

Approved: 4-2-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on March 19, 1993 in Room 514-S of the Capitol.

All members were present except: Senator Feleciano (excused)

Committee staff present: Michael Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Helen Stephens, KPOA
Helen Pedigo, Kansas Sentencing Commission
Matt Lynch, Judicial Council
Gary Stotts, Secretary, Department of Corrections

Others attending: See attached list

Chairman Moran turned to final action on SB 384. Senator Brady moved to amend SB 384 to allow a guardian to consent to non-aversive stimulation during behavioral experiments without having to go to court and to recommend SB 384, as amended, favorably for passage. Senator Rock seconded. Motion carried.

HB 2332 - Increase penalties for second or subsequent conviction of criminal use of weapons and criminal possession of firearms.

Representative Judith Macy submitted written testimony in support of HB 2332 which, as introduced, added molotov cocktail or a pipe bomb to the list of acts considered "criminal use of a weapon" (Attachment 1). Representative Macy asked the Committee to support her amendment to HB 2332 which would prohibit persons convicted of either a "person" felony or a "drug" felony from being allowed certain exceptions from prosecution in the laws on possession of firearms.

Helen Stephens, KPOA, appeared in support of HB 2332 and specifically requested support of the provisions that make possession of a firearm unlawful by a person convicted of a person or drug felony.

Helen Pedigo, Sentencing Commission, submitted a proposed balloon of amendments to HB 2332 to clarify which drug felonies the language in the bill refers to adding the words "a felony sentenced on the Sentencing Guidelines Drug Grid" (Attachment 2). Ms. Pedigo's amendments noted on the balloon also include two additional sections which were added to K.S.A. 21-4204 last year that were not included in the drafting of HB 2332 pertaining to the crimes of possession of a firearm on school property and refusal to surrender a firearm as requested by a school employee. Senator Oleen moved to table HB 2332. Senator Vancrum seconded. Motion carried.

SB 423 - Concerning crimes, criminal procedure and punishment.

Gordon Self, Revisor of Statutes, explained that SB 423 reconciles conflicts and cures technical problems which arose from last year's enactment of two major pieces of legislation dealing with the criminal justice system: sentencing guidelines (1992 SB 479) and recodification of the criminal code (1992 SB 358). The Criminal Law Advisory Committee of the Judicial Council and the Sentencing Commission reviewed those offenses which were treated differently under SB 358 and SB 479 and developed recommendations to reconcile the two bills.

Matt Lynch, Judicial Council, presented recommendations included in SB 423 to reconcile the substantive differences in SB 358 and SB 479 as outlined in his written testimony (Attachment 3). In response to a question, Mr. Lynch stated the Criminal Law Committee of the Judicial Council is recommending amendments to the homicide provisions in 1992 SB 358 which were not spoken to by the Legislature as fully as set out in the amendments in his written testimony. Senator Vancrum raised the policy issue in K.S.A. 21-3604 (abandonment of a child) that the recommendation of the Sentencing Commission raises the severity level of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on March 19, 1993.

the crime if physical danger results and allows a lower severity level if no danger results though the same crime is perpetrated.

Helen Pedigo, Sentencing Commission, advised that the Commission classified all the new crimes created last session in SB 423 in new sections of the bill and also ranked crimes not located in Chapter 21 of the K.S.A.'s in new sections of SB 423 (Attachment 4). In addition, Ms. Pedigo advised that the Sentencing Commission added language dealing with aggravated assault and aggravated battery of a law enforcement officer making the presumptive probation grid blocks, 6-H and 6-I, border boxes which will allow the sentencing court to sentence offenders to prison or probation without having to depart with substantial and compelling reasons. She stated the balance of the bill is reconciliation.

Gary Stotts, DOC, submitted written testimony on amendments in SB 423 to Section 24 of Chapter 239 of the 1992 Session Laws which pertains to limited retroactivity of sentencing guidelines (Attachment 5). Secretary Stotts indicated these amendments as explained in his written testimony are included in SB 423 as introduced. Senator Bond moved to recommend SB 423 favorably for passage. Senator Rock seconded. Motion carried.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for March 22, 1993 at 9:30 a.m.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-19-93

[illegible]



TOPEKA

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& ELECTIONS
MEMBER: JUDICIARY
LOCAL GOVERNMENT
JOINT COMMITTEE ON CHILDREN & FAMILIES

Memorandum

TO: Senate Judiciary Committee
FROM: Rep. Judith K. Macy *J. Macy*
DATE: March 19, 1993
SUBJECT: HB 2332

Mr. Chairman and members of the Committee:

I want to thank you for holding a hearing on HB 2332 and I appreciate the opportunity to be allowed to testify on this Bill.

