

Approved: March 23, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 a.m. on March 22, 1999 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Representative Kent Glasscock
Judge Bullock
Barbara Tombs, Kansas Sentencing Commission

Others attending: see attached list

The minutes of the March 17 meeting were approved on a motion by Senator Donovan and seconded by Senator Gilstrap; carried.

HB 2440—concerning crimes, criminal procedure and punishment; relating to sentencing

Conferee Glasscock testified in support of **HB 2440**. He stated that he introduced this bill, which amends current law, in response to a recent Kansas Supreme Court decision with which he disagreed. He discussed the case in question, the court's decision and the necessity of the bill to clarify legislative intent in the application of the "hard 40" sentence. (attachment 1) Discussion followed.

Conferee Bullock testified in support of **HB 2440**. He discussed the bill and stated that there has been confusion in the statutes regarding heinous crime. He stated that this bill "is designed to shift the emphasis from victim awareness to criminal culpability of the defendant." He noted that the added amendments more clearly define "legislative intent on how to interpret the law" regarding this issue. (no attachment) further discussion followed with clarification by the Conferee regarding the need for certain language in the bill.

Conferee Tombs testified in support of **HB 2440**. She stated that the proposed amendment "expands the definition of aggravating circumstances to include acts that are considered heinous and atrocious in the commission of a murder, whether committed before or after the death of a victim." She discussed the appropriateness of a Hard 40 sentence in such situations. (attachment 2) Brief discussion followed.

Written testimony in support of **HB 2440** was submitted by the Kansas Peace Officers' Association. (attachment 3)

HB 2549—an act amending and supplementing the Kansas estate tax act

HB 2276—an act enacting the Kansas revised limited liability company act

The Chair described **HB 2549** and **HB 2276** and announced a subcommittee meeting in his office at noon to discuss these bills. Members of the subcommittee are: Senators Emert, Pugh, Vratil, and Goodwin with Senator Vratil as Chair.

HB 2015—an act concerning civil procedure; relating to service of process upon insurance companies and fraternal benefit societies

HB 2136—an act concerning public officers and employees; relating to the legal representation thereof before grand juries and inquisitions

HB 2150—an act concerning dispute resolution; relating to arbitration and mediation; confidentiality of proceedings

HB 2154—an act concerning probate; relating to execution and attestation of wills; self-proved wills

HB 2156—an act concerning corporations; relating to voting rights of stockholders

HB 2221—an act concerning the code of civil procedure for limited actions; adopting by reference certain provisions relating to liability for worthless checks and actions to collect thereof

The Chair summarized the following bills and called for a vote: **HB 2015**—Senator vratil moved to amend the bill to increase the fee on pg 1 line 31 from \$25 to \$30 and pass the bill out favorably as amended. Senator Donovan seconded; carried; **HB 2136** was discussed and no action was taken pending legal clarification by staff; **HB 2150** was discussed and no action was taken pending verification of previous action on this bill; **HB 2154**—Senator Bond moved to pass the bill out favorably, Senator Oleen seconded; carried; **HB 2156**—Seantor Pugh moved to pass the bill out favorably, Senator Oleen seconded; carried; **HB 2221**—Senator Bond moved to pass the bill out favorably, Senator Pugh seconded; carried.

The meeting adjourned at 10:45 a.m. The next scheduled meeting is March 23, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 22, 1999

NAME	REPRESENTING
Kathy Porter	QJA
Jimmy Willock	District Court
Robert Alker	Attorney General
James Clark	KCDAA
Kevin A. Thal	KSC
Paul Jones	KSC
Nancy Lindberg	A Hy Gen
ED SCHAD B	WESTERN RESOURCES
Bill Speed	KPOA
DAKE FISHER	WHITNEY DAMROW
Bob Smith	KSDA Assoc
Ken Glavin	HOUSE OF REP.
Stephanie Buchanan	DOB
Bill Henry	Ks Car Casualty
Gene Johnson	Ks ASAP
Glenn M. Havel	KTLA
John Pulstrop	visitor
Alan Hiltz	visitor
Mary Ann Pulstrop	visitor

STATE OF KANSAS

5 Feb
3-2-99

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MAJORITY LEADER
House of Representatives

**Testimony Supporting HB 2440
Before the Senate Judiciary Committee
March 22, 1999**

Today I rise in support of HB 2440.

I introduced this legislation in response to the recent Kansas Supreme Court decision in *State v. Spry*. In this decision, the Court overturned a "hard 40" sentence for the defendant because, it said, the crime did not qualify as "an especially heinous, atrocious or cruel" crime.

Let's talk about this crime. In this case, the defendant broke into Barbara Chaffee, his ex-girlfriend's, house through a window, pulled the telephone wires out of the wall, and crept around sleeping women and children who shared the house with Ms. Chaffee. He moved the child safety gate away from the stairs and quietly went to the basement, where he knew Ms. Chaffee was sleeping. Then he took an ax and hacked her on the back of her head at least 8 times.

