

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~XXX~~ a.m./p.m. on February 22, 1983 in room 526-S of the Capitol.

All members were present except:
Representatives Duncan, Ediger, and Patrick were excused.

Committee staff present:
Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research Department
Nedra Spingler, Secretary
Mary Ann Torrence, Revisor of Statutes Office, was excused.

Conferees appearing before the committee:
Simon Roth, Chairman, Kansas Adult Authority
Beth Denney, Kansas Adult Authority
Representative Rochelle Chronister
Patrick St. Clair, President, Cobalt Boats, Neodesha
Joseph G. Nicosia, National Marine Manufacturing Association, Chicago
Marjorie Van Buren, representing the Judicial Administrator

HB 2212 - An act relating to sentencing.

Simon Roth, Chairman of the Adult Authority, introduced Beth Denney who gave a statement (Attachment No.1) explaining the need for amendments to HB 2212 (Attachment No.2) suggested by the Adult Authority. Chairman Frey noted, by adopting the amendments, the policy change would be to lengthen parole eligibility with the sentencing system not being affected except in two offenses. Representative Wunsch moved to adopt the amendments in Attachment No.2, seconded by Representative Knopp. Motion carried. Representative Wunsch then moved to recommend HB 2212, as amended, favorable for passage, seconded by Representative Peterson. In discussion, a member objected to the probation provision in HB 2212, noting the judge should have this discretion rather than its being mandatory. The motion carried.

HB 2260 - An act relating to reproduction of products.

Representative Chronister explained the product and operation of the Cobalt Boat Company in Neodesha, noting the high quality of the product including the hull which other manufacturers can copy by buying a boat and using the hull as a mold. The bill would protect a boat company's design from being stolen. She said two states have this law with four others considering this legislation. A copy of the California law (Attachment No.3) was furnished members.

Patrick St. Clair, President of Cobalt Boats, said the boat manufacturing industry is faced with the problem of people stealing hull designs which cost up to \$200,000. For the price of a boat and another \$5,000, a person can be in business to compete with his company. In the 14 years of his company's operation, hull designs have been stolen about 12 times. HB 2260 would protect any molded product and refers to the molding process.

Joseph Nicosia, National Marine Manufacturers Association, gave a statement in support of the bill (Attachment No.4), stating the bill would also protect the consumer from inferior products that do not comply with Coast Guard standards. Some features of the design can be patented, but the product itself is not unique enough to meet the test for a federal patent.

There was discussion as to what constituted a molded product and if tool and die products would be affected. The possibility of requiring the manufacturer of the original product to register with the state was mentioned.

HB 2301 - An act relating to small claims procedure.

Marjorie Van Buren said the bill was requested by the district court clerk in Garden City. It would prohibit a landlord from using the small claims procedure in evicting tenants. She said neither the Court Administrator or the clerks' association had asked for the bill, and the Administrator would remain neutral on it. She noted the bill had the potential to

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~a.m.~~ XXX/p.m. on February 22, 19 83

cut down on the small claims workload. Representative Solbach moved to recommend HB 2301 favorable for passage, seconded by Representative Erne. Motion carried.

HB 2302 - An act concerning executions and redemption of real property.

Ms. Van Buren said the bill was in keeping with efforts of district court clerks to clean up the statute. Because of court unification and efforts to simplify, the minute of redemption book (page 5 of the bill) and the execution docket (line 23 of the bill) are no longer used. The Court Administrator and the clerks' association support the bill. Representative Solbach moved to recommend HB 2302 favorable for passage, seconded by Representative Erne. In discussion, a clarification was made that stricken language regarding the execution docket could be handled under K.S.A. Chapter 60. The motion carried.

HB 2163 - An act relating to traffic laws.

Representative Wunsch reported the subcommittee would meet with representatives of the League of Kansas Municipalities for input on the bill's effect on city courts and will report to the full committee with recommendations on February 28.

The Chairman announced a change in the week's agenda with an additional meeting of the Committee to be held on Friday, February 25, at noon.

The meeting was adjourned at 4:50 p.m.



