

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 30, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused
Representative Jill Grant - Excused
Representative Candy Ruff - Excused
Representative Vince Snowbarger - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Roger Walter, Kansas Securities Commission
Carla Stovall, Attorney General
Chuck Sexton, Kansas Bureau of Investigation
Rebecca Floodman, Kansas Sentencing Commission
Representative Patricia Pettey
Michael Dailey, Wyandotte County Sheriff
Kyle Smith, Kansas Peace Officers Association
Representative Dale Swenson

Others attending: See attached list

Roger Walter, Kansas Securities Commission, appeared before the committee with a bill request which would make it illegal to operate a pyramid promotional scheme, (Attachment 1).

Representative Mays made a motion to have this bill request introduced as a committee bill. Representative Garner seconded the motion. The motion carried.

Representative Ott received a bill request from Sedgwick County which would allow the Sedgwick County Regional Forensic Science Center to use a report in lieu of testimony in a preliminary hearing. She made a motion to have this bill introduced as a committee bill. Representative Howell seconded the motion. The motion carried.

Carla Stovall, Attorney General; Chuck Sexton, Kansas Bureau of Investigation; Rebecca Floodman, Kansas Sentencing Commission, appeared before the committee to give an update on the Criminal Justice Information System project. They explained that ECG Management Consultants of Seattle, Washington, were chosen by the Criminal Justice Coordinating Council to perform a needs assessment study, strategic plan and a tactical plan. The needs and strategic plan would be presented to the Criminal Justice Coordinating Council on February 22, 1996 and the tactical plan would be ready for a presentation to the legislature in March of 1996, (Attachment 2).

Hearings on HB 2695 - battery against a law enforcement officer to include correctional officer/employee of the city or county, were opened.

Representative Patricia Pettey, appeared before the committee as the sponsor of the bill. She commented that because of the inherent danger these employees face they should be afforded the same protection as other persons working in law enforcement capacities, (Attachment 3).

Michael Dailey, Wyandotte County Sheriff, appeared before the committee as a proponent of the bill. He provided the committee with an example of why this bill was needed, (Attachment 4).

Kyle Smith, Kansas Peace Officers Association, appeared before the committee as a proponent of the bill. He explained that the passage of this bill would provide a measure of protection to city and county correctional officers by having a deterrent effect with its enhanced penalty, (Attachment 5).

Committee members were concerned that there was a different penalty for battery against a law enforcement officer than an correctional officer. Kyle Smith commented that the problem for the correctional officers are that once someone is in prison, an additional misdemeanor doesn't mean that much to the inmate.

Hearings on HB 2695 were closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on January 30, 1996.

Hearings on HB 2659 - presumed imprisonment sentence for felony committed for the benefit of a criminal street gang, were opened.

Representative Dale Swenson appeared before the committee as the sponsor of the proposed bill. He stated that the intent of the bill was to insure that gang members who commit felony crimes do not go unpunished, (Attachment 6).

Kyle Smith, Kansas Peace Officers Association, appeared before the committee as a proponent to the bill. He told the committee that this bill would send a message to gangs that gang association bears a cost, (Attachment 7).

Hearings on HB 2659 were closed.

The Chairman announced that he had received a couple of bill requests. The first dealt with SRS investigations of sexual abuse and proposed that "In no instance shall an investigation proceed under this section when the alleged victim has reached the age of 23." (Attachment 8)

Representative Goodwin made a motion to have this bill request introduced as a committee bill. Representative Ott seconded the motion. The motion carried.

The second request involved health care providers providing health care to inmates, (Attachment 9).

Representative Ott made a motion to have this bill request introduce as a committee bill. Representative Pauls seconded the motion. The motion carried.

Representative Pauls appeared before the committee to request that "at the request of a parent or guardian a jury would be impaneled in the termination of parental right cases." She made a motion to have this bill request introduced as a committee bill. Representative Howell seconded the motion. The motion carried.

