

Approved February 13, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael R. O'Neal at
Chairperson

3:30 ~~am~~ p.m. on February 1, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Adam, Peterson and Roy, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Tom Sloan, Special Assistant to the Secretary, Department of Corrections
Tim Owens, General Counsel, Social and Rehabilitation Services
Bev Bradley, Legislative Coordinator, Kansas Association of Counties
Chuck Simmons, Chief of Legal Counsel, Department of Corrections
Steven Davies, Secretary, Department of Corrections

HEARING ON SB 214 Assessment of costs of transporting correctional inmates to court proceedings

Tom Sloan, Special Assistant to the Secretary, Department of Corrections, testified under the present system the custodian of a prisoner must pay to transport a prisoner to court for civil action. The Department of Corrections pays the costs of officers, vehicles and room and board to transport an inmate to court for civil action in cases where the inmate is contesting a divorce, contesting child custody, has filed for bankruptcy and cases in small claims court. SB 214 requires the court assess the costs of transporting an inmate to appear before the court in civil matters. The Department of Corrections would continue to pay all transportation costs for cases involving the Department of Corrections. He said budget restrictions make it difficult to pay for non-essential inmate trips. He also informed the Committee that inmates can give depositions on civil matters and not be present in court for a hearing, see Attachment I.

Tim Owens, General Counsel, Social and Rehabilitation Services, submitted an amendment to SB 214 adding the Secretary of S.R.S. to the bill, see Attachment II. The Department of Social and Rehabilitation Services has been considering having a bill introduced which would address transporting young people to certain court proceedings. Although the cost of transportation is a factor, the safety of S.R.S. workers must also be considered. He said they have in the past billed the county for the cost of transportation.

A Committee member requested the Department of Corrections and the Department of Social and Rehabilitation Services submit to the Committee what it costs to transport inmates and juveniles.

Bev Bradley, Legislative Coordinator, Kansas Association of Counties, testified in opposition to SB 214 on the basis counties would have to bear the cost of transporting inmates. Attachment III.

Charles Simmons, Chief of Legal Counsel, Department of Corrections, in reply to Committee questions, said SB 214 was introduced to address Attorney General Opinion 87-147, see Attachment IV. The Department of Corrections would be willing to consider other solutions that would accomplish the objective.

There being no other conferees, the hearing on SB 214 was closed.

Report by the Secretary of Corrections

Steven Davies Secretary, Department of Corrections, informed the Committee the Department of Corrections has received a \$60,000 N.I.C. grant to review the parole division. He addressed expansion of programs for post incarceration. Programs are being added in the communities in the areas of mental health and drug and alcohol.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 1, 1990

BILL REQUESTS

The Chairman explained a bill request from Sedgwick County from Jim Lawring, Attorney, Sedgwick County. The bill addresses the work release program.

Representative Solbach moved and Representative Fuller seconded to introduce the legislation. The motion passed.

The Chairman also explained the Committee has been requested by Tim O'Sullivan, Attorney, Wichita, through Representative Sebelius, to introduce a bill amending the professional corporation law.

A motion was made by Representative Solbach to introduce the bill amending the professional corporation law. Representative Lawrence seconded the motion. The motion passed.

The Committee meeting was adjourned at 5:10 p.m.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Mike Hayden
Governor

Steven J. Davies, Ph.D.
Secretary

To: House Judiciary Committee

Re: S.B. 214 Concerning persons committed to the secretary of corrections relating to assessment of costs of transporting such persons to civil court proceedings

I. Attorney General Opinion 87-147

- a) October 5, 1987 concluded that in the absence of statutory provisions the custodian of a prisoner must pay to transport prisoner to court for civil action
- b) The result is DOC pays for transportation officers, vehicle, room and board for:
 - 1) cases where inmate is contesting a divorce
 - 2) cases where inmate is contesting child custody (no matter how long inmate must serve before being parole eligible)
 - 3) cases in which the inmate has filed for bankruptcy
 - 4) cases in small claims court

II. S.B.214

- a) Requires court assess the costs of transporting an inmate to appear before the court in civil matters
- b) DOC will continue to pay all transportation costs for cases involving the Department

III. Rationale

- a) With the number of institutions and inmates which the Department must manage, staff and transport, budget reductions make it difficult to pay for non-essential inmate trips
- b) Inmates can give depositions on civil matters and not be present in court for the hearing

IV. Conclusion

- a) The Department requests you recommend S.B. 214 favorably for passage

2/1/90
H. Jud. Com.
Attachment I

SENATE BILL No. 214

By Committee on Judiciary

2-8

2/1/90
H. Jud. Com.
Attachment II

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AN ACT concerning persons committed to the secretary of corrections; relating to assessment of costs of transporting such persons to certain court proceedings.

