

Approved March 17, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./p.m. on March 16, 1987 in room 514-S of the Capitol.

~~All~~ members ~~xxx~~ present ~~except~~: Senator Frey, Hoferer, Burke, Feleciano, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Charles Simmons, Department of Corrections
Jim Clark, Kansas County and District Attorneys Association

Senate Bill 366 - Classes of felonies and terms of imprisonment.

Charles Simmons, Department of Corrections, appeared to explain the bill. He testified the department proposes that this provision be amended to strike the words "fixed by the court at not less than" prior to one year with respect to establishing the minimum term for a Class E felony. The department believes the legislature did not intend this result but rather intended to return the minimum sentence for Class E felonies to the pre-1982 term. A copy of his testimony is attached (See Attachment I).

Senate Bill 369 - Contraband in penal institutions.

Charles Simmons recommended that K.S.A. 21-3826 be amended to expand the definition of items which are prohibited to be brought into, taken from, or possessed while in a penal institution or jail. The amendment would bring the Kansas statute into conformity with federal statutes on this subject and would provide that no item could be brought into the prison without the approval of the Secretary of Corrections, director of the institution, or jail. A copy of his testimony is attached (See Attachment II).

Senate Bill 370 - Warrant of secretary of corrections for arrest of escapees.

Charles Simmons recommended the secretary of corrections be authorized to issue a warrant for the arrest and apprehension of any inmate who escapes from the custody of the secretary. This warrant authority would be similar to the authority already granted the secretary of corrections to issue warrants for the arrest of parole violators. A copy of his testimony is attached (See Attachment III). Committee discussion was held.

Jim Clark, Kansas County and District Attorneys Association, stated his association has no positions on these bills but he did have some concerns. He stated he is not opposed to Senate Bill 366; he agrees with intent of Class E Felonies. His major concern is on Senate Bill 369. He stated there needs to be some method of exemption for the lawyer who needs to take documents into the prison to be signed. The concern on Senate Bill 370 is a warrant may only

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on March 16, 1987

Senate Bills 366, 369 and 370 continued

be issued by an impartial magistrate based on probable cause. He said he has not discussed this with the department of corrections, but he feels this concern.

The chairman asked Mr. Clark to discuss his concerns with the Department of Corrections before action is taken on the bill.

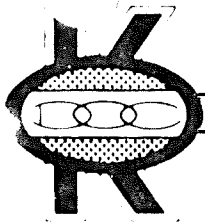
Senate Bill 366 - Classes of felonies and terms of imprisonment.

Senator Hoferer moved to report the bill favorably. Senator Parrish seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

3-16-87



KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR

RICHARD A. MILLS — SECRETARY

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603-3798
913-296-3317

RE: SENATE BILL 366
TOPIC: TERMS OF IMPRISONMENT
ISSUE: K.S.A. 21-4501(e)

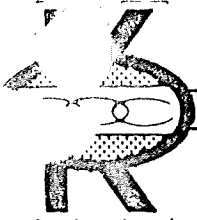
The Department of Corrections proposes that this provision be amended to strike the words "fixed by the court at not less than" prior to one year with respect to establishing the minimum term for a Class E felony. The Department believes this language is misleading and contrary to the intent of the legislature.

Prior to 1982 the statute provided that the minimum term for a Class E felony "shall be one (1) year". In 1982, the statute was amended to provide for a minimum term of "not less than one year nor more than two years." In 1984, when minimum terms for D and E offenses were "rolled back" to 1982 levels, the two year minimum for E felonies was removed. However, the language about the court setting a term at not less than one year was left in the statute.

Some courts have interpreted this to mean that they can set a minimum for Class E offenses for any period of years up to five. In other words, the minimum sentence is limited only on the minimum end (not less than one year) but is unlimited on the maximum end except by the overall maximum sentence.

We believe the legislature did not intend this result but rather intended to return the minimum sentence for Class E felonies to the pre-1982 term.

