

Approved 4-30-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Rep. John M. Solbach at
Chairperson

3:30 ~~xxx~~^{xxx}/p.m. on March 31, 1992 in room 313-S of the Capitol.

All members were present except:

Rep. Lawrence who was excused.

Committee staff present:

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

Conferees appearing before the committee:

The chairman called the meeting to order for the purpose of discussion, amendment and action on SB 479, sentencing guidelines.

Rep. Solbach moved to conceptually amend SB 479 on page 31 somewhere between lines 1 and 5, indicating that the earning of good time credits shall be related to inmates willingness to examine & confront past behavior patterns, and in New Section 13 by developing a program including involvement of business & industry. Rep. Macy seconded the motion. After discussion, motion failed.

Rep. Everhart moved to amend SB 479 conceptually by adopting Alternative B from Bill Rich on retroactivity of sentencing guidelines. (Attachment #1) Rep. Hochhauser seconded the motion. After discussion, motion carried.

Rep. Hamilton moved to substitute her proposed bill into SB 479 and recommend it favorably for passage. Rep. Pauls seconded the motion. Motion failed.

Rep. Pauls moved to strike the language in SB 479 on page 25, lines 17-25 in Section E. Rep. Douville seconded the motion. Motion carried.

Rep. Parkinson moved to conceptually amend SB 479 to say when someone is convicted the cost of holding will be paid by the State if State if State is paying the cost now. Rep. Snowbarger seconded the motion. Motion carried.

Rep. Smith moved to reinstate the language stricken by the Senate on page 30, line 2. Rep. Everhart seconded the motion.

Rep. Hochhauser made a substitute motion to incorporate both current language amended into SB 479 by the Senate and the original language on page 30, line 2. Rep. Gomez seconded the motion. Motion failed.

On the original motion of Rep. Smith, the motion carried.

Rep. Everhart moved to amend SB 479 by making the effective date January 1, 1993. Rep. O'Neal seconded the motion. Motion carried.

Rep. Pauls moved to strike the language on page 25, Section C, lines 12 through 15. Rep. Hamilton seconded the motion. Motion failed.

Rep. Pauls moved to amend SB 479 on page 25, Section C by deleting "sexual orientation". Rep. Snowbarger seconded the motion. Motion failed.

Rep. Pauls moved to amend SB 479 on page 25, Section C, by changing "ethnic" to "ethnicity". Rep. Snowbarger seconded the motion. Motion carried.

Ben Coats, Kansas Sentencing Commission, presented the committee members with a group of amendments he requested be made. (Attachment 2)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 31, 192.

Rep. Parkinson moved to amend SB 479 by adopting the amendments submitted by Ben Coates. Rep. Everhart seconded the motion. Motion carried.

Rep. Douville moved to amend SB 479 on pages 37 and 38 by expanding record keeping requirements to include Class C misdemeanors. Rep. O'Neal seconded the motion. Motion carried.

Representative Everhart moved to recommend SB 479 as amended favorably for passage. Rep. Douville seconded the motion. Motion carried. Representatives Hamilton and Pauls requested to be recorded as voting No on the motion.

Rep. Gomez gave a subcommittee report of HB 2692. Rep. Gomez moved the committee adopt the balloon amendments to HB 2692. (Attachment #3) Rep. Everhart seconded the motion. Motion carried.

Rep. Gomez moved to recommend HB 2692 as amended favorably for passage. Rep. Smith seconded the motion. Motion carried.

Representative Hamilton moved to report SB 662 favorably for passage. Rep. Smith seconded the motion.

Rep. Rock made a substitute motion to amend HB 3053 into SB 662. Rep. Everhart seconded the motion. Motion carried.

Rep. Hamilton moved to report SB 662 as amended favorable for passage. Rep. Smith seconded the motion. Motion carried.

Rep. Heinemann moved to report HB 3105 favorably for passage. Rep. Smith seconded the motion. Motion carried.

Rep. Heinemann moved to approve the committee meeting minutes from Feb. 25, 26, 27, March 2, 3, 4, 5, 6, 16, 17, 18, 19, 20, 23 and 24. Rep. Smith seconded the motion. Motion carried.

Meeting adjourned at 5:40 P.M.

February 19, 1992

To: Chuck Simmons

From: Bill Rich

Re: Retroactivity of Sentencing Guidelines

The following alternatives have been discussed for potential retroactive application of sentencing guidelines. For each alternative it should be assumed that any reduction in the inmate population should be matched by a corresponding increase in parole supervision and community corrections alternatives. Unless otherwise indicated, assume that the parole officer to inmate ratio will be reduced to no more than 50 to 1. Additions should be made to the Department of Corrections budget to cover the cost of additional personnel needed to implement these alternatives. We should also assume a one time additional expense for training judges, prosecutors and defense lawyers prior to the program implementation.

Alternative A: Sentencing guidelines as currently written would be fully implemented on either July 1, 1992 or January 1, 1993.

- a) For those cases in which the inmate, prosecutor or judge object to the application of the presumptive sentence, there would be an additional two month period in which to hear their objections and decide whether mitigating or aggravating circumstances should be applied. (Assume that twenty percent of the eligible inmates will be included in this category.)
- b) In addition to current guidelines there would be increased enforcement of technical parole violations so that a one time technical violation would automatically result in a ten day jail sentence; two violations, twenty days; three violations, forty days in DOC custody; four violations, ninety days with DOC.
- c) Separately calculate the fiscal impact of this option making an assumption that parole officer to inmate ratios would be further reduced to a 35 to 1 ratio.

Alternative B: Sentencing guidelines would be phased in at a steady pace beginning with inmates who appear before the parole board after June 1, 1992, and continuing until July 1, 1993. Assume that there will be a sixty day period for processing of objections to presumptive sentences for those inmates who are denied parole.

- 1) Inmates who have not previously appeared before the parole board.

HJC
3-31-92
Attachment 1
1 of 5

a) Inmates would be screened by the Department of Corrections for application of the sentencing grid prior to their first appearance. That information would be presented to the parole board and could be relied upon as an independent basis for granting parole.

b) If parole was rejected, then the parole board would determine whether any aggravating or mitigating factors warrant adjustment of the inmate's presumptive sentence.

c) Deviation from the presumptive sentence would be subject to review as described below.

2) Inmates who have passed their first parole eligibility date.

a) The sentencing guidelines would be gradually applied beginning with inmates who presumably would not have been sentenced to prison under the guidelines, and ending with those who would be subject to the longest sentences under the grid. This process would begin as soon as feasible, subject to legislative deadlines.

b) The Department of Corrections would identify the presumptive sentence for each of these inmates, and notice of that presumptive sentence would be sent to the inmate, the sentencing court and the prosecuting attorney. Any of these parties would have a fixed period of time in which to object to the presumptive sentence.

c) If any party objects, a hearing would be scheduled to establish a sentence pursuant to the guidelines. The hearing would either be at the sentencing court or, if at least two of the parties agree, by a special judge and counsel assigned for that purpose at the institution where the inmate is housed.

d) Inmates in this group who appear before the parole board prior to application of the guidelines under this section would be diverted to the procedures described in section 1.

3) Parolees.

a) In the event of parole revocation proceedings a presumptive sentence, subject to objections, would be established.

Alternative C: Guideline sentences would constitute an alternative basis for parole, but other retroactive application of the Guidelines would be subject to the schedule and procedures of 2, above. (The fiscal impact of this alternative should be approximately the same as that for Alternative B.)

HJC
3-31-92
Attach #1
2 of 5

Section 24. (a) The sentencing grid for non-drug crimes as provided in section 3 and the sentencing grid for drug crimes as provided in section 4 shall be applied for crimes committed before July 1, 1992, as provided in this section.

(b) (1) Except as provided in subsection (d), persons who committed crimes and were sentenced prior to July 1, 1992, shall have their sentences modified according to the provisions specified in the Kansas sentencing guidelines act.

(2) Except as provided in subsection (d), offenders on probation for crimes committed prior to July 1, 1992, who have such probation revoked shall have their sentences modified according to the provision specified in the Kansas sentencing guidelines act.

(c) The Department of Corrections shall conduct a review of all persons who committed crimes and were sentenced prior to July 1, 1992. The department shall prepare a sentencing guidelines report which shall review and determine what the person's sentence as provided by the crime severity and criminal history grid matrix established by the Kansas sentencing commission guidelines act would be as if the crime were committed on or after July 1, 1992. A copy of the report shall be transmitted to the person who committed the crime, the prosecution officer who originally prosecuted such person, and the sentencing court.

