

Approved

Date

3/31/92

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative John Solbach at
Chairperson

3:30 a.m./p.m. on March 16, 1992 in room 313-S of the Capitol.

All members were present except:

Representative Carmody, Everhart, Gregory & Hamilton who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Ben Coates, Kansas Sentencing Commission
Professor Emil Tonkovich, Kansas University

The Chairman called the meeting to order for staff briefing on SB 479, enacting Kansas sentencing guidelines act. Chairman Solbach gave a brief summary of the events that brought about SB 479 and SB 358.

Ben Coates, Kansas Sentencing Commission, reviewed the summary of recommendations of the Sentencing Commission. (Attachment #1) He answered members questions and made comments about the bill. About 50% of the states have some kind of sentencing guidelines. Technical parole violations are limited to 90 days. One cannot plea bargain away prior criminal history. The bill limits judicial discretion and removes much of the power from the Parole Board. The bill was written using Minnesota, Washington and Oregon standards. More staff and more programs are needed in the community corrections system for it to be effective Coates testified. The Senate removed retroactivity from the bill, and passed the bill on a 35-5 vote.

Professor Emil Tonkovich, Kansas University Law Professor, testified in favor of SB 479 and SB 358. He provided committee members with some classifications as proposed in SB 358. (Attachment #2) He said some felony statutes have been broadened, and pointed out that major policy considerations were made including criminal homicide, and a move from homicide to reckless battery. He said this bill is slightly more severe than current law.

Gordon Self, Revisor of Statutes, reviewed SB 479. (Attachment #3) He reviewed changes made in the bill in the Senate: Change effective date from 7/1/92 to 7/1/93, several technical changes in the grids and made an overall 10% reduction in the grids, reduced from 1500 grams to 500 grams what is considered a "small" amount of marijuana, provided for a departure from the grid for compelling reasons, changed the trigger mechanism in the bill to 90% or more capacity rather than 85%, and required Sentencing Commission to prepare fiscal impact statements any time the legislature deals with a bill amending or creating a new crime, took out the retroactivity provision.

The meeting adjourned at 5:15 P.M.

GUEST LIST

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COMMITTEE:

House Judiciary

DATE:

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NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Sister Therese Bangert	Topeka	Sentencing Commission
Jim Langford	Topeka	DOB
BLAQUE CARTER		KSC
Helen Padiga	Topeka	KSC
Gary STOUTS	Topeka	DOC
Chuck Simmons	Topeka	DOC
Fred Mertz	Hollywood, CA	Ricardo Ent.
Kathy Taylor	Topeka	K Bankers Assn.
Jeff DeBoruffenried		HPD
Devin Shepard	Topeka	Kansans for Gray and Bestmuffenried
Bylon Poca	Topeka	
Carla Dugger	KC	ACLU of KS
Nanette Pryzgar	Topeka	
Deborah Deere	Lansing	Outside Connection
MIKE PAREDES	Topeka	Kansas Child Abuse Staff Prevention Council, Attorney
Tom Brunner	Junction City	
Mickie Cappobianco	Eudora, KS	Close-up
Kim Buche	Eudora	Close-Up
Janice Smith	Eudora	Close-Up
Angela Richardson	Eudora	Close-Up
Supernovine	Eudora	Close-Up
JASON HOOVER	Eudora	Close-Up
Scott Coon	Lawrence	Close-up
Don Grosdidier	Eudora	Close-Up
KEITH H. LANDIS	TOPEKA	CHRISTIAN SCIENCE Comm. on Publications for K.

Summary of the Recommendations
of the Sentencing Commission

by

Ben Coates
Executive Director
Kansas Sentencing Commission

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Introduction

Changing the current sentencing structure from an indeterminate system that provides a great deal of individual discretion to the sentencing judge and the Parole Board is a weighty decision. The move from this open ended system to a structured presumptive one represents a structural and philosophical change. This type of decision goes beyond "tinkering," it is a major departure from the status quo.

This decision should be made upon a sound empirical base, not isolated anecdotal incidents, or a series of what if scenarios. In order to gain a large picture perspective, it is necessary to review the current system to see if it is working. If an examination indicates problem areas, then it seems reasonable to develop an alternative method to address them.