MEMBERS

Simon Roth, Jr.
Chairman
Keith R. Henley
Vice-Chairman
Benjamin H. Day
Carrol Mills, Ph.D.
Alfredo R. Calvillo, Ph.D.

KANSAS ADULT AUTHORITY
Room 910 — 535 Kansas Avenue
TOPEKA, KANSAS 66603
(913) 296-3469

Elizabeth A. Denney
Director
Keith E. Magers
Assistant Director

House Bill 2212

Chairman and Members of the Committee:

As mandated by statute, the members of the Adult Authority conduct initial hearings to establish the time at which an inmate can achieve parole eligibility and is thus entitled to a parole hearing. If the inmate is sentenced to a new sentence while incarcerated for a previous conviction, these statutory provisions come into effect. Some examples include those inmates subsequently sentenced for aggravated escape from custody or for acts of violence committed within the institution. The sentencing court will frequently impose the new sentence consecutive to the sentence the inmate is currently serving because the sentences can be aggregated if they are consecutive. That is, the sentence minimums and maximums can be added together to result in a longer controlling sentence. The provision on when this new aggregated sentence begins, however, becomes a source of confusion about the meaning of the new sentence. Let us say, for example, that an inmate is sentenced to a 2 to 10 year term for the crime of aggravated battery, and this sentence began in 1980. Under regulations that were effective at that time, the Adult Authority would have established his parole eligibility date to be in late 1981. This inmate then escapes from confinement within 2 months of his parole hearing. He is subsequently captured, convicted

and sentenced. The normal sentence for aggravated escape is 1 to 5 years, and if the court sentenced this inmate to consecutive terms, then his new controlling sentence would be 2 to 10 years plus 1 to 5 years, or an aggregated 3 to 15 year term. This 3 year minimum sentence, however, must begin in 1980 by statute. This inmate would serve only several months for the aggravated escape. Those inmates with life sentences for class A crimes would not serve additional time at all on any subsequent sentences because of the provision that the time starts with the date of the earliest sentence begins date and parole eligibility is provided after 15 years. The Adult Authority believes that this provision inadvertently renders the second sentence to be less meaningful, promotes illegal behavior in the institution, and confuses those of us who must administer the law.

Sentence computation on parole violators with new sentences is even more of a problem for the Adult Authority. The Adult Authority conducts parole violator hearings on those parolees who have been sentenced and committed for a new crime while on parole. If the court imposes the new sentence to run consecutive to the previous sentence for which the parolee is now on parole, the sentences will be aggregated to produce a longer controlling sentence. But this longer sentence will begin at the earliest sentence begins date. This provision makes it possible for an inmate to begin serving this new aggregated sentence even before the day the new crime was committed. For example, let us say that the inmate had been sentenced and committed to a term of 1 to 10 years upon conviction for burglary and theft and this sentence began in 1980. By statute and regulation, this inmate achieved parole eligibility 10 months later and was subsequently paroled in 1981. During his 2 year

period of parole supervision, he commits forgery and is sentenced to another 1 to 10 year term that is to run consecutive to the previous sentence. His new aggregated sentence is now 2 to 20 years , but the new 2 year minimum sentence must begin in 1980, the date of the earliest sentence. His parole eligibility date on the new 2 year sentence would occur in late 1981, which is probably before he committed the crime. Thus he is already parole eligible on this new sentence even before the date the sentence is imposed.

Part of the computation problem with such parole violators is that their time served on parole counts as part of the sentence. Parole, however, is an act of legislative grace and a privilege. If the parolee's behavior does not warrant the public trust by his commission of a new crime, then we do not believe he should be credited with the time served on parole. This forfeiture, as it were, of parole time would have the net effect of extending the parole eligibility date of the new consecutive sentence.

To remedy this recurring circumstance, the Adult Authority recommends these amendments to H. B. 2212. The courts retain their power to aggregate the sentences, and also the computation of the beginning date of the new sentence and the parole eligibility date are uniformly extended by the aggregated sentences. Each of the consecutive sentences would be computed from the effective date of the sentence, less prior penal credits to produce an extended parole eligibility date. This would be achieved in part by not crediting parole violators with time served on parole if they were convicted of a new offense.

