

Approved: March 17, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 a.m. on March 16, 1999 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Secretary Charles Simmons, Department of Corrections
Chris Mechler, Court Services Officer, 3rd Judicial District and Legislative Chair of
Court Services Officers

Others attending: see attached list

The minutes of the March 15 meeting were approved on a motion by Senator Bond and seconded by Senator Donovan; carried.

HB 2092—concerning crimes and punishment; relating to dispositional alternatives; placement in conservation camps by secretary of corrections

Conferee Simmons testified in support of **HB 2092**. He discussed the bill, which expands the authority of the Secretary of Corrections (SOC) to make placements at correctional conservation camps as an alternative to incarceration in a Kansas correctional facility, and explained why it is necessary. (attachment 1) Discussion followed. Senator Oleen moved to amend the bill by changing the effective date to the Kansas Register and pass the bill out favorably as amended, Senator Bond seconded; carried.

HB 2135—concerning the secretary of corrections; issuance of warrant for apprehension of an escaped inmate

Conferee Simmons testified in support of **HB 2135**. He stated that the bill amends existing law by authorizing the SOC to issue a warrant for the apprehension of inmates who escape while in the secretary's custody. He discussed the "appropriateness and utility" of the bill. (attachment 2) Discussion followed. Senator Bond moved to pass the bill out favorably, Senator Vratil seconded and the motion carried 9-1 with Senator Pugh voting nay.

HB 2136—concerning public officers and employees; relating to the legal representation thereof before grand juries and inquisitions

Conferee Simmons testified in support of **HB 2136**. He discussed the bill, which would add the DOC, the Kansas Parole Board, and court service officers employed by the Kansas judicial branch, to the list of agencies that are provided legal representation when summoned to appear before a grand jury or inquisition, and he described its merits. He further discussed certain amendments to the bill. (attachment 3) Following discussion on whether or not Section 1 and 2 of the bill are necessary, it was determined that no action be taken on the bill until there is clarification of the law regarding these Sections.

Conferee Mechler testified in support of **HB 2136** and requested court service officers be included in the bill. (attachment 4)

HB 2137--relating to the secretary of corrections; warrant for arrest of released inmate for certain violation

Conferee Simmons testified in support of **HB 2137**. He stated that the bill authorizes the SOC and Kansas parole officers to issue arrest and detain orders for out-of-state parolees and probationers who are under the Secretary's supervision according to interstate compact agreements and who violate the terms of their release supervision. He elaborated on the issue this bill addresses explaining the need for the bill. (attachment 5) Following brief discussion, Senator Bond moved to pass the bill out favorably, Senator Vratil seconded; carried.

HB 2140--concerning eminent domain; relating to appraisal and compensation

Following discussion of **HB 2140** heard in Committee on March 15, 1999, Senator Bond made a motion to delete the phrase "interested party" on pg. 1 line 19, and insert the phrase "party in interest" and to delete the term "of" on pg 1 line 43, Senator Donovan seconded; carried. Following discussion on certain verbiage in the bill, Senator Vratil moved to amend it by striking the phrase after "who" on pg 1 line 22-23 to the phrase "have experience in the valuation of real estate," Senator Pugh seconded; carried. After discussion, Senator Pugh moved to strike the House amended language on pg. 4, lines 8 and 9 of the bill, Senator Donovan seconded. After further discussion, a substitute motion was made by Senator Vratil to retain the existing language [pg 4] and add the phrase "determined by appraiser", Senator Donovan seconded; carried There was discussion on other language in the bill whereupon Senator Bond moved to strike section 5 of the bill, Senator Goodwin seconded. After further discussion and a vote, the motion was defeated. Senator Feleciano moved to pass **HB 2140** out favorably as amended, Senator Donovan seconded; carried.

The meeting adjourned at 11:00 a.m. The next scheduled meeting is March 17, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 16, 1999

NAME	REPRESENTING
Charles Simmons	Dept. of Corrections
Doug Irwin	OLA
Dick Bauman	KDOT
Dale Jones	KSC
Kevin A. Shuba	KSC
Chris Mechler	KACSO
Kathy Porter	JA
James Clark	KCDA
Pron Smith	KS Bar Assn
Kent Galley	McGill Gaches & Assoc
Erik Sartorius	Johnson Co. Board of Realtors
Rat Hubbard	Woodlawn Farms
Deshly Fleming	Federics Consulting
Elwaine F Pomeroy	KS Credit Attorneys Ass'n KS Collectors Ass'n Inc.
Stephanie Buchanan	DOB



