

Approved: April 27, 1991  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:00 a.m. on February 8, 1991 in room 514-S of the Capitol.

All members were present except: Senators Yost, Moran and Martin who were excused.

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Steve Davies, Kansas Department of Corrections  
Carla Stovall, Kansas Parole Board  
William E. Kennedy, Riley County Attorney  
Phyllis Schram, Outside Connections  
Douglas Back, City of Kansas City, Kansas  
Randy Murphy, City of Kansas City Police Department  
Representative Joan Hamilton

Chairman Winter reopened the hearing on the Kansas Sentencing Commission.

Steve Davies, Secretary of Kansas Department of Corrections, continued his presentation from February 7, in support of the KSC recommendations. (See Attachment 5 of February 7, 1991)

Carla Stovall, Chairman of the Kansas Parole Board, addressed the Committee. She supplied the Committee members with copies of Response of the Kansas Parole Board to the Recommendations of the Kansas Sentencing Commission, prepared by the Kansas Parole Board for the 1991 Legislative Session. She stated the KPB would prefer improvements to the current system or, if the Legislature prefers presumptive sentencing guidelines, modifications to the KSC recommendations. They do not support the system being recommended and request more flexibility in sentencing. (ATTACHMENT 1)

William E. Kennedy, Riley County Attorney, presented comments of criticism on the KSC recommendations. (ATTACHMENT 2)

Phyllis Schram, Director of the Community Reentry Program of Outside Connections, testified in opposition to the KSC recommendations. She expressed their concern about the possible loss of rehabilitation programs under the KSC recommendations. She stated that "bad time" will encourage inappropriate behavior and they feel under the recommendations, punishment has more emphasis than teaching the inmates how to reenter society. She concluded by stating they support the position of the Kansas Parole Board.

Douglas Bach, Kansas City, Kansas, testified in support of the KSC recommendations but expressed concerns with the resulting presumptive probation. (ATTACHMENT 3)

Randy Murphy, Detective with the Kansas City Police Department, added his support to the comments offered by Mr. Bach. He added that, as a member of the Fraternal Order of Police, although they have not offered a formal position, most of the members are opposed to lessening of sentencing for burglary convictions.

The Chairman announced that the legislation to implement the KSC recommendations would be drafted directly from those recommendation. He requested all conferees provide to the committee's Revisor specific language to implement their suggestions to the forthcoming bill.

Representative Joan Hamilton presented the Committee with a position paper on the KSC recommendations. (ATTACHMENT 4) She stated her opinion agrees with that presented by the Chairman of the Parole Board.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:05 a.m. on February 8, 1991.

Chairman Winter announced the hearings on the KSC recommendations would continue after introduction of the legislation. He added that those hearings would be limited to receiving new information and not designed for restatements of the positions and suggestions already heard unless specific language is available to be offered.

The meeting was adjourned.

Date 8 February 1991

VISITOR SHEET  
Senate Judiciary Committee

(Please sign)

| Name/Company             | Name/Company                    |
|--------------------------|---------------------------------|
| Kyle Smith - KIBI        |                                 |
| Will Belden LSWK         |                                 |
| Randall L. Murphy KCKSPD |                                 |
| Dan E. Ruff              | <del>City</del>                 |
| Bill Miskell KDOE        |                                 |
| Steve Davies KDOE        |                                 |
| Carla Stovall KPB        |                                 |
| Michael Ross KPB         |                                 |
| Garry Smith              | KPB                             |
| Ron Niles BIDS           |                                 |
| Mark L Manning DOB       |                                 |
| Marilyn Manning          |                                 |
| Don Manning KPB          |                                 |
| Jim Langford DOB         |                                 |
| Lisa Hammer Ct/app.      |                                 |
| Blair A. Carter          | K.S.C.                          |
| Jon Ruskowitz WCCC       |                                 |
| J. W. Strickland         | Third Jud. Dist. Court Services |
| Jerry Sloan OJA          |                                 |
| William J. Gandy         | July County Attorney            |
| Jim Clark/KCDAA          |                                 |
| Mike Bayer               | KIBI                            |
|                          |                                 |
|                          |                                 |
|                          |                                 |
|                          |                                 |
|                          |                                 |