Current System Performance

The prison population experienced tremendous growth during the 1980's. (1980-1989). The total number of inmates incarcerated increased by 165%, the average number of commitments increased by 109%, and the overall crime rate remained static. In fact, the 1989 overall crime rate was within 0.3% of the 1980 one. The other compounding factor in this equation was a significant increase in average length of stay before parole. The average time served was 16.2 months in 1983 and 28.3 months in 1989, an increase of 75%.

Thus, an increased prison population, an increased number of admissions, and an increased length of stay, have had little or no impact on the crime rate. However, they had a significant impact on the amount of prison space and the cost of maintaining prisons.

The increased numbers do not represent an increase in the number of serious crimes, nor an increase in the level of criminal sophistication of the offenders. Since 1983, almost seven out of ten new admissions have been for "D" and "E" felonies. This trend has been steady, in fact, it has been between 65% and 68% for five years. However, in 1983, 48% of the new admissions had a previous felony record, that percent decreased to 37% by 1989 and 18% by 1991. The number of new admissions with a history of prior incarcerations followed the same trend. In 1983, 32% of the new admissions had a history of prior incarceration, by 1989 only 19% had a

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history of prior incarceration, and this number decreased to 15% in 1991. Thus, it is apparent, that the increased admissions and increased length of stay are not a product of more crime, great influxes of more serious offenses, nor do they reflect an increase in the number of inmates with more serious criminal histories. In fact, the opposite is true, over the past eight years, the percent of new court commitments with "D" and "E" felonies has remained constant and their prior criminal history records have improved. That is, they have fewer prior offenses, and fewer of them have been incarcerated before.

Therefore, it is apparent that the increases in prison population and the increased length of stay are not related to an increased crime rate or a steady hardening of offenders. In fact the opposite is true.

Probation and parole revocations make up a large percentage of total admissions. A review of persons sent to prison on probation and parole violations reveals that not only are the sheer number of violators increasing, the proportion brought back without a new conviction has also increased. In 1980, 446 probation/parole violators received prison sentences, 204 or 46% received new sentences as the result of additional criminal convictions. By 1991, the number of violators had increased to 1,583, a 255% increase. There were 374 cases with new felony convictions, but this category only accounted for 24% of the total revocations. This rather alarming trend is of concern. Not only are more inmates coming to prison due to probation and parole violations, but they are coming back without new criminal convictions. The average parole violator who is returned without a new conviction serves over nine months, more than the minimum term for a new class "E" felony. There are several anecdotal accounts of persons being charged but not convicted. If true, these persons are returned to prison without the benefit of a trial or representation by counsel.

In any event, the rising number of revocations is a cause for concern and points out the need for community based sanctions to maintain people in the community. Any solution to prison overcrowding must deal with the revocation issue. It must clearly specify appropriate penalties for persons who are convicted of new felony offenses and for those who are not.

The recidivism rate for persons released is roughly one third by the end of the first year and increases up to one half by the end of the fourth year. It becomes apparent that stronger community programs are needed to keep released felons in the community.

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A 1987 national survey of recidivism rates for offenders released from prison reached two important conclusions:

- 1) Length of stay in prison is not a good indicator of success. Persons who stayed less than six months and persons who stayed over two years have the same basic failure rates.
- 2) The more alarming finding revealed that persons who are put in prison for non-violent crimes are as likely to commit violent crimes when they leave as those who have prior histories of violent crimes.

Racial and Geographical Disparity

There has been considerable concern expressed that any new sentencing system should be free of racial and geographical bias. The Commission undertook a study of persons sentenced in FY 1989 to discern the presence or absence of racial and geographic disparity. The Commission read a random sample of 3,285 felony cases sentenced in FY 1989. This represents over 60% of the cases sentenced that year.

Non-whites were disadvantaged at every decision point studied. The disparity was greatest in large judicial districts and primarily centered on property crimes.

- o Non-whites experienced higher than expected rates of incarceration at original sentencing.
- o The 120 day call back provision favored whites. One of three whites were called back and placed on probation compared to less than one in four non-whites.
- o Non-whites had their probation violated more frequently than whites.
- o Non-whites received significantly longer sentences than whites.
- o Non-whites served significantly longer periods of time before being paroled.

