

Approved \_\_\_\_\_

Date

3/31/92

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative John Solbach at  
Chairperson

3:30 ~~am~~/p.m. on March 18, 1992 in room 313-S of the Capitol.

All members were present except:

Representatives Allen, Carmody, Gregory, Hamilton, Snowbarger & Vancrum who were excused.

Committee staff present:

Jill Wolters, Revisor of Statutes  
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Deborah Deere, Outside Connection  
Professor Michael Barbara, Washburn University  
Susan Kelly, Kansas Council on Crime and Delinquency  
Sandy Lassiter, Concerned Citizens for Equal Justice

The Chairman called the meeting to order for continued hearings on SB 479, Enacting Kansas sentencing guidelines act.

Deborah Deere, Executive Director of Outside Connection, testified in favor of SB 479. (Attachment #1) She answered committee members questions.

Professor Michael Barbara, Washburn University, testified in favor of SB 479. He stated that prison overcrowding is a problem as he projected it would be when he was Secretary of Department of Corrections from 1983-85. He favors the sentencing guidelines and the retroactivity being put back in the bill. He felt the trigger mechanism in the bill is excellent and will help the Department of Corrections control future prison population. He said retroactivity could be phased in. He felt the bill would not restrict judges too much even though the Judges Executive Committee was not in favor of the bill. He felt the Department of Corrections would be able and capable of reducing prison populations by re-evaluating the sentencing guidelines.

The chairman announced that Representative Joan Adam and her Appropriations subcommittee members have been invited to attend hearings on SB 479.

Susan Kelly, Kansas Council on Crime and Delinquency testified in favor of SB 479, but wanted retroactivity put back into the bill. (Attachment #2) In answer to a member's question she said her organization is made up of interested citizens. She said she was in favor of the 120-day call back.

Sandy Lassiter, Concerns Citizens for Equal Justice, testified she felt retroactivity should be restored in SB 479. (Attachment #3) She said her organization is concerned with black citizens.

Hearings will be continued of SB 479 on 3/19/92.

Representative Everhart said there were problems with the way HB 3054 was drafted. She moved to make the necessary amendments, then make it a substitute bill. Rep. Smith seconded the motion. Discussion followed. Representative Everhart, with the consent of Representative Smith, withdrew her motion.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313S, Statehouse, at 3:30 ~~am~~/p.m. on March 18, 1992.

HB 2684 was passed out of the Judiciary Committee earlier in the session, but no action was taken on the Floor of the House.

Representative Smith moved to report HB 2684 favorably for passage. Rep. Douville seconded the motion. Motion carried.

Representative Smith moved to kill SB 436. Representative Pauls seconded the motion.

Representative Everhart made a substitute motion to amend HB 2763 into SB 436. Representative Macy seconded the motion. Motion failed.

Representative O'Neal made a substitute motion to table SB 436. Rep. Smith seconded the motion. Motion carried.

The chairman announced that hearings would be held on HB 2504 on 3/19/92.

Meeting adjourned at 5:00 P.M.

TESTIMONY OF DEBORAH DEERE  
EXECUTIVE DIRECTOR  
OUTSIDE CONNECTION, INC.  
TO THE HOUSE JUDICIARY COMMITTEE  
MARCH 18, 1992

Mr. Chairman, Committee Members, My name is Deborah Deere. I am the Executive Director of Outside Connection, Inc., and I am here today to testify as a proponent of Senate Bill 479.

Outside Connection is a non-profit corporation that was formally organized in 1985 to provide services to offenders and their families throughout Kansas.

Outside Connection has three main goals:

1. To maintain and strengthen the family unit during the period of incarceration so when the offender is released he/she has a strong family to return home to, thereby decreasing their chance of returning to prison. Studies have consistently demonstrated that keeping families together and providing a strong base of support decreases recidivism.

2. To educate the public regarding the trauma of incarceration and the effect on the family and children of offenders.

3. To restore dignity and self respect in inmates, parolees and their families to enable them to become productive citizens of our community.

Outside Connection currently operates three Visitors Centers in the state located in Lansing, Hutchinson, and Norton. The staff at the centers deal with issues concerning the families, the community and the correctional facility. We also operate a Community Re-Entry Program that works with offenders who are within six months of their parole hearing to develop an acceptable parole plan that consists of a place to live, a sponsor, and possible employment opportunities. Our goal is to help them demonstrate to the Parole Board that they are making every effort possible to plan for a successful re-entry to the community.

HJC  
3-18-92  
Attach #1  
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We realize and support your efforts to address disparity in sentencing. The families that we represent are supportive of Sentencing Guidelines because they view them as a means to rid themselves of the constant frustrations of the current parole process.

Our greatest opposition to the bill, as it is today, is the removal of retroactivity. We believe that this is a fairness issue. The Sentencing Commission has identified the evidence of unfairness in sentencing. In order to completely address that issue, we must apply the guidelines to all those sentenced under an unfair and biased system. If you are willing to accept a grid as proposed in this bill, and believe that it is appropriate, and significant punishment then that should apply to all offenders, not just those sentenced a year or more from now.

