Approved: 4-5-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 15, 1996 in Room 529-S of the Capitol.

All members were present except: Brady (excused)
Feleciano (excused)
Rock (excused)
Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Wendy McFarland, ACLU
Sister Teresa
Hans Heinemann

Others attending: See attached list

The Chair called the meeting to order at 10:05 a.m. in room 529-S.

HB 2700--If parole denied, hearing within 10 years of denial instead of 3 years.

Wendy McFarland, ACLU testified in opposition to **HB 2700**. The conferee referred to the issue of clemency or pardons that was discussed during the March 14, 1996 hearing concerning increasing the amount of time from the current four year to a ten year period. The conferee stated that personal research of the Kansas Constitution, Article One, Section 7 essentially states that pardoning power shall be vested in the governor under regulations and restrictions provided by law. The conferee stated that the argument is not a constitutional one, but that there are people serving time in Kansas penitentiaries that are innocence, therefore, it may be unfair to those people to increase the time to ten years instead of four years.

The conferee discussed testimony from the Chairwoman of the Kansas Parole Board and stated that the parole board will still have the authority to grant parole hearings more frequently than every ten years. The conferee expressed concerns that if the size of the parole board is reduced from five to three members, and this bill passes there might not be adequate opportunity for a prisoner to have a hearing prior to the time allowed in this bill. The conferee stated that the ACLU's believes that if this bill passed along with the bills that reduce the size of the parole board and require unanimous decision of those three members, those events will lead to overcrowding and exorbitant cost. The conferee stated all of these bills lend themselves to incarcerating prisoners longer.

The conferee referred to a letter written by Professor David Gottlieb, University of Kansas School of Law in which **HB 2700** could be found unconstitutional. The conferee discussed the Supreme Court case of *California v Morales*, and related the differences in California law and **HB 2700.** The conferee stated that because this bill could deny inmates a parole hearing until the time of release, an ex post facto violation likely exists. The conferee further discussed the opinion of Professor Gottlieb by stating that **HB 2700** has none of the safeguards of the California legislation. (Attachment 1)

Ms McFarland stated that **HB 2700** will cost the state by increasing the prison population. The conferee stated that this bill will jeopardize the safety of correctional officers because there will be less incentive for prisoners to control behavior. The conferee suggested that this bill be formulated to address inmates sentenced after the enactment of this bill. (Attachment 2)

The Committee members discussed the issue of constitutionality of this bill, and applying this bill to inmates sentenced after its enactment.

Sister Teresa read testimony of Jean Hall who is the mother of a Kansas inmate. In the written testimony Jean Hall stated reasons why she is opposed to **HB 2700**. (Attachment 3)

Sister Teresa expressed concern with the provision in **HB 2700** that would require that an inmate have no write-up for three years. Sister Teresa referred to the 1995 Post Audit Report speaking about the fallibility of the Parole Board. The conferee related that she knew of several people who have served long terms and are now productive members of society. Sister Teresa suggested including those who have served long prison times in the formulation of solutions. The conferee concluded by asking the Committee members to consider

whether this bill is "throwing gasoline on the fire" or is this bill dealing with the public safety issues and the concern for victims.

Hans Heinemann spoke in opposition to **HB 2700**. The conferee stated that he had served ten years in the Kansas Department of Corrections. The conferee stated that a person can not be free from disciplinary write-ups of any type if a correctional officer has it in for the person or if somebody is going to stick a shank in somebody else's back. The conferee stated that fights and write-ups cannot be avoided. The conferee discussed a comment made by Secretary of Corrections at the hearing on March 14, 1996 concerning remedies within the system to solve the problem of a guard "picking on an inmate.". The conferee related the details of his personal experience and stated that the enactment of **HB 2700** would jeopardize the safety of correctional officers.

The Chair closed the hearing on **HB 2700.**

Subcommittee Reports:

HB 2751--Landlord may retain possession of tenant personal property in forcible detain action if tentant does not remove such personal property within 120 hours or possession by landlord.

