Approved: March 14, 96
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 29, 1996 in Room 313-S of the Capitol.

All members were present except:
Representative Candy Ruff - Excused

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Charles Simmons, Secretary Department of Corrections
Paul Shelby, Office of Judicial Administration
Jim Clark, Kansas County & District Attorneys Association
Representative John Ballou
Representative John Topliker
David Post, Citizen
Mike Post, Citizen
Wendy McFarland - American Civil Liberties Union
Leo Taylor, Kansas Parole Board

Others attending: See attached list

Secretary Charles Simmons, Department of Corrections, appeared before the committee with several bill requests. The first would allow the presence of an opposite sex corrections officers during strip and body cavity searches of inmates during an emergency at a correctional facility. The second would delete the provision that authorizes placement of persons acquitted or found not guilty because of insanity under the supervision of KDOC parole services. The next would amend several sections requiring the department to establish regulations regarding: training standards; health, medical and dental standards; relationship between custody classification and an inmate's progress in work, education and administration of oaths in conducting investigations and disciplinary proceedings. The last repeals K.S.A. 75-5223 which requires the department to provide copies of religious texts to inmates at state expense, (Attachment 1).

Representative Grant made a motion to have the bill requests introduced as committee bills. Representative Nichols seconded the motion. The motion carried.

Paul Shelby, Office of Judicial Administration, appeared before the committee with a bill request that would amend K.S.A. 1995 Supp. 8-253 & 8-2115 which relates to the reporting of traffic convictions and adjudications from the district courts to the Division of Vehicles, (Attachment 2).

Representative Pauls made a motion to have the bill request introduced as a committee bill. Representative Standifer seconded the motion. The motion carried.

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee with three bill requests. He explained that the first request would amend the discovery statute. The second would amend the criminal possession of firearm statute and the last amends the sentencing grid so that involuntary manslaughter resulting during a DUI it would result in imprisonment, (Attachment 3).

Representative Howell made a motion to have the bill requests introduced as committee bills. Representative Yoh seconded the motion. The motion carried.

Representative Doug Spangler appeared before the committee with a bill request relating to the cost of the sexual assault evidence collection kits, (Attachment 4). He also requested that a bill number be saved for a DUI interlock proposal, which at this time has not been drafted.

Representative Spangler made a motion to have the bill request introduced as a committee bill and a bill slot saved for future usage for an interlock bill. Representative Snowbarger seconded the motion. The motion carried.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on January 29, 1996.

Hearings on **HB 2700** - if parole denied, hearing within 10 years of the denial instead of 3 years, were opened.

Representative John Ballou appeared before the committee as a sponsor of the bill. He stated that the current system places an undue burden on the victims and their families to have to testify and relive the horror of the crime over again. This bill would simply allow the Parole Board to lengthen the time between parole hearings, (Attachment 5).

Representative John Topliker appeared before the committee as a sponsor of the bill. He felt that there is a need to grant more discretion to the Parole Board, (Attachment 6).

Secretary Charles Simmons, Department of Corrections, appeared before the committee in support of the concept of the bill. He commented that decreasing the frequency of hearings would not likely affect parole decision outcomes, but would have the positive effect of reducing the disruptions that these hearings create in the lives of victims and their families. He suggested that the five-year maximum pass length for the Class C, D & E felony classes be set at three years. The five-year pass presents a potential for inmate custody re-distribution within the inmate population and would have an impact on disruptive behaviors, staff safety concerns, escape risks and inmate work assignments, (Attachment 7).

David & Mike Post, citizens, appeared before the committee as proponents of the bill. They testified that six of their family members were killed in 1980 and Danny Crump was sentenced to 6 life sentences. He was eligible for parole fifteen years later and will be up again every three years thereafter. They believe that this is unfair for the family of the victims and that the Parole Board should be able to choose when an inmate would be considered for parole, (Attachments 8 & 9).

Leo Taylor, Kansas Parole Board, appeared before the committee at the invitation of the Chairman. He commented that the Parole Board supports the effort of extending the length of time required for a parole hearing.

Committee members had many questions as to how the Parole Board worked and the Chairman invited the Parole Board to appear before the committee and give a briefing at a later date.

Wendy McFarland - American Civil Liberties Union, appeared before the committee as an opponent to the bill due to the fact that it may be unconstitutional because of the ex post facto provision. She stated that Article 1, Section 8 of the Constitution prohibits government from increasing the severity of ones sentence after it has been given, (Attachment 10).

Representative Mays questioned how this bill would be lengthening the sentence of someone sentenced. Ms. McFarland replied that this was something the courts would need to decide if this bill passes.

