

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY-B

August 11 and 12, 1977

Room 528, State House

Members Present

Representative E. Richard Brewster, Chairman  
Senator Ron Hein  
Senator Joe Norvell  
Senator Jim Parrish  
Representative Ben Foster  
Representative Mike Glover  
Representative Fred Lorentz  
Representative Phil Martin  
Representative Kent Roth

Staff Present

Art Griggs, Revisor of Statutes Office  
Paul Purcell, Kansas Legislative Research Department

Others Present

Senator Elwaine Pomeroy, Chairman of the Special Committee on Judiciary-A

August 11, 1977

Morning Session

Chairman Brewster called the meeting to order at 10:00 a.m. and directed the Committee's attention to Proposal No. 40..

Proposal No. 40 - Determinate Sentencing

Major E. J. Kuntz, Operations Division, Wichita Police Department, was the only conferee on this proposal. He addressed the problem of minimum sentencing of persons convicted of specific crimes. He stated that the present system of incarceration in Kansas is adequate where severe sentences are imposed and that the problem is with the early release of first time offenders who have committed violent crimes. He pointed out that K.S.A. 21-4601 states that dangerous offenders shall be correctively treated in custody for long terms as needed and, in order to effectuate this policy, legislation should be enacted to keep a person in custody for the commission of violent crimes and repeat offenses rather than allowing early release. He said the legislation should be similar to K.S.A. 1976 Supp. 21-4618 which covers probation and sentencing for certain crimes involving use of firearms.

Proposal No. 39 - Expungement and Annulment

Major Kuntz was also the only conferee on this proposal. He requested that consideration be given to modifying the existing statutes so that the period of time a person is required to wait for an expungement would be increased or the granting of annulments would be eliminated. He stated that present law allows persons who have been convicted of serious crimes to obtain expungement of their record and thereby open up employment opportunities previously denied by law.

Proposal No. 40 - Determinate Sentencing

Staff reviewed a draft of a bill that incorporates proposals of the Kansas Adult Authority.

Afternoon Session

Proposal No. 40 continued

Staff distributed copies of Kansas criminal statutes. The rest of the meeting was devoted to Committee discussion of this study proposal. The issue of whether felonies currently classified as A, B or C are appropriately classified was discussed as follows:

The Chairman noted that there had been some comments concerning K.S.A. 1976 Supp. 65-4127a dealing with possession and distribution of opiates, opium or narcotic drugs. Representative Roth said that conferees should be heard from before attempting to determine whether addicts should be treated as criminals or as ill persons. Senator Hein stated there should be a distinction between possession and sale, and questioned if mere possession was being treated too stringently. Senator Norvell noted that there is a Massachusetts case holding that cocaine is less harmful than heroin, and suggested the reduction of possession of cocaine to a Class E felony. The Chairman suggested that any such recommendation be incorporated into a separate draft. Representative Foster urged the Committee to proceed cautiously in this area so that needed changes would not be jeopardized. Senator Hein stated that, if a greater number of violent type offenders are going to be imprisoned, 65-4127a would have to be changed. The Chairman suggested having two separate drafts, one dealing with classifications of felonies and the other setting definite terms of imprisonment.

Concerning K.S.A. 1976 Supp. 21-3504 (indecent liberties with a ward) staff noted that the Legislature had added the word "lewd" to the original statute in an attempt to satisfy constitutional requirements. Senator Norvell stated that K.S.A. 1976 Supp. 21-3503 and 21-3504 should be combined because there is little difference between the two. The Chairman noted that, in the case of a ward, charge has been entrusted to a person or entity by the State. Staff pointed out that, while incest is only a Class E felony, indecent liberties with a child is a Class C felony and indecent liberties with a ward is a Class B felony. Representative Foster stated that any decrease in penalties probably would be met unfavorably by the Legislature because it appears that the current mood is one for increasing rather than decreasing penalties.

The Chairman stated that aggravated sodomy is seen by many people as being as offensive as rape and that rape, aggravated sodomy and aggravated arson should be raised to Class B felonies. It was moved by Representative Martin and seconded by Senator Hein that the draft be prepared to designate rape a Class B felony. The motion carried.

Senator Norvell then moved that staff be directed to draft a change to 65-4127a reducing possession of cocaine to a Class E felony and making a second conviction a Class D felony and a third conviction a Class C felony. The motion was seconded by Representative Roth. The Chairman stated there would be difficulty with this because mandatory penalties would be required for a third conviction. Senator Hein stated that there should be an escalation clause for robbery and burglary as well. Representative Lorentz said he would be opposed to the motion to reduce the classification for possession of cocaine because he believes people would not want this. The motion carried with Representative Lorentz asking to be recorded as being against the motion.

With regard to moving indecent liberties to a Class B felony, Representative Martin said he was not certain the language should include the word "consent." Senator Parrish said the Committee needed to know more about the legislative history of the indecent liberties statute. The Chairman noted that the Committee was merely directing staff to prepare a draft for future discussion and that final decisions were not being made at the present time.

