

Approved
Date: 4/10/02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 8:34 a.m. on April 9, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)

Committee staff present:

Mike Heim, Research
Gordon Self, Revisor
Mary Blair, Secretary

Conferees appearing before the committee:

Representative Joe Humerickhouse
Representative Candy Ruff
Chuck Simmons, Secretary, Department of Corrections (DOC)
Leon Owens, Superintendent, Kansas Neurological Institute (KNI)
Jon Josserand, University of Kansas
Bobbi Mariani, Director, Department of Administration (DOA)

Others attending: see attached list

HB 2933—drug screening for certain state officers and employees

Conferee Humerickhouse testified in support of **HB 2933**, a bill which he stated would expand the definition of “safety sensitive” positions for pre-employment and reasonable suspicion testing of state employees and state contractors. He discussed the purpose and intent of the bill.(attachment 1)

Conferee Ruff testified in support of **HB 2933**. She discussed the expanded list of “safety sensitive” positions emphasizing, in particular, the expansion to include correctional facilities (and independent contractors) and employees working in mental health care facilities. She further discussed the expansion of the list of “reasonable suspicion” positions and briefly covered what the bill would not do.(see attachment 1)

Conferee Simmons testified in support of **HB 2933**. He discussed the importance of the expansion of the definition of “safety sensitive” to include both parole officers and juvenile correctional facility staff.(attachment 2)

Conferee Owens testified in support of **HB 2933**. He discussed the importance of the bill in providing protection for both the people who live at KNI as well as those who work there, citing several situations which have occurred that might have been avoided had pre-employment drug testing for certain KNI employees been required. Attached to his testimony is a list of SRS job classes covered by this bill.(attachment 3)

Conferee Josserand testified in support of **HB 2933** with the exception of that portion which would include certain regents’ employees. He discussed problems with the “broad” language relating to these employees and requested time to refine the definitions.(attachment 4)

Conferee Mariani testified in support of **HB 2933**. She discussed the purpose of the bill and the events necessitating it stating that the bill is a compromise between agencies who requested it and current legal and administrative requirements associated with the Kansas drug screening program (KDSP). She defined and reviewed the two types of testing done in the KDSP and briefly summarized an outline of positions currently under KDSP and those positions which would be added.(attachment 5)

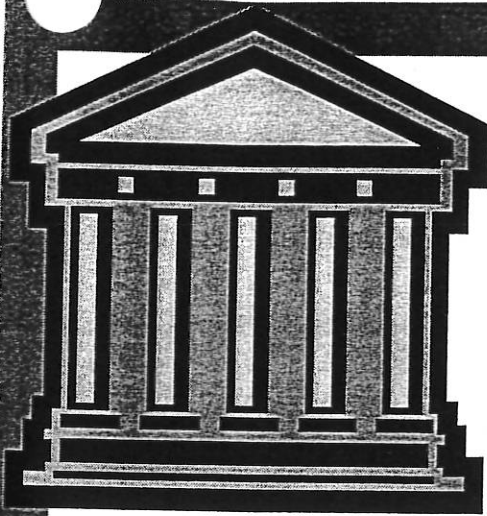
Written testimony supporting the “intent” of **HB 2933** and offering a balloon amendment to the bill was submitted by the Kansas Psychological Association.(attachment 6) Written testimony supporting the bill was submitted by the Kansas Commission on Veterans’ Affairs.(attachment 7)

Following discussion, Senator Oleen moved to amend **HB 2933** by deleting all of lines 37 and 38 on pg 2 and restructuring the sentence as appropriate, Senator O’Connor seconded. Carried. Following further discussion, Senator O’Connor moved to pass the bill out favorably as amended, Senator Oleen seconded. Carried.

SB 652—inmate status and classification

Conferee Simmons testified as neutral on **SB 652**, a bill which would require the DOC to classify parole violators readmitted to prison, as minimum security. He described the current situation regarding inmate population in comparison to the prison capacity for medium and minimum custody male inmates and discussed how this bill would establish policy and guidelines under which more inmates could be released from minimum custody status thus providing a delay in developing additional medium security capacity. (attachment 8) Lengthy discussion followed with clarification and information regarding prison bed population being offered, at the request of the Chair, by Barbara Toombs, Kansas Sentencing Commission. Following further discussion, Senator Donovan moved to pass the bill out favorably, Senator Schmidt seconded. Carried with Senator Adkins requesting his nay vote be recorded.

