

Approved: \_\_\_\_\_

Date

3-17-99

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 1, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused  
Representative Andrew Howell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Avis Swartzman, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation  
Charles Simmons, Secretary Department of Corrections  
Chris Mechler, Kansas Association of Court Services Officers

Kyle Smith, Assistant Attorney General, Kansas Bureau of Investigation, appeared before the committee with requests for bill introductions. The first would amend K.S.A. 65-4159 to make it unlawful to sell methamphetamine or other controlled substances within 1,000 of schools, public parks, child care centers, shopping malls and other retail stores. The next request would expand the drug paraphernalia statute to include the possession of anhydrous ammonia with the intent to manufacture drugs. The third, request would regulate the buying of large quantities of ingredients that are used to make methamphetamine. The last request criminalizes the use of booby-traps set in an effort to protect meth labs and other drug production facilities. (Attachment 1)

Representative Carmody made the motion to have the requests introduced as committee bills. Representative Pauls seconded the motion. The motion carried.

Hearings on **HB 2135 - secretary of corrections authorized to issue warrants for apprehension of an escaped inmate**, were opened.

Charles Simmons, Secretary Department of Corrections, appeared before the committee as the sponsor of the proposed bill. He explained that the bill would amend K.S.A. 75-5222 by creating the authority of the secretary of corrections to issue an administrative warrant for an apprehension of inmates who escape while they are in the custody of the Department of Corrections. (Attachment 2)

Secretary Simmons was asked to provide the committee with a list of other states that do this type of warrants.

Hearings on **HB 2135** were closed.

Hearings on **HB 2136 - legal representation of state officials before grand juries and inquisitions**, were opened.

Charles Simmons, Secretary Department of Corrections, appeared before the committee as the sponsor of the proposed bill. He informed the committee that this bill would require the state to provide legal representation to employees who have been summoned to appear before a grand jury or inquisition on account of an act or omission in the scope of their employment as an employee of the state. (Attachment 3)

Several committee members were concerned that a section of the Tort Claims Act was included in the bill and felt that it would limit the time period to request counsel.

Chris Mechler, Kansas Association of Court Services Officers, requested an amendment that would included court services officers in the bill. (Attachment 4)

Hearings on **HB 2136** were closed.

Hearings on **HB 2137 - authority of secretary of corrections to issue warrants for arrest for individuals supervised under an interstate compact**, were opened.

Charles Simmons, Secretary Department of Corrections, appeared before the committee as the sponsor of the proposed bill. He explained that this would authorize the secretary of corrections to issue administrative warrants for the arrest of persons, who are from other states, when they are under the supervision of the Department of Corrections. (Attachment 5)

Hearings on **HB 2137** were closed.

Representative Carmody made the motion to approve the committee minutes of January 13, 14 & 19. Representative Gregory seconded the motion. The motion carried.

Committee minutes of January 21 & 26 were distributed, they will be approved at a later date.

The committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for February 2, 1999.



State of Kansas

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### House Judiciary Committee

### Bill Requests 2/1/99

### 1999 Methamphetamine Initiative

### Attorney General Carla Stovall

#### A. Amendments to the Kansas Controlled Substance Act

1. **Enhanced penalties.** The manufacture of methamphetamine is a business. While it may feed an addiction, it is primarily operated to make a profit. In determining where to manufacture, the "businessmen" involved in the production of meth do a risk benefit analysis which involves the availability of necessary supplies and the risk of detection and penalties if caught. Kansas must bring its penalties for the production of methamphetamine to meet or exceed those imposed by surrounding states. To do otherwise continues the practices of the past, which has made Kansas a 'Mecca' for meth production.

This request is that a first time offense of manufacturing in violation of KSA 65-4159 be raised to a drug severity level 1 felony from the current level 2. Subsequent convictions and manufacturing near schools, public parks, or shopping malls, places where children are at risk, should become off drug grid offenses, punishable by life imprisonment with no parole eligibility for 15 years and no 'good time' credit.

The Kansas statutes dealing with the sale of methamphetamine and other controlled substances should be amended so that their enhanced sentences of trafficking in drugs within 1,000 feet of schools is expanded to include public parks, child care centers, shopping malls and other retail stores.

2. Thefts of **anhydrous ammonia**, an extremely dangerous chemical, have spread throughout the state as methamphetamine manufacturers steal from legitimate farmers, usually

damaging equipment, leaving leaking tanks of dangerous chemicals to harm the unwary. The drug paraphernalia statute needs to be expanded to criminalize possession of anhydrous ammonia with the intent to manufacture drugs.

3. The Controlled Substances Act needs to be modified to clarify that the **definition of Manufacture**, contained in KSA. 65-4101 allows manufacture for personal use only by doctors, pharmacists and other such licensed professionals.