These differences also hold when only persons with no prior felony histories are considered. This indicates that differences observed are not attributable to non-whites having a more elaborate criminal history. These differences are greatest in large judicial districts and tend

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to be minimized in small and medium sized ones. (For a thorough review of this topic see Chapter 2 in the Kansas Sentencing Commission final report).

Several socio-economic variables may explain some of the variances. However, when reviewed as a whole, race tends to be a better indicator, because when these socio-economic variables are linked with race, non-whites continue to be disadvantaged. The following chart demonstrates the overall probabilities of going to prison for the sample of cases read. The higher the probability the greater the chance of going to prison.

Probability of Receiving a Prison Sentence
by Selected Characteristics by Race

	Overall	White	Non-White
o Total	31.8%	29.2%	37.6%
o Employed	18.6%	17.9%	20.9%
o Un-Employed	36.9%	34.3%	41.5%
o Private Counsel	23.9%	22.3%	29.1%
o Court Appointed Counsel	34.9%	33.3%	39.6%
o High School Dropout	29.7%	24.9%	39.2%
o High School Graduate	31.3%	29.2%	36.1%
o Single	32.0%	28.4%	39.1%
o Married	30.3%	29.7%	31.9%
o Cohabiting	41.2%	32.9%	53.1%

As indicated above, unemployment is a powerful indicator, but when coupled with race, it does not explain all the differences. In fact, the difference between white and non-white unemployed is about the same as the overall difference. Being single or cohabiting are good indicators as well, but when the variable of race is added non-whites fare poorly.

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Thus, there does seem to be problems with the current system. Prison populations grow in the absence of increased criminal activity, the people coming to prison have lesser criminal histories, and mainly commit lesser offenses. Recidivism rates remain high and are not related to sentence length. Racial and geographical biases are present. Non-whites go to prison more often, receive longer sentences, and serve longer periods before they are released. These racial differences are related to socio-economic status, but cannot be fully explained by socio-economic variables.

The system lacks predictability. There are no widely accepted standards that govern who goes to prison, or how long they stay once sentenced. This not only leads to significant overcrowding, but also makes it virtually impossible to forecast resource needs. Some method of controlling who comes to prison and establishing how long they will stay once there must be established. Kansas developed a Community Corrections program several years ago to serve "prison bound" inmates. However, in a system where seven of ten inmates coming to prison are "D" and "E" felons it is hard to establish a clear definition of prison bound.

Possible Solutions

Several states have developed sentencing systems that structure discretion, clearly indicate who should go to prison, and set terms for length of stay. This is not a new practice, it has its roots in the early work on parole guidelines that were established in the 1960's and 1970's. Several states realized that inmates came to prison with similar crimes and similar backgrounds, but disparate sentences. The response was to standardize their disparate sentences by using objective weighted factors. Inmates received scores based upon these factors, the scores were plugged into a parole matrix and an expected sentence was generated. The sentence could only be impacted by negative behavior in prison. Some of these models were based upon predictive factors that were validated by recidivism studies. Others were based upon crime seriousness and prior criminal history.

This movement brought stability to prison populations and allowed states to forecast how long inmates would stay. However, it did not remedy the problem controlling how many people come to prison, it merely standardized how long they would stay once sentenced. This first step allowed the development of a rational sentencing policy that let the legislature coordinate and control prison and community based resources. Kansas currently does not have this capacity,

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there is no clearly articulated policy that controls who comes to prison or how long they stay once they arrive. These two decision points are controlled by the sentencing courts and the Parole Board.

The Kansas Proposal

Roughly half the states have either adopted some form of structured sentencing or are in the process of developing one. Kansas studied these states and chose three states as appropriate models. Minnesota and Washington state have had guidelines since the early 1980's. Oregon just initiated them in 1989. All three states have adopted similar models. Washington and Minnesota have used their guidelines to limit prison growth; both states incarcerate approximately 20% of their convicted felons. Kansas incarcerates 38%. Kansas has an incarceration rate of 223 persons per 100,000 residents. Minnesota and Washington have incarceration rates of 71 and 144 per 100,000 respectively.

