

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

1:15 ~~xx~~ p.m. on March 29, 1984 in room 527-S of the Capitol.

All members were present except:

Representatives Miller, Knopp, Campbell, Harper, Erne, and Wagnon were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department, was excused
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Ken Bahr, Crime Victims Reparations Board
Mike Boyer, Kansas Bureau of Investigation
Philip Kopman, Supervisory Investigator, U.S. Office of Personnel Management
David Plummer, Chief of the Regional Investigation Division, U.S. Office of Personnel
Management
Tom Kelly, Kansas Bureau of Investigation Director

The minutes of the meetings of March 20 and 21, 1984, were approved.

Hearings were held on SB 803 and HCR 1656, HCR 1652, and HCR 1655, all relating to the criminal justice system and introduced by the Joint Committee on Administrative Rules and Regulations to reject regulations of certain agencies.

HCR 1656 - Crime Victims Reparations Board, attorney fees.

Representative Duncan said the resolution would reject K.A.R. 20-4-1 (Attachment No. 1) which raised the rate of attorney fees from \$30 to \$45 an hour. The Joint Committee on Administrative Rules and Regulations believed the fees should be the same as those allowed for indigent cases, and passage of the resolution would return the fee to \$30.

Ken Bahr, Crime Victims Reparations Board, said the Board had no problem with the rejection as it meant more money could be used for crime victims. Because he and his staff usually handle the problems of victims without additional legal service, the raise in fee was not needed.

Representative Schweiker moved to adopt HCR 1656, seconded by Representative Duncan. Motion carried.

HCR 1652 - Juvenile offender information system.

Representative Duncan said the resolution rejects KBI regulation 10-18-1 (Attachment No. 2) because the narrative statements are not appropriate for rules and regulations.

Mike Boyer said the KBI had no objection to the resolution.

The question was raised if the legislature, through these resolutions, was acting against the Attorney General's opinion that ruled legislative intervention in changing rules and regulations through resolutions was unconstitutional. Representative Duncan said, as yet, there was no case law to test the opinion, and a select committee will be appointed to consider guidelines in the matter.

Representative Buehler moved to adopt HCR 1652, seconded by Representative Matlack. Motion carried.

HCR 1655 - Dissemination of nonconviction history by the KBI.

Representative Duncan said the resolution rejects KBI regulation 10-12-2 (Attachment No. 3) which is a legislative policy issue. Passage of the resolution would prohibit nonconviction

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 527-S, Statehouse, at 1:15 ~~xxx~~/p.m. on March 29, 1984

information from being supplied to federal agencies authorized by law or Presidential Executive Order. He objected to the words, "by law", in (c) of Attachment No. 3 which he believed should be "by statute" and questioned if all federal agencies would have access to this information.

Philip Kopman, Supervisory Investigator, U.S. Office of Personnel Management, formerly the U.S. Civil Service Commission, said his office is authorized by federal mandate or executive order to conduct investigations on governmental personnel or potential personnel. He gave examples of the types of personnel investigated such as the astronauts, justice system, federal penitentiary, nuclear weapon, and border patrol personnel and noted the importance of nonconviction information being available. His office receives this information from all states except Kansas, Washington, Virginia, and Delaware. He offered amendments to 10-12-2 (c) (Attachment No. 4) which would be more restrictive by naming the specific federal agency to receive this information and the specific authorizing executive order. The amendments also change "by law" to "by statute". A copy of Executive Order 10450 is attached (Attachment No. 5). In response to objections that his office had gone through KBI regulations rather than through the legislature to be authorized to receive nonconviction information, Mr. Kopman said he had asked a legislator to introduce a bill in this regard, but the Attorney General had said it could be done through rules and regulations.

David Plummer, Chief of the Regional Investigations Division, U.S. Office of Personnel Management, furnished a statement (Attachment No. 6) supporting the need for his office to have nonconviction history and noting procedures used in investigations to protect the rights of individuals.

In discussion, Mr. Kopman said, if the amendment is not adopted, his office would continue to conduct investigations as they have been doing, and potential Kansas employees would not be discriminated against if this information was not available. His office's primary concern is the conduct of the person being investigated and decisions are not based on whether that person was convicted or not convicted of any violation. His office does not investigate military personnel.

