

M I N U T E S

SPECIAL COMMITTEE ON WAYS AND MEANS

August 19 and 20, 1976

Room 514 -- State House

Members Present

Representative Wendell Lady, Chairman  
Senator Wint Winter, Vice-Chairman  
Senator Billy Q. McCray  
Senator T. D. Saar  
Senator D. Wayne Zimmerman  
Representative Keith Farrar  
Representative Roy H. Garrett  
Representative Richard L. Harper  
Representative John T. Ivy  
Representative Irving Niles

Staff Present

Marlin Rein, Kansas Legislative Research Department  
Julie Mundy, Kansas Legislative Research Department  
Alden Shields, Kansas Legislative Research Department  
Carl Tramel, Kansas Legislative Research Department  
Robert Epps, Kansas Legislative Research Department  
J. Russell Mills, Jr., Kansas Legislative Research Department  
Jim Wilson, Revisor of Statutes Office  
Bill Edds, Revisor of Statutes Office

August 19, 1976

Morning Session

The Special Committee on Ways and Means was called to order August 19, 1976, at 10:00 a.m. by Chairman Lady. On a motion by Representative Harper, seconded by Senator Zimmerman, the Committee approved the minutes of the July 15 and 16, 1976, meeting. Page two, paragraph two, line five of the June 24 and 25, 1976 minutes was amended by deleting the words "or non" on a motion made by Representative Harper, seconded by Representative Ivy and approved by the Committee.

Proposal No. 44 - Arson Detection

Chairman Lady requested Jim Wilson from the Revisor of Statutes Office to review the preliminary draft of legislation prepared to assist Committee discussion on arson detection. Mr. Wilson presented the Committee with copies of the discussion draft and copies of existing statutes (see Attachments A and B). He explained that the draft legislation was based on suggested legislation presented to the Committee by Mr. Bud Cornish of the Kansas Association of Property and Casualty Insurance Companies in his testimony at the June 25, 1976, meeting. Mr. Wilson explained that New Section 1 would, in the absence of fraud, malice or bad faith, relieve any person representing a fire insurance company or a statistical and reporting organization of liability in a civil action for damages for any information furnished in compliance with K.S.A. 40-903 and 40-904 and would similarly protect such person from criminal prosecution therefor. This section would also relieve fire insurance companies of liability when providing fire loss information to the State Fire Marshal upon request.

Representative Farrar asked if the discussion legislation would have the effect of presuming arson until proven otherwise. Mr. Wilson said that the intent of the draft was not to presume arson but rather to relieve reporting agencies of the liability

that might otherwise accompany the reporting of information that companies have been hesitant to provide in the past. He said that the possibility of abuse existed in any immunity statute, but that it would be less likely since the arson information would have to be documented.

Representative Farrar then asked if the proposed legislation would relieve a private citizen of liability. Mr. Wilson said it would not. Representative Garrett asked if members of fire departments are given immunity under the draft legislation. Mr. Wilson replied that only insurance companies and their reporting agencies were granted immunity from civil liability and criminal prosecution under the draft.

Upon questioning from Chairman Lady and Representative Garrett relating to specific language in New Section 1, Mr. Wilson explained that some of the language referring to "fraud" and "bad faith" was somewhat redundant but that it reflected the suggested language of Mr. Cornish's testimony.

Mr. Wilson then explained that New Section 2 of the proposed draft legislation would give the State Fire Marshal the power of arrest. He noted that the power of arrest is limited to specific crimes in the area of arson. By way of comparison, Mr. Wilson referred the Committee to the powers of arrest given to state game protectors under K.S.A. 1975 Supp. 74-3322. In response to a question, he stated that one policy basis for the language of New Section 2 is to cover limited situations where suspects could possibly leave the area unless the State Fire Marshal had the power of arrest.

Mr. Wilson reviewed Section 3 of the discussion draft and said the underlined portion at the bottom of page two of Attachment I was the primary addition in that section. Representative Niles suggested that the new language in Section 3(a) might be rewritten to read "Whenever in any such investigation there is reason to suspect that any fire or explosion [was] may have been of an incendiary origin or was an attempt to defraud an insurance company, a report of such circumstances shall be made immediately to the State Fire Marshal."

Senator McCray questioned Mr. Wilson as to the possible fiscal impact of the draft legislation. Mr. Wilson responded that he did not know. Chairman Lady pointed out that the Fire Marshal's request for five additional investigators was separate from the proposed legislation.

Chairman Lady suggested that hearings on the proposed legislation be held at the next Committee meeting. The Committee concurred. Chairman Lady requested staff to contact interested people concerning the hearing. He requested that the proposed legislation be distributed in advance to the insurance companies, the State Fire Marshal, local fire departments, and other interested parties. Representative Garrett requested that Committee members be given additional copies of the draft legislation to distribute to fire departments in their districts. The Chairman instructed the staff to do so.

#### Proposal No. 46 - Day Care Reimbursement

Staff distributed a preliminary report on Day Care Reimbursement to the Committee (see Attachment C). Chairman Lady inquired as to the individual eligibility requirements for day care reimbursement. He was informed that income eligibles were a category of recipients under Title XX that do not receive cash assistance. Persons earning up to 80 percent of the Kansas median income are eligible for 100 percent reimbursement. People earning from 80 percent to 110 percent of the Kansas median income are eligible for partial reimbursement on a sliding scale basis.

Chairman Lady then inquired as to how the money is distributed in Kansas. He was told that at present the \$250,000 of State General Funds available for this program are divided among the 17 area Social and Rehabilitation Service offices according to the total number of children under six years of age in each area. Representative Farrar requested a clarification on the distribution criteria; he asked if the money was distributed on the basis of total children under the age of six in each area or on the basis of total children under the age of six with the need for such services in each area. Staff indicated it was their understanding that the distribution was based on census data of the total number of children under the age of six in each area and not specifically on the basis of need. Representative Farrar commented that where the

OTHERS PRESENT AT MEETING

August 19, 1976

A. Victor Ferreros, State Department of Planning and Research  
J. Kanman, State Department of Planning and Research  
Elmer E. Mehle, Insurance Department  
George R. Rogge, State Fire Marshal Department  
Paul Markley, State Fire Marshal Department  
James Douglas, Division of Budget  
G. C. Stotts, Division of Budget  
Forrest L. Swall, Kansas Council on Crime and Delinquency  
Homer Cowan, Jr., The Western Insurance Company  
John K. Corkhill, KPERS  
Jack Hawn, KPERS  
Cecile B. Roney, K.P.T.A.  
Representative Sharon Hess, Wichita, Kansas  
Delores Seguia, Kansas Council on Crime and Delinquency  
Kevin Knight, Kansas Council on Crime and Delinquency  
Linda Creda, Mental Health Association of Johnson County  
Glorine Shelton, Kansas Council on Crime and Delinquency  
Karen Blank, American Civil Liberties Union  
Jane Sieverling, KAMH - Committee on Penal Reform  
Dennis Graham, Kansas Council on Crime and Delinquency  
Marilyn Bradt, League of Women Voters of Kansas  
George Thompson, Kansas Reception and Diagnostic Center  
Ann Heberger, League of Women Voters of Kansas  
Donna Berger, Kansas Reception and Diagnostic Center  
Robert R. Janeski, Kansas Reception and Diagnostic Center  
John Mendoza, State Department of Planning and Research  
William R. Arnold, Kansas Citizens for Justice  
Kathleen Sebelius, Department of Corrections  
German don Alvarado, Catholic Housing Services, Inc.  
Jane B. Werholtz, Kansas Council on Crime and Delinquency  
Robert Raines, Secretary of Corrections  
Jim Marquez, Governor's Office

August 20, 1976

Jim Maag, Governor's Office  
Ruth Dickinson, State Department of Planning and Research  
Representative Robert Frey  
Mr. Henry Helmke, Director, Southwest Kansas Drug and Alcohol Program

need is and the children are might be two different things. He then said that the more money the Legislature authorizes, the more the Legislature will have to be concerned about distribution. Chairman Lady said that if money is not used in one area, it can be transferred to another area.

Chairman Lady asked if the proposed increased rates for reimbursement for day care homes and day care centers would restrict the number of children who could be provided services on a new basis. He expressed concern since many of the areas had already used the money. Staff responded that the proposed rate increase was modest and would probably have a minimal effect on the number of children served.

Representative Ivy asked if economic feasibility requirements were considered in eligibility criteria. He pointed out that it might not be cost efficient for the state to provide a mother with three children free day care if the woman only earned a minimal amount of money. Representative Niles also expressed concern with economic feasibility. Staff responded that eligibility criteria were based on income and not on economic feasibility.

Chairman Lady instructed staff to develop a preliminary statement of conclusion for the report to present at the next Committee meeting.

#### Proposal No. 45 - State Computers

Staff distributed a memorandum concerning the computer survey to the Committee (Attachment D). The Committee was told that due to a delay in receipt of data the preliminary draft report was not available at present. A preliminary report should be completed within two weeks to permit mailing copies to the Committee members by September 10. That report will include data on: (1) Statewide summation of costs/operations; (2) Division of Computer Services; (3) Employment Security; and (4) Regents' institutions.

Staff told the Committee that several state agencies have expressed a desire to appear before the Committee to discuss changes in computer utilization they feel to be desirable. Chairman Lady commented that the subject of this interim computer study was to inventory the present capabilities and costs and was not for the purpose of recommending changes in the present system.

Representative Sharon Hess was then introduced to the Committee. Representative Hess spoke to the Committee about the use of computers in school systems at the local level. She said at present computers are being used by local school systems for two purposes: (1) administrative, and (2) instructional. She then discussed in detail the merits of computer use as an instructional program. She said computers aided students to learn and made learning fun.

Representative Hess then discussed the problem in the present use of computers by local school systems. She said that as school districts begin to realize the value of instructional computers and desire to purchase such systems, they are at the mercy of salesmen from various firms. The local person who purchases a system does not have adequate information on which to make such a decision. Consequently, school districts purchase computers which have two to three times the capacity needed. Unless sharing among local school districts occurs, resources are being wasted. In addition, Representative Hess pointed out that rural areas are at a disadvantage in that funds are limited and sharing of facilities is more difficult.

Representative Hess urged the Committee to investigate the possibility of coordination of local school system computer programs or development of a central plan for such services. She said a centralized system would require a large initial investment of state funds but if the trend toward computerized instruction persists it could save a great deal of money in the long run by encouraging sharing of services among school systems.

Senator Zimmerman asked if instruction of students in vocational computer use would require physical location of computers in each school system. Representative Hess said that terminals for each school district would be necessary but such equipment would be a much smaller cost than purchasing a computer. Representative Farrar said the computers in Wichita were already being funded through the School Finance Act and that it would be interesting to know how much the state is already contributing.

Proposal No. 40 - Retirement Matters

Chairman Lady introduced Mr. John K. Corkhill, Executive Secretary of the Public Employees Retirement System. Mr. Corkhill distributed a memorandum dated August 19, regarding actuarial cost ramifications of moving the retirement date for non-certificated school employees from September 1 to the close of the school year (Attachment E). In discussing the potential fiscal impact, he also referred to the July 14, memorandum sent to the Committee (Attachment F). He said the breakdown of individual job types listed in that memorandum is typical. Of the total 203 who are not under contract, 20 administrators representing 9.85 percent of the total would receive a total monthly benefit of \$6,757. That amount equals 33.3 percent of total monetary benefits payable to the entire group. Total cost, representing total monthly benefit payments would be \$20,238.

Mr. Corkhill referred to the August 19 memorandum and stated that the additional moneys that would be spent in benefit payments under the proposed plan would have no actuarial effect that would increase the employer contribution rate. He said the size of the amount to be paid would be relatively insignificant in comparison to total benefits paid.

Chairman Lady asked if the teachers had indicated they might request this change in date also. Mr. Corkhill said that many teachers had indicated they wanted such a change. Mr. Jack Hawn, Chief of the Benefit Section, said that even if teachers were added there would be no immediate actuarial effect. He said that perhaps in six or seven years there might be some effect but that it would be relatively insignificant.