We are acutely aware of the need to balance the retroactivity and fairness issue with public safety. Is it good public policy to release 1000 inmates all at once to the community? If you just walk in tomorrow and open the door and release them, then of course everyone, including family members would say NO it is not good policy. However if guidelines were made retroactive, there could be a period of a year or more before we would actually see releases take place. During that year we believe that there could be some creative system developed to allow for a planned and prepared release so that those inmates that are actually released would have a plan as well as support and resources to enable them to succeed.

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Hack #1  
285

While Sentencing Guidelines, with or without retroactivity, will begin to address the issues of disparity in sentencing -- it will do very little, if anything, to reduce recidivism and make our streets safer.

Along with the guidelines, we believe that the state must decide what it wants from corrections, clearly articulate that position, and then make policy decisions that will facilitate the desired results.

As long as we continue to virtually ignore the back door/post incarceration period we will continue to have a significant recidivism rate. Currently, our post incarceration efforts consist primarily of policing by providing parole officers to monitor the parolees behavior. When that behavior appears to be a risk or a new crime is committed, then that person is revoked and returned to prison. We don't pretend to have all the answers or any new revelations as to what causes crime and how to prevent it. But, over the years we have developed a great deal of insight into what we believe contributes to recidivism and repeat offenses. If we could reduce repeat offenses, then we have begun to impact the over all crime rate in our state. I would like to address two areas that we believe would have a tremendous impact on the success of inmates at the time of release.

1. We must look to implementing policy that promotes the maintenance of family ties while in prison. Holt and Miller's, 1972 study, Explorations In Inmate-Family Relations, suggests that family members are a natural support group for prisoners and have great potential for assisting in the reintegration of the offender to the community.

More recent research by the State of New York Department of Corrections indicates that private family visits for prisoners are a positive influence on offender behavior both in prison (Grossman, 1981) and upon release (Macdonald, 1980).

Not only has the family been shown to be an effective resource for dealing with a variety of offenders, but it is often a key factor in discouraging two behavior patterns associated with crime: violence and substance abuse.

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3-18-92  
#Hach #1  
305

There is a great deal of indication that family oriented treatment of drug addiction is more effective than individual focused methods (Stanton 1977). Although the data suggests that contact between offenders and their families is a key ingredient in release success and reducing recidivism, corrections has yet to maximize upon this valuable resource.

The Kansas Department of Corrections has begun to identify this resource and is providing limited programs to further develop and facilitate its effectiveness. We strongly encourage you to support them in their endeavors and expand those programs.

2. At the present time, the state is providing limited treatment programs for drug and alcohol, sex offenders, anger control, and mental health. We believe that these programs could be far more effective if they were provided immediately after release, while on parole, and if the families could be included in the process. While there are limited choices as to behavior while in prison, the real test for dealing with drug use, etc. comes when individuals are released. This is when they need the programs and when we believe they are most effective.

In our opinion, our justice system's success in the future will depend on several factors. First there should be a re-ordering of fiscal priorities, with a major emphasis on community corrections. Community-based intermediate sanctions and alternatives to incarceration should expand so that incarceration will become the last option and reserved for the most severe offenders that, for the public's safety, must be kept from society.

A practical and comprehensive approach that includes drug treatment, literacy, life skills, employment training, and job placement should be components of most correctional programs -- pre-sentence through post release. A redirection of correctional resources will be necessary in order to create and support a "continuum of care" model of correctional supervision that, over time, will begin to improve the offender's successful community reintegration.

Eventually we must learn that incarcerating greater numbers of people for longer periods of time will never solve the problem of crime. It does not make us any safer and, in fact, the cost in human and fiscal terms is far greater than we as a state can afford. Ultimately, we will only benefit as we get smarter, not tougher, on crime.

HJC  
3-18-92  
Attach #1  
HJS

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Holt, N. and Miller D., Explorations in Inmate-Family Relationships, Research Division, Department of Corrections, California, 1972

Macdonald, D., Follow-up Survey of Post-release Criminal Behavior of Participants in Family Reunion Program. Program Planning, Research and Evaluation, State of New York Department of Correctional Services, Albany, New York, 1980.

Stanton, D., Drug Misuse and the Family. Philadelphia Child Guidance Clinis, Philadelphia, Pennsylvania, 1977.

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3-18-92  
Attach #1  
505



# KANSAS COUNCIL ON CRIME AND DELINQUENCY

118 NW Fillmore • Topeka, Kansas 66606 • (913) 234-2542

March 18, 1992

My name is Susan R. Kelly and I am testifying on behalf of the Kansas Council on Crime and Delinquency. KCCD has a current membership of nearly one-hundred individuals and organizations from across Kansas and states as its mission:

- To speak without the constraints that
- corrections officers have as employees
  - legislators have as politicians
  - offenders have with no voice
  - victims have in crisis, and
  - the public has with no leader.

