

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m. ~~xxx~~ on February 6, 1985 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Mike Boyer, Kansas Bureau of Investigation  
Jeff Southard, Deputy Attorney General  
Charles Simmons, Department of Corrections  
Bill Ewing, Southwestern Bell Telephone Company

Senate Bill 103 - Inspection of records relating to juveniles and children in need of care.

Mike Boyer, director of the Statistical Analysis Center of the Kansas Bureau of Investigation, explained the bill to the committee. He pointed out the language in lines 55 through 58 was to be included in the bill last year, but there were problems in getting the bill passed so this was left out. The fiscal impact is very little because much of this work is going on now anyway. A committee member inquired why the KBI needs that information? Mr. Boyer replied this information is for the state. The names are on the police, court and prosecution reports. When a prosecutor wants to know about a particular juvenile, the department has this access. The information is not given out to anyone else. Considerable committee discussion with him followed.

The hearings on Senate Bill 103 were concluded.

Jeff Southard, Deputy Attorney General, appeared to present a proposal to request introduction as a committee bill concerning changes in the corporate farming law. A copy of his handout is attached (See Attachment I). Following his explanation, Senator Gaines moved to introduce the bill. Senator Burke seconded the motion. The motion carried.

David Barclay, Department of Corrections, introduced Charles Simmons, Chief Legal Counsel. Mr. Simmons presented four proposals for introduction as committee bills (See Attachments II). The first proposal concerned officers and employees under the supervision and control of the secretary of corrections. Following the explanation, Senator Feleciano moved to introduce the proposal as a committee bill. Senator Talkington seconded the motion. The motion carried. The second proposal concerned crimes and punishments relating to sentences. Following the explanation, Senator Winter moved to introduce the proposal as a committee bill. Senator Parrish seconded the motion. The motion carried. The third proposal concerned the secretary of corrections relating to issuance of subpoenas for certain purposes. Following the explanation, Senator Talkington moved to introduce the proposal as a committee bill. Senator Langworthy seconded the motion. The motion carried. The fourth proposal concerned the community corrections act relating chargebacks to counties

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m. ~~pm~~ on February 6, 1985.

concerning custody. Following the explanation, Senator Burke moved to introduce the proposal as a committee bill. Senator Hoferer seconded the motion. The motion carried.

Senator Winter presented a proposal for introduction as a committee bill concerning the use of video tape testimony in certain child abuse cases (See Attachment III). Following the explanation, Senator Winter moved the proposal be introduced as a committee bill. Senator Burke seconded the motion. The motion carried.

Senate Bill 49 - Electric public utilities to be separately regulated from other utilities and common carriers.

The chairman explained the Kansas Corporation Commission had backed off from certain sections of the bill they had opposed. He then recognized Bill Ewing, Southwestern Bell Telephone Company. Mr. Ewing stated, since the committee meeting yesterday, he has had conversations with the corporation commission, and they have agreed that there will be a fourth category of radio common carrier. He explained where this is repeated three times in the bill, it will be repeated with the fourth category throughout the bill. Also, from Section 20, K.S.A. 66-141 and K.S.A. 66-156, the four categories will be repeated for these sections. The commission urged changing "and" to "or" in line 26. The chairman noted Brian Moline from the Kansas Corporation Commission had come into his office and agreed to these changes. Senator Talkington moved to amend the bill by deleting "and" in line 26, and inserting "or" where appropriate; and radio common carrier be placed in appropriate categories. Senator Gaines seconded the motion. The motion carried. Following committee discussion, Senator Gaines moved to report the bill favorably as amended. Senator Winter seconded the motion. The motion carried.

Senate Bill 39 - Ballot proposition on method of selecting judges of the district court.

Senator Gaines moved to amend Senate Bill 45 into Senate Bill 39. Senator Talkington seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Following committee discussion concerning two types of propositions in a new judicial district where there are two different methods of selection, Senator Gaines made a substitute motion to amend the bill conceptually by structuring the ballot in situations where the new district is or provide two different methods. Senator Winter seconded the motion. The motion carried. Senator Parrish made a conceptual motion to amend the bill to provide when the proposition for the method of selecting judges of the district court is submitted to the electors in a judicial district in 1984 or in any subsequent year, such proposition may be resubmitted to the electors in the judicial district not more often than once every eight years. Senator Feleciano seconded the motion. Following explanation of the amendment, the motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Hoferer seconded the motion. The motion carried. Senator Feleciano wished to be recorded as voting "no". A copy of Senator Parrish's amendment is attached (See Attachment IV).

