

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on February 1, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines,
D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Angela Rinaldo, Assistant Deputy Secretary of Corrections
Ann Heberger, League of Women Voters
Mark A. Matese, Douglas County Community Corrections
Phil Magathan, Kansas Association of Court Services Officers
Dave J. Gottlieb, University of Kansas School of Law

Senate Bill 49 - Requiring counties to participate in community corrections
on judicial district basis.

Angela Rinaldo, Assistant Deputy Secretary of Corrections, stated she was present to answer questions the committee might have. She said the department did suggest \$5.1 million to implement the program. The addition of this bill would only provide 105 inmates; this will not create an impact on the overcrowding situation. There will be substantial difficulty in getting judicial districts to cooperate in the implementation of it, and it will take staff to implement this program. She said they suggested looking at the entire community corrections act and funds that are made available within that act. She asked the committee to consider the possibility the same amount of programming may be accomplished with the same amount of money.

A committee member inquired, are you testifying in favor of this bill? She replied, yes. The committee member asked about alternatives. She responded, look again at the sections of the act which provide for the funding formula. She proposed amending K.S.A. 75-52101, deleting that entire formula process and make awards to counties based on a plan of need. We can accomplish same thing by going to a grant formula. The committee member asked her to clarify better the impact with respect to increase of number of beds. She replied, there will be no increase in the number of beds. I don't think we will see a significant number of beds coming on line. Conservation camps will bring on line 200 community corrections beds. A committee member inquired what impact the bill will have on the prison population bed space. She replied there was a study concerning how the community corrections program will impact on prisons. It is difficult to measure what the impact is going to be. Those diverted would have come in anyway. There could be an impact on prison-bound 350 people coming in on this bill. One hundred fifty would be diverted if the program were extended statewide. She said conservation camps will have an impact. The chairman requested the Department of Corrections provide a one-page summary on the costs. A committee member inquired what percentage of Kansas population is served by community corrections. She replied two thousand are in the community corrections system. The committee member submitted there will be between 1,000 and 2,000. Another committee member inquired, you said there are not many residential programs? She replied, there just aren't that many people. The committee member inquired, changing from entitlement program to grant program? Any program would pull out? She answered, I think they will. Sedgwick County has not spent \$2.2 million. That is why we proposed to allocate based on need. A committee member inquired, don't you think all of those western counties could all get together and have a regional community corrections facility? She replied that would be my desire. In response to a question she stated it is difficult for us to get judges to use the program.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 1, 1989

Senate Bill 49 - continued

Ann Heberger, League of Women Voters, appeared in support of the bill. She testified the League has long supported the concept of community corrections, and worked for the passage of the Act in 1989. A copy of her testimony is attached (See Attachment I). She added the Kansas Council on Crime and Delinquency is also in favor of the bill.

Mark A. Matese, Douglas County Community Corrections, testified, in your deliberations on this bill, I encourage you to consider the most effective and efficient way of impacting more prison/youth center populations with CCA programs. Copies of his handouts are attached (See Attachments II). A committee member inquired, in your opinion would the passage of this bill alleviate the current prison bed space? Mr. Matese reponded, I can't answer that. Another committee member inquired, under the entitlement program? Mr. Matese replied, we don't have a residential center. Johnson County kicked in to build a facility. Mr. Matese passed around to the committee members a device they are experimenting with that will monitor and supervise a person on parole. A copy of a sketch of the device is attached (See Attachment II).

Phil Magathan, Kansas Association of Court Services Officers, testified the enactment of this legislation would cause the duplication of an established administrative structure and represent a substantial cost to both state and local coffers. Copies of his handouts are attached (See Attachments III).

