Approved: April 4, 2003
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on March 12, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Haley (A)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Representative Sue Storm
Representative Brenda Landwehr
Candice Shively, Deputy Secretary, SRS
Roger Werholtz, Secretary of Department of Corrections
Tim Madden, Chief Counsel, Kansas Department of Corrections

Others attending: see attached list

HB 2125 - Child in need of care code, child's current foster parents could not be excluded from certain proceedings, emergency change of placement

Chairman Vratil opened the hearing on **HB 2125**. Representative Sue Storm appeared before the Committee to testify in support of **HB 2125**. She explained how the provisions of the proposed bill came about through meetings between the Joint Committee on Children's Issues and representatives from SRS, judges, guardians ad litem, foster parents, and parents. She outlined the provisions in her written testimony. (Attachment 1)

Committee questions and discussion followed regarding the pilot projects, and explanation of what an "interested party" is in these court cases.

Representative Brenda Landwehr testified in support and explained the three sub-parts, two of which would amend K.S.A. 38-1552 and the other would amend K.S.A. 38-1567. She said that this is similar to legislation passed by the House last year except the difference was that foster parents were asking for interested party status, and the two advocates for parents was not a pilot project. She stated that during discussions with several judges, they explained the negative impact of interested party status, and expressed concerns with parent advocates in the courtroom. She related that the Joint Committee on Children's Issues then suggested a pilot program. Representative Landwehr also explained the third part of the bill was to clarify K.S.A. 38-1567 to insure, that when an emergency exists which requires immediate action to assure the safety and protection of the child, a hearing may be requested within 24-hours, excluding weekends and holidays. (Attachment 2)

Candice Shively, Deputy Secretary of SRS, testified as a neutral conferee on **HB 2125**. She stated that SRS supported the pilot program initiative. She urged some discretion remain with the court to determine when the presence of any person is disruptive or when a witness may need to be sequestered. (Attachment 3)

After brief questions and discussions, and clarifications on the proposed bill by Mack Gleeson, Office of Judicial Administration, the Chair closed the hearing on **HB 2125**.

HB 2088 - Inmate assistance upon release from incarceration; certain inmates required to pay public transportation costs

Chairman Vratil opened the hearing on **HB 2088**. Roger Werholtz, Secretary of Corrections, testified in favor of **HB 2088**, which amends K.S.A. 75-5211 to limit the obligation of the State to pay for the public transportation of offenders released from prison; increase the threshold amount of funds in an offender's trust account relative to the provision of a release gratuity. He added that the bill would condition the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

State's obligation to pay for required public transportation upon the offender having $600 or less in his or her inmate trust account. He stated that the bill would also raise the threshold for eligibility for a release gratuity due to the balance in the inmate's trust account from $500 to $600. He explained in his written testimony why the Department of Corrections requested this proposed legislation. He said there would not be a requirement for additional resources. (Attachment 4)

Following Committee questions regarding the cost impact and rational of the $100 increase, the Chair closed the hearing on **HB 2088**.

HB 2090 - Scope of agency relationship for inmate work crews defined

Chairman Vratil opened the hearing on **HB 2090.** Tim Madden, Chief Counsel, Kansas Department of Corrections (KDOC), testified in support of **HB 2090**. Mr. Madden explained that this bill amends K.S.A. 75-52, 116 to clarify the agency relationship between the Department of Corrections and other governmental or nonprofit organizations that utilize the services of KDOC offenders for public service or charitable objectives. He said the bill specifies that the agency relationship between KDOC and other governmental or nonprofit organizations. He talked about the other provisions of the bill regarding supervision of the work crews, equipment and material required for a project, and liability issues. (Attachment 5)

After brief questions and discussion, the Chair closed the hearing on **HB 2090**.

The minutes for the February 10 meeting were approved on a motion by Senator Donovan, seconded by Senator O'Connor, and the motion carried.

Chairman Vratil announced that the Committee would meet on Friday, March 14, following adjournment of the Senate, to take final action on previously heard bills.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is March 13, 2003.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds., March 12, 2003

NAME	REPRESENTING
Michael Lutte	KCDAA
Tim Madden	KDOC
Roger Werholtz	KDOC
Denise Everhart	JJA
James Frazier	JJA
Chris Tymeson	KDWP
Trista Curzydlo	KS Bar Assn.
Teresa Schwab	KCSL
Ramona Doerksen	KCSL
Kevin Braun	Hein Law firm
Carolyn McManama	Intern for Sen Allen
Debi Hatfield	KDHE
Joe Herold	KSC
Jane Sieve	Intern
Melissa Stueve	Intern
R.S. McKenna	SRS
Candy Shively	SRS
Mark Gleeson	Judicial Branch
Brenda Landwehr	St. Rep #91

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Wed March 12

NAME	REPRESENTING
Danielle Noe	Johnson County
Jeff Bo Hinborg	State Farm
Erin Kutschmann	~~KSA~~ KNASW
Travis Barnhart	KNASW

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
HIGHER EDUCATION
HEALTH & HUMAN SERVICES
LOCAL GOVERNMENT

Testimony on HB 2125
Senate Judiciary Committee
March 12, 2003

Thank you, Mr. Chairman and committee members, for providing a time for comment in support of HB 2125.

