Legislative Research Department November 11, 1975

PRELIMINARY
MINUTES

SPECIAL COMMITTEE ON CORRECTIONAL INSTITUTIONS

November 6, 1975

Senator Winter presided. Those in attendance included Representatives Lindahl, Jones, Sutter, Slattery, Reeves, Hayden, and Senator Meyers.

Staff members included John Schott of the Legislative Research Department and Bill Edds of the Revisor of Statutes' Office.

Conferees

Bernard Dunn, Department of Corrections

Consideration of Committee Report and Proposed Legislation

The first item of business before the Committee was consideration of the Committee report relative to Proposal No. 9 - Correctional Institutions. The Committee made several changes in and additions to the proposed draft report, which are to be reflected in the final draft of the Committee report.

In addition, the Committee examined and discussed six proposed bills relative to Proposal No. 9 (see Attachments 1 through 6). Following an explanation of these bills by the Revisor of Statutes' Office, the Committee took the following action.

Bill No. 1 -- It was moved and seconded that the new language in Section 4 be stricken. The motion carried. The Committee then moved to recommend the bill, as amended, favorable for passage. The motion carried.

Bill No. 2 -- It was moved and seconded that the new sentence added in Section 1 of the bill relative to the imposition of consecutive sentences be stricken. The motion carried. It was then moved that the bill, as amended, be recommended favorable for passage. The motion carried.

Bill No. 3 -- The third bill was recommended favorable for for passage by the Committee without amendment.

Bill No. 4 -- The Committee spent a considerable amount of time considering the question of availability of records which have been expunged or annulled. It was moved and seconded that this bill be amended to give an individual whose record was expunged or annulled access to such record. This conceptional motion carried. It was then moved and seconded that the bill, as amended, be recommended favorable for passage. The motion carried.

Bill No. 5 -- It was moved and seconded that the bill be recommended favorable for passage. The motion carried.

Bill No. 6 -- The Committee discussed the merits of requiring the publication of the rules and regulations of the Department of Corrections. A conceptional motion was made and seconded to amend this bill to provide that the Department of Corrections, subject to the limitations contained in the bill, be required to publish rules and regulations and changes therein as is required of other agencies of the State of Kansas. The motion carried. It was moved and seconded to introduce the bill as amended for passage. The motion carried.

Following limited discussion, it was the consensus of the Committee that the final Committee report and copies of legislation with appropriate changes and additions be forwarded to the Committee Chairman for his review and signature.

It was moved and seconded that the minutes of the October 9 meeting be approved. The motion carried.

There being no further business the meeting was adjourned.

Prepared by John S. Schott

Approved by Committee on:

1-16-76
Date

PROPOSED BILL NO._____

By Special Committee on Correctional Institutions

Re Proposal No. 9

AN ACT relating to crimes and punishments; concerning certain persons confined in the Kansas correctional institution for women; concerning probation and parole; providing for an examination and study of certain female felony offenders; amending K. S. A. 20-820, 21-4611 and 21-4612 and K. S. A. 1975 Supp. 75-5229, 75-5266 and 75-5283.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 20-820 is hereby amended to read as follows: 20-820. In misdemeanor cases the judge of the county court, when satisfied that the defendant, if permitted to go at large will not again violate the law, may parole or place such person ~~or--place-him~~ on probation upon such conditions and under such restrictions as the judge shall see fit to impose. Such judge may at any time, without notice to such person, terminate such parole or probation by simply directing execution to issue on the judgment, or, in case the person shall have been actually confined in jail or in the Kansas correctional institution for women, the parole may be terminated by directing the sheriff to retake such person under the commitment already in his or her hands.

After any parole has been terminated as above provided, the judge, in ~~his~~ the exercise of discretion, after the payment of all costs in the case, may grant a second parole, but no more than two paroles shall be granted the same person under the same judgment or conviction. If a parole shall be terminated, the time such person shall have been at large on parole shall not be deducted from the time he or she shall be required to serve, but the full amount of the fine shall be collected or the full time in jail or in the Kansas correctional institution for women shall

be served the same as if no parole had been granted. When any person shall be paroled the court or judge thereof, before or at the time granting such parole, may require such person, with one or more sureties, to enter into bond to the state of Kansas, in a sum to be fixed by the court or judge thereof, that such person shall appear in court at such times as the court or judge thereof shall see fit, not to exceed one year, and not depart without leave of court. Such bond shall be approved by the court or judge and forfeiture may be taken and prosecuted to final judgment on such bond in the same manner as now provided by law in cases of bonds taken for appearance of persons awaiting trial upon complaint.