Kansas developed proposed guidelines based upon the following principles:

- o Prison space should be reserved for serious/violent offenders;
- o The degree of sanction imposed should be based upon the amount of harm inflicted;
- o Sanctions should be uniform and not related to race, socio-economic status or geographical location;
- o Penalties should be clearly spelled out and everyone should understand exactly what has happened once they are dispensed;
- o Incarceration should be reserved for persons who present a threat to public safety, and should be reserved for serious violent offenders;
- o The state has an obligation to provide rehabilitation oriented programs to inmates once incarcerated. However, it should be made clear that persons should not be incarcerated solely because they need education, job skills, or other programs. These programs should be made available in the community unless someone commits violent crimes or has an extensive history of prior criminal convictions;

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- o The system must be rational and allow policy makers to plan for resources and to allocate resources.

Presumptive Sentencing

The Sentencing Commission developed a series of recommendations to address these principles. The core of the recommendations involve replacing the current indeterminate sentencing system with a presumptive one. This presumptive system establishes sentences based upon the seriousness level of the crime of conviction and the extent of the defendants prior criminal history. The seriousness of the current offense is the major determinant.

This system operates as a grid which provides the sentencing court with a presumptive sentence for a "typical" offense. The sentence is expressed in a potential range of months. If the case is not "typical" and there are substantial and compelling reasons why the sentence found on the presumptive grid is not appropriate, the sentencing judge can depart and impose a different sentence. When judges depart they must make a record of the substantial and compelling reasons behind the departure. This departure is then appealable by the state or the defendant. The state's right to appeal a sentence is a major change.

Thus, the presumptive sentence is not mandatory. Judicial discretion is not eliminated, it is structured and a new standard for appellate review is created. States that have had guidelines for a while report that approximately 85% of the cases are sentenced within the guidelines and 15% are departures.

The seriousness of the current conviction is the primary determinate of the presumptive sentence. The present indeterminate system has five levels of felonies with fairly large numbers of crimes in the bottom two categories. New crimes are added to this scheme every session. There is no systematic process that evaluates these crimes as to their relative seriousness and recommends a felony level. The decision is often ad hoc.

The Sentencing Commission took all existing crimes and ranked them using 10 levels of seriousness instead of five. More importantly, they were ranked according to their relative harms. The Commission established a hierarchy of harms that were premised upon the assumption that crimes against persons were the most serious, followed by crimes against property, and crimes against the public order. Crimes were sub-divided into these categories and then were ranked

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within them. This lengthy process yielded a stratified list of crimes ranked from the most serious, (level 1) to the least serious (level 10). Additional crimes can be added to the list by using this same process.

Some crime categories are too broad to fit into a single level of seriousness. These crimes were sub-divided into distinct levels of harm and many appear in more than one seriousness level.

The offenders prior criminal history is the other major determinate of the presumptive sentence. Only prior criminal convictions count. The decision was made early on to treat prior crimes against persons more seriously than other crimes.

There are nine categories of prior criminal history ranging from no prior record to three or more prior crimes against persons. Each level is more severe and includes extra sanctions. Thus, the idea of the habitual offender act is built into this progression. This systematic reliance on criminal history is truly a new element. The current sentencing system does not have specific provisions for increased culpability due to prior criminal behavior. It may be assumed that the Parole Board will take it into account, and indeed it is one of the seven factors they use in deciding length of stay. However, other factors often outweigh prior criminal conduct because time served does not always appear related to past criminal history.

All previous felony convictions will be considered. Class A and B misdemeanors will be considered, no class C misdemeanor will be considered.

Due to victim input, primarily battered spouses, three prior person crime misdemeanors will be counted as one prior person felony. This will allow persons with long histories of misdemeanor battery to receive stiffer punishments if they commit felony person crimes. Non-person misdemeanors do not have the same impact. They can enhance the sentence, but only by one level.

Prior DUI convictions will greatly enhance the penalty for persons convicted of an aggravated vehicular homicide due to intoxication. This special rule was included as a result of testimony from MADD groups.