DEPARTMENT OF CORRECTIONS
 OFFICE OF THE SECRETARY
 Landon State Office Building
 900 S.W. Jackson — Suite 400-N
 Topeka, Kansas 66612-1284
 (785) 296-3317

Bill Graves
 Governor

Charles E. Simmons
 Secretary

MEMORANDUM

DATE: March 16, 1999
 TO: Senate Judiciary Committee
 FROM: Charles E. Simmons
 Secretary of Corrections
 RE: HB 2092

HB 2092 was introduced by the Joint Committee on Corrections and Juvenile Justice Oversight and passed the House by a vote of 115 to 9.

The department recommends that HB 2092 be amended by this Committee to provide that it be effective upon publication in the Kansas register. An earlier effective date would allow the department to take greater advantage of the recently increased capacity of the Labette Correctional Conservation Camp.

HB 2092, by amending K.S.A. 21-4603d, would expand the authority of the secretary of corrections to place inmates sentenced to the Department of Corrections in a conservation camp program. Current law authorizes the secretary to place in a conservation camp program inmates who have been sentenced to the department's custody as a result of a revocation of probation or as a departure from a presumptive nonimprisonment disposition. HB 2092 would grant the secretary authority to also place in a conservation camp program those inmates whose crimes are classified as falling within a "border box" of the sentencing guidelines grids.

Courts may sentence offenders who have committed an offense falling within a "border box" to prison or they may impose a nonprison sanction. Neither of those dispositions would constitute a departure under the Sentencing Guidelines Act. These sentencing grid boxes are specifically identified in HB 2092 as 5-H, 5-I, and 6-G of the nondrug grid and 3-E, 3-F, 3-G, 3-H, 3-I, 4-E, and 4-F of the drug grid. These grid blocks involve offenders whose criminal history is not greater than one nonperson felony and whose current offense is a Severity Level 6 nondrug offense or whose criminal history is no greater than 2 misdemeanor convictions when the current offense is a Severity Level 5 nondrug offense. Relative to drug offenses, the border boxes would apply only to those offenders whose criminal history does not

Sen Jud
 3-16-99
 att 1

MEMO: Senate Judiciary Committee

Re: HB 2092

March 16, 1999

Page 2

involve a person felony or more than 3 non person felonies and the current offense is a Severity Level 3 or 4 offense. A listing of offenses and severity levels is attached.

Enactment of HB 2092 would embody the public policy established by the provisions of the Sentencing Guidelines Act regarding non departure dispositions and border boxes. Both the court and the secretary of corrections could place the same pool of offenders in the conservation camp program without departing from the guidelines' presumed dispositions. While HB 2092 expands the pool of inmates eligible for camp placement by the department, HB 2092 does not mandate the placement of any particular inmate. The department would select those inmates believed to be suitable for placement. HB 2092 retains the requirement that inmates selected by the department must also meet the admission criteria of the camp.

Irrespective of whether the court or the secretary of corrections places an offender in a conservation camp program, offenders who successfully complete the six-month conservation camp program are placed under six months of follow-up supervision by the appropriate community corrections services program. A court may also extend the supervision as authorized by K.S.A. 21-4611. Offenders who fail to successfully complete the conservation camp program are either returned to the sentencing court for further disposition which may include the imposition of a prison sentence, or are returned to a department of corrections facility for service of the remainder of their guidelines sentence, depending on whether the court or department placed the offender in the camp program.

The Labette Correctional Conservation Camp now has a capacity for 204 male offenders. The department has the option of placing not less than fifty male offenders in the LCCC program. Recently, the department has contracted for the construction and operation of a conservation camp for female offenders. That program will have a capacity of 32 female offenders, 17 of which can be assigned by the department. Enactment of HB 2092 would expand the pool of eligible inmates the department may place in a conservation camp program. This would facilitate the department's use of the camps as an alternative to incarceration in a correctional facility.

HB 2092 also proposes a technical change by deleting the language beginning at line 40 on page 1 through line 3 of page 2. That section treated dispositions involving offenses falling within 3-G, 3-H, and 3-I of the drug grid as if those grid boxes were "border boxes" relative to assignment to a conservation camp. The amendment of K.S.A. 21-4705 by L.1996, ch. 258 §11 which designated those drug grid blocks as "border boxes" rendered this language superfluous.

The department recommends amendment of HB 2092 to provide for it being effective upon publication in the Kansas register and supports its passage.

