

Approved: Feb 2, 2000  
Date

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:10 a.m. on February 1, 2000 in Room 521-N of the Capitol.

All members were present except: Sen. Bond (excused)  
Sen. Harrington (excused)

### Committee staff present:

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

### Conferees appearing before the committee:

Rosalie Thornburgh, Bureau Chief for Chief of Traffic Safety, Kansas Department of Transportation ( KDOT)  
Bill Madden, Chief Counsel, Department of Corrections (DOC)  
Marilyn Scafe, Parole Board (PB)

Others attending: see attached list

The minutes of the January 31<sup>st</sup> meeting were approved on a motion by Senator Donovan and seconded by Senator Vratil. Carried.

## BILL INTRODUCTIONS

Conferee Thornburgh requested introduction of a bill which would allow the legislature options to bring Kansas into compliance with the federal law regarding driving under the influence (DUI) repeat offenders. She stated, "the bill requires the imposition of motor vehicle impoundment, immobilization and/or installation of ignition interlock." (attachment 1) Senator Goodwin moved to introduce the bill, Senator Vratil seconded. Carried.

Conferee Madden summarized a bill which addresses issues relating to admission of offenders into the department's custody and requested the bill's introduction. (attachment 2) Senator Goodwin moved to introduce the bill, Senator Vratil seconded. Carried.

The Chair discussed the upcoming confirmation hearing on the reappointment of Larry Woodward to the Parole Board. He stated that unless he received opposition from Committee Members by Monday, February 7, he would not require Mr. Woodward's presence at the hearing to be held on Thursday, February 10.

### SB 470—concerning crimes, criminal procedure and punishment; relating to sentencing

Conferee Madden testified in support of **SB 470**. He discussed the proposed amendments including those which would provide for life-time postrelease supervision of inmates who commit new felony crimes while serving an indeterminate sentence with a maximum term of life imprisonment or while serving a sentence for an off-grid offense. (attachment 3) Discussion followed.

### SB 471—aggravating factors in departure sentencing

Conferee Madden testified in support of **SB 471**. He discussed a disparity that exists in current law "between the length of time that must be served by an offender who commits an offense while on postrelease supervision and an offender who commits the same offense while incarcerated" and described how **SB 471** would correct this. (attachment 4) Discussion followed.

**SB 473–aggravated escape from custody**

Conferee Madden explained that **SB 473** corrects a typographical error in the definition of the crime of aggravated escape. (attachment 5) Senator Donovan moved to pass the bill out favorably and place it on the consent calendar, Senator Goodwin seconded. Carried.

**SB 472–violations of condition of release by conviction of new misdemeanor**

Conferee Scafe testified in support of **SB 472** a bill which she explained amends current law “to provide as a penalty for violations of postrelease supervision that result from a misdemeanor conviction, a confinement of not less than six months nor more than the remaining balance of the period of postrelease supervision as determined by the board.” She described current law and explained how **SB 472** would “allow for more equitable penalty for violations of postrelease supervision.”(attachment 6) Lengthy discussion followed. Senator Vratil made a motion to amend the bill to strike lines 32,33, and 34 on page 2 and insert the following language: “to be determined by the Kansas Parole Board which shall not exceed the remaining balance of the period of postrelease supervision.” Senator Goodwin seconded. Carried. Senator Oleen move to amend the bill to make it effective on date of publication in the Kansas Register, Senator Goodwin seconded. Carried. Senator Oleen made a motion to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

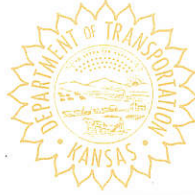
The meeting adjourned at 10:47 a.m. The next scheduled meeting is February 2, 2000.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 1  
Jan 31, 2000

NAME	REPRESENTING
Tim Madden	Ks Dept of Corrections
Jeff Bottelby	KS Peace officers
Mark Goodwin	Hein + Weir
Marilyn Sente	KPB
Breck Johns	KDOC
Jane Mohr	AG Office
Ken Brasher	KSC
Barbara Tangle	KSC
Kevin Graham	KSC
Rosalie Thornburgh	KDOT
Nancy Bogina	KDOT
Jessica Corcoran	Sen. Vratil
Laurie Moser	SW
Barb Conant	KTLA
Kathy Porter	OIA
Paul Davis	KBA
Bill Henry	KS CT Reporters Assn

STATE OF KANSAS



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**KANSAS DEPARTMENT OF TRANSPORTATION  
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Bill Graves  
GOVERNOR

**SENATE JUDICIARY COMMITTEE**

**PENALTIES FOR DUI REPEAT OFFENDERS**

**February 1, 2000**

Mr. Chairman and Committee Members:

This bill would allow the legislature some options to bring Kansas into compliance with the federal law regarding DUI repeat offenders. This bill requires the imposition of motor vehicle impoundment, immobilization and/or the installation of ignition interlock.

