

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE AND JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 4, 2003, in Room 526-S of the Capitol.

All members were present except:

Representative Dale Swenson - excused

Committee staff present:

Jill Wolters - Office of the Revisor

Mitch Rice - Office of the Revisor

Jerry Ann Donaldson - Legislative Research Department

Nicoletta Buonasera - Legislative Research Department

Bev Renner - Committee Secretary

Conferees appearing before the committee:

Lynaia South, Deputy General Counsel-Juvenile Justice Authority

Representative Don Betts, Jr.

Chairperson Ward Loyd

Representative Bill Feuerborn

Representative Jene Vickrey

Bill Bider, Director-Bureau of Waste Management-Kansas Department of Health and Environment

Representative Peggy Long

Detective Kevin Duncan, Financial Crimes Unit-Overland Park Police Department (written)

John Cowles, Assistant District Attorney-Johnson County (written testimony)

Paul J. Morrison, District Attorney-Johnson County (written testimony)

Kyle Smith, Special Agent-Kansas Bureau of Investigation

Lane Ryno, Emporia Police Department for Jim Pritchard, Emporia Police Officer

Tim Madden, Chief Legal Counsel-Kansas Department of Corrections

Secretary Roger Werholtz-Kansas Department of Corrections

Representatives Huntington, Carlin, and Horst were recognized on a Point of Personal Privilege to introduce their pages serving in the House of Representatives today. Vice-Chairperson Owens called attention to a recipient of the Gold Award in Girl Scouting.

Lynaia South, Deputy General Counsel for the Juvenile Justice Authority requested introduction of five bills on behalf of the JJA (Attachment 1); 1) establishes the Kansas Juvenile Correctional Complex and adds this complex in statutes where JJA locations are specified, 2) allows the superintendent of Topeka correctional facility to appoint existing employees as a deputy superintendent and an attorney to unclassified positions, 3) amends statute to allow hiring juvenile correction's officers as young as eighteen years of age and currently enrolled in at least six hours of college courses on a part time basis who can only work at medium and minimum security installations, 4) allows payment of grant funds to communities on a quarterly basis or as otherwise determined by the commissioner, rather than semi-annually, and, 5) allows the head of a state hospital to release needed medical records when disclosure is necessary for the further treatment of the juvenile offender.

Representative Crow made a motion to introduce JJA's bill requests as committee bills. Representative Huntington seconded the motion. The motion carried.

Representative Betts made a motion to introduce as a committee bill, legislation to mandate drug treatment instead of incarceration for first and second drug possession. Seconded by Representative Horst. The motion carried.

Chairperson Loyd made a request to introduce legislation to establish a day reporting center in Wyandotte County.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE AND JUSTICE at 1:30 p.m. on February 4, 2003, in Room 526-S of the Capitol.

Vice-Chairperson Owens made a motion to introduce this request as a committee bill. Seconded by Representative Goering. The motion carried.

**HB 2070 - Littering, penalties.**

Chairperson Loyd opened the hearing on **HB 2070**.

Representative Bill Feuerborn gave testimony in support of **HB 2070 (Attachment 2)**. This legislation recognizes the increasing act of littering and would be following the national trend for dealing with this issue and alters the designation of littering to an unclassified misdemeanor while increasing the penalty.

Chairperson Loyd suggested that a portion of the bill could be modified to a traffic violation with a fine applied so that law enforcement resources would not be necessary to issue citations and appear in court.

Vice-Chairperson Owens commented that some penalties stated in the bill are more than those found for offenses in municipal court.

Representative Jene Vickrey spoke in support of **HB 2070 (Attachment 3)** to emphasize the nature of the problem to the beauty of Kansas.

Bill Bider, Director of Kansas Department of Health and Environment-Bureau of Waste Management was recognized to speak in support of **HB 2070 (Attachment 4)**. KDHE feels that this bill complements their efforts in the "Kansas Don't Spoil It" and "Keep Kansas Beautiful" public education programs. They have seen evidence proving that the requirement to pick up litter has greater potential to change behavior than simply paying a fine.

**Chairperson Loyd closed the hearing on HB 2070.**

**HB 2057 - Identity theft, defrauding for any benefit, not just economic.**

**Chairperson Loyd opened the hearing on HB 2057.**

Representative Peggy Long offered testimony in support of **HB 2057 (Attachment 5)**. She explained that this bill closes a loophole in the law that prevents prosecution until economic loss has been suffered. She presented written testimony from Kevin Duncan, Detective in the Financial Crimes Unit at the Overland Park Police Department (**Attachment 6**), John Cowles, Assistant District Attorney-Johnson County (**Attachment 7**) and Paul J. Morrison, District Attorney-Johnson County (**Attachment 8**).

Kyle Smith, Special Agent-Kansas Bureau of Investigation spoke on behalf of Kansas Peace Officer's Association in support of **HB 2057 (Attachment 9)**. Victims of identity theft can suffer more than economic loss; for example, loss of credit rating, legal expenses, embarrassment, difficulty in getting loans and employment.

Lane Ryno, Emporia Police Department appeared in support of **HB 2057** on behalf of Jim Pritchard, Emporia Police Department who had a family emergency (**Attachment 10**). He cited actual examples of the results of identity theft in cases handled by the Emporia Police Department to support the need for **HB 2057**.

**Chairperson Loyd closed the hearing on HB 2057.**

**HB 2090 - Scope of agency relationship for inmate work crews defined.**

**Chairperson Loyd opened the hearing on HB 2090.**

Tim Madden, Chief Legal Counsel-Kansas Department of Corrections spoke in support of **HB 2090**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE AND JUSTICE at 1:30 p.m. on February 4, 2003, in Room 526-S of the Capitol.

(Attachment 11). This bill addresses the vicarious liability imposed upon the State and the Department of Corrections for negligence acts within governmental entities or nonprofit organizations using the services of an inmate work detail. **HB 2090** clarifies that the agency relationship does not extend to the work assigned or in the matter that the work is performed or supervision of that work.

**Chairperson Loyd closed the hearing on HB 2090.**

**HB 2091 - Offender financial responsibility for DNA collection fees.**

**Chairperson Loyd opened the hearing on HB 2091.**

Secretary Roger Werholtz, Department of Corrections appeared in support of **HB 2091** (Attachment 12). The Kansas Bureau of Investigation has requested assistance from DOC in recovering the cost of the collection of DNA specimens from offenders on release supervision. **HB 2091** would obligate the person giving the specimen to pay the cost of collection. This bill creates the option that the inmate either goes to a state correctional facility for DNA specimen collection or pays the cost for collection at a lab of their choosing. DOC added a balloon in their testimony to insert language to limit the intended scope.

Kyle Smith, Special Agent-KBI testified in support of **HB 2091** (Attachment 13). He explained the history of recognition of the value of DNA collection. Today all felonies and some misdemeanors require DNA specimen collection. These samples are analyzed and placed in a databank for comparison to past and future crimes. Funding for this very expensive technology has not kept up with needs. KBI does not receive state general fund monies for collection, storage or analyzation of DNA information. Federal funding has been granted and instrumental in setting up the DNA program, training scientists and paying for outside analysis. The Laboratory Fee Fund has been used to pay for collection and criminal investigative use. The federal grants are expected to end in 2 years making state action in this matter important. Mr. Smith suggested that this may be the time to set the fee at \$150 to cover all costs, both collection and analysis. KBI also suggested a new section be added to the bill that would create a "KBI DNA Technology Fund."

**Chairperson Loyd closed the hearing on HB 2091.**

The meeting was adjourned at 3:05 p.m. The next scheduled meeting is on February 5, 2003.





# Juvenile Justice Authority



## 2003 Agency Legislative Proposals

February 4, 2003

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Denise Everhart, Acting Commissioner

H. Corr & J.J.  
2.4.03

Attachment 1

## 1. Kansas Juvenile Correctional Complex – Enabling Statute

This amendment is required to establish the Kansas Juvenile Correctional Complex (KJCC) and subject this facility to the same statutes, rules and regulations as any other institution under the supervision and control of the Commissioner. Appropriations were made during the 2000 session to build the KJCC and construction is expected to be completed in fiscal year 2004.

Other provisions in the Juvenile Justice Code will require amendment to reflect the existence of this facility: K.S.A. 38-1602 Definitions (m) Institution – to include the Kansas Juvenile Correctional Complex; K.S.A. 76-3201 (the Commissioner “shall appoint the superintendents of the Atchison Juvenile correctional facility, the Beloit juvenile correctional facility, the Topeka juvenile correctional facility and the Larned juvenile correctional facility. Superintendents shall be in the unclassified service under the Kansas civil service act. . .”)

Other statutes may need amendment if, for example, the provision specifically lists each facility. See K.S.A. 72-978. A provision such as “any reference to the juvenile correctional facilities shall include the KJCC” would act as a saving provision.

We began working with the Revisor’s office on this issue during the interim. Following the language used for our other correctional facilities, the proposed language may include:

Proposed language:

1 Section 1. (a) There is hereby established, as a separate institution, the Kansas juvenile  
2 correctional complex. On and after July 1, 2003, any reference in the laws of this state to  
3 a juvenile correctional facility or institution as defined by K.S.A. 38-1602(m) and  
4 amendments thereto shall be construed as also referring to the Kansas juvenile  
5 correctional complex.

6  
7 (b) The commissioner of juvenile justice shall have the management and control of the  
8 Kansas Juvenile Correctional Complex.

9  
10 Section 2. K.S.A. 76-3201 is hereby amended to read as follows: On and after July 1,  
11 1997, the commissioner shall appoint the superintendents of the Atchison juvenile  
12 correctional facility, the Beloit correctional facility the Topeka juvenile correctional  
13 facility, *the Kansas Juvenile Correctional Complex* and the Larned juvenile correctional  
14 facility. Superintendents shall be in the unclassified service under the Kansas civil  
15 service act. A superintendent may be removed at any time by the commissioner. Each  
16 superintendent shall receive an annual salary fixed by the commissioner, with the  
17 approval of the governor. The commissioner may appoint an acting superintendent for  
18 any institution which has a superintendent to serve temporarily until a vacancy is filled.  
19 Acting superintendents shall have the same powers, duties and functions as  
20 superintendents.

21  
22 Section 3. K.S.A. 38-1602 is hereby amended to read as follows: As used in this code,  
23 unless the context otherwise requires: . . .

24  
25 (m) "Institution" means the following institutions: The Atchison juvenile correctional  
26 facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility,  
27 *the Kansas juvenile correctional complex* and the Topeka juvenile correctional facility.  
28

29 Section 4. K.S.A. 72-978 is hereby amended to read as follows (a)(1) In each school  
30 year, in accordance with appropriations for special education and related services  
31 provided under this act, each school district which has provided special education and  
32 related services in compliance with the provisions of this act shall be entitled to receive:  
33 . . (b) No time spent by a special teacher in connection with duties performed under a  
34 contract entered into by the Atchison juvenile correctional facility, the Beloit juvenile  
35 correctional facility, *the Kansas juvenile correctional complex*, the Larned juvenile  
36 correctional facility, or the Topeka juvenile correctional facility and a school district for  
37 the provision of special education services by such state institution shall be counted in  
38 making computations under this section.

SECTION 10

CHAPTER 76—STATE INSTITUTIONS  
AND AGENCIES; HISTORICAL PROPERTY  
ARTICLE 21—JUVENILE  
CORRECTIONAL FACILITIES; TOPEKA  
AND ATCHISON

Cross References to Related Sections:  
Juvenile offenders code, see ch. 38, art. 16.

\* 76-2101. **Topeka juvenile correctional facility; management.** (a) The name of the youth center at Topeka is hereby changed to the Topeka juvenile correctional facility. On and after July 1, 1997, any reference in the laws of this state to the state industrial school for boys or the youth center at Topeka shall be construed as referring to the Topeka juvenile correctional facility.

(b) The commissioner of juvenile justice shall have the management and control of the Topeka juvenile correctional facility.

History: R.S. 1923, 76-2101; L. 1974, ch. 416, § 6; L. 1980, ch. 299, § 5; L. 1996, ch. 229, § 140; L. 1997, ch. 156, § 104; July 1.

Source or prior law:

L. 1881, ch. 129, §; Revised, 1923.

Cross References to Related Sections:

Sale of certain property at youth center at Atchison, see 76-1719.

CASE ANNOTATIONS

1. Act held constitutional and valid. In re Sanders, Petitioner, 53 K. 191, 197, 36 P.348.

76-2101a. **Fee funds created; remittances; expenditures.** (a) The superintendent of the Topeka juvenile correctional facility shall remit all moneys received by or for the superintendent from charges and other operations of such institution to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Topeka juvenile correctional facility fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of account and reports issued pursuant to vouchers approved by such superintendent or by a person or persons designated by the superintendent.

(b) The superintendent of the Atchison juvenile correctional facility shall remit all moneys received by or for the superintendent from charges and other operations of such institution to the state treasurer in accordance with the provisions of K.S.A. 75-4215,

and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Atchison juvenile correctional facility fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by such superintendent or by a person or persons designated by the superintendent.

