

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 20, 2008 in Room 313-S of the Capitol.

All members were present except:
Annie Kuether- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Secretary Roger Werholtz
Judge Earnest Johnson, 29th Judicial District
Marilyn Scafe, Executive Director, Re-entry Policy Council
Representative Mike O'Neal
Dennis Williams, Finance Director, Department of Corrections

The hearing on **HB 2780 - criminal procedure; new crime committed on probation or community correction, services of warrant for violation of original conviction**, was opened.

Judge Earnest Johnson, 29th Judicial District, appeared before the committee as a proponent of the bill. He informed the committee that the Kansas Re-entry Policy Council (KRPC) has studied ways to improve inmate's chances of being reentered into society upon release from prison. Two important features are educational and rehabilitative programs. The Council found that if the inmate has a probation violation or bench warrant from an earlier case, he cannot participate in these programs. The bill would require the State to pursue the revocation of an earlier case at the beginning of a new felony imprisonment rather than at the end. The result being the elimination of the "holds" that prevent inmates from rehabilitative programs. (Attachment #1)

Secretary Roger Werholtz addressed the committee in support of **HB 2780**. While this bill affects a small number of offenders it is still an important bill. The bill would help the reentry efforts by resolving detainers in a timely manner. (Attachment #2)

Marilyn Scafe, Executive Director, Re-entry Policy Council, commented that they endorse this type of policy change. (Attachment #3)

The hearing on **HB 2780** was closed.

The hearing on **HB 2845 - increasing penalties for theft & aiding escape when such crimes concerning employees or volunteers of the department of corrections**, was opened.

Secretary Roger Werholtz explained that the proposed bill would make the failure to return security related property of the department a severity level 8 felony. It also raises assisting an offender in an escape to a severity level 4. (Attachment #4)

The hearing on **HB 2845** was closed.

The hearing on **HB 2873 - revoking the authorization of the issuance bonds for capital improvement projects to expand prison capacity**, was opened.

Jill Wolters provided background information on the bonds that were issued and explained the proposed bill. During the 2007 Legislative Session there was a proviso placed in an appropriations bill that authorized \$39.5 million bonding authority for the Department of Correction (DOC) contingent upon approval from the State

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 19, 2008 in Room 313-S of the Capitol.

Finance Council. The legislation that was approved specified the bonds must be used for bed capacity expansion. (Attachment #5)

The Department of Corrections requested the bonds be issued and the Finance Council approved the bond anticipation note on October 12, 2007. Since that time, DOC has been in the preliminary planning stages on four specified facilities:

- Two cell houses at El Dorado Correctional Facility
- A substance abuse treatment center at Yates Center
- Minimum-security beds at Ellsworth Correctional Facility
- Additional beds at Stockton Correctional Facility

Secretary Werholtz explained that two RFP's have been issued for the facilities at Ellsworth & Stockton and El Dorado & Yates Center. Bidders for each project have been selected at a cost of \$1.7 million. However, the contracts have not been signed.

Secretary Werholtz stated that there "may have been" some soil testing done already at El Dorado Correctional Facility. Also, that K DFA has "loaned" DOC money until the bonds are actually issued. If the legislature passes this bill the department would have to pay K DFA back the money that they have advanced, including interest.

The committee expressed concern that there is no current need for increasing bed space and that DOC is planning too far out in the future (2017) for beds that might be needed and what is designed today might not be up to industry standards in fifteen years.

Many committee members commented that they didn't recall voting on which prisons would receive expansion and wondered what bill it was placed into and wondered if any testimony was presented before a committee as to the need of the projects in fifteen years.

Secretary Werholtz replied that the four projects were specified and got ironed out while working the omnibus appropriations bill.

Dennis Williams, Finance Director, explained that the \$1.7 million in borrowed money earns interest on the average daily balance rate which is currently higher than the interest rate charged for the bonds. In other words, the interest earned would more than offset the interest owed on the money. There would not be a net interest cost to the state.

HB 2768 - dead bodies, removal and delivery

Representative Watkins made the motion to report HB 2768 favorably for passage. Representative Kinzer seconded the motion.

Representative Pauls made the substitute motion to amend the bill to add a restriction on how dead bodies are transferred to the federally certified organ procurement organization. (Attachment #6) Representative Colloton seconded the motion. The motion carried.

Representative Kinzer made the motion to clarify that the making of an anatomical gift shall not itself under any circumstances be constructed to authorize or direct the health care whose withholding or withdrawal will result in or hasten death. Representative Watkins seconded the motion. With permission of the second Representative Watkins withdrew his motion. He will possibly offer an amendment on the floor.

Representative Pauls made the motion to report HB 2768 favorably for passage as amended. Representative Wolf seconded the motion. The motion carried.

The committee meeting adjourned at 4:30 P.M. The next meeting was scheduled for February 21, 2008.

To: The House Judiciary Committee

From: Judge Ernest L. Johnson, 29th Judicial District (Wyandotte County)
Member, Kansas Reentry Policy Council
Member, KRPC Subcommittee on Detainers

Re: House Bill 2780 (amending K.S.A. 22-3716)

Date: February 20, 2008

The KRPC is investigating ways to improve an inmate's chances of successful reentry to society on the release from imprisonment. The Council, its subcommittees, and its steering committee are studying and analyzing a broad range of different risk reduction strategies. During our studies we identified one narrow problem that could be separately addressed well before the more global proposals we expect to make are developed.

Relevant here, we have accepted as a premise that a defendant's participation in educational and rehabilitative programs while imprisoned can improve the chances of successful reentry.

The narrow problem: An inmate with a probation violation or related bench warrant "hold" from an earlier case can not participate in those rehabilitative programs. We of the Council understand that, because the true release date of the target defendant from incarceration is in suspense (in that the earlier probation might well be revoked and the sentence served), and because the availability of services to inmates is exceeded by the need, DOC only permits those with definite release dates to participate in those programs.

Statutory background: Under K.S.A. 21-4608(c) a defendant on felony probation or assignment to community corrections who then commits a new felony must be sentenced, on that new felony, consecutively to the earlier one. Under K.S.A. 22-3716(b) the court sentencing such a defendant for the new felony is relieved from applying any guideline presumption of probation and can remand the defendant to imprisonment.