I have been a member of the Joint Committee on Children's Issues for a number of years. During our many meetings over this time period, Health Wave and problems associated with foster care have occupied most of the committee's time. In most cases, our foster care system appears to be working satisfactorily. Reintegration into the family is more often successful; children are achieving permanency faster; and adoptions are up. However, in the situations that don't work, life can become a nightmare for any one or all of the stakeholders. While the children don't always have the opportunity to speak, you can be sure that these problem situations are more hellish for them than for anyone else.

Last fall, the Committee met with representatives from SRS, judges, guardians ad litem, foster parents, and parents. During this full day session, we held a freewheeling discussion of problem areas in the delivery of foster care services. The provisions in HB 2125 are the result of that discussion. We believed that these provisions would allow more people to be heard and empower them to speak for themselves.

- Current foster parents may not be excluded from hearings. Foster parents should be seen as a valuable resource to the court. Once removed from home, no one has more current or more accurate information about how the child is faring physically, psychologically or behaviorally than the foster parent.
- When a child is removed from a home due to the presence of an emergency, a hearing must be held within 72 hrs to determine whether an emergency truly existed and whether it is in the child's best interest to be immediately returned. We have had some cases in the last few years, in which a hearing months after an emergency removal determined that an emergency did not exist and that the child should not have been removed. However, by this point the child has become sufficiently used to a new placement, that now it would be traumatic to move him back. This is uncalled for!
- Because of the difficulties that occur in the complicated area of foster care, it is feasible to establish pilot programs that would recognize the importance of a parent advocate in court hearings. Parents who have had a child removed from their home are nervous, fearful, angry, and often unaware of their rights during the process. For these reasons and others, they are often unable to participate fully and appropriately in the proceedings. A trained parent advocate may be an invaluable resource to that parent and to the court.

Thank you for your time. I hope you will give positive consideration to HB 2125.

Sue Storm

Senate Judiciary
3-12-03
Attachment 1-1

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MEMBER: APPROPRIATIONS
HEALTH & HUMAN SERVICES
CHAIRMAN: SOCIAL SERVICES BUDGET
JOINT COMMITTEE ON
CHILDRENS ISSUES

TOPEKA

BRENDA K. LANDWEHR
Representative, Ninety-First District

March 13, 2003

House Bill 2125 concerns the support and care of children in need of care and the rights of foster parents. The Bill contains three sub-parts, two of which would amend K.S.A. §38-1552 and the other would amend K.S.A. §38-1567.

The first component would amend §38-1552 to allow a child's current foster parents the right to attend CinC proceedings that concern their foster child. Currently, §38-1552 does not allow foster parents the right to attend juvenile dependency proceedings unless all of the interested parties are in agreement. Allowing foster parents access to CinC proceedings will put foster parents in a position of understanding the needs of the child as well as educate foster parents as to the workings of the CinC system.

Senate Judiciary
3-12-03
Attachment 2-1

The second component of H.B. 2125 amends §38-1552 to adopt the implementation of a pilot project, in one urban district and one rural district, allowing parents the right to have up to two advocates present at CinC proceedings. Currently, §38-1552 grants broad discretionary powers to the court with regards to who is and is not permitted in the courtroom. At present, the only person in the courtroom on behalf of the parents is the attorney for the parent. If a parent's attorney is court appointed, it is quite possible given the tremendous workload and inexperience of court appointed attorneys, the quality of advocacy on behalf of the parent is marginal to say the least. Appearing before a CinC proceeding is undoubtedly traumatic and the support of an advocate would lend a calming effect to the CinC proceedings for the parent.

This is similar to legislation passed by the House last year. The difference is that foster parents were asking for interested party status and the two advocates for parents was not a pilot project. Last fall, the Joint committee on Children's Issues held a round table discussion with several judges regarding this & other foster care issues. The judges explained the

negative impact of interested party status. They also expressed concerns with parent advocates in the courtroom. So, we suggested a pilot program.

The third component of H.B. 2125 is to clarify and reinforce K.S.A. §38-1567 to insure, that when an emergency exists which requires immediate action to assure the safety and protection of the child, a hearing may be requested within 24 hours, excluding weekends and holidays. Upon receipt of a request for a hearing, the court must schedule a hearing within 72 hours and provide notice to the interested parties and foster parents. At the hearing, the court will determine whether an emergency existed which threatened the safety of the child and required immediate removal for the child's protection.

