

Approved: _____
Date 10-07-04

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on March 16, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Jerry Ann Donaldson, Legislative Research Department
Becky Krahl, Legislative Research Department
Nicoletta Buonasera, Legislative Research Department
Connie Burns, Committee Secretary

Others attending:

See Attached List.

SB 299 – Concerning Kansas surety agents

Chairman Loyd provided the committee a balloon that did not change section 1 & 2 and to reflect the testimony the committee received. (Attachment 1)

Representative Pauls moved to adopt the balloon. Representative Carter seconded the motion. The motion carried.

Representative Ward made a motion to restore the word *not* back in new section 3. Representative Goering seconded the motion. The motion carried.

Representative Ward made a motion to change language on surety agent to match definition section. Representative Kassebaum seconded the motion. The motion carried.

Representative Owens made a motion to move **SB 299** out favorably as amended. Representative Crow seconded the motion. The motion carried.

SB 350 – Clarifies length of parole

The Revisor explained to the committee proposed language to line 16 inserting parole and line 26 following *the initial* insert the word jail.

Representative Goering made the motion to amend as recommended by the Revisor. Representative Kassebaum seconded the motion. The motion carried.

Representative Goering made the motion to report **SB 350** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

SB 422 – Capital murder, if sentence of death not imposed, imprisonment for life without the possibility of parole

Chairman Loyd provided the committee with a balloon that amends KSA 22-3728, KSA 21-4622, and KSA 21-4623. (Attachment 2)

Representative Owens made a motion to adopt the balloon. Representative Kassebaum seconded the motion.

Representative Carter requested to divide and review each section. The first section is to accept the language in lines 22 – 26. Section 1 passed. Section 2 is that less than 18 years of age is not sentenced to the death penalty or life without parole. Section 2 passed. New section 3 amends KSA 21-4623. New section 3 passed. The motion carried to adopt the balloon.

Representative O'Malley made the motion to report **SB 422** favorably for passage as amended. Representative Owens seconded the motion.

Representative Pauls made the motion to amend to add jury instructions but not to include new section 1(b). Representative Carter seconded the motion. The motion failed.

Representative Ward made the motion to amend KSA 21-4624 subsection (e), that a jury has two choices: life without parole or the death penalty. Representative Goering seconded the motion. The motion carried.

Representative Carter made the motion to end of new section (g) that provisions of KSA 22-3728 do not apply to defendants sentenced to death or life without parole. Representative Pauls seconded the motion. The motion failed.

Representative O'Malley made a substitute motion to report **SB 422** favorably for passage as amended. Representative Goudeau seconded the motion. The motion carried.

The meeting was adjourned at 3:15 PM. The next meeting is March 17, 2004.

[As Amended by Senate Committee of the Whole]

PROPOSED AMENDMENT
March 16, 2004

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 299

By Special Committee on Judiciary

1-9

12 AN ACT concerning surety agents

13

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

15 Section 1. As used in this act, (a) "Surety" ~~has the same meaning as~~
16 ~~K.S.A. 40-1102 and amendments thereto means a person or commer-~~
17 ~~cial surety, other than a defendant in a criminal proceeding, that~~
18 ~~guarantees the appearance of a defendant in a criminal proceeding,~~
19 ~~by executing an appearance bond.~~

20 (b) "Agent of a surety" means a person not performing the duties of
21 a law enforcement officer who tracks down, captures and surrenders to
22 the custody of a court a fugitive who has violated a surety or bail bond
23 agreement.

24 Sec. 2. Any [surety or authorized] agent of a surety, commonly re-
25 ferred to as a bounty hunter, who intends to apprehend any person in
26 this state pursuant to K.S.A. 22-2509 and amendments thereto, or under
27 similar authority from any other state, shall inform law enforcement au-
28 thorities in the city or county in which such [surety or] agent of a surety
29 intends such apprehension, before attempting such apprehension. The
30 [surety or] agent of a surety shall present to the local law enforcement
31 authorities a certified copy of the bond, a valid government-issued photo
32 identification, written appointment of agency, if not the actual surety, and
33 all other appropriate paperwork identifying the principal and the person
34 to be apprehended. Local law enforcement may accompany the agent.
35 [Nothing in this section shall prevent a surety from lawfully taking
36 custody of a client who has been surrendered to such surety or when
37 a surety has inadvertent contact with a client and the surety is
38 aware that a court order is currently active for the apprehension of
39 that client.]

40 Sec. 3. [No commercial surety or person acting as an authorized agent
41 of a commercial surety or bounty hunter shall have been convicted in this
42 or any other jurisdiction, of a felony, a violation of this section, or within
43 four years immediately prior to the date of the intended apprehension.]