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Bill Graves  
Governor

Charles E. Simmons  
Secretary

**MEMORANDUM**

DATE: February 1, 2000  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons  
Secretary of Corrections  
RE: Request for Bill Introduction

The Department of Corrections respectfully requests introduction by the Senate Judiciary Committee of the attached bill draft. A summary of the proposed bill is presented below.

*Admission of Offenders into the Department's Custody*

K.S.A. 75-5220 would be amended to require that whenever the physical custody of an offender sentenced to KDOC is transferred to another jurisdiction rather than KDOC, the sheriff shall notify both the Department and the other jurisdiction that a sentence to be executed by KDOC has been imposed. Furthermore, the sheriff would be required to notify KDOC as to where the offender was taken.

Additionally, the proposal would specify that offenders sentenced to the Department be transported to the appropriate correctional facility regardless of whether the prison portion of the sentence has been served. This is necessary so that appropriate intake procedures can be completed.

Finally, the references to the Topeka correctional facility are changed to refer to the Department's reception and diagnostic unit.

I appreciate your consideration of our request, and would be pleased to answer any questions you might have.

CES/TGM/ll

W/attachment

cc: Legislation file w/attachment

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## PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning corrections; relating to placement and conveyance of certain offenders; concerning the reception and diagnostic center; amending K.S.A. 75-5220 and repealing the existing section.

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

Section 1. K.S.A. 75-5220 is hereby amended to read as follows: 75-5220. (a) Except as provided in subsection (d), within three days of receipt of the notice provided for in K.S.A. 75-5218 and amendments thereto, the secretary of corrections shall notify the sheriff having such offender in custody to convey such offender immediately to the ~~Topeka-correctional facility~~ department of corrections reception and diagnostic unit or if space is not available at such facility, then to some other state correctional institution until space at the facility is available, except that, in the case of first offenders who are conveyed to a state correctional institution other than the ~~Topeka-correctional-facility~~ reception and diagnostic unit, such offenders shall be segregated from the inmates of such correctional institution who are not being held in custody at such institution pending transfer to the ~~Topeka-correctional facility~~ reception and diagnostic unit when space is available therein. The expenses of any such conveyance shall be charged against and paid out of the general fund of the county whose sheriff conveys the offender to the institution as provided in this subsection.

(b) Any female offender sentenced according to the provisions of K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff having such offender in custody directly to a correctional institution designated by the secretary of corrections, subject to the provisions of K.S.A. 75-52,134 and amendments thereto. The expenses of such conveyance to the designated institution shall be charged against and paid out of the general fund of the county whose sheriff conveys such female offender to such institution.

(c) Each offender conveyed to a state correctional

institution pursuant to this section shall be accompanied by the record of the offender's trial and conviction as prepared by the clerk of the district court in accordance with K.S.A. 75-5218 and amendments thereto.

(d) If the offender in the custody of the secretary is a juvenile, as described in K.S.A. 38-16,111, and amendments thereto, such juvenile shall not be transferred to the state reception and diagnostic center until such time as such juvenile is to be transferred from a juvenile correctional facility to a department of corrections institution or facility.

(e) All offenders sentenced to the custody of the secretary of corrections, except as provided by subsection (f), shall be transported by the sheriff to the reception and diagnostic unit, other facility designated by the secretary or juvenile correctional facility, as provided by subsections (a), (b) and (d), regardless of whether the prison portion of the offender's sentence has been served.

(f) Whenever the sheriff is required to convey physical custody of an offender to a jurisdiction, agency or facility other than the secretary of corrections, the sheriff shall provide to the jurisdiction, agency or facility to which the offender is delivered a copy of the records prescribed in subsection (c) along with a notice that prior to the release of the offender by that jurisdiction, agency or facility, the department of corrections shall be notified. Furthermore, the sheriff conveying physical custody of an offender to a jurisdiction, agency or facility other than the secretary of corrections shall send to the secretary of corrections a copy of the records prescribed in subsection (c) along with the name and address of the jurisdiction, agency or facility to which the offender was delivered.