History: L. 1973, ch. 369, § 18; L. 1974, ch. 416, § 7; L. 1980, ch. 299, § 6; L. 1996, ch. 229, § 141; L. 1997, ch. 156, § 105; L. 2001, ch. 5, § 434; July 1.

\* 76-2101b. **Atchison juvenile correctional facility; management.** (a) There is hereby established, as a separate institution, the youth center at Atchison. The name of the youth center at Atchison is hereby changed to the Atchison juvenile correctional facility. On and after July 1, 1997, any reference in the laws of this state to the youth center at Atchison shall be construed as referring to the Atchison juvenile correctional facility.

(b) The commissioner of juvenile justice shall have the management and control of the Atchison juvenile correctional facility.

History: L. 1980, ch. 299, § 1; L. 1996, ch. 229, § 142; L. 1997, ch. 156, § 106; July 1.

76-2102. **Site and buildings.** Laws 1879, chapter 170, sections 2 and 3, inclusive, included by reference. [Act provided for the selection of a site and the erection of buildings for the projected "state reform school" with the provision that the site be selected within five miles of the capitol building, and further that the city of Topeka should donate 160 acres of land suitable for the purpose.]

History: R.S. 1923, 76-2102.

76-2103. History: L. 1919, ch. 292, § 3; R.S. 1923, 76-2103; L. 1953, ch. 391, § 31; Repealed, L. 1973, ch. 369, § 51; July 1.

Source or prior law:

L. 1881, ch. 129, § 2; L. 1907, ch. 15, § 4; L. 1919, ch. 293, § 3; 76-121.

76-2104. History: L. 1881, ch. 129, § 3; R.S. 1923, 76-2104; Repealed, L. 1969, ch. 224, § 9; July 1.

CASE ANNOTATIONS

1. Conviction of boy under sixteen; sentence. The State v. Hewes, 60 K. 765, 769, 57 P. 959.

2. Justice of the Peace cannot commit boy to the reform school. In re Stokes, 67 K. 667, 73 P.911.

3. Justice of peace has no jurisdiction under this act. In re Stokes, 67 K. 667, 73 P. 911.

SECTION 12

CHAPTER 76—STATE INSTITUTIONS  
AND AGENCIES; HISTORICAL  
PROPERTY

ARTICLE 32—JUVENILE JUSTICE  
AUTHORITY

\* 76-3201. **Appointment of superintendents and directors; compensation; acting superintendents and directors.** On and after July 1, 1997, the commissioner shall appoint the superintendents of the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Topeka juvenile correctional facility and the Larned juvenile correctional facility. Superintendents shall be in the unclassified service under the Kansas civil service act. A superintendent may be removed at any time by the commissioner. Each superintendent shall receive an annual salary fixed by the commissioner, with the approval of the governor. The commissioner may appoint an acting superintendent for any institution which has a superintendent to serve temporarily until a vacancy is filled. Acting superintendents shall have the same powers, duties and functions as superintendents.

History: L. 1996, ch. 229, § 4; L. 1997, ch. 156, § 112; July 1.

Source or prior law:  
76-12a19.

76-3202. **Appointment of employees; application of civil service act.** On and after July 1, 1997, subject to K.S.A. 75-7003, and amendments thereto, employees of each institution shall be appointed by the superintendent or director of the institution. All employees so appointed shall be in the classified service under the Kansas civil service act, except physicians who shall be in the unclassified service under the Kansas civil service act and as provided in K.S.A. 75-2935, and amendments thereto, or any other statute.

History: L. 1996, ch. 229, § 5; July 1.

76-3203. **Administration of juvenile correctional facilities; rules and regulations; contracts for educational services; issuance of passes, prohibition; security plan, grooming code.**

(a) All jurisdiction, powers, functions and duties relating to institutions as defined in K.S.A. 38-1602, and amendments thereto, are conferred and imposed upon the commissioner to be administered within the juvenile justice authority as provided by this act.

(b) The commissioner may adopt rules and regulations for the government, regulation and operation of institutions. The commissioner may adopt rules and regulations relating to all persons admitted to institutions.

(c) The commissioner may enter into an educational services contract with a unified school district, another public educational services provider or a private educational services provider for an institution pursuant to competitive bids or by negotiation as determined by the commissioner. Each such educational services contract is exempt from the competitive bid requirements of K.S.A. 75-3739, and amendments thereto.

(d) The commissioner shall not issue a pass, furlough or leave to any juvenile placed in an institution except as needed for such juvenile to obtain medical services or to reintegrate such juvenile into the community. If any juvenile is issued a pass, furlough or leave, such juvenile shall be accompanied by a staff member or other designated adult.

(e) The commissioner shall implement an institutional security plan designed to prevent escapes and to prohibit contraband and unauthorized access to the institution and, within the limits of appropriations, contract perimeter fencing as required by the institutional security plan.

(f) The commissioner, by rules and regulations, shall establish a rigid grooming code and shall issue uniforms to juvenile offenders in an institution.

History: L. 1996, ch. 229, § 6, July 1.

Source or prior law:  
76-12a21.

76-3204. **Larned juvenile correctional facility.** On and after July 1, 1997, the name of the youth center at Larned is hereby changed to the Larned juvenile correctional facility. On and after July 1, 1997, any reference to the youth center at Larned, or words of like effect, in any statutes, contract or other document shall be deemed to apply to the Larned juvenile correctional facility. The Larned juvenile correctional facility shall be under the supervision and control of the commissioner of juvenile justice in accordance with K.S.A. 76-3203, and amendments thereto. All juvenile offenders placed in the Larned juvenile correctional facility shall be subject to the laws applicable to any other juvenile correctional facility, as defined by K.S.A. 38-1602, and amendments thereto.

History: L. 1997, ch. 156, § 26, May 22.



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2. Cited; authority to modify restitution under 38-1663 and juvenile's rights to due process upheld. In re C.A.D., 11 K.A. 2d 13, 711 P. 2d 1336 (1985).

3. Cited, provisions of 60-460(dd) (statements by children) inapplicable to juvenile offender proceedings. In re Mary P., 237 K. 456, 701 P.2d 681 (1985).

4. Juvenile proceeding is civil proceeding, protective in nature and totally divorced from criminal implications. State v. Muhammad, 237 K. 850, 854, 703 P.2d 835 (1985).

5. Cited; where defendant had no juvenile offender status because of prior adjudications (38-1602(b)(3)), court lacked jurisdiction under code. State v. Lowe, 238 K.755, 715 P.2d 404 (1986); R'vd, Lowe v. State, 242 K. 64, 744 P.2d 856 (1987).

6. Cited; deliberations and findings necessary to establish venue of dispositional hearing outside juvenile resident county (38-1605) examined. In re A.T.K., 11 K.A.2d 174, 176, 717 P.2d 528 (1986).

7. Cited; failure to advise about expungement rights (21-4619) and appeal rights (38-1681) when defendant no longer "juvenile offender" (38-1602(b)(3)) examined. Reubke v. State, 11 K.A.2d 353, 354, 720 P.2d 1141 (1986).

8. Cited; review by indigent defense services board of claims by appointed attorneys (22-4522) constitutional. Clark v. Ivy, 240 K. 195, 202, 727 P.2d 493 (1986).

9. Failure of state to proceed hereunder deprived court of jurisdiction to accept guilty plea to crime committed before 18. State v. Mayfield, 241 K. 555, 561, 738 P.2d 861 (1987).

10. Cited; legal obligation of county to provide counsel for indigent defendants charged with misdemeanors, hourly rate allowed examined. Board of Osage County Comm'rs v. Burns, 242 K. 544, 545, 747 P.2d 1338 (1998).

11. Cited; 21-3732 relating to incendiary or explosive devices as not including device known as "torpedo" examined. In re D.W.A., 244 K. 114, 765 P.2d 704 (1988).

12. The hearing referred to in 38-1652 as meaning only adjudicatory hearings for those over 15 determined. Stauffer Communications, Inc. v. Mitchell, 246 K. 492, 789 P.2d 1153 (1990).

13. Sufficiency of evidence supporting determination to try juvenile as adult (38-1636) upheld. State v. Hooks, 251 K. 755, 758, 840 P.2d 483 (1992).

14. Cited; in holding crime of aiding a felon (21-3812) applies to aiding a juvenile offender. State v. Busse, 252 K. 695, 698, 847 P.2d 1304 (1992).

15. Cited; whether state may try juvenile prosecuted as adult on charges not previously raised in juvenile proceeding examined. State v. Randolph, 19 K.A.2d 730, 731, 876 P.2d 177 (1994).

16. Whether nonsexually violent juvenile adjudications are considered convictions for habitual sex offender determination purposes examined. State v. Ward, 20 K.A.2d 238, 244, 886 P.2d 890 (1994).

17. Whether juvenile adjudication can be used to enhance severity level of theft conviction examined. In re J.E.M., 20 K.A.2d 596, 598, 890 P.2d 364 (1995).

18. Juvenile adjudications may be considered in calculating offender's criminal history. State v. LaMunyon, 259 K. 54, 55, 911 P.2d 151 (1996).

19. Juvenile adjudication cannot carry criminal implications or qualify as crime; pre-1996 aggravated escape from custody

section (21-3810) inapplicable. State v. Clint L., 262 K. 174, 177, 936 P.2d 235 (1997).

20. Juvenile under 14 must have opportunity to consult with attorney or parent before waiving Miranda rights or statements are inadmissible. In re B.M.B., 264 K. 417, 432, 955 P.2d 1302 (1998).

21. City's special use zoning ordinance discriminated against potential group home residents based on familial status, in violation of FHA (42 U.S.C. 3601 et seq.) Keys Youth Services, Inc. v. City of Olathe, Kan., 52 F.Supp.2d 1284, 1306 (1999).

22. City discriminated against nonprofit corporation on basis of family status of proposed residents under federal housing statute. Keys Youth Services, Inc. v. City of Olathe, Kan., 67 F.Supp.2d 1228, 1229 (1999).

**38-1602. Definitions.** As used in this code, unless the context otherwise requires: ✕

(a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who commits an offense while a juvenile which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include:

(1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117 and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas code of criminal procedure;

(B) sentenced as an adult under the Kansas code of criminal procedure following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 38-16,126, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 38-1636, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(c) "Parent," when used in relation to a juvenile or a juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

(d) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain

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public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which shall not be a jail.

(g) "Juvenile correctional facility" means a facility operated by the commissioner for juvenile offenders.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(i) "Commissioner" means the commissioner of juvenile justice.

(j) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(k) "Court appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 38-1606 and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 1999 Supp. 38-1606a, and amendments thereto, in a proceeding pursuant to this code.

(l) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(m) "Institution" means the following institutions: The Atchison juvenile correctional facility, the

Beloit juvenile correctional facility, the Larned juvenile correctional facility and the Topeka juvenile correctional facility.

(n) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(o) "Sentencing risk assessment tool" means an instrument administered to juvenile offenders which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

(p) "Educational institution" means all schools at the elementary and secondary levels.

(q) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A. 2000 Supp. 72-89b03, and amendments thereto:

**History:** L. 1982, ch. 182, § 60; L. 1983, ch. 140, § 29; L. 1986, ch. 162, § 1; L. 1987, ch. 112, § 37; L. 1989, ch. 95, § 9; L. 1990, ch. 146, § 3; L. 1990, ch. 150, § 6; L. 1993, ch. 291, § 220; L. 1994, ch. 270, § 4; L. 1994, ch. 337, § 2; L. 1996, ch. 229, § 40; L. 1996, ch. 229, § 41; L. 1997, ch. 156, § 44; L. 1997, ch. 156, § 45; L. 1998, ch. 171, § 8; L. 1999, ch. 156, § 11; May 27

### Revisor's Note:

Section was also amended by L. 1990, ch. 146, § 3, effective May 3, 1990, but such amendment was repealed by L. 1990, ch. 150, § 14, effective Jan. 1, 1993.

This section was also amended by L. 1993, ch. 209, § 2, but such amended version was repealed by L. 1993, ch. 291, § 283, effective July 1, 1993.

Section was amended twice in the 1998 session; see also 38-1602a.

Section was amended twice in the 1999 session, see also 38-1602b.

### Cross References to Related Sections:

Traffic offenders 14 or over, see 8-2117.

Fish and game violators 16 or over, see 32-110c.

### Law Review and Bar Journal References:

"The Kansas Hard-Forty Law," The Honorable Tom Malone, 32 W.L.J. 147, 154 (1993).

Survey of Recent Cases, 45 K.L.R. 1369, 1390 (1997).

Survey of Recent Cases, 46 K.L.R. 898 (1998).

### Attorney General's Opinions:

Kansas safety belt use act. 86-95.

Prosecution of juvenile traffic offenders. 89-147.

court to issue subpoenas for the attendance and testimony of witnesses and the production of all relevant records, tests, reports and evaluations in the same manner provided for the issuance of subpoenas in civil actions pursuant to K.S.A. 60-245, and amendments thereto.

