

Approved: 2/24/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 8, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Darlene Thomas, Committee Secretary

Conferees appearing before the Committee:

Kyle Smith, Kansas Bureau of Investigation

Others attending: See attached list

A motion was made by Senator Harris, seconded by Senator Vancrum to approve the minutes for January 31, February 1 and February 2, 1994. The motion carried.

### SB 608--gang activity

Kyle Smith, Kansas Bureau of Investigation, presented to the Committee a balloon he and Nola Faulston, District Attorney, Sedgwick County prepared regarding SB 608 (Attachment No. 1). Mr. Smith answered questions from the Committee.

After discussion Chairman Moran directed the Committee to look at SB 603 and the language presented in the balloon prepared by Gordon Self, Revisor to perhaps incorporate as clarification into SB 608.

### SB 603--use of juvenile by adult

Gordon Self, Revisor presented to the Committee a balloon for SB 603 and answered questions from the Committee (Attachment No. 2). He referred to page 3(i) which would replace the provision in SB 603 for automatic presumptive probation. The balloon provides that presumptive probation is overridden and the judge can sentence up to two times the amount of the sentence for the underlying crime. It also provides the judge the alternative for a non-prison sanction if deemed the best sentence.

Chairman Moran stated the issue in SB 603 was whether to double the sentence and remove "the court may impose a non-prison sanction". It would then be law for the judge to double the sentence.

A motion was made by Senator Vancrum, seconded by Senator Ranson to delete the language on page four of the balloon, "The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block V-H, V-I or VI-G or any grid block below the dispositional line where the presumptive disposition shall be nonimprisonment, shall not be considered a departure and shall not be subject to appeal. A division was requested, 4 yes; 5 no. The motion failed.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.  
on February 8, 1994.

A motion was made by Senator Emert, seconded by Senator Vancrum to strike the words "up to" on page 3(i) of the balloon to read, "...such offender's sentence shall be presumed imprisonment and such sentence shall be ~~up to~~ double the maximum duration of the presumptive imprisonment term...". A division was requested, 5 yes; 6 no. The motion failed.

A motion was made by Senator Martin, seconded by Senator Rock to adopt the balloon and report SB 603 favorably.

A substitute motion was made by Senator Emert, seconded by Senator Bond to adopt the balloon with an amendment to provide that if a felony is committed with a gun there would be no presumption of probation and to report the bill favorably. The motion carried.

### SB 608--gang activity

Chairman Moran referred SB 608 to Criminal Law Sub-Committee, chaired by Senator Emert to consider and report back to the Senate Judiciary Committee.

### SB 512--restitution by parents

Chairman Moran asked the members of the Committee if there was interest in the Committee working SB 512. The Chairman will make a decision at a later date.

### SB 564--authorizing recovery of collection costs including attorney fees in consumer credit transactions

Senator Vancrum gave a subcommittee report on SB 564. He said the only change was to clarify that the cost of collection would include attorney fees or collection agency fees (Attachment No. 3).

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 9, 1994.

# GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/8/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Renee Gardner	Topeka	Governor's Office
<del>John Smith</del>	<del>Topeka</del>	<del>KBI / AG</del>
Paul Shelby	Topeka	OJA
Jan Johnson	Topeka	KDOC
Alan Steppatt	Topeka	PETE McGill & Assoc.
Lisa Moots	Topeka	KS Sentencing Comm.
Kathy Taelin	"	KS Bankers Assn
Chuck Stone	"	"
JEFF SONNICH	TOPEKA	KNLS
Roslyn James-Martin	Topeka	SRS-Youth & Adult Services
Joan Barber	Topeka	Barber & Associates
George Barber	Topeka	KAFS
Thelma West	"	KTRH
Duane Waternorth	Topeka	Division of the Budget
ART Brown	"	KS LSR Dealers
SYDNEY HARDMAN	Lawrence	KS Action for Children
Ben Costes	Topeka	KPA
Jim Mear	"	KPA
Ron Smith	"	KPA
Jim Clark	"	KCBAA
Bill Sneed	Topeka	State Farm



## SENATE BILL No. 608

By Committee on Judiciary

1-26

AN ACT concerning crimes and punishment; relating to participation in criminal street gangs; providing certain penalties; amending K.S.A. 38-1636 and repealing the existing section.