As introduced in the House Judiciary Committee, the Bill contained an addition to the list of acts considered a "criminal use of a weapon". The addition is contained in the Bill before you on page 2, lines 19 through 22 and essentially adds a molotov cocktail or a pipe bomb to that list.

Many of the amendments throughout the Bill are clean-up measures and were made by the Revisor when the Bill was drafted.

My interest in this Bill is due to an amendment I offered in the House Judiciary Committee and my testimony centers around that amendment. This amendment affects 3 criminal statutes:

- 1.) K.S.A. 21-4202 - aggravated weapons violation
- 2.) K.S.A. 21-4203 - unlawful disposal of firearms
- 3.) K.S.A. 21-4204 - unlawful possession of firearms

Under current law, convicted felons may have legal access to weapons so long as they do not fall within the exceptions available in these statutes.

For example, a convicted felon may be charged under the aggravated weapons violation (K.S.A. 21-4202) only if that prior conviction was within the preceding 5 years. A felony conviction that was greater than 5 years prior does not create an "aggravated" violation.

SJ
3-19-93
Attachment 1

Under 21-4203, persons are prohibited from selling, giving or transferring firearms to convicted felons only if the prior conviction was within the last 5 years under certain circumstances and 10 years under other circumstances.

Under 21-4204, convicted felons may possess firearms after waiting 5 years under certain convictions and by waiting 10 years after receiving other convictions.

The amendments to these Statutes will prohibit persons convicted of either a "person" felony or a "drug" felony from being allowed these exceptions from prosecution. The Bill, as amended, would not affect persons convicted of "property" crimes. Additionally, there is a provision that if the conviction of the felony has been expunged or if the person has been pardoned, this amendment would not apply.

It is my understanding that Federal law prohibits persons convicted of a felony from possessing firearms and that the Kansas law has created some difficulty with Federal prosecutors.

Obviously, this is a policy decision for each of us and especially for this Committee as a whole. It is my feeling that convicted felons should not be permitted free access to firearms. I hope that you will make the same decision and report this Bill favorably.

Thank you.

JKM/gh

Sec. 2. K.S.A. 1991 Supp. 21-4204, as amended by section 202 of chapter 239 of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 21-4204. (a) ~~Unlawful Criminal~~ possession of a firearm is:

(1) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(2) possession of a firearm with a barrel less than 12 inches long by a person who, within five years preceding such violation has been convicted of a nonperson felony under the laws of Kansas sentencing guidelines act or any other jurisdiction ~~or~~, has been released from imprisonment for a such felony *or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a such felony*; or

(3) possession of any firearm by any person who, within the preceding 10 years, has been convicted of a crime to which this subsection applies, ~~or person felony or drug crime pursuant to the Kansas sentencing guidelines act~~, a crime under a law of another jurisdiction which is substantially the same as such crime, or has been released from imprisonment for such a crime, *or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony* such crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

a felony
Sentenced
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Sentencing
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DrugGrid

~~(b) Subsection (a)(3) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.~~

(c) Violation of subsection (a)(1) is a class B misdemeanor; violation of subsection (a)(2) or (a)(3) is a class D felony. (b) Violation of subsection (a)(1) committed on or after July 1, 1993, is a class B nonperson select misdemeanor. *A second conviction of a violation of subsection (a)(1) is a class A nonperson select misdemeanor. A third or subsequent conviction of a violation of subsection (a)(1) is a severity level 10, nonperson felony.* Violation of subsections (a)(2) or (a)(3) committed on or after July 1, 1993, is a severity level 9, nonperson felony. *A second conviction of a violation of subsections (a)(2) or (a)(3) is a severity level 8, nonperson felony. A third or subsequent conviction of a violation of subsections (a)(2) or (a)(3) is a severity level 7, nonperson felony.*