Sec. 2. K.S.A. 75-5220 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Bill Graves  
Governor

Charles E. Simmons  
Secretary

**MEMORANDUM**

DATE: February 1, 2000  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons *[Signature]*  
Secretary of Corrections  
RE: SB 470

SB 470 amends K.S.A. 1999 Supp. 22-3717 to provide that inmates who commit new felony crimes while serving an indeterminate sentence with a maximum term of life imprisonment are to remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board. Additionally, SB 470 provides that offenders who commit a new felony while serving a sentence for an off-grid offense, are likewise to remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board irrespective of whether the crime was committed while the offender was on postrelease supervision or incarcerated.

In addition to amending K.S.A. 1999 Supp. 22-3717 as currently proposed by SB 470, it is recommended that the committee amend SB 470 to also amend K.S.A. 21-4608 by inserting "except as provided by K.S.A. 22-3717 and amendments thereto" at the end of the last sentence of K.S.A. 21-4608(e)(2). K.S.A. 21-4608(e)(2) should be amended to conform to the proposed amendment of K.S.A. 1999 Supp. 22-3717. A balloon of this amendment is attached.

SB 470 prevents offenders incarcerated for an indeterminate sentence of life from having their lifetime release supervision obligation reduced due to the commission of a new crime. Pursuant to current law, if an inmate serving an indeterminate sentence with a maximum term of life commits a new felony while incarcerated, the new felony sentence does not begin until the inmate is paroled from the original indeterminate sentence. However, once the new sentence begins and the prison portion of that sentence is served, the inmate's release supervision obligation is determined by the period of postrelease supervision applicable to the new sentence. Thus, an incarcerated offender serving a life sentence, which would normally require the offender to remain under parole supervision

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Att 3



February 1, 2000

Page 2

for life once he or she is released from prison, can reduce his or her release supervision obligation to 24, 36, or 60 months by committing a new felony crime.

SB 470 also prevents offenders serving an off-grid sentence of life from having an incentive to commit a new felony while incarcerated or on postrelease supervision. SB 470 negates this incentive by providing that offenders serving a sentence with a maximum term of life shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board, irrespective of the postrelease supervision period applicable to the new sentence.

In limited situations, current law provides for the continuation of a lifetime release supervision obligation in the event the offender commits a new felony crime. The continuation of the lifetime release supervision obligation under current law is limited to situations where the new offense is committed while the offender is on probation, parole, conditional release, or in a community corrections program for a crime committed prior to July 1, 1993. Current law does not allow for the continuation of a lifetime release supervision obligation if the offender was incarcerated at the time of the commission of the new crime or if the original sentence was for a post July 1, 1993 off-grid offense.

The Sentencing Commission reviewed this issue at its meeting on December 28, 1999 and endorsed this proposal. The department requests favorable consideration of SB 470.

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cc: Legislation file w/attachment

**21-4608. Multiple sentences; defendant subject to or under sentence in federal court or court of another state.**

(a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while

the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717 and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(1) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of imprisonment to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

except as provided by K.S.A. 22-3717 and amendments thereto.

posed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

Nothing in this subsection (f)(4) shall affect the authority of the Kansas parole board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717 and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates, except that credit shall be given for any amount of time spent in a residential facility while on probation or assignment to a community correctional residential services program.

(g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sen-

tence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed.

**History:** L. 1969, ch. 180, § 21-4608; L. 1978, ch. 120, § 8; L. 1982, ch. 150, § 1; L. 1983, ch. 111, § 1; L. 1985, ch. 111, § 1; L. 1986, ch. 123, § 9; L. 1987, ch. 113, § 1; L. 1989, ch. 92, § 24; L. 1992, ch. 239, § 243; L. 1993, ch. 291, § 272; L. 1994, ch. 291, § 47; July 1.

**Source or prior law:**  
62-1512, 62-2251.

**Law Review and Bar Journal References:**

- Parole eligibility for prisoners serving consecutive sentences in Kansas, Malcolm E. Wheeler, 21 K.L.R. 167, 168, 170 (1973).
- Mandatory Sentencing Act (21-4618), 26 K.L.R. 277, 280 (1978).
- "Toward Certainty in Sentencing: Kansas Modifies the Indeterminate Sentence," Wayne K. Westblade, 18 W.L.J. 578 (1979).
- "Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 409 (1984).
- "Parole in Kansas," Carla J. Stovall, 60 J.K.B.A. No. 7, 27, 28 (1991).