Dave J. Gottlieb, University of Kansas School of Law, appeared in support of Senate bill 49 and Senate Bill 50. He stated he felt both of the bills are a substantial step forward. I think the committee ought to consider attempting to be more specific on the question of the factors that it must weigh most heavily in making its judgement of the appropriate sentence. A copy of his testimony is attached (See Attachment IV). During discussion, a committee member inquired, how do you view the sale of drugs? Is that violent or not violent? Professor Gottlieb replied you can define it either way. There should be guidelines that should be given to the commission. A committee member inquired, in respect to Senate Bill 50, do you think if we enter into attempting to add suggestions to the commission we risk politicizing it in the opposite way? Professor Gottlieb replied, I am in favor of somewhat more guidelines. A committee member inquired, in your opinion, should the state expand maximum high security prison or take some other action to improve the penitentiaries. Professor Gottlieb responded, I would favor alternatives that would not require building new structure. I feel there are people in prison who do not need to be there.

Senator Bond moved to approve the minutes of January 30, 1989. Senator Petty seconded the motion. The motion carried.

The meeting adjourned.

Guest list
~~A copy of the fiscal note is attached (See Attachment V).~~

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-1-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Whitney Damon	Topeka	McGill/AESOE
Wally Mateja	114 Mass 3rd Fl. Lawrence, KS. 66044	Douglas County Community Corrections
Cynda Knudsen	Topeka	DOC
Bever Pollart	KDOC Topeka	KDOC
Tom Skiles	Topeka	Shawnee County
Robert Sanders	Topeka	Ks. Dept. of Corr.
Michael Robinson	Topeka	KDOC
ROBERT HEDBERG	TOPEKA	Youth Services
DIANA STAFFORD	TOPEKA	KCDAA
David Gottlieb	Lawrence	University of Kansas
Cyrine Homery	Topeka	Kansas Parole Board
Selen Stephens	Topeka	KPOA
Jacques Oakes	Topeka	KPOA
Ann Hebecker	Overland Park	LWVK
John T. Tolbert	Topeka	KAC
Michael Gail	Topeka	KPB
Steve A. Robinson	Topeka	Ombudsman for Juveniles
Bucky Martin - John	229 S. 8th KCKS	Ex. Dir. Detention Center Third Judicial District
L.H. (Don) Strickland	200 E. 7th St. Topeka, KS	Court Services
Paul Shelley	Topeka	Supreme Court
Greg Payne	Topeka	Supreme Court
Phil Magallon	" " "	V. A. L. S. O
John L. Stegman	Mayetta	Div. of Bud.
Vern Sloan	Topeka	Doc
Paula Ann Speckhouse	Lawrence	Intern

Attachment V
Senate Judiciary
2-1-89

LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

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

February 1, 1989

STATEMENT TO THE SENATE COMMITTEE ON JUDICIARY RE: SB 49.

Mr. Chairman and Members of the Committee:

I am Ann Hebberger, President of the League of Women Voters of Kansas, speaking in favor of SB 49.

As many of you on the Committee 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 SB 49 because we believe that the time has come to require the 31 judicial districts to develop community corrections programs, so that all of the judges will have 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 programs 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.

Thank you for the opportunity to appear before you today, and the League strongly urges your consideration of SB 49. Attachment I

SHC
2-1-89

TESTIMONY ON SENATE BILL NO. 49
FEBRUARY 1, 1989
MARK A. MATESE, DIRECTOR
DOUGLAS COUNTY COMMUNITY CORRECTIONS

Conceptually I support the premise of expanding Community Corrections Act programming throughout the State of Kansas. This Bill, SB49, appears to establish further expansion beyond what was accomplished during the 1988 Legislative Session with the passage of SB457. Community Corrections Act Programs were recognized as integral in dealing with crowding of State prisons and youth center systems. The State Department of Corrections Annual Report on Community Corrections for FY 1988 indicates that 2338 adults and 248 juveniles were served in Community Corrections Act Programs at an annual cost of 4.1 million dollars. This computes to an annual average cost of \$1585.46 or daily costs of \$4.34 per offender.

