Approved: March 17, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on March 12, 1997 in Room 514-S of the Capitol.

All members were present except: Sen. Feleciano (excused)
Sen. Harrington (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Representative Ken Wilk
Frank Kohl, Leavenworth Co. Attorney
Major Ron Cranor, Leavenworth Sheriff's Dept.
Nick Badgerow, Civil Code Advisory Comm. Ks. Jud. Council
Wendy McFarland, ACLU
Steve Dickerson, Ks. Trial Lawyers

Others attending: See attached list

The minutes of the March 5, 6, & 11 meetings were approved on a motion by Sen.Bond and seconded by Sen.Schraad. Motion carried.

HB 2013 - Release of federal prisoners

Conferee Wilk testified in support of **HB 2013** which is a bill to amend K.S.A.22-2713. He stated that, according to Attorney General Opinion No. 96-6, current procedure requires a county sheriff to take custody of an inmate released from the federal penitentiary who has outstanding warrants in other states. (attachment 1) This has become a problem for Leavenworth County who must bear the expense and manpower to house the prisoner until such time as the prisoner can be extradited. Extradition is delayed if a prisoner refuses to sign a voluntary extradition waiver and files a writ of habeas corpus.

Conferee Wilk introduced Conferees Frank Kohl and Ron Cranor. Conferee Kohl testified in support of **HB 2013**. He reiterated Rep. Wilk's statement, detailing the problems that Leavenworth County has encountered and covered the procedural steps county officials have taken in order to rectify these problems legislatively. (attachment 2) Included in his written testimony were several newspaper articles on the subject matter. (names and dates illegible)

Conferee Cranor briefly testified in support of **HB 2013** and requested the committee's passage of the bill. His written testimony added an addendum to supporting information on **HB 2013** (fiscal impact). (attachment 3)

Conferee McFarland spoke, at the pleasure of the Chair, in opposition to **HB 2013** calling the bill an "administrative convenience". She stated that if the bill passed, the prisoner would lose his constitutional right to a writ of habeas corpus. She stated that Leavenworth County could recoup it's expenses through the office of the attorney general through the use of "Interstate Compacts".

After discussion and with no further testimony, the Chair closed the hearing on **HB 2013**. No action was taken on **HB 2013** at this time.

HB 2007 - Amendments to rules of civil procedure

Conferee Badgerow testified in support of **HB 2007** which contains amendments to rules of civil procedure. He gave a brief history of the drafting of the bill and it's historical progress, outlined changes from it's original form (SB140), and summarized the following: 4 provisions that are "not" in the bill; case management conferences; general discovery; interrogatories; motions to compel and for sanctions; and other sanctions. (attachment 4) Discussion followed.

Conferee McFarland testified in support of the majority of provisions in **HB 2007** with a request to amend the bill to remove new language in K.S.A. 60-211, language which she stated imposes unfair sanctions upon prisoners. (attachment 5)

Conferee Dickerson endorsed **HB 2007** calling the bill an "update of the Kansas Code of Civil Procedure". He stated that the bill "represents a comprehensive effort to update the Code based upon some of the federal changes, combined with a healthy element of Kansas common sense". (attachment 6) With no further discussion or testimony, the Chair closed the hearing on **HB 2007**. No action was taken on **HB 2007** at this time.

The Chair adjourned the meeting at 11:02 a.m. The next scheduled meeting is March 13, 1997.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/12/97

NAME	REPRESENTING
FRANK KOHL	Leavenworth Co. Atty
Kenny Wilk	" " "
RON CRANON	LV Co Sheriff Dept
[illegible]	Dist 3 [illegible]
[illegible]	KS Bankers Assn
Steve Dickerson	KTLA
NICK BADGEROW	KANSAS JUDICIAL COUNCIL
Debbe Butler	State Treasurers Office
Machell Kent	Ks State Treasurers Off.
Kristin Baker	ACLU
[illegible]	ACLU
[illegible]	KS Gaming Law
Karen Engle	Greenwood Co. Teacher
Jill Pittman	Lyon Co. Student (Madison)
Laura E. Grother	Lyon Co Student (Americus)
Lori Callahan	KANWEC

HB 2013

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 (HB 2013)
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.