(c) Any person conducting a hearing or review under this act, at the request of either party, may grant specific extensions of time beyond the limitations specified in this act.

(d) Any person conducting a hearing under this act shall consider any request for discovery in accordance with the provisions of K.S.A. 77-522, and amendments thereto, except that depositions of witnesses who will be available for the hearing shall not be allowed.

(e) Every hearing and review under this act shall be provided for at no cost to the child or the parent of the child. The costs of any hearing provided for by a board shall be paid by the school district.

(f) Any review officer conducting a review under this act may hold a hearing to receive additional evidence. Every such hearing shall be conducted in accordance with requirements which are consonant with the requirements of this act.

**History:** L. 1974, ch. 290, § 16; L. 1974, ch. 291, § 2; L. 1977, ch. 241, § 4; L. 1978, ch. 286, § 4; L. 1980, ch. 216, § 5; L. 1982, ch. 292, § 3; L. 1999, ch. 116, § 23; July 1.

**72-976. Requirements for education of children with disabilities in regular classes, exception; admission to state institutions.** (a) Each school district shall be required, to the maximum extent appropriate, to educate children with disabilities with children who are not disabled; and to provide special classes, separate schooling or for the removal of children with disabilities from the regular education environment only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

(b) Nothing in this section shall be construed to authorize the state board or any board to function as an admitting agency to the state institutions or to limit or supersede or in any manner affect the requirements of each board to comply with the provisions of K.S.A. 72-966, and amendments thereto, to provide special education services for each exceptional child in the school district unless and until such child meets the criteria for admis-

sion to a state institution and is so admitted by the state institution. Each state institution shall publish the criteria for admission to such state institution and shall furnish such criteria to each board upon request therefor.

**History:** L. 1974, ch. 290, § 17; L. 1975, ch. 365, § 3; L. 1977, ch. 240, § 3; L. 1999, ch. 116, § 24; July 1.

**72-977. Compulsory attendance of exceptional children at school for receipt of services; provision of services privately; non-applicability to gifted children.** (a) Except as otherwise provided in this section, it shall be the duty of the parent of each exceptional child to require such child to attend school to receive the special education and related services which are indicated on the child's IEP or to provide for such services privately.

(b) The provisions of subsection (a) do not apply to gifted children or to parents of gifted children.

**History:** L. 1974, ch. 290, § 18; L. 1980, ch. 216, § 6; L. 1999, ch. 116, § 25; July 1.

**Attorney General's Opinions:**

Authority of U.S.D. to charge a nonresident pupil for attendance in district; constitutionality. 98-31.

Compulsory attendance at school of exceptional children. 2000-60.

**72-978. Reimbursement to school districts; computation of amounts; apportionment; limitations.** (a) (1) In each school year, in accordance with appropriations for special education and related services provided under this act, each school district which has provided special education and related services in compliance with the provisions of this act shall be entitled to receive:

(A) Reimbursement for actual travel allowances paid to special teachers at not to exceed the rate specified under K.S.A. 75-3203, and amendments thereto, for each mile actually traveled during the school year in connection with duties in providing special education or related services for exceptional children; such reimbursement shall be computed by the state board by ascertaining the actual travel allowances paid to special teachers by the school district for the school year and shall be in an amount equal to 80% of such actual travel allowances;

(B) reimbursement in an amount equal to 80% of the actual travel expenses incurred for providing transportation for exceptional children to



special education or related services; such reimbursement shall not be paid if such child has been counted in determining the transportation weighting of the district under the provisions of the school district finance and quality performance act;

(C) reimbursement in an amount equal to 80% of the actual expenses incurred for the maintenance of an exceptional child at some place other than the residence of such child for the purpose of providing special education or related services; such reimbursement shall not exceed \$600 per exceptional child per school year; and

(D) after subtracting the amounts of reimbursement under (A), (B) and (C) from the total amount appropriated for special education and related services under this act, an amount which bears the same proportion to the remaining amount appropriated as the number of full-time equivalent special teachers who are qualified to provide special education or related services to exceptional children and are employed by the school district for approved special education or related services bears to the total number of such qualified full-time equivalent special teachers employed by all school districts for approved special education or related services.

(2) Each special teacher who is qualified to assist in the provision of special education or related services to exceptional children shall be counted as  $\frac{2}{3}$  full-time equivalent special teacher who is qualified to provide special education or related services to exceptional children.

(b) No time spent by a special teacher in connection with duties performed under a contract entered into by the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility, or the Topeka juvenile correctional facility and a school district for the provision of special education services by such state institution shall be counted in making computations under this section.

**History:** L. 1974, ch. 290, § 19; L. 1976, ch. 307, § 1; L. 1986, ch. 265, § 1; L. 1987, ch. 270, § 1; L. 1992, ch. 280, § 39; L. 1996, ch. 229, § 120; L. 1997, ch. 156, § 84; L. 1999, ch. 116, § 26; July 1.

**72-979. Manner of payments determined by state board; disposition; overpayments; underpayments; forms; reports.** [See Revisor's Note] (a) Payments under this act shall

be made in the manner and at such times during each school year as are determined by the state board. All amounts received by the state under this section shall be deposited in the general fund of the district and transferred to its special education fund. If any district is paid more than it is entitled to receive under any distribution made under this act, the state board shall notify the district of the amount of such overpayment, and such district shall remit the same to the state board. The state board shall remit any moneys so received to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the general fund. If any such district fails so to remit, the state board shall deduct the excess amounts so paid from future payments becoming due to such district. If any district is paid less than the amount to which it is entitled under any distribution made under this act, the state board shall pay the additional amount due at any time within the school year in which the underpayment was made or within 60 days after the end of such school year.

(b) The state board shall prescribe all forms necessary for reporting under this act.

(c) Every board shall make such periodic and special reports of information to the state board as it may request in order to carry out its responsibilities under this act.

**History:** L. 1974, ch. 290, § 20; L. 1999, ch. 116, § 27; L. 2001, ch. 215, § 12; July 1.

**Revisor's Note:**

Section was amended twice in 2001 session, see also 72-979a.

**72-979a. Manner of payments determined by state board; overpayments; underpayments; forms; reports.** [See Revisor's Note] (a) Payments under this act shall be made in the manner and at such times during each school year as are determined by the state board. If any district is paid more than it is entitled to receive under any distribution made under this act, the state board shall notify the district of the amount of such overpayment, and such district shall remit the same to the state board. The state board shall remit any moneys so received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. If any such district fails so to remit, the state

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**72-980.**

**History:**

1999, ch. 11

**72-981.**

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**History:**

116, § 28; July

**72-983.**

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## **2. Unclassified Employees at Juvenile Correctional Facilities**

According to K.S.A. 76-3201-3202, the only employees at the juvenile correctional facilities that may be in the unclassified service are the Superintendents and physicians. This proposal would amend K.S.A. 76-3202 to allow the Superintendent at the Topeka Juvenile Correctional facility to appoint a deputy superintendent and an attorney to the unclassified service. Because of the importance and need for these positions, JJA requested and was granted approval from the Governor's office to fill the unclassified deputy superintendent position at the Topeka Juvenile Correctional Facility on a temporary basis for one year.



Proposed language:

1 76-3202 shall be amended as follows: On and after July 1, 1997, subject to K.S.A. 75-  
2 7003, and amendments thereto, employees of each institution shall be appointed by the  
3 superintendent or director of the institution. All employees so appointed shall be in the  
4 classified service under the Kansas civil service act, except physicians *and one deputy*  
5 *superintendent and one attorney at the Topeka juvenile correctional facility* who shall be  
6 in the unclassified service under the Kansas civil service act as provided in K.S.A. 75-  
7 2935, and amendments thereto, or any other statute.

SECTION 12

CHAPTER 76—STATE INSTITUTIONS  
AND AGENCIES; HISTORICAL  
PROPERTY  
ARTICLE 32—JUVENILE JUSTICE  
AUTHORITY

76-3201. Appointment of superintendents and directors; compensation; acting superintendents and directors. On and after July 1, 1997, the commissioner shall appoint the superintendents of the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Topeka juvenile correctional facility and the Larned juvenile correctional facility. Superintendents shall be in the unclassified service under the Kansas civil service act. A superintendent may be removed at any time by the commissioner. Each superintendent shall receive an annual salary fixed by the commissioner, with the approval of the governor. The commissioner may appoint an acting superintendent for any institution which has a superintendent to serve temporarily until a vacancy is filled. Acting superintendents shall have the same powers, duties and functions as superintendents.

History: L. 1996, ch. 229, § 4; L. 1997, ch. 156, § 112; July 1.

Source or prior law:  
76-12a19.

\* 76-3202. Appointment of employees; application of civil service act. On and after July 1, 1997, subject to K.S.A. 75-7003, and amendments thereto, employees of each institution shall be appointed by the superintendent or director of the institution. All employees so appointed shall be in the classified service under the Kansas civil service act, except physicians who shall be in the unclassified service under the Kansas civil service act and as provided in K.S.A. 75-2935, and amendments thereto, or any other statute.

History: L. 1996, ch. 229, § 5; July 1.

76-3203. Administration of juvenile correctional facilities; rules and regulations; contracts for educational services; issuance of passes, prohibition; security plan, grooming code.

(a) All jurisdiction, powers, functions and duties relating to institutions as defined in K.S.A. 38-1602, and amendments thereto, are conferred and imposed upon the commissioner to be administered within the juvenile justice authority as provided by this act.

(b) The commissioner may adopt rules and regulations for the government, regulation and operation of institutions. The commissioner may adopt rules and regulations relating to all persons admitted to institutions.

(c) The commissioner may enter into an educational services contract with a unified school district, another public educational services provider or a private educational services provider for an institution pursuant to competitive bids or by negotiation as determined by the commissioner. Each such educational services contract is exempt from the competitive bid requirements of K.S.A. 75-3739, and amendments thereto.

(d) The commissioner shall not issue a pass, furlough or leave to any juvenile placed in an institution except as needed for such juvenile to obtain medical services or to reintegrate such juvenile into the community. If any juvenile is issued a pass, furlough or leave, such juvenile shall be accompanied by a staff member or other designated adult.

(e) The commissioner shall implement an institutional security plan designed to prevent escapes and to prohibit contraband and unauthorized access to the institution and, within the limits of appropriations, contract perimeter fencing as required by the institutional security plan.

(f) The commissioner, by rules and regulations, shall establish a rigid grooming code and shall issue uniforms to juvenile offenders in an institution.

History: L. 1996, ch. 229, § 6, July 1.

Source or prior law:  
76-12a21.

76-3204. Larned juvenile correctional facility. On and after July 1, 1997, the name of the youth center at Larned is hereby changed to the Larned juvenile correctional facility. On and after July 1, 1997, any reference to the youth center at Larned, or words of like effect, in any statutes, contract or other document shall be deemed to apply to the Larned juvenile correctional facility. The Larned juvenile correctional facility shall be under the supervision and control of the commissioner of juvenile justice in accordance with K.S.A. 76-3203, and amendments thereto. All juvenile offenders placed in the Larned juvenile correctional facility shall be subject to the laws applicable to any other juvenile correctional facility, as defined by K.S.A. 38-1602, and amendments thereto.

History: L. 1997, ch. 156, § 26, May 22.

### **3. JCOs 18/parttime college student**

This proposal would amend K.S.A. 75-7055 that currently requires all juvenile corrections officers to be at least 21 years of age. The bill would allow the hiring of corrections officers who are at least 18 years of age but only when they are 1) hired to work no more than part-time; and 2) enrolled in at least 6 hours of credits in an accredited post-secondary institution as students in criminal justice, human services or other related field as determined by the appointing authority. Only medium or minimum security facilities or units could use this provision.

The statute would still require the person to possess no felony convictions and to meet the physical agility requirements (post-offer work screen).

Proposed language:

1 K.S.A. 75-7055 shall be amended as follows: All juvenile corrections officers and those  
2 employees within the juvenile corrections officer series first employed on and after July  
3 1, 2000, shall be required to be at least 21 years of age, shall possess no felony  
4 convictions, and shall meet such physical agility requirements as set by the  
5 commissioner. *On and after July 1, 2003, the appointing authority, in his discretion may*  
6 *hire a juvenile corrections officer or employee within the juvenile corrections officer*  
7 *series who does not meet the age requirement set forth in this section but who is at least*  
8 *18 years of age, is hired to work no more than part-time, and is enrolled in at least 6*  
9 *hours or credits in an accredited post-secondary institution as a student in a criminal*  
10 *justice, human services or other related field as determined by the appointing authority.*  
11 *Such employee may only be employed in open unites in minimum or medium security*  
12 *facilities and may not be employed in a maximum security facility or closed unit in a*  
13 *minimum or medium security facility.*

## KANSAS JUVENILE JUSTICE CODE

addition to such matters as are prescribed by rules and regulations of the commissioner, provides for centralized administration and control of the juvenile correctional services under such plan. Such group of counties may comply with the provisions of this subsection through cooperative action pursuant to the provisions of K.S.A. 12-2901 through 12-2907, and amendments thereto, to the extent that those statutes do not conflict with the provisions of K.S.A. 75-7038 through 75-7053, and amendments thereto; or

(3) contracted for juvenile correctional services described in K.S.A. 75-7038, and amendments thereto, from any county or group of cooperating counties, as provided in K.S.A. 75-7051, and amendments thereto, which are receiving grants under K.S.A. 75-7038 through 75-7053, and amendments thereto.

