

Approved: May 08, 2012

(Date)

**MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE
COMMITTEE**

The meeting was called to order by Chairperson Pat Colloton at 1:30 PM on Monday, March 12, 2012 in 144-S of the Capitol.

All members were present except:

Lance Kinzer
Jana Goodman

Committee staff present:

Jackie Lunn, Committee Assistant
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Don Hymer, Kansas Judicial Counsel
Tim Madden, Chief Counsel, Kansas Department of Corrections

Others in attendance:

See attached list.

Chairperson Colloton announced to the Committee she was opening the floor for the consideration of the **House Substitute for SB 159 by Committee on Judiciary -- Conditions of release for parolees and probationers; searches; expunged records; petitions for relief of disabilities for firearms prohibitions.**

The Chair called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill to the Committee. Mr. Thompson provided written copies of the House Substitute for the bill (Attachment 1). The bill adds a provision stating that parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer, special enforcement officer, or other law enforcement officer at any time, with or without a search warrant and with or without cause. The bill would require the Kansas Parole Board, in granting parole or establishing conditions for postrelease supervision, to order the parolee or person on postrelease supervision to agree in writing to this search provision. The bill would further require any sex offender granted parole or placed on postrelease supervision to agree in writing to not possess pornographic materials. The bill would define “pornographic materials” and make this provision retroactive to every sex offender on parole or postrelease supervision on

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July 1, 2011. The bill also would amend the law governing probation to require as a condition of probation that the defendant be subject to searches of the defendant's person, effects, vehicle, resident and property by court service officers, community correctional services officers, and other law enforcement officers, if there is reasonable suspicion of the defendant violating conditions of probation or criminal activity.

Representative Brookens made a motion to adopt the amendment on the House Substitute on SB 159 bill. Representative Smith seconded.

A discussion followed.

The Chair called for a vote on the Brookens amendment. Motion carried.

Representative Brookens made a motion to move the bill out favorably as amended. Representative Smith seconded. Motion carried.

The Chair recognized ***Representative Cassidy who made a motion, voting on the prevailing side, to reconsider SB 306–Intimidation of a witness; including SRS personnel and mandatory abuse reporters as protected witnesses, which was passed out of Committee yesterday. Representative Wolf seconded.***

A discussion followed with the Chair recognizing Sean Ostrow, Office of the Revisor of Statutes. Mr. Ostrow stated there is a problem with changing the language to “victim” each place “victimization” is used changes current law. He offered an amendment to correct the problem. He provided written copies of his amendment for Committee and Staff (Attachment 2).

Representative Kelly made a motion to adopt the amendment of the Revisor’s Office. Representative Pauls seconded. Motion carried.

Representative Cassidy made a motion to move the bill out favorably as amended. Representative Kelly seconded. Motion carried.

Next, the Chair opened the hearing on **SB 320–Juvenile offender cases; probable cause determinations**, and introduced Don Hymer, Kansas Judicial Counsel, Kansas Judicial Council, to give his testimony as a proponent of the bill. Mr. Hymer provided written copies of his testimony for the committee and staff, (Attachment 3). He stated **SB 320** was drafted by the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee and approved by

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the Judicial Council. The bill establishes procedures for making a determination of probable cause within a juvenile offender proceeding.

Chairperson Colloton called for any others to speak or testify to the bill. There were none, so she closed the hearing and announced if there were no objections from the committee they could work the bill. There were no objections so she opened the floor for consideration of **SB 320** and called on Jason Thompson, Office of the Revisor of Statute, to explain a balloon amendment on the bill. Mr. Thompson provided written copies of a balloon for the committee and staff, (Attachment 4). He stated the amendment was a technical cleanup that did not change the original intent of the bill.

Representative Brookens made a motion to adopt the balloon amend from the Revisor. Representative Cassidy seconded. Motion carried.

