

Approved: 3-18-10

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on January 26, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Stan Frownfelter- excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Jerry Donaldson, Kansas Legislative Research Department

Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Tim Madden, Legal Council, Kansas Department of Corrections

State Representative Tom Sloan,

Major General Todd Bunting,

Wayne Bollig, Director, Veteran Services, Kansas Commission on Veteran's Affairs

Others attending:

See attached list.

Tim Madden, Legal Council, Kansas Department of Corrections

State Representative Tom Sloan,

Major General Todd Bunting,

Wayne Bollig, Director, Veteran Services, Kansas Commission on Veteran's Affairs

HB 2412 - Functional incapacitation release; procedures; notice; conditions; supervision upon release.

Chairperson Colloton called the meeting to order and announced to the Committee that in an *CSG Midwest Publication*, Kansas was mentioned for being honored nationally for its efforts to improve prisoner re-entry programs and the reduction of recidivism rates. Next, she called the Committee's attention to the 2010 Session Planner (Attachment 1) and to the fact that we did not have very many days left to introduce Committee bills.

HB 2503 - Authorizing and requiring the secretary of corrections to supervise parole offices and other release mechanisms and entities.

Chairperson Colloton opened the floor for bill introductions; being none, she opened the hearing on **HB 2503** and called the Committee's attention to the "written only" proponent testimony of Secretary Werholtz, Department of Corrections. (Attachment 2)

She introduced Tim Madden, Legal Council, Kansas Department of Corrections, and he stated that the Kansas Department of Corrections was in strong support of this bill. He stated the bill would provide the Secretary with the explicit management responsibility and authority regarding parole services operations as is currently provided, regarding correctional facilities.

A short discussion followed.

Being no others to testify, Chairperson Colloton closed the hearing on **HB 2503** and opened the hearing on **HB 2430**.

HB 2430 - Concerning veterans and sentencing guidelines.

Chairperson Colloton called on State Representative Tom Sloan to give his testimony as a proponent of **HB 2430**. Representative Sloan presented written copy of his testimony. (Attachment 3) He stated the bill was developed as a result of a conversation with the Adjutant General and several staff members. During the

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on January 26, 2010, in Room 144-S of the Capitol.

conversation about how the Legislature could best assist the active duty, National Guard, and Reserve troops to meet their obligations and potential. One of the suggestions was to permit the Courts to take into consideration Post-Traumatic Stress Disorder when sentencing veterans and active duty personnel. In closing, Representative Sloan offered an amendment to clarify the intent of the bill.

Questions and answers followed.

Chairperson Colloton introduced Major General Tod Bunting, the Adjutant General of Kansas, to give his testimony as a proponent of the bill. Major General Bunting presented written copy of his testimony. (Attachment 4) He stated the bill provides Judges the ability to take into consideration for sentencing the fact a defendant is a veteran suffering from Post Traumatic Stress Disorder (PTSD). It recognizes PTSD may be an underlying factor for the behavior and may be taken into consideration when imposing a sentence.

Questions and answers followed.

Chairperson Colloton introduced Wayne Bollig, Director, Veteran Services, Kansas Commission on Veteran's Affairs, to give his testimony as a proponent of the **HB 2430**. Mr. Bollig presented written copy of his testimony. (Attachment 5) Mr. Bollig stated as advocates for veterans, their offices come in constant contact with veterans suffering from PTSD. They deal with their frustrations and are well aware that many of these veterans develop unhealthy coping strategies. In closing, he stated that including veterans in this bill sends a positive message to those that serve.

Questions and answers followed.

With no others to testify, Chairperson Colloton closed the hearing on **HB 2430**.

More questions and answers followed. It was noted that there was work being done in Kansas regarding specialty courts.

HB 2440 - Requiring the secretary of corrections to receive and give victim notification upon certain events while inmate is in the custody of the secretary of social and rehabilitation services.

Chairperson Colloton turned the Committee's attention to **HB 2440** for consideration.

Representative Moxley moves to report HB 2440 out favorably for passage. Representative Spalding seconded.

A lengthy discussion followed. During the discussion Chairperson Colloton called the Committee's attention to the technical clean-up amendment of the Revisor's Office. (Attachment 6) The Chair opened the floor for amendments.

Representative Brookens moved an amendment on page 1, line 16 and change to "shall" as soon as practicable or without unnecessary delay and add the defendants family to the list and add to all other places where victims family is mentioned. Representative McCray-Miller seconded

A discussion followed.

Chairperson Colloton called for a vote on the Brookens amendment. **Motion carried.** She moved the Committee's attention back to the bill.

