

Approved: April 30, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 25, 1997 in Room 519-S of the Capitol.

All members were present except: Representative L. Candy Ruff, Excused
Representative Douglas Mays, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Tim Madden, Chief Counsel, Department of Corrections
Wendy McFarland, American Civil Liberties Union

Others attending: See attached list

Representative Gilbert moved and Representative Crow seconded the minutes of March 13 be approved. The motion carried.

SB 71 - Department of Corrections - Treatment of Inmates

The Chairperson opened the hearing on **SB 71**.

Tim Madden, Chief Counsel, Department of Corrections, testified in support of **SB 71**, stating the bill is part of the department's response to Governor Graves' initiative to repeal unnecessary regulations. This amends the provisions of K.S.A. 75-5210 requiring the adoption of regulations pertaining to the transfer of an inmate between various security levels; the imposition of extra work, loss of privileges, and restrictions; and the designation of officials who may administer oaths during investigations or disciplinary proceedings.

The standards and operational implementation of the actions affected by **SB 71** are better addressed through the department's Internal Management Policy and Procedure manual (IMPP). (Attachment 1)

Wendy McFarland, American Civil Liberties Union, testified as an opponent to **SB 71**, stating the amendment proposes to eliminate certain rules and regulations the Secretary of Corrections has heretofore been required to set and replaces them by setting standards. These changes would affect the issues of medical care, transfers and discipline...all critical issues in correctional facilities. Kansas should be sending clear messages to inmates if the rehabilitative model of prisons is expected to work. These changes would allow for arbitrary decision making in matters that should be spelled out in rules. (Attachment 2)

Representative Swenson moved and Representative Klein seconded to Table **SB 71**. A Division was called. Yeas - 9 Nays - 10. The motion failed.

Representative Mason moved and Representative Dahl seconded to move **SB 71** out favorably.

Representative Swenson opposed.

Representative Klein stated that rules change and are unaware of the changes.

Representative Vickrey stated that rules and regulations are public information.

Representative Ballou moved and Representative Swenson seconded a substitute motion to strike on Page 3 lines 24 and 25. The motion failed.

Representative Grant moved and Representative Lloyd seconded a Substitute motion to remove the enacting clause by striking line 14 on Page 1.

Representative Dahl stated the Secretary of Corrections already has the authority to establish the standards he

wants and it doesn't come through the Legislature to approve his standards.

Representative Tanner stated he agreed with Representative Dahl and supported the motion to move out favorably.

Representative Crow stated she disagreed striking the rules and regulations does not change the law. If so, this bill is not needed. The rules and regulations is the process of this body delegating to the Executive Branch the right to establish rules and regulations gives to the Executive Branch delegation of authority to establish law. Standards, on the other hand, in providing them the ability to establish standards we're not delegating and as a result there is no oversight. The important thing to look at is whether there needs to be laws that establishes the standards for imposition for extra work for inmates, for granting privileges to inmates and for the imposition of restrictions of inmates and whether there should be oversight of those standards. In this law oversight is retained on standards for health, dental and medical services and oversight is retained for standards, punishment, disciplinary rules, segregation of inmates, forfeiture of good timers, fines and payment of restitution but giving up oversight on those other things. That is where the division lies, whether or not oversight is wanted on those standards that will be made or whether or not those standards have to have the weight of law or whether or not they are just standards.

Representative Swenson stated the problem then is not utilizing the current rules and regulations, the procedure is that the public is left out. The rules and regulations are not published in the Kansas Annotated Regulations. The Department head can change his mind daily if he wants and that is why I oppose the bill.

Representative Klein stated we do not know the standards, but we know the rules and regulations.

A Question was called on the Substitute Motion to strike the enacting clause on Page 1, line 14 (Representative Grant's motion) Yeas - 8 Nays - 12. The motion failed.

The Chairperson stated are back on Representative Mason's motion to move **SB 71** out favorably. A Division was called: Yeas - 11 Nays - 9. The motion carried.

The following wished to be recorded as voting **NO** on **SB 71**: Representatives Franklin, Gilbert, Grant, Klein, Kuether and Swenson.

The Chairperson stated there would not be any more meetings this week as would be on the Floor all day. Next week members would either be on the Floor or in Conference Committees; therefore the committee meetings would be on call except for Monday, March 31 and hearings would be continued on **HB 2533**.

The meeting adjourned at 3:00 p.m.

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: March 25, 1997

| NAME | REPRESENTING |
|------------------|------------------------|
| Tim Madden | ks Dept of Corrections |
| Kurtan Singleton | msw student KY |
| Maurice Moring | |
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STATE OF KANSAS



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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: March 25, 1997
To: House Committee on Federal and State Affairs
From: Charles E. Simmons *Secretary*
Subject: SB 71

The Department of Corrections supports SB 71 as amended by the Senate Committee on Federal and State Affairs. SB 71 is part of the department's response to Governor Graves' initiative to repeal unnecessary regulations. SB 71, as passed by the Senate, amends the provisions of K.S.A. 75-5210 requiring the adoption of regulations pertaining to the transfer of an inmate between various security levels; the imposition of extra work, loss of privileges, and restrictions; and the designation of officials who may administer oaths during investigations or disciplinary proceedings.

