

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on January 12, 2005 in Room 241-N of the Capitol.

Committee members absent:

Carol Beggs- excused
Mike Peterson- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Becky Krahl, Kansas Legislative Research
Reagan Cussimano, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Jeff Bottenberg, KS Sheriff Association

Others attending:

See Attached List.

Chairperson Loyd welcomed the committee with introduction committee members and new staff members. The rules for the committee and for conferees appearing before the committee.

Jeff Bottenberg, Kansas Sheriffs' Association, appeared before the committee to request bill introduction. (Attachment 1) Inherently dangerous felonies.

Representative Davis made a motion that this request should be introduced as a committee bill.

Representative Owens seconded the motion. The motion carried.

Representative Ward appeared before the committee to request the introduction of bills. (Attachment 2)

1. Death penalty; if aggravating circumstances outweigh mitigating circumstances, the sentence is death; if circumstances are equal, the defendant is not sentenced to death.

Representative Swenson made a motion that this request should be introduced as a committee bill.

Representative Kelsey seconded the motion. The motion carried.

2. Creating the office of district attorney in judicial districts that vote for approval.

Representative Owens made a motion that this request should be introduced as a committee bill.

Representative Crow seconded the motion. The motion carried.

Chairman Loyd requested a bill introduction on requiring county jail officers to complete basic course of training.

Representative Owens made a motion that this request should be introduced as a committee bill.

Representative Kelsey seconded the motion. The motion carried.

The chairman highlighted significant issues that will be before the committee this session.

The committee meeting was adjourned at 2:20 pm. The next meeting was scheduled for January 18, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 1-12-05

NAME	REPRESENTING
JEREMY S BARCLAY	KDOC
Mark Gleeson	Judicial Branch
Sarah Novasione	Federico Consulting
Richard Somaniego	Kearney & Associates
Michael White	KCDAA
Halcy Harrison	Rep. Yoder, intern
John C GRANGE	Rep 75 th DIST
Samuel Reed	SPEAKER Mays
Sam Schneider	Rep. Kelsey
Julie Menghini	Rep. 3 rd Dist.
Sandy Barnett	KCSOV

Memorandum

TO: HONORABLE WARD LOYD, CHAIR, HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

FROM: JEFF BOTTENBERG, LEGISLATIVE COUNSEL, KANSAS SHERIFFS' ASSOCIATION

RE: BILL INTRODUCTION

DATE: JANUARY 12, 2005

Mr. Chairman, members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Sheriffs' Association ("KSA"). KSA is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff departments throughout the state.

Our proposal amends K.S.A. §21-3436, which concerns inherently dangerous felonies, by adding the provisions of K.S.A. §8-1568(b)(1) and (2), which addresses fleeing or attempting to elude law enforcement. This amendment would allow a person to be charged with felony murder when his reckless and dangerous driving, while fleeing law enforcement, causes the death of an innocent person. Last year there were three fatalities in Wichita because of this conduct, and an officer in McPherson was struck while placing tire-deflating devices in a roadway. The public outcry for tougher penalties for this behavior is growing across the state, and we will be happy to provide full details on the need for this public safety legislation at the time of hearing.

Thus, we respectfully request that this bill be introduced by the House Corrections and Juvenile Justice Committee. Please feel free to contact me if you have any questions.

JSB:kjb
Enclosures

AN ACT concerning crimes and punishment, relating to inherently dangerous felonies; amending K.S.A. 21-3404 and 21-3436 and repealing the existing sections.

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

Section 1. K.S.A. 21-3404 is hereby amended to read as follows:

21-3404. Involuntary manslaughter.

Involuntary manslaughter is the unintentional killing of a human being committed:

(a) Recklessly;

(b) in the commission of, or attempt to commit, or flight from any felony, other than an inherently dangerous felony as defined in K.S.A. 21-3436 and amendments thereto, that is enacted for the protection of human life or safety or a misdemeanor that is enacted for the protection of human life or safety, including acts described in K.S.A. 8-1566 and 8-1568(a) and amendments thereto but excluding the acts described in K.S.A. 8-1567 and amendments thereto; or

(c) during the commission of a lawful act in an unlawful manner.

