

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Stephen Morris at 11:20 a.m. on March 28, 2002 in Room 123-S of the Capitol.

All members were present except: Senator David Adkins - excused

Committee staff present:

Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
William Wolff, Kansas Legislative Research Department
Audrey Nogle, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Assistant Revisor of Statutes
Judy Bromich, Assistant to the Chairman
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Roger Werholtz, Deputy Secretary of Facilities Management, Department of Corrections
Sheriff John Foster, Johnson County Sheriff's Office
Elizabeth Gillespie, Shawnee County Corrections Director (written)

Others attending: See attached list

Senator Jordan moved, with a second by Senator Jackson, to approve the minutes of the February 14, February 15, February 18 and February 19, 2002 committee meetings. Motion carried on a voice vote.

Chairman Morris opened the public hearing on:

SB 653--Cost of maintenance of certain prisoners

Staff briefed the Committee on the bill and distributed information regarding Existing Jail Reimbursement Rates, March 2002 (Attachment 1).

Roger Werholtz, Deputy Secretary, Facilities Management, Department of Corrections, testified in favor of **SB 653** on behalf of Charles Simmons, Secretary, Department of Corrections (Attachment 2). Mr. Werholtz explained that **SB 653** implements a Ways and Means subcommittee recommendation to reduce state obligations for reimbursement of county jails for housing Kansas Department of Corrections condition violators prior to their return to prison.

Sheriff John Foster, representing the Johnson County Sheriff's Office, testified in opposition to **SB 653** (Attachment 3). Sheriff Foster mentioned that he opposes capping an artificial cost on a per diem basis for prisoners that they hold and also opposes furnishing five (5) days free to the state for state parole violators that have been placed in their jails.

Written testimony was submitted by Elizabeth Gillespie, Director, Shawnee County Department of Corrections on **SB 653** (Attachment 4).

Committee questions and discussion followed. Chairman Morris thanked the conferees for appearing before the Committee. There being no further conferees to come before the Committee, the Chairman closed the public hearing on **SB 653**.

Chairman Morris turned the Committee's attention to discussion of:

SB 603--Drug coverage

CONTINUATION SHEET

Chairman Morris asked that Senator Kerr, Chairman of the ad hoc Subcommittee on Pharmacy Costs, give a report on their recommendations (Attachment 5). Senator Kerr mentioned that those interested in pharmacy aspects of the Department of Social and Rehabilitation Services' (SRS) budget were asked to enter into a discussion in an effort to identify areas where savings could be found in the FY 2003 budget and areas where savings could be expected in the future. Those participating in the discussion included representatives of the pharmaceutical industry, Kansas pharmacists, Kansas Medical Society, the Department of Social and Rehabilitation Services and interested Senators and staff. Committee questions and discussion followed. Chairman Morris mentioned that he appreciated all the work done by Senator Kerr and the ad hoc Subcommittee on Pharmacy Costs. The Chairman noted that the discussion on **SB 603** would continue the following day, March 29, 2002.

The meeting adjourned at 12:00 p.m. The next meeting is scheduled for March 29, 2002.

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST

DATE March 28, 2002

NAME	REPRESENTING
Julia Thomas	DOB
Ryan Hudson	KDOC
Dennis Williams	KDOC
Tom Abbott	KDOC
Mike Hammond	ASSOC. OF CHILDREN
Amy Kimphell	Mental Health Coalition
Bob Anderson	Ks. PHARMACEUTICALS ASSOC.
Bred Smart	Pfizer / Abbott
Nancy Zogelman	Pfizer
Barbara Belcher	Merck
Tom Rickman	AVANTIS
Pat Bergmann	Pat Hebbell Assoc.
Pat Hebbell	Pharma
Mike Huttles	Pharmacia / UPJOHN
Dick KROESPEL	ABBOTT LABORATORIES
Tom Kim	CISK
Stephanie Sharp	American Cancer Society
Kevin M. Walker	American Heart Ass'n.
Robert Day	SRS
Laura Howard	SRS
John Foster	Johnson Co. SHERIFF
Judy Miller	KAC

