

Approved: 1-25-96  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on January 17, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)

Committee staff present: Michael Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Carla Stovall, Attorney General of Kansas  
Charles Simmons, Secretary of Corrections  
Gene Johnson, ADSAP

Others attending: See attached list

Chairman Senator Emert called the meeting to order at 10:05 a.m.

### **Bill Introductions:**

Mr. Gene Johnson, ADSAP, requested the introduction of a bill that would make technical changes to K.S.A. Supplement 8-1599. Mr. Johnson stated that in 1994 the open container statute and the consumption of alcohol beverage penalties were removed from K.S.A. Chapter 41 and placed under new statute K.S.A. 8-1599. The conferee stated that the penalty section did not get transferred. Mr. Johnson requested a bill that would strike language in K.S.A. 41-804, 41-2719, and 41-2720 and place that language into K.S.A. 8-1599.

A motion was made by Senator Bond, and seconded by Senator Martin to introduce legislation proposed by Mr. Johnson that would make technical changes to current statutes.

Senator Parkinson requested a bill from the district court trustee of Johnson county on behalf of the State's Trustees Organization clarifying that attorneys' lien do not apply to child support funds that are being held by district court trustees or SRS.

Senator Parkinson moved to introduce legislation that would clarify that attorneys' liens do not apply to child support funds held by the district court trustee or the SRS, second by Senator Bond. Motion carried.

Senator Bond requested that information concerning what SRS is doing in the collection of child support be provided to the Committee. The Chair stated that a request would be made to the Secretary of SRS for information concerning child support collection issues.

The Chair introduced a group from Junction City representing the Crossroads of Leadership, guests of Senator Oleen.

### **HB 2310--Concerning inmates in the custody of the Secretary of Corrections; relating to good time credits**

The Chair presented an overview of **HB 2310** and stated that this bill had passed the House last session, but a hearing was not held in the Senate Judiciary Committee. The Chair explained that in conference committee, a portion of this bill was put into another bill and passed. The purpose of the bill is to reduce the number of frivolous lawsuits filed by inmates. The Chair continued by stating that there is still a section of the bill, Section 2 (2), that was not included in the conference committee report. The Chair stated that the Attorney General's legislative agenda also involves cutting down on frivolous lawsuits by inmates. Therefore, Secretary Simmons will testify on the bill as it currently stands, and the Attorney General will testify and offer amendments.

CONTINUATION SHEET

NOTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 17, 1996.

Mr. Charles Simmons, Secretary of the Department of Corrections, testified in support of **HB 2310**. The Secretary requested that Sections 2 and 3 remain in the bill and encouraged the committee to adopt **HB 2310**. The Secretary explained that Sections 2 and 3 are needed because there are two separate good-time provisions. The two provisions provide a means for the Department of Corrections to withhold from an inmate good-time credits for a particular review period in which an inmate has been found by a court to have filed a lawsuit that was essentially for delay, harassment, was false, involved the use of the system. The conferee commented that almost all of those cases are without merit, many of them are frivolous with malicious intent. The Secretary stated that this is a system that provides safeguards for the inmate, because good-time credits would be withheld only in the event that a judge determines that the case fits the specific criteria set forth in this legislation. The conferee stated that it is important that inmates know there is a sanction possible (for a particular review period) if the legal process is abused. The conferee concluded by stating that the intent of this legislation is to reduce the number of lawsuits filed by inmates. (Attachment 1)

In response to Senator Petty's question, the Secretary stated that there have been bills passed to reduce frivolous lawsuits, such as requiring a fee and requiring exhausting administrative remedies, as well as some habeas corpus statutes. However, the conferee continued none of those establish definitive sanctions for inmates' abuse of the legal system. The Secretary stated that 98 percent of inmates' lawsuits are dismissed in the state's favor, but much time and resources are used in the process.

Suggestions by the Committee included deleting the word, "solely" on page 2, line 40 of the bill, or taking out the words, "solely or primarily".

In response to Committee discussion concerning the constitutionality of this bill, the Secretary stated that due process is required when good-time is taken away, but due process is not required when good-time is awarded. The conferee stated that the purpose of this bill is to act as a deterrent, not to penalize after the fact. The conferee stated that the number of days not awarded an inmate because of this law would amount to a very insignificant amount, since the bill only applies to time not awarded during one review period.

Responding to the Committee members' discussion, Secretary Simmons stated that the language in this bill is patterned after Missouri law.

The Chair requested that the staff contact Missouri regarding that state's experience with this legislation.