CES:TGM/nd

Attachment

cc: Legislative file

FELONY CRIMES
SORTED BY SEVERITY LEVEL THEN BY STATUTE NUMBER

REFERENCE	DESCRIPTION	F/M	LEVEL	P/N
65-4142(c)(2)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds... ≥ \$5,000 < \$100,000	F	3D	N
65-4161(a)	Drugs; Opiates or narcotics; Sale, poss. w/intent to sell, etc.; first offense	F	3D	N
65-4163(a)	Drugs; Depressants, stimulants, hallucinogenics, etc.; Sale, possession w/intent to sel, etc.	F	3D	N
65-4142(c)(1)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds known to be derived from any violation of the uniform controlled substances act, < \$5,000	F	4D	N
65-4152	Drugs; Poss. of paraphernalia w/intent to use for planting, growing, harvesting, manuf., etc. any controlled substance	F	4D	N
65-4160(a)	Drugs; Opiates or narcotics; Possession; first offense	F	4D	N
65-4162(a)	Drugs; Depressants, stimulants, hallucinogenics, etc.; Possession; second and subs.	F	4D	N
65-4164(a)	Drugs; Substances in K.S.A. 65-4113; Sale, possession with intent to sell, deliver, etc.	F	4D	N
H.Sub-SB264, §1(c)	Aggravated criminal threat; ≥ \$500 but less than \$25,000 loss of productivity	F	5	P
21-3440	Injury to a pregnant woman in commission of K.S.A. 21-3412 (aggravated assault), K.S.A. 21-3413(a)(1), battery or KSA 21-3517, sexual battery	F	5	P
21-3404	Involuntary manslaughter	F	5	P
21-3426	Robbery	F	5	P
21-3518	Aggravated sexual battery; intentional touching, without consent, who is ≥16 yoa; force, fear, etc.	F	5	P
21-3604a	Aggravated abandonment of a child	F	5	P
21-3609	Abuse of a child; involves child <18 yoa; intentional torture, cruelly beating, etc.	F	5	P
21-3716	Aggravated burglary	F	5	P
21-4219(b)	Criminal discharge of a firearm at occupied dwelling or vehicle resulting in bodily harm	F	5	P
21-3414(a)(2)(A)	Aggravated battery - reckless, great bodily harm	F	5	P
21-3503(a)(1)	Indecent liberties w/child; child ≥14 yoa, but <16 yoa; lewd fondling or touching	F	5	P
21-3503(a)(2)	Indecent liberties w/child; child ≥14 yoa, but <16 yoa; soliciting to engage in lewd fondling, etc.	F	5	P
21-3516(a)(1)*	Sexual exploitation of a child; employing, etc. child <18 yoa to engage in sexually explicit conduct	F	5	P
21-3516(a)(2)*	Sexual exploitation of a child; possessing visual medium of child <18 yoa engaging in such conduct	F	5	P
21-3516(a)(3)*	Sexual exploitation of a child; guardian permitting child <18 yoa to engage in such conduct	F	5	P
21-3516(a)(4)*	Sexual exploitation of a child; promoting performance of child <18 yoa to engage in such conduct	F	5	P
21-3603(a)(2)(A)	Aggravated incest; Otherwise lawful sexual intercourse or sodomy with relative ≥16 yoa, but <18 yoa	F	5	P
21-3718(b)(1)	Arson; damage resulting in loss of ≥ \$50,000	F	5	N
21-3826(c)(1)	Traffic in contraband in a correctional institution; firearms, ammunition, explosives, controlled substance	F	5	N
21-3826(c)(2)	Traffic in contraband in a correctional institution by an employee of a correctional insitution	F	5	N
44-5,125(a)(1)(vi)*	Worker's Compensation Fund fraud > \$100,000	F	5	N
21-3731(b)(2)	Criminal use of explosives intended to be used to commit a crime, a public safety officer is placed at risk to diffuse the explosive or if another human being is in the building where the explosives are used	F	6	P
	KSA 21-3414(a)(1)(B) and 21-3414(a)(1)(C))	F	6	P
H.Sub-SB 264, §1(b)	Aggravated criminal threat; < \$500 loss of productivity	F	6	P
21-3413(a)(2)	Battery against a correctional officer	F	6	P
21-3413(a)(3)	Battery against a juvenile correctional facility officer	F	6	P
21-3413(a)(4)	Battery against a juvenile detention facility officer	F	6	P
21-3413(a)(5)	Battery against a city/county correctional officer/employee	F	6	P
17-1253	Securities; <u>intentional</u> unlawful offers, sale or purchase	F	6	N
21-3411	Aggravated assault on law enforcement officer	F	6	P
21-3437	Mistreatment of a dependant adult - physical	F	6	P
21-3511(a)	Aggravated indecent solicitation of a child; <14 yoa to commit or submit to unlawful sexual act	F	6	P
21-3511(b)	Aggravated indecent solicitation of a child; <14 yoa, inviting, etc. to enter secluded place	F	6	P
21-3742(d)	Throwing objects from bridge or overpass; resulting in injury to a passenger of vehicle	F	6	P
21-3810(b)	Aggravated escape from custody; escape is facilitated by the use of violence or threat of violence	F	6	P
21-3826(d)	Traffic in contraband in a correctional institution	F	6	N
21-3829	Aggravated interference with conduct of public business	F	6	P
21-3833	Aggravated intimidation of a witness or victim	F	6	P
21-4215	Obtaining a prescription only drug by fraudulent means for resale	F	6	N
40-2,118	Insurance; Fraudulent acts in an amount of more than \$25,000	F	6	N
65-3441(c)	Hazardous Wastes; Knowingly violates unlawful acts included in paragraphs 1-11, subsection (a)	F	6	N
21-3513(b)(3)	Prostitution; Promoting prostitution when prostitute is <16 yoa	F	6	P
21-3718(b)(2)	Arson, damage resulting in loss of ≥ \$25,000, < \$50,000	F	6	N
21-3719(b)(2)	Aggravated arson, <u>no</u> substantial risk of bodily harm	F	6	P
44-5,125(a)(1)(iv)*	Worker's Compensation Fund fraud > \$50,000 < \$100,000	F	6	N



