

Approved: March 14, 1996
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 February 8, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Robert Miller, Excused
Representative Britt Nichols, Excused
Representative Vince Snowbarger, 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:

Secretary Charles Simmons, Department of Corrections
Kelly Jennings, Kansas Association of Public Employees
Wendy McFarland, American Civil Liberties Union
Keith Landis, Christian Science Committee on Publication for Kansas

Others attending: See attached list

Hearings on **HB 2773** - repealing requirement that the secretary of corrections adopt certain rules and regulations, were opened.

Secretary Charles Simmons, Department of Corrections, appeared before the committee as the sponsor of the proposed bill. He told the committee that this bill was in response to the Governor's initiative to repeal unnecessary regulations. The Department of Corrections has concluded that the current statutory requirements for the establishment of standards by rule and regulation for security levels, health services, training and administration of oaths do not serve the public interest. (Attachment 1)

Representative Pauls requested the Secretary provide the committee with a specific list of what regulations would be repealed.

Kelly Jennings, Kansas Association of Public Employees, appeared before the committee in opposition to the amendment that would eliminate the rules and regulations for establishing standards of training and provisions for certifying corrections and parole officers. (Attachment 2)

Hearings on **HB 2773** were closed.

Hearings on **HB 2775** - repeal of statute requiring department of corrections to furnish religious material to inmates, were opened.

Secretary Charles Simmons, Department of Corrections, appeared before the committee as a proponent of the bill. He explained that most religious materials are donated from church organizations, but those that are not being donated have been bought at state expense, which is close to \$4,000. (Attachment 3)

Representative Pauls asked if the Secretary would mind an amendment that would say "The Department of Corrections would furnish donated materials to inmates at their request." instead of repealing the statute. Secretary Simmons said he could live with the amendment.

Wendy McFarland, American Civil Liberties Union, appeared before the committee neither as a proponent nor opponent of the bill. She believed that religious materials shouldn't be bought with taxes, but that inmates should be allowed religious texts. (Attachment 4)

Keith Landis, Christian Science Committee on Publication for Kansas, appeared before the committee neither as a proponent nor opponent of the bill. He stated that religious materials are necessary in prison but not at taxpayer expense. (Attachment 5)

Hearings on **HB 2775** were closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on February 8, 1996.

Hearings on **HB 2776** - exception to strip & body cavity search restrictions for prison and jail inmates during emergencies, were opened.

Secretary Charles Simmons, Department of Corrections, appeared before the committee in support of the bill. He stated that this bill would allow persons of the opposite sex to participate in strip searches during an emergency situation. Currently 15% of their employees are women. (Attachment 6)

The committee was concerned about what would constitute an "emergency". The Secretary replied that an emergency would be, for example, any time there was the need to make a quick move of inmates, because of a disturbance or assault, to secure the facility. Case law is that the privacy of the inmate is subordinate to the civilian. Staff should be able to respond to an emergency situation, regardless of sex. Representative Yoh suggested that a pat down search would be sufficient until an officer of the same sex appeared to perform a body search. Secretary Simmons explained that pat down searches are done every day and would not work in emergency situations. Inmates are very creative when it comes to hiding contraband on or in their body. Representative Standifer requested that Secretary Simmons provide the committee with a detailed definition of "emergency".

Wendy McFarland, American Civil Liberties Union, appeared before the committee as an opponent to the bill. She believes that the current law which prohibits members of the opposite sex from conducting these searches is reasonable. (Attachment 7)

Hearings on **HB 2776** were closed.

The committee meeting adjourned at 5:15 p.m. The next meeting is scheduled for February 12, 1996.



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: February 8, 1996
TO: House Judiciary Committee
FROM: Charles E. Simmons, Secretary
Subject: HB 2773

The Department of Corrections supports HB 2773.

The department supports passage of HB 2773 as part of its response to Governor Graves' initiative to repeal unnecessary regulations. HB 2773 would amend K.S.A. 75-5210 and 75-5212 to eliminate the requirement that the department of corrections establish by rule and regulation, standards for inmate security levels; health, medical, and dental services; and the training of corrections officers and parole officers. HB 2773 would also eliminate the requirement that persons designated by the secretary to administer oaths for the purpose of conducting investigations and disciplinary proceedings be established by rule and regulation. The standards and policies required by K.S.A. 75-5210 and 75-5212, as amended by HB 2773, are best addressed through the department's Internal Management Policy and Procedure manual.

