CRIMINAL LAW AND UNIFORM COMMERCIAL CODE SUBCOMMITTEE
Senator Jerry Moran, Chairman

March 23, 1990 - 10:00 A.M. - 514-S

Committee members present: Senators Moran, Oleen, D. Kerr, Petty and Gaines.

HB 2880 - Creating the crime of assault of a correctional employee.

Barbara Crouse, Kansas State Penitentiary (See Attachment I)
Doug Friesz, Kansas State Penitentiary (See Attachment II)
Dick Koerner, Department of Corrections (See Attachment III)
Wayne F. Wienecki, Kansas Public Employees Union
Ray Roberts, Kansas State Penitentiary (See Attachment IV)
Senator Edward J. Reilly, Jr. (See Attachment V)
Letter from Office of the Attorney General (See Attachment VI)

HB 2692 - Court-ordered mediation for juvenile offenders.

Barbara Schmidt, Victim Offender Mediation Services, Wichita (See Attachment VII)
Patricia Henshall, Office of Judicial Administrator
Written testimony from Representative Joan Adam (See Attachment VIII)
Letter from Judge Karen M. Humphreys (See Attachment IX)
Testimony from Social and Rehabilitation Services (See Attachment X)

SB 370 - Disclosure of certain tax information to division of vehicles.

Mark Burghart, Kansas Department of Revenue (See Attachment XI)

Senator Oleen moved to recommend to the full committee to adopt the cleanup amendments and report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

3-23-90

March 23, 1990

Chairperson, Senator Winter, Vice-Chairpersons, Senator Moran and Senator Yost, Members of the Committee, thank you for the opportunity to present my reasons to you to upgrade the act of Battery of a Correctional Employee from a misdemeanor to a Felony.

The possibility of being tried and sentenced to several extra years in the Penitentiary will act as a deterrent to future assaults.

Messages will be sent to the inmate population that if they attack staff, they will do some serious time.

Messages will be sent to those who, now and in the distant future, assign inmates to positions of trust. These Inmates must not be allowed to regain a position where they should be considered trustworthy, when, in fact, they are a danger to staff.

Messages will be sent to Mental Health personnel. They must be forced to be aware which inmates have proven themselves to be a danger to staff and not indiscriminatly replace these inmates back into positions where staff can be re-assaulted.

Messages will be sent to the parole board that these inmates are dangerous and special attention should be taken before the final decision to parole is made.

When charges are made by the District Attorney's office and a conviction is made, these charges and sentences are placed upfront and permanent in the inmates record. When a

Attach. I
Judiciary
Subcommittee 1/3

conviction downtown is not present, the possibility that someone not familiar with the inmate may overlook the dangers or not accept the fact that the inmate is dangerous and replace him in a position of trust.

The internal punishment is typically segregation for a period of time, loss of good time, and loss of privileges. The segregation time ends, privileges are returned in a few months and, all too often with the turnover in staff, the dangerous nature of these men is forgotten, Formal charges can keep these inmates in the forefront for a longer period of time. This should happen along with, not instead of, formal charges and the possibility of extended prison time.

Correctional Staff have no protection except their wits. We carry no weapons, no mace,, no deterrent except determination to live through today and do the job we are paid to do to the best of our ability. Street law enforcement at least have the emotional support of carrying a weapon for protection. Correctional Employees are placed in a more vulnerable position.

Statistics prove that as inmate population go down, as is now happening at K.S.P., the rates of assaults on both Staff and Inmate go up markedly.

Assaults on Female Staff are typically sexual, as opposed to retaliatory, in nature. Male inmates wish to show their dominance over females. These assaults have been done without any weapons. That makes this most vile intrusion of a woman that civilized man knows, a

I 2/3

Misdemeanor! Any attack on any employee, whether armed or not, must be dealt with the heaviest hand possible.

You, the members of this committee, can send the most important message. You can tell every correctional employee in Kansas that you know the danger we are in. You can tell us you are going to do whatever it takes to support us. Please show us you appreciate the job we do for the State of Kansas be giving us a law with enough teeth in it to make it effective.

Thank you for your support.

Barbara D. Crouse

COII Barbara D. Crouse
Kansas State Penitentiary

BC/dlc

I 3/3

3-23-90

March 22, 1990
D.S. Friesz

My name is Doug Friesz; I am currently employed as the Major of the Guard at the Kansas State Penitentiary. In this position, I have many responsibilities, to include oversight of the internal disciplinary system and the segregation unit, as well as supervision of the uniformed security operations. Today, however, I come to you in the capacity of an advocate of the line-level staff employed at KSP. I would like to take a few minutes to help you view the environment we work in through our eyes.

Let me begin by sharing with you a letter I received this past week from an inmate who is arguably the most dangerous man in the Kansas prison system. It's entitled "A Professional Opinion".