Senator Bond reported on **HB 2751** and stated that this bill will clarify what the landlord may do with former tenants' possessions left on the landlord's premises after eviction. The Senator stated that under current law belongings cannot be considered abandoned. Senator Bond stated that the Supreme Court case of *Davis v O'Dell* states that the tenants left over belongings cannot be considered abandon, this bill will clarify what to do with the property if it is not removed from the dwelling after the unit has been returned to the landlord. The landlord can take possession of property. Senator Bond stated that the subcommittee recommended that this bill be passed.

A motion was made by Senator Bond, seconded by Senator Petty to recommend **HB 2751** favorably for passage. The motion carried.

Senator Bond discussed **HB 2948** and stated that this bill creates a whole new system of case management, a neutral case manager in child custody and visitation matters. Senator Bond stated that this bill was recommended by Judge Shephard, Douglas County and Judge Walters of Sedgwick County who have been trying this without any statutory authority. The case manner would be assigned by the judge when other kinds of dispute resolution fails.

The Committee discussed the requirements in the bill as to the qualifications of the case manager and assessing the cost against the party who objected to the original general entry. The Committee debated whether this provision would inhibit people from disputing journal entries. Senator Bond related that the House struck language that states, "or may be assessed by the court." A member of the subcommittee reported information received during the subcommittee hearing was that there are people who habitually make post divorce filings and that one judge in Sedgwick county had 141 such filings from one individual.

Motion by Senator Vancrum, seconded by Senator Oleen to amend **HB 2948** by inserting language, "or may be assessed by the court". The motion carried.

A motion was made by Senator Bond and seconded by Senator Reynolds to move **HB 2948** favorably as amended. The motion carried.

HB 3017--SRS shall not investigate child abuse reports when alleged victim is 23 years of age or older.

Senator Bond discussed **HB 3017** and stated that the bill removes the requirement that SRS must investigate child abuse reports when the victim is age twenty-three or older.

Senator Bond stated that law enforcement officers are still required to investigate child abuse reports. Senator Bond recommended that this bill be placed in the register.

A motion was made by Senator Oleen, seconded by Senator Bond to amend **HB 3017** by placing it in the register and recommend the bill favorably as amended. The motion carried.

HB 3022--Release of a notice of intent to perform on a subcontractor's lien.

Senator Bond reported that current law requires a notice to file a subcontractor lien, which reserves the subcontractor's right to get paid. The Senator stated that the problem is that these notices of intent to perform are not released and that complicates title transfers. Senator Bond reported that this bill states that lien notices shall after they are paid be released or there is an eighteen month drop dead provision that automatically eliminates them if they have not been released.

A motion was made by Senator Bond, seconded by Senator Vancrum to recommend **HB 3022** favorably for passage. The motion carried.

HB 2791--Repeal of statute concerning standards for correctional institutions and jails.

Senator Bond reported that the Department of Corrections now has two people on payroll for salary for $90,000 to inspect county and city jails, but they have no power to enforce standards. The Governor in his budget deleted $90,000.

A motion was made by Senator Bond to amend **HB 2791** to publication in the Register and seconded by Senator Oleen and pass out favorably as amended. The motion carried.

HB 2402--Establishing visitation centers for victims of domestic violence, etc.

Senator Bond discussed the purpose of the visitation centers. Senator Bond stated that in the Federal Crime Bill there will be some funds, approximately $15,000,000. The percentage or amount of matching federal funds is unknown. Senator Bond stated that this bill as it was introduced in the House by Representative Barbara Ballard, was to place visitation centers under OJA's responsibility , the House amended it to place the visitation centers under the SRS. Senator Bond reported that his subcommittee amended the bill to place it under OJA.

One Committee member stated that this bill enables Kansas to access Federal money and suggested that this function could be placed in intake and assessment centers.