The meeting adjourned.

Copy of the guest list is attached (See Attachment V).

GUEST LIST

2-6-95

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: \_\_\_\_\_

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Mina Brown	1517 Canterbury Hays	Close-Up
Sarah Tramel	1207 Walnut Hays	Close Up
Karen Flood	207 W. 22 Hays	Close-Up
Angie Pickney	710 W 36th Hays	Close-up
Todd Heitschmidt	220 so. main Holywood	Close-up
Sara Sprink	Bn 147, Holywood	Close-up
Dawn Riskey	513 S. 3rd Bushton	Close-up
Rid Taylor	R#3 Fort Scott	Close-up
Jane MacWilliams	715 E. OAK Ft. Scott	Close up
Catherine, Reeves	1023 S. Judson, Ft. Scott	Close-Up
Andrew Carson	RR3 Box 93 Ft. Scott	Close-up
Jamie Mason	1002 National Apt 1 Ft Scott	close-up
Yanna Denroun	723 N Curtis Olathe	Close-up
Kelly Jo Conn	1414 E 123 St Olathe	close-up
Cathy Elsbernd	910 Diane Olathe	Close-up
Lloyd Hull	503 Ks. Topeka	state of Kansas Telecommunications
Ruth Walker	Topeka	Phil. Smith
Janet Parker	RR#1, Garland Ks. 2074	Close-Up
Linda Collins	809 S. Margraive Ft. Scott	Close-up
Pamela Kaby	Route 1 Fort Scott	Close-up
Jan Clark	Topeka	KCDAA
PATRICIA HENSHALL	TOPEKA	OJA
Chester Peckover	Buhler, Ks.	Close Up - Tea.
Mike Whittier	Olathe Ks	Close Up - Ks
Chris Tatham	11 11	11 11 11

2/6/95  
Attach. II



2-1-85



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 6, 1985

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

Honorable Robert Frey, Chairman  
Senate Judiciary Committee  
Senate Chambers, State Capitol  
Topeka, Kansas 66612

Re: Proposed Amendments to K.S.A. 17-5903 and 17-5904

Dear Senator Frey:

This letter will serve as a formal follow-up to our telephone conversation of yesterday, February 5, 1985, concerning some amendments to K.S.A. 17-5903 and 17-5904. These statutes are popularly known as the corporate farming laws, and have the general effect of prohibiting corporate ownership of Kansas farmland. Due to a situation which arose this past summer, we believe the current statutes contain a loophole which should be plugged if the law is not to be circumvented.

Specifically, an entity known as Consolidated Family Farms let it be known in July that it was interested in acquiring farmland in Kansas and other midwestern states. In that CFF was a series of inter-locking limited partnerships, the corporate farming law did not prevent such acquisitions. However, in that a limited partnership is virtually identical to a corporation, the position of a farmer who gave his land to CFF would be for all practical purposes the same as if he had sold it to a corporation. Fortunately, due to sloppy securities filings, CFF was prevented from getting a toehold in Kansas. Soon afterwards the scheme fell through.

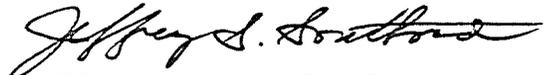
In order to avoid such situations in the future, we would suggest that the corporate farming statutes be amended to restrict the use of limited partnerships in acquiring interests in farmland. The proposed amendments would allow a "limited agricultural partnership" which would be similar to the family farm corporations and family trusts which are now allowed, even though corporations and trusts in general are prohibited. There would also be a grandfather clause for those limited partnerships now operating.

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Attch. I

Honorable Robert Frey  
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Attorney General Stephan appreciates the committee's willingness to consider these amendments, which will serve to strengthen the Kansas statutes which protect the family farm. If I can be of any further assistance to the committee, please let me know.

Very truly yours,



Jeffrey S. Southard  
Deputy Attorney General

JSS:js  
Enclosure

Attch. I

Proposed Changes in Corporate Farming Law

Underscored paragraph letters or numbers indicate new sections.

Section 1. K.S.A. 17-5903 is hereby amended to read as follows: As used in this act:

(a) "Corporation means a domestic or foreign corporation organized for profit or nonprofit purposes.

