

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~xxx~~/p.m. on February 9, 1984 in room 526-S of the Capitol.

All members were present except:

All were present.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Charles Simmons, Chief Counsel, Department of Corrections
Matt Lynch, Judicial Council
David Ryan, Professor, Washburn Law School
Art Griggs, Chief Attorney, Department of Administration

A correction was made to the minutes of February 7, 1984, by adding, on page 2, last paragraph, at the end of the first line, wording to denote that Mr. Rumsey had experience as both a longtime prosecutor and defense attorney.

HB 2781 - An act relating to meritorious good time credit.

A hearing was held on the bill. Representative Duncan said the Joint Committee on Administrative Rules and Regulations noticed, in the course of review of Department of Corrections regulations, that meritorious good time credit was no longer an option as an award for lifesaving acts by inmates. It was believed the option was inadvertently deleted when the sentencing and parole laws were amended, and this credit should be available.

The need for a definition of meritorious good time credit was discussed. Because of a recent Attorney General's opinion regarding the function of the Joint Committee on Administrative Rules and Regulations and its introduction of legislation, it was noted the Committee should specify what meritorious good time credit is.

Charles Simmons, Chief Counsel, Department of Corrections, gave a statement supporting the bill (Attachment No. 1), noting two instances during the two years' lapse of the option where this award would have been justified. Mr. Simmons was requested to draft a definition for meritorious good time credit for the Committee's use in amending the bill.

Attachment No. 2 is a statement in support of HB 2781 from Delores Brinkel representing the Criminal Justice Ministry.

HB 2688 - Administrative procedures act.

Amendments to the bill were discussed. Matt Lynch, Judicial Council, explained the amendments in Attachment No. 3 which address concerns expressed at hearings. There was discussion regarding the definition of "order", taken from the model Administrative Procedures Act. Professor David Ryan believed the term was well-defined in view of the entire bill. Representative Miller moved to adopt the amendments in Attachment No. 3, seconded by Representative Duncan. In discussion, the question was raised if the Judicial Council had seen the concerns of the Department of Corrections (Attachment No. 4) furnished to members at this meeting, and the Committee had not heard from most of the 100 agencies who may have concerns. It was noted the adoption of the Judicial Council amendments would address a lot of the concerns of the Department of Corrections, Department of Administration, and the Department of Transportation. The Department of Corrections concerns should be considered separately and could be addressed through the Department of Corrections statutes. If necessary, the Department of Corrections and other agencies can be exempt from the bill when the Committee discusses the "trailer" bill. The vote on the motion carried.

Art Griggs, Chief Attorney, Department of Administration, furnished a memorandum regarding the Department of Administration's analysis of HB 2688 (Attachment 5). He then reviewed

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
 room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 9, 1984.

the amendments suggested by this agency in Attachment No. 6.

There was discussion on the amendment on page 20 of Attachment No. 6 which Mr. Griggs believed should clarify that agencies can write temporary rules and not have to wait for the permanent regulations to go into effect. Representative Duncan did not believe the amendment was necessary, and the language of the bill would not prevent temporary regulations. Another member questioned why, on page 2, the words, "or regulations" was added and if regulations would have superiority over statutes. It was noted that, with this amendment, an agency hostile to the administrative procedures act could write all new administrative procedures through regulations. Mr. Griggs said all regulations were subject to legislative review, and, if this happens, the Attorney General has said it can be addressed through legislative bills rather than through resolutions introduced by the Joint Committee on Administrative Rules and Regulations.

There was further discussion on the agencies to be exempt. Concern was expressed that the list of state agencies and the "trailer" bill were not being considered altogether.

Representative Miller moved to adopt the Department of Administration amendments in Attachment No. 6 on page 3, page 4, the second balloon on page 13, and page 15, seconded by Representative Solbach. Following discussion, Representative Miller suggested that all of the amendments in Attachment No. 6 be considered one at a time.

On page 2, there was no motion to adopt the amendment; on pages 3 and 4, the motion to adopt carried; on page 9, Representative Duncan moved to adopt the amendment, seconded by Representative Whiteman, motion carried; on page 13, there was no motion to adopt the first balloon, and the motion on the second balloon carried; on page 15, Representative Miller withdrew his motion to adopt which was agreed to by his second, and no further motion was made; on page 17, Representative Knopp moved to adopt the amendments and remove the reference to notices amendment in Section 18, page 9, seconded by Representative Patrick. Representative Miller made a substitution motion to adopt only the third balloon on page 17. The substitute motion failed to carry. Representative Knopp withdrew his original motion, agreed to by his second, and then moved to leave Section 18 the way it was amended and adopt all the amendments on page 17, Section 31, seconded by Representative Patrick. Motion carried. On page 20, there was no motion to adopt the amendment.

Following further discussion of HB 2688, Representative Patrick moved to add, to new Section 3, line 72, after "statutes", the word, "expressly", seconded by Representative Duncan. Motion carried. The suggestion made by a conferee to add, in Section 31, "attorney of record" and, in Section 30, to expand the time of 15 days was noted. Representative Wunsch moved to add, "at least, the attorney of record" wherever appropriate, seconded by Representative Patrick. Motion carried. Representative Wunsch moved to amend Section 30 (b), line 604, by changing 15 days to 20 days, seconded by Representative Duncan. Motion carried. Representative Patrick moved to add, on line 421, after "shall", the words, "be an attorney licensed to practice in the state of Kansas", seconded by Representative Vancrum. It was pointed out that this amendment would require every agency to hire an attorney which would be a hardship for small agencies without staff attorneys. Representative Patrick believed the technical aspects of the Administrative Procedures Act would require the presiding officer to deal with complex issues of the law which could be better handled by lawyers. His amendment would update administrative procedures to modern times. Representative Vancrum said administering HB 2688 would require professionals. Each agency would need a lawyer or the state needed a separate division of professionals for administrative hearings. The motion failed to carry. Representative Miller moved to change the effective date, wherever applicable, to January 1, 1985, to give agencies more time to adapt to the new procedure, seconded by Representative Duncan. Motion carried.