The committee meeting adjourned at 5:15. The next meeting is scheduled for January 31, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 30, 96

NAME	REPRESENTING
Ron Smith	KBA
Kyle Smith	KBI
Michael Dailey	Wyandotte County Sheriff
Wendy M. Johnson	ACLU
Scott Missoguchi	Budget
Barbara Tombs	KS Sentencing Comm.
Rebecca Woodman	KS Sentencing Comm.
Julie Meyer	KS Sentencing Comm.
<small>Trustin Ambler</small>	Intern - Rep. Jim Morrison
Sean Wright	Intern - rep. Haley
Paul Shelby	OJA
Kelly Kulltala	KTLA
Larry Adams	Emporia Police Dept.
Kelly Jennings	KAPE
Sandra C. Jeter	Intern for Maj. Ldw. Snowberger

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

New Section 1. (a) A "pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services, or intangible property by the participant or other persons introduced into the plan or operation.

(b) Establishing, operating, advertising, or promoting a pyramid promotional scheme shall be a severity level 9 nonperson felony.

(c) A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme nor is it a defense under this article that a participant, on giving consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

(d) The attorney general, or county attorney or district attorney, or both may institute criminal action to prosecute this offense.



State of Kansas
KANSAS CRIMINAL JUSTICE COORDINATING COUNCIL

Attorney General Carla J. Stovall, Chair
Governor Bill Graves, Vice Chair
Barbara S. Tombs, Executive Director

HOUSE JUDICIARY COMMITTEE
Testimony Regarding the Criminal Justice Information System project
January 30, 1996

Background

Since the enactment of the Brady bill requiring records checks for firearms purchases, the federal government has been assisting states in their efforts to improve the reporting and dissemination of criminal history information. The Crime Control Act of 1990 amended Part E of the Omnibus Crime Control and Safe Streets Act to require each state which receives Bureau of Justice Assistance (BJA) Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds to allocate at least 5% of the total award to the improvement of criminal justice records. Given the enactment of sentencing guidelines in July, 1993, the state of Kansas has an even greater interest in ensuring the accuracy, completeness and timeliness of criminal justice information. Since sentences are now based in part upon an offender's criminal history, major focus is placed upon the reporting, storing and dissemination of this information.

During the 1994 legislative session, the Criminal Justice Coordinating Council, consisting of the Governor, Attorney General, Secretary of Corrections, Director of the KBI, Secretary of SRS, and the Chief Justice of the Supreme Court, was formed and is staffed by the Kansas Sentencing Commission. Among the council's mandated duties is to oversee development and management of a criminal justice database and to assume the designation and functions of the

state statistical analysis center.

Utilization of Federal Funding

In Kansas, funds from the Byrne 5% set-aside program will be utilized to provide for the continuation of consolidation and automation of records at the central repository and the costs involved in contracting professional services for a criminal justice information system improvement plan, and will assist in implementation of that plan as funding from the program is available.

The National Criminal History Improvement Program (NCHIP) is a three-year funding program sponsored by the U.S. Department of Justice, Bureau of Justice Statistics. The \$903,000 awarded to the Kansas Criminal Justice Coordinating Council for FY 1996 from the NCHIP program will be utilized for improvement of the criminal history systems at the central repository, including the replacement of the Automated Fingerprint Identification System (AFIS).

Criminal Justice Information System Project

In order to fulfill its mandate under state statute and to comply with BJA requirements under the Byrne program for improving criminal justice records, in 1995 the Criminal Justice Coordinating Council embarked on a project to automate records at the central repository, and to achieve a statewide criminal justice information system improvement plan by April, 1996. The council requested state funding of approximately \$291,000 to match the federal 5% set-aside funding of \$873,000. The Kansas Legislature approved the request during the 1995 legislative session. The plan must be approved by BJA before additional Byrne program funds will be made available to the state.

The idea for achieving a criminal history information system improvement plan was originally divided into two phases: First, a needs assessment study of criminal history, juvenile

justice, and incident-based reporting systems in terms of work and information flows and identification of user needs; and second, the actual improvement plan requested by BJA. A Request for Proposal (RFP) was issued in May, 1995 for the needs assessment phase of the project. In August, 1995, ECG Management Consultants of Seattle, Washington, was chosen by the Criminal Justice Coordinating Council to perform the needs assessment study. ECG Management Consultants is an independent management consulting firm which has significant prior experience in providing assessments of criminal offender records to meet the criminal history baseline audit and needs analysis requirements for federal grant programs. ECG has completed such projects in Oregon, Idaho, Nebraska, Nevada, Ohio and Arizona. ECG began work under the subsequent contract with the council on September 24, 1995. The total cost of the original contract was \$113,540.00.

