Approved: 3/22/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on March 9, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Gene Johnson, Sunflower Alcohol Safety
Kyle Smith, Kansas Bureau of Investigation
David Orr, American Civil Liberties Union
Carla Stovall, Attorney
Representative Carol Dawson
Terry Maple, Kansas Highway Patrol
Jim Clark, Kansas County and District Attorneys
Lynn Fields, Kansas Peace Officers Association and Kansas Sheriff's Association

Others attending: See attached list

HB 2599--amending who can withdraw blood in a DUI test

Representative Carol Dawson testified in support of HB 2599 and provided written testimony (Attachment No. 1). She said HB 2599 is a technical clean-up that further clarifies Qualified Medical Technician for the purpose of withdrawing blood samples at the direction of a law enforcement officer for testing in DUI cases.

Gene Johnson, Sunflower Alcohol Safety testified in support of HB 2599 and provided written testimony (Attachment No. 2).

Terry Maple, Kansas Highway Patrol testified in support of HB 2599 and provided written testimony (Attachment No. 3). Sergeant Maple said HB 2599 would clarify who is authorized to draw blood in DUI cases.

Jim Clark, Kansas County and District Attorneys Association testified in support of HB 2599 and provided written testimony (Attachment No. 4). He said HB 2599 does not expand or lessen the qualifications required for performing an analysis of the blood itself.

Lynn Fields, Kansas Peace Officers Association and Kansas Sheriff's Association testified in support of HB 2599.

SB 764--open container laws for liquor and cereal malt beverage consolidated

Gene Johnson, Sunflowr Alcohol Safety testified in support of SB 764 and provided written testimony (Attachment No. 5). He said SB 764 was needed to clarify open container statutes that are inconsistent in the language of penalties.

SB 765--requirements for alcohol and drug education programs attended by certain offenders

Gene Johnson, Sunflower Alcohol Safety testified in support of SB 764 and provided written testimony (Attachment No. 6). He said there were alcohol information schools throughout the state offering three to four hours of education for the DUI offender. Mr. Johnson stated these short schools were not adequate education for a DUI offender.

SB 695--increased sentences for repeat offenders
HB 2788--person commits three felonies, as listed in bill, person in prison for life

Kyle Smith, Kansas Bureau of Investigation testified in support of SB 695 and HB 2788 and provided written testimony (Attachment No. 7). He said these two bills are compatable. Mr. Smith provided the Committee with a copy of the State of Washington statute 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. It provides a mechanism to release elder or enfeebled criminals who no longer pose a threat to society due to their age or physical condition.

Carla Stovall, Attorney provided written testimony in support of HB 2788 (Attachment No. 8).

David Orr, American Civil Liberties Union testified in opposition to HB 2788 and answered questions from the Committee (Attachment No. 9).

Lisa Moots, Sentencing Commission was asked to summarize what HB 2788 and SB 695 would accomplish and the number of individuals they would affect. Ms. Moots said SB 695 deals with certain durational increases in the presumptive sentences for certain offenders on the non-drug grid. She said offenders in the A and B criminal history categories with two prior person felonies or more for a severity level 1 through 10 would have twice the presumptive prison sentence. Ms. Moots said HB 2788 deals with the so called "three strikes and you're out" concept.

Gary Stotts, Department of Corrections was asked to summarize the fiscal impact of HB 2788 and SB 695. Mr. Stotts said the estimates for SB 695 were after two years there would be an increase of 45 additional individuals being incarcerated. After 15 years he estimates 577 additional individuals being incarcerated. On HB 2788, Mr. Stotts said after 5 years there would be a very small impact of approximately 6 additional individuals being incarcerated and after 25 years approximately 822 additional individuals being incarcerated.

