

Approved: March 19, 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, January 30, 2012 in 144-S of the Capitol.

All members were present except:

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:

State Senator Mary-Pilcher Cook
Tim Madden, Legal Counsel, Kansas Department of Corrections
Ed Klumpp, KS Assoc. of Chiefs of Police, KS Sheriffs Assoc., KS Peace Officers Assoc.
Kyle Smith, Assistant Attorney General/Deputy Director, KBI
Jennifer Roth, Kansas Association of Defense Lawyers

Others in attendance:

See attached list.

Chairperson Colloton opened the floor for bill introductions. She stated that she had a bill introduction regarding a bill passed out of Committee last year allowing a law enforcement officer check to see if a person being detained is known to the local mental healthcare agency. The Senate made a change in the bill not allowing the law enforcement officer to check with the local mental healthcare agency until they have been arrested. The law went into effect in July of last year and it is not effective with the present wording. It needs to be amended to change the language back as it was when it was passed by this Committee; to check with the mental healthcare agency while being detained and before they are arrested.

Representative Pauls made a motion to accept the bill request changing the language back to its original language. Representative Wolf seconded. Motion carried.

Chairperson Colloton had another bill she was presenting for Judge Jeff Jack that would allow for consecutive commitment to a juvenile correctional facility under certain circumstances.

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Representative Goodman made a motion to accept the bill request being made on behalf of Judge Jeff Jack as a committee bill. Representative Meier seconded. Motion carried.

Chairperson Colloton had one more bill request requiring judicial review of release of mentally incompetent defendants.

Representative Brookens made a motion to accept the bill request regarding a judicial review of the release of mentally incompetent defendants to prove that they are no longer a threat to themselves or others as a committee bill. Representative Kelly seconded. Motion carried.

Chairperson Colloton recognized Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officers Association. Mr. Klumpp requested a bill amending the statute so that if a law enforcement officer suspects a crime, the refusal to provide certain information to the law enforcement officer would be considered a crime with penalties.

A discussion followed.

Representative Pauls made a motion to accept the bill request of Mr. Klumpp as a committee bill. Representative Smith seconded. Motion carried.

Mr. Klumpp had another request for the Committee. He wished to withdraw a request he made in an earlier meeting of a bill regarding forfeiture of vehicles. He stated a bill had already been requested in the Senate.

The Committee agreed to withdraw his request made earlier in the year.

Chairperson Colloton announced to the Committee that on Wednesday they would be taking action on the BIDS bills, the Prison Review Board cleanup bill, and possibly the transfer of records bill from last year. Next, she called the Committee's attention to the copy of the **Substitute for HB 2059- Requiring second-hand stores to verify identity of sellers and record such information** ([Attachment 1](#)). She asked that the Committee review the copy and possibly they would be able to take action on that bill tomorrow or the next day.

Chairperson Colloton called for any others wishing a bill request; there were none, so she opened the hearing on **SB 159-Substitute for SB 159-Conditions of release for parolees and probationers; searches; expunged records; petitions for relief of disabilities for firearms**

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prohibitions and introduced State Senator Mary Pilcher-Cook to give her testimony as a proponent of the bill.

Representative Pilcher-Cook provided written copies of her testimony for the Committee and Staff ([Attachment 2](#)). She stated that the bill allows corrections and law enforcement officers to conduct search of probationers with responsible suspicion. She stated it is important to note that a judge would have extra latitude in what type of searches could be carried out for probationers, as the Kansas Supreme Court refers to the Court of Appeals' opinion stating, "the sentencing judge's comments and ultimate order during sentencing provide that either community corrections or law enforcement officers can conduct searches at any time for potentially any reason". Public safety would be greatly enhanced with the passage of this bill with little to no fiscal impact. In closing, she asked the Committee to pass this bill out for consideration by the House.