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

New Section 1. As used in this act:

(a) "Criminal street gang" means any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subsection (b), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(b) "Pattern of criminal street gang activity" means the commission, attempted commission or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this act and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

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

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

(3) voluntary manslaughter, K.S.A. 21-3403 and amendments thereto;

(4) involuntary manslaughter, K.S.A. 21-3404 and amendments thereto;

(5) assault, K.S.A. 21-3408 and amendments thereto;

(6) assault of a law enforcement officer, K.S.A. 21-3409 and amendments thereto;

(7) aggravated assault, K.S.A. 21-3410 and amendments thereto;

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

(9) battery, K.S.A. 21-3412 and amendments thereto;

(10) battery against a law enforcement officer, K.S.A. 21-3413

8-8-94  
J. McCreary  
attest 1-1

New Sec. 2

- 1 (11) aggravated battery, K.S.A. 21-3414 and amendments thereto;  
 2 (12) aggravated battery against a law enforcement officer, K.S.A.  
 3 21-3415 and amendments thereto;  
 4 (13) robbery, K.S.A. 21-3426 and amendments thereto;  
 5 (14) aggravated robbery, K.S.A. 21-3427 and amendments  
 6 thereto;  
 7 (15) arson, K.S.A. 21-3718 and amendments thereto;  
 8 (16) aggravated arson, K.S.A. 21-3719 and amendments thereto,  
 9 (17) criminal damage to property, K.S.A. 21-3720 and amend-  
 10 ments thereto;  
 11 (18) criminal use of weapons, K.S.A. 21-4201 and amendments  
 12 thereto;  
 13 (19) aggravated weapons violations, K.S.A. 21-4202 and amend-  
 14 ments thereto;  
 15 (20) criminal discharge of a firearm, K.S.A. 21-4217 and amend-  
 16 ments thereto;  
 17 (21) criminal discharge of a firearm at an unoccupied dwelling  
 18 and criminal discharge of a firearm at an occupied dwelling, K.S.A.  
 19 21-4219 and amendments thereto;  
 20 (22) intimidation of a witness or victim, K.S.A. 21-3832 and  
 21 amendments thereto;  
 22 (23) aggravated intimidation of a witness or victim, K.S.A. 21-  
 23 3833 and amendments thereto; or  
 24 (24) any violation of the uniform controlled substances act, K.S.A.  
 25 65-4101 et seq. and amendments thereto, which involves the dis-  
 26 tribution, sale, delivery or manufacture of a controlled substance.  
 27 New Sec. 2. (a) Any person who actively participates in any  
 28 criminal street gang with knowledge that its members engage in or  
 29 have engaged in a pattern of criminal street gang activity, and who  
 30 willfully promotes, furthers or assists in any criminal conduct by  
 31 gang members, shall be guilty of a class A person misdemeanor.  
 32 For any person who is at least 14 years of age but less than 18 years  
 33 of age who is alleged to have violated the provisions of this act, the  
 34 prosecuting attorney may file a motion requesting the court to prose-  
 35 cute the person as an adult as provided by K.S.A. 28-1636 and  
 36 amendments thereto.  
 37 (b) Any person who is convicted of a felony or a misdemeanor  
 38 which is committed for the benefit of, at the direction of or in  
 39 association with, any criminal street gang, with the specific intent  
 40 to promote, further or assist in any criminal conduct by gang mem-  
 41 bers, shall be punished in the following manner:  
 42 (1) Any person who violates this subsection in the commission

Any person who is convicted of a felony or a misdemeanor and at sentencing it is proved by a preponderance of the evidence that the crime was committed for the benefit of, at the direction of or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members shall be punished in the following manner:

(a) Any person who violates this subsection in the commission of a person misdemeanor shall be guilty of a severity level nine, person felony. Any person who violates this subsection in the commission of a non-person misdemeanor shall be guilty of a severity level ten non-person ~~misdemeanor~~ *felony*.

(b) Any person who violates this subsection in the commission of a felony shall, upon conviction of that felony and upon motion by the state be sentenced by the court to twice the sentence in the sentencing grid for nondrug and drug crimes as provided in K.S.A. 21-4704 and 21-4705 and amendments thereto, for that offense:

and unless the court finds on the record that a lower departure, community corrections or probation will serve community safety interests by promoting the offender's rehabilitation and that the county or district attorney has certified to the court that the defendant has provided substantial assistance to the state.

(c) Any person who has been convicted of an off-grid felony shall be imprisoned and not paroled until a minimum of forty years has been served in the custody of the Department of Corrections.

1 (2) any person who violates this subsection in the commission of  
2 a felony shall, upon conviction of that felony, be subject to up to  
3 two times the sentence in the sentencing grid for nondrug or the  
4 sentencing grid for drug crimes as provided in K.S.A. 21-4704 and  
5 21-4705 and amendments thereto, for that offense; and

6 (3) any person who violates this subsection in the commission of  
7 a felony that is an off-grid felony shall not be paroled until a minimum  
8 of 20 years have been served in the custody of the department of  
9 corrections.

