

Approved March 8, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~/p.m. on February 22, 1990 in room 313-S of the Capitol

All members were present except:

Representatives Fuller, Peterson, Scott, and Snowbarger

Committee staff present:

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

Conferees appearing before the committee:

Representative Jayne Aylward
Arden Ensley, Revisor of Statutes Office
Representative Joann Flower
Barbara Crouse, Corrections Officer, Kansas State Penitentiary
Deborah A. Seaman, Corrections Officer, Kansas State Penitentiary
Representative Clyde Graeber
Chuck Simmons, Legal Counsel, Department of Corrections
Major Doug Friesz, Kansas State Penitentiary
Daniel Crouse, Kansas State Penitentiary
Representative Martha Jenkins

HEARING ON HB 2891 Legislative Liability and Immunity from arrest

Representative Jayne Aylward testified HB 2891 clarifies legislative immunity particularly in the area of traffic infraction. The bill defines a breach of the peace as any crime, misdemeanor or traffic infraction. It further states that no member of the legislature is immune from arrest or conviction for any breach of the peace.

Arden Ensley informed the Committee HB 2891 is a restatement of the law, not a change in the law. Receiving a traffic ticket is a notice to appear, not an arrest. It is not the intent of this bill to change the constitution.

The hearing on HB 2891 was closed.

HEARING ON HB 2880 Creating the crime of assault of a correctional employee

Representative Joann Flower testified HB 2880 creates a new crime by making the assault of a correctional officer a class D felony. The officers at Kansas State Penitentiary and Kansas Correctional Institute in Lansing requested this bill. Currently the assault of a law enforcement officer is a class A misdemeanor, however, it is the policy of the Leavenworth County Attorney not to prosecute misdemeanor crimes committed by inmates within the walls of the Lansing correctional facilities, see Attachment I.

Barbara Crouse, Corrections Officer, Kansas State Penitentiary, testified HB 2880 will upgrade the act of assault of a corrections officer from a misdemeanor to a felony. When these charges are made by the District Attorney's office and a conviction is made, the charges and sentences will be placed up-front in the inmates permanent records. At the present time the inmate is segregated for a period of time, has a loss of good time and a loss of privileges. After a time the dangerous nature of these men is forgotten. The bill will send a message to inmates that if they attack staff they will do some serious time, see Attachment II.

Deborah A. Seaman, Corrections Officer, Kansas State Penitentiary, testified that without HB 2880 they cannot govern inmate actions or insure officer safety, let alone try to enforce behavior or provide a reasonable deterrent for assault on a corrections officer. The number of assaults of correctional officers will increase and the number of qualified dedicated corrections officers will decrease, see Attachment III.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 22, 1990.

Representative Clyde Graeber informed the Committee the bill was introduced at the request of the correctional officers in Leavenworth County. He explained the makeup of Kansas State Prison is changing with the moving out of all of the minimum security prisoners and the movement to Kansas State Prison of most of the maximum security prisoners. This creates a tense situation and affects the working conditions of everyone at Kansas State Prison. He said the state is obligated to protect the employees of Kansas state prisons and to make their jobs easier. The Leavenworth delegation feels this is a very important piece of legislation.

Chuck Simmons, Legal Counsel, Department of Corrections, testified on behalf of Steven J. Davies, Secretary of Corrections, in support of HB 2880. He said Secretary Davies proposes the bill be amended to include all corrections employees and making it a class D felony offense to commit battery on a correctional employee and a class E offense to commit an assault on a correctional employee. He also recommended raising the felony level of aggravated escape and aiding an escape from a class E felony to a class D felony. He further recommended redefining the crime of Traffic in Contraband and raising the level of the crime from a E to a D felony. Sec. 9, page 6, should not be so broad that the specific list of prohibited items is stricken. Rather the statute should be amended to state that in addition to the listed items, "any other unauthorized items whatsoever" should be a violation of the statute, see Attachment IV. A substitute bill is Attachment V.

Major Doug Triesz, Kansas State Prison, addressed the measure of control that has been lost over the past few years.

Daniel Crouse, Kansas State Penitentiary, said he is the husband of Barbara Crouse, who was assaulted twice within two months. He wants people three, four or five years from now to know a particular inmate is dangerous.

There being no other conferees, the hearing on HB 2880 was closed.

HEARING ON HB 2920 Expedited appeal of habeas corpus actions involving extradition

Representative Jenkins testified HB 2920 pertains to the expedited appeal of habeas corpus proceedings involving extradition. The bill requires a transcript to be prepared within 20 days after the appeal from a judgment or an order is filed in a habeas corpus proceeding. Hearings on these appeals are to be heard at the earliest practicable time, see Attachment VI.

There being no other conferees, the hearing on HB 2920 was closed.

The minutes of February 8 and February 12 were approved.

The Committee meeting was adjourned at 5:15 p.m.