The department has conducted a review of its current regulations, along with its Internal Management Policy and Procedure manual (IMPP). The department's review consisted of an analysis of any "liberty interest" implicated by the regulation; the impact of the regulation upon both inmates and the public; and the utility of establishment of standards by regulation verses the detail necessary for staff, inmates, and the public to carry out or understand the policy. The department has concluded that the current statutory requirements for the establishment of standards by rule and regulation for security levels, health services, training, and the administration of oaths do not serve the

House Judiciary
2-8-96
Attachment 1

February 8, 1996

HB 2773

Page 2

public's interest. HB 2773 would not alter the requirement for promulgating regulations involving matters of substantial interest to the public or inmates, for example inmate disciplinary rules and procedures. Additionally, HB 2773 would not alter the statutory requirements regarding *inter alia* the minimum number of training hours for corrections officers.

HB 2773 eliminates the requirement that standards relating to the transfer of an inmate from one security status to another be established by rule and regulation. The department has promulgated K.A.R. 44-5-104 in response to K.S.A. 75-5210. That regulation, however, refers to the department's Internal Management Policy and Procedure manual and the department's Security Classification manual for the establishment of the procedure for the classification of offenders, and the security aspects of security levels. Since this regulation relies upon the substance of internal policies it serves no purpose.

K.S.A. 75-5210 also requires the promulgation of rules and regulations regarding health, medical, and dental services. K.A.R. 44-5-112, due to the extensive nature of the topic, incorporates the department's Internal Management Policy and Procedure to provide the details for the provision of medical care.

Likewise, the provisions of K.S.A. 75-5212, regarding the establishment of training standards by rule and regulation, do not serve a purpose beyond that provided by the department's Internal Management Policy and Procedure and the provisions of 75-5212 not amended by HB 2773. HB 2773 would retain the statutory mandate that corrections officers be required to complete a minimum of 200 hours of training for permanent appointment and 80 hours of in-service training annually.

Finally, HB 2773 would eliminate the requirement that persons authorized to administer oaths be designated by rule and regulation. K.A.R. 44-1-105 simply designates those persons responsible for the conduct of investigations, including those persons acting as hearing officers in hearings regarding inmate discipline and transfers to mental health institutions, as being authorized to administer oaths. The tautological nature of this regulation serves no purpose.

The Department urges favorable action on HB 2773.



1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

TESTIMONY OF KELLY JENNNINGS KANSAS ASSOCIATION OF PUBLIC EMPLOYEES

**Before the House Judiciary Committee
in opposition to House Bill 2773**

Mr. Chairman, members of the committee, good afternoon. My name is Kelly Jennings, I represent the Kansas Association of Public Employees. Thank you for the opportunity to appear before you to share KAPE's concerns with House Bill 2773.

KAPE stands in opposition to a proposed amendment in HB 2773. This amendment may be found on page 3, lines 19 and 20 of the bill. The proposed amendment calls for the elimination of rules and regulations for establishing standards of training and provisions for certifying corrections officers and parole officers.

Training standards and certification requirements for corrections officers and parole officers is an issue that carries importance for all citizens of our state. Kansas citizens must be assured that corrections officers and parole officers are properly trained and certified. By eliminating the requirement for rules and regulations establishing these standards for training and certification, the citizens lose an important check system.

The current practice of adopting rules and regulations is the only means of input and assurance the general public has that proper standards are adopted. Rules and regulations provide a mechanism for public comment and accountability. Simply allowing the secretary to establish standards will remove accountability to the public. If government is to run properly and effectively, citizens must be allowed input and participation. This input and accountability is provided within the rules and regulations process.

KAPE urges this committee to reject this amendment to HB 2773. By continuing to adopt rules and regulations to establish training standards and certification for corrections officers and parole officers, the public will continue to have the means of input and assurance that their needs and concerns are met.

Thank you for the opportunity to appear today. I will be happy to answer any questions you may have.

House Judiciary
2-8-96
Attachment 2





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: February 8, 1996
TO: House Judiciary Committee
FROM: Charles E. Simmons, Secretary
Subject: HB 2775

The Department of Corrections supports House Bill 2775.

HB 2775 repeals K.S.A. 75-5223. K.S.A. 75-5223 requires the Department of Corrections to provide religious texts at state expense, to inmates in the department's custody. The department has developed a number of sources for donated religious texts for use by inmates. However, on occasion it has been necessary for the department to purchase religious texts when none are available through donation. Due to the enactment of the federal Religious Freedom Restoration Act (RFRA), the department anticipates that there may be an increased demand for religious materials pursuant to K.S.A. 75-5223.

