

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m.. on January 22, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Phill Kline (excused)
Representative Doug Mays (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Jim Clark, County and District Attorneys' Assoc.
Representative Kenny Wilk
Frank Kohl, County Attorney for Leavenworth County
Major Ron Cranor, Undersheriff of Leavenworth County

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m and directed the members' attention to the minutes of the January 15 and January 16 meetings. Corrections concerning absences were noted.

A motion was made by Representative Adkins and second was made by Representative Krehbiel to approve the minutes of January 15, and January 16, 1997 as amended. The motion carries.

The Chair reviewed the bill index and noted that some bills that were requested by this Committee were assigned to other committees.

The Chair stated that **HB 2055** and **HB 2056** will be heard by this Committee next week.

Bill Introductions:

Mr. Jim Clark, County and District Attorneys Association, requested five bill proposals be introduced as Committee bills.

Mr. Clark's first bill proposal would allow the search of a person who is an occupant of a motor vehicle or the passenger compartment of the vehicle upon a lawful arrest, under certain conditions. (Attachment 1)

A motion was made by Representative Dahl and a second was given by Representative Shriver to introduce this proposal . The motion carries.

Mr. Clark's second proposal would amend K.S.A. 21-3107 by adding language that would waive for appellate purposes any error claimed by the defendant if the defendant fails to request instruction on a lesser crime. (Attachment 2)

A motion was made by Representative Pauls and a second was given by Representative Shriver to introduce Mr. Clark's second proposal concerning instructions on a lesser crime. The motion carries.

Mr. Clark discussed his third proposal that would prohibit introduction of evidence of voluntary intoxication from consideration in establishing criminal intent. (Attachment 3)

Mr. Clark stated that this proposal would essentially strike subsection 2 of K.S.A. 21-3208. (Attachment 3)

The Chair requested information from Mr. Clark as to whether a similar bill was previously proposed. The conferee indicated that he was not aware of such a bill.

A motion was made by Representative Pauls and a second was made by Representative Dahl to introduce Mr. Clark's third proposal. The motion carries.

Mr. Clark discussed the need for his fourth proposal. The conferee stated that the increased volume of

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on January 22, 1997.

forensic reports for probation or community revocations and the requirement that the examiner be present for cross examination is creating a burden on the court system. The conferee stated that this proposed bill contains similar language as used for admissibility of forensic evidence at preliminary hearings allowing the admissibility of the forensic examiner's written report at the revocation hearings. (Attachment 4)

During Committee members discussion, Representative Howell requested that another laboratory be added to those listed. The Chair stated that another laboratory could be added at the time this bill is heard and discussed.

A motion was made by Representative Howell and second made by Representative Powell to introduce Mr. Clark's fourth proposal as a committee bill. The motion carries.

Mr. Clark fifth bill proposal would amend the penalty section of K.S.A. (1996) 21-3412, domestic violence to parallel DUI penalty section. (Attachment 5)

The Chair stated that this proposed bill will define second and third offenses for sentencing purposes.

A motion was made by Representative Ruff and a second made by Representative Pauls to introduce as a Committee bill. The motion carries.

Representative Krehbiel presented a request for a bill on behalf of Representative McKinney amending the child support statute concerning the placement of child support monies above certain amounts into an education trust fund for the child(ren).

A motion was made by Representative Krehbiel and a second was made by Representative Ruff to introduce as a Committee bill. The motion carries.

HB 2013: Release of federal prisoners.

The Chair introduced Representative Wilk. Representative Wilk stated that the purpose of this bill is to clarify an issue regarding extradition as it concerns United States Penitentiaries. The conferee stated that in no way would a convicted felon be able to walk away from prison into the community as a result of this legislation. Representative Wilk stated that he had an amendment that make slight changes on the second page of the bill, and the conferee stated that he would provide that amendment in writing to the Committee. Representative Wilk introduced Mr. Frank Kohl, County Attorney for Leavenworth county. (Attachment 6)

Mr. Frank Kohl stated this bill is a result of conversation with the Sheriff's Department and Representative Wilk and it addresses a long-standing problem in Leavenworth county. The conferee stated this bill will only impact persons who are in the custody of federal government and who are housed in the state of Kansas. The conferee stated that this bill applies to those who are convicted in another state and have unexpired sentences in that state. The conferee stated that the Kansas law needs to be clarified so that other states with an interest in a person released from a federal facility may take custody of that person without an extradition process. The conferee stated that many county resources are burdened under current law. The conferee stated that this bill would not take away any due process rights. (Attachment 7)

Mr. Kohl referred to page two, section b of **HB 2013**, line 4, and recommended that "United States Penitentiary" be stricken and the words "*Federal Authorities*" be substituted. The conferee stated that making that substitution would cover the United States Penitentiary, the United States Honor Camp, Federal Marshal's Detention Facility and the Military Prison Facilities.

The conferee requested a change in line 5 of page 2 of **HB 2013**, striking the words at the end of line 5, "*pursuant to subsection (a).*" The conferee stated that without the change the bill would not actually do what its' proponents favor.

The Committee members and staff discussed with the conferee constitutional issues concerning extradition, establishing identity, and state jurisdiction over a person.

In response to Committee discussion Mr. Kohl stated that this bill will not change the filing of habeas corpus, since a person cannot file habeas corpus until they are in the custody of the State of Kansas. This bill will prevent them from coming into the custody of the State of Kansas.

The Revisor suggested language to clarify that the demanding state has personal jurisdiction over such person who has "broken the terms of probation, post release supervision, parole or who has an unexpired sentence---etc".

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MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on January 22, 1997.

In response to the suggestion of the Chair, the conferee defined extradition process. The Chair offered the suggestion of considering using the term United States Government in lieu of Federal Authorities.

Major Ron Cranor, Undersheriff of Leavenworth County related to the Committee members that he brought this issue to Representative Wilk and the county attorney. The conferee stated that this bill would right a wrong to the taxpayers of Leavenworth county. The conferee related that the current law adds cost in time and money to the citizens of Leavenworth county. The conferee cited issues of frivolous lawsuits and the Texas case which cost Leavenworth County \$38,000. (Attachment 8)

The Chair requested that Representative Wilk provide the proposed amendments so that this bill can be scheduled for possible action.

The Chair responded to a request from a representative of the ACLU to receive a copy of the proposed amendments and not close the hearing on HB 2013 by announcing that an additional hearing time will be scheduled upon receipt the proposed amendment(s).

The Chair made announcements concerning future meetings and adjourned the meeting at 5:10 p.m.

The next meeting is scheduled for January 27, 1997.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST
LIST

DATE: Wednesday
1-22-97

NAME	REPRESENTING
DeAnna Potos	Governor's Office
Susan Baker	Hein + Weir
Callee Jill Beutow	Bottenberg's Assoc.
Ann Ruselowski	KS Govt. Consulting
Anne Spiess	Peterson Public Affairs Group
Bob Tombs	KSC
Julie Meyer	KSC
Ann Riordan	Rep Shriver's
Kristy Friesen	Rep. Shultz
Kirstin Baker	ACLU

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Bill Requests to the House Judiciary Committee

PROPOSAL NO. 1

Amend K.S.A. 22-2501 to allow the search of a person who is an occupant of a motor vehicle or the passenger compartment of the vehicle upon a lawful arrest, for the purpose of protecting the officer from attack, preventing the person from escaping and discovering the fruits, instrumentalities, or evidence of any crime.

Rationale

The proposal is similar to SB 700 (attached) which passed the Senate in the 1996 Session, but stalled in the House Judiciary Committee. It is required because of the Kansas Supreme Court decision, State v. Anderson & Huffman, 259 Kan. 16, 910 P.2d 180 (1995) which recognized that while the United States Supreme Court may have held that a search of a vehicle incident to arrest is valid under the Fourth Amendment, New York v. Belton, 453 U.S. 454 (1981), the Kansas statute is based on a prior decision, Chimel v. California, 395 U.S. 752 (1969) which restricts such searches to the crime for which the arrest was based, and in the case of traffic violations other than DUI, there is no basis for searching either the occupants or the vehicle.

