

Approved: 3-14-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 7, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Feleciano (excused)
Senator Vancrum (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Elwain Pomroy, Chairman of Judicial Council Criminal Law Advisor Committee
Charles Simmons, Acting Secretary, Kansas Department of Corrections
Jim Clark, County and District Attorneys Association

Others attending: See attached list

SB 139--Concerning crimes, punishment and criminal procedure; relating to effects of felony conviction on civil rights of convicted felons

Elwain Pomroy addressed the Committee as a proponent of **SB 139**, relaying the recommendations of the Judicial Council Criminal Law Advisor Committee. Mr. Pomroy stated that this bill addresses the civil rights of convicted felons compatible with the second sentence of article 5, section 2 of the Kansas Constitution. The purpose of this bill is to remove apparent inconsistencies among such statutes, and to avoid misleading discharged felons as to their rights to use and possess firearms. Mr. Pomroy discussed a number of objectives for this bill. The primary objective was to amend current statutes to be consistent with the Kansas Constitution. This bill amends several current statutes: to address felons who are not imprisoned; to remove the requirement of imprisonment before there is a loss of the enumerated rights; to direct the Parole Board to provide an inmate with a certificate of discharge; to extend the prohibition on jury duty until the felon is finally discharged; and finally to direct sealing and retention of records. (Attachment 1)

In answer to questions from Committee member, Mr. Pomroy explained what the rights of felons are and are not. Mr. Pomroy stated that there has been confusion regarding the rights of felons. This bill is really an attempt to pull together diverse statutes so that both the criminal, and the DOC know the criminal's rights and limitation of rights. This bill will keep the statutes consistent--no new rights, no rights taken away by this bill. This bill provides that as long as you are under DOC supervision, or if you're in jail under DOC supervision these rights are going to be lost, but upon discharge you will get these rights back except for the firearms--it doesn't matter whether you are under DOC or parole. According to input from the prison community and prosecutors, these rights need to be clarified.

Members of the Committee requested information from Jim Clark. Mr. Clark complimented the Judicial Council and referred to questions on Section 6, page 10, lines 36 replacing the 10 years with "the discharge." Mr. Clark stated he would like to see ten years from final discharge apply to jury services. Therefore, those convicted can not have jury service for ten years. In answer to a question concerning possession of a firearm, Mr. Clark stated that the time limitation depends on the offense.

Senator Parkinson made a motion to move the bill favorably for passage without amendment. Second by Senator Reynolds. Motion carried

SB 142--Concerning criminal restitution enforced pursuant to the code of civil procedure

Charles Simmons, Acting Secretary, Kansas Department of Corrections addressed the Committee as a proponent of **SB 142**. Mr. Simmons stated that this bill essentially makes restitution ordered by a court for the damages or loss resulting from a crime enforceable as a civil judgment. Currently restitution is frequently made a condition of parole, and in reality becomes a voluntary action. This bill provides additional legal remedies to crime victims to satisfy restitution judgments. Mr. Simmons explained that the availability of civil judgment as a tool is important in light of Sentencing Guidelines Act provisions which limit prorelease supervision periods for crimes committed after July 1, 1993 to either 12 or 24 months.. If restitution is not paid in that time period, the State has no way to enforce the restitution order under current law. This bill would provide crime victims a longer period of time in which to obtain full satisfaction of the restitution order. Mr. Simmons stated that there is a need to amend into this bill a provision K.S.A. 22-3717, subsection (o) which deals with conditions of parole with regard to supervision, the current provision deals only with release, and that was not probably the intent. With that change we support this bill and believe it will help

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 SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 7, 1995.

crime victims receive restitution.(Attachment 2)

Questions from Committee members were answered by Mr. Simmons regarding the process of collecting restitution, work programs and the filing of writs.

Nancy Lingberg, of the Attorney General's Office, stated that the Attorney General Office has provided written testimony in support of **SB 142, and SB 130.**(Attachment 3)

Jim Clark, County and District Attorneys Association testified in support of **SB 142.** Mr. Clark stated that with presumptive probation for property crimes in particular, (citing findings of the Koch Commission showing the probability of serving time for property crimes as low), the need to introduce stronger enforcement measures is necessary. This bill would provide a remedy to the victim for damages caused by the offense without the requirement of filing a separate civil action.(Attachment 4) Mr. Clark addressed the issue of insurance companies subrogating, and stated that in those incidents, the court could be asked not to impose restitution because a civil action is pending. Civil language covering subrogation coverage could be added to this bill. Mr. Clark believes cases involving insurance companies are fractional, and the scope of this bill is much broader.

Questions from Committee members followed, regarding the wording in the bill regarding "the judge shall" could be changed to "the judge may," Section 1, (d),1, line 39, and Section 2, K.S.A. 1994 Supp. 22-3718, line 28.

Mr. Clark answered, stating that he felt very comfortable with changing "shall" to "may" when dealing with terms of restitution. Issues of res judicata were addressed.

Questions regarding determinations when dealing with criminal and civil codes and collateral sources were answered by Mr. Clark.