Chairman Moran assigned SB 774, SB 764, SB 765, and HB 2579 to the Criminal Law Subcommittee.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 10, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee **DATE:** 3/8/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
John W Smith	Topeka	KDOR DMV
B.O. Wade	Chanute	
Renea Wade	Chanute	
Alan Zaik	Topeka	K-W-I-C 99.3 FM
Gene Johnson	Topeka, KS	KS ASAP Assn
Paul Shelby	Topeka	OJA
Scott R Isherwood	Topeka	AP
Donna McDaniel	Topeka	Sen Burke's office
Jim Clark	Topeka	KCDAA
Ron Smith	"	KS Bar Assoc
Gerald Longabaugh	Wichita	School Related
TERRY Maple	Topeka	KBP
Kyle Smith	Topeka	KBI/AG/KPOA
Kyle Fields	Girard	Crawford Sheriff
TERESA NORTH	TOPEKA	KS DOC
Helen Stephens	"	KPOA
Ben Coates	Topeka	KPA
RAY Schin	TOPEKA	SECA
Kathie Sparks	"	DOB
Scott Albrecht	"	DOB
Matt Powell	Topeka	AP
Adrienne Wilkerson	Topeka	
Gary Sipes	Topeka	DOC
David Orr	Topeka	ACLU

#1

STATE OF KANSAS

CAROL DAWSON
REPRESENTATIVE, 110TH DISTRICT
458 EAST THIRD
RUSSELL, KANSAS 67665

STATE CAPITOL
RM 182-W
TOPEKA, KANSAS 66612-1504
913-296-7637

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: COMMERCIAL AND FINANCIAL INSTITUTIONS AND INSURANCE
GOVERNMENTAL ORGANIZATION AND ELECTIONS
TRANSPORTATION
CHAIRPERSON: JOINT COMMITTEE OF HOUSE AND SENATE: ARTS AND CULTURAL RESOURCES

March 7, 1994

To: Chairman Jerry Moran and Committee Members

HB 2599 is technical clean-up that further clarifies Qualified Medical Technician for the purpose of withdrawing blood samples at the direction of a law enforcement officer for testing in DUI cases.

Currently, samples may be drawn by persons licensed to practice medicine and surgery or a person under the supervision of such licensed person, a registered nurse or licensed practical nurse or a qualified medical technician. Qualified medical technician is generally defined as "one who performs medical duties in a hospital or medical laboratory". The definition of qualified medical technician has been subject to controversy as to whether blood samples are valid since the medical personnel did not expressly fit within this definition.

The new language now states: Any qualified medical technician, <u>including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist.</u>

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KANSAS STATE LEGISLATURE
JUDICIARY COMMITTEE
BLOOD ALCOHOL TESTING
QUALIFIED MEDICAL TECHNICIANS JANUARY 21, 1994

Russell Regional Hospital, in cooperation with area law enforcement agencies has developed policy and protocol for EMT-I and MICT personnel to draw legal blood alcohol testing. This was developed out of a necessity to provide qualified persons able and willing to draw the blood required in prosecution of DUI cases which were unable to be tested by breath or for a defendants second independent test. The reason that EMS was selected for this was that it keeps doctors, nurses and laboratory staff available for other activities. The protocol was signed and implemented without any difficulties to date. Since EMS is housed in the hospital with 24 hour staffing prompt blood draws are available without requiring the call back of laboratory personnel.

A court of appeals decision in Salina this past year defined "medical technician" in the statute of qualified persons able to draw blood as a Medical Laboratory Technician. Prior case law has also set that "a person acting under the supervision of" as stated in the statue requires direct and present supervision rather than protocol. This puts in question whether our attempts in cooperation would withstand a legal challenge. In rural areas the availability of legal blood alcohol draws in a timely manner to satisfy the restraints of statute are difficult to find. The intent of this proposed change is not to infringe on rights of others but to allow for enforcement of current statutes.

The question may be raised if all EMT-Is or MICTs in the State of Kansas want this responsibility. Obviously the answer to this question is no. Just as not all nurses in the state want this responsibility even though statute grants this ability. Matters on local issue such of this should be dealt with through policy and protocol of each individual agency as signed protocol is required for this level of care. Another question that may be raised is will this open the EMS provider to pressure from law enforcement to draw BATs on the scene of an accident. This also could be easily addressed through local policy and protocol.