General questions from Committee members regarding the nine-month and twelve-month teacher salary options were answered by Mr. Corkhill. He explained that if teachers' retirement payment dates were advanced to the end of the school year, all retiring teachers, even those on the twelve-month salary payment schedule, would be entitled to the payment.

The Committee recessed at 11:55 a.m.

Afternoon Session

The Committee reconvened at 1:30 p.m.

Proposal No. 42 - Comprehensive Corrections Plan

Chairman Lady introduced Mr. Robert Raines, Secretary of Corrections. Secretary Raines gave the Committee a brief overview of programs included in the Touche Ross and Co. report, which are currently being implemented. He described appropriations for implementation made by the 1976 Legislature.

Mr. Forrest Swall, a representative of the Kansas Council on Crime and Delinquency (KCCD) was then introduced by Chairman Lady. Mr. Swall read from a lengthy prepared statement (Attachment G). He emphasized that the Committee should examine the Governor's proposal for implementation of the Correctional Master Plan in relation to program effectiveness and cost. He said that the KCCD believes the capital outlay recommended by the Governor for new facilities -- \$17 million for the new prison -- cannot be justified in the absence of a more comprehensive approach to meeting correctional service needs.

Mr. Swall introduced Mr. William Arnold of KCCD to discuss in detail certain assumptions made by the organization in its review of the Correctional Master Plan. Mr. Arnold read from a prepared report entitled "A Correctional Policy Based on the Best Available Knowledge" (Attachment H). The statement discussed the effects of pre-sentence investigations, use of probation, probation supervision, and imprisonment.

Chairman Lady questioned Mr. Arnold about the KCCD statement that certainty of punishment versus severity of punishment was more influential. Mr. Arnold said the finding was not inconsistent with the KCCD proposal that more prisons were not needed since certainty is a reflection of getting caught and convicted and not necessarily

related to imprisonment. Mr. Swall added that the public views severity and certainty as synonymous but that was not actually true. He said prison may or may not relate to the whole issue.

Representative Farrar questioned the KCCD statement that presentence reports provide more information about offender's current circumstances thereby providing a more just procedure for sentencing. He said that sentencing offenders based on current circumstances without regard to previous crimes was not fair. Mr. Arnold explained that the current circumstances were in addition to previous convictions and were not used to the exclusion of past information about an offender. He said that at present, in most cases, the judge only has information about the offenders' past record and very little if any information on the present situation. Chairman Lady asked how many presentence investigations were now being conducted. Mr. Swall said that only 30 percent of all offenders received by the Kansas Reception and Diagnostic Center (KRDC) already have a presentence investigation completed. He also said that since KRDC had to do the other 70 percent, the few counties conducting their own are now carrying a disproportionate share of the cost burden. He cited Shawnee and Johnson counties as examples.

Representative Ivy asked several questions pertaining to the cost of implementing an expanded program of presentence investigation and probation services. Mr. Arnold said the cost of presentence investigations would not require a large increase in cost since the money saved by not expanding KRDC facilities would more than pay for contracting such services with mental health facilities. He said the exact cost of such a proposal was as of now unknown and suggested such a study could be made by the Kansas Legislative Research Department. Mr. Arnold also said that doubling the current level of probation services would cost much less than the institutionalization of offenders. He said the cost of probation (doubled) would be \$730 per offender compared to \$8,350 per offender for incarceration at the Kansas State Penitentiary. He also said that caseloads of adult probation officers could be much higher than they are now and the same level of success still be obtained.

Mr. Swall said that a cost comparison among alternative proposals needed to be made before the Legislature commits funds to implementation of the report. He commented that the cost of new facility construction and renovation under the Governor's proposal was estimated from \$17 to \$30 million, plus \$1 million a year for operating expenses. He said it would take a huge increase in the amount of field services to match that amount.

Representative Garrett inquired as to the origins of the KCCD. Mr. Swall said the organization was a citizen group which originated in the late 1960's for the purpose of penal reform in Kansas. He gave a brief description of past KCCD involvement and financing.

Chairman Lady thanked the KCCD and Mr. Swall for this presentation. He assured them the Committee would consider the recommendations offered in the report.

Staff presented the Committee with a report on correctional programming in neighboring states (Attachment I). The report summarized correctional reform in Missouri, Nebraska, and Oklahoma. Upon questioning from Chairman Lady, staff said the Oklahoma plan reflected regionalization in its approach to correctional programming but that approach may well be more a reflection of the consultant's report than Oklahoma's intention.

#### Proposal No. 62 - Sunset Laws

Staff presented the Committee with a report on sunset laws enacted by Colorado and Florida and with proposals considered in Iowa, Louisiana, Alaska, Minnesota, Illinois, and Texas. Federal sunset proposals were also reviewed (Attachment J).

Representative Farrar expressed interest in the Florida law which required that the Legislature review regulatory agencies in terms of public benefit of regulation. He said the Florida Legislature's "intent not to regulate" clause was an interesting concept. The Committee then discussed in general the concepts of zero based and fixed ceiling budgets.

Chairman Lady directed staff to mail copies of the various laws and other materials relating to the sunset concept to the Committee.

At 3:45 p.m. the Committee adjourned until 9:00 a.m., Friday, August 20, 1976.

August 20, 1976

Morning Session

The Special Committee on Ways and Means was called to order at 9:00 a.m. by Chairman Lady.

Proposal No. 41 - State Aid Programs to Local  
Facilities for the Care of the Mentally  
Ill, Retarded and Alcoholic

The Committee took a tour of Community Addiction Treatment Incorporated, a community-based alcoholism treatment facility. Ms. Sue Holt, Executive Director of that facility, explained the program in detail. Community Addiction Treatment, Incorporated consists of three distinct programs: (1) outpatient services; (2) inpatient services; and (3) therapeutic work services. The Committee toured the outpatient services program at Suite 400 of the Jayhawk Hotel. Due to time limitations a tour of the remaining facilities was not possible. However, Ms. Holt; Glen Leonardi, Assistant Director; and Phil Wallsmith, Coordinator of Outpatient Services; presented a slideshow and detailed description of the inpatient services and the therapeutic work services.

Ms. Holt said that the inpatient services, located in three houses on Lane Street in Topeka, was a program directed at the treatment of hard-core alcoholics and drug users who had failed in other types of treatment programs. She said that since the program deals with people with more serious addictive problems the average length of stay was six months, which is much longer than other types of treatment programs. She said that their programs reflected a medical treatment approach instead of the approach used by Alcoholics Anonymous and Halfway Houses.

Representative Niles asked about a success ratio for the inpatient services programs. Mr. Wallsmith said that the overall rate, which included everyone treated, was approximately 13 percent. He added that the longer a person remained in the inpatient program, the higher the success ratio was. He cited the success ratio as 25 percent for those persons remaining in the program for three months and 43 percent for those staying from four to six months. He said the outpatient success ratio was between 70 and 80 percent.

Ms. Holt told the Committee that funding for alcohol treatment programs was difficult to obtain. She said that Community Addiction Treatment, Inc., received funds from the Department of Social and Rehabilitation Services (SRS) under Title XIX since the program was considered medical treatment. She said that for a person to be eligible he had to have a medical card, which requires the person to have less than \$500.

Mr. Leonardi told the Committee that future fund receipts under Title XIX might depend on accreditation by SRS. He said that at present, licensure is a blanket process statewide which does not require program evaluation or enforcement of standards. Community Addiction Treatment, Inc., is licensed by the Joint Commission on the Accreditation of Hospitals and according to Mr. Leonardi, even that organization does not validate the quality of programs. He also said that although more strict enforcement of licensure is needed in Kansas, the issue is double-edged since accreditation increases program costs.

Ms. Holt said that other than Title XIX funding, the state had traditionally only supported state operated programs and had not made funds available for private treatment facilities. She said that this year was the first time in the ten-year history of Community Addiction Treatment, Inc., that state funds, other than Title XIX, have been available. At present the program has a grant from the state for a full-time psychologist. Ms. Holt said that programs like theirs needed financial aid and that the Legislature was the most appropriate source and provided the best means for ensuring funds were not used indiscriminately.

Chairman Lady asked if state funding of local facilities leads to duplication of services. Ms. Holt said that a state health planning agency checks such possibilities to prevent such duplication from occurring.

After completion of the tour, the Committee returned to the State House where Representative Robert Frey appeared before the Committee to discuss funding of local alcohol programs. Representative Frey introduced Mr. Henry Helmke, Director of the Southwest Kansas Drug and Alcohol Program in Liberal, Kansas. Mr. Helmke explained that his program was a much different approach than that used by Community Addiction Treatment, Inc. He said his program was a halfway house, based on the objective of maintaining sobriety of patients. The program receives most referrals from courts in the five surrounding counties.

Mr. Helmke said annual program costs was \$85,000. Of that amount, approximately \$40,000 was for salaries, \$5,000 for purchase of facilities, \$18,000 for food, and approximately \$22,000 for utilities, maintenance and miscellaneous items. He said the program has some earned income; last year approximately \$20,000 was paid by residents for room and board. Approximately \$20,000 was received from the Income Maintenance Unit of SRS for payment of treatment of unemployed workers. For the most part, these funds pay for only 30 days of treatment. The local United Fund organization provided \$7,000; miscellaneous fees amounted to \$3,000 in income; and \$7,000 was donated by a private foundation.

Mr. Helmke said that Title XX funds could only be used for staff and other direct expenses. He said that maintenance costs were a problem since Title XX funds could not be used. Senator Zimmerman questioned Mr. Helmke about licensing standards. Mr. Helmke said that the halfway house was licensed by the State Board of Health and involved a different type of licensure than that issued to a medical treatment facility such as Community Addiction Treatment, Inc. He said he was concerned that through licensing requirements his program will be required to do things it could not afford, would not have access to, and would not need. He cited medical services as an example. As more stringent licensing requirements are enforced, an increase in medical treatment services may be required. He said that medical services were adequate there but that new requirements might require more services which the area could not afford to provide and would not need.

Representative Ivy asked what arrangements were made by the halfway house to provide medical treatment. Mr. Helmke said that residents in need of medical treatment were referred on an emergency basis to area hospitals. He said approximately two people out of 100 exhibit severe psychosis and require medical treatment. Consequently, a very small portion of the budget is used for medical treatment and where possible, the patient pays for such treatment. He said out of 240 people housed last year, only five referrals to area hospitals were made.

Mr. Helmke also said that stricter licensing requirements could force unnecessary upgrading of personnel qualifications. Chairman Lady asked about the qualifications of the present staff. Mr. Helmke explained that two of the three counselors have college degrees and all three are certified by the State Department of Social and Rehabilitation Services as alcoholic counselors. An additional two trainees are employed. He said that, where possible, recovered alcoholics were employed as counselors.

Mr. Rein inquired as to how state money would be used in this program and Mr. Helmke's suggested criteria for distribution of such money. Mr. Helmke said that development and training of new staff personnel would be one use and that if possible, money could also be used for maintenance, repair, and remodeling of facilities. He said state money should be apportioned according to the number of clients served and cost of program.

Chairman Lady asked Representative Frey for suggestions as to a formula for distribution of state money to local alcohol programs. Representative Frey said that the emphasis between distribution of money for community based inpatient programs and private treatment facilities should be relatively equal. He had no suggestions as to specific formulas for the distribution of such funds.

Chairman Lady thanked both Representative Frey and Mr. Helmke for appearing before the Committee. Staff then presented the Committee with a written memorandum on state aid formulas for community based mental health and mental retardation programs in Colorado, Missouri, and Nebraska (Attachment K). The Committee discussed various aspects of the different formulas employed in those states.



Representative Farrar commented that Nebraska's system whereby counties pick up a share of institutional costs was puzzling in that it could endanger receipt of federal funds and did not provide incentives for development of local programs. Mr. Rein said that the county buy-in to state facilities was developed in Nebraska as an incentive for counties to develop their own community based facilities. He said that county payment for treatment of clients in state institutions was expensive and, therefore, impetus for community based programs was provided.

The Committee discussed the current method of distribution and the percentage distribution between mental health and mental retardation programs. Staff noted that the distribution of funds for the past year was 76 percent for mental health and 24 percent for mental retardation.

Chairman Lady said the effects of changes in the formula for distribution of funds to localities should be determined. He said alternative formulas should be analyzed by staff and SRS for possible effects.

