Meeting on Thurs 2/7/64

~~2/5/64~~
1/31/64

CHANGES IN TITLE B

OFFENSES AND SENTENCES

Article 15: Definitions and Classification of Offenses

§15.00 Classification of offenses

Subdivision 1, lines 2 and 3, changed to read:

"law of this state or of any law or ordinance of a political subdivision of this state, other than one that defines a 'traffic infraction', for"

§15.05 Felony; definition, classifications and designation

Subdivision 2, line 1, changed to read:

"2 Classifications. Felonies are classified, for the purpose of sentence, into five categories as follows:"

Subdivision 3. Alternate proposal

"3. Designation. The particular classification of each felony defined in this chapter is expressly designated in the section or article defining it. Any offense hereafter defined outside this chapter which is declared by law to be a felony without specification of the classification thereof or deemed a felony by virtue of the definition set forth in subdivision one of this section shall be deemed a class E felony." use printed

§15.10 Misdemeanor; definition, classification and designation

Subdivisions 2 and 3, alternate proposal:

"2. Classifications. Misdemeanors are classified, for the purpose of sentence, into three categories as follows:

(a) Class A misdemeanors;

(b) Class B misdemeanors; and

(c) Unclassified misdemeanors.

"3. Designation

(a) Each misdemeanor defined in this chapter is either a class A or a class B misdemeanor, as expressly designated in the section or article defining it."

(b) Any offense defined outside this chapter which is declared by law to be a misdemeanor without specification of the classification thereof or the sentence authorized upon conviction shall be deemed to be a class A misdemeanor.

(c) Any offense defined outside this chapter which, by virtue of an expressly specified sentence, is within the definition set forth in subdivision one of this section shall be deemed to be an unclassified misdemeanor.

§15.15 Violation; definition and designation

Subdivision 2, paragraph (a), changed to read:

"(a) Notwithstanding any other express designation, it is within the definition set forth in subdivision one of this section; or"

§15.20. New provision submitted at the request of certain Commissioners, as follows:

"§15.20 Classification of certain misdemeanors when committed by persistent offenders

1. Classification. When a person who within the preceding ten years has been convicted of three or more crimes, as defined in subdivision two of this section, commits a class A misdemeanor or an unclassified misdemeanor for which a sentence of imprisonment in excess of three months is authorized, such crime shall be deemed to be a class E felony.

2. Definition of previous conviction

(a) A previous criminal conviction within the meaning of subdivision one of this section is a conviction of any crime in this state or of any offense in any other jurisdiction for which a sentence of imprisonment in excess of fifteen days was authorized, irrespective of whether sentence or the execution thereof was suspended, provided the defendant was not pardoned on the ground of innocence.

(b) For the purpose of determining whether a person has previously been convicted of three or more crimes, two or more convictions of crimes that were committed prior to the time the person was convicted of any of such crimes shall be deemed to be only one conviction.

REVISED ARTICLES 20 AND 21

ARTICLE 20: AUTHORIZED DISPOSITION OF OFFENDERS

Section 20.00 Authorized dispositions

1. In general. Every person convicted of an offense shall be sentenced in accordance with this title.

2. Class A felony. Every person convicted of a class A felony shall be sentenced to imprisonment in accordance with section 22.00 unless such person is sentenced to death in accordance with section 125.35 or section 135.30.

3. Revocable dispositions; probation and conditional discharge. When a person is convicted of an offense, the court, where authorized by article twenty-one, may sentence such person to a period of probation or to a period of conditional discharge as provided in that article. Such sentence shall be tentative to the extent that it may be altered or revoked in accordance with article twenty-one, but for all other purposes shall be deemed to be a final judgment of conviction.

In any case where the court imposes a sentence of probation, it may also impose a fine authorized by article twenty-four.

4. Other dispositions. When a person is convicted of an offense, other than a class A felony, and not sentenced to a period of probation or to a period of conditional discharge, or when a sentence of probation or of conditional discharge is revoked, the sentence of the court shall be as follows:

(a) A term of imprisonment authorized by article twenty-two; or

(b) A reformatory period of imprisonment authorized by article twenty-three; or

(c) A fine authorized by article twenty-four, provided, however, that where the conviction is of a class B or class C felony, the sentence shall not consist solely of a fine; or

(d) Both imprisonment and a fine.

In any case where a person has been sentenced to a period of probation and a fine, if the part of the sentence that provides for probation is revoked, the court shall sentence such person to imprisonment.

