

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Ranking Minority Member Jan Pauls at 3:30 p.m. On March 6, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Geraldine Flaharty - Excused
Representative Dean Newton - Excused
Representative Michael O'Neal - Excused
Representative Joe Shriver - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jennifer Strait, Intern for Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Tim Madden, Chief Legal Counsel for Kansas Department of Corrections
Major Bernie Johnston, Johnson County Sheriffs Department
Kyle Smith, Kansas Bureau of Investigations

Hearings on **SB 27 - transfer of offenders by sheriff**, were opened

Tim Madden, Chief Legal Counsel for Kansas Department of Corrections, appeared before the committee as a proponent of the bill. He explained that the proposed bill would delete the reference to correctional institutions where offenders must be delivered and provided that inmate be delivered to a facility designated by the Secretary of Corrections. (Attachment 1)

Major Bernie Johnston, Johnson County Sheriffs Department, was opposed to the change that could require counties to hold a prisoner longer than the term to be served in a prison, due to the sentencing paperwork being finished. He requested an amendment which would allow sheriff departments a reasonable amount of time to deliver the inmate to the custody of the Department of Corrections. (Attachment 2)

Written testimony in opposition to the bill was provided from the Kansas County & District Attorneys Association (Attachment 3)

Hearings on **SB 27** were closed.

Hearings on **SB 99 - offender registration act**, were opened.

Kyle Smith, Kansas Bureau of Investigations, explained that the bill amends the Kansas Offender Registration Act to include those who have been convicted of child molesting, rape, murder and other serious crimes. It would also require those who have been convicted under any federal, military, or another state law to register. (Attachment 4)

Hearings on **SB 99** were closed

Hearings on **SB 209 - enacting the national crime prevention & privacy act**, were opened.

Kyle Smith, Kansas Bureau of Investigations, appeared as a proponent of the bill. He commented that with the passage of the bill would create a better way to distribute records among different states. The proposed bill would set up the legal framework so each state would maintain their own database and be able to access it without the federal government having to keep a copy of all the states' databases. Eight states have adopted the compact. The database is designed to allow non-criminal justice agencies to do background checks. However, it would not expand the list of those who would have access to the database. (Attachment 5)

Hearings on **SB 209** were closed

Representative Pauls announced the appointment of the following subcommittees:

HB 2496 - act for obtaining a guardian or conservator - Representatives Loyd, Williams, Newton, Crow & Dillmore

Kansas Payment Center Issue - Representatives O'Neal, Long, DeCastro, DiVita, Pauls, Klein & Ruff

The committee meeting adjourned at 4:30 p.m. The next meeting is scheduled for March 7, 2001.



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY

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Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

Date: March 6, 2001

To: House Judiciary Committee

From: Charles E. Simmons
Secretary of Corrections

Re: SB 27

SB 27 amends K.S.A. 75-5220 regarding the information to be provided to various jurisdictions regarding the location of sentenced offenders if an offender sentenced to the department is delivered to another jurisdiction. SB 27 also provides procedures for the computation and execution of sentences by the department relative to the department's physical custody of offenders. Finally, SB 27 addresses the lack of uniformity in references to correctional facilities in current law. SB 27 passed the Senate by a vote of 40-0

It is not uncommon for an offender sentenced to the custody of the department by a district court to also have criminal charges pending in another jurisdiction or be required to be returned to another state pursuant to the Uniform Mandatory Disposition of Detainer Act. In those instances, the sheriff delivers the offender to such jurisdiction rather than to the Department of Corrections. SB 27 addresses this situation by requiring the sheriff to notify both the department and the other jurisdiction that a sentence to be executed by the Kansas Department of Corrections has been imposed. This enables the department to begin monitoring the sentence in order to determine when it will be fully served as well as to lodge a detainer with the other jurisdiction. The notification by the sheriff to the other jurisdiction that the offender also has a sentence obligation owed to the department likewise serves to prevent the offender from improperly being released from that jurisdiction.