10 New Sec. 3. (a) This act shall not apply to employees engaged  
11 in concerted activities for their mutual aid and protection, or the  
12 activities of labor organizations or their members or agents.

13 (b) Nothing in this act shall prevent a local governing body from  
14 adopting and enforcing laws consistent with this act relating to gangs  
15 and gang violence. Where such laws duplicate or supplement the  
16 provisions of this act, this act shall be construed as providing alter-  
17 native remedies and not as preempting the application of such laws.

18 Sec. 4. K.S.A. 38-1636 is hereby amended to read as follows:  
19 38-1636. (a) At any time after commencement of proceedings under  
20 this code against a respondent who was: (1) 14 or 15 years of age  
21 at the time of the offense or offenses alleged in the complaint, if  
22 any such offense is or offenses are a class A or B felony, or, on or  
23 after July 1, 1993, an off-grid felony, a nondrug felony crime ranked  
24 at severity level 1, 2 or 3 or a drug felony crime ranked at severity  
25 level 1 or 2, or a violation of sections 1 through 3 and prior to  
26 entry of an adjudication or the beginning of an evidentiary hearing  
27 at which the court may enter adjudication as provided in K.S.A. 38-  
28 1655, and amendments thereto, or (2) 16 or more years of age at  
29 the time of the offense alleged in the complaint and prior to entry  
30 of an adjudication or the beginning of an evidentiary hearing at which  
31 the court may enter adjudication as provided in K.S.A. 38-1655, and  
32 amendments thereto, the county or district attorney may file a motion  
33 requesting that the court authorize prosecution of the respondent as  
34 an adult under the applicable criminal statute.

35 (b) The motion may also contain a statement that the prosecuting  
36 attorney will introduce evidence of the offenses alleged in the com-  
37 plaint and request that, on hearing the motion and authorizing pros-  
38 ecution as an adult under this code, the court may make the findings  
39 required in a preliminary examination provided for in K.S.A. 22-  
40 2902, and amendments thereto, and the finding that there is no  
41 necessity for further preliminary examination.

42 (c) Upon receiving a motion to authorize prosecution as an adult,  
43 the court shall set a time and place for hearing on the motion. The

1 court shall give notice of the hearing to the respondent, each parent  
2 of the respondent, if service is possible, and the attorney repre-  
3 senting the respondent. The motion shall be heard and determined  
4 prior to any further proceedings on the complaint.

5 (d) If the respondent fails to appear for hearing on a motion to  
6 authorize prosecution as an adult after having been properly served  
7 with notice of the hearing, the court may hear and determine the  
8 motion in the absence of the respondent. If the court is unable to  
9 obtain service of process and give notice of the hearing, the court  
10 may hear and determine the motion in the absence of the respondent  
11 after having given notice of the hearing once a week for two con-  
12 secutive weeks in a newspaper authorized to publish legal notices  
13 in the county where the hearing will be held.

14 (e) In determining whether or not prosecution as an adult should  
15 be authorized, the court shall consider each of the following factors:  
16 (1) The seriousness of the alleged offense and whether the protection  
17 of the community requires prosecution as an adult; (2) whether the  
18 alleged offense was committed in an aggressive, violent, premedi-  
19 tated or willful manner; (3) whether the offense was against a person  
20 or against property, greater weight being given to offenses against  
21 persons, especially if personal injury resulted; (4) the number of  
22 alleged offenses adjudicated and pending against the respondent;  
23 (5) the previous history of the respondent, including whether the  
24 respondent had been adjudicated a delinquent or miscreant under  
25 the Kansas juvenile code or a juvenile offender under this code and,  
26 if so, whether the offenses were against persons or property, and  
27 any other previous history of antisocial behavior or patterns of phys-  
28 ical violence; (6) the sophistication or maturity of the respondent as  
29 determined by consideration of the respondent's home, environment,  
30 emotional attitude, pattern of living or desire to be treated as an  
31 adult; (7) whether there are facilities or programs available to the  
32 court which are likely to rehabilitate the respondent prior to the  
33 expiration of the court's jurisdiction under this code; and (8) whether  
34 the interests of the respondent or of the community would be better  
35 served by criminal prosecution. The insufficiency of evidence per-  
36 taining to any one or more of the factors listed in this subsection  
37 shall not in and of itself be determinative of the issue. Subject to  
38 the provisions of K.S.A. 38-1658, and amendments thereto, written  
39 reports and other materials relating to the respondent's mental, phys-  
40 ical, educational and social history may be considered by the court.