Residential burglaries will count as person offenses, commercial burglaries will count as property offenses. This difference has a significant impact. Persons who have two prior

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residential burglaries will get a presumptive prison sentence. This special rule was developed at the request of several judges and the Kansas Peace Officers Association.

Prior juvenile felony crimes will count as well. However, prior juvenile offenses that would have been "D" or "E" felonies will no longer count once the individual reaches age 25. All prior adult and prior juvenile "A", "B", and "C" will always be counted.

Prior multiple crimes will be scored using the same day/same day jurisdiction rule. That is, if a person is convicted of multiple crimes on the same day in the same jurisdiction, it will count as one event. If multiple convictions occur in different jurisdictions, or on different days they will be scored as separate events.

These two elements make up a totally new system that is premised upon developing sentences based upon actual, current and past convictions. It excludes racial, geographical, demographic, and socio-economic variables. Persons convicted of like crimes with like criminal histories should receive like sentences. This represents a radical change, currently each sentencing decision is driven by a wide variety of factors. There is little consistency between judicial districts. This is often said to reflect local sentiments. However, upon investigation it became apparent that there is little consistency within large multi-judge districts. This indicates that sentencing is a function of which the judge makes the decision, and in many cases which Court Services Officer prepares the Pre-sentence Report. This is not reflective of local sentiment, but of individual differences among and between decision makers. Sentencing guidelines create a level playing field. A recent Rand Corporation report credits uniform sentencing practices in California with the virtual elimination of racial bias.

PSI's

A presentence investigation (PSI) shall be required in all cases. Currently many PSI's are waived, this waiver does not insure an accurate assessment of the convicted person's criminal history. Criminal history takes on new significance under the guidelines system, thus accuracy is important. The PSI will be limited to information concerning the current offense and prior criminal history. Family and socio-economic information will not be included. Sentencing decisions should reflect the actual event and prior criminal history and not be based upon social information. The inclusion of social data adversely impacts non-white offenders and leads to racial bias in sentencing. The PSI will include a complete victims statement, an assessment of

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prior criminal history, and a statement of where the offender falls on the grid. The format and the decision to remove socio-economic data from the PSI was the product of a working group made up of Court Services Officers appointed by the Office of Judicial Administration. Their report was adopted by the Commission.

Departures

Departures from the presumptive sentence will require written appealable reasons. The guidelines will provide a non-exclusive list of aggravating and mitigating departure criteria. Judges are free to craft other reasons, it is assumed that this process will develop a common law of sentencing. Prosecutors and defense attorneys can recommend departures and can agree to pleas based upon them. Judges are not bound by these plea bargains, but if they accept them there must be a factual basis to support the departure. If the departure is part of the plea agreement and the judge accepts the terms, the departure is not appealable. In the three states studied, departures are the exception instead of the rule.

There are special departure criteria for drug crimes to enhance penalties for major drug crimes and/or the sale to minors.

Appeals

The guidelines provide both the state and the defense an appeal for sentences that depart from the guidelines. The sentence is not appealable if it falls within the presumptive range or if it is the result of plea negotiation.

The review standard is changed from an abuse of discretion to the presence of substantial and compelling reasons. The appeal will be directed to the Appellate Court. The court will either reverse or affirm the sentence. In cases of reversal, the Appellate Court will remand the case to the trial court for resentencing.

The trial court may correct an incorrect sentence at any time. It is anticipated that the new system will generate a substantial amount of mathematical and clerical errors. These errors can be called to the attention of the trial court and they can be corrected.

120 Day Call Backs

The new structure will eliminate the 120 day call back provision. This provision was put in place several years ago to allow sentencing courts to reconsider their sentence upon receiving a diagnostic report from the Department of Corrections. Over the years this practice has become

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a method to provide short term incarceration. In FY 1989 over 25% of persons sentenced to prison were called back and placed on probation. The cost to provide this assessment is over \$12,000 per inmate, truly an expensive short term stay.

The Commission voted to eliminate the 120 day call provision. The sentence should be based upon the harm created by the event and the defendant's prior criminal history. The 120 day report does not provide any new information on these two items. It is focused on psychological and socio-demographic concerns. The report may well be helpful to the institution and the parole office in the development of a treatment and supervision plan.