* *

Senate Judiciary
Attachment 1
3-12-97

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. Rodriquez,***, 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

CARLA J. STOVALL
Attorney General of Kansas

Theresa Marcel Nuckolls

Theresa Marcel Nuckolls
Assistant Attorney General

CJS:JLM:TMN:jm

SJ. 3/12/97 att # 2

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

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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 came 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 sames 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

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 aileviating 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

Ron, if there is any way possible that I can help I'll be ready and able!!

2-3

SJ 3/12/97 att #3

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

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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. Cray 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. Jantcke, 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 Kiowa 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 Comm'rs, 146 K. 492, 496, 71 P.2d 871.

5. Liability for care of prisoner; default of deputy; liability of surety. Effannestiel 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 228.

7. Sheriff may place reasonable restrictions on prisoners' visitors. Robinson v. State, 198 K. 513, 516, 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. L tt
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

6100 South Fashion Boulevard

Murray, Utah 84107 (801) 265-5500

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TARRANT COUNTY
SHERIFF'S DEPARTMENT

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

February 18, 1994

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 incure. However, we do not charge for housing prisoners and therefore we are not budgeted to reinburse 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

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Prepared Testimony of J. Nick Badgerow

for

Committee on the Judiciary
Kansas Senate

on

House Bill 2007

March 12, 1997

I. Introduction and Background.

May it please the Committee: My name is J. Nick Badgerow, and I appear here today before you to testify regarding House Bill 2007, relating to changes in the Kansas Code of Civil Procedure. I am testifying as a member of, and on behalf of, the Kansas Judicial Council and as Chairman of the Civil Code Advisory Committee of that Council. Our Committee was the original drafter of the bill which has now taken the form of H.B. 2007.

By way of background, I am a civil trial lawyer. My curriculum vitae is attached to this prepared testimony and is incorporated herein by reference. I have tried civil jury trials in the courts of the State of Kansas for the past 21 years. I am Board Certified in Civil Litigation by the National Board of Trial Advocates. I am rated "AV" in both Missouri and Kansas by the Martindale-Hubbell Law Directory. I am listed in Who's Who in American Law, and am a recipient of the Outstanding Service Award of the Kansas Bar Association (1995). In addition to my position on the Judicial Council, I have the honor to serve as co-

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chair of the Civil Justice Reform Act Committee for the United States District Court for the District of Kansas; Chairman of the Ethics and Grievance Committee of the Johnson County Bar Association; and President of the Kansas Inn of Court. I am a co-author of the K.B.A. *Employment Law Handbook*, and a co-author and co-editor of the K.B.A. *Kansas Ethics Handbook*.

Of the work of the Kansas Judicial Council is carried out by lawyers and judges from around the State, but the Council could not function without the hard and daily work of its dedicated staff, including our Executive Director, Randy Hearrell, and our research attorney, Matt Lynch. Mr. Lynch's contributions to the drafting of H.B. 2007 in its original form cannot be over-emphasized, and is insufficiently appreciated. Of the Council recognizes and must express appreciation for the dedication and effort of Mr. Lynch, in this bill and many others.

Of the testimony presented today will focus on H. B. 2007, and particularly on the form of the bill as submitted by the Kansas Judicial Council in 1995 (and originally called S.B. 140). This bill was the culmination of two years' work by a diverse committee of lawyers from all areas of the State -- both geographical and legal -- and was directed to keeping up with changes in the Federal Rules of Civil Procedure (which came about in December, 1993), without adopting the controversial and objectionable portions thereof. For example, the main objection to the Federal Rules has been the provision for "mandatory disclosures." That provision (and many others) were excluded from the Judicial Council's bill. This testimony will outline the changes which are made by H.B. 2007, and will highlight

the changes which are **not** proposed, in the hope of eliminating objections based on provisions that are not contained in the Bill.

II. History.

Judicial Council. Of the Kansas Judicial Council was created by the Legislature in 1927. It is comprised of one judge each from the Kansas Supreme Court and the Kansas Court of Appeals; the Chairmen of the House and Senate Judiciary Committees; four district court judges; and four practicing trial lawyers from around the State.

Of the purpose and function of the Kansas Judicial Council is to work with the Courts, to evaluate caseloads, and to provide assistance in the administration of justice, in both the civil and criminal courts.

Civil Code. Civil courts are those which address suits between individuals, corporations or governmental agencies and which are not criminal in nature. Of the code of civil procedure is the body of rules which the litigants follow in filing, preparing and trying their cases in the civil courts.

