

Approved March 22, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael O'Neal at
Chairperson

3:30 ~~am~~ p.m. on March 12, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Everhart and Peterson, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Senator Jerry Moran
Edwin A. VanPetten, Deputy Attorney General
Edward Larson, Judge, Kansas Court of Appeals
James Clark, Kansas County and District Attorneys Association
Thomas H. Johnson, Appellate Defender Office, Shawnee County
Andy Warren, Deputy District Attorney, Johnson County
Jim Weisgerber, Department of Revenue

HEARING ON SB 468 Court's discretion to modify sentence

Senator Jerry Moran informed the Committee this bill reverses SB 49 passed last year. SB 468 makes it clear the judge retains discretion and it is not necessary for the judge to have an evidentiary hearing to determine what is in the best interest of the public or the prisoner. He said under this bill the court should modify the sentence unless the court is satisfied that it is not in the best interest of the public to do so.

Edwin A. VanPetten, Deputy Attorney General, testified that Attorney General Steffan supports SB 468 in correcting an error of last session. SB 468 changes the burden to make the defendant prove that the public welfare will not be jeopardized by granting probation, see Attachment I.

In answer to a Committee question, Mr. VanPetten replied he had no problem substituting "public safety" for "best interests of the public".

Jim Clark, Kansas County and District Attorneys Association, addressed subsection 4 on page 3. He said after a long incarceration it is difficult to prove a danger to the public. He urged the Committee to adopt the new language in subsection 4 on page 3.

Thomas H. Johnson, Appellate Defender Office, testified in opposition to SB 468. He recommended the existing language should not be changed. He said if the legislature is concerned that the language of K.S.A. 21-4603(3)(a) places a "burden of proof" on the state, the Committee should simply add a line to the existing statute saying that the state has no "burden of proof" at modification hearings, see Attachment II.

Andy Warren, Johnson County Deputy District Attorney and representing the Public Defender System, testified in opposition to SB 468. In half of the cases in Johnson County the court disregarded modification recommendations of KRDC and continued the sentence as imposed. He said there is no need for this bill as a problem does not exist.

The hearing on SB 468 was closed.

HEARING ON SB 261 Probate code, disposition of property by will or other lawful disposition effective at death

Judge Edward Larson, Kansas Court of Appeals, stated he was a member of the Kansas Judicial Council's Probate Advisory Committee. He informed the Committee SB 261 would permit a spouse to dispose of one-half of their property through any instrument which a court determines is subject to the surviving spouse's right of election. He explained the wording "will and all other dispositions" should be left in the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S Statehouse, at 3:30 ~~a.m.~~ p.m. on March 12, 1990.

The hearing on SB 261 was closed.

HEARING ON SB 338 Inheritance tax, gross estate determination liens

Jim Weisgerber, Department of Revenue, testified the proposed amendment would affirmately state that transfers made under the provisions of the Uniform Act are deemed to be made in accordance with law for purposes of the Inheritance Tax Act and, therefore, a corporation or transfer agent need not require that the estate obtain a consent to transfer for transfers so made, see Attachment III.

There being no other conferees, the hearing on SB 338 was closed.

The Chairman announced the hearing on SB 527 would be rescheduled to Wednesday, March 14, 1990

The Committee meeting was adjourned at 5:10 p.m. The next meeting will be Tuesday, March 13, 1990 at 3:30 p.m. in room 313-S.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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TESTIMONY OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE HOUSE JUDICIARY
MARCH 12, 1990
RE: SENATE BILL 468

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

The Attorney General urges your support for Senate Bill 468 in correcting an error of last session. The language adopted last year gave courts little choice but to modify sentences and grant probation if that was the recommendation from the State Reception and Diagnostic Center. This has created injustice to the victims thrown into our Criminal Justice system, who simply do not understand how probation can be given to someone who has victimized them and been convicted in our courts.

I recently convicted a man of Aggravated Vehicular Homicide who was set free after three months incarceration. He received a favorable evaluation from S.R.D.C., and as such, the court had no choice but to grant probation at the modification hearing. This was not sufficient punishment, nor was this fair to the family of the victim, but the court

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Attachment I

really had no choice, as there was no evidence to support the findings necessary to deny the motion for probation, with the burden placed on the State as now exists.

Senate Bill 468 changes the burden to make the defendant prove that the public welfare will not be jeopardized by granting probation. This will go farther to protect the victims' rights and the interests of the innocent public.

We urge your favorable consideration of Senate Bill 468.

