

Approved: Feb 4, 1998  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:12 a.m. on February 3, 1998 in Room 514-S of the Capitol.

All members were present.

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: Tim Madden, Chief Counsel,  
Dept. of Corrections (DOC)

Others attending: See attached list

The minutes of the February 2 meeting were approved on a motion by Sen. Oleen and a second by Sen. Harrington. Motion carried.

### **Confirmation Hearing**

Marilyn Scafe's appointment as Chair and Member of the Kansas Parole Board was unanimously confirmed on a motion by Senator Goodwin and a second by Senator Harrington. Motion carried.

### **SB 70 - Expanding the definition of community service work under the tort claims act to include assignments by the parole board or department of corrections.**

Conferee Madden reviewed **SB 70** stating that it "amends the provision of K.S.A. 1997 Supp. 75-6102 to include within the definition of "community service work", public or community service performed by a person pursuant to a requirement imposed by the Kansas Parole Board or the DOC." He further stated that the bill "would afford the DOC and parole board with the same immunity [from liability] currently provided to other jurisdictions that require offenders to perform community service work" and he elaborated on this. (attachment 1). There was lengthy discussion throughout the conferee's testimony regarding the liability issue as well as the confidentiality issue.

### **SB 515 - An act concerning procedures for the issuance of subpoenas by the secretary of corrections**

Conferee Madden reviewed **SB 515**, a bill which amends the provisions of K.S.A. 75-5251 governing the issuance of subpoenas by the secretary of corrections and which, by current law, are to be issued in the same manner as is provided for arbitration cases (K.S.A. 5-407). He stated **SB 515** clarifies the ambiguous language of K.S.A. 5-407 regarding the service and enforcement of a subpoena and alleviates the need to have the clerk of the district court process a precipe for service of the subpoena. He further stated the bill would provide for confidentiality for the individuals named in the subpoena. (attachment 2) Discussion followed.

### **SB 516 - An act concerning crimes, punishment; relating to conservation camps**

Conferee Madden reviewed **SB 516**, a bill which amends K.S.A. 75-52-127, the conservation camps (CC) bill. He stated that **SB 516** "would allow camps established by the DOC to be operated in the most cost efficient manner possible by permitting offenders sentenced to the camp to be transferred to other DOC facilities, for certain service, and for offenders sentenced to the custody of the DOC pursuant to an imprisonment disposition to be housed at a conservation camp." He further stated that the bill would permit a CC established by the DOC, "to provide the non imprisonment sentencing option to female offenders." He also requested a language change to simplify clerical procedures. (attachment 3) Brief discussion followed.

The meeting adjourned at 11:02 a.m. The next scheduled meeting is Wednesday, February 4, 1998.





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att 1*

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 3, 1998  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons  
Secretary of Corrections *[Signature]*  
RE: SB 70

SB 70 amends the provisions of K.S.A. 1997 Supp. 75-6102 to include within the definition of "community service work" public or community service performed by a person pursuant to a requirement imposed by the Kansas Parole Board or the Department of Corrections. This amendment would treat such assignments the same as is currently provided for community service work performed as a result of a diversion from criminal prosecution, placement in a community corrections program, condition of probation or suspension of a sentence, work performed in lieu of a fine, and placement of juvenile offenders.

The definition of "community service work" is referenced by K.S.A. 1997 Supp. 75-6104 which provides governmental immunity from liability for "any claim for damages arising from the performance of community service work other than damages arising from the operation of a motor vehicle as defined by K.S.A. 40-3103, and amendments thereto." Therefore, SB 70 would provide immunity from liability on the part of the state and governmental entities for community service work performed as the result of a requirement imposed by the Parole Board and the Department of Corrections.

The immunity from liability provided by the provisions of the Tort Claims Act for community service work protects the state and other governmental entities from claims that "but for" the ordering of an offender to perform community service work by the governmental entity, damages caused by the offender or incurred by the offender would not have occurred. The Parole Board and Department have the same public policy interests as the district courts and community corrections programs to utilize community service work as an alternative to other sanctions that could be imposed. The

*Senate Judiciary  
2-3-98  
att 1*

MENO: Senate Judiciary Committee

Re: SB 70

February 2, 1998

Page 2

Department has implemented a graduated sanctions program whereby, offenders under parole or post release supervision are not be returned to prison if an alternative exists that adequately addresses the behavior of the offender. Additionally, entities that could utilize the services of offenders to perform community service would be more inclined to utilize those services if immunity from liability was provided. The immunity provided by the Tort Claims Act relative to district court and community corrections assignments for community service work would likewise apply to similar assignments ordered by the Parole Board and the Department.

The Department continues to aggressively promote community service work. In FY 1997, inmates performed 869,565 hours of community service work, an increase of 45% form FY 1996 totals. Primarily due to a federal grant, the Department's parole services has been able to expand the number of community service work hours performed by parolees by 400% to 14, 429 in FY 1997.