The meeting adjourned at 9:28 a.m. No further meetings have been scheduled.



Expanding drug testing

HB 2933 expands definition of "safety sensitive" positions for pre-employment and reasonable suspicion testing of state employees and state contractors

Expands "safety sensitive" for pre-employment testing to include:

- ✓ All employees with access to secure facilities of correctional institutions
- ✓ All employees with access to a juvenile correctional facility
- ✓ State parole officers
- ✓ All employees in an institution of mental health who provide clinical, therapeutic or habilitative services to clients and patients
- ✓ Regents employees who provide clinical, psychological or therapeutic services to students or staff

Expands reasonable suspicion to include:

- ✓ All employees of institutions of mental health
- ✓ Employees of Kansas State School of the Blind
- ✓ Employees of Kansas State School for the Deaf
- ✓ Employees of the state veteran's homes operated by the Kansas Commission on Veterans Affairs

What this bill does NOT do:

- ✓ Change the existing disciplinary process for a positive test
- ✓ Change any of the current regulations or procedures concerning the commercial driving license (CDL) drug screening program
- ✓ Allow random testing
- ✓ Allow testing on any other groups of employees other than those authorized in the bill

L. CANDY ROFF
Candy Ruff

Joe Humrickhouse
Joe Humrickhouse

District #40

District # 59

5th Dist
4-9-02
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Fourth Amendment Issues

- The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures on the part of the government.
 - Courts have traditionally viewed required drug testing of government employees as a search under the Fourth Amendment.
 - Since it is a protection against the unconstitutional intrusion of the government, private entities are not faced with the same concerns.
- With regard to drug testing, traditionally, courts have held that in order to be reasonable, a search must ordinarily be based on individualized suspicion of wrongdoing.
 - Therefore, drug testing based on reasonable suspicion testing does not in any way impinge upon the protections of the Fourth Amendment.
- However, courts began to recognize that an individual's expectation of privacy must be balanced against the government (or public's) interest in the search.
- So, courts began to recognize an exception to the safeguards of the Fourth Amendment with regard to the "suspicionless" drug testing (ie, not based on individualized suspicion, but instead on some other set criteria) of government employees.
- Specifically, where there is a position having special needs that would require drug testing of individuals in those positions, courts will closely examine the competing private and public interests, and if they find that the public interest outweighs the private interest, the testing of the employee will be ruled constitutional.
- Examples of situations ruled constitutional under the special needs test include: the testing of railroad employees involved in accidents or safety violations (*Skinner*), the testing of Customs employees (*Von Raab*) and most recently, the testing of high school students who wished to participate in a sports program (*Vernonia*), where the court found a particular segment of the public (high school students) had a lesser expectation of privacy than the general population.
- All of these situations have been ruled constitutional by the United States Supreme Court, and based on the application of the special needs test, as set out by the Supreme Court, the positions sought to be brought under the current state of Kansas drug testing program as being subject to suspicionless drug testing would not violate the Court's interpretation of the safeguards of the Fourth Amendment.



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: Senate Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: House Bill 2933

Date: April 9, 2002

As it relates to the Department of Corrections, HB 2933 amends KSA 75-4362 to include state parole officers and all correctional facility staff within the definition of "safety sensitive positions" for the purposes of the state drug screening program. Under current law, the definition of safety sensitive positions regarding employees of the Department of Corrections is limited to law enforcement officers authorized to carry firearms, corrections officers, and the Secretary of Corrections. In contrast, all juvenile correctional facility staff positions are designated as safety sensitive positions. During FY 2001, the Department of Corrections hired 110 employees in positions that would be added to the definition of safety sensitive under the bill's provisions.