(b) "Nonprofit corporation" means a corporation organized not for profit and which qualifies under section 501(c)(3) of the federal internal revenue code of 1954 as amended.

(c) "Limited partnership" means a partnership formed by two or more persons and having one or more general partners and one or more limited partners.

(d) "Limited agricultural partnership" means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:

(1) The partners do not exceed 10 in number;

(2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general ~~partnerships~~ partnerships formed under the laws of the State of Kansas; *and*

(3) at least one of the partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one partner is meeting the requirement of this provision and such partner dies, the requirement of this provision does not apply for the period of time that the partner's estate is being administered in any district court in Kansas.

(The letter designations of the following paragraphs have been changed to accommodate new paragraphs (c) and (d).)

(e) "Limited corporate partnership" means a limited partnership, as defined in K.S.A. 56-1a101 and amendments thereto, which has a member or members, whether as general or limited partners, one or more corporations.

(f) "Corporate partnership" means a partnership, as defined in K.S.A. 56-306 and amendments thereto, which has within the association one or more corporations.

(g) "Feedlot" means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.

(h) "Agricultural land" means land suitable for use in farming.

(i) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not include a contract to provide spraying, harvesting or other farm services.

(j) "Fiduciary capacity" means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.

(k) "Family farm corporation" means a corporation:

(1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) all of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the stockholders is a person residing on the farm or actively engaged in the labor or management of the farming operation. A stockholder who is an officer of any corporation referred to in this subsection and who is one of the related stockholders holding a majority of the voting stock shall be deemed to be actively engaged in the management of the farming corporation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(i) "Authorized farm corporation" means a Kansas corporation, other than a family farm corporation, all of the incorporators of which are Kansas residents and which is founded for the purpose of farming and the ownership of agricultural land in which:

(1) The stockholders do not exceed 15 in number;

(2) the stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations; and

(3) at least 30% of the stockholders are persons residing on the farm or actively engaged in the day-to-day labor or management of the farming operation. If only one of the stockholders is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

For the purposes of this definition, if more than one person receives stock by bequest from a deceased stockholder, all of such persons, collectively, shall be deemed to be one stockholder, and a husband and wife, and their estates, collectively shall be deemed to be one stockholder.

(m) "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact and in any similar capacity.

(k) "Family trust" means a trust in which:

(1) A majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related; and

(2) all the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations.

(o) "Authorized trust" means a trust other than a family trust in which:

(1) The beneficiaries do not exceed 15 in number;

(2) the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and

(3) the gross income thereof is not exempt from taxation under the laws of either the United States or the state of Kansas.

For the purposes of this definition, if one of the beneficiaries dies, and more than one person succeeds, by bequest, to the deceased beneficiary's interest in the trust, all of such persons, collectively, shall be deemed to be one beneficiary, and a husband and wife, and their estates, collectively, shall be deemed to be one beneficiary.

(p) "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Kansas probate code.

Section 2. K.S.A. 17-5904 is hereby amended to read as follows:

(a) No corporation, trust, limited partnership, limited corporate partnership or corporate partnership, other than a family farm corporation, authorized farm corporations, limited agricultural partnership, family trust,

*New language* }

authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state. The restrictions provided in this section do not apply to the following:

- (1) A bona fide encumbrance taken for purposes of security.
- (2) Agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious or charitable nonprofit corporation.
- (3) Agricultural land acquired by a corporation in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.
- (4) Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure.
- (5) A municipal corporation.
- (6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.
- (7) Agricultural land owned or leased by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if (A) any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, or (b) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.
- (8) Agricultural land held or leased by a corporation for use as a feedlot.
- (9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products, or sod.

(10) Agricultural land used for bona fide educational research or scientific or experimental farming.

(11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.

(12) Agricultural land owned or leased by a corporate partnership or limited corporate partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.

*New* § (14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.

(b) Any corporation, trust, limited corporate partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.

(c) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

Section 3. K.S.A. 17-5903 and 17-5904 are hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the Kansas register.

# A

2-6-85

5 RS 045

BILL NO. \_\_\_\_\_

By

AN ACT concerning the secretary of corrections; relating to officers and employees; amending K.S.A. 75-5250 and repealing the existing section.