Due to the ever expanding number of public and community service programs available throughout the State, and the number of hours of community service performed, neither the Department nor the Parole Board has the resources to insure that each community service program has properly trained the offender in the use of tools and the specific task to be performed by the offender. Additionally, neither the Department nor Parole Board can provide direct supervision to all persons released on parole while performing community service work. Community service work can range from cleaning blighted areas to staffing soup kitchens. It is the expectation of the Department that each community service project would be better able to provide the necessary training and supervision.

SB 70 would not provide immunity from liability for an offender who causes injury to the person or property of a member of the public.

The Department urges favorable consideration of SB 70. SB 70 would afford the Department and parole board with the same immunity currently provided to other jurisdictions that require offenders to perform community service work.

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Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

DATE: February 3, 1998  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons  
Secretary of Corrections  
RE: SB 515

SB 515 amends the provisions of K.S.A. 75-5251 governing the issuance of subpoenas by the secretary of corrections. Current law provides that such subpoenas are to be issued in the same manner as is provided for arbitration cases. The issuance of arbitration subpoenas is governed by K.S.A. 5-407. K.S.A. 5-407 states, "Subpoenas so issued shall be served, upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action." Due to the ambiguity of K.S.A. 5-407 regarding whether both the service of the subpoena as well the enforcement of the subpoena requires application to the court, the Department of Corrections files a precipe for the issuance of the subpoena with the clerk of the district court. This entails the processing of the subpoena by the clerk of the district court. The precipe and subpoena are open records in the office of the clerk of the district court.

SB 515 would clarify this ambiguity and alleviate the need to have the clerk of the district court process a precipe for service of the subpoena, thus avoiding the clerk of the district court having to process the application. Additionally, the nature of the investigation would remain confidential which would avoid jeopardizing an investigation and protect the privacy of individuals named in the subpoena. Enforcement of a subpoena issued by the secretary pursuant to SB 515 would still require an order from the district court.

It is requested that favorable consideration be given to SB 515.

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Senate Judiciary  
2-3-98  
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Bill Graves  
Governor

Charles E. Simmons  
Secretary

MEMORANDUM

DATE: February 3, 1998  
TO: Senate Judiciary Committee  
FROM: Charles E. Simmons *[Signature]*  
Secretary of Corrections  
RE: SB 516

Current law provides two statutory provisions relative to the establishment of conservation camps. K.S.A. 75-52,132 authorizes an agreement between the Department and the Board of County Commissioners for Labette County, and K.S.A. 75-52,127 authorizes the Department of Corrections to establish conservation camps. SB 516 amends K.S.A. 75-52,127 and K.S.A. 1997 Supp. 21-4603 and 21-4603d to include conservation camps established by the Department as a non imprisonment sentencing option. The only conservation camp currently identified by statute as a non imprisonment option is the Labette Correctional Conservation Camp (LCCC).

The proposed amendment of K.S.A. 75-52,127 would allow camps established by the Department to be operated in the most cost efficient manner possible by permitting offenders sentenced to the camp, even though on probation, to be transferred to other Department facilities, for certain services, and for offenders sentenced to the custody of the Department pursuant to an imprisonment disposition to be housed at a conservation camp. This would allow the Department to utilize various services located at a correctional facility for offenders sentenced to the conservation camp. Rather than having to rely on local hospitals for the provision of infirmary care, or local jails for enhanced security detention, conservation camp participants could be transferred to a correctional facility for medical care or detention until the offender is able to be returned to the custody of the sheriff of the county in which they were convicted. Additionally, if the number of offenders eligible for the sentence reduction provided by K.S.A 21-4603 and 21-4603d is insufficient to fill the conservation camp, the Department could place other offenders there whose custody level is consistent with the security provided by the camp. The Department's agreement with the Board of County Commissioners for Labette County permits such placements at the Labette Correctional Conservation

*Senate Judiciary*  
2-3-98  
att 3

MEMO: Senator Judiciary Committee

Re: SB 516

February 2, 1998

Page 2

Camp.

Currently, the only conservation camp in operation in Kansas is the Labette Correctional Conservation Camp. This camp was established pursuant to K.S.A. 75-52,132, which authorizes agreements between the Department of Corrections and the Board of Commissioners for Labette County. LCCC houses only male offenders. Successful completion of the camp program by an offender entitles the offender to be placed under supervision by a community corrections program. Thus, female offenders who would otherwise be eligible for this sentencing option are excluded due to their gender. SB 516 would permit a conservation camp established by the Department to provide the non imprisonment sentencing option to female offenders.

SB 516 would not, without additional legislative appropriations, create a boot camp operated by the Department, nor would it prohibit the Department from establishing such a boot camp through a private vendor.

SB 516 also provides that placement at a conservation camp established by the Department as a non imprisonment sentencing disposition would not entail the loss of the civil rights of an offender. This is consistent with the current law regarding placements at LCCC. Finally, SB 516 changes the length of a conservation camp placement from 180 days to 6 months. This change is desired because monthly increments are simpler to use in computing and tracking sentences.

The Department urges passage of SB 516.

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