

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on March 22, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Lana Gordon- Absent

Committee staff present:

Jill Wolters, Revisor of Statutes Office  
Jerry Ann Donaldson, Legislative Research Department  
Becky Krahl, Legislative Research Department  
Nicoletta Buonasera, Legislative Research Department  
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Representative Ward Loyd

Others attending:

See Attached List.

**HB 2941 - The Kansas criminal justice recodification, rehabilitation and restoration project**

Ranking Minority Chair Ward opened the hearing on **HB 2941**.

Chairman Loyd appeared before the committee in support of the bill. The bill is intended to put in place a mechanism by which the people of Kansas can undertake a top-to-bottom, systematic review of our system of criminal justice. Kansas cannot afford the continuing cost of crime and cannot afford the cost of incarceration as our only crime reduction initiative. Seventeen people would serve on the board, from different fields of expertise. (Attachment 1) Three 'R's for Criminal Justice was also presented. (Attachment 2)

Secretary Roger Werholtz, Kansas Department of Corrections, provided written testimony in support of the bill. (Attachment 3)

Steve Kearny, Kansas County & District Attorney Association, provided written testimony as neutral for the bill. (Attachment 4)

Chairman Loyd closed the hearing on **HB 2941**.

The meeting was adjourned at 2:23 PM. The next scheduled meeting is March 23, 2004.



WARD LOYD  
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"THE HEART OF GARDEN CITY"  
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TOPEKA  
HOUSE OF  
REPRESENTATIVES

COMMITTEES  
CHAIR: CORRECTIONS & JUVENILE JUSTICE  
JOINT COMMITTEE ON CORRECTIONS  
& JUVENILE JUSTICE OVERSIGHT  
MEMBER: JUDICIARY  
RULES AND JOURNAL  
EXECUTIVE COMMITTEE, THE  
COUNCIL OF STATE GOVERNMENTS  
CSG LEGAL TASK FORCE

TESTIMONY IN SUPPORT OF HOUSE BILL 2941

BY REPRESENTATIVE WARD LOYD

BEFORE THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

March 22, 2004

Honorable Committee Members,

I appear in support of House Bill 2941, intended to put in place a mechanism by which the people of Kansas can undertake a top-to-bottom, systematic review of our system of criminal justice.

We cannot afford the continuing cost of crime. We cannot afford the cost of incarceration as our only crime reduction initiative.

It has been 10 years since implementation of determinative sentencing.

The presumptive sentencing structure Kansas implemented is based upon the assumptions that:

- ✗ Incarceration should be reserved for serious offenders
- ✗ The primary purposes of prison are incapacitation and punishment.

The goals of our Sentencing Guidelines are:

- ✗ To promote public safety by incarcerating violent offenders
- ✗ To reduce sentence disparity due to racial, geographic or other bias
- ✗ To establish sentences proportional to the seriousness of the offense and degree of harm to the victim
- ✗ To establish an understandable set of presumptive sentences that promote "truth in sentencing"
- ✗ To provide state and local correctional authorities with information to assist with population management options

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ROOM 427  
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House Corr & JJ  
Attachment 1

3-22-04

- ✗ To provide policy makers information to assist with decisions regarding resource allocation

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In recent years there have been numerous appellate court decisions, on both the federal and state levels, which have impacted determinant sentencing, most especially with regard to departures from guidelines.

There has occurred significant new crime legislation, as well as modifications to the sentencing guidelines.

- ✗ 50 new felonies have been added;
- ✗ 10 felony offenses had increased severity levels;
- ✗ 14 misdemeanor offenses were increased to felony offenses;
- ✗ 4 crimes were moved to nongrid status;
- ✗ 1 crime was moved to off-grid offense (but then back);
- ✗ 4 nonperson crimes were moved to person crime status;
- ✗ present sentence for nondrug severity level 1 with Criminal History A is 219% greater than it was 10 years ago (194 mo. to 620); for Criminal History I, it is 60% greater (97 mo. to 155);
- ✗ present sentence for nondrug severity level 2 with Criminal History A is 219% greater than it was 10 years ago (146 mo. to 467); for Criminal History I, it is 60% greater (73 mo. to 117);.