A short discussion followed and the **Chair called for a vote on passing the bill out favorable as amended. Motion carried.**

Chairperson Colloton reminded the Committee they would be taking up the proportionality bill tomorrow and recognized Representative Bethell who announced the subcommittee would meet tomorrow at noon in 142 S. Chairperson Colloton adjourned the meeting at 2:50 p.m. with the next meeting scheduled for January 27,

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on January 26, 2010, in Room 144-S of the Capitol.

2010, at 1:30 p.m. in room 144-S.

2010 Session Planner

January 10, 2010 – February 6, 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jan 10 DAY 0	Jan 11 DAY 1	Jan 12 DAY 2	Jan 13 DAY 3	Jan 14 DAY 4	Jan 15 DAY 5 PRO FORMA	Jan 16 DAY 6
Jan 17 DAY 7	Jan 18 DAY 8 Holiday Martin Luther King Day	Jan 19 DAY 9	Jan 20 DAY 10	Jan 21 DAY 11	Jan 22 DAY 12 PRO FORMA	Jan 23 DAY 13
Jan 24 DAY 14	Jan 25 DAY 15 Last Day for members to request bill drafts	Jan 26 DAY 16	Jan 27 DAY 17	Jan 28 DAY 18	Jan 29 DAY 19 Kansas Day	Jan 30 DAY 20
Jan 31 DAY 21	Feb 1 DAY 22 Last day for non-exempt committees to request bill drafts	Feb 2 DAY 23	Feb 3 DAY 24 Last Day - Bill Introduction by members	Feb 4 DAY 25	Feb 5 DAY 26 Last Day - non-exempt Committee bill Introduction.	Feb 6 DAY 27

2010 Session Planner

February 7, 2010 – March 6, 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb 7 DAY 28	Feb 8 DAY 29	Feb 9 DAY 30	Feb 10 DAY 31	Feb 11 DAY 32	Feb 12 DAY 33	Feb 13 DAY 34
Feb 14 DAY 35	Feb 15 DAY 36	Feb 16 DAY 37 Last Day for p.m. committees	Feb 17 DAY 38 Last Day for a.m. committees to meet.	Feb 18 DAY 39	Feb 19 DAY 40	Feb 20 DAY 41 Last Day - non-exempt bills in house of origin.
			On Floor All Day	On Floor All Day	On Floor All Day	TURN AROUND DAY
Feb 21 DAY 42 No Session	Feb 22 DAY 43 No Session	Feb 23 DAY 44 Pro Forma Session	Feb 24 DAY 45	Feb 25 DAY 46	Feb 26 DAY 47	Feb 27 DAY 48
Feb 28 DAY 49	Mar 1 DAY 50	Mar 2 DAY 51	Mar 3 DAY 52	Mar 4 DAY 53	Mar 5 DAY 54	Mar 6 DAY 55

2010 Session Planner

March 7, 2010 – April 3, 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 7 DAY 56	Mar 8 DAY 57	Mar 9 DAY 58	Mar 10 DAY 59	Mar 11 DAY 60	Mar 12 DAY 61	Mar 13 DAY 62
Mar 14 DAY 63	Mar 15 DAY 64	Mar 16 DAY 65	Mar 17 DAY 66	Mar 18 DAY 67	Mar 19 DAY 68 Last Day for Bills to be considered by non-assembly committees and meet	Mar 20 DAY 69
Mar 21 DAY 70	Mar 22 DAY 71 ON FLOOR All DAY	Mar 23 DAY 72 ON FLOOR All DAY	Mar 24 DAY 73 ON FLOOR All DAY	Mar 25 Conference Committees MAY Meet?? No Session	Mar 26 Conference Committees MAY Meet?? No Session	Mar 27 No Session
Mar 28 No Session	Mar 29 DAY 74 Conference Committees MEET In Session	Mar 30 DAY 75 Conference Committees MEET In Session	Mar 31 DAY 76 Last Day Conf Committees To AGREE In Session	Apr 1 Day 77 Conference Committee REPORTS In Session	Apr 2 Day 78 Good Friday Adjourned	Apr 3 Day 79