Sec. 2. K. S. A. 21-4611 is hereby amended to read as follows: 21-4611. The period of suspension of sentence or probation fixed by the court shall not exceed five (5) years in felony cases or two (2) years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five (5) years in felony cases, nor two (2) years in misdemeanor cases, but in no event shall the total period of probation or suspension of sentence for a felony exceed the maximum term provided by law for the crime, except that where the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. Probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation or suspension of sentence, an order to this effect shall be entered by the court.

The district court having jurisdiction of the offender may parole from sentences to confinement in the county jail or in the Kansas correctional institution for women. The period of such parole shall be fixed by the court and shall not exceed two (2) years and shall be terminated in the manner provided for termination of suspended sentence and probation.

Sec. 3. K. S. A. 21-4612 is hereby amended to read as follows: 21-4612. Any person confined in jail or in the Kansas

correctional institution for women under judgment of conviction before a county court, justice of the peace, city court, magistrate court, court of common pleas, or any other inferior court except police court, may be paroled, his or her parole terminated and absolute discharge granted by the district court or a judge of the district court having jurisdiction of appeals from such inferior court in criminal cases, in the same manner and subject to the same restrictions as if such person had been convicted in and placed on probation by said district court.

Sec. 4. K. S. A. 1975 Supp. 75-5229 is hereby amended to read as follows: 75-5229. Every female person, above the age of eighteen (18) years, who shall be convicted of any offense against the criminal laws of this state, punishable by imprisonment, shall be sentenced to the custody of the secretary of corrections, and the secretary shall designate as the place of confinement of such offender the Kansas correctional institution for women, unless the judge or court imposing such sentence shall fix the term of confinement at thirty (30) days or less in which case such confinement may be in the county jail. The sentencing court, or the district court pursuant to the provisions of K. S. A. 21-4612, as amended, may parole any female person convicted of a misdemeanor and sentenced to the custody of the secretary of corrections at any time during such person's term of confinement.

New Sec. 5. (a) Every female person, who shall be convicted of any felony under the criminal laws of this state and sentenced to the custody of the secretary of corrections, shall, after such offender has been conveyed to the Kansas correctional institution for women, undergo a thorough and scientific examination and study, and a program designed to accomplish a maximum of rehabilitation shall be planned and recommended for such offender. Upon the completion of the case study, diagnosis and report on such offender, such offender shall continue to be held as an inmate at such institution, or she may be paroled or may be assigned to one of the state hospitals for further treatment not

exceeding sixty (60) days where an ultimate parole is indicated at the expiration of such time.

(b) The director of the Kansas correctional institution for women shall appoint such psychiatirsts; psychologists, social workers, chaplains, and other officers and employees, with the approval of the secretary of corrections, as shall be deemed necessary by the secretary to carry out the provisions of subsection (a).

Sec. 6. K. S. A. 1975 Supp. 75-5266 is hereby amended to read as follows: 75-5266. Psychiatric evaluation reports of the reception and diagnostic center and the Kansas correctional institution for women shall be privileged and shall not be disclosed directly or indirectly to anyone except as provided herein. The court, the county attorney, the attorney for the defendant or inmate, the Kansas adult authority and its staff, the classification committees of the state correctional institutions and those persons authorized by the secretary shall have access to such reports. Such reports may be disclosed to the defendant or inmate, the members of his or her family or his or her friends or the superintendent of any other state institution when authorized by the director of the Kansas reception and diagnostic center or the director of the Kansas correctional institution for women. Employees of the institutions under the supervision of the secretary are expressly forbidden from disclosing the contents of such reports to anyone except as provided herein.

Sec. 7. K. S. A. 1975 Supp. 75-5283 is hereby amended to read as follows: 75-5283. The Kansas state reception and diagnostic center, the Kansas correctional institution for women and the state correctional-vocational training center, respectively, shall be continuations of the Kansas state reception and diagnostic center established pursuant to L. 1961, chapter 436, section 2 (K. S. A. 76-24a02), the Kansas correctional institution for women established pursuant to L. 1971, chapter 289, section 1 (K. S. A. 1972 Supp. 76-2501) and the state minimum security institution established pursuant to L. 1970, chapter

375, section 1 (K. S. A. 1972 Supp. 76-24b01), respectively. All institutions of the department of corrections shall be institutions for the incarceration of felons except for the Kansas correctional institution for women which shall be an institution for the incarceration of both felons and misdemeanants.