## **B. Chemical Control Act**

A **chemical control act** regulating the distribution and sale of the chemicals involved in the production of methamphetamine must be passed. All the states surrounding Kansas but Nebraska have such acts and Nebraska is in the process of passing such legislation. This makes Kansas the easiest place to get the necessary chemicals. Unfortunately, the chemicals involved in the production of meth can be readily purchased at your local drug and hardware store. The potential of turning a \$100 investment into as much as \$3,000 worth of profit partly explains the phenomenal growth in the number of meth labs in Kansas.

While protecting local retailers from burdensome regulation, persons buying large quantities of the ingredients should be compelled to produce identification and a record created of such transactions. This will deter such activity in Kansas and provide valuable information to law enforcement. Last year the senate passed a version of the Chemical Control Act 39-1, but time ran out in the House. The Kansas Department of Health and Environment and the Kansas Bureau of Investigation have been working together to streamline that legislation and address the concerns that were expressed last year so that an effective and fair act can be quickly passed by both houses this year.

## **C. Criminal Code**

1. In an effort to destroy the evidence as well as kill or maim law enforcement officers, the drug-induced paranoia of meth manufacturers and other drug dealers has unfortunately resulted in the use of booby-traps. Currently, setting such weapons in furtherance of criminal activity is not a crime in Kansas. We propose to criminalize the use of **booby-traps** set in an effort to protect meth labs and other drug production facilities. Drug traffickers need to

understand that there will be an additional penalty if they resort to these cowardly and deadly methods to protect their illegal enterprises.

2. Law enforcement officers conducting raids on these dangerous explosive clandestine laboratories need to be properly equipped. A well-trained tactical team should be authorized to use **suppressors** on their firearms to avoid the potential for igniting the flammable fumes frequently found in these locations if a gunfight erupts. KSA 21-4201 should be amended to authorize tactical teams, if properly trained, to utilize flash and sound suppressed firearms.

#### **D. Criminal Procedure**

1. **Multi-State Drug Task Forces:** Law enforcement agencies need the authority to enter into agreements sharing law enforcement authority across state lines. While not mandated, this would allow agencies in those locations where manufacturers and drug dealers are hiding across state lines to be properly targeted by a unified effort.

2. **Disposal of hazardous materials.** Due to the volatile nature of the chemical seized at a methamphetamine manufacturing site, the statutes on handling evidence need to be modified to recognize the hazardous nature of storing large quantities of those chemicals after sufficient samples are taken for both prosecution and defense testing. KSA 22-2512 should be amended to authorize the courts to order the destruction, in accordance with federal and state law, of the remaining hazardous materials.



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Bill Graves  
Governor

Charles E. Simmons  
Secretary

## MEMORANDUM

DATE: February 1, 1999

TO: House Judiciary Committee

FROM: Charles E. Simmons   
Secretary of Corrections

RE: HB 2135

HB 2135 amends K.S.A. 75-5222 by specifically authorizing the secretary of corrections to issue a warrant for the apprehension of inmates who escape while in the secretary's custody. Such warrants would communicate to any law enforcement officer the lawfulness of their taking into custody, on behalf of the secretary, an inmate who has escaped from a KDOC correctional facility.

To appreciate the appropriateness and utility of HB 2135, it is necessary to distinguish between taking an escaped inmate into custody because he or she still has a lawfully imposed prison sentence remaining to be served and a situation where a new criminal charge is brought alleging the commission of aggravated escape. Warrants commanding the arrest of a person to answer to the criminal charge of having committed the felony crime of aggravated escape from custody would still be issued solely by a court upon the filing of criminal charges by a county or district attorney. Thus, HB 2135 would not inappropriately impinge upon the court's sole authority to issue warrants for the arrest of persons charged with a new crime. The utility of HB 2135 is based upon the fact that some law enforcement officers do not readily make the distinction between the new criminal charge of aggravated escape from custody and the fact that the inmate still has a sentence to be served and thus view their authority to take persons into custody as being dependent on the issuance of a warrant.

Whenever an inmate escapes from a correctional facility, the department has always maintained that correctional officials and other law enforcement officers have the lawful authority to regain custody of that inmate so that the execution of the previously imposed sentence can be resumed. The department's authority to execute a previously imposed sentence is not dependent on whether a county or district attorney, in his or her discretion, decides to file a new criminal charge and obtains an arrest warrant for the new charge.

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K.S.A. 75-5222 currently commands the secretary to "take all proper measures for the apprehension of said inmate" that has escaped from custody. These measures include notifying other area law enforcement agencies, entering the escapee in the National Crime Information Computer, and seeking the extradition of the escapee if he or she is apprehended in another state.