Attorney General Carla Stovall addressed the Committee to testify in support of **HB 2310** and to offer some additional amendments in an attempt to curtail some of the litigation filed by inmates.

The Attorney General stated that there is public interest in this issue. The conferee discussed proposals made by other states to curtail the filing of frivolous lawsuits by prisoners. The Attorney General outlined her office's requested amendments to **HB 2310**. (Attachment 2)

The Attorney General stated that the first proposed amendment would require a filing fee of \$3.00 for actions filed under K.S.A. 60-1501. The conferee explained that lawsuits filed under that statute are challenging the conditions of confinement. The \$3.00 filing fee passed last year did not apply to conditions of confinement, and about 85% of all the cases fall within that statute. The conferee stated that inmates who did not have the funds could file a poverty affidavit in lieu of docket fee as set forth in K.S.A. 60-2001.

The conferee stated that the second amendment would require that the inmate list for the court all the litigation that he or she has filed in the last 5 years in civil court. The conferee stated that this amendment gives more information to the court, and saves the court staff time in trying to find the litigation that has been filed.

The Attorney General discussed the third recommended amendment dealing with the poverty affidavit. The conferee stated that while inmates now need to disclose how much is in their trust account, to determine whether or not they qualify for poverty status, trust fund monies can be disbursed prior to alleging indigent status in order to avoid paying the filing fee. The conferee cited several examples of inmates who filed a poverty affidavit, after transferring monies in their trust accounts to avoid paying filing fees.

In response to the Chair's question, Mr. Larry Lockback, Assistant Attorney in charge of handling inmate caseloads stated that the way the statute is written, it applies to just general civil actions filed by inmates. The conferee stated that the majority of the cases handled by his office and those handled under the Department of Corrections are filed under K.S.A. 60-1501, that currently the statute states that no docket fee is required.

The Chair closed the hearing on **HB 2310** and staff explained that including the Attorney General's recommendations would strike sections 1 and 2, section 3 would remain, and additional sections would be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 17, 1996.

added to the bill to include all of the Attorney General's amendments.

A motion was made by Senator Vancrum, second by Senator Bond to approve all of the Attorney General's amendments. The motion carried.

Committee discussion followed regarding amending, page 2, line 40--taking out "solely and primarily." It was the consensus of the committee not to delete those words. The Committee members discussed with the Secretary of Corrections the deletion of line 39, page 2, concerning the filing of "false or malicious action with the court." The Secretary stated that his Department asked that line be included, but the line was removed by a House floor amendment. The staff discussed the logistics of writing this bill to include the deletions and additions requested.

A motion was made by Senator Vancrum, second by Senator Reynolds to put line 39, page 2 back in the bill. Motion carried.

A motion was made by Senator Feleciano, and second by Senator Reynolds to pass **HB 2310** favorably as amended and technically revised by the staff.

A motion was made by Senator Bond, second by Senator Petty to approve the minutes of January 11, 1996 Senate Judiciary Committee meeting. Motion carried.

The Chair discussed the confirmation of Hilma Ungeheuer as a member of the Board of Indigents' Defense Service. The Committee members discussed the appointment process of those being re-appointed.

The Chair distributed fact sheets on the appointee to Committee members.

Senator Oleen discussed actions of the Oversight Committee concerning the appointments.

A motion was made by Senator Bond, second by Senator Reynolds to recommend favorably the appointment of Hilma Ungeheuer to the Board of Indigents' Defense Service. The motion carried.

The Chair adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for January 18, 1996.





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Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

Date: January 17, 1996  
To: Senate Judiciary Committee  
From: Charles E. Simmons, Secretary  
Subject: HB 2310

HB 2310 is a holdover bill from the 1995 legislative session and addresses the issue of frivolous inmate lawsuits. As introduced last year, the bill provided for a minimum filing fee of \$3 for all inmate-initiated civil actions and also authorized withholding of good time credits in those instances where an inmate is found by a court to have filed a false or malicious claim, brought a claim for the purpose of harassment, provided false evidence, or abused the discovery process. The docket fee provisions of HB 2310 were amended into SB 222 last year, a measure which subsequently was enacted. The Legislature did not act, however, on the provisions of HB 2310 which authorize the withholding of good time.