Sec. 8. K. S. A. 20-820, 21-4611 and 21-4612 and K. S. A. 1975 Supp. 75-5229, 75-5266 and 75-5283 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO._____

By Special Committee on Correctional Institutions

Re Proposal No. 9

AN ACT relating to crimes and punishments; authorizing certain dispositions of persons convicted of crimes; concerning presentence investigations and reports; concerning custody of persons sentenced to imprisonment; amending K. S. A. 21-4603, 21-4604 and 21-4609 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 21-4603 is hereby amended to read as follows: 21-4603. (1) ~~Whenever any person has been found guilty of a crime upon verdict or plea and a sentence of death is not imposed, the court may require that a presentence investigation be conducted by the Kansas reception and diagnostic center. If such offender is sent to the Kansas reception and diagnostic center, the Kansas reception and diagnostic center may keep him confined for a maximum of one hundred twenty (120) days or until the court calls for the return of such offender. The Kansas reception and diagnostic center shall compile a complete mental and physical evaluation of such offender and shall make its finding known to the court in the presentence report.~~

~~(2)~~ Whenever any person has been found guilty of a crime ~~and~~, whether or not a presentence report has been compiled and submitted to the court, the court may adjudge any of the following:

(a) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one (1) year, to jail for the confinement for the term provided by law;

(b) Impose the fine applicable to the offense;

(c) Release the defendant on probation;

(d) Suspend the imposition of the sentence;

(e) Impose any appropriate combination of (a), (b), (c) and (d).

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation the court shall direct that ~~he~~ such defendant be under the supervision of the secretary of corrections or the probation or parole officer of the court or county.

The court in committing a defendant to the custody of the secretary of corrections shall not fix a maximum term of confinement, but the maximum term provided by law shall apply in each case. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

The court shall not impose consecutive sentences for crimes for which the defendant was convicted when such crimes were committed as a part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

Any time within one hundred twenty (120) days after a sentence is imposed or within one hundred twenty (120) days after probation has been revoked, the court may modify such sentence or revocation of probation by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If an appeal is taken and determined adversely to the defendant, such sentence may be modified within one hundred twenty (120) days after the receipt by the clerk of the district court of the mandate from the supreme court. The court may reduce the minimum term of confinement at any time before the expiration thereof when such reduction is recommended by the secretary of corrections and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the inmate will be served by such reduction. The power here conferred upon the court includes the power to reduce such minimum below the statutory limit on the minimum term prescribed

for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections and the order of reduction shall be made in open court.

Dispositions which do not involve commitment to the custody of the secretary of corrections and commitments which are revoked within one hundred twenty (120) days shall not entail the loss by the defendant of any civil rights.

~~(3)~~(2) At the time of committing an offender to the custody of the secretary of corrections the court shall submit to said officer recommendations on a program of rehabilitation for said offender, based on presentence reports, medical and psychiatric evaluations and any other information available. Such recommendations shall include desirable treatment for correction of physical deformities or disfigurement that may, if possible, be corrected by medical or surgical procedures or by prosthesis. ~~The court may recommend further evaluation at the reception and diagnostic center, even though defendant was committed for presentence evaluation.~~

~~(4)~~(3) This section shall not deprive the court of any authority conferred by any other section of Kansas Statutes Annotated to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

~~(5)~~(4) An application for or acceptance of probation or suspended sentence shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from his or her conviction, as provided by law, without regard to whether ~~he~~ such person has applied for probation or suspended sentence.

Sec. 2. K. S. A. 21-4604 is hereby amended to read as follows: 21-4604. Whenever a defendant is convicted of a ~~crime or offense~~ misdemeanor, the court before whom the conviction is had may request a presentence investigation by a county probation officer. Whenever a defendant is convicted of a felony upon verdict or plea, the court shall require that a presentence

investigation be conducted by a state probation or parole officer or, where county probation services exist, by a county probation officer in a manner to be prescribed by the secretary of corrections. Whenever an investigation is requested, the county probation officer or state probation or parole officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the county probation officer or state probation or parole officer such criminal records as ~~the probation~~ such officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment.