House Judiciary
Attachment 1
1/22/97

SENATE BILL No. 700

By Committee on Judiciary

2-14

10 AN ACT concerning criminal procedure; relating to search without search
11 warrant; amending K.S.A. 22-2501 and repealing the existing section.
12

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

14 Section 1. K.S.A. 22-2501 is hereby amended to read as follows: 22-
15 2501. (a) *When a lawful arrest of a person other than a person who is*
16 *an occupant of a motor vehicle as defined by K.S.A. 8-1437 and*
17 *amendments thereto* is effected, a law enforcement officer may reason-
18 ably search the person arrested and the area within such person's im-
19 mediate presence for the purpose of:

- 20 (a) (1) Protecting the officer from attack;
21 (b) (2) preventing the person from escaping; or
22 (c) (3) discovering the fruits, instrumentalities; or evidence of ~~the any~~
23 *the crime.*

24 (b) *When a lawful arrest of a person who is an occupant of a*
25 *motor vehicle as defined by K.S.A. 8-1437 and amendments thereto*
26 *is effected, a law enforcement officer may reasonably search the*
27 *person arrested and the area within such person's immediate pres-*
28 *ence for the purpose of:*

- 29 (1) *Protecting the officer from attack;*
30 (2) *preventing the person from escaping; or*
31 (3) *discovering the fruits, instrumentalities or evidence of any*
32 *crime.*

33 Sec. 2. K.S.A. 22-2501 is hereby repealed.

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

#2
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Bill Requests to the House Judiciary Committee

PROPOSAL NO. 2

Amend K.S.A. 21-3107(3) by adding language that if the defendant fails to request an instruction on a lesser crime the defendant will have waived any error and the failure shall not be the basis for reversal of the case on appeal.

Rationale

The proposal is similar to SB 298 (attached) which was introduced in the 1995 Session, passed the Senate, but did not get a hearing in the House Judiciary Committee.

House Judiciary
Attachment 2
1/22/97

SENATE BILL No. 298

By Committee on Judiciary

2-13

9 AN ACT concerning crimes and punishment; relating to lesser included
10 crimes; amending K.S.A. 21-3107 and repealing the existing section.
11

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

13 Section 1. K.S.A. 21-3107 is hereby amended to read as follows: 21-
14 3107. (1) When the same conduct of a defendant may establish the com-
15 mission of more than one crime under the laws of this state, the defendant
16 may be prosecuted for each of such crimes. Each of such crimes may be
17 alleged as a separate count in a single complaint, information or indict-
18 ment.

19 (2) Upon prosecution for a crime, the defendant may be convicted
20 of either the crime charged or an included crime, but not both. An in-
21 cluded crime may be any of the following:

22 (a) A lesser degree of the same crime;

23 (b) an attempt to commit the crime charged;

24 (c) an attempt to commit a lesser degree of the crime charged; or

25 (d) a crime necessarily proved if the crime charged were proved.

26 (3) In cases where the crime charged may include some lesser crime,
27 it is the duty of the trial court to instruct the jury, not only as to the crime
28 charged but as to all lesser crimes of which the accused might be found
29 guilty under the information, *complaint* or indictment and upon the ev-
30 idence adduced. If the defendant objects to the giving of the instructions,
31 *or fails to request the lesser crime instructions*, the defendant shall be
32 considered to have waived objection to any error in the failure to give
33 them, and the failure shall not be a basis for reversal of the case on appeal.

34 (4) Whenever charges are filed against a person, accusing the person
35 of a crime which includes another crime of which the person has been
36 convicted, the conviction of the included crime shall not bar prosecution
37 or conviction of the crime charged if the crime charged was not consum-
38 mated at the time of conviction of the included crime, but the conviction
39 of the included crime shall be annulled upon the filing of such charges.
40 Evidence of the person's plea or any admission or statement made by the
41 person in connection therewith in any of the proceedings which resulted
42 in the person's conviction of the included crime shall not be admissible
43 at the trial of the crime charged. If the person is convicted of the crime

~~SB-298~~

~~2~~

44 ~~i~~ charged, or of an included crime, the person so convicted shall receive
45 ~~2~~ credit against any prison sentence imposed or fine to be paid for the
46 ~~3~~ period of confinement actually served or the amount of any fine actually
47 ~~4~~ paid under the sentence imposed for the annulled conviction.

48 ~~5~~ Sec. 2. K.S.A. 21-3107 is hereby repealed.

49 ~~6~~ Sec. 3. This act shall take effect and be in force from and after its
50 ~~7~~ publication in the statute book.

#3
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Bill Requests to the House Judiciary Committee

PROPOSAL NO. 3

Prohibiting introduction of evidence of voluntary intoxication from consideration in establishing criminal intent.

Rationale

In Montana v. Egelhoff, 135 L Ed 2d 361, decided June 13, 1996, the United States Supreme Court upheld a Montana statute which prohibited consideration of a defendant's intoxication in determining a mental state which was an element of the offense, finding no due process violation.

The concept of restricting evidence favorable to a defendant is not new, as the Kansas Rape Shield statute, K.S.A. 21-3525, which restricts evidence of the victim's prior sexual conduct, has been around since 1976.

House Judiciary
Attachment 3
1/22/97

inal acts, or causes such acts to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in his own name or on his own behalf.

(2) An individual who has been convicted of a crime based on conduct performed by him for and on behalf of a corporation is subject to punishment as an individual upon conviction of such crime, although a lesser or different punishment is authorized for the corporation.

History: L. 1969, ch. 180, § 21-3207; July 1, 1970.

CASE ANNOTATIONS

1. Cited; sufficiency of complaint based on theory of defendant's individual responsibility for corporate crime examined. *State v. Jones*, 242 K. 385, 394, 748 P.2d 839 (1988).

21-3208. Intoxication. (1) The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of his conduct and of conforming his conduct to the requirements of law.

(2) An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

History: L. 1969, ch. 180, § 21-3208; July 1, 1970.

Law Review and Bar Journal References:

"Jury Instructions for Insanity," Clarence R. Wiethorn, 9 W.L.J. 271, 279 (1970).

"Criminal Law—Chronic Alcoholism as a Defense to Public Drunkenness," Joseph Graf, 9 W.L.J. 464, 465 (1970).

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392, 435 (1979).

CASE ANNOTATIONS

1. To be "involuntary" intoxicated, defendant must have yielded to irresistible force in first drinking; must be more than strong urge or "compulsion." *State v. Seely*, 212 K. 195, 203, 510 P.2d 115.

2. Mentioned; issue of intoxication bearing on state of mind properly question for jury; not disturbed on appeal. *State v. Miles*, 213 K. 245, 246, 515 P.2d 742.

3. Instruction on voluntary intoxication given in accord herewith; no error in refusing instruction on insanity. *State v. Osbey*, 213 K. 564, 571, 517 P.2d 141.

4. No instruction hereunder required in prosecution under 21-3411; intent not necessary element of crime proscribed. *State v. Farris*, 218 K. 136, 140, 143, 542 P.2d 725.

5. Contention failure to instruct on voluntary intoxication even though not requested without merit; conviction of bur-

glary and theft affirmed. *State v. Cross*, 221 K. 98, 99, 558 P.2d 665.

6. Term "involuntarily produced" construed; intoxication caused by irresistible force; conviction under 21-3403 affirmed. *State v. Palacio*, 221 K. 394, 395, 396, 559 P.2d 804.

7. Referred to; failure to instruct on lesser included offense reversible error, under facts. *State v. Seelke*, 221 K. 672, 678, 561 P.2d 869.