Technology has wrought fundamental societal changes not contemplated in previous decades, including knowledge regarding the manufacture, as well as the availability of, drugs.

Demographics continue to effect evolutionary modifications in Kansas, especially in an aging, more dependant population.

Many more dependant Kansans are living in our communities than ever before, because of the closing of state hospital system in the 1990's, and the placement in our communities of a population of persons developmentally disabled or mentally retarded.

We are now constantly subject to the threat of terrorism, and a pressing need for alertness and homeland security. There are heightened needs to protect our basic utilities infrastructure, and our food stock.

Society is learning more about the occurrence of abuse, of adults and of children, and most especially the devastating affect on young lives of sexual abuse.

Our system of criminal justice, and incarceration, presently offers insufficient provisions aimed

at inmate literacy or development of marketable skills.

The goals of punishment are 1) retribution, 2) incapacitation, 3) deterrence, and 4) rehabilitation.

We have a profound failure to provide support services for reintegration while incarcerated.

By neglecting prison programs and offering little in the way of services for individuals once they leave prison, recidivism rates can only remain unacceptably high.

Today Kansas is locked into the 4-R revolving door syndrome regarding offenders; Release, Rearrest, Reconviction, Reincarceration. In Kansas, as is the case nationally, repeat offender admissions currently exceed new crimes. The incidence of technical parole or probation violations resulting in re-incarceration is also more prevalent. We must move in a new, smarter direction.

Correctional education, including literacy and vocational skills, has a proven positive impact on recidivism. Participants earn higher wages, have increased family stability, higher workforce participation, and contribute to cost-savings for the system.

Today, virtually 75% of those housed in Kansas prisons have not completed a high school education. A Correctional Education Association study shows participants in educational programming enjoy a statistically significant lower re-incarceration rate of 21% compared to 31% for non-participants.

Many inmates are drug offenders, mentally ill, and adults with infectious diseases. The Office of National Drug Control Policy has reported that drug therapy (not simply administration of psychotropic medications) while in prison and under post-incarceration supervision can reduce recidivism by roughly 50%.

Research indicates that programs focused on cognitive skills training – focusing on changing participants' thoughts and attitudes, are effective in reducing recidivism. Moral Reconciliation Therapy (MRT) has a 28% recidivism rate for participants versus 43% for the control group. Reasoning/ and Rehabilitation (R&R) therapy proved successful with participants, reducing recidivist behavior 37%.

Supervised reentry programs across the country appear to reduce recidivism, with participant recidivism dropping 41% for new criminal convictions over three-years in one study.

The economic burden of recidivism is threefold; first being the cost of unemployment in lost income taxes and contributions to the economy; second, the cost of the crime event compounded by police, prosecution and court expenses; and third, the cost of incarceration. We cannot afford the current cost of crime.

Continuing on the current path, considering prison population projections, by 2013 we will have not less than 1,113 more inmates in our prison system. In today's dollars, that will cost Kansans \$31.15 million per year more than we presently spend just to house inmates. That does not take into consideration the \$33.75 million more that Kansans will have to spend to build the bed space needed for the offenders, which assumes we only add new pods at existing prisons, such as El Dorado and Hutchinson.

The factors affecting the incidence of violent crime include ✓ proportion of young men ✓ rate of incarceration (the "incapacitation effect") ✓ availability of jobs ✓ popularity of crack cocaine (today, that likely would be methamphetamine). Each of those factors must be weighed in addressing our current system of criminal justice.

We must target the appropriate offender for incarceration - insure that those who are the greatest risks to society are removed whether they commit a person or a property crime.

H.B. 2941 has been introduced in an effort to address the growing problems with the Kansas criminal justice system, requesting that the Legislature create the Kansas Criminal Recodification, Rehabilitation and Restoration Project. This is referred to as the 3R's for Criminal Justice, and has the following ends in mind:

#### Recodification of the Kansas Criminal Code

- ✗ The committee will be charged to analyze and review all criminal statutes and procedures, making recommendations that will ensure fair and appropriate sentencing, with a particular emphasis on the sentencing guideline grid for drug crimes.
- ✗ The committee will study and make recommendations concerning the statutory definitions of crimes and criminal penalties. An evaluation will also occur as to whether certain criminal conduct can be combined into a single criminal statute, eliminating the problem of two statutes prohibiting the same criminal conduct.
- ✗ The committee will review and determine the severity of the Kansas sentencing policies in relation to other states and review possible adjustments which may relieve prison capacity.