The Department of Corrections continues to seek authority to withhold good time credits under the circumstances outlined in the bill because it is consistent with the philosophy that offenders should be responsible and accountable for their actions. Good time should not be earned if an inmate has abused the judicial process. Good time credits, to be meaningful, should only be awarded when an inmate has earned them by displaying appropriate conduct in all aspects of his or her life while incarcerated, as well as fulfilling other requirements established by the department. There will be a safeguard to protect the inmate's right of access to the courts in that good time credits will only be withheld in instances where a court enters a specific finding that a case meets one of the criteria outlined in the bill. Therefore, we request that the committee amend HB 2310 to reflect actions taken by the 1995 Legislature, and report the bill favorably for passage.

CES:jj

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Attach # 1-8



State of Kansas

## Office of the Attorney General

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STATEMENT OF  
ATTORNEY GENERAL CARLA J. STOVALL  
BEFORE THE SENATE JUDICIARY COMMITTEE  
RE: PROPOSED AMENDMENTS TO H.B. 2310 DESIGNED TO  
DISCOURAGE INMATES FROM FILING NON-MERITORIOUS LAWSUITS  
JANUARY 17, 1996

### I. Amendment to K.S.A. 60-1501(a)

In Kansas, 85% of all inmate litigation is filed pursuant to K.S.A. 60-1501. Currently, this statute does not require a filing fee and the amendment I propose would alter that. Last year, as you know, the legislature amended K.S.A. 60-2001 and required inmates to pay a fee to file their lawsuit -- just as the rest of us must do to initiate litigation. Because the vast majority of inmate litigation utilizes 60-1501, I encourage the legislature to follow through with the statement made last year and link docket fees to actions under 1501.

K.S.A. 60-1501 allows inmates to challenge their incarceration status. I do not believe that requiring a filing fee would harm inmates or prevent them from being able to challenge their status because they could still file a poverty affidavit to qualify for indigent status.

### II. Amendment to K.S.A. 60-1502.

This amendment is designed to inform the court of what lawsuits an inmate currently has pending at the time of initiating another. This will allow the court to determine if the inmate is a "recreational litigator" by requiring the inmate to include in the initial pleading a list of all civil actions, including habeas corpus, the inmate has filed or participated in in state court within the last five years. The court could look at the list, and by looking at other cases already filed with that district court, could determine if the petition was of a duplicate action currently pending. The court could also view the list to determine if the inmate is abusing his right to file petitions seeking writs. Finally, the court could view the list as one factor in determining what, and how

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much, court costs or attorneys fee should be awarded if the inmate's case was frivolous.

Currently, the United States District Court for the District of Kansas requires prisoners seeking relief pursuant to 42 U.S.C. 1983 to inform the court of any prior judicial or administrative relief sought. D. Kan. R. 9.1(f).

### III. Amendment to K.S.A. 60-2001(b)

#### A. Disclosure of Account Balance -

The current provisions of K.S.A. 60-2001(b) permit an inmate to file without paying a docket fee, only if the inmate files a poverty affidavit. Id. Attached to this poverty affidavit, the inmate must attach a statement of the current balance in their inmate trust fund account. Id. Based upon these documents, the district court is to establish a filing fee. Id. Some courts consider the balance when determining whether or not counsel should be appointed at state expense. And, some of the state district courts also consider the amount in the inmate's account when setting the costs an inmate must pay at the conclusion of an action, which are authorized under K.S.A. 60-2001(d).

In practice, however, this current balance disclosure may not always provide the court with a true picture of the inmate's financial solvency. In one case handled by this office, an inmate filed a poverty affidavit asserting his inmate account contained \$400.00 dollars at the time of filing. While this was a true statement, it was misleading as to his "poverty status."

Only three months prior to filing the action, the inmate's trust fund balance reached as high as \$2,100. Additionally, he had a separate savings account which had a balance of over \$4,000. The institution's records revealed he had made several large fund transfers from his trust account immediately prior to his filing of the action.

States such as Indiana, Missouri and Texas currently have similar statutory provisions which require the disclosure of more financial information, or authorize courts to base costs on the account balance, or deposits, for the a period of at least the six month period preceding the inmate's filing of the case. Ind. Code 33-19-3-2.5(c); Mo. Ann. Stat. 217.262; Tex. Code Ann 14.006.

#### B. Filing Fee -

The provisions changing the language of the statute to permit the imposition of an initial filing fee have two functions.

First, it permits the court to assess a \$3.00 fee up front, prior to the filing of the action.

But the amendment also permits the court to assess the filing fee without forgoing what is currently the most effective weapon against non-meritorious cases -- court costs imposed pursuant to K.S.A. 60-2001(d). Under the proposed language, the court would be able to assess a cost up front, and if the inmate's claim proved to be invalid, the court could assess the remainder of the \$61.50 docket fee.