

Approved: 3-27-95  
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 24, 1995 in Room 514-S of the Capitol.

All members were present except:

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:

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m. and advised the Committee of the agenda.

Subcommittee report from Senator Bond. (Attachment 1)

**SB 313--An Act concerning crimes and punishment, sentencing after committing a new offense**

Senator Bond stated that his subcommittee felt that since this bill would develop a whole new structure, that this bill should rest until next year.

**SB 312--Scope of review of appeals of departure sentences under the sentencing guidelines act**

Senator Bond explained that the language in the law passed was not clear, and now appeals are being received on sentences that fall on presumptive limits and appellate courts have had to deal with a number of these appeals already and this amendment is to cure that problem that was not anticipated when the sentencing guidelines were passed last year.

Air quality control department asked that this bill be further amended --removing E felony severity level 10-intentional

Motion by Senator Bond, second by Senator Reynolds to move SB 312 favorably as amended. Motion carried.

**SB 333---Controlled substances, penalties, violations involving marijuana of municipal ordinances**

Senator Bond stated that this bill would provide clear legislative intent to the court with regard to the treatment of prior marijuana convictions at city level, providing consistency state wide to the treatment of the first offense.

Motion made by Senator Bond, second by Senator Parkinson to move SB 333 favorably. Motion carried. (Consent Calendar)

Subcommittee report from Senator Parkinson:

**SB 329--Creating a new Kansas parole board; personnel; training; travel and work policies**

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 24, 1995.

Senator Parkinson explained that this bill codifies the results of the post-audit. The primary result was the reduction in the parole board from five to three. The subcommittee proposed amending **SB 329** to remove language that basically micro-managed how mileage is to be paid. Therefore, what is left of the bill is a change from five to three on the Kansas parole board. The bill goes into effect on July 1, 1995 and two parole board members term expire before that date so the reduction can be accomplished by attrition. Senator Tillotson who offered the bill, testified during the subcommittee meeting. A legislative post-audit person who was in charge of the post audit explained their findings to the subcommittee. Sherman Parks, Head of the Parole Board stated that the parole board was against the bill, but not vehemently, according to Senator Parkinson. Post audit stated that there will be the same level of work required by the parole board, but it will be different. The number of parole hearings will change dramatically since all parole hearings are for off grid crimes only. There will be a need to write a lot of post release plans, but those plans can be written here in Topeka, and they can be done by people who are not members of the parole board. The post audit people indicated that attorneys, or someone with a masters degree could be hired for about \$30,000 to do that work. Senator Parkinson concluded that this bill will reduce the parole board by two members, and we will probably need to hire two professional who will stay in Topeka in essence to replace them. Parole board members make \$75,000 a year--professional could be hired for approximately \$30,000 each so savings will be approximately \$90,000 per year. (Attachment 2)

Lisa Moots, Kansas Sentencing Commission stated that the number of parole hearings has decreased, and parole board members have always been writing release plans. Ms Moots answered questions from committee members regarding the duties of the parole board.

Motion by Senator Parkinson, second by Senator Bond to move the bill favorably as amended by the subcommittee. Motion carried.

Subcommittee report from Senator Harris:

**SB 200--Transfers juvenile facility funds from SRS to the Attorney General's Office**

Senator Harris stated that this bill also authorizes by conceptual amendment the Attorney General to spend up to 2% of the moneys generated toward administrative cost associated with administering the fund. Senator Harris referred to a memo from Nancy Lindberg of the Attorney General's Office that the 2% would be a maximum of \$62,000 annually. Some other language based on the number of licensed beds was considered. Senator Harris noted that the SRS did not show up to oppose this.

**SB 214--Interlocal agreements for care and support of juvenile offenders**

Senator Harris stated that **SB 214** allows operators of regional juvenile facility to have inter-local agreement between themselves to receive money from SRS and also be reimburse each other pursuant to inter-local agreements--SRS takes the position-that if facilities take SRS money which doesn't come close to paying the overall costs of holding the juveniles, that they were prohibited from collecting money from each other.

This bill allows inter-local agreement to take effect and to receive SRS money.  
No fiscal note was available.