In further discussion, Representative Duncan said HB 2688 was a "people's" bill to give citizens who are regulated by agencies a uniform procedure for hearings. A list of agencies that currently have administrative procedures covered by statutes was prepared by the Revisor's office and furnished to members at a previous meeting. The Committee would decide with the "trailer" bill which agencies will be exempt from HB 2688. The bill would then apply to only those agencies without statutory administrative procedures. Representative Miller moved to recommend HB 2688, as amended, favorable for passage, seconded by Representative Whiteman. Representative Douville objected to casting aside procedural laws and regulations that have come about over the past 100 years and putting 100 agencies under HB 2688. It will create a lot of litigation in determining what the new law means. He

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MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 9, 1984.

requested that a balloon be drafted of all amendments for the Committee's review before the bill was voted on. The Chairman ruled to proceed with discussion on the motion. He read a letter received from Zetta Means (Attachment No. 7) noting the lack of appeal procedures when her job was terminated. The vote on the motion carried with 13 members voting in favor of it.

The meeting was adjourned at 5:30 p.m.



Attachment No. 1
2-9-84

KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR

MICHAEL A. BARBARA — SECRETARY

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603
• 913-296-3317 •

Attachment # 1

TO: HOUSE JUDICIARY COMMITTEE
FROM: MICHAEL A. BARBARA, SECRETARY OF CORRECTIONS
RE: HOUSE BILL 2781
DATE: February 9, 1984

BILL SUMMARY:

The amendment proposed by this bill would allow inmates to earn meritorious good time credits for meritorious acts as provided in rules and regulations adopted by the secretary of corrections.

BACKGROUND:

Prior to July 1, 1982, meritorious good time credits were provided for by administrative regulation of the Kansas Adult Authority (specifically K.A.R. 45-2-2). The authorizing statute was K.S.A. 22-3717a(j) which allowed the Kansas Adult Authority to establish good time credits by regulation. Effective July 1, 1982, K.S.A. 22-3717a was abolished. In its place, with respect to good time credits, K.S.A. 1983 Supp. 22-3717(m) was enacted. This section specifically provided for good time credits in certain amounts. However, it did not mention meritorious good time credits. An interpretation was made that this exclusion abolished meritorious good time credits. Thus, since July 1, 1982, no meritorious good time credits have been awarded.

DEPARTMENT POSITION:

The department favors the creation of meritorious good time credits. Such good time credits are thought to be appropriate in situations where an inmate has clearly acted in an heroic or outstanding manner, such as preventing injury or death to a person, the destruction of property or the saving of cost to the State. Such actions should be rewarded beyond the standard good time credits.

MAB:CES/pa

Attachment 20.2
2-9-84



Criminal Justice Ministry

229 South 8th Street
Kansas City, Kansas 66101
(913) 621-1504

Sister Dolores Brinkel, S.C.L.
DIRECTOR

Attachment # 2

TO: House Judiciary Committee
FROM: Sister Dolores Brinkel
DATE: February 9, 1984
RE: HB 2781

On behalf of Criminal Justice Ministry of Catholic Charities for the Archdiocese of Kansas City in Kansas, I wish to speak for HB 2781.

I support the concept of inmates "earning" good time credit. I believe increments of credit should be given in response to good behavior, rather than subtracting from a previous total for disciplinary infractions. This is an incentive for better behavior by the inmates. Furthermore, I support the granting of extra good time credits for meritorious acts, such as saving the life of a staff member.

I would ask the Committee to modify the bill to permit Class A felons to earn good time credits also. Class A felons serve long sentences. With incentive good time, they create fewer problems. Thus, granting good time to Class A felons would be a management tool that encourages better behavior. Earning good time credits would not necessarily mean that Class A felons would automatically be released sooner. Their release would still be determined by the parole board.

I support the awarding of good time credits, regular and meritorious, to all persons incarcerated in our correctional facilities.

Atch. 2

Session of 1984

HOUSE BILL No. 2688

By Joint Committee on Administrative Rules and Regulations

1-13

0015 AN ACT concerning state agencies; enacting the Kansas admin-
0016 istrative procedure act; establishing uniform administrative
0017 procedures for certain state agency actions.

0018 Be it enacted by the Legislature of the State of Kansas:

0019 Section 1. This act shall be known and may be cited as the
0020 Kansas administrative procedure act.

0021 Sec. 2. As used in this act:

0022 (a) "State agency" means any officer, department, bureau,
0023 division, board, authority, agency, commission or institution of
0024 this state, except the judicial and legislative branches of state
0025 government and political subdivisions of the state, which is
0026 authorized by law to administer, enforce or interpret any law of
0027 this state.

0028 ~~(b) "State agency action" means:~~

0029 ~~(1) The whole or a part of a rule and regulation or an order;~~

0030 ~~(2) the failure to issue a rule and regulation or an order; or~~

0031 ~~(3) a state agency's performance of, or failure to perform, any~~

0032 ~~other duty, function or activity, discretionary or otherwise.~~ (b)

0033 (c) "Agency head" means an individual or body of individu-
0034 als in whom the ultimate legal authority of the state agency is
0035 vested by any provision of law. (c)

0036 (d) "License" means a franchise, permit, certification, ap-
0037 proval, registration, charter or similar form of authorization re-
0038 quired by law. (d)

0039 (e) "Order" means a state agency action of particular appli-
0040 cability that determines the legal rights, duties, privileges, im-
0041 munities or other legal interest of one or more specific persons.

0042 (f) "Party to state agency proceedings," or "party" in context
0043 so indicating, means: (e)

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Attch. 3

0044 (1) A person to whom the state agency action is specifically
0045 directed; or

0046 (2) a person named as a party to a state agency proceeding or
0047 allowed to intervene or participate as a party in the proceeding.