*Representative Brookens made a motion to move **SB 320** out favorably as amended. Representative Kelly seconded. Motion carried.*

Chairperson Colloton opened the hearing on **SB 394—Relating to transfer or discharge of certain offenders** and called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill. Mr. Thompson stated **SB 394** would incorporate a probable cause determination in juvenile offender proceedings, as follows:

- The bill would raise the standard for one of the conditions for placement in a juvenile detention facility from an *allegation to probable cause* that the juvenile has committed an offense that would be a felony if committed by an adult;
- The bill would move the statutory provisions for detention hearings and incorporate the probable cause determination into such hearings; and
- The bill would clarify the detention hearing is an informal procedure to which the ordinary evidentiary rules do not apply, allowing the court to consider affidavits, professional reports, and representations of counsel in making the necessary findings.

He went on to say the juvenile would be allowed to present contrary evidence or information. If such evidence cannot reasonably be produced at the detention hearing, the juvenile would be allowed to request a rehearing to contest probable cause within 14 days. Finally, the bill would amend the rules of evidence statute in the Revised Kansas Juvenile Justice Code to accommodate the relaxed evidentiary standards for detention hearings and dispositional hearings.

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Chairperson Colloton introduced Tim Madden, Chief Legal Counsel, Kansas Department of Corrections, to give his testimony as a proponent of the bill. Mr. Madden provided written copies of his testimony for the committee and staff, (Attachment 5). He stated The Department of Corrections supports **SB 394**. The House passed **SB 394** by a vote of 39-1. The bill provides for the amendment of K.S.A. 75-5220 to extend the threshold for the discharge of an offender instead of requiring the transfer of that offender from a local jail to a department facility when the offender has a minimal amount of time remaining to be served. In 2010, the legislature addressed the use of resources by sheriffs in transporting sentenced offenders and the department in admitting and processing those offenders whose prison sentences had or would expire in a matter of days. K.S.A. 75-5220 was amended to provide for the first time, a threshold for when the remaining balance of a prison sentence to be served was so short that the expense and burden to sheriffs and the department for the transfer was not justified and the offender could be discharged immediately from the jail and begin the postrelease supervision obligation. That threshold established by the 2010 amendment of K.S.A. 75-5220 was 10 or fewer days remaining to be served on the prison portion of the sentence at the time the offender was ready for transfer from the jail to a KDOC facility. **SB 394** would increase that threshold to 20 or fewer days. If the offender awaiting transfer has twenty or fewer days remaining to be served, the offender is released from the balance of the prison portion of the sentence and begins to serve the postrelease supervision obligation. A threshold for the release from the prison portion of a sentence for offenders awaiting transfer results in savings to counties relative to their transportation costs to a KDOC facility and the resources of the department in admitting and processing the offender into the department's reception and diagnostic unit when the offender is going to be released and returned to the same community in a matter of days. In closing, he stated the KDOC urges favorable consideration of **SB 394**.

Chairperson Colloton called for any others wishing to speak or testify on the bill. There were none, so she closed the hearing on **SB 394** and announced that if there no objections they could work this bill today. There were none, so she opened the floor for consideration of **SB 394**.

Representative Cassidy made a motion to move SB 394 out favorably. Representative McCray-Miller seconded.

A lengthy discussion followed with Chairperson calling the committee's attention to the bed impact statement. (Attachment 6)

The Chair called for a vote on the motion on the floor to pass SB 394 out favorably. Motion carried.

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Chairperson Colloton opened the floor for consideration of **SB 305**–**Time for criminal trials; competency decision time not counted against the state.**

Representative Kelly made a motion to amend SB 305 into SB 307– Sub for SB 307 - Lesser included crimes; felony murder. Representative Brookens seconded. Motion carried.

Next, the Chair opened the floor for consideration of **SB 307** and called on Jason Thompson, Office of the Revisor of Statutes, to give a brief explanation of the original **SB 307** portion or before it was amended. Mr. Thompson stated **Sub. for SB 307** would amend the statute governing convictions for lesser included crimes to establish there are no lesser degrees of first-degree murder under KSA 2011Supp. 21-5402(a)(2) [felony murder]. This provision would apply retroactively in felony murder cases except in cases where an instruction for a lesser included crime was given and the defendant was convicted of a lesser included crime between July 1, 2011, and July 1, 2012.