8. Cited; presumption that person possesses a free will and is accountable for his rational conduct; exceptions. *State v. Jones*, 2 K.A.2d 220, 226, 577 P.2d 357.

9. Section cited; conviction under 21-3410, 21-3427 upheld. *State v. Cunningham*, 222 K. 704, 708, 567 P.2d 879.

10. No error in refusal to instruct jury as to substance of this section in prosecution under 21-3414; conviction affirmed. *State v. Davis*, 2 K.A.2d 698, 701, 587 P.2d 3.

11. Evidence of underlying felony of aggravated burglary strong and conclusive; no error in failure to give lesser included instructions based upon alleged intoxication. *State v. Case*, 228 K. 733, 738, 620 P.2d 821.

12. Sufficient evidence to find defendant not intoxicated; conviction of rape reversed upon other grounds. *State v. Carr*, 230 K. 322, 326, 634 P.2d 1104 (1981).

13. "Involuntary" intoxication involves more than strong urge or compulsion to drink. *State v. Lilley*, 231 K. 694, 697, 647 P.2d 1323 (1982).

14. Specific intent crimes (and general intent crimes as aider and abettor) require instruction on issue. *State v. Sterling*, 235 K. 526, 528, 680 P.2d 301 (1984).

15. Felony murder and other felony convictions, voluntary intoxication instruction. *State v. Johns*, 237 K. 402, 406, 699 P.2d 538 (1985).

16. Issue concerning level of intoxication was question for trier of fact. *State v. Falke*, 237 K. 668, 683, 684, 703 P.2d 1362 (1985).

17. Cited; voluntary intoxication as defense to theft (21-3701) discussed. *State v. Keeler*, 238 K. 356, 360, 710 P.2d 1279 (1985).

18. Instruction on voluntary intoxication is in response to statute; diminished capacity instruction unnecessary where theory covered by general instructions. *State v. Jackson*, 238 K. 793, 799, 714 P.2d 1368 (1986).

19. Cited; necessity for instructions on voluntary intoxication examined. *State v. Shehan*, 242 K. 127, 744 P.2d 824 (1987).

20. Cited; PIK instruction on voluntary intoxication as consistent with statute examined. *State v. Beebe*, 244 K. 48, 60, 766 P.2d 158 (1988).

21. Voluntary intoxication instruction as not requiring separate instruction on diminished capacity due to posttraumatic stress disorder examined. *State v. DeMoss*, 244 K. 387, 392, 770 P.2d 441 (1989).

22. Voluntary intoxication distinguished from alibi (22-3218) and insanity (22-3219) as only two circumstances requiring notice of intended defense. In re Habeas Corpus Petition of Mason, 245 K. 111, 113, 775 P.2d 179 (1989).

23. Voluntary intoxication as defense in murder trial and instruction thereon examined. *State v. Cadelkarim*, 247 K. 505, 507, 802 P.2d 507 (1990).

24. Failure to give involuntary intoxication instruction not error under facts present; "irresistible force" examined. *State v. Cooper*, 252 K. 340, 349, 845 P.2d 631 (1993).

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Bill Requests to the House Judiciary Committee

PROPOSAL NO. 4

Amend K.S.A. 21-3716(b), evidence at probation or community correction revocation hearings, to include language taken from 22-2902a, admissibility of forensic examiner reports at preliminary examination, after a finding that good cause exists for denying confrontation.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. If the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

~~22-2902a. Preliminary examination; admissibility of report of forensic examiner.~~
At any preliminary examination in which the Results of a forensic examination, analysis, comparison or identification prepared by the Kansas bureau of investigation, the federal bureau of investigation, the bureau of alcohol, tobacco and firearms of the United States department of the treasury, the state secretary of health and environment, the sheriff's department of Johnson or Shawnee county, the police department of the cities of Topeka or Wichita, the drug enforcement administration, the air force of the United States, the navy of the United States, the army of the United States or Bethany medical center, inc. located in Kansas City, Kansas are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the preliminary examination in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

House Judiciary
Attachment 4
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#5
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Bill Requests to the House Judiciary Committee

PROPOSAL NO. 5

Amend the penalty section of K.S.A. (1996) 21-3412, domestic violence battery, to parallel DUI penalty section. Because of redundant language, and new penalties for domestic violence, trial courts are confused and making conflicting rulings. Adopting language in K.S.A. 8-1567 not only clarifies the language and makes the penalties consistent, but the appellate courts have already had occasion to interpret the language.

Attached are the two statutes in question, with the domestic violence penalties on the left and the DUI penalties on the right. The DUI statute also contains identical language to that appearing in subsection C in the lower left hand corner.

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(c) (1) Upon a first conviction of a violation of this section under circumstances which constitute a domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this section a second time under circumstances which constitute a domestic battery, ~~having at least one time before within such period been convicted for such crime or a violation of a comparable crime under the laws of any municipality, state, federal government or foreign government,~~ such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.

(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this crime a third or subsequent time under circumstances which constitute a domestic battery, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for domestic violence. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(C) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(i) "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(ii) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(iii) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(iv) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided

in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. Except as provided in subsection (g), the person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third or a subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection (g), the person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

#6
State of Kansas

KENNY A. WILK
REPRESENTATIVE, 42ND DISTRICT
LEAVENWORTH COUNTY
701 S. DeSOTO RD.
LANSING, KANSAS 66043
(913) 727-2453
ROOM 174-W, CAPITOL BLDG.
TOPEKA, KANSAS 66612-1504
(913) 296-7655



TOPEKA

House of Representatives

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
SUBCOMMITTEES:
EDUCATION
K-12 SCHOOL FINANCE

Memorandum

TO: Rep. Tim Carmody *1155*
FROM: K. Wilk
DATE: January 23, 1997
RE: HB 2013

Attached please find a balloon for the proposed amendments for HB 2013. The balloon denotes the amendments, Mr. Frank Kohl, suggested to the committee. We also agree with Jill Wolters suggested amendment.

If you have additional questions, please call. Thanks for your consideration.

cc: Jill Wolters

House Judiciary
Attachment 6
1/22/97

HOUSE BILL No. 2013

By Representative Wilk

12-17

9 AN ACT concerning extradition; relating to the release of certain pris-
10 oners; amending K.S.A. 22-2713 and repealing the existing section.

11

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

13 Section 1. K.S.A. 22-2713 is hereby amended to read as follows: 22-
14 2713. (a) Whenever any person within this state is charged on the oath
15 of any credible person before any judge or magistrate of this state with
16 the commission of any crime in any other state and, except in cases arising
17 under K.S.A. 22-2706 and amendments thereto, with having fled from
18 justice, or with having been convicted of a crime in that state and having
19 escaped from confinement, or having broken the terms of the person's
20 bail, probation, assignment to a community correctional services program,
21 postrelease supervision or parole, or with being under sentence, some
22 portion of which remains unexecuted, from which such person has not
23 been paroled, placed on postrelease supervision or discharged or other-
24 wise released, or whenever complaint has been made before any judge
25 or magistrate in this state setting forth on the affidavit of any credible
26 person in another state that a crime has been committed in such other
27 state and that the accused has been charged in such state with the com-
28 mission of the crime, and, except in cases arising under K.S.A. 22-2706
29 and amendments thereto, has fled from justice, or with having been con-
30 victed of a crime in that state and having escaped from confinement, or
31 having broken the terms of the person's bail, probation, assignment to a
32 community correctional services program, postrelease supervision or pa-
33 role, or with being under sentence, some portion of which remains unex-
34 ecuted, from which such person has not been paroled, placed on post-
35 release supervision or discharged or otherwise released, and is believed
36 to be in this state, the judge or magistrate shall issue a warrant directed
37 to any law enforcement officer commanding the apprehension of the per-
38 son named therein, wherever such person may be found in this state, and
39 to bring such person before the same or any other judge, magistrate or
40 court who or which may be available in or convenient of access to the
41 place where the arrest may be made, to answer the charge or complaint
42 and affidavit, and a certified copy of the sworn charge or complaint and
43 affidavit upon which the warrant is issued shall be attached to the warrant.