HOUSE BILL No. 2212

By Representative Lowther

2-4

0017 AN ACT concerning crimes and punishments; relating to sen-
0018 tencing; amending K.S.A. 1982 Supp. 21-4608 and repealing
0019 the existing section.

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

0021 Section 1. K.S.A. 1982 Supp. 21-4608 is hereby amended to
0022 read as follows: 21-4608. (1) When separate sentences of impris-
0023 onment for different crimes are imposed on a defendant on the
0024 same date, including sentences for crimes for which suspended
0025 sentences or probation have been revoked, such sentences shall
0026 run concurrently or consecutively as the court directs. Whenever
0027 the record is silent as to the manner in which two or more
0028 sentences imposed at the same time shall be served, they shall be
0029 served concurrently.

0030 (2) Any person who is convicted and sentenced for a crime
0031 committed while on *probation*, parole or conditional release for a
0032 misdemeanor shall serve the sentence concurrently with or con-
0033 secutively to the term or terms under which the person was *on*
0034 *probation* or released, as the court directs.

0035 (3) Any person who is convicted and sentenced for a crime
0036 committed while on *probation*, parole or conditional release for a
0037 felony shall serve the sentence consecutively to the term or terms
0038 under which the person was *on probation* or released.

0039 (4) Any person who is convicted and sentenced for a crime
0040 committed while on release for a felony pursuant to article 28 of
0041 chapter 22 of the Kansas Statutes Annotated shall serve the
0042 sentence consecutively with the term or terms under which the
0043 person was released.

0044 (5) Any person who is convicted and sentenced for a crime
0045 committed while such person is incarcerated and serving a sen-

0046 tence for a felony in any place of incarceration shall serve the
 0047 sentence consecutively to the term or terms under which the
 0048 person was incarcerated.

0049 (6) The provisions of this subsection relating to parole eligi-
 0050 bility shall be applicable to persons convicted of crimes commit-
 0051 ted prior to January 1, 1979, but shall be applicable to persons
 0052 convicted of crimes committed on or after that date only to the
 0053 extent that the terms of this subsection are not in conflict with the
 0054 provisions of K.S.A. ~~22-3717a~~ 22-3717 and amendments thereto.
 0055 In calculating the time to be served on concurrent and consecu-
 0056 tive sentences, the following rules shall apply:

0057 (a) When indeterminate terms run concurrently, the shorter
 0058 minimum terms merge in and are satisfied by serving the longest
 0059 minimum term and the shorter maximum terms merge in and are
 0060 satisfied by conditional release or discharge on the longest max-
 0061 imum term if the terms are imposed on the same date.

0062 (b) When concurrent terms are imposed on different dates,
 0063 computation will be made to determine which term or terms
 0064 require the longest period of incarceration to reach parole eligi-
 0065 bility, conditional release and net maximum dates, and that
 0066 sentence will be considered the controlling sentence. The parole
 0067 eligibility date may be computed and projected on one sentence
 0068 and the conditional release date and net maximum may be com-
 0069 puted and projected from another to determine the controlling
 0070 sentence.

0071 (c) When indeterminate terms imposed on the same date are to
 0072 be served consecutively, the minimum terms are added to arrive
 0073 at an aggregate minimum to be served equal to the sum of all
 0074 minimum terms and the maximum terms are added to arrive at an
 0075 aggregate maximum equal to the sum of all maximum terms.

0076 (d) When indeterminate sentences are imposed to be served
 0077 consecutively to sentences previously imposed in any other court
 0078 or the sentencing court, the aggregated minimums and maxi-
 0079 mums shall be computed from the date of the earliest sentence
 0081 consecutive for the purpose of determining the sentence begins
 0082 date, parole eligibility, conditional release and net maximum

and the

effective

subsequent sentences which have been

. The inmate shall be given credit on the aggregate sentence for time spent incarcerated on the previous sentences, but not exceeding the maximum credit toward parole eligibility,

0083 dates.

0084 (e) When consecutive sentences are imposed which are to be
0085 served consecutive to sentences for which a prisoner has been on
0086 probation, parole or conditional release, ~~the parole eligibility,~~
0087 ~~conditional release and net maximum dates shall be adjusted by~~
0088 the amount of time served on probation, parole or conditional
0089 release.