Parole Board's Role

The Parole Board will no longer be responsible for releasing persons from prison. Their release will be governed by the original sentence imposed, plus or minus any administrative adjustments made by the Department of Corrections under the statutory good time provisions.

This represents a major change in policy. The old system relied upon judges setting broad indeterminate sentences and the Parole Board deciding when the person should be released. Over the past several years the length of time served has dramatically increased. This increase in time served has not reduced recidivism, nor has it decreased the number of parole revocations. In fact both have increased.

The Parole Board will continue to release persons sentenced under the old system. They will also continue to parole persons convicted of off-grid crimes. The Parole Board will review all persons records before their release and may impose special conditions that must be followed upon release. They will be responsible for conducting revocation procedures stemming from technical or new criminal conviction offenses.

Post-release Supervision

All persons will be supervised for a specific period of time upon release from prison. The length of the period of supervision will depend upon the level of offense committed. Persons convicted of a level 1-6 offense will have a mandatory supervision period of 24 months. Levels 7-10 crimes will be supervised for 12 months. Time served in the community will vest. Revocations due to technical violations will be limited to 90 days. Revocation for new crimes may serve up to the full amount of the time remaining on the post release period.

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Other Recommendations

Once the guidelines are in place, a monitoring system must be established to insure compliance. This monitoring system will require the development of a common data base between the Courts, Community Corrections and the Department of Corrections. This currently does not exist. There are no standard definitions, nor are there standard data collection procedures. There will also be an increased reliance on the accurate collection of criminal history. This will necessitate changes in the current methods of recording misdemeanor convictions.

The Sentencing Commission has been instructed to study the feasibility of consolidating all field services into one administrative body.

There has been considerable discussion surrounding the topic of retroactivity. The Commission recommends that the legislature consider making the guidelines retroactive. This may well reduce prison population and will help correct past disparity.

The Commission also recommends the development of a review of the guidelines on an annual basis to determine impact. In the event of potential overcrowding, the Secretary of Corrections should certify that there is a potential emergency. Once certified the Commission should develop proposed remedies to present to the legislature. This process serves as a trigger rather than a cap.

Summary

In summary, the current system is not meeting the needs of the state. Prisons are overcrowded, incarceration rates are high, lengths of stay have grown and none of these events seem to impact the crime rate, recidivism rate or success on parole. In fact, courts are sending an increasing number of "D" and "E" felons to prison. Those currently sent to prison have less serious records than in the past.

This reflects a lack of a clearly articulated corrections policy. There are no clear cut guidelines about who should go to prison or how long they should stay. Individual judges and the Parole Board set these policies. Unless the legislature defines a policy along a set of clearly defined guidelines, current practices will continue. The proposed guidelines provide such a policy, they have proven their worth in other similar states.

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If the guidelines had been in place in FY 1989 the number of persons going to prison would have been reduced by 13.5%. There would have been clear definitions of who was going to prison and how long they would remain. The legislature would have been in a position to accurately forecast resource demands. More importantly persons with like criminal histories sentenced to like crimes will receive like penalties. They will not receive different sentences based upon racial, geographical or socio-economic variables.

For further information contact Ben Coates at 296-0923.

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FY 1991

SENTENCING PATTERNS

by Type of Crime
by Race
by Disposition

TYPE OF CRIME	PRISON			PROBATION		
	White	Non-White	Total	White	Non-White	Total
Chapters 34,35,36	60%	78%	67%	40%	22%	33%
Chapters 37,38	33%	46%	37%	67%	54%	63%
Chapter 65 (Drugs)	29%	44%	35%	71%	56%	65%
Other	28%	43%	32%	72%	57%	68%
TOTAL	37%	54%	43%	63%	46%	57%

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CRIMINAL HOMICIDES

<u>Intentional</u>		<u>Reckless</u>	
3401(a)	Premeditated	3401(b)	Felony-murder
3402(a)	Intentional w/o premeditation	3402(b)	Depraved-heart
3403	Voluntary manslaughter	3404	Invol. manslaughter

SEX CRIMES

	<u>W/O Consent</u>	<u>12-15</u>	<u>Under 12</u>
Intercourse:	3502 Rape (any age)	3504 Agg. Indec. Lib.	3502 Rape
Sodomy:	3506 Agg. Sodomy (any age)	3505 Sodomy	3506 Agg. Sodomy
"Battery":	3517-18 Sex./Agg. Sex. Battery (16 and over)	3503 Indec. Lib	3504 Agg. Indec. Lib.

