

Approved: 3-24-95
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairman Rochelle Chronister at 3:30 p.m. on March 15, 1995 in Room 519-S of the Capitol.

All members were present.

Committee staff present: Ben Barrett, Legislative Research Department
Dale Dennis, Department of Education
Avis Swartzman, Revisor of Statutes
Lois Thompson, Committee Secretary

Conferees appearing before the committee: Dr. Stephen McClure, Supt., Shawnee Heights (in behalf of United School Administrators)
Sue Chase, Kansas National Education Association
M. Kevin Ireland, Attorney for State Board of Education
Paul Shelby, Office of Judicial Administrator
Representative Vernon Correll
Fred Johnson, Attorney, USD #504
Gerald Henderson, United School Administrators
Roger Werholtz, Deputy Secretary of Programs and State Development, Dept. of Corrections

Others attending: See attached list

Hearings opened on HB 2556 pertaining to criminal offenders; relating to education thereof.

Revisor Avis Swartzman explained provisions of the bill.

Representative Vernon Correll, sponsor of HB 2556 stated this legislation was introduced to alleviate a problem that had occurred in one of his school districts. An 18 year old man, convicted as an adult of drug possession serving 15 months in the county jail wants to attend school during the day. The school board has refused to allow this on the basis he would disrupt the school day. (Attachment 1)

Representative Correll responded to questions from the committee.

Fred W. Johnson, attorney for USD #504, appeared in support of HB 2556. "Currently, any person who has been convicted in the District Court of a criminal offense and sentenced to the county jail may qualify to attend school or be educated at the expense of the school district in which the jail is located if that prisoner is a resident of that district prior to his or her incarceration. . . .To promote a safe and orderly environment conducive to learning it does not seem logical that our public schools should be a place for adult offenders incarcerated in our county jails." (Attachment 2)

Mr. Johnson stood for questions from the committee.

Gerald W. Henderson, Executive Director, United School Administrators of Kansas, spoke in total support of HB 2556. "Certainly schools must have the right to deny admission to convicted adult felons at least until such time as they have served their sentences." (Attachment 3)

Roger Werholtz, Deputy Secretary, Programs and Staff Development, Kansas Department of Corrections, while not opposing the intent of the bill was concerned with the broad language of HB 2556 which appears to include special education as well as general education. (Attachment 4)

Mr. Werholtz stood for questions from the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 519-S Statehouse, at 3:30 p.m. on March 15, 1995.

This closed hearings on HB 2556.

Hearings open on SB 160 concerning state board of education; persons applying for issuance or renewal of certificates.

Dr. Steve McClure, Superintendent, Shawnee Heights USD 450 representing United School Administrators of Kansas, testified in support of SB 160. "This bill sets up an intrastate network for county attorneys, or their designee, to report crimes against children to the Kansas State Department of Education." (Attachment 5)

Sue Chase, representing KNEA, testified in support of SB 160. "Currently the Professional Practices Commission has been plagued with the random manner in which cases are referred to them. The commission has no routine access to records or information. The only cases they hear are those which have been reported to them or have appeared in the newspapers. This becomes a game of chance. KNEA believes this bill provides the means for assisting the Practices Commission in their work." (Attachment 6)

M. Kevin Ireland, Staff Attorney for the State Department of Education, appeared in support of SB 160, and offer an amendment to SB 160 which is necessary to clarify its intent. The proposed amendment to SB 160 will require persons identified in subsection (b) to wait at least five years from the date of their conviction to apply for a certificate. (Attachment 7)

Paul Shelby, Assistant Judicial Administrator testified in opposition to SB 160 because it will adversely impact the workload of clerks of the district court. The bill as changed by the Senate Committee would get all of its information on criminal history, child abuse, and the like from district courts. They oppose the passage of SB 160 in this form and recommend deletion of searching records for past terminations of parental rights, and perhaps by requiring notification by prosecutors of any future suits covering this aspect of the bill. They also recommend returning to asking the KBI and FBI about criminal history information. (Attachment 8)

The floor was opened to questions from the committee.

This closed hearings on SB 160.

Vice-Chairman Eugene Shore presided over discussion and action on HB 2556.

Representative Swenson moved and Representative Ballou seconded amendment to delete county jail or state correctional institutions (on line 12 and 13). Motion carried.

Representative Ballou moved and Representative Ballard seconded motion to pass HB 2556 favorably as amended.

Representative Horst moved and Representative O'Connor moved a substitute motion to amend HB 2556 to state it would not apply to special education students. Motion carried.

Representative Ballard moved and Representative Ballou seconded motion to pass HB 2556 favorably as amended. Motion carried.

Discussion and action opened on HCR 5021.

