

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:40 a.m. on March 18, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Mary Pilcher-Cook- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes

Doug Taylor, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Others attending:

See attached list.

Senator Donovan moved, Senator Kelly seconded, to approve the Committee minutes for January 29 and February 2. Motion carried.

The Chairman called for final action on **HB 2039 - Identification of defendant by unique DNA profile sufficient for reasonable certainty requirement of warrant.**

Senator Vratil moved, Senator Schodorf seconded, to amend HB 2039 so the statute of limitations would continue to run.

Following discussion the committee decided more information is needed regarding how the bill would effect the statute of limitations and to continue **HB 2039** to next session. The motion to amend died.

The Chairman called for final action on **SB 292 - Civil procedure, liens; requiring notice of commencement and notice of furnishings to be filed prior to filing certain commercial property liens.**

The Chairman indicated the interested parties have not reached an agreement on language and he will carry the bill over to next session with the strong request that the parties resolve the issue during the interim.

The Chairman called for final action on **SB 281 - Sentencing for severity level 4 drug crimes; probation or assignment to community.**

Helen Pedigo, Executive Director, Kansas Sentencing Commission, was called upon to provide further explanation of the fiscal note. Following questioning, a balloon amendment was provided by the Kansas Sentencing Commission. (Attachment 1)

Senator Vratil moved, Senator Kelly seconded, to amend SB 281 as reflected the balloon. Motion carried.

Senator Vratil moved, Senator Kelly seconded, to recommend SB 281 as amended, favorably for passage. Motion carried.

Senator Schmidt moved, Senator Schodorf seconded, to delete the language currently in HB 2097 and insert SB 283 and SB 281 as amended by the committee as a substitute bill. Motion carried.

Senator Haley distributed a proposed substitute for SB 17 - Videotaping felony interrogations. Senator Haley moved, Senator Lynn seconded, to insert the language in the proposed draft into HB 2097.

Following discussion, the Chairman indicated there was another vehicle available for Senator Haley's bill the Committee could take up at the next meeting. Senator Haley withdrew his motion.

Senator Schmidt moved, Senator Bruce seconded, to recommend Senate Substitute for HB 2097, favorably for passage. Motion carried.

The next meeting is scheduled for March 19, 2009. The meeting was adjourned at 10:32 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-18-09

NAME	REPRESENTING
Joe Mosimann	Hein La
Sean Miller	CAPITOR STRATEGIES
Ted Smith	KDOR
Marilyn Jacobsen	DDA
Richard Smiley	KOUNCY ASSOC.
Ed Kump	KACP KPOA

SENATE BILL No. 281

By Committee on Ways and Means

2-17

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to sentencing; severity level 4 drug crimes; amending K.S.A. 21-
11 4611 and repealing the existing section.
12

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

14 Section 1. K.S.A. 21-4611 is hereby amended to read as follows: 21-
15 4611. (a) The period of suspension of sentence, probation or assignment
16 to community corrections fixed by the court shall not exceed five years
17 in felony cases involving crimes committed prior to July 1, 1993, or two
18 years in misdemeanor cases, subject to renewal and extension for addi-
19 tional fixed periods not exceeding five years in such felony cases, nor two
20 years in misdemeanor cases. In no event shall the total period of proba-
21 tion, suspension of sentence or assignment to community corrections for
22 a felony committed prior to July 1, 1993, exceed the greatest maximum
23 term provided by law for the crime, except that where the defendant is
24 convicted of nonsupport of a child, the period may be continued as long
25 as the responsibility for support continues. Probation, suspension of sen-
26 tence or assignment to community corrections may be terminated by the
27 court at any time and upon such termination or upon termination by
28 expiration of the term of probation, suspension of sentence or assignment
29 to community corrections, an order to this effect shall be entered by the
30 court. The provisions of K.S.A. 75-5291, and amendments thereto, shall
31 be applicable to any assignment to a community correctional services
32 program pursuant to this section.

33 (b) The district court having jurisdiction of the offender may parole
34 any misdemeanant sentenced to confinement in the county jail. The pe-
35 riod of such parole shall be fixed by the court and shall not exceed two
36 years and shall be terminated in the manner provided for termination of
37 suspended sentence and probation.

38 (c) For all crimes committed on or after July 1, 1993, the duration of
39 probation in felony cases sentenced for the following severity levels on
40 the sentencing guidelines grid for nondrug crimes and the sentencing
41 guidelines grid for drug crimes is as follows:

- 42 (1) For nondrug crimes the recommended duration of probations is:
43 (A) Thirty-six months for crimes in crime severity levels 1 through 5;

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Kansas Sentencing Commission
March 13, 2009

SB 281

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Except as otherwise provided, in

1 and

2 (B) 24 months for crimes in crime severity levels 6 and 7.

and severity level 4 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed

3 (2) For drug crimes the recommended duration of probation is 36 months for crimes in crime severity levels 1 and 2.