Senator Harris stated that no opponents to this bill appeared to testify.

Based on SRS interpretation of the law if SRS money is received, these facilities cannot receive other money if they are receiving money from SRS

Motion by Senator Harris, second by Senator Oleen to pass **SB 214** favorably. Motion carried with Senator Brady voting no

**SB 234--Concerning juvenile offender diversion program; allowing a juvenile to be on diversion even if he has previously be adjudicated**

Senator Harris stated that this bill has the support of county and districts attorneys. This bill spells out the crimes for which a juvenile may not be eligible for diversion, including all person felonies, narcotics, controlled substance violations, any events involving use or possession of a firearm and certain grid crimes of drug dealer that are presumptive imprisonment-

Senator Harris stated that the subcommittee had suggested amendments including a provision that if a person violates the diversion agreement there can be a stipulation of the facts to the court.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.  
on February 24, 1995.

The consensus of the Committee was to recommend this bill favorably with those conceptual amendments.

Discussion on misdemeanor drugs was held.

Senator Emert suggested using felony guidelines that presently apply to adults

Motion by Senator Vancrum, second by Senator Feliciano was made to adopt conceptual amendments to make this parallel to the adult statute concerning diversion. Motion carried.

The Chair passed SB 234 until Monday. Staff will write a draft for SB 234 incorporating the criteria for adult diversion as cited in K.S.A. 22-2908

Meeting adjourned.

The next meeting is scheduled for February 27, 1995.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-24-95

NAME	REPRESENTING
Frances Kastner	KS Food Dealers Assn
Cindy Denton	Koch Commission
Ronald Kasper	KDOT
Callie Denton	KS Insurance Dept
John Hummer	KS Governmental Consulting
Anne Spiess	KS Assoc of Counties
Jim Clarke	KCDAA

REPORT OF JUDICIARY SUBCOMMITTEE

SB 313 The subcommittee recommends that SB313 not be acted upon this year.

SB 312 Report attached

SB 333 Report attached

Senate Judiciary  
2-24-95  
Attachment 1



State of Kansas  
KANSAS SENTENCING COMMISSION

Senate Bill 312

Senate Bill 312 is intended to limit the number of appeals which are brought challenging sentences imposed under the Kansas Sentencing Guidelines Act. Prior to the enactment of the guidelines, sentencing appeals have historically been permitted based on claims that the sentences were the result of "partiality, prejudice, oppression, or corrupt motive" on the part of the sentencing court or the state. The guidelines act contemplates appeals only in departure cases, not in cases in which the sentence imposed falls within presumptive limits in every respect; however, the language of the guidelines appeal statute, K.S.A. 21-4721, apparently does not clearly enough preclude appeals on the grounds of partiality, prejudice, oppression, or corrupt motive where the defendant has received a sentence within the presumptive range, because the appellate courts have already had to deal with a number of such appeals. The amendment to K.S.A. 21-4721 contained in this bill should cure this problem and also reflects the holdings by the Court of Appeals which have already been rendered on this issue.

In addition, the subcommittee amended this bill by assigning a guidelines severity level of 10 to the felony crimes defined in K.S.A. 65-3025 and 3026, which are intentional violations of air quality control regulations. This amendment was requested by the Air Quality Control Department through the Kansas Sentencing Commission.

## SENATE BILL 333

Current Kansas law states that any person who violates K.S.A. 65-4162(a) would be deemed guilty of a class A, nonperson misdemeanor. If a person has a prior conviction under K.S.A. 65-4162(a) or a conviction for a substantially similar offense from another jurisdiction, then such person would be guilty of a severity level 4 felony. Although the language "*or a conviction for a substantially similar offense from another jurisdiction*" would appear to include convictions of "substantially similar offenses" in municipal court, the Kansas Supreme Court has opined that "(A)bsent a clear expression of legislative intent the rule of strict construction requires us (the court) to hold that a conviction under a city ordinance cannot be used as a basis for an enhanced penalty for a subsequent violation of state statute." *State v. Floyd*, 218 Kan. 764 (1976). Thus a person could be convicted multiple times in municipal court (or even in multiple municipal courts around the state) for a violation of a city ordinance that contains the exact language of K.S.A. 65-4162(a) and the person could not be found guilty of the severity level 4 felony as set out by statute.