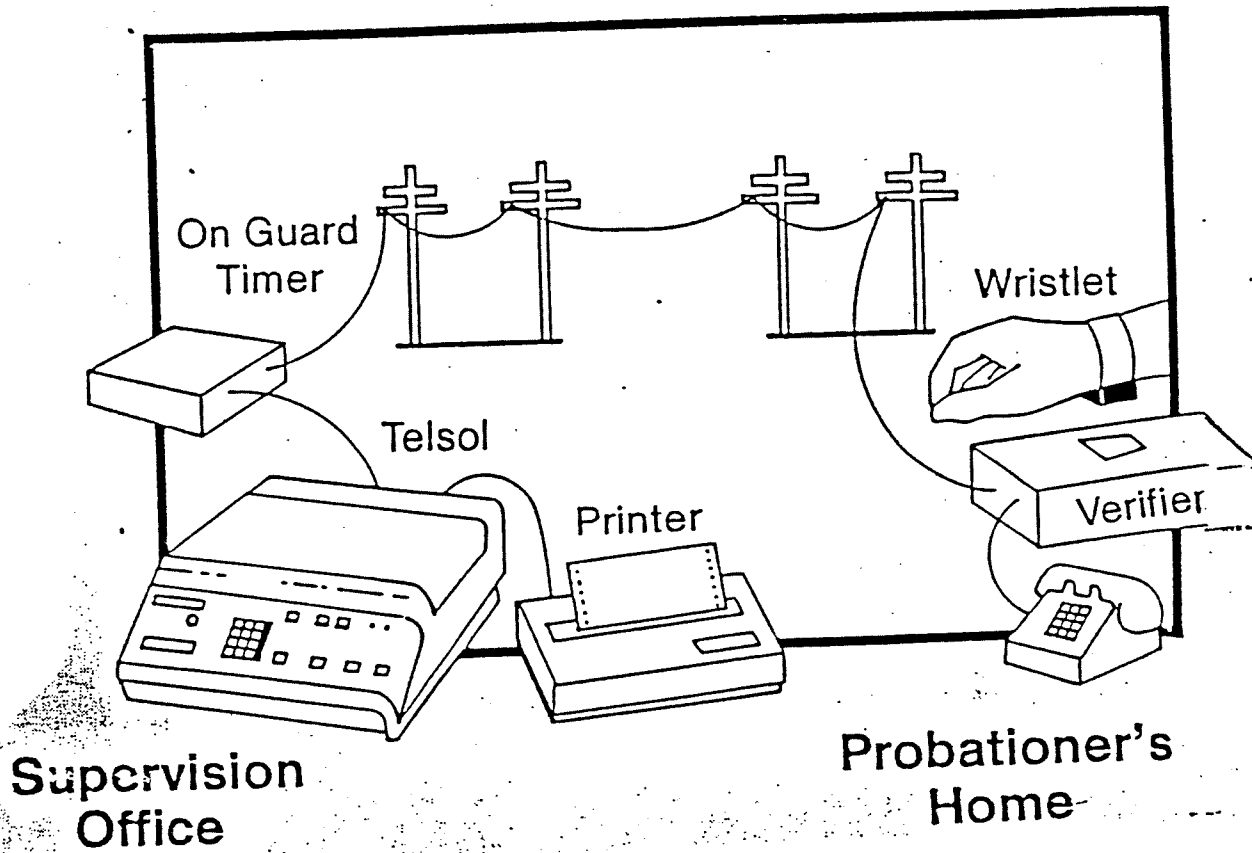
In considering passage of SB49 I urge you to consider keeping intact the existing CCA Programs which cover approximately 60% of the state's population. The voluntary nature of participation has been eliminated in this bill. Allowing counties the opportunity to consider ways to improve local correctional services, has been successful in existing programs. Criminal Justice officials have worked cooperatively in existing programs and I would anticipate negative reactions to state mandated programs.

I would encourage you to include additional funding outside of the existing programs funding structure to allow for adequate operations.