Government

1 (b) Whenever any person who has broken the terms of such person's
 2 probation, postrelease supervision, parole or who has an unexpired sen-
 3 tence and who is currently held and is subsequently being released from
 4 custody of the United States Penitentiary at Leavenworth, Kansas, and a
 5 warrant for the apprehension of such person has been issued pursuant to
 6 subsection (a), the duly accredited officers, or such officers' designees, of
 7 a foreign state may enter the state of Kansas to apprehend such person.
 8 For that purpose no formalities shall be required other than establishing
 9 the authority of the officer and the identity of the person to be appre-
 10 hended. All legal requirements to obtain extradition of fugitives from jus-
 11 tice are hereby expressly waived by the state of Kansas, as to such persons.

State

State

12 Sec. 2. K.S.A. 22-2713 is hereby repealed.
 13 Sec. 3. This act shall take effect and be in force from and after its
 14 publication in the statute book.

COUNTY OF LEAVENWORTH

COURTHOUSE
300 WALNUT
LEAVENWORTH, KANSAS 66048
Area Code (913) 684-0400



FROM THE OFFICE OF:

January 14, 1997

TO: Legislative Committee Members

RE: H.B. 2013

From: Frank Kohl, Leavenworth County Attorney
Herb Nye, Leavenworth County Sheriff
Ron Cranor, Leavenworth County Undersheriff

In submitting this bill for your consideration we are attempting to alleviate a burden that has been placed upon our county for years. As the only county in Kansas that hosts a federal penal institution no other county has had to face the burden, both financial and manpower, that we have had to assume.

For years we have followed the practice of taking custody, on federal property of the United States Penitentiary, inmates who have detainers or warrants filed on them from some other state and are now being released from their federal sentence.

We take custody of the inmate on federal property and transport the inmate to our district court. The inmate is brought before a district court judge where a Voluntary Waiver of Extradition is presented for the inmate to sign.

All goes well, if the inmate signs the waiver; if not, the taxpayers of Leavenworth County are burdened with jail costs and court proceedings, some of these lasting years. The last big one cost Leavenworth County \$38,000. (See news Clipping attached) That one involved an inmate who was convicted in Texas of murder. At the same time he was convicted of a federal offense in a United States District Court in Texas. The federal government arbitrarily moved the inmate to the United States Penitentiary at Leavenworth. The State of Texas filed a detainer on the inmate because of his murder conviction and waited for his release. Instead of being able to come and get their inmate from the penitentiary, we had to pick him up. Once we picked him up he decided he didn't want to go to Texas, to serve his term. Our example is given to show that the State of Texas was burdened because of the actions of the federal government in placing the inmate outside of Texas jurisdiction in USP Leavenworth and the difficulty they had in getting him back even though he was

*House Judiciary
Attachment 7
1/22/97*

City-County Probation
684-0760

Council on Aging
684-0777

Emergency Medical Service
684-0788

Noxious Weeds
684-0494

Community Corrections
684-0775

County Infirmary
684-1010

Health Department
684-0730

Sheriff
682-5724

previously convicted. Then Leavenworth County had the burden of holding this inmate and being involved with legal proceedings to get him back to Texas. None of this expense needed to occur, if Texas could have come directly to USP and picked up their inmate.

We conducted a survey of all county sheriffs in states having a federal institution to determine how they dealt with inmates being released from their federal institution. Out of 23 states contacted, 20 responded to our survey. Of that 20 - 11 states handle the release of inmates the same as we do, and 9 states do not get involved with the process at all. Among them are California, Arizona and Georgia. I can find no federal mandate that requires our intervention, as a matter of fact, in communication with the warden of USP, he will help us in any way possible.

As we could find no state law clearly defining our role, including a review of the Uniform Criminal Extradition Act, The Agreement on Detainers and the Kansas Extradition Manual, we requested an Attorney General Opinion through Representative Kenny Wilk. (See 96-6, attached)

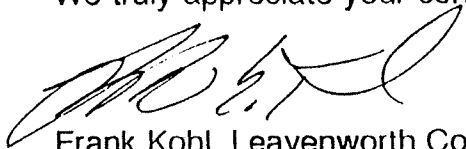
The opinion led us to believe that a change in legislation was the only way to proceed to relieve us of this burden.

We feel amending KSA 22-2713 is a viable way to properly address the issue. We do point out that we don't feel any person's due process is violated by this change as the person has already been adjudicated by a foreign state court and is;

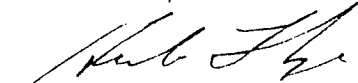
- (1) On probation,
- (2) On postrelease supervision,
- (3) On parole,
- (4) Has an unexpired sentence from another state

We do agree that in a pre-trial situation the accused should have the opportunity to be brought before our district court for a determination of waiving extradition or other legal proceedings.

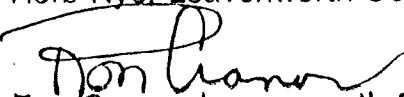
We truly appreciate your consideration of this bill.



Frank Kohl, Leavenworth County Attorney



Herb Nye, Leavenworth County Sheriff



Ron Cranor, Leavenworth County Undersheriff

Violence continues in Liberia

MONROVIA, Liberia (AP) — Liberia's rebels, many of them teen-agers armed with machine guns, fought furious street battles Saturday, shattering hopes that the evacuation of warlord Roosevelt Johnson would spur moves toward peace. The fresh violence came one day after U.S. Marines airlifted Johnson to Ghana for peace talks.

Tobacco linked to 'molecular glue'

WASHINGTON (AP) — Smokers may get the same kind of heart disease that attacks diabetics thanks to sugars in tobacco that form a "molecular glue" to harden their arteries, new research suggests. Doctors have long warned that some 190,000 Americans die annually from smoking-related heart disease. Through diabetic-like glucose reactions that occur even in young smokers, said study author Anthony Cerami of Long Island's Picower Institute for Medical Research.

Weather



Today's high: 70

Forecast, A2

Index

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Crossword	C8	Opinion	A4
Daily Record	A5	Sports	B1-4
Horoscope	A5	This & That	A5



By RICHIE
Sunday Times Staff Writer

If a Republican-sponsored bill becomes law, the sale of adult magazines on Fort Leavenworth will cease.

But not just on Fort Leavenworth.

The bill, working its way through the House, seeks to ban the sale of adult magazines and videos on all military bases.

However, proponents of the legislation told the House National Security Committee just before

they approved the measure on Wednesday that the *Sports Illustrated* swimsuit issue and *Victoria's Secret* catalog could stay on the shelves.

On Fort Leavenworth, the Shopette and the Post Exchange are the only two places where adult magazines are sold, fort officials said Friday.

"Yes, we do carry two adult publications for sale at those places, *Playboy* and *Penthouse*," said Lt. Col. Jim Gleisberg, public affairs officer. "They're placed on the top shelves out of children's reach and

an R-rating. He said there is no plan made on the base as to how it would be implemented.

"Since it's not a law yet," Gleisberg said, "we'll wait and do anything in regards to it until we're directed to do so by higher headquarters or by the Army Air Force Exchange Service."

The Army and Air Force Exchange Service is the office of military base exchanges worldwide and is headquartered in Dallas. AAF

Federal prisoners burdening the county

Sheriff's Department looking for a way to cut down on the expense

By CONNIE PARISH
Sunday Times Staff Writer

Mention "extradition" to Leavenworth County Undersheriff Ron Cranor and he's likely to tell you just what he thinks.

It's not good.

That's because too many federal prisoners released with detainers to other states fight extradition, which means surrendering to the state demanding their return.

What that's meant to Leavenworth County over the years is problems.

It's also cost the county money. Take the most recent example.