Expanding the definition of safety sensitive positions recognizes that all employees within a correctional facility are involved in the maintenance of security and supervision of inmates, and that illegal drug use by any employee represents a security risk to other staff and the inmate population. Additionally, parole officers are law enforcement officers charged with the enforcement of release supervision conditions imposed on offenders, including prohibitions against illegal drug usage. The inclusion of these two classes of employees within the definition of safety sensitive recognizes their role regarding the department's safety and law enforcement mission.

The department requests favorable consideration of HB 2933.

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Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Judiciary Committee
April 9, 2002

Testimony on House Bill 2933

Chairman Vratil and members of the committee, I am Leon Owens, Superintendent of the Kansas Neurological Institute (KNI) located here in Topeka. KNI is a residential facility which serves and supports 182 people with developmental disabilities who live in twenty-four homes located on the grounds of the facility. Ten to fifteen direct support staff members make up each home team which is led by a team coach (supervisor). Teams are organized to provide around-the-clock support to the six to ten people living in each home. KNI currently has a workforce of 602 staff with 353.5 being direct support staff and the other 248.5 made up of maintenance and housekeeping staff, food service staff, health care staff, professional staff, and administrative staff. The majority of the positions at KNI would be considered "safety sensitive positions" in that they provide direct hands-on care to the 182 people living at KNI.

At KNI, we believe that the drug screening of employees stated in HB 2933 is essential in providing protection for the people who live at KNI and the people who work at KNI. We support the expansion of the classifications that can be tested prior to employment and authority to test all employees based on reasonable suspicion of illegal drug use. The use of illegal drugs is not limited to a particular group of people nor to a particular classification of employees. All of the employees at KNI have contact with the people who live there and make decisions that can affect the quality of their lives. Any use of illegal drugs could result in harm to the individual employee, the person who lives at KNI, or other employees of KNI.

I would like to share a couple of situations that have occurred at KNI over the years. One shows the benefits of being able to do the drug screenings for the protection of the people who live at KNI. The second situation will show you the importance of being able to do drug screenings on all employees when there is a reasonable suspicion.

In December 2000 we had an incident where a direct support staff person used extremely poor judgment by racing a train to a crossing using a state vehicle. The staff member was transporting another staff person and two people who live at KNI. Fortunately, they were able to beat the train. We were also fortunate that the unlawful act was witnessed by a sheriff's deputy who stopped the vehicle and issued a ticket. Because of his actions, we sent the driver to be drug tested. The driver tested positive and since it was the employee's second positive drug screen, he was dismissed.

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In 1995 there was an incident where a high-level management person was suspected of drug use based on documented behaviors. The classification of this person was not subject to drug testing. Even though it was recommended that the person seek assistance through the state's Employee Assistance Program, there was no way to ensure assistance would be sought. During a night in July 1995, someone was able to enter the KNI Business Office, open the safe, and steal about \$1,500. The next morning another employee, also in a classification not subject to testing, with whom the high-level management employee was known to associate, was found dead of a drug overdose. Based on the limited number of people who had access to the safe, the high-level management person was allowed to resign. We believe we might have prevented this incident from happening if KNI had been able to send these people for drug testing.

We have used the drug screening program on several other occasions for reasonable cause to confirm that documented behaviors were related to illegal drug use with direct support staff. When the results have come back positive, the employees have participated in a drug treatment program and have been able to return to work. Over the years, KNI has had other incidents of absenteeism, job injuries, theft, damage to KNI property, and injury to the people who live at KNI which may have been prevented or resolved if we had the authority to provide drug screenings for reasonable cause on all employees.

KNI's mission is to support each person who lives at KNI to have a meaningful life. Our mission can only be met by having high-quality staff to provide these supports. One tool for ensuring that we get and maintain that high-quality staff would be to have HB 2933 in place. That would give us the authority to drug screen an expanded number of classifications prior to employment and the authority to screen all employees when there is reasonable suspicion.

Thank you for your time. If you have any questions, I would be glad to answer them.