We are not requesting for an expansion of the scope of practice of EMT-I or MICT since drawing of blood is a part of the current practice act. We are however asking that you allow law enforcement officers to utilize the tools available to them to enforce the current statutes. We don't view this as a statute change but a language clarification to close some legal loopholes.

Respectfully

Roger D. Knak RN/MICT-IC
EMS Director
Russell Regional Hospital
200 S. Main
Russell, Kansas 67665

cc. Mr. Earley RRH/CEO

Robert Balloun, Sheriff

Office of

Russell County Sheriff

Russell, Kansas 67665

Office Phone 913-483-2151 Emergency

913-483-6694 Administrative

Dear Commitee Members,

01-23-94

K.S.A. 8-1001(c) states in part:

> If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician.

Although the legislature chose the title "qualified medical technician" in specifying those persons authorized to withdraw blood under 8-1003, we find no statutory or case law definition of that title.

This oversight is reflected in case #68,206, Court of Appeals of the State of Kansas: City of Salina vs Martin. In paragraph (1) of the court syllabus it is stated:

> "The term "qualified medical technician" as used in K.S.A. 8-1001(c)(3) is not defined by statute, and the question of whether a person who does not fall within one of the other categories is authorized to draw blood under subsection (3) is a question of fact to be decided by the trial court."

It is my opinion and the opinion of many of my colleagues that the language of K.S.A. 8-1001(c) should be changed to reflect the definition of "qualified medical technician."

Robert Balloun

Robert Balloun,

Russell County Sheriff

1-4

Testimony
Senate Judiciary Committee
March 8, 1994

House Bill 2599

Good Morning, Mr. Chairman and Members of the Committee,

I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Alcoholism and Drug Addiction Counselors Association and the Kansas Association of Alcohol and Drug Program Directors.

Our organizations support House Bill 2599 as it is written for passage in this legislative session.

Respectfully submitted,

Gene Johnson

Gene Johnson
Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Community Alcohol Safety Action Project Coordinators Association

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KANSAS HIGHWAY PATROL
Testimony Before the
Senate Judiciary Committee
Regarding 1994 H.B. 2599

Presented by
Sergeant Terry L. Maple
March 9, 1994

Good afternoon Mr. Chairman and members of the Committee. My name is Sergeant Terry Maple and I appear before you today on behalf of Patrol Superintendent Lonnie McCollum to offer the Patrol's support for 1994 House Bill 2599.

HB 2599 would clarify who is authorized to draw blood in DUI cases. The amendments will clearly state that an emergency medical technician intermediate (EMTI) or mobile intensive care technician (MICT) as defined in K.S.A. 65-6112, and a phlebotomist may draw blood in DUI cases.

Troopers making DUI arrests often encounter difficulty in determining who is qualified to draw blood and these amendments should clarify the issue and reduce confusion in this regard.

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Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2599

The Kansas County and District Attorneys Association appears in support of House Bill No. 2599, which amends K.S.A. 1993 Supp. 8-1001, the implied consent law, to expand the category of medical personnel authorized to withdraw blood for the purposes of a performing a blood alcohol test. The bill does not expand or lessen the qualifications required for performing an analysis of the blood itself.

The growing concern expressed by the general public as well as legislative bodies across the country over the danger imposed by impaired driving has resulted in a major emphasis on DUI enforcement, in both urban and rural areas alike. The problem that this bill deals with is that in rural areas, lack of medical personnel is a fact of life not only for DUI enforcement but for general health care. The narrow construction of the statute as exemplified by the holding in City of Salina v. Martin, creates an anomalous situation where medical personnel not listed in the statute are performing vital health care functions, but are not able to assist in DUI enforcement. House Bill 2599 simply recognizes this anomaly and broadens the classification of persons allowed to draw blood for purposes of a blood alcohol examination.