The Committee recessed at 12:15 p.m.

#### Afternoon Session

The Committee reconvened at 1:30 p.m. and resumed discussion of Proposal No. 41.

Mr. Epps discussed the general philosophy underlying the development of alternative formulas for distribution of state funds to local mental health, mental retardation, and alcohol programs. He talked about the different types of characteristics the Committee and staff must concentrate on in developing such formulas. One key issue is a method of equalizing for differences in county taxes supporting such programs. He also cited the problem of balancing distribution on the basis of need versus per capita. He said the reimbursement method used in Colorado relates best to the issue of need for services but that it does not take into consideration local effort. A possible solution could be the addition of a maintenance of effort clause. He said the authority now in Kansas for counties is half a mill but actual use ranges from zero to half a mill.

Representative Farrar said that a maintenance of effort clause based on mill levy alone would not take into account valuation and urged that valuation be considered when discussing level of effort. Mr. Rein suggested that one formula might include a flat amount to each local agency with the remainder of the appropriation allocated on a per capita basis. Representative Ivy said he would be interested in seeing a formula that was balanced between contractual services and the ability to pay.

Chairman Lady requested that staff develop several alternative formulas to present to the Committee at the next meeting.

#### Proposal No. 42 - Comprehensive Corrections Plan

The Committee discussed future plans for study of the corrections plan. Staff pointed out that it was necessary to determine the reason for the Secretary of Correction's priorities for implementing the plan. One issue to be clarified is the reason for building a new institution; is the reasoning to decrease the population at the present institutions or is it to make space for additional commitments? Staff also said that the Governor's recommendations differed from those in the Touche Ross report, yet no one had explained why.

The Committee agreed that staff should analyze the corrections plan and develop questions relating to major issues. The staff should then inform Secretary Raines of those issues and request that he appear before the Committee at the September meeting to discuss those issues.

The meeting was adjourned at 2:45 p.m.

Prepared by Julie Mundy

Approved by Committee on:

  
(Date)

PRELIMINARY DISCUSSION DRAFT  
For Consideration by Special Committee  
on Ways and Means

Re Proposal No. 44--Arson Detection

AN ACT

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

New Section 1. (a) In the absence of fraud, malice or bad faith, no fire insurance company, statistical and reporting organization, or person who furnishes information to the state fire marshal in accordance with the provisions of K.S.A. 40-903 or 40-904, and any amendments thereto, shall be liable for damages in a civil action or shall be subject to criminal prosecution for any oral or written statement made or for any other action taken that is necessary to supply such information.

(b) The state fire marshal, or any authorized deputy or other authorized official of the office of the state fire marshal, may request any fire insurance company which is transacting business and investigating a fire loss of real or personal property in this state, to release any information in its possession relative to such loss. Such company shall release the information requested and shall cooperate with the state fire marshal or any such deputy or official. No such company or any one acting in its behalf, in the absence of fraud, malice or bad faith, shall be liable for damages in any civil action or shall be subject to criminal prosecution for any oral or written statement made or any other action taken that is necessary to supply information in accordance with this subsection.

New Sec. 2. The state fire marshal and any deputy or other official of the office of the state fire marshal who is authorized by the state fire marshal, is hereby authorized to make

arrests for the following crimes:

(a) Arson as defined in K.S.A. 21-3718 and any amendments to said section;

(b) aggravated arson as defined in K.S.A. 21-3719 and any amendments to said section;

(c) attempted arson as defined in K.S.A. 21-3301 and 21-3718 and any amendments to said sections;

(d) attempted aggravated arson as defined in K.S.A. 21-3301 and 21-3719 and any amendments to said sections;

(e) conspiracy to commit arson as defined in K.S.A. 21-3302 and 21-3718, and any amendments to said sections; and

(f) conspiracy to commit aggravated arson as defined in K.S.A. 21-3302 and 21-3719, and any amendments to said sections.

Sec. 3. K.S.A. 31-137 is hereby amended to read as follows:

31-137. (a) The state fire marshal, his all deputies of the state fire marshal, the chief of any organized fire department of any municipality, whether such fire department is regular or volunteer, or any and each member of any such fire department who has been duly authorized by the chief thereof, shall enforce the provisions of this act and any rules and regulations adopted pursuant thereto. Said persons are authorized to make any investigations deemed necessary of any fire or explosion occurring within this state; and they shall make an investigation of any fire or explosion occurring within this state, or an attempt to cause any fire or explosion within this state, if there is reason to believe that the fire was of an incendiary origin or was an attempt to defraud an insurance company. Whenever in any such investigation there is reason to believe that any fire or explosion was of an incendiary origin or was an attempt to defraud an insurance company, a report of such circumstances shall be made immediately to the state fire marshal.

(b) In order to carry out such investigations, the state fire marshal and those persons herein designated shall have the right and authority at all times of day or night to enter upon or examine, in accordance with existing laws and regulations, any

building or premise where any fire or explosion or attempt to cause a fire or explosion shall have occurred.

(c) Every person designated herein shall make a written report to the state fire marshal of the findings of any investigation conducted by ~~him~~ such person pursuant to this section ~~which shall be filed and shall file such report~~ in the office of the state fire marshal.

Sec. 4. K.S.A. 31-137 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

**40-903. Monthly record of losses; annual report to state fire marshal.** Every fire insurance company transacting business in this state is hereby required to file with the state fire marshal, through the statistical and reporting organization with which they are affiliated, as provided by K. S. A. 40-937, or through the secretary or other officer of the insurance company, a monthly record of fire losses showing the name of the insured, location of the property burned, and the probable cause of fire, and in addition, an annual report of all fires on which losses have been paid in the preceding calendar year, designating the class of occupancy divided by construction and protection and by cause of fire for each class, giving the total insurance, loss paid and sound value on the property destroyed for all classes and by each cause. Such annual report shall be made to the state fire marshal on or before the first day of March of each year. [L. 1927, ch. 231, 40-903; L. 1967, ch. 262, § 1; July 1.]

**40-904. Preliminary fire reports.** In the case of a fire of suspicious origin a preliminary report shall be made immediately to the state fire marshal through the statistical and reporting organization with which carrier is affiliated, as provided by K. S. A. 40-937, or through some officer of the insurance company, showing the name of the insured, the date of the fire, location, occupancy, and such facts and circumstances as shall come to their knowledge tending to establish the cause or origin of the fire. [L. 1927, ch. 231, 40-904; L. 1967, ch. 263, § 1; July 1.]

**21-3718. Arson.** (1) Arson is knowingly, by means of fire or explosive:

(a) Damaging any building or property in which another person has any interest without the consent of such other person; or

(b) Damaging any building or property with intent to injure or defraud an insurer or lienholder.

(2) Arson is a class C felony. [L. 1969, ch. 180, § 21-3718; July 1, 1970.]

**21-3719. Aggravated arson.** Aggravated arson is arson, as defined in section 21-3718, and committed upon a building or property in which there is some human being.

Aggravated arson is a class B felony. [L. 1969, ch. 180, § 21-3719; July 1, 1970.]

**21-3301. Attempt.** (1) An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.

(3) An attempt to commit a class A felony is a class C felony. An attempt to commit a felony other than a class A felony is a class E felony. An attempt to commit a misdemeanor is a class C misdemeanor. [L. 1969, ch. 180, § 21-3301; July 1, 1970.]

**21-3302. Conspiracy.** (1) A conspiracy is an agreement with another person to commit a crime or to assist to commit a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by him or by a co-conspirator.

(2) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of his co-conspirators, before any overt act in furtherance of the conspiracy has been committed by him or by a co-conspirator.

(3) Conspiracy to commit a class A felony is a class C felony. Conspiracy to commit a felony other than a class A felony is a class E felony. A conspiracy to commit a misdemeanor is a class C misdemeanor. [L. 1969, ch. 180, § 21-3302; July 1, 1970.]

**74-3302.** Director, tenure; salary and expenses; qualifications; assistants and employees; rules and regulations; investigations; gifts and property; eminent domain; game protectors, selection, qualifications and powers; local preserve protectors, sheriffs and deputy sheriffs. The commission shall appoint and employ a director of the forestry, fish and game commission who shall continue in office at the pleasure of the commission and who shall be in the unclassified service and shall receive an annual salary to be fixed by the governor with the approval of the state finance council, payable monthly, and the necessary and actual traveling expenses. The director shall be selected with special reference to his training, experience, fitness and knowledge of the duties to be performed by him, and shall have had some education or training in fish and wildlife biology or equivalent experience. The director, with the approval of the commission, shall appoint such assistants and employees as may be necessary to carry out the provisions of this act or of any laws of the state affecting the powers and duties of said commission, all of whom, with the exception of the chief legal counsel, shall be in the classified service under the Kansas civil service act. Each employee in each classified position shall attain permanent status in a classified position without examination and without a probationary period: *Provided*, That civil service classification procedure shall be followed in allocating positions to classes. Classes of positions and salary ranges shall be established upon the motion by the director of the department of administration which may be subsequently approved, modified or disapproved at the next meeting of the finance council. The number thereof shall be subject to the approval of the commission.

The commission hereby created shall adopt such rules and regulations not inconsistent with the laws governing its organization and procedure and the administration of the provisions of this act as may be deemed expedient. Such commission may also make and enforce reasonable rules and regulations concerning the use and occupancy of land and property under its control, may provide and develop facilities for outdoor recreation, may conduct such investigations as it may deem necessary for the proper administration of this act, and on behalf of the people of the state the commission may accept gifts and grants of land and other property and shall have the authority to buy, sell and exchange

or condemn land or other property for any of the purposes contemplated by this act. The commission shall make such rules and regulations for the protection of lands and property under its control against wrongful use or occupancy as will insure the carrying out of the intent of this act or to protect the same from depredation or to preserve such lands and property from molestations, spoliation, destruction or any other improper use thereof.

Said director shall by and with the consent and approval of the commission, organize a game protection service and employ game protectors. The director may, with the approval of the commission, appoint local preserve protectors for the purpose of protecting and supervising fish and game on preserves under the jurisdiction of the forestry, fish and game commission. State game protectors, sheriffs and deputy sheriffs shall have the power and authority: (a) To enforce all the laws of the state relating to state parks, recreational and game management areas, game, fish, furbearers, wild birds and wild animals and the rules and regulations of the forestry, fish and game commission relative thereto; (b) to serve warrants and subpoenas issued for the examination, investigation or trial of all offenses against the laws and regulations relating to game, fish, furbearers, wild birds and animals; (c) to carry firearms or weapons concealed or otherwise, in the performance of their duties.

Neither the director nor any other person appointed or employed under the authority of this section, shall be over sixty (60) years of age when initially employed, but this provision

shall not affect any employee of the commission who is employed at the time this act takes effect. [K. S. A. 74-3302; L. 1974, ch. 361, § 67; July 1.]



## MEMORANDUM

TO: Special Committee on Ways and Means August 12, 1976  
FROM: Kansas Legislative Research Department  
RE: Preliminary Report on Proposal No. 46 -  
Day Care Reimbursement

Background

Proposal No. 46 directed the Committee to review the reimbursement system and levels of reimbursement for the day care programs funded by the Department of Social and Rehabilitation Services. The programs in question include the purchase of day care for Aid to Families with Dependent Children and qualifying families under Title XX of the Social Security Act, so-called "income eligibles." Interest in the matter has focused on both the level of reimbursement as well as the differential rate policy as applied to day care centers and day care homes.

A measure was introduced in the 1976 session of the Legislature that would have eliminated the rate differential and provided for like rates for both day care homes and day care centers. In its consideration of the measure, the Senate Committee on Ways and Means requested that the matter be an item of interim study. At the time the study was authorized the Department was reimbursing day care homes at a flat rate of \$3.85 per day. Centers were required to submit cost statements to the Department with the reimbursement being made at allowable cost up to a maximum of \$5.50 per day.

