

HCS#2 HB 1644 -- USE OF FORCE

SPONSOR: McGhee (Riddle)

COMMITTEE ACTION: Voted "do pass" by the Committee on Corrections and Public Institutions by a vote of 10 to 0.

This substitute changes the laws regarding the use of force by employees of the Department of Mental Health. In its main provisions, the substitute:

(1) Specifies that a person will not be guilty of the crime of patient, resident, or client abuse or neglect if he or she beats, strikes, or injures a patient, resident, or client or if he or she uses more force than necessary for the proper control of a patient, resident, or client of a mental health or residential facility when acting in self-defense or in defense of others;

(2) Specifies that self-defense and the defense of others will justify only the use of the minimal amount of force reasonably necessary to deter an imminent threat of harm to oneself or another person or to end an assault on oneself or another person. This provision will only apply to employees at maximum or medium security department facilities;

(3) Prohibits the department from terminating or sanctioning an employee based on an action taken in self-defense or defense of others in the course of employment against a person, patient, resident, or client who is dangerous or violent; has a history of dangerous or violent behavior; or whose mental state or condition includes dangerous or violent tendencies and requires the employment record of the employee to be expunged of any documentation regarding the act of self-defense or defense of others; and

(4) Requires the department to conduct a hearing to determine whether an employee acted in self-defense or the defense of others if a person asserts self-defense or defense of others. Any adverse determination by the department will be subject to appeal in accordance with Chapter 536, RSMo.

FISCAL NOTE: Estimated Cost on General Revenue Fund of \$135,208 in FY 2011, \$144,853 in FY 2012, and \$149,199 in FY 2013. No impact on Other State Funds in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that there are major safety concerns for employees at Fulton State Hospital. Employees are fearful of being assaulted by the clients or being fired for defending themselves or others. There is not enough staff to provide adequate protection, and the training is not sufficient to

prepare employees for all the situations that arise. After an incident at Bellfontaine Habilitation Center, the department implemented a new policy on the handling of clients which makes it very difficult for employees to defend themselves. Often an employee who is injured on the job and can't perform his or her regular duties is placed on light duty for a period of time but terminated if he or she can't return to regular duty. The department also has mandatory staffing policies which allow no overtime pay but staff are being forced to work double shifts with no rest placing them in dangerous situations.

Testifying for the bill were Representative Riddle; Douglas Van Camp; John Edward Ellerman; Jered Crawford; James Douglas Bonner; Angela Verdugo; Joe Van Norman; John Brown; Carol Butcher; Anna Diefendorf; Barbara Brazos; and Heather Pitt.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say that 75% of employee injuries occur at a maximum security facility which houses persons found not guilty by reason of insanity, criminal psychopaths, those awaiting pre-trial evaluation, and individuals who have been found incompetent to stand trial. Besides those injuries, employees believe that the department has placed greater emphasis on protecting the patients over the safety and well-being of the staff. The department recognizes that there are problems and is in the process of correcting them. The department needs more funding for increased staffing, training, and capital improvements. Until more money is available, the department is doing the best it can with limited resources.

Testifying on the bill were Department of Mental Health; Marty Martin, Fulton State Hospital; Tom Wuff; and Department of Corrections.