S.B. 333 gives the "clear expression of legislative intent" necessary to use a prior conviction in municipal court for violation of a city ordinance for a "substantially similar offense," if the offense involved marijuana or tetrahydrocannabinol as designated in K.S.A. 65-4105(d), as grounds to increase the penalty to a severity level 4 felony.

The legislature took similar action in K.S.A. 8-1567 when it added the language in subsection (k) to include municipal court convictions for the offense of "driving under the influence of alcohol or drugs" in order to use the stricter penalties (including a felony offense for a third conviction) as set out by statute.

The net effect of S.B. 333 would be to treat convictions of an offense involving marijuana or tetrahydrocannabinol, as designated in K.S.A. 65-4105(d), in municipal court as a qualified prior conviction necessary to raise subsequent convictions to a felony offense. It should also be pointed out that S.B. 333 would also treat convictions of a similar offense under a county resolution as a qualified prior convictions when determining the severity level of subsequent convictions.

SENATE BILL No. 329

By Committee on Judiciary

2-15

9 AN ACT concerning the Kansas parole board; ~~creating a new board~~; re-  
10 lating to ~~personnel, training~~; travel ~~and work~~ policies; amending K.S.A.  
11 22-3707 and 22-3708 and K.S.A. 1994 Supp. 22-3709 and 22-3713 and  
12 repealing the existing sections.  
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 22-3707 is hereby amended to read as follows: 22-  
16 3707. (a) ~~The Kansas parole board. On July 1, 1995, the Kansas parole~~  
17 ~~board, as such board existed on June 30, 1995, is hereby abolished. On~~  
18 ~~July 1, 1995, there is hereby established a new Kansas parole board. Such~~  
19 ~~board established on July 1, 1995, shall consist of five three~~ members  
20 appointed by the governor, subject to confirmation by the senate as pro-  
21 vided in K.S.A. 75-4315b and amendments thereto. ~~No more than three~~  
22 ~~two~~ members of the board shall be members of the same political party.  
23 The term of office of the members of the board shall be four years. If a  
24 vacancy occurs in the membership of the board before the expiration of  
25 the term of office, a successor shall be appointed for the remainder of  
26 the unexpired term in the same manner that original appointments are  
27 made. Each member of the board shall devote the member's full time to  
28 the duties of membership on the board.

29 (b) The governor may not remove any member of the Kansas parole  
30 board except for disability, inefficiency, neglect of duty or malfeasance in  
31 office. Before removal, the governor shall give the member a written copy  
32 of the charges against the member and shall fix the time when the mem-  
33 ber can be heard at a public hearing, which shall not be less than 10 days  
34 thereafter. Upon removal, the governor shall file in the office of the sec-  
35 retary of state a complete statement of all charges made against the mem-  
36 ber and the findings thereupon, with a complete record of the proceed-  
37 ings.

38 (c) Each member of the Kansas parole board on the effective date of  
39 this act shall be and remain a member of the board and shall hold office  
40 until the member's term expires and a successor is appointed and quali-  
41 fied or until a vacancy occurs in the member's office. Of the two members  
42 added by this act, one shall be appointed for an initial term of three years  
43 and one for an initial term of four years, as designated by the governor.

Proposed Subcommittee Amendments to Senate Bill No. 329

membership and appointments

No successor shall be appointed as provided by this section for any member of the Kansas parole board whose term expires during calendar year 1995. Upon the expiration of the terms of members of the Kansas parole board whose terms expire during calendar year 1995, the Kansas parole board

On and after the effective date of this act, no appointment shall be made that would result in

being

Senate Judiciary  
2-24-95  
Attachment 2



1 ~~Such members' terms shall commence on the effective date of this act~~  
2 ~~All of the powers, duties and functions of the Kansas parole board as such~~  
3 ~~board existed prior to July 1, 1995, are hereby transferred to and con-~~  
4 ~~ferred and imposed upon the Kansas parole board established pursuant~~  
5 ~~to this act. The Kansas parole board established pursuant to this act shall~~  
6 ~~be the successor in every way of the powers, duties and functions of the~~  
7 ~~Kansas parole board existing prior to July 1, 1995, in which the same~~  
8 ~~were vested prior to July 1, 1995.~~

9 Sec. 2. K.S.A. 22-3708 is hereby amended to read as follows: 22-  
10 3708. (a) (1) The annual salary of the chairperson of the Kansas parole  
11 board shall be an amount equal to the annual salary paid by the state to  
12 a district judge designated as administrative judge; and

13 (2) the annual salary of each other member of the Kansas parole  
14 board shall be an amount which is \$2,465 less than the annual salary of  
15 the chairperson.