During Committee discussion Senator Oleen stated that the language in **HB 2402** states that if there is not access to federal dollars, then there will be no visitation centers as proposed under this bill. Senator Oleen stated that the federal funds are contingent upon identifying a potential match of funds.

A member of the Committee suggested amending **HB 2402** into **HB 3033.**

HB 3033--Increasing civil docket fees $5; creating a post divorce motion docket fee of $20 money goes to access to justice fund.

Senator Bond stated that **HB 3033** will provide funding for the visitation centers by increasing the marriage license fee.

Senator Bond stated that **HB 3033** was to gutted and the subcommittee increased from $40 to $80 the cost of a marriage license. Senator Bond stated that the money was divided as it is currently divided--57% to the shelters, 22% to Families and Childrens Trust Accounts, (local grants, CASA etc.) and under the current $40 marriage license fee, 20% goes to the general fund. Senator Bond stated that the subcommittee suggested that 20% of the new fee be used to fund matches for visitation centers.

Committee discussed not taking funds away from any program currently designated to receive those funds.

Senator Vancrum made a motion to roll together **HB 3033** and **HB 2402** and make adjustments. No second was made.

Senator Bond made a motion to move HB 2402 favorably, seconded by Senator Petty as amended to go back to OJA. The motion was not unanimous and did not carry.

A substitute motion was made by Senator Oleen to recommend **HB 2402** with amendments to place it back under OJA and to increase the marriage license fee by $10 to go to matching funds contingent on access to federal funds. The motion was seconded by Senator Vancrum and carried.

The Chair adjourned the meeting at 11:30 a.m.

The next meeting is scheduled for March 18, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-15-96

NAME	REPRESENTING
Sister Therese Barget	SELF
Hon P. Hemmeran	The prison general population
Julie Meyer	KS Sentencing Commission
Barbara Combs	Ks Sentencing Commission
Rebecca Woodman	KS Sentencing Commission
DAVID POST	
M.L. Post	
TERESA SAIYA	KDOC/KPB
Marilyn Scafe	KPB
Kelly Kultala	KCDAA
Jan Johnson	DOC
Greg DeBacker	National Congress of Fathers & Children
Claude Reichenbach	NCFC
Jim Clark	KCDAA
Joseph Goldstein	Fathers

#1

Post-it® Fax Note 7671	Date	# pg. 2
To Wendy McFarlane	From DAVID Gottlieb	
Co./Dept.	Co.	
Phone #	Phone # 913-864-5591	
Fax # 913-233-2666	Fax #	

From: David J. Gottlieb
Re: Constitutionality of H.B. 2700

I am a Professor at the University of Kansas School of Law, who teaches in the area of criminal procedure. I am writing concerning H.B. 2700. As I understand the bill, it would change the current rights of inmates convicted under "old law" of C, D, and E felonies to a parole hearing every year, and instead grant a hearing after an initial denial of parole only once every five years. It would also change the time for hearings for inmates convicted of A and B felonies from the current standard of a hearing once every three years after eligibility (with a file review every year) and replace it with a system requiring a hearing only once every ten years. Apparently, these new procedures would be applied across the board to all inmates convicted under "old law." As I understand it, at a hearing held yesterday, members of the Committee expressed the view that these changes would not violate the ex post facto clause of the Constitution, and that the Supreme Court's recent case of California Department of Corrections v. Morales, 115 S.Ct. 1597 (1995) explicitly supports the constitutionality of the proposed statute.

I have read Morales carefully. I am taking the time to write to express my view first, that Morales cannot be read as supporting the statute and that, indeed, a careful reading of Morales indicates that the Supreme Court of the United States would very likely find H.B. 2700 to be unconstitutional.

In Morales, the Supreme Court considered whether the ex post facto clause was violated by a California statute that decreased the frequency of parole hearings from once every year to once every three years for prisoners convicted of "more than one offense which involves the taking of a life" if the Parole Board also made a finding "that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for its finding."