For many years, the Kansas code of civil procedure has traditionally been patterned on the Federal Rules of Civil Procedure. This has provided a benefit to parties and practicing lawyers, because of the general uniformity of the rules in both court systems, and the availability of precedents and interpretations of the rules from the many federal courts around the Country.

Federal Amendments. Prior to the 1993 amendments, the Federal Rules were last amended in 1986. Most of those changes were incorporated into the Kansas Code of Civil Procedure. On December 1, 1993, the Federal Rules were substantially amended. Those amendments were met with vocal opposition and equally vocal support from the Courts and the practicing Bar as either the anathema or the savior of civil litigation as we know it. Of course, in practice they have proved to be neither.

Of the 1993 amendments allowed each federal district to "opt out" -- to choose not to accept the amendments. Of the District of Kansas has not chosen to opt out, and has applied most of the amendments since January 28, 1994 -- soon after their adoption in 1993.

Civil Code Committee -- Kansas Judicial Council. Faced with these changes, the Kansas Judicial Council's Civil Code Committee took up the Federal Rules amendments to determine how much, if any, should be incorporated into the Kansas Code. This Civil Code Committee was the best equipped and most objective group in the State for such a task. Chaired by the able and intelligent Marvin Thompson of Russell during most of its activities, the Committee is comprised of a wide and diverse panel of practicing lawyers representing both the plaintiff and defense bars, as well as Professor Robert Casad of the University of Kansas School of Law, a nationally recognized expert on civil procedure.

Study. Of the Civil Code Committee worked for over two years to come up with its proposed Bill, meeting some 28 times. At an average of eight people for each meeting, and working an average of six hours per meeting, this comprises 1,200 person-hours of labor by

the Committee -- in addition to the countless, almost full-time work of the Judicial Council staff, including particularly Matt Lynch, Research Attorney. Of the bill went through numerous drafts, and was finally submitted to the Judicial Council (upon unanimous vote of the Civil Code Committee) in early, 1994. Of the Judicial Council also accepted the Bill by unanimous vote in April, 1994. However, not content to rely on the diversity of the Civil Code Committee, nor yet of the Judicial Council itself, the Judicial Council submitted the Bill to the Kansas Bar Association, and the Bill was published in that Association's *Journal of the Kansas Bar Association* in May, 1994, with an invitation for comment. Of the Bill was also presented to the Kansas District Courts Judicial Conference in October, 1994.

Of the Bill was then submitted for introduction by the Kansas Senate in January, 1995.

Before the Senate Judiciary Committee, before which this speaker had the honor to present the Bill, only one public comment was received. That comment requested that the provision requiring expert witnesses to prepare their own reports be deleted. Of the Judicial Council did not oppose that change, and it was made.

Testimony was presented to the Kansas House Judiciary Committee in March, 1995, with no public comment or opposition from any person or organization.

Thereupon, the Bill passed both the House and the Senate. However, the Bill died *sine die* at the end of that legislature, and has now been resubmitted.

Comments Received. In response to the publication of the Bill in the *Kansas Bar Journal* and the submission of the Bill to the Judicial Conference, two letters were received,

requesting delay in submission of the Bill until after the Federal District Court in Kansas decided whether to opt out. In March, 1995, the Federal Court renewed its decision not to opt out. Several judges in Johnson County expressed concerns about mandatory case conferences. And some verbal objections were made to the requirement for mandatory disclosures. As will be seen in this discussion, neither mandatory case conferences nor mandatory disclosures are included in the Bill.

There were no other public or private comments or objections received to the Bill by the Judicial Council.

III. Summary of Bill.

This Bill is best understood by starting with a discussion of what is **not** contained in the Bill.

Of the Bill does not contain the "Safe Harbor" provisions of Federal Rule 37, which allows a frivolous pleading to be filed and then to be withdrawn with impunity.

Of the Bill does not provide for the so-called "voluntary/mandatory" disclosures of Federal Rule 26(a).

Of the Bill does not provide for the so-called "Mined Harbor" in Rule 37, which requires sanctions if a frivolous discovery objection or response is withdrawn after receipt of a Motion to Compel.

And the Bill does not require an expert witness report to be written by the expert; the contain a list of all testimony given by the expert in the preceding four years; to list all

publications in the past ten years; nor to identify the compensation being paid to the expert witness.