David Hanson, representing, Kansas Association of Property and Casualty Insurance Companies, related concerns with **SB 142.** While the association represented by Mr. Hanson commends the concept of this bill, there is concern about the technical effects of this bill. In particular there is agreement in providing prosecutors more strength to require restitution, but the problem seen by insurance companies is that treating this as a civil judgment may close some doors that you don't intend to close. The res judicata effect is one of those collateral estoppel. The concern Mr. Hanson expressed was that if there is a civil judgment in a criminal case, it would preclude subsequent actions to recover property losses paid by insurance companies. Under current law insurance companies can subrogate in a separate civil proceeding to recover losses. However, under this bill with a criminal action and a civil action going on, it is not really clear who would be controlling that litigation. Mr. Hanson posed several questions. -- Is there going to be discovery in the criminal case so that the victims damages will be fully investigated, fully paid? How will the insurance company receive notice if they have a vested interest? If the judgment is entered who is going to enforce it? Mr Hanson identified the problem of two sources trying to collect on one or more judgments. The final concern is settlement for release, would the insurance company be prejudice for subrogation? These are the effects, technical as they may be, that we are concerned about. Mr. Hanson requested a study of potential effects before tying a civil judgment to a criminal judgment. Mr. Hanson suggested extending the time allowed for restitution without making it a civil judgment, or consideration might be given to the language as it is, but add a specific provision saying that this shall have no effect res judicata or collateral estoppel, nor shall this preclude the victims from seeking additional damages, because sometimes particularly in criminal cases where sentencing occurs promptly, there may be damages that don't appear until later.

Jim Clark answering Mr. Hanson's questions, the right of subrogation will come in with the victim's rights.

Bill Introduction:

Senator Parkinson requested a bill, approved by the County and District Attorneys Association, that would require the defense attorney to request the lesser crime instruction, or waive that as an appealable point. Motion by Senator Parkinson, second by Senator Oleen. Motion carried.

Senator Parkinson requested a bill that would allow a \$10 handling fee for bad checks. Motion withdrawn

Motion to approve minutes by Senator Oleen, second by Senator Reynolds. Motion carried.

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 8, 1995.

Judicial Council Testimony
on
1995 SB 139
Senate Judiciary Committee
February 7, 1995

SB 139 contains the recommendations of the Criminal Law Advisory Committee of the Judicial Council. SB 139 is intended to make the statutes addressing the civil rights of convicted felons clearly compatible with the second sentence of article 5, section 2 of the Kansas Constitution, to remove apparent inconsistencies among such statutes and to avoid misleading discharged felons as to their rights to use and possess firearms.

The second sentence of section 2, article 5 of the Kansas Constitution states:

"No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote."

Upon review of the constitutional provision and the relevant statutes, the Criminal Law Advisory Committee recommends that, upon conviction, a felon should lose the right to hold public office, the right to vote and the right to serve as a juror and that such rights should automatically be restored upon discharge from supervision or from custody by reason of the expiration of the term of imprisonment to which the felon was sentenced. Upon discharge, convicted felons should be informed that they are not relieved from complying with any state or federal law relating to use or possession of firearms by persons convicted of a felony.

Subsection (b) of K.S.A. 21-4603d (section 1 of SB 139, page 3) currently states that, "Dispositions which do not involve commitment to the custody of the secretary of corrections shall not entail the loss by the defendant of any civil rights." This is arguably inconsistent with the constitutional provision which requires a restoration of rights before a convicted felon is qualified to vote. It also appears to be inconsistent with K.S.A. 43-158 which states that persons with a felony conviction in the preceding 10 years shall be excused from jury service. K.S.A. 43-158 makes no distinction between felons who have been committed to the custody of the Secretary and those who have not. In addition, to the extent that the right to possess firearms is a civil right, K.S.A. 21-4204 contains prohibitions on possession of firearms by convicted felons even if not imprisoned. SB 139 amends 21-4603d so that subsection (b) will no longer apply for felony convictions occurring on or after July 1, 1995.

Section 2 of the bill amends K.S.A. 21-4611 on page 4, lines 8 through 15, to address felons who are not imprisoned.

Section 3 amends K.S.A. 21-4615 and removes the requirement of imprisonment before there is a loss of the enumerated rights. The constitutional provision that a convicted felon is not qualified to vote does not refer to imprisonment. To serve as a juror, a person must possess the qualifications of an elector (K.S.A. 43-156). A person would also have to be a qualified elector to hold a number of public offices.

Section 5 amends K.S.A. 22-3722 (page 10, lines 21 through 26). K.S.A. 22-3722 directs the Parole Board to provide an inmate with a certificate of discharge. The current certificate of discharge states, ". . . that all civil rights lost by operation of law upon commitment are hereby restored. These rights include, but are not limited to, the right to vote, the right to hold public office, and the right to serve on a jury. . . ." It would seem more appropriate for the certificate to refer to the specific rights lost under 21-4615, and the section is amended to reach this result. The section is also amended so that the certificate will inform the inmate that the inmate is not relieved from complying with any state or federal law relating to use or possession of firearms by persons convicted of a felony. First, this informs discharged inmates that they are still subject to prohibitions concerning firearms. Second, federal law looks to state law to determine whether a person is a convicted felon and thus subject to the prohibitions in the federal firearms law. 18 U.S.C. § 921(a)(20) states, "Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." In other words, if a felon is still subject to firearms prohibitions under state law, the felon is considered a convicted felon for purposes of federal firearms prohibitions. Decisions in the Tenth Circuit and Kansas federal district court have held that the state firearms restriction does not have to be expressed in the actual certificate of discharge to be effective. However, other federal courts have viewed the subject differently.