The Kansas Supreme Court recently ruled that this crime did not fulfill the aggravating factor as "an especially heinous, atrocious or cruel" crime. I believe it should.

I am not alone in this belief. When the House Judiciary Committee held a hearing on the bill, Judge Bullock not only endorsed the legislation, but offered a text for expanding the breadth of the legislation. His experience on the bench has shown him that we need to clarify the application of the "hard 40" sentence. The House committee included his suggestions and others in the current version of this bill.

HB 2440, as amended by the House Judiciary Committee, will allow the court to consider a list of factors, including anything it considers "especially heinous, atrocious or cruel". It specifically states that the victim need not be aware of his or her fate, and need not to have suffered. The amended legislation will likely result in hard 40 sentences for murderers who: stalk or threaten their victims; inflict mental anguish or physical abuse before the victim's death; plan to kill the victim in a cruel manner, but accidentally kill the victim before having the opportunity to be cruel; torture their victim; desecrate the victim's body, including post death mutilation (i.e., Jeffrey Dahmer); are in prison for a felony at the time of the murder; kill their victim while engaging in, or due to, assisting as a witness in a criminal prosecution.

This bill will allow the court to apply common sense in its judgment of whether a "hard 40" sentence is deserved. In my opinion, this bill more clearly states what I believe has always been the legislative intent of which crimes deserve the "hard 40" sentence.

I would like to thank Majority Leader Emert and all of the committee members for the opportunity to testify regarding this legislation. I hope you will support HB 2440.

Sen Jud.
3-22-99
att 1



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3-22-99
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State of Kansas
KANSAS SENTENCING COMMISSION

Honorable Richard D. Walker, Chair
District Attorney Paul Morrison, Vice Chair
Barbara S. Tombs, Executive Director

Testimony on House Bill 2440
Senate Judiciary Committee
March 22, 1999

The Kansas Sentencing Commission would like to offer support for House Bill 2440. The proposed amendment to expand the definition of aggravating circumstances to include acts that are considered heinous and atrocious in the commission of a murder, whether committed before or after the death of a victim, creates a situation in which the imposition of a Hard 40 sentence would be an appropriate sentence.

Sentencing Guidelines were designed and implemented on the underlying principle that the longest and most severe sentences should be reserved for the most violent and chronic offenders. The offense of murder is always viewed as a crime of violence, however, when the murder includes acts that are deemed cruel, heinous and atrocious, a higher level of violence and indifference to a human life is exhibited. Whether the heinous and atrocious acts occurred prior to or after the death of a victim, the fact remains that the offender acted in a manner that is outside a scope of violence that is normally associated with the crime of murder.

The Sentencing Commission supports the imposition of the Hard 40 sentence for murders committed in the manner described above, since the victim's awareness of acts is not the critical issue but rather the intent and actions of the offender. We support the passage of House Bill 2440 and hope the Judiciary Committee will consider this bill favorably.

For additional information, please contact:

Barbara S. Tombs
Executive Director

Sen Jud
3-22-99
att 2

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MEMORANDUM

TO: Senator Tim Emert
Senate Judiciary Committee

FROM: William W. Sneed
Kansas Peace Officers Association

DATE: March 22, 1999

RE: HB 2440

Mr. Chairman, members of the committee, my name is Bill Sneed and I appear today on behalf of the Kansas Peace Officers Association (KPOA). KPOA, the largest professional law enforcement organization in Kansas, thanks the Committee for the opportunity to express its views concerning House Bill 2440.

This legislation achieves a significant clarification of existing law. The current version of K.S.A. 21-4636(f) includes, as an aggravating factor in determining the suitability of the "hard 40" sentence, that "the defendant committed the crime in an especially heinous, atrocious, or cruel manner." Unfortunately, current language is, at best, inexact; at worst, it is exceedingly vague. It encourages inconsistency.

HB 2440 will, if passed, help crystallize the notion of this critical aggravating circumstance and promote consistency in sentence determination. The proposed amendment clearly facilitates logical decision-making and provides Kansas' judges a more precise indication of legislative intent.

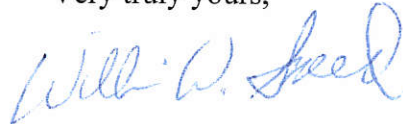
In Unity There Is Strength

Sen Jud
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att 3

Specifically, the amendment allows the sentencing judge to find that repeated acts of violence, inflicted with the intent to cause death and continued even after the victim died, constitute aggravating circumstances. Such violence, which is far from rare, cries out for an aggravating circumstance finding. HB 2440 affords Kansas judges the opportunity to make such a finding based upon clear and concise criteria. Defendants who truly deserve the "hard 40" are more likely to receive it.

Again, KPOA supports this legislation and urges the Committee to report it favorably.

Very truly yours,



William W. Sneed

WWS/pk