The defendant argued that the change in parole procedures retrospectively increased his punishment and therefore violated the ex post facto clause of the Constitution. The Court noted that the question of whether changes such as those in Morales will be of sufficient importance to violate ex post facto must be one of degree, and then stated that the Court was required to determine whether the change "produces a sufficient risk of increasing the measure of punishment attached to the covered crimes," 115 S.Ct. at 1603 (emphasis added).

The majority then found that the change in eligibility did not produce such an increase because 1)the amendment applied "only" to a class of prisoners for whom the likelihood of release on parole is quite remote, those who have been involved in multiple homicides; 2)the Board was also required to find that the "it is

SEN. JUD.
3-15-96
ATTACH 1

not reasonable to expect that parole would be granted at a hearing during the following years"; 3) an administrative appeal was apparently available; and 4)the Board retained the authority to tailor the frequency of subsequent suitability hearings to the particular circumstances of the individual prisoner. Finally, the Supreme Court specifically noted that it would express "no view" as to the constitutionality of any of a number of other statutes that would alter the timing of parole hearings under circumstances different from those present in California.

The Committee should recognize that this statute has none of the safeguards of the California legislation. First, it applies to all inmates sentenced under old law, not simply to a class of prisoners for whom the likelihood of release is remote. Second, it provides for no individualized finding that the particular inmate would be unable to get parole. Rather, it applies to each and every inmate denied parole at his or her initial hearing. It provides for no individualized consideration. Most importantly, unlike the California statute, the legislation in question has the effect of permanently denying parole for a large class of inmates who are denied parole at their initial hearings. Under the statute, almost all D and E felons who are denied parole at eligibility will have no other opportunity for a hearing prior to the expiration of their terms. Many C felons will be in the same position. The Bill will also preclude B felons with sentences less than life imprisonment from a parole hearing where the felon is denied at the initial hearing.

In other words, the effect of this bill, for many if not most inmates in the State, is to permit the inmate only an initial eligibility hearing. Unlike the case in Morales it will clearly delay the release and increase the punishment of hundreds of inmates currently in the system. It is a "procedural" change which, in effect, repudiates the rehabilitative model of sentencing under which these individuals were convicted and sentenced. For that reason, it is utterly unlike the California statute approved in Morales.

Yesterday, when I spoke to the conferee from the American Civil Liberties Union who testified before you, I stated that I believed that the legislation as described to me presented a serious ex post facto problem. After rereading Morales I am comfortable expressing a stronger view. I believe that the statute as proposed is likely to be declared unconstitutional if it is enacted as written.

American Civil Liberties Union
of Kansas and Western Missouri
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Wendy McFarland, Lobbyist
575-5749

TESTIMONY IN OPPOSITION TO HB 2700
PRESENTED TO THE SENATE JUDICIARY
MARCH 14, 1996

IN PREPARING MY TESTIMONY IN OPPOSITION TO HB 2700, I CONSULTED WITH MANY INDIVIDUALS, AGENCIES AND ORGANIZATIONS WHO HAVE AGREED TO ALLOW ME TO CREDIT THEM. I DO SO IN AN EFFORT TO CONVEY TO YOU THAT IT IS NOT ONLY THE AMERICAN CIVIL LIBERTIES UNION THAT OPPOSES THIS BILL.

WE ARE MOST SPECIFICALLY OPPOSED TO THE PORTION OF THIS BILL THAT WOULD DRASTICALLY INCREASE THE LENGTH OF TIME BETWEEN PAROLE HEARINGS FOR INMATES. IT IS OUR BELIEF THAT IF THIS BILL IS PASSED ALONG WITH OTHER BILLS INTRODUCED THIS YEAR THAT WOULD REDUCE THE SIZE OF THE PAROLE BOARD AND REQUIRE UNANIMOUS DECISIONS FOR GRANTING PAROLE, THAT OVERCROWDING AND THE EXORBITANT COSTS ASSOCIATED WITH OVERCROWDING WILL INCREASE CONSIDERABLY.