Under K.S.A. 21-4610(a) the Legislature has required that "... the court shall condition any order granting probation, suspension of sentence or assignment to a community correctional services program on the defendant's obedience of the laws of the United states, the state of Kansas and any other jurisdiction to the laws of which defendant may be subject." Clearly, then, the commission of a new felony is a violation of the probation previously granted.

Current Practices: Generally, when the earlier and then the new offense are committed in the same county the prosecutor and the court address each case so that, if the defendant is imprisoned on the new case, the earlier case has also been resolved. Our proposed amendment would prevent the problems that frequently arise when the new imprisonment sentence is imposed in a county other than the one where probation had been granted. The defendant is imprisoned in

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DOC custody for the new felony. It is not logical to expect that the defendant could comply from prison with any terms of the earlier probation violated by the new conviction. It is logical to expect that the State would move, if it had not already done so before the new felony conviction, to revoke the earlier case probation for that noncompliance. Upon the inevitable failure of the defendant to appear at the revocation hearing the court generally issues a bench warrant. That warrant is, or should be, reported to DOC and becomes a "hold" on that defendant. The defendant serves the new sentence and, on release from that, is then finally returned for the revocation hearing in the earlier court. Depending, obviously, on the length of the new sentence, such warrants and bench warrants can languish for years.

K.S.A. 22-4301 provides that a person imprisoned in a Kansas prison can request a "final disposition of any untried indictment, information, or complaint pending against him in this state." However, we have no mandatory disposition process for probation revocation warrants. Although there is little question that the earlier sentencing court has the inherent power to order the return of the defendant to that county for a revocation hearing, the anecdotal experience of the council's members was that the state rarely requests such an order.

The solution to this narrow problem: We propose a legislative requirement, with a procedure to implement it, that the State must pursue the revocation of an earlier case probation at the beginning of a new felony imprisonment rather than at the end.

This proposed amendment places on the State through the new felony prosecutor the obligation to notify the State agency prosecuting the earlier case that its probationer has been imprisoned. This would not seem to be a great burden: the new felony presentence investigation report must note the earlier conviction/probation case for criminal history purposes as well as for the special sentencing rules I mentioned earlier. Once notified, that earlier prosecutor must choose whether to have the inmate probationer returned for a revocation hearing or, essentially, allow the earlier case to be closed. We suggest that successful reentry can be promoted by requiring the return of the probation-violating inmate to the earlier court at the outset of the imprisonment for the new felony rather than at its end. That would result in the elimination of the "holds" that prevent the inmate from program participation.

Although not directly related to our reentry concerns, we also had concerns that the appeals courts would find the practice of leaving inmate bench warrants hanging could result in a Due Process violation dismissal of the earlier case. In September, 2007, the Court of Appeals made such a ruling, albeit in an egregious case. In *State v. Hall*, 38 K.A. 2d 465, issued September 21, 2007, the syllabus of the Court indicated:

- “1. K.S.A.2006 Supp. 22-3716(b) provides that upon formal notice that a defendant has violated the conditions of his or her probation, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. Determining whether inaction constitutes an unnecessary delay depends upon the circumstances of each case.
2. The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits procedurally and substantively the ability of the State to revoke a

probationer's probation. The State is required to proceed in a timely and reasonable manner in order to meet the requirements of due process. An unreasonable delay by the State in the issuance and execution of a warrant for the arrest of a probationer whose whereabouts are either known or ascertainable with reasonable diligence may result in the State's waiver of the violation and entitle the defendant to discharge.”

That case confirmed our concerns about Due Process and also made clear that the onus to obtain the inmate's return for the revocation hearing was properly on the attorney/prosecutors for the State.

Finally, and more personally, this proposed mandated procedure seems more consistent with the legislative intent I see in the consecutive sentencing and presumption elimination provisions cited above. I agree with the adage that justice delayed can be justice denied. In a circumstance like this, it follows from those provisions that the inmate who was granted probation in the earlier case, then violated that probation by committing a new felony resulting in imprisonment, should appear sooner than later before the probation granting court. Whether the judge then revokes the probation, closes the earlier case, or something in between would remain in the court's discretion. Then, though, the inmate and all aspects of the justice system would have a definite release date for the inmate, and the bench warrant/probation violation problem would be eliminated.

Respectfully submitted,
Ernest L. Johnson

1 sentence. In this event, imposition of a prison sentence for the new crime
 2 does not constitute a departure. *If the court sentences the offender to*
 3 *imprisonment for the new conviction, the prosecutor for the new convic-*
 4 *tion shall notify, in writing within 30 days of the imposition of the im-*
 5 *prisonment sentence, the prosecutor in the county where the inmate was*
 6 *convicted and placed on such probation or assigned to a community cor-*
 7 *rectional services program. The notified prosecutor shall have 90 days*
 8 *from the date of the imposition of the imprisonment sentence for the new*
 9 *crime to personally serve on the offender any warrant issued by the court*
 10 *pursuant to subsection (a) for violation of the offender's nonprison sanc-*
 11 *tion, which warrant shall authorize all officers named in the warrant to*
 12 *return the offender to the custody of such court. If the 90 day period has*
 13 *passed and: (1) If the warrant has been issued but not personally served*
 14 *pursuant to this subsection, the warrant shall become null and void and*
 15 *service no longer permitted; or (2) if the warrant has not been issued, the*
 16 *request for the warrant shall be denied and no warrant issued.*

, or the prosecutor if the
 new conviction is in the
 same county,

17 (c) A defendant who is on probation, assigned to a community cor-
 18 rectional services program, under suspension of sentence or serving a
 19 nonprison sanction and for whose return a warrant has been issued by
 20 the court shall be considered a fugitive from justice if it is found that the
 21 warrant cannot be served. If it appears that the defendant has violated
 22 the provisions of the defendant's release or assignment or a nonprison
 23 sanction, the court shall determine whether the time from the issuing of
 24 the warrant to the date of the defendant's arrest, or any part of it, shall
 25 be counted as time served on probation, assignment to a community cor-
 26 rectional services program, suspended sentence or pursuant to a nonpri-
 27 son sanction.