**Existing Jail Reimbursement Rates
(March 2002)**

Allen	40	Kiowa	30	Thomas	40
Anderson	35	Labette	35	Trego	35
Atchison	55	Lane	30	Wabaunsee	40
Barber	35	Leavenworth	60	Wallace	
Barton	35	Lincoln	40	Washington	40
Bourbon	40	Linn	40	Wichita	
Brown	35	Logan	35	Wilson	40
Butler	40	Lyon	45	Woodson	30
Chase	40	Marion	25	Wyandotte	63.85
Chautauqua	35	Marshall			
Cherokee	60	McPherson	45		
Cheyenne		Meade	35		
Clark	35	Miami	45		
Clay	40	Mitchell	7		
Cloud	30	Montgomery	35		
Coffey	40	Morris	30		
Comanche		Morton	40		
Cowley	30	Nemaha	40	Average	37.71
Crawford	40	Neosho	30	Median	35
Decatur	20	Ness	30		
Dickinson	35	Norton	52		
Doniphan	35	Osage	40	<i>(Note: Counties with no entry have not submitted a re- imbursement rate to KDOC.)</i>	
Douglas	42	Osborne	35		
Edwards	30	Ottawa	45		
Elk	30	Pawnee	40		
Ellis	40	Phillips	40		
Ellsworth	40	Pottawatomie	30		
Finney	50	Pratt	30		
Ford	30	Rawlins			
Franklin	36	Reno	53		
Geary	40	Republic	30		
Gove		Rice	35		
Graham	40	Riley	40		
Grant	30	Rooks	40		
Gray	20	Rush			
Greeley	30	Russell	40		
Greenwood	30	Saline	36.11		
Hamilton	30	Scott	32		
Harper	35	Sedgwick	51.78		
Harvey	47.67	Seward	30		
Haskell	30	Shawnee	62.26		
Hodgeman	30	Sheridan			
Jackson	65	Sherman	30		
Jefferson	45	Smith	35		
Jewell	10	Stafford			
Johnson	88.85	Stanton	35		
Kearny	30	Stevens	30		
Kingman	30	Sumner	40		

**Existing Jail Reimbursement Rates
(March 2002)**

Mitchell	7	Trego	35	Comanche	
Jewell	10	Franklin	36	Gove	
Decatur	20	Saline	36.11	Marshall	
Gray	20	Allen	40	Rawlins	
Marion	25	Bourbon	40	Rush	
Cloud	30	Butler	40	Sheridan	
Cowley	30	Chase	40	Stafford	
Edwards	30	Clay	40	Wallace	
Elk	30	Coffey	40	Wichita	
Ford	30	Crawford	40		
Grant	30	Ellis	40		
Greeley	30	Ellsworth	40		
Greenwood	30	Geary	40		
Hamilton	30	Graham	40		
Haskell	30	Lincoln	40		
Hodgeman	30	Linn	40		
Kearny	30	Morton	40		
Kingman	30	Nemaha	40	Average	37.71
Kiowa	30	Osage	40	Median	35
Lane	30	Pawnee	40		
Morris	30	Phillips	40		
Neosho	30	Riley	40		
Ness	30	Rooks	40		
Pottawatomie	30	Russell	40		
Pratt	30	Sumner	40		
Republic	30	Thomas	40		
Seward	30	Wabauns	40		
Sherman	30	Washingt	40		
Stevens	30	Wilson	40		
Woodson	30	Douglas	42		
Scott	32	Jefferson	45		
Anderson	35	Lyon	45		
Barber	35	McPherso	45		
Barton	35	Miami	45		
Brown	35	Ottawa	45		
Chautauqua	35	Harvey	47.67		
Clark	35	Finney	50		
Dickinson	35	Sedgwick	51.78		
Doniphan	35	Norton	52		
Harper	35	Reno	53		
Labette	35	Atchison	55		
Logan	35	Cherokee	60		
Meade	35	Leavenwo	60		
Montgomery	35	Shawnee	62.26		
Osborne	35	Wyandott	63.85		
Rice	35	Jackson	65		
Smith	35	Johnson	88.85		
Stanton	35	Cheyenne			

*(Note: Counties with no entry
have not submitted a re-
imbursement rate to KDOC.)*

*Prepared by KLRD
(Source: KDOC)*

STATE OF KANSAS



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 Ways and Means Committee
From: Charles E. Simmons, Secretary
Subject: Senate Bill 653
Date: March 28, 2002

Senate Bill 653 implements a Ways and Means subcommittee recommendation to reduce state obligations for reimbursement of county jails for housing KDOC condition violators prior to their return to prison. The bill provides:

- that the maximum reimbursement rate shall not exceed the per capita daily operating cost, excluding inmate programs, for the Department of Corrections; and,
- that the department shall not reimburse counties for the first five days an offender is detained in the county jail.