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

Section 1. K.S.A. 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. Any person who has been convicted, expungement notwithstanding, by a court of law or court-martial of any crime punishable by imprisonment for more than one year, shall not be hired as a corrections officer, corrections supervisor, corrections counselor or unit team manager. Subject to available appropriations, student interns may be appointed to temporary positions, the duration of which shall not exceed ~~one--hundred fifty--(150)~~ 150 calendar days, 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~~ the act shall not apply. The secretary is hereby authorized for good cause to assign and

2/6/85

Attch. II

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. 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.

## DEPARTMENT OF CORRECTIONS

TOPIC: Employment of Persons with Prior Felony Records  
January 10, 1985

ISSUE

Should the Department of Corrections prohibit persons with prior felony records from working as correctional officers, corrections supervisors, corrections counselors or unit team managers?

BACKGROUND

In the past several years, the Department has had an internal policy that persons with prior felony records could not be hired to work as correctional officers. The rationale for the policy was the belief that it is an inappropriate practice to have former felons employed in key professional correctional positions. In addition to the obvious security concern, it is likely to be difficult for such a person to maintain control over inmates and to be respected by them if he or she has a felony background. Moreover, the Department requires correctional officers and other key staff to be trained in the use of firearms and to use them if necessary. However, Kansas statutes prohibit former felons from possessing a firearm for five years after a conviction.

There is no clear statutory authority for the Department to have a policy prohibiting the hiring of former felons. Yet, the issue continues to be raised by applicants. Most recently, a former Department of Corrections' correctional officer applied who had a felony record prior to his original employment when no exclusionary policy was in effect. The Department was placed in the awkward position of refusing to hire him despite his prior employment.

Similar concerns among local law enforcement lead to the adoption of a statutory prohibition on hiring persons with felony records as policemen or sheriffs.

RECOMMENDATION

The Kansas legislature should amend K.S.A. 75-5250 by adding this provision:

"No person who has been convicted, expungement notwithstanding, by a court of law or court martial of any crime punishable by imprisonment for more than one year shall be hired as a corrections officer, corrections supervisor, corrections counselor, or unit team manager."

Attch. II

**B**

2-6-  
5 RS 045

\_\_\_\_\_ BILL NO. \_\_\_\_\_  
\_\_\_\_\_

AN ACT concerning crimes and punishments; relating to sentences; amending K.S.A. 1984 Supp. 21-4608 and repealing the existing section.

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

Section 1. K.S.A. 1984 Supp. 21-4608 is hereby amended to read as follows: 21-4608. (1) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences or probation have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently.

(2) Any person who is convicted and sentenced for a crime committed while on probation, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation or released, as the court directs.

(3) Any person who is convicted and sentenced for a crime committed while on probation, parole or conditional release for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation or released.

(4) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released.

(5) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a

*Attach. II*

sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(6) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717 and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(a) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(b) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of incarceration to reach parole eligibility, conditional release and net maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and net maximum may be computed and projected from another to determine the controlling sentence.

(c) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(d) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. The inmate shall be given credit on the aggregate sentence for time spent

Attch. II

incarcerated on the previous sentences, but not exceeding the ~~maximum--credit--toward-parole-eligibility~~ an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned, for the purpose of determining the sentence begins date and the parole eligibility, conditional release and net maximum dates.

(e) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, parole or conditional release, the amount of time served on probation, parole or conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and net maximum dates.

(7) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term.

(8) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed.

Sec. 2. K.S.A. 1984 Supp. 21-4608 is hereby repealed.

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

*Atch. II*

ISSUE

Should K.S.A. 1983 Supp. 21-4608 (6) (d) be technically amended to more succinctly define "maximum credit toward parole eligibility"?

