

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 ~~a.m.~~/p. m., on January 24, 1978.

All members were present except:

The next meeting of the Committee will be held at 3:30 ~~a.m.~~/p. m., on January 25, 1978

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

The meeting was called to order by the Chairman, who asked members if they had found the opportunity to discuss HB 2707 with those who would be concerned. Rep. Hayes stated he had been unable to reach the individual he had wanted to talk with, and would not ask for additional time. It was moved by Rep. Stites and seconded by Rep. Gastl that HB 2707 be recommended favorably. Motion carried by a majority, with Rep. Frey voting in opposition.

The Chairman noted that HB 2712 would be set for additional hearing the following week, and asked Mr. Griggs to review the bill so members would be very familiar with it prior to that hearing. Mr. Griggs discussed the bill in detail, explaining the areas where there were substantial changes. Particularly, he noted that in Section 3, the penalty for rape and aggravated sodomy is made the same, and that the penalty is increased. In this regard, the Chairman stated he has been asked about the possibility of introducing a bill defining the crime of sexual assault, and getting away from gender. He asked the committee if there was objection to such a bill, and as there was none, he requested Mr. Griggs to draft a bill for committee introduction.

Mr. Griggs explained that Section 14 provides penalties for various classes of felonies, and the amendments allow the court to set the maximum term, whereas presently, the statute sets the maximums. Section 15 deals with habituals, and the amendments take into account the fact that the courts will set maximums as well as minimums. Mr. Griggs noted there was a Court of Appeals ruling this summer which said (with regard to Section 17) that the legislative intent was that the courts could not release defendants on suspension of sentence. (Article 34).

The Chairman inquired if the mandatory sentence should be maintained, particularly when looking at minimum terms under the proposal. He explained that several of the judges and members of the Supreme Court indicated they feel there have been a number of situations when this has been grossly unfair.

Mr. Griggs pointed out that in (3) on page 13, the court is required to set out the matters taken into account in sentencing. Page 14 amends the multiple sentencing statute. Section 18 deals with probation and suspension, and Section 19 gets into what the interim committee recommended insofar as sentencing procedure is concerned. Presently anyone convicted of a felony is eligible for parole in 120 days, except for class A felonies and multiple sentences. Those amendments begin on page 17. Mr. Griggs explained that (g) deals with aiding and abetting, and gives some consideration to certain individuals, and this was a suggestion from Justice Prager during the interim.

Rep. Hurley inquired if determinations are made by reference back to the complaint, and Mr. Griggs explained the judge enters that in the order of commitment (refer back to page 14). Rep. Hurley asked if there are instructions, or what method is used for determination. Mr. Griggs explained that the draft leaves it with the judge. The Chairman, Rep. Hurley and Rep. Frey agreed to look into this aspect of the proposal.

Mr. Griggs explained that the draft requires the Adult Authority to meet with the inmate and give him information about advancing the date he might be considered for parole by a contract arrangement. It also requires the Authority and Department of Corrections to adopt rules and regulations which will become subject to legislative review. New Section 20 sets up the contract arrangement.

Sections 21 and 22 deal with controlled substances, and the amendment proposes to make distinction between possession and sale, and amounts, also lowering the penalties. Rep. Frey inquired about testimony which led to changing the dollar amounts from \$50.00 to \$100.00. Rep. Foster stated it came from committee members.

The Chairman noted there is a distinction between property crimes and crimes against people. Rep. Frey stated he assumed that most first offenders are not sent to prison. The Chairman stated it is surprising how many people are sent to prison for writing a \$60.00 insufficient check. He asked that the Department of Corrections furnish a breakdown on this. Rep. Baker stated he had a problem regarding the amount of a check as versus the amount of a theft.

The Chairman stated there are a number of significant changes in this one bill, and while it is indeed in one bill, it could be divided into separate proposals. He noted that some of the proposed changes might jeopardize some really needed changes.

The Chairman asked for a report from the subcommittee regarding HB 2714. Rep. Hayes distributed a balloon amendment, and suggested there should still be another amendment which is technical in nature, concerning court permission as versus the permission of the parent having custody. It was moved by Rep. Hayes and seconded by Rep. Gillmore that the amendments be adopted. Motion carried. It was then moved by Rep. Roth and seconded by Rep. Martin that HB 2714, as amended, be reported favorably. Motion carried.

The meeting was adjourned.

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HOUSE BILL No. 2714

By Special Committee on Judiciary—B

Re Proposal No. 43

12-7

0017 AN ACT defining and classifying the crime of aggravated inter-
0018 ference with parental custody; supplementing the Kansas
0019 criminal code.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. (1) Aggravated interference with parental
0022 custody is hiring someone to commit the crime of interference
0023 with parental custody, as defined by K.S.A. 21-3422, or commit-
0024 ting interference with parental custody, as defined by K.S.A.
0025 21-3422, when:

0026 (a) ~~Done~~ by a person who has previously been convicted of
0027 interference with parental custody, as defined by K.S.A. 21-3422;

0028 ~~or~~
0029 (b) ~~committed by a person who is armed with a dangerous~~
0030 ~~weapon;~~

0031 ~~(c) committed by a person for hire; or~~

0032 ~~(d) the child is taken outside the state or the defendant, after~~
0033 ~~lawfully taking the child outside the state while exercising visi-~~
0034 ~~tation rights, refuses to return the child to this state to a parent~~
0035 ~~entitled to custody of the child.~~

0036 Aggravated interference with parental custody is a class E
0037 felony.

0038 (2) This section shall be a part of and supplemental to the
0039 Kansas criminal code.

0040 Sec. 2. This act shall take effect and be in force from and after
0041 its publication in the statute book.

committed

(c) committed by a person who, after lawfully taking the child outside the state while exercising visitation rights, refuses to return the child at the expiration of such rights; or

(d) committed by a person who, at the expiration of visitation rights outside the state, refuses to return or impedes the return of such child.

*© not to be included in the statute book
insured by the state
G. J. ...*

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