

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Special Study Committee on Social and Rehabilitative Institutions

RE: Report of Committee

The Special Study Committee on Social and Rehabilitative Institutions was directed by the Legislative Coordinating Council to study and review the management structure and utilization of personnel in the state institutions operated by the Department of Social and Rehabilitation Services and the potential liability or financial exposure incurred by the state in the operation of such institutions.

The Committee held 28 meetings, heard 51 conferees, visited Osawatomie State Hospital, and received and reviewed documents and statements supplied to the Committee by present and former institutional employees, citizens and former patients. In addition, staff and some members of the Committee heard 22 interested persons in Atchison.

The Committee received testimony from the superintendent of each of the institutions operated by the Department of Social and Rehabilitation Services; three members of the Legislature; 34 employees of the Youth Center at Atchison and a student, along with a former employee and a foster parent; representatives of the Johnson County Mental Health Centers; two mental health technicians employed at Osawatomie, along with the Director of Nursing; representatives of Advocates for Freedom in Mental Health; four employees of the Youth Center at Topeka; two county attorneys; a magistrate judge; a mental health technician from Winfield; a former employee of the Department of Social and Rehabilitation Services, and the EEO officer; the mother of an institutionalized patient; a student from Benedictine College; a representative of the Kansas Association for Retarded Citizens; and the Secretary of Social and Rehabilitation Services.

A considerable amount of the testimony presented to the Committee dealt with personnel problems which exist at the Youth Center at Atchison. Other testimony concerned patient rights, the implementation of the career ladder in regard to youth

Senate Bill Nos. 897, 898, 899, and 900 accompany this report.

service workers at the Youth Centers, the pay scales and vacant positions at all institutions, the administration of the Rainbow Mental Health Facility, aftercare for juveniles, the administrative structure of the Department of Social and Rehabilitation Services, and the programs of the institutions.

Organization

Background

Some of the conferees who met with the Committee expressed concern over the size of the Department of Social and Rehabilitation Services and the scope and complexity of its services. In general, the concerns related to the operation and management of state institutions and the direction being given the institutions under the jurisdiction of the Secretary. The Committee received two recommendations to sever functions from the Department and to create new agencies to administer these functions.

Conclusions

The Committee concluded that the concept of an umbrella agency, which can provide and integrate a number of human services, is a practical and viable organizational structure for the delivery of such services.

While almost 4,800 of the agency's approximately 7,800 full-time employees are involved with the operation of the state institutions, the Committee does not believe the creation of a separate agency to administer the mental health and mental retardation institutions is warranted at this time. In reaching this conclusion, the Committee noted the position of the Director (now Commissioner) of Mental Health and Retardation Services, which has been vacant for over a year, had been filled. The new Commissioner should have the opportunity to provide supervision and direction for the institutions as well as advocacy for institutional services within the Department.

Recommendation

The Committee recommends that no action be taken to create a new cabinet level department for the administration of mental health, mental retardation or juvenile programs at this time.

Management Structure

Background

The Committee heard testimony which indicated that some institutional employees are not aware of the management structure of the Department of Social and Rehabilitation Services. Indeed, a significant number of employees consider the Secretary to be responsible for decisions regarding the day-to-day operation of their respective institutions. Testimony indicated there appears to be little communication between employees working directly with residents of the institutions, their immediate supervisors and the central administration. There is a reluctance on the part of some employees to express their complaints, opinions or suggestions to the central staff.

Conclusions

The Committee has concluded that the finding of the Governor's Task Force on SRS which stated, "A significant majority of the decisions emanating from SRS appears to be raised to the level of the Secretary," aptly describes the management structure of the agency or at least the perception of the structure by lower echelon and lower management institutional employees.

The Committee recognizes that decisions regarding the institutions are for the most part, the direct responsibility of the superintendents. In general, Committee members believe administrative decisions should be made at the lowest appropriate level. The Committee also believes that those employees who work directly with

residents and their immediate supervisors should be encouraged to communicate their opinions, concerns and creative ideas freely to upper level management without fear or without retribution; that communication should flow from the lower level of institutional employees upward rather than exclusively from the Secretary downward; and that the management structure should be improved so that suggestions and substantive input from lower level employees and management is no longer discouraged.

In part, the Committee believes the management structure of the Department is the product of a policy of elevating personnel on the basis of their length of service within the agency rather than on the basis of management and supervisory training and skills. The Committee is concerned that such policy may be common to state agencies and not confined exclusively to the Department of Social and Rehabilitation Services.

Recommendations

The Committee recommends that training in appropriate supervisory and management skills be provided for those persons in management and supervisory positions within the institutions and central staff. Such training should include the management of personnel and the administration of the substantive content of the program under the jurisdiction of the employee. A management and administrative training program for all levels of the Department hierarchy should result in an increase in administrative skills at all levels of management, enabling high-level management to proceed with the primary function of policymaking and long-range planning rather than to the routine details of daily operation of the institutions. If possible, each person supervising employees should be required to complete a comprehensive supervisory and administrative training program prior to placement in a supervisory or management position. The Committee would recommend that such training take place in all agencies, but believes it is particularly important in the Department of Social and Rehabilitation Services.

The Committee is concerned that situations involving employees and programs within the system have reached the crisis point before positive corrective action has been commenced. With the implementation of appropriate management and

administrative training, adequate authority could be delegated within the system to allow a response appropriate to the position and responsibility of those in management and supervisory positions.

Youth Center at Atchison

Early in the Committee study it became apparent that the problems which exist at the Youth Center at Atchison are more severe than those at other state institutions operated by the Department of Social and Rehabilitation Services. The number of conferees who addressed problems and concerns relating to the Youth Center illustrates the degree of stress which exists at the institution.

Background

In part, the situation which exists on the campus of the Youth Center at Atchison is the result of recent changes in the role of the institution.

In 1974, the Legislature changed the mission and purpose of the then Kansas Children's Receiving Home at Atchison. The name of the institution was changed to the Youth Center at Atchison to reflect more accurately the change in the institution's mission to that of an institution for the long-term treatment and rehabilitation of juveniles committed by the courts or to the custody of the Secretary of Social and Rehabilitation Services pursuant to the juvenile code.

With the change in the role of the Youth Center at Atchison enacted by the 1974 Legislature, the type of resident housed at the institution changed from those primarily under the age of 14 who were status offenders to older delinquent or miscreant youth. However, it appears the management and program of the Youth Center did not change materially for some two years after the legislative mandate to

change the role of the institution. It also appears that the staff was placed under stress in dealing with a new type of resident -- stress which continues to exist on the campus at the present time.

In 1977, the Legislature made the decision to combine the Youth Center at Atchison with the Youth Center at Topeka for administrative purposes. The 1977 legislation placed both institutions under the control of the superintendent of the Youth Center at Topeka. The Legislature authorized the position of assistant superintendent for the Atchison campus. Effective May, 1977, the superintendent of the Youth Center at Topeka began acting as the superintendent of the Youth Center at Atchison. An assistant superintendent was appointed in the Spring of 1978 to provide more direct supervision for the Atchison campus.

It appears that during the transition period following the act of the 1977 Legislature, personnel changes were made at Atchison which set the stage for the development of two factions at the institution.

Although one of the purposes of the combined administrative structure was to provide for training staff at Atchison to carry out the new mission of the institution, it was not until mid-1979 that a trained personnel officer became available, on a shared basis, to the Youth Center at Atchison, and actual training programs for the Atchison staff apparently were not in operation until early 1979.

Conclusions

The Committee has concluded that the problems existing at the Youth Center at Atchison are severe, that such problems interfere with carrying out the program of the institution, and that the Legislature should act to provide an opportunity for resolution of the problems. The Committee is concerned that personnel problems have been permitted to continue for approximately three years from the time they began to manifest themselves and that such personnel conflicts have been permitted to affect the program of the Youth Center.

During the Committee deliberations, the members identified two factions which have developed among the staff at Atchison. The factions are in open conflict with regard to the mission and purpose of the institution. The chief sources of conflict appear to be a chief social worker and social work staff more oriented to the care of the wayward and neglected juveniles who were housed at the Atchison campus prior to the 1974 change in the role of the institution and a director of youth services who apparently is more oriented to the concept of detention than to rehabilitation. It should be noted that there are staff members employed at the Atchison campus who have endeavored to avoid affiliation or alignment with either faction. These employees are forced to work under stressful conditions.

The Committee believes it is imperative that the dissension which has developed between the two factions which have been identified on the Atchison campus be ended. The members note in this regard apparent stress among the staff has been communicated to residents at the Atchison campus, resulting in a breakdown of program.

The Committee has decided that the concept of unified administration of the Youth Center at Topeka and the Youth Center at Atchison has not led to the resolution of staff conflict and staff training needs at the Atchison campus. The Committee believes that the Atchison campus is of sufficient size and the problems attendant to the operation of the institution are such that it is in need of a separate superintendent and supporting administrative staff.

Recommendations

The Committee recommends that legislation be enacted to provide for the administrative separation of the Youth Center at Topeka and the Youth Center at Atchison and that each institution have a separate superintendent. The Committee further recommends that the Legislature, through appropriation action, provide for adequate staff, especially a personnel officer, in-service training director, and appropriate maintenance staff. While the Committee does not wish to preclude the sharing of appropriate staff between the Youth Center at Topeka and the Youth Center

at Atchison, the Committee wishes to make it clear that staff positions at the Youth Center at Atchison must be given sufficient priority to enable adequate attention to the solution of the problems which have been permitted to reach a near crisis proportion at the Youth Center. The Secretary of Social and Rehabilitation Services has indicated that he has no objection to the administrative separation of the institutions.

The Committee also believes that the Legislature should look to the Secretary of Social and Rehabilitation Services to be accountable for the operation of the Youth Center at Atchison. The Committee agrees with the Secretary's position that he not interfere with the program of the institution and there is no desire on the part of the Committee to create a situation that would stifle initiative and program creativity at the local institutional level. However, it is clear the Secretary is ultimately responsible for the establishment and maintenance of an adequate and appropriate program which reflects the mission and purpose of the institution.

It should be made clear that the superintendent of the institution at Atchison is the appointing authority with the responsibility and full authority to insist on staff performance in carrying out the purpose and mission of the institution as that purpose has been established by the Legislature. In this respect, the superintendent should have the full backing of all central office staff of the Department of Social and Rehabilitation Services, the Governor and the Legislature in carrying out and enforcing decisions, including staff terminations, if such become necessary, in order to solve the dissension existing at the Youth Center at Atchison.

The Committee has prepared legislation to carry out its recommendation that the Youth Center at Atchison be separated from the Youth Center at Topeka for administrative purposes. The legislation accompanies this report.

Rainbow Mental Health Facility

Background

During the hearings held by the Committee, conferees discussed the unique position of the Rainbow Mental Health Facility as it relates to the state institutional program. At the present time, Rainbow serves as the inpatient and partial hospitalization facility for the Wyandotte county comprehensive mental health center and the northeast Johnson county community mental health center. Under the present arrangement, there are no direct admissions to the Rainbow facility other than through the two comprehensive community mental health centers and the University of Kansas Medical Center. Under this arrangement Wyandotte and Johnson are the only counties in the state which directly derive inpatient and partial hospitalization benefits from a state institution funded primarily with state and federal funds and are further the only two counties which directly control admissions to a state institution.

Conclusions

The Committee rejected recommendations to place Rainbow under the administration of a citizen board and concluded that if the state is to continue the operation and funding of Rainbow, the facility should be placed in the same status as the three state mental health hospitals. The full operation of the facility would then be totally the responsibility of the state and the Secretary of Social and Rehabilitation Services would have full authority to place patients from any part of the state in the Rainbow facility.

Recommendation

The Legislature has before it S.B. 860 which would change the status of the Rainbow facility to that of a state mental hospital. The Committee recommends the passage of S.B. 860.

Youth Rehabilitation Centers

Background

In addition to hearing from conferees with respect to the operations of the three youth centers in the state and their role in the treatment and rehabilitation of juvenile offenders, the Committee heard testimony with respect to the youth rehabilitation centers located at the three state mental hospitals. The Youth Rehabilitation Centers (YRC's), located at Larned, Osawatomie and Topeka State Hospitals, were created with approximately 15 beds at each institution. Present YRC capacity is approximately 30 beds at Larned, 16 beds at Topeka State (with plans for 15 additional beds), and approximately 45 beds at Osawatomie.

Several conferees expressed concern for problems regarding the location of youth rehabilitation centers on the campuses of hospitals concerned primarily with the treatment of mentally ill persons. The Committee also discussed these problems as a result of its visit to Osawatomie.

Conclusions

The Committee found the location of youth rehabilitation centers at the state hospitals for the mentally ill has created conflict and tension on the hospital campuses among the residents and staff.

From 1969 to 1972 a comprehensive plan for the prevention and treatment of juvenile delinquency was developed which called for the state to establish three regional rehabilitation centers for juvenile offenders with three additional regional centers to be established as the program developed. In response to what seemed to be a growing philosophy that treatment of juvenile delinquency should be community based, the concept of state regional rehabilitation centers was not carried out. However, in response to the pressing need for institutional settings in which juveniles could be placed for treatment and rehabilitation, youth rehabilitation centers were created, as a temporary solution only, at the state mental health hospitals located at Larned, Topeka, and Osawatomie.

The Committee concluded that the establishment of youth rehabilitation centers at the state hospitals for the mentally ill as a temporary solution for the demand for space for institutional care for juvenile delinquents has been allowed to continue without adequate consideration of recommendations for a permanent solution by the Department of Social and Rehabilitation Services and the Legislature. The needs for institutional care for juvenile offenders and a change in the state's present programs should be addressed since it is apparent to the Committee that these changes are long overdue. An immediate need for beds at separate youth rehabilitation centers now exists.

Recommendations

The Committee recommends that the YRC's now located on the campuses of the state mental hospitals be phased out. To meet the need for facilities for the juveniles housed at the YRC's, primary consideration should be given to constructing a new youth center or centers in appropriate geographical locations, with such location to be based on need; or, in the alternative, to converting one of the state mental health hospitals into a separate youth center.

The Committee also recommends that the Department of Social and Rehabilitation Services be more aggressive in developing proposals for consideration by the Legislature relating to appropriate physical facilities, personnel and programs for the treatment and rehabilitation of juvenile offenders.

Aftercare

Background

The Committee heard conferees who expressed concern with the lack of aftercare afforded juveniles once they are released from institutions. Currently, the aftercare of juveniles is one of the functions of social workers in local offices of the

Department of Social and Rehabilitation Services. In many instances, the case load of the social workers is such that adequate time for follow-up of a juvenile released from a state institution is not available. It further appears that some social workers do not have the training nor inclination to work with follow-up on juveniles released from a state institution.

The Committee found that some juveniles are retained in institutions past the age of 17 to complete rehabilitation treatment. The Committee noted that in many cases the 17 to 21 year old, upon being released from the institutions, in all probability will not be going back into a home setting. Rather, the juvenile can be expected to be self supporting.

Conclusions

The Committee concludes that a more comprehensive aftercare program should be developed by the Department of Social and Rehabilitation Services and funded by the Legislature.

Recommendation

The Committee recommends that minimum follow-up of residents of youth institutions be instituted. The Committee notes the program at the YRC at Osawatomie wherein a one year follow-up of YRC youth released to the community is carried out. The information collected is helpful in evaluating the effectiveness of the YRC program and to determine the status of youth in regard to aftercare assistance. The Committee recommends this information be gathered as a matter of uniform policy throughout youth facilities.

The Committee also recommends an investigation of the concept of a half-way house for youth 17 to 21 years old to be established in conjunction with the vocational training institution at Salina which is under the jurisdiction of the Board of Regents. The primary goal of such a program would be to establish a training program

to prepare older youth for gainful employment necessary to be self sufficient citizens, recognizing that in all probability these youth will not go back into a home setting but will be fully responsible for their own lives.

In the development of an overall program and plan for juvenile offenders and the institutional facilities, community based programs should continue to be explored and used if possible for some of the youths now housed in the youth rehabilitation centers. In this respect, the Committee recommends that attention be given to requiring community based facilities from which the state purchases services to develop programs for and to be required to take difficult youth.

Medical Staff

Background

Various conferees identified problems relating to the procurement and retention of physician services for the state hospitals. Due to an inadequate salary scale, the location of the institutions, and other factors, many of the medical positions are being filled by foreign physicians. This gives rise to communication problems involving both patients and staff. The turnover in physicians also poses problems with continuity of treatment programs and staff training.

Conclusions

The Committee concludes that additional attention should be given to the recruitment and retention of physicians for the state institutions in order to avoid a breakdown in treatment programs.

Recommendations

The Committee recommends that the Department of Social and Rehabilitation Services, the Governor and the Legislature consider adjustments to the salary scale for physicians.

The Committee also recommends that the statutes governing the state medical tuition scholarship program be amended to include service at any one of the state institutions as qualifying service for the purpose of the scholarship program.

The Committee also recommends that the Secretary initiate contacts with medical students early in their training to encourage them to practice in state institutions.

Mentally Retarded

The Committee wishes to express its concern with an apparent problem involving retention at state hospitals for the mentally ill of persons with a primary diagnosis of mentally retarded rather than mentally ill. While the Department has stated that placement delays are a result of lack of space at institutions for the mentally retarded for the placement of these patients, the Committee was not made aware of any plans to alleviate this situation.

Recommendation

The Committee strongly recommends that retention of the mentally retarded patient in mental hospitals be discouraged unless the patient's primary diagnosis is that of mental illness.

The Committee further recommends that the Department develop a plan to provide temporary accommodations for mentally retarded patients waiting to be transferred to an appropriate institution for the mentally retarded in order to provide such mentally retarded patients appropriate care and to insure that they will not interfere with treatment of the mentally ill.

Employee Records

Background

Some conferees appearing before the Committee addressed instances which had occurred at some of the institutions which allegedly related to prior criminal record history of employees at the institution. The Committee was advised that the Secretary has instigated administrative procedures whereby the appointing authority will have the benefit of a check on criminal history records.

Conclusions

The Committee concludes that in order to assure the Secretary of a complete and adequate check of the criminal records history of an employee or prospective employee, it is advisable for the Secretary to have access to expunged records, as do criminal justice agencies, private detective agencies or security agencies for the purposes of employment with such agencies.

Recommendation

The Committee recommends that appropriate legislation be enacted to permit the Secretary to require on application forms for employment not only the disclosure of a felony conviction record but also the existence of any expunged criminal records. Such legislation also should provide for access by the Secretary, or the Secretary's designee, to expunged criminal records. Legislation to carry out this recommendation with respect to expunged criminal records accompanies this report.

Ombudsman

Background

Many conferees gave examples of suggestions, complaints and criticisms which had been addressed to the Secretary or the Governor's Office without receiving a satisfactory answer or any answer.

Conclusions

In this respect, the Committee endorses the recommendation of the Governor's Task Force on SRS with respect to the establishment of an ombudsman system for both clients and employees of SRS.

Recommendation

An ombudsman system is recommended for the Division of Mental Health and Retardation Services. The ombudsman should be completely independent of and not accountable to the Secretary of SRS. The appointing authority should be the Legislative Coordinating Council. Legislation is being drafted to carry out this recommendation.

Oversight

Background

The Committee notes that S.B. 677, which has been passed by each House of the Legislature, creates a nine-member Social and Rehabilitation Services Review Commission. Members of the Commission are to be appointed by the Governor, the President of the Senate, the Speaker of the House, and the Minority Leaders of each House.


Conclusion

The Committee has concluded that the Commission created by S.B. 677 should, in addition to the responsibilities set out in the bill, exercise an oversight function in regard to the implementation of various recommendations concerning the Department.

Recommendation

The Special Study Committee on Social and Rehabilitation Institutions recommends that the Social and Rehabilitative Services Review Commission monitor and exercise oversight over the implementation of the recommendations of the Governor's Task Force on SRS and the recommendations of this Committee.

Respectfully submitted,


Sen. Robert Talkington, Chairman
Special Study Committee on Social and
Rehabilitative Institutions

Sen. Michael Johnston
Rep. David Heinemann

Rep. Joseph Hoagland, Vice Chairman
Rep. Phil Martin

SENATE BILL No. 897

By Committee on Ways and Means

(By Request of Special Study Committee on Social
and Rehabilitative Services)

4-9

0020 AN ACT concerning disclosure of expunged records of certain
0021 convictions; amending K.S.A. 1979 Supp. 12-4516 and 21-4619
0022 and repealing the existing sections.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 1979 Supp. 12-4516 is hereby amended to
0025 read as follows: 12-4516. (a) Except as provided in subsection (b),
0026 any person who has been convicted of a violation of a city
0027 ordinance of this state may petition the convicting court for the
0028 expungement of such conviction if two or more years have
0029 elapsed since the person: (1) Satisfied the sentence imposed; or
0030 (2) was discharged from probation, parole or a suspended sen-
0031 tence.

0032 (b) In the case of a conviction for the violation of a city
0033 ordinance which would also constitute a violation of any of the
0034 items enumerated in subsection (a) of K.S.A. ~~1978~~ 1979 Supp.
0035 8-285, and any amendments thereto, no person may petition for
0036 expungement until five or more years have elapsed since the
0037 person: (1) Satisfied the sentence imposed; or (2) was discharged
0038 from probation, parole or a suspended sentence.

0039 (c) When a petition for expungement is filed, the court shall
0040 set a date for a hearing thereon and shall give notice thereof to the
0041 prosecuting attorney. The petition shall state: (1) The defendant's
0042 full name (2) the full name of the defendant at the time of arrest
0043 and conviction, if different than (1); (3) the defendant's sex, race,
0044 and date of birth; (4) the crime for which the defendant was
0045 convicted; (5) the date of the defendant's conviction; and (6) the

0046 identity of the convicting court. A municipal court may prescribe
0047 a fee to be charged as costs for a person petitioning for an order of
0048 expungement pursuant to this section. Any person who may have
0049 relevant information about the petitioner may testify at the hear-
0050 ing. The court may inquire into the background of the petitioner
0051 and shall have access to any reports or records relating to the
0052 petitioner that are on file with the secretary of corrections or the
0053 Kansas adult authority.

0054 (d) At the hearing on the petition, the court shall order the
0055 petitioner's conviction expunged if the court finds:

0056 (1) That the petitioner has not been convicted of a felony in
0057 the past two years and no proceeding involving any such crime is
0058 presently pending or being instituted against the petitioner;

0059 (2) that the circumstances and behavior of the petitioner war-
0060 rant the expungement; and

0061 (3) that the expungement is consistent with the public wel-
0062 fare.

0063 (e) When the court has ordered a conviction expunged, the
0064 order of expungement shall state the information required to be
0065 contained in the petition. The clerk of the court shall send a
0066 certified copy of the order of expungement to the federal bureau
0067 of investigation, the Kansas bureau of investigation, the secretary
0068 of corrections and any other criminal justice agency who may
0069 have a record of the conviction. After the order of expungement is
0070 entered, the petitioner shall be treated as not having been con-
0071 victed of the crime, except that:

0072 (1) Upon conviction for any subsequent crime the conviction
0073 that was expunged may be considered as a prior conviction in
0074 determining the sentence to be imposed;

0075 (2) in any application for employment: (A) as a detective with
0076 a private detective agency, as defined by K.S.A. 75-7b01; (B) as
0077 security personnel with a private patrol operator, as defined by
0078 K.S.A. 75-7b01; ~~or~~ (C) with a criminal justice agency, as defined
0079 by K.S.A. ~~1978~~ 1979 Supp. 22-4701 or (D) *with an institution as*
0080 *defined in K.S.A. 1979 Supp. 76-12a01 of the department of social*
0081 *and rehabilitation services*, the petitioner, if asked about previous
0082 convictions, must disclose that the conviction took place;

0083 (3) the court, in the order of expungement, may specify other
0084 circumstances under which the conviction is to be disclosed; and

0085 (4) the conviction may be disclosed in a subsequent prosecu-
0086 tion for an offense which requires as an element of such offense a
0087 prior conviction of the type expunged.

0088 (f) Whenever a person is convicted of an ordinance violation,
0089 pleads guilty and pays a fine for such a violation or is placed on
0090 parole or probation or is given a suspended sentence for such a
0091 violation, the person shall be informed of the ability to expunge
0092 the conviction.

0093 (g) Subject to the disclosures required pursuant to subsection
0094 (e), in any application for employment, license or other civil right
0095 or privilege, or any appearance as a witness, a person whose
0096 conviction of an offense has been expunged under this statute
0097 may state that he or she has never been convicted of such offense.

0098 (h) Whenever the record of any conviction has been expunged
0099 under the provisions of this section or K.S.A. 1977 Supp. 12-4515,
0100 ~~21-4616, 21-4617~~ 1979 Supp. 21-4619 or the statutory predecessor
0101 of such sections, the custodian of the records of arrest, conviction
0102 and incarceration relating to that crime shall not disclose the
0103 existence of such records, except when requested by:

0104 (1) The person whose record was expunged;

0105 (2) a criminal justice agency, private detective agency or a
0106 private patrol operator, and the request is accompanied by a
0107 statement that the request is being made in conjunction with an
0108 application for employment with such agency or operator by the
0109 person whose record has been expunged;

0110 (3) a court, upon a showing of a subsequent conviction of the
0111 person whose record has been expunged;

0112 (4) *the secretary of social and rehabilitation services, or a*
0113 *designee of the secretary, for the purpose of obtaining information*
0114 *relating to employment in an institution, as defined in K.S.A. 1979*
0115 *Supp. 76-12a01, of the department of social and rehabilitation*
0116 *services of any person whose record has been expunged;*

0117 ~~(4)~~ (5) a person entitled to such information pursuant to the
0118 terms of the expungement order; or

0119 ~~(5)~~ (6) a prosecuting attorney, and such request is accompa-

0120 nied by a statement that the request is being made in conjunction
0121 with a prosecution of an offense that requires a prior conviction
0122 as one of the elements of such offense.

0123 Sec. 2. K.S.A. 1979 Supp. 21-4619 is hereby amended to read
0124 as follows: 21-4619. (a) Except as provided in subsection (b), any
0125 person convicted in this state of a misdemeanor or a class D or E
0126 felony may petition the convicting court for the expungement of
0127 such conviction if two or more years have elapsed since the
0128 person: (1) Satisfied the sentence imposed; or (2) was discharged
0129 from probation, parole, conditional release or a suspended sen-
0130 tence.

0131 (b) In the case of a conviction for a class A, B or C felony or
0132 any violation enumerated in subsection (a) of K.S.A. 1979 Supp.
0133 8-285, and any amendments thereto, no person may petition for
0134 expungement until five or more years have elapsed since the
0135 person: (1) Satisfied the sentence imposed; or (2) was discharged
0136 from probation, parole, conditional release or a suspended sen-
0137 tence.

0138 (c) When a petition for expungement is filed, the court shall
0139 set a date for a hearing thereon and shall give notice thereof to the
0140 prosecuting attorney. The petition shall state: (1) the defendant's
0141 full name; (2) the full name of the defendant at the time of arrest
0142 and conviction, if different than (1); (3) the defendant's sex, race
0143 and date of birth; (4) the crime for which the defendant was
0144 convicted; (5) the date of the defendant's conviction; and (6) the
0145 identity of the convicting court. There shall be no docket fee for
0146 filing a petition pursuant to this section. All petitions for ex-
0147 pungement shall be docketed in the original criminal action. Any
0148 person who may have relevant information about the petitioner
0149 may testify at the hearing. The court may inquire into the back-
0150 ground of the petitioner and shall have access to any reports or
0151 records relating to the petitioner that are on file with the secretary
0152 of corrections or the Kansas adult authority.

0153 (d) At the hearing on the petition, the court shall order the
0154 petitioner's conviction expunged if the court finds:

0155 (1) That the petitioner has not been convicted of a felony in
0156 the past two years and no proceeding involving any such crime is

0157 presently pending or being instituted against the petitioner;

0158 (2) that the circumstances and behavior of the petitioner war-
0159 rant the expungement; and

0160 (3) that the expungement is consistent with the public wel-
0161 fare.

0162 (e) When the court has ordered a conviction expunged, the
0163 order of expungement shall state the information required to be
0164 contained in the petition. The clerk of the court shall send a
0165 certified copy of the order of expungement to the federal bureau
0166 of investigation, the Kansas bureau of investigation, the secretary
0167 of corrections and any other criminal justice agency who may
0168 have a record of the conviction. After the order of expungement is
0169 entered, the petitioner shall be treated as not having been con-
0170 victed of the crime, except that:

0171 (1) Upon conviction for any subsequent crime the conviction
0172 that was expunged may be considered as a prior conviction in
0173 determining the sentence to be imposed;

0174 (2) in any application for employment: (A) as a detective with
0175 a private detective agency, as defined by K.S.A. 75-7b01; (B) as
0176 security personnel with a private patrol operator, as defined by
0177 K.S.A. 75-7b01; or (C) with a criminal justice agency, as defined
0178 by K.S.A. 1979 Supp. 22-4701 or (D) with an institution as defined
0179 in K.S.A. 1979 Supp. 76-12a01 of the department of social and
0180 rehabilitation services, the petitioner, if asked about previous
0181 convictions, must disclose that the conviction took place;

0182 (3) the court, in the order of expungement, may specify other
0183 circumstances under which the conviction is to be disclosed; and

0184 (4) the conviction may be disclosed in a subsequent prosecu-
0185 tion for an offense which requires as an element of such offense a
0186 prior conviction of the type expunged.

0187 (f) Whenever a person is convicted of a crime, pleads guilty
0188 and pays a fine for a crime or is placed on parole or probation or is
0189 given a suspended sentence or conditional release, the person
0190 shall be informed of the ability to expunge the conviction.

0191 (g) Subject to the disclosures required pursuant to subsection
0192 (e), in any application for employment, license or other civil right
0193 or privilege, or any appearance as a witness, a person whose

0194 conviction of a crime has been expunged under this statute may
0195 state that he or she has never been convicted of such crime, but
0196 the expungement of a felony conviction does not relieve an
0197 individual of complying with any state or federal law relating to
0198 the use or possession of firearms by persons convicted of a felony.

0199 (h) Whenever the record of any conviction has been expunged
0200 under the provisions of this section or K.S.A. 1977 Supp. 12-4515;
0201 ~~21-4616, 21-4617~~ 1979 Supp. 12-4516 or the statutory predecessor
0202 of such sections, the custodian of the records of arrest, conviction
0203 and incarceration relating to that crime shall not disclose the
0204 existence of such records, except when requested by:

0205 (1) The person whose record was expunged;

0206 (2) a criminal justice agency, private detective agency or a
0207 private patrol operator, and the request is accompanied by a
0208 statement that the request is being made in conjunction with an
0209 application for employment with such agency or operator by the
0210 person whose record has been expunged;

0211 (3) a court, upon a showing of a subsequent conviction of the
0212 person whose record has been expunged;

0213 (4) *the secretary of social and rehabilitation services, or a*
0214 *designee of the secretary, for the purpose of obtaining information*
0215 *relating to employment in an institution, as defined in K.S.A. 1979*
0216 *Supp. 76-12a01, of the department of social and rehabilitation*
0217 *services of any person whose record has been expunged;*

0218 ~~(4)~~ (5) a person entitled to such information pursuant to the
0219 terms of the expungement order; or

0220 ~~(5)~~ (6) a prosecuting attorney, and such request is accompa-
0221 nied by a statement that the request is being made in conjunction
0222 with a prosecution of an offense that requires a prior conviction
0223 as one of the elements of such offense.

0224 Sec. 3. K.S.A. 1979 Supp. 12-4516 and 21-4619 are hereby
0225 repealed.

0226 Sec. 4. This act shall take effect and be in force from and after
0227 its publication in the statute book.

COW

SENATE BILL No. 898

By Committee on Ways and Means

(By Request of Special Study Committee on Social
and Rehabilitative Services)

4-9

0020 AN ACT concerning institutions of the department of social and
0021 rehabilitation services; making the youth center at Atchison
0022 separate from the youth center at Topeka; supplemental youth
0023 care facilities; amending K.S.A. 75-3335a, 76-1510c, 76-2101,
0024 76-2101a, 76-2111, 76-2112 and 76-2114 and K.S.A. 1979 Supp.
0025 75-52,104, and repealing the existing sections; also repealing
0026 K.S.A. 76-1701a and 76-1808.

0027 *Be it enacted by the Legislature of the State of Kansas:*

0028 New Section 1. There is hereby established, as a separate
0029 institution, the youth center at Atchison.

0030 Sec. 2. K.S.A. 75-3335a is hereby amended to read as follows:
0031 75-3335a. (a) Within the limits of funds appropriated therefor,
0032 and including any grants or funds received from any agency of
0033 the United States government, and other sources, the secretary of
0034 social and rehabilitation services may establish, maintain and
0035 improve throughout the state supplemental youth care facilities
0036 for delinquent or miscreant children confined in institutions, for
0037 the purpose of providing treatment and rehabilitation services for
0038 such children. All such children ~~committed to such~~ *placed in*
0039 supplemental youth care facilities shall be ~~admitted in accord-~~
0040 ~~ance with the laws relating to the admission of~~ *subject to laws*
0041 *applicable to* delinquent or miscreant children ~~to placed in~~
0042 the youth center at Topeka, *youth center at Atchison* or youth center
0043 at Beloit; and said children shall be subject to all laws and rules
0044 and regulations relating to children ~~committed to said industrial~~
0045 ~~schools.~~

0046 (b) Each such supplemental youth care facility established

0047 ~~under this act~~ shall be under the supervision and administration
0048 of the superintendent of the institution wherein such facility ~~may~~
0049 ~~be is~~ established. ~~Said~~ *The* superintendent shall appoint, with the
0050 approval of the ~~director~~ *commissioner* of mental health and
0051 retardation services, all employees of ~~said the~~ supplemental youth
0052 care facility, who shall be in the classified service under the
0053 Kansas civil service act.

0054 (c) The secretary may adopt rules and regulations relating to
0055 the operation and management of any supplemental youth care
0056 facility established pursuant to the provisions of this act.

0057 Sec. 3. K.S.A. 1979 Supp. 75-52,104 is hereby amended to
0058 read as follows: 75-52,104. (a) Each county receiving grants
0059 under this act shall be charged a sum determined by the secretary
0060 of corrections which shall be equal to the total of: (1) The per
0061 diem costs to the state general fund of confinement and rehabili-
0062 tation of those persons who are committed to the secretary of
0063 corrections on and after the first day of the calendar quarter for
0064 which the county first receives grant payments under K.S.A. 1979
0065 Supp. 75-52,105, except that no charge shall be made for those
0066 persons convicted of a class A, B or C felony; and

0067 (2) the per diem costs to the state general fund of the care and
0068 custody of those juveniles who are committed to or placed in the
0069 youth center at Beloit, ~~or Topeka, including the Atchison annex~~
0070 *youth center at Atchison or youth center at Topeka*, or the youth
0071 rehabilitation center at Topeka, Larned or Osawatomie, except
0072 when such commitment or placement in any such facility in-
0073 volves a juvenile adjudged a delinquent as a result of conduct
0074 which if committed by an adult would constitute a class A, B or C
0075 felony.

0076 (b) In no case shall the amount charged for the total of such
0077 per diem costs exceed the amount of the grant which the county is
0078 eligible to receive under this act. The secretary of corrections
0079 shall determine such costs and deduct them from the amount of
0080 the grant payable to each such county. All such charges shall be a
0081 charge against the county of commitment except that the secretary
0082 of corrections may waive a charge against a county in a case
0083 involving a commitment arising from an escape or charge of

0084 aggravated juvenile delinquency.

0085 Sec. 4. K.S.A. 76-1510c is hereby amended to read as follows:
0086 76-1510c. The secretary of social and rehabilitation services ~~is~~
0087 ~~hereby authorized and empowered to~~ *may* transfer from any state
0088 institution under ~~its~~ *the* jurisdiction and control, other than the
0089 youth center at Topeka, *the youth center at Atchison* and the youth
0090 center at Beloit, to the state hospital at Norton any ward of the
0091 state or patient. Such wards or patients may include mentally ill
0092 and incapacitated persons and such hospital shall provide all
0093 necessary care including that required for mentally ill and inca-
0094 pacitated persons.

0095 Sec. 5. K.S.A. 76-2101 is hereby amended to read as follows:
0096 76-2101. The name of the state industrial school for boys is
0097 hereby changed to the youth center at Topeka. On and after the
0098 effective date of this act, any reference in the laws of this state to
0099 the "state industrial school for boys" shall be construed as refer-
0100 ring to the "youth center at Topeka."

0101 The secretary of social and rehabilitation services shall have
0102 the management and control of the youth center at Topeka;
0103 ~~subject to the same provisions of law which govern the connec-~~
0104 ~~tion of the department of social and rehabilitation services with~~
0105 ~~the other charitable and correctional institutions of the state and~~
0106 *the youth center at Atchison.*

0107 Sec. 6. K.S.A. 76-2101a is hereby amended to read as follows:
0108 76-2101a. (a) The superintendent of the youth center at Topeka
0109 shall remit all moneys received by or for ~~him or her~~ *the superin-*
0110 *tendent* from charges and other operations of such institution to
0111 the state treasurer at least monthly. Upon receipt of any such
0112 remittance the state treasurer shall deposit the entire amount
0113 thereof in the state treasury and the same shall be credited to the
0114 youth center at Topeka fee fund. All expenditures from such fund
0115 shall be made in accordance with appropriation acts upon war-
0116 rants of the director of account and reports issued pursuant to
0117 vouchers approved by such superintendent or by a person or
0118 persons designated by ~~him or her~~ *the superintendent.*

0119 (b) *The superintendent of the youth center at Atchison shall*
0120 *remit all moneys received by or for the superintendent from*

0121 *charges and other operations of such institution to the state*
0122 *treasurer at least monthly. Upon receipt of any such remittance*
0123 *the state treasurer shall deposit the entire amount thereof in the*
0124 *state treasury and the same shall be credited to the youth center at*
0125 *Atchison fee fund. All expenditures from such fund shall be made*
0126 *in accordance with appropriation acts upon warrants of the di-*
0127 *rector of accounts and reports issued pursuant to vouchers ap-*
0128 *proved by such superintendent or by a person or persons desig-*
0129 *nated by the superintendent.*

0130 Sec. 7. K.S.A. 76-2111 is hereby amended to read as follows:
0131 76-2111. If any person shall entice or attempt to entice away from
0132 said youth center at Topeka *or the youth center at Atchison* any
0133 boy legally committed to the same, or shall harbor or conceal, or
0134 aid in harboring or concealing any boy who shall have escaped
0135 from ~~said~~ *the youth center at Topeka or the youth center at*
0136 *Atchison* such person upon conviction thereof shall be deemed
0137 guilty of a misdemeanor, and be punished by imprisonment in
0138 the county jail for not more than sixty (60) days, or a fine of not
0139 less than twenty-five dollars (\$25) nor more than one hundred
0140 dollars (\$100). Any law enforcement officer shall arrest any boy
0141 who has escaped from said youth center at Topeka *or the youth*
0142 *center at Atchison* and return such boy thereto.

0143 Sec. 8. K.S.A. 76-2112 is hereby amended to read as follows:
0144 76-2112. The superintendent of the youth center at Topeka *and*
0145 *the superintendent of the youth center at Atchison* shall have full
0146 power to place any boy ~~committed to such~~ *at the youth center of*
0147 *such superintendent* at such employment and cause him to be
0148 instructed in such branches of useful knowledge as may be
0149 suitable to his years and capacity.

0150 Sec. 9. K.S.A. 76-2114 is hereby amended to read as follows:
0151 76-2114. (a) Whenever a boy is released from the youth center at
0152 Topeka for a trial period to his parents or otherwise placed, he
0153 shall be released on probation, and the superintendent of the
0154 youth center at Topeka shall have power to send for and return
0155 such boy to the youth center at Topeka when in the superintend-
0156 ent's opinion the best interests of the boy will be promoted by
0157 such return.

0158 **(b) Whenever a boy is released from the youth center at At-**
0159 *chison for a trial period to his parents or otherwise placed, he*
0160 *shall be released on probation, and the superintendent of the*
0161 *youth center at Atchison shall have power to send for and return*
0162 *such boy to the youth center at Atchison when in the superintend-*
0163 *ent's opinion the best interests of the boy will be promoted by such*
0164 *return.*

0165 Sec. 10. K.S.A. 75-3335a, 76-1510c, 76-1701a, 76-1808, 76-
0166 2101, 76-2101a, 76-2111, 76-2112 and 76-2114 and K.S.A. 1979
0167 Supp. 75-52,104 are hereby repealed.

0168 Sec. 11. This act shall take effect and be in force from and
0169 after its publication in the statute book.

cow

SENATE BILL No. 899

By Committee on Ways and Means

(By Request of Special Study Committee on Social
and Rehabilitative Services)

0020 AN ACT concerning scholarships for medical students; medi-
0021 cally underserved areas; amending K.S.A. 1979 Supp. 76-375,
0022 as amended by 1980 House Bill No. 3248, and repealing the
0023 existing section.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. K.S.A. 1979 Supp. 76-375, as amended by 1980
0026 House Bill No. 3248, is hereby amended to read as follows:
0027 76-375. (a) On or before December 31 in each year, the secretary
0028 of health and environment shall prepare a list of areas of this state
0029 which the secretary determines to be medically underserved areas
0030 by specialty. *Every such list shall include all* ~~Such an area may be~~
0031 ~~comprised of one or more~~ medical care facilities or institutions
0032 operated by the state of Kansas *as medically underserved areas*
0033 *for both service commitment area I and service commitment area*
0034 *II.* In preparing such a list the secretary of health and environ-
0035 ment shall consult with the university of Kansas school of medi-
0036 cine, the Kansas medical society, the state board of healing arts,
0037 any health systems agency located in whole or in part within the
0038 state and the statewide health coordinating council.

0039 (b) A service commitment area shall be designated as a service
0040 commitment area I or a service commitment area II. Service
0041 commitment area I shall be any area determined by the secretary
0042 of health and environment under subsection (a) to be a medically
0043 underserved area. Service commitment area II shall be the entire
0044 state.

0045 (c) In selecting a service commitment area I prior to the

0046 commencement of the full-time practice of medicine and surgery
0047 pursuant to all agreements entered into under K.S.A. 1979 Supp.
0048 76-374 requiring service for a period of time in a service com-
0049 mitment area I, the person so selecting shall select such area from
0050 among those areas appearing on the list of areas prepared by the
0051 secretary of health and environment under this section. The
0052 service commitment area selected shall have appeared on any
0053 such list not more than thirty (30) months prior to the com-
0054 mencement of such full-time practice of medicine and surgery by
0055 the person selecting such service commitment area. Upon the
0056 selection of such service commitment area, the person so select-
0057 ing shall inform the university of Kansas school of medicine and
0058 the secretary of health and environment of the area selected.

0059 (d) A person serving in a service commitment area I pursuant
0060 to any agreement under this act may serve all or part of any
0061 commitment in the service commitment area initially selected by
0062 such person. If such person moves from one service commitment
0063 area I to another service commitment area I, such person shall
0064 notify the university of Kansas school of medicine and the secre-
0065 tary of health and environment of his or her change of service
0066 commitment area. Service in any such service commitment area I,
0067 selected from the appropriate lists of service commitment areas,
0068 shall be deemed to be continuous for the purpose of satisfying
0069 any agreement entered into under this act. Any service commit-
0070 ment area I selected after the initially selected service commit-
0071 ment area I shall have appeared on a service commitment area I
0072 list prepared by the secretary of health and environment not more
0073 than twelve (12) months prior to the move by such person from
0074 one service commitment area I to another service commitment
0075 area I.

0076 (e) In connection with the determination of medically under-
0077 served areas under this section, the secretary of health and envi-
0078 ronment shall assess annually the need in the state as a whole for
0079 medical services provided by persons engaged in the practice of
0080 medicine and surgery and shall report thereon annually to the
0081 legislature. Each report shall include any recommendations for
0082 needed legislation, including any recommended amendments to

0083 this act, which relate to the need for such medical services in the
0084 various areas of this state.

0085 Sec. 2. K.S.A. 1979 Supp. 76-375, as amended by 1980 House
0086 Bill No. 3248, is hereby repealed.

0087 Sec. 3. This act shall take effect and be in force from and after
0088 its publication in the statute book.

SENATE BILL No. 900

By Committee on Ways and Means

(By Request of Special Study Committee on Social and
Rehabilitative Services)

4-9

0020 AN ACT creating the office of ombudsman of social and rehabil-
0021 itation institutions; prohibiting certain acts and prescribing
0022 penalties therefor.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. As used in this act:

0025 (a) "Administrative act" means any action, omission, deci-
0026 sion, recommendation, practice or procedure of an institution,
0027 but does not include the preparation or presentation of legislation
0028 by an institution.

0029 (b) "Institution" means an institution as defined in K.S.A.
0030 1979 Supp. 76-12a01 of the department of social and rehabilita-
0031 tion services or any officer, employee or member thereof, or any
0032 officer or employee supervisory thereof, acting or purporting to
0033 act in the exercise of official duties. Also, institution means
0034 officers and employees of mental health and retardation services.

0035 Sec. 2. (a) There is created the office of ombudsman of social
0036 and rehabilitation services institutions, called ombudsman in this
0037 act.

0038 (b) The ombudsman shall be appointed by the legislative
0039 coordinating council.

0040 (c) The ombudsman shall serve for a term of four (4) years. No
0041 person shall serve as ombudsman for more than three (3) terms. If
0042 the term of an ombudsman expires prior to the appointment of a
0043 successor, the incumbent ombudsman may continue in office
0044 until a successor is appointed. If a vacancy occurs in the office of
0045 ombudsman for any reason other than expiration of a term, the

0046 deputy ombudsman shall become acting ombudsman until a
0047 successor is appointed, and such successor shall be appointed for
0048 a full term.

0049 (d) The ombudsman shall be in the unclassified civil service
0050 of the Kansas civil service act and shall receive an annual salary
0051 equal to that paid by the state to district judges.

0052 Sec. 3. (a) No person shall serve as ombudsman:

0053 (1) While such person is a candidate for or holds any other
0054 national or state office; or

0055 (2) while such person is engaged in any other occupation for
0056 which such person receives compensation.

0057 (b) No person who serves as ombudsman shall become a
0058 candidate for any national or state office within two (2) years
0059 from the date such person vacates the office of ombudsman.

0060 (c) It is essential that the nonpartisan nature, integrity and
0061 impartiality of the ombudsman's functions and services be
0062 maintained. The ombudsman and members of the ombudsman's
0063 staff may not join, support or otherwise participate in a partisan
0064 political organization, faction or activity, including, but not lim-
0065 ited to, the making of political contributions. However, this
0066 subsection shall not restrict the ombudsman or members of the
0067 ombudsman's staff from expressing private opinions, declaring a
0068 party affiliation or voting.

0069 Sec. 4. The legislature, by a concurrent resolution adopted by
0070 a roll call vote of two-thirds of the members in each house entered
0071 in the journals, may remove or suspend the ombudsman from
0072 office, but only for neglect of duty, misconduct or disability.

0073 Sec. 5. (a) The ombudsman may employ a deputy ombuds-
0074 man and shall employ such assistants and clerical personnel as
0075 necessary to carry out the provisions of this act. At least one of the
0076 ombudsman's assistants shall be an attorney licensed to practice
0077 law in this state.

0078 (b) The ombudsman may delegate to the deputy ombudsman
0079 or assistants any duties except those specified in section 16 and
0080 subsections (a) and (b) of section 17; however, during the om-
0081 budsman's absence from office, the ombudsman may delegate the
0082 duties specified in section 16 and subsections (a) and (b) of

0083 section 17 to the deputy for the period of the absence. Duties
0084 specified in section 16 and subsections (a) and (b) of section 17
0085 shall be performed by the deputy ombudsman when such deputy
0086 is serving as acting ombudsman under section 2.

0087 (c) The office of ombudsman shall be under the direct super-
0088 vision of the ombudsman. All employees in the ombudsman's
0089 office shall be in the unclassified civil service of the Kansas civil
0090 service act and shall be employed by and responsible to the
0091 ombudsman, who shall fix the compensation of each employee,
0092 within appropriations available therefor.

0093 (d) The ombudsman and employees in the ombudsman's of-
0094 fice shall be covered by the state group health plan and Kansas
0095 public employees retirement system to the same extent as other
0096 state employees and shall receive travel expenses and subsistence
0097 allowances as provided for other state employees.

0098 (e) The budget estimate of the ombudsman shall be submitted
0099 by the office to the director of the budget as other budget
0100 estimates are submitted.

0101 (f) The office of the ombudsman shall be located in the city of
0102 Topeka. The legislative coordinating council shall provide suit-
0103 able office space and equipment for the ombudsman and the
0104 ombudsman's staff.

0105 Sec. 6. The ombudsman shall establish procedures for re-
0106 ceiving and processing complaints, conducting investigations,
0107 and reporting findings. The ombudsman shall not charge any fee
0108 for the submission or investigation of complaints.

0109 Sec. 7. (a) The ombudsman shall have jurisdiction to inves-
0110 tigate the administrative acts of institutions, including mental
0111 health and retardation services.

0112 (b) The ombudsman may exercise powers without regard to
0113 the finality of an administrative act.

0114 Sec. 8. The ombudsman shall investigate any complaint
0115 which is an appropriate subject for investigation under section
0116 11, unless the ombudsman reasonably believes that:

0117 (a) There is presently available an adequate remedy for the
0118 grievance stated in the complaint;

0119 (b) the complaint relates to a matter that is outside the juris-

0120 diction of the ombudsman;

0121 (c) the complaint relates to an administrative act of which the
0122 complainant has had knowledge for an unreasonable length of
0123 time before the complaint was submitted;

0124 (d) the complainant does not have a sufficient personal inter-
0125 est in the subject matter of the complaint;

0126 (e) the complaint is trivial or made in bad faith; or

0127 (f) the resources of the ombudsman's office are insufficient
0128 for adequate investigation.

0129 Sec. 9. The ombudsman may investigate the administrative
0130 act of any institution, without complaint by any person if the
0131 ombudsman reasonably believes that it is an appropriate subject
0132 for investigation under section 11.

0133 Sec. 10. (a) If the ombudsman decides not to investigate a
0134 complaint, the ombudsman shall inform the complainant of that
0135 decision and shall state the reasons therefor.

0136 (b) If the ombudsman decides to investigate a complaint, the
0137 ombudsman shall notify the complainant of the decision.

0138 (c) If the ombudsman decides to investigate a complaint, the
0139 ombudsman shall notify the agency of the investigation unless
0140 the ombudsman believes that advance notice will unduly hinder
0141 the investigation or make it ineffectual.

0142 Sec. 11. (a) An appropriate subject for investigation by the
0143 ombudsman is an administrative act of any institution which the
0144 ombudsman has reason to believe might be:

0145 (1) Contrary to law;

0146 (2) unreasonable, unfair, oppressive, arbitrary, capricious,
0147 and abuse of discretion or unnecessarily discriminatory, even
0148 though in accordance with law;

0149 (3) based on a mistake of fact;

0150 (4) based on improper or irrelevant grounds;

0151 (5) unsupported by an adequate statement of reasons;

0152 (6) performed in an inefficient or discourteous manner; or

0153 (7) otherwise erroneous.

0154 (b) The ombudsman may investigate to find an appropriate
0155 remedy.

0156 Sec. 12. The ombudsman shall not have the jurisdiction to

0157 investigate or take action upon any matter which is within the
0158 jurisdiction of the ombudsman of corrections under K.S.A. 1979
0159 Supp. 74-7403 and amendments thereto unless such matter is
0160 referred to the ombudsman by the ombudsman of corrections.

0161 Sec. 13. (a) In an investigation, the ombudsman may:

0162 (1) Make inquiries and obtain information as the ombudsman
0163 considers necessary;

0164 (2) enter without notice to inspect the premises of any insti-
0165 tution, but only when institutional personnel are present; and

0166 (3) hold private hearings.

0167 (b) The ombudsman shall maintain confidentiality with re-
0168 spect to all matters and the identities of the complainants or
0169 witnesses coming before the ombudsman except insofar as dis-
0170 closures may be necessary to enable the ombudsman to carry out
0171 duties or support recommendations.

0172 Sec. 14. (a) Subject to the privileges which witnesses have in
0173 the courts of this state, the ombudsman may:

0174 (1) Compel by subpoena, at a specified time and place, the
0175 appearance and sworn testimony of a person who the ombuds-
0176 man reasonably believes may be able to give information relating
0177 to a matter under investigation; and

0178 (2) compel a person, by subpoena, to produce documents,
0179 papers, or objects which the ombudsman reasonably believes
0180 may relate to the matter under investigation.

0181 (b) If a person refuses to comply with a subpoena issued
0182 under (a) of this section, the district court of any county may, on
0183 application of the ombudsman, compel obedience by proceed-
0184 ings for contempt in the same manner as in the case of disobedi-
0185 ence to the requirements of a subpoena issued by the court or
0186 refusal to testify in the court.

0187 Sec. 15. Before giving an opinion or recommendation which
0188 is critical of any person or institution, the ombudsman shall
0189 consult with that agency or person.

0190 Sec. 16. (a) The ombudsman shall report his or her opinion
0191 and recommendations to an institution if the ombudsman finds,
0192 after investigation, that:

0193 (1) A matter should be further considered by the institution;

- 0194 (2) an administrative act should be modified or canceled;
0195 (3) a statute or regulation on which an administrative act is
0196 based should be altered;
0197 (4) reasons should be given for an administrative act;
0198 (5) any other action should be taken by the institution;
0199 (6) there are no grounds for action by the institution; or
0200 (7) the institution's act was arbitrary or capricious, consti-
0201 tuted an abuse of discretion, or was otherwise erroneous or not in
0202 accordance with the law.

0203 (b) The ombudsman may request the institution to notify the
0204 ombudsman within a specified time, of any action taken on the
0205 ombudsman's recommendations.

0206 Sec. 17. (a) Within a reasonable time after the ombudsman
0207 reports his or her opinion and recommendations to an institution,
0208 the ombudsman may present the opinion and recommendations,
0209 which shall be accompanied by any reply of the institution, to the
0210 governor, the legislature, a grand jury or the public, as the
0211 ombudsman deems appropriate.

0212 (b) If the ombudsman believes there is a breach of duty or
0213 misconduct by an officer or employee of an institution in the
0214 conduct of official duties, the ombudsman shall refer the matter
0215 to the chief executive officer of the institution, the secretary of
0216 social and rehabilitation services, the commissioner of mental
0217 health and retardation services or, when appropriate, to a grand
0218 jury or to another appropriate official or agency.

0219 (c) Within a reasonable time after the ombudsman reports his
0220 or her opinion and recommendations to an institution, the om-
0221 budsman shall notify the complainant of the actions taken by the
0222 ombudsman and by the institution.

0223 Sec. 18. On or before December 1 of each year, the ombuds-
0224 man shall submit to the governor, the legislature and the public
0225 an annual report of the ombudsman's activities under this act.
0226 The ombudsman may issue other periodic or special reports.

0227 Sec. 19. No proceeding or decision of the ombudsman may
0228 be reviewed in any court, unless it contravenes the provisions of
0229 this act, and the ombudsman shall have the same immunities
0230 from civil and criminal liability as a judge of this state. The

0231 ombudsman and his or her staff shall not be required to testify in
0232 any court with respect to matters coming to their attention in the
0233 exercise or purported exercise of their official duties.

0234 Sec. 20. Any letter to the ombudsman from a person in the
0235 custody or care of an institution shall be forwarded immediately,
0236 unopened, to the ombudsman. Any letter from the ombudsman to
0237 a person in the custody or care of an institution shall be delivered
0238 immediately, unopened, to the person.

0239 Sec. 21. This act in no way extends the time limit in which
0240 judicial review of action of any institution or state agency must be
0241 sought.

0242 Sec. 22. It is a misdemeanor for any person to willfully
0243 hinder the lawful actions of the ombudsman or the ombudsman's
0244 staff, or willfully refuse to comply with their lawful demands, or
0245 willfully violate section 20, and upon conviction thereof shall be
0246 fined not more than one thousand dollars (\$1,000).

0247 Sec. 23. This act shall take effect and be in force from and
0248 after its publication in the statute book.