> You could float the U.S.S. Missouri in all the printer's ink that has been wasted over the past few weeks debating the pro's and con's surrounding the proposed, "hard 40" bill. I use the word wasted in the literal sense because I can't understand how there could be even the slightest doubt in anyone's mind as to what effect such a ridiculous law would have.
>
> Speaking as a 43 year old career criminal who has absolutely no hope of ever drawing another breath of free air, I will tell you point-blank what passage of the "hard 40" bill will do. Each time a trial judge sentences a defendant under the provision of a statute like that, along with the journal entry and commitment order, that judge may just as well instruct the court clerk to type up a license to kill and send it to the penitentiary with the rest of the paperwork.
>
> Pass a law like that and in a few years there will be a couple of hundred people like myself rotting away behind the walls at KSP--Men who place about as much value on the lives of those who live and work around them as they do a wad of used bubble gum.
>
> Personally, I could care less whether the "hard 40" becomes law, I already have my 007 classification. The question is how many more David Nicholson's do you want the system flooded with?
>
> One more thing, and then I'm out of here. I propose attaching this amendment to the "hard 40" bill. Should the bill become law it would be mandatory that every hardline solon who voted yea spend two weeks each year working as a guard here at the Kansas State Prison. It would be kind of like spending two weeks at a summer camp which is located in a war zone.

Attach: II
Judiciary Subcomm.
1/2

But then what do I know? I'm just a man who will die in prison with or without an additional "hard 40".

We in the field of corrections are familiar with being the object of the inmates' frustration with life in general and the criminal justice system in particular. But there are times that it seems like we are the object of everyone's frustrations. Our reward for performing a difficult job often seems to be an increasingly difficult job to perform. My staff did not create overcrowding, but they have dealt with its effects. My staff did not create a statewide budget crunch, but they are dealing with its effects. What we are asking for is an additional bit of leverage in an environment we feel is becoming increasingly dangerous.

Roughly half of the inmates currently housed in our segregation unit have lengthy sentences to serve, and it can be argued that legislation such as that proposed would have no deterrent effect on them, But, not all of our assaultive inmates are serving long sentences. My perspective is that even one attack on an officer is deterred by the prospect of an additional sentence, then we will have accomplished something significant.

Place yourself for a moment in the position of a new officer, making $8.13 an hour, enforcing rules in a society of rule-breakers, where a life may be worth as little as a carton of cigarettes.

I am asking you to send my staff the message that their lives are worth considerably more than that to you and the citizens of Kansas they serve.

3-23-90
Dick T. ner

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

Steven J. Davies, Ph.D.
Secretary

TO: HOUSE JUDICIARY COMMITTEE

RE: HOUSE BILL 2880

Secretary Davies fully supports the intent of H.B. 2880 to create a safer working environment for corrections officers and employees. Certainly any reasonable action that can be taken to reduce the potential for injury in the line of duty to these employees should be considered and implemented where possible.

By raising the classification of battery on a corrections officer to the felony level, H.B. 2880 makes a strong statement that the State will not tolerate abuses by inmates against staff who daily manage and control some of the most dangerous individuals in our society.

Under current law assault on a law enforcement officer is a Class A misdemeanor; as is battery on a law enforcement officer. Assault on other than a law enforcement officer is a Class C misdemeanor; with battery being a Class B misdemeanor.

Secretary Davies is concerned that current laws do not create enough of a deterrent effect to keep inmates from acting out against corrections officers and other corrections employees. Therefore, the Secretary supports the amendments to H.B. 2880 to include all corrections employees and make it a Class E offense to commit a battery on a correctional employee.

Counselors, maintenance workers, clerical staff, and other support staff work in institutions on a daily basis and are exposed to the same individuals and risks as a corrections officer. By including these individuals along with corrections officers, the State will serve notice that it will take aggressive action to better provide for the safety of those who work in a corrections environment.

However, in its current form the Secretary in concerned that H.B. 2880 does not go far enough to provide a more secure environment in which corrections employees must work. The Secretary recommended to the House Committee that battery on a corrections

Attach. III
Judiciary
Subcommittee 1/9

employee be a Class D felony and assault on a corrections employee be a Class E felony. H.B. 2880 raises the felony level for battery to a Class E offense but makes no change regarding the offense of assault on a corrections employee. As a result, assault on a non-corrections officer would remain a Class C misdemeanor. The Secretary does not believe this classification is a sufficient deterrent to inmates to keep them from assaulting staff. Consideration should be given to raising the classification of an assault on a corrections employee.

The Secretary has two additional recommendations to provide for the safety of officers and the security of correctional institutions and the general public. The suggestions were made to the House Committee but were not included in the amendments to H.B. 2880. Nevertheless, the Secretary believes they are important factors in providing for a safer and more secure environment within the correctional institutions. Therefore, it is requested that consideration be given to these additional recommendations.

First, it is recommended that consideration be given to raising the felony level of aggravated escape and aiding an escape from a Class E felony to a Class D felony. Escapes or attempted escapes pose a serious risk to those who work in a corrections environment. By raising the classification of the crime from an E to a D felony, some inmates may be discouraged from taking this action. Any escape which does not occur or which is not attempted lessens the potential risks to staff and others.

The second additional action which is recommended is to redefine the crime of Traffic in Contraband and raise the level of the crime from an E to a D felony.

The crime needs to be redefined because in its present form it does not make it a violation to bring certain items into a correctional facility. For example, it would not violate this statute to bring in yeast or other food items with which alcohol or "hooch" could be produced; bringing in parts of a gun would not be prohibited by the current law; nor would bringing in saw blades or other tools.

Obviously, any of the above items pose a risk to security and a threat the safety of staff. Bringing them into a correctional facility should be prohibited.

A draft of H.B. 2880 in the form recommended by Secretary Davies is attached for your consideration.