Jill Wolters told the committee that in April 1995 the United State Supreme Court, in a 7-2 decision, held in *California Department of Corrections v. Morales*, 131 L Ed 2d 588, that the California law, which did something very similar to this bill, did not violate the ex post facto prohibition in the Constitution, because it didn't change the definition of the criminals crime or change the punishment attached to the crime. It simply altered the method in which the release date could be moved up and the "amendment creates only the most speculative possibility of increasing the length of the time".

The committee meeting adjourned at 5:15. The next meeting is scheduled for January 30, 1996 .

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 29, 96

NAME	REPRESENTING
Paul Shelby	OJA
Charles Simmons	DOC
~~Barb Jones~~	KSC
Scott Misoglu	DOB
Jan Johnson	KDOC
Glen Mullen	House Maj Leader
Jim Clark	KCDAA
Bob Wyatt	St. Parole Board
LEO TAYLOR	" " "
Joe Ballou	House Rep.
John Toplikar	" "
Jason Oblander	Intern
Mike Post	self
DAVID POST	SELF
Lynne Post	S. H
Cindy Foster	self
KEITH L HINDS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Peggy Jarman	PCAL
Kellen Kultala	KTLA
Ron Smith	KBA

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
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Topeka, Kansas 66612-1284
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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: January 29, 1996

To: Representative O'Neal, Chairperson
House Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: Request for Bill Introductions

I am requesting that the House Judiciary Committee introduce the following bills on behalf of the Department of Corrections:

- Amends KSA 22-2524 to allow the presence of opposite sex corrections officers during strip searches and body cavity searches of inmates during an emergency at a correctional facility. (5 RS 1839)

- Amends KSA 22-3428 by deleting provisions which currently authorize placement of persons acquitted or found not guilty because of insanity under the supervision of KDOC parole services. (5 RS 1840)

- Amends several statutory sections requiring that the department establish regulations regarding: training standards; health, medical and dental standards; relationship between custody classification and an inmate's progress in work, education or training; and administration of oaths in conducting investigations and disciplinary proceedings. (5 RS 1844)

- Repeals KSA 75-5223 which requires the department to provide copies of religious texts to inmates at state expense. (5 RS 1774)

Bill drafts for these proposals are attached. Thank you for your consideration and assistance in this matter.

CES:jj
Enclosures

House Judiciary
1-29-96
Attachment 1

BILL INTRODUCTION
House Judiciary Committee

Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee:

I appreciate the opportunity today to request a bill introduction which would amend K.S.A 1995 Supp. 8-253 and K.S.A. 8-2115 which relate to the reporting of traffic convictions and adjudications from the district courts to the Division of Vehicles, Department of Revenue.

The statutes noted above set out the specific format and content of information that must be reported. In the past year, the courts and the Division of Vehicles have been working together to explore the use of new technologies for electronic transmission of statutorily required information.

Wyandotte County District Court was established as a pilot site in September 1994 to test electronic transmission of selected Kansas minor traffic convictions to the Division of Vehicles using the state data network and from all reports the system is working fine.

The proposed amendments would require that the information reported to the Division be "on a form or in a format approved by the division," but it will not name specific technologies used to transfer information or list the specific pieces of information that must be transmitted.

The proposed language will allow greater flexibility in selection of the formats used to transfer information but will ensure that the Division has the ability to control the information that must be reported.

The Division of Vehicles supports this proposal and we request your favorable consideration.

House Judiciary
1-29-96
Attachment 2

DRAFT BILL TRAFFIC RECORDS

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

Sec. 1. K.S.A. 1995 Supp. 8-253 is hereby amended to read as follows: 8-253. (a) When K.S.A. 8-254, and amendments thereto, makes mandatory the revocation of a person's driving privileges by the division, the court in which such conviction or adjudication is had shall require the surrender to it of all driver's licenses then held by the person so convicted or adjudicated, and the court shall forward the same, or if such court has a clerk shall direct the clerk to forward the same, together with a record of such conviction or adjudication to the division, within 10 days from the date the conviction or adjudication becomes final.

(b) Every court having jurisdiction over offenses committed under the motor vehicle drivers' license act shall forward to the division a record of the conviction of any person by such court for a violation of that act. Such record shall be made upon ~~any~~ *a* form *or in a format* approved by the division ~~and shall include the name and address of the violator, the violator's driver's license number, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail or bond was forfeited and the amount of the fine or forfeiture~~.