M E M O R A N D U M

TO: Senate Judiciary Committee

FROM: Carla Stovall

DATE: February 8, 1991

RE: Outline of Comments on Kansas Sentencing Commission Recommendations

INTRODUCTION:

not a rable rouser; don't seek conflict - not my nature  
in fact, usually seek to avoid it  
much easier to go along with the Sentencing Commission members; not to visibly  
and vocally oppose  
couldn't do that because disagree on fundamental issue  
couldn't disregard own beliefs just to be harmonious  
as Senators, opposed to party/leadership/constituents - because believed  
in your position  
Why I make these comments today

Served on Sentencing Commission since its creation  
Began with belief that beneficial and do good because  
status quo not perfect  
not irreparably broken - just in need of repair

Respect many of Sentencing Commission members

Chaired major crime seriousness

Because disagree on pivotal issue -- not here to criticize, condemn, sabotage  
Sentencing Commission --

1) suggest improvements in status quo render sentencing  
guidelines unnecessary

and/or

2) suggest modifications to sentencing guidelines to improve  
and make palatable

not here to protect jobs on KPB - easy to discount my testimony  
Sentencing guidelines adopted and implemented today and retroactive --  
not curtail terms of appointment of any of the 5 KPB members

Always a KPB (1) inmates not affected by sentencing guidelines;

2) lifers; 3) conditions; 4) revoke

Personally "paroled" 7/92

Hope laid job issue to rest and move on . . .

I.

Example of status quo broken -- growth in inmate population

Major impetus of SB 50

How control growth? All evidence I've seen -- every state has growth  
check without regard to determinate/indeterminate/grid

Sign of times?

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Carla Stovall  
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Key -- prioritize who comes to prison

KSA 21-4601 . . .

same goal as Kansas Sentencing Commission  
incarcerate violent offenders  
probation to property offenders

Sentencing Commission stats - significant numbers of Ds and Es with no  
priors go to prison, "clogging up" system.

have presumptive probation - judges not following, must enforce it  
"abuse of discretion" vs "substantial and compelling"  
forces accountability and guarantees greater compliance

- 1) reduce numbers to prison will save beds for violent
- 2) keep prop offenders in comm

I understand DOC's desire to predict needs

SRS can't -- rising caseload every year

Human Resources can't -

Not possible when dealing with human behavior and needs

## II.

No truth in sentencing -- therefore broken

is difficult to understand until familiarize

As prosecutor -- didn't understand

Indeterminate sentence of 5 - 20 mean prisoners to 5 or 20, or in between?

Understand range necessary to allow KPB to assess and evaluate appropriate  
time for release

actually - because "good time", 5 - 20 is not 5 - 20 but 2 1/2 - 10

inmates with 5 minimum could get out in 2 1/2

No wonder victims/LEO scratch heads and curse

Based on current "good time" - liberal as ever

Big complaint heard by KSC

Suggest - achieve truth in sentencing under current

- 1) judge "5 - 20" - "2 1/2 - 10" --- 7 factors  
all understand

- 2) abolish "good time" -- 5 - 20 mean 5 - 20

-- must serve all of 5 before considered -> no "good time"  
because behavior control because KPB deny release; no "good  
time" on minimum, just maximum (practical - rework  
sentences because numbers of inmates and reduce ranges)

Achieve truth in sentencing without sacrificing ability to protect public

If overcrowding = problematic; reduce 5 - 20 to 4 - 9

basically - what conferees suggest do with sentencing guidelines

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III.

Status quo broken because of racial bias.  
sentencing commission numbers - racial disparity in sentencing  
no genius -- no proportionate representation in many . . . college profs,  
legislature, congress, bench, business, etc.

disparity is everywhere

My concern -- don't adopt sentencing guidelines and link cured racism  
not that easy

Key -- % of unemployed who go to prison  
higher % of white and non-white and unemployed go to prison than  
employed counterparts

Why judges likely to incarcerate those without jobs and history?

less likely to succeed on probation

on sentencing guidelines -- place on probation those in presumptive probation  
range -- without regard to amenability

If don't provide unamenable with skills to read want ads, fill out  
application, interview, keep job . . . then merely setting up to violate  
probation because not addressed core of the problem. If don't help make  
amenable to probation -- they won't be -- whether status quo or sentencing  
guidelines

Sentencing commission's numbers indicate more non-white revoked --  
no change in why/how revocations --> more non-white continue to be  
violators

nothing changed -- more non-white will be incarcerated -- just delayed  
Further - - -

non-white arrested at higher proportion than white ----- NO CHANGE

Sentencing Commissions numbers - more likely to go to prison if court

appointed counsel and more non-white have court appointed ----- NO CHANGE

SD --> nothing changes in pre-sentence phases -- disproportionate  
number of non-white end up before judges -- under sentencing  
guidelines, just plug prisoner into cell -- crime and  
history only -- standardization of racism.