PROPOSED BILL NO. ____

By

AN ACT concerning crimes and punishments; relating to correctional institutions, officers and employees; defining and classifying certain crimes; amending K.S.A. 21-3110, 21-3810, 21-3811 and 21-3826 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(6) "Correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

(7) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

~~(6)~~ (8) To "deprive permanently" means to:

(a) Take from the owner the possession, use or benefit of

III 3/9

his or her property, without an intent to restore the same; or

(b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

~~(7)~~ (9) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(8)~~ (10) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(9)~~ (11) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(10)~~ (12) "Law enforcement officer" means any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

~~(11)~~ (13) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

~~(12)~~ (14) "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(13)~~ (15) "Owner" means a person who has any interest in property.

~~(14)~~ (16) "Person" means an individual, public or private

corporation, government, partnership, or unincorporated association.

~~(15)~~ (17) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

~~(16)~~ (18) "Property" means anything of value, tangible or intangible, real or personal.

~~(17)~~ (19) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

~~(18)~~ (20) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

~~(19)~~ (21) "Public officer" includes the following, whether elected or appointed:

(a) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(c) A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(d) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

(f) Any other person exercising the functions of a public officer under color of right.

~~(20)~~ (22) "Real property" or "real estate" means every

estate, interest, and right in lands, tenements and hereditaments.

~~(21)~~ (23) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

~~(22)~~ (24) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(23)~~ (25) "Stolen property" means property over which control has been obtained by theft.

~~(24)~~ (26) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

~~(25)~~ (27) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

New Sec. 2. (a) Assault of a correctional officer or employee is assault, as defined in K.S.A. 21-3408 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Assault of a correctional officer or employee is a class E ~~misdemeanor~~ felony.

New Sec. 3. (a) Aggravated assault of a correctional officer or employee is aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Aggravated assault of a correctional officer or employee is a class C felony.

III 6/9

New Sec. 4. (a) Battery against a correctional officer or employee is battery, as defined in K.S.A. 21-3412 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Battery against a correctional officer or employee is a class D felony.

New Sec. 5. (a) Aggravated battery against a correctional officer or employee is aggravated battery, as defined in K.S.A. 21-3414 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Aggravated battery against a correctional officer or employee is a class B felony.

New Sec. 6. Sections 2 through 5 shall be part of and supplemental to the Kansas criminal code.

Sec. 7. K.S.A. 21-3810 is hereby amended to read as follows: 21-3810. Aggravated escape from custody is:

(a) Escaping while held in lawful custody upon a charge or conviction of felony; or

(b) escaping while held in custody on a charge or conviction of any crime when such escape is effected or facilitated by the use of violence or the threat of violence against any person.

Aggravated escape from custody is a class ~~E~~ D felony.

Sec. 8. K.S.A. 21-3811 is hereby amended to read as follows: 21-3811. Aiding escape is:

(a) Assisting another who is in lawful custody on a charge or conviction of crime to escape from such custody; or

(b) supplying to another who is in lawful custody on a charge or conviction of crime, any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or

(c) introducing into an institution in which a person is confined on a charge or conviction of crime any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

III 7/9

Aiding Escape is a class ~~E~~ D felony.

Sec. 9. K.S.A. 21-3826 is hereby amended to read as follows: 21-3826. Traffic in contraband in a penal institution is introducing or attempting to introduce into or upon the grounds of any institution under the supervision and control of the ~~director of penal institution~~ secretary of corrections or any jail, or taking, sending, possession, attempting to take or attempting to send therefrom, or distribute within, any item whatsoever, ~~or any unauthorized possession while in aforesaid institution or distributing within any aforesaid institution,~~ including any narcotic, synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler, alcoholic liquor, intoxicating beverage, firearm, ammunition, gun powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication, or writing without the consent or authorization of the secretary of corrections, director, superintendent or jailer.

Traffic in contraband in a penal institution in a class ~~E~~ D felony.

Sec. 10. K.S.A. 21-3110, 21-3810, 21-3811 and 21-3826 are hereby repealed.

Sec. 11. This act shall take effect and be in from from and after its publication in the statute book.

III 8/9

3-23-90

INMATE ON STAFF ASSAULTS
BY FACILITY
BY FISCAL YEAR

FACILITY	FY 87	FY 88	FY 89	TO DATE FY 90	TOTAL
KSP/KCIL	4	6	6	9	25
KSIR	1	1	6	0	8
KCVTC/SRDC	0	0	1	1	2
TCF/FCF	0	0	0	0	0
NCF/SCF	N/A	5	5	5	15
ECF	N/A	N/A	6	3	9
HCWF	N/A	N/A	2	1	3
WCF	0	0	1	0	1
OCF	N/A	0	0	0	0
THC	0	0	0	0	0
EHC	0	0	0	0	0
WWRC	0	0	0	0	0
TOTALS	**5**	**12**	**27**	**19**	**63**

Kansas Department of Corrections
Operations Division
March 12, 1990

III 9/9

3-23-90
Ray Rob. 5

BATTERY ON STAFF (NO WEAPON INVOLVED)
JANUARY 1986 TO PRESENT

JANUARY 29, 1986
CO WILLIAMSON WAS HIT IN THE FACE BY INMATE GOODWIN #30352 WHILE OFFICER WAS PERFORMING SEARCH. INMATE WAS BEING SEARCHED PRIOR TO ESCORT TO COUNTY COURT. NO APPARENT REASON FOR INCIDENT.

MARCH 4, 1987
INMATES ZIEGLER #37297 AND CAMPBELL #38976 ENTERED THE OFFICE OF CC I WILEY, PUSHED HIM AGAINST THE WALL, AND MADE THREATS AGAINST THE STAFF MEMBER. UNKNOWN REASON FOR INCIDENT.