(c) For the purpose of this act, the term "conviction" means a final conviction and without regard to whether sentence was suspended or probation granted after such conviction. Also, for the purposes of this act, a forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) The clerk of any court of record to which a conviction for violation of any law described in subsection (b) has been appealed shall within 10 days of the final disposition of the appeal forward a notification of such final disposition to the division.

Sec. 2. K.S.A. 8-2115 is hereby amended to read as follows: 8-2115. (a) Every municipal judge or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this act or of any other law regulating the operation of vehicles on highways or for the violation of an ordinance of any city defining any offense the provisions of which are identical with provisions of this act, or fixing a limitation upon the speed of vehicles pursuant to the provisions of this act.

(b) Within 10 days after the conviction or forfeiture of bail or an appearance bond of a person upon a charge of violating any provisions of this act or other law or city ordinance regulating the operation of vehicles on highways, every judge or clerk of the court in which such conviction was had or bail or bond was forfeited shall prepare and immediately forward to the division an abstract of the record of the court covering the case in which such person was so convicted or forfeited bail or bond~~.~~ *The abstract shall be on a form or in a format approved by the division.*

~~which abstract must be certified by the judge or clerk to be true and correct. Report need not be made of any conviction or forfeiture involving the illegal parking or standing of a vehicle. The provisions of this subsection shall be deemed to be satisfied for any conviction or forfeiture except for those in respect to any violation specified in K.S.A. 8-254 or 8-285, and amendments thereto, by the submission of consolidated magnetic tape reports prepared by computer and containing the name, date of birth and driver's license number of the party charged, the case number, the nature of the offense, the arrest date, the vehicle identification number of the vehicle involved and a statement as to whether or not the vehicle involved was a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto. The format of such magnetic tape reports and the frequency of submission shall be in accordance with specifications of the division.~~

(c) ~~Such abstract shall be made upon a form furnished by the division and shall include the name and address of the party charged, the vehicle identification number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail or bond forfeited, the amount of the fine or forfeiture as the case may be and a statement as to whether or not the vehicle involved was a commercial motor vehicle as defined in K.S.A. 8-2,128, and amendments thereto.~~

~~(d)~~ Every court of record also shall forward a like report to the division upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

~~(e)~~*(d)* The failure, refusal or neglect of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be ground for removal therefrom.

~~(f)~~*(e)* The division shall keep all abstracts received hereunder at its main office and the same shall be open to public inspection during reasonable business hours.

~~(g)~~*(f)* The clerk of any court of record to which a conviction for violation of any of the laws described in subsection (a) has been appealed shall forward within 10 days of the final disposition of such appeal a notification of such final disposition to the division.

Sec. 3. K.S.A. 8-2115 and K.S.A. 1995 Supp. 8-253 are hereby repealed.

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

22-3212. Discovery and inspection. (a) ~~Upon request~~, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) ~~Upon request~~, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution. Except as provided in subsections (a)(2) and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law.

(c) ~~If the defendant seeks discovery and inspection under subsection (a)(2) or subsection (b),~~ the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

shall furnish a list of witnesses known by defendant and whom defendant intends to call at trial, and

(d) The prosecuting attorney and the defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

(e) Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(f) Discovery under this section must be completed no later than 20 days after arraignment or at such reasonable later time as the court may permit.

(g) If, subsequent to compliance with an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

(h) For crimes committed on or after July 1, 1993, the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 *et seq.* and amendments thereto.

(i) The prosecuting attorney and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant.

House Judiciary
1-29-96
Attachment 3

21-4204. Criminal possession of a firearm. (a) Criminal possession of a firearm is:

(1) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(2) possession of any firearm by a person who has been convicted of a person felony or a violation of any provision of the uniform controlled substances act under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of any provision of the uniform controlled substances act, and was found to have been in possession of a firearm at the time of the commission of the offense;

(3) possession of any firearm by a person who, within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(4)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was found not to have been in possession of a firearm at the time of the commission of the offense;

(4) possession of any firearm by a person who, within the preceding 10 years, has been convicted of: (A) A felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b or K.S.A. 1995 Supp. 65-4160 through 65-4164, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony, was found not to have been in possession of a firearm at the time of the commission of the offense, and has not had the conviction of such crime expunged or been pardoned for such crime; or (B) a nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the offense;

(5) possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event; or

(6) refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer.

(b) Subsection (a)(5) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student; or

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day.

(c) Violation of subsection (a)(1) or (a)(5) is a class B nonperson select misdemeanor; violation of subsection (a)(2), (a)(3) or (a)(4) is a severity level 8, nonperson felony; violation of subsection (a)(6) is a class A nonperson misdemeanor.

except for those persons who are under 18 years of age; for persons less than 18 years of age, the penalty is a class A nonperson misdemeanor, but a second or subsequent violation is a severity level 8 nonperson felony.