The Chairman asked Senator Pomeroy to summarize the two bills regarding sex offenses which remain in the House Judiciary Committee. Senator Pomeroy explained that one would repeal the crime of illegal cohabitation which now directly conflicts with the concept of common law marriage. Further, the crime of adultery would be eliminated but would be a civil offense and would remain grounds for divorce. The other bill would redefine sodomy so that it would not include acts between consenting adults, but would apply to certain sexual activities for hire.

Senator Hein said problems exist with the language of the arson and aggravated arson statutes.

Senator Parrish noted, with regard to the procedure being followed, that a number of changes have already been suggested by various Committee members but he questioned whether any decision was necessary at this time.

Mr. Devon Knoll, Director, Kansas Adult Authority, stated that the Authority is concerned with the crimes of murder, kidnapping, rape, robbery and illegal possession and sale of drugs. The Authority is also concerned with prolonged confinement. He asked if there was any possibility of appointing a task force committee to study the situation and possible ramifications of suggested changes. The Chairman explained that, while this might be desirable, it would be impossible for such a group to make timely recommendations to the Committee. Senator Pomeroy stated that the Judicial Council had been requested to make such a study but nothing has been done so far. Senator Parrish noted that the Special Committee on Corrections has a Blue Ribbon panel which is doing an administrative study on corrections and that Judiciary-B should coordinate information and activities with that Committee. Mr. Knoll stated that if some of the crimes are classified as more serious than they are presently, there will be a need for additional prisons. Representative Foster noted that it will be some time before the Blue Ribbon panel completes its work and discloses recommendations, and still more time before any suggestions are implemented and, therefore, Judiciary-B should proceed with its charge. The Chairman agreed that there was no reason why the Committee should not make a decision as to which crimes the Committee will recommend mandatory minimum sentences. Representative Martin indicated that a coordination of recommendations could be made at a later date.

The Chairman noted the policy of the statutes with regard to public safety, and said that persons who are a threat to society should be taken off the streets. He pointed out that there may be crimes in Class C which should be put in a lower category because the offender is not a violent offender. He suggested looking at Class A, B and C felonies to make sure there is some relationship between the classification and the nature of the crime.

Senator Pomeroy pointed out that, except for possession of drugs, the other crimes in these three classes all appear to relate to danger to persons. Senator Hein said that the attempted poisoning statute was a duplication of K.S.A. 21-3301. Representative Roth stated that K.S.A. 21-3433, dealing with air piracy, is ambiguous. He moved that the draft change the language of that statute so that it will read "willful and unauthorized seizure" rather than "willful or unauthorized seizure." The motion was seconded by Senator Hein. Senator Parrish questioned whether, in light of the existence of federal law on this matter, there is any need for this statute. Senator Pomeroy questioned whether such a large penalty should be assessed in cases of air piracy where no harm was done to persons. He said that the air pirate would be in no worse position under the current law if he killed everyone on board. Senator Hein said that such a person would also be guilty of kidnapping. Representative Roth amended his motion to include a recommendation that the crime be drafted as a Class C felony, and that there be a crime of aggravated air piracy where there was bodily harm, and that this would be a Class A felony. Senator Hein consented to the amendment and the motion carried.

The Chairman directed the Committee's attention to the draft which incorporates the Adult Authority proposals. Senator Parrish stated he would like to deal with the issue of good time credits. He also said the courts should have more than 120 days to alter the sentence imposed.

Representative Foster stated that he had heard no testimony so far that indicated a compelling need to change the present indeterminate sentencing structure.

The Chairman noted some of the Adult Authority proposals have not been discussed very extensively. Mr. Knoll stated that the problem is mostly with violent crimes and recidivism and that the Authority would like direction from the Legislature in those cases.

The Chairman noted that the 120 day period is to allow the court to make a final determination after receiving reports from the Kansas Reception and Diagnostic Center. Senator Parrish stated that KRDC indicated to him that the Secretary of Corrections is asking for reports within 30 days and that 30 days is not sufficient time.

The Chairman asked what effect the draft might have on the number of persons in the institutions. Mr. Knoll stated it would be very difficult to project; that on the surface it would appear that confinements would increase but it was his impression that it would not be a drastic increase.

The Chairman stated he felt the sentencing judge should be able to know approximately the length of time a person would have to serve, taking into account good time credits, and he inquired if there would be value in modifying the method by which the good time credits are earned. Senator Hein asked if these rules and regulations were subject to legislative review. Mr. Knoll stated that they are exempt, but that public hearings are conducted prior to the adoption of any rules and regulations. Senator Hein stated that legislative review should be required.

The Chairman suggested reviewing the penalties for each classification to see whether the penalties were realistic. The Chairman asked Mr. Knoll if the Adult Authority is in a position to recommend the length of a minimum term if the Committee drafted changes to the various classes of felonies. Mr. Knoll stated that the Authority's concern was only with those violent crimes already noted.