Under the original contract, ECG was scheduled to complete its needs assessment by the end of January, 1996, after which the planning phase of the project would begin. However, based upon feedback from local criminal justice agencies during the course of the needs assessment, it became clear to the Criminal Justice Coordinating Council that statewide needs in terms of criminal justice records improvement are basic, and that the scope of the needs assessment should be modified to directly support and develop a criminal justice information system improvement plan for the state. In addition, because of the original division of the project into two separate phases, it was unlikely that the improvement plan would be completed within the timeframe required by BJA. Accordingly, at the end of December, 1995, the council, upon the recommendation of its Technical Advisory Group, amended its contract with ECG to include the development of a criminal justice information system improvement plan. The total cost of the contract as amended is \$163,100.00.

Needs Assessment

ECG has completed a draft needs assessment of the existing records information systems in Kansas. As part of the assessment, ECG has made significant preliminary findings relative to governance, policy, forms and procedures, management, training and education, data, information technology, and the ASTRA network. These findings are summarized below:

1. Governance

- * The state has recently created a new governance structure (Kansas Criminal Justice Coordinating Council) with executive oversight of criminal justice information.
- * Local criminal justice agencies do not have adequate input into, or involvement in, the criminal records system governance structure.
- * The Director of the K.B.I. does not have authority over court disposition reporting.
- * Responsibility and authority for the state's criminal justice information systems are distributed among multiple organizations.

2. Policy

- * State criminal history statutes are comprehensive.
- * The current criminal history reporting processes do not support the statutory requirements for reporting criminal justice events.
- * The juvenile justice reporting process does not support the statutory requirements for reporting criminal justice events.
- * State statutes do not directly support the dissemination of criminal history information for the benefit of the criminal justice system or the citizens of Kansas.
- * The dissemination of criminal history data to non-criminal justice agencies is not fully supported by statute.
- * The central repository's policy is to research and review each and every file prior to responding to a record request.
- * The criminal history reporting system is choked by manual and redundant processes that inhibit the reporting of quality information in a timely manner.

- * The inconsistencies and complexities of the criminal prosecution and adjudication process cannot always be captured using structured forms.
- * The juvenile justice information system forms do not capture enough information to record the continuum of contact with the juvenile.
- * The delays and inefficiencies in the reporting methods increase the amount of effort required to process information.
- * K.B.I. service delays increase processing time and effort at the local jurisdictions.
- * The fingerprint processing flow could be mainstreamed and better controlled.
- * The central repository staff maintain both automated and manual data systems.

3. Management

- * Current state criminal history policies and statutes are not supported by the necessary infrastructure.
- * The central repository does not monitor and track the arrest and disposition data submissions made by the local jurisdictions.
- * Delays in the preparation of the PSI delays the transfer of offenders to DOC custody and costs the local jurisdictions.
- * The inability of local jurisdictions to receive timely criminal history information from the central repository can adversely affect public safety.

4. Training and Education

- * Many of the contributors lack the training needed to adequately report criminal history information to the central repository.
- * The Prosecution Juvenile Report is not being completed consistently.
- * In Johnson County, duplicate fingerprint cards are sometimes generated.

5. Data

- * The majority of the adult and juvenile criminal history records maintained by the central repository are not automated.
- * Local jurisdictions are not benefitting from the data that is being collected in the KIBRS and JJIS systems.

* State and local jurisdictions question the value of collecting the amount of data that is currently requested by the data collection forms and systems definition.

* KCH does not capture and store information about wanted persons or offenders under supervision.

6. Information Technology

* There is no local agency electronic access to the three state criminal history systems (KCH, JJIS, and KIBRS).

* The three core criminal history systems are not integrated or linked together.

* The technology supporting the KIBRS system limits multiuser access and ad hoc reporting.

* There is some integration of criminal justice information technology at the local level.

* The AFIS and Live-Scan equipment in place do not support the automated exchange of fingerprint information.