**Attorney General's Opinions:**

Classification of crimes and penalties; prospective application of increased penalties. 82-187.

**CASE ANNOTATIONS**

1. Subsection (1) cited; greater sentence imposed after trial de novo on appeal to district court. *State v. Parker*, 213 K. 229, 230, 516 P.2d 153.
2. Contents noted; motion to vacate sentence pursuant to 60-1507; no grounds for relief. *Burns v. State*, 215 K. 497, 500, 524 P.2d 737.
3. Applied; consecutive service of two terms upheld; convictions of aggravated assault. *State v. Bradley*, 215 K. 642, 648, 527 P.2d 988.
4. Cited; where record silent there is presumption that sentences are concurrent. *State v. Thorton*, 224 K. 127, 577 P.2d 1190.
5. Sentence upheld; no showing of abuse of discretion or vindictiveness on part of trial court. *State v. Rice*, 227 K. 416, 425, 607 P.2d 489.
6. Concurrent sentences with other states; amendment not retroactive; no appeal of sentence modification motion filed more than 130 days after sentencing. *State v. Henning*, 3 K.A.2d 607, 608, 609, 599 P.2d 318.
7. Imposing consecutive sentences for charges arising from single transaction not error. *State v. Grantom*, 229 K. 517, 520, 625 P.2d 499.
8. Court cannot impose sentence to run consecutive to a sentence not yet imposed in a pending case. *State v. Bell*, 6 K.A.2d 573, 574, 631 P.2d 254 (1981).
9. Paragraph (3) cited in holding error in sentencing under 21-4618 did not alter practical effect of concurrent sentences imposed for multiple crimes. *State v. Smith*, 232 K. 284, 286, 654 P.2d 929 (1982).

10. No abuse in imposing consecutive maximum sentences for each offense of aggravated kidnapping and rape. *State v. Coberly*, 233 K. 100, 110, 661 P.2d 383 (1983).

11. Life sentence controlled time served in prison; sentence on extended battery has no bearing on defendant's parole eligibility. *State v. Richard*, 235 K. 355, 356, 681 P.2d 612 (1985).

12. Where sentencing criteria (21-4606) followed, sentences imposed within judicial discretion. *State v. Adkins*, 236 K. 259, 264, 689 P.2d 880 (1984).

13. Suspended sentences included in meaning of probation for consecutive sentencing under (3). *State v. Ashley*, 236 K. 551, 553, 693 P.2d 1168 (1985).

14. Sentence on conviction for crime committed while on felony probation must be served consecutively to earlier sentence. *State v. Kerley*, 236 K. 863, 865, 696 P.2d 975 (1985).

15. 21-4614 considered with consecutive sentences to determine jail credit time and beginning sentence date. *State v. Jenkins*, 10 K.A.2d 8, 10, 690 P.2d 396 (1984).

16. Defendant released on bond after conviction, but prior to sentencing, subject to mandatory provisions hereof which divest court of power to modify. *State v. Sayles*, 10 K.A.2d 180, 181, 694 P.2d 918 (1985).

17. Consecutive sentences not mandated where defendant commits another felony while on release awaiting trial for earlier felony. *State v. Reed*, 10 K.A.2d 189, 190, 694 P.2d 1329 (1985).

18. Consecutive sentences required for felony committed while on release pursuant to 22-2801 et seq. for prior felony. *State v. Reed*, 237 K. 685, 690, 703 P.2d 756 (1985).

19. Cited; jail time credit (21-4614) while in community corrections facility on probation, authority to commit discussed. *State v. Fowler*, 238 K. 326, 337, 710 P.2d 1268 (1985).

20. Court not precluded from granting probation when appropriate, however remote such possibility might be. *State v. Keeler*, 238 K. 356, 369, 710 P.2d 1279 (1985).

21. Proceeding under 60-1507; intent of sentencing judge when one of multiple sentences vacated discussed. *Niblock v. State*, 11 K.A.2d 30, 32, 711 P.2d 771 (1985).

22. Determination whether separate sentences imposed on same day should be concurrent or consecutive is discretionary with trial court. *State v. Strauch*, 239 K. 203, 219, 718 P.2d 613 (1986).