(b) Before September 15, 1998, the administrative judge in each judicial district shall make a recommendation to the board of county commissioners in each county in such judicial district which has not established a program to provide for the juvenile correctional services described in K.S.A. 75-7038, and amendments thereto, as to which option provided in subsection (a) each such county in such judicial district should choose to comply with the provisions of K.S.A. 75-7038 through 75-7053, and amendments thereto.

History: L. 1997, ch. 156, § 21; May 22.

### Attorney General's Opinion:

Judicial District Corrections Advisory Board is governmental entity for purposes of Kansas tort claims act. 2000-3.

**75-7053. Grants; annual determination; criteria based on measurable performances.** On and after July 1, 1997:

(a) On or before each March 15, each county or group of counties applying to receive a grant shall submit a budget request to the commissioner. On or before each July 1, the commissioner of juvenile justice and the Kansas advisory group on juvenile justice and delinquency prevention shall determine annually the amount of the grant for the ensuing fiscal year for each county or group of counties which has qualified to receive grants as provided in this section.

(b) The determination of the grant of a county or group of counties by the commissioner shall consider, but not be limited to, the following criteria based on measurable performances: staffing levels justified by active cases under supervision; one-time

expenditures such as renovation or construction costs, major equipment purchases or capital acquisitions; administrative costs; funded contracts for services; client numbers; caseload projections; travel costs outside the program area; and existing experience of similar programs.

History: L. 1997, ch. 156, § 22; May 22.

**75-7054. Employees appointed by the commissioner; unclassified.** The commissioner of juvenile justice may appoint deputy commissioners and assistant commissioners as determined necessary by the commissioner to carry out the mission of the authority. All deputy commissioners and assistant commissioners shall serve at the pleasure of the commissioner, shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the commissioner and approved by the governor. The commissioner may appoint a public information officer, a chief attorney, other attorneys, and a personal secretary for the juvenile justice authority. These employees shall serve at the pleasure of the commissioner, shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the commissioner and approved by the governor. Unless otherwise designated, all other employees of the juvenile justice authority shall be in the classified service.

History: L. 1998, ch. 187, § 1; July 1.

**75-7055. Juvenile corrections officers, requirements.** All juvenile corrections officers and those employees within the juvenile corrections officer series first employed on and after July 1, 2000, shall be required to be at least 21 years of age, shall possess no felony convictions, and shall meet such physical agility requirements as set by the commissioner \*

History: L. 2000, ch 150, § 35; June 1.



#### **4. Payment of Grant Funds**

K.S.A. 75-7050 states that the grants issued to communities are to be paid semiannually. Paying these funds on a quarterly basis allows for more accurate accounting oversight, is in line with the reporting requirements of that same statute, and is in line with federal reporting requirements. Thus, JJA recommends the language of this statute be amended to allow the payment of these funds on a quarterly basis or as otherwise determined by the Commissioner.

Proposed language:

1 K.S.A. 75-7050 shall be amended as follows: (a) Upon compliance by a county or group  
2 of counties with the requirements for receipt of the grants authorized by K.S.A. 75-7038  
3 through 75-7053, and amendments thereto, and approval of the comprehensive plan by  
4 the commissioner of juvenile justice and the Kansas advisory group on juvenile justice  
5 and delinquency prevention, the commissioner shall determine the amount of the annual  
6 grant to each such county and commencing on the next ensuing January 1 or July 1 after  
7 approval of the comprehensive plan, shall proceed to pay such grant in equal ~~semiannual~~  
8 *quarterly* payments in accordance with and subject to K.S.A. 75-7038 through 75-7053,  
9 and amendments thereto, applicable rules and regulations, and the provisions of  
10 appropriation acts.

11 (b) Within 10 days after the end of each calendar quarter, each county receiving  
12 ~~semiannual~~ *quarterly* grant payments under K.S.A. 75-7038 through 75-7053, and  
13 amendments thereto, shall submit to the commissioner of juvenile justice certified  
14 statements detailing the amounts expended and costs incurred for the juvenile  
15 correctional services described in K.S.A. 75-7038, and amendments thereto. Upon  
16 receipt of such certified statements, the commissioner shall determine whether each such  
17 county is in compliance with the expenditure and operation standards prescribed under  
18 K.S.A. 75-7038 through 75-7053, and amendments thereto, for such services and shall  
19 determine the ~~semiannual~~ *quarterly* payment amount each such county is entitled to  
20 receive after making any adjustments for reductions or charges as required by or in  
21 accordance with K.S.A. 75-7038 through 75-7053, and amendments thereto, and  
22 applicable rules and regulations.

23 (c) ~~Semiannual~~ *quarterly* grant payments for counties entitled thereto under K.S.A. 75-  
24 7038 through 75-7053, and amendments thereto, shall be made upon warrants of the  
25 director of accounts and reports issued pursuant to vouchers approved by the  
26 commissioner of juvenile justice or by a person or persons designated by the  
27 commissioner to the county treasurers of such counties.

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History: L. 1997, ch. 156, § 18; May 22.

\* 75-7050. **Semiannual grant payments; certified expenditure statements by counties.** On and after July 1, 1997:

(a) Upon compliance by a county or group of counties with the requirements for receipt of the grants authorized by K.S.A. 75-7038 through 75-7053, and amendments thereto, and approval of the comprehensive plan by the commissioner of juvenile justice and the Kansas advisory group on juvenile justice and delinquency prevention, the commissioner shall determine the amount of the annual grant to each such county and, commencing on the next ensuing January 1 or July 1 after approval of the comprehensive plan, shall proceed to pay such grant in equal semiannual payments in accordance with and subject to K.S.A. 75-7038 through 75-7053, and amendments thereto, applicable rules and regulations, and the provisions of appropriation acts.

(b) Within 10 days after the end of each calendar quarter, each county receiving semiannual grant payments under K.S.A. 75-7038 through 75-7053, and amendments thereto, shall submit to the commissioner of juvenile justice certified statements detailing the amounts expended and costs incurred for the juvenile correctional services described in K.S.A. 75-7038, and amendments thereto. Upon receipt of such certified statements, the commissioner shall determine whether each such county is in compliance with the expenditure and operation standards prescribed under K.S.A. 75-7038 through 75-7053, and amendments thereto, for such services and shall determine the semiannual payment amount each such county is entitled to receive after making any adjustments for reductions or charges as required by or in accordance with K.S.A. 75-7038 through 75-7053, and amendments thereto, and applicable rules and regulations.

(c) Semiannual grant payments for counties entitled thereto under K.S.A. 75-7038 through 75-7053, and amendments thereto, shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of juvenile justice or by a person or persons designated by the commissioner to the county treasurers of such counties.

History: L. 1997, ch. 156, § 19; May 22.

75-7051. **State and county may purchase juvenile correctional services from grant-receiving counties.** On and after July 1, 1997:

(a) The commissioner of juvenile justice may contract for any juvenile correctional services described in K.S.A. 75-7038, and amendments thereto, from any county or group of cooperating counties which are receiving grants under K.S.A. 75-7038 through 75-7053, and amendments thereto.

(b) Any county may contract for any juvenile correctional services described in K.S.A. 75-7038, and amendments thereto, from any county or group of cooperating counties which are receiving grants under K.S.A. 75-7038 through 75-7053, and amendments thereto, regardless of whether such county or group of counties is in the same judicial district as the county contracting for such services.

History: L. 1997, ch. 156, § 20; May 22.

75-7052. **Required participation by counties in juvenile community corrections; options; administrative judge, recommendations.** On and after July 1, 1997:

(a) Before July 1, 1999, each county in this state, based on the recommendation from the administrative judge of the judicial district in which each such county is located as provided in subsection (b), shall have:

(1) Established a juvenile corrections advisory board in accordance with K.S.A. 75-7044, and amendments thereto, and adopted a comprehensive plan for the development, implementation, operation and improvement of the juvenile correctional services described in K.S.A. 75-7038, and amendments thereto which has been approved by the commissioner of juvenile justice and which, in addition to such matters as are prescribed by rules and regulations of the commissioner, provides for centralized administration and control of the juvenile correctional services under such plan;

(2) entered into an agreement with a group of cooperating counties to establish a regional or multi-county community juvenile correctional services program; established a juvenile corrections advisory board in accordance with K.S.A. 75-7044, and amendments thereto; and adopted a comprehensive plan for the development, implementation, operation and improvement of the juvenile correctional services described in K.S.A. 75-7038, and amendments thereto, which has been approved by the commissioner of juvenile justice and which, in

## 5. Medical Records

The correctional facilities need access to medical records, including psychiatric records, of the juvenile offenders committed to them. Without them the treatment providers do not know what previous treatment was provided. Duplicate screening and examinations must be done costing valuable time and money. Further, the offender may not receive as prompt and efficient care.

K.S.A. 65-5601 et seq. sets forth the privilege for psychiatric records. K.S.A. 38-1609 sets forth the privilege for medical records of juvenile offenders. Although section (a)(2) allows these records to be disclosed when the head of the treatment facility determines "disclosure is necessary for the further treatment of the juvenile offender", treatment facility is not defined and thus the records are not provided.

JJA recommends 38-1609 be amended to allow the head of a state hospital to release these needed medical records.

Proposed language:

1 K.S.A. 38-1609 shall be amended as follows: (a) The diagnostic, treatment or medical  
2 records, *including records subject to K.S.A. 65-5601*, of any juvenile offender shall be  
3 privileged and shall not be disclosed except: (1) Upon the written consent of the former  
4 juvenile or, if the juvenile offender is under 18 years of age, by the parent of the juvenile;  
5 (2) upon a determination by the head of the treatment facility *or state hospital*, who has  
6 the records, that disclosure is necessary for the further treatment of the juvenile offender;  
7 ...



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victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juvenile offenders shall be confidential and shall not be disclosed except as provided in this section or by rules and regulations established by the commissioner of juvenile justice.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified pursuant to the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a child whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a child, which advocate reports to the court, or an agency having the legal responsibility or authorization to care for, treat or supervise a child;

(C) a parent or other person responsible for the welfare of a child, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the child or the guardian ad litem for such child;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the Kansas juvenile justice code, whichever is applicable;

(G) a person who is a member of a multidisciplinary team;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to

diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect and specifically includes the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board;

(K) an educational institution if related to a juvenile offender that attends such educational institution; and

(L) educators who have exposure to the juvenile offender or who are responsible for pupils who have exposure to the juvenile offender.

(3) To any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

**History:** L. 1982, ch. 182, § 66; L. 1983, ch. 140, § 30; L. 1984, ch. 157, § 2; L. 1990, ch. 147, § 6; L. 1992, ch. 318, § 6; L. 1993, ch. 164, § 2; L. 1994, ch. 270, § 8; L. 1996, ch. 229, § 47; L. 1996, ch. 229, § 48; L. 1997, ch. 156, § 48; L. 1998, ch. 171, § 9; July 1.

### Attorney General's Opinions:

Records of juveniles in NCIC system, 84-126.

Open records; law enforcement records; jail book; standard offense report, mug shots. 87-25.

Confidentiality of juvenile records; disclosure pursuant to court order. 93-75.

Confidentiality of information concerning juvenile offenders age 14 and older. 95-94.

### 38-1609. Records of diagnostic, treatment or medical facilities concerning juvenile offenders.

(a) The diagnostic, treatment or medical records of any juvenile offender shall be privileged and shall not be disclosed except:

(1) Upon the written consent of the former juvenile or, if the juvenile offender is under 18 years of age, by the parent of the juvenile;

(2) upon a determination by the head of the treatment facility, who has the records, that disclosure is necessary for the further treatment of the juvenile offender;

(3) when any court having jurisdiction of the juvenile offender orders disclosure;

(4) when authorized by K.S.A. 38-1614 and amendments thereto;

(5) when requested orally or in writing by any attorney representing the juvenile offender, but the records shall not be further disclosed by the attorney unless approved by the court or presented as admissible evidence; or

## KANSAS JUVENILE JUSTICE CODE

(6) upon a written request of a juvenile intake and assessment worker in regard to an alleged juvenile offender when the information is needed for screening and assessment purposes or placement decisions, but the records shall not be further disclosed by the worker unless approved by the court.