Not all minorities support Sentencing Commission -- hear from more . . .  
my understanding - hear from many who oppose sentencing guidelines

Currently - KPB correct/minimize disparity . . .

Conclude - improve status quo --

- 1) enforce presumptive probation for Ds and Es -- keep more non-  
white out of prison
- 2) provide programs for those on probation -- keep more non-  
white from being violators and result in less crowding
- 3) address truth in sentencing by -- requiring judge to explain  
from the bench -- abolish "good time" and have a 5 - 20 = 5  
- 20

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Concerns re: GRID

Determinate sentencing -- entire concern  
SB 50 -- "grid" not equal determinate  
Issue of determinate vs indeterminate never fully debated  
day ripe for discussion -- 10 - 15 minutes  
Chairman shut down discussion hard and fast  
vote was 9 - 2 --- DOC and me  
might have lost anyway after 10 - 15 hours, but  
    -- concerns would have been heard  
    -- commission would have understood trade-offs  
Tried to describe Tennessee and Pennsylvania -- indeterminate grid  
Penn. - grid = minimum and double  
Tenn. - grid = maximum and 30, 35, 40%  
sentencing commission did not evaluate --  
    O.M.W. without meaningful consideration of alternatives  
Indeterminate is imp. because prisoners are humans  
different motive to commit crimes  
different level of culpability  
different harms to different victims  
different reaction to probation  
different reaction to prison  
different potential to develop into law abiding  
    Determinate ignores -- but they are important to determine  
    appropriate sentence length.  
Unreasonable to presume -  
    every robber with two thefts - 49 months sentence  
    -- mother robs money to feed family  
    -- mother robs money to feed cocaine habit  
because robbery is at level 5 -- also presuming every prisoner with two  
thefts -- each will do 49 months, whether involuntary manslaughter,  
aggravated vehicular, attempted poisoning, indecent liberty, etc.  
    in presumption -- all are equal  
Indeterminate now gives 5 - 10 -- 2 1/2 - 10  
most don't go at 2 1/2 and most are gone before 10; somewhere in between  
with determinate -- everyone does same -- this means many prisoners  
serving too long, occupying beds needed for others  
this from a former prosecutor -- I's not said as a prosecutor -- but my  
views are tempered with realism after 2 1/2 years on KPB  
One good reason for indeterminate and flexibility -- TCJ  
    -- medical needs of older inmates - 55 and up \$36,000 -- double  
    under determinate -- cancer, AIDS, medical treatment very costly --  
    can't release.  
Not suggesting - flu -- but when age and/or disease renders incapacitated and

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Not suggesting - flu -- but when age and/or disease renders incapacitated and debilitated -- so can't hurt victim and cut exorbitant costs;

release should be an option

now -- anytime after parole evaluation, KPB can release

Flip side -- also important --> can't keep as long as needed

8 crimes on grid carry longer sentence at max - then KPB can keep if sentenced to max!

[those below - 1 person with less than conviction rate

[only 2 considered higher than conviction rate.

means - lose ability to protect \*

Can't find words to describe characteristics of some inmates ---

behavior, conduct, demeanor, comments and mental health reports -- know in hearts/minds -- keep every day possible

conviction rate in status quo

only few out of 25 will allow longer time

now 16% serve to convicted rate --

some -- only 16% -- not that important

But 16% - need incarcerated ALAD.

Ben began -- Yorky Smith - all criminal justice shudders.

rare - tragic

KAA(Kansas Adult Authority) fired

KAA = KPB - full-time; reduce -- new entity.

