

Approved: 2-12-96
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 30, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Moran (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: Bob Mead--Confirmation, Kansas Parole Board
Barb Hinton, Legislative Post Auditor
Tim Madden, Chief Legal Counsel, Department of Corrections
Paul Shelby, Office of Judicial Administration

Others attending: See attached list

The Chair called the meeting to order at 10:10 a.m.

A motion was made by Senator Feleciano and second by Senator Parkinson to approve the minutes of January 18, 1996. The motion carried.

Bill introductions:

Senator Harris requested the introduction of a bill that would amend the Act concerning common nuisances to include habitual violation of laws specified in Articles 34, 35, 36, 41 and 42 of Chapter 21.

A motion was made by Senator Feleciano, seconded by Senator Reynolds to introduce as a Committee bill. The motion carried.

Senator Vancrum requested the introduction of a bill that would treat the beneficiaries of life insurance policies in the event of divorce or dissolution of marriage very similarly to those who are named in wills and trusts. This proposed bill would negate any designation of the ex-spouse as a beneficiary of an insurance policy automatically.

A motion was made by Senator Vancrum, seconded by Senator Oleen to introduce as a Committee bill. The motion carried.

Senator Petty requested the introduction of a bill concerning assisted technology. This bill would establish "lemon laws" similar to automobiles, but this bill deals with assisted technology, i.e. wheelchairs, communicative devices, etc.

Senator made a motion to introduce as a Committee bill, Senator Oleen seconded the motion. The motion carried.

Chairman, Senator Emert requested the introduction of a bill removing the caps on hospital liens, as well as removing the restriction to Kansas hospitals.

A motion was made by Senator Bond, seconded by Senator Reynolds to introduce as a Committee bill. The motion carried.

Senator Oleen requested a bill on behalf of Riley County Attorney that would establish an attendance review board for schools.

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A motion was made by Senator Oleen, seconded by Senator Reynolds to introduce as a Committee bill. The motion carried.

Confirmation Hearing for:

Mr. Bob Mead for appointment to the Kansas Parole Board

The Chair introduced Mr. Mead to the Committee. Mr. Mead a former Kansas House Representative related his professional background. Mr. Mead stated that he was appointed to the Parole Board by Governor Graves in May of 1995.

Committee discussion with Mr. Mead regarding the current activity of the Parole Board, issues of downsizing the Parole Board, and the establishment of more community based sanctions for technical violators followed. Committee discussion followed concerning the Post Audit Committee's report and the Parole Board Chair's testimony regarding changes in response to that report.

A Committee member requested that Mr. Mead report back to the Committee proposed changes that could be implemented through legislation to help the Secretary of Corrections with the growing prison population, to determine the need for the Parole Board, and to identify alternative sanctions for parole violators.

Mr. Mead discussed the issue of technical violators and stated that he and the Chairwoman Scafe would be glad to address the Committee to discuss recommendations for changes.

Motion was made by Senator Bond, second by Senator Reynolds to recommend favorably for confirmation of the Senate the appointment of Mr. Bob Mead to the Kansas Parole Board. The motion carried.

SB 408--Correctional institutions, inmate trust funds, minimum limit on garnishment payments.

Barb Hinton, Legislative Post Auditor testified in favor of **SB 408**. Ms Hinton stated that while reviewing payments from inmate trust funds, it was observed that district courts were ordering garnishment payments from inmate funds of very small amounts. The conferee stated that the cost of the garnishment process for these small amounts was disproportionate to the amount to be collected. Ms Hinton recommended that to ensure that the cost of garnisheeing inmate trust funds does not exceed the amounts being paid out, that the law be revised to require a minimum of five dollars. (Attachment 1)

Committee discussion followed concerning inmates' responsibility and lowering the minimum amount to one dollar.

Mr. Tim Madden, Chief Legal Counsel, Department of Corrections testified on behalf of the Secretary of Corrections in favor of **SB 408**. Mr. Madden stated that the Department has been issuing checks of very small amounts of money in response to garnishment orders. The conferee stated that in discussing New Section One in SB 408 with Mr. Shelby, OJA, this bill will apply only to garnishment proceedings. Mr. Madden stated that the three dollar filing fee would not be prohibited from collection from the inmate's trust account. The conferee stated that this bill is restricted to garnishment proceedings. (Attachment 2)

Mr. Shelby expressed concerns of the Administration regarding Section One of **SB 408**. Mr. Shelby stated that the Administration feels that Section One is in conflict with K.S.A. 60-2001, the docket fee statute. The conferee proposed an amendment that would rearrange the wording in Section One to say, "in garnishment proceedings no payment shall be made from any inmate trust account for any amount less than five dollars." Mr. Shelby state that the change in language would eliminate the "any order" or "judgment" which the Administration feels should be isolated out of that statement.

Motion was made by Senator Bond, second by Senator Petty to move the amendment requested by Mr. Shelby on behalf of Judicial Administration to ensure that **SB 408** applies to garnishments only. The motion carried.

