

Approved 5-2-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

12:30 ~~am~~ p.m. on April 30, 1992 in room 313-S of the Capitol.

All members were present except:

Representatives Allen, Snowbarger and Vancrum who were excused.

Committee staff present:

Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

The chairman called the meeting to order.

State Representative Campbell introduced the Senior class from Teska High School who were in attendance at the committee meeting.

The chairman received direction from the committee to request interim and Judicial Council studies as deemed appropriate by the chairman in consent with Representatives O'Neal, Garner and Everhart.

It was requested that the following which was similarly included in the 1991 interim Judiciary Committee minutes and in the Senate Committee on Judiciary minutes of January 24, 1992 relating to the question of judicial discretion and SB 479 be included on record in the House Committee of Judiciary minutes.

"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, the Committee recognized that the guidelines are designed to structure 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."

SCR 1634 was considered for action.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 12:30 ~~am~~/p.m. on April 30, 1992.

Rep. O'Neal moved to amend SCR 1634 on page 1, line 27 by adding, "or as otherwise provided by law" after the word "court". Rep. Hochhauser seconded the motion. Motion carried.

Rep. O'Neal moved to further amend SCR 1634 on page 2 by deleting lines 16 thru 18 and inserting in lieu thereof, "A vote against this amendment would continue the current practice where victims of crime are provided certain statutory rights but are not guaranteed these rights in the constitution". Rep. Everhart seconded the motion. Motion carried.

Rep. Pauls submitted a proposed amendment to SCR 1634 to the committee. (Attachment #1)

Rep. Pauls moved to further amend SCR 1634 per her proposal. Rep. Macy seconded the motion. Motion carried.

Rep. Gomez moved to amend SCR 1634 on page 1, line 28, after the word "constitutional", adding "or statutory or as defined by law". Rep. Everhart seconded the motion. Motion carried.

Rep. Heinemann moved to amend SCR 1634 on page 1, line 36 by deleting the word "insure" and inserting in lieu thereof, "ensure". Rep. Gomez seconded the motion. Motion carried.

Rep. Rock moved to table SCR 1634. Rep. Hochhauser seconded the motion. Motion failed.

Rep. O'Neal moved to report SCR 1634 as amended favorably for passage. Rep. Everhart seconded the motion. Motion carried.

The meeting adjourned at 1:10 P.M.

Senate Concurrent Resolution No. 1634

By Committee on Judiciary

2-6

9 A PROPOSITION to amend article 15 of the constitution of the state
10 of Kansas by adding a new section thereto, prescribing certain
11 rights for victims of crime.

12
13 *Be it resolved by the Legislature of the State of Kansas, two-thirds*
14 *of the members elected (or appointed) and qualified to the Senate*
15 *and two-thirds of the members elected (or appointed) and qualified*
16 *to the House of Representatives concurring therein:*

17 Section 1. The following proposition to amend the constitution
18 of the state of Kansas shall be submitted to the qualified electors of
19 the state for their approval or rejection: Article 15 of the constitution
20 of the state of Kansas is amended by adding a new section thereto
21 to read as follows:

22 "§ 15. Victims' rights. (a) Victims of crime *as defined by law*
23 shall be entitled to certain basic rights, including the right to be
24 informed of, *and to be present at, and to be heard at all critical*
25 *stages public hearings, as defined by law,* of the criminal justice
26 process, *and to be heard at sentencing or at any other time deemed*
27 *appropriate by the court,* to the extent that these rights do not
28 interfere with the constitutional rights of the accused.

29 "(b) Nothing in this section shall be construed as creating a
30 cause of action for money damages against the state, a county, a
31 municipality, or any of the agencies, instrumentalities, or em-
32 ployees thereof provided that the legislature may, by statutory
33 enactment, reverse, modify or supersede any judicial deci-
34 sion or rule arising from any cause of action brought pursuant
35 to this section. *The legislature may provide for other remedies*
36 *to insure adequate enforcement of this section.*

37 "(c) Nothing in this section shall be construed to authorize a
38 court to set aside or to void a finding of ~~guilt, or innocence~~ for
39 an acceptance of a plea of guilty *or to set aside any sentence*
40 *imposed in any criminal case."*

41 Sec. 2. The following statement shall be printed on the ballot
42 with the amendment as a whole:

43 "Explanatory statement: This amendment would prescribe that

guilty or not guilty

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Attach #2
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1 victims of crime would be guaranteed certain basic rights during
 2 the criminal justice process as long as they do not interfere with
 3 the constitutional rights of the accused. Such rights include the
 4 right to be informed; *and* be present *at public hearings* and be
 5 heard at all stages of the eriminal justice p̄oceeds *sentencing*
 6 *or at any other time deemed appropriate by the court.* This
 7 amendment does not provide or create a cause of action for money
 8 damages against the state, a county, a municipality or any agency,
 9 instrumentality or employee thereof nor does this amendment
 10 authorize a court to set aside or void a finding of ~~guilt or innocence~~
 11 or an acceptance of a plea of guilty *or set aside any sentence*
 12 *imposed* in any criminal case.

——— guilty or not guilty

13 "A vote for this amendment would guarantee certain basic rights
 14 for victims of crime as long as such rights do not interfere with
 15 the rights of the accused.

16 "A vote against this amendment would continue the present
 17 situation where victims of crime are not provided certain specific
 18 guaranteed constitutional rights."

19 Sec. 3. This resolution, if approved by two-thirds of the members
 20 elected (or appointed) and qualified to the senate and two-thirds of
 21 the members elected (or appointed) and qualified to the house of
 22 representatives, shall be entered on the journals, together with the
 23 yeas and nays. The secretary of state shall cause this resolution to
 24 be published as provided by law and shall cause the proposed amend-
 25 ment to be submitted to the electors of the state at the general
 26 election in the year 1992 unless a special election is called at a
 27 sooner date by concurrent resolution of the legislature, in which
 28 case it shall be submitted to the electors of the state at the special
 29 election.

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