Sec. 3. K.S.A. 21-4202, as amended by section 200 of chapter

Sec. 70. K.S.A. 1991 Supp. 21-4204 is hereby amended to read as follows: 21-4204. (1) ~~Unlawful Criminal~~ possession of a firearm is:

(a) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(b) possession of a firearm with a barrel less than 12 inches long by a person who, within five years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction ~~or~~, has been released from imprisonment for a felony *or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony*;

(c) possession of any firearm by any person who, within the preceding 10 years, has been convicted of a crime to which this subsection (1)(c) applies, ~~or~~ has been released from imprisonment for such a crime, *or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony*, and has not had the conviction of such crime expunged or been pardoned for such crime;

(d) possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event ; or

Sentencing Commission classified this crime as a B nonperson select misdemeanor.

Ch. 298

1992 Session Laws of Kansas

1959

(e) refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer.

The Sentencing Commission classified this crime as an A nonperson misdemeanor

3-19-93
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Attachment 2

239 of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 21-4202. (a) An aggravated weapons violation is a violation of any of the provisions of K.S.A. 21-4201, and amendments thereto, by a person who:

(1) Within five years preceding such violation has been convicted of a nonperson felony under the laws of Kansas sentencing guidelines act or any other jurisdiction or has been released from imprisonment for a such nonperson felony; or

(2) ~~has been convicted of a person felony or drug crime pursuant to the Kansas sentencing guidelines act or in any other jurisdiction or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime.~~

(b) Aggravated weapons violation is a class E felony. Aggravated weapons violation committed on or after July 1, 1993, is a severity level 9, nonperson felony for a violation of subsections (a)(1) through (a)(5) or subsection (a)(9) of K.S.A. 21-4201, and amendments thereto. Aggravated weapons violation is a severity level 8, nonperson felony for a violation of subsections (a)(6) through (a)(8) of K.S.A. 21-4201, and amendments thereto.

Sec. 4. K.S.A. 1991 Supp. 21-4203, as amended by section 201 of chapter 239 of the 1992 Session Laws of Kansas, is hereby amended to read as follows: 21-4203. (a) Unlawful Criminal disposal of firearms is knowingly:

(1) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;

(2) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(3) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person who, within the preceding five years, has been convicted of a nonperson felony under the laws of this Kansas sentencing guidelines act or any other jurisdiction or has been released from imprisonment for a felony; or

(4) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a crime to which this subsection (a)(4) applies, person felony or ~~drug crime pursuant to the Kansas sentencing guidelines act~~, a crime under a law of another jurisdiction which is substantially the same as such crime or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged

a felony sentenced on the Sentencing Guidelines drug grid

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2-2

Judicial Council Recommendations
Contained in 1993 SB 423
Senate Judiciary Committee
March 19, 1993

During the 1992 session, the legislature passed Sentencing Guidelines (SB 479; L. 1992, ch. 239) and the recodification of the criminal code (SB 358; L. 1992, ch. 298), both effective July 1, 1993. The bulk of amendments to the substantive offenses in SB 479 were changes in the penalty provisions necessitated by the Sentencing Guidelines grid. However, the Sentencing Commission deemed it advisable to add elements in a limited number of sections to subdivide such offenses for penalty purposes. The Criminal Law Advisory Committee of the Judicial Council reviewed those offenses which were treated differently under SB 358 and SB 479 and developed recommendations to reconcile the two bills.

§§ 61 and 62 (pp. 37 and 38). **21-3602 (incest) and 3603 (aggravated incest).** The Judicial Council took the approach in SB 358 of covering unlawful sexual acts with children under 16 under other sex offenses (indecent liberties, rape, criminal sodomy) rather than under the incest provisions. The Sentencing Commission has accepted this approach. However, in SB 479 the Sentencing Commission added a reference in 21-3602 to step and adoptive relatives. The Criminal Law Committee noted different scenarios in which parents of adult children enter into new marriages and create step relationships that had not existed previously. The committee also noted the Judicial Council comment to the 1969 recodification of the criminal code which indicates 21-3602 was intentionally confined to biological relatives. In regard to aggravated incest, the Criminal Law Committee concluded the section would read more clearly if marriage was addressed exclusively in one subsection.

