

Approved: January 23, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at
3:00 p.m. on January 15, 1992 in room 313-S of the Capitol.

All members were present except:
Senators Yost, Feleciano, Gaines, Martin and Parrish, who were excused.

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

Conferees appearing before the committee:
Gary Stotts, Kansas Department of Corrections
Bill Rich, Washburn University School of Law

The Committee met jointly with the House Judiciary Committee to continue hearings on SB 479.
SB 479 - Enacting the Kansas sentencing guidelines act.

Gordon Self, Office of the Revisor of Statutes, reviewed in detail SB 479 as proposed by the 1991 Interim Special Committee on Judiciary. (ATTACHMENT 1)

Gary Stotts, Secretary of the Kansas Department of Corrections, reviewed his support of SB 479 as presented to the 1991 Interim Special Committee on Judiciary.

Professor Bill Rich, Washburn University School of Law, testified in support of SB 479 and renewed his comments as given to the 1991 Interim Special Committee on Judiciary.

The meeting was adjourned at 5:33 p.m

To: Senate and House Judiciary Committees
From: Gordon Self, Assistant Revisor of Statutes
Date: January 14, 1991
Re: Senate Bill No. 479

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

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. 4-6): 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.

Section 5 (pp. 6-8): The sentencing grid for drug offenses and limited explanatory language. The explanatory language on

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page 8 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. 8): Prescribes that if it cannot be determined if the crime was committed on or after July 1 1992, it shall be presumed that it was committed prior to such date; the court must pronounce sentence in all felony cases; the prison sentence for crimes on or after July 1, 1992, 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. 8 and 9): 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, omission of crimes from severity scale and anticipatory offenses.

Section 8 (pp. 9 and 10): 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. 10 through 12): Prescribes the criminal history categories and provides a descriptive criminal history for each such category.

Section 10 (pp. 12, 13): Relates to criminal history

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categories in both the non-drug and the drug grid. Specifies the types of prior convictions upon which the criminal history 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. 13, 14): 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 (p. 14): Specialized factors to be considered in determining criminal history scores based on drug crime convictions.

Section 13 (pp. 14, 15): Options available to the prosecutor in plea bargaining arrangements.

Section 14 (pp. 15 through 23): 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. 23): 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. 23, 24): Requires that the sentencing 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. 24, 25): 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 (p. 25): 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. 25, 26): Provides criteria upon which the judge may depart from the sentencing guidelines whether a durational or dispositional departure.

Section 20 (pp. 27, 28): Provides sentencing rules relating to concurrent sentences including determination of the base sentence and specialized departure criteria.

Section 21 (pp. 28, 29): 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 (p. 29): 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 to crimes committed on or after July 1, 1992 unless applicability of retroactivity provisions.

Section 24 (pp. 29, 30): Retroactivity provisions of act state that persons who committed crimes prior to July 1, 1992, shall have sentences modified according to the provisions of the sentencing guidelines act. Prescribes the administrative procedure, modification hearing procedures and requirements and standards under which release under the sentence currently being served may be granted.

Section 25 (pp. 30, 31): Requires Kansas sentencing commission to meet to propose modifications and improvements to the sentencing guidelines to be presented to the legislature. The modifications shall be effective unless the legislature acts to modify or reject such proposed modifications.

Section 26 (p. 31): Severability clause.

Sections 27, 28, 31, 37 through 50, 55 through 112, 115 through 153, 155 through 230: 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, 1992, based on the commission's rankings of virtually every felony in the criminal code.

Section 30 (pp. 33, 34): Provides that municipal courts must transmit information concerning dispositions of all class A and B misdemeanors to the KBI central repository.

Section 32 (pp. 34, 35): Requires fingerprints for persons

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wanted for the commission of a class A or B misdemeanor.

Section 33 (p. 35): 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 34 through 36 (pp. 36, 37): Inapplicability of current attempt, conspiracy and solicitation statutes to offenses committed on or after July 1, 1992.

Sections 231 through 233, 235 through 237, 239 through 245, 246 through 248, 250 through 283, 285 through 291: Provide necessary limitation of application of existing law and necessary revisions to existing statutes relating to implementation of the guidelines.

Section 234 (pp. 125, 126): Prescribes fines which may be imposed as part of sentencing for crimes committed on or after July 1, 1992.

Section 238 (pp. 132 through 134): Prescribes dispositional alternatives available to the court for persons convicted of crimes on or after July 1, 1992.

Section 245 (pp. 138 through 141): 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, 1992.

Section 249 (pp. 147, 148): 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, 1992.

Section 260 (pp. 158 through 177): Provides forms expressing

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the proper recording necessary for all journal entries of felony convictions for crimes committed on or after July 1, 1992.

Section 270 (pp. 181 through 186): 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, 1992, 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, 1992, while on probation for a crime committed prior to July 1, 1992, 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 284 (pp. 207 through 209): 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.