

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:30 a.m. on January 15, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Schmidt (excused)

Committee staff present:

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

Conferees appearing before the committee:

Susan Bechard, Kansas County and District Attorneys Association (KCDA)A
Barbara Toombs, Kansas Sentencing Commission (KSC)
Pat Scalia, Board of Indigents Defense Service (BIDS)

Others attending: see attached list

The minutes of the January 14, 2002 meeting were amended to correct a typing error and approved as amended on a motion by Senator O'Connor, seconded by Senator Donovan, Carried.

Conferee Bechard requested introduction of two bills. The first bill would target the chronic burglar by escalating burglaries with prior convictions into a felony with presumptive imprisonment. The second bill would strike certain language in current legislation regarding probation revocation. (attachment 1) Following discussion on the first bill request, Senator Goodwin moved to introduce the bill, Senator Donovan seconded. Carried. Following discussion on the second bill request, Senator Gilstrap moved to introduce the bill, Senator O'Connor seconded. Carried.

Conferee Toombs requested introduction of two bills. The first bill she discussed would change procedures for upward departure sentences. She stated it "addresses the corrective action necessary to address the constitutionality issue raised in United States Supreme Court decision and subsequently in a Kansas Supreme Court decision." The second bill she discussed would, on July 1, 2003, create the Department of Field Services which would consolidate court services, community corrections and parole/postrelease under one independent state agency. She reviewed the implementation, function, and responsibilities of the new agency. (attachment 2) Following discussion on the first bill request, Senator Adkins moved to introduce the bill, Senator O'Connor seconded. Carried. Following discussion on the second bill request, Senator Umbarger moved to introduce the bill, Senator Goodwin seconded. Carried.

Conferee Scalia requested introduction of three bills. The first bill she discussed would repeal KSA 22-4520 thereby accomplishing BIDS's mission to provide competent legal defense in an economical manner. The second bill would amend current legislation to bring additional funds into the state general fund by increasing the request for public defender application fee. The third bill would reduce paperwork by amending current legislation to allow for electronic deposit of funds by the District Court Clerks to the State Treasurer. (attachment 3) Following discussion on all the bill requests, Senator Goodwin moved to introduce the first bill, Senator Oleen seconded. Carried. Senator Oleen moved to introduce the second bill, Senator Donovan seconded. Carried. Senator Donovan moved to introduce the third bill, Senator O'Connor seconded. Carried. Following further discussion the Chair requested the Conferee provide the Committee with the following: the formula which BIDS uses to determine reimbursement for attorney's fees; the amount which should have been reimbursed; and the amount which has actually been reimbursed.

The meeting adjourned at 10:27 a.m. The next scheduled meeting is January 16, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 15, 2002

NAME	REPRESENTING
Stanley Bechard	KCDAA
Ami Hyten	Judicial Branch
Mark Gleeson	Judicial Branch
Nancy Lindberg	AG
Hele Pedix	Governor's Office
Joe Harold	KSC
Bunda Harmon	KSC
Barbara Tombs	KSC
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Doug Smith	Pinegar, Smith & Assoc.
Michelle Peterson	Kansas Governmental Consulting
W. Cody Morris	Ks. App. Prod. Assn
Jeff Bottenberg	KS Sheriff's Ass'n
Paul Davis	KS Bar Assn.
Barb Coax	KTLA
Jule Hein	HWC

Jerome A. Gorman, President
 John M. Settle, Vice-President
 Gerald W. Woolwine, Secretary-Treasurer
 David L. Miller, Past President
 Steven F. Kearney, Executive Director



Edmond D. Brancart
 Thomas J. Drees
 Christine Kenney
 Eric Rucker

Kansas County & District Attorneys Association

1200 W. 10th Street • PO Box 2428
 Topeka, KS 66601-2428
 (785) 232-5822 • Fax: (785) 234-2433
 www.kcdaa.org

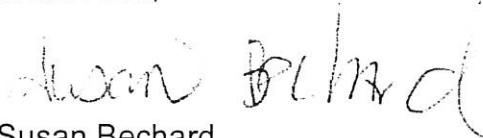
January 15, 2002

Chairman Vratil and members of the Senate Judiciary Committee,

The Kansas County and District Attorneys Association would like to thank you for taking time today to allow for us to request the following bill introductions.