0048 ~~-(g) "Party to judicial review or civil enforcement proceed-~~
0049 ~~ings," or "party" in context so indicating, means:~~

0050 ~~(1) A person who files a petition for judicial review; or~~

0051 ~~(2) a person named as a party in a proceeding for judicial~~
0052 ~~review or civil enforcement or allowed to participate as a party in~~
0053 ~~the proceeding.~~ _____ (f)

0054 ~~-(h)~~ "Person" means an individual, partnership, corporation,
0055 association, political subdivision or unit thereof or public or
0056 private organization or entity of any character, and includes
0057 another state agency. _____ (g)

0058 ~~-(i)~~ "Political subdivision" means political or taxing subdivi-
0059 sions of the state, including boards, commissions, authorities,
0060 councils, committees, subcommittees and other subordinate
0061 groups or administrative units thereof, receiving or expending
0062 and supported in whole or in part by public funds. _____ (h)

0063 ~~-(j)~~ "Rule and regulation" means a standard, statement of
0064 policy or general order, including amendments or revocations
0065 thereof, of general application and having the effect of law,
0066 issued or adopted by a state agency to implement or interpret
0067 legislation enforced or administered by such state agency or to
0068 govern the organization of procedure of such state agency. _____ (i)

0069 ~~-(k)~~ "Rulemaking" means the process for formulation and
0070 adoption of a rule and regulation.

0071 Sec. 3. (a) This act applies except to the extent that other
0072 statutes provide procedures governing state agency actions.

0073 (b) This act creates only procedural rights and imposes only
0074 procedural duties. They are in addition to those created and
0075 imposed by other statutes.

0076 Sec. 4. Except to the extent precluded by another provision
0077 of law, a person may waive any right conferred upon that person
0078 by this act.

0079 Sec. 5. Nothing in this act shall preclude informal settlement
0080 of matters that may make unnecessary more elaborate proceed-

orders and adjudicative proceedings by state agencies.

0081 ings under this act.

0082 Sec. 6. (a) At any point in a state agency proceeding the
0083 presiding officer or other state agency official responsible for the
0084 proceeding:

0085 (1) May convert the proceeding to another type of state
0086 agency proceeding provided for by this act if the conversion is
0087 appropriate, is in the public interest and does not substantially
0088 prejudice the rights of any party; and

0089 (2) if required by any provision of law, shall convert the
0090 proceeding to another type of state agency proceeding provided
0091 for by this act.

0092 (b) A conversion of a proceeding of one type to a proceeding
0093 of another type may be effected only upon notice to all parties to
0094 the original proceeding.

0095 (c) If the presiding officer or other state agency official re-
0096 sponsible for the original proceeding would not have authority
0097 over the new proceeding to which it is to be converted, that
0098 officer or official, in accordance with state agency procedure,
0099 shall secure the appointment of a successor to preside over or be
0100 responsible for the new proceeding.

0101 (d) The record of the original state agency proceeding may be
0102 used in the new state agency proceeding.

0103 (e) After a proceeding is converted from one type to another,
0104 the presiding officer or other state agency official responsible for
0105 the new proceeding shall:

0106 (1) Give such additional notice to parties or other persons as
0107 is necessary to satisfy the requirements of this act pertaining to
0108 those proceedings;

0109 (2) dispose of the matters involved without further proceed-
0110 ings if sufficient proceedings have already been held to satisfy
0111 the requirements of this act pertaining to the new proceedings;
0112 and

0113 (3) conduct or cause to be conducted any additional pro-
0114 ceedings necessary to satisfy the requirements of this act per-
0115 taining to those proceedings.

0116 Sec. 7. This act shall take effect on July 1, 1984, and does not
0117 govern proceedings pending on that date. This act governs all

adjudicative

0118 state agency proceedings commenced after that date. This act
0119 also governs state agency proceedings conducted on a remand
0120 from a court or another state agency after the effective date of this
0121 act.

adjudicative

0122 Sec. 8. (a) An adjudicative proceeding shall be the process
0123 for formulating and issuing an order, unless the order is a
0124 decision:

0125 (1) To issue or not to issue a complaint, summons or similar
0126 accusation;

0127 (2) to initiate or not to initiate an investigation, prosecution or
0128 other proceeding before the state agency, another agency or a
0129 court; or

0130 (3) under section 10, not to conduct an adjudicative proceed-
0131 ing.

0132 (b) Sections 8 to 11, inclusive, apply to rulemaking proceed-
0133 ings under the rules and regulations filing act only to the extent
0134 that another statute expressly so requires.

0135 Sec. 9. (a) A state agency may provide an adjudicative pro-
0136 ceeding at any time with respect to a matter within the agency's
0137 jurisdiction.

0138 (b) A state agency shall provide an adjudicative proceeding
0139 upon the application of any person, unless:

0140 (1) The state agency lacks jurisdiction of the subject matter;

0141 (2) resolution of the matter requires the state agency to exer-
0142 cise discretion within the scope of subsection (a) of section 8;

0143 (3) a statute vests the state agency with discretion to conduct
0144 or not to conduct an adjudicative proceeding before issuing an
0145 order to resolve the matter and, in the exercise of that discretion,
0146 the state agency has determined not to conduct an adjudicative
0147 proceeding;

0148 (4) resolution of the matter does not require the state agency
0149 to issue an order that determines the applicant's legal rights,
0150 duties, privileges, immunities or other legal interests;

0151 (5) the matter was not timely submitted to the state agency;
0152 or

0153 (6) the matter was not submitted in a form substantially
0154 complying with any applicable provision of law.

0155 (c) An application for a state agency to issue an order in-
 0156 cludes an application for the state agency to conduct appropriate
 0157 adjudicative proceedings, whether or not the applicant expressly
 0158 requests those proceedings.