IV. Case Management Conferences.

K.S.A. 60-216 relates to discovery and case management conferences which district judges should hold with the civil litigants as often as necessary to narrow the issues and prepare for trial. Most trial judges hold such conferences on a routine basis. However, some judges objected that the Bill made such conferences mandatory, and that some small cases might not justify at least one mandatory conference between the lawyers and the judge. Of the mandatory provision was changed to make it permissive.

Of the purpose of such a conference is to get a handle on the case early in its life; to weed out the extraneous claims and issues; and to set deadlines to move the case. Of the rule provides for early discovery on some limited issues (such as the statute of limitations or personal jurisdiction), to save time and cost to the court and the parties; and for early summary judgment in those cases where it would be justified. All this will provide for increased efficiency and will increase the chances of an early settlement.

Of the rule also provides for multiple pretrial conferences as needed.

V. General Discovery.

K.S.A. 60-226 is analogous to Federal Rule 26, and relates to the general scope of discovery. Of the amended Federal Rule 26 requires an early disclosure by each party, listing all witnesses with knowledge of "disputed facts pled with particularity in the pleadings;" all documents relating to "disputed facts pled with particularity in the pleadings;" a detailed

computation of the damages sought by the claiming party; and the policy of any insurance which may provide coverage for the claims made in the case.

There are numerous objections to this so-called "voluntary-mandatory" disclosures. For a summary of those objections, see Badgerow, *Dealing with Change: A Practical Approach to Using the New Federal Rules*, 63 *Journal of the Kansas Bar Association* 26, April, 1994. In general, it is objected by some that these mandatory disclosures require one to guess what are the "disputed facts pled with particularity." It causes conflicts between the duty of loyalty to and vigorous advocacy for a client against the duty to comply with orders of a court. Of the rule imposes a duty to disclose, supplanting the right to wait to be asked the right question. And the rule imposes sanctions for failing to make the disclosures or failing to make them in an adequate manner -- as viewed in the light of subsequent discovery or disclosure.

Of the Federal Rule also imposes changes in expert witness reports. Of the former rule (and the present K.S.A. 60-226) require only a statement of the facts and opinions to which an expert witness is expected to testify, with a summary of the grounds for each opinion. Of the new Federal Rule requires, instead, that the expert (and not the party's lawyer) write the report; that the expert state the basis and reasons for all opinions and the data/information considered. Of the expert's report must list all exhibits; his/her qualifications; all publications by the expert in the past ten years; all testimony in the past four years; and the compensation being paid to the expert witness.

While that provision was initially included in the Judicial Council's bill, it was removed from S.B. 140 before a vote by the Judiciary Committee; and it has not been re-inserted.

One Federal Rule amendment which has been included in the Bill is that which relates to supplemental or correcting answers. Of the former rule made an answer sufficient for the remainder of the case if it was "correct when made," regardless of changes in circumstances or facts which may have occurred since the answer was made. Of the rule now requires amendment of a discovery response if the facts later change, to comport with the true facts at the time of the amendment.

VI. Interrogatories.

Of the Bill includes the Federal Rules' improvement in the handling of objections. Previously, any objection to an interrogatory (or written discovery question) allowed the responding party not to answer any part of the interrogatory. As amended, the Rule requires the responding party to answer any interrogatory "to the extent not objectionable." For example, if one objects to an open-ended interrogatory on the basis that it is unlimited in time and that it should be limited to a three-year period, then the responding party must proceed to provide information within that three-year period.

VII. Motions to Compel and for Sanctions.

Under the Bill, Motions to Compel Discovery and for Sanctions are governed by K.S.A. 60-237. As noted above, the amended Federal Rules provide a "Mined Harbor:" one who receives a motion to compel and is convinced to change a discovery response **must** be

subjected to sanctions. This would not encourage improvement of discovery responses, but rather compel entrenchment in answers that might otherwise be corrected.

As a practical matter, what happens is that general, vague and conclusory "Golden Rule" letters are sent to obtain further discovery responses. Such Golden Rule letters are required before a Motion to Compel can be filed. No authorities or specific support are contained in the Golden Rule letter, so the responding party is not encouraged to withdraw or change the offending discovery response. Then, the Motion to Compel is filed, setting forth specific grounds and citing legal authorities and precedent. But then it is too late for the responding party to correct its discovery response, since to do so will result in the imposition of sanctions under the Mined Harbor provision of Rule 37.