5. Corporations. When a corporation is convicted of an offense, the court shall sentence the corporation either to a fine authorized by section 24.10 or to a period of conditional discharge authorized by article twenty-one. In any case where a corporation has been sentenced to a period of conditional discharge and such sentence is revoked, the court shall sentence the corporation to a fine.

6. Civil penalties. This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty and any appropriate order exercising such authority may be included as part of the judgment of conviction.

ARTICLE 21: SENTENCE OF PROBATION;

SENTENCE OF CONDITIONAL DISCHARGE

Section

21.00 Sentence of probation
21.05 Sentence of conditional discharge
21.10 Conditions of probation and of conditional discharge
21.15 Calculation of periods of probation and of conditional discharge
21.20 Time served under revoked sentence of probation; credit against certain indeterminate sentences.

§21.00 Sentence of probation

1. Criteria. The court may sentence a person to a period of probation upon conviction of any crime other than a class A felony if the court, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, is of the opinion that:

(a) Institutional confinement of the defendant is not necessary for the protection of the public;

(b) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision; and

(c) Such disposition is not inconsistent with the ends of justice.

Provided, however, that the court shall not impose a sentence of probation in any case where it sentences a defendant for more than one crime and imposes a sentence of imprisonment for any one of the crimes, or where the defendant is subject to any undischarged indeterminate or reformatory sentence of imprisonment imposed at a previous time by a court of this state.

2. Sentence. When a person is sentenced to a period of probation the court shall impose the period authorized by subdivision three of this section and shall specify, in accordance with section 21.10, the conditions to be complied with. The court may modify or enlarge the conditions or, where a condition has been violated, revoke the sentence at any time prior to the expiration or termination of the period of probation.

3. Periods of probation. Unless terminated sooner in accordance with the code of criminal procedure, the period of probation shall be as follows:

Nechales (5) carried!

(a) For a class B or a class C felony, the period of probation shall be ~~ten~~ five years;

(b) For a class D or a class E felony, the period of probation shall be five years;

(c) For a class A misdemeanor, the period of probation shall be three years;

(d) For a class B misdemeanor, the period of probation shall be one year; and

(e) For an unclassified misdemeanor, the period of probation shall be three years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall be one year.

§21.05 Sentence of conditional discharge

1. Criteria. The court may impose a sentence of conditional discharge for any offense other than a class A, class B or ~~class C~~ Dangerous Offender felony if the court, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, is of the opinion that neither the public interest nor the ends of justice would be served by a sentence of imprisonment or a fine and that probation supervision is not appropriate.

Nechs

In any case where a sentence of conditional discharge is imposed for a felony the court shall set forth in the record the reasons for its action.

2. Sentence. When the court imposes a sentence of conditional discharge the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, fine or probation supervision but subject, during the period of conditional discharge, to such conditions as the court may determine. The court shall fix the period of conditional discharge in accordance with subdivision three of this section and shall specify, in accordance with §21.10 the conditions

to be complied with. The court may modify or enlarge the conditions or, where the conditions have been violated, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

3. Periods of conditional discharge. Unless terminated sooner in accordance with the code of criminal procedure, the period of conditional discharge shall be as follows:

(a) Three years in the case of a felony; and

(b) One year in the case of a misdemeanor or a violation.

§21.10 Conditions of probation and conditional discharge

1. In general. The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law abiding life or to assist him to do so.

2. Conditions relating to conduct and rehabilitation. When imposing a sentence of probation or of conditional discharge the court shall make the sentence subject to the condition that the defendant commits no other offense and may, as a condition of the sentence, require that the defendant:

(a) Avoid injurious or vicious habits;

(b) Refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(c) Work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment;

(d) Undergo available medical or psychiatric treatment and remain in a specified institution, when required for that purpose;

(e) Support his dependents and meet other family responsibilities;

(f) Make restitution of the fruits of his crime or make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;

(g) If a minor,

(i) reside with his parents or in a suitable foster home or hostel as referred to in section six-f of the correction law,

(ii) attend school,

(iii) spend such part of the period of the sentence as the court may direct, but not exceeding two years, in a facility made available by the division for youth pursuant to subdivision two of section five hundred two of the executive law, provided that admission to such facility may be made only with the prior consent of the division for youth.

(iv) attend a non-residential program for such hours and pursuant to a schedule prescribed by the court as suitable for a program of rehabilitation of youth,

(v) contribute to his own support in any home, foster home or hostel;

(h) Post a bond or other security for the performance of any or all conditions imposed;

(i) Satisfy any other conditions reasonably related to his rehabilitation.