SB 27 also provides for the efficient computation and execution of sentences by the department consistent with the department's need to establish necessary postrelease supervision conditions while at the same time relieving sheriffs from the obligation to convey offenders to the department unnecessarily. Most sentences imposed pursuant to the Sentencing Guidelines Act are comprised of a prison portion and a postrelease supervision period. Therefore, even though an offender sentenced to the custody of the Department of Corrections has served the prison portion of a guidelines sentence, such offenders may nonetheless still be subject to the department's jurisdiction relative to the enforcement of postrelease supervision conditions. SB 27 addresses that need by clearly providing that such offenders are to be transported to a correctional facility regardless of whether the prison portion of the offender's sentence has been served. This enables the department to properly assert custody over offenders who have been sentenced to its custody through the intake process employed at either the El Dorado or Topeka Correctional facilities. This ensures the proper identification of the offender, implementation and execution of the sentence imposed by the court, and the imposition of the appropriate supervision conditions. These intake procedures are necessary in order for the department to carry out the execution of the sentence even if only the postrelease supervision obligation remains.

SB 27 also provides for fiscal savings to sheriffs by addressing instances in which an offender sentenced to the custody of the department has served all of the sentencing obligations imposed, including a postrelease supervision obligation, prior to his or her physical delivery to the Department of Corrections. SB 27 permits sheriffs to provide the sentencing record to the department for its review and the issuance of a discharge certificate prior to the sheriff transporting the offender to the department, thus obviating the need for the conveyance of the offender to the department.

The provisions of SB 27 relative to references to correctional facilities is a nonsubstantive change.

The Department requests favorable consideration of SB 27.

CES/TGM/cj

cc: Legislative file

Testimony Of:

Major Robert Johnston
Johnson County Sheriff's Office

Senate Bill 27

March 6, 2001

Mr. Chairman, Members of the Committee:

My name is Robert Johnston, Commander of the Johnson County Sheriff's Office Detention Bureau. I am appearing before the committee in a neutral position of Senate Bill 27.

On January 24th the Johnson County Sheriff's Office presented testimony in opposition to Senate Bill 27. At various points after that testimony, Tim Madden with the Department of Corrections, has graciously worked with me and others to offer amendments to the bill that were adopted by the Senate Judiciary Committee. I want this committee to be aware of those efforts and my appreciation.

One of the changes related previously was in new section (e) on page two of the bill. The Department of Corrections offered the amendment to approve the release of an inmate without that inmate being transported to prison if they had served both the prison portion and the post release supervision obligation. The amendment as offered did assist all Sheriff Offices in as much as a prisoner does not have to be transported several hundred miles only to be released that day or the next.

1 The issue I want the committee to be aware of is that a County Sheriff may be required to hold a prisoner longer than the actual prison portion while waiting for the production of sentencing paperwork to make its way through the court system. I clearly understand the reasoning behind the position maintained by the Department of Corrections as it relates to their management responsibilities of a felon after prison time has been served. The liability concern for a Sheriff's Office is holding a prisoner in custody longer than the actual prison portion of the sentence.

A prisoner will know how much actual custody time they have remaining to serve and they will also know the difference between "Prison Portion" and "Post Release Supervision". I am willing to work with the 10th Judicial District to more efficiently produce required sentencing documents but even with the best production, a day or two custody time beyond the required sentence will produce significant liability.

I ask this committee to consider an amendment to this bill that would permit the Sheriff a reasonable amount of time to procure the sentencing documents and transport to the Department of Corrections even if the actual prison portion of the sentence has been served.

Thank you for the opportunity to present this issue before the committee. I stand ready to answer questions the committee may have.

House Judiciary
3-6-01
Attachment 2

Proposed Amendment:

New Subsection:

(g) Whenever the Sheriff receives custody of an offender and the prison portion of the sentence has been served and the postrelease supervision obligation remains to be completed, the Sheriff shall have 14 calendar days to deliver such offender to the Secretary of Corrections. The Sheriff shall maintain custody of the offender during this 14 day period.

David L. Miller, President
Jerome A. Gorman, Vice-President
John M. Settle, Secretary-Treasurer
Julie McKenna, Past President
Steven F. Kearney, Executive Director



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Kansas County & District Attorneys Association

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To: Chairman O'Neal and Members of the Judiciary Committee
From: Kansas County and District Attorneys Association
RE: Senate Bill 27

Senate Bill 27 was originally intended to amend the law to allow the Secretary of Corrections flexibility in the placement of newly arriving inmates. It was amended in the Senate to also relieve sheriffs of the responsibility to transport offenders to the Secretary if the sheriff could provide a record that would demonstrate that the offender had served both his prison sentence and his post-release supervision term. It is this latter provision that causes KCDA members concern.