Committee Activity

Initial consideration of the matter focused on the joint licensing responsibilities of the Department of Social and Rehabilitation Services and the Department of Health and Environment. Representatives of each of the departments appeared before the Committee explaining the licensing requirements for each type of care. Day care homes are licensed for up to six children and generally operated in the context of the family home. Day care centers are licensed for seven or more children and are generally housed in separate free-standing facilities or public or quasi-public facilities. Many of them are operated on a non-profit basis. Day care center licensing requirements are generally more numerous and more stringent than are the requirements for day care homes. Centers are generally better equipped and more likely

to be staffed by trained personnel which makes them more costly to operate. In its consideration of the licensing requirements, the Committee gave special attention to the home capacity limitation on the number of children that can be cared for under the age of two. Kansas licensing requirements for day care homes limit capacity to four if two children are cared for under the age of two.

The Committee also received testimony from representatives of various day care organizations around the state, including the Wyandotte Association for Child Care and the Wichita Child Day Care Association. Testimony centered on the need for increasing the reimbursement rates.

The Committee also surveyed neighboring states with respect to their policy on capacity, rate differentials, capacity limitations on infants and rates for homes and centers. In addition to Kansas, seven neighboring states were surveyed including Arkansas, Colorado, Missouri, Nebraska, New Mexico, Oklahoma, and Wyoming. Of the eight states, "Home" care capacity was limited to five children in two states, six children in four states (including Kansas), seven children in one state and ten children in one state (Arkansas). Conversely, "Center" care was defined as six or more children in two states, seven or more children in four states (including Kansas), eight or more children in one state and eleven or more children in one state (Oklahoma).

A variety of payment standards and rate differentials were revealed. Four of the states (Kansas, Nebraska, Oklahoma, and Wyoming) had a specific rate differential between "Home" care and "Center" care with the balance of the states prescribing no specific differentials. The average rates for "Homes" and "Centers" in the latter group however, suggested a distinct differentiation in rates be they based on cost, negotiation or usual and customary charges. With respect to payment rates, "Home" care varied from up to a maximum of \$3.00 per day in Oklahoma to a maximum of \$5.00 per day in Nebraska. (Kansas provides for a flat fee of \$3.85 per day.) "Center" rates varied from up to a maximum of \$4.00 per day in New Mexico to up to a maximum of \$6.50 per day in Nebraska. In certain instances, "Center" rates could be even higher in Wyoming where reimbursement is made at the "private-pay" rate. In addition, Missouri reported a separate payment standard for Title XX income eligible/donated funds contracts wherein payment is based on actual cost. Such payments were reported to be running from \$7.00 to \$10.00 per day.

The Arkansas system contained a unique feature wherein a post-contract adjustment is made based on actual audited costs (subject, of course, to their \$6.00 maximum).

Each of the states prescribed some restriction on the care of children under the age of two. In three of the states (including Kansas), maximum authorized capacity is reduced where care is provided to children under the age of two. Three of the states provide limitations on the number of infants that may be cared for without reducing capacity and the balance (two states) prescribe increased staff/child ratios when such care is provided.

At the July meeting Dr. Robert Harder, Secretary of the Department of Social and Rehabilitation Services, proposed new increased rates to become effective in August or September. The new rates increase the reimbursement for day care homes from a flat rate of \$3.85 per day to \$4.00 per day. Rates for day care centers will continue to be based on allowable costs but the maximum daily rate is increased from \$5.50 to \$5.75. The adjustment also contains a graduated feature based on the age of the child and the hours of care provided the child per day.

#### Conclusion/Recommendations

## MEMORANDUM

TO: Special Committee on Ways and Means August 17, 1976  
FROM: Kansas Legislative Research Department  
RE: Computer Survey - Proposal No. 45

At the direction of the Committee, the staff prepared a survey document for distribution to all state agencies which either have data processing equipment or purchase data processing services. The original study plan called for a preliminary draft report to be available for the August meeting. Unfortunately, delay in receipt of some data have not permitted the staff to validate all responses received to date. A number of agencies experienced difficulty in identifying Fiscal Year 1976 expenditures for data processing immediately following the close of the fiscal year. To date, all major users of data processing have complied with the request with only a few smaller users still outstanding. The data gathering process should be completed within the next week.

Format of Report

A preliminary report should be completed to permit mailing copies to the Committee members by September 10. That report will generally adhere to the following outline:

- I. Summation of Costs/Operations
  - A. Summary of FY 1976 costs, number of personnel, etc.
  - B. Identification of major users and installations; cooperative efforts; purchased services; etc.
- II. Division of Computer Services
  - A. Hardware owned and leased as of June 30, 1976
  - B. Costs - FY 1976

- C. Personnel (numbers, type, and cost).
- D. Service operation concept
- E. User agencies served by DCS (short description of applications, costs, personnel, agency equipment, etc.)

### III. Employment Security

Same as above

### IV. Regents' Institutions

- A. Summary (same data as for Division of Computer Services)
- B. Agency by agency (same as above)

### Conclusion

The staff has been advised by several state agencies of their desire to appear before the Committee to not only discuss the current "state of the art" in data processing as applied in state government but to also discuss changes in computer utilization they feel to be desirable. If the Committee would be interested in such a discussion at the September meeting, the staff will schedule agency personnel to appear.

DR. DON GOETZ, Chairman  
W. L. KER, JR., Vice-Chairman  
VIRGIL A. BASGALL  
RICHARD B. HANGER  
DON S. PETERS  
THOMAS W. ROSS  
ROBERT W. WAGSTAFF



ATTACHMENT E

## PUBLIC EMPLOYEES RETIREMENT SYSTEM

400 First National Bank Tower  
One Townsite Plaza  
Topeka, Kansas 66603

August 19, 1976

## MEMORANDUM

TO: Mr. John K. Corkhill, Executive Secretary

FROM: Jack L. Hawn, Chief of Benefit Section

RE: Conversation with Dr. John Mackin

On August 18, 1976, I contacted Dr. John Mackin of the Martin E. Segal Company regarding the actuarial cost ramifications, if any, relative to my memo of July 14. You will recall this particular memo was in response to the request of the Special Committee on Ways and Means to compile statistics regarding school members other than teachers who are required to retire on September 1 in compliance with the Retirement System's statutes.

Dr. Mackin indicated that the mere fact that additional monies would be spent in benefit payments would have no actuarial effect which would increase the employer contribution rate. Dr. Mackin indicated that the only time this would have an effect actuarially would be if in moving up the retirement date it altered the average age at retirement of school employees, which this would not do, as you are only talking about a maximum of three months.

I did mention to Dr. Mackin that should legislation be passed affecting these individuals, the teachers more than likely would request similar legislation in their behalf. He again indicated this would have no immediate actuarial effect but over the years the additional amount of benefits paid to such a large group would possibly show up in some respect in the employers' rate.

JLH:gn

DR. MOND GOETZ, Chairman  
 W. W. WALKER, JR., Vice-Chairman  
 RICH. A. BASGALL  
 RICHARD B. HANGER  
 DON S. PETERS  
 THOMAS W. ROSS  
 ROBERT W. WAGSTAFF



ATTACHMENT F

## PUBLIC EMPLOYEES RETIREMENT SYSTEM

400 First National Bank Tower

One Townsite Plaza

Topcka, Kansas 66603

July 14, 1976

## MEMORANDUM

TO: Mr. John K. Corkhill, Executive Secretary

FROM: Jack L. Hawn, Chief of Benefit Section

RE: Special Committee Ways and Means Request

You will recall at the June 24 meeting of the Special Committee on Ways and Means, Representative Wendell Lady requested that we compile statistics regarding school members other than teachers who are required to retire on September 1 in compliance with the Retirement System's statutes.

In calendar year 1975 a total of 863 KPERS school members retired. Of this number 606 retired on September 1, 1975. The remainder (257) were either inactive vesteds who can retire at any time or individuals who were allowed by the KPERS Board to retire prior to the end of the school year due to extenuating circumstances. Of the 606 who retired September 1, following is a breakdown of the type of employment these individuals were in at the time of retirement:

JANITORS	96
COOKS	55
SECRETARIES AND OTHER CLERICAL	22
ADMINISTRATORS	20
LIBRARIANS	4
NURSES	4
TEACHERS' AIDES	<u>2</u>
TOTAL	203

The 203 individuals listed above represent total monthly benefit payments of \$20,238.54. Of the 20 administrators to whom the 1976 bill made

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Memo to Mr. Corkhill

July 14, 1976

specific reference, their total monthly benefit payments alone amounted to \$6,757.57. Otherwise, the administrators represented 9.85% of the individuals involved and 33.39% of the total monthly benefits payable to these individuals.

These figures are probably representative of any given year of retirements and, therefore, if legislation were adopted which would allow school members other than teachers to retire, say, at the end of the school term; i.e., June 1, you could reasonably expect to pay approximately \$60,000 per year in additional benefits.

JLH:gn

cc: Alden Shields  
Dennis Williams

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A STATEMENT TO:

THE INTERIM SPECIAL COMMITTEE ON  
WAYS AND MEANS

Wendell Lady, Chairman

SUBJECT: REVIEW OF MASTER COMPREHENSIVE  
CORRECTIONS PLAN

FROM: THE KANSAS COUNCIL ON CRIME AND DELINQUENCY  
THE CORRECTIONS PLANS COMMITTEE

DATE: AUGUST 19, 1976

Corrections Plans Committee Members:

Sister Delores Brinkel, Kansas City

Marilyn Bradt, Lawrence

Karen Blank, Topeka

German de Alvarado, Lawrence

William Arnold, Lawrence

Jane Werholtz, Topeka

Ann Heberger, Overland Park

*Jane Seewerling, Fairway*

Glorine Shelton, Salina

Diane Simpson, Salina

Mary Ann Bradford, Topeka

Donnis Graham, Lawrence

Sister Mary Lou Roberts, Salina

Marston McCluggage, Lawrence

Forrest Swall, Lawrence, Chairman

Organizations Represented by the Corrections Plans Committee Members of the  
Kansas Council on Crime and Delinquency

The Kansas League of Women Voters

The Kansas Mental Health Association

The Kansas Trial Lawyers Association

The Kansas Catholic Conference

The American Civil Liberties Union of Kansas

## Introduction

Since 1970 citizen groups in Kansas have been active participants in studying penal reform needs in Kansas. The citizen effort began with an in-depth review of all the major adult prison programs and facilities. This study and review was published in two volumes and each member of the legislature was furnished at least one copy.

During this period the Legislature undertook an effort to make fundamental changes in the corrections laws in Kansas, in the 1972 and 1973 sessions. Our citizen groups supported you in that effort.

The active efforts of the citizen groups has continued. This past summer the Kansas Council on Crime and Delinquency has assembled a Corrections Plans Committee to carefully review the Touche Ross eight-year plan and the current proposals offered by Governor Bennett in response to that plan. This committee of citizens from across the state, representing six major organizations, has met 15 times, reviewing the Touche Ross plan, the Governor's proposals, interviewing officials, studying many other source materials, and carefully developing recommendations. Our review of these proposals is not an isolated effort. This review is undertaken with a keen awareness of what has led up to the present state of affairs in corrections in Kansas, including:

- the establishment of KRDC in the early 1960's,
- the riots at KSP in 1969,
- the development of the Correctional Vocational Training Center,
- the reorganization of the Department of Corrections,
- the significant decline in population in Kansas prisons,
- the selection and appointment of the Secretary of Corrections in 1974,

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- the beginning of an increase in prison populations in the last two years,
- the change of key administrators at our major penal institutions, and
- the GCCA-funded \$200,000, 8-year plan of this past year.

#### THE NEED

We have studied the figures that reveal the increase in the number of persons being convicted in the criminal courts. With this increase there is a need for programs that help protect the public and if possible, foster changes in the behavior of offenders.

We recognize the crowded nature of the present correctional facilities and agree that ways must be found to relieve the over-crowding and provide more useful programs for prisoners. However, the degree of the immediate need for new facilities may have been exaggerated in the Governor's information provided by letter to each of you.

There is a need for carefully prepared individual assessments on persons convicted of felonies. Also, programs of incarceration or supervision in the community should be relevant to the needs of each person convicted.

We know that medical care and mental health treatment for the incarcerated offenders are grossly inadequate and that steps must be taken to improve these services.

All of these needs are consistent with the Governor's views and the views expressed by the Secretary of Corrections. However, we would add one more which, in our study, seems noticeably absent: the need to examine the correctional aspect of the criminal justice system in Kansas in relation to the total criminal justice system. This we find to be a glaring deficiency of the Touche Ross report as well as the Governor's recommendation.

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So far, we have presented to the Interim Committee the current needs confronting our corrections system. In the rest of our presentation we will be presenting a description of the serious limitations of the Governor's recommendations, and we will offer specific recommendations for policies and programs more in keeping with knowledge in corrections than the Governor's proposals, and much less costly than the Governor's proposals in both the short- and long-range picture.

This three-fold presentation, we realize, is not an easy undertaking. Facing this committee armed with basically a three-page report, and a 10-page statement with a few supportive documents compared with a 177-page fine-print report prepared by Touche Ross & Co., a message from the Governor along with an array of supplemental materials from the Secretary of Corrections makes us seem poorly armed. We may be a little like David, armed with a simple sling shot, facing a giant Goliath, covered with protective armor.

Nevertheless, as citizens and taxpayers we must present our findings to this Committee. We do so believing you will take these findings seriously and you will require answers to the questions and issues raised before committing the state to spending millions of dollars for prisons we may not need.

#### THE GOVERNOR'S PLAN

An examination of the Governor's proposal reveals serious deficiencies.

The most serious deficiency is that it deals only with the obvious problems of institution overcrowding and basic services. The remedies proposed represent essentially the same old remedies.

The specific recommendations of the Governor are as follows:

- A. A 125-bed unit for the Kansas Reception and Diagnostic Center.

Without considering other less costly approaches to

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individualized evaluations on convicted offenders, the Governor proposes an expansion of the KRDC facility. Yet it has been documented that the function of KRDC is not effectively related to programs at our prisons.

We believe the following questions should be answered in considering the Governor's proposal for a new prison:

1. How will the building of another prison have an impact on crime reduction?
2. How does the Governor reconcile the choice of a new prison with the wide disparity of cost effectiveness, considering construction/operating costs of a prison versus funding alternatives that are much less costly?
3. We know that expanding facilities result in greater reliance on prisons by the courts, and is associated with minimizing less costly alternatives; knowing this, how does the Governor rationalize a public policy that reinforces an endless circle of spending?

B. The 200- to 400-bed "Medium Security" Prison:

The Governor's major rationale for the construction of this facility is to relieve over-crowding and reduce the prison populations to more manageable levels. However, the construction of this prison will neither reduce the condition of over-crowding nor help solve management problems.

By the time the medium security facility is constructed our prisons will still be over-crowded. There will be a strong temptation to fill the new facility beyond its capacity and we will,

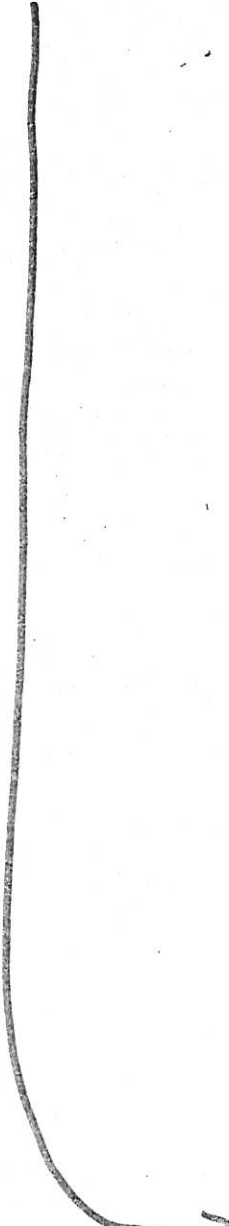
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based on the Governor's present reasoning, be considering the addition of more prisons.

At a time when government is being criticized for its bigness and continued expansion, the Governor calls for a vastly expanded state corrections capital outlay. This conflicts with urgings by leading corrections administrators for a greatly expanded use of community alternatives.

Our criticism of the Governor's proposal for a new medium security prison is consistent with the American Corrections Association position adopted February 20, 1976, which calls for "the support of alternatives to institutionalization" and the establishment of "reasonable criteria for determining that state and local jurisdictions have developed plans and programs for the deinstitutionalization of corrections to an extent consistent with the public safety and that the meeting of such criteria be a prerequisite for funding of capital outlay for capital improvements to existing plants and new institutional construction."

(May-June 1976, American Journal of Corrections, p. 6)

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- C. The 100-bed dormitories for Kansas State Penitentiary and Kansas State Industrial Reformatory:

The 100-bed dormitories constitute an expansion of the present prisons. The Governor, in proposing a new medium security facility, emphasized the need for smaller populations for more manageable units. Yet with the addition of 100-bed dormitory facilities at KSP and KSIR the size is increased, contrary to the Governor's stated objective to achieve smaller, more "manageable" population levels.

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The security problems outside dormitories would create are not dealt with. Minimum security outside dormitories will add to the problem of contraband. Access to the prison programs will be limited. The purpose of the prison will be confused and the function will be fragmented; there is bound to be a corresponding set of management problems.

The Governor suggests that the 100-bed dormitories are a temporary solution to relieve current over-crowding and allow for remodeling of present cell houses. However, he ignores the fact that such "temporary" arrangements have a way of becoming permanent, and that this is a grossly expensive way to provide a temporary solution.

D. Deficits in the Governor's proposal.

Another serious deficiency in the Governor's proposal is what he does not recommend as well as what he does recommend.

He makes no recommendation with regard to a unified state-wide probation service. Probation, the supervision of the convicted felony offender in the community rather than commitment to prison, is the most widely used alternative to prison and has had a significant impact on prison populations. As you may know, in Kansas we have a split probation system, with probation services provided by state officers in some areas and by local county officers in others. However, there is no uniformity of services and great disparity of quality of service. It is also extremely significant to note that, in terms of cost-effectiveness, with a given offender population, imprisonment has been no more effective in reducing crime and protecting the public than has probation - yet

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probation services are annually \$367 per capita as compared to \$8,350 for the Kansas State Penitentiary (a 1-23 ratio) and to \$13,528 for the Kansas Correctional-Vocational Training Center (a 1-37 ratio).

The Governor makes no recommendation regarding mandatory presentence investigations on all convicted felony offenders. Yet corrections material provides considerable evidence that judges make more effective sentencing decisions with respect to public protection and offender rehabilitation if they have the benefit of sound information. Many Kansas judges do not have presentence information. A high percentage of persons are committed to Kansas prisons with no presentence assessment. This is especially true of Sedgwick County which accounts for nearly 40% of our prison population. This is also true of Wyandotte County and a number of other less populated judicial districts over the state.

The Governor's neglect of these important considerations and his failure to identify remedies in other segments of the criminal justice system has the effect of placing a heavy burden on corrections to solve problems that are part of the entire criminal justice system - law enforcement, the courts, and the community.

#### CITIZEN RECOMMENDATIONS

We realize that it is not enough to criticize the Governor's proposals. Valid criticisms call for alternative recommendations. Our recommendations are incorporated in the material you have from the Corrections Plans Committee. These summarized are as follows:



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1. Establishing a policy of mandatory presentence investigation for all convicted felons, to be carried out in the community. These investigations should be conducted by or under the supervision of the Kansas Department of Corrections in conformance with standards established by the Department of Corrections.
2. Establish a procedure for utilizing local medical and mental health resources for the medical and psychiatric evaluations currently carried out at the Reception Diagnostic Center. Standard setting and supervision would need to be provided by the Department of Corrections. When needed, the Reception Diagnostic Center could serve as a back-up to the local services.
3. Carefully evaluate the effects of presentence evaluations and the effectiveness of the local medical and mental health resources on the total system for at least a one-year period before an expansion of KRDC is considered.
4. The further development of state-funded community-based programs for nonviolent convicted felons.
5. The development, expansion, and updating of programs in existing correctional units: prisons, work release centers, and honor camps.
6. The construction of additional facilities only after community programs have been established and programs in existing correctional units have been developed, expanded, and updated consistent with the Kansas Department of Corrections' own recommendations.
7. The establishment of a uniform state-wide probation system that would require a minimum standard of service for all county probation departments; or the assumption by the Department of Corrections of all felony probation services.

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The adoption of these policies would go a long way in achieving the objectives set out by the Governor's statements. They would provide for at least as much public protection, they would offer more potential for offender rehabilitation, they would contribute to a reduction in the present rate of increase in our prison population, and finally they could be implemented with no immediate capital outlay for new prison facilities.

There will be a cost factor in the establishment of the programs recommended. But this cost will compare favorably with the cost of administering the additional operations in a greatly expanded prison system as proposed by the Governor.

The assumptions that have guided us in formulating these recommendations are included in a one-page statement in your packet.

All of these recommendations are consistent with the recommendations set forth in the Corrections report of the Advisory Commission on Criminal Justice Standards and Goals. They coincide with recent statements adopted by the American Corrections Association, and they are in full agreement with the policy statements of the National Council on Crime and Delinquency.

#### CONCLUSION

Our conclusions are two-fold:

1. We cannot support the Governor's proposals, nor the even more expensive recommendation stated in the Touche Ross construction proposals.
2. We are compelled to urge a more comprehensive and less costly approach to our corrections problems.

The Governor's proposals must be studied in light of the excessive costs they will impose on the state in the immediate future as well as over the years. His proposals must also be reviewed in light of the comparatively smaller costs associated with alternative approaches.

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The Governor's proposals must be examined in relation to program effectiveness. How well will the goals of public safety, offender rehabilitation, and institutional management be achieved? The underlying assumptions of the Governor's proposals must be clarified and evaluated in light of current knowledge in corrections and systems planning. His proposals and his assumptions must also be considered in relation to the well thought-out positions by three of our national standard-setting bodies - public and private - named in this statement.

Finally we believe that the capital outlay recommended by the Governor for new facilities - \$17 million for the new prison alone - cannot be justified in the absence of a more comprehensive approach to meeting correctional service needs.

## A Correctional Policy Based on the Best Available Knowledge

The People of Kansas and their elected representatives do not have to be satisfied to merely react to crime or to the judgements or crime by carrying forward old policies of imprisoning everyone sentenced under present arrangements. Rather, we can design our reaction to crime in the light of the best knowledge available about what works to rehabilitate offenders. Happily, this knowledge clearly suggests that what works best is also the least expensive. The following questions and their answers provide the basis of the proposals by the Kansas Citizens for Justice for correctional plans in Kansas.

1. Will requiring pre-sentence investigations of offenders reduce the number of persons sentenced to our Department of Corrections?

Answer: We cannot be sure, but the evidence makes such a reduction lively.

We do know that probation officers' recommendations for probation are very likely to be followed. Carter and Wilkins (references cited in this text are listed at the end alphabetically by author and date) reported in 1967 on a series of studies of federal and California court operations. Judges follow the recommendations probation officers make for probation in pre-sentence investigation reports over 95% of the time, and judges follow probation officers' recommendations for imprisonment about 80% of the time. Prosecuting attorneys also often give recommendations for sentencing, and judges widely give credence to these prosecutors' recommendations. (Blumberg, 1967: 117-137; Casper, 1972: Chps. 4 and 5; and Hogarth, 1971: 186-193). Although I cannot find any data on the subject, it is reasonable to assume that prosecutors would likely be "tougher" than probation officers in their recommendations. Furthermore, it can be shown (Hogarth, 1971: Chps. 19 and 20) that the single most important criterion judges use in pronouncing sentence is prior criminal record. This means that people get sentenced for past offenses, to a certain extent. The pre-sentence report provides information about offenders' current circumstances on which to base sentences, clearly a more just procedure.

2. Does the use of probation increase public danger from future crime?

Answer: Definitely not.

The question must be more precisely put this way: are offenders who are alike in significant characteristics any more likely to repeat their offending behavior when put on probation than they are when they are imprisoned and released on parole? Because of the inconsistency of sentencing in the United States and elsewhere, it is possible to compare like individuals who were put on probation and who were imprisoned and released on parole. Sparks (1968) describes five such studies (two in England, one in Wisconsin, and two in California) making such comparisons which show, almost uniformly, that first offenders are less likely to repeat their offenses if put on probation than if imprisoned and that recidivists (people with prior records) do as well on probation as they do after imprisonment. Four experimental studies in which persons were randomly assigned to probation or to imprisonment (the two populations, therefore, were very similar) revealed higher success rates on probation than on parole after imprisonment, but there were some problems about these studies so they are not definitive answers to our question. To answer the question the other way around, imprisonment is no more likely to prevent future criminality in a given type of offender than is probation.

3. Could more people be put on probation without decreasing public safety?

Answer: very probably, yes.

In a California study done several years ago when the use of probation was more popular than it is now, it was estimated (on the grounds the offenders were like those for whom probation usually worked) that 20% of the adults in prisons could have been put on probation without increasing failure rates on probation. Another study, one of juveniles, indicated that a total of twice as many could be put on probation as were being put on probation at the time (both studies cited in Sparks, 1968). Three other studies examined differ over time or space in the proportions of persons put probation and found that failures on probation did not vary much as the numbers of people put on probation changed drastically. In other words, when lots of people were being imprisoned, the imprisoned included many who could do as well on probation as those who received the lesser punishment. (Lipton, Martinson, and Wilks, 1975: 56-58).

4. Does intensive probation supervision increase public safety?

Answer: for juveniles, definitely yes. For adults, probably not.

Lipton, Martinson, and Wilks (1975: 27-29 and 46-49) carefully review seven studies of intensive probation (caseloads of 15 or 16 or fewer) and found that reductions in failures for both boys and girls under 18 were clearly associated with the intensive supervision. The one study they describe of varying caseloads for adults did not seem to have any effect on the failure rate. Other studies seem to suggest that varying caseload size for adult parolees does not effect their failure rate, so it is reasonable that varying probation caseload size would have little effect on adults.

5. Does imprisoning people longer make them more likely to succeed after they get out?

Answer: the relation of sentence length and success rate is curvilinear.

Lipton, Martinson, and Wilks (1975: 81-84) review five studies showing that rates of success are lowest for those serving three months or less and for those serving over two or three years. Increasing age, alone, accounts for part of the increasing success of those who have served long terms. In addition, those serving long sentences are often convicted of inter-personal crimes for which failure rates tend to be low regardless of treatment applied. For both juveniles and adults, but particularly for juveniles, short sentences (or shortening sentences) produce the lowest failure rates.

6. Does imprisoning people deter others from committing crime?

Answer: we absolutely cannot tell at this time.

This conclusion is based on Jack Gibbs' analysis of the evidence as of 1975. (Chp. 1). As I read the evidence, it says that severity of punishment (usually measured by length of sentence) is very slightly related to the incidence of property crimes if the chance of getting caught is high and that severities unrelated to rates of expressive or emotional crimes. Certainty of getting caught, convicted, and imprisoned is more strongly related to offending, but the actual certainty is so low for the vast majority of our crimes that the data don't mean much at all.

7. What does all this mean for Kansas?

Answer: the sensible course of action is immediate creation of added programs for probationers and revision of the code to encourage judges to use additional probation.

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## MEMORANDUM

August 12, 1976

TO: Special Committee on Ways and Means

FROM: Kansas Legislative Research Department

RE: Correctional Programs in Neighboring States

At the Committee's request, efforts were undertaken to determine what neighboring states have done toward "correctional reform." In surveying three neighboring states, it was found that all have undertaken an assessment of their correctional facilities and programs. Oklahoma and Nebraska have hired consultants to conduct studies of their correctional systems and their needs. Missouri has not utilized outside consultants nor developed a written comprehensive plan. All three states are experiencing an increase in the number of commitments and have assessed their current institutions to be overcrowded, deteriorating and unsuitable for "modern day" rehabilitative programs. The planning efforts in all three states have suggested a need for new construction as well as improvements in the areas of personnel and inmate treatment and programs.

In Missouri the initial planning by the Department of Corrections calls for two minimum security institutions of 500 capacity to be located in or near the two major population centers. Moneys have been appropriated for construction of one of the two facilities but site selection problems have delayed construction. The new institutions were to provide additional beds and to allow phase-out of existing beds at the Penitentiary. A recent decision will relocate the female inmates to available housing at the Renz Farm facility and redesignate the State Correctional Center for Women as a pre-release center for males.

The primary concern in Nebraska has tended to be one of replacing existing facilities. During the 1974 legislative session moneys were appropriated for construction of a separate Diagnostic and Evaluation Center. In the 1975 legislative session planning moneys were appropriated for replacement of the Reformatory with two small minimum security institutions and for replacing or revamping the Penitentiary into a maximum security facility with a capacity of not more than 250. However, like in Missouri, no construction has begun. The Diagnostic Center project has been delayed because of citizen concern over the proposed site. Planning is proceeding on the remaining project with construction of a



medium security facility in Lincoln to begin in the current year and a medium security facility in Omaha to begin next year. A decision concerning the maximum security facility has not been finalized.

The immediate goal in Oklahoma is to provide additional beds in order to relieve the population pressure principally at the Penitentiary in McAlistier. During the past legislative session moneys were appropriated for construction of a new Reception Center, a new medium security institution, and three new work release centers.

In terms of inmate population levels, all three states indicate that commitment rates are increasing. In comparison, Missouri has the greater number of total inmates and the greater number confined within one institution (see Attachment A). The following table reflects the total inmate counts on two dates for Kansas and the three neighboring states:

<u>State</u>	<u>1-1-75</u>	<u>1-1-76</u>	<u>Percent Increase</u>
Kansas	1,421	1,696	19.4
Oklahoma	2,867	3,435	19.8
Missouri	3,754	4,150	10.5
Nebraska	1,254	1,259	.4

In all three neighboring states some form of reorganization has occurred within the past two to three years to strengthen the correctional management structure. In addition the correctional personnel in those states are stressing the need for employee training, better information systems, and more work and treatment programs for inmates. However, no suggested innovations are obvious. Both Oklahoma and Nebraska have established a number of work release centers while Missouri has established five community service centers to serve the offender after release for counseling and job placement.

In comparing the consultant reports of Nebraska and Oklahoma, the Nebraska reports are oriented toward facilities design while the Oklahoma report recommends a comprehensive revamping of the correctional system. A major recommendation in the Oklahoma report is that the number of persons incarcerated should be reduced over a six-year period through diversion, shorter sentences, etc. The other major recommendation is that correctional institutions and services should be regionalized. The regionalization concept calls for reducing the populations of existing institutions to between 200 and 300 and the construction of additional institutions depending upon the success in reducing commitments.

ATTACHMENT A

	<u>Inmates</u>
<u>Kansas (As of 7-19-76)</u>	
State Penitentiary	795
Industrial Reformatory	759
Kansas Correctional- Vocational Training Center	130*
Kansas Correctional Institution for Women	97
Kansas Reception and Diagnostic Center	125
Wichita Work Release Center	18
Honor Camp	50
Total	<u>1,974</u>

\*Includes 16 on work release.

<u>Missouri (As of 2-29-76)</u>	
State Penitentiary	2,152
Missouri Training Center for Men	932
Missouri Intermediate Reformatory	532
State Correctional Center for Women	101
Fordland Honor Camp	185
Church Farm	395
Renz Farm	180*
Total	<u>4,477</u>

\*Includes 30 females.

<u>Nebraska (As of 7-31-76)</u>	
Nebraska Penal and Correctional Complex:	
Penitentiary Unit	927
Reformatory Unit	337
Women's Reformatory at York	85
Five Work Release Centers	121*
Total	<u>1,470</u>

\*Includes seven females.

Oklahoma (As of 8-9-76)

State Penitentiary	
Main Institution	1,526*
Trustee Dormitories	258
State Reformatory	636
Stringtown Vocational Training School	391
Hodgens Training Center	200
McCloud Honor Farm	264
Lexington Regional Training Center	458
Oklahoma City Women's Treatment Centers	77
Five Community Treatment Centers (work release)	134
Total	<u>3,944</u>

\*Includes 102 females

## MEMORANDUM

TO: Special Committee on Ways and Means August 12, 1976  
FROM: Kansas Legislative Research Department  
RE: Proposal No. 62: Sunset Laws

Introduction: The Sunset Concept

The Colorado General Assembly earlier this spring approved H.B. 1088, now commonly known as the Sunset Law. Enactment of the Sunset concept, which requires periodic and comprehensive reviews of executive programs and agencies under the threat of termination, is illustrative of the growing concern of many legislatures seeking to enhance the legislative oversight function. Zero-base budgeting, review of administrative rules and regulations, program evaluation, and legislative post auditing are examples of the oversight mechanism adopted by some legislatures to insure that legislation is implemented in accordance with legislative intent. The Sunset concept, by requiring the automatic termination of programs and agencies unless the legislature takes affirmative action to authorize their continued existence, provides the legislature with an additional device for legislative oversight.

The chief proponent of the Sunset concept has been Common Cause. This organization views Sunset laws as being complementary to the so-called Sunshine laws (campaign financing, open meetings, lobbying disclosure, and personal financial disclosure) which it also advocates. Common Cause believes that the Sunset concept is an action-forcing mechanism which will create an incentive for periodic and comprehensive executive and legislative evaluations of existing programs and agencies. Common Cause further believes that, through enactment of Sunset legislation, programs and agencies will be periodically and comprehensively reviewed under threat of termination. Overlapping jurisdictions will be untangled and agencies rejuvenated, and programs and agencies that no longer serve a public purpose will be eliminated.

Colorado Common Cause was instrumental in both initiating and securing the passage of the Colorado Sunset Law. At present, similar laws have been introduced in Congress and in other state legislatures including Illinois, California, Alaska, Louisiana, Minnesota, and Florida. In addition to the Colorado enactment, similar laws have been enacted by the Florida and Iowa legislatures, although the Iowa bill was later vetoed by the governor.

Common Cause has suggested ten basic principles that it feels should be observed in the development of any workable Sunset law:<sup>2</sup>

1. The programs or agencies covered under the law should automatically terminate on a date certain, unless affirmatively re-created by law.

2. Termination should be periodic (every six or eight years) in order to institutionalize the progress of evaluation.

3. Introduction of the Sunset mechanism will be a learning process and should be phased-in gradually, beginning with those programs to which it seems most readily applicable.

4. Programs and agencies in the same policy area should be reviewed simultaneously in order to encourage coordination, consolidation, and responsible pruning.

5. Existing entities should undertake the preliminary program evaluation work, but their evaluator capacities must be strengthened.

6. In order to facilitate meaningful review, the Sunset proposal should establish general criteria to guide the program evaluation process.

7. Substantive preliminary work must be packaged in manageable decision-making reports so that top decision-makers can exercise their common sense political judgments.

8. Substantial committee reorganization, including adoption of a system of rotation of committee members, is a prerequisite to meaningful Sunset review.

9. Safeguards must be built into the Sunset mechanisms to guard against arbitrary terminations and to provide for outstanding obligations and displaced personnel.

10. Public participation in the form of public access to information and public hearings is an essential part of the Sunset process.

### State Sunset Proposals

#### Colorado

The Colorado Sunset Law, first in the nation, was signed by the governor on April 22, 1976. The Colorado law limits the life of each of the 43 boards and commissions in

Colorado's Department of Regulatory Agencies to six years. The law establishes a schedule for legislative review, with one-third of the Department's boards and commissions being designated for termination every other year beginning on July 1, 1977. Agencies with similar functions are grouped together: (a) on July 1, 1977, 13 boards, including the Public Utilities Commission, the Division of Insurance, and the State Board of Cosmetology, are terminated unless continued by the legislature; (b) on July 1, 1979, 12 boards and agencies are terminated, primarily those in medical and health-related fields; (c) on July 1, 1981, 14 agencies are terminated, including those in the financial and construction field.

The law requires a public hearing to be held before termination, continuation, or re-establishment of any agency. It also requires the Legislative Audit Committee to conduct a performance audit of each agency to be completed at least three months prior to its termination date. In this respect, the Legislative Audit Committee is charged with considering at least the following nine factors:

1. The extent to which the division, agency, or board has permitted qualified applicants to serve the public.
2. The extent to which affirmative action requirements of state and federal statutes have been complied with by the agency or the industry it regulates.
3. The extent to which the agency has operated in the public interest and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of the Department of Regulatory agencies.
4. The extent to which the agency has recommended statutory changes to the General Assembly which benefit the public as opposed to the persons it regulates.
5. The extent to which the agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency on the public regarding improved service, economy of service, and availability of service.
6. The extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public.
7. The extent to which the agency has encouraged participation by the public in its rules and decisions as opposed to participation solely by the persons it regulates.
8. The efficiency with which formal public complaints filed with the agency have been processed to completion.

9. The extent to which changes are necessary in the enabling laws of the agency to adequately comply with the first eight factors listed.

The Colorado Legislative Audit Committee will hold public hearings for the purpose of reviewing the report on an agency. Additionally, legislative committees in each house will also hold public hearings during which the members will receive testimony from the public and the executive director of the agency. The agency has the burden of demonstrating the public need for its continuation.

If terminated, the agency would continue in operation without diminished power or authority for one year in order to complete its affairs and to provide a full year for the General Assembly to reconsider its decision. Newly-created and re-created boards and commissions will also be limited to lives of six years. The law provides that termination or re-creation will not cause the dismissal of any claim or right of a citizen against the agency.

#### The Florida Sunset Law

The Florida Sunset Law (Chapter 76-168) is similar to the Colorado Law in that it requires regulatory agencies to be assessed for their public benefit and to be abolished unless continued by the legislature. The law repeals statutes and regulations relating to 36 professions, occupations, businesses, industries, and other endeavors effective July 1, 1978; another 23 will be repealed July 1, 1980; and an additional 35 in 1982. The appropriate substantive legislative committees will review the licensing and regulatory functions of these agencies one year prior to the repeal date and make recommendations concerning continuation, modification or repeal of the enabling statutes.

In deciding whether to continue regulation of these various professions and occupations, the legislature is required to consider whether the lack of regulation would harm the public health, safety, or welfare; whether less restrictive regulation would adequately protect the public; whether the regulation increases the cost of goods or services involved; and whether all facets of the regulatory process are designed to protect the public. Terminated agencies would be given one year to complete their affairs, and the act of termination would not affect the rights of any person in any cause of action which occurred prior to the date the agency was terminated. The Florida Legislature declared that it was its intent not to regulate unless such regulation was necessary to protect the public health, safety, and welfare, but not to regulate in a manner which will affect the competitive market adversely.

### The Iowa Sunset Proposal

The Iowa Sunset Law (House File 1573), which contained a Sunset provision requiring agencies to justify their existence every six years, was vetoed by the governor. Unlike the Sunset laws of Colorado and Florida, the Iowa proposal would have required every state agency to undergo the review process, beginning in 1977, and not merely the so-called regulatory agencies as in the other two states.

During this review, each agency would have been subject to an audit by the newly-created Performance Audit Division of the Legislative Fiscal Bureau. Terminated agencies would have been given one year to finish their affairs.

In his veto message, Governor Ray stated that the legislature had appropriated inadequate funds (\$50,000) for such a comprehensive review; that such a review would constitute an undue burden on the legislature and agencies, and would certainly extend the length of legislative sessions; that the legislature already has Sunset power in that it is given the opportunity each year to review and authorize or refuse to authorize the continued existence of each state agency; and that a provision in the act granting the Performance Audit Division unfettered access to all executive branch files and documents was intolerable.

### Other Sunset Proposals

A Sunset bill for Louisiana which affected various state agencies passed the Senate but was not enacted (S.B. 28). The various agencies were scheduled for termination unless re-created by the legislature following a zero-based budget review.

An Alaska bill (S.B. 738) would have abolished various regulatory boards and commissions over the next two years unless continued or re-established by legislative action. Prior to the termination date, the legislature would have been required to hold public hearings, and the burden of proving a public need for its continued existence would have rested with each agency.

A Minnesota Sunset bill (Senate File No. 595) would apply to all state agencies and would establish termination dates from July 1, 1978, to July 1, 1983. Specific guidelines are established to determine whether the agency has proved a public need for its continued existence or regulatory function. The bill would provide for public hearings and also require a performance audit by the Legislative Auditor.

The proposed "Illinois Regulatory Agency Self-Destruct Act of 1976" provides for the automatic termination of all the Illinois regulatory agencies between July 1, 1978, and July 1, 1982. A performance audit would be conducted by the Legislative



Audit Commission and public hearings would be held by the appropriate standing committees of the legislature. The bill includes a list of factors to be taken into consideration in determining whether the agency has demonstrated a public need for its continued existence.

The Texas Legislature, acting as a constitutional convention in 1975, proposed a new constitution that contained a Sunset provision. Under the proposed constitution, which was rejected by the voters, statutory state agencies with statewide jurisdiction having appointive officers, except institutions of higher education, would have been limited to a life span of ten years unless renewed by law.

### Federal Sunset Proposals

#### The Government Economy and Spending Reform Act of 1976 (S. 2925)

Sponsored by Senator Edmund Muskie and others, the proposed "Government Economy and Spending Reform Act of 1976" (S. 2925) would place all government programs and activities on a four-year reauthorization schedule and subject these agencies to zero-based budget reviews. Unless reauthorized by Congress, the programs would automatically terminate. Exceptions to automatic termination include payments of interest on the national debt and programs under which individuals make payments to the government in expectation of future compensation, such as social security.

The proposal requires the General Accounting Office and the Congressional Budget Office to report the results of relevant audits and evaluations and other requested information to the appropriate Congressional committees, which would then perform the necessary program evaluation, budget reviews, and eventually make their recommendations to the full Congress.

#### The Regulatory Reform Act of 1976 (S. 2812)

Sponsored by Senator Charles Percy and others, the proposed "Regulatory Reform Act of 1976" (S. 2812) provides for the termination of most rules of regulatory agencies unless regulatory reform measures are adopted. The measure provides for a comprehensive review of regulation in five specific areas of the economy over a period of five years from 1977-1981. Unless either the President or Congress adopts a comprehensive plan for reforming regulatory practices in the designated areas prior to the scheduled termination dates of the agencies, all rules of the agencies would terminate except those that protect the public safety, encourage economic competition, or protect consumer interest.

Federal Advisory Committee Act of 1972 (P.L. 92-463)

This act, in effect since 1972, provides for the termination of each advisory committee every two years unless renewed by the President or other executive officer who established the committee, unless its duration is otherwise established by law or unless it files a charter with the appropriate Congressional committee. The act has led to the termination or merger of more than 700 advisory committees in its first 28 months of operation.<sup>3</sup>

The Sunset Concept: Pro/Con

Arguments Supporting the Sunset Concept

1. It allows the legislature to examine the operations of the agencies and programs which it has created. The examination may discover that similar services are being provided by various agencies or that various programs have been created to deal with a single problem.

2. It will permit the legislature to determine whether agencies are regulating to serve the public or regulating to serve those regulated. Agencies which are no longer responsive to public needs or that have outlived their usefulness will be terminated.

3. It will permit legislatures to consolidate overlapping programs, terminate unnecessary programs, and generally provide for more efficiency and better use of the tax dollar.

4. It will force legislatures to conduct systematic, periodic, and comprehensive evaluations of state agencies and programs.

5. It will help to restore the balance of power between the executive and legislative branches of government since the legislature will exercise scrutiny over executive programs and agencies.

Arguments Opposed to the Sunset Concept

1. The periodic and comprehensive reviews mandated by the Sunset concept will impose a tremendous amount of additional work on the part of the legislature and the executive agencies.

2. Executive branch agencies, fearing termination, may devote much of their time justifying their existence, working on public relations, and building blocs of support within the legislature.

3. Controversial agencies, such as civil rights commissions or environmental protection agencies, may be arbitrarily terminated because they have aggressively pursued their statutory responsibilities.

4. A Sunset program could become a form of window dressing, generating mountains of paperwork but never actually resulting in a comprehensive evaluation of the agencies and programs under consideration.

5. The costs of the comprehensive reviews mandated by the Sunset concept could exceed the operating budgets of many agencies, some of which are supported by fees and not general fund moneys.

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<sup>1</sup> "Sunset: A Proposal for Accountable Government," a Common Cause draft prepared for the American Bar Association's Administrative Law Review for September, 1976, publication, p. 4.

<sup>2</sup> Ibid., pp. 20-34.

<sup>3</sup> State Government News, June 1976, p. 10.

## MEMORANDUM

August 19, 1976

TO: Special Committee on Ways and Means  
FROM: Kansas Legislative Research Department  
RE: State Aid Formulas for Community Mental Health/  
Mental Retardation Programs

Information regarding state aid formulas for community based mental health and mental retardation programs has been obtained from the states of Colorado, Missouri, and Nebraska.

Colorado

The State of Colorado provides assistance to community mental health and community mental retardation programs on the basis of purchase of service contracts with each community program. Each center is required to submit patient caseload projections and cost data to the Colorado Department of Institutions from which unit cost reimbursement rates are calculated. Reimbursement rates and caseload projections are then used to determine executive budget recommendations. An amount of reserve funds are included in the department's budget recommendation to allow for small increases in caseload reimbursements.

FY 1977 appropriations from the State General Fund totaled \$9.3 million for community mental health programs and \$4.9 million for community mental retardation programs.

Colorado officials indicated that the major problem confronting the state aid program is a lack of standards and data by which to measure the cost effectiveness of the program.

Missouri

The 1976 session of the Missouri Legislature appropriated funds for community mental health centers for the first time. An amount of \$575,000 was appropriated for FY 1977 to fund the decrease in federal staffing grants at eight community mental health centers. The funds designated for community mental health centers were taken out of other program areas in the state's total mental health budget of approximately

\$100,000,000. Therefore, total state funding was not increased to provide assistance in Missouri's community mental health centers. Currently, Missouri does not provide state aid to community-based mental retardation or alcoholism treatment programs.

The State of Missouri does not presently have a state aid formula for community programs serving the mentally ill, retarded and alcoholic, and there are no immediate plans to develop a state aid formula. Rather, the state has tentative plans to continue funding the declining portion of the federal staffing grants. The federal staffing grants are projected to decrease at an annual rate of approximately 15 percent. If the state continues funding the cumulative amount of annual decreases in the staffing grants the amount of state funding for community mental health centers could reach \$2.5 million when the staffing grants are phased out.

#### Nebraska

State law specifying the aid formula for funding community mental health and community mental retardation centers in Nebraska requires the state and counties to share in financing the unfunded portion of center budgets on a 75 percent - 25 percent basis. All federal funds, private funds, third party payments, and client fees are considered and deducted from the total amount to determine the unfunded portion of center budgets which is then eligible for state and county funding (state 75 percent, counties 25 percent).

The Nebraska law provides that the allocation of state funds are to be limited to providing staff, technical assistance, program operation, leasing, renting maintenance of facilities and for the initiation of programs and services. State funds cannot be used for capital construction projects.

State funds appropriated to help support community programs are administered by six mental health regional governing boards and six mental retardation regional governing boards who are charged with providing community services within each geographic region. Regional governing boards are comprised of representatives appointed by county commissions.

FY 1976 appropriations of State General Fund moneys totaled \$2.8 million for community mental health programs and \$5.6 million for community mental retardation programs.

A unique feature of Nebraska's funding structure for mental health and mental retardation is a requirement that counties provide a portion of the funding for state inpatient facilities. For patients at the three state mental hospitals and the single state mental retardation facility the counties are required to pay a daily rate of \$15 for the first 90 days of hospitalization and a daily rate of \$3.00 for hospitalization beyond 90 days.

FY 1976 COMMUNITY MENTAL RETARDATION CENTER FISCAL DATA

<u>Community Mental Retardation Center</u>	<u>State Aid as Percent of Total Income</u>	<u>Center Income Per Capita for Area Population</u>	<u>State Aid Per Capita for Area Population</u>	<u>County Taxes Per Capita for Area Population</u>
Big Lakes Developmental Center	4.0%	\$4.17	\$.17	\$.91
Chikaskia Area Training Center	4.0	7.13	.30	.22
Cottonwood, Inc.	5.0	5.88	.27	.20
Dodge City Area Council for Retarded Citizens	3.0	3.31	.11	.05
Finney County Mental Retardation Services	5.0	1.87	.10	.15
Franklin County Vocational Rehabilitation Facility	2.0	14.04	.27	1.00
Homer B. Reed Adjustment and Training Center	2.0	16.75	.29	1.74
Johnson County Mental Retardation Center	6.0	3.94	.24	.52
Leavenworth County Association for the Handicapped	3.0	4.10	.14	.08
Mental Retardation Governing Board of Wyandotte County	6.0	1.26	.07	.30

<u>Community Mental Retardation Center</u>	<u>State Aid as Percent of Total Income</u>	<u>Center Income Per Capita for Area Population</u>	<u>State Aid Per Capita for Area Population</u>	<u>County Taxes Per Capita for Area Population</u>
Mid Kansas Developmental Disabilities Services	8.0%	\$3.07	\$.24	\$1.50
Occupational Center of Central Kansas	4.0	5.09	.18	.31
Reno Occupational Center	4.0	3.35	.13	.25
Sedgwick County Mental Retardation Governing Board	6.0	6.81	.39	.26
Sunflower Training Center, Inc.	5.0	3.48	.16	.88
Terramara, Inc.	2.0	3.72	.09	.21
Topeka Association for Retarded Citizens	7.0	2.06	.13	.42
Verdigris Valley Association for Retarded Citizens	3.0	2.40	.08	.00



FY 1976 COMMUNITY MENTAL HEALTH CENTER FISCAL DATA

<u>Community Mental Health Center</u>	<u>State Aid as Percent of Total Income</u>	<u>Center Income Per Capita for Area Population</u>	<u>State Aid Per Capita for Area Population</u>	<u>County Taxes Per Capita for Area Population</u>
Area Mental Health Center	11.0 %	\$6.08	\$.64	\$2.86
Bert Nash Community Mental Health Center	10.0	4.09	.42	1.58
Center for Counseling and Consultation	14.0	2.67	.39	1.49
Central Kansas Mental Health Center	13.0	2.27	.29	.93
Cowley County Mental Health Center	4.0	3.85	.16	1.40
Crawford County Mental Health Center	4.0	5.28	.22	.94
Four County Mental Health Center	7.0	4.03	.29	1.41
Franklin County Mental Health Center	10.0	3.16	.31	1.30
High Plains Community Mental Health Center	9.0	10.42	.91	1.71
Iroquois Center for Human Development	9.0	8.52	.73	4.02
Johnson County Mental Health Center (Northeast)	9.0	5.41	.48	1.70
Johnson County Mental Health Center (Southwest)	8.0	8.20	.68	1.28

<u>Community Mental Health Center</u>	<u>State Aid as Percent of Total Income</u>	<u>Center Income Per Capita for Area Population</u>	<u>State Aid Per Capita for Area Population</u>	<u>County Taxes Per Capita for Area Population</u>
Mental Health Center of East Central Kansas	7.0%	\$9.24	\$.67	\$1.82
The Mental Health Institute	11.0	3.77	.41	1.74
North Central Kansas Guidance Center	10.0	2.74	.27	1.31
Northeast Kansas Guidance Clinic	8.0	2.87	.24	.80
Prairie View Mental Health Center	7.0	21.53	1.57	1.56
Sedgwick County Department of Mental Health	7.0	7.20	.50	2.00
SEKAN Comprehensive Mental Health Services	3.0	3.18	.09	.00
Shawnee Community Mental Health Corporation	9.0	11.69	1.03	1.44
South Central Mental Health Counseling Center	7.0	4.67	.35	1.63
Southeast Kansas Mental Health Center	11.0	2.69	.29	1.33
Southwest Guidance Center	15.0	2.69	.42	1.63
Sunflower Guidance Center	11.0	2.98	.33	1.80
Wyandotte County Mental Health and Guidance Center	4.0	6.69	.29	.85

FY 1976 COMMUNITY MENTAL HEALTH CENTER FISCAL DATA

Community Mental Health Center Name and Location	Counties Served	Catchment Area Population	FY 1976 CMHC Income							
			Patient Fee Income	Federal Funds	State Funds (Other Than State Aid)	County Taxes	Other	Subtotal	State Aid	Total
Area Mental Health Center Garden City* Dodge City, Ulysses, Scott City	Finney, Ford, Grant, Greeley, Hamilton, Hodgeman, Kearny, Lane, Scott, Stanton, Gray, Morton	85,684	\$70,310	\$126,050	--	\$245,435	\$24,618	\$466,413	\$54,801	\$521,214
Bert Nash Community Mental Health Center Lawrence* Baldwin	Douglas	55,643	54,824	56,592	--	87,914	5,034	204,364	23,154	227,518
Center for Counseling and Consultation Great Bend	Barton, Rice, Pawnee, Stafford	60,501	16,404	30,973	--	89,992	1,114	138,483	23,298	161,781
Central Kansas Mental Health Center Salina*	Dickinson, Ellsworth, Lincoln, Ottawa, Salina	88,830	49,721	39,878	--	82,248	3,546	175,393	26,025	201,418
Cowley County Mental Health Center Winfield* Arkansas City	Cowley	34,872	4,561	75,093	--	48,987	--	128,641	5,534	134,175
Crawford County Mental Health Center Pittsburg*	Cherokee, Crawford	60,980	42,251	203,853	--	57,477	4,882	308,463	13,237	321,700
Four County Mental Health Center Independence*	Chautauqua, Elk, Montgomery, Wilson	65,568	11,646	129,183	--	92,421	11,716	244,966	19,212	264,178

Community Mental Health Center Name and Location	Counties Served	Catchment Area Population	FY 1976 CMHC Income							
			Patient Fee Income	Federal Funds	State Funds (Other Than State Aid)	County Taxes	Other	Subtotal	State Aid	Tot
Franklin County Mental Health Center Ottawa*	Franklin	20,796	\$9,488	\$21,957	--	\$26,950	\$802	\$59,197	\$6,516	\$65,713
High Plains Community Mental Health Center Hays* Colby, Norton, Phillipsburg, Goodland	Cheyenne, Decater, Ellis, Gove, Graham, Logan, Ness, Norton, Osborne, Phillips, Rawlins, Rooks, Rush, Russell, Sheridan, Sherman, Smith, Thomas, Tread, Wallace	131,536	434,347	521,443	--	225,038	70,399	1,251,227	119,421	1,370,648
Iroquois Center for Human Development Greensburg *	Clark, Comanche, Edwards, Kiowa	14,355	15,079	37,447	--	57,636	1,694	111,856	10,452	122,308
Johnson County Mental Health Center (Northeast) Mission* Merrian	Northeast Johnson	162,000	170,251	333,437	--	276,001	19,368	799,057	77,868	876,825
Johnson County Mental Health Center (Southwest) Olathe* Sunflower Village	Southeast Johnson	77,225	195,173	284,308	--	98,560	2,726	580,767	52,695	633,462
Mental Health Center of East Central Kansas Emporia* Burlington, Council Grove, Eureka, Lyndon, Strong City	Chase, Coffey, Greenwood, Lyon, Morris, Osage	70,677	131,798	336,679	--	128,885	8,154	605,516	47,559	653,075

Community Mental Health Center Name and Location	Counties Served	Catchment Area Population	FY 1976 CMHC Income							
			Patient Fee Income	Federal Funds	State Funds (Other Than State Aid)	County Taxes	Other	Subtotal	State Aid	Total
The Mental Health Institute Hutchinson* Anthony, Kingman, Pratt, Medicine Lodge	Barber, Harper, Kingman, Pratt, Reno	104,224	\$87,021	\$66,577	--	\$181,551	\$15,097	\$350,246	\$42,265	\$392,511
North Central Kansas Guidance Center Manhattan* Clay Center, Junction City, Marysville	Clay, Geary, Marshall, Riley, Pottawatomie	101,024	29,304	86,607	--	132,511	1,089	249,511	27,293	276,804
Northeast Kansas Guidance Clinic Atchison* Leavenworth	Atchison, Leavenworth	70,838	33,778	96,102	--	56,970	--	186,850	16,653	203,503
Prairie View Mental Health Center Newton* McPherson	Harvey, Marion, McPherson	69,023	739,198	463,727	--	107,420	67,381	1,377,726	108,199	1,485,925
Sedgwick County Department of Mental Health Wichita*	Sedgwick	335,641	195,587	1,159,277	--	672,633	221,402	2,248,899	168,035	2,416,934
Sekan Comprehensive Mental Health Services Independence* Pittsburg	Allen, Bourbon, Elk, Chautauqua, Cherokee, Crawford, Labette, Montgomery, Neosho, Wilson, Woodson	207,143	157,004	472,152	--	--	10,384	639,540	19,601	659,141
Shawnee Community Mental Health Corporation Topeka*	Shawnee	171,760	769,184	544,247	--	246,533	186,326	1,746,290	176,420	1,922,710

Community Mental Health Center Name and Location	Counties Served	Catchment Area Population	FY 1976 CMHC Income							
			Patient Fee Income	Federal Funds	State Funds (Other Than State Aid)	County Taxes	Other	Subtotal	State Aid	Total
South Central Mental Health Counseling Center El Dorado* Wellington	Butler, Sumner	62,774	\$24,181	\$138,045	--	\$102,233	\$7,213	\$271,672	\$21,688	\$293,360
Southeast Kansas Mental Health Center Humbolt* Fort Scott, Parsons	Allen, Bourbon, Labette, Neosho, Woodson	80,595	27,650	57,804	--	107,165	215	192,834	23,695	216,529
Southwest Guidance Center Liberal* Cimmaron, Montezuma	Gray, Haskell, Meade, Morton, Seward, Stevens	38,547	8,643	16,306	--	62,897	--	87,846	16,019	103,865
Sunflower Guidance Center Concordia*, Belleville, Beloit, Washington	Cloud, Jewell, Mitchell, Republic, Washington	46,027	19,295	20,152	--	82,742	--	122,189	15,033	137,222
Wyandotte County Mental Health and Guidance Center Kansas City* Bonner Springs	Wyandotte	189,714	175,077	839,626	--	161,836	34,752	1,211,291	54,107	1,265,398

\*Main Office

FY 1976 COMMUNITY MENTAL RETARDATION CENTER FISCAL DATA

Community Mental Retardation Center Name and Location	Counties Served	Catchment Area Population	FY 1976 CMRC Income							
			Patient Fee Income	Federal Funds	State Funds (Other Than State Aid)	County Taxes	Other	Subtotal	State Aid	Total
Big Lakes Developmental Center Manhattan* Clay Center, Junction City	Clay, Geary, Pottawatomie, Riley	87,072	\$176,519	\$ 35,081	\$ --	\$ 78,971	\$57,779	\$348,350	\$ 14,695	\$363,045
Chikaskia Area Training Center Medicine Lodge* Harper, Pratt, Kingman, Anthony	Barber, Harper, Kingman, Pratt	34,800	164,011	16,102	5,228	7,572	44,755	237,667	10,549	248,216
Cottonwood, Inc. Lawrence*	Douglas, Jefferson	68,464	268,740	3,510	--	13,692	98,109	384,050	18,796	402,846
Dodge City Area Council for Retarded Citizens Dodge City*	Clark, Comanche, Edwards, Ford, Gray, Hodgeman, Kiowa	46,459	102,293	20,668	--	2,108	23,710	148,779	4,891	153,670
Finney County Mental Retardation Services Garden City	Finney, Kearny, Lane, Scott, Grant, Haskell	46,375	47,166	5,755	15,993	7,050	6,153	82,117	4,436	86,553
Franklin County Vocational Rehabilitation Facility Ottawa*	Franklin, Osage, Coffey	20,796	194,504	12,500	--	20,833	58,570	286,407	5,634	292,041
Homer B. Reed Adjustment and Training Center Hays* Hill City, Atwood	Cheyenne, Ellis, Grove, Logan, Norton, Rawlins, Sheridan, Sherman, Thomas, Wallace	73,815	794,105	103,514	30,000	128,338	158,860	1,214,817	21,263	1,236,080

Community Mental Retardation Center Name and Location	Counties Served	Catchment Area Population	FY 1976 CMRC Income							
			Patient Fee Income	Federal Funds	State Funds (Other Than State Aid)	County Taxes	Other	Subtotal	State Aid	Total
Verdigris Valley Association for Retarded Citizens Independence	Montgomery	42,481	\$71,626	\$ 9,919	\$ 920	--	\$ 16,047	\$ 98,512	\$ 3,307	\$ 101,819

\*Main Office