Representative Duncan moved to adopt the amendments in Attachment No. 4, seconded by Representative Vancrum. Representative Patrick made a substitute motion to table the resolution, seconded by Representative Wunsch. It was noted, if the resolution is tabled, agencies other than the U.S. Office of Personnel Management would have access to the information without restrictions. The vote on the substitute motion failed to carry. The vote on the motion to amend carried. Representative Buehler moved that HCR 1655, as amended, be adopted, seconded by Representative Duncan. Motion carried.

SB 803 - Repository of information on missing and unidentified deceased persons.

Tom Kelly, KBI Director, supported the bill which was requested by Judge Mike Elwell, Douglas County District Court, who was concerned about missing people and unidentified persons and bodies. The bill would provide that information the KBI receives on these people in Kansas would be entered in the National Information Center's missing persons program. Supplying the information by local law enforcement officers must be mandatory rather than voluntary. Last year, Kansas had 2,600 runaways reported which could have been reported as missing persons, but only 78 Kansans were listed in the national program file as of February, 1984. The \$39,000 fiscal impact would be needed for implementing and computerizing the program and for one position.

Representative Vancrum moved to report SB 803 favorably, seconded by Representative Solbach. Motion carried.

The meeting was adjourned at 2:00 p.m.

20-4-1. Attorney; assistance in preparation of application; fees. (a) An Each attorney representing a claimant shall submit to the board an itemized statement of the attorney's time expended ~~in~~ on behalf of the claimant in preparation of the claim.

(b) The attorney fee shall be at a rate of ~~thirty (\$30.00) dollars~~ \$45.00 per hour for time expended in preparation, investigation and presentation of the claim, together with reimbursement for mileage at the rate allowed by rules and regulations, adopted by the department of administration, for reimbursement of public officials. (Authorized by K.S.A. ~~1979~~ Supp. 74-7304; implementing K.S.A. 74-7311; effective May 1, 1980; amended May 1, 1984.)

DEPT. OF ADMINISTRATION

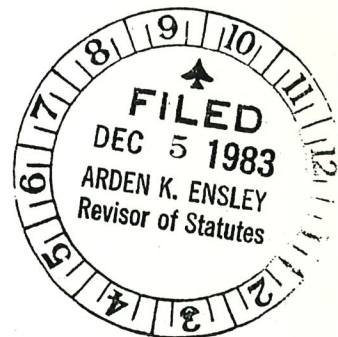
OCT 17 1983

APPROVED BY *JAK*

APPROVED

ATTORNEY GENERAL

By *MWB 10/19/83*



Attch. 1

ARTICLE 18 - IMPLEMENTATION, ADMINISTRATION

10-18-1 Implementation. The Kansas juvenile offender information system as established by K.S.A. 38-1618 represents the offender portion of an overall Kansas juvenile justice information system.

(Authorized by L. 1983, Ch. 140, Sec. 36; implementing L. 1983, Ch. 140, Sec. 36; effective T-_____
_____; effective May 1, 1984.)

DEPT. OF ADMINISTRATION

OCT 20 1983

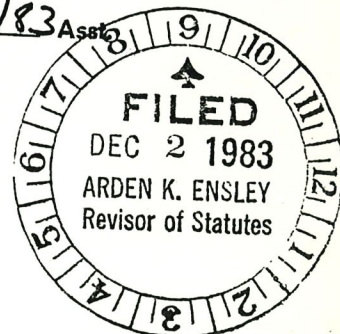
APPROVED BY *[Signature]*

APPROVED

ATTORNEY GENERAL

By *BLH* 10/27/83 *Asst*

Att. h. 2



ARTICLE 12 - DISSEMINATION

10-12-2 Dissemination of non-conviction criminal history record information. Criminal justice agencies may provide non-conviction criminal history record information to the following: (a) other criminal justice agencies;

(b) those authorized by court order or subpoena; and,

(c) federal agencies for such investigative purposes as authorized by law or presidential executive order.