Representative Powell moved and Representative Tanner seconded motion to amend HCR 5021 to repeal only the self executing powers from the State Board of Education as indicated in the balloon. (Attachment 9)

Representative Wells moved and Representative Luthi seconded motion to table. Motion failed on a division of 6 to 10.

Representative Powell moved and Representative Ballou seconded motion to pass HCR 5021 favorably as amended. Motion carried.

Meeting adjourned at 5:45 p.m.

The next meeting is scheduled for March 16, 1995.

GUEST LIST

Committee: Education

Date: 3/15/95

NAME: (Please print)	Address:	Company/Organization:
Steve McClure	4401 SE Shawnee Hts Rd Tecumseh 66542	Shawnee Hts USD 450
[Signature]	425 Commercial Osawego, KS 67356	Osawego USD 504
Brian Johnson	634 Fourth St. 67356 <small>Osawego, KS</small>	
M. Kevin Ireland	Ks. St. Dept. of Ed., 120 SE 10th, Topeka	Lawrence, KS.
Lorraine Cordes	Lawrence, KS.	Lehman, Prandelery
Mark Tallman	Topeka	KASIS
Karen Coulter	Overland Park	Sen. James Lee
Wanda Morrison	Hutchinson	KS ST Bd of Ed
Gene Chase	Topeka	KNEA
Louise Ayl	"	USA
Bob Johnson	Topeka	WU LAW SCHOOL.
Dicky Arnett	Topeka	SRS/YAS
Karen Rowery	Topeka	KASIS

STATE OF KANSAS

VERNON W. CORRELL
REPRESENTATIVE, SEVENTH DISTRICT
LABETTE COUNTY
PO BOX 214
OSWEGO, KS 67356



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
TRANSPORTATION
FINANCIAL INSTITUTIONS & INSURANCE

TO: HOUSE EDUCATION COMMITTEE
FROM: REP. VERNON CORRELL
RE: HOUSE BILL 2556

Thank you Madam Chair and members of the Committee. I am Rep. Vernon Correll who asked that this legislation be introduced to alleviate a problem that has occurred in one of my school districts.

We have a situation where a young man, 18 years of age, convicted as an adult of drug possession, is serving 15 months in the county jail. He now wants to attend school during the day and the school board has refused to allow him on the basis he would disrupt the school day.

His parents are now suing the school district for not providing a public education. The school board believes they should not have to admit this person as long as he is incarcerated.

I urge you to pass HB 2556 favorably to help other school districts in the future. I'll be glad to answer questions but would like to refer them to Mr. Fred Johnson, the school council.

Thank you for allowing me to appear.

Vernon W. Correll
State Representative

*House Education
Attachment 1
3-15-95*

BEFORE THE KANSAS HOUSE EDUCATION COMMITTEE

MARCH 15, 1995

HONORABLE ROCHELLE CHRONISTER
CHAIR

MEMBERS OF THE COMMITTEE

HOUSE BILL No. 2556

Testimony of Fred W. Johnson who appears on behalf of U.S.D. #504, Oswego, Kansas, as a proponent of the proposed legislation.

Ladies and Gentlemen, I appreciate the opportunity to appear before you today to discuss this proposed legislation. House Bill No. 2556 is before you today at the request of U.S.D. # 504 by reason of a set of circumstances that we believe may become common. Currently, any person who has been convicted in the District Court of a criminal offense and sentenced to the county jail may qualify to attend school or be educated at the expense of the school district in which the jail is located if that prisoner is a resident of that district prior to his or her incarceration. ¹ As a reflection of the public just being fed up with the rampant crime and with the sweeping new sentencing guidelines enacted in Kansas, the courts are sentencing more and more offenders to serve time in the county jails. Therefore, many of those who used and abused the system as minors are now finding

¹See Turner v. Kelley, 411 F. Supp. 1331(1976).

*House Education
Attachment 2
3-15-95*

themselves in county jails with the prospect of remaining there for extended periods of time. Faced with this punishment the idea arises that one possible escape, at least for a few hours a day, is to go to school. A plea is made for school release and suddenly an adult resident of the county jail is demanding that the school district allow him or her to attend classes with the rest of the student population.

In March of 1994, the Educate America Act commonly referred to as Goals 2000 became law. One of those goals under Title I (7) is that every school will be free of drugs, violence and the unauthorized presence of firearms and alcohol, and will offer a disciplined environment conducive to learning. The State of Kansas acting ahead of federal legislation through the Kansas Quality Performance Accreditation program states that one standard for Process Outcome Number 1 is that schools will "provide a safe and orderly environment conducive to learning." In a similar light the federal and state legislation has moved quickly to remove minor children convicted of crimes out of our county jails and to totally protect them from the learning of jail house talk and activities by the construction of juvenile detention facilities at great expense. Now we are asking you under House Bill 2556 to protect the children attending our public schools from just such jail house talk and activities. As an example consider the case of a young man who, during the previous year in high school, missed 42 days of school; a total of 25.0 units were required for graduation to the next grade but the total cumulative units earned were 17 for the year. This young man had been attending an out of district school but was denied permission to return for the next school year. The 18 year old, soon to be 19, appears for enrollment at his resident district high school. The man promptly misses 20 days of school in the first semester and in the meantime is convicted of possession of marijuana and reckless driving