0159 (d) An adjudicative proceeding commences when the state
 0160 agency or a presiding officer:

0161 (1) Notifies a party that a prehearing conference, hearing or
 0162 other stage of an adjudicative proceeding will be conducted; or

0163 (2) begins to take action on a matter that appropriately may
 0164 be determined by an adjudicative proceeding, unless this action
 0165 is:

0166 (A) An investigation for the purpose of determining whether
 0167 an adjudicative proceeding should be conducted; or

0168 (B) a decision which, under subsection (a) of section 8, the
 0169 state agency may make without conducting an adjudicative pro-
 0170 ceeding.

0171 Sec. 10. If pursuant to subsection (b) of section 9, a state
 0172 agency decides not to conduct an adjudicative proceeding in
 0173 response to an application, the state agency shall furnish the
 0174 applicant a copy of its decision in writing, with a brief statement
 0175 of the state agency's reasons and of any administrative review
 0176 available to the applicant.

0177 Sec. 11. (a) Except to the extent that the time limits in this
 0178 subsection are inconsistent with limits established by another
 0179 statute for any stage of the proceedings, a state agency shall
 0180 process an application for an order, other than a declaratory
 0181 order, as follows:

0182 (1) Within 30 days after receipt of the application, the state
 0183 agency shall examine the application, notify the applicant of any
 0184 apparent errors or omissions and notify the applicant of the
 0185 name, official title, mailing address and telephone number of a
 0186 state agency member or employee who may be contacted re-
 0187 garding the application;

0188 (2) within 90 days after receipt of the application or of the
 0189 response of the applicant to a timely request made by the state
 0190 agency pursuant to paragraph (1), the state agency shall:

0191 (A) Approve or deny the application, in whole or in part, on

adjudicative

0562 temporary relief as is authorized and appropriate.

0563 (g) A final order or an order remanding the matter for further
0564 proceedings shall be rendered in writing and served within 30
0565 days after receipt of briefs and oral argument unless that period
0566 is waived or extended with the written consent of all parties or
0567 for good cause shown.

0568 (h) A final order or an order remanding the matter for further
0569 proceedings under this section shall identify any difference
0570 between this order and the initial order and shall include, or
0571 incorporate by express reference to the initial order, all the
0572 matters required by subsection (c) of section 26.

0573 (i) The agency head shall cause copies of the final order or
0574 order remanding the matter for further proceedings to be served
0575 on each party in the manner prescribed by section 31.

0576 Sec. 28. A party may submit to the presiding officer or
0577 agency head a petition for stay of effectiveness of an initial or
0578 final order until the time at which a petition for judicial review
0579 would no longer be timely, unless otherwise provided by statute
0580 or stated in the initial or final order. The presiding officer or
0581 agency head may take action on the petition for stay, either
0582 before or after the effective date of the initial or final order.

0583 Sec. 29. Unless otherwise provided by statute or rule and
0584 regulation:

0585 (a) Any party, within 15 days after service of a final order,
0586 may file a petition for reconsideration with the agency head,
0587 stating the specific grounds upon which relief is requested. The
0588 filing of the petition is not a prerequisite for seeking administra-
0589 tive or judicial review.

0590 (b) The agency head shall render a written order denying the
0591 petition, granting the petition and dissolving or modifying the
0592 final order, or granting the petition and setting the matter for
0593 further proceedings. The petition may be granted, in whole or in
0594 part, only if the agency head states, in the written order, findings
0595 of fact, conclusions of law and policy reasons for the decision if it
0596 is an exercise of the state agency's discretion, to justify the order.
0597 The petition is deemed to have been denied if the agency head
0598 does not dispose of it ~~with~~ within 20 days after the filing of the petition.

0747 an order resulting from summary adjudicative proceedings and
0748 shall conduct this review upon the written or oral request of a
0749 party if the state agency receives the request within 15 days after
0750 service under subsection (c) of section 38.

0751 Sec. 40. (a) A state agency need not furnish notification of
0752 the pendency of administrative review of an order resulting from
0753 summary adjudicative proceedings to any person who did not
0754 request the review, but the state agency may not take any action
0755 on review less favorable to any party than the original order
0756 without giving that party notice and an opportunity to explain
0757 that party's view of the matter.

0758 (b) The reviewing officer, in the discretion of the agency
0759 head, may be any person who could have presided at the sum-
0760 mary adjudicative proceeding, but the reviewing officer ~~must~~ be
0761 one who is authorized to grant appropriate relief upon review.

0762 (c) The reviewing officer shall give each party an opportunity
0763 to explain the party's view of the matter unless the party's view is
0764 apparent from the written materials in the file submitted to the
0765 reviewing officer. The reviewing officer shall make any inquiries
0766 necessary to ascertain whether the proceeding must be con-
0767 verted to a conference adjudicative hearing or a formal adjudi-
0768 cative hearing.

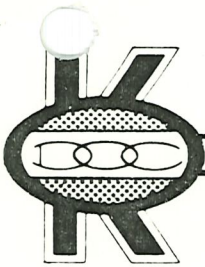
0769 (d) The reviewing officer may render an order disposing of
0770 the proceeding in any manner that was available to the presiding
0771 officer at the summary adjudicative proceeding or the reviewing
0772 officer may remand the matter for further proceedings, with or
0773 without conversion to a conference adjudicative hearing or a
0774 formal adjudicative hearing.

0775 (e) An order under this section shall be served on the parties
0776 in the manner prescribed by section 31.

0777 (f) A request for administrative review of an order resulting
0778 from a summary adjudicative proceeding is deemed to have been
0779 denied if the reviewing officer does not dispose of the matter or
0780 remand it for further proceedings with 15 days after the request
0781 is submitted.