(1) In determining the criminal history classification, the department of corrections shall conduct a reasonable search of the inmate's file and available presentence report, and make a reasonable inquiry of the Kansas bureau of investigation and the federal bureau of investigation, for other records of criminal or juvenile convictions which would affect the criminal history classification.

(2) The department of corrections shall have access to any juvenile records maintained by the Kansas bureau of investigations or the department of social and rehabilitation services for use in determining the person's criminal history classification.

(3) The criminal history classification as determined by the department of corrections shall be deemed to be correct unless objection thereto is filed by either the person or the prosecution officer within the 60 day period provided to request a hearing. If an objection is filed, the sentencing court shall determine the person's criminal history classification. The burden of proof shall be on the prosecution officer regarding disputed criminal history issues.

(4) The department of corrections shall complete and submit to the appropriate parties the report on all persons with a controlling sentence based on a class E felony by August 15, 1992.

HJC
3-31-92
Attach #1
305

(5) The department of corrections shall complete and submit to the appropriate parties the report on all persons with a controlling sentence based on a class D felony by October 15, 1992.

(6) The department of corrections shall complete and submit to the appropriate parties the report on all persons with a controlling sentence based on a class C felony by December 1, 1992.

(7) The department of corrections shall complete and submit to the appropriate parties the report on all persons with a controlling sentence based on a class A or B felony by December 31, 1992.

(d) (1) Within 60 days of the issuance of such report, the person who committed the crime and the prosecution officer shall have the right to request a hearing regarding conversion to a sentence under the Kansas sentencing guidelines act to be held in the jurisdiction where the original criminal case was filed. The secretary of corrections shall be provided notice of any request for a hearing. If a request for a hearing is not filed within 60 days of the issuance of the report, the department shall convert the person's sentence to one provided for under the sentencing guidelines and provide notification of that action to the person, the prosecution officer, and the court in the jurisdiction where the original criminal case was held. The conversion by the department of corrections to the sentencing guidelines shall be to the mid-point of the range in the applicable grid box.

(2) In the event a hearing is requested and held, the court shall determine the applicable sentence as prescribed by the Kansas sentencing guidelines act.

(3) In the event a hearing is requested, the court shall schedule and hold the hearing within 30 days after it was requested and shall rule on the issues raised by the parties within 30 days after the hearing.

(4) Such offender shall be represented by appointed counsel pursuant to the provisions of K.S.A. 22-4501 et seq. and amendments thereto.

(5) The court shall enter an order regarding the person's sentence and forward that order to the secretary of corrections who shall administer the sentence.

(e) If a sentence is converted as provided by this section, then all the rights and privileges accorded by the Kansas sentencing guidelines act shall be applicable. A person's sentence shall not be increased in length through a conversion to one under sentencing guidelines.

HJC
3-31-92
Attach #1
495

Was this part in ...

The Committee wishes to emphasize several factors concerning the court's power to depart for substantial and compelling circumstances.

First, the list of aggravating and mitigating factors set forth does not purport in any way to be an exclusive list of factors the court may take into account when it determines whether the offender or offense are so atypical that a departure is warranted. Factors such as the youth of the offender, the offender's mental and emotional condition, and the offender's physical condition, including drug and alcohol dependence, may render that individual's behavior less culpable than the typical offender for a particular crime. Likewise, a sophisticated offender whose crime requires special planning and skill may be more culpable than the typical offender. Other factors not mentioned here or in the guidelines may also be relevant to the culpability of the offender. It is the committee's expectation that precision in the factors that may be considered will develop over time as the appellate courts of the State develop a common law of sentencing.

Second, ^{For us at the ...} the Committee recognizes that the guidelines are designed to regulate judicial discretion, not to eliminate it. The guidelines contemplate that a typical offense and offender will be sentenced within the guidelines. For an individual somewhat more or less culpable than a typical offender, the court may choose a sentence at the top or bottom of the applicable guideline. However, where the individual is substantially more or less culpable than the typical offender, the court may consider a departure.

Finally, the Committee believes that no individual should be sentenced to prison solely or primarily to be rehabilitated. However, that general consideration does not mean that rehabilitative factors are always irrelevant in deciding whether to sentence an individual to probation rather than imprisonment. In exceptional cases, the court should be able to consider a defendant's amenability to probation when deciding whether to grant a dispositional departure.

2

HJC
3-31-92
A/H/vk #1
585

1 consists of 10 levels of crimes. Crimes listed within each level are
2 considered to be relatively equal in severity. Level 1 crimes are the
3 most severe crimes and level 10 crimes are the least severe crimes.
4 If a person is convicted of two or more crimes, then the severity
5 level shall be determined by the most severe crime of conviction.

6 (b) When the statutory definition of a crime includes a broad
7 range of criminal conduct, the crime may be subclassified factually
8 in more than one crime category to capture the full range of criminal
9 conduct covered by the crime.

10 (c) The provisions of this subsection shall be applicable with re-
11 gard to ranking offenses according to the crime severity scale as
12 provided in this section:

13 (1) When considering an unranked offense in relation to the crime
14 severity scale, the sentencing judge should refer to comparable of-
15 fenses on the crime severity scale.

16 (2) All felony crimes omitted from the crime severity scale are
17 considered nonperson felonies for purpose of computing criminal
18 history.

19 (3) *All unclassified felonies shall be scored as level 10 nonperson*
20 *crimes, for the purpose of computing criminal history.*

21 ~~(2)~~ (4) When a person is convicted of any other felony crime or
22 crime punishable by state imprisonment which is omitted from the
23 crime severity scale, the sentence shall be in accordance with the
24 sentence specified in the statute that defines the crime.

25 ~~(3)~~ With regard to anticipatory offenses committed on or
26 after July 1, 1992, the provisions of this subsection shall be
27 applicable:

28 (A) A conviction for an attempt to commit an offense shall
29 be ranked on the crime severity scale at two crime levels below
30 the appropriate level for the underlying or completed crime.
31 A conviction for attempted murder in the first degree, at-
32 tempted treason or attempted aircraft piracy shall be ranked at
33 severity level 1 on the severity scale. In all cases, the lowest
34 severity level for an attempt to commit a felony offense shall
35 be level 10.

36 (B) A conviction for conspiracy to commit the off-grid crimes
37 of murder in the first degree, treason and aircraft piracy shall
38 be ranked on the crime severity scale at severity level 2. A
39 conviction for conspiracy to commit any other felony crime shall
40 be ranked on the scale at two crime levels below the appro-
41 priate level for the underlying or completed crime. In all cases,
42 the lowest severity level for a conspiracy to commit a felony
43 offense shall be 10.

HJC
3-31-92
Attach #2
108-22

felony will not decay or be forgiven.

(7) All class A misdemeanor convictions class B person misdemeanors and class B select non-person misdemeanors shall be considered and scored. Class C misdemeanors will not be considered and scored.

(8) Unless otherwise provided by law, unclassified felonies, class A and B misdemeanors and unclassified misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(c) (1) One prior criminal history unit will be assigned for each previous conviction event. Jurisdiction is the court in which the criminal action has been filed.

(2) (A) No distinction will be made between multiple or single prior convictions occurring on the same day in a single jurisdiction, both shall be treated as a single conviction event.

(B) When two or more convictions occur on the same day, but are in different jurisdictions, then one event will be scored for each jurisdiction.

~~(C) The most severe crime within the multiple counts making up a prior conviction event will be used to assess the prior criminal history score for the current event.~~

(D) In multiple misdemeanor convictions, person misdemeanor convictions will be used to assess the prior history score for the current event.

New Sec. 11. In addition to the provisions of section 10, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grid for nondrug crimes and the presumptive sentencing guidelines grid for drug crimes:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A violation of subsections (1)(a) through (1)(f) of K.S.A. 21-4201 and amendments thereto regarding unlawful use of weapons or subsection (1)(a) of K.S.A. 21-4204 and amendments thereto regarding unlawful possession of firearms will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be converted to person felony units.

(c) If the current crime of conviction is for aggravated vehicular homicide, as specified in subsections (1) and (3) of K.S.A. 21-3405a and amendments thereto, while committing a violation of driving under the influence of alcohol or drugs as provided in K.S.A. 8-

(9) Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.