Of the Mined Harbor was not included in H.B. 2007.

VIII. Other Sanctions.

K.S.A. 60-211 provides for sanctions against a party who signs a pleading that asserts facts or claims which are without foundation, unless it can be shown that the assertions were non-frivolous. Of the rule is still a mandatory one, and requires that sanctions be assessed. Of the rule has been amended to make it clearly apply to pleadings and not to discovery, since discovery sanctions are governed by K.S.A. 60-237.

Of the Federal Rules amendments include a provision which allows the withdrawal of a frivolous pleading, within ten days after receipt of a proposed motion for sanctions under the rule. If such a draft motion is received and the offending pleading is withdrawn, then no motion for sanctions can be filed and no sanctions can be awarded.

This so-called "Safe Harbor" allows one to file a frivolous, unsupported pleading with no threat of sanctions, so long as the offending pleading is withdrawn within ten days after receipt of a draft motion for sanctions. Thus, a pleading could be on file for weeks before it is withdrawn, and all the damage done by negative publicity would have been done.

H.B. 2007 does not contain the Mined Harbor provision of the Federal Rules.

IX. Some Objections Answered.

As noted above, a few objections were received to the original S.B. 140. Most were based on a misunderstanding of what is being proposed. Of the rest were addressed in the amendments made before a vote in either House.

1. Mandatory Disclosures. As noted above, these are not in the Bill.

2. Safe Harbor. Again, this provision was not included in the Bill.

3. Mandatory Discovery Conferences. Most courts hold such conferences in every case. Of the conferences help to get a case moving, and make the parties focus on the issues.

4. No Notice. As noted, the Bill was published in the *Journal of the Kansas Bar Association* some seven months before it was introduced in the Legislature, and disseminated to the Kansas Judicial Conference three months before it was introduced. Since then, two more years have elapsed, allowing (1) sufficient time to determine if the Federal Rules work and are accepted by the practicing Bar, and (2) sufficient time for public comment, including hearings before this Committee, the Senate Judiciary Committee, and before a Joint Conference Committee.

5. Too Quick. Of the Judicial Council worked for two years, expending over 1,000 person-hours in this effort, and two more years of work have been done since then by the Legislature.

6. Not Thought-Out. This objection is the most base-less. In accordance with prior amendments, the Judicial Council could have blindly accepted, and submitted to the Legislature, all the changes contained in the December 1, 1993 amendments to the Federal Rules of Civil Procedure. That would have had some support, since practicing lawyers like uniformity of rules and interpretation. Instead, the Judicial Council agonized over every phrase, and only adopted those that could be uniformly accepted by the plaintiff and defense bars. None of the objectors has spent the time the Civil Code Committee spent in working out this Bill.

X. Conclusion.

This Bill was unanimously approved by the Civil Code Committee of the Judicial Council, after two years of work -- a Committee representing the broadest cross-section of the bench, bar and academia.

Of the Bill was unanimously approved by the Judicial Council -- an organization representing a broad cross-section of practicing lawyers, trial judges, appellate judges, and legislators.

While there was much controversy about the Federal Rules, that controversy has been about the provisions which are not in this Bill.

We respect and appreciate the Legislature's interest and recognize that this is not an easy subject. However, there is just not much opposition from the bench and bar -- and no opposition once it is understood what is, and is not, in this Bill.

J. Nick Badgerow
SPENCER FANE BRITT & BROWNE LLP
500/40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210
(913) 345-8100
(913) 345-0736 (Facsimile)

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ACLU

American Civil Liberites Union

Wendy McFarland - Lobbyist
(913) 575-5749

TESTIMONY ON HB 2007
MARCH 12, 1997

HOUSE BILL 2007 IS A BILL THAT WILL AMEND AND CHANGE CURRENT LAW CONCERNING CIVIL PROCEDURE INCLUDING THE PLEADINGS AND MOTIONS OF KANSAS INMATES SEEKING RELIEF FROM INHUMANE TREATMENT OR CONDITIONS IN PRISON AS WELL AS WRITS OF HABEUS CORPUS THAT SEEK JUDICIAL REVIEW TO ESTABLISH THE INNOCENCE OF ONE WHO HAS BEEN WRONGFULLY CONVICTED.