* Most local jurisdictions lack the basic applications required to effectively support their business functions.

* State sponsored applications appear to be targeted to benefit the state and do not provide the local jurisdictions with the functionality they need.

* The KIBRS interface specifications have not been stable enough to encourage participation by several jurisdictions.

* The KIBRS software supplied to local agencies provides no benefit to the agencies that use it.

* Cost limits utilization and access to the ASTRA Network.

7. ASTRA Network

* The ASTRA switch messaging software is based upon very old technology and will be very expensive to substantially enhance.

* The messaging software only provides basic functionality and does not incorporate very much "intelligence" in message processing.

* The ASTRA system does not provide state and local agencies with critical central files for wants, warrants, or other needs.

* The single networking protocol design limits new data processing solutions and restricts end users in their selection of technology.

* The ASTRA system is not positioned to take advantage of the new capabilities of NCIC 2000 or IAFIS, when those systems arrive.

Strategic Plan

In order to achieve the development of a criminal justice information system improvement plan for the state, ECG assembled a twenty-eight member strategic planning committee consisting of representatives from both state and local criminal justice agencies. The planning committee participated in a strategic planning retreat conducted by ECG in Manhattan, Kansas on January 24, 25 and 26, 1996. During this retreat the planning committee, taking into consideration the needs assessment findings summarized above, developed the outlines of a strategic plan for the state, which will encompass a future system model identifying the future data, processes, technology, and organizational and governance structures required to support the collection and dissemination of criminal justice records information within the state.

The needs assessment and the strategic plan will be presented to local criminal justice constituencies in a series of regional meetings to be held in seven cities (Garden City, Colby, Hays, Concordia, Hutchinson, Topeka and Chanute) during the week of February 12, 1996. These regional meetings will provide local criminal justice agencies from across the state the opportunity to give their input to both the needs assessment and the strategic plan. The final Needs Assessment and Strategic Plan will be presented to the Criminal Justice Coordinating Council on February 22, 1996, and subsequently to the appropriate legislative committees.

Tactical Plan

After completion of the strategic plan, ECG will assist the planning committee with the development of a tactical plan which will identify and define tactical improvement projects to

be undertaken in the short term in order to implement the future system model and meet the state's strategic objectives. An overall project schedule and budget for these improvement projects will be developed as part of the tactical plan. The Tactical Plan, along with the appropriate funding requests for the tactical improvement projects, will be ready for presentation to the appropriate legislative committees in March, 1996.

Implementation of the Plan

Following completion and submission of the Criminal Justice Information System Improvement Plan, the Criminal Justice Coordinating Council will issue an RFP for the second phase of the overall project, which will involve the architectural design and specifications (hardware, software, etc.) of the future system model developed in the Strategic Plan. Further details will be forthcoming as we approach this phase of the project.

Closing Remarks

The Kansas Criminal Justice Coordinating Council is committed to achieving a statewide criminal justice information system which assures timely, real-time access to complete and accurate information, and which can accommodate rapidly changing technologies. We are well on our way to achieving this goal, and the support of the Kansas Legislature in this important statewide endeavor is essential to its future success.

Submitted By:

Attorney General Carla J. Stovall

PAT HUGGINS PETTEY

REPRESENTATIVE, THIRTY-FIRST DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY BEFORE
HOUSE JUDICIARY COMMITTEE
January 30, 1996

HOUSE BILL NO. 2695

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
TAXATION
JOINT COMMITTEE ON CHILDREN
AND FAMILIES
DEMOCRATIC LEADERSHIP
CAUCUS CHAIR

Chairman O'Neal and fellow legislators, thank you for the opportunity to speak on HB 2695. This bill was requested by Sheriff Mike Dailey and the Wyandotte County Commissioners and is supported by the State Sheriff's Association. Currently if a county jail detention center officer is assaulted in the performance of their duties, the assault and/or battery charge is handled like a typical assault and/or battery charge. Because of the inherent danger, such employees should be afforded the protection as other persons working in this capacity as defined in this statute.

This statute presently covers correctional officers or employees of the Secretary of Corrections, State Youth Center Officers or employees, Juvenile Detention Facility Officers or employees, and the youth center covers the employees of SRS as well as any independent contractor working at the State Youth Center. The last change to this statute was made in the 1994 session with the addition of youth center employees through HB 2668.