28 (d) *Except as provided in subsection (b)*, the court shall have 30 days
 29 following the date probation, assignment to a community correctional
 30 service program, suspension of sentence or a nonprison sanction was to
 31 end to issue a warrant for the arrest or notice to appear for the defendant
 32 to answer a charge of a violation of the conditions of probation, assign-
 33 ment to a community correctional service program, suspension of sen-
 34 tence or a nonprison sanction.

35 (e) Notwithstanding the provisions of any other law to the contrary,
 36 an offender whose nonprison sanction is revoked and a term of impris-
 37 onment imposed pursuant to either the sentencing guidelines grid for
 38 nondrug or drug crimes shall not serve a period of postrelease supervision
 39 upon the completion of the prison portion of that sentence. The provi-
 40 sions of this subsection shall not apply to offenders sentenced to a non-
 41 prison sanction pursuant to a dispositional departure, whose offense falls
 42 within a border box of either the sentencing guidelines grid for nondrug
 43 or drug crimes, offenders sentenced for a "sexually violent crime" as de-



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2780
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 20, 2008

The Department of Corrections supports HB 2780. HB 2780 amends K.S.A. 22-3716 to address situations where an offender is convicted in one jurisdiction and sentenced to prison while under probation supervision in another jurisdiction. HB 2780 provides a requirement that notification of the subsequent conviction and prison sentence be given to the prior prosecutor. HB 2780 also provides a procedure for bringing the offender back to the prior court for the revocation of the earlier probation. The county in which the offender was on probation would have 90 days from receiving notice of the subsequent conviction to serve a probation violation warrant on the incarcerated offender.

HB 2780 would aid the Department's reentry efforts by resolving detainers in a timely manner. Under current law, an offender can be sentenced to prison for a crime committed in one county but have the status of his probation from another county left in limbo throughout the term of his or her imprisonment. This causes the Department to expend its resources structuring the release plan for an offender only to find out shortly before the offender's scheduled release that an earlier probation is being revoked and thus the housing, employment and treatment arrangements that have been made must be cancelled. Reserving space in substance abuse or mental health treatment programs as well as housing in a residential community bed for persons scheduled for release, only to have the release delayed due to an unresolved detainer, can cause those resources to be wasted. HB 2780 serves to resolve probation violation detainers in a timely manner.

The Department urges favorable consideration of HB 2780.

MEMORANDUM

Senator Pete Brungardt
Kansas Senate

Deputy Secretary Rae Anne
Davis
Kansas Department of
Commerce

Paul Feleciano, Chair
Kansas Parole Board

Judge Ernie Johnson, Chair
Kansas Sentencing
Commission

Justice Lee Johnson
Kansas Supreme Court

Secretary Don Jordan
Kansas Department of Social
and Rehabilitation Services

Representative Joe Patton
Kansas House of
Representatives

President Steve Weatherford
Kansas Housing Resources
Corporation

Secretary Roger Werholtz
Kansas Department of
Corrections

Secretary Roderick Bremby
Kansas Department of Health
& Environment

Lori Marshall, Crime Victims
Advocate
Office of the Attorney General

Steve Weatherford, President
Kansas Housing Resources
Corporation

To: **Representative Michael O'Neal, Chair**
Judiciary Committee, Kansas House of Representative

From: **Marilyn Scafe, Executive Director**
Kansas Reentry Policy Council

Date: **February 20, 2008**

Re: **HB 2780, Detainers**

The Kansas Reentry Policy Council (KRPC) has endorsed the changes to K.S.A. 22-3716 (a) as stated in the proposed legislation. The process for drafting these changes started with recommendations from the KRPC Detainer task force as suggested by Judge Ernie Johnson. The changes were approved by the KRPC Steering Committee, and preceded to final approval by the Kansas Reentry Policy Council.

Attached you will find an outline explanation of the organization of the Kansas Reentry Policy Council. The members of the Kansas Reentry Policy Council are designated by an MOA, with the Attorney General as Chairperson and Secretary of Corrections as Vice Chairperson. This council has appointed a Steering Committee to oversee the assignment of work to task forces relevant to the 20 goals of the Kansas Risk Reduction and Reentry Plan.

The Detainer task force was formed to address the goal regarding legal barriers: Identification (Drivers License) and Detainers: *Through relationships with law enforcements, courts, prosecutors, and Division of Motor Vehicles, address pending detainers and driver's license issues in a timely way to remove them as barriers to reentry whenever possible.*

Judge Ernie Johnson from the KRPC presented the issue of pending probation violation warrants to original sentences after the imposition of a second sentence as a situation that could be addressed by the Detainer task force. While there are not a large number of inmates identified as having pending probation violation warrants, the situation affects more than just KDOC classification and reentry planning. Since courts are unable to hold violation hearings until after inmates are released, these cases create a tracking problem and a backlog of pending hearings for the courts.

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Many of the warrants are lodged only after KDOC gives final notice of an upcoming release date. This last minute lodging of warrants creates confusion for offenders and their families, victims, landlords and interrupts reservations for treatment beds and halfway houses.

The timing of release planning is important. Final reentry planning begins 14 months from the release date. When planning begins, if there are pending warrants, the KDOC will investigate the situation to see if they can be resolved in order to move the inmates into certain programs identified to address risk factors. Reclassification is sometimes necessary in order to move inmates into specific programs. A detainer or pending warrant can block this move, especially to programs in minimum such as work release.

The outcome of the pending violation hearing could impact the time the offender is required to serve in KDOC, or it may have consequences in the community if the offender is continued on supervision. If the offender is revoked for the violation and must be returned to KDOC to serve additional time, the release planning efforts will have to be repeated for the subsequent release. If the offender is continued on supervision and released by the court to the community, the offender may end up in an area that is not the designated plan. This can be troublesome if the offender has problems working out transportation back to the approved place for residency. It can also present a public safety issue for victims. For example, some victims may be depending on special conditions given to the offender to prohibit entrance into an area where the victim resides. Without careful coordination of the timing of release to the community, it can be difficult to ensure that the offender is in compliance with all of the conditions of the release.