ALL OF THESE BILLS LEND THEMSELVES TO KEEPING INMATES INCARCERATED LONGER REGARDLESS OF WHETHER OR NOT THEY DESERVE TO BE.

I READ RECENTLY IN THE NY TIMES THAT DURING FISCAL YEAR 1995, THE STATE OF NEW YORK ALLOTTED 5 PER CENT OF ITS ANNUAL BUDGET TO ITS CORRECTIONAL SYSTEM. THAT PERCENTAGE DOUBLED TO 10 PER CENT IN 1996 AS A RESULT OF STRICTER SENTENCING GUIDELINES THAT STATE PUT INTO EFFECT THIS YEAR.

KANSAS HAS CURRENTLY EARMARKED 2.5 PER CENT OF ITS BUDGET TOWARDS THE DEPT. OF CORRECTIONS. IT IS NOT UNREASONABLE TO ASSUME THAT THESE BILLS WHICH WE FEEL ARE DESIGNED TO KEEP PRISONERS INCARCERATED LONGER, INCLUDING THE SEXUAL PREDATOR SENTENCING PROVISIONS THIS COMMITTEE PASSED EARLIER THIS WEEK, WILL END UP COSTING US IN THE SAME WAY THEY HAVE COST NEW YORK.

THE STATE OF KANSAS CURRENTLY HAS A PRISON POPULATION OF 7,100. THE DEPARTMENT OF CORRECTIONS SAYS IT COSTS THE STATE $18,700 PER YEAR TO HOUSE THEM. HOW MANY INMATES WILL BE KEPT AN ADDITIONAL 7 YEARS AT AN EXPECTED COST OF $131,390 PER PRISONER IF THIS BILL PASSES? ONE? OF COURSE. JUST 10 MORE INMATES POSSIBLY DESERVING OF PAROLE WHOSE HEARINGS ARE DELAYED 7 MORE YEARS WILL COST THE STATE WELL OVER A MILLION DOLLARS TO HOUSE THEM FOR THAT EXTRA 7 YEARS.

REALIZE THAT TWO THIRDS OF THE CURRENT PRISON POPULATION FALL UNDER THE JURISDICTION OF THE PAROLE BOARD. THAT MEANS 4, 733 INMATES WILL HAVE PAROLE HEARINGS SOMETIME IN THE FUTURE. ONE WOULD HAVE TO ASSUME THAT SOME OF THESE INMATES HAVE EARNED THE RIGHT AND ARE READY AND DESERVING OF PAROLE. IF THIS BILL PASSES, THOSE INMATES WILL HAVE TO WAIT 3 OR 10 MORE YEARS TO BE PAROLED AND THIS DELAY WILL BE AT GREAT EXPENSE TO KANSAS TAXPAYERS.

Sen Jud 3-15-96
ATTACH 2

THE SAFETY OF CORRECTIONAL EMPLOYEES IS ALSO AT RISK. THE KANSAS ASSOCIATION OF PUBLIC EMPLOYEES WHO REPRESENT APP. 800 CORRECTIONAL EMPLOYEES HAVE ASKED ME TODAY TO CONVEY THEIR VERY REAL CONCERNS THAT PASSAGE OF THIS BILL WILL HAVE THE EFFECT OF REMOVING HOPE AND THEREFORE THE INCENTIVE OF INMATES TO OBEY RULES IN THE BELIEF THAT GOOD BEHAVIOR AND EFFORTS TOWARDS SELF-REHABILITATION MIGHT WIN THEM EARLY PAROLE.

COMMON SENSE SHOULD TELL EACH OF YOU THAT IT IS UNREASONABLE TO EXPECT THAT ONCE AN INMATE HAS BEEN TURNED DOWN FOR PAROLE, THERE WILL BE ANY INCENTIVE TO PROVE THEMSELVES WORTHY OF PAROLE WHEN THE NEXT PROMISE OF BEING HEARD IS TEN YEARS AWAY.