Section 6 amends K.S.A. 43-158 concerning jury service. Currently, the section measures the prohibition on jury service from the date of conviction with no reference to imprisonment or discharge. As amended, the section will be consistent with the other statutes and the prohibition will extend until the felon is finally discharged.

The bill also contains a minor amendment to the expungement statute, K.S.A. 21-4619 (section 4, page 9, lines 1 and 2). In reviewing this area, the committee considered the relationship of the expungement statute. Apparently, certain agencies are destroying expunged records and they are not subsequently available for appropriate purposes. The amendment directs sealing and retention of such records.

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Bill Graves
Governor

Charles E. Simmons
Acting Secretary

MEMORANDUM

To: Senate Judiciary Committee

From: Charles E. Simmons
Acting Secretary of Corrections *CES*

Subject: Senate Bill 142

Date: February 7, 1995

The Department of Corrections supports SB 142.

SB 142 would make restitution ordered by a court for the damages or loss resulting from a crime enforceable as a civil judgment. In most cases where restitution is imposed under current law, efforts are made as part of the parole or postrelease supervision process to require the offender to pay the restitution. These efforts will continue if SB 142 is enacted, but the bill provides additional legal remedies to crime victims to satisfy restitution judgments. This is expected to strengthen the effectiveness of efforts to enforce restitution requirements, and should ultimately increase the total amount of restitution paid to victims.

Availability of this additional tool is especially important in light of Sentencing Guidelines Act provisions which limit postrelease supervision periods for crimes committed after July 1, 1993 to either 12 or 24 months (plus earned good time credits). If the restitution is not paid in that time period, under current law the State has no way to enforce the restitution order. Making restitution enforceable as a civil judgment will allow the restitution order to survive the period of parole or postrelease supervision, thus enabling crime victims to have a longer period of time in which to obtain full satisfaction of the restitution order.

*Senate Judiciary Com.
2-7-95
Attachment 2*



State of Kansas

Office of the Attorney General

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CARLA J. STOVALL
ATTORNEY GENERAL

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February 7, 1995

Senator Tim Emert
Chairperson, Senate Judiciary Committee
State Capitol, Room 143-N
Topeka, Kansas 66612

Dear Senator Emert and Members of the Senate Judiciary:

This letter is in support of Senate Bills 130 and 142 which would allow unpaid restitution to be considered a judgement against a defendant. In many cases a crime victim who has been awarded restitution in a criminal case will not be paid. The victim who is not paid may file civil action against the defendant to try and obtain the money. For a victim this is an added expense. These bills would allow the court-ordered restitution to become a judgment for payment in civil cases pursuant to civil procedure.

In Senate Bill 130 the juvenile is and should be accountable for his or her actions. The committee may want to consider requiring parents to also be responsible for the restitution.

It is my understanding this type of law has worked in other states and I believe it would be beneficial for Kansas to adopt this procedure.

I am asking that you support Senate Bills 130 and 142 which will assist crime victims.

Sincerely,

A handwritten signature in cursive script that reads "Carla J. Stovall".

Carla J. Stovall
Attorney General

Senate Judiciary Comm
2-7-95
Attachment 3

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Testimony in Support of

SENATE BILL 142

The Kansas County and District Attorneys Association appears in support of SB 142, which makes a restitution order in a criminal case have the effect of a civil judgement, allowing a victim of the offense a remedy for damages caused by the offense without the requirement of filing a separate civil action.

The bill is in recognition of the lack of capacity of the criminal justice system to enforce restitution orders against offenders on probation or parole. The proliferation of criminal cases has stretched the post-sentencing supervision function of our court and parole systems to the limit, and in the case of the restitutorial aspect of supervision, the court or parole board loses jurisdiction over the offender before restitution is paid in full. The problem has been exacerbated by imposition of sentencing guidelines, especially in parole cases. The imposition of determinate sentencing was accompanied by a shortened period of parole supervision, 12 or 24 months. In probation cases, the period shall not exceed five years of supervision in felony cases or two years for misdemeanors. The period can be extended but not beyond the maximum term of incarceration. While imposition of sentencing guidelines was a sincere effort to provide alternatives to incarceration for non-violent offenders, the present system fails in that regard if restitution orders remain unenforced.

The bill allows a private action by the victim where the public rehabilitative effort has failed. In the rare instance that insurance coverage is available, or the victim wishes to file a separate civil action, that fact can be made known to the court at sentencing and no restitution order need be made.

*Senate Judiciary Comm
2-7-99
Attachment 4*