

Approved: \_\_\_\_\_

Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 12:30 p.m. on March 23, 1994 in Room 519-S of the Capitol.

All members were present except: Senator Rock (excused)  
Senator Feleciano (excused)  
Senator Bond (excused)

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

Conferees appearing before the committee:

Lisa Moots, Sentencing Commission

Others attending: See attached list

A motion was made by Senator Emert, seconded by Senator Harris to approve the Senate Judiciary Committee minutes for March 11, March 14, March 15 and March 16. The motion carried.

### SB 836--crimes and punishment, sentencing guidelines

Chairman Moran called to the attention of the Committee testimony in regard to SB 835 and SB 836 from Lisa Moots, Sentencing Commission (Attachment No. 1). He asked Lisa Moots to clarify for the Committee the policy issues in regard to sentencing guidelines.

Lisa Moots addressed the Committee in regard to the policy issues for sentencing guidelines. She said the first policy concern involved the felony DUI. She said a DUI offender, on the third offense could be charged and prosecuted as a felony offense and the offense was assigned a guideline severity level 9.

Ms. Moots suggested an amendment to SB 836 on page 21(i), line 11, to add language to read "of the secretary of corrections, *unless probation or parole is revoked and the court orders the balance of the sentence of up to one year to be served in the custody of the Secretary of Corrections subject to the provisions of K.S.A. 1993, Supp. 21-4722 and amendments thereto any good time earned shall be served as a term of post release supervision.*"

A motion was made by Senator Petty to adopt language from the Sentencing Commission on SB 836, page 21(i). The motion failed for lack of a second.

Lisa Moots said the second policy concern was in regard to the departure factor that had been proposed by the Sentencing Commission as one mechanism for dealing with persistent offenders who are in certain criminal history categories. She suggested on SB 836, page 37, lines 4-12 be deleted.

A motion was made by Senator Bond, seconded by Senator Emert to delete the language in SB 836, page 37, lines 4-12 (Section E). The motion carried.

Lisa Moots said the third policy concern was in regard to whether to include the opportunity for judges to depart based upon verifiable convictions of municipal ordinances and county resolutions and how to phrase that language or whether to leave those as among the prior convictions that are included in criminal history.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 519-S Statehouse, at 12:30 p.m.  
on March 23, 1994.

A motion was made by Senator Parkinson, seconded by Senator Petty to delete language in SB 836, page 37, lines 13-17 (Section F). The motion carried.

A motion was made by Senator Emert, seconded by Senator Ranson to conceptually amend SB 836 by removing "identical" and inserting "comparable". The motion carried.

A motion was made by Senator Bond, seconded by Senator Vancrum to amend SB 763 into SB 836. The motion carried.

A motion was made by Senator Vancrum, seconded by Senator Emert to amend HB 3074 into SB 836. The motion carried.

A motion was made by Senator Parkinson, seconded by Senator Brady to conceptually amend SB 836 to include technical amendments. The motion carried.

A motion was made by Senator Petty, seconded by Senator Oleen to conceptually amend SB 836 to include providing Labette Boot Camp as a dispositional alternative. The motion carried.

A motion was made by Senator Brady, seconded by Senator Oleen to conceptually amend SB 836 to allow provisions that after care for individuals released from Labette be placed in the custody of a community corrections program. The motion carried.

A motion was made by Senator Bond, seconded by Senator Brady to remove HB 2332 from the table. The motion carried.

A motion was made by Senator Bond, seconded by Senator Emert to remove all provisions of HB 2332 and insert SB 836 as amended. The motion carried.

A motion was made by Senator Emert, seconded by Senator Petty to amend technically SB 835. The motion carried.

A motion was made by Senator Emert, seconded by Senator Petty to amend SB 835 into Sub HB 2332. The motion carried.

A motion was made by Senator Vancrum, seconded by Senator Bond to report Sub HB 2332 favorably as amended. The motion carried.

A motion was made by Senator Petty, seconded by Senator Martin to amend SB 829 by making the effective date July 1, 1996. The motion failed.

A motion was made by Senator Bond, seconded by Senator Petty to remove all the provisions of HB 2490 and insert the provision for immunization programs (Attachment No. 2) and report Sub HB 2490 favorably as amended. The motion carried.

HB 2697--service of process, time limits

There was no action taken on HB 2697.

