

## REPORTS OF STANDING COMMITTEES

MADAM PRESIDENT:

The Committee on **Judiciary** recommends **HB 2048**, as amended by House Committee, be amended on page 3, in line 26, by striking "(i)"; also in line 26, by inserting after the comma "the felony crime shall be classified as follows:

(i) ";

On page 4, in line 11, after "felony" by inserting "offense that resulted in the"; in line 13, by striking "that resulted in the out-of-state conviction"; in line 22, after "as" by inserting "a"; also in line 22, after "nonperson" by inserting "felony"; in line 23, by striking all after "offense"; in line 24, by striking "adjudication";

On page 5, by striking all in lines 25 and 26; following line 26, by inserting:

"Sec. 2. K.S.A. 2018 Supp. 21-6820 is hereby amended to read as follows: 21-6820. (a) A departure sentence is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.

(b) Pending review of the sentence, the sentencing court or the appellate court may order the defendant confined or placed on conditional release, including bond.

(c) On appeal from a judgment-~~or~~of conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

(1) Any sentence that is within the presumptive sentence for the crime; or

(2) any sentence resulting from an agreement between the state and the defendant which the sentencing court approves on the record.

(d) In any appeal from a judgment of conviction imposing a sentence that departs from

the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(1) Are supported by the evidence in the record; and

(2) constitute substantial and compelling reasons for departure.

(e) In any appeal from a judgment of conviction, the appellate court may review a claim that:

(1) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(2) the sentencing court erred in either including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or

(3) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(f) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(g) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Kansas sentencing commission. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(h) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the

review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(i) The sentencing court shall retain authority irrespective of any notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors.

(j) The amendments made to this section by this act are procedural in nature and shall be construed and applied retroactively.

Sec. 3. K.S.A. 2018 Supp. 22-3504 is hereby amended to read as follows: 22-3504. ~~(1)~~ (a) The court may correct an illegal sentence at any time while the defendant is serving such sentence. The defendant shall receive full credit for time spent in custody under the sentence prior to correction. Unless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief, the defendant shall have a right to a hearing, after reasonable notice to be fixed by the court, to be personally present and to have the assistance of counsel in any proceeding for the correction of an illegal sentence.

~~(2)~~ (b) Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

~~(3)~~ (c) For the purposes of this section:

(1) "Illegal sentence" means a sentence: Imposed by a court without jurisdiction; that does not conform to the applicable statutory provision, either in character or punishment; or that is ambiguous with respect to the time and manner in which it is to be served at the time it is pronounced. A sentence is not an "illegal sentence" because of a change in the law that occurs after the sentence is pronounced.

(2) "Change in the law" means a statutory change or an opinion by an appellate court of the state of Kansas, unless the opinion is issued while the sentence is pending an appeal from the judgment

of conviction.

(d) The amendments made to this section by this act are procedural in nature and shall be construed and applied retroactively.

New Sec. 4. If any provision or provisions of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or provisions or application, and to this end the provisions of this act are severable.";

Also on page 5, in line 27, by striking "and" and inserting a comma; also in line 27, after "21-6811c" by inserting ", 21-6820 and 22-3504";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after the semicolon by inserting "appeal of sentence; correction of sentence;"; in line 4, after "6811" by inserting ", 21-6820 and 22-3504"; and the bill be passed as amended.

\_\_\_\_\_Chairperson