Approved 1-23-92
Date

MINUTES OF THE HOUSE COMMITTEE ON Judiciary.

The meeting was called to order by Rep. John M. Solbach at
Chairperson

3:15 a.m./p.m. on January 16, 1992 in room 313S of the Capitol.

All members were present except:

Representatives Allen, Carmody, Gomez and O'Neal who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Professor David Gottlieb, University of Kansas School of Law
Joan Hamilton, State Representative
Matt Lynch, Kansas Judicial Council
Kathleen Sebelius, State Representative

Chairman Solbach called the meeting to order for the purpose of taking action on HB 2466 and HB 2102.

Representative Rock moved that HB 2466 be passed as amended. Representative Smith seconded the motion. Committee discussion followed. The motion carried. Representative Hamilton asked to be recorded as voting no.

Representative Smith moved that HB 2102 be amended by adding the language in the attached balloon. (Attachment #1), then passed as amended. Representative Macy seconded the motion. Committee discussion followed. Jill Wolters indicated there would also have to be some technical changes to accommodate the substantive changes called for in the balloon. Smith and Macy included that in their motion. Motion carried.

Chairman Solbach and Senator Wint Winter then co-chaired a joint committee meeting for the purpose of testimony on SB 479, enacting the Kansas Sentence Guidelines Act, and for the re-codification of the criminal code.

Professor David Gottlieb, University of Kansas School of Law, testified in support of SB 479 as a rational, effective change and as an improvement over the current system. He submitted language as a suggested amendment to the bill. No Att. #2

Representative Joan Hamilton testified in opposition to SB 479, supporting the current system with suggested changes. Attachment #3.

Representative Kathleen Sebelius testified in support of SB 479. She outlined the operating assumptions of Kansas Sentencing Commission and the policy questions to be answered. Attachment #4.

Matt Lynch, Kansas Judicial Council, expressed their technical concerns with the relationship of the porposed criminal code recodifications, SB 358 and SB 479. They would prefer to have the recodifications in place prior to guidelines going into effect. He added some areas of both proposals need to be examined for possible substantive differences.

Meeting adjourned at 5:00 P.M.

GUEST LIST

COMMITTEE: Judiciary DATE: 1-16-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
Kathy Ketter	Topeka	Outside Connection
Don Mainey	Topeka	Kansas Canola B

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend House Bill No. 2102, As Further Amended by House Committee, On page 9, in line 30, following the period, by inserting: "The court, on motion, may order the support paid, pursuant to subsection (a)(2), terminated when the child reaches 18 years of age if the parent or parents paying such support provide evidence to the court that such support would have terminated even if the parents would not have divorced or separated.";

On page 11, in line 31, following the period, by inserting the following: "The court, on motion, may order the support paid, pursuant to subsection (a)(1)(B), terminated when the child reaches 18 years of age if the parent or parents paying such support provide evidence to the court that such support would have terminated even if the parents would not have divorced or separated.";

_____

_____District.

Scott
Sen. W.
Sen. F.
HJC
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THE HAMILTON REPORT

SENTENCING GUIDELINES: RESTRUCTURING SUGGESTIONS

by Joan M. Hamilton, 51st Representative

Members of the Judiciary Committee:

I want to thank you for the opportunity to address you during the interim regarding the difficult subject of sentencing guidelines and restructuring sentences on October 30, 1991. I urge you to reread my testimony as to some of the concerns I had. These concerns are shared by a great number of key people in the system (over 150 calls received), as well as citizens, inmates' groups, Parole Board members, correctional personnel, and other legislators.