Eugene Alexander was released from the U.S. Penitentiary in March 1993. But he still had time to serve in Texas on a murder charge.

Alexander wasn't anxious to go back to Bexar County, Texas. When the Leavenworth County sheriff's department picked him up, their normal procedure, he decided to fight extradition.

So Alexander sat in the Leavenworth County Jail until November 1995 while his attorneys fought that legal battle. The bill for his 2 1/2-year stay came to about \$37,000. As of last month, county officials said Texas still

Buzzing around



See Federal on page A3

Federal prisoners draining county's cash

nty agenda

eting to discuss the National
uard armory and the opera-
on, maintenance and upkeep
the proposed justice center.
On Thursday and Friday,
ommissioners will attend the
ansas County Commissioners
ssociation Spring Meeting at
anhattan. Friday is Leaven-
County Safety Day.

Kansas, Missouri

People in Branson and Pitts-
rg, Kan., also reported see-
g the light.

"There is no correlation to
hat people claim they saw.
might as far as it being space
bris that we are monitor-
g," said Maj. Steve Boylan,
blic affairs officer for the
S. Space Command in
eyenne Mountain just west
Colorado Springs.

The command monitors
e and space debris, but
le to detect or track
teorites, Boylan said.

Authorities in several coun-
; in southwest Missouri had
eived no reports of any-
ng unusual. The National
ather Service office in
ringfield had been called
out the phenomenon but had
information about what it
ght have been, an employee
d.

ug couriers

The U.S. Border Patrol
erates six checkpoints on
vily traveled highways out

Continued from page A1

hasn't paid that tab.

Sheriff Herb Nye wanted to see if the sheriff's department had a legal obligation to pick up those federal inmates. The arrangement with the penitentiary dates back at least to the 1950s, he knows.

He's got a book that shows a 1956 Associated Press photo of a sheriff's deputy guarding a handcuffed federal inmate, Floyd Hamilton, in front of the Leavenworth County Jail.

Nye talked to Rep. Kenny Wilk, R-Lansing, who asked for an attorney general's opinion as to whether his department had a legal obligation to pick up the inmates.

A complex 7-page opinion seems to indicate it does.

But Nye and Cranor say that's not the case in all states. Cranor has talked to sheriff's departments across the country. Some of them

do pick up the prisoners; other's don't.

The Vigo County Sheriff's Department in Terre Haute, Ind., is one that doesn't.

An office manager there said most times, the agencies pick up their own people from the U.S. Penitentiary in Terre Haute.

"There are very few times when we have to pick them up (for the other agencies)," she said. "We don't have the manpower to do that all the time."

The sheriff's department is not normally notified when such federal inmates are released, she said.

However, in Santa Barbara County, Calif., the U.S. Penitentiary at Lompoc does notify the county's warrants bureau in Santa Barbara, said a spokesman from the sheriff's department.

The warrants bureau notifies the office in Lompoc, which picks up the prisoners and takes them to a

holding facility in Santa Maria. They are then transported by bus to the main jail in Santa Barbara. However, the spokesman said this isn't much of a problem, because it only happens maybe half a dozen times a year.

Cranor argues that it's not a federal law that requires them to pick up the Leavenworth USP inmates; otherwise, all states would have to do it the same way.

He's made it his mission to call as many jurisdictions as possible that have federal prisons. He also wants to get copies of their state laws.

That way, he and Nye say, they'll have documentation to show that a state law could be changed so the county no longer would have this burden.

They say they wouldn't mind picking up the prisoners if the other states occasionally needed assistance. But they'd rather not

do it all the time, especially when it opens up the possibility of the prisoners making an extended stay.

Nye said he hoped to meet with Attorney Gen. Carla Stovall to see if she would support such a change in the law.

After all, he said, "We're the only county in Kansas affected by this, so no one else cares."

Meanwhile, Cranor said, "We keep asking ourselves, 'What are we doing on federal property? Why are we picking somebody up on federal property?'"

Diabetic plans to walk from Kansas to Indianapolis

By MICHAEL BATES
Associated Press Writer

DERBY — The little stroll Jack McCarthy is planning would scare off most healthy people.

To celebrate surviving 60 years as an insulin-dependent diabetic, McCarthy is walking from Derby to Indianapolis where his insulin is made. Then he will continue his walk to the start of the Olympics in Atlanta, probably getting to carry the Olympic torch for a segment of

betes. And there have been shorter walks, too.

He retired in February after 38 years as an employee at Raytheon Aircraft, formerly known as Beech Aircraft Corp. But he has been training for the walk since August, gradually adding to his daily mileage.

He acknowledges the five years since his last walk across Kansas makes a difference.

"It's a little harder to do this time," he said. "But I will not tell

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with God
651-2343

24 - Hr. Telephone Devotional
St. Paul Lutheran Church & School

Thank You
The family of
Amos E. Alexander

wish to express their grati-
tude to friends and relatives
for the many acts of kindness
shown to us. We are grateful
for the many phone calls,
cards, food, visits, prayers,
flowers, and all other
acts of kindness.

Inge Alexander - Wife and family
Laura Stevenson - Sister and family



Ask Dr.
John Zillman



U.S. Department of Justice

Federal Prison System

United States Penitentiary

Office of the Warden
Leavenworth, Kansas 66048-1254

May 30, 1996

Major Ron Cranor, Undersheriff
Leavenworth County Sheriff's Department
503 South Third Street
Leavenworth, Kansas 66048

Dear Major Cranor:

This is in response to your correspondence dated May 15, 1996, regarding a recent opinion authored by the Office of the Attorney General for the State of Kansas. As you know, the opinion addressed the role of a county sheriff in taking custody of persons released from federal custody at the expiration of their federal term of imprisonment.

The opinion has been carefully reviewed by Tim Roberts, Supervisory Attorney, at USP, Leavenworth. Mr. Roberts is in complete agreement with the conclusion reached in the opinion. Regrettably, I am unable to assist you in alleviating or lessening the financial difficulties your agency experiences due to incarcerating released federal prisoners for other state jurisdictions. I am willing, however, to consider and discuss any suggestions you may have regarding this institution's role in reducing the amount of time these prisoners remain incarcerated in your county jail.

If I may be of further service, please do not hesitate to contact me. I look forward to continuing the good working relationship between our respective agencies.

Sincerely,

PAGE TRUE
Warden

*Re: if this is
my way possible
not in help
I'll be study and work!*

House Judiciary
Attachment 8
1/22/97



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

February 5, 1996

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 96-6

The Honorable Kenny A. Wilk
State Representative, 42nd District
State Capitol, Room 174-W
Topeka, Kansas 66612

Re: Counties and County Officers--Jails--County Jails; United States
Prisoners; Prisoners on Detainer from Other States

Criminal Procedure--Kansas Code of Criminal Procedure; Arrest--
Fugitives From Justice; Confinement in Jail When Necessary

Synopsis: A county sheriff has the authority and the duty to comply with a warrant issued by a court or the governor acting under K.S.A. 22-2701 *et seq.* and must detain persons in accordance with the terms of K.S.A. 22-4401 *et seq.* Absent a warrant issued for arrest, a county sheriff must cooperate with other state authorities in accordance with K.S.A. 22-4403 and take custody of a person wanted by another state. The resulting costs of incarceration incurred by a county detaining a person on behalf of another state may be requested from the demanding state or the defendant, pursuant to K.S.A. 19-1917a, 22-3801, 22-4401 article VI(g), or 22-2712. The state seeking ultimate custody of the person detained in Kansas must somehow obtain or possess personal jurisdiction over the individual in question before taking actual physical custody of a person found outside their boundaries. Such jurisdiction may be accomplished pursuant to the provisions of the detainer act and the extradition act. States may not act extra-territorially prior to establishing jurisdiction. Cited herein: K.S.A. 19-811; 19-812; 19-821; 19-1910; 19-1916; 19-1917; 19-1930; 22-2701; 22-2702; 22-2708; 22-2710; 22-2712; 22-2713; 22-2714; 22-2715; 22-2717; 22-3801; 22-4101; 22-4301; 22-4401; 22-4403; 28-175; 18 U.S.C.A. § 3181; U.S. const., art. 4, sec. 2, cl. 2.