SRS Job Classes Covered by HB 2933

The following listing is submitted to clarify job responsibilities for those job classifications for which SRS is seeking authority to conduct pre-employment drug testing at the state hospitals:

- Classifications marked with a 1 have access to medications.
- Classifications marked with a 2 have direct contact in daily care and/or treatment.
- Classifications marked with a 3 have security responsibilities (and access to the entire facility, including access to areas in which medications are stored).
- The job classes Foster Grandparent (Federal) and Foster Grandparent (State) have been removed from the list. Employees in these job classes do not have the same level of client/patient contact as employees in the other job classifications listed.
- The job class Clinical Pastoral Trainee has also been removed from the list. SRS no longer uses this classification.
- The job classes Safety & Security Chief and Safety & Security Officer I and II have been added to the list. Employees in these job classifications have campus-wide safety and security responsibilities and, as indicated above, access to all areas.
- **Boldface type: classes now covered by the State of Kansas Drug Testing Program.**

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|---|-------|
| Activity Specialist I & II | 2 |
| Activity Therapist I & II | 2 |
| Activity Therapy Technician | 2 |
| Adult Training Center Manager | 2 |
| Certified Occupational Therapy Assistant | 2 |
| Chemical Dependency Counselor | 2 |
| Client Training Supervisor | 2 |
| Clinical Chaplain | 2 |
| Cosmetologist | 2 |
| Dental Assistant | 1 & 2 |
| Dental Hygienist (Unclassified) | 1 & 2 |
| Dentist (Unclassified) | 1 & 2 |
| Health Care Assistant | 2 |
| Health Care Technician II | 2 |
| Laboratory Technician II | 2 |
| Licensed Mental Health Specialist | 1 & 2 |
| Licensed Mental Health Technician I & II | 1 & 2 |
| Mental Health Trainee | 2 |
| Licensed Practical Nurse | 1 & 2 |
| Licensed Practical Nurse, Senior | 1 & 2 |
| Medical Technologist (Unclassified) | 2 |
| Mental Health Aide | 2 |
| Mental Retardation Specialist | 2 |
| Mental Retardation Technician I & II | 1 & 2 |
| Mental Retardation Trainee | 2 |

SRS Job Classes Covered by HB 2933

Page 2

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|--|-------|
| Occupational Therapist I & II | 2 |
| Orthotic/Prosthetic Technician I & II | 2 |
| Pharmacist (Unclassified) | 2 |
| Physical Therapy Aide & Physical Therapy Assistant | 2 |
| Physician Specialist (Unclassified) | 1 & 2 |
| Psychologist I, II, III & IV | 2 |
| Psychology Trainee | 2 |
| Psychometric Technician | 2 |
| Qualified Mental Retardation Professional | 2 |
| Radiologic Technologist I & II | 2 |
| Registered Nurse I, II, III, IV & V | 1 & 2 |
| Safety & Security Chief | 3 |
| Safety & Security Officer I & II | 3 |
| Social Worker, Social Worker Specialist | 2 |
| Social Work Supervisor & Social Work Director | 2 |
| Speech Pathologist/Audiologist I, II & III | 2 |

Testimony - HB 2933
April 9, 2002
Jon Jossierand, University of Kansas

Mr. Chairman, Members of the Committee. I am pleased to appear here today on HB 2933.

As this proposal was originally drafted, the Division of Personnel Services consulted with a number of state personnel officers to identify possible modifications to existing law.

As a result of a suggestion made by the medical center, D.P.S. drafted language that was included as subsection g (8) that would include certain regents' employees.

Upon circulation of this bill among the other campuses, it was discovered that this language is probably unintentionally too broad, and would affect a group of regents' employees much broader than intended by the original suggestion.

After further consulting with the personnel officers and the Department of Administration and D.P.S., I think it is everyone's conclusion that subsection g (8) should be omitted from the bill until such future time when our definitions can be refined.

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4-9-02
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**Testimony to the
Senate Judiciary Committee
By
Bobbi Mariani, Division of Personnel Services
April 9, 2002
HB 2933 -Drug Screening Program**

Thank you Mr. Chairman and members of the committee for the opportunity to speak to you in support of House Bill 2933. This bill would expand the current drug screening program for the state of Kansas to allow for the testing of more employees in specified positions. The drug screening program for the state of Kansas encompasses two different types of testing. The first type of test is the pre-employment test. Due to case law and interpretations of the 4th Amendment, this type of testing can only be required of employees who are designated as "safety sensitive" employees. The other type of testing provided for under the drug screening program is drug testing based on reasonable suspicion. All employees designated as "safety sensitive" are also subject to reasonable suspicion testing, but other groups of employees that are specifically identified in this bill, can also be subject to drug tests based on reasonable suspicion as well.

