

Approved: _____

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 21, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Martin (excused)

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

Others attending: See attached list

Chairman Moran announced that SB 473 and HB 2578, capitol punishment, would not be debated today due to Senator Martin and Senator Vancrum being absent.

Chairman Moran asked Senator Bond for a Family Law Sub-Committee report on SB 686, SB 709, and SB 710. Senator Bond said the sub-committee voted not to pass the bills out of Committee due to a number of problems within the bills.

SB 608--providing for crimes and punishment relating to participation in criminal street gangs

Senator Emert was asked to report on the deliberations of the Criminal Law Sub-Committee regarding SB 608. He reported that the subcommittee recommends a substitute bill (Attachment No. 1). He said this bill provided the burden is the preponderance of the evidence rather as opposed to beyond a reasonable doubt. He said the bill has a severability clause and is effective upon being published in the Kansas Register.

A motion was made by Senator Emert, seconded by Senator Feleciano to adopt the sub-committee report. The motion carried.

A motion was made by Senator Parkinson, seconded by Senator Bond to further amend the sub-committee report on SB 608 to include a standard beyond a reasonable doubt. Motion failed.

A motion was made by Senator Emert, seconded by Senator Feleciano to report SB 608 as amended favorably.

A substitute motion was made by Senator Petty, seconded by Senator Harris to further amend SB 608 to read, "...shall may be sentenced to imprisonment for a term double", deleting the exception language and report the bill favorably. Division requested, 4 yes; 6 no. The motion failed.

The original motion prevailed by Senator Emert, seconded by Senator Feleciano to adopt the sub-committee report and report the bill favorably. The motion carried.

SB 629--docket fees

Senator Bond gave reference to SB 807--family violence prevention programs, which provides for up to \$1 for each violation going to prevention of domestic violence programs. He suggested that SB 629 and SB 807 be merged together.

The question was raised as whether to charge docket fees or court costs to provide funds for domestic violence programs. The question was raised as to how to distribute the funds as well as accountability for the funds.

Mike Heim, Legislative Research staff was asked to prepare a report on docket fees and how they are distributed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.
on February 21, 1994.

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for today upon adjournment of the Senate in Room 254-E.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/21/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Eric Harris	9828 Harvest Ct	
Dave Munow	1664 Maybelle	
TONI WHEELER	TOPEKA	SEN. DEMO OFC.
Alma Kikner	"	MVFR
Nona Schneeweis	Topeka	AI
Stherese Bangert	Topeka	KCADP
Janice Fairchild	Kingman, Ks	citizen
Carolyn Fairchild	Murdock, Ks	" "
Bob H. Fairchild	Kingman, Ks	" "
Rance K. Fairchild	Murdock, Ks	"
Jeff Brownell	Emporia	Senator Kerr
Carolyn King	Wabash, Ks	senior Red.
Ruth Harris	Wichita, Ks	citizen
Janice Frahm	Colby, Ks	
LaDine McRough	Pate	Shoemaker
Bruce Frahm	PO Box 100 Colby	Amer. Red. & Relief League
Matt Trudell	Topeka	AD
Alan Zarch	TOPEKA	K-W-I-C 99.3 FM
M. Hawver	"	Hawver's Capitol Repair
Paul Shelby	"	OJA
Bill Lucero	Topeka	MVFR
Mike Matson	"	WIBW
John Wright	"	Page

(over)

name	address	company/organization
Julius Drost		Hanson City Star
R.W. Aggrec	NY	Times
Ben Coates	Topeka	KPA
Donna McBurnel	Topeka	Sen Burke's office
Jean McK...	"	KCADP
Anne Tucker	Topeka	
Grace Mann	O.P.	QWVK
Jim Clon	Town	KCDQA
Neler Stephens	✓	KPOA
Mel Cathen	Topeka	BIDS
Kyle Smith	Topeka	KBI/16
Jess Mootz	"	ESC
Kent M. Milder	Tecumseh	Shawnee Hills United Methodist
Bill Miskell	TOPEKA	KDOC
John M. M...	Topeka	DBFERR

ANTI-GANG BILL

SENATE BILL 608 (Substitute)

Changes and Explanation:

I. Make part of sentencing guidelines instead of a separate act

-- like use of firearms, becomes a "special rule" in
K.S.A. 21-4704 and 4705

II. Drops difficult issue of misdemeanor crimes and how to penalize

III. How would now work:

A. Prosecutor makes initial decision as to whether appropriate and
sufficient evidence, if not regular sentence; if wants to then:

1. Files motion prior to sentencing on felony cases only
-- puts defendant on notice
-- creates powerful plea bargaining tool for prosecutor

2. Prosecutor would need to show/present evidence that:

a. Defendant is member of "criminal street gang"

b. Show that criminal street gang has:

- 1) 3 or more people;
- 2) One of its primary activities is the commission
of a person or drug felony;
- 3) Common name or symbol; and
- 4) Committed 2 or more person or drug felonies;
+ one of which after effective date of
this act;
+ last one within 3 years of prior; and
+ separate occasions or by 2 different people

c. Defendant committed the felony at the direction of, for
benefit or, or in association with the criminal
street gang
-- specific intent to help gang's criminal conduct

B. Burden is preponderance of evidence by judge

Same as old 21-4618, use of firearms which
was repeatedly held constitutional (e.g. St. v. Freeman,
223 Kan. 361 (1977))

C. If burden met then court shall

1. Sentence to prison, not probation

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attchment 1-1

2. Length is double the present grid for that crime
3. If murder for gang then 40 years
- Unlike 'Hard 40' would include juveniles
4. Safety valve - court may reduce prison term (but not to probation, etc.), but court must make finding that reductions
 - a. Serves community safety interest, and
 - b. Promotes offender reformation

IV. Other changes

- A. Effective upon publication in Kansas Register
- B. Severability clause

#6148

SENATE BILL No. 608

By Committee on Judiciary

1-26

(SUBSTITUTE)

AN ACT concerning crimes and punishment;
relating to the use of firearms, employment or
usage of minors in certain criminal violations
and felonies committed by or for criminal street
gangs; sentencing therefore; amending K.S.A.
1993 Supp. 21-4704 and 21-4705 and repealing the
existing sections.

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

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:

(b) The provisions of this section shall be applicable to the sen-
tencing guidelines grid for nondrug crimes. Sentences expressed in

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 Felonies	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	193 183 173	173 170 161	167 158 150	154 146 138	141 134 127	127 122 115	116 110 104	103 97 92
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	
Border Box	
Presumptive Imprisonment	

SB 603—Am. by SCW

1 such grid represent months of imprisonment.

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

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

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

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result
23 of good time and the period of postrelease supervision at the sen-
24 tencing hearing. Failure to pronounce the period of postrelease su-
25 pervision shall not negate the existence of such period of postrelease
26 supervision.

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

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

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

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

1 of time; or

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

4 Any decision made by the court regarding the imposition of an
5 optional nonprison sentence if the offense is classified in grid blocks
6 5-H, 5-I or 6-G shall not be considered a departure and shall not
7 be subject to appeal.

8 (g) The sentence for the violation of K.S.A. 21-3411, aggravated
9 assault against a law enforcement officer or K.S.A. 21-3415, aggra-
10 vated battery against a law enforcement officer and amendments
11 thereto which places the defendant's sentence in grid block 6-H or
12 6-I shall be presumed imprisonment. The court may impose an op-
13 tional nonprison sentence upon making a finding on the record that
14 the nonprison sanction will serve community safety interests by pro-
15 moting offender reformation. Any decision made by the court re-
16 garding the imposition of the optional nonprison sentence, if the
17 offense is classified in grid block 6-H or 6-I, shall not be considered
18 departure and shall not be subject to appeal.

19 (h) When a firearm is used to commit a violation of K.S.A. 21-
20 3410, aggravated assault, or K.S.A. 21-3414, aggravated battery,
21 and amendments thereto any person felony, the offender's sentence
22 shall be presumed imprisonment. ~~The court may impose an optional~~
23 ~~nonprison sentence upon making a finding on the record that the~~
24 ~~nonprison sanction will serve community safety interests by pro-~~
25 ~~moting offender reformation. Any decision made by the court re-~~
26 ~~garding the imposition of the optional nonprison sentence, if the~~
27 ~~offense is classified in grid block 7 C, 7 D, 7 E, 7 F, 7 G, 7 H, 7~~
28 ~~I, 8 C, 8 D, 8 E, 8 F, 8 G, 8 H, or 8 I, shall not be considered a~~
29 ~~departure and shall not be subject to appeal.~~