MARCH 24, 1987
LT. LEROY WAS SEARCHING INMATE GANT #30938. INMATE HIT THE STAFF MEMBER IN THE FACE WITH HIS ELBOW. UNKNOWN REASON FOR INCIDENT.

JUNE 30, 1987
CO CHINN WAS ESCORTING INMATE RICE #37929 BACK TO A CELL IN THE SEGREGATION UNIT. INMATE SLIPPED OUT OF RESTRAINTS AND HIT STAFF MEMBER IN THE FACE. INMATE WAS BEING RELEASED IN A FEW DAYS AND BELIEVED THAT HE WOULD NOT BE PROSECUTED FOR MISDEMEANOR BATTERY.

JULY 6, 1987
CO KING, WHILE WORKING IN THE PROTECTIVE CUSTODY UNIT, LET INMATE MARTIN #38774 OUT OF CELL TO TAKE A SHOWER. INMATE APPROACHED THE STAFF MEMBER AND BEGAN KICKING THE STAFF MEMBER. INMATE WAS IN RESTRAINTS. NO APPARENT REASON FOR INCIDENT.

APRIL 11, 1988
CO STEWART WAS ASSIGNED AS OIC OF PROTECTIVE CUSTODY UNIT. STAFF MEMBER COUNSELED INMATE DILL #36117 ON THE CARE OF HIS CELL. LATER DURING THE SHIFT, STAFF MEMBER WAS IN SHOWER AREA, INMATE ENTERED THE AREA, APPROACHED THE STAFF MEMBER, AND STRUCK HIM IN THE FACE WITH HIS FIST.

APRIL 14, 1988
CO COVINGTON WAS ASSIGNED TO THE SEGREGATION UNIT. INMATE HANNON WAS GIVEN THE OPPORTUNITY TO TAKE A SHOWER. INMATE WAS PLACED IN RESTRAINTS AND EXITED THE CELL. IT IS PROCEDURE THAT WHEN INMATE EXITS CELL FOR SHOWER, THE CELL WILL BE SEARCHED. WHEN STAFF MEMBER ATTEMPTED TO ENTER CELL FOR SEARCH, INMATE BEGAN KICKING HIM. OTHER STAFF WERE PRESENT AT THE TIME AND WERE ABLE TO CONTROL INCIDENT.

Attach. IV
Judiciary Subcomm.
1/3

APRIL 14, 1988
CO REYES WAS ASSIGNED AS OIC OF THE SEGREGATION UNIT. INMATE GUIDEN #37035 BECAME DISRUPTIVE AND IT WAS DETERMINED HE WOULD BE MOVED TO A MORE RESTRICTED CELL. REYES BEGAN TALKING WITH INMATE AT WHICH TIME INMATE REACHED THROUGH THE CELL BARS, AND WITH A CLENCHED FIST, HIT THE STAFF MEMBER IN THE FACE.

APRIL 23, 1988
CO MADDEN WAS ASSIGNED AS OIC OF THE SEGREGATION UNIT. MADDEN APPROACHED THE CELL OF INMATE WHITE #8402 TO ESCORT THE INMATE TO RECREATION. STAFF MEMBER BELIEVED INMATE WAS IN HANDCUFFS AND INSTRUCTED OFFICER TO OPEN THE CELL. AT THIS TIME, INMATE STRUCK MADDEN IN THE MOUTH WITH A CLENCHED FIST. UNKNOWN REASON FOR INCIDENT.

SEPTEMBER 7, 1988
MENTAL HEALTH STAFF MEMBER CORDASCO WAS INTERVIEWING INMATE DALE #35017. AT THE END OF THE INTERVIEW, INMATE WAS DISMISSED. AT THIS TIME, MS CORDASCO WENT INTO THE RESTROOM, WHEN SHE EXITED, INMATE DALE GRABBED HER, WHEN SHE SCREAMED, INMATE TOLD HER TO SHUT UP. AFTER SEVERAL SCREAMS, HELP ARRIVED. STAFF MEMBER RECEIVED SCRATCHES TO HER FACE.

NOVEMBER 19, 1988
CO BENEFIELD WAS ASSIGNED TO THE MEDIUM SECURITY UNIT. INMATE SMITH #34230 WAS FOUND TO BE DRUNK. WHEN OFFICERS ATTEMPTED TO RESTRAIN THE INMATE, HE KICKED STAFF MEMBER IN THE FACE CAUSING A BROKEN NOSE.

DECEMBER 26, 1988
CO HUNT WAS ASSIGNED TO THE INSIDE DORM. WHEN OFFICER WAS MAKING COUNT, INMATE HARLIN #16588, BECAME DISRUPTIVE, OFFICER CALLED CAPTAINS OFFICE FOR ASSISTANCE. INMATE WAS THEN CUFFED UP. WHEN BEING ESCORTED OUT OF UNIT, INMATE CHARGED STAFF MEMBER AND BEGAN KICKING HIM.

APRIL 27, 1989
LT. ZINK, WHO WAS ASSISTANT SHIFT SUPERVISOR, WAS CALLED TO BCH BECAUSE INMATE DEERE #33605 WAS BEING DISRUPTIVE. ONCE AT THE CELL, THE LT. PLACE THE INMATE IN RESTRAINTS AND ORDERED THE CELL DOOR OPEN SO THE INMATE COULD BE TAKEN TO SEGREGATION. ONCE OUT OF CELL, INMATE BEGAN KICKING THE LT.