August 12, 1977  
Morning Session

Proposal No. 40 continued

The Chairman noted that members seem to be in general agreement with the draft which was submitted and discussed; that there was some feeling the 120 day period should be increased; that the court should have more discretion especially with regard to Class A, B and C felonies; and that special attention should be given to crimes against persons. He asked members to consider whether or not the court should be allowed to fix a maximum term along with the minimum. He pointed out that whether the draft should show that the rules and regulations should have legislative review has not been decided but that the Department of Corrections has always supplied copies of rules and regulations whenever requested and there are no known complaints.

The Chairman inquired if there were objections to drafting provisions for legislative review of all rules and regulations. Staff suggested a separate draft might be appropriate, and Senator Hein said there will be a bill on rules and regulations next session, anyway, and this could be tied to it.

Senator Hein stated he is still concerned about the penalties prescribed for mere possession of certain drugs. Representative Foster suggested that he would like more information about cocaine and that previous action on drafting instructions might have been assented to without complete information. The Chairman agreed that it was advisable to look at the substances now covered and decide whether or not they belong in the Class A felony category. Senator Norvell stated that he agreed the matter needed more research.

Senator Parrish reported on his research concerning the indecent liberties statute, explaining that when the Legislature added the word "lewd", it was apparently trying to make the smallest amount of change which was necessary to meet the constitutional requirements. He explained that the Judicial Council had written that statute differently and he outlined suggested changes.

Representative Martin stated it is impossible to write a perfect statute, and that some faith must be placed in the prosecutors. He believes indecent liberties should be left as a Class C felony and the offender removed from society. Senator Pomeroy asked if there was a serious problem leaving it as a Class C felony -- that "lewd" has been in the statute only two years and during that time there have been relatively few prosecutions. The Chairman suggested rescinding previous drafting instructions regarding K.S.A. 1976 Supp. 21-3504, and keeping indecent liberties and rape as Class C felonies. It was moved by Senator Parrish and seconded by Senator Hein that this be done. The motion carried. The Chairman noted that this would repeal drafting instructions concerning 21-3504 and leave K.S.A. 1976 Supp. 21-3503 a Class C felony.

The Chairman asked if any of the Class C felonies should not require a minimum term. Senator Parrish said perjury should not nor should mere possession of certain drugs. The Chairman suggested that, as drafting instructions only, possession be eliminated and sale and possession with intent to sell be left at their present level. Representative Lorentz stated that he is strongly opposed to this. Representative Martin also objected because this would eliminate involuntary treatment for third time offenders. Representative Roth suggested the draft include a statement that intent to sell may be presumed from possession of large quantities of these drugs. Senator Norvell asked Mr. Knoll if, upon second conviction of drug possession, the drug offender should be required to serve a minimum of three years. Mr. Knoll answered that he felt the emphasis should be

on the sale of drugs, but that the judge has discretion in the matter. He said he did not know how many drug offenders are in Lansing, but that his impression is that most inmates are property offenders.

The Chairman noted that, where an individual cannot meet the terms for parole but poses no threat to society, there is no early release for such persons if they had been sentenced under an indeterminate sentencing structure. He said that for such persons to serve long prison terms is a rather severe penalty. Mr. Knoll said there are some situations like this where the individual merely wants to serve his time without being paroled and where the Adult Authority feels he should be released.

With regard to the problem of sentencing disparity, the Chairman said he was aware of the problem but that the Department of Corrections would be the equalizer in this matter. He said that the Legislature probably would not be in favor of reducing terms prescribed by the current statutes.

#### Afternoon Session

Representative Lorentz stated that, if there is to be a change in the way the maximum sentence is imposed, he would prefer that the judge not set the maximum. Representative Foster inquired whether there is any indication that there would, in fact, be sentencing disparity where the judges across the state were allowed to prescribe the maximum. Representative Roth stated he would like to see the power to set a maximum within a certain range because it would give the inmate some idea of how long he will be in prison. Representative Foster stated he had a great deal of confidence in judges, that the concern over disparity was not warranted, and that the Legislature should not detract from the authority of the court to sentence or place on probation. The Chairman asked how long the court would retain jurisdiction to modify its sentence under the draft under discussion. Staff indicated that the current 120 days is retained but that it would be applicable only to Class D and E felonies. Representative Foster suggested this should be extended to a year if it does not cause mechanical problems and that this should be discretionary with the court. Senator Pomeroy noted that it might be better to require it within a certain period of time after receiving the KRDC report. The Chairman asked if there might be occasions where, after 120 days, a reduction in the maximum might be appropriate and noted that the Adult Authority cannot request the judge to change a sentence. Mr. Knoll noted that the Department of Corrections can make a request for a reduction of the minimum but not the maximum. Representative Lorentz stated he would be completely satisfied with the present system with a change being made to require minimum sentences as shown in the draft.

The Chairman directed staff to prepare a working draft incorporating the changes agreed upon during the meeting so that the Committee can scrutinize the entire draft at one of its next meetings.

The Chairman adjourned the meeting at 3:15 p.m.

Prepared by Paul Purcell

Approved by Committee on:

9-12-77  
Date