Thank you for your time and consideration.

Brenda K. Landwehr
State Representative
91st District

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Judiciary
March 12, 2003

HB 2125 - Rights of Foster Parents

Integrated Service Delivery
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Senate Judiciary
3-12-03
Attachment 3-1

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Judiciary
March 12, 2003

HB 2125 - Rights of Foster Parents

Senator Vratil and members of the Committee, I am Candy Shively, Deputy Secretary of SRS.

SRS participated with the Joint Committee on Children and Families in the review of services for children in need of care and appreciate the effort to understand this very complicated system. This bill provides the family with whom a child has been residing for six months or longer the right to a hearing within 72 hours of an emergency removal; it gives foster parents the right to attend child in need of care court hearings; and it establishes two pilot programs in which parent's are allowed to bring two observers to the court proceedings. One of the observers would be required to participate in training provided by the Office of Judicial Administration.

K.S.A. 38-1566 requires 30 days notice of an intent to remove a foster child from a home when a child has lived with one family for six months or more. This is in recognition of the child's need for stability and reality that in six months the child will have established a significant relationship with that family, a particular school and within a specific community. Disrupting this relationship is not and should not be taken lightly. Within 10 days of receiving the notice, the foster family may request a hearing. The court has the ultimate authority to determine whether the move is in the best interest of the child.

K.S.A. 38-1567 provides an exception to the 30 day notice in an emergency. Although the vast majority of foster parents provide exemplary care, abuse and neglect are possible and immediate action may be necessary to protect a child. Unlike removal from birth parents, emergency removal from foster parents is within the authority of the custodian. As custodian, SRS takes this very seriously and staff are quite cautious. However, it is a judgement call and oversight by the court is appropriate. Currently the move must be reported to the court, but there is no provision specifically authorizing a foster parent to request a hearing or requiring the court to evaluate evidence and determine whether an emergency justified disruption of the child's life. Having responded appropriately to an emergency, staff should be able to explain the determination to a court within a time frame that allows the child to return to familiar caretakers and surroundings if appropriate.

Sufficient confidentiality to protect the privacy of vulnerable children and families while insuring sufficient openness to facilitate accountability and understanding are critical, competing requirements and difficult to balance. Insuring the inclusion of foster parents in court hearings to determine the best interests of the children they care for 24 hours every day, seems a reasonable step toward openness. I believe it will have little impact on practice in most courts. However, I do urge some discretion remain with the court to determine when the presence of any person is disruptive or when a witness may need to be sequestered. Courts must have the ability to address the unforeseeable.

Thank you and I stand for questions.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Memorandum

DATE: March 12, 2003

TO: Senate Judiciary Committee

FROM: Roger Werholtz
Secretary of Corrections

RE: HB 2088

HB 2088 amends K.S.A. 75-5211 to limit the obligation of the State to pay for the public transportation of offenders released from prison; increase the threshold amount of funds in an offender's facility trust account relative to the provision of a release gratuity; and provide eligibility for a release gratuity to offenders released to a detainer but who are nonetheless released to the community within 30 days.

Currently, K.S.A. 75-5211 provides for public transportation at state expense for all offenders released from a correctional facility who need public transportation, irrespective of whether the offender has funds available to pay for his or her own transportation. HB 2088 would condition the State's obligation to pay for required public transportation upon the offender having $600 or less in his or her inmate trust account.

HB 2088 also increases the threshold for the eligibility for a release gratuity relative to the amount of money held in the offender's trust account from $500 to $600. The current disqualification from receiving a release gratuity due to an offender's participation in a work release or private business enterprise while incarcerated, remains one of the factors that disqualifies an offender from receiving a release gratuity pursuant to HB 2088.

Finally, HB 2088 amends K.S.A. 75-5211 in regard to the payment of a release gratuity to offenders released to a detainer. Current law disqualifies all offenders released to a detainer from receiving a release gratuity. HB 2088 provides that such offenders would be given a release gratuity if they are released from the detainer to the community within 30 days and otherwise qualify for the payment.

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Senate Judiciary
3-12-03
Attachment 4-1

HB 2088 was introduced at the request of the Department to address the financial needs of released offenders upon their return to the community. At the same time, HB 2088 limits the obligation of the State to pay for the public transportation required by released offenders in returning to their home.