The standards and operational implementation of the actions affected by SB 71 are better addressed through the department's Internal Management Policy and Procedure manual (IMPP). The department has conducted a review of its current regulations along with its Internal Management Policy and Procedure manual. That 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, the imposition of extra work, loss of privileges, restrictions and the designation of officials who may administer oaths do not serve the public's interest. SB 71 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 involving the imposition of fines, restitution, or the forfeiture of "good time credits" would still be addressed by rules and regulations. Additionally, SB 71 as amended by the Senate, would still require the department to adopt rules and regulations establishing and prescribing standards for health, medical and dental services for each institution.

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House Committee on Federal and State Affairs

Re: SB 71

March 25, 1997

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K.S.A. 75-5210 currently requires the promulgation of rules and regulations regarding security classification. Both federal and state courts have held that the security classification of inmates is not subject to constitutional scrutiny. Furthermore, K.S.A. 75-5210, specifically provides that the secretary of corrections shall have the authority at any time to transfer an inmate from one level of status to another level of status.

In order to carry out a policy for the proper classification of inmates relative to security levels, the department has developed an extensive Security Classification Manual. The utility of the Security Classification Manual in providing the detailed considerations involved in determining security classification is recognized by the regulation currently required by K.S.A. 75-5210. K.A.R. 44-5-104 refers to both the department's Security Classification Manual and the Policy and Procedure manual.

Finally, K.S.A. 75-5210 requires that rules and regulations designate the persons authorized to administer oaths and the form of the oath administered. Amendment of K.S.A. 75-5210 would fulfill the purpose of the regulation without the redundancy of the promulgation of rules and regulations. K.A.R. 44-1-105 was promulgated pursuant K.S.A. 75-5210. That regulation, by necessity, identifies the persons authorized to administer oaths by the function being performed. The form of the oath to be administered pursuant to regulation requires conformity with the statutory requirements of K.S.A. 54-101 et seq. The intent of SB 71 is to establish the legal requirements for the administration of oaths without requiring duplication by the promulgation of regulations.

The department urges favorable action on SB 71 as amended by the Senate.

CES/TGM/nd

ACLU

WENDY MCFARLAND/LOBBYIST (913) 575-5749

TESTIMONY OPPOSING SB 71

IN SENATE BILL 71 AMENDMENTS HAVE BEEN OFFERED TO CHANGE CERTAIN PORTIONS OF KSA 75-5210. THE CHANGES APPEAR TO BE SIMPLE. THE AMENDMENT PROPOSES TO ELIMINATE CERTAIN RULES AND REGULATIONS THE SECRETARY OF CORRECTIONS HAS HERETOFORE BEEN REQUIRED TO SET AND REPLACES THEM BY SETTING STANDARDS.

A STANDARD LITERALLY SERVES ONLY AS A BASIS FOR MAKING RULES AND REGULATIONS AND IN THIS CASE IS INTENTIONALLY VAGUE AND OPEN TO ARBITRARY INTERPRETATION AND ENFORCEMENT. RULES ARE NOT OPEN TO THAT KIND OF INTERPRETATION. THEY ARE WRITTEN IN A DEFINITIVE WAY SO AS TO SET FORTH THE CLEAR MEANING OF EACH DICTATE.

WE ARE CONCERNED ABOUT THE UNCLEAR EXPECTATIONS BOTH PRISONERS AND CORRECTIONAL WORKERS WILL HAVE WITHOUT SPELLING OUT WHAT IT EXPECTED OF THEM. WE ARE ALSO CONCERNED THAT THE BILL REMOVES YOUR AUTHORITY, AS REPRESENTATIVES OF THE PEOPLE, TO REVIEW MATTERS THAT WILL BE DECIDED SOLELY BY THE EXECUTIVE BRANCH. REGARDLESS OF THE INCONVENIENCE TO THE SECRETARY, THE LEGISLATURE SHOULD STILL SET THE LAWS, VIA RULES, REGULATIONS AND STANDARDS FOR HIM TO FOLLOW.

THESE CHANGES WILL AFFECT THE ISSUES OF MEDICAL CARE, TRANSFERS AND DISCIPLINE...ALL CRITICAL ISSUES IN CORRECTIONAL FACILITIES. KANSAS SHOULD BE SENDING CLEAR MESSAGES TO INMATES IF WE EXPECT THE REHABILITATIVE MODEL OF PRISONS TO WORK. THESE CHANGES WILL ALLOW FOR ARBITRARY DECISION MAKING IN MATTERS THAT SHOULD BE SPELLED OUT IN RULES.

WE URGE YOU TO VOTE NO ON THIS BILL AND INSTEAD CONTINUE TO SEND CLEAR MESSAGES TO INMATES OF WHAT THEY CAN EXPECT OF US AND MORE IMPORTANTLY. WHAT WE EXPECT OF THEM.

FedState
3-25-97
Atch #2