4 (3) ~~In felony cases sentenced at severity levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and severity level 4 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation; or assignment to a community correctional services program as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 12 months in length.~~

,

12 (4) In felony cases sentenced at severity level 8 on the sentencing guidelines grid for nondrug crimes ~~and severity level 3 levels 3 and 4~~ on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program, as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 18 months in length.

level 3

and felony cases sentenced pursuant to K.S.A. 21-4729, and amendments thereto

19 (5) If the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by the length of the probation terms provided in subsections (c)(3) and (c)(4), the court may impose a longer period of probation. Such an increase shall not be considered a departure and shall not be subject to appeal.

25 (6) Except as provided in subsections (c)(7) and (c)(8), the total period in all cases shall not exceed 60 months, or the maximum period of the prison sentence that could be imposed whichever is longer. Nonprison sentences may be terminated by the court at any time.

29 (7) If the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. If the defendant is ordered to pay full or partial restitution, the period may be continued as long as the amount of restitution ordered has not been paid.

34 (8) The court may modify or extend the offender's period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, whichever is longer, inclusive of the original supervision term.

39 (d) The provisions of subsection (c), as amended by this act, shall be applied retroactively. The sentencing court shall direct that a review of all persons serving a nonprison sanction for a crime in severity levels 8, 9 or 10 of the sentencing guidelines grid for nondrug crimes or a crime in severity levels 3 or 4 of the sentencing guidelines grid for drug crimes

1 be conducted. On or before September 1, 2000, the duration of such
2 person's probation shall be modified in conformity with the provisions of
3 subsection (c).

4 Sec. 2. K.S.A. 21-4611 is hereby repealed.

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

Kansas Register

PROPOSED Substitute for SENATE BILL NO. 17

By

AN ACT concerning crimes, punishment and criminal procedure;
relating to evidence and videotaping of felony interrogations.

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

Section 1. (a) As used in this section:

(1) "Custodial interrogation" retains the meaning prescribed to it by the United States and Kansas Constitutions.

(2) "Place of detention" means a building under the control of a law enforcement unit, a courthouse holding facility for defendants in the custody of a jail or prison, a city or county jail or work release facility, a state prison, or a state security hospital or a facility operated by the department of social and rehabilitation services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto.

(3) "Video recording" means to capture the visual and audio components of an event in a manner that allows the event to be observed through that medium.

(b) (1) Effective July 1, 2009, except as provided in subsection (c), if a place of detention is equipped with one or more rooms capable of making a video recording, a video recording shall be made of a custodial interrogation conducted in such place of detention when the interrogation concerns an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 felony crime. The recording shall include the advice of rights. The recording shall not end until the interrogation is concluded. If the defendant elects to make or

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Attachment 2

sign a written statement during the course of a custodial interrogation, the making and signing of the writing shall be recorded.

(2) Effective July 1, 2010, except as provided in subsection (c), a video recording shall be made of a custodial interrogation conducted in any place of detention when the interrogation concerns an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 felony crime. The recording shall include the advice of rights. The recording shall not end until the interrogation is concluded. If the defendant elects to make or sign a written statement during the course of a custodial interrogation, the making and signing of the writing shall be recorded.

(c) A video recording of a statement under subsection (b) is not required if the oral, written or sign language statement was made:

(1) During an interrogation that was not recorded as required by subsection (b) because video recording was not feasible;

(2) spontaneously and not in response to a question;

(3) voluntarily, whether or not the result of an interrogation, and the statement has a bearing on the credibility of the accused as a witness;

(4) after questioning that is routinely asked during the processing of the arrest of a suspect;

(5) in an interrogation outside the state of Kansas;

(6) at a time when the interrogators are unaware that an offense covered by subsection (b) has occurred; or

(7) at a time when the person being interrogated is not a suspect for the offense to which the statement relates while the person is being interrogated for an offense other than an offense specified in subsection (b).

(d) If the court finds by a preponderance of the evidence that the defendant was subjected to an interrogation in violation of this section, the defendant shall be entitled to a jury instruction on the failure to record the interrogation. If the defendant requests such an instruction, the court shall instruct the jury that it is the law of Kansas to make a video recording of a custodial interrogation of a person suspected of committing the offense charged and because of the absence of any recording of the interrogation in the case before them, they should weigh evidence of the defendant's alleged statement with great caution and care.

(e) Every video recording required under this section shall be preserved until the defendant's conviction for an offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or until the prosecution of offenses related to the recorded statement is barred by law, whichever occurs later.

(f) Every video recording of any statement as required by this section shall be confidential and exempt from the Kansas open records act in accordance with K.S.A. 45-221, and amendments

thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.