TEN YEARS IS NOT AN INCENTIVE TO DO "GOOD TIME". WE HAVE A DUTY TO PROTECT PRISON GUARDS FROM INMATES. THIS BILL WILL ONLY SERVE TO INCREASE THE DANGER INSIDE KANSAS PRISONS.

I CONTACTED TWO FORMER AND TWO CURRENT MEMBERS OF THE PAROLE BOARD IN PREPARING THIS TESTIMONY AS WELL AS A FORMER SECRETARY OF THE DEPT. OF CORRECTIONS. ALTHOUGH THEY DID NOT AGREE ON ALL OF THE ISSUES I QUESTIONED THEM ABOUT, THEY WERE UNANIMOUS IN SUPPORTING OUR CONTENTION THAT HB 2700 WILL HAVE THE EFFECT OF CAUSING MORE PRISON OVERCROWDING AND REMOVING THE INCENTIVE FROM INMATES TO OBEY RULES.

TWO CURRENT MEMBERS WERE CANDID TO ADMIT THAT THE SENATE AND HOUSE BILLS NOW PENDING THAT WOULD REQUIRE A UNANIMOUS VOTE OF THE ENTIRE PAROLE BOARD TO GRANT PAROLE WILL EFFECTIVELY CUT IN HALF THE NUMBER OF INMATES THAT MIGHT OTHERWISE BE PAROLED. THEY WERE QUITE FORTHCOMING IN ADMITTING THAT UNANIMOUS DECISIONS, WHICH ARE NOT CURRENTLY REQUIRED, ARE A RARITY ON THE CURRENT BOARD. THIS FACT COUPLED WITH THE INCREASE FROM 3 TO 10 YEARS ON HEARINGS, PROMISES TO CONTINUE THE PROBLEM OF OVERCROWDING AND THE EXORBITANT PRICE TAG THAT COMES WITH IT.

ONE PAROLE BOARD MEMBER ALSO SAID THAT HE AND OTHER BOARD MEMBERS ARE LESS LIKELY TO GRANT PAROLE ON A COLD FILE...MEANING A FIRST TIME PAROLE HEARING FOR AN INMATE. HE SAID THAT HE OFTEN DENIES AN INMATES FIRST REQUEST WITH THE KNOWLEDGE THAT HE WILL MOST PROBABLY SEE THEM AGAIN IN ONE OR THREE YEARS AND WILL THEN BE MORE FAMILIAR WITH THE INMATE AND HIS FILE AND BE MORE LIKELY AT THAT TIME TO GRANT PAROLE IF THE INMATE HAS SHOWN HIMSELF TO BE WORTHY OF IT SINCE THE LAST HEARING.

INCREASING THESE TIME PERIODS TO 3 AND 10 YEARS RESPECTIVELY, WILL DISALLOW PAROLE BOARD MEMBERS WHO SERVE 4 YEAR TERMS, FROM EVER SEEING THE SAME INMATE TWICE SO ALL INMATES WILL ESSENTIALLY BE COLD FILES WHICH THE PAROLE BOARD INHERENTLY PASSES ON.

THE LEGISLATURE IS TAMPERING WITH THE INTEGRITY OF THE PAROLE BOARD BY LIMITING THEIR DISCRETION AND ACCESS TO INMATES.

FINALLY, WE ALSO BELIEVE THE CHANGES THIS BILL PROPOSES WILL BE UNCONSTITUTIONAL...SPECIFICALLY AN EX POST FACTO VIOLATION. WE UNDERSTAND THAT MERE PROCEDURAL CHANGES DO NOT NECESSARILY VIOLATE THE CONSTITUTION, BUT THESE CHANGES ARE SO INCOMPATABLE WITH THE REHABILITATIVE MODEL OF SENTENCING WHICH EXISTS FOR PEOPLE CONVICTED UNDER OLD LAW, THAT IT AT LEAST SUGGESTS A SUBSTANTIAL PROBLEM WITH EX POST FACTO ACCORDING TO ARTICLE 1 SECTION 8 OF THE UNITED STATES CONSTITUTION. THIS CLAUSE PROHIBITS GOVERNMENT FROM INCREASING THE SEVERITY OF ONES SENTENCE AFTER IT HAS BEEN GIVEN.