Disposing of the pending probation violation warrants allows for the courts to clear their dockets, enables KDOC to complete a more accurate calculation of time needing to be served by the offender for both sentences, helps to ensure the most appropriate release plan and gives the offender the opportunity to focus on the conditions established for the supervised release in the community.

Kansas Offender Risk Reduction and Reentry Plan

Vision

Every offender released from prison will have the tools needed to succeed in the community.

Structure

Statewide Policy

Legislature

Role of the legislature is to provide oversight and funding to support the "big picture" goals of increasing public safety, reducing recidivism and averting costs and growth in the prison population.

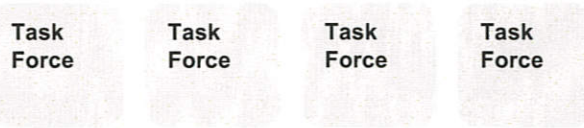
Kansas Reentry Policy Council

Role of the KRPC is to oversee the successful execution of the state's comprehensive risk reduction and reentry plan by promoting interagency collaboration, investing in neighborhood based strategies, and holding state agencies accountable.

Statewide Implementation

Steering Committee

Role of the steering committee is to execute the state's comprehensive risk reduction and reentry plan. When necessary, the steering committee will establish task forces to address a particular goal, strategy, or challenge.



Local Implementation



Goals

1. Reduce Revocations
2. Create Organizational/Cultural Change
3. Establish Individualized Risk Reduction Planning & Case Management
4. Increase Available Housing
5. Provided Cognitive Services
6. Increase Sustainable Employment
7. Build Capacity of Community & Faith Based Organizations
8. Remove Legal Barriers (Identification and Detainers)
9. Address Child Support & Family Issues
10. Ensure Access to Transportation
11. Engage Law Enforcement in Reentry
12. Reduce Substance Abuse Related Failures
13. Provide Transitional Services to Offenders with Mental Illness
14. Raise Awareness & Build Public Support
15. Engage in Rigorous Data Collection & Evaluation
16. Establish Ongoing Legislative Support & Oversight
17. Establish & Sustain the Kansas Reentry Policy Council
18. Establish & Sustain a Steering Committee
19. Engage Local Communities
20. Engage Probation & Community Corrections

Kansas Reentry Policy Council

Kansas Attorney General; Chairman, Kansas Reentry Policy Council
Stephen Six

Senator
Pete Brungardt

Secretary, Kansas Department of Health and Environment
Roderick Bremby

Deputy Secretary, Kansas Department of Commerce
Rae Anne Davis

Chair, Kansas Parole Board
Paul Feleciano

Judge; Chairman, Kansas Sentencing Commission
Ernie Johnson

Justice, Kansas Supreme Court
Lee Johnson

Secretary, Kansas Department of Social Rehabilitation Services
Don Jordan

Victim Representative, Office of Attorney General
Lori Marshall

House of Representatives
Joe Patton

President, Kansas Housing Resources Corporation
Steve Weatherford

Secretary, Kansas Department of Corrections
Roger Werholtz

Executive Director, Kansas Reentry Policy Council
Marilyn Scafe

Community Developer, Kansas Reentry Policy Council
Vicki Boyd

Administrative Specialist, Kansas Reentry Policy Council
Kari Johnson

Kansas Reentry Policy Council Steering Committee

Deputy Secretary, Kansas Department of
Social Rehabilitation Services
Lori Alvarado

Deputy Secretary, Kansas Department of
Social Rehabilitation Services
Ray Dalton

Deputy Secretary, Kansas Department of
Social Rehabilitation Services
Candace Shively

Director of Skills Enhancement Services
Kansas Department of Commerce
David Brennan

Apprentice Program Manager
Kansas Department of Commerce
Loretta Shelley

Adult and Youth Services Manager
Kansas Department of Commerce
Susan Weidenbach

Program Director of Support and Services,
Kansas Housing Resources Corporation,
Al Dorsey

Deputy Secretary, Kansas Department of
Health and Environment
Aaron Dunkel

Chief of Police
Lenexa Police Department
Ellen Hanson

Sheriff
Crawford County
Sandy Horton

CSO Specialist
Office of Judicial Administration
Chris Mechler

Executive Director
Kansas Sentencing Commission
Helen Pedigo

Judge
3rd Judicial District
Mark Braun

Community Corrections Director
3th Judicial District
Robert Sullivan

Deputy Secretary
Kansas Department of Corrections
Roger Haden

Deputy Secretary
Kansas Department of Corrections
Keven Pellant

Deputy Secretary
Kansas Department of Corrections
Chuck Simmons

Director of Reentry and Release Planning
Kansas Department of Corrections
Margie Phelps

Parole Board Member
Kansas Parole Board
Robert Sanders

KCCCA
Joshanna Stone



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2845
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 20, 2008

The Department of Corrections supports HB 2845. HB 2845 addresses the security concerns of the Department regarding employees and volunteers of the Department and its contractors. HB 2845 increases the penalty for those persons who aid in the escape of a prisoner as well as fostering the return of uniforms, badges, identification cards and other security property of the Department by former employees and volunteers by increasing the penalty for the theft of that property.

Under current law, persons who aid in the escape of a prisoner commit a Severity Level 8 nonperson felony. Severity Level 8 offenses carry a presumptive sentence of probation if the defendant has a criminal history of less than 2 person felony convictions. Employees of the Department aiding in the escape of a prisoner do not have a sufficient criminal history to warrant a prison sentence unless the court can make the requisite findings to support a dispositional departure. HB 2845 would amend K.S.A. 21-3811 to provide that for employees and volunteers of the Department and its contractors, aiding an escape would be a Severity Level 4 nonperson felony.

Severity Level 4 offenses carry a presumptive sentence of imprisonment for all criminal history categories. For defendants with no criminal history or only 1 misdemeanor offense, a Severity Level 4 offense carries a presumptive sentence of incarceration for at least 38 months.

