

Approved February 26, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~pm~~ on February 13, 1986 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Steineger, Talkington, Winter and Yost.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Elwaine Pomeroy, Kansas Parole Board
Jim Clark, Kansas County and District Attorneys Association
Matt Lynch, Kansas Judicial Council
Arno Windscheffel, Supreme Court Judicial Administrator

The chairman presented a request for a committee bill concerning scalping. Following committee discussion, Senator Talkington moved to introduce the bill. Senator Burke seconded the motion, and the motion carried.

Senate Bill 475 - Restitution in criminal cases.

Elwaine Pomeroy, Kansas Parole Board, appeared in support of the bill. He explained the board had a problem with wording concerning restitution as part of choices court would have if the court would choose to put defendant on probation or suspend the sentence, and they support that. A copy of his handout is attached (See Attachment I). Chairman Pomeroy referred to Senate Bill 439 that deals with restitution. He explained it is a problem for them when the amount of restitution is not specified in regard to restitution. He said it would be helpful at the time of sentencing if the facts are fresh to everyone whether or not to order restitution. He then referred to Senate Bill 622 and explained that bill also relates to restitution, when restitution is ordered, and that person is not available.

Jim Clark, Kansas County and District Attorneys Association, testified his association is in support of the bill. They think this bill would be very helpful.

Senate Bill 477 - Repealing statutes concerning attorney's refusal to account for client's money.

Matt Lynch explained this bill was recommended by the Kansas Judicial Council, and the statute is no longer needed (See Attachment II).

Arno Windscheffel, Supreme Court Judicial Administrator, explained the reason for asking for the repeal. He said this statute was enacted when there was no process for disciplining lawyers, and this has long outlived its purpose. The disciplinary rule makes this statute useless.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY
room 514-S, Statehouse, at 10:00 a.m. ~~pm~~ on February 13, 1986.

Senate Bill 477 continued

Following the testimony, Senator Gaines moved to report the bill favorably. Senator Winter seconded the motion, and the motion carried.

Senate Bill 439 - Adult Authority/Parole Board name change; technical amendments.

The chairman reviewed the bill. Following committee discussion, Senator Gaines made a conceptual motion to amend the bill to provide for majority rule of the parole board. Senator Winter seconded the motion, and the motion carried.

Senate Bill 475 - Restitution in criminal cases.

The chairman explained the bill allows the judge the opportunity to make determination whether or not inmate could make restitution. Following committee discussion, Senator Feleciano moved to amend the bill conceptually to provide when not assessing restitution, to give a compelling reason not to order restitution. Senator Gaines seconded the motion. Following a discussion of Senate Bill 622 which also deals with this issue, Senator Feleciano withdrew his motion. Senator Feleciano then moved to report the bill favorably. Senator Gaines seconded the motion, and the motion carried.

Senate Bill 178 - Crimes relating to obscenity and child pornography.

Following committee discussion, Senator Talkington moved to make the necessary technical amendments and to update the bill for this year. Senator Feleciano seconded the motion, and the motion carried. Following further discussion, Senator Gaines moved to amend the bill by reinstating subsection 4, and state the condition that the projectionist does not have knowledge that it was an obscene motion picture or has financial intent. Senator Steineger seconded the motion, and the motion carried. Senator Feleciano moved to report the bill favorably as amended. Senator Yost seconded the motion. Following committee discussion, the motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-13-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Elaine F Pomeroy	Topeka	KS Parole Bd.
M. Hawn	"	Car-Son
Ma H Lynch	"	Judicial Council
Small Windelkopf	"	Disciplinary
Carol J. Worth	Lawrence	LWV
Jim Clree	Topeka	KC DAA
Lesley T. Ketzal	Lawrence	LWV
Eleanor Hoodyard	Lawrence	LWV
Marjorie Van Buren	Topeka	OJA
Ellen F. Estes	Wichita	LWV
Leil Wright	Wichita	LWV
Kim Warren	"	LWV guest
Christy Wright	"	"
Jan Smith	Topeka	Ks Bar Assoc
Ma J May	Lawrence	League of Women Voters
Wilma Dickey	Mission	League
Hattie X. Stewart	KCKs	LWV
Ethelyn McRae	"	"
Hasila N. Ali	Lawrence	LWV
Theresa Martin - Kekabab	Lawrence, KS	LWV
Barbara Buehler	Overland Park	League of Women Voters
Bety Kappelmann	Lawrence, KS	LWV
Marci Francisco	Lawrence, KS.	LWV
Carol Remelli	Lawrence KS	LWV
Marlene Hansen	Wichita KS	LWV

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Mary Wehrheim	Wichita	LWV
Dwight Johnson	Wichita	League of Women Voters
Beth Garrison	Wichita	LWV
Cynthia K. Pechacek	Topeka	Personalized
Norie Beck	Dodge City, KS	United Way



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612

(913) 296-2256

August 23, 1985

Representative Robert J. Van Crum
Chairman, Special Committee on Ways & Means
9004 W. 104th
Overland Park, KS 66212

Dear Representative Van Crum:

Re: Proposal No. 29 - Parole Practices and Procedures

Several conferees before the committee August 20 referred to the Kansas Adult Authority's ordering of restitution as a condition of parole. One conferee mentioned a need to set up procedures for collection of restitution in cases without a standing court order, suggesting the Victims Reparations Board as a possible collecting and disbursing agent.