All counties seeking reimbursement from KDOC under KSA 19-1930 would be affected by the bill's provision limiting state reimbursement to the sixth and subsequent day of local confinement. A smaller number of counties would be affected by the provision establishing a per diem rate cap. Our assumption is that the KDOC per diem amount used to establish the cap would be based each year on the department's budget as approved by the legislature. Because the department's budget for FY 2003 has not yet been finalized, our analysis of the bill's impact is based on the Governor's original budget recommendations, which equate to a per diem rate of approximately \$53 per ADP, excluding inmate programs. If this amount were to be the final amount, seven counties would be affected by the cap, including Atchison, Cherokee, Jackson, Johnson, Leavenworth, Shawnee, and Wyandotte.

The number of counties affected, as well as the total impact of the bill, will depend upon the final budget approved for the department. Using the \$53 projected per diem rate as a basis for estimation, the combined impact of the bill's two provisions would result in a reduction of approximately \$843,000 in state reimbursement obligations to county jails in FY 2003, as compared to the provisions of current law.

In any consideration relative to jail cost reimbursements in FY 2003, it is important to keep in mind that FY 2002 obligations are not fully funded. Our current expectation is that obligations in FY 2002 will exceed appropriations made for this purpose by approximately \$900,000. If SB 396 passes (authorizing current year funds for prior year obligations), the FY 2003 appropriation will first be used to meet the obligations remaining from FY 2002. If the savings which would be realized are fully deducted from the department's budget for FY 2003, the department will not have sufficient remaining funds to pay the FY 2003 obligations or to even pay the first three quarters of obligations so that the fourth quarter could be paid with FY 2004 funds.

The table below compares the funding status under the various scenarios, including this bill, currently under consideration relative to reimbursement of local jail costs.

KDOC Reimbursements to Local Jails: Obligations and Funding Status
Governor's Recommendations versus Senate Recommendation

	Current Law Gov (Green Book)	Rate Cap Only Gov (Mar Rec)	Rate Cap & 5 Day Senate Rec
FY 03 appropriation	\$ 1,950,000	\$ 1,734,000	\$ 1,234,000
FY 02 obligation carried forward (est)	900,000	900,000	900,000
FY 03 funds available for FY 03 obligations	1,050,000	834,000	334,000
FY 03 obligations under current law (est)	2,600,000		
FY 03 obligations under rate cap only (est)		2,384,000	
FY 03 obligations under SB 653 (est)			1,757,000
Difference between 03 funding & obligations	\$ (1,550,000)	\$ (1,550,000)	\$ (1,423,000)

**All scenarios assume passage of SB 396, authorizing use of current year funds for prior year obligations. Rate cap based on \$53/day per ADP.*

Finally, I would note that the Governor's revised budget recommendations include one of the provisions included in this bill, the establishment of a cap on the reimbursement rate paid to counties. If this provision were included as a stand-alone item, our estimate is a reduction in obligations of approximately \$216,000 in FY 2003—again, subject to change once the department's budget is finalized.

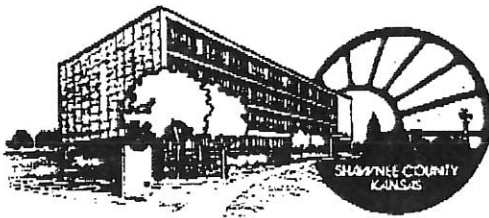
Testimony of Sheriff John Foster
Representing the Johnson County Sheriff's Office in Opposition to
Senate Bill #653
In front of the Senate Ways and Means Committee, March 28, 2002

Mr. Chairman and Members of the Committee:

My name is John Foster, Johnson County Sheriff. I appear today in opposition to Senate Bill #653. I oppose capping an artificial cost on a per diem bases for prisoners that we hold and I also oppose furnishing five (5) days free to the state for state parole violators that have been placed in our jails. If this legislation passes, it will create a deficit that will exceed \$80,000.00 per anum for the Johnson County Sheriff's Office. I see no valid reason why the counties should furnish five (5) days of free boarding and lodging for prisoners that are the responsibility of the state. I estimate that by the end of March 2002, the state will be in arrears in the amount of approximately \$120,000.00 to \$130,000.00. I know the Secretary of Corrections lacks the bed space to house all the prisoners that are technically in his custody and I am aware that he has a budget issue to deal with, but all of us have budget issues to deal with and some of us have space issues to deal with also.

I urge this committee **NOT** to pass this bill out of committee.

