Approved: 127, 1994

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on February 2, 1994 in Room 313-S of the Capitol.

All members were present except:

Representative Denise Éverhart - Excused Representative Joan Wagnon - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department Jill Wolters, Revisor of Statutes Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Kathryn Farris, Representative Tom Bradley's Intern Kyle Smith, Kansas Bureau of Investigation Wint Winter, Lawrence Carla Stovall Representative Russell Mills Tim Chambers, Reno County Attorney Lisa Moots, Kansas Sentencing Commission Gary Stotts, Secretary of Department of Corrections Carla Dugger, American Civil Liberties Union

Others attending: See attached list

Hearings on HB 2788 - "Three Strikes You're Out" Legislation, were opened.

Kathryn Farris spoke on behalf of Representative Tom Bradley, who is the main sponsor of the proposed bill. She stated that this legislation does not lessen the current options of punishment for first and second felonies. The purpose of this bill is to put away 6% of criminals who commit 70% of the crime. Representative Bradley favors amending the bill to include all severity level three felonies, (see attachment 1).

Kyle Smith, Kansas Bureau of Investigation, appeared before the Committee on behalf of Attorney General Bob Stephan. Studies show that 3.8% of criminals commit 55.5% of the crimes. This indicates that there are amoral people who cannot function within the laws of society and care nothing about the lives and rights of others. Those who repeatedly commit serious crimes have demonstrated their inability to live in society and for these the sentence should be life imprisonment. The purpose of this bill was to improve public safety by placing the most dangerous criminals in prison and would reduce the number of serious repeat offenders. This bill won't solve all the problems, but it would make a difference. The criminals should be afraid of this proposed bill, would have a deterrent effect. Mr. Smith suggested two amendments. The first would expand the bill to include severity level three offenses. The second amendment would be drafted after a Washington statute that clarifies that the governor's power to pardon and/or commute a sentence would be not affected by the "Three Strikes You're Out" statute, so that there would be a mechanism to release elderly or feeble criminals who no longer pose a threat to society, (see attachment 2)

Chairman O'Neal questioned if the second proposed amendment would have any impact on the Department of Corrections power to make recommendations of a similar nature. Mr. Smith replied that this could be included. The Chairman commented that currently DOC has the ability to make suggestions as to which individuals need to be released because of health reasons or age. Mr. Smith stated that if the Committee considers adding in DOC it should be very specific and possibly limit the offenders to only those over 60 years of age. Chairman O'Neal questioned if the first proposed amendment would include all severity level three crimes. Mr. Smith responded that it would be only six additional crimes.

Wint Winter, Lawrence, appeared before the Committee as a proponent of the bill. He stated that three strikes are too many for some violent crimes such as murder and that these type of crimes should only be one strike, and for crimes such as rape two strikes should be all that's required. While there are some criminals that help themselves to rehabilitate, there are also some for whom there is no cure.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEEON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on February 2, 1994.

Chairman O'Neal stated that when Mr. Winter served in the Senate he not only Chaired Senate Judiciary but also served on Ways & Means. He questioned that because of the aging prison population should there be a safety net, with the Governor and Department of Corrections, to make sure that the State would not have to pay a large sum of money to keep them locked up forever. Mr. Winter replied that this is a legitimate concern. DOC's impact statements are relatively small, however, the cost of not implementing this proposed bill is relatively high itself. This simply takes the Sentencing Guidelines to the next level of making the criminals accountable for their actions.

Representative Smith questioned if Mr. Winter thought that in the event of a capital crime serving a lifetime imprisonment without a chance for parole would be a better substitute than the death penalty. Mr. Winter responded that because of the cost of the death penalty, spending a lifetime in prison is an effective deterrent. If the Legislature decides to enact the death penalty the "Three Strikes" sentence would be an alternative penalty.

Representative Heinemann stated that the bill reads that one must be convicted on two separate occasions. On the second conviction the court should inform the defendant that he has already received two strikes and what would happen to him on the third time.

Carla Stovall appeared before the Committee in support of the proposed bill. She stated that Sentencing Guidelines have not changed the sentencing system. The revolving door of allowing felons to be released to re-offend still continues. This bill would put an end to that after the third conviction. She suggested an amendment that would make it apply to the second convictions for sexually violent crimes and crimes where death resulted, (see attachment 3).

Chairman O'Neal questioned what her reaction was on the issue of having offenders of age 30-40 years enter prison and then many years later having to pay for health care for the offenders to keep them in prison for the rest of their lives. What impact would prison health care have on the State's budget? Ms. Stovall responded that either DOC would pay for the health care on the inside or SRS would pay for health care on the outside. However, where and who is going to pay for it can't be the primary concern.

Representative Russell Mills appeared before the Committee as a proponent of the bill. He stated that this bill was a step in the right direction but proposed an amendment that would include all felony sex offenses, all felonies and all drug offenses. The message needs to be sent that if a person commits a crime, they will be dealt with in a harsh manner, (see attachment 4).

Tim Chambers, Reno County Attorney, appeared before the Committee as a proponent of the bill. He stated that he has several concerns with the bill. The first that Section C (2) needs to be made clearer that the three strikes are a combination of any of the crimes listed. The second concern was that if a persons out on bail and awaiting trial for a violent crime or felony and commits another crime would that be considered two strikes or just one. The last would be to lower the severity level to include sexual predators. A person doesn't have to have a violent criminal past to be a violent person, (see attachment 5).

Representative Rock stated that he felt this bill should be addressing the number of offenses that a person commits and not the number of convictions.

Lisa Moots, Kansas Sentencing Commission, appeared before the Committee and stated that the Sentencing Commission could not, at this time, provide the Committee with the suggested impact of the bill. She suggested that the Committee consider adding the following crimes to the bill: kidnapping, sexually violent and sexually motivated crimes. She also stated that there is a lot of plea-bargaining to avoid the suggested sentence and she felt that the plea-bargaining should not be allowed in the "Three Strikes You're Out" bill. She would like to see an amendment that would clarify the meaning of the language in Subsection C (2) "has been convicted on at least two separate occasions", (see attachment 6).