Religions recognized by RFRA are not required to donate religious materials. Therefore, the department would be required to purchase religious texts pursuant to K.S.A. 75-5223 irrespective of cost. HB 2775 would not alter the department's ability to accept donated religious texts nor prevent an inmate from purchasing religious texts.

The Department urges favorable action on HB 2775.

TGM/nd

American Civil Liberties Union
of Kansas and Western Missouri
706 West 42nd Street, Suite 108
Kansas City, Missouri 64111
(816) 756-3113

Wendy McFarland, Lobbyist
575-5749

February 9, 1996

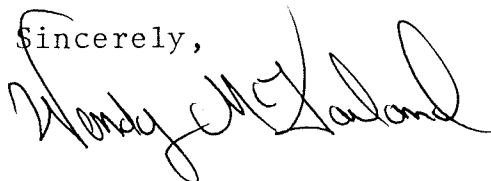
TO: Chairman O'Neal
Representative Mays
Other members of the House Judiciary

I apologize for not providing you with written comments of the ACLU's position on House Bill 2775 concerning religious texts in prisons.

As I explained, we decided late Wednesday to neither support or oppose the bill for equally compelling reasons. I therefore felt that no written testimony was needed.

Since I did state our decision in front of the committee in addition to offering a brief explanation concerning a statement by the Secretary of Corrections, I do understand your request that my comments be placed in writing and in the future you can be assured that I will do so.

Sincerely,



Wendy McFarland

House Judiciary
2-8-96
Attachment 4

Christian Science Committee on Publication For Kansas

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

To: House Committee on Judiciary

Re: HB 2775

The following is a summary of my comments to your committee on HB 2775.

I am not speaking in opposition to the repeal of K.S.A. 75-5223. At the same time, I believe there is an important place for religion in correctional facilities. I do have some comments which may be helpful to the committee.

As I read the existing statute, the Secretary of Corrections is required to furnish, at state expense, "a Bible or other related religious text materials" to any confined inmate who makes a request for those items.

I have a small religious library. In it I have several translations of the Bible and a variety of "related religious text materials," including two multi-volume Bible dictionaries which cost over \$200 per set, and a 3-volume commentary which cost \$40. Other related texts, relating to either the Old or New Testaments, or both, cost from \$5 to \$40. If these materials were made available to any inmate requesting them, the cost to the state would be quite high.

Most churches, like my own, will gladly make religious material available to one in need, including inmates, if the need is known.

Our litigious society follows a diversity of religious teachings. The present statute does not seem to apply to materials for an inmate who prefers something other than a Bible related religion. This could provide a basis for many lawsuits.

I certainly do believe an inmate should have access to religious materials of preference, but not necessarily at state expense.

A friend and former member of our Topeka church had been in prison in another state after being sentenced as an accomplice in an armed robbery which resulted in a death.

As I recall his story, he had found a place to nap on a pile of discarded copies of The Christian Science Monitor, the international newspaper published by our church. We consider the paper to be a news publication and not a religious publication even though each issue has one religious article. After a time, he began to look through the papers and began reading the

House Judiciary
2-8-96
Attachment 5

religious articles. When his interest grew, he began studying religious material published by our church.

His life changed to the point that the governor pardoned him. We met when he moved to Topeka twenty or more years ago and became a member of our local church. He, his wife, and son moved from Topeka to the St. Louis area, where he worked in a bookstore at a school operated for students who follow the teachings of Christian Science. Some of our members still maintain contact with his family and report that the change in his life seems to be permanent.

Perhaps the needs of the Secretary and the inmates could be met by amending the present statute to allow inmates to be furnished religious material of preference if done without expense to the state. (There might be some expense to the state if a large volume of materials had to be checked for contraband. The Church of Everlasting Freedom might be established by enterprising criminals who would insert saw blades or similar items between the pages of religious texts sent to the facility.)



Keith R. Landis
Committee on Publication
for Kansas

As far as I know, the church named in the last paragraph is fictional. I know of no church by that name.



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: February 8, 1996
TO: House Judiciary Committee
FROM: Charles E. Simmons, *Secretary*
Subject: HB 2776

The Department of Corrections supports HB 2776.

House Bill 2776 amends the provisions of K.S.A. 22-2524 pertaining to strip searches and body cavity searches performed upon persons incarcerated due to a criminal conviction or order of a court. HB 2776 would permit law enforcement officers, including corrections officers, of the opposite sex to conduct strip searches, during an emergency, of persons convicted of crimes and committed to a jail or other institution. Additionally, during an emergency, officers of the opposite sex could be present during a body cavity search.