§§ 63 and 64 (pp. 38 and 39). **21-3604 (abandonment of a child).** The Sentencing Commission subdivided this offense based on whether or not the abandonment resulted in immediate physical danger for the child. SB 358 did not amend this section. The Criminal Law Committee was concerned with the potential vagueness of "immediate physical danger" and also noted the significant difference in severity level between abandonment (level 8) and aggravated abandonment (level 5). The Criminal Law Committee recommends a new section on aggravated abandonment which will cover violations of 21-3604 which result in great bodily harm. The Sentencing Commission chose severity level 5 for aggravated abandonment and this is the same penalty the Commission selected for recklessly causing great bodily harm.

§§ 71 and 232 (pp. 43 and 169). **21-3611 (aggravated juvenile delinquency).** The Sentencing Commission subdivided certain of the acts covered by this section based on whether or not they result in a serious threat to life. The Criminal Law Committee noted that the origins of this section predated provisions for waiver of juvenile court jurisdiction by amenability hearings. Apparently, as new situations arose, additional felonies were added to this section so that certain juveniles could be prosecuted as adults. The Criminal Law Committee recommends the more direct approach of confining 21-3611 to running away or escaping from SRS institutions and amending 38-1602 so that juveniles who commit felonies while confined in SRS institutions can be prosecuted as adults for such felonies.

§§ 83 and 84 (pp. 49 and 50). **21-3715 (burglary) and 3716 (aggravated burglary).** SB 358 added a reference in both sections to intent to commit a sexual battery to cover matters formally addressed in the aggravated sexual battery provision. The Sentencing Commission further subdivided 21-3715 based on whether the structure burglarized is a residence. The Criminal Law Committee accepts this subdivision but recommends use of "dwelling" rather than "residence" since dwelling is defined in 21-3110 to mean "a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence." "Residence" is defined in 77-201 to mean "a place which is adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. . . ."

§§ 85 and 86 (pp. 50 and 51). **21-3718 (arson) and 3719 (aggravated arson).** The Sentencing Commission subdivided arson based on the dollar amount of harm and subdivided aggravated arson based on whether or not it results in a serious threat to life. SB 358 did not amend either of these sections. The Criminal Law Committee was somewhat reluctant to recommend subdividing aggravated arson on the theory the offense presumes a serious threat to life since the use of fire or explosives is inherently uncontrollable. However, the committee recognized that a broad range of conduct can technically fit within the definition of aggravated arson and the potential problems this raises in conjunction with sentencing guidelines. Ultimately, the committee recommended a lower threshold of risk (substantial risk of bodily harm) to distinguish between violations of aggravated arson for penalty purposes.

§ 112 (p. 66). **21-3810 (aggravated escape).** The Sentencing Commission added language which would make a violation of this section a higher level felony if the escape "is effected or facilitated by the use of violence or the threat of violence against any person." It appeared to the Criminal Law Committee that this distinction was already present under the existing language and it would be simpler to provide the higher penalty for violations of subsection (b).

Property crimes, dollar amount. In a number of property crimes, the dollar amount of harm determines the penalty level. SB 358 amended a number of property crimes to make the dollar amounts consistent and used the amount of \$50,000 to distinguish the levels of felonies. In the Sentencing Guidelines bill, the legislature chose to use \$25,000. Since \$25,000 represents the most recent legislative statement, the Criminal Law Committee recommends using that amount in the property crimes to identify the more serious felonies in the following sections: 21-3701, 3704, 3707, 3720, 3729, 3734, 3755, 3904 and 3905.

§ 264 (pp. 202 and 203). **Inherently dangerous felonies, drive-by shootings.** In adopting SB 358, a new section was added which lists inherently dangerous felonies which will support a charge of felony murder. This list is further amended in section 264 of SB 423. In 1992, the legislature also enacted 21-4219 (which is further amended by section 167 of SB 423) to address drive-by shootings. Felony violations of 21-4219 were stated to support a charge of felony murder. Consequently, section 264 of SB 423 adds felony violations of 21-4219 to the list of inherently dangerous felonies. The first three felonies on the list of inherently dangerous felonies are intentional homicides and were included on the theory a distinct criminal homicide can serve as the underlying felony for felony murder. However, unless such a homicide is

clearly distinct, the merger doctrine continues to apply and prevent such a homicide from serving as an underlying felony for felony-murder purposes. However, the list as amended also includes child abuse and drive-by shootings. It appears to be the legislative intent that child abuse and drive-by shootings should not be subject to the merger doctrine. Accordingly, the Criminal Law Committee recommended the addition of subsection (b) (p. 203, lines 25 through 30, SB 423) to indicate those inherently dangerous felonies which are subject to the merger doctrine.