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Attach #2

To: House Judiciary Committee

From: Gordon Self, Assistant Revisor of Statutes

Date: March 16, 1992

Re: Senate Bill No. 479, As Amended by Senate Committee of the Whole

Senate Bill No. 479, as Amended by Senate Committee of the Whole, is a redraft of 1991 S.B. No. 382 to reflect necessary technical changes and the recommendations of the 1991 Interim Committee on Judiciary and the Senate Committee on Judiciary and the Senate Committee of the Whole.

The major provisions of the bill include: Section 1 (page 2): Title of the act.

Section 2 (page 2): A modified statement of purpose provision that prescribes that the provisions of the act shall have equal application to all offenders and shall distinguish offenders only as to the crime and the previous criminal record of the offender.

Section 3 (pp. 2-4): The definition section of the act.

Section 4 (pp. 4-7): The sentencing guidelines grid for nondrug offenses and limited explanatory language. The explanatory language on page 6 prescribes the presumptive nature of the grid and the possibility of judicial deviation from the presumptive sentence based on substantial and compelling reasons; states the appropriate punishment is dependent on the severity of the crime of conviction and the offender's criminal history; and specifies the grid's application as to presumption of imprisonment or nonimprisonment and the judge's sentencing discretion within the appropriate sentencing range.

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Section 5 (pp. 7-9): The sentencing grid for drug offenses and limited explanatory language. The explanatory language on page 9 prescribes that if a person is convicted of the sale of small amounts of marijuana under certain circumstances, the court may impose an optional non-prison sentence.

Section 6. (p. 9): Prescribes the court must pronounce sentence in all felony cases; the prison sentence for crimes on or after July 1, 1993, shall be the time the person shall actually serve; and that murder in the first degree, aircraft piracy and treason are offgrid offenses and are not represented on the grid and the sentence for all shall be life imprisonment.

Section 7 (pp. 9 through 11): Explanatory provisions relating to the crime severity scale of the sentencing grid for non-drug offenses. Provisions relate to description of the different severity levels, subclassification of certain crimes, unranked offenses and omission of crimes from severity scale.

Section 8 (pp. 11 and 12): Explanatory provisions relating to the crime severity scale of the sentencing grid for drug offenses. Provisions relate to description of the different severity levels, anticipatory offenses and plea bargaining agreements.

Section 9 (pp. 12 and 13): Prescribes the criminal history categories and provides a descriptive criminal history for each such category.

Section 10 (pp. 13 and 14): Relates to criminal history categories in both the non-drug and the drug grid. Specifies the types of prior convictions upon which the criminal history

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categories are based and lists numerous factors to be used in determining an offender's criminal history classification, such as decay factor provisions relating to prior conviction that are no longer considered as part of the offender's criminal history score; effect of misdemeanors; and multiple prior convictions.

Section 11 (pp. 14 and 15): Additional factors to be considered in determining an offender's criminal history classification, such as how to score prior class A and B misdemeanors, violations involving unlawful use of weapons, conviction of aggravated vehicular homicide while driving under the influence of alcohol or drugs; prior burglary convictions; and out-of-state convictions.

Section 12 (pp. 15 and 16): Specialized factors to be considered in determining criminal history scores based on drug crime convictions.

Section 13 (p. 16): Options available to the prosecutor in plea bargaining arrangements.

Section 14 (pp. 16 through 24): Requires a presentence report in all felony cases, specifies information to be included in such report and provides the format for the presentence report and the criminal history worksheet.

Section 15 (p. 24): Provides that the criminal history of offender shall be admitted in court or determined by a preponderance of the evidence; a summary of the offender's criminal history shall satisfy the state's burden; and procedures regarding disputed portions of the offender's criminal history.