Chairperson Colloton called on Scott Schultz, Executive Director, Kansas Sentencing Commission, to review the bed impact on the bill. (Attachment 7) Director Schultz stated In FY 2011, 11 offenders were convicted of the crime of murder in the first degree under formerly K.S.A. 21-3401(b). Of this number 10 were sentenced to prison as an offgrid: one with a sentence of 15 years; eight with a sentence of 20 years; and one with life sentence without parole. One was sentenced to prison at severity level 3 with 61 months of sentence. This was a solicitation case. He went on to say this substitute bill would have no impact on prison admission and prison bed need because of the long prison sentences.

A discussion followed.

Representative Brookens made a motion to adopt the original portion of SB 307, Representative Kelly seconded.

A short discussion followed with the *Chair calling for a vote on the motion on the floor. Motion carried.*

Next, the committee moved their attention to the **SB 305** which was amended into **SB 307**.

A lengthy discussion followed with several of the committee members having concerns.

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Representative Moxley made a motion to remove the SB 305 that had been amended into SB 307. Representative McCray-Miller seconded. Motion carried. Motion carried.

Representative Cassidy made a motion to move the bill out favorably as amended. Representative Kelly seconded. Motion carried.

Chairperson Colloton opened the floor for consideration of **SB 39–Sub for SB39 by Committee on Judiciary; creating the classification of "aggravated sex offender" and establishing residency restrictions.**

Representative Smith made a motion to move SB 39–Sub for SB39 out favorably for passage. Representative Kelly seconded.

Chairperson Colloton called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill. Mr. Thompson stated **Sub. for SB 39** would amend the Kansas Offender Registration Act to create the category of aggravated sex offender, which would be defined as any person who, on or after July 1, 2012, is convicted of any sexually violent crime, if any of the parties involved is under 16 years old. Such offenders would be prohibited from residing within 500 feet of School property containing a structure used for K-12 instruction or activities. The prohibition would not apply if the offender is in the custody of a correctional facility or in the care or custody of any treatment facility. The sentencing court and the registering law enforcement agency would be required to inform such offenders of the residency restriction

Representative Smith made a motion to pass the bill out favorably. Representative Kelly seconded.

A lengthy discussion followed.

Representative Brookens moved to table SB 39. Representative McCray-Miller seconded. Motion carried.

Chairperson called the committee's attention to the handout titled *House Arrest Reintegration Program For Low Risk Offenders* for their review. (Attachment 8)

Chairperson Colloton moved the committee's attention to **HB 2748–Discharging a firearm inside or into a city; crime; exceptions**, for consideration. The committee had amended **HB**

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2427-Firearms; firearms dealers; entrapment; criminal penalties into **HB 2748** in an earlier meeting.

Chairperson Colloton called on Sean Ostrow, Office of the Revisor of Statutes, and asked if he had received the Kinzer amendment on this bill. He explained the amendment. (Attachment 9) ***Representative Kelly made a motion to move the bill out favorably as amended. Representative Cassidy seconded.***

A discussion followed with Representative Smith stating he had an amendment to offer on the bill (Attachment 10) and provided it for the committee and staff. The amendment would add the language from **HB 2584-Knives; restriction on regulations; weapons crimes amended**, that is in Section 1 only.

Representative Smith moved to adopt his amendment. Representative Cassidy seconded.

A discussion followed.

The Chair called for a vote on the motion on the floor of Representative Smith amendment. Motion failed.

The discussion continued with ***the Chair calling for the original motion to move the bill out favorable with the Kinzer amendment. Motion failed.***

The Chair adjourned the meeting at 3:00 PM with the next meeting scheduled for March 13, 2012, at 1:30 PM in room 144 S.