Thank you for your attention. There are others here who are more knowledgeable of this situation but I would be glad to stand for questions.



OFFICE of the SHERIFF
WYANDOTTE COUNTY
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101
PHONE: (913) 573-2861

MICHAEL S. DAILEY
SHERIFF

January 29, 1996

House Judiciary Committee
Kansas House of Representatives
State Capital Building
Topeka, Kansas 66612-1504

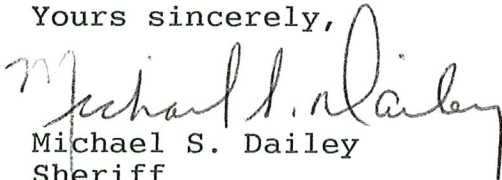
Dear Committee Members,

Thank you for the opportunity to address this committee and express my support for House Bill 2695. This bill will make it a felony to commit battery on a city or county correctional officer.

As a Sheriff, whose Deputies are both certified and non certified officers, I know the importance of passing this bill.

One example, which points out the need for this legislation occurred in the fall of 1995. A deputy, working in my detention facility, was stabbed in the face with a ball point pen by an inmate who believed the deputy did not have certified law enforcement status. The inmate's comment after the attack was, "it's simple battery". The inmate actually believed he would draw the lesser charge simply because the deputy did not share the same status in law as his certified counterpart. This is wrong. We need a law which includes all correctional officers, certified or not, and I urge you to pass House Bill 2695.

Yours sincerely,


Michael S. Dailey
Sheriff

MSD/wj

House Judiciary
1-30-96
Attachment 4



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
BEFORE THE HOUSE JUDICIARY
KYLE G. SMITH, SPECIAL AGENT
KANSAS BUREAU OF INVESTIGATION
ON BEHALF OF
THE KANSAS PEACE OFFICERS' ASSOCIATION
IN SUPPORT OF HOUSE BILL 2695
JANUARY 30, 1996

Chairman O'Neal and Members of the Committee:

I appear today on behalf of the Kansas Peace Officers' Association in support of House Bill 2695. This is a relatively simple amendment to the battery against a law enforcement officer statute to include city and county correctional officers giving them the same protection as state correctional officers. Given the number of criminals who are held in city and county jails, this application would seem both logical and just. If a prisoner batters a guard, the distinction between who the employer is, controlling what level the crime is, makes no sense.

It is hoped that passage of HB 2695 would provide a measure of protection to city and county correctional officers by a deterrent effect with its enhanced penalty. Thank you for your consideration. I would be happy to answer questions.

House Judiciary
1-30-96
Attachment 5

DALE A. SWENSON
REPRESENTATIVE, NINETY-SEVENTH DISTRICT

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: BUSINESS, COMMERCE AND LABOR
EDUCATION
FEDERAL AND STATE AFFAIRS

Testimony on HB 2659
January 30, 1996

Current provision of law allows for sentence enhancement when it can be shown that the commission of the felony was in association with, or to the benefit of, a criminal street gang. HB 2659 creates a sentencing presumption for such offenders rather than just being one of the many factors that a judge may consider when determining the sentence imposed on persons being sentenced for a felony.

The annual report from the Kansas Bureau of Investigation reported that three out of four officers shot in recent months were shot by juveniles, that the 15-18 age group is the largest group of arrestees, and the 10-14 age is the fastest growing group of arrestees.

Gang related crime is above all a violent crime problem. Homicides and other violent crimes account for about half of all recorded gang-related crime incidents. Street gangs inherently operate outside the law, and stopping their growth is difficult.

The intent of HB 2659 is to insure that gang members who commit felony crimes do not go unpunished. This approach sends a clear message to street gangs.