Gary Stotts, Secretary of Department of Corrections, appeared before the Committee and stated that as of the date that this bill was drafted, there were 288 admissions for the calendar year '93 that were designated felonies. Out of those there were 24 that had two plus convictions that would probably be affected by this bill. However, this number does not distinguish between person and non-person crimes. Within the next week the DOC should have a criminal history database of 8,000 to 12,000.

Chairman O'Neal stated that the way this bill was drafted an individual could start on July 1, 1994 with two strikes against them. It's not your next three...it's any three. Kyle Smith, Kansas Bureau of Investigation, commented that the crime would need to be committed on or after July 1, 1994.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEEON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on February 2, 1994.

Carla Dugger, American Civil Liberties Union, did not appear before the Committee but requested that her testimony be included into the minutes, (see attachment 7).

Hearings on HB 2788 were closed.

The Committee meeting adjourned at 5:30. The next meeting is scheduled for February 3, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE FEBRUARY 2, 1994

NAME	ADDRESS	ORGANIZATION
Lisa Moots	Topeta	15 SenteringCom
Jan Johnson	1	. KDOC
Cary STORS	Topeka	100cc
Carla Stevall	11	· Pildice
Duan Watkguseth	Topeka	Digsion of the Budget
SUSANA, Hamilton	LAURENCE	KTA
Tuesa Granville	Topeka	observer/student
A. curiams,	Topeka	1000
Kathleen Grieve	52 Dist. Topeka	observer / studen
JASON CARRIER	LAWRENCE	KAPCCA
Bruce Links	Lawrence	KALPCCA
Helen Stephene.	Sopeha	KPOA
/		
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CAREER AND HABITUAL VIOLENT OFFENDERS ACT

TESTIMONY 2/2/94 REPRESENTATIVE TOM BRADLEY INTERN KATHRYN FARRIS

The first role of government is the protection of its citizens. This protection includes safety on one's own street. Kansas citizens have a right to be protected from career and habitual, violent offenders. Crime is the primary concern of the people in the 52nd District. They feel threatened in their very homes.

This legislation does not lessen the current options of punishments for first and second felonies. It is intended to draw a line in the sand saying enough is enough. The purpose is to get tough on the 6% of the criminal element who commit 70% of the crime. If a person has raped, kidnapped, or molested three times, then we have no more patience—he is permanently removed from society. We must put away the habitual predators who live in our communities.

This is a non-partisan issue. Republican Senator Dole and Democrat Representative Glickman both support this type of federal legislation.. It is often referred to as "Three Strikes and You're Out;" or as Bob Dole says, "Three Strikes and You're In--IN FOR LIFE."

You will hear from others that recommend category level three felonies be included in this legislation. We consider including level three felonies a friendly amendment.

Will this by itself solve the crime problem? The answer is NO. It is only a part of the solution. The Career and Habitual Violent Offenders Act needs to be included as part of an overall crime package. We need to pass other legislation such as treating violent juveniles as adults and not allowing juveniles under eighteen the unsupervised use of handguns.

In addition, we must look at prevention as well as punishment. We are losing the sense of family in today's environment of crime and drugs. Over 30% of all births today in Shawnee County are out-of-wedlock. Welfare reform will be addressed later this year by the Appropriations Committee.

We ask the committee to please vote to consider this bill.

