alternative is to keep building prisons which are filled before opening. Soon there will be no tax dollars left for quality education for all, child care, highways, KanWork, the environment, the State Water Plan, health care for those in need, and services that the taxpayers expect their dollars to pay for.

Thank you for this opportunity to speak before you today, and we strongly urge your consideration of the passage of SB 50.



Concerned Citizens for Equal Justice  
P.O. Box 5045  
Topeka, Kansas 66605

Lontena Gentry  
Chairperson

Sheryl Harvey  
Asst. Chairperson

Charlene Canady  
Secretary

Mae Neal  
Research & Statistics

Sandy Lassiter  
Public Relations

March 23, 1989

Greetings!

I am honored to be able to speak before you and to offer my support of Senate Bill no. 50.

As a representative of the Concerned Citizens for Equal Justice organization, I come before you to speak on a matter which is of most important and that is the justice system for which works much disparity in today's society. I am pleased to know that recommendations coming from earlier testimonies regarding the complexity of the justice system and how sentencing is handled is being studied and the Kansas Sentencing Commission has been considered for formation to study the disparities in justice practices.

Presently, we have a major task at hand regarding the justice system. it, is to continue to work to improve upon the system to make it as fair and as just regarding all aspects of the human race as possible and we believe a commission to study this process is very acceptable to the well being of all who become involved in the justice system.

It is hoped that through the efforts of Senate Bill No. 50 substantial consideration will be taken in developing sentencing guidelines of current sentencing and release practices.

It is our belief that fairness in sentencing guidelines will decrease the great disproportion of people of color and especially Blacks who seemingly occupy the greatest in disproportion.

We believe that everyone will benefit if the Commission can construct reasonable and considerable guidelines which will balance proportionately among those individuals who find themselves hinged on necessary sentencing and release practices.

We believe if the system is improved throughout for people of color, the white population will benefit greatly, as well.

Thus, the Concerned Citizens for Equal Justice organization lends support to the efforts coming from a selected and elected Commission on Sentencing when they find and give substantial consideration in developing sentencing guidelines which will lessen the grave percentage of disparity in the justice system and will give each human being separate but equal and just decisions on a racial

*House Judiciary*  
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Due to the racial disparity in representation in the prison system in that 40% of the Kansas prison population are people of color to effect the problem and affect the solution involvement of people of color should be greatly considered in forming the Commission, on Sentencing. We feel certainly the black population at large should be considered as part of the opportunity to solve the problem of racial disparity in the justice system. This will be an opportunity for Blacks, now, to serve constructly in positive decision making which will affect both people of color and the white population as well.

Thank you.

*Terry X. Crowder*

Terry Crowder  
Representative  
Concerned Citizens for Equal Justice  
P.O. Box 5045  
Topeka, Kansas 66605

*F.J. 3/23/89*  
*Att XVIII*  
*19, 2*



Concerned Citizens for Equal Justice  
P.O. Box 5045  
Topeka, Kansas 66605

Lontena Gentry  
Chairperson

Sheryl Harvey  
Asst. Chairperson

Charlene Canady  
Secretary

Mae Neal  
Research & Statistics

Sandy Lassiter  
Public Relations

Kansas Representatives; I am Sandra Lassiter, elementary school counselor and a representative of Concerned Citizens for Equal Justice. Our group is greatly concerned with the disproportionate number of minorities imprisoned, as well as the disparity in sentencing.

Roger Endell, Secretary of Corrections said, "Kansas is #1 in the nation in growth of prison population", (Topeka Capital-Journal, January 15, 1988). This is not only shocking, but embarrassing.

As of March 1, 1988, our prison population totaled approximately 6,105 inmates; 2,069 of those are Black. Forty percent of our prison population is minority. Thirty percent of those being Black. Interestingly enough, ~~only~~ a Wyandotte County judge said "... that if blacks were sentenced at the same rate as whites, there would be 30% fewer inmates in Kansas prisons".

We are in favor of the passage of Senate Bill #50 with the amendment stating, "The racial composition of the Commission shall be representative of the racial composition of the inmate population of state correctional institutions ...."

Our calculations show 5 of the 15 member commission should be Black. We propose 5 Black representatives and 1 Hispanic.

We also have a prepared listing of qualified, intelligent and knowledgeable minority persons we would like to recommend to serve on this commission.

Thank you for your time and attention.

Sandra Lassiter

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*3/23/89*  
*Attachment XIX*

SENATE BILL # 50

Concerning Senate Bill #50 which establishes the Kansas sentencing commission and which will provide recommendations of sentencing guidelines.

Being a member of the Concerned Citizens for Equal Justice, we support the amendment to have the commission consist of at least 4 blacks and 1 hispanic which would more closely represent the current inmate population, which is approximately 30 to 40% black.

The black community wants to be involved and have input in the decision making of the guidelines of these new sentencing standards that will be set for the Kansas Criminal Justice system.

Concerned Citizens for Equal Justice

P. O. Box 5045

Topeka, KS 66605

Lontena Gentry, Chairperson

*House Judiciary*  
*3/23/84*  
*Attachment XX*

Kansas Advisory Committee on Hispanic Affairs  
Testimony  
on  
Senate Bill 50

By  
Celso L. Ramirez  
Acting Executive director

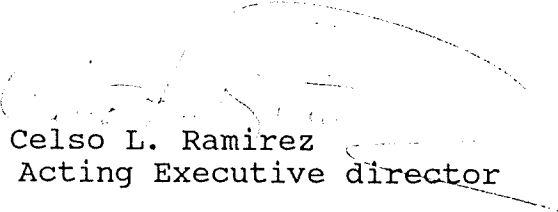
May it please the chairperson and the members of the Judiciary Committee. I am Celso L. Ramirez, Acting Director of KACHA, and I am submitting written information to you on Senate Bill 50 on behalf of KACHA.

KACHA would whole heartedly support Senate Bill 50 and its provisions, if an amendment were offered to provide for ethnic minority representation.

According to the Kansas Department of Corrections annual report of 1987, 40% of the inmate population as of June 30th, 1987 were non-white. With such high numbers, it would seem only logical that fair representation would want to be afforded.

Again, we are in support of Senate Bill 50, if an amendment were provided to have ethnic minority representation on the Commission.

Thank you for the opportunity to address the Committee.



Celso L. Ramirez  
Acting Executive director

House Judiciary  
3/23/89  
Attachment XXI