Attachment II
SGC
2-1-89

Additionally, the State must continue funding for CCA programs as the State's crowding problem permeates local communities. Probation, Parole, Community Corrections, mental health, drug/alcohol treatment centers, local jails and additional services feel the affects of prison/youth center crowding. The Texas Legislature included in their prison construction packages funding for local communities to do exactly what CCA programs do and will continue to do - address local effects of crowding.

In your deliberations on this bill I encourage you to consider the most effective and efficient way of impacting more prison/youth center populations with CCA programs. It may be beneficial for Legislative Post Audit to explore ways to accomplish this. The audit could also consider the current management of the CCA (as done with the Virginia Diversion Incentive approx. '83-85) with the intent to provide direction to the State on improving and expanding what we have.



Attachment II
J.P.C.
2-1-89

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS



February 1, 1989

Executive Board

President
Michael Patterson
Topeka

Vice President
John Steelman
Ottawa

Secretary
Sue Froman
Wichita

Treasurer
Mark Bruce
Parsons

Nomination/Membership
Donna Hoener
Olathe

Legislative Chairperson
Phil Magathan
Topeka

Training Chairperson
Lisa Parrett
Olathe

Parliamentarian
Mary Kadel
Independence

Public Relations Chairperson
Shirley West
Wichita

Immediate Past President
Karen Dunlap
Concordia

To: Committee on Judiciary and Members of the
Kansas Legislature

From: Phil Magathan, Legislative Chairperson
Ron Schweer, Legislative Committee Member

Re: Senate Bill No. 49--AN ACT
concerning the Community correction;
requiring participation by counties.

The Kansas Association of Court Services Officers (KACSO) represents professionals throughout Kansas who provide supervision of both adult and juvenile offenders by order of the 31 district courts and the Kansas Supreme Court. The population of offenders supervised by court services officers during fiscal year (FY) 1988 exceeded 25,000. The KACSO membership represents the largest "field corrections" agency in Kansas and considers legislation which may impact the future development of field services in a positive or negative manner. The enactment of S.B. 49 would require the establishment of community corrections programs in "all counties constituting judicial districts." The financial commitment necessary for this legislation would in effect provide a duplication of services now provided by many court service officers statewide. The expansion of existing services and flexibility to enter into contractual agreements with local agencies could provide the court services departments with the alternatives necessary to maximize community placement and minimize the risk to the general public. Each judicial district in Kansas is comprised of a court services department providing varying levels of offender supervision. Community corrections programs serve only a fraction of communities in Kansas, primarily in the major urban areas.

The present administrative structure of community corrections programs is similar to that of the Court Services Departments in Kansas. It is our position that enactment of this legislation would cause the duplication of an established administrative structure and represent a substantial cost to both state and local coffers.

Attachment III
SJC
2-1-89

Committee on Judiciary and Members of the
Kansas Legislature
February 1, 1989
Page 2

A review of the Community Corrections Act reveals that the legislative intent of the Act was to provide the counties in Kansas the opportunity to participate by establishing an advisory board, rather than requiring this participation as outlined in S.B. 49.

As an association, we strongly urge this committee to consider the use of Court Services Departments in Kansas as the provider of services otherwise proposed in S.B. 49 as part of a mandated community corrections program. The administrative structure of the Court Services Departments could provide the supervision of staff and programs to maximize the use of community resources at a much more amendable cost to the citizens of Kansas.

PM/RS:emk

TESTIMONY OF DAVID J. GOTTLIEB
University of Kansas School of Law
For the Senate Committee on the Judiciary
February 1, 1989

I am a Professor at the University of Kansas School of Law whose major area of practice and teaching has been the criminal justice system. I am also Director of the Kansas Defender Project, a law school clinical program in which students represent inmates at the Kansas State Penitentiary. I've seen the prison crowding problem first-hand. I'm here to support Senate Bills 49 and 50, and I do so because I believe they are necessary steps not only to dealing with the overcrowding problem, but to creating a more rational sentencing system.