FELONY CRIMES SORTED BY SEVERITY LEVEL

Statute	Description	<u>F/M</u>	Class	<u>P/N</u>	Level
Nondrug Grid Cri					
21-3401	Murder in the first degree	F	A	P	Offgrid
×21-3801	Treason	F	Ä	P	Offgrid
₹21-3401	Attempted murder in the first degree (21-3301)	_			•
₹21-3402(a)	Murder in the second degree (Intentional)	F	:	P	1
¥21-3421	Aggravated kidnapping	F F	В	P	1
×21-3801	Treason; Attempted (21-3301)	F	A A	P P	1
		•	^	r	•
(21-3401	Conspiracy to murder in the first degree (21-3302)	F	•	P	2
21-3402(b) 21-3801	Murder in the second degree (reckless)	F	В	P	2
×21-3502(a)(1)	Treason; Conspiracy (21-3302)	F	Α	P	2
21-3502(a)(2)	Rape; sexual intercourse with a person who does not consent; overcome by force, fear, etc. Rape; sexual intercourse with a child <14 year.	F	В	Р	2
21-3506(a)(1)	Aggravated criminal sodomy; sodomy with a child <14 you	F	•	P	2
21-3506(a)(2)	Aggravated criminal sodomy; causing a child <14 you to engage in sodomy with a person or animal	F	•	P	2
×21-3506(a)(3)	Aggravated criminal sodomy; sodomy with person who does not consent; overcome by force, etc.	F	•	P P	2 2
		•	•	Г	4
21-3401	Solicitation to murder in the first degree (?1-3303)	F		P	3
21-3403	Voluntary mansiaughter	F	C	P	3
21-3415	Aggravated battery on LEO - intentional, great bodily harm (see 21-3414a1A)	F	В	P	3
(21-3420 21-3427	Kidnapping	F	В	P	3
21-3719	Aggravated robbery	F	В	P	3
21-3801	Aggravated arson; substantial risk of bodily harm Treason; Solicitation (21-3303)	F	В	P	3
(21-3504(a)(1)	Aggravated indecent liberties w/child; ≥14 yoa, but <16 yoa; sexual intercourse	F	A	P	3
(21-3504(a)(3)	Indecent liberties w/child; <14 you; lewd fondling or touching	F	•	Р	3
21-3505(a)(2)	Criminal sodomy; sodomy with a child ≥14 yos, but <16 yos	F	•	P	3
21-3505(a)(3)	Criminal sodomy; causing child ≥14 yoa, but <16 yoa to engage in sodomy with a person or animal	F	•	P P	3 3
21-3414(a)(1)(A)	Aggravated battery - intentional, great bodily harm	_			
21-3504(a)(2)	Indecent liberties w/child; ≥14 yoa, but <16 yoa; lewd fondling or touching	F	С	P	4
	•	F	•	P	4
New Section	Aggravated abandonment of a child; involves child <16 you resulting in great bodily harm	F	Ε	P	5
21-3404	involuntary mansiaughter	F	Ď	P	5
21-3426	Robbery	F	С	P	5
21-3518 21-3609	Aggravated sexual battery; intentional touching, without consent, who is >16 yoa; force, fear, etc.	F	D	Р	5
21-3716	Abuse of a child; involves child <18 yoa; intentional torture, cruelly beating, etc. Aggravated burglary	F	C	P	5
21-3718	Arson; damage resulting in loss of > \$50,000	F	C	P	5
21-4219(c)	Criminal discharge of a firearm at occupied dwelling or vehicle resulting in bodily harm	F	C	N	5
21-3414(a)(2)(A)	Aggravated battery - reckless, great bodily harm	F	C	P P	5
X21-3503(a)(1)	indecent liberties w/child; child >14 yoa, but <16 yoa; lewd fondling or touching	F		Þ	5 5
×21-3503(a)(2)	indecent liberties w/child; child ≥14 yos, but <16 yos; soliciting to engage in lewd fondling, etc.	F	•	P	5
21-3516(a)(1)	Sexual exploitation of a child; employing, etc. child <16 you to engage in sexually explicit conduct	F	D	P	5
(21-3516(a)(2)	Sexual exploitation of a child; possessing visual medium of child <16 year engaging in such conduct	F	D	P	5
(21-3516(a)(3)	Sexual exploitation of a child; guardian permitting child <16 yea to engage in such conduct	F	D	P	\$
(21-3516(a)(4) 21-3603(a)(2)(A)	Sexual exploitation of a child; promoting performance of child <16 you to engage in such conduct	F	D	P	5
210000(a)(2)(A)	Aggravated Incest; Otherwise lawful sexual Intercourse or sodomy with relative ≥16 yoa, but <18 yoa	F	•	Р	5
17-1253	Securities; Unlawful offers, sale, purchase (Penalties provided in 17-1267)	F	D	N	£
21-3411	Aggravated assault on law enforcement officer	F	C	P	6 6
21-3415	Aggravated battery on LEO - Intentional, bodily harm or physical contact (see 21-3414a1B/C)	F	В	P	6
X21-3511(a)	Aggravated indecent solicitation of a child; <14 year to commit or submit to unjawful sexual act	F	Ď	P	6
×21-3511(b)	Aggravated indecent solicitation of a child; <14 yoa, inviting, etc. to enter secluded place	F	D	P	6
21-3513(b)	Prostitution; Promoting prostitution when prostitute is <16 you	F	D	Р	6
21-3718	Arson; damage resulting in loss of > \$25,000, < \$50,000	F	С	N	6
21-3719	Aggravated arson; no substantial risk of bodily harm	F	В	P	6

PELONY CRIMES SORTED BY SEVERITY LEVEL

Statute	<u>Description</u>	F/M	Class	P/N	Level
21- 3742(d)	Throwing objects from bridge or overpass; resulting in injury to a passenger of vehicle				
21-3810(b)	Aggravated escape from custody; escape is facilitated by the use of violence or threat of violence	F	D E	P P	6 6
21-3826	Traffic in contraband in a correctional institution	F	E	N	6
21-3829	Aggravated interference with conduct of public business	F	D	P	6
21-3833	Aggravated intimidation of a witness or victim	F	Ē	P	6
21- 42 15	Obtaining a prescription only drug by fraudulent means for resale	F	C	N	6
65-3441 (c)	Hazardous Wastes; Knowingly violates unlawful acts included in paragraphs 1-11, subsection (a)	F	C	N	6
9-2004	Banking; Swear Falsely; Perjury in a felony trial	F	D	N	7
17-1254	Securities; Unlawful acts (Penalties provided in 17-1267)	F	E	N	7
17-1255 17-1264	Securities; Unlawful sale of unregistered securities (Penalties provided in 17-1267)	F	Ε	N	7
17-1264 19-3519	Securities; Filing false or misleading statements (Penalties provided in 17-1267	F	Ε	N	7
21-3410	Counties; Water Districts; fraudulent claims of \$25,000 or more Aggravated assault	F	D	N	7
21-3422a(b)	Aggravated assault Aggravated interference with parental custody	F	D	P	7
21-3428	Blackmail	F	D	P	7
21-3513(b)	Prostitution; Promoting prostitution when prostitute is ≥16 yos, second or subsequent conviction	F	E	N	7
21-3701	Theft; loss of > \$25,000	F	E	Р	7
21-3704	Theft of services; loss of > \$25,000	F	D	N	7
21-3707	Giving a worthless check; loss of > \$25,000	F	D	N	7
21-3715(a)	Burglary; building used as a dwelling	F	D D	N	7
21-3715(b)	Burglary; building not used as a dwelling	F	ם	P N	7 7
21-3718	Arson; damage resulting in loss of < \$25,000	F	C	N	7
21-3720	Criminal damage to property; damage of property > \$25,000	F	D	N	7
21-3726	Aggravated tampering with a traffic signal	F	Ē	N	7
21-3729	Criminal use of a financial card; money, services, etc. w/in 7 day period > \$25,000	F	D	N	7
21-3734	Impairing a security interest; value of > \$25,000	F	D	N	7
21-3742(c)	Throwing objects from bridge or overpass; resulting in injury to a pedestrian	F	E	P	7
21-3755(c)	Computer crime; loss of ≥ \$25,000	F	D	N	7
21-3802	Sedition	F	D	N	7
21-3805(b) 21-3901	Perjury; false statement is made upon the trial of a felony charge	F	D	N	7
21-3904	Bribery	F	D	N	7
21-3905	Presenting a false claim; > \$25,000 Permitting a false claim; > \$25,000	F	D	N	7
21-4219(b)	Criminal discharge of a firearm at occupied dwelling or vehicle	F	D	N	7
21-4401	Racketeering	F	D	P	7
25-2409	Elections; Election bribery	F	D	N	7
25-2417	Elections; Bribery of an election official	F	D	N	7
25-2418	Elections; Bribe acceptance by an election official	F	D	N	7
40-0247	insurance agent/broker failure to pay premium to company; loss of >\$25,000	F	D	N	7
50-1013	Willful violation of loan broker article	F	D E	N	7
21-3413(a)(2)	Battery against a correctional officer	F	E	N P	7 7
21-3414(a)(1)(B)	Aggravated battery - intentional, bodily harm	Ė	Č	P	7
21-3414(a)(1)(C)	Aggravated battery - intentional, physical contact	F	Ċ	P	7
X21-3510(a)(1)	indecent solicitation of a child; ≥14 yoa & <16 yoa to commit or submit to unlawful sexual act	F		P	7
×21-3510(a)(2)	indecent solicitation of a child; ≥14 you & <16 you, inviting, etc. to enter secluded place	F		P	7
21-3603(a)(1)	Aggravated Incest; Marriage to person <18 yoa, who is a known relative	F	•	P	7
21-3603(a)(2)(B) 21-3612(a)(5)	Aggravated incest; Lewd fondling and touching described in 21-3503 with relative >16 you, but <18 you	F	•	P	7
21-4111(b)(2)	Contributing to a child's misconduct; causing, encouraging child <18 you to commit a felony	F	D	P	7
21-4111(b)(3)	Criminal desecration; same; loss of ≥ \$25,000 Criminal desecration; same; loss of ≥ \$25,000	F	D	N	7
21-4111(b)(4)	Criminal desecration; same; loss of ≥ \$25,000	F	D D	N N	7 7
21-3604	Abandonment of child; involves child <16 you			14	1
21-3710	Forgery	F	E	P	8
21-3711	Making a faise writing	F	E	N	8
21-3731	Criminal use of explosives	F	D	N	8
21-3807(b)	Compounding a felony crime	F	E E	P N	8 8
		•	-	14	•
	Kansas Sentancing Guidelines Desk Reference Manual				
	Appendix A2, Page 2		1-6	ł	
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KANSAS BUREAU OF INVESTIGATION