BACKGROUND

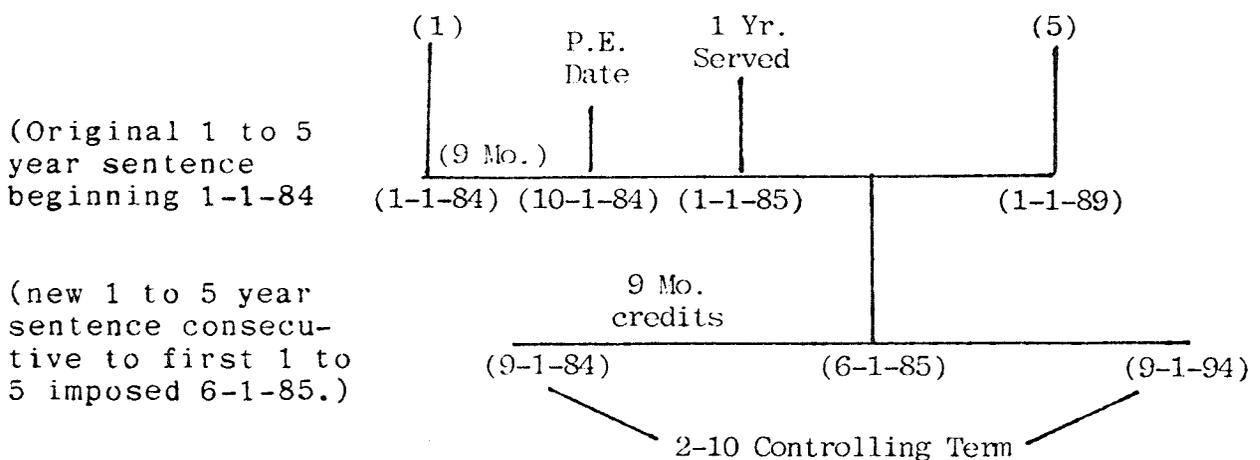
The existing language which we propose to strike--"maximum credit toward parole eligibility"--was added in H.B. 2212 which became law July 1, 1983. The reason it was added was to correct a situation which gave credit on consecutive sentences back to the beginning date of the first sentence. This, in many cases, made consecutive sentences less severe than concurrent sentences.

The problem with the current language is that it is unclear and is subject to interpretation. The Department of Corrections has interpreted this language to mean the amount of time an individual had to serve to be parole eligible provided he earned all possible good time credits. For example, on a one-year sentence this would be nine months. On a two year it would be one year, five months and seven days.

The other interpretation is that the language meant all the time served until this person was parole eligible. This would mean time up to the minimum sentence. For example, if the person served eleven months before being made parole eligible, under this interpretation he would receive eleven months credit on a subsequent consecutive sentence. This interpretation would have the effect of rewarding someone for bad behavior and the failure to earn good time credits.

The amendment we propose adopts the Department's interpretation of this statute. It gives the inmate credit on an aggregate sentence only for that time served on the first sentence which would have made the individual parole eligible, not necessarily the entire time he might have served on the first sentence.

EXAMPLE:



Under the other interpretation, that the individual receive credit up to the date he was actually parole eligible, the individual in this example would receive one year credit, with a resulting sentence begins date of 6-84.

We view this change as essentially one of clarification. We believe H.B. 2212 was intended to reduce the amount of time credited on consecutive sentences. Our interpretation does that. Its only impact is in establishing a sentence begins date on consecutive sentences imposed on different dates. The amendment will remove any doubt as to the proper interpretation of this statute.

RECOMMENDATION

Reintroduce the bill as described.

FISCAL IMPACT

The amendment is technical in nature, and does not alter existing methods of sentence computation. Hence, the bill is without fiscal impact.

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C

2-6-85

5 RS 0449

BILL NO. \_\_\_\_\_

By

AN ACT concerning the secretary of corrections; relating to the issuance of subpoenas for certain purposes; amending K.S.A. 75-5251 and repealing the existing section.

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

Section 1. K.S.A. 75-5251 is hereby amended to read as follows: 75-5251. (a) The secretary shall ~~have power, and it shall be his or her duty from time to time, to~~ examine and inquire into all matters connected with the government and discipline of the correctional institutions ~~under his or her supervision and control,~~ the punishment and employment of the inmates confined ~~therein,~~ in correctional institutions and the purchases and sales of the articles provided for such correctional institutions or sold on account thereof; ~~and he or she may from time to time,~~ and the secretary may require reports from the director or other officers of any such correctional institution in relation to any ~~or all of said matters; it shall be his or her duty to~~ of those matters. The secretary shall inquire into any improper conduct which may be alleged to have been committed by the director or any other officer of any such correctional institution; and for that purpose the secretary shall have power to issue subpoenas to compel the attendance of witnesses; and the production of any papers and writings before it in the same manner and with like effect as in cases of arbitration, writings, records, books, documents and other materials that the secretary considers necessary for the investigation of the issues. Subpoenas may be signed by the secretary of corrections and may be served by any parole or probation officer or law enforcement officer in the same manner as similar process in the district court. Any person who

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testifies falsely or fails to appear when subpoenaed shall be subject to the same orders and penalties to which a person before a court is subject. Any district court of this state, upon application of the secretary of corrections, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the secretary of corrections, by a citation for contempt or otherwise in the same manner as production of evidence or testimony may be compelled before the district court. The secretary may administer oaths to such witnesses as are brought before ~~him-or-her~~ the secretary for examination.