and, as a part of his sentence, ordered to pay restitution for an apparent theft charge which was dropped. None of these crimes happened on school property and all were misdemeanors. Because of the highly active juvenile record of this man, the court sentences him to a total of 15 months in the county jail. At sentencing this man makes a plea to the court that he wants to graduate with his class and can he please go to school? If the Court authorizes school release what are the options of the district? The provisions of K.S.A. 72-8901 have been amended to exclude misdemeanor convictions except under special circumstances.² We assert that to have an inmate incarcerated for a drug conviction attending public school during the term of his or her incarceration would be in violation of or at the least contrary to the spirit of the Drug Free Schools and Communities Act.³ Our public schools were never designed nor intended to educate adult inmates alongside other younger, impressionable students. To promote a safe and orderly environment conducive to learning it does not seem logical that our public schools should be a place for adult offenders incarcerated in our county jails.

This man is not interested in school. He is interested in being out of jail. There is education available to this man, however. The county jail offers G.E.D. classes to inmates of all ages and the local junior college has agreed to and does perform the testing for such a program.

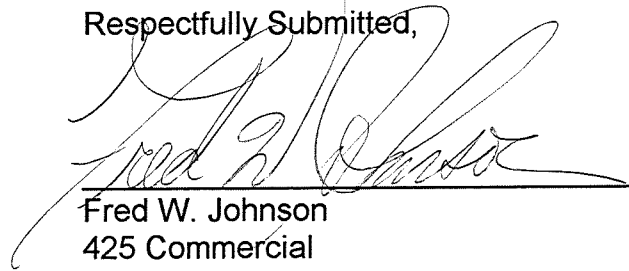
We support House Bill No. 2556 and ask you to support the same to protect our children from those adults whom the court has determined the public should be protected

²House Bill No. 2768, 1994.

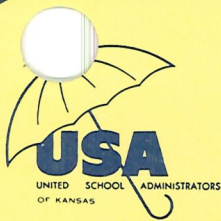
³P.L. 102-226, 103 St. 1928

from and to protect our children from those persons whom the legislature has determined should be punished for their behavior by greater and longer incarceration in our penal system. Our school districts should be allowed to concentrate on the education of our children and the implementation of Goals 2000 and Q.P.A. in whatever form the legislature may make into law. We feel that without this necessary legislation our schools will be spending valuable tax dollars attempting to protect our children from the jail house education and violence we have worked so hard to protect them from.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Fred W. Johnson", written over a horizontal line.

Fred W. Johnson
425 Commercial
Oswego, KS 67356
(316) 795-2754
Attorney for U.S.D. #504,
Oswego, Kansas



HB 2556

Testimony presented before the House Committee on Education
by Gerald W. Henderson, Executive Director
United School Administrators of Kansas
March 15, 1995

Madam Chairman and Members of the Committee:

United School Administrators of Kansas is in total support of **HB 2556**. Certainly schools must have the right to deny admission to convicted adult felons at least until such time as they have served their sentences.

LEG/HB2556

*House Education
Attachment 3
3-15-95*



KANSAS DEPARTMENT OF CORRECTIONS

BILL GRAYES, GOVERNOR

CHARLES E. SIMMONS, ACTING SECRETARY

LONDON STATE OFFICE BUILDING — 900 SW JACKSON
TOPEKA, KANSAS — 66612-1284
913-296-3317

TESTIMONY

DATE: March 15, 1995

TO: House Education Committee

FROM: Roger Werholtz, Deputy Secretary,
Programs and Staff Development

SUBJECT: HB 2556

The Kansas Department of Corrections wishes to offer the following observations regarding HB 2556. As written, we believe that HB 2556 has no fiscal or operational impact on the department. We believe the language of this bill gives us the latitude to continue our current operations. However, we would like to point out that the broad language of HB 2556 appears to include special education services as well as general education. This may create some conflict with P.L. 94-142 which governs the provision of special education. HB 2556 would seem to create the latitude at some future point to eliminate those services for inmates between the ages of 16 and 22 who meet the eligibility criteria under P. L. 94-142. It is the department's understanding, based on conversations with the Kansas Department of Education, that if a policy decision were made at some time in the future to eliminate special education services for eligible inmates under the age of 22, there is a possibility that such a decision may adversely impact the state's eligibility for federal special education funds. It appears that HB 2556 might make it easier for this possibility to arise. The department encourages the committee to obtain input from the Department of Education regarding the relative magnitude of this issue.