(10) Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.

Person felony convictions will always take precedence over non-person felony convictions, otherwise the most severe crime within the multiple counts making up a prior conviction event will be used to assess the prior criminal history score for the current event.

HJC
MAR 31 1992
Att # 2
2-22

1 period of the prison sentence that could be imposed, whichever is
 2 longer. If the defendant is convicted of nonsupport of a child, the
 3 period may be continued as long as the responsibility for support
 4 continues. The court may extend or modify the offender's period of
 5 supervision. The extensions may only be ordered at such intervals
 6 pursuant to a modification hearing and a judicial finding of necessity,
 7 including unfulfilled conditions or other circumstances warranting
 8 extension. Such extensions shall be made for a maximum period of
 9 five years or the maximum period of the prison sentence that could
 10 be imposed inclusive of the original supervision term. Non-prison
 11 sentences may be terminated by the court at any time.

, whichever is longer,

12 New Sec. 20. (a) The provisions of subsections (1), (2), (3), (4),
 13 (5) or (8) of K.S.A. 21-4608 and amendments thereto regarding con-
 14 current sentences will apply to the sentencing of offenders for crimes
 15 committed on or after July 1, ~~1992~~ 1993, pursuant to the sentencing
 16 guidelines system as provided in this act.

17 (b) Sentencing judges will have discretion to impose concurrent
 18 or consecutive sentences in multiple conviction cases. In cases where
 19 consecutive sentences may be imposed by the sentencing judge, the
 20 following shall apply:

21 (1) When the sentencing judge imposes multiple sentences con-
 22 secutively, the consecutive sentences shall consist of an imprisonment
 23 term and a supervision term. The postrelease supervision term will
 24 be based on the primary crime.

25 ~~(2) The sentencing judge must establish a base sentence for the~~
 26 ~~primary crime. The primary crime is the crime with the highest~~
 27 ~~crime severity ranking. If more than one crime of conviction is~~
 28 ~~classified in the same crime category, the sentencing judge must~~
 29 ~~designate which crime will serve as the primary crime.~~

30 (3) The base sentence is set using the total criminal history score
 31 assigned.

32 (4) The total sentence assigned for all crimes charged cannot
 33 exceed twice the base sentence. The postrelease supervision term
 34 will reflect only the primary crime. Supervision periods will not be
 35 doubled.

36 (5) Nonbase sentences will not have criminal history scores ap-
 37 plied, as calculated in the criminal history I column of the grid, but
 38 base sentences will have the full criminal history score assigned.

39 (6) If the sentence for the primary crime is a prison term, the
 40 entire imprisonment term of the consecutive sentences will be served
 41 in prison.

42 (7) If the sentence for the consecutive sentences is a prison term,
 43 the postrelease supervision term is a term of postrelease supervision

The sentencing judge must establish a base sentence for the primary crime. The primary crime is the crime with the higher crime severity ranking. If more than one crime of conviction is classified in the same crime category, the sentencing judge must designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the non-drug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge will use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the non-drug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge will use the crime with the longest sentence term within the grid block range as the primary crime.

HJC
 MAR 31 1992
 Att #2
 3-22

1 as established for the primary crime.

2 (8) If the sentence for the primary crime is a non-prison sentence,
3 the consecutive sentences shall be served as multiple non-prison
4 terms. In this situation, a non-prison term will be imposed for each
5 crime conviction. All non-prison terms associated with consecutive
6 sentences will be served concurrently.

7 (c) The following shall apply for a departure from the presumptive
8 sentence based on aggravating factors within the context of consec-
9 utive sentences:

10 (1) The court may depart from the presumptive limits for con-
11 secutive sentences only if the judge finds substantial and compelling
12 reasons to impose a departure sentence for any of the individual
13 crimes being sentenced consecutively.

14 (2) When a departure sentence is imposed for any of the indi-
15 vidual crimes sentenced consecutively, the imprisonment term of
16 that departure sentence shall not exceed twice the maximum pre-
17 sumptive imprisonment term that may be imposed for that crime.

18 (3) The total imprisonment term of the consecutive sentences,
19 including the imprisonment term for the departure crime, shall not
20 exceed twice the maximum presumptive imprisonment term of the
21 departure sentence following aggravation.

22 New Sec. 21. (a) A *departure* sentence ~~outside the standard~~
23 ~~range for the crime~~ is subject to appeal by the defendant or the
24 state. The appeal shall be to the court of appeals in accordance with
25 rules adopted by the supreme court.

appellate courts

26 (b) Pending review of the sentence, the sentencing court or the
27 appellate court may order the defendant confined or placed on con-
28 ditional release, including bond.

29 (c) On appeal from a judgment or conviction entered for a felony
30 committed on or after July 1, ~~1992~~ 1993, the appellate court shall
31 not review:

32 (1) Any sentence that is within the presumptive sentence for the
33 crime; or

34 (2) any sentence resulting from an agreement between the state
35 and the defendant which the sentencing court approves on the
36 record.

37 (d) In any appeal from a judgment of conviction imposing a sen-
38 tence that departs from the presumptive sentence prescribed by the
39 sentencing grid for a crime, sentence review shall be limited to
40 whether the sentencing court's findings of fact and reasons justifying
41 a departure:

42 (1) Are supported by the evidence in the record; and

43 (2) constitute substantial and compelling reasons for departure.

HJC
MAR 31 1992
Att # 2
4-22

1 (e) In any appeal, the appellate court may review a claim that:

2 (1) ~~The sentencing court failed to comply with requirements~~
3 ~~of law in imposing or failing to impose a sentence; The sentence~~
4 ~~resulted from partiality, prejudice, oppression or corrupt motive;~~

5 (2) the sentencing court erred in either including or excluding
6 recognition of a prior conviction or juvenile adjudication for criminal
7 history scoring purposes; or

8 (3) the sentencing court erred in ranking the crime severity level
9 of the current crime or in determining the appropriate classification
10 of a prior conviction or juvenile adjudication for criminal history
11 purposes.

12 (f) The appellate court may reverse or affirm the sentence. If the
13 appellate court concludes that the trial court's factual findings are
14 not supported by evidence in the record or do not establish sub-
15 stantial and compelling reasons for a departure, it shall remand the
16 case to the trial court for resentencing.

17 (g) The appellate court shall issue a written opinion whenever
18 the judgment of the sentencing court is reversed. The court may
19 issue a written opinion in any other case when it is believed that a
20 written opinion will provide guidance to sentencing judges and others
21 in implementing the sentencing guidelines adopted by the Kansas
22 sentencing commission. The appellate courts may provide by rule
23 for summary disposition of cases arising under this section when no
24 substantial question is presented by the appeal.

25 (h) A review under summary disposition shall be made solely
26 upon the record that was before the sentencing court. Written briefs
27 shall not be required, and the review and decision shall be made in
28 an expedited manner according to rules adopted by the supreme
29 court.

unless ordered by the
appellate court

30 New Sec. 22. (a) For purposes of determining release of an in-
31 mate for a crime committed on or after July 1, ~~1992~~ 1993, the
32 following shall apply with regard to good time calculations:

(i) The sentencing court shall
retain authority
irrespective of any notice
of appeal for 90 days after
entry of judgment of
conviction to modify its
judgment and sentence to
correct any arithmetic or
clerical errors.

33 (1) A system shall be developed whereby good behavior by in-
34 mates is the expected norm and negative behavior will be punished;
35 and

36 (2) the amount of time which can be *earned by an inmate and*
37 *subtracted from any sentence is limited to an amount equal to 20%*
38 *of the presumptive sentence.*

39 (b) Any time which is *earned and* subtracted from any pre-
40 sumptive sentence of any inmate pursuant to good time calculation
41 shall be added to such inmate's time of postrelease supervision.

42 (c) The secretary of corrections is hereby authorized to adopt
43 rules and regulations to carry out the provisions of this act regarding

HJC
MAR 31 1992
att # 2
5-22

1 determining the amount and method of payment of such sum, the
2 court shall take account of the financial resources of the defendant
3 and the nature of the burden that payment of such sum will impose.
4 A defendant who has been required to pay such sum and who is
5 not willfully in default in the payment thereof may at any time
6 petition the court which sentenced the defendant to waive payment
7 of such sum or of any unpaid portion thereof. If it appears to the
8 satisfaction of the court that payment of the amount due will impose
9 manifest hardship on the defendant or the defendant's immediate
10 family, the court may waive payment of all or part of the amount
11 due or modify the method of payment.