Aberration from norm

Other Yorky Smiths now in prison - wanting out

KPB doing release - violent and dangerous

Yorky Smith in now --

Yorky Smith in with grid --

difference is -- won't be mistake when they are ( no rarity or aberration) released under sentencing guidelines -- routine. No way to keep.

Black majority sentence shorter than conviction rate -- concern.

Florida -- 1983

Connecticut -- 1980

Colorado -- 1979

All reinstated review authority so Board can deny release.

Prediction - no increase

numbers -- not quarrel with Ben's numbers - I'm not a statistician

Maine

California

Indiana

Illinois

Minnesota



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Technical Concerns --

- 1) DVs - max 90 days - not new change ] new crime - not flexible
- 2) criminal history ] new crime - not flexible

Victims --

rehabilitation -- agree with Steve Davies

If do not think status quo can be mended --  
and want sentencing guidelines --

PLEASE MAKE INDETERMINATE

Pennsylvania/Tennessee, or create our own

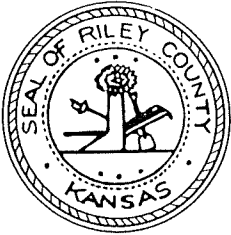
Indeterminate/determinate mix

personal preference - indeterminate  
proposed - determinate

Letters to Wint Winter from other states

-- not heard of by sentencing commission

Imperative to have all information so can make best decision for all!



GABRIELLE M. THOMPSON  
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Assistant Riley County Attorneys

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GENIECE A. WRIGHT  
Legal Specialist

### TESTIMONY OF WILLIAM E. KENNEDY III RILEY COUNTY ATTORNEY

Testimony Prepared for the Senate Judiciary Committee  
Presented on February 8, 1991

Please accept the following as advisory criticism concerning the recommendations of the Kansas Sentencing Commission:

This is a very complex issue, and a radical departure from our current system. The Commission members and staff are to be applauded and thanked for the high class of their work.

I have three suggestions for improvement.

1. Our present system has a built-in safety valve at sentencing, the judge. It is not hard to foresee the possibility of an aggravated battery conviction following a bar fight wherein the victim has lost an eye. Few would argue that this is not serious and permanent injury. In the proposed system, this would be a severity level 4 crime and assuming no prior record, a prison sentence of 42 to 48 months would be ordered.

One could then also foresee a police officer facing a defendant with a knife, wherein the defendant was subdued after the police officer was slightly cut on the hand during a fight (aggravated battery on law enforcement officer-possibility of serious injury). The proposed penalty for this, again assuming a first time defendant, would be a severity level 6 which would presume a sentence of from 17 to 19 months and presumed probation.

These ideas do not square and thus I offer my suggestion. In addition to departure sentencing, a court should be allowed to decide on the appropriateness of prison on the one hand or probation on the other. The reality is that throughout Kansas, while many judges were once prosecutors, few prosecutors were once judges. Most judges have come through a seasoning, while prosecutors tend to be the newer, less experienced, attorneys. The District Attorney Bill proposed last year would help this problem, I believe a great deal, but I believe that the mandatory sentencing act too much leaves the fox guarding the chicken coop. I believe the authority for departure sentences should be broadened. The Kansas Sentencing Commission apparently found that the courts were following the sentencing guidelines in the current statutes. The apparent problem with those guidelines was the guidelines were effectively racially linked. The probation option would lower prison population.

2. It is permissible for a prosecutor to grant a diversion in all but the most serious crimes. Typically, prosecutors require a person entering a diversion agreement to confess judgment in order to obtain the diversion. This design allows the prosecutor some leeway as he can offer a diversion secure that if the defendant fails to follow the terms of the diversion, if a court should deem it appropriate to . . .

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revoke a diversion, then by the terms of the agreement, the defendant is then convicted of the crime. Thus, a felony diversion including a confession of judgment should be given a place across the top of the sentencing range charts as if it were a conviction for the crime charged. The confession of judgment form should be a standardized state form.

3. Crimes in the area of severity levels 7 and 8 with crime experiences of C, D, E and F, and crimes of level 6 with criminal histories of H-I should be presumptive Community Corrections crimes. These, for example, are the harder core of the presumed probation offenders and it is for these that Community Corrections is designed.