Sec. 3. K. S. A. 21-4609 is hereby amended to read as follows: 21-4609. When a ~~convicted~~ person is sentenced to imprisonment upon conviction of a felony, the judgment of the court shall order that such person be committed, for such term or terms as the court may direct, to the custody of the secretary of corrections. When such person is sentenced to the custody of the secretary of corrections and such sentence is subsequently modified in any respect, including discharge of such defendant from custody, by a court of this state having jurisdiction of such matter, such court shall thereupon notify the secretary of corrections of the nature of such modification.

The secretary of corrections may designate as the place of confinement any available and suitable correctional institution or facility maintained by the state of Kansas or a political subdivision thereof.

Any person serving a sentence of imprisonment may be transferred from one institution to another by order of the secretary of corrections.

Sec. 4. K. S. A. 21-4603, 21-4604 and 21-4609 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO._____

By Special Committee on Correctional Institutions

Re Proposal No. 9

AN ACT relating to the department of corrections; concerning officers and employees of correctional institutions; amending K. S. A. 1975 Supp. 75-5250 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1975 Supp. 75-5250 is hereby amended to read as follows: 75-5250. The officers of any correctional institution under the supervision and control of the secretary of corrections shall consist of a director, who may reside at the correctional institution, and such other officers and employees, including physicians and attorneys, as the secretary shall deem necessary. The director of each correctional institution shall be appointed by the secretary. All other officers and employees of the several correctional institutions shall be appointed by the director of each institution with the approval of the secretary. Subject to available appropriations, student interns may be appointed to temporary positions as correctional officers of such institutions. Any physician or attorney so appointed and any student intern appointed as a temporary correctional officer shall be in the unclassified service under the Kansas civil service act. All other such officers and employees shall be within the classified service under the Kansas civil service act, but the residence requirements of said act shall not apply. The secretary is hereby authorized for good cause to assign and reassign the supervisory personnel, including the director of any correctional institution, to any other correctional institution at any time without the consent of such director, officer or employee. The expenses of moving caused by such assignment or

reassignment shall be paid by the department of corrections.

Sec. 2. K. S. A. 1975 Supp. 75-5250 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO._____

By Special Committee on Correctional Institutions

Re Proposal No. 9

AN ACT relating to crimes and punishments; concerning the annullment and expungement of certain convictions; amending K. S. A. 21-4616 and 21-4617 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 21-4616 is hereby amended to read as follows: 21-4616. (a) Every defendant who had not attained the age of twenty-one (21) years at the time of the commission of the crime for which he or she was convicted, and who has served the sentence imposed or who has fulfilled the conditions of his or her probation or suspension of sentence for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time thereafter be permitted by the court to withdraw his or her plea of guilty and enter a plea of not guilty; or if ~~he~~ such defendant has been convicted after a plea of not guilty, the court may set aside the verdict of guilty; and in either case, the court shall thereupon dismiss the complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the crime of which he or she has been convicted, and ~~he~~ such defendant shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The defendant shall be informed of this privilege when he or she is placed on probation or suspended sentence.

(b) In any application for employment, license or other civil right or privilege, or any appearance as a witness, a

person whose conviction of crime has been annulled under this statute may state that he or she has never been convicted of such crime.

(c) Whenever any conviction of an individual for the commission of a crime has been annulled under the provisions of this section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records upon inquiry from any source unless such inquiry be that of a sentencing court following the conviction of the individual, whose conviction was annulled, for the commission of a subsequent crime. Such custodian shall release such records to the sentencing court upon a showing of the conviction of such individual of a subsequent crime and a statement that the information is necessary in determining the sentence to be imposed for the subsequent crime.

Sec. 2. K. S. A. 21-4617 is hereby amended to read as follows: 21-4617. (a) Every offender who was twenty-one (21) years of age or older at the time of the commission of the crime for which he or she was committed and who has served the sentence imposed or who has fulfilled the conditions of his or her probation, suspension of sentence, conditional release or parole for the entire period thereof, or who shall have been discharged from probation, conditional release or parole prior to the termination of the period thereof, may petition the court five (5) years after the end of such sentence, the fulfilling of such conditions of probation, suspension of sentence, conditional release or parole or such discharge from probation, conditional release or parole and may request that his or her record be expunged of such conviction if during such five (5) year period such person has exhibited good moral character and has not been convicted of a felony. In considering any such request for expungement, the court shall have access to any records or reports relating to such offender, including records or reports of a confidential nature, on file with the secretary of corrections or the Kansas adult authority.

(b) Any person having his or her record so expunged shall thereafter be released from all penalties and disabilities resulting from the crime of which he or she has been convicted, and ~~he~~ such person shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The offender shall be informed of this privilege when he or she is placed on probation, suspended sentence, conditional release or parole.