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Testimony
Senate Judiciary Committee
March 8, 1994

Senate Bill 764

Good Morning, Mr. Chairman and Members of the Committee,

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Alcoholism and Drug Addiction Counselors Association and the Kansas Association of Alcohol and Drug Program Directors. We support Senate Bill 764 as needed legislation to clean up some of our open container statutes that are somewhat inconsistent in the language of penalties. We also wish to make it possible for the Alcohol Beverage Control officers to make those arrest of those individuals who are violating the liquor laws in the State of Kansas.

We are also suggesting by this legislation it be referred to Chapter 8 of the Kansas Statute in order for our regular traffic control officers to make arrests under the traffic laws in the State of Kansas. We are combining two statutes into one, that being the alcoholic liquor and cereal malt beverages. We think this would simplify the procedure for law enforcement and also for the Court system.

As it stands now, an open can of cereal malt beverage, if found by law enforcement officers in a vehicle, must be filed under the criminal statute, even though it is part of the traffic offense. Penalties of this misdemeanor are punishable by a fine of not more than $200, or imprisonment of not more than six months, or both. In addition, the offender could lose his drivers license for a period of 90 days, unless the Court directs the defendant's driving privileges be restricted for a period of 90 days, under KSA8-92.

Thank you for allowing me to appear today, I will now attempt to answer any questions.

Respectfully submitted,

Gene Johnson

Gene Johnson
Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Community Alcohol Safety Action Project Coordinators Association

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#6

Testimony
Senate Judiciary Committee
March 8, 1994

Senate Bill 765

Good Morning, Mr. Chairman and Members of the Committee,

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Alcoholism and Drug Addiction Counselors Association and the Kansas Association of Alcohol and Drug Program Directors. We ask this Committee to introduce this Bill in order for our organizations and for many other organizations throughout the State, who are now operating Alcohol Information Schools for those individuals who have been convicted of DUI or have been granted diversion from the charge of DUI.

Our organizations, which consists of twenty-five member organizations throughout out the state, have always been in staunch support of traffic safety brought about by the reduction of drinking and driving. Years ago we established that any Alcohol Information School should consist of no less than eight hours of classroom and discussion, and probably not more than twelve hours. Our organizations hold firm to the minimum eight hours of instruction for those offenders who have been referred to us by District Attorneys, City Attorneys and the Courts.

Over the past several years certain individuals and organizations have been approaching the criminal justice system throughout the State, advising their local judges and defense counsels that they have an Alcohol Information School. These usually consist of three or four hours and can be handled in one evening or at least a one-half day session. Believe me, Senators, this is not adequate education for a DUI offender. These organizations and individuals are trying to circumvent a "good" DUI by being more lax with those individuals who have violated that DUI law. Many courts do not realize that they are sending their violators to inadequate schooling for their offense. By allowing these shortened schools of three to four hours, often in a loosely structured setting, might give the impression to the offender that the offense he is being sent there for, is not too "serious."

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Our organizations feel that this is our opportunity to send the message to these first time offenders, that this is serious business and if they choose to drink and drive, more severe consequences will occur.

Thank you for this opportunity to appear before you. I will now attempt to answer any questions.

Respectfully submitted,

Gene Johnson

Gene Johnson
Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Community Alcohol Safety Action Project Coordinators Association

#7

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
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ROBERT B. DAVENPORT
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ATTORNEY GENERAL

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 2788
MARCH 9, 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 suffers. 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.

The purpose of the bills the committee is hearing today 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. While SB 695 also addresses these problems it lacks the ease of understanding which is so important for deterrence value that HB 2788 contains.

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.

A concern has been raised regarding enfeebled elder inmates. The State of Washington statute has included a section 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. If desired,

language along this line could easily be amended into K.S.A. 22-3701 dealing with governor's pardons and commutations.

We would also point out that the definition of a "prior conviction event" found on page 2, lines 12-18 is lifted straight from the sentencing guidelines and may not be appropriate here because it groups all convictions occurring in one court on a single day together as one prior conviction. This would include a rape and then another rape/murder occurring months later if the defendant plead guilty to both on the same day. I believe Lisa Moots, Executive Director of the Kansas Sentencing Commission has some better language to propose.

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.

#139

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 criminal 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 sentencing 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 sentencing practices that both the victims and persistent offenders can understand.