In order to ensure the safety of employees, the public and our most vulnerable of populations, a number of agencies have requested expansion of the drug screening program. Last year, the Department of Corrections (KDOC) introduced legislation proposing the inclusion of all employees in correctional facilities and state parole officers in the definition of safety sensitive employees as well as a change in policy regarding to disciplinary action of employees who receive a positive drug test. KDOC's legislation did not pass. As a result, the Division of Personnel Services worked with representatives of the Department of Social and Rehabilitative Services, KDOC, Department of Human Resources and Wichita State University to develop a compromise legislative proposal.

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Although it was not possible to propose all of the changes that were requested from the agencies that participated, House Bill 2933 represents a compromise between those requests and the current legal and administrative requirements associated with this program. The following is an outline of positions currently included in the drug screening program as well as the positions that would be added should this bill be adopted.

K.S.A. 75-4362 currently defines safety sensitive for pre-employment testing to include:

- State law enforcement officers who are authorized to carry firearms
- State corrections officers
- Juvenile correctional facility staff
- Heads of state agencies who are appointed by the governor and employees on the governor's staff

Proposal expands safety sensitive for pre-employment testing to include:

- All employees with access to secure facilities of correctional institutions
- All employees with access to a juvenile correctional facility
- State parole officers
- All employees in an institution of mental health who provide clinical, therapeutic or rehabilitative services to clients and patients
- Regents employees who provide clinical, psychological, or therapeutic services to students or staff

K.S.A. 75-4362 currently includes the following employees covered under reasonable suspicion:

- All persons employed within a correctional institution
- All persons employed within a juvenile correctional facility

Proposal expands those employees covered under reasonable suspicion to include:

- All employees of institutions of mental health
- Employees of the Kansas State School for the Blind
- Employees of the Kansas State School for the Deaf
- Employees of a state veteran's home operated by the Kansas Commission on Veteran's Affairs (this was a technical amendment by the House Committee)

This bill does not change the existing disciplinary process for a positive test. In addition, this bill will not change any of the current regulations or procedures concerning the commercial driving license (CDL) drug screening program.

Thank you for your time. We would appreciate your favorable consideration of House Bill 2933. I will be happy to answer any questions you may have.

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TESTIMONY

TO: The Honorable John Vratil, Chairman
And Members Of The
Senate Committee On Judiciary

FROM: Whitney Damron
On Behalf Of The
Kansas Psychological Association

RE: HB 2933 – Drug Screening Program For Certain State Officers

DATE: April 9, 2002

Good Morning Mr. Chairman and Members of the Senate Committee on Judiciary. I am Whitney Damron and I appear before you this morning on behalf of the Kansas Psychological Association to offer comments regarding HB 2933. Dr. Kristin Russell, Ph.D. (913-677-3553), the Legislative Chair of the KPA, has prepared comments for your review. Unfortunately, she was unable to attend this hearing this morning. The attached testimony was E-mailed to me late last evening and therefore was not on KPA letterhead, nor signed.

The KPA has been in the process of reviewing this legislation for several weeks and debated whether to offer comments at all. They did not present testimony during House hearings on HB 2933, but following their Spring Conference held in Topeka late last week, a decision was made to offer the attached comments for your consideration.

By way of information, the Kansas Psychological Association is an organization of professional (doctoral level) psychologists. Their association is headquartered in Topeka, as follows:

Kansas Psychological Association
1508 SW Topeka Blvd., Suite 203
Topeka, Kansas 66612
(785) 354-8430
(785) 233-4837 (FAX)

On behalf of the Kansas Psychological Association, I thank you for your consideration of their comments.

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April 9, 2002

The Honorable John Vratil, Chairman
And Members of the Senate Committee on Judiciary

Re: HB2933- State Employee Drug Screening Program Amendments

Dear Chairman Vratil and Members of the Senate Committee on Judiciary:

We are writing on behalf of the Legislative Committee of the Kansas Psychological Association and the two hundred licensed Kansas psychologists who are members of the Association.

We have reviewed HB 2933 and are supportive of the general intent of the bill. We believe it is important to ensure that state employees in "safety sensitive positions" are drug-free. However, we would like to see the language in the bill changed to ensure that only those employees who truly work in "safety sensitive positions" are required to undergo drug screens.

It is our understanding that the bill is targeted at mental health professionals who work in an environment where medications may be accessible, such as a medical center or mental health center. We feel the legislation should clearly identify those centers only. We request that the language of the bill clearly exclude psychologists working in settings where medications are not readily available such as the University Counseling Centers.

Amending Section 1. (g) (8) to read "all employees of a regents institution who *have potential access to medications and who provide pharmaceutical, medical, clinical, therapeutic or psychological services to students and staff*" would address and clarify this issue

If you have any questions about the proposed modification, please do not hesitate to contact either of us.

Respectfully,

Kristin Schudy Russell, Ph.D.
Chairperson, Legislative Committee
Kansas Psychological Association

John Spiridigliozzi, Ph.D.
President
Kansas Psychological Association

3
4 **HOUSE BILL No. 2933**

5
6 By Committee on Business, Commerce and Labor

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8 2-13

9
10 AN ACT concerning state officers and employees; relating to the drug
11 screening program for certain state officers and employees and certain
12 applicants for state employment; amending K.S.A. 2001 Supp. 75-4362
13 and repealing the existing section; also repealing K.S.A. 75-4363.

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

16 Section 1. K.S.A. 2001 Supp. 75-4362 is hereby amended to read as
17 follows: 75-4362. (a) The director of the division of personnel services of
18 the department of administration shall have the authority to establish and
19 implement a drug screening program for persons taking office as gover-
20 nor, lieutenant governor or attorney general and for applicants for safety
21 sensitive positions in state government, but no applicant for ~~such a~~ *safety*
22 *sensitive* position shall be required to submit to a test as a part of ~~such~~
23 *this* program unless the applicant is first given a conditional offer of
24 employment.

25 (b) The director also shall have the authority to establish and imple-
26 ment a drug screening program ~~for persons currently holding based upon~~
27 *a reasonable suspicion of illegal drug use by any person currently holding*
28 *one of the following positions or offices:*

29 (1) The office of governor, lieutenant governor or attorney general
30 ~~or;~~

31 (2) ~~any safety sensitive positions in state government, based upon~~
32 ~~reasonable suspicion of illegal drug use by any such person. position;~~

33 (3) *any position in an institution of mental health, as defined in K.S.A.*
34 *76-12a01, and amendments thereto, and that is not a safety sensitive*
35 *position;*

36 (4) *any position in the Kansas state school for the blind, as established*
37 *under K.S.A. 76-1101 et seq., and amendments thereto;*

38 (5) *any position in the Kansas state school for the deaf, as established*
39 *under K.S.A. 76-1001 et seq., and amendments thereto; or*

40 (6) ~~any position in the Kansas soldiers' home, as established under~~
41 ~~K.S.A. 76-1901 et seq.~~ **employee of a state veteran's home operated**
42 **by the Kansas commission on veteran's affairs as described in**
43 **K.S.A. 76-1901 et seq. and K.S.A. 76-1951 et seq., and amendments**

1 *thereto.*

2 ~~(b)~~ (c) Any public announcement or advertisement soliciting appli-
3 cations for employment in a safety sensitive position in state government
4 shall include a statement of the requirements of the drug screening pro-
5 gram established under this section for applicants for and employees
6 holding ~~such a safety sensitive~~ position.

7 ~~(c)~~ (d) No person shall be terminated solely due to positive results of
8 a test administered as a part of a program authorized by this section if:

9 (1) The employee has not previously had a valid positive test result;
10 and

11 (2) the employee undergoes a drug evaluation and successfully com-
12 pletes any education or treatment program recommended as a result of
13 the evaluation. Nothing herein shall be construed as prohibiting demo-
14 tions, suspensions or terminations pursuant to K.S.A. 75-2949e or 75-
15 2949f, and amendments thereto.

16 ~~(d)~~ (e) Except in hearings before the state civil service board regard-
17 ing disciplinary action taken against the employee, the results of any test
18 administered as a part of a program authorized by this section shall be
19 confidential and shall not be disclosed publicly.

20 ~~(e)~~ (f) The secretary of administration may adopt such rules and reg-
21 ulations as necessary to carry out the provisions of this section.

22 ~~(f)~~ (g) "Safety sensitive positions" means *the following*:

23 (1) All state law enforcement officers who are authorized to carry
24 firearms;;

25 (2) *all state corrections officers;*

26 ~~juvenile correctional facility staff~~; (3) *all state parole officers;*

27 (4) heads of state agencies who are appointed by the governor and
28 employees on the governor's staff;

29 (5) *all employees with access to secure facilities of a correctional in-*
30 *stitution, as defined in K.S.A. 21-3826, and amendments thereto;*

31 (6) *all employees of a juvenile correctional facility, as defined in*
32 *K.S.A. 38-1602, and amendments thereto;*

33 (7) *all employees within an institution of mental health, as defined in*
34 *K.S.A. 76-12a01, and amendments thereto, who provide clinical, thera-*
35 *peutic or habilitative services to the clients and patients of those institu-*
36 *tions; and*

37 (8) *all employees of a regents institution who provide clinical, ther-*
38 *apeutic or psychological services to the students and staff.*

39 ~~(g)~~ All persons employed within a correctional institution, as defined
40 in K.S.A. 21-3826, and amendments thereto, or a juvenile correctional
41 facility, as defined in K.S.A. 38-1602, and amendments thereto, may be
42 subject to drug screening based upon reasonable suspicion of illegal drug
43 use.

have potential access to medications and who
pharmaceutical, medical,

As proposed to be amended, Section (g) (8) would read (italics = new language):

All employees of a regents institution who *have potential access to medications and who provide pharmaceutical, medical, clinical, therapeutic or psychological services to the students and staff.*

6-4

1 Sec. 2. K.S.A. 75-4363 and K.S.A. 2001 Supp. 75-4362 are hereby
2 repealed.

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

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Chairman
Jack Struck
Vice Chairman
Jack Walker
Member
Udell S. Grant
Member
Dwight D. Keen
Member
Cordell D. Meeks, Jr.



KANSAS COMMISSION ON VETERANS' AFFAIRS



Executive Director
Gene "Stoney" Wages
Veterans Home
Jim Hays, Superintendent
Soldiers Home
Steve Goodman, Superintendent
Veterans' Cemetery Program
Wayne Bollig
State Approving Agency
Dr. David DePue, Director

Jayhawk Towers, 700 SW Jackson, Suite 701
Topeka, KS 66603-3758

(785) 296 3976
(785) 296-1462 (Fax)

April 4, 2002

The Honorable Senator John Vratil
Chairperson, Judiciary
Statehouse Room 120-S
Topeka, KS 66612

Dear Senator Vratil:

The Department of Administration, Division of Personnel Services has proposed legislation that would expand the current drug screening program for the State of Kansas to allow for testing of more employees in certain positions. Since the drug screen program is a statewide program, the Division of Personnel Services, which administers the program, contacted a number of agencies and sought their opinions on the current statutes. The Kansas Commission on Veterans' Affairs was one of the agencies consulted on these proposed amendments.

Specifically, House Bill 2933 would amend K.S.A. 75-4362 to include all employees of correctional facilities, state parole officers, direct care staff at institutions of mental health and employees at regents institutions who provide clinical, psychological or therapeutic services to students or staff in the definition of safety sensitive employees, and therefore subject to a pre-employment drug test. HB 2933 would also amend the statute to allow all employees of institutions of mental health, Kansas School for the Blind, Kansas School for the Deaf and Kansas Soldiers Home to be tested for reasonable suspicion. The proposal does not change the disciplinary process for a positive test.