12 Sec. 245 [244]. K.S.A. 21-4611 is hereby amended to read as
13 follows: 21-4611. ~~(1)~~ (a) The period of suspension of sentence, pro-
14 bation or assignment to community corrections fixed by the court
15 shall not exceed five years in felony cases or two years in misde-
16 meanor cases, subject to renewal and extension for additional fixed
17 periods not exceeding five years in felony cases, nor two years in
18 misdemeanor cases. In no event shall the total period of probation,
19 suspension of sentence or assignment to community corrections for
20 a felony exceed the greatest maximum term provided by law for the
21 crime, except that where the defendant is convicted of nonsupport
22 of a child, the period may be continued as long as the responsibility
23 for support continues. Probation, suspension of sentence or assign-
24 ment to community corrections may be terminated by the court at
25 any time and upon such termination or upon termination by expi-
26 ration of the term of probation, suspension of sentence or assignment
27 to community corrections, an order to this effect shall be entered
28 by the court.

29 ~~(2)~~ (b) The district court having jurisdiction of the offender may
30 parole any misdemeanant sentenced to confinement in the county
31 jail. The period of such parole shall be fixed by the court and shall
32 not exceed two years and shall be terminated in the manner provided
33 for termination of suspended sentence and probation.

34 (c) For all crimes committed on or after July 1, 1992 1993, the
35 recommended duration of probation in all felony cases is as follows:

36 (1) For nondrug crimes:

37 (A) Thirty-six months for crimes in crime severity levels 1 through
38 5; and

39 (B) 24 months for crimes in crime severity levels 6 through 10;
40 and

41 (2) for drug crimes:

42 (A) Thirty-six months for crimes in crime severity levels 1 through
43 3; and

HJC
MAR 31 1992
Att # 2
6-22

(B) 24 months for crimes in crime severity level 4.

Sec. 246 [245]. K.S.A. 1991 Supp. 21-4618 is hereby amended

to read as follows: 21-4618. ~~(1)~~ (a) Except as provided in subsection ~~(3)~~ (c), probation, assignment to a community correctional services program or suspension of sentence shall not be granted to any defendant who is convicted of the commission of the crime of rape, the crime of aggravated sodomy or any crime set out in article 34 of chapter 21 of the Kansas Statutes Annotated in which the defendant used any firearm in the commission thereof and such defendant shall be sentenced to not less than the minimum sentence of imprisonment authorized by law for that crime. This section shall not apply to any crime committed by a person under 18 years of age.

~~(2)~~ (b) When a court has sentenced a defendant as provided above, the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to this K.S.A. 21-4618 and amendments thereto based on a finding by the court that a firearm was so used.

~~(3)~~ (c) The provisions of this section shall not apply to any crime committed by a person where such application would result in a manifest injustice.

(d) The provisions of this section shall not apply to any crime committed on or after July 1, 1992 1993.

Sec. 247 [246]. K.S.A. 1991 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1992 1993, a crime in severity levels 6 through 10, may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, a community correctional services program, parole, *postrelease supervision*, conditional release or a suspended sentence.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, *postrelease supervision*, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1992 1993, if an off-grid crime or falls within severity levels 1 through 5, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is

(3) The total period in all cases shall not exceed five years, or the maximum period of the prison sentence that could be imposed whichever is longer. If the defendant is convicted of nonsupport of a child the period may be continued as long as the responsibility for support continues. The court may modify or extend the offender period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, which ever is longer, inclusive of the original supervision term. Non prison sentences may be terminated by the court at any time.

HJC
MAR 31 1992
Att # 2
7-22

1 (d) If the sentence is increased because defendant previously has
2 been convicted of one or more felonies the record shall contain a
3 statement of each of such previous convictions, showing the date,
4 in what court, of what crime and a brief statement of the evidence
5 relied upon by the court in finding such previous convictions. De-
6 fendant shall not be required to furnish such evidence.

7 (e) It shall be the duty of the court personally to examine the
8 journal entry and to sign the same.

9 (f) *For felony convictions for crimes committed after July 1, 1992*
10 *1993, the journal entry shall be recorded using substantially the*
11 *following form:* contain the following information:

- (1) Court Case Number
- (2) Kansas Bureau of Investigation Number
- (3) National Case Tracking Number
- (4) Court O.R.I. Number
- (5) A listing of the original offenses charged by the state
 - (A) The title of the crime
 - (B) The statute violated
 - (C) The crime seriousness ranking
 - (D) The date the offense occurred
- (6) The type of counsel
- (7) Type of trial (if any)
- (8) Pre-trial status of the offender
- (9) The date of the sentencing hearing
- (10) A listing of offenses the defendant is convicted of
- (11) The criminal history classification
- (12) The sentence imposed for each offense including post release or probation supervision durations.
- (13) Whether the sentences run concurrently or consecutively
- (14) Amount of credit for time spent incarcerated
- (15) Period ordered in county jail as a condition of probation
- (16) A listing of offenses in which a departure sentence is imposed
- (17) Type of departure sentence
- (18) Factors cited as a basis for departure sentence

and shall be recorded using substantially the following form:

HJC
MAR 31 1992
Att #2
8-22

STATE OF KANSAS
PLAINTIFF)
)
VS.)
)
DEFENDANT)

CASE NO.: _____
K.B.I. NO.: _____
TRACKING NO.: _____
COURT O.R.I.: _____

JOURNAL ENTRY

ORIGINAL OFFENSE(S): The State originally charged the defendant on _____ with:
(Date)

Most Serious Offense (Primary Offense)

Count No.: _____ Offense: _____

K.S.A.: M F _____ Seriousness Ranking: _____

Date of Offense: _____ Attempt Conspiracy Solicitation

Dismissed by State (WP) (WOP) Plea: Not Guilty Guilty No Contest _____

Dismissed by Court (WP) (WOP) Not Guilty - Insanity Other (Date)

Second Most Serious Offense

Count No.: _____ Offense: _____

K.S.A.: M F _____ Seriousness Ranking: _____

Date of Offense: _____ Attempt Conspiracy Solicitation

Dismissed by State (WP) (WOP) Plea: Not Guilty Guilty No Contest _____

Dismissed by Court (WP) (WOP) Not Guilty - Insanity Other (Date)

Third Most Serious Offense

Count No.: _____ Offense: _____

K.S.A.: M F _____ Seriousness Ranking: _____

Date of Offense: _____ Attempt Conspiracy Solicitation

Dismissed by State (WP) (WOP) Plea: Not Guilty Guilty No Contest _____

Dismissed by Court (WP) (WOP) Not Guilty - Insanity Other (Date)

Supplement attached to report additional original convictions.

Type of counsel prior to sentencing: Private Assigned Self PD Other

Type of Trial: Bench Trial Jury Transcript Other

Pre-Trial Status: Not Released From Custody Released O.R. Released Private Bail Released Professional Bail

Released 3rd Party Court Ordered Released Other

1. SENTENCING

1.1 A sentencing hearing in the above-captioned matter was held before (District)(Magistrate) Judge _____ on _____
(Date)

1.2 Present were:

Defendant:

Defendant's Attorney:

Type of counsel at sentencing: Private Assigned Self PD Other

(Assistant)(District)(County) Attorney:

Other:

HJC
MAR 31 1992
Att # 2
9-22

1.3 The Defendant was asked if there was any legal cause why judgement and sentence should not be pronounced and imposed, and none was shown. Allocution was offered to the defendant and made by the defendant. The court finds no legal cause why judgement and sentence should not be pronounced.

1.4 Other: _____

2. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the Court finds:

2.1 CURRENT OFFENSE(S):

Most Serious Offense (Primary Offense)

Count No.: _____

K.S.A.: M F _____

Date of Offense: _____

(plea) (jury-verdict) (bench trial)

Offense: _____

Seriousness Ranking: _____

Attempt Conspiracy Solicitation

(Date)

Second Most Serious Offense

Count No.: _____

K.S.A.: M F _____

Date of Offense: _____

(plea) (jury-verdict) (bench trial)

Offense: _____

Seriousness Ranking: _____

Attempt Conspiracy Solicitation

(Date)

Third Most Serious Offense

Count No.: _____

K.S.A.: M F _____

Date of Offense: _____

(plea) (jury-verdict) (bench trial)

Offense: _____

Seriousness Ranking: _____

Attempt Conspiracy Solicitation

(Date)

Supplement attached to report additional current convictions.