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KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL KANSAS BUREAU OF INVESTIGATION BEFORE THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HOUSE BILL 2788 **FEBRUARY 2, 1994**

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan I am very pleased to be here today to testify in support of HB 2788, commonly known under the baseball appellation "three strikes and you're out."

It seems almost redundant to discuss the problem that this bill was designed to address - the small percentage of career criminals who commit an incredibly disproportionate percentage of the violent crimes that our society is suffering. The studies that have been done corroborate the public's conclusions reached by reading our daily headlines and watching the morning news. In a California study of males born in 1956, 3.8% of those subjects are responsible for 55.5% of the crimes. An Alcohol. Tobacco and Firearms study involving a survey of career criminals, showed that they average 160 crimes per year. A Rand Corporation study found that 24% of the inmates surveyed admitted committing 135 crimes per year with 10% claiming to have committed an average of 600 crimes per year.

The bottom line is there are amoral people out there who cannot function within the laws of society and care nothing for the lives and rights of others. These sociopaths have demonstrated they are unable to

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learn or change their ways despite the best efforts of social scientists who try to treat them, and those of us in criminal justice who apply the lessons and deterrence of prior criminal incarceration.

HB 2788 recognizes these facts and identifies those persons who through repeated commission of the most serious offenses have clearly demonstrated their inability to live in society. For such criminals the sentence is life.

I have attached to this testimony a couple of sections from the Three Strikes and You're Out Bill passed in the State of Washington. The new section 2 deals with the findings and intent behind their bill. I was tempted to plagiarize these statements as my own because I think they cut to the very heart of the problem. In short, the purpose of such a bill is to improve public safety by placing the most dangerous criminals in prison and reduce the number of serious repeat offenders out committing crimes, through tougher sentencing. With proper and simplified sentencing practices that both the victims and criminals can understand, we can restore public trust in our criminal justice system by being responsive to the demands of the people.

In practical terms, we have the benefit of locking away those criminals who have been objectively proven to inflict horrendous damage on society plus the deterrence of certain and severe consequences to persons with two convictions. This bill can and will make society safer.

On behalf of Attorney General Stephan we would offer two amendments. My second attachment is a copy of a chart prepared by the Sentencing Commission which lists felony crimes by severity level. The bill as drafted includes offgrid crimes, first and second level felonies and serious sexual offenses.

In November when the Attorney General requested the Chair of the Senate and House to consider a "Three Strikes and You're Out" bill, he proposed including level three crimes. As you can see by the attachment, there are very serious violent offenses contained in level three, for instance, aggravated robbery, kidnapping, aggravated battery on a law enforcement officer. We propose amending HB 2788 by including these level three felonies. The last four crimes listed in level three are violations of 21-3504 and 21-3505 are already included in the bill as drafted.

The second amendment, more in the line of a suggestion, is contained in my first attachment. The State of Washington statute has included new section 5, which deals with clarification that a governor's power to pardon and/or commute a sentence is not affected by the Three Strikes and You're Out statute, so that there is a mechanism to release elder or enfeebled criminals who no longer pose a threat to society due to their age or physical condition. Language along this line could easily be amended into K.S.A. 22-3701 dealing with governor's pardons and commutations.

On behalf of Attorney General Stephan I would like to thank this committee for addressing these serious issues and considering this bill. I would be happy to stand for any questions.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION, Sec. 1. FINDINGS AND INTENT. (1) The people of the state of Washington find and declare that:

- (a) Community protection from persistent offenders is a priority for any civilized society.
- (b) Nearly fifty percent of the criminals convicted in Washington state have active prior criminal histories.
- (c) Punishments for uniminal offenses should be proportionate to both the seriousness of the crime and the prior criminal history.
- (d) The public has the right and the responsibility to determine when to impose a life sentence.
- (2) By dontending three-time, most serious offenders to prison for life without the possibility of parole, the people intend to:
- (a) Improve public safety by placing the most dangerous criminals in prison.
- (b) Reduce the number of serious, repeat offenders by tougher sentencing.
- (c) set proper and simplified sencencing practices that both the victime and persistent offenders can understand.
- (d) Rectore public trust in our criminal justice system by directly involving the people in the process.