(c) In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of crime has been expunged under this statute may state that he or she has never been convicted of such crime.

(d) Whenever the record of any conviction of an individual for the commission of a crime has been expunged under the provisions of this section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records upon inquiry from any source unless such inquiry be that of a sentencing court following the conviction of the individual, whose record was expunged, for the commission of a subsequent crime. Such custodian shall release such records to the sentencing court upon a showing of the conviction of such individual of a subsequent crime and a statement that the information is necessary in determining the sentence to be imposed for the subsequent crime.

Sec. 3. K. S. A. 21-4616 and 21-4617 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO._____

By Special Committee on Correctional Institutions

Re Proposal No. 9

AN ACT relating to crimes and punishments; concerning the procedure for the revocation of probation, suspension of sentence, parole and conditional release; amending K. S. A. 22-3716 and K. S. A. 1975 Supp. 75-5217 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 22-3716 is hereby amended to read as follows: 22-3716. (1) At any time during probation or suspension of sentence the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any probation officer may arrest such defendant without a warrant, or may deputize any other officer with power of arrest to do so by giving him or her a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of his release. The written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest the probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to the defendants arrested under these provisions.

(2) (a) Upon such arrest and detention, the probation offi-

cer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. ~~Thereupon, or upon an arrest by warrant as herein provided~~ Within ten (10) days after the arrest or personal appearance of the defendant, a preliminary hearing shall be held before the court, or a parole or probation officer designated by the judge of such court, at or near the place of arrest or the place of the alleged violation of the conditions of release, to determine whether there is probable cause to believe that the defendant has violated any of the conditions of his or her release. The defendant shall be given notice of the time of such hearing and of the acts alleged to have been committed which would violate conditions of his or her release. The defendant shall be granted the opportunity to appear at the hearing and introduce oral or documentary evidence in his or her own behalf. The defendant shall have the right to confront and cross-examine any party upon whose testimony revocation of probation or suspension of sentence may be based, unless the court or hearing officer makes a finding of good cause for not allowing such confrontation. Strict adherence to the rules of procedure and evidence applicable in criminal cases shall not be required at such hearing. The court or the hearing officer, based upon information disclosed during the hearing, shall make a determination whether there is probable cause to believe that the defendant has violated any of the conditions of his or her release and state the reasons for and indicate the evidence relied upon in making such determination. Upon a determination by the court or the hearing officer that probable cause exists to believe that the defendant has violated any of the conditions of his or her release, such defendant shall be detained in the county jail or other place of detention pending the final hearing upon revocation as hereinafter provided.

(b) Upon a determination by the court or hearing officer that there is probable cause to believe a violation has occurred, the court shall thereupon cause the defendant to be brought

before it without unnecessary delay for a final hearing on the violation charged. Prior to such final hearing the released inmate shall be provided with written notice of the alleged violation of the conditions of his or her release. The final hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and ~~he~~ such defendant shall be informed by the judge that if he or she is financially unable to obtain counsel, an attorney will be appointed to represent him or her. The defendant shall have the right to present the testimony of witnesses and other evidence on his behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. The defendant shall have the right to confront and cross-examine any party upon whose testimony revocation of probation or suspension of sentence may be based, unless the court makes a finding of good cause for not allowing such confrontation. The defendant shall have the right to show mitigating circumstances as to why a violation of the conditions of release does not warrant the revocation of probation or suspension of sentence when there is no question of fact as to whether a violation of the conditions of release was committed. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. Upon a decision to revoke any defendant's probation or suspension of sentence, the court shall prepare a written statement of such decision specifying the evidence relied upon and the reasons for the revocation of such probation or suspension of sentence.

(3) A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice. If it shall appear that he or she has

violated the provisions of his or her release, the court shall determine whether the time from the issuing of the warrant to the date of his or her arrest, or any part of it, shall be counted as time served on probation or suspended sentence.

Sec. 2. K. S. A. 1975 Supp. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole or conditional release the secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize all officers named therein to deliver the released inmate to a place designated by the secretary. Any parole or probation officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving him or her a written statement setting forth that the released inmate has, in the judgment of the parole or probation officer, violated the conditions of his release. The written statement delivered with the released inmate by the arresting officer to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining ~~him~~ release inmate. After making an arrest the parole or probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Pending the preliminary hearing, as hereinafter provided, upon any charge of violation the released inmate shall remain incarcerated in the institution.