These measures are taken by virtue of the fact that the escapee has been judicially sentenced to the custody of the secretary for the execution of a criminal sentence. The judicial documents sentencing the defendant to the custody of the secretary of corrections are sufficient to commence the process for the extradition of the escapee apprehended in another state pursuant to K.S.A. 22-2723. However, some states, nonetheless, request that a copy of a "warrant" be provided in addition to the sentencing documents and affidavit attesting to the fact that the fugitive has escaped from confinement when extradition is sought from that state. While a "warrant" is not required by the Uniform Criminal Extradition Act for the extradition of fugitives who have escaped from custody, it is a pragmatic reality that the Kansas Department of Corrections must appease the officials of another state when those officials are responding to the department's extradition request.

Similarly, the department has experienced situations where law enforcement agencies within the state of Kansas have located an escapee and request documentation authorizing their taking the escapee into custody on behalf of the department. While the court's sentencing orders provide that authorization, it is the department's belief that most law enforcement agencies prefer a single, clear, and concise document which evidences the fact that the escapee has escaped from a lawful imposed sentence.

HB 2135 would provide for the issuance a single document communicating the lawfulness of the apprehension of an inmate who has escaped from confinement on behalf of and at the direction of the secretary of corrections.

The Department requests favorable consideration of HB 2135.

CES/TGM/nd

cc: Legislation file



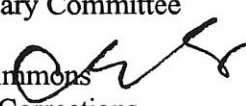


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Bill Graves  
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Charles E. Simmons  
Secretary

## MEMORANDUM

DATE: February 1, 1999  
TO: House Judiciary Committee  
FROM: Charles E. Simmons   
Secretary of Corrections  
RE: HB 2136

The provisions of HB 2136 were submitted to the 1998 Legislature in SB513 which passed the Senate by a vote of 40 - 0. The same provisions were addressed by the House in SB 501 as amended by the House Appropriations Committee. SB 501 as amended, passed the House by a vote of 117 to 5. However, SB 501 was returned to the Senate due to the amendment and the Senate found that the House amendment was not germane and the language regarding this proposal was not included when SB 501 was enacted during the 1998 session.

HB 2136 amends the provision of K.S.A. 75-6108 to require a governmental entity to provide representation to employees summoned to appear before a grand jury or inquisition on account of an act or omission in the scope of their employment as an employee of the governmental entity. A governmental entity may refuse to provide representation if the act or omission was not within the scope of the employee's employment, the employee acted or failed to act because of actual fraud or actual malice, or the representation would create a conflict of interest between the governmental entity and the employee. HB 2136 further specifies that a governmental entity shall not be required to provide the defense or representation to any employee in a criminal or civil service proceeding.

While the convening of grand juries in Kansas is atypical, the Kansas Supreme Court has had occasion to determine that grand jury hearings are not criminal proceedings. [*Ferris v. Lockett*, 175 Kan. 704 (1954)]. Regardless of how the courts have characterized grand jury proceedings, from a employee's perspective, being summoned to appear before a grand jury is a serious matter that should be approached with the advice and counsel of an attorney. After incurring personal expenses for representation, it would be of little solace to a governmental employee that an internal investigation conducted by the employing governmental entity concluded that no criminal behavior had occurred and that the employee had acted without actual fraud or malice. Likewise, it would not benefit an employee to have borne the cost of legal representation before a grand jury even though the grand jury did not return an indictment. The failure of a governmental entity to provide representation and leaving the employee to bear the cost of representation before a grand jury proceeding is as

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demoralizing as the abandonment of the employee in traditional civil litigation. Due to the nature of the services provided to the citizens of Kansas by the Department of Corrections and other agencies, it is a reality that state employees will be subject to various legal proceedings. In order to attract and retain competent and dedicated staff, the state should not expect its employees to bear the cost of legal representation in proceedings relating to their actions when those actions have been taken within the scope of their duties and without fraud or malice. A governmental employee should not have to pay for legal representation related to the performance of his or her duties. Public policy is best served when employees are not forced to consider whether they will be exposed to financial hardship when performing duties on behalf of the government. The importance of this public policy is exemplified by K.S.A. 48-241a which provides for the representation of members of the Kansas national guard and Kansas air national guard in both civil and criminal proceedings for any action performed in furtherance of their military duties. The extensive representation provided by K.S.A. 48-241a is not sought in HB 2136. HB 2136 specifically excludes the provision of representation in criminal proceedings.