RW:mjb

cc: File



Equal Opportunity Employer

*House Education
Attachment 4
3-15-95*

**Dr. Steve McClure, Supt.
Shawnee Heights U.S.D. 450
Representing
United School Administrators of Kansas**

Briefing In Support of Senate Bill #160

Purpose: The purpose of my briefing is to provide you (committee members) critical information about Senate Bill #160 from a practicing school administrator's point of view.

This bill sets up an intrastate network for county attorneys, or their designee, to report crimes against children to the Kansas State Department of Education.

The abuse of children is a constant, prevalent, and ongoing problem in our society.

Child abuse does not exist, **IF**, we mean by using the term, "child abuse," that after an individual grows up, there are no longer scars from that abuse. Growing up, physically, sometimes makes you big enough in stature to resist such abuse. But, the scars from abuse at age 8, 13, 16, are still there when you are 35 and 40 years old. We all know individuals, many individuals, who carry those scars around with them for a lifetime.

As a Gideon, I was in charge of the prison ministry in Lansing for six years. During that time, I saw many things I found scary. Incident #1, enclosed, provides one of those incidences. Let me go over that with you briefly. What happened in that situation is that I worked with an individual in the medium security prison at Lansing. The individual had abused a number of young girls. The individual held Kansas and Missouri teaching certificates. The individual lived in Johnson County, abused children in Johnson County, and taught school in Missouri. There was no way the superintendent of Shawnee Mission was aware that this individual even lived in Overland Park, much less their conviction on child abuse, or the fact they held a Kansas teaching certificate.

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As I worked with this individual, I became concerned, (1) about the amount of time it took to get this individual to Larned into a counseling program; (2) also the fact that there was some doubt as to whether the counseling would be provided prior to the three year prison term being completed. However, another concern of mine was that this individual was going back into society with a valid teaching certificate. So, I called Judy Hamilton, who was then the director of certification at the Kansas State Department of Education. She, then, checked out my story with Johnson County District Court, found it to be a true story, and the person's teaching certificate was revoked. There is a good interstate network, whereby if a teaching certificate is revoked in Kansas, all of the states in the United States receive that information. So, that person's Missouri teaching certificate was also revoked.

In the future, there may be other ways of fulfilling this need that Senate Bill #160 addresses. For example, in four years, K.B.I. will have a good information system up and going. There is the Violent Crime in Law Enforcement Act of 1993, which provides a national crime background check system. Title VIII, Sub-Title C, The Jacob Wetterling Crimes Against Children Registration Act, will help in this regard. Title VII, The Violence Against Women's Act, will help in this regard. But, currently, there is no system in place that meets the need that Senate Bill #160 addresses.

As a school administrator, I know I am liable in numerous situations. In these situations, when something like this happens, I am liable for failure to supervise; failure to investigate; failure to train; failure to hire carefully; failure to warn others; failure to report abuse. However, this, as a school administrator, is not my primary concern. My primary concern is the hurt that affects children for their entire lives. This law protects children against repeated offenders offenses. No superintendent wants an educator in their school district that has committed any of these offenses. No principal wants a teacher in their building that has committed any of these offenses. No teacher wants the teacher next door teaching as a colleague who has committed any of these offenses.

There is a good interstate network currently in place. However, there needs to be an intrastate network. What we are asking you to support is Senate Bill #160, which will create an intrastate network, whereby county attorneys will communicate such offenses to the Kansas State Department of Education.

Thank you.

INCIDENT #1

In the 1980's, I was heavily involved in a prison ministry at Lansing State Prison. One of the inmates I was involved with was an individual who was in prison for crimes against children and had previously, upon the time that this surfaced, was a teacher in the Kansas City, Mo. school district that lived in Johnson County, Ks. and held both a Missouri and Kansas teaching certificate.

In a case such as this, my recommendation of a Kansas State Department of Education policy/regulation might not work totally because there was no way that the superintendent of the Shawnee Mission School District was aware of this individual, much less aware of the conviction.

With my long-term relationship with this inmate, it became evident to me that sometimes these individuals work their way up on the list to receive treatment and sometimes they do not. He finally did receive some treatment at Larned State Hospital. He was returned to Lansing and released shortly, thereafter. In this particular incident, I did report this to the Kansas State Department of Education, Director of Certification, and she started the process which eventually resulted in the revocation of this individual's certificate.



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Susan Chase Testimony Before
House Education Committee
Wednesday, March 15, 1995

Thank you, Madam Chair. I am Susan Chase and I represent the Kansas National Education Association. I appreciate the opportunity to address this committee in support of SB 160.

Currently, KSA 72-8503 establishes the Professional Practices Commission. The purpose of the practices commission is to "hear cases arising under the rules and regulations adopted by the state board of education, involving the issuance, suspension, revocation, or reinstatement of teachers' and administrators' certificates and to render initial orders for disposition." The commission is made up of currently certificated and actively employed professionals. This committee takes its responsibilities seriously in disposing of the cases that come before them.

The one problem that has plagued the practices commission in their work is the random manner in which cases are referred to them. Currently the commission has no routine access to records or information. Thus the only cases they hear are those which have been reported to them or have appeared in the newspapers. Therefore, it becomes a game of chance. Some cases go unnoticed while others get referred. KNEA believes this bill provides the means for assisting the practices commission in their work.

We believe the remaining parts of the bill put into statute the current practices of the commission. With the changes proposed by the State Board of Education, we believe the practices commission will continue to function as it has in the past.

We encourage this committee to make the suggestions outlined by the state board staff and to pass this bill out favorably.

Kansas State Board of Education

120 S.E. 10th Avenue, Topeka, Kansas 66612-1182

TO: House Education Committee

FROM: M. Kevin Ireland, Staff Attorney
State Department of Education

SUBJECT: 1995 Senate Bill No. 160 as amended by Senate Committee

DATE: March 15, 1995

My name is Kevin Ireland and I am a staff attorney with the State Department of Education. Mr. Rod Bieker is the General Counsel for the Department. However, since Mr. Bieker is not able to attend today's hearing, I have been asked to attend to offer our comments in support of Senate Bill 160 and to offer, as well, an amendment to Senate Bill 160 which we believe is necessary to clarify its intent. Our proposed amendment is indicated in the balloon to Senate Bill 160 which is attached to my testimony.

Upon closer review of subsections (b) and (e) of Senate Bill 160, we believe the reference to a five year period in both subsections (b) and (e) could have the unintended effect of almost doubling the five year waiting period. For example, if a person who has been convicted of a crime described in subsection (b) applies for a certificate within five years of the date of the conviction, the State Board is required under subsection (b) to deny the certificate. Under subsection (e), the person would be required to wait an additional five years after the date of the denial to reapply for a certificate. Whereas, if the person simply waited five years and one day after the date of the conviction to apply for a certificate, the provisions of subsections (b) and (e) would not apply. The potential for a less than uniform effect is evident.

We believe our proposed amendment to Senate Bill 160 will resolve this inconsistency and will, at the same time, clarify the intent which was to require those persons identified in subsection (b) to wait at least five years from the date of their conviction to apply for a certificate.

In closing, I would add that we certainly appreciate your consideration of our proposed amendments to Senate Bill 160.

SENATE BILL No. 160

By Senator Bogina

1-31

10 AN ACT concerning the state board of education; relating to persons
11 applying for issuance or renewal of certificates; authorizing the state
12 board to receive certain information.

13

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

15 Section 1. (a) The state board of education shall not knowingly issue
16 a certificate to or renew the certificate of any person who: *has been*
17 *convicted of any offense or attempt to commit any offense specified*
18 *in subsection (c) of K.S.A. 21-4619 and amendments thereto.*

19 (b) *Except as provided in subsection (e), the state board of ed-*
20 *ucation shall not knowingly issue a certificate to or renew the cer-*
21 *tificate of any person who, ~~within the five-year period preceding~~*
22 *~~the date of filing an application for a certificate:~~*

23 (1) (A) Has been convicted of an inherently dangerous felony as de-
24 fined in K.S.A. 1994 Supp. 21-3436, and amendments thereto, (B) has
25 been convicted of a felony under the uniform controlled substances act,
26 (C) has been convicted of any act which is described in articles 34, 35 or
27 36 of chapter 21 of Kansas Statutes Annotated or has been convicted of
28 an attempt under K.S.A. 21-3301, and amendments thereto, to commit
29 any such act, ~~or other than an act specified in subsection (c) of K.S.A.~~
30 *21-4619 and amendments thereto,* (D) has been convicted of any act
31 which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amend-
32 ments thereto, or similar statutes of other states or the federal govern-
33 ment, *or (E) has entered into a criminal diversion agreement after*
34 *having been charged with any offense described in this subsection;*
35 *or*

36 (2) ~~has committed an act of physical, mental or emotional abuse or~~
37 ~~neglect or sexual abuse of a child as validated by the department of social~~
38 ~~and rehabilitation services pursuant to K.S.A. 38-1523, and amendments~~
39 ~~thereto, and (A) the person has failed to successfully complete a corrective~~
40 ~~action plan which had been deemed appropriate and approved by the~~
41 ~~department of social and rehabilitation services, or (B) the record has not~~
42 ~~been expunged pursuant to rules and regulations adopted by the secretary~~
43 ~~of social and rehabilitation services; or~~

7-2

1 ~~(2)~~ (2) has had parental rights terminated pursuant to the Kansas
2 code for care of children or a similar code of any other state.