2. Conditions relating to supervision. When imposing a sentence of probation the court, in addition to any conditions imposed pursuant to subdivision one of this section, shall require, as conditions of the sentence, that the defendant:

(a) Report to a probation officer as directed by the court or the probation officer and permit the probation officer to visit him at his place of abode or elsewhere;

(b) Remain within the jurisdiction of the court unless granted permission to leave by the court or the probation officer; and

(c) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

§21.15 Calculation of periods of probation and conditional discharge

1. A period of probation or of conditional discharge commences on the day it is imposed and multiple periods, whether imposed at the same or at different times, shall run concurrently.

2. When a person has violated the conditions of his probation or conditional discharge and is declared delinquent by the court, the declaration of delinquency shall interrupt the period of the sentence as of the date of the delinquency and such interruption shall continue until a final determination as to the delinquency has been made by the court pursuant to a hearing held in accordance with the provisions of the code of criminal procedure.

3. In any case where a person who is under a sentence of probation or of conditional discharge is also under an indeterminate or reformatory sentence of imprisonment imposed for an additional offense by a court of this state, the service of the sentence of imprisonment shall satisfy the sentence of probation or of conditional discharge unless the sentence of probation or of conditional discharge is revoked prior to the next to occur of parole or conditional release under, or satisfaction of, the sentence of imprisonment.

~~§21.20 Time served under revoked sentence of probation; credit against certain indeterminate sentences~~

~~If a sentence of probation is revoked and an indeterminate sentence of imprisonment with a maximum term which is in excess~~ aut

of three years is imposed in its place, the time spent on probation shall be credited against the portionof the maximum term of the sentence of imprisonment that exceeds three years and, if a minimum period of imprisonment is fixed by the court, against the portion of the minimum period that exceeds one year.

ARTICLE 22 SENTENCES OF IMPRISONMENT

§22.00 Indeterminate sentence of imprisonment for felony

Subdivision 3, paragraph (b), change to read:

"(b) Where the sentence is for a class B, C or D felony and the court, having regard to the circumstances of the crime and the history and character of the defendant, is of the opinion that the ends of justice and best interests of the public require that the court specify a minimum period of imprisonment in the sentence, the court may fix the minimum period. In such event, the minimum period shall be specified in the sentence at not more than one-third of the maximum term imposed, and the reasons for the specification of such minimum period shall be set forth, by the court, in the record."

Subdivision 3, paragraph (c) line 2, add the following at end of line:

"in accordance with the provisions of the correction law."

§22.05 Change section to read as follows

"§22.05 Alternative definite sentence for class D or E felony

Notwithstanding the provisions of section 22.00 of this article, if a person is sentenced for a class D or class E

felony and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less."

§22.10 Sentence of imprisonment for persistent felony offender

Subdivision 1. If the Commission adopts a proposal such as the one set forth in section 15.20, *supra*, the following change is recommended:

"Definition. A persistent felony offender is a person who stands convicted of a felony, other than a crime which is deemed classified as a felony by virtue of the provisions of ~~§15.20~~, after having previously been convicted of two or more felonies as defined in subdivision three of this section."

Subdivision 3,(b), line 2, changed to read:

"has previously been convicted of two or more felonies, two or more"

§22.15 Sentences of imprisonment for misdemeanors and violation

Subdivisions 3 and 4, alternate proposal :

"3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime.

"4. Violation. A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court and shall not exceed fifteen days.

"In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed."

Adopted

Alternate second paragraph for subdivision 4:

"[In the case of a violation defined outside this chapter, if the sentence is expressly specified in law or ordinance that defines the offense, the term of imprisonment shall be in accordance with that provision, and no term of imprisonment shall be imposed if the only sentence authorized by that provision is a fine.]"

§22.30 Calculation of terms of imprisonment

Subdivision 1, paragraph (b) at end of paragraph, add optional limitation as follows:

"or thirty years, whichever is less."