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H. Jud Com.
Att I

From: Thomas H. Johnson
Assistant Appellate Defender
Appellate Defender Office
RE: SB 468

Summary of Testimony in Opposition

On behalf of the Public Defender System, I wish to express opposition to the changes in subsection (3)(a) and (4) of this bill to the language adopted and passed as law last spring in K.S.A. 21-4603(3)(a) and (4). Specifically, we oppose amending the language in K.S.A. 21-4603(3)(a) and (4), which requires the trial court to modify an inmate's sentence when recommended by S.R.D.C. unless it makes two findings, namely that (1) the public safety will not be jeopardized, and (2) the inmate will not benefit from modification, to require the court to modify unless it is "satisfied that the best interests of the public will not be jeopardized." I offer the following rationale in support of the Public Defender's opposition to the bill:

1. Kansas penal philosophy focuses on rehabilitation. Individual offenders are to be dealt with in accordance with their individual needs. The language of K.S.A. 21-4603(3)(a) and (4), as written, is consistent with a penal philosophy of rehabilitation because it mandates the trial court modify an inmate's sentence unless it finds that the modification will not benefit the inmate's welfare. The proposed language of this bill no longer requires the trial court to consider the inmate's welfare; instead, the court merely must consider the "best interests of society."

2. The language of 21-4603(3)(a) and (4) is specific and requires the trial court to find that the public safety will be jeopardized and the inmate will not benefit from modification before it can ignore an S.R.D.C. recommendation in favor of modification. The proposed language of this bill is vague and general. The court is merely required to find that the "best interest of the public will not be jeopardized." What the best interest of the public is, the bill does not define. The language of this bill dilutes the direct language of K.S.A. 21-4603(3)(a) and (4), and attenuates the appellate courts' ability to enforce the legislative mandate that modification will be granted when recommended by S.R.D.C.

3. The language this bill proposes to amend in K.S.A. 21-4603(3)(a) and (4) was amended as recently as last Spring. The rationale for the 1989 amendments was a D.O.C. study indicating that trial courts modified less than 50% of the time when recommended by S.R.D.C., and a federal court order requiring the state to reduce its prison population. There is no new information which indicates that the underlying rationale of K.S.A. 21-4603(3)(a) and (4) has changed.

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Attachment II

4. The Attorney General's argument in support of the proposed changes focuses on the complaint that trial judges are interpreting the provision of 21-4603(3)(a) to place a burden of proof on the State to show why an inmate should not receive modification when it is recommended by S.R.D.C. While it is no doubt true that a couple of trial judges have misconstrued the language, there is absolutely no evidence whatsoever that the appellate courts would affirm any such ruling. Analogous provisions which require the court to grant probation for first time E and D felons have never been construed to impose a burden on the State to overcome the presumption. In every case, the decision is left to the sound discretion of the trial court to determine whether the defendant qualifies for the presumption. The language of K.S.A. 21-4603(3)(a) does not place a burden on the prosecution, nor does it take the decision to modify from the trial judge's hands. Finally, if the legislature is concerned that the language of 21-4603(3)(a) places a "burden of proof" on the State, the remedy is not to undermine the statute by making it easier for trial judges to ignore S.R.D.C. recommendations; rather this committee should simply add a line to the existing statute saying that the State has no "burden of proof" at modification hearings.

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Att II



KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

March 12, 1990

Comments Concerning Senate Bill 338, As Amended By Senate Committee

Kansas law provides that a lien imposed for the purpose of guaranteeing the payment of inheritance tax shall attach to all property of which a decedent died seized or possessed, in whatever form of investment it may happen to be, from and after the time of death. [K.S.A. 79-1569] The law goes on to provide that this lien "shall not affect any property after it has been sold or disposed of for value by the executors or administrators in accordance with law." (Emphasis added.)

At present, the question of whether or not a transfer is made "in accordance with law", thereby releasing the State's lien, must be answered by reference to the Kansas Inheritance Tax Act and/or the Kansas Probate Code. Since obtaining a precise answer can be a complex and time consuming task, however, many transfer agents dealing with corporate stocks, bond and securities simply choose to short cut the process by assuming the lien continues to apply until such time as the Department of Revenue issues a "Consent to Transfer" (or Waiver) which specifically releases the lien. As a result, many transfers which might be accomplished pursuant to law are delayed while the estate obtains a specific release from the Department of Revenue.

The amendment offered in SB 338 should alleviate much of the confusion as to when a transfer is being made "in accordance with law". K.S.A. 17-4911 is a part of the Uniform Act For The Simplification Of Fiduciary Security Transfers, an act which provides corporations and transfer agents with guidelines to follow when dealing with fiduciaries. The proposed amendment would affirmatively state that transfers made under the provisions of the Uniform Act are deemed to be made in accordance with law for purposes of the Inheritance Tax Act and, therefore, that a corporation or transfer agent need not require that the estate obtain a consent to transfer for transfers so made.

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Attachment III