1 ~~person convicted of any crime involving moral turpitude, dishonesty, ve-~~
2 ~~hicular homicide, assault, battery, domestic battery, assault of a law en-~~
3 ~~forcement officer, misdemeanor battery against a law enforcement offi-~~
4 ~~cer, criminal restraint, sexual battery, endangering a child, intimidation~~
5 ~~of a witness or victim or illegally using, carrying or possessing a dangerous~~
6 ~~weapon. A surety recovery agent may not enter a residence to re-~~
7 ~~cover a fugitive without first demanding admittance and explaining~~
8 ~~the purpose for which admittance is desired.~~

9 Sec. 4. Violation of this act shall be a class A nonperson misdemeanor
10 for the first violation and a level 9 nonperson felony upon a second and
11 subsequent violation.

12 Sec. 5. This act shall take effect and be in force from and after its
13 publication in the statute book.

No person who, within the past 10 years, has been convicted, in this or any other jurisdiction, of a person felony, may act as a surety or as an agent of a surety.

As Amended by Senate Committee

Session of 2003

PROPOSED AMENDMENT
March 16, 2004

SENATE BILL No. 422

By Committee on Judiciary

2-2

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
11 ing to imprisonment for life without the possibility of parole; amending
12 K.S.A. ~~21-4622 and~~ 21-4634 and K.S.A. 2003 Supp. 21-4635 and 22-
13 3717 and repealing the existing sections.

21-4622, 21-4623 and

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

15
16 New Section 1. (a) Except as provided in K.S.A. 21-4634, and
17 amendments thereto, if a defendant is convicted of the crime of capital
18 murder, pursuant to K.S.A. 2003 Supp. 21-3439, and amendments
19 thereto, for crimes committed on and after July 1, 2004, and a sentence
20 of death is not imposed, the court shall sentence the defendant to im-
21 prisonment for life without the possibility of parole.

22 (b) ~~Except as provided in K.S.A. 22-3728, and amendments~~
23 ~~thereto, a defendant who is sentenced to imprisonment for life with-~~
24 ~~out the possibility of parole shall spend the remainder of the de-~~
25 ~~fendant's natural life incarcerated and in the custody of the secre-~~
26 ~~tary of corrections.~~ A defendant who is sentenced to imprisonment for
27 life without the possibility of parole shall not be eligible for parole, pro-
28 bation, assignment to a community correctional services program, con-
29 ditional release, postrelease supervision, or suspension, modification or
30 reduction of sentence. Upon sentencing a defendant to imprisonment for
31 life without the possibility of parole, the court shall commit the defendant
32 to the custody of the secretary of corrections and the court shall state in
33 the sentencing order of the judgment form or journal entry, whichever is
34 delivered with the defendant to the correctional institution, that the de-
35 fendant has been sentenced to imprisonment for life without the possi-
36 bility of parole.

37 (c) This section shall be a part of and supplemental to the Kansas
38 criminal code.

39 ~~Sec. 2. K.S.A. 21-4622 is hereby amended to read as follows: 21-~~
40 ~~4622. If the court authorizes prosecution as an adult of a juvenile pursuant~~
41 ~~to K.S.A. 38-1626 and amendments thereto, the county or district attor-~~
42 ~~ney may proceed pursuant to section 1, and amendments thereto, or~~
43 ~~K.S.A. 21-4624 through 21-4628 and amendments thereto.~~

[See attached Sections 2 and 3. Renumber remaining sections accordingly.]

Sec. ~~1.~~² K.S.A. 21-4622 is hereby amended to read as follows: 21-4622. Upon conviction of a defendant of capital murder and a finding that the defendant was less than 18 years of age at the time of the commission thereof, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed hereunder. ~~shall~~ for life without the possibility of parole

Sec. ~~1~~³ K.S.A. 21-4623 is hereby amended to read as follows: 21-4623. (a) If, under K.S.A. 21-4624 and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631 and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.

(b) At the hearing, the court shall determine whether the defendant is mentally retarded. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 10 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in

evidence against the defendant in any criminal proceeding.

(c) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631 and amendments thereto.

(d) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is mentally retarded, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed hereunder. [or life without the possibility of parole

(e) As used in this section, "mentally retarded" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01 and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

1 (0) For offenders sentenced prior to the effective date of this act who
2 are eligible for modification of their postrelease supervision obligation,
3 the department of corrections shall modify the period of postrelease su-
4 pervision as provided for by this section for offenders convicted of severity
5 level 9 and 10 crimes on the sentencing guidelines grid for nondrug
6 crimes and severity level 4 crimes on the sentencing guidelines grid for
7 drug crimes on or before September 1, 2000; for offenders convicted of
8 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug
9 crimes on or before November 1, 2000; and for offenders convicted of
10 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug
11 crimes and severity level 3 crimes on the sentencing guidelines grid for
12 drug crimes on or before January 1, 2001.

13 ~~Sec. 5. K.S.A. 21-4622 and 21-4634 and K.S.A. 2003 Supp. 21-~~
14 ~~4635 and 22-3717 are hereby repealed.~~

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

21-4622, 21-4623 and