*

*

*

8-2

Dear Representative Wilk:

You request our opinion on the proper role of a county sheriff involved in taking custody of persons wanted by another state and found in a county wherein a federal prison is located. You inform us that once the person has completed their federal prison sentence and is to be released by federal authorities, the Leavenworth county sheriff has followed the practice of taking custody, (on federal property of the United States penitentiary) of those inmates who have a detainer or warrant filed against them by authorities with other states. Once the sheriff takes such custody, the inmate is brought before a Kansas district court judge, where a voluntary waiver of extradition is presented to the inmate for signature. If the inmate refuses to cooperate with the extradition process, he or she is placed in the county jail until such time as the matter is resolved or extradition can occur. If a prisoner contests extradition, the person may remain in the county jail for some time and the resulting costs have to date been borne by the county.

You indicate that Kansas is one of only eight states that follows this procedure. You note that some federal inmates are wanted in the same state in which the federal government originally prosecuted and were moved to Kansas at the discretion of federal authorities. You therefore question the legal standing of an inmate who is present in Kansas. You additionally inform us that some federal inmates are wanted by other states because of parole violations and you ask us to answer the following specific questions:

"1. Is there a legal requirement that mandates the Leavenworth County Sheriff Department take custody of inmates of the United States Penitentiary (USP) in Leavenworth, KS, who have a detainer filed against them from some other state and are being released from their federal sentence?

"2. Is there a legal requirement that precludes foreign states from making their own arrangements to take custody of an inmate on United States Penitentiary property?"

The issues involved are largely addressed in K.S.A. 22-2701 *et seq.*, 22-4101 *et seq.*, 22-4301 *et seq.* and 22-4401 *et seq.* These acts set forth the proper procedures and circumstances whereby a person charged with another crime or wanted for parole violations may be detained by Kansas authorities. The applicable statutes and case law must be applied on a case by case basis to determine the facts and what statutory procedure should be followed in each situation.

Under K.S.A. 22-4401 *et seq.*, Kansas has legislatively entered into an agreement with other states and the federal government. The parties to this agreement have promised to detain persons found within this state but sought by other states. *See Sweat v. Darr*, 235 Kan. 570, (1984). As stated in *In the Matter of Lancaster*, 19 Kan.App.2d 1033 (1994), the agreement on detainers, K.S.A. 22-4401 *et seq.*, applies to persons in one state who

have criminal charges pending against them in another state when the sovereign state has an outstanding charge but has yet to convict the individual in question. A detainer allows the authorities in one state to "hold" a person for another sovereign.

A detainer may arise either because the prisoner in question notifies the respective authorities of charges pending in another matter and requests a speedy trial by the appropriate court or because officials in one state notify officials in another that a person being sought may be found in their state. If the person being detained challenges extradition, the process may take longer and thus the detention period may be prolonged. K.S.A. 22-4403 requires public officials, including county sheriffs, to enforce the agreement on detainers and cooperate with parties in effectuating its purpose. The purpose of the act is "to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. . . . It is the further purpose of this agreement to provide such cooperative procedures." K.S.A. 22-4401, article I. [The uniform mandatory disposition of detainers act, K.S.A. 22-4301 *et seq.*, is similar, but applies to prisoners incarcerated in Kansas with charges pending against them in Kansas. *See also State v. Rodriguez*, 254 Kan. 768, 771 (1994).]

Once someone is detained, or "held," by authorities in one state on behalf of another sovereign, the next step in the process is to move the person in question to the jurisdiction for whom they were detained. In cases involving another state, this process is called extradition.

Extradition is a principle addressed in the United States constitution:

"A person charged in any State of Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime." Art. IV, sec. 2.

The extradition clause in the United States constitution further enables each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed. *Biddinger v. Commissioner of Police*, 245 U.S. 128, 132-33, 38 S.Ct. 41, 42-43, 62 L.Ed. 193 (1917).

"The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states. . . . [T]he courts of an asylum state are bound by, Art. IV, Sec.2 . . . by [18 U.S.C.] Sec. 3182, and, where adopted, by the Uniform Criminal Extradition Act." *Michigan v. Doran*, 439 U.S. 282, 287, 99 S.Ct. 530, 534, 58 L.Ed.2d 521 (1978). *See also Puerto*

Rico v. Branstad, 483 U.S. 219, 287, 288, 107 S.Ct. 2802, 2806-07, 97 L.Ed.2d 187 (1987).

K.S.A. 22-2701 *et seq.*, the Kansas uniform criminal extradition act, implements the requirements of the extradition clause. The uniform extradition act was enacted the year after the agreement on detainers act and it sets forth the procedures for extradition of prisoners wanted by another state but found within Kansas. *See Dunn v. Hindman*, 18 Kan.App.2d 537 (1993).

"A person who commits a crime in another state and flees to Kansas is subject to mandatory extradition under K.S.A. 22-2702." ***Kennon v. State***, 248 Kan. 515, (1991). K.S.A. 22-2702 provides:

"Subject to the provisions of this article, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state."

Notification of a detainer may be provided by the prisoner or law enforcement authorities. A warrant can exist prior to detainer or be sought afterwards in accordance with K.S.A. 22-2714:

"The arrest of a person may be lawfully made also by any peace officer or private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant."

K.S.A. 22-2713 provides similar authority for persons wanted for parole violations. Extradition to another state requires a warrant issued by the governors of the two involved states. Obtaining such warrants may take up to 90 days. *See* K.S.A. 22-2715 and 22-2717. A governor's warrant issued under K.S.A. 22-2708 requires county authorities to take custody of the accused person and immediately deliver the accused to the custody of agents or officials from the demanding state. K.S.A. 22-2715; ***In Re Habeas Corpus Application of Lane***, 17 Kan.App.2d 476, 479 (1992). However, the person so arrested or detained may challenge the extradition process pursuant to the rights afforded them

under K.S.A. 22-2710 or it may take some time to obtain a governor's warrant. Thus, there may be a delay in the removal from Kansas.

You do not indicate whether your question involves a warrant issued by the governor, by a Kansas district court, or from another state. However, in each situation, a Kansas sheriff has the duty to take custody of any person they locate who is the subject of an outstanding warrant. "The sheriff, in person or by his undersheriff or deputy, shall serve and execute, according to law, all process, writs, precepts and orders issued or made by lawful authority and to him directed. . . ." K.S.A. 19-812. Thus, a county sheriff may not knowingly ignore an outstanding warrant or charge. There is ample authority allowing and requiring county officials to cooperate with other states seeking to detain and ultimately extradite a person found in Kansas and wanted for a crime committed in another state. If the required procedures are followed, and particularly if another state makes the sheriff aware of an outstanding warrant and asks the sheriff to detain anyone on their behalf (even a former federal prisoner), a county sheriff may take custody of and house such a prisoner for the other state. If the governor or a court has issued a warrant, officers charged with effectuating the arrest must comply with the terms of that warrant and may not ignore duties imposed upon them by law.

If there is a delay in removing the person from Kansas the problem of cost to the county arises. The issue then becomes whether the county sheriff has any continuing duty to incarcerate or keep the person in question or whether the county has any recourse for recovery of resulting costs.

K.S.A. 22-2712 speaks to confinement in a county or city jail and states in pertinent part:

"The officer or person executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may be delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping."

K.S.A. 19-1917 specifically allows a county jail to be used for the safekeeping of any fugitive from justice from another state or territory. In addition, K.S.A. 19-811 requires and allows the sheriff to house prisoners in a county jail. Thus, once a sheriff lawfully takes custody of a person pursuant to their duties and rights as sheriff, it is proper that such a person be housed in the county jail until such time as they may be legally removed or released.