2010 Session Planner

April 4, 2010– May 5, 2010

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Apr 4 DAY 80 Easter No Session	Apr 5 DAY 81 Conference Committee REPORTS	Apr 6 DAY 82 DROP DEAD DAY Last Day non-exempt bills in either house	Apr 7 No Session	Apr 8 No Session	Apr 9 No Session	Apr 10 No Session
Apr 11 No Session	Apr 12 No Session	Apr 13 No Session	Apr 14 No Session	Apr 15 No Session	Apr 16 No Session	Apr 17 No Session
Apr 18 No Session	Apr 19 No Session	Apr 20 No Session	Apr 21 No Session	Apr 22 No Session	Apr 23 No Session	Apr 24 No Session
Apr 25 No Session	Apr 26 No Session	Apr 27 No Session	Apr 28 DAY 83 VETO SESSION	Apr 29 DAY 84 VETO SESSION	Apr 30 DAY 85 VETO SESSION	May 1 DAY 86 VETO SESSION
May 2 DAY 87	May 3 DAY 88	May 4 DAY 89	May 5 DAY 90			

1-4

Testimony on HB 2503
to
The House Corrections and Juvenile Justice Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 26, 2010

The Department of Corrections urges favorable consideration of HB 2503. HB 2503 amends K.S.A. 75-5251 which currently provides the secretary with the authority to examine the operations of correctional facilities and conduct administrative inquiries regarding those facilities. HB 2503 provides that same authority to the secretary regarding the department's parole offices and release supervision services.

The Department of Corrections exercises its jurisdiction and management over offenders who are either incarcerated or under the release supervision of the department. The secretary's administrative authority and responsibility to examine the business, government, discipline and management of correctional facilities is clearly set out in K.S.A. 75-5251, however, the secretary's administrative responsibility and authority regarding the management of parole offices is not explicitly set out and particularly does not provide for the issuance of administrative subpoenas and the administration of oaths to witnesses regarding the operations of the department's parole services. HB 2503 would provide the secretary with the explicit management responsibility and authority regarding parole services operations as is currently provided regarding correctional facilities.

The Department urges favorable consideration of HB 2503.

Corrections and Juvenile Justice

Date: 1-26-10

Attachment # 2

DEPARTMENT OF CORRECTIONS

TOM SLOAN
 REPRESENTATIVE, 45TH DISTRICT
 DOUGLAS COUNTY

STATE CAPITOL, 55-S
 300 SW 10TH AVENUE
 TOPEKA, KANSAS 66612
 (785) 296-7654
 1-800-432-3924

772 HWY 40
 LAWRENCE, KANSAS 66049-4174
 (785) 841-1526
 tom.sloan@house.ks.gov



TOPEKA
 HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENT
 CHAIRMAN: VISION 2020

MEMBER: ENERGY AND UTILITIES
 GOVERNMENT EFFICIENCY
 AND FISCAL OVERSIGHT
 JOINT COMMITTEE ON ENERGY
 AND ENVIRONMENT

Testimony: HR 2430 – Veterans with PTSD and Sentencing Guidelines January 26, 2010

Madam Chairman, Members of the Committee: HR 2430 was developed as a result of a conversation with the Adjutant General and several staff members. During the conversation about how the Legislature could best assist the active duty, National Guard, and Reserve troops meet their obligations and potential, two suggestions were made:

- 1) Increase coordinated planning between military and civilian authorities regarding compatible land uses around military training facilities (HB 2445 – Veterans, Military, and Homeland Security Committee); and
- 2) Permit the Courts to take into account Post-Traumatic Stress Disorder when sentencing veterans and active duty personnel (HB 2430).

Most Kansans are proud of the persons serving in the military. We support the troops, even if not the policies that place them in harms way. Unfortunately, for some persons sent to combat areas, upon their return to Kansas and their families, the experiences, sights, sounds, fears, and memories result in behavior that brings them to court. The vast majority of these veterans are not criminals, rather they continue reacting to their combat theatre experiences.

HB 2430 provides that Judges may include post-traumatic stress syndrome (PTSD) as a mitigating factor considered in determining whether substantial and compelling reasons for a departure from the sentencing guidelines exists.

The bill provides a clinical definition of PTSD (page 2, lines 38-42), requires verification of the medical condition by a physician or psychologist (page 3, lines 30-35), and requires verification that the individual served in a combat zone (page 6, lines 30-33).

HB 2430 permits a Judge to use his/her judgment as to whether the veteran and society would be best served by incarcerating the individual or by utilizing the medical, mental health, and other programs available through federal and state veterans organizations and authorities.

A proposed amendment is attached to this testimony. On page 3, the amendment clarifies that active duty members of the military, National Guard, and Reserves are entitled to the same consideration as veterans. The intent of the bill was to cover the active and retired service people; the proposed amendment simply makes that intent clear.

Members of the Committee, thank you for your attention. I will be pleased to respond to questions.