0782 Sec. 41. The state agency record for a summary adjudicative
0783 proceeding consists of any documents regarding the matter that

shall



KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR

MICHAEL A. BARBARA — SECRETARY

*Attachment No. 4
2-84*

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603
• 913-296-3317 •

Attachment # 4

TO: HOUSE JUDICIARY COMMITTEE
FROM: MICHAEL A. BARBARA, SECRETARY OF CORRECTIONS
RE: HOUSE BILL 2688
DATE: February 9, 1984

The Department of Corrections has reviewed H.B. 2688 and has concluded that, in its present form, it will have significant impact on the operations of the department.

As we understand the bill, a formal or summary adjudicative proceeding would be required in situations where an agency takes an action which determines the "legal rights, duties, privileges, immunities or other legal interest of one or more specific persons." With respect to the Department of Corrections, daily operations of a penal institution would involve numerous actions which appear to fall within this definition.

Specifically, almost any action taken with respect to an inmate would affect that inmate's legal rights, privileges or other legal interests. For example, these actions would include:

- work or program assignments
- custody classification decisions
- cell transfers
- institution transfers
- interstate transfers
- parole eligibility actions
- award of good time credits
- eligibility for honor camps
- eligibility for work release programs
- eligibility for pre-release programs
- approving or disapproving visitors
- property ownership
- store privileges
- delivery of medical care
- scheduling of religious services.

This list is for illustration purposes only and is by no means complete. Many actions taken by the department with respect to an inmate could be viewed as affecting the legal rights, privi-

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leges or other legal interests of the inmate. Under these circumstances, compliance with the provisions of this Act would present a formidable, if not impossible, task. Certainly the operation of the institution would be vastly more complicated.

Additionally, from a legal standpoint, the act would create a procedural right for an individual which, with respect to inmates, could be construed to be a "liberty interest" and thus raised as a constitutional issue in federal court under 42 U.S.C. §1983.

DEPARTMENT POSITION:

The Department of Corrections respectfully suggests to the Committee that agencies which house, control and manage persons committed by law to their custody be exempted from this act. In the alternative, it is suggested that only those actions of such agencies be included where specifically required by statute.

MAB:CES/pa

Attachment No. 5
2-9-84

STATE OF KANSAS
DEPARTMENT OF ADMINISTRATION
JOHN CARLIN, Governor
PATRICK J. HURLEY, Secretary of Administration
Room 263-E, Capitol Building
(913) 296-3011

Attachment # 5

MEMORANDUM

TO: House Judiciary Committee
FROM: Arthur H. Griggs, ~~Chief~~ Attorney
DATE: February 9, 1984
SUBJECT: House Bill 2688

In general terms, the procedures set forth in House Bill 2688 appear workable and logical. One concern with the bill, as introduced, is the ability to know when the procedures set forth in the bill must be followed by a state agency. It is my understanding that amendments to the bill will be considered which modify Section 3 so that the act will apply when agency "orders" are involved, rather than when "state agency actions" are involved. These amendments would help narrow the potential ambiguity as to when the bill's procedures apply.

If the act is so amended, the definition of "order", beginning in line 39, appears to be of key importance in knowing when the act applies. The definition of "order" includes action "that determines legal rights, duties, privileges, immunities, or other legal interests of one or more specified persons". I have attempted to identify various agency actions that might fall within this definition. For example, several types of functions come to mind that could be construed as an order, and yet I'm unsure that the sponsors of the bill intend that formal or summary adjudicative hearings should be required in all such cases. Admittedly, there is a valid argument for requiring hearings for some of the functions described in the following examples. The purpose in citing these examples is to point out to the Committee areas where there are legislative policy questions the Committee may wish to consider.

1. Failure to pass an exam, such as a driver's license exam or exam to obtain an occupational license or certificate could be viewed as "orders" since the legal rights and privileges of an individual would be involved.
2. Performance evaluation appeals, layoff orders, and job transfers of employees could all be construed as coming under the act since such actions could be viewed as affecting the legal rights and privileges of the affected state employee.

Atch. 5

3. The utilization of an agency's grievance procedure, under some circumstances, likewise could be viewed as affecting the legal rights and privileges of an employee filing a grievance.

4. Per a Department of Administration regulation, people wishing to sell products or solicit contributions in state office buildings operated by the Department must receive permission to do so from the Secretary of Administration. Denying such a request could invoke the act since such action could be viewed as determining legal rights and privileges of this specific individual.

5. The awarding of grants or the selection of contracting parties likewise might be found to come within the act since peoples' legal rights and privileges could be involved.

Related to the concern addressed above as to when the act applies is the fact that House Bill 2688 does not amend any existing statutes which contain hearing procedures. Parties that have been involved in the bill have acknowledged that there is a need to blend existing statutes with the procedures set forth in the bill. Because of the tremendous amount of work that this will entail, the Department of Administration is encouraging agency attorneys to start identifying statutes that would need to be blended and consider what language changes would be necessary to harmonize the procedures set forth in the bill with the procedures set forth in various agency statutes and regulations. The Committee may find it helpful for agency attorneys to bring to the Committee's attention those areas where the need for a full formal adjudicative hearing or summary may be questionable and yet appear to fall within the definition of "order".

It appears that by considering the various amendatory sections in conjunction with consideration of House Bill 2688, it would be possible to minimize confusion as to the applicability of various hearing requirements. The Department of Administration will endeavor to provide assistance in apprising state agencies of House Bill 2688 and the need for them to consider what amendments to existing statutes and regulations may be necessary.

HOUSE BILL No. 2688

By Joint Committee on Administrative Rules and Regulations

1-13

0015 AN ACT concerning state agencies; enacting the Kansas admin-
0016 istrative procedure act; establishing uniform administrative
0017 procedures for certain state agency actions.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. This act shall be known and may be cited as the
0020 Kansas administrative procedure act.

0021 Sec. 2. As used in this act:

0022 (a) "State agency" means any officer, department, bureau,
0023 division, board, authority, agency, commission or institution of
0024 this state, except the judicial and legislative branches of state
0025 government and political subdivisions of the state, which is
0026 authorized by law to administer, enforce or interpret any law of
0027 this state.