1. Chronic Burglar: Self-enhancement statute for K.S.A. 21-3715, Burglary with prior convictions to escalate burglary into a felony with presumptive imprisonment (e.g. First Offense - L9, Second Offense - L7, Third Offense -L5, 4+ - L3).
2. Probation Revocation: Strike the language "or any lesser sentence" from K.S.A. 22-3716(b) [Procedural provisions for appearing before the district court omitted.] If the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and *may require the defendant to serve the sentence imposed or any lesser sentence*, and if imposition of sentence was suspended, may impose any sentence which might originally have been imposed."

Thank You,


 Susan Bechard
 KCDA

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State of Kansas

KANSAS SENTENCING COMMISSION

Honorable Paul E. Miller, Chairman

District Attorney Paul Morrison, Vice Chairman

Barbara S. Tombs, Executive Director

MEMORANDUM

TO: Senate Judiciary Committee

FROM: Barbara Tombs, Executive Director *BT*

RE: 2002 Bill Introductions

DATE: January 15, 2002

The Kansas Sentencing Commission respectfully requests introduction of two bills for consideration by the Senate Judiciary Committee during the 2002 Legislative Session. The first bill addresses the corrective action necessary to address the constitutionality issue raised in the United States Supreme Court decision *Apprendi v. New Jersey* and the subsequent Kansas Supreme Court decision *State v. Gould*.

State v. Gould, involved a case of first impression for the Kansas Supreme Court to address the application of the U.S. Supreme Court's ruling in *Apprendi v. New Jersey*, to the upward departure statute of the Kansas Sentencing Guidelines Act (KSGA). In *Gould*, the Court held that a jury must decide the aggravating circumstances based upon the reasonable doubt standard, if the maximum sentence for an offense could be enhanced by an upward departure from the presumptive KSGA sentence.

Downward departures are not affected and the Court declined to apply its ruling on upward departure sentences retroactively. The Court set a cutoff date of June 26, 2000, the date *Apprendi* was decided, as the benchmark for the application of *Apprendi* to upward departure sentences in Kansas. Since *Gould* was decided, the Court has specifically held in *Whisler v. State* that the *Gould* decision is not required to be applied retroactively as a matter of constitutional law.

However, two additional Supreme Court decisions, namely *State v. Cody* and *State v. Kneil*, have further held that it doesn't matter whether an offender is sentenced based upon a plea of guilty or no contest, as opposed to being found guilty following a bench or a jury trial, an offender is still entitled to having any aggravating circumstances that may enhance the maximum sentence decided by a jury based upon the reasonable doubt standard.

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At the current time, the application of *Apprendi* has been defined as applicable to upward durational departures only. However, on January 23, 2002, the Supreme Court will hear oral arguments in *State v. Carr*, to address whether or not the *Gould* decision also applies to upward dispositional departures as opposed to just upward durational departures.

The proposed legislation amends K.S.A. 21-4718 to provide the basis for a bifurcated jury proceeding to first determine innocence or guilt, then in the event of a guilty verdict that same jury would also determine in a separate proceeding based upon proof beyond a reasonable doubt, if any aggravating circumstances are present that could serve to enhance the maximum sentence. A unanimous verdict is required and also the use of a special jury verdict form. However, at the time of sentencing, it would still be the sentencing court who would determine whether or not an upward departure is warranted based upon the jury's finding regarding any aggravating circumstances.

The second bill the Sentencing Commission would like to introduce for consideration by the Committee creates on July 1, 2003, the Department of Field Services, which involves the consolidation of court services, community corrections and parole/postrelease under a new independent state agency. The Department will be headed by a cabinet level Commissioner and will be responsible for the comprehensive supervision, treatment and re-entry process of offenders in the community. All offenders supervised by the Department of Field Services will be subject to evaluation by a statewide comprehensive Risk/Needs Assessment tool to be developed and implemented by July 1, 2003. The Department will also be responsible for developing and maintaining a comprehensive statewide database for offenders under community supervision. In addition, the Department of Field Services will include a specific evaluation division which will be responsible for annual evaluations of community based programs utilized by the department and report program effectiveness annually to the legislature.

