

Approved: 3/22/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

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

All members were present except: Senator Vancrum (excused)
Senator Feleciano (excused)

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

Conferees appearing before the committee:

Matt Lynch, Judicial Council
Jim Clark, Kansas County and District Attorneys Association
Paul Morrison, Attorney

Others attending: See attached list

A motion was made by Senator Harris, seconded by Senator Brady to approve minutes for February 21 and February 22, 1994. The motion carried.

SB 745--inherently dangerous felonies serving as underlying felony for purposes of felony murder

Matt Lynch, Judicial Council testified in support of SB 745 and provided written testimony (Attachment No. 1). He said the only significant change was the addition of language "aggravated assaults" and "intentional aggravated batteries" on page 2, lines 28 through 35. Mr. Lynch said the remainder of the changes are organizational changes.

Jim Clark, Kansas County and District Attorneys Association testified in support of SB 745. Mr. Clark said he supported striking the language on page 1, lines 22 through 27 because it created ambiguity. He said the bill needed to be clarified by a Revisor's note.

Chairman Moran closed the hearings on SB 745.

SB 701--mandatory term of imprisonment of 40 years imposed by court for certain offenders

Paul Morrison, Attorney testified in support of SB 701 and answered questions from the Committee. He stated the purpose of SB 701 was to give the "hard 40" statute broader use. Mr. Morrison said penalties needed to be expanded for premeditated murder. He suggested that in New Section 3 the sentence for premeditated murder be changed by removing the requirement that the county or district attorney file a written notice. Mr. Morrison suggested in reference to HB 2788, the Committee give consideration to increasing penalties for career criminals. He said the issue of individuals being incarcerated through the sunset years of life posed a problem and would have to be dealt with in terms of medical care.

SB 701--mandatory term of imprisonment of 40 years imposed by court for certain offenders

A motion was made by Senator Bond, seconded by Senator Rock to conceptually amend SB 701 to read the court may impose a sentence of any number of years between 15 and 40, specifically with no parole.

CONTINUATION SHEET

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

Senator Bond withdrew his previous motion, seconded by Senator Rock to conceptually amend SB 701 to read the court may impose a sentence of any number of years between 15 and 40, specifically with no parole.

A motion was made by Senator Bond, seconded by Senator Rock to amend SB 701 in regard to the statutory language of K.S.A. 21-4606 in terms of citing the reason for administering the "hard 40". The motion carried.

A motion was made by Senator Parkinson, seconded by Senator Bond to further amend SB 701 for first degree premeditated murders to receive the "hard 40" and to include no notice is required by the prosecutor. The judge would determine aggravating and mitigating circumstances and there would be no automatic appeal. The penalty for premeditated murder would be the "hard 25" (no parole) and the judge would have to site reason under K.S.A. 21-4606 unless the "hard 40" is utilized as provided above. The motion carried.

Chairman Moran asked staff to prepare a balloon on SB 701 for the Committee.

Chairman Moran announced there would be hearings on SB 820, SB 821 and SB 825 March 11 as well as possible action on bills previously heard.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 11, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 3/10/94

[illegible]

JUDICIAL COUNCIL TESTIMONY ON 1994 SB 745

INHERENTLY DANGEROUS FELONIES

SENATE JUDICIARY COMMITTEE MARCH 10, 1994

SB 745 contains amendments to K.S.A. 1993 Supp. 21-3436 recommended by the Judicial Council Criminal Law Advisory Committee.

K.S.A. 21-3436 was part of the revisions to the criminal code, which became effective July 1, 1993, and it lists the inherently dangerous felonies which can serve as the underlying felony for felony murder. The list was limited to those felonies that had been specifically recognized by the Kansas Supreme Court, those that presumably would have been recognized if presented to the court and those specifically added by the legislature (child abuse, felony drug offenses, and drive-by shootings). The intentional homicides were included on the theory a distinct criminal homicide can serve as the underlying felony for felony murder. State v. Lucas, 243 Kan. 462 (1988).