A motion was made by Senator Bond, second by Senator Parkinson to move the bill favorably as amended. The motion carried, with Senator Vancrum and Senator Feleciano opposing.

SB 515--Requirement for consent to marriage by judge eliminated for 16 and 17 year olds.

Senator Brady spoke in support of **SB 515**. Senator Brady stated that this bill removes the judge from the process of granting permission for marriage of sixteen and seventeen year olds. Senator Brady stated that a

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judge in Parsons requested this bill be introduced. The Senator stated that there have been two or three bills proposed to remove the necessity of the judge's permission in the marriages of those between the ages of sixteen and eighteen. Senator Brady referred to the judge who requested this bill as stating that if those who are sixteen and seventeen years old apply for a marriage license, they have the permission of at least one parent or guardian. Senator Brady stated that when the youths have parental permission, it is not likely that a judge will deny that permission. The process of requiring the judge's permission takes up a lot of time, and in practice most judges routinely grant permission.

The Committee members discussed whether having to have a judge's permission deterred some sixteen and seventeen year old youths from marriage.

SCR 1617--Requesting the Chief Justice of the Supreme Court to develop and implement guidelines for intermediate sanction options for probation violators.

The Chair discussed the Resolution and stated that SCR 1617 was requested by the Interim Committee. The Chair discussed the large number of people going back to prison because of technical violations of parole or probation. The Chair stated that in the interest of reducing prison population, sanctions other than returning or placing technical violators in prison are needed. The Chair stated that the Secretary of Corrections has developed guidelines for intermediate sanctions for parole violators. SCR 1617 was requested for the development of guidelines for intermediate sanctions for the large number of probation violators. This Resolution requests that the Chief Justice of the Supreme Court develop and implement guidelines for intermediate sanctions for probation violators. The Office of Judicial Administration was selected by the Interim Committee because that branch oversees community corrections, court services, judges, and probation officers.

Mr. Paul Shelby, OJA, stated that this Resolution has been under discussion with the Chief Justice and other members of the Court. Mr. Shelby stated that the Chief Justice wants to work with the legislature to hold down prison population. The conferee stated that the Chief Justice feels that it would be more appropriate for the Judicial Council to study this issue and make recommendations to the legislature. Mr. Shelby presented amendments that would request the Kansas Judicial Council to study and suggest intermediate sanction options for technical probation violators. (Attachment 3)

In response to a question by a Committee member, the conferee stated that the Chief and other members of the Court feel that the Judicial Council is the proper place for this task.

Discussion followed concerning the report going to the Senate and House Judiciary Committees during the 1997 Legislative Session, as opposed to administrative development and enactment by the courts of intermediate sanctions.

In response to a question concerning the courts authority to enact intermediate sanctions, Mr. Shelby stated that the court has always taken direction from the legislature. The conferee stated that the problem with intermediate sanctions, is that they are not always available in every district. The issue of the time period for enactment of intermediate was discussed by the conferee and Committee members. The issue of payment for intermediate sanctions was discussed.

It was the consensus of the Committee to discuss SCR 1617 after obtaining additional information.

The Chair adjourned the meeting at 11:05 a.m..

The next meeting is scheduled for January 31, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-30-96

NAME	REPRESENTING
Kristin Westmore	Senator Reynolds
Katy O'Hanlon	Senator Reynolds
Tim Madden	Ks Dept of Corrections
Paul Shelby	OJA
Charles Satzler	Ks Dept of Health + Env
Julie Meyer	KS Sentencing Comm.
Robert Wood	KS Sentencing Comm.
Bob Jones	KS Sentencing Comm.
Gene Johnson	Ks. ASAR Assoc.
Bob Hinton	Legis. Post Audit
Jack Ingle	Ks Supreme Court
Larry Hagan	Sen Paul Fieliciano
Bob Maul	Ks Parole Board
Betty Kuitala	KTLA
St Therese Banzet	Self

The Cost to Process Many Garnishment Payments from Trust Funds Appeared to Far Exceed the Payments Themselves

While reviewing payments from inmate trust funds, we found that district courts were ordering garnishment payments from these inmate funds of very small amounts—as small as one cent.

Generally, a court will issue an order to a correctional facility to hold the assets of an inmate to satisfy a garnishment. In response, the correctional facility will identify the balance in the inmate's trust fund account, place a hold on that amount, and notify the court of the amount being held. The court may then order the correctional facility to pay these trust fund amounts to the plaintiff, usually through the plaintiff's attorney.

In reviewing trust fund payments, we noted several very small garnishment payments. To find out the extent of such payments, we asked the institutions to list for us all garnishment payments from inmate trust funds in the amount of one dollar or less. As the following table shows, the institutions identified 67 such payments. Those payments averaged 14 cents, and ranged from one cent to one dollar.