(b) Willful violation of this section is a class C misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile offender established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

**History:** L. 1982, ch. 182, § 67; L. 1990, ch. 147, § 7; L. 1996, ch. 229, § 49; July 1, 1997.

**38-1610. Expungement of records.** (a) Except as provided in subsection (b), any records or files specified in this code concerning a juvenile offender may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the person who is the juvenile offender or, if the person is a juvenile, by the person's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3439, 21-3442, 21-3503, 21-3504, 21-3506, 21-3509, 21-3510, 21-3511, 21-3516, 21-3603, 21-3608 or 21-3609 and amendments thereto or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile at the time of the trial, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. There

shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(d)(1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) The person has reached 23 years of age or that two years have elapsed since the final discharge of the person;

(B) since the final discharge of the person, the person has not been convicted of a felony or of a misdemeanor other than a traffic offense or a juvenile offender under the Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

(e) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The person, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the person. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and those persons designated by that person.

(f) Copies of any order made pursuant to subsection (a) or (c) shall be sent to each public officer and agency in the county having possession of any records or files ordered to be expunged. If the officer or agency fails to comply with the order within a reasonable time after its receipt, the officer or agency may be adjudged in contempt of court and punished accordingly.

(g) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(h) Nothing in this section shall be construed to prohibit the maintenance of information relating to

**Testimony on HB 2070**  
**By Rep. Bill Feuerborn**  
**House Committee on Corrections & Juvenile Justice**

Tuesday, February 4, 2003

Mr. Chairman and members of the committee, thank you for providing me with an opportunity to discuss the proposed legislation before you today. HB 2070 is a joint effort by myself and Rep. Vickrey of Miami County that addresses the increasing act of littering in our beautiful state. The first reaction of many to legislation of this kind is to dismiss it as not being as pertinent a crime and therefore not requiring our immediate attention. In fact Mr. Chairman, Kansas would be following the national trend of dealing with this issue, if this legislation were passed and it became law.

In Arizona, a program stopping roadside littering has been a success, with about 150 calls a week coming to its statewide hotline, after the Arizona Department of Transportation launched the hotline to report drivers who litter. Louisiana and other states have established similar hotlines and have found the rates of littering to be falling. Louisiana also has increased its fines for repeat offenders to no less than \$5000. Washington State put together a Littering Taskforce that recommended the setting of fines at a sufficient level to encourage incentives for compliance and also set up a focus group, which reviewed littering patterns and penalties. Some states have also considered lowering fines, in order to improve the collection of fines. Arkansas recently changed their fines for first time offenders to \$100 and eight hours of compulsory service.

I would also urge the committee to consider the efforts of former mayor Rudy Giuliani of New York City. He came into office facing a severe rise in crime and a city in overall decay. He and other community leaders decided to tackle this threat by using a different approach. Rather than only focusing on responding to serious crimes, the New York City police department was directed to concentrate on the prevention of lesser crimes. Police and neighborhood leaders were directed to crackdown on: graffiti, loitering, lewd public displays and littering. The results were that not only were these lesser crimes reduced, but more serious crimes ranging from theft to murder were also greatly reduced.

H. Corr & J.J.  
2.4.03  
Attachment 2

New York City continues to lead the way in dealing with this issue, as Mayor Bloomberg has increased the fine for repeat offenders, while also levying higher fines on graffiti offenders and for those having garbage that is not properly contained. While Kansas is by no means facing the challenges New York City has, we can still learn from these efforts and adapt them to the challenges in our own state.

Basically, Mr. Chairman this bill takes over where the current statute leaves off. Right now, littering is designated as a Class C Misdemeanor which carries with it a maximum penalty of up to and no more than one month in the county jail and/or a fine of \$500 or less. This legislation seeks to alter the designation of littering to an unclassified misdemeanor and increase the penalty to the following:

First Conviction

A fine of less than \$250 and no more than \$1000 and a requirement of a person picking up litter for not less than 8 hours.

Second Conviction

A fine of no less than \$1,000 and no more than \$2,000 and a requirement of a person picking up litter for not less than 16 hours.

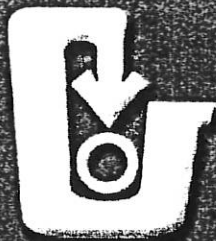
Third or Subsequent Conviction

A fine of no less than \$2,000 and no more than \$4,000 and a requirement of a person picking up litter for not less than 8 hours.

The key differences Mr. Chairman, as you can see are the additions of required time for picking up litter by those convicted of this crime and the increased fines. The state's share of the fines would not change, but of course the total amount in the state coffers would increase with the fines. Mr. Chairman, we all care about the appearance and well being of our state. Rep. Vickrey and I have proposed this legislation to ensure that we maintain the beauty of our state for generations to come.

At this time Mr Chairman, I would be more than happy to take any questions that you and other members of the committee might have.





# Litter

Litter and  
it will hurt.

REPORT VIOLATORS  
866-LITTER-1

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## Litter Fines

In 2001, the Department of Ecology (Ecology) conducted several focus groups to explore knowledge and attitudes towards littering among key audiences. Demographic research indicates that the key audience (litterers) tend to be young (16-35), single, and male. People who participated in the focus group research admitted to a variety of littering behaviors including tossing cigarette butts, tossing alcoholic beverage containers, tossing food wrappers or other beverage containers, not covering or securing loads, or simply not cleaning out the back of their pickup truck. When asked what would convince them to not litter, a clear theme emerged. **"Knowing I will be caught and fined,"** was the number one deterrent to littering. Hearing what the fines are was new information for the research participants.

In the litter survey, both focus group and telephone survey participants endorsed the use of fines and community service to curb littering behavior. The Litter Task Force recommended that the Legislature and Ecology encourage Washington State Patrol and local governments to enforce litter laws and that local penalties "be set at levels sufficient to provide meaningful incentives for compliance." While many support the use of enforcement, studies show that few states are able to enforce littering laws effectively for two reasons: lack of personnel available for such a low priority issue and the fact that it is difficult to "catch" offenders in the act.

**Chapter 70.93 RCW** sets minimum fines for littering and illegal dumping and encourages local governments to adopt ordinances similar to the provision of the state law. Most enforcement of litter laws is carried out at the local level by police departments, sheriff's offices, or health departments. Many cities and counties have adopted local ordinances which contain more stringent provisions than the state law. To find out about litter ordinances in your community you may try contacting the sheriff or police department, county or city clerk, or the code enforcement office.

At the state level, minimum fines are set in state law. As the violation is processed, fees or assessments may be added, thereby increasing the amount the violator must actually pay. The table below shows the littering penalties as outlined in state law, and the actual resulting penalty. This information was obtained from the Washington State Administrative Office of the Courts.

### Littering Penalty Information



"Violation"	"Citation"	"Penalty" Per Statute	"Penalty" Per AOC*
Littering lighted debris (e.g. cigarette butt)	<u>RCW 70.93.060(4)</u>	\$500 <u>RCW 7.80.120(1)(a)</u>	\$950 (class 1 civil infraction)
No litterbag in vehicle or watercraft	<u>RCW 70.93.100</u>		\$95 (misdemeanor)
Littering an amount less than or equal to 1 cubic foot	<u>RCW 70.93.060(2)(a)</u>	\$50 <u>RCW 7.80.120(1)(c)</u>	\$95 (class 3 civil infraction)
Littering an amount greater than a cubic foot but less than a cubic yard	<u>RCW 70.93.060(2)(c)</u>	Litter cleanup restitution of twice the actual cleanup cost, not less than \$50 <u>RCW 70.93.060(2)(b)</u>	Up to \$1000 and up to 90 days in jail (misdemeanor) - <u>RCW 9A.20.021(3)</u>
Littering an amount greater than a cubic yard	<u>RCW 70.93.060(2)(d)</u>	Litter cleanup restitution of twice the actual cleanup cost, not less than \$100 <u>RCW 70.93.060(2)(c)</u>	Up to \$5000 and up to 1 year in jail (gross misdemeanor) - <u>RCW 9A.20.021(2)</u>
Failure to secure load	<u>RCW 46.61.655</u>	\$171 (traffic infraction)	
Throwing dangerous materials on the roadway	<u>RCW 46.61.645</u>		\$171 (traffic infraction)

\*The fines per Administrative Office of the Courts are higher because they include fees and assessments.

Washington State Patrol (WSP) reports that 3,666 littering citations were issued in 1998; 3,937 were issued in 1999; and 4,509 were issued in 2000. The table below shows more detail on the citations issued in 2001, the most current data available. Due to the myriad of jurisdictions issuing and processing litter citations, quantifying the extent to which litter laws are enforced statewide at all levels is unavailable.

**Litter Related Violations  
Issued by Washington State Patrol  
2001**

2.4

Description	Arrest (Actual Ticket)	Written Warning	Verbal Warning	Total
Failure to secure load	276	262	972	1510
Debris escape	157	106	636	899
Uncovered load	15	24	91	130
Debris thrown	207	15	327	549
Debris lighted	264	18	981	1263
<b>Total</b>	<b>919</b>	<b>425</b>	<b>3007</b>	<b>4351</b>

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**For More Information Please Contact LITTER1**

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Article 53

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**State police kick off anti-litter campaign**  
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The state police kicked off a 90-day anti-litter campaign this month, which includes enhanced enforcement and education. The campaign is in cooperation with Gov. and Mrs. Mike Foster.



Louisiana law defines litter as all waste material include disposable packages, containers, sand, gravel, cans, bottles, dead animals and furniture. Trash blowing out of a pickup truck is a common occurrence in the state, and troopers will crack down on this and all types of **littering**.

The penalties for **littering** range from \$50 to \$50,000 and my include community service, no matter if the **littering** occurs on public or private property.

The campaign hot line number is 1-888-LITRBUG (548-7284).

- From Staff Reports

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Article 171

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Search by Industry

Search by Person

**Officials: Roadside littering hotline a success**

01/15/2003

Associated Press Newswires

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MESA, Ariz. (AP) - A program aimed at stopping roadside litterers has been a success, with about 150 calls a week coming to its statewide hotline, officials said.

"This has been the most rewarding thing we've ever done because truly there are people out there who genuinely care about Arizona, and it's so refreshing," said Leandra Lewis, executive director of Arizona Clean and Beautiful, a nonprofit group that seeks to keep the state litter-free.

In July, the Arizona Department of Transportation and Lewis' group launched a \$75,000-a-year program that asks people to report drivers who litter.

Callers are asked to give the offender's license plate number, where the act took place, what was tossed and a description of the vehicle.

ADOT then uses the information to find the address of the litterer, and Arizona Clean and Beautiful sends a letter to the offender.

"No need to worry this time, even though fines under the law are steep," the letter states. "Our goal is to stop litter. Will you please tell whoever tossed the litter from your vehicle 'Please don't do that anymore.

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TOPEKA

HOUSE OF  
REPRESENTATIVES**Testimony on House Bill 2070**

Mr. Chairman and Committee Members:

Thank you for hearing **HB 2070** concerning littering and penalties. If you have ever owned a vacant lot, a farm with a dead end road, a secluded waterway, a busy road frontage, or for that matter, cared for any small parcel of property, you will appreciate the intent of this bill.

Litterbugs seem to be the most prolific of all creatures whether on the interstate tossing out fast food wrappers or on the back side of a remote wilderness site dropping off appliances, tires or the like. As a parent, I've taught my children if you make a mess you clean it up.

The combination of increased fines along with discretion to require those guilty of littering to pick up trash may just deter people from carelessly tossing their litter without care of whomever cleans up their mess.

Sincerely,

A handwritten signature in cursive script that reads "Jene Vickrey".

Rep. Jene Vickrey  
State Representative  
6<sup>th</sup> District

H. Corr & J.J.  
2.4.03  
Attachment 3





# K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony of House Bill 2070**  
presented to  
**House Corrections and Juvenile Justice Committee**  
by  
Bill Bider, Director, Bureau of Waste Management  
February 4, 2003

The Department of Health and Environment appreciates this opportunity to present testimony in support of House Bill 2070. This bill compliments the efforts of KDHE and many other public and private organizations which work to protect the environment and keep our state as clean as possible. For example, several years ago, KDHE implemented the "Kansas Don't Spoil It" public education initiative designed to raise public awareness of environmental issues and to encourage citizens to make wise personal decisions regarding things like recycling, composting, and household hazardous waste disposal. More recently, KDHE has assisted a private organization in implementing the "Keep Kansas Beautiful" campaign which recruits cities and counties to become involved in community beautification and environmental management programs.

HB 2070 not only establishes proper penalties for littering behavior, it requires clean-up work which will improve the appearance of our roadsides, parks, neighborhoods, and countryside.

The requirement to pick up litter has greater potential to change the behavior of the person who has been convicted of littering than simply requiring the person to pay a fine, and that is one of the major goals of any enforcement program. The Bureau of Waste Management has similarly implemented an enforcement mechanism for violators of solid waste and hazardous waste laws and regulations. We allow violators to carry out supplement environmental improvement projects in lieu of paying penalties. We have found that businesses that carry out environmentally beneficial projects instead of paying penalties generally adopt a whole new outlook when it comes to environmental compliance. Many former violators have not only learned their lesson, they have enthusiastically moved beyond state requirements establishing company policies yielding broad-based improvements in environmental compliance practices. The same outcome could occur in individuals who are required to clean up litter.