The Secretary of Corrections has described the overcrowding situation currently existing at our prisons as a crisis. A federal judge has already issued a preliminary injunction on overcrowding at various state institutions, and if we don't get this problem under control, we risk ceding further control of aspects of our criminal justice policy to federal courts.

This crisis might be justifiable if it were clear that everyone who was in prison belonged there. However, my experience convinces me this is not the case. Over the last ten years, we have more than doubled our prison population, despite the fact that the crime rate has remained almost steady. We incarcerate for longer periods of time, and we are incarcerating many people who would not have received prison terms a few years ago. Some of this is the result of changes in state law, but more is the result of a system based on a rehabilitative model that is being administered by people who have lost faith in rehabilitation.

Our sentencing system is now structured to give judges great discretion in deciding whether and how long to incarcerate and then to give the Parole Board discretion in determining when to release. The theory behind granting this discretion is to allow for individualized determinations based upon rehabilitation. In the current political climate, however the tendency has been to throw the book at the offender first, and ask questions later. The situation with the Parole Board is even worse. In fact, the Board has created a catch-22. It has increased crowding by denying release. It has then required completion of programs before parole which the inmate cannot enter because there are too many other inmates ahead of him.

In addition to creating problems of crowding, the present system tolerates terrible disparities in sentencing. Thus, at the same time check writers are going to prison, child molesters may be granted probation.

Both of these bills will help alleviate the problems I've described. The community corrections bill will help reduce overcrowding by separating out those least in need of imprisonment. The sentencing guidelines bill will make even more important changes by helping us determine, in a systematic manner, those who most deserve imprisonment. It will add an element of predictability in the system that is critical for the proper functioning of our corrections department.

Attachment IV
SJC
2-1-89

While I support these bills, I do have a number of specific suggestions for Senate Bill 50, the bill setting up the Kansas Sentencing Commission. In particular, I believe that the bill could profit from more specific guidance about the criteria that should be used when guidelines are implemented.

First, Section 1 of the bill speaks of the Commission's task as devising a "fixed" term. I believe that the bill should make clear whether the guidelines contemplate that the current parole function will be continued, abolished, or modified. Obviously, guidelines will differ depending on whether the Parole Board will continue to function. The Commission should probably also be told whether it should assume the current system of good-time credits or whether it should consider some alternative system.

Second, I think the Committee ought to consider attempting to be more specific on the question of the factors that it must weigh most heavily in making its judgment of the appropriate sentence. Is the severity of the offense the most important factor? In some states that factor is paramount. Should an assessment of a defendant's prior record or risk be an important factor? In the federal system, the defendant's risk is heavily weighted. Is a defendant's capacity for or need for rehabilitation to be taken into account at all? Most modern systems do not give rehabilitation any priority.

Third, in any guideline system, perhaps the most crucial task is to decide who in a rational way those who deserve imprisonment and those who do not. The only current guidance is the presumption of probation for first-time E felons. I think it would be helpful if the legislature had more specific ideas on how the probation versus imprisonment decision should be made. For example, should the violence or lack of violence be a principal concern? Should it make a major difference if a defendant has a favorable probation report? I would suggest a fairly strong statement against the use of prison for non-violent offenses, and a requirement that it not be used for first-time non-violent offenders. I feel strongly about this because I think the greatest failure of the federal guidelines was in this area. The federal guidelines, which are going to result in a doubling of the federal prison population, were drafted so imprisonment was the norm, and probation the exception. A repetition of that experience would worsen, not ease, our present problems.

Finally, I believe the Commission should not be asked simply to look at current practice, but to look at practice in the recent past as well, and to rely on past practice where it is more rational. For example, if people are being held for additional years merely because they are required to complete programs the state can't provide, those inequities should not be frozen into the system.

Although I think the bills could be improved, I do want to make clear that I applaud this start toward more rational sentencing, and I fully support the thrust of these bills.