THE AMERICAN CIVIL LIBERTIES UNION IS SPECIFICALLY CONCERNED WITH THE PROPOSED CHANGES IN K.S.A. 60-211 THAT SEEK TO MORE NARROWLY DEFINE WHAT A COURT WILL HOLD AS A REASONABLE MOTION AS OPPOSED TO ONE THAT IS NOT. YOU WILL FIND THIS LANGUAGE BEGINNING ON PAGE 7, LINE 9 AND ENDING ON PAGE 8, LINE 17.

IT ALSO AUTHORIZES THE SECRETARY OF CORRECTIONS TO TAKE ANY MONEY FROM AN INMATE'S ACCOUNT TO PAY A SANCTION THE COURT SHOULD IMPOSE IF THE MOTION FAILS TO MEET THE NEW AND MORE STRINGENT DEFINITIONS OF WHAT IS REASONABLE.

IF THERE IS SUCH AN ACCOUNT WITH ANY MONEY IN IT, THERE IS NO NEED TO CHANGE CURRENT LAW TO ACCESS IT. THERE ARE ALREADY REMEDIES IN LAW FOR PEOPLE TO ATTACH THAT ACCOUNT WITHOUT INVOLVING THE SECRETARY OF CORRECTIONS.

IF YOU WOULD READ THE CURRENT LANGUAGE, MINUS THE PROPOSED CHANGES, YOU WILL SEE THAT 60-211 ALREADY ALLOWS FOR SANCTIONS TO REMEDY WHAT YOU MIGHT CONSIDER TO BE UNREASONABLE REQUESTS FROM INMATES.

ACCESS TO THE COURTS IS THE ONLY WAY FOR INMATES TO SEEK PROTECTION FROM INHUMANE PRISON CONDITIONS OR TO PROVE THEIR INNOCENCE. HISTORICALLY, THIS ACCESS HAS BEEN CLEARED AND PROTECTED BY THE COURTS AS ONE OF THE FEW FUNDAMENTAL RIGHTS WE ALLOW PRISONERS.

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THE STATE SHOULD NOT LIMIT ACCESS TO THIS ONE RIGHT BY PLACING STRINGENT STANDARDS ON THE CONTENT OF THESE MOTIONS FOR RELIEF.

PLEASE REMEMBER THAT ATTORNEYS ARE RARELY AVAILABLE TO INMATES TO SEEK REDRESS OF PRISON CONDITIONS. WITHOUT THE ADVICE AND ASSISTANCE OF ATTORNEYS, THE INMATE HAS ONLY HIMSELF AND POSSIBLY THE HELP OF A MORE EXPERIENCED INMATE TO PREPARE A PETITION TO REQUEST A REVIEW OF CONDITIONS.

CONSIDER THAT MANY INMATES ARE ILLITERATE, UNEDUCATED AND HAVE NO KNOWLEDGE OF THE LAW. THERE ONLY HOPE OF RELIEF FROM ANY INTOLERABLE CONDITION IS TO COMPOSE A REQUEST FOR JUDICIAL REVIEW OF THE PROBLEM. THE COURTS HAVE HISTORICALLY HELD THAT THESE REQUESTS CAN BE ACCEPTABLE WHEN WRITTEN ON KLEENEX TISSUES OR EVEN SCRAPS OF PAPER. THOSE COURTS RECOGNIZED THE DIFFICULTIES AN INMATE FACES IN SEEKING RELIEF FROM THOSE WHO WATCH AND CONTROL HIS EVERY MOVE.

IF THESE REQUESTS ARE NOW TO BE ROUTINELY REJECTED BECAUSE OF STRINGENT AND UNREASONABLE LAWS THAT REQUIRE KNOWLEDGE OF RIGHTS AND LAWS A PRISONER MAY NOT BE AWARE OF, THEN WE CAN BE ASSURED THAT THERE WILL BE A BACKLASH BY INMATES WHO BEGIN TO SEE NO HOPE OF FAIRNESS IN THEIR TREATMENT. ANGER WILL BE BOTTLED UP AND WILL EVENTUALLY SHOW ITSELF IN WAYS THAT ENDANGER THE SAFETY OF PRISON WORKERS AND OTHER INMATES.