Court-Ordered Garnishment Payments One Dollar or Less Fiscal Year 1994

<u>Correctional Facility</u>	<u>Number of Court Orders</u>	<u>Dollar Amount of Orders</u>	
		<u>Total</u>	<u>Average</u>
El Dorado	26	\$3.40	\$.13
Ellsworth	14	1.28	.09
Hutchinson	13	.65	.05
Lansing (six month-period only)	14	<u>3.83</u>	.27
Total	67	\$9.16	\$.14

The court's actions in issuing these orders appear to follow those prescribed in State law (K.S.A. 60-714 *et seq.* and K.S.A. 61-2002 *et seq.*). However, the very small amount of money being paid out would appear to be totally disproportionate to the efforts and costs experienced by the plaintiff, the plaintiff's attorney, the court, and the correctional facility. Those efforts and costs would include correspondence, clerical time and costs, computer time, checks and other materials, and postage. Although we didn't attempt to estimate the costs involved, it is clear that those costs far exceeded the amounts paid out.

Recommendation

To ensure that the cost of garnisheeing inmate trust funds does not far exceed the amounts being paid out, the Legislature should revise State law to establish a minimum amount below which payment need not be made from inmate trust funds. Even a \$5 minimum would have eliminated all the unnecessary processing efforts and costs identified in the 67 court orders discussed in this audit.

Sen Juel Com
1-30-96
Attach 1

FINANCIAL AND COMPLIANCE AUDIT REPORT

**OMBUDSMAN FOR CORRECTIONS
PAROLE BOARD
SENTENCING COMMISSION
EL DORADO CORRECTIONAL FACILITY
HUTCHINSON CORRECTIONAL FACILITY
LANSING CORRECTIONAL FACILITY
LARNED CORRECTIONAL MENTAL HEALTH FACILITY
NORTON CORRECTIONAL FACILITY
TOPEKA CORRECTIONAL FACILITY
WINFIELD CORRECTIONAL FACILITY**

OBTAINING AUDIT INFORMATION

This audit was conducted by Randy Tongier, Financial-Compliance Audit Manager, and Tom Vittitow, Auditor, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Tongier at the Division's offices.



DEPARTMENT OF CORRECTIONS
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(913) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

M E M O R A N D U M

DATE: January 30, 1996
TO: Senate Judiciary Committee
FROM: Charles E. Simmons, Secretary
Subject: SB 408

The Department of Corrections supports SB 408.

Senate Bill 408 was introduced by the Legislative Post Audit Committee in response to an audit of correctional facilities for FY 1994. That audit found that district courts were ordering garnishment payments from inmate trust accounts of very small amounts, as small as one cent. During the audit, the correctional facilities identified 67 garnishment payments of one dollar or less, with an average amount of 14 cents.

Pursuant to SB 408, K.S.A. 60-721 would be amended to provide that no payment shall be made from any inmate trust account pursuant to any order or judgment in any garnishment proceeding for any amount less than \$5. Passage of this bill would eliminate the effort and costs associated with garnishing inmate trust accounts for small sums of money. The amount of costs eliminated cannot be estimated.

CES/TGM/nd

Sen Jud Com.
1-30-96
Attach 2

Proposed Amendments to
Senate Concurrent Resolution No. 1617

A CONCURRENT RESOLUTION requesting the *Kansas Judicial Council* ~~Chief Justice of the Kansas Supreme Court~~ to *study and suggest develop and implement guidelines for* intermediate sanction options for technical ~~certain~~ probation violators.

WHEREAS, Trends in prison population indicate that there will be continued growth in prison population over the next ten years; and

WHEREAS, Such growth will further burden an already heavily utilized correctional system in Kansas; and

WHEREAS, The Legislature of the State of Kansas has a responsibility to look to all means of dealing with such growth without negatively impacting public safety; and

WHEREAS, Technical violators are persons who violate conditions of parole or probation without committing a new offense; and

WHEREAS, The Department of Corrections has implemented a graduated sanction program for technical parole violators as a means of reducing the number of technical violators who return to the prison system: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That we hereby request the *Kansas Judicial Council* ~~Chief Justice of the Kansas Supreme Court~~ to *study and suggest the use of intermediate sanction options for probation violators and report back to the Senate and House Judiciary Committees during the 1997 Legislative Session on any recommendations regarding an intermediate sanction program develop and implement guidelines for intermediate sanction options for probation violators as a means of reducing the number of such violators who return to prison; and*

Be it further resolved: All branches of government are directed to cooperate with and support the *Kansas Judicial Council* in conducting this study ~~Such sanction options should vary depending on the supervision level of the offender and the type severity of the violation and should include, but not be limited to: Intensive supervision; electronic monitoring; community service; curfews; detention in local jails; travel restrictions; treatment programs; residential programs; increase in supervision level; pre revocation admission to prison; and revocation; and~~

Sen Jud Com
1-30-96
Attach 3

Be it further resolved: That the Secretary of State be directed to send an enrolled copy of this resolution to the Honorable *Tyler Lockett*, chairman of the Kansas Judicial Council ~~Kay McFarland, Chief Justice of the Kansas Supreme Court.~~