The Commission strongly believes the one year delayed implementation period is necessary to ensure that the issues critical to consolidation are identified and addressed to enhance the effectiveness of the Department. By May 1, 2002, the Sentencing Commission will appoint a Transition Committee, which will include adequate and necessary representation from the three entities involved in the consolidation. This Transition Subcommittee will (1) identify critical issues related to consolidation, (2) identify and address obstacles to consolidation, (3) establish a timeline of required activities prior to consolidation, (4) identify appropriate resources to be transferred to the new agency, (5) identify additional resources that may be required, (6) review and identify staffing needs for the agency, and (6) draft a comprehensive transition plan for review by the Sentencing Commission.

On or before February 1, 2003, the Sentencing Commission will submit a detailed comprehensive budget, state fiscal note, department structure, department operational and staffing plan and clearly defined mission, goals and objectives under which the new department will operate.

The Sentencing Commission hopes you will give careful and positive consideration for the proposed legislation presented this morning. The Commission is available to provide any additional information to address any concerns of the committee.



BOARD OF INDIGENTS' DEFENSE SERVICES

**JAYHAWK WALK
714 SW JACKSON, SUITE 200
TOPEKA, KANSAS 66603-3714**

(785) 296-4505

January 14, 2001

2002 Legislative Proposals

Chairman Vratil, Senators and Staff:

It is my pleasure to appear before you today to present the proposed legislation of the State Board of Indigents' Defense Services. My name is Patricia A. Scalia and I serve as executive director of the Board, a position I have held since 1998.

The Board requests three pieces of legislation, the first will allow us to accomplish our mission of providing competent legal defense in an economical manner. The second will bring additional funds into the state general fund. The third will reduce paperwork.

The following are the Board's proposals:

1. Repeal of KSA 22-4520

Summary: This statute, which prohibits the Board and its director from interfering with public defender and assigned counsel cases, conflicts with the Board's statutory mission of providing competent defense in an economical manner.

Almost weekly, the executive director and the administrative counsel are called upon by attorneys to approve or authorize the hiring of experts or the filing of particularly costly motions, such as motions for a change of venue. A denial of any such request, like a request to hire the DNA expert from New Zealand, could, and I believe will be argued to be interference with the defense of a case and a violation of state statute. The problem is highlighted now with fully half of the capital punishment cases going forward to trial with assigned counsel.

Although we understand the concerns that brought this statute to be, it must at least be modified to allow the Board to carry out its mission and not have its costs dictated by trial counsel.

Fiscal impact: \$100,000 + (depending on expense demanded.)

Policy Implications and Impact on the Agency Strategic Plan: If this statute is not repealed, the tax payers will fund every motion and pay for every expert that a defense attorney can conceive of or hire, otherwise, the board will have interfered with the defense of a case and violated the statute.

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2. **Amend KSA 22-4529** to require persons requesting representation by a public defender to pay an application fee of \$50.00.

Summary: The present statute calls for an assessment of an “administrative fee” of \$35, in the discretion of the Court, as part of the court costs. For a number of reasons, this fee is received in only a fraction of cases. Those reasons include, the judge not addressing the issue, the repayment not being made a part of the court’s order because of the form used for sentencing and the order specifying a hierarchy of payment with this payment being last.

Fiscal Impact: Agency receipts will more than double the present “administrative fee”.

Policy Implications and Impact on the Agency Strategic Plan: Despite its best efforts for several years, the agency has been able to negotiate a “Standing Order” for payment of the administrative fee from only one judicial district, Johnson County. The ability to receive the payment up front rather than last, if ever, will more than double the agency’s payment to the state general fund.

3. **Amend KSA 22-4504** to allow for electronic deposit of funds by the District Court Clerks to the State Treasurer for deposit to the state general fund with a report to be sent to the Board advising of the defendant’s full name, the county and case number, and the amount of the payment.

Summary: The current statute directs the clerks to remit all monies received to the Board at least monthly and for the Board in turn to remit monthly to the State Treasurer. The Board does not need to receive the funds as it keeps no part of those funds. This only serves to delay the process. A report of payment with the identifying information set out above is sufficient for the Board’s purposes. Electronic deposit will allow for safe and rapid receipt of funds.

Fiscal Impact: None

Policy Implications and Impact on the Agency Strategic Plan: None.

We believe these changes will assist us in being responsible stewards of the taxpayers’s money.

If I may provide specific data, or may respond to any questions, I am at your service.

Yours truly,



Patricia A. Scalia
Executive Director

PAS:bc