OK

Subdivision 3, change the first paragraph and subparagraphs (a) and (b) to read as follows:

"3. Jail time. The term of a definite sentence or the maximum term of an indeterminate sentence imposed on a person shall be credited with and diminished by the amount of time the person spent in custody, prior to the commencement of such sentence, as a result of the charge that culminated in the sentence. In the case of an indeterminate sentence, if the minimum period of imprisonment has been fixed by the court, the credit shall also be applied against such portion of the minimum period as exceeds one year. The credit herein provided shall be calculated from the date custody under the charge commenced to the date the sentence commences and shall not include any time that is

credited against the term or maximum term of any previously imposed sentence to which the person is subject. Where the charge or charges culminate in more than one sentence, credit shall be applied as follows:

(a) If the sentences run cuncurrently, the credit shall be applied against each such sentence;

(b) If the sentences run consecutively, the credit shall be applied against the longest sentence imposed.

Subdivision 4, subparagraphs (a) and (b) changed to read as follows:

"(a) In the case of a person serving an indeterminate sentence, the total of such allowances shall not exceed one-third of his maximum or aggregate maximum term and the allowances shall be applied as provided in subdivision one (b) of section 22.40;

(b) In the case of a person serving a definite sentence, the total of such allowances shall not exceed one-sixth of his term or aggregate term and the allowances shall be applied as a credit against such term."

§22.35 The following alternate provision, submitted at the request of certain commissioners, would replace all three subdivisions of the present section.

§22.35 Merger of certain definite and indeterminate sentences

The service of an indeterminate sentence of imprisonment shall satisfy any definite sentence of imprisonment imposed on a person for an offense committed prior to the time the indeterminate sentence is imposed, or any concurrent definite sentence imposed for an offense that is subsequently committed. A person who is serving a definite sentence at the time an indeterminate sentence is imposed shall be delivered to the custody of the state department of correction to commence service of the indeterminate sentence immediately.

Carried

§22.40 Release on parole; conditional release

Subdivision 1, paragraph (b) line 11, change last word in the line from "five" to "three"

Leave at 5!

## ARTICLE 23: REFORMATORY SENTENCE OF IMPRISONMENT FOR YOUNG ADULTS

§23.05 Change to read as follows:

"§23.05 Place of imprisonment under reformatory sentence

When a reformatory sentence of imprisonment is imposed, the court shall commit the young adult to the custody of [the division of young adult correction in the state] department of correction for a reformatory period and until released in accordance with law."

§23.10 Calculation of reformatory sentence

Subdivision 2, subparagraph (b), changed to read as follows:

"The service of a reformatory sentence of imprisonment by a young adult shall satisfy any definite sentence of imprisonment imposed on such person for an offense committed prior to the time the reformatory sentence is imposed. Any young adult who is serving a definite sentence at the time a reformatory sentence is imposed shall be delivered to the custody of the division of young adult correction of the state department of correction to commence service of the reformatory sentence immediately.

Subdivision 3, Jail time, should be changed to read as follows:

"The period of a reformatory sentence imposed on a young adult shall be credited with and diminished by the amount of time spent in custody prior to commencement of the sentence, which shall be determined and calculated in accordance with the provisions of subdivision 3 of section 22.30."

ARTICLE 24: FINES

§24.05 Fines for misdemeanors and violation

New subdivisions 3, 4 and 5 to read as follows:

"3. Unclassified misdemeanor. A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the law or ordinance that defines the crime."

"4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred and fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. Exception. The provisions of this section shall not apply to a corporation.

§24.10 Entire section changed as follows:

"§24.10 Fines for corporations.

1. General rule. A sentence to pay a fine, when imposed on a corporation for an offense defined in this chapter or for an offense defined outside this chapter for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) Ten thousand dollars, when the conviction is of a felony;

(b) Five thousand dollars, when the conviction is of a class A misdemeanor or an unclassified misdemeanor for which a term of imprisonment in excess of three months is authorized;

(c) Two thousand dollars, when the conviction is

of a class B misdemeanor or an unclassified misdemeanor for which the authorized term of imprisonment is not in excess of three months;

(d) Five hundred dollars, when the conviction is of a violation;

(e) Any higher amount equal to double the amount of money or double the value of the property gained by the defendant through the commission of the offense.

2. Exception. In the case of an offense defined outside this chapter, if a special fine for a corporation is expressly specified in the law or ordinance that defines the offense, the fine fixed by the court shall be as follows:

(a) An amount within the limits specified in the law or ordinance that defines the offense; or

(b) Any higher amount equal to double the amount of money or double the value of the property gained by the corporation through the commission of the offense.

3. Determination of pecuniary gain. When the court imposes the fine authorized by paragraph (e) of subdivision one or paragraph (b) of subdivision two, the court shall make a finding, based upon the record, as to the amount of the corporation's pecuniary gain through the commission of the offense. If the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue."