

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~p.m.~~ on February 8, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Mulich and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Frank Diehl, Kansas Bureau of Investigation
David Plummer, United States Office of Personnel Management, St. Louis
Philip Kopman, United States Office of Personnel Management, St. Louis
Ken Bahr, Crime Victims Reparations Board

The chairman explained a complicated situation has developed on the three senate concurrent resolutions scheduled for today because last Friday the attorney general ruled the present system for reviewing rules and regulations is inconsistent with the provisions of the state constitution. The legislature has had to determine how to approach the problem and feels it is important to have some way of having legislative oversight of implementation of the laws that are passed. The committee will not immediately act on the resolutions, but the chairman would like to go ahead with the hearings to discuss the policies involved. Copies of the rules and regulations were distributed to committee members (See Attachments, No. 1,2,3). Senator Werts, the chairman of the Committee on Administrative Rules and Regulations, explained this system has been in existence since about 1939 in Kansas. He thinks legislative oversight will continue, but leadership needs to arrive at a decision. These resolutions will proceed through the legislative process. He then explained the three concurrent resolutions.

Senate Concurrent Resolution 1652 - Rejecting K.A.R. 10-18-1, juvenile offender information system.

Frank Diehl explained the Kansas Bureau of Investigation submitted the temporary and permanent rules and regulations. They withdrew the temporary and did not formally withdraw the permanent. They have no objection to the resolution.

Senate Concurrent Resolution 1656 - Rejecting K.A.R. 20-4-1, crime victims reparations board, attorney fees.

Ken Bahr stated his agency has no objection to the resolution.

Senate Concurrent Resolution 1655 - Rejecting K.A.R. 10-12-2, dissemination of nonconviction history by KBI.

Frank Diehl testified there are certain agencies that need this information for hiring people in certain institutions. He referred back to the original Kansas plan adopted in 1976, and one of the categories in that plan was federal agencies who need such information. The chairman asked Mr. Diehl to explain how the Kansas Plan was adopted. Mr. Diehl explained the office of LEAA came out with certain guidelines; people getting this LEAA money were to adopt plans for collection and dissemination of criminal records. The plan is dated 1976 and was adopted in 1977, and the KBI participates in it. A private firm was hired to draw up the document itself. The chairman explained the plan the advisory committee adopted was reviewed by the legislature. A committee member inquired, only concern he has is why didn't the KBI come to the legislature and ask that a bill be introduced? Mr. Diehl replied, they thought the original intent was clear and it would be simpler to go through the rules and regulations process. They have no quarrel

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 8, 1984.

Senate Concurrent Resolution 1655 continued

with enumerating what agencies should have the information. The bureau feels it is something that is necessary. The committee member inquired, if the KBI would support a bill that would enumerate various agencies that would have access to this information? Mr. Diehl replied, I think that is agreeable. A committee member inquired, what is nonconviction criminal record? Mr. Diehl replied, when an arrest is made, and it is a dismissal of a charge. A committee member inquired, in other words, no conviction, including a not guilty judgment or a dismissal with prejudice at state's cost? Mr. Diehl replied, yes. The chairman inquired, is it limited to an arrest that was followed by something other than a conviction? Mr. Diehl replied, yes. A committee member inquired, do they expose expungement records to other agencies? Mr. Diehl replied, it is strictly confined to enumerated types of situations. A committee member inquired, the agencies to which this information could be released could be controlled by some one out of this state? The chairman remarked, I am concerned with the delegation of powers. Further committee discussion with Mr. Diehl followed.

David Plummer requested support for the changes proposed in Article 12 of the Kansas Administrative Rules and Regulations. A copy of his testimony is attached (See Attachment No. 4). A committee member inquired, how many of the 50 states are providing this information? Mr. Plummer replied, about 47 states provide the information in various form. Further discussion with him followed.

Phil Kopman testified Mr. Plummer covered everything; he would say the same thing. He responded to questions from the committee.

The hearings on the consurrent resolutions were completed.

The chairman pointed out the copies of the proposed amendments to Senate Bills 614 and 615, which were heard on Monday, February 6, are attached, and also attached is a copy of a report showing figures from the Youth Services Programs (See Attachments No. 5, 6, 7).