3 ~~(b)~~ (c) For the purpose of complying with the provisions of subsec-
4 tion ~~(a)~~ *subsections (a) and (b)*, the state board of education may:

5 (1) Require fingerprinting of all persons applying for issuance or re-
6 newal of a certificate and submit such fingerprints to the Kansas bureau
7 of investigation and to the federal bureau of investigation for the purposes
8 of verifying the identity of such persons and obtaining records of criminal
9 convictions of such persons;

10 (2) receive from the Kansas bureau of investigation or the state de-
11 partment of corrections or other criminal justice agencies criminal history
12 record information, criminal intelligence information and information re-
13 lating to criminal and background investigations insofar as such infor-
14 mation pertains to persons applying for issuance or renewal of a certifi-
15 cate; and

16 ~~(3)~~ make written request of and receive from the district courts and
17 the department of social and rehabilitation services, at no cost, infor-
18 mation relating to proceedings against persons *who currently hold a*
19 *certificate or who are* applying for issuance or renewal of a certificate
20 insofar as such proceedings pertain to any of the offenses or acts specified
21 in subsection ~~(a)~~ *subsections (a) or (b)*.

22 ~~(c)~~ (d) Information, other than conviction data records of criminal
23 convictions and adjudications of abuse or neglect and termination
24 of parental rights, received by the state board of education pursuant to
25 the provisions of subsection ~~(b)~~ (c) shall be confidential. Any disclosure
26 of such confidential information by a member of the state board shall be
27 subject to any civil or criminal penalties imposed by law for violations of
28 the duty of confidentiality imposed upon the agencies from which the
29 information was received and shall constitute grounds for removal from
30 office.

31 (d) The state board of education, in accordance with K.S.A. 75-4319,
32 and amendments thereto, may recess for a closed or executive meeting
33 to receive and discuss information specified in subsection (b) and to ne-
34 gotiate with persons applying for issuance or renewal of a certificate re-
35 garding any such information.

36 (e) The state board of education may issue a certificate to or
37 renew the certificate of a person who has been denied a certificate
38 ~~under the provisions of subsection (b)~~ if the state board determines,
39 following a hearing, that the person has been rehabilitated for a
40 period of at least five years from the date of denial of the previous
41 application for a certificate. The state board of education may con-
42 sider factors including, but not limited to, the following in deter-
43 mining whether to grant a certificate:

committed an offense or act described in

conviction of the offense or commission of the act

1 (1) ~~The nature and seriousness of the original conduct resulting~~ offense or act
2 ~~in denial of a certificate;~~
3 (2) ~~the conduct of the person subsequent to the denial;~~ commission of the offense or act
4 (3) ~~the time elapsed since the denial;~~ commission of the offense or act
5 (4) ~~the age of the person at the time of the conduct resulting in~~
6 ~~the denial;~~ offense or act
7 (5) ~~whether the conduct was an isolated or recurring incident;~~ offense or act
8 and
9 (6) discharge from probation, pardon or expungement.
10 (f) Before any certificate is denied by the state board of edu-
11 cation for any of the offenses or acts specified in subsections (a) and
12 (b), the person shall be given notice and an opportunity for a hear-
13 ing in accordance with the provisions of the Kansas administrative
14 procedure act.
15 (g) On and after July 1, 1995, the county or district attorney
16 shall file a written report with the state board of education indi-
17 cating the name, address and social security number of any person
18 who has been determined to have committed any offense or act spec-
19 ified in subsection (a) or (b). Such report shall be filed within 30
20 days of the date of the determination that the person has committed
21 any such act.
22 (e) (h) The state board of education shall not be liable for civil dam-
23 ages to any person refused issuance or renewal of a certificate by reason
24 of the state board's compliance, in good faith, with the provisions of this
25 section.
26 Sec. 2. This act shall take effect and be in force from and after its
27 publication in the statute book.

Testimony of Paul Shelby
Assistant Judicial Administrator
House Education Committee

~~Wednesday, March 14, 1995~~
Thursday, March 15

Honorable Representative Chronister and members of the Education Committee:

I am pleased to be able to testify today on 1995 Senate Bill 160 as the bill will adversely impact the workload of clerks of the district court. This bill seeks to prohibit the State Board of Education from knowingly issuing a teaching certificate or renewing certification of any person who has been convicted of or who has attempted to commit any serious sex offense. The bill would also prevent certification of persons, who within the past five years, have been convicted of an inherently dangerous felony; a felony violation of the Uniform Controlled Substance Act; certain "person," sex, or family and children offenses; promotion of obscenity; or entered into a criminal diversion agreement for any of the above offenses; or had parental rights terminated.

As originally drafted, the bill sought criminal history data from the Kansas Bureau of Investigation and by requiring that fingerprint data be submitted provided for uncovering any attempt by an applicant for certification to conceal culpable behavior under other names. This latter requirement apparently contributed to a fiscal note of \$762,064 in excess of the Governor's Budget Report reported in the Supplementary Note to this bill. As changed by the Senate Committee, the bill abandons the KBI and FBI as sources of information. By abandoning the FBI as a source of information, criminal history information from out-of-state has been forgone, even though, in lines 30 through 33, page 1, the bill incorporates convictions from other states and the federal government as criteria which would block certification.

The bill as changed by the Senate Committee would get all of its information on criminal history, child abuse, and the like from district courts. District courts contribute conviction data to the Sentencing Guidelines Commission and to the Kansas Bureau of Investigation so that such information may be centrally located and available for circulation to interested persons.

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The district courts do not have a centrally located easily accessible information center except for the Kansas Bureau of Investigation, which by legislative action acts as repository of criminal history data.

In 1985, after passage of the Kansas Open Records Act, our Supreme Court passed on the essence of the enactment to our court system by adopting Administrative Order No. 45, "Administration of the Open Records Act" which prescribes the procedure by which persons may apply to district courts for data which may be in court records. The order directs clerks of the district court to direct inquiries about criminal history to the official custodian of that information, the KBI. It also provides for a written application for searching court files for particular information.

This bill requires information which district courts may have to be supplied to the Board of Education at no cost (lines 16 through 18, page 2). But we all know that information costs; by abandoning accessing a central repository this bill increases costs by extending the search to the 105 district courts in the state. Our district courts have over a period of years especially in our larger courts slowly converted criminal indexes to computerized data. However, most of our courts, including the most computerized, only go back a few years, then the indexes to be searched must be manually accessed which means that extensive searches, for example, as for an applicant fifty years of age could be for five years in one of our largest courts on a computer index and then for 27 years on manual indexes.

Asking for evidence of severance of parental rights involves several problems, not least of which is that the bulk of these actions are found in confidential juvenile records. No attempt is made in this bill to continue the confidentiality of these records, which may cause some judges to be reluctant to release the information, if it is ever found by a district court. The reason this information would be extremely difficult to find is that parents are not indexed in these cases, only the minor persons involved. That means that in order to be reasonably sure that an applicant has not had a severance of parental rights all juvenile records compiled in a five year period in every court in the state would have to be screened for the name of the applicant (for the period July 1, 1989 to June 30, 1994, 79,730 such cases would have to be screened).

We think that this bill, as it is now drafted, imposes an enormous workload on the district courts of Kansas. We oppose its passage in this form and recommend deletion of searching records for past terminations of parental rights, and perhaps by requiring notification by prosecutors of any future suits cover this aspect of the bill. We also recommend returning to asking the KBI and FBI about criminal history information. By forgoing the requirement for fingerprint cards the fiscal note should be much less than \$762,042. Giving the job to the district courts as in this bill would incur costs of millions of dollars.

SENATE BILL No. 160

By Senator Bogina

1-31

10 AN ACT concerning the state board of education; relating to persons
11 applying for issuance or renewal of certificates; authorizing the state
12 board to receive certain information.

13

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

15 Section 1. (a) The state board of education shall not knowingly issue
16 a certificate to or renew the certificate of any person who: *has been*
17 *convicted of any offense or attempt to commit any offense specified*
18 *in subsection (c) of K.S.A. 21-4619 and amendments thereto.*

19 (b) *Except as provided in subsection (e), the state board of ed-*
20 *ucation shall not knowingly issue a certificate to or renew the cer-*
21 *tificate of any person who, within the five-year period preceding*
22 *the date of filing an application for a certificate:*

23 (1) (A) Has been convicted of an inherently dangerous felony as de-
24 fined in K.S.A. 1994 Supp. 21-3436, and amendments thereto, (B) has
25 been convicted of a felony under the uniform controlled substances act,
26 (C) has been convicted of any act which is described in articles 34, 35 or
27 36 of chapter 21 of Kansas Statutes Annotated or has been convicted of
28 an attempt under K.S.A. 21-3301, and amendments thereto, to commit
29 any such act, *or other than an act specified in subsection (c) of K.S.A.*
30 *21-4619 and amendments thereto,* (D) has been convicted of any act
31 which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, and amend-
32 ments thereto, or similar statutes of other states or the federal govern-
33 ment, *or (E) has entered into a criminal diversion agreement after*
34 *having been charged with any offense described in this subsection;*
35 *or*

36 (2) *has committed an act of physical, mental or emotional abuse or*
37 *neglect or sexual abuse of a child as validated by the department of social*
38 *and rehabilitation services pursuant to K.S.A. 38-1523, and amendments*
39 *thereto, and (A) the person has failed to successfully complete a corrective*
40 *action plan which had been deemed appropriate and approved by the*
41 *department of social and rehabilitation services; or (B) the record has not*
42 *been expunged pursuant to rules and regulations adopted by the secretary*
43 *of social and rehabilitation services; or*

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(3) (2) has had parental rights terminated pursuant to the Kansas code for care of children or a similar code of any other state.

(b) (c) For the purpose of complying with the provisions of subsection (a) subsections (a) and (b), the state board of education may:

(1) Require fingerprinting of all persons applying for issuance or renewal of a certificate and submit such fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such persons and obtaining records of criminal convictions of such persons;

(2) receive from the Kansas bureau of investigation or the state department of corrections or other criminal justice agencies criminal history record information; criminal intelligence information and information relating to criminal and background investigations insofar as such information pertains to persons applying for issuance or renewal of a certificate; and

(3) ~~make written request of and receive from the district courts and the department of social and rehabilitation services, at no cost information relating to proceedings against persons who currently hold a certificate or who are applying for issuance or renewal of a certificate insofar as such proceedings pertain to any of the offenses or acts specified in subsection (a) subsections (a) or (b).~~

(e) (d) Information, other than conviction data records of criminal convictions ~~and adjudications of abuse or neglect and termination of parental rights~~, received by the state board of education pursuant to the provisions of subsection (b) (c) shall be confidential. Any disclosure of such confidential information by a member of the state board shall be subject to any civil or criminal penalties imposed by law for violations of the duty of confidentiality imposed upon the agencies from which the information was received and shall constitute grounds for removal from office.

(d) The state board of education, in accordance with K.S.A. 75-4310, and amendments thereto, may recess for a closed or executive meeting to receive and discuss information specified in subsection (b) and to negotiate with persons applying for issuance or renewal of a certificate regarding any such information.

(e) The state board of education may issue a certificate to or renew the certificate of a person who has been denied a certificate under the provisions of subsection (b) if the state board determines, following a hearing, that the person has been rehabilitated for a period of at least five years from the date of denial of the previous application for a certificate. The state board of education may consider factors including, but not limited to, the following in determining whether to grant a certificate:

request criminal history information concerning any convictions of a candidate for a teaching certificate or renewal of a certificate by submitting the full name of the candidate, any other names by which the candidate has been known, the candidate's date of birth, and the candidate's social security number to the Kansas bureau of investigation for screening.

Delete

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- 1 (1) *The nature and seriousness of the original conduct resulting*
2 *in denial of a certificate;*
3 (2) *the conduct of the person subsequent to the denial;*
4 (3) *the time elapsed since the denial;*
5 (4) *the age of the person at the time of the conduct resulting in*
6 *the denial;*
7 (5) *whether the conduct was an isolated or recurring incident;*
8 *and*
9 (6) *discharge from probation, pardon or expungement.*
10 (f) *Before any certificate is denied by the state board of edu-*
11 *cation for any of the offenses or acts specified in subsections (a) and*
12 *(b), the person shall be given notice and an opportunity for a hear-*
13 *ing in accordance with the provisions of the Kansas administrative*
14 *procedure act.*
15 (g) *On and after July 1, 1995, the county or district attorney*
16 *shall file a written report with the state board of education indi-*
17 *cating the name, address and social security number of any person*
18 *who has been determined to have committed any offense or act spec-*
19 *ified in subsection (a) or (b). Such report shall be filed within 30*
20 *days of the date of the determination that the person has committed*
21 *any such act.*
22 (e) (h) *The state board of education shall not be liable for civil dam-*
23 *ages to any person refused issuance or renewal of a certificate by reason*
24 *of the state board's compliance, in good faith, with the provisions of this*
25 *section.*
26 Sec. 2. *This act shall take effect and be in force from and after its*
27 *publication in the statute book.*

PROPOSED AMENDMENT TO HOUSE CONCURRENT RESOLUTION NO. 5021

On page 1, in line 20, by striking "Article" and inserting "Section 2 of article"; in line 21, by striking "revised" and inserting "amended"; by striking all of lines 22 through 28;

On page 2, by striking all of lines 24 through 43;

On page 3, by striking all of line 6; by striking all of lines 12 through 43;

On page 4, by striking all of lines 1 through 15; following line 15, by inserting the following:

"§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education ~~which shall have general~~ and for its supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

(c) Any municipal university shall be operated, supervised and controlled as provided by law."

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. The purpose of this amendment is to permit the legislature to provide by law for the powers and duties of the state board of education.

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"A vote for this proposition would terminate the constitutional powers and duties of the state board of education and would permit the legislature to provide for those powers and duties by law.

"A vote against this proposition would continue in effect the constitutional powers and duties of the state board of education with respect to general supervision of public schools and would continue in effect the limitation on the authority of the legislature to provide for those powers and duties by law.";

In the title, in line 11, by striking "revise" and inserting "amend section 2 of"; in line 12, after "to", by inserting "the state board of";