In its deliberations on this general matter, the reviewer is asked to recall that the budget of Community Corrections has been effectively chopped where community corrections was mandated throughout the state last year, but the budget was not increased.

Please consider as follows:

1. The true intent of the Kansas Sentencing Commission is to decrease over-crowding of prisons. Very little is being done to reduce the number of felony convictions, and it is not to be expected that this will occur. Thus, even given a static conviction rate throughout the state, if this proposal performs as designed, then the number of defendants in the presumptive probation portion of the chart will swell, all this at a time in which the money to oversee those parties has been spread far thinner than the original design. The legislature has effectively removed the community from Community Corrections and now considers a proposal to call on the services that Community Corrections could provide. This observation is not at all a stab at the work of the Kansas Sentencing Commission, but simply a notation that legislation cannot be developed in a vacuum. Increased funding of Community Corrections and consideration of last year's District Attorney Bill should be considered concurrently with the excellent work of the Kansas Sentencing Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'William E. Kennedy III', written over a large, stylized flourish.

William E. Kennedy III  
Riley County Attorney



# CITY OF KANSAS CITY, KANSAS

DAVID T. ISABELL  
City Administrator



EXECUTIVE CHAMBER  
ONE MCDOWELL PLAZA

KANSAS CITY, KANSAS 66101  
PHONE (913) 573-5030

Senator Wint Winter, Jr.  
Chairman of Senate Judiciary Committee  
State Capitol Room 514-S  
Topeka, Kansas 66612

Dear Chairman Winter  
and Members of the Senate Judiciary Committee:

The City of Kansas City, Kansas and the Kansas City Police Department appreciate the opportunity to appear before you this morning in regard to the recommendations made by the Kansas Sentencing Commission. First of all I would like to clarify that we are not opposed to the enactment of presumptive sentencing. In fact we believe there currently are many inequities with the judicial system which need to be corrected, however, there are several perspectives of this process which do concern us and the operation of our city.

The City of Kansas City, Kansas is afraid of the effects which will come about from presumptive probation which will follow the enactment of presumptive sentencing. Under the recommendations made by the Kansas Sentencing Commissions' interim report individuals convicted of non-violent crimes will be eligible for presumptive probation, thus returning to our local communities.

The impact this would have on Kansas City, Kansas and Wyandotte County is too much for us to incur. In 1989 there were 416 people convicted of non-violent crimes in Wyandotte County which would have been eligible for presumptive sentencing under the proposed guidelines. Knowing that these convicted felons will return to our community we can estimate that approximately one third will repeat another non-violent crime. Of these 137 criminals about another third can be projected not to post bail in our county. Thus, we will be forced to house these 45 individuals for 180 days pending their trial. Currently our county jail requires 54 dollars a day per prisoner, constituting an additional cost which our city and county would have to incur of over 437,000 dollars per year. This figure does not include those individuals who will be coming back after their third, fourth, and fifth non-violent probationary offense.

Another factor which we must account for is that we do not have the jail space to handle this many more prisoners. Thus, we would be required to build a new facility in Wyandotte County. Therefore, unless the state sends a great deal of funding to our community, presumptive probation means letting these individuals

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*3-1/2*

who have been caught for crimes go free because we cannot possibly handle this many prisoners.

In Kansas City, Kansas we have been faced with many budgets constraints, we have lost 14% of our tax base as a result of the recent removal of inventories from taxation, yet our city is putting more money into our anti-crime efforts. This years budget saw nine new officers added to our special crime units. A special task force on crime has been set up to identify methods of educating our youth and working on new community efforts to divert crime. New initiatives have been brought to the legislature this year to give our officers and prosecutors better odds on convicting felons. But with the enactment of this legislation without modifications to keep those convicted repeat non-violent offenders behind bars our efforts will be for naught.

We recommend that you include the following procedures in the legislation for putting criminals into the sentencing grid.

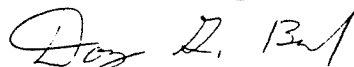
- 1) Second time burglar offenders should be put in the sentencing grid.
- 2) First time burglary offenders with prior theft or stolen property convictions will be placed on the sentencing grid.
- 3) Second time theft convictions should result in placement in the sentencing grid.
- 4) First time theft with prior misdemeanor theft or possession convictions should result in placement in the sentencing grid.