STATE OF KANSAS

JOANN FLOWER
REPRESENTATIVE, 47TH DISTRICT
JEFFERSON AND LEAVENWORTH
COUNTY AREA
RT. 2, BOX 5
OSKALOOSA, KANSAS 66066
(913) 863-2918



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL
BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

Rep. Joann Flower
22 February 1990
Testimony Before the House Judiciary Committee
H.B. 2880

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to testify today on H.B. 2880. House Bill 2880 creates a new crime by making the assault of a correctional officer a Class D felony. This measure was introduced by the Leavenworth County Legislative Delegation at the request of the correctional officers at KSP and KCIL in Lansing.

Under current law (K.S.A. 21-3409) the assault of a law enforcement officer is a class A misdemeanor. It is the policy of the Leavenworth County Attorney to not prosecute misdemeanor crimes committed by inmates within the walls of our Lansing correctional facilities. This leaves our correctional officers without any recourse or even satisfaction when attacked by an unarmed inmate.

I would urge this committee to give favorable consideration to H.B. 2880. Thank you very much.

2/22/90
H. Jud Com.

Attachment I

Feb. 22, 1990

Rep. O'Neil, Members of the Committee, thank you for the opportunity to present my reasons to you to upgrade the act of Assault of a Correctional Officer from a Misdemeanor to a Felony.

The possibility of being tried and sentenced to several extra years in the Penitentiary will act as a deterrent to future assaults.

Messages will be sent to the Inmate population that if they attack staff, they will do some serious time.

Messages will be sent to those who, now and in the distant future, assign Inmates to positions of trust. These Inmates must not be allowed to regain a position where they should be considered trustworthy when, in fact, they are a danger to staff.

Messages will be sent to Mental Health personnel. They must be forced to be aware which inmates have proven themselves to be a danger to staff and not indiscriminately replace these inmates back into positions where staff can be re-assaulted.

Messages will be sent to the parole board that these inmates are dangerous and special attention should be taken before the final decision to parole is made.

When charges are made by the District Attorney's office and a conviction is made, these charges and sentences are place up front and permanent in the inmates record. When a conviction downtown is not present, the possibility that

2/22/90
H. Gub Com

Attachment II

someone not familiar with the inmate may overlook the dangers or not accept the fact that the inmate is dangerous and replace him in a position of trust.

The internal punishment is typically segregation for a period of time, loss of good time, and loss of privileges. The segregation time ends, privileges are returned in a few months and, all too often with the turnover of staff, the dangerous nature of these men is forgotten. Formal charges can keep these inmates in the forefront for a longer period of time. This should happen along with, not instead of, formal charges and the possibility of extended prison time.

Correctional Staff have no protection except their wits. We carry no weapons, no mace, no deterrent except determination to live through today and do the job we are paid to do to the best of our ability. Street Law Enforcement at least have the emotional support of carrying a weapon for protection. Correctional Officers are placed in a more vulnerable position.

Statistics prove that as inmate population go down, as is now happening at K.S.P., the rates of assaults on both Staff and Inmate go up markedly.

Assaults on Female Staff are typically sexual, as opposed to retaliatory, in nature. Male inmates wish to show their dominance over females. These assaults have been done without any weapons. That makes this most vile intrusion on a woman that civilized man knows, a misdemeanor!

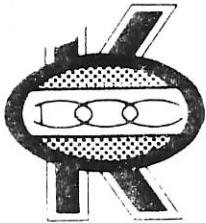
2/22/90
J. GudCom
Att II
2

Any attack on an officer, whether armed or not, must be dealt with the heaviest hand possible.

You, the members of this committee, can send the most important message. You can tell every correctional officer in Kansas that you know the danger we are in. You can tell us you are going to do whatever it takes to support us. Please show us you appreciate the job we do for the State of Kansas by giving us a law with enough teeth in it to make it effective.

Thank you for your support.

2/22/90
H. Jud Com
Att II 3



KANSAS DEPARTMENT OF CORRECTIONS

INTERDEPARTMENTAL MEMORANDUM

TO:

DATE:

FROM:

SUBJECT:

We live in a Country with laws that are made to govern our actions and attitudes, laws that are made to ensure safety and security among citizens, laws that are made to enforce morales and lawful behavior, and laws that provide proper incarceration for unlawful acts. Without bill 2880 we cannot govern inmate actions, or ensure officer safety. Let alone try to enforce behavior or provide a reasonable deterrent for assault on a corrections officer.

It is an incredible shame to live in a state where an inmate found in possession of 3 marijuana cigarettes can be charged with a class E felony and within the same day a corrections officer can be assaulted by this same inmate and the only recourse we have is to sentence him to 75 days in a different cell, and of course the inmate gets credit for time served while the investigation is on going. Does this truly sound like a reasonable deterrent? Or do the words sitting duck take on a new meaning? With the Department of Corrections having little or no recourse, you will continue to not only see the number of assaults of qualified dedicated correctional officers dwindle.