AUGUST 4, 1989
OFFICER MCGOWAN AND BASTION WERE ASSIGNED TO UBCH. WHEN TRYING TO SEARCH INMATE THOMPSON, INMATE BECAME ANGRY AND BEGAN SWINGING HIS ARMS HITTING BOTH OFFICERS.

DECEMBER 2, 1989
OFFICER CROUSE WAS ASSIGNED TO THE PROTECTIVE CUSTODY UNIT. INMATE LAUGHLIN #32623, WHO WAS AN ORDERLY, ASKED THE OFFICER TO CHECK THE WORK HE HAD DONE IN A CELL. WHEN OFFICER ENTERED THE CELL, INMATE JUMPED HER, GRABBED HER AROUND THE NECK AND SAID HE NEEDED HER.

FEBRUARY 9, 1990
OFFICER CROUSE WAS ASSIGNED TO THE ECU. INMATE SHAW #7400 JUMPED OFFICER, PULLED HER INTO THE RESTROOM AND BEGAN KISSING HER. ALSO ATTEMPTED TO FORCE HIS LEG BETWEEN HER LEGS. OTHER INMATES ASSISTED THE OFFICER.

FEBRUARY 20, 1990
LT. MYERS AND OTHER OFFICERS ENTERED DAY ROOM AT THE MEDIUM SECURITY FACILITY. OFFICERS APPROACHED A GROUP OF INMATES PLAYING CARDS AND ADVISED THEM THEY WERE GOING TO BE SEARCHED. INMATE HARLIN #16588 BECAME DISRUPTIVE AND WAS ORDERED TO PLACE HIS HANDS BEHIND TO BE CUFFED, INMATE REFUSED. SCUFFLE BEGAN, INMATE HIT LT. MYERS IN THE FACE WITH HIS ELBOW WHILE RESISTING ARREST.

MARCH 3, 1990
CO WARD WAS ASSIGNED AS OIC OF SEGREGATION UNIT. INMATE MEYERS BECAME DISRUPTIVE AND WARD WENT TO THE INMATES CELL IN AN ATTEMPT TO SETTLE HIM. INMATE REACHED THROUGH THE CELL BARS AND STRUCK THE STAFF MEMBER IN THE FACE.

3-23-90

Fine print weakens hard-40 legislation

THE IRISH GIANT!
WHO STANDS

9 feet 6 inches
will not be present and need not be expected

— Mark Twain's sneaky advertisement for one of his appearances

Twain recognized and often applied the principle that "many a small thing has been made large by the right kind of advertising."

Michael Ryan

Legal affairs

So it is with the state's trumpeted new "hard time" law which provides for a mandatory 40-year prison sentence for some murderers.

The emphasis here is on the *some*. In fact, it is such a narrow "some" as to amount to an irrelevant sum. The law is the state's Irish Giant; it stands imposingly tall in its advertisements, but we need not expect it to appear very often.

That's because as written and passed by the Legislature and signed by the governor, the law at best will apply to one, perhaps two or three criminals a year in Kansas. And the state may have to put out classified ads to get even that many to qualify for hard time.

Here's the fine print: The only scenarios in which the 40-year sentence can be invoked are those in which the murderer:

- had previously been convicted of a felony resulting in death, disfigurement or dismemberment of another;
- killed more than one person this time;
- murdered for money, or hired someone to kill;
- killed someone to avoid arrest or prosecution;
- killed someone in an especially heinous, atrocious or cruel manner;
- killed someone while in prison for a felony;
- killed a witness in a criminal case.

So, be forewarned: Read the fine print before looking for any giants. This law won't provide any.

That's not to say the law is worthless. It's certainly not one giant leap for mankind, but it's one decent step. Despite its tight bridle, it will be useful in some cases.

But currently, state law provides all other first-degree murderers parole eligibility after only 15 years; a solid 40, with no chance of parole, would be right and fitting for all such murderers, but if the Legislature wants to start with only the more heinous ones, so be it. Even snails are known to move at times.

Ultimately, though, something more must be accomplished to keep the life snuffers out of our face.

To be quite honest, I can't understand why the 40-year hard time couldn't apply to anyone convicted of first-degree murder. Why etch out all the special conditions above? Should the fact that you only killed one person as opposed to two give you a 25-year break on your sentence?

Perhaps 40 years is too hard for some to swallow. It is, after all, more than half a lifetime. I'd settle for 30 years. At least that would be double what the law provides now.

Another consideration is the corrections department.

Your friends in the corrections field complain, quite rightly, that inmates facing ungodly time in prison without the chance of parole have nothing to lose, and therefore are incorrigible and dangerous.

But their complaint, on the face, is tantamount to telling society, "Hey, we can't handle these people in prison! Let them out!" Seems a bit backward, doesn't it? Prisons are our last line of defense. We've got to make them work; there's simply no choice.

It surely must take a strong stomach for corrections officials to plead to the public that their prisoners are too tough to handle. What would you have us do about it? Put them in our guest room at home?

Of course not. If these characters are too much for you, that's tough. Get out of the business. You knew you weren't running a Bible study group.

Yes, your options on the inside are few for dealing with incorrigibles. What can you do to punish someone who's already locked up? Not much, under the best of circumstances. And less than that in Kansas' antiquated and overpopulated prisons.