I also want to thank you for this opportunity to suggest to you some ideas for changing the present system, but not reinventing the wheel and throwing away the old system. I have NO argument that the present system is NOT working as well as it should. However, it's not because we have gotten "too tough" on crime and because our prisons are overcrowded. It's because we have NEVER taken the time to make the front end learn about the back end and to "cooperate with everything in-between". When one branch of the system has a goal and another has a complete opposite, there will be problems and conflicts. Though we focused on getting the offender punished and put in prison-----when the offender got into the system, we then focused on his behavior IN prison, rather than what he had done in society and how he would do in society--the offender learned to "trick the system"----then the focus went BACK to suitability in society and the offender didn't know what was expected and **neither did the citizens or the offenders' families.**

WE MUST ALL THRIVE FOR THE SAME GOAL (WITH PERHAPS A DIFFERENT FOCUS).

G O A L? ----------PUBLIC SAFETY & OFFENDER CHANGE OF BEHAVIOR

FOCUS?----1. Law enforcement - enforcement
2. Prosecutor - prosecution
3. Judicial - sentencing
4. Corrections - rehabilitation for the community
5. Parole - suitability for community

TRUTH IN SENTENCING

The positive aspect of the Sentencing Guidelines is the "Truth in Sentencing". However, the negative to that truth

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is that the discretion is taken away from the judges and all sentences are determinate. Though the statistics show disparity with indeterminate sentences, you will have the same problem with determinate sentences. All crimes, though the same on paper, should not be treated the same nor are they the same. **What would I propose? Both a truth in sentences and move for discretion, giving the inmate motive to change behavior and the judge leeway to have the sentence fit the crime.**

EXAMPLE: Presently Aggravated Robbery is a Class B felony with an indeterminate sentence of 5-15 minimum, 20-Life maximum. If the inmate gets the minimum of 5-20 years, he is parole **eligibility** in 2 1/2 years (1/2 of minimum) and MUST be released by 10 years (conditional release date which is 1/2 of the maximum time. This is sometimes very confusing to the public, much less the judicial system which is constantly aware of the legislature changing parole eligibility time. **SO LET'S GET SOME EASIER UNDERSTANDING AND TRUTH IN SENTENCING!**

Suggestion: Aggravated Robbery
Class B felony (don't change Classes)
Possible sentence - Minimum 2.5 years
- Maximum 15 years.

Discretion: Allow Judges to sentence offender to any time on this scale with the minimum NOT to exceed 1/2 of maximum and the maximum to NOT be less than 1/2 of maximum (i.e. 2.5 - 7.5 would be minimum; 7.5 - 15 would be maximum).

Requirement: Judge must state reasons why offender should NOT receive minimum and factors involved (as present law states).

Additional requirement: Judge should state program requirements to offender so offender, family, victim and public KNOW what will be expected in change of behavior before offender's release.

(Though DOC might say that the Judge's should not have the power to dictate the programs they should have available to the inmates, alot of time and money is lost by taxpayers and the system with repeated and unnecessary reevaluations. A PSI [pre-sentence investigation] is required before each sentence is imposed- very rarely are these waived. Often evaluations and

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psychological reports are done during the PSI. Some judges will even send the inmate to the SRDC for an evaluation. This is ALL REPEATED if the offender is sent to prison, since all male offenders are sent through SRDC and female offenders are sent to Lansing to determine Program Agreements.)

Consolidate these efforts ---- it makes more sense and would save monies and time for everyone. Who better to know about the facts and evidence of the offenses besides the actual parties; behavior change needed would be more available to the Judge during sentencing than to have to reeducate DOC officials; history of offender is available and impact of crime is all known. The victim's impact statement is **required during this stage,** so they have had an important part of it.

THE TRUTH???? --- WITH ALL THE INFORMATION ABOVE KNOWN, THE JUDGE WOULD THEN SENTENCE THE OFFENDER.

Example: He imposes the sentence of 2.5 years with a maximum of 6 years.

Inmate is informed that he will <u>have to serve the minimum sentence of 2.5 years before he is parole eligible. IF HE FINISHES HIS PROGRAM AGREEMENT AND DOES NOT PICK UP ANY FURTHER TIME IN PRISON,</u>

<u>THE PRESUMPTION IS THAT HE WILL BE PAROLE SUITABLE AND HE WILL BE RELEASED.</u> This is a major change for Kansas, because all of our case law puts the entire burden on the inmate to become parole suitable....parole is considered a privilege and must be earned.