The inclusion of these items will provide a greater fear of second time offenses as well as relieve us the expense of housing third and fourth time non-violent offenders for 180 days.

A fifth point is that we will still be out close to a half million dollars a year as a result of probationary sentencing and we hope you provide us with some relief from the savings the state will incur from presumptive probation.

Without these provisions we must oppose presumptive sentencing because our community cannot afford the impact it will have on us even though we feel it is needed by our judicial system.

Respectfully submitted



Douglas G. Bach  
Intergovernmental Liaison

cc: David T. Isabell, City Administrator  
Tom Dailey, Chief of Police

**JOAN HAMILTON**

REPRESENTATIVE, FIFTY-FIRST DISTRICT  
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TOPEKA

HOUSE OF  
 REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

MEMBER: FEDERAL & STATE AFFAIRS  
 GOVERNMENTAL ORGANIZATION  
 JUDICIARY

February 8, 1991

Mr. Chair and Members of the Senate Judiciary Committee:

I come before you today as **Representative Joan Hamilton** from Topeka, Kansas, but alot of you already know my history as a Kansas Parole Board member for 5½ years and a Prosecutor from Shawnee County for 9 years. During my 9 years in the D.A.'s office, I started as an intern and worked up to First Assistant District Attorney before being appointed to the KPB. I worked juvenile cases, mental illness cases, sexual offense cases, major felony cases, and was Head of the Major Offenders Bureau which included Habitual Offenders. I have seen first-hand all facets of the criminal justice system in my 16 years experience.

I was asked by Senator Winter to take a position to the Sentencing Commission report, either proponent or opponent. **I don't believe it is that simple.** There are a number of positive factors within the Report, but also a number of concerns and problems. There is no way to express those to you in five minutes, but I hope you will listen to some of them, and ask questions of many experts before we dive into this major change for Kansas. I'm not saying that the present system is good, or doesn't need changing. I'm just saying that we need to carefully examine the change and it's effect BEFORE IT HAPPENS. Too often, history within the criminal system has found itself re-examining and regretting actions AFTER THE FACT. THIS IS TOO NEW AND DIFFERENT TO MAKE THAT SAME MISTAKE.

WHAT IS GOOD ABOUT THIS REPORT?: Truth in Sentencing

KANSAS has needed a form of determinate sentences for a long time. The concept was being sought in 1983 by A.G. Stephan, but then dropped.

We still would need a maximum term, but the minimum should be served. That would allow an understanding by the victim or victim's family, the public, the defendant and family, and the media. The maximum term would allow control within the correctional system, and a motive to "change".

**Elimination of "good time"**

This concept was never quite understood by anyone EXCEPT CORRECTIONAL PERSONNEL. Though Judges could have explained during sentencing, many didn't understand or have the time to learn. Plus there was frequent change of "good time" calculations.

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BECAUSE OF OVERCROWDING OR ADMINISTRATIVE POLICIES, I never saw "good time" implemented as I believe the legislature intended it to.

The concept of "bad time" is easier understood. The guidelines and expectations should be outlined more carefully, however.

#### **Balancing Incarceration with the Crime**

More violent and habitual offenders need to be in prison, and our communities need to work more with the non-violent offenders.

However, with the little or no discretion for judges regarding sentencing, you will be incarcerating defendants who might not otherwise be in prison FOR MUCH LONGER PERIODS OF TIME.

EXAMPLE: AGGRAVATED ROBBERY

Today: 5-15 years, parole eligibility 2½

S.C.: 8½ years

Result: 6 years difference and these inmates are usually the "model prisoner" who might NOT have gotten out in the 2½ years BECAUSE OF THE OFFENSE, but would rarely have served the 6 years difference. WHAT ARE THE PRISONS GOING TO DO WITH THESE ADDITIONAL NUMBERS - AND STILL MAINTAIN CONTROL?

#### WHAT ARE SOME OF THE CONCERNS ABOUT THIS REPORT?

##### **Shift in Philosophy from Rehabilitation to Punishment**

I would be the first to admit that rehabilitation does not occur in prison for every inmate, and that punishment to STOP the behavior is what needs to be done for some inmates. However, I have seen rehabilitation and even FORCED REHABILITATION work. If we want high success rates - forget it. But even 1-5% (and I believe it is higher) is better than NONE. Nation-wide, they say that repeat offenders will victimize 26 people before being caught or caught again. If we only have a 1% rehabilitation success rate, we will have saved 26 people. With this shift WE NOT ONLY LOSE THAT, BUT WE WORSEN THE ATTITUDE AND BEHAVIOR OF THE INMATE.