16 (b) Members of the Kansas parole board shall be allowed all actual  
17 travel and necessary expenses incurred while in the discharge of official  
18 duties *in accordance with the provisions of K.S.A. 75-3201 et seq. and*  
19 *amendments thereto and rules and regulations of the secretary of admin-*  
20 *istration adopted thereunder.*

21 Sec. 3. K.S.A. 1994 Supp. 22-3709 is hereby amended to read as  
22 follows: 22-3709. (a) The chairperson and vice-chairperson of the Kansas  
23 parole board shall be designated by the governor. The chairperson of the  
24 board shall have the authority to organize and administer the activities of  
25 the board. ~~The chairperson of the board may designate panels, consisting~~  
26 ~~of three members of the board, which shall have the full authority and~~  
27 ~~power of the board to order the denial, grant or revocation of an inmate's~~  
28 ~~parole or conditional release, or for crimes committed on or after July 1,~~  
29 ~~1993, grant parole for off-grid crimes or revocation of postrelease super-~~  
30 ~~vision or to order the revocation of an inmate's conditional release, upon~~  
31 ~~hearing by one or more members of the panel. The director of the board~~  
32 ~~shall act as secretary to the board.~~

33 (b) Any decision of the Kansas parole board granting original parole  
34 to an inmate sentenced for a class A or class B felony or for off-grid crimes  
35 committed on or after July 1, 1993, shall be by unanimous vote of all  
36 members of the three-member panel acting on such parole ~~except that,~~  
37 ~~if two members of such panel vote to parole the inmate, the full mem-~~  
38 ~~bership of the board shall review the decision of the panel and may parole~~  
39 ~~such inmate upon the vote of four members of the board.~~

40 (c) *The board shall adopt and implement a program of education and*  
41 *in-service training for new members of the board and establish written*  
42 *policies relating to member and employee working hours and the report-*  
43 *ing of sick and annual leave.*

1 Sec. 4. K.S.A. 1994 Supp. 22-3713 is hereby amended to read as  
2 follows: 22-3713. The Kansas parole board shall appoint a state director  
3 of the parole board who may appoint and prescribe, with the approval of  
4 the parole board, the duties of a deputy director and other employees  
5 required to administer the provisions of this act. *The state director shall*  
6 *appoint such additional employees necessary to perform tasks related to*  
7 *postrelease supervision conditions imposed by the board for inmates re-*  
8 *leased pursuant to the sentencing guidelines act and such other duties as*  
9 *prescribed by the board related thereto.* The parole board may authorize  
10 one or more of its members to conduct hearings on behalf of the parole  
11 board.

12 The deputy director may exercise such powers and perform such duties  
13 of the director as may be authorized by the parole board. The director  
14 and all other officers and employees of the parole board shall be within  
15 the classified service of the Kansas civil service act. The residence requi-  
16 rements of the Kansas civil service act shall not apply to the appointment  
17 of the director or deputy director. All officers and employees of the parole  
18 board shall receive, in addition to their regular compensation, their actual  
19 and necessary travel and other expenses incurred in the performance of  
20 their official duties *in accordance with the provisions of K.S.A. 75-3201*  
21 *et seq. and amendments thereto and rules and regulations of the secretary*  
22 *of administration adopted thereunder.*

23 Sec. 5. K.S.A. 22-3707 and 22-3708 and K.S.A. 1994 Supp. 22-3709  
24 and 22-3713 are hereby repealed.

25 Sec. 6. This act shall take effect and be in force from and after its  
26 publication in the ~~statute book.~~

-Kansas register