0028 (b) "State agency action" means:

0029 (1) The whole or a part of a rule and regulation or an order;
0030 (2) the failure to issue a rule and regulation or an order; or
0031 (3) a state agency's performance of, or failure to perform, any
0032 other duty, function or activity, discretionary or otherwise.

0033 (c) "Agency head" means an individual or body of individu-
0034 als in whom the ultimate legal authority of the state agency is
0035 vested by any provision of law.

0036 (d) "License" means a franchise, permit, certification, ap-
0037 proval, registration, charter or similar form of authorization re-
0038 quired by law.

0039 (e) "Order" means a state agency action of particular appli-
0040 cability that determines the legal rights, duties, privileges, im-
0041 munities or other legal interest of one or more specific persons.

0042 (f) "Party to state agency proceedings," or "party" in context
0043 so indicating, means:

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0044 (1) A person to whom the state agency action is specifically
0045 directed; or

0046 (2) a person named as a party to a state agency proceeding or
0047 allowed to intervene or participate as a party in the proceeding.

0048 (g) "Party to judicial review or civil enforcement proceed-
0049 ings," or "party" in context so indicating, means:

0050 (1) A person who files a petition for judicial review; or

0051 (2) a person named as a party in a proceeding for judicial
0052 review or civil enforcement or allowed to participate as a party in
0053 the proceeding.

0054 (h) "Person" means an individual, partnership, corporation,
0055 association, political subdivision or unit thereof or public or
0056 private organization or entity of any character, and includes
0057 another state agency.

0058 (i) "Political subdivision" means political or taxing subdivi-
0059 sions of the state, including boards, commissions, authorities,
0060 councils, committees, subcommittees and other subordinate
0061 groups or administrative units thereof, receiving or expending
0062 and supported in whole or in part by public funds.

0063 (j) "Rule and regulation" means a standard, statement of
0064 policy or general order, including amendments or revocations
0065 thereof, of general application and having the effect of law,
0066 issued or adopted by a state agency to implement or interpret
0067 legislation enforced or administered by such state agency or to
0068 govern the organization of procedure of such state agency.

0069 (k) "Rulemaking" means the process for formulation and
0070 adoption of a rule and regulation.

0071 Sec. 3. (a) This act applies except to the extent that other
0072 statutes provide procedures governing state agency actions.

or regulations

0073 (b) This act creates only procedural rights and imposes only
0074 procedural duties. They are in addition to those created and
0075 imposed by other statutes.

0076 Sec. 4. Except to the extent precluded by another provision
0077 of law, a person may waive any right conferred upon that person
0078 by this act.

0079 Sec. 5. Nothing in this act shall preclude informal settlement
0080 of matters that may make unnecessary more elaborate proceed-

0081 ings under this act.

0082 Sec. 6. (a) At any point in a state agency proceeding the
0083 presiding officer or other state agency official responsible for the
0084 proceeding:

0085 (1) May convert the proceeding to another type of state
0086 agency proceeding provided for by this act if the conversion is
0087 appropriate, is in the public interest and does not substantially
0088 prejudice the rights of any party; and

0089 (2) if required by any provision of law, shall convert the
0090 proceeding to another type of state agency proceeding provided
0091 for by this act.

0092 (b) A conversion of a proceeding of one type to a proceeding
0093 of another type may be effected only upon notice to all parties to
0094 the original proceeding.

0095 (c) If the presiding officer or other state agency official re-
0096 sponsible for the original proceeding would not have authority
0097 over the new proceeding to which it is to be converted, that
0024 0098 officer or official, in accordance with state agency procedure,
0099 shall secure the appointment of a successor to preside over or be
0100 responsible for the new proceeding.

0101 (d) The record of the original state agency proceeding may be
0102 used in the new state agency proceeding.

0103 (e) After a proceeding is converted from one type to another,
0104 the presiding officer or other state agency official responsible for
0105 the new proceeding shall:

0106 (1) Give such additional notice to parties or other persons as
0107 is necessary to satisfy the requirements of this act pertaining to
0108 those proceedings;

0109 (2) dispose of the matters involved without further proceed-
0110 ings if sufficient proceedings have already been held to satisfy
0111 the requirements of this act pertaining to the new proceedings;
0112 and

0113 (3) conduct or cause to be conducted any additional pro-
0114 ceedings necessary to satisfy the requirements of this act per-
0115 taining to those proceedings.

0042 0116 Sec. 7. This act shall take effect on July 1, 1984, and does not
0117 govern proceedings pending on that date. This act governs all

Subject to section 3,

0118 state agency proceedings commenced after that date. This act
0119 also governs state agency proceedings conducted on a remand
0120 from a court or another state agency after the effective date of this
0121 act.

0122 Sec. 8. (a) An adjudicative proceeding shall be the process
0123 for formulating and issuing an order, unless the order is a
0124 decision:

0125 (1) To issue or not to issue a complaint, summons or similar
0126 accusation;

0127 (2) to initiate or not to initiate an investigation, prosecution or
0128 other proceeding before the state agency, another agency or a
0129 court; or

0130 (3) under section 10, not to conduct an adjudicative proceed-
0131 ing.

0132 (b) Sections 8 to 11, inclusive, apply to rulemaking proceed-
0133 ings under the rules and regulations filing act only to the extent
0134 that another statute expressly so requires.

0135 Sec. 9. (a) A state agency may provide an adjudicative pro-
0136 ceeding at any time with respect to a matter within the agency's
0137 jurisdiction.