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

Section 1. When any court of the state of Kansas issues an order directing any person committed to the custody of the secretary of corrections to appear before the court in any judicial proceeding to which the Kansas department of corrections is not a party, the order shall specify to whom the costs of transporting such person to appear before the court shall be assessed. In no instance shall the court assess to the department of corrections the cost or responsibility of transporting an inmate to appear before the court if the department is not a party to the proceeding.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Custody of
or committed to the Secretary of Social and Rehabilitation Services

or Kansas Department of Social and Rehabilitation Services

or Kansas Department of Social and Rehabilitation Services

individual

said



"Service to County Government"

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John T. Torbert

February 1, 1990

To: Representative Michael O'Neal,
Members House Judiciary Committee

From: Bev Bradley, Legislative Coordinator
Kansas Association of Counties

Re: SB 214

The Kansas Association of Counties has major concerns with SB 214. This bill prohibits courts from assessing transportation costs against the Department of Corrections of inmates in custody of the Secretary of Corrections in court proceedings where the Department is not a party. The court would be required to designate how these costs were to be paid. We suspect that this means the county would bear the costs. We oppose this.

If the county would be the responsible governmental unit, it is another mandate. It would be another expense item over which the county would have no control, but would be required to do. We have heard a great deal this session about tax lids, removing exemptions, and budget padding. We haven't heard about stopping expense items over which the county governing board has no control. We oppose the county being given this additional expense item.

This morning I visited with Sheriff Anderson from Douglas County. He told me that the federal government recognizes the cost of a current year vehicle and one officer as \$31.94 per hour. This is the amount they are willing to pay for law enforcement for the Clinton Lake area, without negotiations. A prisoner that he had in mind would require at least one other officer in addition to the driver to transport. That is another \$10. per hour. A trip to Lansing and back to Lawrence to bring a prisoner is a minimum of 2 hours. Then to return him is another 2 hours. We now have 4 hours time at a minimum cost of \$41.94 per hour or \$167.76. That is one prisoner, one time, a relative short distance. It would be a major cost state wide. We oppose this concept.

Thank you Mr. Chairman, for the opportunity to come before your committee.

*2/1/90
H. Jud. Com.
Attachment III*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 5, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87-147

Mr. Timothy J. Chambers
Reno County Attorney
Law Enforcement Center
210 West First Street
Hutchinson, Kansas 67501

Re: Counties and County Officers -- Sheriff --
Transporting Inmates to Civil Proceedings

State Departments; Public Officers and Employees --
Department of Corrections -- Transportation of
Inmates to Civil Proceedings

Synopsis: The primary responsibility for transporting a prisoner to court in a civil case under a writ of ad testificandum lies with the custodian. In the absence of statutory or judicial direction, there is no authority to cause third parties who are neither custodians nor parties to the litigation to bear the costs of transporting a prisoner. Cited herein: K.S.A. 19-812; 60-1503; 75-5201; 28 U.S.C. §§ 2241 and 2243.

Dear Mr. Chambers:

As Reno County Attorney, you have requested our opinion concerning the transportation of prisoners to court. Specifically, you inquire whose responsibility it is to transport a prisoner in the custody of the Secretary of Corrections when that prisoner is needed to appear in court in a civil case.

2/1/90
H. Jud Com.
Attachment IV

You indicate that in criminal cases the Department of Corrections transports the prisoner if the crime occurred within their institution. When the crime is one that occurred in Reno county, outside K.S.I.R., the sheriff's office transports the prisoner to court. Thus, the problem of transporting a prisoner arises only when a civil proceeding is involved. You further indicate that it is undisputed that both the Department of Corrections and the Sheriff, as officers of the court, must obey the mandate of the court and transport prisoners if the court so orders. K.S.A. 75-5201 et seq. and K.S.A. 19-812. However, because the transportation of prisoners to civil proceedings causes a hardship on both, you request our opinion.