APPARENTLY, THESE NEW PROCEDURES, IF ENACTED, WOULD BE APPLIED ACROSS THE BOARD TO ALL INMATES CONVICTED UNDER "OLD LAW." WHEN THIS BILL WAS HEARD IN THE HOUSE JUDICIARY, MEMBERS OF THAT COMMITTEE EXPRESSED THE VIEW THAT THESE CHANGES WOULD NOT VIOLATE THE EX POST FACTO CLAUSE OF THE CONSTITUTION AND THAT THE SUPREME COURT'S RECENT CASE OF CALIFORNIA DEPARTMENT OF CORRECTIONS V. MORALES SUPPORTS THE CONSTITUTIONALITY OF THE PROPOSED STATUTE.

AT MY REQUEST, LAW PROFESSOR DAVID GOTTLIEB OF THE UNIVERSITY OF KANSAS AND LAW PROFESSOR BILL RICH OF WASHBURN UNIVERSITY READ THE MORALES DECISION CAREFULLY AND BOTH CONCLUDED THAT THIS DECISION INDICATES THAT THE SUPREME COURT OF THE UNITED STATES WOULD VERY LIKELY FIND HB 2700 TO BE UNCONSTITUTIONAL.

HOUSE BILL 2700 , ACCORDING TO PROF. GOTTLIEB, HAS NONE OF THE SAFEGUARDS OF THE CALIFORNIA LEGISLATION. FIRST, HE STATED, HB 2700 APPLIES TO ALL INMATES SENTENCED UNDER OLD LAW, NOT SIMPLY TO A CLASS OF PRISONERS FOR WHOM THE LIKELIHOOD OF RELEASE IS REMOTE. IN CALIFORNIA THE INCREASE IN TIME BETWEEN PAROLE HEARINGS WOULD ONLY AFFECT THOSE WHO HAVE SUCH LONG SENTENCES THAT RELEASE BY PAROLE IS UNLIKELY.

HE WENT ON TO SAY THAT IT PROVIDES FOR NO INDIVIDUALIZED CONSIDERATION AS THE CALIFORNIA LEGISLATION DOES. MOST IMPORTANTLY, HE STATES, THE LEGISLATION IN QUESTION HAS THE EFFECT OF PERMANENTLY DENYING PAROLE FOR A LARGE CLASS OF INMATES WHO ARE DENIED PAROLE AT THEIR INITIAL HEARINGS. UNDER THE STATUTE, ALMOST ALL D AND E FELONS WHO ARE DENIED PAROLE AT ELIGIBILITY WILL HAVE NO OTHER OPPORTUNITY FOR A HEARING PRIOR TO THE EXPIRATION OF THEIR TERMS, WHICH IS WHY WE ARE CERTAIN THAT AN EX POST FACTO VIOLATION EXISTS HERE AND THE BILL AS IT IS WRITTEN WILL BE DECLARED UNCONSTITUTIONAL.

BOTH PROFESSORS AGREED THAT IF THIS BILL PASSES, THE STATE CAN EXPECT PLENTY OF INMATE LITIGATION BASED ON THIS ONE FACTOR.

IN CLOSING, WE URGE YOU TO REJECT HB 2700 BASED ON OUR CONSTITUTIONAL ARGUMENT, THE POTENTIAL PRICE TAG OF DELAYING PAROLE FOR DESERVING INMATES AND THE IMMINENT DANGER IT WILL POSE TO PRISON GUARDS.

#3

STATEMENT TO SENATE COMMITTEE

Jean L. Hall

Hello. My name is Jean Hall. I am the mother of a Kansas inmate, a Class A felon who has been in prison for 22 years, and I am here today to speak against the bill that would allow the Kansas Parole Board to pass parole-eligible Class A felons for ten years.