2.2 Parties agree on the Criminal History Classification as established in the Presentence Investigative Report.

Parties did not agree on the Criminal History Classification as established in the Presentence Investigative Report.

(State)(Defendant) requests an evidentiary hearing for proof of Criminal History.

(State)(Defendant) does not request an evidentiary hearing for proof of Criminal History.

An evidentiary hearing on the issue of Criminal History classification in the above-captioned action was held before District Judge

_____ on _____.

(Date)

The Court, upon hearing statements by witnesses, argument of counsel and receiving evidence finds that the defendant's Criminal History Classification is as follows:

HJC
MAR 31 1992
Att # 2
10-22

2.3 CRIMINAL HISTORY CLASSIFICATION (CIRCLE) (Attach criminal history worksheet if amended):

A B C D E F G H I

2.4 The presumptive guideline sentence for the primary offense is:

Count No.: _____ a prison term of _____ to _____ months
and a post-prison supervision duration of _____ months.

Count No.: _____ a prison sentence of _____ to _____ months
and a probation supervision duration of _____ months.

2.5 Additional current convictions:

PRESUMPTIVE RANGE

BASE RANGE

(Use for Consecutive Sentences)

Second most serious: Count No.: _____ to _____ months

_____ to _____ months

Third most serious: Count No.: _____ to _____ months

_____ to _____ months

Supplement attached to report additional current convictions.

2.6 Other: _____

3. JUDGMENT AND ORDER

3.1 It is, therefore, by the Court ORDERED, ADJUDGED, AND DECREED that:

The defendant be sentenced to the custody of the (Secretary of Corrections)(County Jail) to serve a sentence of:

Most serious offense (Primary): Count No.: _____ M F _____ months

Second Most serious offense: Count No.: _____ M F _____ months
(Concurrent)(Consecutive) to counts.: _____

Third Most Serious offense: Count No.: _____ M F _____ months
(Concurrent)(Consecutive) to counts.: _____

Supplement attached to report additional current convictions.

3.2 Total Term of Incarceration: _____ months

3.3 This prison term runs (Concurrent)(Consecutive) to prior sentence of _____ months in Case No.: _____ in the
District Court of _____ County, Kansas (Other (Federal/State) _____) on _____
(Date)

3.4 Credit of _____ days is granted for time spent incarcerated.

3.5 The defendant serve a post-prison supervision duration of _____ months.

3.6 The defendant is hereby placed on probation under the supervision of (Court Services)(Community Corrections) for a duration of
_____ months.

3.7 The defendant, as a condition of probation is ordered to serve a period of _____ (days)(months) in the _____
county jail.

3.8 The defendant, as a condition of probation is ordered to serve a period of _____ (days)(months) at the State Conservation Camp.

HJC
MAR 31 1992
Att # 2
11-22

3.9 The defendant is ordered to comply with the following conditions of probation:

- 21-4610
- Alcohol evaluation (follow recommendations)
- Drug evaluation (follow recommendations)
- In-patient (Alcohol)(Drug) treatment (Follow recommendations of counselor)
- In-patient Mental Health treatment (Follow recommendations of counselor)
- Out-patient (Alcohol)(Drug) Treatment (Follow recommendations of counselor)
- Out-patient Mental Health treatment (Follow recommendations of counselor)
- Random (Breath)(Blood)(Urinalysis) testing at request of C.S.O. at defendant's own expense.
- Notify the C.S.O. of changes in employment, residence and phone number.
- (Gain)(Maintain) employment
- No contact with (victim)(co-defendant)
- (Written)(Verbal) apology to victim
- Community Service Work (_____ Hours)
- Curfew Restriction _____
- Travel Restriction _____
- (AA)(NA) Attendance
- Not to possess or consume any alcohol or illegal drugs
- Educational program - (G.E.D.)(Vocational)(Higher Education)
- Other _____
- Other _____
- Other _____
- Other _____
- Other _____
- Other _____
- Other _____
- Other _____
- Other _____
- Other _____

Pay the following costs to the Court in (monthly)(weekly)(daily) payments of _____ (or based on a schedule as directed by the supervising officer).

- Court Costs: _____ due by: _____
- Fines: _____ due by: _____
- Probation Fee: _____ due by: _____
- Attorney Fees: _____ due by: _____
- Alcohol Eval. Fee: _____ due by: _____
- Other: _____ due by: _____
- Other: _____ due by: _____
- Other: _____ due by: _____
- Other: _____ due by: _____

Total amount restitution (with credit for amounts paid by co-defendant(s)) to:

<u>NAME</u>	<u>ADDRESS</u>	<u>AMOUNT</u>
_____	_____	\$ _____
_____	_____	\$ _____

HJC
MAR 31 1992
Att #2
12-22

_____ \$ _____

 _____ \$ _____

3.10 The Clerk of the District Court is directed to pay out upon receipt the restitution received to the above named individual(s).

3.11 Other: _____

3.12 Substantial and compelling reasons exist which justify a departure sentence imposed for the:

- Most Serious Offense - Count No.: _____
- Second most Serious Offense - Count No.: _____
- Third Most Serious Offense - Count No.: _____
- Supplement attached to report additional current convictions.

3.13 (State)(Defendant) moves the Court for imposition of a departure sentence.

3.14 The Court imposes a departure sentence.

3.15 Type of departure sentence:

- Dispositional
- Durational
- Dispositional and Durational

3.16 Factors cited as a basis for departure sentence:

MITIGATING FACTORS

- The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.
- The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.
- The offender, because of physical or mental impairment, lacked substantial capacity for judgement when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.
- The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.
- The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.
- Other: _____

AGGRAVATING FACTORS

- The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.
- The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.
- The offense was motivated entirely or in part by the race, color, religion, ethnic, national origin or sexual orientation of the victim.
- The offense involved a fiduciary relationship which existed between the defendant and the victim.

HJC
 MAR 31 1992
 Att # 2
 13-22

The defendant's conduct included activity involving three or more persons or entities or a joining of both, which collaborated in any way in carrying on any activity, activities, purpose or purposes, including, but not limited to, legal as well as illegal activities even though participants did not know each other's identity; membership in the group or enterprise may change from time to time; participants may stand in a wholesaler-retailer or other arm's length relationship in carrying on such criminal activities; or any combination of such factors.

Other: _____

The crime was committed as part of a major organized drug manufacture, production, cultivation or delivery activity. Two or more following nonexclusive factors conceded evidence of major organized drug manufacture, production, cultivation or delivery activity:

AGGRAVATING FACTORS FOR DRUG OFFENSES

- The offender derived a substantial amount of money or asset ownership from the illegal drug-sale activity.
- The presence of substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.
- The presence of drug transaction records or customer lists that indicate a drug-sale activity of major size.
- The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material.
- Building acquisitions or building modifications including but not limited to painting, wiring, plumbing, or lighting which advanced or facilitated the commission of the offense.
- Possession of large amounts of illegal drugs or substantial quantities of controlled substances.
- A showing that the offender has engaged in repeated criminal acts associated with the manufacture, production, cultivation or delivery of controlled substances.
- The offender possessed illegal drugs with intent to sell, which were sold or were offered for sale to a person under 18 years of age.
- The offender utilized employees or agents under 18 years of age in acts associated with the manufacture, production, cultivation or delivery of controlled substances.
- Other: _____

3.17 The court hereby orders that the Sheriff or his designee transport the defendant to the custody of the Secretary of Corrections.

3.18 Other: _____

IT IS SO ORDERED.

District Judge

APPROVED:

(Assistant)(District)(County) Attorney

Attorney for Defendant

HJC
MAR 31 1992
Att # 2
14-22

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

STATE OF KANSAS

PLAINTIFF)

VS.