41 (f) The court may authorize prosecution as an adult upon com-  
42 pletion of the hearing if the court finds that the respondent was (1)

1 offense, if the offense is a class A or B felony, and was committed  
2 before July 1, 1993, and that there is substantial evidence that the  
3 respondent should be prosecuted as an adult for the offense with  
4 which the respondent is charged;

5 (2) 14 or 15 years of age at the time of the alleged commission  
6 of the offense, if the offense is an off-grid felony, a nondrug severity  
7 level 1, 2 or 3 felony or a drug level 1 or 2 felony or a violation  
8 of sections 1 through 3, and that there is substantial evidence that  
9 the respondent should be prosecuted as an adult for the offense with  
10 which the respondent is charged; or

11 (3) 16 or more years of age at the time of the alleged commission  
12 of the offense and that there is substantial evidence that the re-  
13 spondent should be prosecuted as an adult for the offense with which  
14 the respondent is charged. In that case, the court shall direct the  
15 respondent be prosecuted under the applicable criminal statute and  
16 that the proceedings filed under this code be dismissed.

17 (g) If the respondent is present in court and the court also finds  
18 from the evidence that it appears a felony has been committed and  
19 that there is probable cause to believe the felony has been committed  
20 by the respondent, the court may direct that there is no necessity  
21 for further preliminary examination on the charges as provided for  
22 in K.S.A. 22-2902, and amendments thereto. In that case, the court  
23 shall order the respondent bound over to the district judge having  
24 jurisdiction to try the case.

25 (h) If the respondent is convicted, the authorization for prose-  
26 cution as an adult may attach and apply to any future acts by the  
27 respondent which are or would be cognizable under this code if the  
28 order of the court so provides.

29 (i) If the respondent is prosecuted as an adult under subsection  
30 (f)(1) or (f)(2) and convicted of a lesser included offense, the re-  
31 spondent shall be a juvenile offender and receive an authorized  
32 disposition pursuant to K.S.A. 38-1663, and amendments thereto.

33 ~~Sec. 5. K.S.A. 38-1696 is hereby repealed.~~

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

4.

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#2

Proposed Amendments to S.B. No. 603  
 Section 1. K.S.A. 1993 Supp. 21-4704 is hereby amended to  
 read as follows: 21-4704. (a) For purposes of sentencing, the  
 following sentencing guidelines grid for nondrug crimes shall be  
 applied in felony cases for crimes committed on or after July 1,  
 1993:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	204 194 185	193 183 173	178 170 161	167 158 150	154 146 138	141 134 127	127 122 115	116 110 104	103 97 91
II	154 146 138	144 137 130	135 128 121	125 119 113	115 109 103	105 100 95	96 91 86	86 82 77	77 73 68
III	103 97 92	95 90 86	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	86 81 77	81 77 72	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	68 65 61	64 60 57	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND									
Presumptive Probation									
Presumptive Imprisonment									

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's

*Senate Judiciary*  
 2-8-94  
*attached 2-1*

criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an

optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, aggravated assault against a law enforcement officer or K.S.A. 21-3415, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit a violation of K.S.A. 21-3410, aggravated assault, or K.S.A. 21-3414, aggravated battery, and amendments thereto, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 7-C, 7-D, 7-E, 7-F, 7-G, 7-H, 7-I, 8-C, 8-D, 8-E, 8-F, 8-G, 8-H, or 8-I, shall not be considered a departure and shall not be subject to appeal.

(i) If an offender 18 or more years of age employs, hires, uses, persuades, induces, entices or coerces any individual under 18 years of age to violate or assist in avoiding detection or apprehension for violation of any person felony or violation of K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto relating to such violation of any person felony, such offender's sentence shall be presumed imprisonment and such sentence shall be up to double the maximum duration of the presumptive imprisonment term for the underlying violation of the person

felony or violation of K.S.A. 21-3301, 21-3302 or 21-3303 relating to such violation of the person felony. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block V-H, V-I or VI-G or any grid block below the dispositional line where the presumptive disposition shall be nonimprisonment, shall not be considered a departure and shall not be subject to appeal. The provisions of this section shall apply regardless of whether the offender knew the age of the individual under 18 years of age.