This method would still put some requirements on the inmate to do programs and work, and to behave while in the system, however, if programs are done and no further bad behavior is exhibited, the presumption is for his release. There would be no further judgment from a Board and he would not stand in suspense. It would also allow the flow of numbers that the Sentencing Commission feel is so important for DOC.

FOR THE VICTIM AND PUBLIC --- On the front end, it would assure them of input and the knowledge to know that strong sentences are still discretionary with the judge so their input is important and could make a difference. They would also know at the time of sentencing when the offender would be released back into society. The laws requiring DOC to notify victims of violent crime about offender coming into their community

would still be necessary and important. However the requirements of notification of public hearings would not. It would reduce alot of work yet still have the important input needed.

I BELIEVE THERE SHOULD BE MORE CONTROL IN THE PROSECUTION STAGE FOR THE PUBLIC AND VICTIMS AND I WILL ADDRESS THAT BRIEFLY LATER.

FOR THE INMATE AND FAMILY:

You are still delivering a message that the behavior of the offender is not acceptable, but he and his family know when his release will be IF he performs his obligations of the Program Agreement and does not act up. This allows for planning, but also forces some programming and motive to change. With the span of time allowed, the offender can still serve alot of time IF he is not motivated to do as expected.

This is where many will say that they like the idea of punishment and throwing **rehabilitation** away because there isn't any in prison. There is!!!!! I've seen it firsthand, even with repeat offenders. We can't expect to have 90, 80, 70, or even 60 or 50% success. We are dealing with complicated lives that have been influenced for years. Changing behavior in even 3-5 years is sometimes improbable, but it's not impossible.

National statistics show that for every offender, the average number of victims he will affect is 26. Even if Kansas only rehabilitated 1% (and I think we do better than that!), we could save 1,560 of our citizens from the horror of crime.

1% of 6,000 population = 60 X 26 = 1,560.

IF WE GIVE IT UP-----WE DON'T HAVE ANY HOPE FOR HELPING WITH PUBLIC SAFETY AND PREVENTION OF CRIME.

Also we throw away the key in worrying about recidivism--- surely we don't expect the offenders to change just because they have gotten out of prison. Yes, they will get more time assuming they are caught. But 90% of crime goes unsolved, and though the recidivism rate is high presently in Kansas, we couldn't expect it to do anything but increase.

Suggestion #2: Presently there is presumptive probation for Class E felonies. We should re-look at those statutes and restrict the discretion of the judges more on this level of felony. It is not being used as expected. We should also increase the presumption to increase property Class D felonies. With this increase of presumptive probation should

be given the ability of the judge to go away from that presumption of probation IF:

1. The **original** charges included a series of burglaries.....it's unfair to the offenders to treat multiple burglars the same as single burglars (even if they all occurred on a day or in one jurisdiction).

2. Any of the charges included offenses dealing with violence or harm.

3. The other statutory authority to go off the expected performance.

The **fallacy with the Sentencing Commission's statistics** showing the impact of numbers that precluding D and E felonies would have on the system, is that it doesn't give the long-range effect. **Unless we, as legislators, change the requirements of restitution and steady employment in the probation requirements and parole suitability requirements---all we are doing is DELAYING the numbers of offenders that will still go to prison on PVs (probation and parole violations).** The KBI and Wyandotte County Police department have both looked into these statistics and can relate to you their findings. It's not the racial disparity that is affecting the sentences as much as the **socio-economic situation. We need to be plugging in more monies to work release center, job opportunities and job training. If you disregard the racial element and look ONLY AT THE EMPLOYMENT RATE OF THOSE SENTENCED-----YOU WILL FIND THAT THERE IS <u>VERY LITTLE DISPARITY.</u>** These guidelines will NOT change this disparity.....they will only delay the effect.

We must make the necessary changes in the appropriate statutes, and also see the need for adding additional monies to community corrections and job opportunities.

