

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on February 4, 1987 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Matt Lynch, Kansas Judicial Council
Elwaine Pomeroy, Kansas Parole Board
Gene Johnson, Kansas Community Alcohol Safety Action Projects Association

Matt Lynch, Kansas Judicial Council, requested a bill be introduced concerning new issue to be raised before the court. A copy of the handout is attached (See Attachment I). This proposal was recommended by the Administrative Procedure Committee. Following his explanation, Senator Feleciano moved to introduce the bill. Senator Langworthy seconded the motion, and the motion carried.

Elwaine Pomeroy, Kansas Parole Board, requested a bill be introduced concerning good time credits. A copy of the handout is attached (See Attachment II). Following his explanation, Senator Feleciano moved to introduce the bill. Senator Talkington seconded the motion, and the motion carried.

Elwaine Pomeroy requested a bill be introduced concerning multiple sentences. A copy of the handout is attached (See Attachment III). He explained the proposal. Senator Burke moved the bill be introduced. Senator Langworthy seconded the motion, and the motion carried.

Elwaine Pomeroy requested a bill be introduced concerning return of parole violator. A copy of the handout is attached (See Attachment IV). Following his explanation, Senator Burke moved the bill be introduced. Senator Gaines seconded the motion, and the motion carried.

Senator Burke requested a bill be introduced concerning alcohol beverages relating to transportation in open containers and consumption while operating motor vehicle. Gene Johnson, Kansas Community Alcohol Safety Action Projects Association, explained the proposal to the committee. Following committee discussion, Senator Burke moved to introduce the bill. Senator Talkington seconded the motion, and the motion carried.

Senate Bill 53 - Amendments to Rules of Civil Procedure.

Matt Lynch, Kansas Judicial Council, testified this bill was the recommendation of the Civil Code Committee of the judicial council. The purpose of the bill is to alleviate storage problems for the district courts. Following committee discussion of the bill, Senator Gaines moved to amend the bill by not striking "or mail" in line 338. Senator Hoferer seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 4, 1987

Senate Bill 53 continued

Senator Gaines moved to amend the bill by not striking "on file" on line 456. Senator Hoferer seconded the motion, and the motion carried. Senator Winter moved to report the bill favorably as amended. Senator Gaines seconded the motion, and the motion carried.

Committee discussion was held concerning attorneys fees.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

77-617. Limitations on new issues. A person may obtain judicial review of an issue that was not raised before the agency, only to the extent that:

- (a) The agency did not have jurisdiction to grant an adequate remedy based on a determination of the issue;
- ~~(c) (b)~~ the agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding; or
- ~~(d) (e)~~ the interests of justice would be served by judicial resolution of an issue arising from:
 - (1) A change in controlling law occurring after the agency action; or
 - (2) person exhausted the last feasible opportunity for seeking relief from the agency.

(b) The agency action subject to judicial review is a rule and regulation and the person has not been a party in adjudicative proceedings which provided an adequate opportunity to raise the issue;

8-259. Cancellation, suspension, revocation or denial of license by division; judicial review. (a) Except in the case of mandatory revocation under K.S.A. 8-254 and amendments thereto, the cancellation, suspension, revocation or denial of a person's license by the division is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. In the case of review of an order of suspension under K.S.A. 8-1001 et seq., and amendments thereto, the petition for review shall be filed within 10 days after the effective date of the order and venue of the action for review is the county where the administrative proceeding was held. In all other cases, the time for filing the petition is as provided by K.S.A. 77-613 and amendments thereto and venue is the county where the licensee resides. The action for review shall be by trial *de novo* and the licensee shall have the right of trial by jury upon demand therefor. The court on review shall consider the licensee's traffic violations record and liability insurance coverage before granting a stay or other temporary remedy pursuant to K.S.A. 77-616 and amendments thereto. If a stay is granted, it shall be considered equivalent to the license surrendered. If a stay is not granted, trial shall be set upon 20 days' notice to the legal services bureau of the department of revenue. No stay shall be issued if a person's license is canceled pursuant to K.S.A. 8-250 and amendments thereto.