There are no statutes or case law in our state specifically setting forth the relative responsibilities of transporting prisoners to civil proceedings. As such, the question presented is one appropriately for the legislature. However, because we are presented with an issue of substantial practical importance (who must bear the costs of transporting prisoners when directed by our courts), we are persuaded to answer your question in the context of a writ of habeas corpus ad testificandum.

A writ of habeas corpus ad testificandum is an order calling for the production as a witness of one lawfully incarcerated. Courts issue these writs when it is necessary to bring a person who is confined in a prison or jail into court to testify in a pending case. U.S. v. Bailey, 585 F.2d 1087, 1090, (D.C. Cir. 1978). Although subject to regulation by statute, the power to issue the writ is inherent in the courts. When such a writ is served, the sheriff, jailer or other custodian of such person is bound to bring him into court to give his testimony. 97 C.J.S. Witnesses §30 (1957).

The Supreme Court of the United States has had occasion to answer whether third parties, who are neither custodian nor parties to the litigation, should bear the cost of producing prisoners in a federal court under a common-law writ of habeas corpus ad testificandum. In PA. Bureau of Correction v. U.S. Marshals Service, 474 U.S. 34, 106 S. Ct. 355, 88 L.Ed.2d 189 (1985), the United States Marshals Service was ordered by the United States District Court for the Eastern District of Pennsylvania to transport a prisoner from the county jail to the federal court. This decision was reversed by the United States Court of Appeals for the Third Circuit. On certiorari, the United States Supreme Court

2/1/90
H. Jud Com
Att IV
2

affirmed, holding that in the absence of exceptional circumstances, neither a magistrate nor a district court has the authority to order the Marshals to transport state prisoners to the federal courthouse in an action brought by a state prisoner under 42 U.S.C. §1983 [a civil action] against county officials. (But c.f., Justice Steven's dissent).

The holding in this case is predicated in part on the habeas corpus statute found in 28 U.S.C. §2243. It provides in pertinent part that the writ "shall be directed to the person having custody of the person detained." The Supreme Court agreed with the Court of Appeals that there was no basis in the habeas corpus statute for the District Court's authority to direct a writ ad testificandum to a non-custodian. The Supreme Court reasoned:

"We find no evidence in the language of §2241 and §2243, in their legislative history, or in the common-law writ ad testificandum to suggest that courts are also empowered to cause third parties who are neither custodians nor parties to the litigation to bear the cost of producing the prisoner in a federal court. We therefore conclude that there is no basis in the habeas corpus statute for a federal court to order the Marshals to transport state prisoners to the federal courthouse." PA. Bureau of Correction v. U.S. Marshals Service 474 U.S. at 39, 106 S.Ct. at 359, 88 L.Ed.2d at 194-195 (1985). (Emphasis added.)

While not directly on point (because it deals with federal marshals' duties), the Supreme Court case is useful by analogy. The Kansas statute dealing with general writs of habeas corpus is found at K.S.A. 60-1503, which states:

"(b) Form. The writ shall be directed to the party having the person under restraint and shall command him or her to have such person before the judge at the time and place specified in the writ."

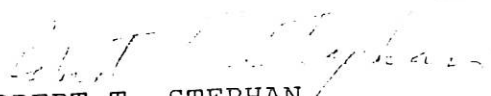
The statute makes it clear that general writs are to be addressed to the custodian and that the custodian is charged with bringing the person before the judge. Applying this


2/1/90
N. Jud Com
Att IV
3

statute to writs of habeas corpus ad testificandum, we conclude that the custodian is the proper entity to be charged with the transportation.

Accordingly, it is our opinion that the custodian of the prisoner is the appropriate entity to be charged with the transportation of a prisoner to a civil action until such time as the legislature further clarifies the relative responsibilities. See also Note, "Transportation of State Prisoners to their Federal Civil Rights Actions," 53 Fordham L. Rev. 1211, 1228-29 (1985), cited in U.S. v. Sokolov, 814 F. 2d 864 (2nd Cir. 1987).

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm

2/1/90
H. Jud Com
Att IV 4