The meeting adjourned.

2-8-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Lavern Andrews	RR Marquette	Close Up Kansas
Charise Morgan	225 Ballard	Close " "
Jeff Babinski	1220 W. 42nd	close-up Kansas
Jean Bak	Topeka	Cime Victims Rep. Bd.
TROY CLOUSE	TOP Topeka	Close-up Kansas
Larry Brosemer	Topeka	Close-up Kansas
David Chavez	Topeka	close KANSAS
Kileen Sander	Hays	Close-up Kansas
Ami Benson	Hays	Close-up Kansas
Kris Boucher	Hays	close-up Kansas
Angela Maroney	Hays	Closeup Kansas
Jessica McCall	Hays	close-up Kansas
Rob Channell	Hays	Close-up Kansas
Myrtle Wicks	Hays	Closeup Kansas
JEFF LESSMAN	HAYS	Close Up
Beth Benson	Lindsborg	Close-up
John Hermann	3417 E 2nd Wichita	Close-up
Liu-Hwa Frazier	Wichita	Close-Up Kansas
Leslie Bengtson	Lindsborg	Close-Up Kansas
Levitt-Salem	Lindsborg	Close up Kansas
Danell T. Ringer	Painter	Kans AAM
Jacinta Bupp	(Hays)	Close Up Kansas
Caryn Ryanik	Hays	Closeup Kansas
Mark Ford	Haysville	close up Kansas
Sherry Powers	Haysville	Close up Kansas

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Shawn Sturm	Haysville 321 W. 7 th ST	CAMPUS HIGH SCHOOL
Alan L. Griswold	709 Amite dr. Haysville	Campus High School
Don J. Blum	4 th W. Main	OPM
Chris J. Kopman	PO Box 15369 Kansas City, Mo	Office Personnel Request
Frank Dichtl	Topeka	K.B.I.
Thomas E. Kelly	"	"
Jim J. [unclear]	"	"
Tom Fintler	Lawrence	Sen Hess
Lee Lips	204 W 5 th	Topeka Police Dept.
Leo Ethel	"	"
Sanya Seraphim	Topeka High School ↔	2001 Wildw. Topeka
Keith Lydia	Topeka High school	Close up
Larry [unclear]		Sen. Feiniger
Julie Nelson	Jindaborg High	Close Up
Annette Wallace	Topeka High	close-up
MR. RAY FARAG	731 Fairway, Wichita, Ms.	Close-up - Spouse
Michael Underwood	146 S. Belmont	Close-up
Fia Sinchir	2152 S. Grove, Wichita, Ks	Close-up (Wichita East)
Christy Hepner	2062 S. Green Wichita, Ks.	Closeup (W. East HS)
Debbie Dickinson	1208 Luther Wichita, Ks.	Closeup (W. East HS.)
Donna [unclear]	614 E 5 th Topeka, Ks	Close-up
Esther Franz	Hays High	" Hays, Ks

2-8-84
SCR 1.52
Attach. # 1

Juvenile Offender Information System

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.)

Non-negated

DEPT. OF ADMINISTRATION

OCT 20 1983

APPROVED BY *[Signature]*

APPROVED

ATTORNEY GENERAL

By *BLH* 10/27/83

FILED
DEC 2 1983
ARDEN K. ENSLEY
Revisor of Statutes

Atch. 1

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

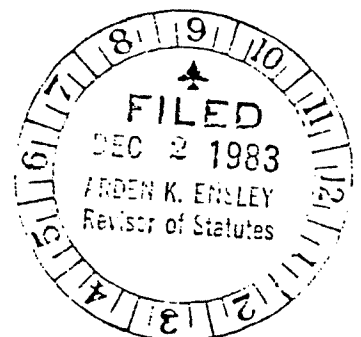
OCT 25 1983

APPROVED BY *FAK*

APPROVED

ATTORNEY GENERAL

By *BLH* 10/27/83 Asst.