The only substantive amendment made by the bill is the addition of aggravated assaults and intentional aggravated batteries on page 2, in lines 28 through 35. This addition is based on the decision in State v. Humphrey, 252 Kan. 6 (1992) in which the court held a distinct aggravated assault could serve as the underlying felony for felony murder.

The other amendments in SB 745 relate to the organization of K.S.A. 1993 Supp. 21-3436. Under the bill, felonies which are subject to the merger doctrine are listed separately in subsection (b). Introductory language is added to subsection (a) to indicate the felonies listed in subsection (a) are not subject to the merger doctrine.

As part of the revisions to the criminal code, K.S.A. 21-3401 (murder in the first degree) was amended to include " . . . the killing of a human being committed . . . in the commission of, or flight from an inherently dangerous felony as defined in K.S.A. 1993 Supp. 21-3436 and amendments thereto. . . ." Prior to the recent revisions, K.S.A. 21-3401 essentially provided that murder in the first degree included the killing of a human being committed " . . . in the perpetration or attempt to perpetrate any felony"

Under the "any felony" language, the court had to determine (1) whether the underlying felony was inherently dangerous to human life and (2) whether the elements of the underlying felony were so distinct from the homicide as not to be an ingredient of the homicide. Under the second issue, if the underlying felony was not so distinct it was said to merge with the homicide and preclude the application of felony murder.

Senate Judiciary
3-10-94
attchment 1-1

The merger doctrine prevents escalating all degrees of homicide to first-degree murder. For example, A kills B intentionally in the heat of passion. A is guilty of voluntary manslaughter. Voluntary manslaughter cannot be used as the underlying felony to make the killing of B felony murder. The merger doctrine has also been applied to assaultive behavior. For example, most murders are committed by means of an aggravated battery. The Kansas Supreme Court has held that an accused may not be charged with both murder and aggravated battery because the crime consists of one act; the murder and the battery merge. The accused could be charged with first-degree premeditated murder, or some lesser degree of murder, but not with felony murder because the underlying felony (aggravated battery) merges with the homicide so there are not two separate felonies. There is but a single criminal act involved.

The intent in separating the list of inherently dangerous felonies into two subsections is to clarify when consideration must be given to the merger doctrine. Past acts of the legislature indicate the legislature does not want killings committed during child abuse or drive-by shootings to be subject to the merger doctrine. Consequently, these felonies are listed in subsection (a). Those felonies generally subject to the merger doctrine (intentional homicides, aggravated assaults, intentional aggravated batteries) are listed separately in subsection (b). However, the felonies listed in (b) can, in the appropriate circumstances, serve as an underlying felony for felony murder. For example, A commits an aggravated assault against B and in the course of such aggravated assault kills C by a separate and distinct act. The aggravated assault of B can serve as the collateral felony to make the killing of C felony murder.

CRIMINAL LAW ADVISORY COMMITTEE

Elwaine F. Pomeroy, Chair
1415 Topeka
Topeka, KS 66612
(913) 357-0311

Judge Carol J. Bacon
1015 S. Minnesota
Wichita, KS 67211
(316) 383-7487

Wendell Betts
P.O. Box 639
400 SW 8th, Ste. 409
Topeka, KS 66603
(913) 232-7266
(913) 232-5841 (Facsimile)

Edward G. Collister
3311 Clinton Parkway Court
Lawrence, KS 66047
(913) 842-3126
(913) 749-0179 (Kinkos)

Representative Jim D. Garner
601 E. 12th
Coffeyville, KS 67337
(316) 251-1864

Judge Michael Malone
Law Center
Lawrence, KS 66044
(913) 841-7700
(913) 842-8455 (Facsimile)

Steven L. Opat
715 N. Washington
Junction City, KS 66441
(913) 762-2100
(913) 762-2291 (Facsimile)

Sen. Mark V. Parkinson
13628 W. 95th Street
Lenexa, KS 66215
(913) 888-1777
(913) 888-1794 (Facsimile)

Loren L. Taylor
Police Department
City Hall
Kansas City, KS 66101
(913) 573-6195

(Revised 10/93)