In reviewing SB 358, the Criminal Law Advisory Committee has developed a limited number of further recommended amendments to the homicide provisions.

Reckless homicides. SB 358 amended 21-3402 to include within murder in the second degree ". . . the killing of a human being committed:

(a) . . .

(b) Unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life."

Involuntary manslaughter (21-3404) was amended to include ". . . the unintentional killing of a human being committed:

(a) Recklessly; or

(b) "

Reckless conduct is defined in 21-3201(3) to mean "conduct done under circumstances that show a realization of the imminence of danger to the person of another and a wanton disregard or complete indifference and unconcern for the probable consequences of such conduct. . . ."

The amendments to 21-3402 and 3404 concerning reckless killings followed the language of the model penal code.

The Sedgwick County District Attorney's Office raised a concern relating to the distinction between reckless murder and reckless manslaughter. At a minimum, it appears the use of the language ". . . complete indifference. . . for the probable consequences . . ." in the definition of reckless conduct may create confusion for a jury when combined with the additional element of "extreme indifference to human life" contained in reckless murder. Consequently, the Criminal Law Committee recommends further amendments to the definition of reckless conduct in 21-3201(3) (SB 423, §17, p. 20, ll. 40-42).

Imperfect justification. SB 358 amended 21-3403 (voluntary manslaughter) to mitigate intentional killings from murder to manslaughter when committed "upon an unreasonable but honest belief that deadly force was justified in self-defense." The further recommended amendments (SB 423, §20, p.21, ll. 27-29) substitute a reference to the justification provisions

of 21-3211 (defense of person), 3212 (defense of dwelling) and 3213 (defense of property other than dwelling) rather than limiting the provision to self-defense. The further amendments are also intended to avoid any argument that an honest but unreasonable belief as to the scope of a justification provision serves as a basis for mitigation. The Criminal law Committee viewed these further changes as consistent with the approach of the model penal code.

Unintentional killings involving the use of excessive force in self-defense (SB 423, §21, p.21, l. 43). The Criminal Law Committee recommends further amending 21-3404 (involuntary manslaughter) to include unintentional killings committed "during the commission of a lawful act in an unlawful manner." The recommendation is based on cases exemplified by State v. Gregory, 218 Kan. 180 (1975) and State v. Warren, 5 Kan.App.2d 754 (1981) which discussed unintentional killings involving the use of excessive force in self-defense. The cases characterize such homicides as unintentional killings during the commission of a lawful act (self-defense) in an unlawful manner (excessive force). Since there was an intent to inflict injury, the idea that the homicide was committed recklessly was specifically rejected. The Criminal Law Committee was concerned such cases wouldn't necessarily be covered as reckless killings under involuntary manslaughter and since they are unintentional killings, they would not be covered by any other homicide provision.



State of Kansas
KANSAS SENTENCING COMMISSION

To: Senate Judiciary Committee

From: Helen J. Pedigo

Date: March 19, 1993

Re: Senate Bill 423 - Reconciliation

21-3411 Aggravated assault of a law enforcement officer

21-3415 Aggravated battery of a law enforcement officer when there is a possibility of great bodily harm

These are both severity level 6 crimes which, if the offender has no prior record, have a presumptive prison sentence. The Commission added language to make the presumptive probation grid blocks, 6-H and 6-I, border boxes which will allow the sentencing court to sentence to prison or probation without having to depart with substantial and compelling reasons.