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
BEFORE THE HOUSE JUDICIARY
KYLE G. SMITH, SPECIAL AGENT
KANSAS BUREAU OF INVESTIGATION
ON BEHALF OF
THE KANSAS PEACE OFFICERS' ASSOCIATION
IN SUPPORT OF HOUSE BILL 2659
JANUARY 30, 1996

Chairman O'Neal and Members of the Committee:

I appear today on behalf of the Kansas Peace Officers' Association in support of House Bill 2659. As the committee is aware, this legislation would in essence improve, from a public safety point of view, the sentences on those felons who commit crimes on behalf of criminal street gangs by making such a sentence presumed imprisonment. The problems with violent street gangs have not gone away, and as we all feared have, indeed, increased and spread throughout Kansas. Narcotics trafficking, extortion, drive-by shootings, witness intimidation are all unfortunately too common throughout the state.

Not only would this legislation provide a more certain means of immobilizing proven gang members, but it would send an important message to the gangs that gang association bears a cost. It would no longer be just cool or an act of bravado to flash your signs or wear your colors when committing a drive-by, it would also be an act that would result in your imprisonment.

On behalf of the law enforcement officers in Kansas we would ask your support for House Bill 2659. I would be happy to answer any questions.

House Judiciary
1-30-96
Attachment 7



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

September 28, 1995

Representative William G. Mason
1661 Arizona
El Dorado, KS 67042

Re: Limitations on Child Abuse Investigations

Dear Representative Mason:

Based on our conversations last session, I have worked with staff to develop legislation which would address the concerns you expressed. Enclosed please find a suggestion for amendment of K.S.A. 38-1523 which would clearly limit the Department's responsibility and authority to investigate stale allegations of child abuse or neglect.

Currently the law is simply not clear. The mandate to investigate allegations of child abuse or neglect supports the argument that the Department not assess reports received from adults reporting abuse they suffered as children. However, the language in K.S.A. 38-1524(b) requires the Department to take immediate steps to protect the health and welfare of "any other child under the same care who may be harmed by abuse or neglect." Without clear direction from the Legislature, the Department confronts a Hobson's choice.

We appreciate your interest in this area and look forward to working with you to improve child welfare in Kansas.

Sincerely,

A handwritten signature in cursive script that reads "Sue".

Roberta Sue McKenna, Attorney
SRS - Legal Division
DSOB, 915 SW Harrison, Room 530
Topeka, KS 66612-1570
(913) 296-3967

RSM/clh

cc: Rochelle Chronister

House Judiciary
1-30-96
Attachment 8

33-1522b. Same; reporting of certain abuse or neglect of children in institutions operated by the secretary; rules and regulations.

(a) The secretary shall adopt rules and regulations governing the reporting of suspected child abuse or neglect that occurs in an institution operated by the secretary. Such rules and regulations shall specify:

(1) Those types of incidents which are required to be reported;

(2) standards for determining those such incidents that, without investigation, appear not to involve abuse or neglect, which incidents shall be reported to the attorney general for review by agents under the direction of the attorney general and for investigation by such agents if they determine investigation to be warranted; and

(3) standards for determining those such incidents that, without investigation, appear to involve abuse or neglect, which incidents shall be reported to the attorney general for investigation by agents under the direction of the attorney general.

(b) Any person who has reason to suspect that child abuse or neglect has occurred in an institution operated by the secretary shall make the report directly to the attorney general's office and shall not be required to make such report first to the secretary or to any employee of the secretary.

(c) The secretary shall consult with and seek the advice of the attorney general in promulgating rules and regulations pursuant to this section.

(d) This section shall be part of and supplemental to the Kansas code for care of children.

History: L. 1988, ch. 140, § 1; July 1.

33-1523. Same; investigation of reports; disclosure upon application withdrawal. (a) *Investigation for child abuse or neglect.* The state department of social and rehabilitation services and law enforcement officers shall have the duty to receive and investigate reports of child abuse or neglect for the purpose of determining whether the report is valid and whether action is required to protect the child from further abuse or neglect. If the department and such officers determine that no action is necessary to protect the child but that a criminal prosecution should be considered, the department and such law enforcement officers shall make a report of the case to the appropriate law enforcement agency.

(b) *Joint investigations.* When a report of child abuse or neglect indicates (1) that there is serious physical injury to or serious deterioration or sexual abuse of the child and (2) that action may be required to protect the child, the investigation shall be conducted as a joint effort between the department of social and rehabilitation services and the appropriate law enforcement agency or agencies, with a free exchange of information between them. If a statement of a suspect is obtained by the law enforcement agency, a copy of the statement shall be provided to the department of social and rehabilitation services on request.