Thank you for your time.

H. Corr & J.J.  
2.4.03  
Attachment 4



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
VICE-CHAIR: HEALTH & HUMAN SERVICES  
MEMBER: UTILITIES  
JUDICIARY

PEGGY LONG  
REPRESENTATIVE, 76TH DISTRICT  
BOX 546  
MADISON, KANSAS 66860  
(316) 437-2730  
ROOM 446-N CAPITOL BLDG.  
TOPEKA, KS 66612  
(785) 296-7685

**TESTIMONY**  
**HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE**  
**HOUSE BILL 2057**  
**Identity Theft**  
**February 4, 2003**

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you on this important issue. Many of the members on this committee heard this bill and even worked it last year as it went through the process of passing through the House. For the benefit of those of you who are new, I would like to explain the need for House Bill 2057 to become law and close a current loophole in the law that prevents justice from being rapid and complete in many cases.

Last year there were two identity theft bills, as there are this year. As a matter of fact, I think they are the same ones. One originated in the Senate and mine began in the House. Though they had the same title, the purpose of them is really quite different. The Senate Bill attempts to make theft more difficult to carry out, and mine is an attempt to make it easier to prosecute when it occurs.

It seems unnecessary to explain to you the importance of this bill. Identity theft is a real newsmaker right now. The *New York Times* recently commented on the Federal Trade Commission reports that identity theft complaints increased from 86,000 in 2001 to 162,000 in 2002. According to the Federal Trade Commission, these complaints now account for 43 percent of all the consumer crime statistics. Add to that the problem in Kansas of having to prove intent to defraud for economic benefit, and you have a real problem for law enforcement and the court system in our state. Many people purchase false identification documents perhaps without realizing that they actually belong to a real, live, law-abiding individual. These documents are used to gain credit, obtain a job and many other things. When that individual does not pay their bills and moves on or gets arrested for another crime, the victim of identity theft finds out about the fraud many times only when creditors are trying to collect on past due accounts. Law enforcement often cannot pursue justice until actual economic loss has been suffered; and, by that time, the perpetrator is long gone.

Please join with me in helping to make the justice system of this state run a little easier and smoother by closing this loophole in the law. I would ask that you read the written testimony of other individuals across the state who would like to see this bill become law.

Thanks again for your time and attention. With that I stand for questions.

H. Corr & J.J.  
2-4-03  
Attachment 5

**From:** "Duncan, Kevin" <dkduncan@opkansas.org>  
**To:** "longp@house.state.ks.us" <longp@house.state.ks.us>  
**Date:** Tue, Feb 4, 2003 10:24 AM  
**Subject:** HOUSE BILL No. 2057

Rep. Long,

I am a Detective in the Financial Crimes Unit at the Overland Park Police Department. I am pleased with you efforts in combating Identity Theft and just read you proposed amendment. I wanted to offer my thoughts as approximately 80% of my case load is Identity theft and or Forgery involving Identity Theft.

Recently, I have noticed a drastic increase in the theft of "Business" bank account and routing numbers to be used in the perpetration of a forgery via a counterfeit check. I am involved currently in a federal investigation initiated by Overland Park that involves a large group that would use compromised business bank account numbers such as Aquilla, SBC, and "mom and pop" local business account numbers to facilitate a forgery. A counterfeit check is created with the name of the business and appropriate address at the top. The bottom of the check lists the business' appropriate account number and routing number. The checks in my case were for \$5,000 to \$6,000 each and approximately 3-5 a day were being cashed. You can imagine the loss which is already estimated at over \$135,000.00 and expected to be over \$1,000,000.00.

These checks are easily made on a home computer. I have attached a few pics of the "printing lab" found just last week in KCMO.

Would it be possible to include the wording of "Business bank account numbers" or "Business Identification Numbers, to include but not limited to the address and or telephone number of the business" when used to create a any document for the purpose of any financial benefit without the business' authorization.

Just a thought, and thanks again for your efforts in this area. Financial Crime is the most profitable crime going and without new statutes and tougher punishments it will continue to grow.

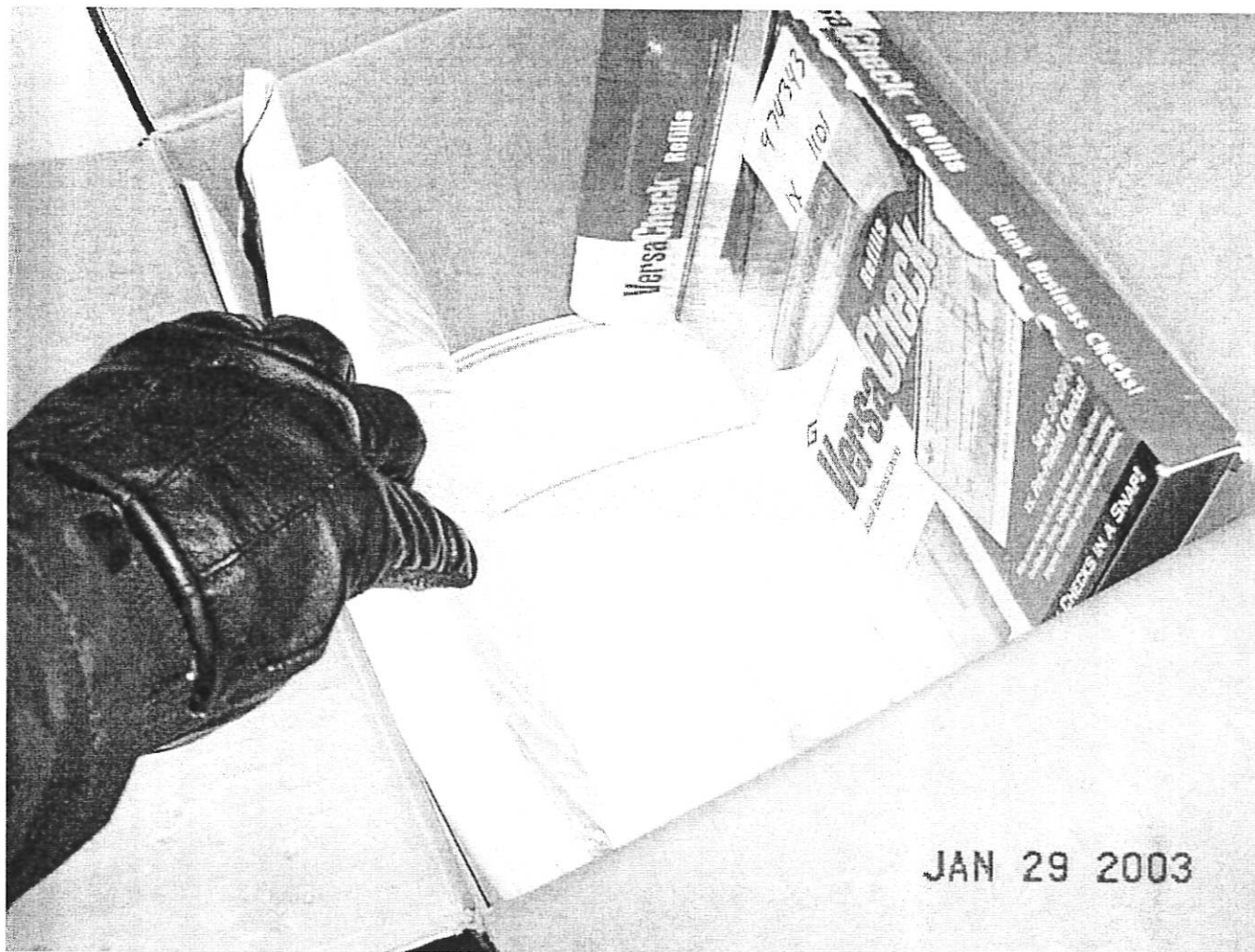
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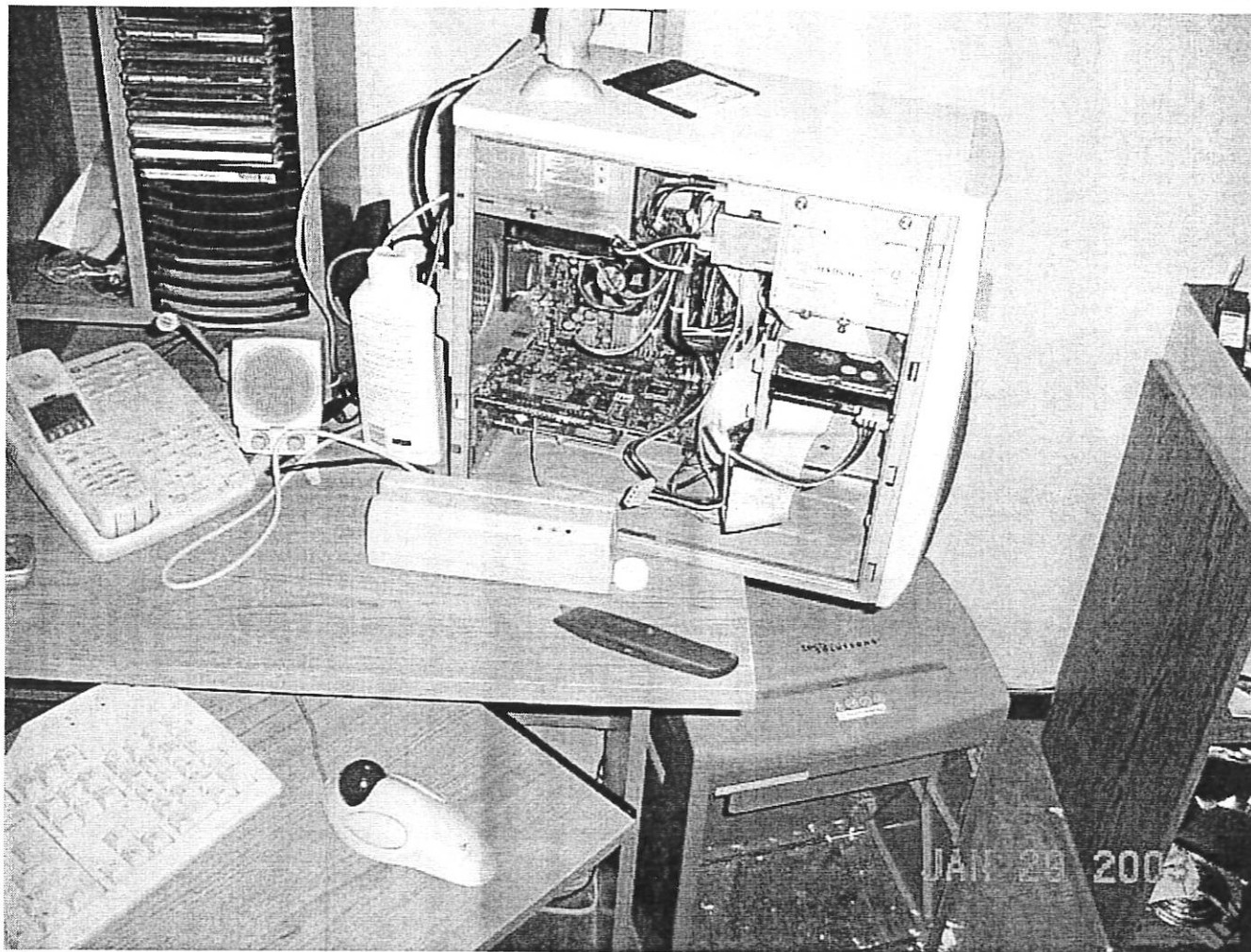
Thanks,

Detective Kevin Duncan  
Overland Park Kansas Police  
913.327.6952 desk  
913.908.0673:cell