HB 2845 also addresses the failure of former employees and volunteers to return uniforms, badges, identification cards and other property of the Department that could compromise the security of the Department. The retention of this property could aid in the escape of a prisoner. The recent escape of two special management custody inmates from the El Dorado Correctional Facility, allegedly with the assistance of a former officer, illustrates the Department's interest in having its security related property promptly returned upon an employee or volunteer leaving state service. In the case of the EDCF escape, the former officer's uniform and the inmates' clothing were recovered at a rest stop in Oklahoma.

HB 2845 provides that the theft by an employee or volunteer of the Department's uniforms, badges, identification cards and other property that could compromise the security of the department valued at less than \$1,000 is a Severity Level 10 non person felony. Currently, the theft of property of a value of less than \$1,000 is a class A nonperson misdemeanor. Additionally, the statutory provision defining the *prima facie* evidence of intent to permanently deprive the owner of property would be amended to include the failure of a former employee or volunteer to return that property after have been given notice to do so.


The Department considered an alternative to amending the theft statutes to foster the return of security related property at the end of a person's employment with the Department. The Department considered withholding an employee's last paycheck until issued property was returned but that proposal would be in conflict with federal labor law.

The Department urges favorable consideration of SB 2845.

Office of Revisor of Statutes

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MEMORANDUM

To: House Committee on Judiciary
From: Jill Ann Wolters, Senior Assistant Revisor 
Date: February 20, 2008
Subject: Brief of HB 2873

House Bill No. 2873 revokes the approval of the issuance of bonds for capital improvement projects to expand prison capacity by the Kansas development finance authority (KDFA) which was granted in state finance council resolution no. 07-572, adopted by the state finance council on October 17, 2007. The bill further prohibits appropriated money from being expended by the department of corrections (DOC) or any other agency, for the issuance of bonds by KDFA or for the planning and design for capital improvement projects to expand prison capacity. KDFA is prohibited from issuing the bonds as authorized by the state finance council resolution for capital improvements or for the planning and design of capital improvement projects to expand prison capacity.

The bill notes that the revocation of authority is based upon the consideration of the official inmate population projections of the Kansas sentencing commission which do not indicate a need for expanded prison capacity.

Finally, the bill makes null and void the provisions of 2007 HB 2368, sec. 185 (h) and (i), [2007 Session Laws of Kansas chapter 167] that granted the authority to the department of corrections for fiscal year 2009 in subsection (h) and fiscal year 2010 in subsection (i) to expend moneys for the issuance of bonds by KDFA for capital improvement projects to expand prison capacity, subject to approval of the state finance council.

This bill is patterned after a bill that was passed in 1981 [Senate Bill No. 470, section 69]. The bill prohibited the expenditure of moneys for a lease of property commonly known as the Women's Club. The section read as follows:

"No moneys appropriated to any state agency, as defined by K.S.A. 1980 Supp. 75-3701, and amendments thereto, shall be expended for the lease of the property located at 420 Southwest Ninth Street in the City of Topeka (commonly known as The Woman's Club) nor shall any other funds of any agency of state government be utilized for such purpose. It is the intent of this section to invoke and exercise the 'termination for fiscal necessity' clause of the lease entered into by the department of administration for the property described in this section."

The bill was upheld by the Kansas Supreme Court in *Manhattan Buildings, Inc. v. Hurley*, 231 Kan. 20 [643 P.2d 87 (1987).]

House Judiciary
Date 2-20-08
Attachment # 5

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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January 30, 2008

To: Joint Committee on State Building Construction
From: Jarod Waltner, Fiscal Analyst
Re: Department of Corrections, Bed Capacity Expansion

The information contained herein relates to the bonding authority authorized by proviso during the 2007 Legislative Session for the Department of Corrections (DOC), specifically the Yates Center project.

Bond Issue

During the 2007 Legislative session, a proviso was included in House Bill 2368, the appropriations bill, that authorized a \$39.5 million bond issue for the Department of Corrections contingent on approval of the State Finance Council. The Finance Council approved the \$39.5 million bond issue on October 12, 2007.

The language of section 185, subsection (d) of 2007 House Bill 2368 as amended only specifies the bond proceeds must be used for bed capacity expansion and appears to give full discretion for use of the bond proceeds to the Secretary of Corrections as long as the bond proceeds are used for bed capacity expansion projects. It appears that since all \$39.5 million of the bond issue was authorized in FY 2008, the language in subsections (h) and (i) of section 185 of 2007 House Bill 2368 as amended, and further amended by House Substitute for Senate Bill 357, do not apply to the bond issue. Relevant pages from 2007 House Bill 2368 and House substitute for Senate Bill 357, which amends section 185 of House Bill 2368, are attached with the referenced sections highlighted.

According to officials with DOC, preliminary planning has begun on the four facilities specified in House substitute for Senate Bill 357. Those projects are:

- Two cell house with a total of 256 beds at El Dorado Correctional Facility;
- 240 substance abuse treatment beds at Yates Center;
- 100 minimum-security beds at Ellsworth Correctional Facility; and
- 72 beds at Stockton Correctional Facility.

The DOC solicited for bids from firms to create plans for the projects. The four projects were split into two separate bids; Ellsworth and Stockton (ES) as one and El Dorado and Yates Center (EDYS) as the other. The solicitation period ended in the middle of December, 2007.

On January 9, 2008, the Department of Administration selected five bidders for the ES project and four bidders for the EDYS project to proceed to an interview with the Negotiations Committee. The Negotiations Committee will conduct interview with the five firms bidding for the ES project on

January 30th, 2008 and the four bidders for the EDYS project on January 31st, 2008. The selected bidders are chosen the same day as the interviews occur.

Officials with DOC anticipate the contract negotiations with the winning bidders will conclude approximately one month after the firms are selected. This would put an approximate start date for planning of the two projects at the end of February or beginning of March.

For the EDYS project, officials with DOC estimate the planning for the El Dorado portion will take three months, and the Yates Center portion will take five months. For the ES project, officials with DOC estimate the Ellsworth portion will take five months but they did not have an estimation on the length of time for the Stockton portion because substantial changes will need to be made in order for the new beds to be accommodated.