(c) *Investigation of certain cases.* Suspected child abuse or neglect which occurs in an institution operated by the secretary shall be investigated by an agent under the direction of the attorney general. Any other suspected child abuse or neglect by persons employed by the state department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency under the direction of the appropriate county or district attorney, and not by the state department of social and rehabilitation services.

(d) *Coordination of investigations by county or district attorney.* If a dispute develops between agencies investigating a reported case of child abuse or neglect, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.

(e) *Investigations concerning certain facilities.* Any investigation involving a facility subject to licensing or regulation by the secretary of health and environment shall be promptly reported to the state secretary of health and environment.

(f) *Cooperation between agencies.* Law enforcement agencies and the department of social and rehabilitation services shall assist each other in taking action which is necessary to protect the child regardless of which party conducted the initial investigation.

(g) *Cooperation between school personnel and investigative agencies.* Elementary and secondary schools, the state department of social and rehabilitation services and law enforcement agencies shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. Administrators of elementary and secondary schools shall provide to employees of the state department of social and rehabilitation services and law enforcement agencies access to a child in a setting on

In no instance, shall an investigation proceed under this section when the alleged victim has reached the age of 23.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES
OFFICE OF MAJORITY WHIP

MICHAEL R. (MIKE) O'NEAL
104TH DISTRICT

CHAIRMAN, JUDICIARY COMMITTEE

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P.O. BOX 2977
HUTCHINSON, KS. 67504
1-316-662-0537

cc

... or a health care provider
furnishing health care to inmates
within a state correctional facility
pursuant to a ~~an~~ employment contract
of employment to furnish such services. "

Amending ~~75-6115~~

~~75-6115~~
75-6116

Q: should 75-6115 be amended to provide the
act does apply to civil rights cases but does not
apply to medical negl. actions?

75-6112 STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

CASE ANNOTATIONS

1. Statutory liability limit of act inapplicable where insurance purchased providing greater coverage. *Jackson v. City of Kansas City*, 235 K. 278, 320, 680 P.2d 877 (1984).
2. Exception to limitation under 75-6105(a) prevents summary judgment on damages question over \$500,000. *Lee v. Wyandotte County, Kan.*, 586 F.Supp. 236, 239 (1984).

75-6112. Same; judgments against municipalities, payment; periodic payments, conditions; interest; structured annuities. (a) Upon motion of a municipality against whom final judgment has been rendered for a claim within the scope of this act, the court in accordance with subsection (b) may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding 10 years. Any periodic payment upon becoming due and payable under the terms of the judgment shall constitute a separate judgment. Any judgment ordering any such payments shall specify the total amount awarded, the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. Judgments paid pursuant to this section shall bear interest as provided in K.S.A. 16-204 and amendments thereto. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event and periodic payments shall not be ordered paid over a period in excess of 10 years. Nothing herein shall be construed to prohibit the use of structured annuities to satisfy judgments.

(b) A court may order periodic payments only if the court finds that:

(1) Payment of the judgment is not totally covered by insurance coverage obtained therefor; and

(2) funds for the current budget year and other funds of the municipality which lawfully may be utilized to pay judgments are insufficient to finance both the adopted budget of expenditures for the year and the payment of that portion of the judgment not covered by insurance obtained therefor.

History: L. 1979, ch. 186, § 12; L. 1987, ch. 353, § 7; July 1.

Law Review and Bar Journal References:

"Constitutional Law: Governmental Immunity Statute Violates Equal Protection as Applied to Kansas Turnpike Authority." Robert G. Martin, 19 W.L.J. 581 (1980).

"The Kansas Tort Claims Act and School Districts," Susan C. Jacobson, 25 K.L.R. 619, 632 (1980).

75-6113. Moneys for payment of judgments or settlements against municipalities, sources. Payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 *et seq.*, and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general obligation bonds. Warrants or temporary notes issued under the authority of this section may mature serially at such yearly dates as to be payable by not more than 10 tax levies. Bonds issued under the authority of this section shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of this state. Taxes levied for the payment of warrants, temporary notes or bonds shall be exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto, and shall not be subject to or limited by any other tax levy limitation prescribed by law.