30 (i) If an offender 18 or more years of age employs, hires, uses,
31 persuades, induces, entices or coerces any individual under 18 years
32 of age to violate or assist in avoiding detection or apprehension for
33 violation of any person felony or any attempt, conspiracy or solici-
34 tation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amend-
35 ments thereto to commit a violation of any person felony, such
36 offender's sentence shall be presumed imprisonment and such sen-
37 tence shall be up to double the maximum duration of the presumptive
38 imprisonment term for the underlying violation of the person felony
39 or attempt, conspiracy or solicitation as defined in K.S.A. 21-3301,
40 21-3302 or 21-3303 to commit a violation of the person felony. ~~The~~
41 ~~court may impose an optional nonprison sentence upon making~~
42 ~~a finding on the record that the nonprison sanction will serve~~
43 ~~community safety interests by promoting offender reformation.~~

9-1

1 *Any decision made by the court regarding the imposition of*
2 *the optional nonprison sentence, if the offense is classified in*
3 *grid block V-H, V-I or VI-G or any grid block below the dis-*
4 *positional line where the presumptive disposition shall be non-*
5 *imprisonment, shall not be considered a departure and shall*
6 *not be subject to appeal. The provisions of this section shall apply*
7 *regardless of whether the offender knew the age of the individual*
8 *under 18 years of age.*

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

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

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

31 (1) An appropriate treatment program is likely to be more ef-
32 fective than the presumptive prison term in reducing the risk of
33 offender recidivism;

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

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

42 (d) (1) The sentencing court has discretion to sentence at any
43 place within the sentencing range. The sentencing judge shall select

(j) Upon motion by the state and if it is shown at sentencing that the offender committed any felony violation 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, the offender shall be sentenced to imprisonment for a term double the maximum duration of the imprisonment term for the underlying felony violation.

(1) The court may impose a reduced prison term only upon making a finding on the record that the reduced prison term will serve community safety interests by promoting offender reformation.

(2) Regardless of the age of the offender, if the offender is being sentenced for an off-grid felony the sentence shall be imprisonment and the offender shall not be paroled until a minimum of forty years has been served in the custody of corrections.

(3) "Criminal street gang" means any 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 person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-410] et seq. and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto, 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.

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
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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

SB 603—Am. by SCW

6

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 the center of the range in the usual case and reserve the upper and
 2 lower limits for aggravating and mitigating factors insufficient to
 3 warrant a departure.

4 (2) In presumptive imprisonment cases, the sentencing court shall
 5 pronounce the complete sentence which shall include the prison sen-
 6 tence, the maximum potential reduction to such sentence as a result
 7 of good time and the period of postrelease supervision at the sen-
 8 tencing hearing. Failure to pronounce the period of postrelease su-
 9 pervision shall not negate the existence of such period of postrelease
 10 supervision.

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

14 (e) If an offender 18 or more years of age employs, hires, uses,
 15 persuades, induces, entices or coerces any individual under 18 years
 16 of age to violate or assist in avoiding detection or apprehension for
 17 violation of any provision of the uniform controlled substances act,
 18 K.S.A. 65-4101 et seq. and amendments thereto or any attempt,
 19 conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or
 20 21-3303 and amendments thereto to commit a violation of any pro-
 21 vision of the uniform controlled substances act, such offender's sen-
 22 tence shall be presumed imprisonment and such sentence shall be
 23 up to double the maximum duration of the presumptive term for
 24 the underlying violation of the uniform controlled substances act or
 25 attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-
 26 3302 or 21-3303 to commit the violation of the uniform controlled
 27 substances act. ~~The court may impose an optional nonprison~~
 28 ~~sentence upon making a finding on the record that the non-~~
 29 ~~prison sanction will serve community safety interests by pro-~~
 30 ~~moting offender reformation. Any decision made by the court~~
 31 ~~regarding the imposition of the optional nonprison sentence,~~
 32 ~~if the offense is classified in grid block IV-C, IV-H or IV-I,~~
 33 ~~shall not be considered a departure and shall not be subject~~
 34 ~~to appeal.~~ The provisions of this section shall apply regardless of
 35 whether the offender knew the age of the individual under 18 years
 36 of age.

37 Sec. 4 K.S.A. 1993 Supp. 21-4704 and 21-4705 are hereby re-
 38 pealed.

39 Sec. 2- 5 This act shall take effect and be in force from and
 40 after its publication in the statute-book. Kansas Register.
 41
 42
 43

(f) Upon motion by the state and if it is shown at sentencing that the offender committed any felony violation 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, the offender shall be sentenced to imprisonment for a term double the maximum duration of the imprisonment term for the underlying felony violation.

(1) The court may impose a reduced prison term only upon making a finding on the record that the reduced prison term will serve community safety interests by promoting offender reformation.

(2) "Criminal street gang" means any 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 person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto, 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.

(3) If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.