HB 2776 would also permit law enforcement officers, during an emergency at a jail or institution, to conduct strip searches upon persons of the opposite sex accused of a crime and committed to a jail or other institution pursuant to a court order; or of necessity, confined with other prisoners in a jail while awaiting appearance before a magistrate.

The Department of Corrections provides equal employment opportunities to persons irrespective of their sex. During an emergency, a correctional facility may have to move within a short time period, a substantial number of inmates, and for security reasons, conduct strip or body cavity searches of those inmates. To perform these necessary emergency operations, it is necessary to utilize all available officers, including those of the sex opposite of the inmates, to escort, provide security, or conduct searches, including strip searches. During an emergency, HB 2776 would allow

House Judiciary
2-8-96
Attachment 6

February 8, 1996
HB 2776
Page 2

officers of the opposite sex to be present and conduct strip searches and to be present during a body cavity search. Corrections officers do not perform body cavity searches so this bill does not affect who actually performs those searches.

The Department urges favorable action on HB 2776.

CES:TGM/nd

American Civil Liberties Union
of Kansas and Western Missouri
706 West 42nd Street, Suite 108
Kansas City, Missouri 64111
(816) 756-3113

Wendy McFarland, Lobbyist
575-5749

TESTIMONY ON HB 2776 PRESENTED 2/8/96
BEFORE THE HOUSE JUDICIARY COMMITTEE

GOOD AFTERNOON. MY NAME IS WENDY MCFARLAND AND I AM HERE TODAY ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION OF KANSAS AND WESTERN MISSOURI. TO OPPOSE HB 2776.

IF THIS BILL PASSES, PERSONS COMMITTED TO A JAIL OR OTHER INSTITUTION WILL BE SUBJECT TO A STRIP SEARCH OR A BODY CAVITY SEARCH BY MEMBERS OF THE OPPOSITE SEX DURING AN "EMERGENCY". IT WILL ALSO ALLOW ANY LAW ENFORCEMENT OFFICER TO CONDUCT A BODY CAVITY SEARCH DURING WHAT THEY ARBITRARILY DETERMINE TO BE AN "EMERGENCY".

CURRENT LAW PROHIBITS MEMBERS OF THE SAME SEX FROM EITHER CONDUCTING OR BEING PRESENT DURING THESE SEARCHES. CURRENT LAW ALSO REQUIRES THAT BODY CAVITY SEARCHES BE CONDUCTED BY A LICENSED PHYSICIAN OR REGISTERED NURSE. THE CURRENT LAW IS REASONABLE.

THE LAW AS IT NOW STANDS ALLOWS FOR STRIP SEARCHES TO BE CONDUCTED AT ANY TIME AS LONG AS TWO CRITERIA ARE MET. FIRST, THERE MUST BE PROBABLE CAUSE TO BELIEVE THAT THE INDIVIDUAL IS CONCEALING A WEAPON OR CONTROLLED SUBSTANCE. SECOND, THE SEARCH MUST BE CONDUCTED BY PERSONS OF THE SAME SEX AS THOSE CONDUCTING THE SEARCH.

THESE STIPULATIONS DO NOT TIE THE HANDS OF LAW ENFORCEMENT IN A WAY THAT WOULD JEOPARDIZE ANYONE'S SAFETY.

NO EMERGENCY SITUATION CAN WARRANT THE KIND OF INVASIVE AND DEGRADATING EFFECT A STRIP OR BODY CAVITY SEARCH WOULD HAVE ON A WOMAN WHEN THE ASSAULTIVE PROCEDURE COULD BE WITNESSED OR EVEN CONDUCTED BY A MAN.

ONE OTHER IMPORTANT CHANGE THIS BILL WOULD MAKE TO CURRENT LAW IS THAT IT WILL NOW ALLOW, IN "EMERGENCIES", FOR STRIP AND BODY CAVITY SEARCHES TO BE DONE ON INDIVIDUALS WHO HAVE ONLY BEEN ARRESTED OR ARE MERELY BEING DETAINED FOR SOMETHING AS MINOR AS A TRAFFIC VIOLATION AS LONG AS THEY ARE BEING DETAINED, PURSUANT TO A COURT ORDER, IN A JAIL OR OTHER INSTITUTION.

PLEASE, IF YOU WISH TO PRESERVE EVEN THE MINUTENESS OF DIGNITY NOW AVAILABLE TO THE WOMEN AND MEN INCARCERATED IN OUR STATE AND TO CONTINUE TO PROTECT THE RIGHTS OF PRIVACY YOU ENJOY, THEN YOU WILL VOTE AGAINST HB 2776.

THANK YOU.

House Judiciary
2-8-96
Attachment 7