(b) The clerk of any court to which an appeal has been taken under this section shall, within 10 days after the final disposition of such appeal, forward a notification of the final disposition to the division.

The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this act.

41-323. Violations of act; civil penalties. (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee under the Kansas liquor control act has violated any provision thereof, may impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(b) No fine shall be imposed pursuant to this section except upon the written order of the director to the licensee who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee to appeal to the board. Such licensee may appeal such order to the board, and shall be subject to appeal and review in the manner provided by K.S.A. 41-321, 41-322 and 41-323, and amendments thereto.

(c) Any fine imposed pursuant to this section shall be paid to the state treasurer, who shall deposit the same in the state treasury and credit it to the state general fund.

(d) This section shall be part of and supplemental to the Kansas liquor control act.

such order

41-2633a. Violations by licensees; civil fine. (a) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee under article 26 of chapter 41 of the Kansas Statutes Annotated has violated any provision thereof, may impose on such licensee a civil fine not exceeding \$1,000 for each violation.

(b) No fine shall be imposed pursuant to this section except upon the written order of the director to the licensee who committed the violation. Such order shall state the violation, the fine to be imposed and the right of the licensee to appeal to the board. Such licensee may appeal such order to the board, and the order of the board shall be subject to appeal and review in the manner provided by K.S.A. 41-321, 41-322 and 41-323, and amendments thereto.

(c) Any fine imposed pursuant to this section shall be paid to the state treasurer, who shall deposit the same in the state treasury and credit it to the state general fund.

(d) This section shall be part of and supplemental to article 26 of chapter 41 of the Kansas Statutes Annotated.

MEMO

TO: ELWAINA POMEROY

FROM: JOHN K. BORK

DATE: JANUARY 27, 1987

The following is suggested for inclusion in the sentencing article of K.S.A. Chapter 21.

K.S.A. 21-4603a. Good Time Credits. "Good time credit," as used in this section and in Chapter 22, for all inmates sentenced after July 1, 1982, shall be allocated as follows:

a.

GOOD TIME TABLE*
(Assumed 360 Day Year)
(Months of 30 Days Each)

SENTENCE Minimum (or) Maximum	GOOD TIME EARNED			MUST SERVE		
	Years	Months	Days**	Years	Months	Days***
1 Year	0	3	0	0	9	0
2 Years	0	6	23	1	5	7
3 Years	0	10	15	2	1	15
4 Years	1	1	15	2	10	15
5 Years	1	5	8	3	6	22
6 Years	1	9	0	4	3	0
7 Years	2	0	0	5	0	0
8 Years	2	3	23	5	8	7
9 Years	2	7	15	6	4	15
10 Years	2	11	8	7	0	22
11 Years	3	2	8	7	9	22
12 Years	3	6	0	8	6	0
13 Years	3	9	23	9	2	7
14 Years	4	0	23	9	11	7
15 Years	4	4	15	10	7	15
16 Years	4	8	8	11	3	22
17 Years	5	0	0	12	0	0
18 Years	5	3	0	12	9	0
19 Years	5	6	23	13	5	7
20 Years	5	10	15	14	1	15
21 Years	6	1	15	14	10	15
22 Years	6	5	8	15	6	22
23 Years	6	9	0	16	3	0
24 Years	7	0	0	17	0	0
25 Years	7	3	23	17	8	7
26 Years	7	7	15	18	4	15
27 Years	7	11	8	19	0	22
28 Years	8	2	8	19	9	22
29 Years	8	6	0	20	6	0
30 Years	8	9	23	21	2	7
31 Years	9	0	23	21	11	7
32 Years	9	4	15	22	7	15
33 Years	9	8	8	23	3	22
34 Years	10	0	8	24	0	0
35 Years	10	3	0	24	9	0
36 Years	10	6	23	25	5	7
37 Years	10	10	15	26	1	15
38 Years	11	1	15	26	10	15
39 Years	11	5	8	27	6	22
40 Years	11	9	0	28	3	0
41 Years	12	0	0	29	0	0
42 Years	12	3	23	29	8	7
43 Years	12	7	15	30	4	15
44 Years	12	11	8	31	0	22
45 Years	13	2	8	31	9	22
46 Years	13	6	0	32	6	0
47 Years	13	9	23	33	2	7
48 Years	14	0	23	33	11	7
49 Years	14	4	15	34	7	15
50 Years	14	8	8	35	3	22