(b) The secretary shall have free access to the correctional institutions at all times, and ~~it shall be the duty~~ of the director and other officers of any such correctional institution, whenever requested, to shall exhibit to the secretary, on demand, all the books, papers, accounts and writings pertaining to the correctional institution, or to the its business, government, discipline or management thereof, and to render to the secretary every other facility in their power to enable the secretary to discharge ~~his-or-her~~ the secretary's duties under this act.

(c) The secretary shall adopt rules and regulations for the direction and government of such correctional institutions and the officers thereof, ~~and may change the same from time to time~~ of correctional institutions.

Sec. 2. K.S.A. 75-5251 is hereby repealed.

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

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ISSUE

Should the Secretary of Corrections power to issue subpoenas be broadened?

BACKGROUND

K.S.A. 75-5251 provides that the Secretary of Corrections has the authority to issue subpoenas to compel the attendance of witnesses, and the production of papers and writings before it in the same manner and with like effect as in cases of arbitration. K.S.A. 5-407 provides that in cases of arbitration that subpoenas be served upon application of the court. This can be a cumbersome process resulting in delays in investigations. During the 1984 legislative session H.B. 3030 was introduced (copy attached). This bill received no committee action. It provides that he may issue and have served subpoenas for matters he is investigating. The process bypasses the District Court in the service of the subpoenas but retains court involvement in enforcing the subpoenas.

RECOMMENDATIONS

H.B. 3030 should be reintroduced.

Attach. II

D

BILL NO. \_\_\_\_\_

AN ACT concerning the community corrections act; relating to chargebacks to counties; concerning custody; amending K.S.A. 75-52,104 and repealing the existing section.

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

New Section 1. An individual placed in a community corrections program by a court shall not be considered as being in the custody of the secretary of corrections.

Sec. 2. K.S.A. 75-52,104 is hereby amended to read as follows: 75-52,104. (a) On and after January 1, 1986, each county receiving grants under this act shall be charged a sum ~~determined by the secretary of corrections which shall be equal to the total of the per diem costs to the state general fund of confinement and rehabilitation~~ of \$28.84 per diem for those persons who are committed to the secretary of corrections on and after the first day of the calendar quarter for which the county first receives grant payments under K.S.A. 75-52,105 and amendments thereto, except that no charge shall be made for those persons: (1) Convicted of a class A, B or C felony; (2) convicted of a class D or E felony who had more than one prior felony conviction; (3) convicted of aggravated assault under K.S.A. 21-3410 and amendments thereto; (4) convicted of a sex offense under article 35 of chapter 21 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto; or (5) sentenced under K.S.A. 21-4618 and amendments thereto.

(b) In addition to amounts charged under subsection (a) to each county receiving grants under the community corrections act, on and after the first day of the calendar quarter for which the county first receives grant payments under K.S.A. 75-52,105 and

*Attach. II*

amendments thereto, a charge shall be assessed against the county for each juvenile committed to or placed in a state youth center, as defined by K.S.A. ~~1983~~ 1984 Supp. 38-1602 and amendments thereto in the amount of \$3,000 for the first calendar year the county receives the grants and \$6,000 during the second calendar year and each calendar year thereafter that the county receives the grants, except that no charge shall be assessed when the commitment or placement in any such facility involves a juvenile adjudged to be a delinquent or a juvenile offender as a result of conduct which if committed by an adult would constitute a class A, B or C felony, an aggravated assault under K.S.A. 21-3410 and amendments thereto or a felony sex offense under article 35 of chapter 21 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto. A charge assessed against a county under this subsection shall be assessed at the time of commitment of the juvenile except that after January 1, 1983, if the commitment of a juvenile is modified within 60 days to remove the facility placement as provided in subsection (c) of K.S.A. ~~1983~~ 1984 Supp. 38-1665 and amendments thereto, the charge assessed against the county shall be \$500 for the first calendar year the county receives a grant and \$1,000 the second and each subsequent calendar year the county receives a grant.