Involuntary manslaughter is a severity level 5, person felony.

Section 2. K.S.A. 21-3436 is hereby amended to read as follows:

21-3436. Inherently dangerous felony; definition.

(a) Any of the following felonies shall be deemed an inherently dangerous felony whether or not such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and amendments thereto as not to be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and amendments thereto:

(1) Kidnapping, as defined in K.S.A. 21-3420 and amendments thereto;

(2) aggravated kidnapping, as defined in K.S.A. 21-3421 and amendments thereto;

(3) robbery, as defined in K.S.A. 21-3426 and amendments thereto;

(4) aggravated robbery, as defined in K.S.A. 21-3427 and amendments thereto;

(5) rape, as defined in K.S.A. 21-3502 and amendments thereto;

(6) aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto;

(7) abuse of a child, as defined in K.S.A. 21-3609 and amendments thereto;

(8) felony theft under subsection (a) or (c) of K.S.A. 21-3701 and amendments thereto;

(9) burglary, as defined in K.S.A. 21-3715 and amendments thereto;

(10) aggravated burglary, as defined in K.S.A. 21-3716 and amendments thereto;

(11) arson, as defined in K.S.A. 21-3718 and amendments thereto;

(12) aggravated arson, as defined in K.S.A. 21-3719 and amendments thereto;

(13) treason, as defined in K.S.A. 21-3801 and amendments thereto;

(14) any felony offense as provided in K.S.A. 65-4127a, 65-4127b or 65-4159 or 65-4160 through 65-4164 and amendments thereto;

(15) any felony offense as provided in K.S.A. 21-4219 and amendments thereto;

(16) endangering the food supply as defined in K.S.A. 2003 Supp. 21-4221, and amendments thereto; and

(17) aggravated endangering the food supply as defined in K.S.A. 2003 Supp. 21-4222, and amendments thereto= ;

(18) Fleeing or attempting to elude a police officer, as defined in K.S.A. 8-1568(b)(1) and (2).

(b) Any of the following felonies shall be deemed an inherently dangerous felony only when such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and amendments thereto as to not be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and amendments thereto:

(1) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401 and amendments thereto;

(2) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402 and amendments thereto;

(3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403 and amendments thereto;

(4) aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto;

(5) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411 and amendments thereto;

(6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414 and amendments thereto; and

(7) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415 and amendments thereto.

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

Section 3. K.S.A. 21-3404 and 21-3436 are hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the statute book.

REVISOR OF STATUTES
BILL DRAFTING REQUEST

PRINTED BILL

No. _____

BILL DRAFTER: Jill Wolters

BILL DRAFTER'S NO. 05-17

DATE: January 13, 2005

REVISOR OF STATUTES NO. _____

SPONSOR

SENATE:

HOUSE:

SUBJECT AND INSTRUCTIONS

Response to State v. Marsh, death penalty unconstitutional

SHORT TITLE

Death penalty; if aggravating circumstances outweigh
mitigating circumstances, the sentence is death; if
circumstances are equal, the defendant is not sentenced
to death.

By

AN ACT concerning crimes, punishment and criminal procedure; relating to the sentence of death; amending K.S.A. 2004 Supp. 21-4624 and repealing the existing section.

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

Section 1. K.S.A. 2004 Supp. 21-4624 is hereby amended to read as follows: 21-4624. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than five days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced to life without the possibility of parole, and no sentence of death shall be imposed hereunder.

(b) Except as provided in K.S.A. 21-4622 and 21-4623, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be

applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances ~~is--not--outweighed--by~~ outweighs any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. If such jury finds

that the aggravating circumstances and mitigating circumstances are equal, the defendant shall not be sentenced to death and shall be sentenced to life without the possibility of parole. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of life without the possibility of parole and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant to life without the possibility of parole, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

(g) A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant's natural life incarcerated and in the custody of the secretary of corrections. A defendant who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence. Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the

court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

Sec. 2. K.S.A. 2004 Supp. 21-4624 is hereby repealed.

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