At this time we the correctional officers in the state of kansas are continuing to do a thankless job to ensure the safety of you, the citizens. Yet citizens will continue to demand that someone else pay for it. It is time for us to take a stand fo r ourselves in order ot continue to do the job you the citizen demands, and still maintain control over 1600 inmates currently incarcerated at K.S.P. complex In order for us to maintain that control we need to have your support to ensure this bill is passed, a deterrent is apparent, and we the correctional officers are not just sitting ducks

increase # of
ducks
number

2/22/90
H. Jud Com.

Attachment III

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: HOUSE BILL 2880

Secretary Davies fully supports the intent of H.B. 2880 to create a safer working environment for corrections officers. Certainly any reasonable action that can be taken to reduce the potential for injury in the line of duty to these employees should be considered and implemented where possible.

By raising the classification of an assault on a corrections officer to the felony level, H.B. 2880 makes a strong statement that the State will not tolerate abuses by inmates against staff who daily manage and control some of the most dangerous individuals in our society.

Under current law assault on a law enforcement officer is a Class A misdemeanor; as is battery on a law enforcement officer. Assault on other than a law enforcement officer is a Class C misdemeanor; with battery being a Class B misdemeanor.

Secretary Davies is concerned that current laws do not create enough of a deterrent effect to keep inmates from acting out against corrections officers and other corrections employees. Therefore, the Secretary suggests that consideration be given to broadening H.B. 2880 to include all corrections employees and making it a Class D offense to commit a battery on a correctional employee and a Class E offense to commit an assault on a correctional employee.

Counselors, maintenance workers, clerical staff, and other support staff work in institutions on a daily basis and are exposed to the same individuals and risks as a corrections officer. By including these individuals along with corrections officers, the State will serve notice that it will take aggressive action to better provide for the safety of those who work in a corrections environment.

2/22/90
H. Jud. Com.

Attachment IV

The Secretary has two additional recommendations to provide for the safety of officers and the security of correctional institutions and the general public.

First, it is recommended that consideration be given to raising the felony level of aggravated escape and aiding an escape from a Class E felony to a Class D felony. Escapes or attempted escapes pose a serious risk to those who work in a corrections environment. By raising the classification of the crime from an E to a D felony, some inmates may be discouraged from taking this action. Any escape which does not occur or which is not attempted lessens the potential risks to staff and others.

The second additional action which is recommended is to redefine the crime of Traffic in Contraband and raise the level of the crime from an E to a D felony.

The crime needs to be redefined because in its present form it does not make it a violation to bring certain items into a correctional facility. For example, it would not violate this statute to bring in yeast or other food items with which alcohol or "hooch" could be produced; bringing in parts of a gun would not be prohibited by the current law; nor would bringing in saw blades or other tools.

Obviously, any of the above items pose a risk to security and a threat the safety of staff. Bringing them into a correctional facility should be prohibited.

The amendments we have proposed have been distributed to you. Upon further review, we believe the amendments to the contraband statute in Sec. 9, page 6, should not be so broad that the specific list of prohibited items is stricken. Rather, the statute should be amended to state that in addition to the listed items, "any other unauthorized item whatsoever" should be a violation of the statute.

2/22/90
H. Jud Com.
Att IV
2

PROPOSED BILL NO. _____

By

AN ACT concerning crimes and punishments; relating to correctional institutions, officers and employees; defining and classifying certain crimes; amending K.S.A. 21-3110, 21-3810, 21-3811 and 21-3826 and repealing the existing sections.

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

Section 1. K.S.A. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(6) "Correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

(7) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

~~(6)~~ (8) To "deprive permanently" means to:

(a) Take from the owner the possession, use or benefit of

2/22/90
 J. G. Com.
 Attachment V

his or her property, without an intent to restore the same; or

(b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

~~(7)~~ (9) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(8)~~ (10) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(9)~~ (11) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(10)~~ (12) "Law enforcement officer" means any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

~~(11)~~ (13) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

~~(12)~~ (14) "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(13)~~ (15) "Owner" means a person who has any interest in property.

~~(14)~~ (16) "Person" means an individual, public or private

2/22/90
H. Jud. Com.
Att V-2

corporation, government, partnership, or unincorporated association.

~~(15)~~ (17) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

~~(16)~~ (18) "Property" means anything of value, tangible or intangible, real or personal.

~~(17)~~ (19) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

~~(18)~~ (20) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

~~(19)~~ (21) "Public officer" includes the following, whether elected or appointed:

(a) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(c) A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(d) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

(f) Any other person exercising the functions of a public officer under color of right.

~~(20)~~ (22) "Real property" or "real estate" means every

2/22/90
L. Jud Com
Att V-3

estate, interest, and right in lands, tenements and hereditaments.