*Attch. I
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KANSAS DEPARTMENT OF CORRECTIVE 3

MIKE HAYDEN — GOVERNOR

RICHARD A. MILLS — SECRETARY

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603-3798
913-296-3317

RE: SENATE BILL 369

TOPIC: CONTRABAND IN PENAL INSTITUTION

ISSUE: SHOULD K.S.A. 21-3826 BE AMENDED TO BROADEN THE
DEFINITION OF "CONTRABAND" IN PENAL INSTITUTIONS OR
JAILS?

BACKGROUND:

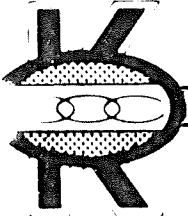
K.S.A. 21-3826 lists particular items which are unlawful to take into, take from, or possess while in any institution or jail. A review of the items listed reveals that a number of items which could potentially compromise the security of an institution are not included in the language of the statute and therefore would not be a violation of law. For example, bringing items, such as yeast with which to make alcoholic beverages, or materials with which to make officer uniforms, would not violate this statute. In addition, bringing in escape materials, such as hacksaw blades or lock-picking devices, would also not be a violation of this statute. In addition, bringing in a firearm would be a violation of this statute while bringing in a firearm, a piece at a time, would not be a violation of the statute.

RECOMMENDATION:

It is recommended that K.S.A. 21-3826 be amended to expand the definition of items which are prohibited to be brought into, taken from, or possessed while in a penal institution or jail. The amendment would bring the Kansas statute into conformity with federal statutes on this subject and would provide that no item could be brought into the prison without the approval of the secretary of corrections, director of the institution, or jailer.

Attachment II

3-16-87



KANSAS DEPARTMENT OF CORRECTIONS

MIKE HAYDEN — GOVERNOR

RICHARD A. MILLS — SECRETARY

JAYHAWK TOWERS • 700 JACKSON • TOPEKA, KANSAS • 66603-3798
913-296-3317

RE: SENATE BILL 370

TOPIC: WARRANT FOR THE ARREST OF ESCAPEES FROM THE CUSTODY OF
THE SECRETARY OF CORRECTIONS

ISSUE: SHOULD THE SECRETARY OF CORRECTIONS BE AUTHORIZED TO
ISSUE A WARRANT FOR THE ARREST AND APPREHENSION OF ANY
INMATE WHO ESCAPES FROM THE CUSTODY OF THE SECRETARY?

BACKGROUND:

K.S.A. 75-5217 authorizes the secretary of corrections to issue a warrant for the arrest of any individual who violates the conditions of that individual's release from incarceration. Such warrants are issued in the case of parole violation and conditional release violation. There is no similar authority for the secretary of corrections to issue a warrant for the apprehension of an individual who has escaped from confinement, although K.S.A. 75-5222 does direct the secretary to take all proper measures for the apprehension of an escaped inmate. The need for authority for the secretary of corrections to issue warrants for the apprehension of escapees has recently surfaced. Two specific problems have been identified.

First, Missouri apparently has a statute which provides that they may detain an individual for only a limited number of hours after that person has been taken into custody unless a warrant has been filed with the sheriff. In one recent incident, an inmate escaped from a Kansas facility on a weekend and was taken into custody in Jackson County, Missouri. Due to the fact that the inmate was taken into custody on a weekend, a warrant through the cooperation of the district attorney's office could not be obtained within the time period required by Missouri law. Consequently, Jackson County officials were in the process of releasing the escaped inmate from custody even though they were aware of his status. The Department of Corrections was able to intervene to have the escapee held on local traffic charges until such time as a warrant could be obtained through the district attorney's office.

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A second situation concerns the escape of an inmate from a minimum custody contract facility. The local prosecutor did not want to file escape charges due to the cost involved in prosecuting the offense and in returning the individual to the county for prosecution. Consequently, no escape warrant was issued. When the inmate was apprehended in another state, Kansas had no warrant to send to that state authorizing the arrest and continued detention of the individual.

RECOMMENDATION:

It is recommended that the secretary of corrections be authorized to issue a warrant for the arrest and apprehension of any inmate who escapes from the custody of the secretary. This warrant authority would be similar to the authority already granted the secretary of corrections to issue warrants for the arrest of parole violators.