#### Rehabilitation of Kansas Prisoners

- ✗ The committee will identify ways to prepare prisoners to re-enter the community, including utilizing the resources and experience of faith-based and community organizations to help returning-inmates contribute to society. By neglecting prison programs and offering little in the way of services for individuals once

they leave prison, recidivism rates can only remain unacceptably high.

#### Restoration of Kansas Prisoners

- ✘ The committee will identify ways to restore the offender into a productive member of society, including the establishment of community networks, particularly to assist returning fathers to be better parents and productive members of their families.

In short, this project examines ways to place justice back into the criminal justice code, it rehabilitates prisoners in the system to become productive and law abiding citizens once released, and it provides support for prisoners once restored to society.

No less an authority than Eli Lehrer, then a fellow at The Heritage Foundation, reviewed findings from the Urban Institute study, and convinced by what he read, called on conservative thinkers to get tough on crime by supporting re-entry policies. "America's burgeoning prison system has done a poor job insuring that convicts leave the prison gates ready to lead productive lives . . . [we] should support four policies: improved follow-up, better drug treatment, in-prison work programs, and faith-based rehabilitation."

HB 2941 requires that the CJP work with and take into consideration –

- ✓ Kansas Sentencing Commission, including its current review of proportionality in process;
- ✓ Kansas Judicial Council;
- ✓ Kansas Department of Corrections, which has advised that it will be undertaking a complete review of its inmate classification system.

It is presently contemplated that the Criminal Justice Project will have one permanent staff person while it does its work. Any costs associated with the work on the project will be those associated with the Committee's travels across our state, to receive input from citizens, prosecutors, defense attorneys, police departments, sheriffs and deputies, victims, academia, sitting judges, and victims. In addition, there will be costs of hiring those who will do the analysis on our criminal code, and in bringing to Kansas those with the expertise on programs it would be well for us to consider.

We estimate the cost of the 18 to 24-month project to be \$250,000 on the low side, up to a maximum amount of \$500,000 on the high side. We intend to seek funding for this effort on the Federal level, and will carry the request to members of our Congressional delegation.

Under HB 2941, no request is anticipated to be made from the State General Fund. At the least, if there is cost it will come in the requirement that, LCC willing, legislative staff will be assigned to and work with the Criminal Justice Project.

To the extent the Legislature and this committee are able to address the many issues of concern presently existing with regard to crime, criminal behavior, and incarceration, by favorably considering and acting on HB 2941, I would encourage doing so. Thank you.





Ward Loyd  
District 123

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## Three 'R's for Criminal Justice

### Talking Points

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#### *The Need...*

- X Despite declining crime rates in the State of Kansas over the past decade, our inmate population has grown by more than 45%.
- X Within three years of release, over 67% of prisoners were re-arrested, nearly 47% were re-convicted for new crimes, over 35% were re-sentenced for new crimes and nearly 52% returned to prison. Over half of those readmitted were non-violent offenders and technical parole violators who have committed no crime or not been re-convicted but have violated a condition of their parole.
- X The economic burden of recidivism is threefold; first being the cost of unemployment in lost income taxes and contributions to the economy; second, the cost of the crime event compounded by police, prosecution and court expenses; and third, the cost of incarceration. We cannot afford the current cost of crime.
- X Countless changes to the Kansas criminal code have been scattered throughout the statutory code over the past decade, increasing the margin of error in prosecutors appropriately identifying and charging criminals.
- X At the present rate, by 2013 we will have at least 1,113 more inmates in our prison system. In today's dollars, that will cost Kansas \$31.15 million annually to house those inmates, and at least \$33.75 million to build the prison bed space for them.
- X The rate of mental illness in state prisons and local jails is three times the rate in the general population, constituting more than 21% of inmates, with approximately 75% of these individuals having a co-occurring substance abuse disorder.