0090 (7) When a definite and an indefinite term run consecutively,
0091 the period of the definite term is added to both the minimum and
0092 maximum of the indeterminate term and both sentences are
0093 satisfied by serving the indeterminate term.

0094 (8) When a defendant is sentenced in a state court and is also
0095 under sentence from a federal court or other state court or is
0096 subject to sentence in a federal court or other state court for an
0097 offense committed prior to the defendant's sentence in a Kansas
0098 state court, the court may direct that custody of the defendant
0099 may be relinquished to federal or other state authorities and that
0100 such state sentences as are imposed may run concurrently with
0101 any federal or other state sentence imposed.

0102 Sec. 2. K.S.A. 1982 Supp. 21-4608 is hereby repealed.

0103 Sec. 3. This act shall take effect and be in force from and after
0104 its publication in the statute book.

not be credited as service on the aggregate sentence
in determining the parole eligibility, conditional
release and net maximum dates

ROCHELLE CHRONISTER
ASSISTANT MAJORITY LEADER
REPRESENTATIVE, NINTH DISTRICT
WILSON WOODSON COUNTIES
LIBERTY AND NEOSHO TOWNSHIPS
IN COFFEY COUNTY
ROUTE 2 BOX 321A
NEODESHA KANSAS 66757



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: COMMUNICATION, COMPUTERS,
AND TECHNOLOGY
MEMBER: CALENDAR AND PRINTING
WAYS AND MEANS

ATTACHMENT # 3

An Act

Prohibiting Duplication of Manufactured Parts

Section 1. (a) It shall be unlawful for any person to duplicate for the purpose of sale any manufactured item made by another without the permission of that other person using the direct molding process described in Subsection (c).

(b) It shall be unlawful for any person to sell an item duplicated in violation of subsection (a).

(c) The direct molding processes subject to this section is any direct molding process in which the original manufactured item was itself used as a plug for the making of the mold which is used to manufacture the duplicate item.

(d) The provisions of this section shall apply only to items duplicated using a mold made on or after January 1, 1983.

Section 2. Any person injured by a violation of the provisions of this law may bring an action in a court of competent jurisdiction for an injunction prohibiting such violations. In addition, the injured person shall be entitled to actual damages incurred as a result of such violations, reasonable attorney' fees, and costs.



National Marine Manufacturers Association

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ATTACHMENT # 4
353 Lexington Avenue
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FEBRUARY 22, 1983

TESTIMONY IN SUPPORT OF KANSAS HULL DESIGN PROTECTION BILL, HB-2260
BY: JOSEPH G. NICOSIA, STATE LEGISLATIVE ATTORNEY

GOOD AFTERNOON, I APPRECIATE THE OPPORTUNITY TO TESTIFY IN SUPPORT OF HOUSE BILL 2260. MY NAME IS JOSEPH NICOSIA AND I AM STATE LEGISLATIVE ATTORNEY FOR THE NATIONAL MARINE MANUFACTURERS ASSOCIATION HEADQUARTERED IN CHICAGO. OUR ASSOCIATION REPRESENTS MORE THAN 700 MANUFACTURERS OF RECREATIONAL BOATS AND RELATED EQUIPMENT. OUR BOAT MANUFACTURERS ARE VERY INTERESTED IN THIS LEGISLATION.

1. IN THE BOAT MANUFACTURING PROCESS, MUCH TIME, EFFORT AND COST GOES INTO DEVELOPING A HULL DESIGN. MANY THOUSANDS OF DOLLARS ARE SPENT IN CONCEIVING, DESIGNING AND BUILDING THE PRODUCT FROM SCRATCH. THE PROCESS BEGINS WITH HUNDREDS OF DIFFERENT ARCHITECTURAL DESIGNS OF THE HULL. FROM THOSE PICTURES A WOODEN PLUG IS MADE. THIS PLUG LOOKS LIKE A STRIPPED-DOWN MODEL OF A BOAT AND INCORPORATES DESIGN LINES, CABIN LINES, KEEL LINES AND OTHER FEATURES WHICH GIVE THE PLUG A DISTINCTIVE APPEARANCE. FROM THIS PLUG, MOLDS ARE CONSTRUCTED. ONCE A MOLD IS MADE FROM THE PLUG, THE IDENTICAL HULL DESIGN CAN BE REPRODUCED. THE FINAL HULL CONFIGURATION IS DEVELOPED ONLY AFTER EXTENSIVE PRE-PRODUCTION TESTS FOR PERFORMANCE AND SAFETY. STRUCTURAL INTEGRITY IS HIGHLY IMPORTANT.