Upon completion of the project the DOC will place the plans on file for use when bed capacity expansion is needed.

Substance Abuse Treatment Bed Capacity

According to the 2007 Department of Corrections Annual Report, the DOC has 272 substance abuse treatment beds available to the inmate population. This includes the following:

- 56 standard program beds. The standard program consists of the Chemical Dependency Recovery Programs (CDRP) operated at Larned Correctional Mental Health Facility (LCMHF) and the Labette Women's Correctional Conservation Camp (LWCC). These are both short-term substance abuse treatment programs for minimum-custody inmates. The program includes treatment for both alcohol and drug abuse. There are several criteria, including length of sentence remaining, medical issues, and substance abuse evaluation score, that must be met in order to be eligible for the standard program. The bed space is as follows:
 - 40 male beds at LCMHF; and
 - 16 female beds at LWCC.

- 216 therapeutic community (TC) beds. The DOC uses the therapeutic community beds as a treatment resource for inmates in need of a greater level of treatment and who pose the greatest risk of recidivism as indicated by the substance abuse evaluation score. This includes alcohol as well as drug abuse. The bed space is as follows:
 - 60 male medium-custody beds at Hutchinson Correctional Facility;
 - 80 male minimum-custody beds at Osawatomie Correctional Facility;
 - 52 male medium-custody beds at Ellsworth Correctional Facility; and
 - 24 female beds at Topeka Correctional Facility.

According to the Offender Program Evaluation from DOC, dated January 2007, the average rate of utilization in FY 2006 for the standard program at LCMHF is 100.8 percent, up from 98.5 percent in FY 2005. The average rate of utilization for the LWCC in FY 2006 was 97.4 percent, up from 95.8 percent in FY 2005. TC programs had an average rate of utilization of 96.1 percent in FY 2006, up from 95.0 percent in FY 2005. It is the intent of DOC to maintain an average utilization rate

for all substance abuse treatment programs above 90.0 percent to effectively utilize current contracted bed space. This does not include the bed space at LCMHF, which is a non-contracted program. Mirror, Inc. currently holds the contract for the 180 contracted substance abuse treatment beds in DOC.

Officials with DOC indicate that there is a greater need for community outpatient substance abuse treatment slots than there is for in-facility bed space under the current sentencing laws. The need for substance abuse treatment beds could change depending on the passage of new laws in the future, but this is the current position of DOC.

Yates Center Project

One of the projects identified in House Substitute for Senate Bill 357 is a 240 minimum-custody male bed substance abuse treatment facility in Yates Center, which would be included as a program under the El Dorado Correctional Facility. As stated earlier, it appears that since all \$39.5 million of the bonding authority was approved in FY 2008 the Yates Center Project is not required to be built and if it were to be built, it would not have to be the second project of the four specified.

Officials with the Department of Corrections indicated that at the current time it is still the intention of DOC to utilize the Yates Center project as a substance abuse treatment facility. However, officials with DOC also emphasized they are not planning to start any bed capacity expansion projects at the current time due to the current inmate population and inmate population estimates by the Kansas Sentencing Commission, which do not indicate a need for bed capacity expansion.

It is hoped that this memorandum sufficiently answers your questions about the bonding authority and the Yates Center project. If you have additional questions or need additional information, please do not hesitate to contact me directly at (785) 368-7041.

JIW/kal

institutions building fund of the Kansas commission on veterans affairs is hereby redesignated as the veterans' home rehabilitation and repair projects account of the state institutions building fund of the Kansas commission on veterans affairs.

Sec. 185.

DEPARTMENT OF CORRECTIONS

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2008, for the capital improvement project or projects specified, the following:

Debt service payment for the revenue refunding bond issues	\$575,303
Debt service payment for the Ellsworth correctional facility at Ellsworth, Kansas	\$1,620,000
Debt service payment for the reception and diagnostic unit relocation bond issue	\$1,411,000

(b) There is appropriated for the above agency from the correctional institutions building fund for the fiscal year ending June 30, 2008, for the capital improvement project or projects specified, the following:

Debt service payment for the revenue refunding bond issues	\$1,689,697
Capital improvements – rehabilitation and repair of correctional institutions ..	\$3,231,303

Provided, That the secretary of corrections is hereby authorized to transfer moneys during fiscal year 2008 from the capital improvements – rehabilitation and repair of correctional institutions account of the correctional institutions building fund to an account or accounts of the correctional institutions building fund of any institution or facility under the jurisdiction of the secretary of corrections to be expended during fiscal year 2008 by the institution or facility for capital improvement projects and for security improvement projects including acquisition of security equipment.

(c) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2008, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Correctional facilities infrastructure projects fund	No limit
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Provided, That the department of corrections may make expenditures from the correctional facilities infrastructure projects fund for a capital improvement project or projects to improve agency facilities: *Provided, however*, That expenditures from this fund for such capital improvement project or projects, including necessary furniture and equipment, shall not exceed the amount transferred to the correctional facilities infrastructure projects fund: *Provided further*, That the secretary of corrections is hereby authorized to transfer moneys during fiscal year 2008 from the correctional facilities infrastructure projects fund to an account or subaccount of the correctional facilities infrastructure projects fund of any institution or facility under the jurisdiction of the secretary of corrections.

(d) In addition to the other purposes for which expenditures may be made by the department of corrections from the moneys appropriated from the state general fund or from any special revenue

fund for fiscal year 2007 or for fiscal year 2008 as authorized by chapter 142 or chapter 216 of the 2006 Session Laws of Kansas or by this or other appropriation act of the 2007 regular session of the legislature, expenditures may be made by the department of corrections from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2007 or for fiscal year 2008 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for capital improvement projects to expand prison capacity: *Provided*, That such capital improvement projects are hereby approved for the department of corrections for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That the aggregate amount of all such revenue bonds issued shall not exceed \$39,525,000 plus all amounts required for costs of any bond issuance, costs of interest on any bond issued or obtained for one or more of such capital improvement projects during the construction of such projects and any required reserves for payment of principal and interest on any such bond: *Provided, however*, That such bonds shall be issued only upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c and amendments thereto, except that such approval may also be given while the legislature is in session: *And provided further*, That the department of corrections may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement projects: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the state general fund or any appropriate special revenue fund or funds: *And provided further*, That no such bonds shall be issued by the Kansas development finance authority unless the director of the budget has certified to the department of administration and to the Kansas development finance authority that sufficient moneys will be available to make debt service payments for such bonds.