21-4704. Sentencing guidelines; grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition; nongrid crime. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court

may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, aggravated assault against a law enforcement officer or K.S.A. 21-3415, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567 and subsection (b) of K.S.A. 21-3705, and amendments thereto shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567 and subsection (b) of K.S.A. 21-3705, and amendments thereto shall not be served in a state facility in the custody of the secretary of corrections.

(j.) The sentence for the violation of K.SA. 21-3404(b) which results from a violatio of 8-1567 and amendments thereto shall be presumed imprisonment.

HOUSE BILL NO. ____

By Representative Spangler

AN ACT concerning court costs; relating to the cost of the sexual assault evidence collection kits; amending K.S.A. 1995 Supp. 65-448 and repealing the existing section.

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

Section 1. K.S.A. 1995 Supp. 65-448 is hereby amended to read as follows: 65-448. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, any physician on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A. 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If the physician refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician to enforce the provisions of this act. Any refusal by a physician to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or

guardian of a minor that such an examination has taken place.

(b) Costs of conducting an examination of a victim as herein provided including the costs of the sexual assault evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may charge the defendant for the costs paid herein as court costs assessed pursuant to K.S.A. 28-172c, and amendments thereto.

Sec. 2. K.S.A. 1995 Supp. 65-448 is hereby repealed.

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

STATE OF KANSAS

JOHN BALLOU
REPRESENTATIVE, FORTY-THIRD DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
AGRICULTURE
EDUCATION
FEDERAL AND STATE AFFAIRS

January 29, 1996

Chairman and Members of House Judiciary Committee

I stand before you today to give testimony on the importance of HB-2700, and what its impact will be.

The importance of HB-2700 is that victims and the family of victims will not have to go to a Parole Hearing every year or 3 years to testify. At the present time, every convicted felon sentenced prior to July, 1993 of A & B felons is guaranteed a parole hearing every 3 years, and C, D & E felons every year after they have served their minimum sentence. This puts an unnecessary burden on the victims and/or their family members to have to testify and relive the horror of the crime all over again, even when the Parole Board is not going to release the convicted felon anyway.

HB-2700 will still give to convicted felons their first Parole Hearing after serving their minimum sentence. However, after their first hearing and review by the Parole Board, the Parole Board will then have the discretion of setting the next hearing for 5 years for C, D & E felons, or 10 years for A & B felons.

HB-2700 will also require judges to go on record when there is multiple sentencing, whether the sentences are to be concurrent or consecutive.

You will hear testimony later, from David Post and what HB-2700 means to him and his family. Remember, there are more families like the Post Family which are having to disrupt their lives every year or 3 years because of this very unjust law that favors the convicted felon, NOT THE VICTIM OR THEIR FAMILY.

J. L. Ballou

Rep. John Ballou, 43rd District

House Judiciary
1-29-96
Attachment 5

STATE OF KANSAS

JOHN M. TOPLIKAR
REPRESENTATIVE, 15TH DISTRICT
507 E. SPRUCE
OLATHE, KS 66061

HOUSE OF REPRESENTATIVES
OFFICE: 155 EAST
TOPEKA, KS 66612
(913) 296-7683

January 29, 1996

Mr. Chairman and members of the House Judiciary Committee

The legislation we are proposing in HB-2700 will change the current mandate for holding hearings now imposed upon the Parole Board. We feel there is a need to grant more discretion to the Parole Board in setting the next hearing date after a violent criminal has been denied parole.

HB-2700 will relieve the families and survivors of crime victims from pleading before the Board as often, in order to keep a convicted murderer or rapist off the streets. For years, the law has been overly concerned with the rights of criminals. It's high time we re-focus and consider justice and compassion on the families of the victim and so we encourage your support of HB-2700.

Rep. John Toplikar
15th District

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1-29-96
Attachment 6

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

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: January 29, 1996

To: House Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: HB 2700

Summary of the Bill's Provisions

—Provides that the sentencing judge must state on the record whether sentences in multiple conviction cases are to be served concurrently or consecutively. Under current law, sentences run concurrently unless otherwise stated in the record or otherwise provided by law.

—Increases from 3 years to 10 years the length of a pass which the Kansas Parole Board (KPB) can impose for offenders convicted of a Class A, B or off-grid crime.