(c) In no case shall the amount charged exceed the amount of the grant which the county is eligible to receive under this act. The secretary of corrections shall determine the charges under subsections (a) and (b) and shall deduct the appropriate charges from the amount of the grant payable to each such county. For individuals convicted of crimes committed after July 1, 1982, the charges to the county shall be computed on the actual length of confinement but not to exceed the average length of time served, by felony class, for individuals paroled during the period July 1, 1982, through June 30, 1983. All such charges shall be a charge against the county of commitment except that the secretary of corrections may waive a charge against a county in a case

involving a commitment arising from an escape or charge of aggravated juvenile delinquency.

(d) A charge against the county of commitment shall terminate at the time an individual is paroled and shall not thereafter be resumed on that commitment.

(e) If an individual is committed to the custody of the secretary of corrections from a participating county and from a nonparticipating county on crimes which would be subject to charges under this act, the charge to the participating county shall be 1/2 the rate established in subsection (a).

Sec. 3. K.S.A. 75-52,104 is hereby repealed.

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

COMMUNITY CORRECTIONS  
1985  
RECOMMENDED STATUTORY CHANGES

I. Issue: Chargeback rate based on prior year's per diem cost of confinement

The per diem chargeback rate is now based on the per diem cost of confinement to the general fund. This policy subjects the participating counties to yearly fluctuations in the amount of funds available to operate programs which are not related to program performance. In fact, if all other factors are constant, a decrease in prison population results in an increase in the per diem cost of confinement and thus an increase in the counties chargeback rate.

Similarly, if prison population remains constant and the Department of Corrections reduced overcrowded housing through expanding the number of facilities, the per diem cost of confinement goes up. Community corrections counties pay more to chargeback costs and have less money for programs under either scenario.

It is difficult for counties to plan from year to year when per diem chargeback rate fluctuates yearly. For example, an increase of \$2.00 a year would mean approximately \$65,000 less funds on which to operate programs for Wyandotte county. This means a county would have to cutback staff or other services and supervision even if the same number of chargeback offenders are sent to prison from that county as the year before.

Proposed Statutory Remedy:

Provide that a fixed chargeback rate of \$28.84 per day be established. \$28.84 is the average cost of confinement for the last five years.

II. Issue: Chargeback for Technical Parole Revocations

Currently, the Community Corrections Act requires charging for all chargeback category commitments to the Department of Corrections. This includes offenders returned to the D.O.C. by the Kansas Adult Authority on technical parole violations. The intension of chargebacks is to provide an incentive to the participating counties to maintain in the community the types of offenders who would formerly have been committed to the Department of Corrections. The district court and the district attorney are by statute represented on the county's community corrections advisory board, and the community corrections programs provide recommendations on sentencing to the district court. If the county through the district court commits an offender to the Department of Corrections, it is a local decision.

However, it is not a local decision when a technical parole violator is revoked. It is a Kansas Adult Authority decision. The counties have already paid for the commitment of such an offender, but have to again resume payment if the Adult Authority over whom they have no control recommit such an offender.

Proposed Statutory Remedy:

Exempt technical parole violators from charges.

III. Issue: Charges for dual commitments from participating and non-participating counties.

Currently, participating counties are charged the full per diem chargeback rate when both a participating and non-participating county commit an offender. If a non-participating county commits an offender, that offender will go to prison regardless of what the participating county does. If a non-participating county has first sentenced the offender to the custody of the D.O.C., the district court in the participating county is very unlikely to grant a paper probation or leave on probation an offender who will be serving a prison sentence anyway.

Proposed Statutory Remedy:

Charge half the per diem cost of confinement for offenders committed from both a participating and non-participating county. This would still maintain an incentive for participating counties to grant probation to the offender, while acknowledging the fact that sentencing in the other county is of equal importance in diverting the offender from prison.

- IV. Issue: Are offenders placed in a community corrections program on probation under the jurisdiction of the sentencing judge or in the custody of the Secretary of Corrections?

BACKGROUND

The Community Corrections Act has always been interpreted as providing that judges wishing to use the Act are to place offenders on probation and then into a local community corrections program as a condition of that probation. Under this arrangement, offenders remain under the jurisdiction of the judge in same way as offenders on probation but not in a community corrections program. Recently, however, one judge in Wichita has interpreted the Community Corrections Act as providing that a person placed in a community corrections program is actually in the custody of the Secretary of Corrections. The Department has been unable to convince him otherwise. His orders continue to cause problems in this area.