NEW SECTION. Sed. 5. GOVERNOR'S POWERS. (1) Nothing in this act shall ever be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any offender on an individual case-by case basis. However, the people recommend that any offender subject to total confinement for life without the possibility of parole not be considered for release until the offender has reached the age of at least sixty years old and has been judged to be no longer a threat to society. The people further recommend that sex offenders be held to the utmost scruttiny under this subsection regardless of age.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of offenders subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ten years after the release of the offender or upon the death of the released offender.

FELONY CRIMES SOTTED BY SEVERITY LEVEL

	Staiute <u>[</u>	Description Expression Section 1	F/M	Class		Level	
	Nondrug Grld Crim	MAR .			n	Offerla	
	21-3401	Nurder in the first degree	F	A	p n	Offgrld	
		freason	F	Α	Р	Offgrid	
	21-5001	Horsell	_		. 15		
	04 0404	Attempted murder in the first degree (21-3301)	F	<u>.</u> .	þ	1,	
		Murder in the second degree (intentional)	F	В	p	1	
		Aggravated kidnapping	F	A	P	1	
		Aggravated Notapping Trouson; Attempted (21-3301)	F	Α	Þ	1	
	??i=\$501	125 TUCK), Wilelington (VI 2001)		and the second	•	1	
		and the first degree (21.3300)	F	•	Р	2	
		Conspiracy to murder in the first degree (21-3302)	F	В	Р	2	
	` '	Murder in the second degree (reckless)	F	Α	Р	2	
	21-3801	Treason; Conspiracy (21-3302)	F	В	Р	2	
	21-3502(a)(1)	Rape; sexual intercourse with a person who does not consent; overcome by force, fear, etc.	F		P	2	
•	21-3502(a)(2)	Rape; sexual intercourse with a child <14 you	F		P	2	
_	21-3506(a)(1)	Aggravated criminal sodomy; sodomy with a child <14 yea	F		P -	. 2	
	21-3506(a)(2)	Aggravated criminal sodomy; causing a child <14 you to engage in sodomy with a person or animal Aggravated criminal sodomy; causing a child <14 you to engage in sodomy with a person or animal	F		р	2	
İ	21-3506(a)(3)	Aggravated criminal sodomy; sodomy with person who does not consent; overcome by force, etc.	*	and a second new page of the contract of the c			
			F		P	3	
_	21-3401	Solicitation to murder in the first degree (21-3303)	F	Č	P	3	
1	21-3403	Voluntary mansialidite:	r	C ·		3	
	21-3415	Aggravated battery on LEO - Intentional, great bodily harm (see 21-3414a1A)	· F	8	P		
	21-3420	Kidnapping	F	В	P	3 .	
· <u>a</u>		Aggravated robbery	F	В	.2.	3	
1	21-3427	Aggravated robbity Aggravated arson; substantial risk of bodily harm	F	В	þ	3	
	21-3719	Treason; Solicitation (21-3303)	F	Α	P	3	
	21-3801	Aggravated indecent liberties w/child; ≥14 yoa, but <16 yoa; sexual intercourse	F	-	Р	3	
<u>.</u>	21-3504(a)(1)	Indecent liberties w/child; <14 you; lewd fondling or touching	F	•	P	3	
8	21-3504(a)(3)	indecent liberties wichild; the you, letter totaling or totaling	F	•	P	3	
	21-3505(8)(2)	Criminal sodomy; sodomy with a child ≥14 yea, but <16 yea Criminal sodomy; causing child ≥14 yea, but <16 yea to engage in sodomy with a person or animal	"- F-	•	P	3	
	21-3505(a)(3)	Criminal sodomy; causing child >14 you, but to you to engage its southly that a personal transfer of the control of the contro				. :	
ell.		the state of the s	F	С	Р	4	
	21-3414(a)(1)(A)	Aggravated battery - Intentional, great bodily harm	· F	-	P	4	
	21-3504(a)(2)	Indecent libertles w/child; ≥14 yoa, but <16 yoa; lewd fondling or touching	-				
		the state of the s	F	E	Р	5	
	New Section	Aggravated abandonment of a child; involves child <16 you resulting in great bodily harm	F	D	Р	5	
*	21-3404	Involuntary manslaughter	F	Ċ	р	5	
-43	21-3426	Robbery force for etc.	F	Ď	Р	5	
	21-3518	Aggravated sexual battery; Intentional touching, without consent, who is >16 yea; force, fear, etc.	, F	ē	p	5	
	21-3609	Abuse of a child; involves child <18 yoa; intentional torture, cruelly beating, etc.	' =	Č	Р	5	
1	21-3716	Aggravated burglary	г Е	Č	- ዝ	5	
	21-3718	Assembled the second se	г Е		P	5	
	21-4219(c)	Criminal discharge of a firearm at occupied dwelling or vehicle resulting in bodily narm	۲ ۳	C C	۲	· 5	
	21-3414(a)(2)(A)	Aggraveted bottery - reckless, great bodily harm		• .	P	. 5	
	21-3503(a)(1)	indepent liberties wichild; child >14 yoa, but <16 yoa; lewd fondling or touching	<u>r</u>	•		5	
		independ the place whether child >14 year but <16 year soliciting to engage in lead tollowing, even	F	-	p	5	
_	21-3503(a)(2)	cavial exploitation of a child amplication, etc. child <16 you to engage in sexually explicit conduct	t .F	D	P	5	i
3	21-3516(8)(1)	equip exploitation of a child; possessing visual medium of child <16 you engaging in such condu	201 1	D.	P		
*	21-3516(a)(2)	Count evidention of a child quardian permitting child <16 years on age in such conduct	1	D	P	5	
	21-3516(a)(3)	when the state of a collect recognition performance of child 415 VOS to engage in state bullium	F .	D	၁	5	
	21,-3516(8)(4)	The state of the s	yoa F	•	Р	5	
	21-3603(a)(2)(A	Aggravated likest, other mas tarrier appear in the same and the same a	•	•		:	
		Securities; Unlawful offers, sale, purchase (Penalties provided in 17-1267)	F	D	H		
	17-1253	Securities; Uniawith or law enforcement officer	F	С	r ²		
	21-3411	Aggravated assault on law enforcement officer	F	В	Р		
1	21-3415	Aggravated assault on the children on a physical contact (see 21-3414a1B/C) Aggravated battery on LEO - Intentional, bodily harm or physical contact (see 21-3414a1B/C)	F	D	á	. •	
	21-3511(a)	Aggravated indecent solicitation of a child; <14 year to commit or submit to unlawful sexual act	F	D	ę	€	
.	21-3511(b)	Aggravated indecent solicitation of a child; <14 yoa, inviting, etc. to enter secluded place	; E	. D	.P		
	21-3513(b)	Prostitution: Promoting prostitution when prostitute is <16 you	F	C	Ņ		
	21-3718	Arean: damage resulting in loss of ≥ \$25,000, < \$50,000	F	ä	. , ,		
1	21-3719	Aggravated arson; no substantial risk of bodily harm			•	• •	
-1		e e					