If the committee is going to consider changes in statutory language concerning restitution, I would like to have the opportunity to offer testimony. Under Supreme Court Administrative Order No. 41 (attached) and with a new emphasis on restitution to victims, I believe increasingly the K.A.A. will find that there is a court order for restitution for incarcerated persons becoming eligible for parole. If there is such a court order, the restitution can be collected through the clerk of the court. However, where the K.A.A. orders restitution absent a court order, it would probably be inappropriate for the clerk to function as collection and disbursing agent for an executive branch agency.

Sincerely,

A handwritten signature in cursive script that reads "Marjorie J. Van Buren".

Marjorie J. Van Buren
Executive Assistant to
the Judicial Administrator

MJVB:dkh
Enc.

cc: Russell Mills

A-I
S. Judiciary 2/13/86

IN THE SUPREME COURT OF THE STATE OF KANSAS :

Administrative Order No. 41

Re: Reparation and Restitution pursuant to K.S.A.
1983 Supp. 21-4610(4)(a) or 38-1663(a) or (b)

1. In cases in which reparation or restitution is ordered pursuant to the requirements of K.S.A. 1983 Supp. 21-4610 or 38-1663, the total amount of reparation or restitution, the manner of payment if designated by the court, the names and addresses of the persons to whom restitution is to be made, and the amount to be paid each shall be journalized.

2. Imposition of restitution and determination of the amounts, recipients and manner of payment shall be a judicial function which shall not be assigned or delegated to the court services staff of the district court.

3. If, at the time reparation or restitution is ordered, the sentencing judge completes and files with the clerk of the district court a copy of the attached restitution order form (OJA-52) for each person being ordered to make reparation or restitution, the requirements of paragraph one of this order are satisfied.


4. It shall be the duty of the clerk of the district court to receive, disburse, account for and keep running balances of reparation and restitution payments coming into the court. The court services staff of the district court shall have access to the court's reparation and restitution payment records for the purpose of monitoring timely payment.

5. Unless otherwise required by law and except as otherwise directed by the court, moneys received from persons ordered to make reparation or restitution through the district court shall be credited to the following, in the order indicated, as applicable:

- a. Docket fee, costs and fines.
- b. Reparation or restitution.
- c. Reimbursement ordered pursuant to K.S.A. 1983 Supp. 21-4610(4)(b) for expenditures by the State Board of Indigents' Defense Services.

6. Court services staffs of the district courts shall monitor timely payment of reparation or restitution ordered. The Judicial Administrator shall develop a set of procedures for monitoring timely payment of reparation and restitution and recommend the procedures to the judges of the district courts and assist in the implementation of the procedures upon request of the district courts.

BY ORDER OF THE COURT this 6th day of March 1984.


ALFRED G. SCHROEDER
Chief Justice

Attachment

FILED

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1984

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(CAPTION)

Case No. _____

RESTITUTION ORDER

On this _____ day of _____, 19____, IT IS ORDERED that the above-named (defendant) (respondent) pay restitution in the total amount of \$_____ through the Office of the Clerk of the District Court to the persons and in the amounts and manner stated below:

<u>Name</u>	<u>Address</u>	<u>Amount</u>
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Restitution shall be paid in the following manner:

(Judge)

7-119. Refusal to account for money; penalty. An attorney who receives the money or property of his or her client in the course of professional business, and refuses to pay or deliver it immediately after demand, is guilty of a misdemeanor.

History: G.S. 1868, ch. 11, § 17; Oct. 31; R.S. 1923, § 7-119.

7-120. Effect of claim of lien. Where the attorney claims to be entitled to a lien upon the money or property, he or she is not liable to the penalties of K.S.A. 7-119, until the person demanding the money proffers sufficient security for payment of the amount of the attorney's claim when it is legally ascertained.

History: G.S. 1868, ch. 11, § 18; Oct. 31; R.S. 1923, § 7-120.

21-3701. Theft. Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(a) Obtaining or exerting unauthorized control over property; or

(b) Obtaining by deception control over property; or

(c) Obtaining by threat control over property; or

(d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of \$150 or more is a class E felony. Theft of property of the value of less than \$150 is a class A misdemeanor, except that theft of property of the value of less than \$150 is a class E felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of theft two or more times.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

History: L. 1969, ch. 180, § 21-3701; L. 1972, ch. 116, § 1; L. 1978, ch. 120, § 29; L. 1984, ch. 119, § 2; May 17.

21-3705. Unlawful deprivation of property. Unlawful deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of his property.

Unlawful deprivation of property is a class A misdemeanor.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

History: L. 1969, ch. 180, § 21-3705; L. 1972, ch. 116, § 2; July 1.

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