Corrections and Juvenile Justice

Date: 1-26-10

Attachment # 2

J-2

1 4716. (a) Except as provided in subsection (b), the sentencing judge shall
2 impose the presumptive sentence provided by the sentencing guidelines
3 for crimes committed on or after July 1, 1993, unless the judge finds
4 substantial and compelling reasons to impose a departure. If the sen-
5 tencing judge departs from the presumptive sentence, the judge shall
6 state on the record at the time of sentencing the substantial and com-
7 pelling reasons for the departure.

8 (b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and
9 amendments thereto, any fact that would increase the penalty for a crime
10 beyond the statutory maximum, other than a prior conviction, shall be
11 submitted to a jury and proved beyond a reasonable doubt.

12 (c) (1) Subject to the provisions of subsections (c)(3) and (e), the
13 following nonexclusive list of mitigating factors may be considered in de-
14 termining whether substantial and compelling reasons for a departure
15 exist:

16 (A) The victim was an aggressor or participant in the criminal conduct
17 associated with the crime of conviction.

18 (B) The offender played a minor or passive role in the crime or par-
19 ticipated under circumstances of duress or compulsion. This factor is not
20 sufficient as a complete defense.

21 (C) The offender, because of physical or mental impairment, lacked
22 substantial capacity for judgment when the offense was committed. The
23 voluntary use of intoxicants, drugs or alcohol does not fall within the
24 purview of this factor.

25 (D) The defendant, or the defendant's children, suffered a continuing
26 pattern of physical or sexual abuse by the victim of the offense and the
27 offense is a response to that abuse.

28 (E) The degree of harm or loss attributed to the current crime of
29 conviction was significantly less than typical for such an offense.

30 (F) *The defendant has been diagnosed by a physician or licensed psy-*
31 *chologist as having post-traumatic stress disorder and has been certified*
32 *by the executive director of the Kansas commission on veterans affairs as*
33 *having served in the armed forces of the United States of America in a*
34 *combat zone, as defined in section 112 of the federal internal revenue code*
35 *of 1986, as amended.*

36 (2) Subject to the provisions of subsection (c)(3), the following no-
37 nexclusive list of aggravating factors may be considered in determining
38 whether substantial and compelling reasons for departure exist:

39 (A) The victim was particularly vulnerable due to age, infirmity, or
40 reduced physical or mental capacity which was known or should have
41 been known to the offender.

42 (B) The defendant's conduct during the commission of the current
43 offense manifested excessive brutality to the victim in a manner not nor-

is either currently on active
duty with any branch of the
armed services of the United
States of America or



Testimony on House Bill 2430

To the House Corrections and Juvenile Justice Committee

Major General Tod Bunting
The Adjutant General of Kansas

Tuesday, January 26, 2010

Mr. Chairman and members of the Committee:

I am Major General Tod Bunting the Adjutant General and the Director of Homeland Security for Kansas. Thank you for allowing me to comment and speak in support of HB 2430. This Bill provides Judges the ability to take into consideration for sentencing the fact a defendant is a veteran suffering from Post Traumatic Stress Disorder (PTSD). This legislation does not consider PTSD an excuse for criminal activity. However, it recognizes PTSD may be an underlying factor for the behavior and may be taken into consideration when imposing a sentence.

The Bill requires the veteran must be diagnosed as having PTSD by a Physician or licensed psychologist; is currently on active duty; or has been certified by the Executive Director of the Kansas Commission on Veterans Affairs as having served in the Armed Forces of the United States in a combat zone. This legislation would cover Active Duty and Reserve Component (National Guard and Reserves) members placed on Title 10 United States Code, active duty while serving in an Internal Revenue Service (IRS) designated Combat Zone.

Corrections and Juvenile Justice

Date: 1-26-10

Attachment # 4

The Kansas National Guard has had many soldiers deployed to Iraq and Afghanistan and seen a dramatic increase in PTSD from their tours of duty. It was due to this and a tragically related increase in the number of suicides, the Kansas Resiliency Program has been established.

In 2006, the Kansas National Guard suffered the same number of suicides related to combat as it did death from combat. I, as the Adjutant General along with State of Kansas Command Sergeant Major Steve Rodina saw a clear need to prevent post-traumatic stress caused by combat tours and disaster missions. As a result, we developed a multi-faceted approach putting several initiatives in motion, one of which was the creation of the Resiliency Center.

The Resiliency Center's mission is to provide a comprehensive range of customized education and training that instill the tools necessary to handle and prosper in times of great stress. This "tool-box" of education, skills and training provides effective physical and emotional resilient responses that improve individual and family readiness, collective readiness, mission preparedness and performance.