(e) In addition to the other purposes for which expenditures may be made by the department of corrections from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2007 or for fiscal year 2008 as authorized by chapter 142 or chapter 216 of the 2006 Session Laws of Kansas or by this or other appropriation act of the 2007 regular session of the

legislature, expenditures shall be made by the department of corrections from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2007 or for fiscal year 2008 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for correctional institution infrastructure projects: *Provided*, That such capital improvement project is hereby approved for the department of corrections for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That the department of corrections may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement project shall not exceed \$19,250,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of such project and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement project shall be financed by appropriations from the state general fund or any appropriate special revenue fund or funds: *And provided further*, That no such bonds shall be issued by the Kansas development finance authority unless the director of the budget has certified to the department of administration and to the Kansas development finance authority that sufficient moneys will be available to make debt service payments for such bonds.

(f) On July 1, 2007, the director of accounts and reports shall transfer \$2,556,082 from the construction defects recovery fund of the department of administration to the correctional facilities infrastructure projects fund of the department of corrections.

(g) In addition to the other purposes for which expenditures may be made by the department of corrections from the moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2008 as authorized by this or other appropriation act of the 2007 regular session of the legislature, expenditures may be made by the department of corrections from moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal year 2008 (1) to raze H dormitory, building #40000-00133, at the Lansing correctional facility; and (2) to raze a checkpoint building, building #66000-02744, at the Topeka correctional facility.

(h) In addition to the other purposes for which expenditures may be made by the department of corrections from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2009 by this or other appropriation act of the 2008 or 2009 regular session of the legislature, expenditures may be made by the department of corrections from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2009 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for capital improvement projects to expand prison capacity: *Provided*, That such capital improvement projects are hereby approved for the department of corrections for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That the aggregate amount of all such revenue bonds issued shall not exceed \$39,525,000 plus all amounts required for costs of any bond issuance, costs of interest on any bond issued or obtained for one or more of such capital improvement projects during the construction of such projects and any required reserves for payment of principal and interest on any such bonds: *Provided, however*, That such bonds shall be issued only upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c and amendments thereto, except that such approval may also be given while the legislature is in session: *And provided further*, That the department of corrections may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement projects: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the state general fund or any appropriate special revenue fund or funds: *And provided further*, That no such bonds shall be issued by the Kansas development finance authority unless the director of the budget has certified to the department of administration and to the Kansas development finance authority that sufficient moneys will be available to make debt service payments for such bonds.

(i) In addition to the other purposes for which expenditures may be made by the department of corrections from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2010 by this or other appropriation act of the 2009 or 2010 regular session of the legislature, expenditures may be made by the department of corrections from moneys appropriated

from the state general fund or from any special revenue fund for fiscal year 2010 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for capital improvement projects to expand prison capacity: *Provided*, That such capital improvement projects are hereby approved for the department of corrections for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That the aggregate amount of all such revenue bonds issued shall not exceed \$39,525,000 plus all amounts required for costs of any bond issuance, costs of interest on any bond issued or obtained for one or more of such capital improvement projects during the construction of such projects and any required reserves for payment of principal and interest on any such bonds: *Provided, however*, That such bonds shall be issued only upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c and amendments thereto, except that such approval may also be given while the legislature is in session: *And provided further*, That the department of corrections may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement projects: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the state general fund or any appropriate special revenue fund or funds: *And provided further*, That no such bonds shall be issued by the Kansas development finance authority unless the director of the budget has certified to the department of administration and to the Kansas development finance authority that sufficient moneys will be available to make debt service payments for such bonds.

Sec. 186.

JUVENILE JUSTICE AUTHORITY

(a) There is appropriated for the above agency from the state institutions building fund for the fiscal year ending June 30, 2008, for the capital improvement project or projects specified, the following:

Capital improvements – rehabilitation and repair of juvenile correctional facilities	\$500,000
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Provided, That the commissioner of juvenile justice is hereby authorized to transfer moneys from

5-9

For the fiscal year ending June 30, 2008 \$208,750

Sec. 58.

KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING

(a) On July 1, 2007, the director of accounts and reports shall transfer all moneys in the Kansas commission on peace officers' standards and training fund of the university of Kansas to the Kansas commission on peace officers' standards and training fund of the Kansas commission on peace officers' standards and training. On July 1, 2007, all liabilities of the Kansas commission on peace officers' standards and training fund of the university of Kansas are hereby transferred to and imposed on the Kansas commission on peace officers' standards and training fund of the Kansas commission on peace officers' standards and training and the Kansas commission on peace officers' standards and training fund of the university of Kansas is hereby abolished.

Sec. 59.

DEPARTMENT OF TRANSPORTATION

(a) On July 1, 2007, the expenditure limitation established for the fiscal year ending June 30, 2008, by section 156(b) of 2007 House Bill No. 2368 on the agency operations account of the state highway fund of the department of transportation is hereby increased from \$260,959,100 to \$263,664,840.

(b) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year or years specified, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures other than refunds authorized by law shall not exceed the following:

Traffic records enhancement fund

For the fiscal year ending June 30, 2008 No limit

Provided, That the department of transportation shall prepare and submit a report on the expenditures of the traffic records enhancement fund to the house of representatives committee on appropriations and the senate committee on ways and means on or before February 1, 2008.

Sec. 60.

STATE BANK COMMISSIONER

(a) On July 1, 2007, the expenditure limitation established for the fiscal year ending June 30, 2008, by section 70(a) of 2007 House Bill No. 2368 on the bank commissioner fee fund is hereby increased from \$7,673,144 to \$7,723,244.

Sec. 61.