DEPARTMENT OF CORRECTIONS
 OFFICE OF THE SECRETARY
 Landon State Office Building
 900 S.W. Jackson — Suite 400-N
 Topeka, Kansas 66612-1284
 (785) 296-3317

Bill Graves
 Governor

Charles E. Simmons
 Secretary

MEMORANDUM

DATE: March 16, 1999
 TO: Senate 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. HB 2135 passed the House by a vote of 122 to 0.

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

MEMO: Senate Judiciary Committee

Re: HB 2135

March 16, 1999

Page 2

or district attorney, in his or her discretion, decides to file a new criminal charge and obtains an arrest warrant for the new charge.

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



SJub
3-16-99
att 3

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 16, 1999
TO: Senate Judiciary Committee
FROM: Charles E. Simmons
Secretary of Corrections
RE: HB 2136 As Amended by House Committee

HB 2136 was passed by the House by a vote of 118 to 4. HB 2136 amends the provisions 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 an 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 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

Sen Jub
3-16-99
att 3

MEMO: Senate Judiciary Committee
Re: HB 2136 As Amended by House Committee
March 16, 1999
Page 2

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. HB 2136 would include employees of the department of corrections, the Kansas parole board, and court service officers employed by the Kansas judicial branch as persons to whom representation pursuant to K.S.A. 75-4360 is to be provided.

As originally introduced, HB 2136 also proposed that the general restrictions relative to the provision of legal representation by the governmental entity found in current law at K.S.A. 75-6108 be made applicable to K.S.A. 75-4360. The House amendment struck those proposed restrictions and thus HB 2136, as passed by the House, only amends K.S.A. 75-4360 relative to the provision of representation for grand jury and inquisition appearances along with the inclusion of department, parole board and court service employees within the group of employees to whom K.S.A. 75-4360 applies.

During the 1998 legislative session the Senate passed by a vote of 40 to 0 SB 513. That bill was identical to the HB 2136 as introduced by the House Judiciary Committee

The Department urges favorable consideration of HB 2136 as amended by the House.

CES/TGM/nd

cc: Legislation file



5 Feb 99
att 4

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
CHRIS MECHLER, LEGISLATIVE CHAIRPERSON
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS
ON 1999 HOUSE BILL 2136
MARCH 16, 1999

Chairman Emert 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.

Sen Jud
3-16-99
att 4



S. Jud
3-16-99
att 5

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 16, 1999

TO: Senate 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. HB 2137 passed the House by a vote of 123 to 1.

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

Sen Jud
3-16-99
att 5

MEMO: Senate Judiciary Committee

Re: HB 2137

March 16, 1999

Page 2

sending state to have issued a warrant. Fortunately, the sending state in that situation was able to issue 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