Corrections officials need prisons within prisons; some type of secure setting that inmates would want to avoid. Some kind of extracurricular punishment on the inside. Our prisons don't currently afford that luxury.

But that's not the public's fault, and we shouldn't let loose of murderers any sooner because of it. If the system isn't tailored to fit the laws, officials need to see their friendly neighborhood legislators about it. And the legislators need to listen.

One would hope the new prison space the state is now devising will ease these problems and make it a bit fluffier for the guards to house the nothing-to-lose longtimers — even the sorry few who will fit into the thin 40-year hard-time slot.

But even if the new prison space doesn't make it any easier to handle the unhandables, that's not the public's problem. It's the problem of those who are paid to protect and serve the public.

Michael Ryan is Capital-Journal legal affairs writer.

Attach. V
Judiciary
Subcommittee 1/1

3-23-90

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

March 23, 1990

Senator Jerry Moran
Chairman
Senate Subcommittee on Criminal Law
Capitol Bldg., Room 143N
Topeka, KS 66612

Re: House Bill 2880

Dear Senator Moran:

Attorney General Stephan has requested that I forward to the subcommittee this office's support for House Bill 2880, which increases the potential penalty for those who assault correctional employees. It is obvious that these employees are more at risk to assault or battery than the person on the street, and it is the feeling of General Stephan that based upon the situations they face on a daily basis, they deserve as much protection as we can give them under the law.

It is imperative that these violations are felony violations, as someone who is presently incarcerated within the penal institutions of our State Department of Corrections has no respect whatsoever for a misdemeanor offense. A misdemeanor offense has no effect on their present sentences, other than to affect possible good time credits. However, a felony offense while they are serving time can increase the period of their incarceration. Therefore, the likelihood of them avoiding such conflict would appear to be greater.

We would ask that the subcommittee recommend this bill favorably.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Edwin A. Van Petten
Deputy Attorney General

EAVP/cy

Attach. VI
Judiciary
Subcommittee
1/1

3-23-90

PREPARED FOR THE SENATE JUDICIARY COMMITTEE

March 23, 1990

House Bill 2692

I am Barbara Schmidt, Director of Victim Offender Mediation Services (VOMS) in Wichita from 1981 until last October when the program's services were temporarily suspended due to inadequate funding, despite the assistance received from Sedgwick County and numerous private sources. I am here today to testify in behalf of H.B. 2692 as it pertains to the use of mediation between juvenile offenders and their victims. I would like to first tell you briefly about victim/offender mediation, and then read several short excerpts from statements written by program participants.

(I will refer to the juvenile offenders as "he" throughout instead of he/she, not because I am being sexist, but because almost all of the offenders referred to VOMS were male.)

Victim/offender mediation is designed primarily to provide an opportunity for a juvenile offender and his victim to talk with each other about their offense and to negotiate a mutually acceptable restitution agreement. The agreement could include monetary repayment, direct work for his victim, community service, or some behavioral agreement. The face-to-face meeting is facilitated by a trained volunteer or staff member. The basic idea of victim/offender mediation is based on the concept that crime is the violation of one person by another person, not only the violation of a statute. Because it involves both parties, both are given an opportunity to take part in the resolution of the conflict.

Attach. VII
Judiciary
subcommittee
1/6

As I am sure you are aware, all-too-often juvenile property offenders assume that their illegal activities are of no significance to a "real person(s)". (Most referrals for victim/offender mediation involve property offenders although increasingly many personal injury cases are being referred to programs throughout the country and are being successfully resolved: Some of VOMS' most meaningful mediation sessions involved personal injuries, especially when they involved conflicts between two adolescents.) Property offenders often rationalize that no one was really hurt, that the victim could easily afford to replace whatever was stolen or damaged, or that his/her insurance would cover any monetary damages and/or loss. Other needs, if considered at all, are thought to be inconsequential. However, when face-to-face with his victim, an offender is made aware of his personal responsibility for his illegal behavior and the problems he created. He is also made aware that even in a property offense someone was really hurt--even if not physically. In a personal injury case, he learns of the emotional, as well as the physical, injury incurred.

In addition to becoming personally responsible for the problems created, he is given an opportunity to do whatever he is able to make things "more right". He is able to apologize, if he so desires, as well as help determine the amount and type of restitution that he should be responsible for. Through the apology, acceptance of the apology, and the restitution, an offender's self concept is often enhanced. As Judge Robert Morrison stated in the February, 1988 Centre City News:

> The offender gets a different perspective. He sees that this is a real live warm body that he has ripped off. Hopefully, they come away a better citizen later. If that occurs, the community reaps the benefit. . . They (the victim and offender) both feel a whole lot better after these meetings. . . A lot of these kids have low self-esteem , they feel like losers. Often they'll come away with higher self-esteem and the community reaps the benefit from the future conduct of that individual.

Victims also derive other benefits from victim/offender mediation in addition to having direct input regarding an appropriate type and amount of restitution. Too often, they feel twice victimized: First by an offender and then by the criminal/juvenile justice system they see as uncaring. (Representatives of the systems are busy dealing with offenders, and often are not able to provide enough services to victims, not because they do not want to, but because they do not have the time.) Victims are often not advised as adequately as they would like regarding the status of their cases and usually have questions regarding the offense that no one, except the perpetrator, can answer. Often, having a chance to ask questions such as "Why did you choose my house?" or "What would you have done had we come home when you were in our house?" enables a victim to achieve closure and put the offense behind him/herself. Victim/offender mediation assists in addressing these, and other, needs of victims.