Kansas Sentencing Guidelines Desk Reference Manual Appendix A2, Page 1

TESTIMONY OF CARLA STOVALL HOUSE JUDICIARY COMMITTEE FEBRUARY 2, 1994 HOUSE BILL 2788

Thank you for the opportunity to speak in support of House Bill 2788.

How could such a concept by opposed? I look back upon my experience as a Parole Board member and think of the large number of inmates who were in prison numerous times -- often for the same type of offenses. I was struck by the futility of the sentencing system and the revolving door. Sentencing guidelines does nothing to change that -- and I think exacerbates the weakness. Felons are released to reoffend. And they do.

This bill would put an end to that after the third conviction. I think it is a positive step and recognition that people in our state are fed up with the inability of our prison to keep people locked up so they cannot hurt innocent victims again. I applaud the sponsors of this bill. However, I urge you to amend it to make it apply to the second conviction. If you do not feel you can make it that strong, then please make it apply for the second conviction of sexually violent crimes. I have previously urged the legislature to make 1st Degree Murderers remain imprisoned without the possibility of parole or release so this bill would not apply to them.

I support the suggested amendment of Attorney General Bob Stephan to including level three felonies in categorizing an individual as a persistent felon.

Studies demonstrate that sexually violent offenders commit many more crimes than they ever are convicted of. By the time rapists or child molesters receive their third conviction many more than three women or children have been severely physically injured and emotionally scarred for the rest of their lives. Let's take this opportunity, while the impetus is here, to say enough is enough! The second conviction for rape and child molestation will land you in prison for the rest of your life. Don't let them out after the second conviction to do it again.

The crime which gripped our state this summer was the rape and murder of Stephanie Schmidt. Her killer was a convicted rapist who had served time for that crime. Gideon was released and raped a young woman in April who did not report the crime for reasons about which we could easily speculate. Gideon then raped and murdered Stephanie in July. In a recent newspaper interview he warned that he could and would escape from any prison he was sent to and that we would commit the same crime again. While the brutality and senselessness of Stephanie's tragedy has riveted our attention on this particular monster, I submit to you that he is not one of a

kind. Clones of his are in our prisons waiting to get out and others are cruising our streets looking for victims.

The tendency of these animals to reoffend as often as the opportunity is there should be a sufficient reason to say "NO" to release after the second conviction. Do we have to wait for the third child to be raped or the third young adult to be murdered to say "ENOUGH ALREADY!" Don't make law enforcement say to the third victim that "oh, good, now we can lock him up forever because the third time is the charm." Violence is never charming.

I urge you to amend HB 2788 to apply to second convictions for crimes where death resulted and for those which were sexually violent. Even if my suggestions are not incorporated within this bill, I do urge you to recommend it for passage. Give the system the ability to keep violent repeat offenders from being released to prey once again upon our innocent.

Mr. Chairman, members of the committee, thank you for the opportunity to come before you today.

As we all know, crime is the number one concern of not only Kansans, but all Americans. To address this concern in the area of repeat offenders, I would encourage you to support a "three strikes and you are out" bill to rid our streets of these predators.

I applaud Representative Bradley and the numerous co-sponsors of this bill. I support your efforts.

The philosopher, <u>Voltaire</u>, once said, "Fear succeeds crime - it is it's punishment".

No truer words in my opinion were ever spoken about crime. It is now time to place the "fear" where it belongs in the hearts and minds of the career criminal.

House Bill 2788 is a good step in that direction. I would, however, propose that the committee consider amending the bill.

In its present form it does not include all felony sex offenses. I believe that is a mistake based upon my experience as an attorney who represents criminals. I have been lead to believe that if a person has been convicted of three felony sex crimes that person probably cannot be rehabilitated and therefore, society must be protected from that individual.

PAGE 2

I am not an expert in sexual abuse, however, and I would respectfully suggest you seek out experts in this area prior to voting on this bill.

Similarly, I do not believe this bill encompases all felony drug offenses. Here again, in my opinion, if a person is convicted of three felony drug offenses, he either has a severe drug problem for which treatment has not worked or he is engaged in the business of selling illegal drugs to our youth. It has been my experience that most of the people I have represented in criminal court were under the influence of a drug or committing that crime to obtain funding for the purchase of drugs. Thus, we must do all that we can to put this kind of predator behind bars for life.

Likewise, persons who commit five non-person felonies, in my opinion, are career criminals. In the attack on career criminals we should not be discriminatory but treat all career criminals for what they are, a menace to society.

Let us send a message to the career criminal that is loud and clear and that message is this: "If you continue to commit crime in the State of Kansas you will be dealt with in the harshest manner possible. You will be given a number, and a room there to remain for the rest of your natural life."

If we pass a "three strikes and you are out" bill, I truly believe that the career criminal will get the message.

PAGE 3

I strongly encourage you to amend this bill as I suggest and pass this bill

as soon as possible.