Senate Ways and Means
3-28-02
Attachment 3



**Shawnee County
Department of Corrections**

501 S.E. 8th Street - Topeka, Kansas 66607 - (785) 291-5100

Elizabeth Gillespie, Director

Adult Detention Facility - 501 SE 8th - Topeka, Kansas 66607 - (785) 291-5000 - FAX (785) 233-7765
Youth Detention Facility - 401 SE 8th - Topeka, Kansas 66607 - (785) 233-6459 - FAX (785) 291-4963

March 28, 2002

The Senate Committee on Ways and Means
State Capitol
Topeka, Kansas 66612

Dear Members of the Kansas Senate:

On behalf of the Board of Shawnee County Commissioners and myself, I want to strongly register our opposition to Senate Bill 653. This proposal standardizes the State's reimbursement rate to county jails for the housing of parole violators at an amount not to exceed the per capita rate for the Department of Corrections, minus programs. Initially, the standardized amount would be \$53.00 per day. It should be noted that Shawnee County's current per capita rate of \$62.26 per day is calculated by an outside accounting firm utilizing the past year's completed fiscal records. Shawnee County does not seek to profit from the State, but only desires to break even.

The standardized figure being proposed was apparently reached by using the per capita rate for inmates in the Kansas Department of Corrections (KDOC.) Per capita rates for county jails and state prisons should not be compared. Offenders housed in state prisons are confined for longer terms, and the State has many more housing and classification options including minimum, medium, and maximum-security beds. The State's per capita rate calculation is an overall calculation that includes lesser expensive minimum-security beds. This results in a lower per capita rate. County jails have such high turnover that the classification possible within the KDOC cannot be utilized in county jails. Most county jail space is considered maximum-security space and, therefore, comes with a higher cost.

The proposal also states that the first five days of each offender's stay in a county jail will be free of cost to the State. This facet of the proposal impacts reimbursements to the counties even more than the standardized rate. Apparently the justification behind this proposal is that the counties should share the obligation since the offenders were residing in the county. Please be reminded that the taxpaying citizens of any county are also taxpayers to the State.

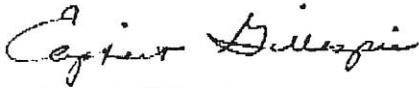
If all provisions of the Subcommittee's proposal were applied to the parole violators housed in Shawnee County during the State's Fiscal Year 2001, the county's total reimbursement would have

Senate Ways and Means
3-28-02
Attachment 4

been \$245,506.00 rather than \$459,738.56 actually realized. This amounts to a reduction of \$214,232.56 for one year. This money can only be recouped by raising the mill levy on the local citizenry.

Once again, I want to express our dissatisfaction with the attempt to shift State costs and budget deficits to the counties. In a press release last summer regarding the Kansas Department of Corrections' inability to reimburse counties for the housing of parole violators, Governor Graves stated that the State never had any intention of "shirking" its fiscal responsibilities to the counties. Less than one year later, the reimbursements are still the fiscal responsibilities of the State. This proposed action sets a very poor example to the citizenry of Kansas who have similar personal and government fiscal responsibilities.

Sincerely,



Elizabeth Gillespie,
Director

EG:eg

Cc: Judy Moler, Kansas Association of Counties

March 25, 2002

To: Senator Steve Morris and members of the Senate Committee on Ways and Means

Re: Report of the ad hoc Subcommittee on Pharmacy Costs—Submitted by Senator Dave Kerr, Chair

Senator Kerr, Chair of the ad hoc Subcommittee on Pharmacy Costs of the Senate Committee on Ways and Means, invited those interested in pharmacy aspects of the Department of Social and Rehabilitation Services' (SRS) budget to enter into a discussion with him in an effort to identify areas where savings could be found in the FY 2003 budget and areas where savings could be expected in the future. Those participating in the discussion included representatives of the pharmaceutical industry, Kansas pharmacists, Kansas Medical Society, the Department of SRS, and interested Senators and staff.

At the outset of the discussion, Senator Kerr asked SRS representatives to explain current efforts underway or being planned to reduce drug costs to the Medicaid Program. He expressed strong reservation about continued usage of the average wholesale price (AWP) as the basis for reimbursement for prescription drugs. Because it is widely acknowledged to bear little relationship to actual drug acquisition cost, he suggested exploration of the wholesale acquisition cost (WAC) as perhaps a better approach to reimbursing pharmacists.

After discussion, the Department identified the following patient care and money-saving strategies:

- **Recalculated Pharmacy Reimbursement.** Recent studies demonstrate that the AWP level of reimbursement is not the best reimbursement methodology. Texas, for example, reimburses the lessor of WAC price plus 10 percent rather than the AWP minus 10 percent. A review of an Arkansas study would indicate that simply altering the discount margin could achieve the same ends as a WAC pricing strategy.

The Department suggests that adopting a pricing model based on the Arkansas study (AWP minus 14 percent for brand drugs and AWP minus 25 percent for generics) would save Kansas an estimated \$6.8 million all funds in FY 2003 (\$2.7 million SGF '03).