DEPARTMENT OF CORRECTIONS

(a) There is appropriated for the above agency from the state general fund for the fiscal year or years specified, the following:

Central administration operations and parole and post-release supervision operations	
For the fiscal year ending June 30, 2008	\$495,123
Community corrections	
For the fiscal year ending June 30, 2008	\$4,491,763

Provided, That, if 2007 House Substitute for Senate Bill No. 14 is not passed by the legislature during the 2007 regular session and enacted into law, then, on July 1, 2007, the \$4,491,763 appropriated for the above agency for the fiscal year ending June 30, 2008, by this subsection from the state general fund in the community corrections account is hereby lapsed.

Topeka correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$25,800
Hutchinson correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$66,400
Lansing correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$46,100
Ellsworth correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$25,800
Winfield correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$20,300
Norton correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$59,000
El Dorado correctional facility – facilities operations	
For the fiscal year ending June 30, 2008	\$66,400

(b) On July 1, 2007, the position limitation established by section 157(a) of 2007 House Bill No. 2368 for the department of corrections is hereby increased from 3,112.70 to 3,119.70, *Provided, however*, if 2007 House Substitute for Senate Bill No. 14 is not passed by the legislature during the 2007 regular session and enacted into law, then, on July 1, 2007, the position limitation established for the fiscal year ending June 30, 2008, by section 157(a) of 2007 House Bill No. 2368 for the department of corrections is hereby decreased from 3,119.70 to 3,112.70.

(c) Notwithstanding any provisions to the contrary in section 185 of 2007 House Bill No. 2368, the bonding authority of \$39,525,000 of proceeds of the bonds authorized by subsections (h) and (i) of section 185 of 2007 House Bill No. 2368 for the department of corrections shall be allocated in accordance with the provisions of this subsection: *Provided*, That, upon determination by the secretary of corrections of the need to expand prison capacity, such capital improvement projects to expand prison capacity shall occur in the following order: Two cell houses or 256 beds at El Dorado correctional facility; 240 substance abuse treatment beds at Yates Center; 100 minimum security beds at Ellsworth correctional facility; and 72 beds at Stockton correctional facility.

(d) During the fiscal year ending June 30, 2008, notwithstanding the provisions of section 139(a) of 2007 House Bill No. 2368, expenditures may be made by the above agency from the reappropriated balance in the central administration operations and parole and postrelease supervision operations account for the total offender activity documentation system replacement information technology project without the prior approval of the state finance council: *Provided further*, That all expenditures by the above agency from the reappropriated balance in the central administration operations and parole and postrelease supervision operations account for the total offender activity documentation system replacement information technology project for fiscal year 2008 shall be in addition to any expenditure limitation imposed on expenditures from such reappropriated balance in such account for fiscal year 2008.

Sec. 62.

KANSAS PAROLE BOARD

(a) There is appropriated for the above agency from the state general fund for the fiscal year or years specified, the following:

Parole from adult correctional institutions

For the fiscal year ending June 30, 2008 \$15,100

Sec. 63.

KANSAS REAL ESTATE COMMISSION

(a) On July 1, 2007, the expenditure limitation established for the fiscal year ending June 30, 2008, by section 83(a) of 2007 House Bill No. 2368 on the real estate fee fund is hereby increased from \$923,397 to \$1,050,197.

(b) On July 1, 2008, the expenditure limitation established for the fiscal year ending June 30, 2009, by section 83(a) of 2007 House Bill No. 2368 on the real estate fee fund is hereby increased from \$946,679 to \$1,074,435.

(c) On July 1, 2007, the position limitation established for the fiscal year ending June 30, 2008, by section 88 of 2007 House Bill No. 2368 for the Kansas real estate commission is hereby increased from 14.00 to 15.00.

(d) On July 1, 2008, the position limitation established for the fiscal year ending June 30, 2009, by section 88 of 2007 House Bill No. 2368 for the Kansas real estate commission is hereby increased from 14.00 to 15.00.

Sec. 64.

JUVENILE JUSTICE AUTHORITY

HOUSE BILL No. 2768

By Committee on Judiciary

2-5

Proposed amendment
Representative Jan Pauls
February 20, 2008

House Judiciary
Date 2-20-08
Attachment # 4

9 AN ACT concerning public health; relating to removal of dead bodies;
10 amending K.S.A. 2007 Supp. 65-1753 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2007 Supp. 65-1753 is hereby amended to read as
15 follows: 65-1753. Except as otherwise provided by law and in accordance
16 with any applicable legal requirements, a dead human body which is re-
17 moved from the location of death shall be transported only to a licensed
18 funeral establishment, a licensed branch funeral establishment containing
19 an embalming preparation room or a holding facility, a licensed crematory
20 containing a holding facility, a hospital, a cemetery, a coroner or medical
21 examiner facility, the university of Kansas medical center, a *federally cer-*
22 *tified organ procurement organization serving the state of Kansas* or other
23 location of final disposition.

24 Sec. 2. K.S.A. 2007 Supp. 65-1753 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.

(a)

(b) A dead human body which is removed from the location of death shall be transported to a federally certified organ procurement organization serving the state of Kansas only upon the release of a person listed in the order of priority pursuant to KSA 2007 Supp. 65-3228, and amendments thereto.

For Information Only:

65-3228. Who may make anatomical gift of decedent's body or part. (a) Subject to subsections (b) and (c) and unless barred by K.S.A. 2007 Supp. 65-3226 or 65-3227, and amendments thereto, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

- (1) An agent of the decedent at the time of death who could have made an anatomical gift under K.S.A. 2007 Supp. 65-3223 (2), and amendments thereto, immediately before the decedent's death;
- (2) the spouse of the decedent;
- (3) adult children of the decedent;
- (4) parents of the decedent;
- (5) adult siblings of the decedent;
- (6) adult grandchildren of the decedent;
- (7) grandparents of the decedent;
- (8) the persons who were acting as the guardians of the person of the decedent at the time of death;
- (9) an adult who exhibited special care and concern for the decedent and who was familiar with the decedent's personal values; and
- (10) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under K.S.A. 2007 Supp. 65-3230, and amendments thereto, knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

History: L. 2007, ch. 127, § 9; July 1.