(Authorized by K.S.A. ~~1980~~ 1982 Supp. 22-4704; implementing K.S.A. ~~1980~~ 1982 Supp. 22-4707; effective E-81-31, October 8, 1980; effective May 1, 1981; amended May 1, 1984.)

DEPT. OF ADMINISTRATION

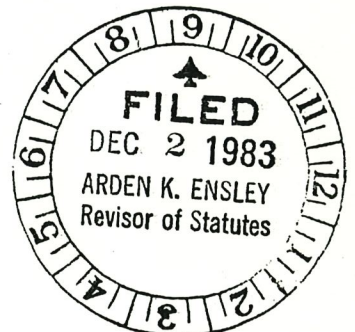
OCT 25 1983

APPROVED BY *FDK*

APPROVED

ATTORNEY GENERAL

By *BLH* 10/27/83 Asst.



Atch. 3

ARTICLE 12 - DISSEMINATION

10-12-2 Dissemination of non-conviction criminal history record information. Criminal justice agencies may provide non-conviction criminal history record information to the following:

- (a) other criminal justice agencies;
- (b) those authorized by court order or subpoena; and,
- (c) The United States Office of Personnel Management for such investigative purposes as authorized by statute or presidential executive order 10450.

(Authorized by K.S.A. 1982 Supp. 22-4704; implementing K.S.A. 1982 22-4707; effective E-81-31, October 8, 1980; effective May 1, 1981; amended May 1, 1984.)

Executive Order 10450

Security Requirements For Government Employment

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118 j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22-1, et seq.), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: *Provided*, that upon request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investi-

gation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: *Provided*, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: *And provided further*, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field preappointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall readjudicate, or cause to be readjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may

be appropriate, shall review, or cause to be reviewed, and, where necessary, readjudicate, or cause to be readjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: *Provided*, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly

consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications, or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.¹

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States.

¹ As amended by Executive Order 10548 of August 2, 1954.

or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership → with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising ← their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the government of the United States or any State or subdivision thereof by unlawful means.²

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.³

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the

² As amended by Executive Order → 11735 of June 4, 1974.

³ As amended by Executive Order 10491 of October 13, 1953. ←

investigative facilities of the Civil Service Commission, and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (3) ⁴ of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

SEC. 9. (a) There shall be established and maintained in the Civil Service Commission a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Commission under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Civil Service Commission information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order

⁴ As amended by Executive Order 10531 of May 27, 1954.

shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

SEC. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Civil Service Commission on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: *Provided*, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pend-

ing in the Federal Bureau of Investigation or the Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended,⁵ is hereby revoked.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Civil Service Commission, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Civil Service Commission shall report to the National Security Council, at least semiannually, on the results of

⁵ As amended by Executive Order →11735 of June 4' 1974, which revoked Executive Order 11603 of July 2' 1971.←

such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.⁶

(b) All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Civil Service Commission in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Commission as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Civil Service Commission is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.⁶

SEC. 15. This order shall become effective thirty days after the date hereof.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 27, 1953.

⁶ As amended by Executive Order 10550 of August 5, 1954.

Mr. Chairman and distinguished panel members, my name is David Plummer. I am Chief of the Regional Investigations Division, United States Office of Personnel Management. We are here to ask your support for the changes proposed to Article 12 of the Kansas Administrative Regulations. This change is needed to clearly allow Federal investigative agencies, such as the United States Office of Personnel Management, to carry out their mission to ensure the fitness, integrity, trustworthiness, and loyalty of Federal employees and of those persons working in the national defense.

The U. S. Office of Personnel Management, which is the successor agency to the U. S. Civil Service Commission for most administrative and operational responsibilities, has under Federal statute, and Presidential Executive Order broad investigative responsibilities. OPM is given a lead role by the Atomic Energy Act of 1954 and Presidential Executive Order 10450 for the Federal Government's loyalty/security program as well as being the organization responsible for establishing guidelines and determining the basic fitness of employees for the Federal service. Under statute and Presidential Executive Order, OPM has a responsibility for conducting background investigations of persons, both Federal employees and contractor employees to the Department of Energy, who will be employed in nuclear weapons, research, or manufacture and who will have access to classified information or areas. We are responsible for conducting background investigations for other Federal agencies that do not have their own investigative staffs or do not want to use their trained criminal investigators to do this type of an investigation. For example, we conduct background investigations for most of the Department of Justice employees, except the FBI, which includes all persons in the Federal Prison System, Assistant U. S. Attorneys, Drug Enforcement Agents, Immigration and