**CC:** "john.cowles@jocoks.com" <john.cowles@jocoks.com>, "Pierce, Byron" <bdpierce@opkansas.org>

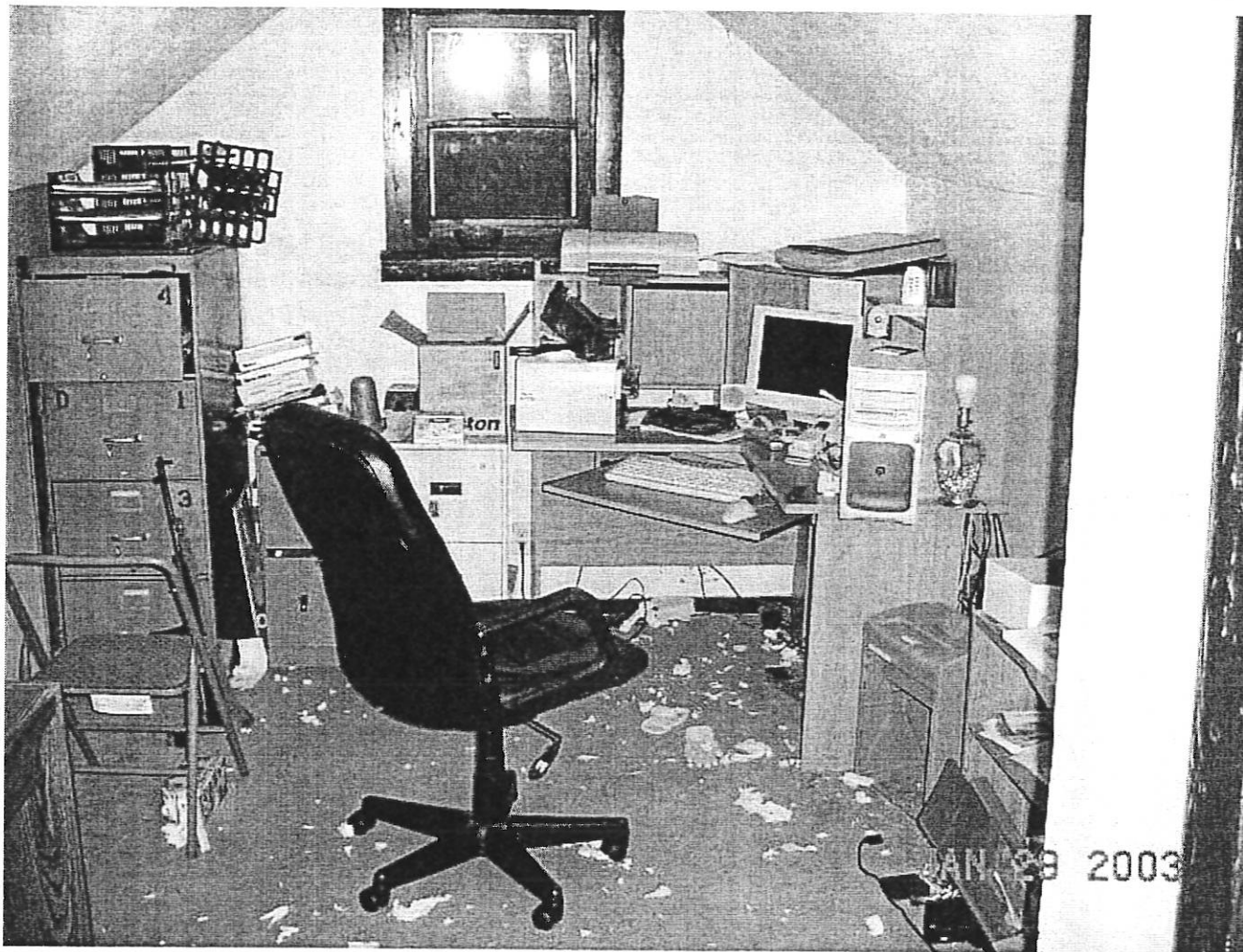
H Corr & J.J.  
2-4-03  
Attachment 6





6-2





6-<sup>4</sup>~~3~~

**From:** "Cowles, John, DAT" <John.Cowles@jocoks.com>  
**To:** "longp@house.state.ks.us" <longp@house.state.ks.us>  
**Date:** Mon, Feb 3, 2003 3:34 PM  
**Subject:** HB 2057

Dear Rep. Long,

Here is a brief testimony from my boss, Paul Morrison, in support of your bill. I put it in two formats, just in case. Neither Paul nor I can come to the hearing tomorrow.

<<2057.WPD>>

<<2057.doc>>

The details of the wording of the statute may be tricky. Just striking the word "economic" and substituting "any benefit," may not cover some situations, and may further be complicated by the fact that the language "with intent to defraud" is still there (which would suggest an economic motive).

I would suggest some kind of wording for the misdemeanor that would omit "with intent to defraud" and include instead "without the authority" of the victim and for "any reason other than economic benefit."

I hope this is helpful to you. Let me know if you have any questions or we can help out in any way.

Thank you,

John E. Cowles,  
Assistant District Attorney

**CC:** "peglong@ink.org" <peglong@ink.org>

H. Corr § JJ  
2-4-03  
Attachment 7

**From:** "Cowles, John, DAT" <John.Cowles@jocoks.com>  
**To:** "longp@house.state.ks.us" <longp@house.state.ks.us>  
**Date:** Fri, Jan 31, 2003 11:32 AM  
**Subject:** Identity Theft

Rep. Long,

I recently saw your proposed amendment to the identity theft statute, HB 2057.

I am a prosecutor in Johnson County, and much of my case load is Identity Theft.

Your proposed legislation is a great idea, but I wanted to offer my thoughts to you.

Frequently, I get complaints that non-economic benefit Identity Theft is being perpetrated. This will take the form of the perpetrator using victim's information to make airline reservations, hotel reservations, magazine subscriptions, and so forth. It's a headache for the victim, but the perpetrator receives no economic benefit for him or her self. What concerns me about your bill is the wording "with intent to defraud for any benefit..." In the above scenarios, there is no benefit at all to the perpetrator, unless you would consider his sense of satisfaction in making the victim's life miserable, which would still not be with intent to "defraud."

Could the wording for the misdemeanor ID theft be something to the effect of "with intent to harrass or affect the credit worthiness of the victim"

Just a thought. Thank you for your interest in this important issue.

John E. Cowles,  
Assistant District Attorney

# Testimony to the House Corrections & Juvenile Justice Committee

## Regarding House Bill 2057

Paul J. Morrison  
District Attorney, Johnson County, Kansas

I fully support the concept of HB 2057, which would create a misdemeanor form of identity theft where the crime is perpetrated for reasons other than for economic benefit. This office has received many complaints of this form of identity theft, however under the current statute the charge of identity theft would not apply and the victims are typically left without recourse. Identity theft committed for reasons other than economic benefit can occur in one of two ways:

1. The perpetrator wants to harass the victim by using the victim's personal information to make hotel reservations, airline reservations, magazine subscriptions, and so forth. The perpetrator does not receive an economic benefit from this activity, but the victim has to go to the trouble of undoing the mess created in his or her name.
2. The perpetrator obtains identification in the name of his victim in order to avoid warrants, usually for traffic matters.

Unfortunately, identity theft in all forms has become one of the fastest growing crimes in our State and across the country. According to the Federal Trade Commission, there were 893 identity theft victims in Kansas in 2002. I support our legislature in continuing to develop identity theft laws to protect the personal and financial information of all Kansans.

H. Corr & J.J.  
2-4-03  
Attachment 8

# Kansas Peace Officers Association

## Testimony in Support of HB 2057

Before the House Corrections and Juvenile Justice Committee

Kyle G. Smith

On behalf of the Kansas Peace Officers Association

February 4, 2003

Chairman Lloyd and Members of the Committee,

On behalf of the Kansas Peace Officers Association we would urge your passage of HB 2057. While normally thought of as a means of committing fraud, identity theft can have other motives and other victims than just the financial ones.

Whether the intent is to gain access to restricted information or 'merely' to destroy an ex-spouse's credit rating, the harm to the victim can be equally devastating. Even in a financially motivated case of identity theft, the person whose identity has been stolen can be as much of a victim as the merchant or institution who suffered the economic loss. Loss of credit rating, legal expenses, embarrassment, difficulty in getting loans and employment frequently are experienced by the person whose identity was usurped – even though some other 'victim' suffered the loss of 'economic benefit'. One of our best special agents was almost not hired because our background check revealed extensive problems – all of which turned out to be the result of identity theft.

Thank you for your attention and I would be pleased to stand for any questions.

H. Corr & J.J.  
2.4.03  
Attachment 9



## WHAT CRIMINAL STATUTES APPLY?

*Identity theft is on the rise. Criminals, using a variety of methods, steal credit card numbers, driver's license numbers, ATM cards, social security numbers, telephone calling cards and other key pieces of individuals' identities. Criminals use this information to impersonate victims, spending as much money as they can in as short a period of time as possible. Victims are left with a damaged reputation, bad credit report, and must spend months or even years trying to regain their financial health.*

The 1998 Kansas Legislature passed a criminal statute recognizing that persons who have their identities stolen are victims.

Identity theft, KSA 21-4018, is a Level 7 Person Felony.

Other statutes that may apply are:

1. **Theft**  
KSA 21-3701
2. **Making false information**  
KSA 21-3711
3. **Forgery**  
KSA 21-3710
4. **Insufficient funds checks**  
KSA 21-3707
5. **False impersonation**  
KSA 21-3824 (Government officer or licensed professional)
6. **Dealing in false identification documents**  
KSA 21-3830

### CREDIT REPORTING SERVICES

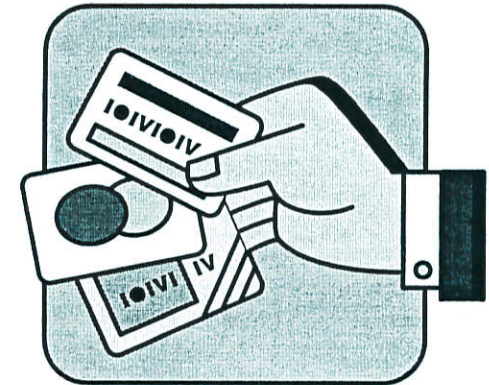
Experian	888-397-3742
Trans Union	800-680-7289
Equifax	800-525-6285

### GOVERNMENT

Social Security Administration  
800-269-0271

*Protect Yourself From*

# IDENTITY THEFT



*Provided by*  
**Kansas Bureau of Investigation**  
 1620 SW Tyler  
 Topeka, KS 66612  
 785-296-8200

## HOW IS MY PERSONAL INFORMATION USED?

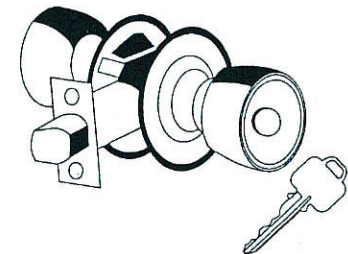
- Obtain credit card(s) in your name. All that is needed is your name, address, social security number, and limited work history in most cases.
- Obtain loan(s) in your name. Most financial institutions will make small loans without collateral if the credit history associated with the name given is good.
- Open checking accounts in your name. With your information, checking accounts can be opened with little money in your name.
- Take a job in your name. Income tax collectors will want to know why you did not declare the additional income on your last income tax return.
- Obtain a duplicate driver's license in your name, allowing someone to drive and receive traffic tickets in your name.
- Your reputation can be used to facilitate any number of transactions, which will be designed in the end to con someone out of money, and you won't know anything about it.

## PROTECT YOURSELF FROM IDENTITY THEFT

- Don't use your social security number as your driver's license number.
- Don't leave mail in your residential mailbox.
- Don't store any personal information or account numbers on computers with modems.
- Don't carry personal information or account numbers in your wallet or purse.
- Take ATM, credit card and other receipts with you, and either save them in a safe place or destroy them.
- Shred documents which could contain personal information.
- Don't give any part of your social security number or personal account numbers over the phone.
- Never put your account number on an envelope or a postcard.
- Keep a record of your credit card numbers, their expiration dates, and the telephone numbers of each company for reporting losses.
- If you believe you have been a victim of fraud, you may request, in accordance with Section 612 of the Federal Fair Credit Reporting Act, a free copy of your credit report from the three major credit reporting agencies. (Listed on the back of this publication).
- Open billing statements promptly and compare them with your receipts. If there are any mistakes, report them, in writing, immediately.

## WHAT SHOULD I DO IF I'VE BEEN VICTIMIZED?

- File a report with the police immediately.
- Cancel each credit card, and get new cards with new account numbers.
- Report missing cards to the three major credit reporting services.
- Report the loss to your bank. Cancel checking and savings accounts and open new ones. Stop payments on all outstanding checks.
- Get a new ATM card, account number and PIN or password.
- Call your utilities, including your phone company. Inform them someone may try to get new service using your identification.
- Report your missing driver's license to the Department of Motor Vehicles, and get a new driver's license that does not list your social security number as the driver's license number.
- Change the locks on your home and car if your keys were stolen.







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*Michael J. Heffron, Chief of Police*

*Michael Lopez, Deputy Chief of Police*

*Michael Williams, Deputy Chief of Police*

Chairperson and Members of the House Correction and Juvenile Justice Committee  
Capital Building  
Topeka, Kansas

My name is Jim Pritchard and I am a police officer for the Emporia Police Department. Please accept my written testimony in support of House Bill 2057. It has come to my attention that at times the current statute concerning Identity Theft is not as inclusive as it should be. The current statute reads: "Identity Theft is knowingly and with intent to defraud for *economic benefit*, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor." The proposed change would include the "Intent to defraud for *any benefit, including but not limited to economic benefit*, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or person identification number of another person, other than that issued lawfully for the use of the possessor." Based on individual calls I have responded to, I believe that this change is badly needed.

One example concerned an illegal alien who had purchased a social security card. With this social security card and other identification, this person was able to obtain a Missouri Identification card with his photo on it but under the false name. Once this person had a *valid* state issued identification card, it was not difficult to obtain employment and begin obtaining credit cards under the assumed name. I believe at least nine credit cards under the assumed name were seized.