Our programs and curriculum focuses on building resiliency for guard members and their families. To create the most relevant and practical information, the Resiliency Center has developed several partnerships to include, The Israeli Military and mental health experts; The Walter Reed Army Institute for Research; The National Defense University, Kansas State University, as well as analyzing existing military leadership and stress management training programs; collaborating with military and civilian experts, and conducting guardsmen interviews. The Center's first initiative, "Flash-Forward," is a course designed to give leaders the tools to model and foster resiliency within their unit as well as their lives outside the Guard. We are working with the Institute for Creative Technology (ICT) through the University of Southern California,

to expand Flash-Forward using the latest cutting edge computer and graphics technology to make it available via DVD and web-based applications so that the training and education reaches an expanded population. We are hopeful that this program will be adopted by the National Guard, country-wide. In addition, the Resiliency center is developing a separate resiliency course for family members; developing a functional core strengthening exercise program that will address the significant physical demands of missions and deployments; a compassion-fatigue program for those who work intensively with our injured warriors.

While our work with soldiers and airman continues to hopefully reduce the incidents of PTSD, we recognize that it will still occur and that a judge should have the ability and flexibility to consider the effects on behavior in criminal matter. Thank you and I will be pleased to answer any questions.

**Kansas Commission on Veterans' Affairs
Wayne Bollig, Director, Veteran Services**

House Corrections and Juvenile Justice Committee:

RE: HB - 2430 – Veterans with PTSD relating to sentencing guidelines.

Chair and members of the Committee, I am Wayne Bollig, the Director of the Veterans Services for the Kansas Commission on Veterans' Affairs. Thank you for the opportunity to testify as a proponent of **HB - 2430**

The mission of Veteran Services is to provide advocacy and resources to the veterans of Kansas, their families, and/or their survivors, and to assist them in acquiring and utilizing the benefits to which they are entitled under law, resulting in a better standard of life for those veterans, dependents and survivors. Part of this mission is to serve our incarcerated veterans. As advocates for veterans our offices come in constant contact with veterans suffering from PTSD. We deal with their frustrations and are well aware that many of these veterans develop unhealthy coping strategies, such as alcohol or drug abuse or deliberate self-harm. To add to their already stressful lives these veterans are often tied up in a claims process that can take years and is at times adversarial. This is a bill that will have a positive impact on the lives of veterans diagnosed with PTSD.

I believe that including veterans in this bill sends a positive message to those that serve. It shows that Kansas holds their service in high regard.

Thank you for your time.

Corrections and Juvenile Justice
Date: 1-26-18
Attachment # 5

HOUSE BILL No. 2440

By Committee on Corrections and Juvenile Justice

1-13

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to the notification of victims of persons committed to the custody
11 of the secretary of social and rehabilitation services; amending K.S.A.
12 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727
13 and repealing the existing sections.

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) The secretary of corrections shall provide notifi-
16 cation as provided in K.S.A. 22-3303, 22-3305, 22-3428 and 22-3428a,
17 and amendments thereto, and upon the escape or death of a committed
18 defendant or inmate while in the custody of the secretary of social and
19 rehabilitation services, to any victim of the defendant or inmate's crime
20 who is alive and whose address is known to the secretary of corrections
21 or, if the victim is deceased, to the victim's family if the family's address
22 is known to the secretary of corrections. Such notice shall be required to
23 be given to the victim or the victim's family only if the defendant was
24 charged with, or the inmate was convicted of, any crime in article 33, 34,
25 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments
26 thereto.

27
28 (b) As used in this section, "victim's family" means a spouse, surviving
29 spouse, children, parents, legal guardian, siblings, stepparent or
30 grandparents.

31 Sec. 2. K.S.A. 22-3303 is hereby amended to read as follows: 22-
32 3303. (1) A defendant who is charged with a felony and is found to be
33 incompetent to stand trial shall be committed for evaluation and treat-
34 ment to the state security hospital or any appropriate county or private
35 institution. A defendant who is charged with a misdemeanor and is found
36 to be incompetent to stand trial shall be committed for evaluation and
37 treatment to any appropriate state, county or private institution. *At the*
38 *time of such commitment the institution of commitment shall notify the*
39 *secretary of corrections for the purpose of providing victim notification.*
40 Any such commitment shall be for a period of not to exceed 90 days.
41 Within 90 days after the defendant's commitment to such institution, the
42 chief medical officer of such institution shall certify to the court whether
43 the defendant has a substantial probability of attaining competency to

22-3430, 22-3431
and 22-3727,