Section 16 (pp. 24 and 25): Requires that the sentencing

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judge impose the presumptive sentence unless substantial and compelling reasons exist to impose a departure. Provides a list of mitigating and aggravating factors which may be considered in determining whether substantial and compelling reasons exist to impose an upward or downward departure.

Section 17 (pp. 25 and 26): Provides aggravating factors which may be considered in determining whether substantial and compelling reasons exist to impose a departure in a drug offense.

Section 18 (pp. 26 and 27): Provides procedural guidelines for sentencing hearings requested upon motion of either the state or the defendant to consider imposition of a departure sentence.

Section 19 (pp. 27 and 28): Provides criteria upon which the judge may depart from the sentencing guidelines whether a durational or dispositional departure.

Section 20 (pp. 28 and 29): Provides sentencing rules relating to concurrent sentences including determination of the base sentence and specialized departure criteria.

Section 21 (pp. 29 and 30): Prescribes the appeal procedure when a sentence is imposed outside the standard range for the offense. Sets limitations on the sentence review and establishes the court's dispositional alternatives and requirements.

Section 22 (pp. 30 and 31): Prescribes the requirements relating to good time calculations including maximum amount limitation, any time subtracted from sentence shall be added to time of postrelease supervision and rules and regulations authority to secretary of corrections.

Section 23 (p. 29): Application of sentencing guidelines act

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to crimes committed on or after July 1, 1993.

Section 24 (p. 33): Requires Kansas sentencing commission to meet to propose modifications and improvements to the sentencing guidelines to be presented to the legislature. The modifications shall not be effective unless approved by the legislature and the governor.

Section 25 (p. 33): Severability clause.

Sections 26, 27, 30, 36 through 49, 54 through 111, 114 through 152, 154 through 229: Prescribes crime severity levels for crimes specified in the Kansas criminal code. Crime severity levels were assigned for crimes committed on or after July 1, 1993, based on the commission's rankings of virtually every felony in the criminal code.

Section 29 (pp. 35 and 36): Provides that municipal courts must transmit information concerning dispositions of all class A and B misdemeanors to the KBI central repository.

Section 31 (p. 37): Requires fingerprints for persons wanted for the commission of a class A or B misdemeanor.

Section 32 (pp. 37 and 38): Requires law enforcement agencies to maintain permanent records of all class A or B misdemeanors reported or known to have been committed in their jurisdiction.

Sections 33 through 35 (pp. 38 and 39): Inapplicability of current attempt, conspiracy and solicitation statutes to offenses committed on or after July 1, 1992.

Sections 230 through 232, 234 through 236, 238 through 244, 245 through 247, 249 through 282, 284 through 290: Provide necessary limitation of application of existing law and necessary

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revisions to existing statutes relating to implementation of the guidelines.

Section 233 (p. 129): Prescribes fines which may be imposed as part of sentencing for crimes committed on or after July 1, 1993.

Section 237 (pp. 136 and 137): Prescribes dispositional alternatives available to the court for persons convicted of crimes on or after July 1, 1993.

Section 244 (pp. 144 and 145): Provides statutory guidance for probation of offenders including recommended duration of probation in all felony cases where the crime was committed on or after July 1, 1993.

Section 248 (pp. 151 and 152): Provides requirements for judgment forms when the defendant is to be sentenced to the custody of the secretary of corrections for crimes committed on or after July 1, 1993.

Section 259 (pp. 161 through 181): Provides forms expressing the proper recording necessary for all journal entries of felony convictions for crimes committed on or after July 1, 1993.

Section 269 (pp. 185 through 190): Currently relates to parole eligibility and conditions of parole. Revisions to the statute provide that persons sentenced for crimes committed on or after July 1, 1993, will not be eligible for parole but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as provided in the statute; that if an inmate is sentenced to prison for a crime committed on or after July 1, 1993, while on probation for a

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crime committed prior to July 1, 1993, the old sentence shall be converted to a determinate sentence as provided in the statute; and parole board's duties and limitations as to inmate's proposed release plan.

Section 283 (pp. 212 and 213): Prescribes the continuation of the Kansas sentencing commission as a permanent state agency and expanded duties and responsibilities of the commission related to implementation and monitoring of the sentencing guidelines system and other criminal justice studies.

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