Chairman Moran thanked the Committee for the willingness they exhibited in their attendance of Senate Judiciary Committee meetings throughout the session.

The meeting adjourned at 1:30 p.m.

## GUEST LIST

**COMMITTEE:**

DATE:

[illegible]



State of Kansas  
KANSAS SENTENCING COMMISSION

SENATE BILLS 835, 836  
SENATE COMMITTEE ON JUDICIARY  
MARCH 23, 1994

It should come as no surprise that the sentencing guidelines act requires additional refinements in the first legislative session following the effective date of the act. All of the provisions of Senate Bill 835 are purely technical in nature, and the same can be said for almost all of the contents of Senate Bill 836. For those provisions of SB 836 which require any type of substantive or philosophical decision on your part, I will try to outline your options for you and tell you why the sentencing commission recommends the approaches taken in the bill.

SB 835 contains no provisions of any substance. Instead, it simply reorganizes and rennumbers the sections and subsections of a number of crime statutes to make them consistent, to facilitate the determination of the severity level assigned to the crime and, as a side benefit, to facilitate the process of data entry of dispositional information by the Kansas sentencing commission, Kansas department of corrections, and the KBI. Otherwise, SB 835 assigns guidelines severity levels to several previously unranked, relatively obscure felonies.

For the most part SB 836 contains clarifying language that closes some gaps in the procedures established by the guidelines act and responds to a number of questions left unanswered by the act. The bill also contains one suggestion for a possible new aggravating departure factor that comes from the sentencing commission for your consideration [Section 18]. The sentencing commission's recommendations for some language to resolve conflicts in the DUI sentencing provisions are also contained in the bill [Sections 1, 10]. The bill also offers a couple of alternatives regarding the appropriate mechanism for including certain municipal ordinance violations in an offender's criminal history [Sections 14, 15, 17, 18].

The technical aspects of the bill include provisions which:

Clarify the rules regarding the imposition of consecutive sentences

Clarify the definition of "prior conviction" for purposes of inclusion in offender's criminal history score and the limits on use of prior convictions

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Clarify the rules regarding plea-bargaining and the acceptance of guilty pleas by the court

Clarify that an attempt, conspiracy, or solicitation of a person crime is also a person crime

Clarify the procedure for notice regarding imposition of departure sentences

Clarify the rules regarding the controlling term of postrelease supervision in cases of multiple sentences

Codify the supreme court's rule regarding peremptory challenges (with corrections)

Clarify the provisions regarding imposition of an extended period of postrelease supervision for certain sex offenders

Clarify the provisions regarding the process of preparing the presentence investigation report and the accessibility of the report

Clarify the rules regarding the amount of the balance of the sentence to be served by postrelease supervision violators with new conviction but no new sentence

Amend the journal entry and other required forms.



Proposed amendment to H.B. 2852  
As Amended by House Committee of the Whole

Sec. \_\_. K.S.A. 65-2422 is hereby amended to read as follows: 65-2422. (a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of this act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by this act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose.

(c) The state registrar shall not permit inspection of the records or issue a certified copy of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the act for judicial review and civil enforcement of agency actions, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made.

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and

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stillbirth certificate data to federal, state or municipal agencies.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and shall be used solely by the election officer for the purpose of correcting records of their offices.

(g) No person shall prepare or issue any certificate which purports to be an original, certified copy or copy of a certificate of birth, death or fetal death, except as authorized in this act or rules and regulations adopted under this act.

(h) Records of births, deaths or marriages which are not in the custody of the secretary of health and environment and which were created before July 1, 1911, pursuant to chapter 129 of the 1885 Session Laws of Kansas, and any copies of such records, shall be open to inspection by any person and the provisions of this section shall not apply to such records.

(i) Social security numbers furnished pursuant to K.S.A. 65-2409 and amendments thereto shall only be used as permitted by title IV-D of the federal social security act and amendments thereto or as permitted by section 7(a) of the federal privacy act of 1974 and amendments thereto. The secretary shall make social security numbers furnished pursuant to K.S.A. 65-2409 and amendments thereto available to the department of social and rehabilitation services for purposes permitted under title IV-D of the federal social security act.

(j) The secretary may direct the state registrar to provide birth information upon request to state agencies related to immunization programs. Such information shall not be used for commercial purposes. Confidential medical and statistical information will not be released.