Sec. 2. K.S.A. 1993 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

SENTENCING RANGE - DRUG OFFENSES

Category →	A			B			C			D			E			F			G			H			I		
Severity Level ↓	3 + Person Felonies			2 Person Felonies			1 Person & 1 Nonperson Felonies			1 Person Felony			3 + Nonperson Felonies			2 Nonperson Felonies			1 Nonperson Felony			2 + Misdemeanors			1 Misdemeanor No Record		
I	204	194	185	196	186	176	187	178	169	179	170	161	170	162	154	167	158	150	162	154	146	161	150	142	154	146	138
II	83	78	74	77	73	68	72	68	65	68	64	60	62	59	55	59	56	52	57	54	51	54	51	49	51	49	46
III	51	49	46	47	44	41	42	40	37	36	34	32	32	30	28	26	24	23	23	22	20	19	18	17	16	15	14
IV	42	40	37	36	34	32	32	30	28	26	24	23	22	20	18	18	17	16	16	15	14	14	13	12	12	11	10

LEGEND
Presumptive Probation
Presumptive Imprisonment

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.



(c) Upon conviction of any person pursuant to K.S.A. 65-4127b and amendments thereto, in which the substance involved was marijuana or tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-4105 and amendments thereto; such substance was possessed with intent to sell, sold or offered for sale in an amount which does not exceed 500 grams or 25 plants; such substance was not possessed with intent to sell, sold or offered for sale as provided in subsection (d) of K.S.A. 65-4127b and amendments thereto; and such offense is classified in grid blocks 3-H or 3-I of the presumptive sentencing guidelines grid for drug crimes, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism;

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; and

(3) the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-H or 3-I shall not be considered a departure and shall not be subject to appeal.

(d) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(e) If an offender 18 or more years of age employs, hires, uses, persuades, induces, entices or coerces any individual under 18 years of age to violate or assist in avoiding detection or apprehension for violation of any provision of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto or violation of K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto relating to such violation of any provision of the uniform controlled substance act, such offender's sentence shall be presumed imprisonment and such sentence shall be up to double the maximum duration of the presumptive term for the underlying violation of the uniform controlled substances act or violation of K.S.A. 21-3301, 21-3302 or 21-3303 relating to such violation of the uniform controlled substances act. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block IV-G, IV-H or IV-I, shall not be considered a departure and shall not be subject to appeal. The provisions of this section shall apply regardless of whether the offender knew the age of the individual under 18 years of age.

## SENATE BILL No. 564

By Committee on Judiciary

1-21

Proposed Amendments by Judiciary  
Subcommittee on Attorney Fees

8 AN ACT concerning costs of collection including attorney fees; au-  
9 thorizing recovery thereof; relating to limits in consumer credit  
10 transactions; disclosure requirements; amending K.S.A. 16a-2-507,  
11 16a-5-110 and 58-2312 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 16a-2-507 is hereby amended to read as fol-  
15 lows: 16a-2-507. With respect to a consumer credit transaction, the  
16 agreement may not provide for the payment by the ~~consumer~~ of  
17 *attorney's fees debtor of reasonable costs of collection, including,*  
18 *but not limited to, court costs, attorney fees and collection agency*  
19 *fees, except that such costs of collection may not include: (1) Attorney*  
20 *fees or collection agency fees if the unpaid principal balance of the*  
21 *consumer credit transaction at the time of default is \$1,000 or less;*  
22 *and (2) costs that were incurred by a salaried employee of the*  
23 *creditor or its assignee. A provision in violation of this section is*  
24 *unenforceable, except that it is not a violation of this section to state*  
25 *in an agreement evidencing a consumer credit transaction that costs* or  
26 *of collection including attorney fees and collection agency fees may*, but not both,  
27 *be recovered "to the extent permitted by law" or similar language.*  
28 *The preceding sentence is declaratory of the meaning of this section*  
29 *as originally adopted.*

30 Sec. 2. K.S.A. 16a-5-110 is hereby amended to read as follows:  
31 16a-5-110. (1) After a consumer has been in default for ~~ten (10)~~ 10  
32 days for failure to make a required payment in a consumer credit  
33 transaction payable in installments, a creditor may give the consumer  
34 the notice described in this section. A creditor gives notice to the  
35 consumer under this section when ~~he~~ the creditor delivers the notice  
36 to the consumer or delivers or mails the notice to the address of  
37 the consumer's residence ~~{ as provided in subsection (6) of section~~  
38 ~~K.S.A. 16a-1-201} and amendments thereto.~~

39 (2) The notice shall be in writing and shall conspicuously state:  
40 The name, address, and telephone number of the creditor to which  
41 payment is to be made, a brief description of the credit transaction,  
42 the consumer's right to cure the default, and the amount of payment  
43 and date by which payment must be made to cure the default and

# 3

Attorney's fees  
3-1

1     Sec. 4. K.S.A. 16a-2-507, 16a-5-110 and 58-2312 are hereby re-  
2     pealed.

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

6-6