0138 (b) A state agency shall provide an adjudicative proceeding
0139 upon the application of any person, unless:

0140 (1) The state agency lacks jurisdiction of the subject matter;

0141 (2) resolution of the matter requires the state agency to exer-
0142 cise discretion within the scope of subsection (a) of section 8;

0143 (3) a statute vests the state agency with discretion to conduct
0144 or not to conduct an adjudicative proceeding before issuing an
0145 order to resolve the matter and, in the exercise of that discretion,
0146 the state agency has determined not to conduct an adjudicative
0147 proceeding;

0148 (4) resolution of the matter does not require the state agency
0149 to issue an order that determines the applicant's legal rights,
0150 duties, privileges, immunities or other legal interests;

0151 (5) the matter was not timely submitted to the state agency;
0152 or

0153 (6) the matter was not submitted in a form substantially
0154 complying with any applicable provision of law.

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0303 (c) If a prehearing conference is not held, the presiding
0304 officer for the hearing may issue a prehearing order, based on the
0305 pleadings, to regulate the conduct of the proceedings.

0306 Sec. 18. (a) The state agency shall set the time and place of
0307 the hearing and give reasonable written notice at least 10 days
0308 prior to the hearing to all parties and to all persons who have
0309 filed written petitions to intervene in the matter. ↗

Service of notices shall be governed by section 31.

0310 (b) The notice shall include a copy of any prehearing order
0311 rendered in the matter.

0312 (c) To the extent not included in a prehearing order accom-
0313 panying it, the notice shall include:

0314 (1) The names and mailing addresses of all parties and other
0315 persons to whom notice is being given by the presiding officer;

0316 (2) the name, official title, mailing address and telephone
0317 number of any counsel or employee who has been designated to
0318 appear for the state agency;

0319 (3) the official file or other reference number, the name of the
0320 proceeding and a general description of the subject matter;

0321 (4) a statement of the time, place and nature of the hearing;

0322 (5) a statement of the legal authority and jurisdiction under
0323 which the hearing is to be held;

0324 (6) the name, official title, mailing address and telephone
0325 number of the presiding officer;

0326 (7) a statement of the issues involved and, to the extent
0327 known to the presiding officer, of the matters asserted by the
0328 parties; and

0329 (8) a statement that a party who fails to attend or participate
0330 in a prehearing conference, hearing or other stage of an adjudi-
0331 cative proceeding may be held in default under this act.

0332 (d) The notice may include any other matters the presiding
0333 officer considers desirable to expedite the proceedings.

0334 (e) The state agency shall give notice to persons entitled to
0335 notice under any provision of law who have not been given
0336 notice under subsection (a). Notice under this subsection may
0337 include all types of information provided in subsections (a)

0338 through (d) or may consist of a brief statement indicating the
0339 subject matter, parties, time, place and nature of the hearing,

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0451 nical rules of evidence, but shall give the parties reasonable
 0452 opportunity to be heard and to present evidence, and the pre-
 0453 siding officer shall act reasonably without partiality. The presid-
 0454 ing officer shall give effect to the rules of privilege recognized by
 0455 law. Evidence need not be excluded solely because it is hearsay.

0456 (b) All testimony of parties and witnesses shall be made
 0457 under oath or affirmation.

0458 (c) Statements presented by nonparties in accordance with
 0459 paragraph (c) of section 23 may be received as evidence.

0460 (d) Any part of the evidence may be received in written form
 0461 if doing so will expedite the hearing without substantial preju-
 0462 dice to the interests of any party.

0463 (e) Documentary evidence may be received in the form of a
 0464 copy or excerpt. Upon request, parties shall be given an oppor-
 0465 tunity to compare the copy with the original if available.

0466 (f) Official notice may be taken of (1) any matter that could be
 0467 judicially noticed in the courts of this state, (2) the record of other
 0468 proceedings before the state agency, (3) technical or scientific
 0469 matters within the state agency's specialized knowledge, and (4)
 0470 codes of standards that have been adopted by an agency of the
 0471 United States, of this state or of another state or by a nationally
 0472 recognized organization or association. Parties shall be notified
 0473 before or during the hearing, or before the issuance of any initial
 0474 or final order that is based in whole or in part on matters or
 0475 material noticed, of the specific matters or material noticed and
 0476 the source thereof, including any staff memoranda and data, and
 0477 be afforded an opportunity to contest and rebut the matters or
 0478 material so noticed.

0479 Sec. 25. A presiding officer serving in an adjudicative pro-
 0480 ceeding may not communicate, directly or indirectly, regarding
 0481 any issue in the proceeding while the proceeding is pending,
 0482 with any party or participant, with any person who has a direct or
 0483 indirect interest in the outcome of the proceeding or with any
 0484 person who presided at a previous stage of the proceeding,
 0485 without notice and opportunity for all parties to participate in the
 0486 communication.

0487 Sec. 26. (a) If the presiding officer is the agency head, the

The presiding officer may exclude evidence that is irrelevant, immaterial or unduly repetitious.

and the presiding officer shall have the power to administer an oath or affirmation

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0525 served on each party and, if the order is an initial order, on the
0526 agency head in the manner prescribed by section 31.

0527 Sec. 27. (a) The agency head, upon its own motion may, and
0528 upon petition by any party or when required by law shall, review
0529 an initial order, except to the extent that:

0530 (1) A provision of law precludes or limits state agency review
0531 of the initial order; or

0532 (2) the agency head, ~~in the exercise of discretion conferred~~
0533 ~~by a provision of law~~ (A) determines to review some but not all
0534 issues, or not to exercise any review, (B) delegates its authority to
0535 review the initial order to one or more persons, or (C) authorizes
0536 one or more persons to review the initial order, subject to further
0537 review by the agency head.

0538 (b) A petition for review of an initial order must be filed with
0539 the agency head, or with any person designated for this purpose
0540 by rule and regulation of the state agency, within 15 days after
0541 service of the initial order. If the agency head on its own motion
0542 decides to review an initial order, the agency head shall give
0543 written notice of its intention to review the initial order within
0544 15 days after its service.