The Commission classified new crimes:

<u>Description</u>	<u>Current ClassRanking</u>	
Infliction of injury to a police dog	A Misd.	Nonperson
Receipt/use of drug proceeds - this will be in Chapter 21 of the K.S.A.'s	C Fel.	7 Nonperson
Mistreatment of dep. adult - physical	D Fel.	6 Person
Mistreatment of dep. adult - financial or omission of care	A Misd.	Person
Stalking - first offense	B Misd.	Person
Stalking - second & subsequent	A Misd.	Person
Abortion of a viable fetus	A Misd.	Person
Perf. abortion on an unemancipated minor	A Misd.	Person
Disclosure of minor's ID or court record of abortion	B Misd.	Nonperson
Funeral picketing	B Misd.	Person
Drive-by shooting-unoccupied dwelling	E Fel.	8 Nonperson
Drive-by shooting-occupied, but no apprehension of bodily harm	D Fel.	7 Person
Drive-by shooting - resulting bodily harm	C Fel.	5 Person
H.I.V. crime	A Misd.	Person

We classified previously unranked crimes, located in chapters other than 21 of the K.S.A.'s:

<u>Statute</u>	<u>Description</u>	<u>Ranking</u>
8-116(a)&(c)	Vehicles; vehicle identification number offenses - E felony	10

19-3519	Water districts; fraudulent claims \$50 or less - A misdemeanor; greater than \$50 - D felony. This crime should be classified according to the amount of the fraudulent claim as a severity level 7, 9 nonperson or an A misdemeanor with \$500 and \$25,000 cut-offs as with other property crimes. This will require a change of elements.	A Nonperson Misdemeanor 9 Nonperson and 7 Nonperson
25-2409	Elections; election bribery - D felony	7
25-2411	Elections; election perjury - E felony	9
24-2412	Elections; election forgery - E felony	8
25-2414	Elections; possessing false or forged election supplies - E felony	9
25-2417	Elections; bribery of an election official - D felony	7
25-2418	Elections; bribe acceptance by an election official - D felony	7
25-2420	Elections; election fraud by an election officer - E felony	10
25-2421	Elections; election suppression - E felony	10
25-2422	Elections; unauthorized voting disclosure - E felony	10
25-2423	Elections; election tampering - E felony	8
25-2425	Elections; voting machine fraud - E felony	10
25-2426	Elections; printing and circulating imitation ballots - E felony	10
25-2428	Elections; destruction of election supplies - E felony	9
25-2429	Elections; destruction of election papers - E felony	9
25-2431	Elections; false impersonation of a voter - E felony	9
25-4414	Electronic/electromechanical voting system fraud - E felony	10
25-4612	Optical scanning equipment fraud - E felony	10
34-293	Grain storage; issuance of receipt for warehouseman's grain - E felony	10
34-295	Grain storage; negotiation of receipt of encumbered grain - E felony	10
39-717(b)	Welfare assistance; illegal disposition over \$150 - E felony This crime should be classified based on the amount of the disposition using \$500 and \$25,000 cut-offs	A Misdemeanor 9 and 7
50-1013	Consumer protection; loan broker act; penalty - E felony	10
55-156	Oil & gas; protection of water prior to abandoning well - E felony	10
55-157	Oil & gas; cementing in of surface casing - E felony	10
55-904	Oil & gas; disposal of salt water (second and subsequent) - E felony	10
65-2859	Healing arts; filing false documents - E felony	8
65-2861	Healing arts; false swearing - E felony	9
65-3441(b)	Hazardous wastes; unlawful acts (11) - E felony	10
65-3441(c)	Hazardous wastes; unlawful acts (1-11, aggravated) - C felony	6
74-8717(b)	Lottery; forgery of lottery ticket - D felony	8
74-8718(f)	Lottery; unlawful sale of lottery ticket (second and subsequent) - D felony	9
74-8719(f)	Lottery; unlawful purchase of lottery ticket (second and subsequent) - D felony	9
74-8810(i)	Parimutuel racing; prohibited acts - E felony	8

In the juvenile section, we inadvertently left out decay rules for felonies listed in level 4 of the drug grid. We clarified the decay rule to apply if the offender's current crime of conviction is committed after the offender reaches the age of 25. We also added a provision that off-grid felonies will never decay.

We changed the manner of classifying out-of-state crimes for criminal history to accept the out-of-state classification of felony or misdemeanor. Then Kansas has the responsibility to determine whether the crime was a person or nonperson felony.

Aggravated vehicular homicide was repealed by the Judicial Council's bill and merged into involuntary manslaughter. We amended the section, which treats each DUI as a person felony for criminal history when the current crime of conviction is aggravated vehicular homicide, to reference the involuntary manslaughter statute.

Fingerprinting requirements were amended last year to include A and B misdemeanors. However, the intent of the Commission was to also include criminal history on battery, assault, and other city ordinances which are comparable to A and B misdemeanors. Amendments in this bill reflect that change.