(b) (1) Upon such arrest and detention, the parole or probation officer shall immediately notify the secretary and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. ~~Thereupon, or upon an arrest by warrant as herein provided~~ Within ten (10) days after the arrest or personal appearance of the released inmate, a preliminary hearing shall be held before a parole a probation officer, designated by the secretary of corrections, at or near

the place of arrest or the place of the alleged violation of the conditions of release, to determine whether there is probable cause to believe that the released inmate has violated any of the conditions of his or her release. The released inmate shall be given notice of the time of such hearing and of the acts alleged to have been committed which would violate conditions of his or her release. Such inmate shall be granted the opportunity to appear at the hearing and introduce oral or documentary evidence in his or her own behalf. Such inmate shall have the right to confront and cross-examine any party upon whose testimony revocation of parole or conditional release may be based, unless the hearing officer makes a finding of good cause for not allowing such confrontation. Strict adherence to the rules of procedure and evidence applicable in criminal cases shall not be required at such hearing. The hearing officer, based upon information disclosed during the hearing, shall make a determination whether there is probable cause to believe that the released inmate has violated any of the conditions of his or her release and state the reasons for and indicate the evidence relied upon in making such determination. Upon a determination by the hearing officer that probable cause exists to believe that the released inmate has violated any of the conditions of his or her release, such inmate shall remain incarcerated in the institution pending the final hearing upon revocation as hereinafter provided.

(2) Upon a determination by the hearing officer that probable cause exists to believe that any such violation has occurred, the secretary thereupon shall cause the released inmate to be brought before the Kansas adult authority, its designee or designees, for a final hearing on the violation charged, under such rules and regulations as the authority may adopt. Prior to the final hearing the released inmate shall be provided with written notice of the alleged violation of his or her release. The released inmate shall be granted the opportunity to appear at the final hearing and introduce evidence in his or her own behalf. Relevant written statements made under oath shall be

admitted and considered by the authority, its designee or designees, along with other evidence presented at the hearing. The released inmate shall have the right to confront and cross-examine any party upon whose testimony revocation of parole or conditional release may be based, unless the authority makes a finding of good cause for not allowing such confrontation. Such inmate shall have the right to show mitigating circumstances as to why a violation of the conditions of release does not warrant the revocation of parole or conditional release when there is no question of fact as to whether a violation of the conditions of release was committed. If the violation is established to the satisfaction of the authority, the authority may continue or revoke the parole or conditional release, or enter such other order as ~~he~~ may ~~see~~ be seen fit. Upon a decision to revoke any released inmate's parole or conditional release, the authority shall prepare a written statement of such decision specifying the evidence relied upon and the reasons for the revocation of such parole or conditional release.

(c) A released inmate for whose return a warrant has been issued by the secretary shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice. If it shall appear that such fugitive has violated the provisions of ~~his~~ or her release, the time from the violation of such provisions to the date of ~~his~~ or her arrest shall not be counted as time served under the sentence. The secretary shall issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and shall direct that all reasonable means to serve the warrant and detain such fugitive be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of such fugitive.

Sec. 3. K. S. A. 22-3716 and K. S. A. 1975 Supp. 75-5217 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO.____

By Special Committee on Correctional Institutions

AN ACT relating to administrative rules and regulations; providing that notice and the opportunity to be heard on the adoption of certain rules and regulations need not be given to any inmate or group of inmates confined in a state correctional institution; amending K. S. A. 1975 Supp. 77-421a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1975 Supp. 77-421a is hereby amended to read as follows: 77-421a. Whenever any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and the legislative branches, is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state, and such rules and regulations are exempt from the requirements of K. S. A. 77-415 et seq. by virtue of the definition of "rule or regulation" in subsection (4) of K. S. A. 77-415, such rules and regulations shall be adopted in the manner prescribed by K. S. A. 1975 Supp. 77-421, ~~as--amended~~. Notwithstanding the foregoing provision of this section, neither the secretary of corrections nor the director of any state correctional institution shall be required to give notice or e opportunity to be heard, as provided by K. S. A. 1975 Supp. 77-421, to any inmate or group of inmates confined in any state correctional institution on the adoption of any rules and regulations relating to the security and safety of any of the correctional institutions of the state or other facilities under the general supervision and management of the secretary.

Sec. 2. K. S. A. 1975 Supp. 77-421a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.