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*Today, Kansas is locked into the 4-R revolving door syndrome regarding offenders; Release, Rearrest, Reconviction and Reincarceration. We must move in a new, more intelligent direction.*

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## Three 'R's for Criminal Justice

*We must target the appropriate offender for incarceration - insure that those who are the greatest risks to society are removed whether they commit a person or a property crime.*

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### ***The Solution...***

- ✓ To address the growing problems with the Kansas criminal justice system, the Legislature must create the Kansas Criminal Recodification, Rehabilitation and Restoration Project.
- ✓ The project will be guided by a committee who will make recommendations to the legislature and the governor. The committee will be comprised of various members of the law enforcement community, judicial branch representatives, academia, legislators, citizens and governor appointees.
- ✓ **Recodification of the Kansas Criminal Code**
  - The committee will be charged to analyze and review all criminal statutes and procedures, making recommendations that will ensure fair and appropriate sentencing, with a particular emphasis on the sentencing guideline grid for drug crimes.
  - The committee will study and make recommendations concerning the statutory definitions of crimes and criminal penalties. An evaluation will also occur as to whether certain criminal conduct can be combined into a single criminal statute, eliminating the problem of two statutes prohibiting the same criminal conduct.
  - The committee will review and determine the severity of the Kansas sentencing policies in relation to other states and review possible adjustments which may relieve prison capacity.
- ✓ **Rehabilitation of Kansas Prisoners**
  - The committee will identify ways to prepare prisoners to re-enter the community, including utilizing the resources and experience of faith-based and community organizations to help returning-inmates contribute to society. By neglecting prison programs and offering little in the way of services for individuals once they leave prison, recidivism rates can only remain unacceptably high.
- ✓ **Restoration of Kansas Prisoners**
  - The committee will identify ways to restore the offender into a productive member of society, including the establishment of community networks, particularly to assist returning fathers to be better parents and productive members of their families.

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*In short, this project examines ways to place justice back into the criminal justice code, it rehabilitates prisoners in the system to become productive and law abiding citizens once released, and it provides support for prisoners once restored to society.*

(31)



# KANSAS

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KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2941  
to  
The House Corrections and Juvenile Justice Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

March 22, 2004

The Department of Corrections supports the passage of HB 2941, which establishes the Kansas criminal justice recodification, rehabilitation, and restoration project. This project will be overseen by an appointed committee charged with the duty of recodifying the Kansas criminal code, identifying rehabilitation methods, and identifying ways to make offenders productive members of society.

The Department supports the proposed scope of issues identified for study. HB 2941 addresses a number of issues that affect specific operations of the Department.

As the legislation correctly identifies, the sentencing system has evolved to one that is so complex that the Department currently deals with at least four different sentencing structures simultaneously. This lack of a cohesive structure can lead to confusion amongst all concerned parties, including inmates and families, the Department, the court system, the media, and perhaps most importantly, crime victims and the public.

The Department of Corrections believes that there are a number of new and effective strategies being developed to rehabilitate offenders, and prepare them for reentry and transition to community-based supervision. In recent years, the agency resources to capitalize on new methodology and programs have been diminishing. By having this committee review and identify methods for reentry and transitional programs, more attention and detail can be given to restoring offenders to the community as productive, law-abiding citizens.

The Department of Corrections applauds the comprehensive list of stakeholders outlined within HB 2941, and pledges the Department's full cooperation in this important effort.

The Department urges favorable consideration of HB 2941.

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March 22, 2004

Chairman Ward Loyd  
House Corrections and Juvenile Justice Committee

RE: House Bill 2941

Dear Chairman Loyd and members of the committee:

Thank you for allowing our Association to present testimony on HB 2941. On behalf of the KCDA Board of Directors, my testimony is offered for informational purposes only. The short notice of the hearing did not allow the Board to discuss the bill and take a position.

In discussing the bill over the weekend with Tom Drees, KCDA Secretary/Treasurer, it may be that the Kansas Sentencing Commission already has the statutory authority to carry out much of the intent described in HB 2941. The Kansas Sentencing Commission statutes are found in K.S.A. 74-9101.

Our Association applauds the efforts of Chairman Loyd to review the criminal statutes, their impact and their evolution since their last examination. The KCDA welcomes the opportunity to participate in this dialog.

Steve Kearney, Executive Director