51 Years	15	0	0	36	0	0
52 Years	15	3	0	36	9	0
53 Years	15	6	23	37	5	7
54 Years	15	10	15	38	1	15
55 Years	16	1	15	38	10	15
56 Years	16	5	8	39	6	22
57 Years	16	9	0	40	3	0
58 Years	17	0	0	41	0	0
59 Years	17	3	23	41	8	7
60 Years	17	7	15	42	4	15
61 Years	17	11	8	43	0	22
62 Years	18	2	8	43	9	22
63 Years	18	6	0	44	6	0
64 Years	18	9	23	45	2	7
65 Years	19	0	23	45	11	7
66 Years	19	4	15	46	7	15
67 Years	19	8	8	47	3	22
68 Years	20	0	0	48	0	0
69 Years	20	3	0	48	9	0
70 Years	20	6	23	49	5	7
71 Years	20	10	15	50	1	15
72 Years	21	1	15	50	10	15
73 Years	21	5	8	51	6	22
74 Years	21	9	0	52	3	0
75 Years	22	0	0	53	0	0
76 Years	22	3	23	53	8	7
77 Years	22	7	15	54	4	15
78 Years	22	11	8	55	0	22
79 Years	23	2	8	55	9	22
80 Years	23	6	0	56	6	0
81 Years	23	9	23	57	2	7
82 Years	24	0	23	57	11	7
83 Years	24	4	15	58	7	15
84 Years	24	8	8	59	3	22
85 Years	25	0	0	60	0	0
86 Years	25	3	0	60	9	0
87 Years	25	6	23	61	5	7
88 Years	25	10	15	62	1	15
89 Years	26	1	15	62	10	15
90 Years	26	5	8	63	6	22
91 Years	26	9	0	64	3	0
92 Years	27	0	0	65	0	0
93 Years	27	3	23	65	8	7
94 Years	27	7	15	66	4	15
95 Years	27	11	8	67	0	22
96 Years	28	2	8	67	9	22
97 Years	28	6	0	68	6	0
98 Years	28	9	23	69	2	7
99 Years	29	0	23	69	11	7
100 Years	29	4	15	70	7	15

* Based on the established good time formula of one day for every three days served and one month for every year served as set forth in statute.
**Rounded up to avoid partial days.
***Rounded down to avoid partial days.

Attach. II
Senate Judiciary
2-4-87

b. If an inmate was sentenced after July 1, 1982, and his sentence is not covered by (a), he or she shall be allocated credit of 1 day for every 3 days served and one month for every year served.

c. Good time credits shall be awarded on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

History: L. 1987, ch. _____, July 1, 1987.

(Note: subsection (o) of K.S.A. 1986 Supp. 22-3717 should be eliminated.)

Rationale:

There is widespread misunderstanding among both the bench and bar concerning good time credits and the time an inmate must actually serve. The above table, inserted in the sentencing section, K.S.A. 21-4601 et seq, would eliminate some of this confusion. While I have suggested this be included in Chapter 21, it could be just as appropriate under Chapter 22. The table is taken from DOC Regulation 44-6-117. DOC does not actually object to the inclusion of the above table in the statute, but certainly does not want the table changed.

JKB:may

MEMO

TO: ELWAIN POMEROY
 FROM: JOHN K. BORK
 RE: PROPOSED AMENDMENTS
 DATE: JANUARY 27, 1987

The following are the suggested amendments to K.S.A. 1986 Supp. 21-4608:

21-4608. Multiple sentences. (1) 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 3, 4, and

5.

(2) 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 released, as the court directs.

(3) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole or on conditional release 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 released.

*Attach III
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(4) 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.

