

Approved: 14 June 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at
4:00 p.m. on March 25, 1991 in room 527-S of the Capitol.

All members were present except: Senators Yost, Moran, Feleciano, Gaines, Kerr and Oleen who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Ben Coates, Kansas Sentencing Commission

Chairman Winter called the meeting to order to continue committee discussion and possible action on the sentencing guidelines.

SB 382 - enacting a presumptive sentencing guidelines system.

Ben Coates, Executive Director of the Kansas Sentencing Commission, explained the section of SB 382 that applied to drug crimes. He expressed the Commission's strong attitude for stable departure criteria.

Committee discussion followed on the details of the drug crimes and their relationship to the proposed grids. The suggestion of Professor Gottlieb to make presumptive probations on the sale of drugs in small amounts with no prior offense or only one prior offense was discussed in great detail. (see Attachment 4 of February 6, 1991 minutes)

Senator Martin moved to amend SB 382 by adopting the amendment suggested by Professor Gottlieb with an amount trigger; if amount of sale is less than one-half of the statutory limit, shorter sentence is given (one-half the grid amount). Senator Rock seconded the motion. The motion to amend carried.

The Committee continued discussion on the policy issues of SB 382. (see Attachment 2 of March 22, 1991 minutes) The policy question and Committee's determinations were as follows:

◦ Should the ability to depart from the grid sentence be enhanced, more restricted, abolished, or actually built into the grids? Should all departures from the grid by judges be monitored?
The consensus of the Committee was to leave SB 382 as written in this regard.

◦ Should diversions be treated as convictions?
The consensus of the Committee was to leave SB 382 as written in this regard.

◦ Should consecutive sentences be treated differently than as provided in SB 382?
The consensus of the Committee was to leave SB 382 as written in this regard.

◦ Should a defendant have a right to appeal a consecutive sentence?
The consensus of the Committee was to leave SB 382 as written in this regard.

◦ Should the 120-day call-back be eliminated?
The consensus of the Committee was to leave SB 382 as written in this regard.

◦ Should more crimes on the grid be considered for sentences of presumptive probation or presumptive community corrections?
The Committee discussion suggested further exploration of the suggestions presented by Professor Gottlieb, especially concerning robbery convictions.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 527-S, Statehouse, at 4:00 p.m. on March 25, 1991.

Senator Martin moved to conceptually amend SB 382 so intent is not to serve 48 months, but to have to serve some time; change existing statute on grand theft, dropping from \$50,000 to \$25,000 threshold on all four crimes; create special rule that denies presumptive probation, falling back on boxes to allow serving of time. Senator Rock seconded the motion. The motion carried.

- Should the 120-day call-back be eliminated?

The consensus of the Committee was to leave SB 382 as written in this regard.

- What role should the Parole Board play if a determinate sentencing system is adopted?

Committee discussion revealed three options: enhanced role on retroactivity determinations, to impose special emphasis for the Board, and/or for parole to be handled off-grid. The consensus of the Committee was to leave SB 382 as written for the time being in this regard.

It was further decided to have the Chairman direct the new entity for the Kansas Sentencing Commission (SB 381, if signed into law) to monitor the effectiveness and efficiency that the Parole Board and Courts are administrating their duties, and to direct the Parole Board and Courts to report to the Legislature and the KSC on their progress.

- Should judicial discretion be enhanced beyond what is provided in SB 382?

The consensus of the Committee was to leave SB 382 as written in this regard.

- What role should social and economic factors such as employment, marital status, and education play in the sentencing process?

The consensus of the Committee was that these factors would not be considered predominate.

- Should a trigger mechanism be included so that when the state's prison population reaches a certain level the grid system is temporarily revised to shorten sentences or provide for more defendants who are eligible for presumptive probation or presumptive community corrections?

The Committee discussed in detail the suggestions of Professors Barbara and Rich on trigger mechanism. (see Attachments 1 and 4 of February 5, 1991 minutes)

Senator Martin suggested a motion to conceptually amend SB 382 to adopt the Barbara/Rich recommendation for a trigger mechanism (85% - 95%); KSC recommendations become law absent legislative action with KSC having rule/regulations authority. Senator Rock stated he would second such a motion if made more specific. Chairman Winter requested the Revisor staff member, Gordon Self, to collaborate with Professor Rich and return to the Committee with language on the specific trigger mechanism for the Committee to examine.

The question was raised on how to review pending legislation and its effect on determinate sentencing and corresponding projected bed space needed. It was suggested that policy be set for future legislatures to include KSC in the decision process by requiring a response from the KSC from their monitoring introduction of legislation and, within thirty days, returning with projections of effects on the prisons, similar to the current fiscal notes.

Chairman Winter requested staff to draft the specific language of amendments suggested and concepts offered, then to have KSC complete projections on the effects or results of those amendments and concepts. The Committee will then have specifics to consider before final determinations are made. The Chairman also noted that the Committee needed to review the suggested amendments of the Parole Board and additional policy questions required addressing.

Chairman Winter concluded the meeting by stating it was unlikely the Committee could complete work on SB 382 and forward it onward to the full Senate. He suggested the subject be studied further in an Interim Committee so the language would be as concise as possible when reported out of Committee.

The meeting was adjourned.

(No guest log was completed at this meeting.)