0545 (c) The petition for review shall state its basis. If the agency
0546 head on its own motion gives notice of its intent to review an
0547 initial order, the agency head shall identify the issues that it
0548 intends to review.

0549 (d) In reviewing an initial order, the agency head shall exer-
0550 cise all the decision-making power that the agency head would
0551 have had to render a final order had the agency head presided
0552 over the hearing, except to the extent that the issues subject to
0553 review are limited by a provision of law or by the agency head
0554 upon notice to all parties.

0555 (e) The agency head shall afford each party an opportunity to
0556 present briefs and may afford each party an opportunity to
0557 present oral argument.

0558 (f) The agency head may render a final order disposing of the
0559 proceeding or may remand the matter for further proceedings
0560 with instructions to the person who rendered the initial order.
0561 Upon remanding a matter, the agency head may order such

0599 An order under this section shall be served on the parties in
0600 the manner prescribed by section 31.

0601 Sec. 30. (a) A final order is effective upon service unless
0602 stayed.

0603 (b) An initial order shall become effective and shall become
0604 the final order 15 days after service if no party has filed a petition
0605 for review by the agency head, the agency head has not given
0606 written notice of its intention to exercise review and a final
0607 determination by the agency head is not otherwise required by
0608 law.

0609 (c) This section does not preclude a state agency from taking
0610 immediate action to protect the public interest in accordance
0611 with section 36.

0612 Sec. 31. Service of an order shall be made by delivering a
0613 copy of the order to the party or by mailing a copy of the order to
0614 the party at the party's last known address. Delivery of a copy of
0615 an order means handing the order to the party or leaving the
0616 order at the party's principal place of business or residence with
0617 a person of suitable age and discretion who works or resides
0618 therein. Service shall be presumed if the presiding officer, or a
0619 person directed to make service by the presiding officer, makes a
0620 written certificate of service.

0621 Sec. 32. (a) A state agency shall maintain an official record of
0622 each formal adjudicative proceeding.

0623 (b) The state agency record consists only of:

0624 (1) Notices of all proceedings;

0625 (2) any prehearing order;

0626 (3) any motions, pleadings, briefs, petitions, requests, and
0627 intermediate rulings;

0628 (4) evidence received or considered;

0629 (5) a statement of matters officially noticed;

0630 (6) proffers of proof and objections and rulings thereon;

0631 (7) proposed findings, requested orders and exceptions;

0632 (8) the record prepared for the presiding officer at the hear-
0633 ing, together with any transcript of all or part of the hearing

0634 considered before final disposition of the proceeding;

0635 (9) any final order, initial order, or order on reconsideration;

, or service of a notice of a hearing,

or notice

Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

0710 (a).

0711 (f) The state agency record consists of any documents re-
0712 garding the matter that were considered or prepared by the state
0713 agency. The state agency shall maintain these documents as its
0714 official record.

0715 (g) Unless otherwise required by a provision of law, the state
0716 agency record need not constitute the exclusive basis for state
0717 agency action in emergency adjudicative proceedings or for
0718 judicial review thereof.

0719 Sec. 37. A state agency may use summary adjudicative pro-
0720 ceedings if:

0721 (a) The use of those proceedings in the circumstances does
0722 not violate any provision of law;

0723 (b) the protection of the public interest does not require the
0724 state agency to give notice and an opportunity to participate to
0725 persons other than the parties; and

0726 (c) the matter is entirely within one or more categories for
0727 which the state agency by rule and regulation has adopted this
0728 section and sections 38 to 41, inclusive. A

0729 Sec. 38. (a) In summary adjudicative proceedings, the
0730 agency head, or a person designated by the agency head, may be
0731 the presiding officer.

0732 (b) The presiding officer, before taking action, shall give
0733 each party an opportunity to be informed of the state agency's
0734 view of the matter and to explain the party's view of the matter.
0735 The presiding officer, at the time any unfavorable action is taken,
0736 shall give each party a brief statement of findings of fact, con-
0737 clusions of law and policy reasons for the decision if it is an
0738 exercise of the state agency's discretion, to justify the action, and
0739 a notice of any available administrative review.

0740 (c) The state agency shall forthwith serve each party with a
0741 copy of the order in a summary adjudicative proceeding in the
0742 manner prescribed by section 31. The order shall include at least
0743 a statement of the state agency's action and a notice of any
0744 available administrative review.

0745 Sec. 39. Unless prohibited by any provision of law, a state
0746 agency, on its own motion, may conduct administrative review of

In addition to the grounds for adopting temporary rules and regulations set forth in subsection (a) of K.S.A. 1983 Supp. 77-422, a state agency may adopt temporary rules and regulations specifying categories to which section 37 to 41, inclusive, apply.

Attachment no. 7
2-9-84

Zetta J. Means Attachment # 7
3440 N. 33rd Terrace
Kansas City, Kansas 66104

January 23, 1984

Honorable Norman E. Justice
Kansas State Capitol
Topeka, Ks. 66612

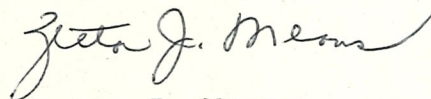
Dear Representative:

As per our telephone conversation of this morning, 1-23-84, regarding my termination as a county service officer at Wyandotte County Juvenile Court, I am forwarding the following information.

From a xeroxed document from Terry Showalter, on 1-17-84, I have been advised that there is no appeal procedure during the initial probationary period.

I contacted the Kansas State Civil Rights Commission and the Equal Opportunity Commission after our conversation. It is my hope that through legal procedures that my termination will be reviewed and handled in a fair and equitable manner.

Respectfully,



Zetta J. Means

cc Honorable Clarence Love
Honorable Billy Q. McCray
Mr. R. Frye, Chairman of the Judicial Committee
Honorable Theo Field
Mr. Terry Showalter, Department Director
Mr. Richard Shannon, Court Administrator

Atch. 7