—Increases from 1 year to 5 years the length of a pass which the KPB can impose for offenders convicted of crimes in felony classes other than Class A, B or off-grid.

Impact on the Department of Corrections

The primary operational impact on the Department of Corrections results from the bill's provisions increasing the length of the pass which the KPB can issue in making parole decisions. The extent of the impact will depend on the degree to which the board exercises the authority provided in the bill. Increasing the length of time which inmates serve before they are next considered for parole has the effect of increasing the security risks presented by those inmates, both in terms of escape potential and daily

management, including potential for disruptive behavior and risks to departmental staff. Therefore, HB 2700 creates the potential for some realignment in the custody distribution of the inmate population, shifting affected inmates from lower to higher custody classification levels. We expect that most of the shift would occur in inmates moving from minimum custody to medium custody.

As of December 31, 1995 there were 4,028 inmates (or 57% of the total inmate population of 7,055) with indeterminate sentences only, i.e. whose release is subject to the jurisdiction of the KPB. Of the 4,028, there were 1,164 inmates with a minimum custody classification, with the following felony class distribution by controlling offense: 54 Class A; 353 Class B; 525 Class C; 177 Class D; 44 Class E; 1 unclassified; 12 compact; and 92 for whom felony class was not entered in the database. Although we cannot project with certainty the number of inmates whose custody might increase as a result of this bill, our best judgment at this time is that up to 10 percent of the indeterminate sentence minimum custody inmates might be affected.

At the current time, the department has a deficit of minimum security beds and a surplus of medium and maximum security beds. With existing capacity (including beds to be added in March upon completion of the Garland Building at Winfield Correctional Facility) and Prophet model population projections as of June 30, 1996, the department estimates, for male inmates, the minimum security bed shortfall at 203, and the medium and maximum security bed surpluses, at 175 and 206, respectively. If the upward shift in custody stays within these bounds, there would be little impact on bedspace configurations in the immediate future. Regarding future bedspace needs, the bill might contribute to a somewhat heavier weighting for higher security beds than would otherwise be the case. However, the overall impact of the bill would tend to decrease over time as the number of offenders with indeterminate sentences becomes a smaller segment of the inmate population.

Other operational impacts would result from a change in inmate custody mix, including inmate work assignments and in particular, the number of inmates who would be available for assignment to community work details. An extended parole pass for inmates previously classified as minimum security would cause those inmates' custody classification to increase, rendering them unsuitable for community work assignments.

Those inmates with sentences for Class A and B felonies who receive pass lengths at or near the maximum of 10 years would likely create special management problems, and increase the number of inmates assigned to special management status. Prior departmental experience with inmates having extremely long pass dates (before the current 3-year pass maximum was established) indicates that these inmates are more likely to engage in self-destructive and disruptive behavior.

Impact on Size of Inmate Population

HB 2700 carries the potential to increase inmate population levels, since fewer opportunities to parole could result in fewer parole release decisions. However, the department does not expect the impact to be significant. The extent of impact depends on the manner in which the Kansas Parole Board exercises the expanded discretion regarding length of pass. Our expectation is that the board would individualize pass length decisions in accordance with the board's judgment about future parole prospects for each inmate. If this occurs, the eventual release dates for individual inmates would not likely be substantially different from current practice, even if the board varies the time intervals at which it considers whether or not to parole the inmate. We therefore believe the impact will be minimal.

KDOC Position

The department is supportive, in concept, of providing the KPB with authority to increase pass lengths, especially in the higher felony classes where there are inmates scheduled for parole hearings who have extremely low probabilities of being paroled. Decreasing the frequency of the hearings will not likely affect parole decision outcomes, but will have the positive effect of reducing the disruptions that these hearings create in the lives of victims and victims' families.

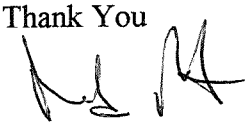
The department recommends, however, that the five-year maximum pass length proposed in the bill for Class C, D, and E felony classes be set at three years instead. The five-year pass length presents the greatest potential for inmate custody re-distribution within the inmate population, and therefore, the greatest potential for operational impact in terms of disruptive behaviors, staff safety concerns, escape risks, and inmate work assignments. A three-year maximum pass provides additional KPB discretion in setting pass length, representing a tripling of the one-year maximum currently in effect, without the operational drawbacks on offender management.