At our request, a balloon amendment was included in this proposed bill. It originally referred only to the Kansas Soldiers Home, while the intent was to include all veterans' homes under the authority of the Kansas Commission on Veterans' Affairs. The correct language is included in the bill passed by the House and now before your committee.

The Kansas Commission on Veterans' Affairs supports the proposed amendments and asks for your support of this bill. If you have any questions about these proposed changes, please contact Kim Tatum, Director of Human Resources at (620)221-9479, ext. 220.

Sincerely,

Stoney Wages
Executive Director

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STATE OF KANSAS



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Bill Graves
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MEMORANDUM

To: Senate Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: Senate Bill 652

Date: April 9, 2002

The Senate Ways and Means Subcommittee on Corrections in its report regarding the department's budget submitted March 18, 2002 made the following recommendation:

The Subcommittee recommends introduction of legislation establishing policy and guidelines the Secretary of Corrections can use to classify more parole and postrelease supervision condition violators in minimum custody rather than higher custody levels. Although such a policy change will not result in further State General Fund savings for FY 2003, it should delay the necessity of developing additional medium security capacity in the near future.

This recommendation was made after the department reviewed with the Subcommittee the current situation regarding the inmate population in comparison to the prison capacity for medium and minimum custody male inmates.

At the end of March 2002, the number of male inmates was at 100.2% of capacity (8,196 male inmates with a capacity of 8,182). At the same time the number of medium custody inmates exceeded available prison capacity. The split on March 31st was as follows:

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| | Maximum | Medium | Minimum |
|------------------------|---------|--------|---------|
| Male capacity | 2277 | 3502 | 2403 |
| Male population | 2234 | 3562 | 2400 |
| | 43 | -60 | 3 |
| Utilization adjustment | -175 | | 175 |
| Available beds | -192 | | 178 |

As of March 31, 2002, there were 1,357 male inmates whose most recent admission was for a condition violation of their postrelease supervision or parole. These inmates were classified in the correctional facilities at the following custody levels:

| Classification | Numbers | Percent |
|--------------------|---------|---------|
| Minimum | 417 | 30.7 |
| Medium | 597 | 44.0 |
| Maximum | 157 | 11.6 |
| Special management | 80 | 5.9 |
| Unclassified | 106 | 7.8 |

Under sentencing guidelines condition violators are returned to prison for a period of 90 to 180 days. What SB 652 provides is that those inmates who are within 90 days of release who were either minimum or medium custody at the time of their most recent prior release from prison will be presumed to be minimum custody upon readmission to prison if the basis for the readmission did not involve a new criminal conviction.

The intent of the bill is to facilitate the reentry of offenders into the community. Rather than having inmates who are going back in the community in less than 90 days be housed in medium custody prior to release, they would instead be presumed to be classified minimum custody.

Under the department's classification system, inmates are scored on eleven objective point-based criteria and one non-point based risk criteria. In those instances in which the twelve items do not reflect the level of risk the inmate presents, an override to the classification system supported by documentation that either raises or lowers the inmate's classification may be approved. With SB 652, condition violators within 90 days of release would be presumed to be minimum custody meaning that an override would be necessary in order to increase their custody level.

The department's classification system now classifies many of these offenders as medium security. Types of behaviors for which offenders are returned to prison as condition violators include:

substance abuse violations, not cooperating with treatment requirements, violation of relapse plans, domestic violence, and absconding supervision.

While offenders exhibiting these behaviors can pose a serious risk while in the community under parole supervision, they can generally be managed in a minimum security prison setting. However, the potential exists for negative public reaction regarding placement of such offenders in minimum custody. It is for this reason that a clarification of intent and direction be included in statute if such placements are to be made.

This presumption could result in more condition violators being classified as minimum custody. The public safety safeguards in SB 652 are that it:

- only impacts inmates within 90 days of release;
- only impacts condition violators returned to prison for reasons other than a new criminal conviction;
- only impacts inmates who were minimum or medium custody at the time they were last released from prison;
- allows an override for upward classification.

Being released directly into the community from a medium custody facility is not desirable. This bill establishes a policy under which more inmates could be released from minimum custody status.