(5) 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.

(6) 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:

(a) 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.

(b) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of incarceration 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.

(c) 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.

(d) When indeterminate sentences are imposed 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. The inmate shall be given credit on the aggregate sentence for time spent incarcerated 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 determining the sentence begins date and the parole eligibility, conditional release and maximum dates.

In no event shall the inmate actually serve more than the aggregate maximum of the sentences.

Nothing in this subsection (6)(d) 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.

(e) 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, assigned 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.

(7) 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.

(8) 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 sentence 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; July 1.

RATIONALE:

Change No. 1:

In many cases the District Court Judge fails to specify in the Journal Entry of Sentencing whether the sentences should run concurrently or consecutive. When the defendant does come within the provisions of subsections 3, 4, or 5, this is actually an illegal sentence. The Department of Corrections has been only mildly successful at getting the sentencing court to correct the sentence. The new sentence will enable the Department of Corrections to correct or adjust the sentence to the requirements of the law.

Change No. 2:

As subsection (6) (d) now reads, it is possible that an inmate could be required to serve more than the aggregate of the maximum sentences.

The following example illustrates:

An inmate sentenced to 1 to 10 years could fail to make parole, and serve to his conditional release date, a period of just over 7 years. If he were convicted of a class E felony while on conditional release he could be sentenced to 1 to 2 years, making an aggregate sentence of 2 to 12 years. He would get credit for only 9 months of the seven years he had served, and could serve up to an additional 7 years and 9 months on the 2 to 12 year sentence. Thus, he would serve over 14 years on a 12 year sentence. In fairness to the inmate, he should be released when he has served the full 12 years.

75-5217. Return of parole violator; issuance of warrant; arrest; procedure. (a) At any time during release on parole or conditional release, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize ~~all officers~~ ~~to deliver the released inmate to a place designated by the secretary, including a county jail.~~ Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written ~~statement~~ setting forth that the released inmate has, in the judgment of the parole officer, violated the conditions of the inmate's release. The written ~~statement~~ delivered with the released inmate by the arresting officer to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a ~~similar statement~~ of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

any law enforcement officer to arrest and

as provided by subsection (d).

order to arrest and detain

order to arrest and detain

copy of the order to arrest and detain with a statement

(b) Upon such arrest and detention, the parole officer shall ~~immediately~~ notify the secretary of corrections and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the secretary shall cause the released inmate to be brought before the Kansas ~~adult authority~~, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the ~~authority~~ may adopt. Relevant written statements made under oath shall be admitted and considered by the Kansas ~~adult authority~~, its designee or de-

, or the secretary's designee, within five days.

and the finding of probable cause pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release;

parole board

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parole board

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signees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the Kansas ~~authority~~, the ~~authority~~ may continue or revoke the parole or conditional release, or enter such other order as the ~~authority~~ may see fit.

parole board

board

board

~~(c) A released inmate for whose return a warrant has been issued by the secretary of corrections shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice. If it shall appear that the fugitive has violated the provisions of the fugitive's release, the time from the violation of such provisions to the date of the fugitive's arrest shall not be counted as time served under the sentence. The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such fugitive be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of such fugitive.~~

released inmate

the released inmate.

in the event a released inmate cannot be located in order to be served with a warrant issued by the secretary of corrections for violation of any of the conditions of release, the time from the issuance of the warrant for violation of the conditions to the date of the released inmate's arrest shall not be counted as time served under the sentence. In the event the released inmate is arrested in another state for reasons other than the parole violation warrant issued by the secretary of corrections, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date the released inmate is first available to be returned to the state of Kansas.

(d) Law enforcement officers shall execute warrants issued by the secretary of corrections pursuant to subsection (a) or (c), and shall deliver the inmate named therein to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

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In the event the released inmate reaches his or her conditional release date as provided by K.S.A. 22-3718 and amendments thereto after a finding of probable cause but prior to a hearing before the Kansas parole board, the secretary of corrections shall be authorized to detain the inmate until the hearing is held. The secretary shall then enforce the order issued by the Kansas parole board.