In addition to attracting and retaining competent staff and alleviating the fear on the part of employees that they will have to bear their own legal expenses for actions taken within the scope of their duties, the state directly benefits from providing experienced representation to its employees summoned to appear before grand jury proceedings when it undertakes the representation of the state and the employee in collateral tort litigation. Competent counsel must treat a grand jury proceeding as a discovery tool available in a subsequent tort action. The secrecy of a grand jury proceeding is not absolute. In some situations the transcripts of grand jury proceedings may be available to civil litigants. Furthermore, privileges such as confidential attorney client communications and attorney work product may be waived forever by a witness appearing before a grand jury, thus adversely affecting the rights of the state and its employees in subsequent tort litigation. The ability to provide competent representation to the state and its employees as intended by K.S.A. 75-6108 in tort litigation is hindered by ignoring the ramifications of a grand jury proceeding.

The amendment of K.S.A. 75-6108 relative to the provision of representation to government employees summoned to appear before grand juries and inquisitions is also mirrored in the amendment of K.S.A. 75-4360. K.S.A. 75-4360 was enacted prior to the passage of the Tort Claims Act and requires the state to represent the Governor, adjutant general, highway patrol troopers, Kansas Bureau of Investigation agents, and employees of correctional institutions. However, K.S.A. 75-4360 currently does not allow for the state to refuse to provide representation to those officials. HB 2136 allows the state to refuse to provide representation pursuant to K.S.A. 75-4360 for the same reasons as are set out in K.S.A. 75-6108.

HB 2136 also amends K.S.A. 75-4360 to include employees of the Department of Corrections who do not work at a correctional facility and the Kansas Parole Board.

The Department urges favorable consideration of HB 2136.

CES/TGM/nd

cc: Legislation file

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

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TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE  
CHRIS MECHLER, LEGISLATIVE CHAIRPERSON  
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS  
ON 1999 HOUSE BILL 2136  
FEBRUARY 1, 1999

Chairman O'Neal and Members of the Committee:

I am Chris Mechler, Legislative Chairperson for the Kansas Association of Court Services Officers. I am here today to speak on the behalf of the States 342 Court Services Officers. We would ask to be included in House Bill 2136.

Court Services Officers serve the courts and the public in many ways. We supervise child in need of care, juvenile offender, child custody, bond supervision, and adult misdemeanor and felony probation cases. We would like to be assured that the State would support us if in the performance of our duties we were prosecuted by civil action or summoned to appear before a grand jury or inquisition.

Thank you for your consideration.



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## MEMORANDUM

DATE: February 1, 1999  
TO: House Judiciary Committee  
FROM: Charles E. Simmons  
Secretary of Corrections  
RE: HB 2137

HB 2137 amends K.S.A. 75-5217 to specifically authorize the Kansas secretary of corrections to issue warrants or Kansas parole officers to issue orders, for the arrest of persons under release supervision of the Kansas Department of Corrections pursuant to the Uniform Act for Out-of-State Parolee Supervision who violate the terms of their release supervision. The Uniform Act for Out-of-State Parolee Supervision, K.S.A. 22-4101 et seq., permits the release supervision of offenders convicted in one state to be transferred to another state. The Act provides that parolees whose supervision is transferred are to be governed by the same standards that prevail for the receiving state's own parolees, and that the receiving state shall assume the duties of supervision of the parolee. Compact parolees whose supervision is assumed by the department are expressly required to comply with the release conditions imposed by the Kansas Department of Corrections in addition to any conditions required by the sending state.

The department's policy for exercising its supervisory duties over compact parolees dictates that it issue warrants for the arrest of those persons for the same reasons that govern the issuance of supervision violation warrants for its own parolees pursuant to K.S.A. 75-5217. Parolees arrested pursuant to a department's supervision violation warrant are entitled to a revocation hearing before either the Kansas Parole Board or the sending state depending on whether the parolee's supervision stems from a Kansas conviction or from another state. Recently, a district court held that the Kansas Department of Corrections does not have the authority pursuant to K.S.A. 75-5217 to issue a warrant independently of the sending state. Thus, in order to remove a parolee from the community pending a revocation hearing for having violated a condition of his or her supervision, that court required the sending state to have issued a warrant. Fortunately, the sending state in that situation was able to issue

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a warrant before the district court ordered the release of the parolee from jail. Since the issues raised by the district court became moot by the issuance of a warrant by the sending state, that court's decision was not subjected to review by an appellate court.

K.S.A. 75-5217 recognizes that parole officers in the community need to have the ability to take parolees into custody immediately. That authority can be exercised in regard to a Kansas parolee by the parole officer prior to the parole officer receiving a warrant issued by the Kansas secretary of corrections. That authority is needed for the same reasons in regard to compact parolees but would be frustrated to an even greater degree by application of the district court's opinion that an arrest cannot be made until another state has received information regarding the violation and issued its own warrant. HB 2137 would treat compact parolees the same as our state's own parolees and would authorize Kansas parole officers to immediately take the necessary steps to protect the community from compact parolees pending the issuance of a warrant and the holding of a revocation hearing.

The department requests favorable consideration of HB 2137.

CES/TGM/nd

cc: Legislation file