KCCD has advocated the implementation of sentencing guidelines since 1988 as a way to make informed policy decisions about who is incarcerated and why. We are concerned about the racial, economic and geographic disparity that currently exists in imposing sentences. This has been an ongoing concern of others as well, as evidenced by the 1987 report of the Advisory Committee on Prison Overcrowding. That committee found a "disproportionate number of minorities in the Kansas prison system." Now, five years later, this problem continues to be unresolved. Implementation of sentencing guidelines, including retroactivity, will help address this problem.

With Senate Bill 49 in the recent past, KCCD shares the public's concern of the mass release of inmates. We agree that with retroactivity, safeguards must also be implemented. We support the gradual release of inmates and the right of respective District Attorneys to review individual cases and comment on sentence reduction. We also view the Department of Corrections and the Parole system as having a vital role in the release of inmates.

As a former employee of the Kansas Department of Corrections, I have witnessed the disparity first-hand. It is common knowledge among DOC employees that certain crimes committed in some counties will bring the maximum penalty, while that same crime will draw probation in other counties. Some of us dealt with this imbalance of the judicial system by privately joking, "It's OK to rape the women in \_\_\_\_\_ County but don't get caught with marijuana;" or "Hey, if you're thinking of setting up an embezzlement operation, do it in \_\_\_\_\_ County - they don't care;" or "Boy, don't jaywalk in \_\_\_\_\_ County - they put people in prison for that!"

The last facility at which I served was often referred to as a "call-back camp" because most of the inmates housed there were awaiting their 120-day call-back. Several times each week inmates were released to court or received word regarding sentence

*Kansans  
who believe that the criminal justice system  
affects us all - victim and offender!*

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# Hach #2  
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# KANSAS COUNCIL ON CRIME AND DELINQUENCY

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-2-

reduction from the county of conviction. Seldom could I identify a rhyme or reason for why one inmate was granted probation while another remained incarcerated to serve his sentence, especially if both had been convicted of the same crime. Prison staff could guess at the reasoning and it was usually assumed that an inmate's race, social and economic standing, and county of conviction were among the deciding factors in his case.

All human beings experience anger, frustration, irritability and fear when confronted with situations that seem unfair, unfounded or inconsistent. Most of us, however, can retreat to the safety and comfort of our homes, and to the support of our friends and loved-ones to reconcile ourselves with the injustices of life. Individuals incarcerated in the Kansas penal system are left alone to deal with the unanswerable question of why those convicted of the same crime may receive completely different sentences. In addition, they have to live with the fact that they do not know when their sentences will end.

It is difficult for most of us to feel sympathy and compassion for convicted felons. However, it is not difficult for us to relate to the stress, frustration and fear experienced by the staff who are in charge of maintaining order and safety in our prisons. In the present system we are asking the Program staff of our institutions to make sense of the senseless distribution of justice. If you will not consider the philosophical soundness of sentencing guidelines with retroactivity, or the morale of inmates, please consider the well-being of the staff which enforces those sentences.

KCCD asks that you reconsider the Senate's action of removing retroactivity of the sentencing guidelines. One of the reasons for establishing a Sentencing Commission was to design a means to ensure equality in imposing sentences. To remove retroactivity from Senate Bill 479 undermines that intent.

Thank you.

*Kansans  
who believe that the criminal justice system  
affects us all - victim and offender!*

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Attach #2  
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The Concerned Citizens for equal justice have played an intricate part in this sentencing commission and establishing fair guidelines.

We initially conferred with Secretary of Corrections, Roger Endell, about the disparity in sentencing. At that time, Blacks represented the state population at 6%, but 40% of the prison population.

It is now researched and concluded that disparity is evident. We lobbied for a more fairer representation on the sentencing commission. At the initial appointment, only one person of color was appointed.

Our concern today is with the retroactivity piece. We are not suggesting all prisoners be released but we are suggesting this is an opportunity to correct some injustices, and restore some faith in our justice system. Approximately 80% of our maximum security are Blacks. We are keenly aware that we lose a large number of Blacks in the plea bargaining process. In a recent California news report, "2" Black males are being considered for release after 17 years of incarceration. There was no clear cut evidence and the case was stacked against them. (A lot of tax dollars lost unnecessarily).

We've had our share of mistakes in Kansas. A case that clearly comes to mind is that of a Black male - C.J. Jackson - who spent 2 years imprisoned for a rape he didn't commit. He then was compensated several thousand dollars.

Presently, serving his eighth year in prison, Clarence Grubbs, for rape of two women. He was called to TPD for questioning at 10:30 PM. He walked to the station. The serologist test excluded him as a suspect in one case, and inconclusive on the other as well as inconclusive on the lie detector test. Each of these cases should be been tried on the strength of its' own merit.

Sandra Lassiter

HJC  
3-18-92  
Attack #3