

Approved: 2-20-97
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:00 a.m. on February 5, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:
Charles, E. Simmons, Secretary of Corrections
Ms. Wendy McFarland, ACLU, Topeka

Others attending: See attached list

SB 69: Traffic in contraband in correctional institutions

Mr. Charles E. Simmons, Secretary of Corrections, addressed the committee as a proponent of the bill (Attachment #1). Secretary Simmons said the Department of Corrections had requested introduction of the bill, which is a simple amendment, to raise the penalty from level 6 to level 5 for introduction of certain types of contraband in a correctional institution.

He explained sentencing guidelines and the difference between level 6 and level 5, saying at severity level 5, a prison sentence can be imposed, which the Department of Corrections believes is appropriate for offenders who introduce the more serious forms of contraband covered by the bill. He pointed out that **SB 69** would have an impact on inmate population because some offenders who currently receive prison sentences for trafficking in contraband would receive longer sentences with the enactment of **SB 69**.

Senator Gooch expressed concern about contraband being introduced into a correctional facility by employees and asked if the same treatment and penalty would apply to an employee. Secretary Simmons responded that the bill did apply to employees as well as inmates. Several committee members asked for clarification of contraband as opposed to controlled substance, and Secretary Simmons explained that contraband was anything not authorized and does not necessarily have to be an illegal item.

Secretary Simmons concluded his remarks by saying he believes it is sound policy to differentiate penalties on contraband risk characteristics and encouraged favorable action on **SB 69**.

Senator Gooch moved that **SB 69** be amended to impose the higher penalty on correctional employees who traffick in contraband. Senator Jones seconded the motion and the motion carried.

Senator Becker moved that **SB 69** be effective upon publication in the KANSAS REGISTER. Senator Harrington seconded the motion which carried by voice vote.

Senator Jones moved that **SB 69** be reported favorably, as amended, to the full Senate; Senator Harrington seconded the motion and the motion carried.

SB 71 Concerning department of corrections; relating to treatment of inmates

Charles E. Simmons, Secretary of Corrections, appeared in support of **SB 71** (Attachment #2). Secretary Simmons explained that **SB 71** was requested in response to Governor Graves' initiative to repeal unnecessary regulations. He said the Department of Corrections felt that the actions affected by this bill would be better addressed through the department's Internal Management Policy and Procedure manual rather than by the adoption of rules and regulations. He urged favorable action on **SB 71** to allow the Department of

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E-Statehouse,
at 11:00 a.m. on February 5, 1997.

Correction flexibility in addressing the specific areas named in the bill through internal policy.

Ms. Wendy McFarland spoke on behalf of the American Civil Liberties Union in opposition to **SB 71** (Attachment #3). Ms. McFarland expressed concern over the actions affected by the bill being addressed by internal policy, saying expectations of prisoners and correctional workers would be unclear unless spelled out in rules and regulations. She urged the committee not to allow the amendments proposed in **SB 71**, citing the potential for arbitrary interpretation and enforcement if rules and regulations are replaced by standards.

The meeting adjourned at 12:05 p.m.; the next meeting is scheduled for February 6, 1997.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-5-97

NAME	REPRESENTING
Lashonda Ellington	Sen. Gooch's Intern
Kristin Baker	ACLU
Amy Campbell	R. Rice Law Office
Charles Simmons	Dept. of Corrections
Jim Clark	KC DAA



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: February 5, 1997
To: Senate Federal and State Affairs Committee
From: Charles E. Simmons, Secretary
Subject: SB 69

The Department of Corrections requested introduction of SB 69, which amends KSA 21-3826, Traffic in Contraband in a Correctional Facility. The bill raises the penalty for introduction of certain types of contraband, including firearms, ammunition, explosives and controlled substances.