Reply to
 Chicago
 New York

2. UNSCRUPULOUS MANUFACTURERS SEEK TO AVOID THESE DEVELOPMENT COSTS BY TAKING A COMPETITOR'S BOAT, STRIPPING IT DOWN, USING IT AS A PLUG, AND MAKING A MOLD FROM WHICH BOATS MAY BE REPRODUCED. THEY AVOID SPENDING THOUSANDS OF DOLLARS BY PIRATING THE HULL DESIGN OF THE ORIGINAL MANUFACTURER AND GAIN AN UNFAIR COMPETITIVE ADVANTAGE.
3. IN A DIFFICULT ECONOMY, THE NUMBER OF MANUFACTURERS RESORTING TO COPYING THE HULL DESIGNS MADE BY OTHER MANUFACTURERS HAS INCREASED SHARPLY. THIS PROCESS IS KNOWN IN THE TRADE AS "SPLASHING" OR "POPPING" A MOLD.
4. CALIFORNIA HAS ENACTED A LAW, VERY SIMILAR TO THIS BILL THAT PROHIBITS MOLDED PRODUCT DESIGN COPYING OF ALL TYPES, NOT MERELY LIMITED TO BOATS. MICHIGAN ENACTED A NEARLY IDENTICAL MEASURE IN DECEMBER OF 1982. BOAT MANUFACTURERS REPORT THEY ARE VERY SATISFIED WITH THE CALIFORNIA LAW, WHICH MERELY CREATES A PRIVATE RIGHT OF ACTION FOR A VICTIMIZED MANUFACTURER TO TAKE LEGAL ACTION TO STOP THE PRACTICE. THE CALIFORNIA LAW HAS RESULTED IN A SIGNIFICANT REDUCTION OF THE PRACTICE IN THAT STATE. A FEW INJUNCTIONS HAVE BEEN ISSUED AND SOME OUT-OF-COURT SETTLEMENTS HAVE BEEN REACHED.
5. BY ITS NATURE, IT IS UNFAIR TRADE COMPETITION LEGISLATION. IT INVOLVES NO EXPENSE TO THE STATE EITHER FOR ENFORCEMENT OR MONITORING. ITS MAIN VALUE IS TO DISCOURAGE OTHERS FROM ENGAGING IN THE PRACTICE. WITHOUT THIS TYPE OF LAW, IT IS VERY EXPENSIVE AND DIFFICULT TO PURSUE A LEGAL REMEDY ON COMMON LAW PRINCIPLES ALONE. THE STATUTE EASES THAT BURDEN.

- 5-
6. I ALSO WANT TO EMPHASIZE THAT THE PUBLIC RECEIVES A DIRECT BENEFIT AS WELL. BOATS MADE BY REPUTABLE MANUFACTURERS MUST MEET STRINGENT SAFETY STANDARDS OF THE COAST GUARD AND OTHER ORGANIZATIONS. THOSE WHO PRODUCE CHEAP IMITATIONS ATTEMPT TO MARKET A PRODUCT THAT IS UNSAFE AND OF POOR QUALITY. THIS IS A FRAUD ON THE PUBLIC AND IS A DANGER TO THE CONSUMER WHO COULD EASILY BE PROTECTED BY THIS LEGISLATION.
 7. LEGISLATIVE BILLS HAVE BEEN INTRODUCED IN A NUMBER OF STATES THIS YEAR, THAT WOULD, IF ENACTED INTO LAW, GIVE OUR INDUSTRY AND THE PUBLIC THE PROTECTION IT DESERVES. I HOPE KANSAS WILL BE ONE OF THEM. THANK YOU.