- **Drug Utilization in Long-Term Care Facilities** (including high numbers of prescriptions and prescriptions for psycho tropic drugs). The University of Kansas Medical Center is conducting a study on usage in such facilities and a report is expected by August 2002. *(A review of high utilization, particularly reflected in high numbers of prescriptions per patient, could go beyond persons in nursing facilities.)*

Senate Ways and Means
3-28-02
Attachment 5

The Department indicates a program to profile patients with multiple prescriptions could begin by January 2003. Potential cost savings could be \$600,000 in FY 2003 (\$238,000 SGF '03, \$478,000 thereafter).

- **High Users of Inpatient Hospital Services.** Last year, the Department identified approximately 2,100 instances of high utilization (more than one hospitalization) costing nearly \$70 million. Within that number, some 300 individuals had four or more admittances to a hospital in a year's time. The issue is development of case management for such persons as opposed to efforts at disease management. (The implementation of case management for these clients involves management of all health care, not just drug utilization.)

The Department noted a study in Oklahoma incorporating a nurse case management program of high users of inpatient hospitalization. The object of such an approach is to assure that persons with chronic health conditions receive appropriate and coordinated treatment. **Based on the Oklahoma study, perhaps as much as \$5.6 million dollars in all funds could be saved (\$1.7 million SGF in '03, \$2.2 million SGF thereafter).**

- **Voluntary Drug Formulary vs. Preferred Formulary Using Prior Authorization.** The Department believes that cost of a drug should be considered along with issues of efficacy and safety of drugs prescribed and paid for by the Medicaid Program. A modification to 2002 SB 603 is being prepared by the Department to allow development of a preferred formulary which uses prior authorization. The belief is that physicians will prescribe the lowest priced drug in those instances where an independent formulary committee of clinicians has identified a class of drugs with similar efficacy and safety but differing costs. The Department has little confidence that a voluntary drug formulary can affect the necessary cost savings to the Program. The preferred formulary envisioned by the Department would not include atypical antipsychotic drugs as they would be excluded from prior authorization.

The Department estimates shifting physician prescribing patterns by 20 percent to 40 percent could result in a savings of \$4.2 million all funds. Half of the approach could begin in July 2002 and the second half started in October 2002 (\$1.5 million SGF '03, \$1.7 million SGF thereafter).

The Department has made it clear that none of these modifications to the existing Medicaid Program can be accomplished within existing staff levels. **Ten additional staff would be needed to complete the tasks and manage their implementation—five nurses and five program administrators—at a cost of \$549,000 all funds (\$206,000 SGF).** Further, the Department expects that completing these tasks is a prelude

to additional work focusing on managing care for the aged and disabled populations, the populations that drive most of the costs in the Medicaid budget.

Based upon implementation of the strategies outlined, potential cost savings to the Medicaid Program for FY 2003 could be \$14.7 million all funds and \$5.9 million State General Fund. For a full year potential cost savings could be \$17 million all funds, \$6.8 million State General Fund.

Those representing the pharmaceutical industry in the discussion expressed reservations about prior authorization. They commented:

- studies in other states indicate the cost of doing prior authorization, *i.e.*, the cost to the Department and the costs to the providers, could exceed the saving obtained by the program; therefore, projected savings from such an approach to cost containment are doubtful; and
- depending upon the method of implementation, there may be limitations imposed by federal law that impact the success of prior authorization.

In general, the industry supports voluntary prior authorization and educational strategies for disease prevention and management programs aimed at containing Medicaid costs (drug or otherwise).

The representative of the Kansas pharmacists expressed interest in looking at other reimbursement approaches for prescription drugs and pharmacists' fees. The Arkansas plan supported by SRS, however, will cause serious problems for pharmacists. While the generic component causes fewer difficulties, he said there is little room for pharmacists to negotiate lower prices with pharmaceutical companies on brand name prescription drugs. He asked that further consideration be given to leaving the current AWP level rather than implementing the SRS proposal for brand drugs. In general, he commented that the best way to manage cost issues is through a formulary.

The representative of Kansas medical providers asked that caution be exercised in any program changes in that medical provider participation in the Medicaid Program already is fragile. Providers support the creation of a formulary committee consisting of active health care providers as proposed in SB 603.

Participants agreed these strategies will only be effective if aggressively implemented and tracked for results by SRS and the Legislature. Therefore, it is requested that SRS make brief, quarterly reports on savings achieved from each of the above strategies to the Legislative Research Department for distribution to interested legislators.