That brings me to Suggestion #3:

Suggestion #3: We haven't given the mandatory requirement of <u>community corrections in all counties</u> enough time to see if they are effective. While on the parole board, you could determine which counties utilized their communities well for rehabilitation and change, and you knew immediately those that "abused" the corrective system. With the **mandatory** requirement, we need to allow each county to establish their corrections (which our state help), and give it a chance. These Sentencing Guidelines **force the communities to do so with the presumptive probation for nonviolent offenses. Why re-invent the wheel....the mechanism is already there, let's enforce it and help them.**

Suggestion #4:

WE MUST GET OUR ATTENTION OFF THE ADULT SYSTEM AND BEGAN TO WORK WHERE IT WILL MAKE A DIFFERENCE ------ THE JUVENILE SYSTEM. WE HAVE TOO LONG IGNORED THE FACT THAT THE REASON CRIME AND PRISON BEDS ARE INCREASING IS BECAUSE WE HAVE GIVEN UP ON THE YOUTH.

Behavior is sometimes molded into an individual by the age of 8 OR YOUNGER. We are trying to change it at 18 years and older and it has been set for almost 10 years. We can't give up....we must try to help the young and first-time offender during their youth.

ACTUAL TRUE STORY:

In my third year on the parole board (1986), I saw an inmate who was only 16 years old. Chad was there as a certified adult because of three burglaries as a juvenile. He had been a D & N (dependent and neglected child) in juvenile court at the age of 3. We had taken him out of his abused home and put him into the "system". We failed....he needed much more. At the hearing he knew me. I knew him. He still wanted to change but the attitude was very bad. However, we required him to get a trade, be put into a work release program before release and also to have mental health counseling to deal with his "years within the system" and also to see he would have to depend on himself if he was to make it. It worked.....at least he's not back into the system YET.

My questions and puzzlement: Why didn't we give this to him earlier? He should have been schooled and trained by age 16....we ignored it.

Where were his models? Presently the Boot Camp for Young Offenders has big "hopes". The Judge will even tell you that jurisdictions are finding loopholes in the statutes by certifying juveniles earlier than they would....to let them be eligible for the Camp.

Why aren't we setting up these Camps for our young offenders? Why wait until they are adults? We are working back-assward.

FACT: Our model prisoners are the repeat offenders and violent offenders. Though there are exceptions to this, the high percentage are these offenders. We then focus on giving these offenders the privileges within the system because they are our "model prisoners". Conversely, our first-time offenders and young prisoners often have a bad attitude and do not like the authority and can't "play the game".

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They, therefore, are kept behind the maximum walls and programming is not as available to them. Is this not back-assward? **Yes, it is.**

I've heard numerous times from mainly legislators that too many first-time offenders and C,D,and E property offenders are in prison. Why?

1. Many legislators feel it's because DOC was too strict, or the Parole Board was too strict....not so. These offenders are harder to deal with and instead of the system giving them a chance for change, we punish them and reward the offender who knows the "game".

2. DOC officials are told to treat offenders the same once they get into the system....don't ask about the crime (s). Though I believe an offender should not be judged totally by their past, it's truly unrealistic to expect uneducated personnel to know a "con" from an offender who wants to make change **and that's what we are doing.**

   EDUCATION SHOULD BE A REQUIREMENT FOR THE OFFENDER-NOT JUST A PRIVILEGE.

   THE OFFENDER SHOULD BE PLACED IN PROGRAMS ACCORDING TO THIS CRIME AND HISTORY, NOT HIS PRISON BEHAVIOR.

   Certain offenses, i.e. Aggravated Juvenile Delinquency, should not preclude offenders from programs. The custody format of DOC needs to be completely revamped....this is not a task of the Legislature, but could be a focus for the Department. The crime history of the juvenile and his risk to society should be the factors considered for privileged programs....each case should be individually examined.

