

6 pg

**DEFENDER ASSOCIATION
OF PHILADELPHIA**

121 North Broad Street
Philadelphia, PA. 19107-1913
(215) 568-3190

**Ellen Greenlee
Defender**

April 13, 1992

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
AMENDMENT PROVIDING FOR MANDATORY SENTENCES FOR ARSON

HOUSE BILL 270 P.N. 281

MONDAY, APRIL 13, 1992

Presented by:

David Zuckerman
Defender Association of Phila.
121 N. Broad St.
Philadelphia, PA 19107

The crime of arson, of all the major felonies, is perhaps the most complex from the perspective of prevention, treatment punishment and protection of society. To presume that the unyielding threat of lengthy incarceration in the form of mandatory sentencing will either reduce the incidence of arson or provide greater protection to the public ignores these complexities in favor of a "quick fix", a remedy that will that will in many cases add unnecessarily to the already rapidly growing prison population.

There is simply no such thing as a typical arsonist. Some commit arson for profit, others have clinically diagnosed disorders that prevent them from controlling their impulse to set fires. Most fall somewhere in between and have deep-rooted psychological problems coupled with substance abuse (usually alcohol). Some set fires to gain attention or to satisfy a need to feel powerful. Some so that may be first on the scene and garner the glory of helping to put it out. Some fires are set to hide the commission of a crime, others are the work of vandals. For some the conduct is a product of repressed rage, coupled with feelings of inadequacy. Others act out of revenge in response to real or imagined wrongs.

Most arsonists are the product of broken homes and abusive alcoholic parents. Studies indicate that 40% of arson fires are started by juveniles. Other studies indicate that between 18% and 48% of arsonists are mentally retarded. Virtually all have some diagnosable mental illness ranging from personality disorders to true pyromania. Researchers have also recently found correlations between

certain acid deficiencies in the brain and recidivist arson. Clearly, the needs of society, when dealing with such a diverse and complex offender population, cannot be met with a "one size fits all" sentencing scheme.

It is incumbent upon the sentencing judge to consider all relevant criteria when fashioning a sentence. In virtually all arson cases the judge will have not only the benefit of a complete criminal and social history of the offender but also the reports of psychological and psychiatric experts. With a battery of experts at its disposal along with the complete history of the offender the trial court is best situated to fashion an appropriate sentence. In most cases the sentence fashioned will include a lengthy prison sentence. The standard range of the sentencing guidelines for Arson (F-1) for an offender with no criminal record is 24-48 months. An offender with a prior record score of three is subject to a sentence of 42-66 months, or squarely within the range contemplated by the legislation.

The chief problem with this legislation and indeed all mandatory sentencing schemes is that it seek to legislate with a "blunt instrument." All offenders are subject to a minimum sentence regardless of the circumstance of their particular case. In many cases this will lead to an unfair and unjust result. Certain categories of offender have traditionally merited special consideration. Juvenile offenders certified to adult court for example tend to be more impulsive, less mature and less socially responsible. Also disadvantaged youth, a class to which most juvenile offenders belong, frequently lack parental control and influence and therefore are more prone to succumb to rash anti-

social behavior. Also, the youthful offender shows considerably more promise to respond effectively to rehabilitative efforts available in the adult system. Shorter prison terms combined with drug rehabilitation, counseling and vocational training would provide a better framework to help youthful offenders develop into productive, law abiding young adults. In the appropriate case a judge may very well find that a troubled boy who starts a minor trash can fire in the rest room can be dealt with in a manner that doesn't require five to ten years in jail.

The high incidence of mentally ill and retarded among this offender group will also invariably lead to unnecessarily harsh sentences. Those found "guilty but mentally ill" will still be subject to the mandatory sentence. In those cases where treatment shows promise of reducing the risk of recidivism, the trial judge should have that option available. Mentally retarded offenders, while legally culpable, might also best be treated in institutions better equipped to deal with retardation than the state prison.

Many of the cases are the consequence of extreme duress. Often one acting under such duress does not present a high recidivism risk. A trial judge may be reluctant to impose a lengthy prison sentence on a woman who burns her abusive boyfriend's clothing in the bathtub as revenge for being beaten. Other cases are situational and arise from an allegation of recklessness. A homeless man who warms himself by burning trash in a fifty gallon drum can be guilty of arson if he, by his carelessness, puts someone in danger of bodily injury.

Although it is impossible to anticipate every unfair result under the proposed legislation, it is clear they will arise with

sufficient frequency to raise grave doubts about the efficacy of the bill. A large percentage of arsonists (particularly juveniles and the mentally ill and retarded) belong to a class of offender that is simply not likely to be deterred by the threat of lengthy incarceration.

Nor would the bill incapacitate enough offenders to have a meaningful impact on the incidence of arson. Next to rape arson is the most under-reported crime. One FBI study estimated only two people are convicted for every 100 fires of incendiary or suspicious origin (another study found sixteen arrests per 100 fires known to be of incendiary origin). Law enforcement officials readily acknowledge that true pyromaniacs and arsonists for hire are notoriously hard to catch.

The interests of public safety will not be served by the bill. Moreover, any concerns about disparity in or severity of arson sentences are adequately met by the Sentencing Guidelines. Lastly, the bill will result in increased prison population as well as the likelihood of unduly harsh sentences in many cases. These considerations compel the conclusion that the bill as proposed is an unwise and unnecessary legislative initiative.

Sources

Virkkenen M. et al, Cerebrospinal Fluid Monoamine Metabolite Levels in Male Arsonists, Arch Gen Psychiatry 1987; 44: 241-247

Virkkunen M. et al, Relationship of Psychobiological Variables to Recidivism in Violent Offenders and Impulsive Fire Setters; A Follow-up Study, Arch Gen Psychiatry 1989; 46: 600-603

Monahan J. The prediction of violent behavior: toward a second generation of theory and policy. Am J Psychiatry. 1984;141:10-15.

Soothil KL, Pope PJ. Arson: a 20 year cohort study. Med Sci Law. 1973;13:127-138.

Lewis NDC, Yarnell H: Pathological Firesetting (Pyromania) , Nervous and Mental Disease Monographs. New York, NY: The Coolidge Foundation; 1951;82.

Rider AO: The firesetter, a psychological profile: II. Law Enforcement Bull 1980;49:7-21.

American Psychiatric Association Committee on Nomenclature and Statistics: Diagnostic and Statistical Manual of Mental Disorders, ed 3. Washington, DC, American Psychiatric Association, 1980.

Stewart MA, Culver KW: Children who set fires: The clinical picture and a follow-up. Br J Psychiatry 1982;140:357-363.

Maitland L., Investigators Paint the Profile of Not-for-profit Arsonists, New York Times April 5, 1981

Bartlett K., AP Newsfeature, September 2, 1990.