(d) Restore public trust in our criminal justice system by directly involving the people in the process.

NB 2981

NEW SECTION. Sec. 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 scrutiny 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.

WRITTEN TESTIMONY OF CARLA STOVALL
SENATE JUDICIARY COMMITTEE
MARCH 9, 1994
HOUSE BILL 2788

Thank you for the opportunity to present written testimony in support of House Bill 2788. I would have preferred to have been here in person but was already scheduled to be out of town.

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

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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.

#9

TESTIMONY IN OPPOSITION TO HOUSE BILL 2788

TO: Senate Judiciary Committee

FROM: David J. Orr, on behalf of the American Civil Liberties Union

DATE: March 9, 1994

The ACLU opposes HB 2788 on both constitutional and practical grounds.

Due Process

Due process rights of the accused are compromised under this bill. It deprives trial judges of the ability to consider the particular circumstances under which the crime was committed, as well as the individual attributes of the defendant, both of which may be highly relevant in determining the appropriate sentence to be imposed.

A fundamental principle of our justice system is that punishment should be fair, and should fit the crime. Life imprisonment, particularly where no possibility of parole or sentence modification exists, should be imposed only in those serious crimes involving injury to a person. Yet the provisions of this bill include crimes which do not fit this description.

An Incentive to Violence

Enactment of this bill would in many cases actually provide an incentive to commit violent crime. An individual committing an offense, the conviction of which would deem him or her a persistent offender, would have no reason to refrain from slaying any and all witnesses to the crime, since doing so would diminish the chances of conviction, without subjecting the offender to any greater penalty than he or she would otherwise face.

Similarly, a suspect who believes himself to be a persistent offender under this law would have no reason, when fleeing from police, to refrain from using violence to avoid apprehension. This bill quite simply makes violence the logical course of action for such a suspect: his chances of escape are increased by employing it, while the punishment he faces remains unchanged.

Should this legislation be enacted, every subsequent murder of a rape victim, police officer, or witness to a crime will force us to face the question of whether that individual might still be alive had this bill been rejected.

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Conversely, there is no reason to believe that this legislation would in any way serve to reduce crime. Since the late 1970's, hundreds of mandatory sentencing laws of various types have been passed throughout the United States, while crime rates have continued to rise.

Cost

The financial burden on the taxpayers will be significant with respect to the immediate impact of this bill, and overwhelming in its future impact. With so many inmates serving life without parole sentences, every person in the state will become a virtual geriatric ward. While the average annual cost of incarcerating an inmate is $20,000 - $25,000, federal figures show that the cost of keeping an elderly person in prison is in excess of $60,000. This figure does not include operations such as liver transplants and hip replacements, which are not uncommon for elderly people to undergo. Crime statistics from various sources consistently show a sharp decline in crime rates after age 30, with less than 1% of serious crimes committed by individuals over 60. Thus, three younger, more violence-prone criminals could be held in the place of one geriatric prisoner. With limited resources at hand, these statistics must be seriously considered.

The immediate financial impact of this bill will come in the form of an increase in the number of criminal jury trials which this bill would bring about. A guilty defendant charged under this law would have no reason to enter into a plea bargain, since the prosecuting attorney would have nothing to offer. Besides these court costs, additional funds would be needed to provide legal counsel for all indigents involved.

The number of jury trials -- and the resulting costs -- would also increase for those charged with a first or second offense, since many would be unwilling to voluntarily accept a first or second "strike" by entering a plea of guilty.

Under any rational assessment, it is clear that funds spent on this otherwise unnecessary litigation, as well as the money and resources used to keep elderly men and women incarcerated through their 70's 80's and 90's could be much more effectively used to address the root causes of crime.

Conclusion

This proposed legislation lies in opposition to the rights of due process guaranteed by the Consitution. It provides a tangible incentive, in many cases, for the commission of violent crime. It imposes a significant financial burden on Kansas taxpayers, with no foreseeable benefit. Responsible lawmaking policy mandates that House Bill 2788 be rejected.