AGAIN, AS YOU SEE, THE FOCUS NEEDS TO BE WITH THE JUVENILE OFFENDER AND THE JUVENILE SYSTEM----IF WE ARE TO MAKE AN IMPACT ON THE POPULATION OF OUR PRISONS, WE MUST START WHERE WE HAVE SOME HOPE----THE FIRST END.

Suggestion #5:

Limit the power of the prosecutor!

(I speak of this again with firsthand experience. Before serving on the Kansas Parole Board for 5½ years, I was a Prosecutor in Shawnee County for 9 years [leaving in Nov., 1983, as the First Assistant District Attorney]).

If we had a statewide District Attorney's plan with experienced D.A.s and persons dedicating their careers to

public service you would see different results in alot of jurisdictions. However, we don't, and in many of your counties----because of lack of experience and salary, time and court personnel, you have ridiculous plea negotiations. This happens a lot in our large counties also.

I'm not advocating doing away with plea bargains---they must be there, and often the public and victim want a reasonable negotiation. The courts must also have the tool of plea bargains or they would be more crowded and backed up then they already are! **However, under these Sentencing guidelines, you have given the prosecution the ultimate power tool and control. They could take a violent offenses, i.e. Aggravated Robbery, Class B felony and reduce it to Theft, a nonviolent crime under the grid, Class D felony, and the judge's hands would be tied -----presumptive probation.**

You might say----that doesn't happen very often!!!??? Yes it does. Often murders are reduced to manslaughters, robberies to theft, rapes to battery, and indecent liberties with a child to child abuse. Though some of these reductions are still within the "violent" crime category - the sentences are substantially lower.

In the 1990-91 legislature, we passed a law requiring prosecutors to INFORM victims of "crimes against person" of any negotiations PRIOR to the finality of the negotiation. Though this is a step in the right direction, there still is no control over the negotiations and reductions of the prosecutor. The victim or victim's family need not consent to this negotiation. They just have to be informed.

We must make our prosecutors more accountable to the public, the victims, victims' families and the offenders. Often multiple charges are filed with the idea of dismissal of charges. <u>Their powers and discretion are abused far more often than any judge's discretion.</u>

<u>CONCLUSION:</u>

Though SB50 directed the Commission to formulate a grid, it did NOT direct the Commission to make it a **determinate** grid.

I hope you will give my "formula" of truth in sentencing coupled with discretion and flexibility of the judges a serious look.

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We must make the **goal** of the judicial system the same -- rather than piecemeal each branch to do only their job. The

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right hand must be educated to know what the left hand is doing.

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The judges should take over the requirements of the Program Agreement **with the cooperation and coordination of DOC** to eliminate dual testings and costly time.

****

Class D and E felonies should be added to presumptive probation with multiple offenses to be an exception for the judges.

****

The custody format of DOC should be revamped to focus on the history of the offender and their crimes, rather than their performance in prison. We must shift our focus to the first-time offender and youth offender if we are going to change the makeup of our prisons.

****

Give community corrections a chance to work!! More monies needs to be given to them to allow the nonviolent offender and first-time offender to work out their time within the community.

****

Education and job training should be a requirement of release of an offender.....work releases need to be set up in jurisdictions where offenders most frequently return, i.e. Wyandotte County and more in Sedgwick.

****

<u>WE CANNOT IGNORE THE JUVENILE SYSTEM ANYMORE---NOR SHOULD WE BE FOCUSING ON GETTING "TOUGHER" WITH OUR JUVENILE OFFENDERS. IT DIDN'T WORK WITH THE "ADULTS"---WHY ARE WE TRYING TO RE-INVENT THE WHEEL WITH THE JUVENILES?</u> They are the ones we should be trying to give a "second chance" to.

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****

I would be most willing and even eager to work with the Legislative Research staff to vamp the necessary statutes and change the present operating statutes.

Thank you for this opportunity again. If further questions and suggestions are needed, I welcome the privilege to speak before you again.