Chairperson Colloton introduced Tim Madden, Legal Counsel for the Department of Corrections to give his testimony as a proponent of the bill with amendments. Mr. Madden provided written copies of his testimony for the Committee and Staff ([Attachment 3](#)). He stated the Department of Corrections supports this bill but has concerns with the language of the bill. He attached a balloon amendment with his testimony that would address his concerns. He stated that the bill with the present language would provide for unbridled searches by any law enforcement officer. The Department believes that addressing the issue of the search of parolees should involve an analysis of two components of the search. First, the requisite justification to conduct a search and secondly, who may conduct the search. In order to minimize detrimental harassment that unbridled authority could cause the unlimited authority to conduct suspicionless searches should be limited to parole officers. Other law enforcement entities would still retain all of the search authority vested in them relative to the public and also have the ability to demonstrate to the parole officer that a non-harassment reason exists to conduct a search of the parolee. In closing, he stated that the Department of Corrections believes that limiting the authority to conduct suspicionless searches are justified by the administrative nature of parole supervision and therefore should be limited to parole officers administering that supervision. He urged the Committee to consider his balloon amendment for the bill.

A lengthy question and answer session followed regarding the language of the bill and the proposed amendment of the Kansas Department of Corrections.

Chairperson Colloton introduced Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officers Association, to give his testimony as a

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proponent of the bill. Mr. Klumpp provided written copies of his testimony for the Committee and Staff (Attachment 4). He stated that the passage of this bill would provide an additional tool for law enforcement officers. Many times law enforcement confronts these parolees in less populated areas of the state or at odd hours of the night or on weekends when the availability of a parole officer is more scarce. Without this bill, law enforcement asking a parole office to conduct a search can also be problematic if the court rules the search by a parole officer was conducted simply at the request of law enforcement who otherwise did not have authority to conduct the search themselves. In closing, he stated that the passage of this bill as it is without the Department of Corrections proposed balloon amendment will encourage parolees to stay clean.

A question and answer session followed.

Chairperson Colloton introduced Kyle Smith, Deputy Director of the KBI, to give his testimony as a proponent of the bill. Deputy Director Smith provided written copies of his testimony for the Committee and Staff (Attachment 5). He stated that the bill provides enhances supervision of probationers and parolees. These are people who have already demonstrated a propensity to commit crimes. If probationers and parolees are violating the terms of their release by carrying guns or selling drugs, it is in our best interest to discover their unwillingness to change and prevent more crimes. This bill assists in this by empowering law enforcement officers to conduct searches of these criminals to ensure their compliance to the terms of their release. The constitution allows such searches if they are conducted according to the rules as set out by the courts. The courts in Kansas have ruled widely on such searches, due to the lack of statutory clarification. This bill provides that clear guidance and authority to provide reasonable supervision of these convicted criminals. In closing, he stated the KBI supports this bill without the balloon amendment of the Department of Corrections.

A question and answer session followed.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of Bryan Weiser, Court Services Officer, Ninth Judicial District (Attachment 6)

Chairperson Colloton called on Jason Thompson, Office of the Revisor of Statutes, to explain the **Substitute for SB 159**. Mr. Thompson stated the bill would amend the statute governing parole and postrelease supervision, by adding 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

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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 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.

Upon the conclusion of the explanation of the bill, Chairperson Colloton introduced Jennifer Roth representing the Kansas Association of Criminal Defense Lawyers, to give her testimony as an opponent of the bill. Ms. Roth provides written copies of her testimony for the Committee and Staff ([Attachment 7](#)). She stated that the state does not need this bill because there are tools in place that already address these issues. She went on to say this bill was structured like a bill in California and the Kansas is not California. She stated that the suspicion search proposed in the bill is arguably counter to goals of reintegration and public safety. Her research concluded a bill like this not appear to be widespread among the majority of states. In closing, she stated the bill risks violating the U.S. and Kansas Constitutions.

A question and answer session followed.

Chairperson Colloton called for any others wishing to speak or testify on the bill; there were none, so she closed the hearing on the **House Substitute for SB 159**.

The meeting was adjourned at 3:00 pm with the next scheduled meeting for January 31, 2012 at 1:30 pm in room 144 S.