The journal entry was adjusted slightly to strike aggravating factors which did not pass as part of the Sentencing Guidelines law. We added space in the presentence investigation reports for listing the category I sentence as well as the sentence under the criminal history category of the offender. We also added identification numbers on some of the forms which will aid the Commission in the monitoring of the effects of Sentencing Guidelines. Language outlining the journal entry of revocation was added. We had included the forms last year. However, we had left out the statutory language which stated the requirements of the form.

The sentencing grids amended slightly. The only change in the nondrug grid is that the nondrug heading is now one word. On the drug grid, the Commission had classified the first possession of cocaine or narcotics as a presumptive probation crime in boxes 3-H and 3-I. When the Judicial Counsel lowered the penalty on this crime from a class D to a D felony, the Commission followed, by reclassifying first possession at severity level 4, which is presumptive probation. In boxes G, H and I. The first sale of cocaine or narcotics remains at severity level 3, and presumes imprisonment for all criminal histories. Therefore, the bifurcated boxes are now unnecessary.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

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Joan Finney
Governor

Gary Stotts
Secretary

To: Senate Judiciary Committee

From: Gary Stotts
Secretary of Corrections

Date: March 19, 1993

Subject: Senate Bill 423

Section 24 of Chapter 239 of the 1992 Session Laws provides for limited retroactivity of sentencing guidelines. Over the past several months the Department of Corrections has been identifying those inmates eligible for retroactivity by determining the severity level of the offense for which each offender has been convicted as well as each offender's prior criminal history. Planning has also been ongoing with respect to the process by which the retroactivity will be implemented. Through this activity the Department identified a number of areas in Section 24 which required clarification. Proposals to address these areas were presented to and approved by the Sentencing Commission. My purpose today is to explain these issues to the Committee and urge that the Committee take favorable action regarding the amendments to this section.

Subsection (c) of Section 24 provides that the Department of Corrections shall conduct a review of all persons who committed crimes and were sentenced prior to July 1, 1993. A sentencing guidelines report shall be prepared for each of these individuals. It is our interpretation that this provision requires that a report be prepared for not only individuals who are incarcerated but for those who are on parole as well. It also requires that a report be prepared for those inmates who are not eligible for the retroactive provisions of the law.

I believe it was the legislature's intent to limit retroactivity to only those individuals who are incarcerated and fall within the limited retroactivity provisions. However, the existing provisions of Section 24 are broader than this intended result. The amendment proposed in subsection (c) would make it clear that only individuals incarcerated on and after July 1, 1993 for crimes committed prior to that date would be eligible for retroactivity. Under the amendment proposed in subsection (b) (2), offenders who are on parole for crimes committed prior to July 1, 1993 but are revoked after July 1, 1993 would have their sentences converted upon revocation, but only if they are eligible for retroactivity. The amendment in subsection

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(c) would also make it clear that a report would only need to be prepared and issued for those inmates who are eligible for retroactivity. This would ease the workload of facility staff by eliminating the need to prepare reports on inmates who by reason of the severity level of their offense are not eligible for retroactive application of the law.

The proposed amendment providing that those who are on parole be converted to guidelines only upon revocation is necessary because current provisions of the law could otherwise be interpreted to be fully retroactive to all offenders falling within the appropriate grid boxes, even if on parole. Under this interpretation, if an individual is eligible for retroactivity, then all the rights and privileges of the Sentencing Guidelines Act apply to that individual. This would include the 12 or 24 month post release supervision periods. Applying these time periods to those already on parole would have the effect of making the guidelines fully retroactive to parolees, a result which I do not believe was intended by the Legislature.

The suggested amendments in subsection (d) are intended to clarify the actual process of implementing retroactivity. The amendments make it clear that a motion should be filed with the sentencing court if a hearing is requested regarding the report submitted by the Department of Corrections, that notice to the Department that a hearing has been requested must be in written form, and that if the secretary has not received written notice of a hearing by the fifth business day after expiration of the thirty day period to request a hearing, the secretary may implement the converted sentence. This provision is intended to address situations where a request for a hearing is filed near or on the 30th day and will lessen the possibility of an inmate being released even though a hearing has been requested by the county or district attorney.

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