In Kansas, as in many states, criminal history is an important factor in determining the possible punishment that may lawfully be imposed on an offender. Prosecutors must be able to prove criminal history in court. This requires the production of documents that are properly authenticated or certified that conclusively establish that the offender in question committed the prior crimes. For this purpose, prosecutors frequently rely on what is known as a "pen pack" or a certified packet of information from a penitentiary or department of corrections that includes such identifying information as a mug shot and fingerprints and an indication of the crimes of conviction and county of conviction.

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Senate Bill 27 would appear to eliminate the possibility of obtaining a "pen pack" in those cases where the records indicate the offenders have served their sentences without substituting an alternate form of proof of identification for subsequent criminal history purposes. This would have an adverse impact on prosecutors' ability to prove criminal history in the event a defendant re-offends.

Thank You,

Ann Swegle, Chief Assistant Sedgwick County District Attorney



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Testimony in Support of SB 99
Before the Senate Judiciary Committee
Kyle Smith
Kansas Bureau of Investigation
March 6, 2001

Chairman O'Neal and members of the Committee,

I am pleased to appear today on behalf of the KBI in support of SB 99, which enhances the offender registration database (K.S.A. 22-4901 *et seq.*) currently maintained by the KBI. As most of you are aware, the offender registration act requires persons convicted of certain violent and sexually oriented offenses to register with the sheriff of their county of residence. This system has three major benefits: it provides law enforcement with important investigative information; it allows neighbors, employers, parents, etc. to check on risks in their community; and, perhaps most importantly, it provides substantial deterrence to these offenders by reminding them that law enforcement is aware of them in their community and already has their fingerprints, description, DNA, and address.

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These amendments would require persons in Kansas, who have been convicted of child molesting, rape, murder and other serious offenses, but are currently not covered by the statute, to register with the state. Primarily, the amendments that we are proposing would add to the list of required registrants non-resident workers employed in Kansas, non-resident students attending college in Kansas, those persons convicted in military courts and new residents who were required to register in their previous state of residence. Each of these categories are convicted offenders, in Kansas, who otherwise would be outside the current law. We think it is particularly important to clarify that the Kansas statute covers those persons who were convicted in another state and have moved here because we don't want Kansas to become a attractive refuge for violent offenders seeking to avoid the registration required in their home state.

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Attachment 4

There is also a separate definition of "sexually violent predator", for use in the offender registration act, to distinguish it from the civil commitment of sexually violent predators.

I would be happy to address any questions.

Thank you for your consideration.



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SB 209
KYLE SMITH, SPECIAL AGENT
DIRECTOR OF PUBLIC AND GOVERNMENTAL AFFAIRS
KANSAS BUREAU OF INVESTIGATION

March 6, 2001

Chairman O'Neal and members of the Committee:

I am pleased to appear today on behalf of Director Larry Welch and the Kansas Bureau of Investigation in support of Senate Bill 209. This legislation will significantly improve the dissemination of criminal history record information to non-criminal justice agencies by putting in place in Kansas the National Crime Prevention and Privacy Compact. The short title of this is the "III Compact."

1 The goal of the III Compact is to create a decentralized national records system that will permit records exchange between states in a more efficient and effective manner. It gives states control over their criminal history records and eliminates the need for the FBI to duplicate state databases. The compact accomplishes these benefits by providing a legal framework for the cooperative exchange of records using standard rules and procedures, and by creating a governing body representing signatory states and the FBI.

I would like to make one point very clear. This compact does not expand, reduce or in any way change what information is available under Kansas law. It merely improves the mechanics on how records are maintained and distributed under existing Kansas statutes.

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Attachment 5

In passing this bill, Kansas will agree to comply with the standards for record retention and sharing. We will be obligated to provide our records to other states using the systems and structures established under the III Compact. In exchange, Kansas will become a full participant in the national system of records exchange and will not have to continue sending duplicate criminal histories to the FBI.