Joan M. Hamilton, 51st Representative
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MEMBER: COMMITTEE ON INTERSTATE COOPERATION
JUDICIARY COMMITTEE
KANSAS FILM COMMISSION
KANSAS SENTENCING COMMISSION

HOUSE OF
REPRESENTATIVES

OFFICE OF THE MAJORITY CAUCUS CHAIR

TESTIMONY TO THE JOINT JUDICIARY COMMITTEE
January 16, 1992

SENTENCING GUIDELINES IN KANSAS

Overview
Prior to the passage of SB 50 in 1989, legislators were extremely frustrated with a criminal justice system which they felt to be out of control.

-steep increases in prison population (almost triple in a decade), with no impact on crime or public safety;
-changes in sentencing practices which were overly-political and influenced by isolated events;
-growing budget demands, including a settlement of a class-action suit with a mandate for constitutional conditions by Judge Rogers;
-public frustration with a system which they don't understand, inability to access information about sentencing, arbitrary and disparate decisions about who goes to prison and how long the sentence will be;
-erratic pattern of parole release;
-allegations of racial bias, with a growing disproportionate number of non-whites in prison;
-use of expensive resources for non-violent offenders, and in spite of presumptive probation for both D and E felons, growing numbers sent into the system
-NO ABILITY FOR POLICY MAKERS TO CONTROL COSTS OR CONTROL POPULATION INFLUX. GOODTIME USED AS POPULATION CONTROL.

Operating Assumptions of Commission

-Commission felt that any recommendation which required further building of prisons was DOA;
-Attempt to follow legislative philosophy in many areas, (incarcerate violent criminals, public protection, intolerance for drug offenses). Commission members felt if Legislature wanted to alter positions, it was their role.
-Use of prison resources must be dedicated to most dangerous offenders. Line drawn between crimes involving persons and crimes involving property.

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Commission constituted of diverse group, representing all facets of criminal justice system. The group worked hard, had a series of public hearings, and constant input from community groups.

Debate on rehabilitation versus punishment is red herring. No one on Commission disputes advantages of rehabilitation. Bottom line decision was that ONLY TWO FACTORS should determine the length of a sentence: severity of the crime and past criminal history. The Commission strongly endorsed eliminating societal factors at sentencing and at the parole stage to foster truth in sentencing and eradicate racial and geographic bias from the system. Rehabilitation should be encouraged, but not determine release.

Policy Decisions

Is the current system in need of total overhaul, or will some tampering achieve the goals outlined by the Legislature in SB 50?

Does the political climate lend itself to rational decisions about sentencing, or should a neutral body with some expertise make recommendations to the Legislature?

Do we intend to make every effort to promote "truth in sentencing" and eradicate the racial and regional bias in the current system?

Do we, as legslators, want the tools to make fundamental decisions about the use of correctional resources, and have the management tools to control the population influx?

Decisions about the appropriate punishment for individual crimes, the drug grid, and the number of months in each category, can be seperately debated. The first issue is whether we want to finally be in a position to make policy decisions about this system, eliminate the arbitrary results at the trial and parole level, and manage our resources.

Currently we have no control over who is sent to prison and who is released from prison. The alternative is to continue to be controlled by election-year sentencing changes, sporadic bursts of community corrections fervor, and a budget which is driven by population influx beyond our control.

I urge the Committees to carefully consider these proposals. It is among the most significant policy issues to be made in the 1992 Session, and has enormous implications for the future of this state.

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FORMATION OF THE COMMISSION

The Criminal Justice Coordinating Council recommended the development of a Kansas Sentencing Commission. These recommendations were presented during the 1989 Legislative session in the form of Senate Bill 50. The Bill passed, was signed by the Governor and became law in the spring of 1989. Prison overcrowding was a major concern that prompted the Coordinating Council to recommend the Commission, and the Legislature to enact Senate Bill 50. The bill directs the Commission to:

- Establish appropriate sentencing dispositions for all felony crimes (ranges, placements, probation or incarceration);
- Minimize sentencing disparity, especially in the areas of race and geography;
- Make recommendations concerning the future role of the Parole Board and good time credits;
- Consider current practices and resources.