DEFENDANT)

CASE NO.: _____

K.B.I. NO.: _____

TRACKING NO.: _____

COURT O.R.I.: _____

JOURNAL ENTRY OF PROBATION REVOCATION

1. HEARING

1.1 A probation revocation hearing in the above-captioned action was held before District Judge _____ on _____ (Date)

1.2 Present were:
 Defendant:
 Defendant's Attorney: Appointed Retained
 (Assistant)(District)(County) Attorney:
 Other:

2. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel and case record to date, the court finds:

2.1 That on the _____ day of _____, 19____, the defendant was sentenced to the custody of the Secretary of Corrections as follows:

- Most serious offense (Primary): Count No.: _____ M F _____ months.
- Second most serious offense: Count No.: _____ M F _____ months
(concurrent)(consecutive) to counts _____.
- Third most serious offense: Count No.: _____ M F _____ months
(concurrent)(consecutive) to counts _____.
- Supplement attached to report additional current convictions.

2.2 Total term of imprisonment: _____ months.

2.3 That the defendant was placed on probation under the supervision of (Court Services)(Community Corrections) for a duration of _____ months.

2.4 That the defendant was ordered to comply with conditions of probation as set forth by the court.

2.5 That on the _____ day of _____, 19____, a Motion to Revoke the defendant's probation was filed.

2.6 That there is sufficient evidence and grounds for the Court to consider revoking the defendant's probation in that the defendant violated (his)(her) probation as follows:

That the defendant stipulates to violating conditions of probation as follows:

Explain: _____

2.7 That there is not sufficient evidence and grounds for the Court to consider revoking the defendant's probation.

HJC
MAR 31 1992
Att # 2
15-22

2.8 That the defendant should remain on probation under the order to comply with the same general and special conditions.

That the defendant should remain on probation under the following modified conditions:

That the duration of probation be (extended)(reduced) to _____ months.

Other: _____

2.9 That the Court does hereby revoke the defendant's probation and orders that defendant to be committed to the Secretary of Corrections to begin serving the original sentence(s) imposed on the _____ day of _____, 19____.

2.10 For purposes of computing time as provided in K.S.A. 21-4614, the sentence(s) as imposed shall be considered to have begun on the _____ day of _____, 19____, giving the defendant credit for _____ days spent incarcerated.

2.11 It is hereby the order of the court that the Sheriff or his disignee transport the defendant to the custody of the Secretary of Corrections.

2.12 Other: _____

IT IS SO ORDERED.

District Judge

Approved:

(Assistant)(District)(County) Attorney

Attorney for the Defendant

HJC
MAR 31 1992
Att # 2
16-22

1 follows: 22-3602. (a) Except as otherwise provided, an appeal to the
2 appellate court having jurisdiction of the appeal may be taken by
3 the defendant as a matter of right from any judgment against the
4 defendant in the district court and upon appeal any decision of the
5 district court or intermediate order made in the progress of the case
6 may be reviewed. No appeal shall be taken by the defendant from
7 a judgment of conviction before a district judge upon a plea of guilty
8 or *nolo contendere*, except that jurisdictional or other grounds going
9 to the legality of the proceedings may be raised by the defendant
10 as provided in K.S.A. 60-1507 and amendments thereto.

11 (b) Appeals to the supreme court may be taken by the prose-
12 cution from cases before a district judge as a matter of right in the
13 following cases, and no others:

14 (1) From an order dismissing a complaint, information or
15 indictment;

16 (2) from an order arresting judgment;

17 (3) upon a question reserved by the prosecution; or

18 (4) upon an order granting a new trial in any case involving a
19 class A or B felony *or for crimes committed on or after July 1, 1992*
20 *1993, in any case involving an off-grid crime.*

21 (c) Appeals to a district judge may be taken by the prosecution
22 from cases before a district magistrate judge as a matter of right in
23 the cases enumerated in subsection (b) and from orders enumerated
24 in K.S.A. 22-3603 and amendments thereto.

25 (d) Any criminal case on appeal to the court of appeals may be
26 transferred to the supreme court as provided in K.S.A. 20-3016 and
27 20-3017, and amendments thereto, and any party to such case may
28 petition the supreme court for review of any decision of the court
29 of appeals as provided in subsection (b) of K.S.A. 20-3018 and amend-
30 ments thereto, except that any such party may appeal to the supreme
31 court as a matter of right in any case in which a question under the
32 constitution of either the United States or the state of Kansas arises
33 for the first time as a result of the decision of the court of appeals.

34 (e) *For crimes committed on or after July 1, 1992 1993, an appeal*
35 *by the prosecution or the defendant relating to sentences imposed*
36 *pursuant to a presumptive sentencing guidelines system as provided*
37 *in section 1 et seq. and amendments thereto, shall be as provided*
38 *in section 21.*

39 Sec. ~~264~~ [263]. K.S.A. 22-3608 is hereby amended to read as
40 follows: 22-3608. (1) (a) If sentence is imposed, the defendant may
41 appeal from the judgment of the district court not later than 10 days
42 after the expiration of the district court's power to modify the sen-
43 tence. The power to revoke or modify the conditions of probation

HJC
MAR 31 1992
Att # 2
17-22

1 or the conditions of assignment to a community correctional services
2 program shall not be deemed power to modify the sentence.

3 ~~(2)~~ (b) If the imposition of sentence is suspended, the defendant
4 may appeal from the judgment of the district court within 10 days
5 after the order suspending imposition of sentence. *The provisions*
6 *of this subsection shall not apply to crimes committed on or after*
7 *July 1, 1992 1993.*

8 Sec. ~~265~~ [264]. K.S.A. 22-3706 is hereby amended to read as
9 follows: 22-3706. No person acting as agent or representative for an
10 applicant seeking pardon, commutation of sentence, or parole
11 shall contract for or receive a fee contingent upon the granting
12 of such application individual before the board for pardon, com-
13 mutation of sentence, parole or revocation of parole, conditional
14 release or postrelease supervision shall contract for or receive a fee
15 contingent upon a certain decision by the board. Such agent or
16 representative shall submit his a statement on the applicant's behalf
17 to the Kansas adult authority parole board in writing and shall
18 submit therewith an affidavit stating his such agent's representative's
19 name; place of residence; the name of the applicant he represents
20 being represented or has been represented; the fee, if any, paid to
21 him or to be paid to him such agent or representative by any person
22 for such services; that such fee is not or was not contingent upon
23 the granting or denial of such application for pardon, com-
24 mutation of sentence, or parole. If any person representing any
25 applicant for pardon, commutation of sentence, or parole shall fail
26 to file such affidavit the application shall not be considered. Any
27 affidavit filed as provided in this section shall be a public record.
28 *The provisions of this section relating to parole shall not apply*
29 *to crimes committed on or after July 1, 1992 1993, except that*
30 *the provisions shall apply to off-grid crimes committed on or*
31 *after July 1, 1992 1993.*

32 Sec. ~~266~~ [265]. K.S.A. 22-3709 is hereby amended to read as
33 follows: 22-3709. (a) The chairperson and vice-chairperson of the
34 Kansas parole board shall be designated by the governor. The chair-
35 person of the board shall have the authority to organize and ad-
36 minister the activities of the board. The chairperson of the board
37 may designate panels, consisting of three members of the board,
38 which shall have the full authority and power of the board to order
39 the denial, grant or revocation of an inmate's parole or conditional
40 release, or for crimes or revocation of postrelease supervision com-
41 mitted on or after July 1, 1992 1993, grant parole for off-grid crimes
42 or to order the revocation of an inmate's conditional release, upon
43 hearing by one or more members of the panel. The director of the

The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(c) For crimes committed after July 1, 1993, the defendant shall have 10 days after the judgment of the District Court to appeal.

HJC
MAR 31 1992
Att # 2
18-22

38-1636

(f) The court may authorize prosecution as an adult upon completion of the hearing if the court finds that the respondent was (1) 14 or 15 years of age at the time of the alleged commission of the offense, if the offense is a class A or B felony, and that there is substantial evidence that the respondent should be prosecuted as an adult for the offense with which the respondent is charged, or (2) 16 or more years of age at the time of the alleged commission of the offense and that there is substantial evidence that the respondent should be prosecuted as an adult for the offense with which the respondent is charged. In that case, the court shall direct the respondent be prosecuted under the applicable criminal statute and that the proceedings filed under this code be dismissed.

if the offense was committed before July 1, 1993, or a crime severity level 1-3 felony offense if committed on or after July 1, 1993,

HJC
MAR 31 1992
Att # 2
19-22

38-16,112. Same; definition. As used in this act, the term "juvenile felon" means those persons who are 14 or 15 years of age at the time of the offense alleged in the complaint, such offense is a class A or B felony, such person was prosecuted as an adult and such person has been found guilty of such offense.

if committed before July 1, 1993, or a crime severity level 1-3 felony offense if committed on or after July 1, 1993.