THE COURTS HAVE MADE IT CLEAR THAT IT IS POSSIBLE FOR INMATES TO SEEK RELIEF BEFORE AN INJURY HAS TAKEN PLACE AS IN THE INSTANCE OF AN INMATE WHO, BECAUSE OF PRISON OVERCROWDING, IS PLACED IN A CELL WITH A VIOLENT PRISONER. IF THIS CELLMATE IS THREATENING THE PERSON WITH RAPE, THIS INMATE HAS THE RIGHT TO PETITION THE COURT FOR PROTECTION. CAN WE REALISTICALLY EXPECT THIS INMATE TO KNOW WHAT STANDARDS OF PROOF WILL BE ACCEPTABLE UNDER THE NEW DEFINITION OF REASONABLE?

THE COURTS MUST BE ALLOWED TO REVIEW THESE REQUESTS AND NOT BE INHIBITED BY STRINGENT DEFINITIONS OF WHAT IS REASONABLE AND WHAT IS NOT. MEDICAL TREATMENT NOT OFFERED, PHYSICAL OR SEXUAL ABUSE BY OTHER INMATES OR STAFF, PROCLAIMED INNOCENCE ARE ALL WORTHY SUBJECTS OF REVIEW.

TO IMPOSE SANCTIONS BECAUSE SOME OF THE REQUESTS ARE NOT REASONABLE AND TO AUTHORIZE THE SECRETARY OF CORRECTIONS TO SEIZE ANY MONEY FROM AN INMATE'S ACCOUNT TO PAY THOSE

SANCTIONS IS NOT NECESSARY. CURRENT LAW ALLOWS FOR JUDGES TO SANCTION IF THAT IS WHAT THEY SEEK TO DO.

IT COSTS THE STATE VERY LITTLE TO REVIEW THESE PETITIONS AND THE BENEFIT IS TO ALLOW INMATES TO FEEL THEY ARE BEING HEARD. THE ADDED COST OF CREATING A REIMBURSEMENT SYSTEM INVOLVING THE SECRETARY OF CORRECTIONS MAY, IN FACT, COST MORE THAN THE PRESENT WORKABLE SYSTEM.

ALLOWING INMATES THE RIGHT TO PETITION IS A CONSTITUTIONAL RIGHT AND THE RIGHT ITSELF CAUSES THE STATE TO DO WHAT THEY ARE SUPPOSED TO DO. THIS RIGHT SERVES AS A CHECK AND BALANCE SYSTEM FOR A SYSTEM THAT RECEIVES LITTLE REVIEW OTHERWISE. THE COURTS SHOULD BE ALLOWED TO REVIEW THE PETITIONS OF INMATES AND TO ALLOW GREATER LATITUDE IN DETERMINING THE REASONABLENESS OF THEIR GRIEVANCE WHEN THE AUTHOR OF THE REQUEST MAY NOT EVEN BE ABLE TO READ OR WRITE. THAT IS THE REALITY WE SEEK TO PROTECT IN ASKING YOU TO REMOVE THE NEW LANGUAGE IN K.S.A. 60-211.

CURRENT LAW PROVIDES YOU WITH ALL THE SAFEGUARDS NECESSARY TO PREVENT AND SANCTION THOSE WHO ACCESS THE COURTS WITH UNREASONABLE REQUESTS. WE MUST CONTINUE TO PROTECT THOSE WITH LEGITIMATE ISSUES SO THAT THEY PERCEIVE FAIRNESS IN THOSE WHO INCARCERATE THEM.

S Jud 3/12/97 att 6

SENATE COMMITTEE ON JUDICIARY
March 12, 1997

My name is Steve Dickerson and I am legislative chair for the Kansas Trial Lawyers Association (KTLA) for the 1997 legislative session. KTLA always welcomes the opportunity to appear before this committee as it considers and works legislation affecting consumers' legal interests.

KTLA generally endorses HB 2007 as amended by the House Committee of the Whole. The bill is essentially the work product of the Civil Code Advisory Committee of the Kansas Judicial Council. The committee contains a broad cross-section of the Kansas bar, and has invested considerable time and energy in trying to responsibly draft this update of the Kansas Code of Civil Procedure (Code).

The Code governs and controls the filing and processing of all civil actions in our district courts. When the present Code was first enacted in 1963 it was largely patterned after the federal rules of civil procedure. The federal rules of civil procedure have continued to evolve including certain significant changes which were effective in 1993. HB 2007 represents a comprehensive effort to update the Code based upon some of the federal changes combined with a healthy element of Kansas common sense.

Thank you for the opportunity to be heard on this bill. I am happy to respond to your questions or requests for additional information.

Senate Judiciary
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