{21} (23) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

{22} (24) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

{23} (25) "Stolen property" means property over which control has been obtained by theft.

{24} (26) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

{25} (27) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

New Sec. 2. (a) Assault of a correctional officer or employee is assault, as defined in K.S.A. 21-3408 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Assault of a correctional officer or employee is a class E ~~misdemeanor~~ ^{Felony}.

New Sec. 3. (a) Aggravated assault of a correctional officer or employee is aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Aggravated assault of a correctional officer or employee is a class C felony.

2/22/90
 J. J. Cor.
 Att V - 4

New Sec. 4. (a) Battery against a correctional officer or employee is battery, as defined in K.S.A. 21-3412 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Battery against a correctional officer or employee is a class D felony.

New Sec. 5. (a) Aggravated battery against a correctional officer or employee is aggravated battery, as defined in K.S.A. 21-3414 and amendments thereto, committed against a correctional officer or employee by an inmate incarcerated in a correctional institution.

(b) Aggravated battery against a correctional officer or employee is a class B felony.

New Sec. 6. Sections 2 through 5 shall be part of and supplemental to the Kansas criminal code.

Sec. 7. K.S.A. 21-3810 is hereby amended to read as follows:
21-3810. Aggravated escape from custody is:

(a) Escaping while held in lawful custody upon a charge or conviction of felony; or

(b) escaping while held in custody on a charge or conviction of any crime when such escape is effected or facilitated by the use of violence or the threat of violence against any person.

Aggravated escape from custody is a class E D felony.

Sec. 8. K.S.A. 21-3811 is hereby amended to read as follows:
21-3811. Aiding escape is:

(a) Assisting another who is in lawful custody on a charge or conviction of crime to escape from such custody; or

(b) supplying to another who is in lawful custody on a charge or conviction of crime, any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or

(c) introducing into an institution in which a person is confined on a charge or conviction of crime any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

2/22/90
J. J. Corn
Att V -5

Aiding escape is a class E D felony.

Sec. 9. K.S.A. 21-3826 is hereby amended to read as follows:
 21-3826. Traffic in contraband in a penal institution is introducing or attempting to introduce any item whatsoever into or upon the grounds of any institution under the supervision and control of the ~~director--of--penal--institutions~~ secretary of corrections or any jail, or taking, sending, attempting to take or attempting to send therefrom any item whatsoever or any unauthorized possession of any item whatsoever while in aforesaid ~~institution-or-distributing-within-any-aforesaid-institution, any narcotic, synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler, alcoholic liquor, intoxicating beverage, firearm, ammunition, gun, powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication, or writing~~ any such institution or jail, without the consent of the warden secretary of corrections, director, superintendent or jailer.

Traffic in contraband in a penal institution is a class E D felony.

Sec. 10. K.S.A. 21-3110, 21-3810, 21-3811 and 21-3826 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

2/22/90
 D. J. Com
 Att V-6

MARTHA JENKINS
 REPRESENTATIVE, FORTY-SECOND DISTRICT
 LEAVENWORTH COUNTY
 ROUTE 1, BOX 47
 LEAVENWORTH, KANSAS 66048-9712
 STATE CAPITOL, ROOM 426-S
 TOPEKA, KANSAS 66612
 (913) 296-7680



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 VICE-CHAIRMAN: JUDICIARY
 MEMBER: AGRICULTURE AND SMALL BUSINESS
 FEDERAL AND STATE AFFAIRS
 LEGISLATIVE, JUDICIAL AND
 CONGRESSIONAL APPORTIONMENT
 NATURAL AND SCIENTIFIC AREAS
 ADVISORY BOARD

H.B. 2920

22 February 1990

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to testify today on H.B. 2920. House Bill 2920 pertains to the expedited appeal of habeas corpus proceedings involving extradition. The bill requires a transcript to be prepared within 20 days after the appeal from a judgment or an order is filed in a habeas corpus proceeding. Hearings on these appeals are to be heard at the earliest practicable time.

The bill further provides that the only design of the appeal is to do substantial justice to the party appealing. No incidental questions which may have arisen on the hearing of the application before the court shall be reviewed.

This measure was introduced to address a problem we have experienced in Leavenworth County for some time. Our county jail houses many federal detainees and other criminals, for extended periods of time and at great costs to the taxpayers, who are held as detainees for other states. Leavenworth County seems to have more than its share due to the presence of the federal, military and state penitentiarys. We have been unsuccessful in our appeal to federal and state governments for impact aid.

The language was suggested by Bob Abbott, Chief Judge of the Kansas Court of Appeals and is patterned after Texas law. Simply put, this measure reduces the amount of time involved in an appeal and allows the Court to hear the appeal at the earliest practicable time.

2/22/90
 J. Jud Com

Attachment VI