The State has long recognized the need to provide offenders released from incarceration with a cash payment to assist them in reestablishing themselves in the community. Prior to 1984, the Department was authorized to provide up to $250, dependant on need, to released offenders. In 1984 the Legislature provided that a release gratuity of $100 was to be given to all released offenders except those released to a detainer or who were employed through a work release or private business enterprise. In 1993, the Legislature conditioned the payment of a release gratuity upon the balance of funds in the inmates trust account, establishing a threshold of $500 for eligibility of a release gratuity. The Legislature in 1993, also provided for a limitation on cash payments to those offenders who are returned to prison due to a violation of their supervision conditions. The Department provides a release gratuity of $40 for the subsequent release of an offender who has less than $100 in his or her inmate account, with a limit of $220 to be given to an offender over course of the service of the sentence. HB 2088 would not change these restrictions on the payment of a release gratuity for subsequent releases.

In regard to the provision of HB 2088 pertaining to releases to a detainer, the bill addresses the long recognized need for a release gratuity to aid offenders in their return to the community and extends that aid to those offenders who, though initially released to a detainer, are nonetheless in the community within 30 days. Those offenders are confronted with the same financial needs facing other released offenders, albeit after a delay of no longer than 30 days.

HB 2088 also raises the threshold for eligibility for a release gratuity due to the balance in the inmate's trust account from $500 to $600. Since the adoption of the $500 threshold ten years ago, the expenses incurred by offenders upon their return to the community as well as their obligation to pay for rehabilitation programs and supervision fees have increased. The Department, based upon its experience and confirmed by the LSI-R risk assessment instrument used to evaluate offenders in the community, believes that the ability of an offender to meet his or her financial obligations is an important aspect of the successful reintegration of an offender into the community. To this end the Department of Corrections has adopted a policy requiring that 10% of all funds received by an inmate from an outside source be saved for his or her use upon release. HB 2088 in conjunction with the mandatory savings required for offenders is a balanced approach in meeting the financial obligations confronting offenders upon their release from prison.

HB 2088 was passed by the House by a vote of 122 to 2. The Department urges favorable consideration of HB 2088.

KANSAS

Tim Madden

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Memorandum

DATE: March 12, 2003

TO: Senate Judiciary Committee

FROM: Roger Werholtz
Secretary of Corrections

RE: HB 2090

HB 2090 amends K.S.A. 75-52,116 to clarify the agency relationship between the Department of Corrections and other governmental or nonprofit organizations that utilize the services of KDOC offenders for public service or charitable objectives. HB 2090 specifies that the agency relationship between the State or the Department of Corrections and other governmental or nonprofit organizations is limited to only the continued confinement of the inmates providing the labor for the other organization. Specifically, an agency relationship involving the State or the Department in regard to the work assigned, performed or supervised by the other organization would not be established pursuant to K.S.A. 75-52,116.

During FY 2002 offender work crews comprised of minimum custody inmates from correctional facilities and offenders under post release supervision at Day Reporting Centers provided over 893,900 hours of labor to other state agencies, school districts, cities, counties, and nonprofit organizations. Those services, if paid for at the minimum wage rate, would have cost other government entities and nonprofit organizations in excess of $4,603,900.

K.S.A. 75-52,116 provides the authorization for the Department of Corrections to extend the limits of confinement for minimum custody inmates to work for other entities without the supervision of corrections officers. The entities that benefit from work details are to supervise and control the detail, reporting to the Department of Corrections. Due to the limited resources of the Department of Corrections, the provision of work details is dependant upon the other government entity or charitable organization providing for the custodial supervision of the offender. Additionally, the equipment and material required for a project is to be provided by the entity using the services of the detail.

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Senate Judiciary
3-12-03
Attachment 5-1

The impetus for HB 2090 is recent litigation brought against a city and the Department of Corrections arising out of a fatal mowing accident. The fatality occurred while the decedent, a member of a work detail, was mowing city property. The decedent was supervised in his work by the city and was using city equipment at the time of his death. The lawsuit alleges liability on the part of the State. The suit contends that pursuant to K.S.A. 75-52,116, the State is responsible as the principal of an agency relationship for any liability attributable to the negligence of the city.

HB 2090 retains the agency authority of entities relative to the supervision of the extended limits of confinement of inmates on a work detail and therefore, any escape from a work detail remains punishable as an aggravated escape from custody. However, HB 2090 would clarify that any negligence on the part of the entity benefiting through the labor of a work detail would not be imputed to the State or the Department of Corrections.

The rationale for vicarious liability being imposed upon principals for the negligent acts committed by persons performing duties for the benefit of the principal is that the since the principal derives the benefits of the agent's work, the principal should also be responsible for injuries caused by his or her agent. HB 2090 is consistent with the rationale for vicarious liability. HB 2090 recognizes that in regard to inmate work details, permitting other governmental entities and nonprofit organizations to utilize inmate labor benefits those entities. The role of the Department is merely to provide a way for those entities to pursue projects that they otherwise would not be able to accomplish.

HB 2090 was passed by the House by a vote of 121 to 1. The Department of Corrections urges favorable consideration of HB 2090.