Referrals can be made for victim/offender mediation at several different points in the criminal/juvenile justice system: as a diversion, between adjudication and disposition, or at the dispositional hearing. Most cases were referred to VOMS between the time a youth was adjudicated, or found responsible for the offense, and the dispositional or sentencing hearing. A representative of the program talked personally with the offender and his parent(s), as well as with the victim, to explain the program and determine if all parties were

interested in meeting. (It is recognized that an offender is under considerable pressure to agree to meet if court officials so recommend; however, participation must be completely optional for victims. They must not be victimized again through coersion.) Assuming all agree to meet, a mediation session is arranged and facilitated by a trained volunteer or staff member. During the meeting, facts and feelings pertaining to the offense were discussed and a mutually acceptable restitution agreement, negotiated. Following the mediation session, a summary of VOMS' involvement in the case and the restitution agreement were sent to the court for review and approval. Compliance with the terms of the agreement became a major part of the terms of probation. (Compliance with agreements involving community service or direct work for victims were monitored carefully by VOMS, and the court advised of progress. Monetary payments were made through the court.) Lack of compliance with the terms of an agreement were considered probation violation and were handled accordingly by court officials.

Client satisfaction with the mediation process reinforced its importance. VOMS administered pre- and post-mediation session questionnaires to both victims and offenders. An analysis of several of the items revealed the following:

1. After talking individually with a mediator, 87% of both victims and offenders stated that they expected the mediation session would be helpful.

2. Following the mediation session, 92% of the victims and 93% of the offenders stated that the session was helpful.

3. Fifty-four percent of the victims and 89% of the offenders stated that they understood the crime better from the other person's perspective than before the mediation session.

4. Ninety-four percent of the victims and 84% of the offenders stated that, under similar circumstances, they would again agree to meet face-to-face with their victim/offender.

To further illustrate participants' opinions, I would like to read several excerpts from statements or letters. The first is from an elderly victim; the second, a young "VOMS graduate"; and the third, an offender's mother.

> When I first heard about the program, I felt angry that the criminal was being pampered, but I was wrong, for they also like to see justice done. These people know their job and . . . do exceptionally well. The one boy I didn't know, but the other was my next door neighbor. . . his family and mine were very good friends. I hope these young men found out early enough in life the "do's and don'ts" so their lives. . . at a later date, won't be ruined before they begin. Thank you for your time, and your concern to help make things better for all of us. A VICTIM.
>
> I thought that what I was doing was a quick way to have fun. It was never my intention to hurt anyone. . . As I progressed through the sessions I discovered that there were actually people behind my crime, and in one instance, I had come too close to actually hurting an innocent victim's son. I learned a lot about how to deal with society. . . A JUVENILE OFFENDER.
>
> Last October my son got into trouble. It was an extremely emotional time in our family. Through the court system, VOM contacted us and explained their program. Throughout this upsetting ordeal - VOM was a blessing - the workers are kind, considerate, and very much professional in what they say and do. They worked with the victim as well as with my son the offender and never once treated my son as a criminal. They were as concerned with his outcome as well as the outcome of the victim. I recommend this program highly. . . I only pray I won't ever need their services again. THE MOTHER OF A JUVENILE OFFENDER.

Victim/offender mediation is not only beneficial to its direct clients, but to us as tax paying community members as well. Although in most cases victim/offender mediation is not a substitute for incarceration, several juveniles referred to VOMS would have been sent to a residential facility had a referral to VOMS not been an option. Others, as alluded to in Judge Morrison's statement, may have commited additional offenses resulting in subsequent confinement had they not participated in a meeting with their victims. Each of the annual

budgets for most of the victim/offender mediation programs throughout the country are less than the amount of money required to confine two juvenile offenders in a state institution for the same period of time. Victim/offender mediation is not only humane, but is also cost efficient.

However, victim/offender mediation is neither a panacea nor for all cases, victims, and offenders-although it has been found to be helpful, and to be greatly appreciated by numerous victims and offenders in over one hundred programs throughout the United States and Canada. The residents of Kansas deserve to have it promoted and programs available so that referrals can be made in jurisdictions throughout the state. Passage of House Bill 2692 could help make this a reality.

3-23-90

STATE OF KANSAS

JOAN ADAM
REPRESENTATIVE, FORTY-EIGHTH DISTRICT
305 NORTH TERRACE
ATCHISON, KANSAS 66002-2526

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ASSESSMENT AND TAXATION
JUDICIARY
TRANSPORTATION
RANKING MINORITY MEMBER: LEGISLATIVE, JUDICIAL, AND CONGRESSIONAL APPORTIONMENT

TO: Chairman Moran and Members of the Senate Judiciary Sub-Committee

I appreciate the opportunity to testify today on HB2692. I should first mention that the language in lines 1 to 3 on page 2 of this bill and lines 1 to 7 on page 4 is clean up language and not a part of the policy change I'll be discussing.

HB2692 proposes a change to the juvenile code which will allow the judge the discretion of requiring the juvenile offender to participate in mediation.

At the present time, at the dispositional hearing, the judge has some of the options listed on page 1 and the top of page 2--options such as SRS custody, probation, custody with a parent, or youth center placement. The judge may also order counseling. HB2692 will allow the court the option of requiring the juvenile to participate in mediation. As you see in line 23 of page 2, - the costs of the mediation would be assessed as counseling or any other court costs are assessed. They can be paid by the county or assessed to the offender.

