

Approved March 15, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~p.m.~~ on March 4, 1988 in room 514-S of the Capitol.

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

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee: None

Senate Bill 596 - Alcohol and drug evaluations required for certain offenses by persons.

Senator Parrish moved to amend the bill to provide the juvenile judge will have the discretion to order an evaluation on first offense, and on second offense the evaluation be mandatory. Senator Gaines seconded the motion. The motion carried.

Senator Feleciano moved to amend the bill to provide the judge has the discretion when ordering a drug abuse program he can use any of the programs and not just the one referenced in the bill. Senator Gaines seconded the motion. The motion carried.

Senator Hoferer moved to amend the bill by striking all of Section 4 dealing with definition. Senator Gaines seconded the motion. The motion carried.

Senator Gaines moved to report the bill favorably as amended. Senator Hoferer seconded the motion. The motion carried.

Senate Bill 679 - Consumer protection act, exclusion of warranties.

Senator Winter moved to amend the bill by deleting Section 3(1), strike new language in Section 3(i) and insert in line 75 language to make clear reference to the warranties in K.S.A. 84-2-314 and K.S.A. 84-2-315, and delete Section 1. Senator Burke seconded the motion. The motion carried.

Senator Burke moved to report the bill favorably as amended. Senator Winter seconded the motion. The motion carried.

Senate Bill 586 - Corporation control share acquisition act.

Senator Winter moved to amend the bill in Section 3, and in lines 190 and 191 correct technical error, the language should be redemption of not less than all shares. Senator Gaines seconded the motion. The motion carried.

Senator Gaines moved to report the bill favorably as amended. Senator Winter seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./p.m. on March 4, 1988.

Senate Bill 690 - Professional negligence action, certificates of consultation.

Following committee discussion, Senator Feleciano moved to report the bill adversely. Senator Steineger seconded the motion. Following further committee discussion, Senator Feleciano withdrew his motion. Senator Gaines moved to refer the bill to interim study. Senator Feleciano seconded the motion. The motion carried.

Senate Bill 594 - Mandatory sentencing for selling certain narcotic and hallucinogenic drugs.

Senator Winter explained the amendment he offered in the earlier meeting applies to the different amounts for each separate type of drug listed. Following committee discussion it was the consensus of the committee to request the bill be reprinted and re-referred to Senate Ways and Means Committee. Copies of the proposed Substitute for Senate Bill 594 and explanation of the substitute bill are attached (See Attachment I).

The meeting adjourned.

A copy of the guest list is attached (See Attachment II).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-4-88
10:00 AM

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Evelyn Gates	Topeka	Supreme Court
Gene Johnson	Topeka	KSAAP
Roger Wallis	Topeka	Sec. Com.
Dany Mays	"	Sec Commission
GERHARD METZ	"	KCCI
Denny J. Jones	"	Sen Melick
John Clark	Topeka	KCPAA
George Barber	Topeka	Ks Consulting Engne
KEVIN ROBERTSON	Topeka	Ks Consulting Engne
Jim Youally	Overland Park	KASAC
Barb Reinert	Topeka	KPOA
John Conrad	"	Governor
Bill Henry	"	KS Energy Sec.
Richard Mason	"	KTCT

Proposed Substitute for SENATE BILL NO. 594

AN ACT concerning controlled substances; relating to presumptive and mandatory sentencing; amending K.S.A. 65-4127a and K.S.A. 1987 Supp. 65-4127b and repealing the existing sections.

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

Section 1. K.S.A. 65-4127a is hereby amended to read as follows: 65-4127a. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under his such person's control, possess with intent to sell, offer for sale, sell, prescribe, administer, deliver, distribute, dispense or compound any opiates, opium or narcotic drugs. Any person who violates this section shall be guilty of a class C felony, except that, upon conviction for the second offense, such person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a class A felony, and the punishment shall be life imprisonment.

(b) Any person convicted pursuant to subsection (a) in which (1) the substances involved were equal to or greater than the amounts for such substances as specified in section 3, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, shall not be granted probation, assignment to a community correctional services program or suspension of sentence and such person shall be sentenced to not less than the minimum sentence of imprisonment for such conviction as provided by subsection (a).

(c) Upon conviction of any person pursuant to subsection (a) in which (1) the substances involved were equal to or greater

than 1/2 the amounts for which such substances as specified in section 3, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to any person, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community corrections services program or suspension of sentence.

(d) When a court has sentenced such person as provided in this section, the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with such person to the correctional institution, that such person has been sentenced pursuant to this section and include findings in support of the sentence imposed.