23. Cited; indigent defendant's right to transcript of sentencing hearing following denial of sentence modification examined. *State v. Duckett*, 13 K.A.2d 122, 764 P.2d 134 (1988).

24. Trial court's comments in imposing sentence as not constituting abuse of discretion examined. *State v. Pioletti*, 246 K. 49, 68, 785 P.2d 963 (1990).

25. Legislature as having authority to provide limitation on applicability of any statute rather than appellate court noted. *State v. King*, 14 K.A.2d 478, 481, 793 P.2d 1267 (1990).

26. Imposition of sentence contrary to plea agreement, when withdrawal of guilty plea permitted examined. *State v. Hill*, 247 K. 377, 380, 799 P.2d 997 (1990).

27. Record of criminal activity examined where court imposed consecutive maximum sentences within statutory limits. *State v. Barraza-Flores*, 16 K.A.2d 15, 24, 819 P.2d 128 (1991).

28. Claim of consecutive sentences as constituting abusive sentencing denied. *Ellifrits v. Davies*, 769 F.Supp. 350, 351 (1991).

29. Subsection (3) governs specific aspect of situations generally governed by subsection (8). *State v. Aleman*, 16 K.A.2d 784, 830 P.2d 64 (1992).

30. Cited in holding once a sentence is imposed, court is powerless to vacate that sentence and impose a harsher sentence. *State v. Royce*, 252 K. 394, 396, 397, 845 P.2d 44 (1993).

31. Consecutive sentencing not mandatory under circumstances presented. *State v. Edwards*, 252 K. 860, 868, 869, 870, 852 P.2d 98 (1993).

32. Consecutive maximum sentences following nolo contendere pleas not abuse of trial court's discretion under facts stated. *State v. Gibbens*, 253 K. 384, 855 P.2d 937 (1993).

33. Statute does not apply to orders of commitment to state mental institution. *State v. Finley*, 18 K.A.2d 419, 422, 854 P.2d 315 (1993).

34. No credit allowed toward controlling sentence (21-4614a) for time spent under house arrest (21-4603b); inpatient drug treatment issue remanded. *State v. Williams*, 18 K.A.2d 424, 426, 856 P.2d 158 (1993).

35. Logistical problems noted where district court relinquished defendant to Missouri authorities absent evaluation at Topeka correctional facility. *State v. Tillman*, 18 K.A.2d 556, 558, 858 P.2d 1219 (1993).

36. Whether felony sentencing through filing journal entry rather than in open court rendered sentences void examined. *State v. Vickers*, 19 K.A.2d 495, 496, 872 P.2d 314 (1994).

37. Whether separate sentences imposed on the same day should be concurrent or consecutive is discretionary with trial court examined. *State v. Johnson*, 255 K. 252, 261, 874 P.2d 623 (1994).

38. Whether court erred by sentencing defendant to consecutive hard 40 sentences for two murder convictions examined. *State v. Stafford*, 255 K. 807, 816, 878 P.2d 820 (1994).

39. Whether court's ruling mandatory sentencing provision applies prior to actual sentencing rendered enhancement ineffectual examined. *State v. Shortey*, 256 K. 166, 176, 884 P.2d 426 (1994).

40. Whether corrected oral sentence prevails over erroneous application of sentence enhancement pursuant to 21-4204(1)(b) in journal entry examined. *State v. McCloud*, 256 K. 178, 180, 883 P.2d 775 (1994).

41. Whether court erred by assuming consecutive sentences for probation violation; subsection (1) takes precedence over subsection (4). *State v. Owens*, 19 K.A.2d 773, 774, 875 P.2d 1007 (1994).

42. Whether allowing prosecution to amend habitual criminal act motion to substitute valid for invalid conviction is reversible error examined. *State v. Hunt*, 257 K. 388, 400, 894 P.2d 178 (1995).

43. Whether imposing imprisonment for presumed nonprison felony defendant committed on probation for felony constitutes departure examined. *State v. Dillard*, 20 K.A.2d 660, 662, 890 P.2d 1248 (1995).

44. Whether defendant is entitled to rehearing on motion to modify where state violated plea agreement examined. *State v. McDaniel*, 20 K.A.2d 883, 885, 893 P.2d 294 (1995).