The III Compact was passed by Congress and signed into law by the president in October 1998. Since then, eight states have passed legislation adopting the compact; Colorado, Iowa, Montana, Nevada, Connecticut, South Carolina, Georgia and Florida. All states are expected to become signatories eventually.

My testimony is intended to cover three points. First, I'd like to describe the current status of criminal history record checks in Kansas. Secondly, I will explain how changes underway at the state and national level have led to the National Crime Prevention and Privacy Compact, commonly referred to as the "III Compact." Lastly, I'll describe the impact and benefits of implementing that compact by passing Senate Bill 209.

Criminal History Records Checks; the Current Process

Criminal history records consist of summary information of arrests and court dispositions maintained in a central repository at each state and also at the federal level. The Kansas central repository is at the KBI. Each of the other states has a similar single central repository, and each state central repository submits most of its record information to the Federal Bureau of Investigation (FBI). The FBI consolidates these state criminal histories and federal criminal

history records in a single federal repository, known as the Interstate Identification Index (III). Thus, the III essentially duplicates the criminal history records available in each state.

Non-criminal justice agencies in Kansas, such as the Kansas Department of Health and Environment and public schools may obtain III national record checks when such checks are required by specific enabling state legislation. Other states conducting non-criminal justice record checks must similarly have their own state legislative entitlement to receive records from the III.

National Crime Prevention and Privacy Compact.

For the past several years the FBI has coordinated sweeping changes in the way criminal history records are maintained and shared. The primary intention is to decentralize record maintenance and permit state repositories to exchange records directly. To this end, the III database will only be used to identify a record and assist in the exchange of record contents between states.

Most states are now electronically connected to the III. The FBI has stopped releasing the criminal history records submitted by those states. For these states, III is only a "pointer" system. For the remaining states, to include Kansas, that electronic connection is incomplete; the FBI still holds and releases criminal histories on behalf of those states. Kansas will be fully connected and will take responsibility for releasing criminal histories to other states when the Kansas central repository database is replaced this summer. Thus, having the III Compact in place in Kansas is necessary for the proper implementation of our automation and networking goals.

Since the FBI has always released Kansas criminal records from the national database on behalf of Kansas, there has been no state legislation specifically addressing release of Kansas criminal history records to other states for non-criminal justice purposes. The III Compact fills that void in a satisfactory manner.

The III Compact implements decentralization of record sharing with the following key features:

1. By adopting the Compact, participating states agree to release criminal history records to authorized users for authorized purposes. In so doing, the state assumes the dissemination functions currently performed by the FBI on behalf of the state.
2. Each Compact state maintains a central repository of criminal history records that is based on fingerprint identification and that holds all criminal history records for that state.
3. Each Compact state establishes electronic connectivity to share records in a timely manner in a standardized network environment.
4. Each Compact state acknowledges legal and procedural obligations in using and distributing records. These obligations include state laws governing access for non-criminal justice purposes, rights of the subject to challenge and correct his/her criminal history and access to records granted by federal legislation.

After the Compact is Enacted.

The compact will assist Kansas and other participating states as follows:

1. *States maintain ownership of their state criminal history records.* Kansas will regain ownership of Kansas records from the III database, because the responsibility for release of Kansas records will be shifted from the FBI to the Kansas central repository.
2. *The laws of the requesting state govern the use of the criminal history records received from other states.* The Kansas legislature will continue to control, through legislation, the rules and regulations for the use of records in Kansas. The authority and responsibilities of the state are not diminished.
3. *The use of criminal history records is not expanded under the compact.* When Kansas is contacted to provide a record to another state, the adult criminal record will be released in its entirety, just as is done now by the FBI acting on behalf of Kansas. Expunged records and Kansas juvenile offender records are excluded from the compact and will not be released. The compact does not control in-state use of records, and inter-state use will remain the same as it has always been.
4. *Inter-state sharing of records is defined and structured.* States are connected in an efficient and effective network with common language and procedures. The technology to share data is enhanced by the structure of the compact.

In conclusion, the KBI supports Senate Bill 209 as a significant law that will provide the structure and authority to control the dissemination of criminal history records and to permit Kansas to fully participate in the national network of criminal justice agencies.