HJC
MAR 31 1992
Att #2
20-22

K.	TRACKING #	KANSAS CRIMINAL HISTORY WORKSHEET		CASE #	O.R.
K.B.I. UPDATE NEEDED <input type="checkbox"/> YES <input type="checkbox"/> NO				JUDICIAL DIST.	CO. NAME
NO PRIOR RECORD <input type="checkbox"/>		<input type="checkbox"/> SUPPLEMENT ATTACHED		P.S.I. INVESTIGATOR (LAST, FIRST, MI.)	
OFFENDER NAME (LAST, FIRST, MI.)		DATE OF BIRTH / /	S.S.N.# - -	WORKSHEET DATE / /	SENTENCE DATE / /

WAS OFFENDER UNDER CUSTODY SUPERVISION AT TIME OF CURRENT OFFENSE? NO YES
 IF YES, TYPE OF SUPERVISION: PROBATION PAROLE-SUPERVISED RELEASE CONFINED RELEASED - PENDING SENTENCE ESCAPE OTHER

K.S.A. & OFFENSE TITLE	FED	STATE	MILITARY	MUN./CITY	ST	CO.	DISPOSI. DATE	CASE #	JUVENILE			ADULT						
									FELONY		CLASS A	FELONY		CLASS A	CLASS B			
									PER	NON	PER	NON	PER	PER	NON	PER		
1.																		
2.																		
3.																		
4.																		
5.																		
6.																		
7.																		
8.																		
9.																		
10.																		
11.																		
12.																		
TOTALS																		

*CONVERTED PERSON FEL. ADULT JUV = TOTAL PERSON FELONIES
 + + =

+ = TOTAL NON-PERSON FELONIES

+ = TOTAL PERSON MISDEMEANORS

+ = TOTAL NON-PERSON MISDEMEANORS

*DIVIDE PERSON A & B MISDEMEANORS BY 3

HJC
 MAR 31 1992
 Off #2
 21-22

PRESENTENCE INVESTIGATION REPORT
FACE SHEET

Tracking # _____

_____ JUDICIAL DISTRICT
_____ COUNTY

DEFENSE ATTORNEY:

CASE # _____ O.R.I.# _____

COURT APPOINTED: _____ YES _____ NO

NAME: _____

PROSECUTING ATTORNEY:

A/K/A: _____

D.O.B.: ____/____/____ AGE: _____

SENTENCING JUDGE:

S.S.N.: ____/____/____ K.B.I.# _____

SEX: M F RACE: W B A.I. A

OFFENSES: (List in order starting with most serious offense)

ETHNICITY: HISP. _____ NON HISP. _____

K.S.A.: M F _____

ADDRESS: _____

DESCRIPTION: _____

_____	_____	_____
CRIME SERIOUSNESS	CRIMINAL HISTORY	GRID BLOCK SENTENCING RANGE

CITIZENSHIP: U.S. NON-U.S.

PRESUMPTIVE PRISON _____ POST SUPERVISION DURATION _____

DATE OF GUILTY PLEA OR JUDGEMENT: _____

PRESUMPTIVE PROBATION _____ PROBATION DURATION _____

_____ / _____ / _____

SENTENCING DATE: _____ / _____ / _____

K.S.A.: M F _____

DETAINERS OR OTHER CHARGES PENDING?

DESCRIPTION: _____

_____	_____	_____
CRIME SERIOUSNESS	CRIMINAL HISTORY	GRID BLOCK SENTENCING RANGE

_____ YES _____ NO

SUBJECT IN CUSTODY? _____ YES _____ NO

PRESUMPTIVE PRISON _____ POST SUPERVISION DURATION _____

CREDIT TIME SERVED _____

PRESUMPTIVE PROBATION _____ PROBATION DURATION _____

MORE THAN 3 CHARGES? _____ YES _____ NO

CHARGES REDUCED? _____ YES _____ NO

K.S.A.: M F _____

CODEFENDANTS _____

DESCRIPTION: _____

_____	_____	_____
CRIME SERIOUSNESS	CRIMINAL HISTORY	GRID BLOCK SENTENCING RANGE

PRESENTENCE INVESTIGATOR: _____

PRESUMPTIVE PRISON _____ POST SUPERVISION DURATION _____

_____ / _____ / _____

PRESUMPTIVE PROBATION _____ PROBATION DURATION _____

DATE SIGNED

DATE SUBMITTED

HJC
MAR 31 1992
Att #2
22-22

HOUSE BILL No. 2692

By Special Committee on Children's Initiatives

1-14

8 AN ACT concerning children; relating to disclosure of certain re-
9 cords; amending K.S.A. 38-1508 and K.S.A. 1991 Supp. 38-1506,
10 38-1507, 38-1607 and 38-1608 and repealing the existing sections.
11

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

13 Section 1. K.S.A. 1991 Supp. 38-1506 is hereby amended to read
14 as follows: 38-1506. (a) Official file. The official file of proceedings
15 pursuant to this code shall consist of the petition, process, service
16 of process, orders, writs and journal entries reflecting hearings held
17 and judgments and decrees entered by the court. The official file
18 shall be kept separate from other records of the court. The official
19 file shall be privileged and shall not be disclosed directly or indirectly
20 to anyone except:

21 (1) A judge of the district court and members of the staff of the
22 court designated by a judge of the district court;

23 (2) the guardian ad litem and the parties to the proceedings and
24 their attorneys;

25 (3) a ~~any individual, or any~~ public or private agency or insti-
26 tution, having custody of the child under court order ~~or providing~~
27 ~~social, educational, medical,~~ mental health ~~advocacy or other pro-~~ or
28 ~~essional services to~~ the child; and

29 (4) any other person when authorized by a court order, subject
30 to any conditions imposed by the order.

31 (b) Social file. Reports and information received by the court,
32 other than the official file, shall be privileged and open to inspection
33 only by the guardian ad litem or an attorney for an interested party
34 or upon court order. The reports shall not be further disclosed by
35 the guardian ad litem or attorney without approval of the court or
36 by being presented as admissible evidence.

37 (c) Preservation of records. The Kansas state historical society
38 shall be allowed to take possession for preservation in the state
39 archives of any court records related to proceedings under the Kansas
40 code for care of children whenever such records otherwise would
41 be destroyed. No such records in the custody of the Kansas state
42 historical society shall be disclosed directly or indirectly to anyone
43 for ~~100~~ years after creation of the records, except as provided in

services to the child or a court approved
advocate for

Handwritten notes: 988 # 100-100, 100-100, 100-100

1 subsections (a) and (b). Pursuant to subsections (a)(4) and (b), a judge
 2 of the district court may allow inspection for research purposes of
 3 any court records in the custody of the Kansas state historical society
 4 related to proceedings under the Kansas code for care of children.

5 Sec. 2. K.S.A. 1991 Supp. 38-1507 is hereby amended to read
 6 as follows: 38-1507. (a) All records and reports concerning child abuse
 7 or neglect received by the department of social and rehabilitation
 8 services or a law enforcement agency in accordance with K.S.A. 38-
 9 1522 and amendments thereto are confidential and shall not be dis-
 10 closed except under the following conditions:

11 (1) Upon the order of any court after a determination by the
 12 court issuing the order that the records and reports are necessary
 13 for the conduct of proceedings before it and are otherwise admissible
 14 in evidence, except that access shall be limited to *in camera* in-
 15 spection unless the court determines that public disclosure of the
 16 information contained in the records and reports is necessary for the
 17 resolution of an issue then pending before it.