It appears that the cost of providing such a service to authorities of another jurisdiction may sometimes be shifted. A county sheriff is prohibited from personally recovering or asking for fees other than those provided for by law. See K.S.A. 19-821, 28-175.

However, the county itself may consider seeking reimbursement from the requesting state or the defendant. In *State v. Garrett*, 14 Kan. App.2d 8 (1989), the court found that extradition costs were taxable to the defendant under K.S.A. 22-3801. See also *State v. Higgins*, 240 Kan. 756 (1987) and *State v. Dean*, 12 Kan. App.2d 321 (1987). Under K.S.A. 22-2712 and K.S.A. 22-4401 article V(h), the costs of keeping the prisoner may be charged to the demanding state.

This reading of the extradition act is further supported by K.S.A. 19-1910, 19-1916 and 19-1930 which allow a county sheriff to charge for maintenance of certain prisoners being held on behalf of other entities. Finally, K.S.A. 19-1917 specifically states that a county jail may be used to safekeep a fugitive from another state and the jailer is entitled to and may be paid reasonable compensation by the officer demanding the custody of the same. This rule is altered if the concerned states have entered into a supplementary agreement providing for a different allocation of costs. See K.S.A. 22-4401, article V(h). It therefore appears that the ultimate fiscal responsibility for such county jail incarceration costs may be shifted or charged to the defendant or the demanding state seeking extradition.

You state your second question in terms of another state's control or authority over the person being released by federal authorities. You ask whether officials from another state may not just take custody of an individual present in Kansas. This question requires examination of constitutional principles and authority concerning the extent of personal jurisdiction that may be extraterritorially exercised by states acting outside their borders. Persons cannot be involuntarily detained or incarcerated by the government unless certain minimum standards are met. One such primary standard is jurisdiction. "To try a person for the commission of a crime, the trial court must have jurisdiction of both the subject matter and the person of the defendant." 21 Am.Jur.2d *Criminal Law* § 338 (1981). Ordinarily, one state or sovereign entity cannot exercise its authority beyond its borders. Stated another way, authorities from one state may not enter Kansas and take involuntary custody of an individual present in this state without gaining some grant of jurisdictional authority in the territory or over the person in question.

Prior to taking action against a person, a state must first obtain jurisdiction over that person. When a person is not physically present within a state, the state seeking custody must therefore apply to a court having jurisdiction over the person in question. "A person is accused of several offenses triable by different courts, or of offenses against different sovereignties, the court or sovereignty first acquiring jurisdiction of the offender is entitled to retain it exclusively until its duty is fully performed or its law satisfied. However, the court of sovereignty so acquiring jurisdiction may waive its exclusive priority and surrender or lend the offender to another court or sovereignty." 22 C.J.S. *Criminal Law* § 151 (1989). "It is a general rule that one state or sovereignty cannot enforce the penal laws of another, or punish offenses committed in and against another state or sovereignty, and statutes are always to be construed with this principle." *Id.* at § 155. Thus, the foreign state seeking jurisdiction over the newly released former federal prisoner must lawfully obtain personal jurisdiction over that individual. The extradition act provides the procedure

and authority for obtaining that jurisdiction. This procedure requires action by state authorities.

Individuals incarcerated in a federal penitentiary may argue the merits of the voluntariness of their presence within the state and may even contest Kansas personal jurisdiction over their persons. However, case law does not appear to favor this type of argument. See *Hobson v. Crouse*, 332 F.2d 561(10th Cir. 1964) ; *Devine v. Hand*, 287 F.2d 687 (10th Cir. 1961); *State v. Mick*, 229 Kan. 157 (1981); *State v. Ulriksen*, 210 Kan. 795 (1972); *State v. Eaton*, 199 Kan. 610 (1967). A court's power to try a person for a crime or enter orders affecting a person is ordinarily not impaired by the fact that the person was involuntarily brought within the court's jurisdiction.

If a court or authorities in another state wish to exercise personal jurisdiction over an individual physically within this state, authorities from the other state may not just forcibly remove such a person. To do so could risk charges of kidnaping, violation of several closely guarded constitutional rights, and be contrary to the extradition act. The other state may not just "lure" the sought-after fugitive into the state. *Ortega v. City of Kansas City*, 659 F. Supp. 1201 (D.Kan. 1987). Rather, if a person is unwilling to voluntarily accompany officials for criminal prosecution by another state, application to the proper courts must be made and due process rules followed. See K.S.A. 22-2710. It is for that purpose that Kansas and other states have adopted various detainer and extradition acts. Under laws such as this, a person may be lawfully removed from one state to another.

We note that while a person is still on federal property the state seeking custody of the newly released person may request some detention assistance from federal authorities. However, absent a consensual agreement or federal law mandating such cooperation, the requesting state may not be able to obtain the assistance of federal authorities, particularly where federal jurisdiction over the person has ceased.

It is our opinion that a county sheriff has the authority and the duty to comply with a warrant for detainer or arrest properly issued by a court or the governor acting under K.S.A. 22-2701 *et seq.* and must detain persons in accordance with the terms of K.S.A. 22-4401 *et seq.* Absent a warrant issued for arrest, a county sheriff must cooperate with authorities from other states in accordance with K.S.A. 22-4403, and may take custody of a person wanted by another state. The resulting costs of incarceration incurred by a county detaining a person on behalf of another state may be requested from the demanding state or the defendant, pursuant to K.S.A. 19-1917, K.S.A. 22-3801, K.S.A. 22-4401 article V(h), or K.S.A. 22-2712. The state seeking ultimate custody of the person detained in Kansas must somehow obtain or possess personal jurisdiction over the individual in question before taking physical custody of a person found outside their

boundaries. Such jurisdiction may be accomplished pursuant to the provisions of the detainer act and the extradition act. States may not extraterritorially act without first obtaining jurisdiction.

Very truly yours,



CARLA J. STOVALL
Attorney General of Kansas



Theresa Marcel Nuckolls
Assistant Attorney General

CJS:JLM:TMN:jm

H 8
COUNTY OF LEAVENWORTH

COURTHOUSE
300 WALNUT
LEAVENWORTH, KANSAS 66048
Area Code (913) 684-0400



FROM THE OFFICE OF:

TO: Legislative Committee Members

RE: Addendum to Supporting Information on H.B. 2013 (Fiscal Impact)

During the years of 1990 thru 1996 we have been unable to collect approximately \$90,000 due our county for holding inmates involved in extradition proceedings. (KSA 19-1917)

We have billed other agencies for approximately \$146,000 and have only collected approximately \$56,000. Most of this uncollected debt was incurred from our picking up and holding inmates being released from USP Leavenworth.

Most states do not honor our request for reimbursement. (See copies of typical letters of response attached)

Not included above is the costs associated with our usage of clerical staff time, transport officers time, and vehicle expense in transporting inmates from USP to the Leavenworth County Jail.

In addition, former USP inmates while in our custody have filed numerous lawsuits against the county. Although not successful in obtaining judgment, they have none the less created a workload for the Office of County Attorney and the County Counselor defending these suits.

Respectively submitted by,

Ron Cranor, Undersheriff

City-County Probation
684-0760

Council on Aging
684-0777

Emergency Medical Service
684-0788

Noxious Weeds
684-0494

Community Corrections
684-0775

County Infirmary
684-1010

Health Department
684-0730

Sheriff
682-5724

8-10

committing judge of the district court, redeliver such person when demanded.

History: C.S. 1868, ch. 53, § 16; L. 1876, ch. 85, § 1; R.S. 1923, 19-1916; L. 1976, ch. 145, § 76; Jan. 10, 1977.

Research and Practice Aids:

Prisons — 13.

C.J.S. Prisons §§ 18, 19.

