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ATTORNEY GENERAL OPINION NO. 92- 19

The Honorable Frank D. Gaines
State Senator, Sixteenth District
State Capitol, Room 140-N
Topeka, Kansas 66612

Re: Crimes and Punishment--Classification of Crimes and Penalties; Sentencing--Classes of Felonies and Terms of Imprisonment; Review and Reduction of Previous Sentences; Retroactive Application

Synopsis: 1991 Senate Bill No. 479 neither increases nor decreases punishment for crimes committed prior to its enactment. It is not required that the bill contain a provision permitting retroactive application of its terms. Cited herein: 1991 S.B. No. 479, §§ 4, 5, 23.

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Dear Senator Gaines:

As senator for the sixteenth district, you request our opinion regarding the constitutionality of 1991 Senate Bill No. 479. Specifically, you ask whether the bill must contain a provision permitting retroactive application of its terms in order to meet state and federal constitutional standards.

1991 Senate Bill No. 479 provides for a presumptive sentencing guidelines system. Among the features of the bill are grids to be consulted for determining the sentences of convicted persons. 1991 S.B. 479, §§ 4, 5. A new classification scheme for crimes is also established. Pursuant to section 23 of the bill, the presumptive sentencing guidelines system is

inapplicable to crimes committed prior to July 1, 1992. Prosecutions for crimes committed prior to July 1, 1992, are to be governed, prosecuted and punished under the laws existing at the time such crimes were committed. 1991 S.B. 479, § 23.

Statutes are frequently adopted that change the nature, degree, or kind of penalty or punishment to be imposed for the commission of a criminal act. 21 Am.Jur.2d Criminal Law, § 590 (1981). Thus, the mode or place of confinement of a prisoner, the length of imprisonment, or the time or method of execution may be altered by statute. Id. Provisions of this kind are valid, except as they operate to increase or enhance punishment for crimes committed before their enactment. Id. The punishment may be lessened, but never increased, as against anyone, for a crime already committed, and statutes which so aggravate the punishment come within the prohibition as to ex post facto laws. 16A Am.Jur.2d Constitutional Law, § 643 (1979).

At common law, where a criminal statute is amended, lessening the punishment, a convicted person is entitled to the benefit of the new act although the offense was committed prior to enactment of the new act. Moorehead v. Hunter, 198 F.2d 52, 53 (C.A. 10 Cir. 1952). This principle applies only where there is no general saving statute or a specific saving clause in the repealing statute. Id.

A number of the sections of 1991 Senate Bill No. 479 contain provisions stating that the sections are applicable only to crimes committed on or after July 1, 1992. See, i.e. 1991 S.B. 479, §§ 4, 5. Also, section 23 of the bill states that "the provisions of this act creating a presumptive sentencing guidelines system have no application to crimes committed prior to July 1, 1992." Because of such provisions, 1991 S.B. 479 neither increases nor decreases punishment for crimes committed prior to its enactment. It is not required that 1991 S.B. 479 contain a provision permitting retroactive application of its terms.

Very truly yours,



Robert T. Stephan
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General