Atch. 6

Naturalization Agents, etc., etc. all of which are in the Criminal Justice System as are many of the other positions for which we conduct investigations such as Investigators, Auditors and Inspectors*General for other Federal agencies. I estimate that at least 25 to 30 percent of our investigations are for these kinds of positions. In addition to these law enforcement positions, there are many positions in the Federal service where we think the public certainly has an interest, indeed a right, to expect the fitness, integrity and honesty of employees serving the public. This is true of employees in the Veterans Administration Hospitals involved in patient care -- to ensure that such persons employed in the hospital do not have a history of violence, or abusive behavior or that they are not abusing drugs or alcohol -- of persons employed in the Air Traffic Control System, as I am sure we all fly and want to ensure, to the extent possible, that persons who are Air Traffic Controllers or Technicians are not involved with drugs or have an alcohol problem -- I am sure we would want Agents and Auditors employed by the Internal Revenue Service to possess the honesty and integrity needed for these positions. These are just a few examples of the types of positions with a significant public trust inherent in the position and where we need to be sure that the persons serving in these positions are fit for the position.

For the Office of Personnel Management as well as other agencies to adequately carry out this mission to ensure the fitness, honesty, integrity and loyalty of the Federal workforce and of those persons working in the national defense, we need complete access to criminal history record information which would include arrest record information. This need for arrest record information is recognized by the guidelines on criminal history record information collection and dissemination issued by the Law Enforcement Assistance Administration of the Department of Justice (Title 28 Part 20

U.S. Code). It is these guidelines that were largely responsible for individual states enacting laws dealing with dissemination of criminal history record information such as that existing in the State of Kansas. These very guidelines, specifically refer to the U.S. Office of Personnel Management by name, as an example of an agency with a need for access to criminal history record information including nonconviction data. Of course the Office of Personnel Management, as well as every Federal agency must abide by these very LEAA guidelines on the use and dissemination of criminal history record information.

However, let me also assure you that criminal history record information obtained by us, which does not result in a conviction, by itself would not result in an adverse suitability or security determination. The conduct involved will identify a need for further investigation or clarification to resolve the issue or conduct raised by the arrest record. As I am sure you are aware, there are many persons involved in serious conduct who are, for a variety of reasons, never brought to trial, a witness refuses to testify, the victim does not press charges, etc. Many times these persons will have a pattern of such conduct which certainly is an indicator of possible problems and the need for investigation or further clarification to resolve the issues raised.

With all this said let me also assure you that while we have spoken of the need to protect the rights of the public there are also laws and procedures to ensure that the rights of the individual are protected. There are criminal penalties involved under Title 5, Section 552 of the U.S. Code for the misuse of information. Additionally, in cases like we are talking about, where the subject is being considered for a particular Federal position or for access to security information or areas -- a noncriminal investigation -- the subject is aware of the investigation being

conducted, the scope of the investigation, the use of the information, and the type of sources to be contacted and has signed an "Authority for Release of Information" authorizing the investigative agency to obtain information about that subject including criminal history record information. Before an action adverse to an individual is taken there are "due process" procedures that must be followed to protect that person's rights. The subject of an investigation also has the right to obtain the investigative reports maintained on the subject and to refute and/or have amended the information contained in that report. We feel that there are more than adequate safeguards to protect an individual against arbitrary and capricious action.

We think we have clearly shown our need for the proposed change to Article 12 of the Kansas Administrative Regulations, which possible need for such changes was recognized by the Kansas Legislature which allows for such changes. This change will help Federal investigative agencies carry out their mission. It will benefit the citizens of the State of Kansas and the public generally by ensuring that those persons employed in the public service or in the national defense are fit for the positions being considered for, are trustworthy, honest, and loyal and will not bring harm to the public, themselves or the national defense. We appreciate your consideration in support of this change to the regulations and thank you for the chance to appear before this committee and if there are any questions we will try to respond.