Victim-offender mediation is a relatively new concept in dispute resolution. It involves a face to face meeting between the victim and offender in the presence of a trained mediator. Each session provides the opportunity for discussion of facts and feelings related to the criminal act and a reconciliation of differences. Most importantly the mediator assists the parties in developing a plan to recover losses sustained by the victim and promotes offender accountability.

One of the reasons the use of victim-offender mediation has been increasing is that it has positive results for both the victim and offender. The victim confronts the offender directly and receives his or her "pound of flesh". The offender is faced with the results of the crime he's committed: his crime is no longer an abstraction. Follow up studies have shown that both victim and offender have very positive responses to the mediation process.

I believe HB2692 will provide a small but very positive change to our juvenile system. I urge your favorable support.

Attach. VIII
Judiciary
Subcommittee
1/1

3-23-90

DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
WICHITA, KANSAS
67203-3775

KAREN M. HUMPHREYS
JUDGE
DIVISION NUMBER FOURTEEN

March 20, 1990

The Honorable Wint Winter, Jr.
Chairman of Senate Judiciary Committee
Kansas Senate
Statehouse
Room 120-S
Topeka, KS 66612

RE: House Bill 2692

Dear Chairman Winter and Committee Members:

I regret that my court schedule prevents me from appearing before the Judiciary Committee to express my support for HB 2692. Please accept this letter in lieu of my personal appearance. I must say that my last appearance in relation to another legislative matter was a most enjoyable experience.

I had an opportunity to serve as a judge assigned to the juvenile department from January, 1988 through July, 1989. During that year and a half I utilized the provisions of KSA 38-1663 on a daily basis and numerous times in the course of each day's docket. A significant percentage of all adjudications (approximately 50%) of juvenile offenders fell into the age range of 10 through 14. As you well understand these youth are virtually without job skills and unlikely to be employed.

Nonetheless they are often adjudicated for offenses involving extensive damage and loss to property. Orders imposing restitution as conditions of probation are useless in many cases due to age, poverty and lack of job skills.

A very viable alternative in those circumstances was referral to the Victim Offender Mediation Service which involves direct interaction between victims and offenders. The participants, with appropriate supervision of a mediator, can share their positions and concerns and work toward a mutally acceptable resolution of the damage and loss. This agreement, in the form of a contract, then becomes part of the offender's probation condition. In noncompliance occurs, probation can be revoked.

Attach. IX
Judiciary
Subcommittee 1/2

The benefits of mediation in the context of youthful unemployable offenders are very real. The opportunity to listen to a victim's story and personally meet a victim is crucial to any meaningful program of changing attitudes and behavior on the part of offenders.

My experience with successfully mediated contracts for restitution convinced me that it served the best interests of all concerned; the victim, the offender, the parents. The ends of justice were also enhanced.

Mediation serves multiple purposes - none of which are negative. I strongly support the proposed amendments to KSA 38-1663 and urge your favorable passage of HB 2692.

Thank you for your consideration of these comments.

Very truly yours,

Karen Humphreys

Karen M. Humphreys
District Judge

KMH/dlc

IX 2/2

Department of Social and Rehabilitation Services

Testimony before

Senate Judiciary Committee

Regarding

Senate Bill 2692

March 23, 1990

Robert C. Barnum
Commissioner of Youth Services
Kansas Department of Social and Rehabilitation Services
(913) 296-3284

Attach. X
Judiciary
Subcommittee
1/2

Department of Social and Rehabilitation Services
Winston Barton, Secretary

Testimony in Support of S.B. 2692
AN ACT CONCERNING J.O.s, RELATING TO COURT-ORDERED MEDIATION

(Mr. Chairman), Members of the Committee, I am appearing today in support of H.B. 2692, which amends the dispositional alternatives of the juvenile offender code, KSA 38-1663.

Background: The juvenile offender code enumerates the dispositional alternatives available to the court in seeking appropriate supervision of the juvenile offender.

This bill adds mediation and house arrest to the choices available to the court in the disposition of juvenile offender cases. Parents of a juvenile offender may be required to pay the cost of these services.

Discussion: Two important community based options are added to the dispositional options available to the Court. These two options improve the ability of the Court to address the problems of Juvenile Offenders without expensive out of home placement.

Action Requested: I urge your support of this bill.

Winston Barton
Secretary
Department of Social &
Rehabilitation Services
(913) 296-3271

X 2/2

3-23-90

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Wint Winter, Jr., Chairman
Senate Committee on Judiciary

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

Date: March 23, 1990

Subject: S.B. 370

Thank you for the opportunity to appear in support of S.B. 370. The bill is a recommendation of the Division of Vehicles, Department of Revenue. The bill would amend the state income tax confidentiality provisions to allow certain information derived from a state tax return to be provided to personnel in the Division of Vehicles. The information which may be divulged under the bill is limited to the name, social security number and last known address of the taxpayer.

The bill would enable the Division of Vehicles to obtain the most current mailing address for licensees. Currently, thousands of notices of license suspension and license renewal are returned to the Department undelivered. Licensees often do not notify the Department when they have changed addresses even though they are required by law to do so. Address information derived from a recently filed state tax return would be the most current and would substantially reduce the amount of undelivered notices. It is anticipated that the Department would experience a decrease in its mailing costs if the bill is enacted.

We urge the Senate Committee's favorable consideration of the bill. I would be happy to respond to any questions you might have.

Attach. XI
Judiciary
1/1 Subcommittee