Attch. 2

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.)

higher than independent rate

DEPT. OF ADMINISTRATION

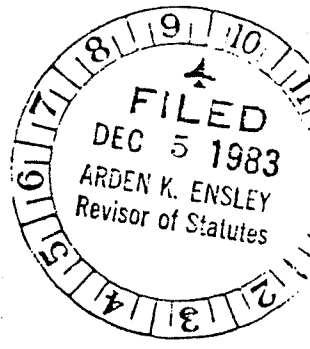
OCT 17 1983

APPROVED BY *JAK*

APPROVED

ATTORNEY GENERAL

By *MWB 10/19/83*



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

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.

SUGGESTED ALTERNATE WORDING FOR SENATE BILL NO. 614

PREPARED FOR THE SENATE JUDICIARY COMMITTEE

Attach #5

DELIBERATIONS BY SUZANNE H. HARDIN

"If custody of a child is awarded under this section to a person other than the child's parent, the court shall give preference to awarding custody of the child to a relative of the child by blood, marriage or adoption or to another person with whom the child has close emotional ties and a finding that the close emotional relationship provides the child with the nurturance, security, and stability necessary for the child's physical, mental and emotional health and development."

"If custody of the child is awarded under this section to a person other than the child's parent, the court shall give preference to awarding custody of the child to a relative of the child by blood, marriage or adoption or to another person with whom the child has close emotional ties. The court shall have as a primary concern a finding that healthful emotional attachments that have formed between the child and the psychological parent shall be in the best interest of the child's emotional, mental and physical health and development."

"close emotional ties" means a psychological relationship that places a relative or person in a loving, caring and accepting relationship with the child so that healthful emotional attachments have formed between the child and the "psychological parent".

"psychological parent" means a relative or person who is in a loving, caring and accepting relationship with the child so that close healthful emotional attachments have formed between the child and the relative or person who is not the biological parent."

2-8-84

Attach. # 6

SUGGESTED ALTERNATE WORDING FOR SENATE BILL NO. 615

PREPARED FOR THE SENATE JUDICIARY COMMITTEE
DELIBERATIONS BY SUZANNE H. HARDIN

"If custody of a child is awarded under this section to a person other than the child's parent, the court may grant a grandparent of the child reasonable rights to visit the child upon motion of the grandparent and a finding that the visitation rights would be in the best interests of the child. In determining the child's best interests, the court (shall/may) consider whether visitation would endanger the child's physical or emotional health or impair the child's emotional development." **

The committee may wish to consider changing "grandparent" to "grandparent by blood, marriage or adoption" or "grandparent or step-grandparent" with thought to the number of families who have gone through changes in marital status.

** The committee may wish to consider the wording "the child's physical or emotional health or impair the child's emotional development" since these are significant issues in normal child development in the 1980's. Differentiation is made between emotional and physical health as on-going conditions, and emotional development as a long-term process.

Att. 6

YOUTH SERVICES PROGRAMS
FY 1983 - FY 1985

	<u>FY 1983</u>	<u>FY 1984 (Revised)</u>	<u>FY 1985 (Gov. Rec.)</u>
<u>Programs that are Preventive in Orientation</u>			
Community Based Service Grants (State General Fund)	\$ 383,005	\$ 550,000	\$ 550,000
Child Abuse and Neglect (Federal Fund)	103,703	122,000	122,000
Juvenile Justice and Delin- quency Act (Federal Fund)	610,501	1,354,000	1,545,000
Family and Children Trust Fund (State Special Revenue)	134,000	170,000	185,000
Family Support Worker (In-Home Preventive Service Program) (State and Federal Funds)	<u>689,135</u>	<u>1,047,771</u>	<u>1,516,862</u>
Subtotal	<u>\$1,920,344</u>	<u>\$3,243,771</u>	<u>\$3,918,862</u>
<u>Out-of-Home Placements</u>			
Foster Care	\$18,107,240	\$19,542,178*	\$19,193,593
Adoption Support	<u>669,823</u>	<u>924,300</u>	<u>889,300</u>
Subtotal	<u>\$18,777,063</u>	<u>\$20,466,478</u>	<u>\$20,082,893</u>
Grand Total	<u>\$20,697,407</u>	<u>\$23,710,249</u>	<u>\$24,001,755</u> *

Note: Excludes Youth Services Administration, Local Office Social Services, and Day Care.

* PROviso that 30,000.00 should be allowed to train private sector persons by S.R.S. in the area of family violence.

RH

Attach. 7