At present, the longest the parole board can pass an inmate is three years. We are told that this bill was proposed because crime victims and victim's families suffer emotionally when inmates come up for parole every three years. I will not say anything against crime victims or their families. My husband and I are retired business people, and we also have been victimized by violent crime. I believe that crime victims and victim's families should have a role in parole decisions. But I do not believe that crime victims or victim's families should be the only factors in the parole process. I oppose this bill because it would do just that, and because it would leave many other concerned people, namely inmates and their families, out of the process.

I feel this bill is unnecessary because it is already very difficult for eligible Class A felons to get a parole. The Kansas Parole Board follows a state law - K.S.A. 22-3717 - to make parole decisions. Under that law, victims and victim's families must be notified in writing before an inmmate's parole hearing. These notifications are, in effect, invitations, almost instructions, to protest the inmate's parole. Given the nature of the instructions and the tenor of the times, crime victims are perhaps made to feel that they are required to protest, and that not to protest could be considered poor citizenship or a lack of civic responsibility. Victim's families are encouraged to believe that failure to protest could be taken as a lack of respect or affection for the victim.

Not only crime victims and victim's families, but district attorneys, law enforcement agencies, the Kansas Department of Corrections, the public, and even the media all have an opportunity to comment and make input into the parole process. If any one of them makes a protest, the inmate is denied parole. This is why, since new sentencing guidelines went into effect in 1993, that less than a handful of eligible Class A felons have been paroled.

SEN. JUD
3-15-96
ATTACH 3

You will understand that my perspective is largely one of an inmate's parent. In 1974, we were told that our son would be eligible for parole in fifteen years, and that we could reasonably expect him to be released then, or shortly thereafter. He became parole eligible in 1989 and we are still waiting for him to be paroled. We have attended five public parole hearings since 1989. We have hired attorneys, drafted parole plans, made arrangements for our son to work in the family business and live in our home, and consulted with parole officers. At the last parole hearing, in March 1995, the mayor of our town attended and testified that our son would be welcome in the community. However, someone protested, again, and he was passed for two years.

When we ask for explanations from lawyers and parole board members, we are told that hardening public attitudes about crime and criminals are responsible for the death penalty, the "hard 40," and an unwillingness to parole criminals, even those who have been behind bars for 20 or 25 years. The hardening of public and legislative attitudes is certainly true, but I wonder if they have come largely from media hype, and at the expense of common sense.

According to the Justice Department's Bureau of Statistics, FBI reports, and the Kansas Bureau of Investigation, violent crime, in Kansas and across the nation, has been going down for years and is no more of a menace now than it was twenty years ago. Yet the media would have us believe that we are all about to be murdered in our beds. They hype every robbery, every shooting, perhaps because they don't have to worry about litigation from criminals, and hyping crime is the only way they can get people to buy newspapers or watch the TV news.

This media distortion extends to prisons and inmates. According to television, Kansas prisons are resorts and spas where inmates lay around and enjoy themselves, and serving 20 or 30 years in them is little different than working at a job or a career in the military. The truth is that prison is a relentlessly negative environment, with bitter racial dynamics that are rarely seen or considered by the public. And no one seems to understand or care that inmates who go into prison as young men are not the same people 25 years later when they are middle-aged and still behind bars.

Finally, I oppose this bill because it is simply more "lock'em up and throw away the key," and does not reflect common sense. Parole eligibility is not something that should be changed like the Federal Reserve does interest rates. What this bill does, basically, is to instruct the parole board to pass Class A felons for ten years. If inmates reach parole eligibility, they should have legitimate hearings, not those in which the parole board has already decided before-the-fact to pass them. And if the Kansas Parole Board is determined not to parole anyone, or perhaps only a few D and E felons, why have a parole board at all?

I hope you will take into account all I have said, and vote to oppose this bill. Thank you.

Jean Levon Hall
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