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Bill Graves  
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Charles E. Simmons  
Secretary

**MEMORANDUM**

DATE: February 1, 2000  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons  
Secretary of Corrections  
RE: SB 471

SB 471 amends K.S.A. 1999 Supp. 21-4716 and K.S.A. 21-4717 to specifically include as an aggravating factor the fact that the crime was committed by an offender while incarcerated. Aggravating factors may be considered by the sentencing court when imposing a sentence that departs from the presumptive sentence provided for by sentencing guidelines.

SB 471 addresses a disparity that exists between the length of time that must be served by an offender who commits an offense while on postrelease supervision and an offender who commits the same offense while incarcerated. Under current law, when an offender commits a new felony while on postrelease supervision, he or she must serve the remaining balance of the postrelease supervision period before the newly imposed sentence begins. Postrelease supervision periods range from 24 months to 60 months. However, sentences imposed for crimes committed while an offender was serving the prison portion of a guidelines sentence commence upon the completion of the prison portion of the original sentence. Thus, offenders who commit a new felony offense while incarcerated do not serve any portion of the original postrelease supervision period. SB 471 addresses this disparity by permitting the sentencing court to impose a departure sentence due to the fact that the crime was committed while the offender was incarcerated. A durational departure may be up to twice the maximum presumptive sentence provided for by the sentencing matrix.

The application of the aggravating factor identified by SB 471 is limited. The fact that the crime was committed while the offender was incarcerated, as with all other aggravating factors, may not be used as a justification for a departure if the aggravating factor is a statutory element of the crime or is used to subclassify the crime on the crime

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February 1, 2000

Page 2

severity scale. Therefore, a durational departure for crimes such as battery of a correctional officer, aggravated escape or trafficking in contraband would not be justified by the fact that the offense occurred while the offender was incarcerated.

The Sentencing Commission reviewed this issue at its meeting on December 28, 1999 and endorsed this proposal. The Department requests favorable consideration of SB 471.

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cc: Legislation file

STATE OF KANSAS




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DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
*Landon State Office Building*  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(785) 296-3317

Bill Graves  
Governor

Charles E. Simmons  
Secretary

**MEMORANDUM**

DATE: February 1, 2000  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons   
Secretary of Corrections  
RE: SB 473

SB 473 corrects a typographical error in the definition of the crime of aggravated escape. The crime of aggravated escape from custody was amended in L. 1999, Ch. 164 §11. However, in defining correctional facilities, an erroneous reference was made to K.S.A. 75-5207. The correct citation should be K.S.A. 75-5202.

The department requests favorable consideration of SB 473.

cc: Legislation file

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M. Scafe  
Chairperson

Leo "Lee" Taylor  
Vice Chairperson

Carl Cushinberry  
Member

Larry D. Woodward  
Member



**KANSAS PAROLE BOARD**  
LANDON STATE OFFICE BUILDING  
900 SW JACKSON STREET, 4TH FLOOR  
TOPEKA, KANSAS 66612-1236  
(785) 296-3469

Teresa L. Saiya  
Administrator

**MEMORANDUM**

**DATE: February 1, 2000**

**TO: Senate Judiciary Committee**

**FROM: Marilyn Scafe, Chair  
Kansas Parole Board**

**RE: SB 472**

This bill amends K.S.A. 1999 Supp. 75-5217 to provide as a penalty for violations of postrelease supervision that result from a misdemeanor conviction, a confinement of not less than six months nor more than the remaining balance of the period of postrelease supervision as determined by the board.

Current law provides that if a revocation of an offender's postrelease supervision results from either a new felony or misdemeanor conviction, the offender will be returned to prison for the remaining period of postrelease supervision which is not subject to good time credits. If the revocation results from a violation of a condition and not a new conviction for either a felony or misdemeanor, the penalty is six months which is subject to good time reduction by not more than three months. This bill proposes that the KPBB be given the discretion to have offenders who are revoked for new misdemeanor convictions serve from six months up to the remaining period of postrelease supervision, not subject to good time credits.

SB 472 would allow for a more equitable penalty for violations of postrelease supervision. Additionally, the flexibility provided by SB 472 would enable the board to address supervision violations by the impositions of a prison sanction without having to impose a lengthy mandatory punishment.

The Sentencing Commission reviewed this issue at its meeting on December 28, 1999, and endorsed the proposal of allowing the KPBB to determine the punishment for a violation of postrelease for a misdemeanor conviction.

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