CES:jj

Hello, my name is David Post. In September 1980 Danny Crump built a bomb and sat it on my mothers car resulting in the death of my Father, Mother, 2 Brothers and 2 Sisters. On June 11,1981 Danny Crump was sentenced to 6 LIFE SENTENCES, 3 SENTENCES OF 5-20 YEARS,1 SENTENCE OF 3-15 YEARS and 1 of 1-5 YEARS, with all counts to run CONSECUTIVELY with each other. He should not have come up for parole for many, many, many years. Fifteen years later he is eligible for parole. Each time Danny Crump comes up for parole my family and friends are forced to relive that day in September 1980. Danny Crump gave us no choice. My family and I put up an effort last August to keep Danny in jail and our effort paid off because he will stay in jail for another three years.

The laws have changed since Danny Crump was sentenced. Right now the way the laws are the parole board can only pass him for a maximum of three years. The parole board is the only tool families like ours have to keep Danny and criminals like him where they should be. The parole board are the only people that can let him get released early and I think that we should let them have the choice to choose more than three years. They should be able to choose NOT to see them for up to 10 years.

Thank You



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My name is Mike Post. In 1980 Danny Crump killed my parents and four of my siblings. In 1981 he was convicted and sentenced to 6 consecutive life terms. At the time, my family and I thought that that was it. Danny Crump was out of our lives forever. We found out later that we were wrong.

Even though the police had did their job and compiled a mountain of evidence against Crump. Even though the prosecutors had very professionally did their jobs and convicted Crump. Even though the judge did his job and sentenced Crump with the harshest penalty that he could, Danny Crump was eligible for parole after only serving 15 years. Only 15 years after committing one of Johnson County's most heinous crimes, Crump was eligible to be set free.

No problem. Our parents raised us to always keep a positive outlook. If we had to fight Crump's parole every 10 or 15 years, we would fight it.

This last summer my family and our many friends spent hundreds of dollars and hundreds of man-hours on a petition campaign. It was both a very joyful and a very painful time. It was very heartening to see the support that we had. We received many kind letters from people sympathizing with our situation. On the other hand though, we found ourselves reliving some of the ugliness of 1980 with the grandchildren, nieces, and nephews who were too young (or weren't around) at the time.

And much to our dismay, last year we found out that Crump would be eligible for parole EVERY three years. My family would have to relive the trauma of 1980 EVERY three years. You can imagine our dread at finding out that EVERY three years we would have to print up our flyers . EVERY three years we would have to spend all of our evenings and weekends trying to get signatures. EVERY three years we will have to march in front of the news cameras and pick our emotional scabs so that we can make sure that Crump serves his sentence.

That brings me to the reason that I am here. The systems seems to have broken down at the end. As I mentioned earlier, the system worked for us at the beginnings of our ordeal. I could ramble on for hours recounting positive stories about Olathe PD, the sheriff's office, and the Johnson County DA's office. But after Crump was convicted the system started failing us. Having the possibility of only serving 15 years for 6 counts of premeditated murder is outrageous. And the fact that the Kansas parole board can only pass the convict for three years (no matter what they find at the hearing) is even more outrageous.

Having read **HR2700**, I am very pleased to see a law that goes a long way toward giving some rights back to the victims. I encourage you to support this bill.

Mike Post

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AMERICAN CIVIL LIBERTIES UNION
OF KANSAS AND WESTERN MISSOURI
706 West 42nd Street, Kansas City, Missouri 64111 (816) 756-3113

TESTIMONY ON HOUSE BILL 2700 GIVEN 1/29/96

GOOD AFTERNOON. MY NAME IS WENDY MCFARLAND AND I REPRESENT THE ACLU OF KANSAS AND WESTERN MISSOURRI. THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU CONCERNING HB 2700.

AS IS QUITE OFTEN THE CASE, THE ACLU STANDS ALONE IN LEGISLATIVE HEARINGS OF THIS KIND AND TODAY APPEARS TO BE NO EXCEPTION. I AM PLEASED HOWEVER TO TELL YOU THAT I HAVE CONSULTED WITH MANY INDIVIDUALS AND ORGANIZATIONS IN PREPARING MY TESTIMONY AND MANY HAVE AGREED TO ALLOW ME TO CREDIT THEM IN AN EFFORT TO CONVEY TO YOU THAT IT IS NOT ONLY THE ACLU THAT HAS OPPOSITION TOWARES THIS BILL.

THE ACLU IS MOST SPECIFICALLY OPPOSED TO THE POTION OF THIS BILL THAT WOULD DRASTICALLY INCREASE THE LENGTH OF TIME BETWEEN PAROLE HEARINGS FOR INMATES. IT IS OUR BELIEF THAT IF THIS BILL IS PASSED ALONG WITH OTHER BILLS PENDING IN THIS COMMITTEE THAT WOULD REDUCE THE SIZE OF THE PAROLE BOARD AND REQUIRE UNANIMOUS DECISIONS FOR GRANTING PAROLE, THAT OVERCROWDING AND THE EXORBITANT COSTS ASSOCIATED WITH OVERCROWDING WILL INCREASE CONSIDERABLY.