The problem and why our PRESENT rehabilitation hasn't worked is because we have focused on the wrong offenders. Our DOC and correctional system is geared toward the "model prisoner" who typically is the CON, habitual offender, and/or violent offender. They are the ones afforded most of the privileged programs, etc. Our juvenile offender and/or youth and first time offenders do not know how to "work" the system, and therefore are NOT "model prisoner". They, in turn, become victim to discipline, authority, and no programs. THAT IS WHERE THE SHIFT NEEDS TO FALL ---- NOT FROM REHABILITATION TO PUNISHMENT. The punishment will still be incorporated into the sentence.

**Taking Away Judge's Discretion and Treating the  
Offense the Same because it reads the same.**

Throughout the testimony I've heard numerous times, "The more discretion you give the Judge, the more disparity you will have. This is unfair."

Ladies and Gentlemen, that sounds fair and it sounds easy. It also looks good on paper, but believe me -- NO TWO CRIMES ARE ALIKE. Richard Ney, Public Defender from Wichita, gave the example that it was unfair to have sentences determined by the floor of the Courthouse --- when the crime was the same. If that's true, then it is a shame, but I believe that should be resolved by the appellate courts, who have determined unfair sentences. There are so many degrees of the same crime, and unless taken up on a case-by-case basis, it wouldn't be fair to the defendant. I.E. 19 year-old has consensual sex with 15 year vs. 61 year-old has sex with 5 year-old -----both of them are Indecent Liberties with a Child. Treated the same????

**ALL POWER TO THE PROSECUTOR WHILE TYING HANDS OF  
JUDGE**

Plea negotiations has always been a powerful tool for the prosecutor. NOW this will make them all powerful. Without limitations to plea bargains (which have only been outlined for drug cases and criminal history), you will make the prosecutor - trier, judge and jury. I.E. Aggravated robbery plea bargained to simple theft by D.A. - Judge will be required to put a violent offender on presumptive probation. Course, the judge could go off the grid BUT A MITIGATING AND/OR AGGRAVATING FACTOR IS NOT PLEA BARGAIN, so it would probably be appealable and winable.

**Lack of Victim Input and Rights**

I am a member of the Attorney General's Task Force for Victims' Rights and Chairperson of the subcommittee on sentencing, corrections and parole. Though the guidelines do not eliminate the Victim Impact Statement, what vital part would it play when the Judge is limited in his sentencing? Also, without restrictions on the FRONT-END, there would be no incentive to work with victims and their families. We find ourselves back to the 1970s and very frustrated.

**S O L U T I O N ? ? ? ?**

I wish I could tell you that there was a solution. I believe the RIGHT STEP AND FIRST STEP WOULD BE THE

"Truth in Sentencing".

The SECOND STEP should be to: Take it slow and carefully. Our history has NOT gotten Kansas in trouble because we have acted slowly and carefully. It has been because we have had INACTION ---- AND THEN REACTION....and OVERREACTION.

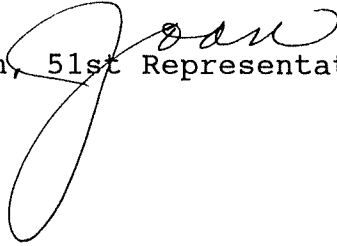


Please don't make the same mistakes. This is too important to the people of Kansas, the victims and their families (both as victims of the crimes and of the system), the inmates and their families, the overall justice system.

As a side note, I would like to tell the Committee that I have received over 123 calls to date, with concerns and problems with these guidelines. One of the biggest concerns I believe we should have is that major players in the system have chosen to take "no position", because if this doesn't work they can always blame the Legislature.

Again, thank you for allowing me this opportunity to address you today. I am available to answer any questions you might have.

Joan Hamilton, 51st Representative  
Room 272-W  
296-7650

A handwritten signature in cursive script, appearing to read "Joan", written over the typed name in the address block.