History: L. 1979, ch. 186, § 13; L. 1987, ch. 354, § 1; July 1.

Attorney General's Opinions:

Liability of governmental entities; townships. 86-18.

75-6114.

History: L. 1979, ch. 186, § 14; Repealed. L. 1981, ch. 360, § 5; July 1.

75-6115. Claims for damages against health care providers. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than a hospital owned by a municipality and the employees thereof. Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than a hospital owned by a municipality and the employees thereof, arising out of the rendering or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(b) As used in this section:

(1) "Health care provider" shall have the meaning provided by K.S.A. 40-3401, and amendments thereto.

(2) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

History: L. 1979, ch. 186, § 15; L. 1982, ch. 375, § 1; L. 1989, ch. 143, § 7; July 1.

Law Review and Bar Journal References:

"A Practitioner's Guide to the Kansas Tort Claims Act," Jerry R. Palmer, 48 J.B.A.K. 299, 304 (1979).

Attorney General's Opinions:

Liability of state and courts for acts of probationers. 81-98.

University of Kansas institutional review boards are covered by tort claims act. 81-139.

Kansas tort claims act; indemnification of employee acting within scope of employment; inapplicable to claims against health care providers; health care provider defined. 85-29.

Public health; cities and counties; emergency medical services; liability of training personnel for care rendered pursuant to instruction. 87-172.

Kansas healing arts act; physician/employees of K.D.H.E.; exempt licensees; legal defense; tort claims act. 88-22.

75-6116. Defense and payment of liability and defense costs of employee in civil cases; payment of punitive or exemplary damages or reimbursement of related defense costs; compromise or settlement of claim; not a waiver of immunity; certain health care providers considered employees. (a) If an employee of a governmental entity is or could be subject to personal civil liability on account of a noncriminal act or omission which is within the scope of the employee's employment and which allegedly violates the civil rights laws of the United States or of the state of Kansas, the governmental entity:

(1) Shall provide for the defense of any civil action or proceeding which arises out of the act or omission and which is brought against the employee in the employee's official or individual capacity, or both, to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for the defense of actions and proceedings under the Kansas tort claims act; and

(2) may reimburse the employee attorney fees, costs and expenses incurred in defending a claim for punitive or exemplary damages in such action or proceeding to the extent and under the conditions and limitations provided

by K.S.A. 75-6108 and amendments thereto for reimbursement of such fees, costs and expenses incurred in defending a claim for punitive or exemplary damages under the Kansas tort claims act.

(b) The governmental entity, subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, shall pay or cause to be paid any judgment or settlement of the claim or suit, including any award of attorney fees, and all costs and fees incurred by the employee in defense thereof if:

(1) The governmental entity finds that the employee reasonably cooperated in good faith in the defense of the action or proceeding;

(2) the trier of fact finds that the action or proceeding arose out of an act or omission in the scope of the employee's employment; and

(3) the trier of fact does not find that the employee acted or failed to act because of actual fraud or actual malice.

(c) Notwithstanding any other provision of law to the contrary, a governmental entity may pay any part of a judgment taken against an employee of the governmental entity that is for punitive or exemplary damages for the violation of the civil rights laws of the United States if the governmental entity finds that:

(1) The action or proceeding arose out of an act or omission in the scope of the employee's employment;

(2) the employee reasonably cooperated in good faith in the defense of the claim; and

(3) the employee's act or omission was not the result of actual fraud or actual malice.

(d) The possibility that a governmental entity may pay that part of a judgment that is for punitive or exemplary damages or attorney fees or other costs related thereto shall not be disclosed in any trial in which it is alleged that an employee of that entity is liable for punitive or exemplary damages, and such disclosure shall be grounds for mistrial.

(e) A municipality may pay for the cost of providing defense, judgments and other costs involving actions for alleged civil rights violations in the same manner as that provided in the Kansas tort claims act.

(f) In actions described in subsection (a), a claim against the state or an employee of the state may be compromised or settled for and on behalf of the state or employee under the conditions and procedures provided by K.S.A. 75-6106 and amendments thereto for settle-