Representative Russell Mills

District No. 93

COUNTY ATTORNEY
Timoth hambers

ASSIS COUNTY ATTORNEYS
Kevin C. Fletcher
Keith E. Schroeder

David B. Kurt - Juvenile

OFFICE OF THE RENO COUNTY ATTORNEY

The 27th Judicial District of Kansas

Law Enforcement Center 210 West First Ava. Hutchinson, Kansas (316) 694 FAX #316-694-2807

Victim-Witness Service (316) 694-2718

Diversion Coordinator (316) 694-2716

TESTIMONY OF TIMOTHY J. CHAMBERS, RENO COUNTY ATTORNEY before the
HOUSE JUDICIARY COMMITTEE, FEBRUARY 2, 1994
Re: "3 Strikes Legislation"

Law enforcement and prosecutors of the State of Kansas applaud any efforts of the Kansas Legislature to assist them in the fight against the ever-increasing problem of violent crime in our state. Symbolic legislation will not solve the problem. Rather, we need a comprehensive plan of attack covering both the front and back ends of the criminal justice system. Keep our children from becoming criminals. However, once a decision has been made to commit crimes of violence, then consequences commensurate with the crime must follow.

It would be hard to find a prosecutor who did not agree in concept with the idea of "3 Strikes, You're In." What prosecutors will disagree with is a "persistent offender law" that's only practical effect is public relations perception rather than long term incarceration of the repeat violent offenders. "Persistent offender" 113 Strikes" merely present-day political are catchwords to describe an habitual criminal act. Years ago, Kansas law was that three separate felony convictions of any type equalled life in prison. Over the years, the habitual criminal act was amended to greatly reduce its effect, and finally met its demise



with Sentencing Guidelines.

While the proposed legislation effectively deals with the habitual sex offender, it virtually ignores the repeat violent offender. In the past fifteen years, I can recall three individuals in Reno County who would qualify as "persistent offenders" based on multiple sex crime convictions. I cannot recall a single individual who would qualify based on violent crimes of a non-sexual nature. I would be surprised if any such individual exists in the State of Kansas. If a "persistent offender act" is to have any meaningful effect, I submit at a minimum, severity levels 3-5 should be included. The people of the State of Kansas have a right to be adequately protected from any criminal, who on three separate occasions, is convicted of violent crimes which inflict great bodily harm or death.

Any persistent offender legislation passed will affect only a minute portion of the criminal element. Certainly, we must deal firmly with the repeat violent offender. Just as importantly, we must deal with the habitual offender. As a result of sentencing guidelines, literally hundreds of habitual criminals have been released from prison or have had their sentences greatly reduced. Sixty-seven Reno County inmates the Department of Corrections determined were eligible for retroactivity have been convicted of at least 418 felony offenses. Prior convictions included attempted first degree murder, rape, aggravated robbery, indecent liberties, aggravated batteries, aggravated assaults, etc. While the D.O.C. mistakenly included eleven inmates in the retroactivity pool in Reno County, it is still clear Sentencing Guidelines are releasing

large numbers of inmates who pose a danger to the citizens of Kansas. One Reno County inmate with 38 adult felony convictions including 22 burglary convictions in Reno County was originally sentenced 15 to 60 years in our Court. Sentencing Guidelines reduces his sentence to 42 months, and if he is convicted of another burglary when released, he falls in the probation portion of the sentencing grid. Over ten percent of the Reno County inmates placed in the retroactive pool by D.O.C., which means the person would have received probation under Sentencing Guidelines, had ten or more felony convictions. That is not right.

For the last ten years, the legislative focus of criminal legislation has been to reduce prison populations. It is now time to focus on dealing with how to protect Kansans from the criminals. Our state song says "give me a home where the buffalo roam." The buffalo are gone and have been replaced by the criminal. Let's deal with the juvenile system and instead of doing away with Juvenile Community Corrections, let's increase its scope. And please, rather than passing laws that say we are tough on crime, let's pass laws that are tough on crime.



State of Kansas KANSAS SENTENCING COMMISSION

HOUSE JUDICIARY COMMITTEE HOUSE BILL 2788 FEBRUARY 2, 1994 COMMENTS OF LISA MOOTS

As far as the purely quantitative impact of this bill, I cannot at this time give you any better information than has been provided to you by the Department of Corrections. We looked today at the 442 cases that we have so far in our in-house database in which offenders have been sentenced under guidelines for <u>any</u> felony committed on or after July 1, 1993, just to get some sense of their criminal history, but this is not yet a large enough total sample to be representative or meaningful. We found that 16 of these offenders were in guidelines criminal history categories A or B, meaning that they had prior convictions for two or more Person felonies of <u>any</u> type.

From a more philosophical perspective, I know that you want to be very careful about the crimes that you include in this bill which will trigger its application to an offender. In that vein, I think that there are additional crimes you might want to consider including, and a couple whose inclusion you might want to reconsider.

First, other than kidnapping and the sexually violent and sexually motivated crimes enumerated in K.S.A. 22-3717 (1993 Supp.), the bill includes Person crimes in Severity Levels 1 and 2. However, if my understanding is correct that you are interested in focusing on violent offenses and offenders, I think there may be some other important crimes for you to take a look at. Just by way of example, some crimes that have not been included that are often considered to be quite violent include aggravated robbery, aggravated arson, and aggravated battery involving the intentional infliction of great bodily harm on a law enforcement officer or other person. One easy approach to capturing all crimes that are traditionally considered violent would be to include in the bill all Person crimes in Severity Levels 1 through 4. I have attached a listing of these crimes for your consideration.

This approach would remove the crimes of Indecent Liberties with a Child (K.S.A. 21-3503; Severity Level 5), Aggravated Sexual Battery (K.S.A. 21-3518; Severity Level 5), Aggravated Indecent Solicitation of a Child (K.S.A. 21-3511; Severity Level 6), Indecent Solicitation of a Child (K.S.A. 21-3510; Severity Level 7), and Sexual Exploitation of a Child (K.S.A. 21-3516; Severity Level 5). These crimes could still be included through the existing language of the bill, but I would encourage you to examine each one and its elements separately to be certain that you want to include all of them. For example, Indecent Liberties with a Child commonly involves only consensual fondling between the offender and a victim who is 14 or 15 years old; while this

can obviously constitute serious criminal conduct, it does not necessarily call for the invocation of the type of penalty that is provided this bill. Another similar example would be the indecent solicitation crimes, which involve enticing a child or persuading a child to go to a secluded area for the purpose of committing an unlawful sexual act, but that act need not have actually occurred, so there may be no physical contact at all between the offender and the victim.