CASE ANNOTATIONS

1. Liability as between counties for mileage and expense. County of Osborne v. Honn, 23 K. 257, 258.
2. County committing prisoner held liable for sheriff's fees. Finney County v. Gray County, 8 K.A. 745, 746, 54 P. 1100.
3. Section cited in determining duty of county to maintain jail. Norton v. Simms, 85 K. 822, 824, 118 P. 1071.
4. Discussed; where indigent defendant arrested and subsequently charged with state law violation, medical expenses as consequence thereof chargeable to county. Wesley Med. Center v. City of Wichita, 237 K. 807, 814, 815, 703 P.2d 818 (1985).

19-1917. Fugitives from other states; compensation for custody. Any county jail may be used for the safekeeping of any fugitive from justice from another state or territory, and the jailer shall in such case be entitled to reasonable compensation for the support and custody of such fugitive from justice, to be paid by the officer demanding the custody of the same.

History: C.S. 1868, ch. 53, § 17; Oct. 31; R.S. 1923, 19-1917.

Attorney General's Opinions:

Charge and custody of jail; prisoners' meals. 81-190.

CASE ANNOTATIONS

1. Discussed; where indigent defendant arrested and subsequently charged with state law violation, medical expenses as consequence thereof chargeable to county. Wesley Med. Center v. City of Wichita, 237 K. 807, 815, 703 P.2d 818 (1985).

19-1918.

History: C.S. 1868, ch. 53, § 18; R.S. 1923, 19-1918; L. 1941, ch. 192, § 1; Repealed, L. 1963, ch. 174, § 2; June 30.

19-1919. Treatment of prisoners; juvenile prisoners; visits of parents and friends. All prisoners shall be treated with humanity, and in a manner which promotes their reform. Juveniles shall be kept in quarters separate from adult criminals. The visits of parents and friends shall at all reasonable times be permitted.

History: C.S. 1868, ch. 53, § 19; R.S. 1923, 19-1919; L. 1982, ch. 182, § 122; Jan. 1, 1983.

Law Review and Bar Journal References:

Duran v. Bradford—The Common Law Duty of a Law

Enforcement Officer, Sheila M. Janicke, 4 J.K.T.L.A. No. 6, 10, 11, 12, 13 (1981).

CASE ANNOTATIONS

1. Under this section city not liable for condition of jail. City of New Kowa v. Craven, 46 K. 111, 115, 26 P. 426.
2. Provisions of section read into sheriff's bond whether in actual bond or not. Farmer v. Rutherford, 136 K. 298, 305, 15 P.2d 474.
3. Sheriff ousted; mistreatment of prisoners is misconduct in office. State, ex rel., v. Jackson, 139 K. 744, 752, 33 P.2d 118.
4. Sheriff entitled to jail attendance fee although deputy acts as jailer. Day v. Cowley County Commrs., 146 K. 492, 496, 71 P.2d 871.
5. Liability for care of prisoner; default of deputy; liability of surety. Pfannenstiel v. Doerfler, 152 K. 479, 483, 105 P.2d 886.
6. Wrongful death; prisoner killed in jail by gas. Bukaty v. Berglund, 179 K. 259, 267, 294 P.2d 223.
7. Sheriff may place reasonable restrictions on prisoners' visitors. Robinson v. State, 198 K. 543, 546, 426 P.2d 95.
8. Section cited; county liable for the medical services rendered an injured prisoner. Mt. Carmel Medical Center v. Board of County Commissioners, 1 K.A.2d 371, 381, 566 P.2d 384.
9. Discussed; where indigent defendant arrested and subsequently charged with state law violation, medical expenses as consequence thereof chargeable to county. Wesley Med. Center v. City of Wichita, 237 K. 807, 809, 815, 703 P.2d 818 (1985).

19-1920.

History: L. 1877, ch. 122, § 1; R.S. 1923, 19-1920; Repealed, L. 1963, ch. 174, § 2; June 30.

CASE ANNOTATIONS

1. Section cited in defining duty of county to maintain jail. Norton v. Simms, 85 K. 822, 824, 118 P. 1071.

19-1921.

History: L. 1877, ch. 122, § 2; R.S. 1923, 19-1921; Repealed, L. 1963, ch. 174, § 2; June 30.

19-1922.

History: L. 1905, ch. 226, § 1; R.S. 1923, 19-1922; Repealed, L. 1951, ch. 223, § 1; June 30.

CASE ANNOTATIONS

1. Section cited in defining duty of county to maintain jail. Norton v. Simms, 85 K. 822, 824, 118 P. 1071.

19-1923. Jails in certain cities other than county seat; cooperation by city. That the county commissioners of any county shall have the power to appropriate any sum out of the county treasury not otherwise appropriated, not to exceed one thousand dollars, for the purpose of erecting or building in such city other than the county seat of such county, a jail or holdover, for the use of said county and the city in which such jail shall be erected:



State of Utah

DEPARTMENT OF CORRECTIONS
DIVISION OF FIELD OPERATIONS
Raymond H. Wahl, Director

Michael O. Leavitt
Governor

O. Lane McCotter
Executive Director

August 6, 1996

Susan Nester, Accounts Clerk
Leavenworth County Sheriff's Department
503 S. Third
Leavenworth, Kansas 66048

Re: Clark, James Edward
SSN: 308-56-5089
DOB: 04-29-1952

Dear Ms. Nester:

Your letter of April 11th, and attached billing, regarding the above named individual were forwarded to my attention. You indicate in the letter that under existing law you are demanding payment. Could you let us know what existing law you are referencing, and I could have our legal counsel look into the matter. The Interstate Compact includes a declaration... that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs..."

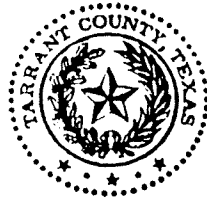
You indicated in the letter, "I understand and appreciate the fact that most jurisdictions do not charge for the extradition of prisoners..." In my over 23 years in this business I have never received such a billing from any jurisdiction. To my knowledge you are the only jurisdiction so billing.

While I empathize with your dilemma, I think your precedent would have tremendous repercussions if all jurisdictions were to follow suit. You mention that the tremendous amount of extradition cases processed through your facility are the result of having a federal institution in your county. Perhaps the federal government should be approached regarding the problem.

Sincerely,

ALAN ANTHONY, Deputy Director

Ray Wahl, Director



**TARRANT COUNTY
SHERIFF'S DEPARTMENT**

February 18, 1994

DAVID WILLIAMS
SHERIFF
817/884-1300
817/884-3305 FAX

CRIMINAL COURTS BLDG.
300 W. BELKNAP
THIRD FLOOR
FORT WORTH, TEXAS 76102-2084

Leavenworth County Sheriff's Department
Attention: Terri Ferguson, Accounts Clerk
503 South Third
Leavenworth, Kansas 66048

RE: Bryan Williams, white male, DOB: 7/27/68, Our Warrant
No. 0517253 and 0517250

Dear Ms. Ferguson:

Pursuant to your letter dated February 3, 1994, and statement, for housing the above referenced subject from December 7, 1993, through December 13, 1993, for expenses incurred while awaiting extradition back to Texas.

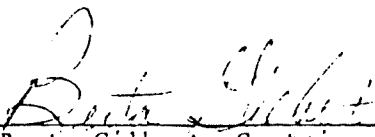
Having a Federal Institution in our county, we handle all extraditions on prisoners that have out of state detainers against them at the time of their release, and we are very much aware of the expense and problems which can incur. However, we do not charge for housing prisoners and therefore we are not budgeted to reimburse another agency for these expenses.

I will forward a copy of your letter and statement to our auditor's office for consideration.

Thanks again, and if we can be of further assistance please do not hesitate to call.

Sincerely,

DAVID WILLIAMS, SHERIFF
TARRANT COUNTY, TEXAS



Berta Gilbert, Captain
Warrant Division

DW/BG:ww

enclosures