18 (2) The secretary or the law enforcement agency where the report
 19 is filed shall authorize access to any records or reports concerning
 20 child abuse or neglect to any of the following persons upon order
 21 of any court and may authorize access to such persons without a
 22 court order if the child involved is a subject of the record or report:

23 (A) A person licensed to practice the healing arts who has before
 24 that person a child whom the person reasonably suspects may be
 25 abused or neglected;

26 (B) a court-appointed special advocate for a child, which advocate
 27 reports to the court, or an agency having the legal responsibility or
 28 authorization to care for, treat or supervise a child;

29 (C) a parent or other person responsible for the welfare of a
 30 child, or such person's legal representative, with protection for the
 31 identity of reporters and other appropriate persons;

32 (D) the guardian *ad litem* for such child;

33 (E) a police or other law enforcement agency;

34 (F) an agency charged with the responsibility of preventing or
 35 treating physical, mental or emotional abuse or neglect or sexual
 36 abuse of children, if the agency requesting the information has stan-
 37 dards of confidentiality as strict or stricter than the requirements of
 38 this code;

39 (G) a person who is a member of a multidisciplinary team; or

40 (H) an agency authorized by a properly constituted authority to
 41 diagnose, care for, treat or supervise a child who is the subject of
 42 a report or record of child abuse or neglect; or

43 (I) any individual, or any public or private agency or institution,

2076
 2

1 *having custody of the child under court order or providing social,*
 2 *educational, medical, mental health, advocacy or other professional*
 3 *services to the child, with protection for the identity of reporters*
 4 *and other appropriate persons.*

or
 [services to the child or a court approved
 advocate for

5 (b) No individual, association, partnership, corporation or other
 6 entity shall willfully or knowingly permit or encourage the unau-
 7 thorized dissemination of the contents of records or reports con-
 8 cerning child abuse or neglect received by the department of social
 9 and rehabilitation services or a law enforcement agency in accordance
 10 with K.S.A. 38-1522 and amendments thereto except as provided
 11 by this code. Violation of this subsection is a class B misdemeanor.

12 (c) Records or reports given to persons described in paragraph
 13 ~~(a)(2)(A)~~ subsection (a)(2)(C) shall not be further disclosed to persons
 14 who are not members of the multidisciplinary team without prior
 15 approval of the court.

16 Sec. 3. K.S.A. 38-1508 is hereby amended to read as follows:
 17 38-1508. All records and reports concerning child abuse or neglect
 18 received by law enforcement agencies shall be kept separate from
 19 all other records and shall not be disclosed to anyone except:

20 (a) The judge and members of the court staff designated by the
 21 judge of the court having the child before it in any proceedings;

22 (b) the guardian *ad litem* and the parties to the proceedings and
 23 their attorneys, subject to the restrictions imposed by subsection
 24 (a)(2)(C) of K.S.A. 38-1507 and amendments thereto;

25 (c) the department of social and rehabilitation services;

26 (d) ~~the officers of public institutions or agencies to whom~~
 27 ~~eustody of the child has been granted any individual, or any~~
 28 ~~officer of a public or private agency or institution, having custody~~
 29 ~~of the child under court order or providing social, educational,~~
 30 ~~medical, mental health, advocacy or other professional services to~~
 31 ~~the child, with protection for the identity of reporters and other~~
 32 ~~appropriate persons; and~~

or
 services to the child or a court approved
 advocate for

33 (e) law enforcement officers or county or district attorneys or
 34 their staff when necessary for the discharge of their official duties
 35 in investigating or prosecuting a report of known or suspected child
 36 abuse or neglect.

37 Sec. 4. K.S.A. 1991 Supp. 38-1607 is hereby amended to read
 38 as follows: 38-1607. (a) *Official file*. The official file of proceedings
 39 pursuant to this code shall consist of the complaint, process, service
 40 of process, orders, writs and journal entries reflecting hearings held
 41 and judgments and decrees entered by the court. The official file
 42 shall be kept separate from other records of the court. The official
 43 file shall be open for public inspection as to any juvenile 16 or more

3
 3
 1

1 years of age at the time any act is alleged to have been committed.
2 The official file shall be privileged as to any juvenile less than 16
3 years of age at the time any act is alleged to have been committed
4 and shall not be disclosed directly or indirectly to anyone except:

5 (1) A judge of the district court and members of the staff of the
6 court designated by the judge;

7 (2) parties to the proceedings and their attorneys;

8 (3) ~~a any individual, or any public or private agency or insti-~~
9 ~~tution, having custody of the juvenile under court order or providing~~
10 ~~social, educational, medical, mental health, advocacy or other pro-~~
11 ~~fessional services to the child~~ _____ or

12 (4) law enforcement officers or county or district attorneys or _____ + services to the child or a court approved
13 their staff when necessary for the discharge of their official duties; advocate for
14 and

15 (5) any other person when authorized by a court order, subject
16 to any conditions imposed by the order.

17 (b) *Social file.* Reports and information received by the court
18 other than the official file shall be privileged and open to inspection
19 only by attorneys for the parties or upon order of a judge of the
20 district court or an appellate court. The reports shall not be further
21 disclosed by the attorney without approval of the court or by being
22 presented as admissible evidence.

23 (c) *Preservation of records.* The Kansas state historical society
24 shall be allowed to take possession for preservation in the state
25 archives of any court records related to proceedings under the Kansas
26 juvenile offenders code whenever such records otherwise would be
27 destroyed. The Kansas state historical society shall make available
28 for public inspection any unexpunged docket entry or official file in
29 its custody concerning any juvenile 16 or more years of age at the
30 time an offense is alleged to have been committed by the juvenile.
31 No other such records in the custody of the Kansas state historical
32 society shall be disclosed directly or indirectly to anyone for 100
33 years after creation of the records, except as provided in subsections
34 (a) and (b). Pursuant to subsections (a)(5) and (b), a judge of the
35 district court may allow inspection for research purposes of any court
36 records in the custody of the Kansas state historical society related
37 to proceedings under the Kansas juvenile offenders code.

38 (d) Relevant information, reports and records shall be made avail-
39 able to the department of corrections upon request and a showing
40 that the former juvenile has been convicted of a crime and placed
41 in the custody of the secretary of the department of corrections.

42 Sec. 5. K.S.A. 1991 Supp. 38-1608 is hereby amended to read
43 as follows: 38-1608. (a) All records of law enforcement officers and

44
3

1 agencies and municipal courts concerning a public offense committed
2 or alleged to have been committed by a juvenile under 16 years of
3 age shall be kept readily distinguishable from criminal and other
4 records and shall not be disclosed to anyone except:

5 (1) The judge and members of the court staff designated by the
6 judge of a court having the juvenile before it in any proceedings;

7 (2) parties to the proceedings and their attorneys;

8 (3) the department of social and rehabilitation services ~~or the~~
9 ~~officers of public institutions or agencies to whom the juvenile~~
10 ~~is committed;~~

11 (4) ~~any individual, or any officer of a public or private agency~~
12 ~~or institution, having custody of the juvenile under court order or~~
13 ~~providing social, educational, medical,~~ mental health ~~advocacy or~~ or
14 ~~other professional services to~~ the juvenile;

15 (4) (5) law enforcement officers or county or district attorneys services to the juvenile or a court approved
16 or their staff when necessary for the discharge of their official duties; advocate for

17 (5) (6) the central repository, as defined by K.S.A. 22-4701 and
18 amendments thereto, for use only as a part of the juvenile offender
19 information system established under K.S.A. 38-1618 and amend-
20 ments thereto; and

21 (6) (7) any other person when authorized by a court order, sub-
22 ject to any conditions imposed by the order.

23 (b) The provisions of this section shall not apply to records
24 concerning:

25 (1) A violation, by a person 14 or more years of age, of any
26 provision of chapter 8 of the Kansas Statutes Annotated or of any
27 city ordinance or county resolution which relates to the regulation
28 of traffic on the roads, highways or streets or the operation of self-
29 propelled or nonself-propelled vehicles of any kind;

30 (2) a violation, by a person 16 or more years of age, of any
31 provision of chapter 32 of the Kansas Statutes Annotated; or

32 (3) an offense for which the juvenile is prosecuted as an adult.

33 (c) All records of law enforcement officers and agencies and mu-
34 nicipal courts concerning a public offense committed or alleged to
35 have been committed by a juvenile 16 or 17 years of age shall be
36 subject to the same disclosure restrictions as the records of adults.

37 (d) Relevant information, reports and records shall be made avail-
38 able to the department of corrections upon request and a showing
39 that the former juvenile has been convicted of a crime and placed
40 in the custody of the secretary of the department of corrections.

41 Sec. 6. K.S.A. 38-1508 and K.S.A. 1991 Supp. 38-1506, 38-1507,
42 38-1607 and 38-1608 are hereby repealed.
43

38
4
6

1 Sec. 7. This act shall take effect and be in force from and after
2 its publication in the statute book.

6
4
6