Another aspect or possible impact of this bill to which I would encourage you to give some attention relates to the consequences of sentencing an offender to life without parole. Not only might an offender with no hope of release be a management problem for the Department of Corrections, but a significant amount of plea-bargaining will almost inevitably result from the offender's motivation to avoid the sentence. The result may be that prosecutors have to take a lot more cases to trial in order to get convictions for crimes that trigger the application of the bill, or that defendants will often be allowed to plead to less serious crimes than they actually committed. In turn, some of the offenders who would qualify for the penalty provided by the bill if convicted as originally charged will avoid that penalty, and, in addition, the criminal history that would be needed to qualify the offender in future cases for the penalty provided by the bill might also be eliminated by the acceptance of a plea to a lesser or different charge, because that criminal history will be not be reflective of what they have actually done, but rather what they have actually been convicted of in the past.

Otherwise, I would suggest clarifying the meaning of the language "...has been convicted on at least two separate occasions..." contained in subsection (c)(2) [line 41]. Does this mean that the convictions have to have occurred on separate occasions or the crimes leading to the convictions must have occurred on separate occasions?

FELONY CRIMES SORTED BY SEVERITY LEVEL

Statute	<u>Description</u>	<u>F/M</u>	Class	P/N	Level	
Person Crimes in Severity Levels 1 through 4						
21-3401 21-3801	Murder in the first degree Treason	F	A A	P P	Offgrid Offgrid	
01 0401	Attached moudes in the first degree (of coost)		••		-	
21-3401	Attempted murder in the first degree (21-3301)	F	•	P	1	
21-3402(a) 21-3421	Murder in the second degree (intentional)	F	В	P	1	
21-3421	Aggravated kidnapping Treason; Attempted (21-3301)	F	A	P	1	
21-3001	Treason; Attempted (21-3501)	F	A	P	1	
21-3401	Conspiracy to murder in the first degree (21-3302)	F		P	2	
21-3402(b)	Murder in the second degree (reckless)	F	В	P	2	
21-3801	Treason; Conspiracy (21-3302)	F	Ā	P	2	
21-3502(a)(1)	Rape; sexual intercourse with a person who does not consent; overcome by force, fear, etc.	F	В	P	2	
21-3502(a)(2)	Rape; sexual intercourse with a child <14 you	F	•	P	2	
21-3506(a)(1)	Aggravated criminal sodomy; sodomy with a child <14 you	F	•	P	2	
21-3506(a)(2)	Aggravated criminal sodomy; causing a child <14 you to engage in sodomy with a person or animal	F	•	P	2	
21-3506(a)(3)	Aggravated criminal sodomy; sodomy with person who does not consent; overcome by force, etc.	F	•	P	2	
21-3401	Solicitation to murder in the first degree (21-3303)	F		P	3	
21-3403	Voluntary manslaughter	F	C	P	3	
21-3415	Aggravated battery on LEO - intentional, great bodily harm (see 21-3414a1A)	F	В	P	3	
21-3420	Kidnapping	F	В	Р	3	
21-3427	Aggravated robbery	F	В	P	3	
21-3719	Aggravated arson; substantial risk of bodily harm	F	В	P	3	
21-3801	Treason; Solicitation (21-3303)	F	Α	P	3	
21-3504(a)(1)	Aggravated indecent liberties w/child; ≥14 yoa, but <16 yoa; sexual intercourse	F		P	3	
21-3504(a)(3)	Aggravated indecent liberties w/child; <14 yoa; lewd fondling or touching	F		Ρ	3	
21-3505(a)(2)	Criminal sodomy; sodomy with a child >14 yoa, but <16 yoa	F	-	P	3	
21-3505(a)(3)	Criminal sodomy; causing child ≥14 yoa, but <16 yoa to engage in sodomy with a person or animal	F	-	P	3	
21-3414(a)(1)(A)	Aggravated battery - intentional, great bodily harm	F	С	P	4	
21-3504(a)(2)	Aggravated indecent liberties w/child; ≥14 yoa, but <16 yoa; lewd fondling or touching	F	•	P	4	

AMERICAN CIVIL LIBERTIES UNION

OF KANSAS AND WESTERN MISSOURI

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Testimony on "Three Strikes You're Out" and HB 2671 House Judiciary Committee, Rep. Michael O'Neal, Chair Submitted Wednesday, February 2, 1994

The American Civil Liberties Union of Kansas is concerned about the concept of "Three Strikes, You're Out" criminal justice legislation for the following reasons:

- -- We urge the Committee to draft this legislation by defining the affected crimes in very narrow and precise language. For example, what constitutes a prior violent crime?
- -- We would oppose legislation which results in life imprisonment for a 19 year-old who commits three violent crimes in a short period of time.
- -- In the rush to heighten punishment for criminals, please keep in mind that violent crimes decrease significantly in persons over the age of 30. Many violent crimes are related to socioeconomic status or drug addiction in young persons who may fully recover and mature in later years. There is no basis for holding such persons past the point of maturity. Also, this group is disproportionately minorities (racial and ethnic).
- -- A great increase in the numbers of young persons incarcerated with no possibility of parole will undoubtedly cause major disciplinary problems and financial cost in prisons.
- -- Please do not draft legislation which results in the incarceration of persons who do not pose a threat past the age of maturity and who are disproportionately minorities. A narrow bill will better meet your objectives.

ACLU opposes HB 2671 for the following reasons:

- -- The "organized criminal activity act" is built on a conspiracy theory not restricted to violent crime which chills speech and association.
- -- For example, if someone violates the law related to picketing funerals and more than one person does it, and they do it on two occasions, they could be charged with a felony under this legislation.
 - -- Carla Dugger, Associate Director