ALL OF THESE BILLS LEND THEMSELVES TOWARDS KEEPING INMATES INCARCERATED LONGER, WHETHER OR NOT THEY DESERVE TO BE.

IN FISCAL YEAR 1995, THE STATE OF NEW YORK ALLOTTED 5 PER CENT OF ITS ANNUAL BUDGET TOWARDS THE CORRECTIONAL SYSTEM. THAT PERCENTAGE HAS INCREASED TO 10 PER CENT IN 1996.

KANSAS HAS CURRENTLY EARMARKED 2.5 PER CENT OF ITS BUDGET TOWARDS CORRECTIONS. IT IS NOT UNREASONABLE TO ASSUME THAT THESE BILLS WHICH WE FEEL ARE DESIGNED TO KEEP PRISONERS INCARCERATED LONGER, WILL END UP COSTING US IN THE SAME WAY THEY HAVE COST NEW YORK.

THE STATE OF KANSAS CURRENTLY HAS A PRISON POPULATION OF 7,100. THE DEPARTMENT OF CORRECTIONS SAYS IT COSTS THE STATE $18,700 PER YEAR TO HOUSE THEM. HOW MANY INMATES WILL BE KEPT AN ADDITIONAL 7 YEARS AT AN EXPECTED CAST OF $131,390 IF THIS BILL PASSES? ONE? OF COURSE. EVEN 8 MORE INMATES, DESERVING OF PAROLE, WHO ARE DELAYED THEIR HEARING FOR 7 MORE YEARS WILL COST THE STATE WELL OVER A MILLION DOLLARS TO HOUSE THEM FOR THAT EXTRA 7 YEARS.

REALIZE THAT TWO THIRDS OF THE CURRENT PRISON POPULATION FALL UNDER THE JURISDICTION OF THE PAROLE BOARD. THAT MEANS 4,733 INMATES WILL HAVE PAROLE HEARINGS SOMETIME IN THE FUTURE. ONE WOULD HAVE TO ASSUME THAT SOME OF THESE INMATES HAVE EARNED THE RIGHT AND ARE READY AND DESERVING OF PAROLE. IF THIS BILL PASSES, THOSE INMATES WILL HAVE TO WAIT 4 OR 7 MORE YEARS TO BE PAROLED AND THEIR DELAY IS AT GREAT EXPENSE TO KANSAS TAXPAYERS.

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THE SAFETY OF CORRECTIONAL EMPLOYEES IS ALSO AT RISK. THE KANSAS ASSOCIATION OF PUBLIC EMPLOYEES WHO REPRESENT APP. 800 CORRECTIONAL EMPLOYEES HAVE ASKED ME TODAY TO CONVEY THEIR VERY REAL CONCERNS THAT PASSAGE OF THIS BILL WILL HAVE THE EFFECT OF REMOVING HOPE AND THEREFORE THE INCENTIVE OF INMATES TO OBEY RULES IN THE BELIEF THAT GOOD BEHAVIOR AND EFFORTS TOWARDS SELF-REHABILITATION MIGHT WIN THEM EARLY PAROLE.

COMMON SENSE SHOULD TELL EACH OF YOU THAT IT IS UNREASONABLE TO EXPECT THAT ONCE AN INMATE HAS BEEN TURNED DOWN FOR PAROLE, THAT THEY WILL HAVE ANY INCENTIVE TO PROVE THEMSELVES WORTHY OF EARLY RELEASE WHEN THE NEXT PROMISE OF BEING HEARD IS 10 YEARS AWAY.

THE SAFETY OF CORRECTIONAL OFFICERS IS VERY MUCH AT RISK WITHOUT REASONABLE INCENTIVE TO INMATES TO DO "GOOD TIME". 10 YEARS IS NOT AN INCENTIVE. WE HAVE A DUTY TO PROTECT PRISON GUARDS FROM INMATES. THIS BILL WILL ONLY SERVE TO INCREASE THE DANGER INSIDE KANSAS PRISONS.