Proposed Statutory Remedy:

Amend KSA 21-4610 to provide tht an individual placed in community corrections is not in the custody of the Secretary.

*Attch II*

SENATE BILL NO. \_\_\_\_\_

By

AN ACT concerning evidence; providing for admissibility of certain prerecorded statements and televised or videotaped testimony by certain children in certain actions.

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

Section 1. In any proceeding pursuant to the Kansas code for care of children in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral statement of the child, or of any witness less than 13 years of age, made before the proceeding began, is admissible in evidence if:

(a) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(b) no attorney for any party is present when the statement is made;

(c) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(d) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(e) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(f) every voice on the recording is identified;

(g) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be crossexamined by any party; and

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(h) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a certified shorthand reporter is provided to the parties.

Sec. 2. (a) On motion of any party to a proceeding pursuant to the Kansas code for care of children in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, the court may order that the testimony of the child, or of any witness less than 13 years of age, be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court, the finder of fact and the parties to the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact and the parties to the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a certified shorthand reporter is provided to the parties.

(b) At the taking of testimony under this section:

(1) Only an attorney for each party, the guardian ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys for the parties may question the child; and

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a

*Attach. III*

screen or mirror that permits them to see and hear the child during the child's testimony, but does not permit the child to see or hear them.

(c) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

Sec. 3. (a) On motion of the attorney for any party to a criminal proceeding in which a child less than 13 years of age is alleged to be a victim of the crime, the court may order that the testimony of the child be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding if: (A) The recording is both visual and aural and is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a certified shorthand reporter is provided to the parties.

(b) At the taking of testimony under this section:

(1) Only the attorneys for the defendant, the state and the child, any person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the recording or closed-circuit equipment may be present in the room with the child during the child's testimony;

(2) only the attorneys may question the child;

(3) the persons operating the recording or closed-circuit equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child

*Attach. III*

during the child's testimony but does not permit the child to see or hear them; and

(4) the court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

(c) If the testimony of a child is taken as provided by this section, the child shall not be compelled to testify in court during the proceeding.

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

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

Parish  
Amendment  
2-6-85

0083 such time as the proposition of the method of selection of the  
0084 judges of the district court is resubmitted to the voters of the  
0085 judicial district and a different method of selection is approved  
0086 by the voters as provided by this section.

0087 (e) The provisions of K.S.A. 1982 Supp. 20-333e shall govern  
0088 the filling of the positions enumerated in that section upon  
0089 vacancies occurring on January 10, 1983, by reason of expiration  
0090 of the terms of office for those positions.

0091 (f) Except as provided in subsection (b), the proposition of  
0092 the method of selecting judges of the district court may be  
0093 resubmitted to the electors in any judicial district not more often  
0094 than once every four eight years, whenever there shall be is  
0095 submitted to the secretary of state a petition signed by qualified  
0096 electors of the judicial district, equal in number to not less than  
0097 5% of the electors of the judicial district who voted for the office  
0098 of secretary of state at the last preceding general election. In  
0099 such event, the secretary of state shall cause the proposition as  
0100 stated in subsection (c) to be placed on the ballot at the next  
0101 succeeding general election in an even-numbered year which  
0102 occurs more than 90 days after the date such petition is filed with  
0103 the secretary of state.

0104 (g) It shall be the duty of the state board of canvassers to  
0105 canvass the votes in each judicial district voting on the proposi-  
0106 tion of the method of selection of judges of the district court in  
0107 the manner prescribed by K.S.A. 25-3206 and amendments  
0108 thereto. Upon completion of the final canvass and certification of  
0109 the results, the secretary of state shall transmit a copy of the  
0110 results for each such judicial district to the chief justice of the  
0111 supreme court. Upon receipt thereof, the chief justice shall  
0112 notify the clerk of the supreme court and the board of county  
0113 commissioners of each county in a judicial district which voted  
0114 in favor of the nonpartisan method of selection of their respective  
0115 duties under this act, and the chief justice shall designate a  
0116 chairperson of the commission for each such judicial district, as  
0117 provided in K.S.A. 20-2903 and amendments thereto.

0118 Sec. 2. K.S.A. 1984 Supp. 20-2901 is hereby repealed.

0119 Sec. 3. This act shall take effect and be in force from and  
0120 after its publication in the statute book.

when

is submitted to the electors in a judicial district in 1984 or in any subsequent year, such proposition

the

thereafter

(f)

Attch. IV

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