Sec. 2. K.S.A. 1987 Supp. 65-4127b is hereby amended to read as follows: 65-4127b. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, or have under such person's control, ~~prescribe, administer, deliver, distribute, dispense or compound:~~

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto; or

(4) any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony upon conviction for a second or subsequent offense ~~or---if---the---substance---was---prescribed---for---or---administered, delivered, distributed or dispensed to a child under 18 years--of~~

age.

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, manufacture, prescribe, administer, deliver, distribute, dispense or compound:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto; or

(4) any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto.

Any person who violates this subsection shall be guilty of a class C felony.

(c) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

(d) Any person convicted pursuant to subsection (a), (b) or (c) in which (1) the substances involved were equal to or greater than the amounts for such substance as specified in section 3, or

(2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, shall not be granted probation, assignment to a community correctional services program or suspension of sentence and such person shall be sentenced to not less than the minimum sentence of imprisonment for such conviction as provided by subsection (a), (b) or (c).

(e) Upon conviction of any person pursuant to subsection (a), (b) or (c) in which (1) the substances involved were equal to or greater than 1/2 the amounts for such substances as specified in section 3, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to any person, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community corrections services program or suspension of sentence.

(f) When a court has sentenced such person as provided in this section, the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with such person to the correctional institution or county jail, that such person has been sentenced pursuant to this section and include findings in support of the sentence imposed.

New Sec. 3. (a) For purposes of sentencing pursuant to this act, substances and quantities shall be as follows:

<u>SUBSTANCE</u>	<u>gm</u>
Alpha-Methylfentanyl	.05
Amphetamine	25
Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid	50
Cannabis Resin or Hashish	20
Cocaine	25
Codeine	50
D-Lysergic Acid	.05 pure or
Diethylamide/Lysergide/LSD	100 dosage units

Dextroamphetamine	25
Dextropropoxyphene/Propoxyphene	100
Diazepam	50
Diethyltryptamine/DET	50
Dimethyltryptamine/DMT	.16
Fentanyl	50
Hashish Oil	10
Heroin	5
Hydrocodone/Dihydrocodeinone	10
Hydromorphone/Dihydromorphinone	2
L-Methamphetamine/Levo-methamphetamine/ L-Desoxyephedrine	125
Marihuana/Cannabis	800
Marihuana/Cannabis Plant	25 plants
Meperidine/Pethidine	100
Mescaline	10
Methadone	10
Methamphetamine	12.5
Methaqualone	50
Morphine	10
Mushrooms containing Psilocin and/or Psilocybin	50
Nitrazepam	50
Opium	100
Oxycodone	10
Pentazocine	50
Peyote	50
Phencyclidine/PCP	5
Phendimetrazine	50
Phenmetrazine	50
Phentermine	50
Phenylacetone P2P	30
Psilocin	1
Psilocybin	1
Pyrrolidine Analog of Phencyclidine/PHP	5

Tetrahydrocannabinol	5
Thiophene Analog of Phencyclidine/TCP	5
1-Piperidinocyclo- hexanecarbonitrile/PCC	10
2,5-Dimethoxy-4-methylamph- etamine/DOM	3
3-Methylfentanyl	.04
3,4-Methylene- dioxyamphetamine/MDA	10
3,4-Methylene- dioxymethamphetamine/MDMA	10
4-Bromo-2,5-Dimethoxyamph- etamine/DOB	2

(b) Any reference to a particular controlled substance in this section includes all salts, isomers and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed.

(c) The scale amounts for all controlled substances in this section refer to the total weight of the controlled substance. If any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

Sec. 4. K.S.A. 65-4127a and K.S.A. 1987 Supp. 65-4127b are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Explanation of Substitute
for Senate Bill No. 594

Current sentencing laws do not distinguish between big-time drug dealers and casual users. Both are generally subject to a class C felony. Our laws now would permit a major drug dealer to receive probation while a person with a single gram goes to prison.

S.B. 594 would have required mandatory minimum (3 years for C felony) for drug dealers based on the amounts of drugs involved. However, as the Attorney General pointed out, the amounts proposed in S.B. 594 (1 ounce for heroin and cocaine and 5 pounds for marijuana and most other drugs) was unworkable.

The substitute for S.B. 594 uses a more exact and comprehensive list of drugs and weights to decide which persons are really major drug dealers. It also applies a mandatory minimum to persons who sell to children.

The bill does not increase the penalties for drug crimes but does mean that a major drug dealer who sells to children or traffics in large quantities of narcotics will at least get some jail time if convicted. The substitute bill is endorsed by the Governor and the Attorney General.