Under current law, trafficking in contraband in a correctional institution is a severity level 6 crime, the penalty for which is presumptive probation for those offenders whose criminal histories do not involve a prior felony conviction. The law does not distinguish among contraband types, even though different types of contraband pose significantly different threats to a correctional facility, its staff and inmate population. The introduction of firearms, ammunition, or explosives into a correctional facility can only be interpreted as an intent to commit further criminal acts. Moreover, these forms of contraband represent a very real risk of injury or death to correctional staff, other inmates, and possibly the public at large. The department also proposes that trafficking in controlled substances be placed at the higher severity level because of their illegal status and because of the security and inmate management problems they create in a correctional setting.

SB 69 would increase, to severity level 5, the penalty for those types of contraband presenting the greatest risks to security. At severity level 5, a prison sentence can be imposed without a departure in all criminal history categories, which we believe is

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Attachment: #1

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appropriate for those offenders who introduce the more serious forms of contraband covered by the bill. Presumptive sentence lengths also are longer at severity level 5 than at severity level 6. As an example, a mid-point sentence in Criminal History category E would be 49 months at severity level 5, compared to 30 months at severity level 6.

SB 69 would have an impact on inmate population levels. Some offenders who currently receive prison sentences for trafficking in contraband would receive longer sentences if SB 69 is enacted. Some offenders who would receive a presumptive nonprison sentence under current law would likely receive a prison sentence under SB 69. The Kansas Sentencing Commission has estimated that the bill would result in a small, gradual increase in the inmate population over the next 10 years, with an impact of 15 by the end of FY 1998 and reaching 70 by the end of FY 2006.

We believe it is sound policy to differentiate penalties based on contraband risk characteristics, and we encourage your favorable action on SB 69.

CES:jj



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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: February 5, 1997
To: Senate Committee on Federal and State Affairs
From: Charles E. Simmons, Secretary
Subject: SB 71

The Department of Corrections supports SB 71 as part of its response to Governor Graves' initiative to repeal unnecessary regulations. SB 71 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; mental health, medical and dental services; 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 versus the detail necessary for staff, inmates, and the public to carry out or understand the policy. The department has concluded that the current statutory requirements for the establishment of standards by rule and regulation for security levels, health services, 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.

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Senate Committee on Federal and State Affairs

Re: SB 71

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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.

The Constitutional standards regarding the necessity for the provision of adequate and necessary medical care are well established. At the same time, regulations regarding the provision of medical services cannot be sufficiently detailed to provide meaningful direction to correctional or medical personnel. The department and its health care provider have established detailed procedures through departmental Policies and Procedures and Prison Health Service protocols to address medical, dental and mental health care. Again, rules and regulations that rely and refer to provisions of the department's Internal Management Polices and Procedures are redundant.

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. In order to accomplish this intent, the department recommends that SB 71 be amended by the Committee beginning at page 2, line 20 to state the following:

~~“The secretary or the secretary's designee and any persons designated by rules and regulation of the secretary may administer oaths for the purpose of conducting investigations and disciplinary proceedings necessary in the performance of the duties of the secretary. pursuant to rules and regulations adopted by the secretary under this subsection and under K.S.A. 75-5251, and amendments thereto. For this purpose, the secretary shall adopt rules and regulations designating those persons who may administer oaths in such investigations and proceedings and the form and manner of administration of the oaths. Oaths shall be administered in a form and manner that is in accordance with K.S.A. 54-101 et seq.”~~

The department urges favorable action on SB 71.

CES/TGM/nd

ACLU

American Civil Liberties Union

Wendy McFarland - Lobbyist
(913) 575-5749

TESTIMONY OPPOSING SB 71
DELIVERED 2/5/97

IN SENATE BILL 71 AMENDMENTS HAVE BEEN OFFERED TO CHANGE CERTAIN PORTIONS OF KSA 75-5210. THE CHANGES APPEAR TO BE SIMPLE ADDING ONLY 18 WORDS AND STRIKING 48 OTHERS.

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.

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 NOT ALLOW THESE AMENDMENTS AND INSTEAD CONTINUE TO SEND CLEAR MESSAGES TO INMATES OF WHAT THEY CAN EXPECT OF US AND WHAT WE EXPECT OF THEM.

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Attachment: #3