I CONTACTED TWO FORMER AND TWO CURRENT MEMBERS OF THE PAROLE BOARD IN PREPARING THIS TESTIMONY AS WELL AS A FORMER SECRETARY OF THE DEPARTMENT OF CORRECTIONS. ALTHOUGH THEY DID NOT AGREE ON ALL OF THE ISSUES I QUESTIONED THEM ABOUT, THEY WERE UNANIMOUS IN SUPPORTING OUR CONTENTION THAT HB 2700 WILL HAVE THE EFFECT OF CAUSING MORE PRISON OVERCROWDING AND REMOVING THE INCENTIVE FROM INMATES TO OBEY RULES.

TWO CURRENT MEMBERS WERE CANDID TO ADMIT THAT THE SENATE AND HOUSE BILLS NOW PENDING THAT WOULD REQUIRE A UNANIMOUS VOTE OF THE ENTIRE PAROLE BOARD TO GRANT PAROLE WILL CAUSE BOARD MEMBERS TO BE A LITTLE NERVOUS ABOUT GRANTING PAROLE. THIS HESITATION ON THEIR PART COUPLED WITH THE INCREASE FROM 3 TO 10 YEARS ON HEARINGS, PROMISES TO CONTINUE THE PROBLEM OF OVERCROWDING AND HENCE THE EXORBITANT COST ASSOCIATED WITH HOUSING THESE INMATES.

ONE PAROLE BOARD MEMBER ALSO SAID THAT HE AND OTHER BOARD MEMBERS ARE LESS LIKELY TO GRANT PAROLE ON A COLD FILE...MEANING A FIRST TIME PAROLE HEARING FOR AN INMATE. HE SAID THAT HE OFTEN DENIES AN INMATES FIRST REQUEST WITH THE KNOWLEDGE THAT HE WILL MOST PROBABLY SEE THEM AGAIN IN ONE OR THREE YEARS AND WILL THEN BE MORE FAMILIAR WITH THE INMATE AND HIS FILE AND BE MORE LIKELY AT THAT TIME TO GRANT PAROLE IF THE INMATE HAS SHOWN HIMSELF TO BE WORTHY OF IT SINCE THE LAST HEARING.

INCREASING THESE TIME PERIODS TO 5 AND 10 YEARS RESPECTIVELY, WILL DISALLOW PAROLE BOARD MEMBERS FROM EVER SEEING THE SAME INMATE TWICE SO ALL INMATES WILL ESSENTIALLY BE COLD FILES WHICH THE PAROLE BOARD INHERENTLY PASSES ON.

THE LEGISLATURE IS TAMPERING WITH THE INTEGRITY OF THE PAROLE BOARD BY LIMITING THEIR DISCRETION AND ACCESS TO INMATES. THE CURRENT SYSTEM OF PAROLE HEARINGS EVERY YEAR FOR C, D AND E FELONS AND EVERY 3 YEARS FOR A AND B FELONS IS WORKING WELL. TO QUOTE MANY A POLITICIAN, "IF IT AIN'T BROKE THEN WHY FIX IT?"

FINALLY, WE ALSO BELIEVE THE CHANGES THIS BILL PROPOSES MAY BE UNCONSTITUTIONAL...SPECIFICALLY AN EXPOS FACTO VIOLATION. WE UNDERSTAND THAT MERE PROCEDURAL CHANGES DO NOT NECESSARILY VIOLATE THE CONSTITUTION, BUT THESE CHANGES ARE SO INCOMPATABLE WITH THE REHABILITATIVE MODEL OF SENTENCING WHICH EXISTS FOR PEOPLE CONVICTED UNDER OLD LAW, THAT IT AT LEAST SUGGESTS A SUBSTANTIAL PROBLEM WITH EXPOS FACTO ACCORDING TO ARTICLE 1 SECTION 8 OF THE CONSTITUTION WHICH PROHIBITS GOVERNMENT FROM INCREASING THE SEVERITY OF ONES SENTENCE AFTER IT HAS BEEN GIVEN.

ACCORDING TO PROF. MICHAEL KAYE OF THE WASHBURN UNIVERSITY SCHOOL OF LAW AND PROF. DAVID GOTTLIEB OF THE UNIVERSITY OF KANSAS SCHOOL OF LAW, IF THIS PASSES, THE STATE CAN EXPECT PLENTY OF LITIGATION BASED ON THIS ONE FACTOR.

IN CLOSING, WE URGE YOU TO REJECT HB 2700 BASED ON OUR CONSTITUTIONAL ARGUMENT, THE POTENTIAL COST OF DELAYING PAROLE FOR DESERVING INMATES AND THE IMMINENT DANGER IT WILL POSE TO PRISON GUARDS.

THANK YOU.

WENDY MCFARLAND

LEGISLATIVE LOBBYIST FOR THE ACLU