A second example involved a lady who reported that her husband was having difficulty with finding a job. She advised that someone had used her husbands' social security number and had obtained a driver's license in two different states. For whatever reason, the driver's licenses had been suspended. She said her husband had his Texas identification card but could not get a Kansas driver's license because the computer system showed license suspensions.

H. Corr & J.J.

2-4-03

Attachment 10

This lady has also shown me letters from the Internal Revenue Service stating that her husband owed almost \$11,000.00 in taxes. She told me that someone had used her husband's social security number and name to gain employment. This had apparently occurred at several different locations. The Internal Revenue Service was notifying her husband that he had failed to file tax returns and pay his taxes.

This lady further told me that they had been turned down for a car loan because someone using her husband's name and social security number had given them a bad credit rating. This lady said one item involved a loan for \$15,000.00 that had been defaulted on. The lady told me that she was going to need an attorney to try and get the matters cleared up. This will no doubt take a good deal of time and money to accomplish this. Obviously there is a victim of an injustice here. It would be hard to prove a crime was committed under the current statute 21-4018.

Sometime back, I was in the process of bonding out a prisoner for domestic violence and realized he had accidentally signed two different names. During the course of determining who he was, I found a Missouri identification card with his name and someone else's name on it. There was also a phone card under the assumed name. He had been working at a business and had assumed someone else's name and social security number. This person was also an illegal alien. Another concern with this case is that this person was developing criminal history under someone else's name.

Based upon the examples cited above, I would certainly appreciate any and all consideration for the passage of HB 2057.

Thank you:



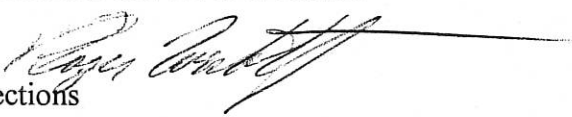
Officer Jim Pritchard  
Emporia Police Department  
Kansas Peace Officer's Association

# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Memorandum

DATE: February 4, 2003  
TO: Committee on Corrections and Juvenile Justice  
FROM: Roger Werholtz   
Secretary of Corrections  
RE: HB 2090

HB 2090 amends K.S.A. 75-52,116 to clarify the agency relationship between the Department of Corrections and other governmental or nonprofit organizations that utilize the services of KDOC offenders for public service or charitable objectives. HB 2090 specifies that the agency relationship between the State or the Department of Corrections and other governmental or nonprofit organizations is limited to only the continued confinement of the inmates providing the labor for the other organization. Specifically, an agency relationship involving the State or the Department in regard to the work assigned, performed or supervised by the other organization would not be established pursuant to K.S.A. 75-52,116.

During FY 2002 offender work crews comprised of minimum custody inmates from correctional facilities and offenders under post release supervision at Day Reporting Centers provided over 893,900 hours of labor to other state agencies, school districts, cities, counties, and nonprofit organizations. Those services, if paid for at the minimum wage rate, would have cost other government entities and nonprofit organizations in excess of \$4,603,900.

K.S.A. 75-52,116 provides the authorization for the Department of Corrections to extend the limits of confinement for minimum custody inmates to work for other entities without the supervision of corrections officers. The entities that benefit from work details are to supervise and control the detail, reporting to the Department of Corrections. Due to the limited resources of the Department of Corrections, the provision of work details is dependant upon the other government entity or charitable organization providing for the custodial supervision of the offender. Additionally, the equipment and material required for a project is to be provided by the entity using the services of the detail.

H. Corr & J.J.

2-4-03

Attachment 11



February 4, 2003

HB 2090

Page 2

The impetus for HB 2090 is recent litigation brought against a city and the Department of Corrections arising out of a fatal mowing accident. The fatality occurred while the decedent, a member of a work detail, was mowing city property. The decedent was supervised in his work by the city and was using city equipment at the time of his death. The lawsuit alleges liability on the part of the State. The suit contends that pursuant to K.S.A. 75-52,116, the State is responsible as the principal of an agency relationship for any liability attributable to the negligence of the city.

HB 2090 retains the agency authority of entities relative to the supervision of the extended limits of confinement of inmates on a work detail and therefore, any escape from a work detail remains punishable as an aggravated escape from custody. However, HB 2090 would clarify that any negligence on the part of the entity benefiting through the labor of a work detail would not be imputed to the State or the Department of Corrections.

The rationale for vicarious liability being imposed upon principals for the negligent acts committed by persons performing duties for the benefit of the principal is that since the principal derives the benefits of the agent's work, the principal should also be responsible for injuries caused by his or her agent. HB 2090 is consistent with the rationale for vicarious liability. HB 2090 recognizes that in regard to inmate work details, permitting other governmental entities and nonprofit organizations to utilize inmate labor benefits those entities. The role of the Department is merely to provide a way for those entities to pursue projects that they otherwise would not be able to accomplish.


The Department of Corrections urges favorable consideration of HB 2090.

# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Memorandum

DATE: February 4, 2003  
TO: Committee on Corrections and Juvenile Justice  
FROM: Roger Werholtz  
Secretary of Corrections   
RE: HB 2091

HB 2091 amends K.S.A. 2002 Supp. 21-2511 to address the cost of the collection of DNA specimens. K.S.A. 21-2511 provides for the collection of DNA exemplars from offenders convicted of certain offenses. Offenders subject to providing blood and saliva samples have diverse sentencing dispositions and at any particular time are at various locations within the criminal justice system. Additionally, the provisions of K.S.A. 21-2511 are retroactive in regard to the scope of the offenses for which testing is required. Thus, collection of DNA samples entails obtaining specimens at various locations throughout the state from offenders on probation supervised by courts, under the release supervision of the Department or incarcerated in youth residential and adult correctional facilities.

The Kansas Bureau of Investigation collects some of the samples required through regularly scheduled collections conducted at Department of Corrections facilities. Assistance is also provided to the KBI by community corrections and Department of Corrections officials in making arrangements for the collection of specimens from offenders in the community. However, in coordinating collections from offenders in the community, the Bureau has informed the Department of its budget restrictions that impede collections at sites where the number of offenders from whom a medical technician draws samples is not large enough to significantly defray that expense on a per capita basis.

The Bureau has requested assistance from the Department in recovering the cost of the collection of specimens from offenders on release supervision. However, due to the

absence of any authority to do so, the Department is unable to accommodate the Bureau's request. HB 2091 would obligate the person from whom the specimen is collected to pay for the cost of collection.

An obligation for offenders to pay for the cost of collection impacts the Department of Corrections relative to the burden on the Department to process the collection of funds from offenders and forwarding those payments to the Bureau. Additionally, the Department must be cognizant of the effect on the inmate population of having an additional financial burden placed upon inmates and the benefit to the operation of a correctional facility to have, whenever possible, offenders voluntarily provide samples in response to a reasonable incentive. The imposition of a fee upon the inmate population has a significant impact on the inmate population due to the small amount paid to inmates for facility work assignments.

To provide an incentive for offenders to voluntarily provide samples and reflect the significant reduction in the per capita cost incurred by the Bureau when specimens are collected at a correctional facility, the Department requests that HB 2091 be amended by providing an exception for offenders whose specimens are collected at a correctional facility. An exemption from the payment of a fee by offenders whose sample is collected at a correctional facility does not have a significant impact on the costs incurred in collecting those samples due to the low per capita expense occasioned by the large number of samples that can be obtained at one time by a medical technician. Therefore, the Department requests that samples collected at a correctional facility not be subject to a collection fee.

Additionally, due the wide variation in the per capita cost, which is dependent upon the number of persons from whom a medical technician obtains samples, the Kansas Bureau of Investigation has informed the Department that a number of States charge a set fee for the collection. While the Kansas Bureau of Investigation is in a better position to identify the amount of the fee that should be required for the collection of samples not obtained through a correctional facility, the Department requests that if a fee is established, such fee not impose a significant burden upon released offenders.

In order to provide an exception to the imposition of a fee for the collection of DNA samples when obtained from the offender at a correctional facility, the Department has prepared a proposed amendment to HB 2091. A copy of that proposal is attached.

The Department urges favorable consideration of HB 2091 with the proposed amendment.

## HOUSE BILL No. 2091

By Committee on Corrections and Juvenile Justice

1-28

9 AN ACT concerning crimes and punishments; relating to specimen col-  
10 lection fees; amending K.S.A. 2002 Supp. 21-2511 and repealing the  
11 existing section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2002 Supp. 21-2511 is hereby amended to read as  
15 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as  
16 a juvenile offender because of the commission of any felony; a violation  
17 of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a  
18 violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amend-  
19 ments thereto when the victim is less than 18 years of age; a violation of  
20 K.S.A. 21-3507, and amendments thereto, when one of the parties in-  
21 volved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A.  
22 21-3513, and amendments thereto, when one of the parties involved is  
23 less than 18 years of age; a violation of K.S.A. 21-3515, and amendments  
24 thereto, when one of the parties involved is less than 18 years of age; or  
25 a violation of K.S.A. 21-3517, and amendments thereto; including an at-  
26 tempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301,  
27 21-3302 or 21-3303 and amendments thereto, of any such offenses pro-  
28 vided in this subsection regardless of the sentence imposed, shall be re-  
29 quired to submit specimens of blood and saliva to the Kansas bureau of  
30 investigation in accordance with the provisions of this act, if such person  
31 is:

32 (1) Convicted as an adult or adjudicated as a juvenile offender be-  
33 cause of the commission of a crime specified in subsection (a) on or after  
34 the effective date of this act;

35 (2) ordered institutionalized as a result of being convicted as an adult  
36 or adjudicated as a juvenile offender because of the commission of a crime  
37 specified in subsection (a) on or after the effective date of this act; or

38 (3) convicted as an adult or adjudicated as a juvenile offender because  
39 of the commission of a crime specified in this subsection before the ef-  
40 fective date of this act and is presently confined as a result of such con-  
41 viction or adjudication in any state correctional facility or county jail or is  
42 presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663,  
43 and amendments thereto.



1 (b) Notwithstanding any other provision of law, the Kansas bureau of  
2 investigation is authorized to obtain fingerprints and other identifiers for  
3 all persons, whether juveniles or adults, covered by this act.

4 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide  
5 specimens of blood and saliva shall be ordered by the court to have spec-  
6 imens of blood and saliva collected within 10 days after sentencing or  
7 adjudication:

8 (1) If placed directly on probation, that person must provide speci-  
9 mens of blood and saliva, at a collection site designated by the Kansas  
10 bureau of investigation. Collection of specimens shall be conducted by  
11 qualified volunteers, contractual personnel or employees designated by  
12 the Kansas bureau of investigation. Failure to cooperate with the collec-  
13 tion of the specimens and any deliberate act by that person intended to  
14 impede, delay or stop the collection of the specimens shall be punishable  
15 as contempt of court and constitute grounds to revoke probation;

16 (2) if sentenced to the secretary of corrections, the specimens of  
17 blood and saliva will be obtained as soon as practical upon arrival at the  
18 correctional facility; or

19 (3) if a juvenile offender is placed in the custody of the commissioner  
20 of juvenile justice, in a youth residential facility or in a juvenile correc-  
21 tional facility, the specimens of blood and saliva will be obtained as soon  
22 as practical upon arrival.

23 (d) Any person required by paragraph (a)(3) to provide specimens of  
24 blood and saliva shall be required to provide such samples prior to final  
25 discharge or conditional release at a collection site designated by the  
26 Kansas bureau of investigation. Collection of specimens shall be con-  
27 ducted by qualified volunteers, contractual personnel or employees des-  
28 ignated by the Kansas bureau of investigation.

29 (e) The Kansas bureau of investigation shall provide all specimen vi-  
30 als, mailing tubes, labels and instructions necessary for the collection of  
31 blood and saliva samples. ~~The person from whom the samples are collected~~  
32 ~~shall be responsible for the costs of collection.~~ The collection of samples  
33 shall be performed in a medically approved manner. No person author-  
34 ized by this section to withdraw blood and collect saliva, and no person  
35 assisting in the collection of these samples shall be liable in any civil or  
36 criminal action when the act is performed in a reasonable manner ac-  
37 cording to generally accepted medical practices. The withdrawal of blood  
38 for purposes of this act may be performed only by: (1) A person licensed  
39 to practice medicine and surgery or a person acting under the supervision  
40 of any such licensed person; (2) a registered nurse or a licensed practical  
41 nurse; or (3) any qualified medical technician including, but not limited  
42 to, an emergency medical technician-intermediate or mobile intensive  
43 care technician, as those terms are defined in K.S.A. 65-61.12; and amend-

Except for an offender under the supervision of department of corrections whose specimens are collected at a state correctional, the



1 ments thereto, or a phlebotomist. The samples shall thereafter be for-  
2 warded to the Kansas bureau of investigation. The bureau shall analyze  
3 the samples to the extent allowed by funding available for this purpose.

4 (f) The DNA (deoxyribonucleic acid) records and DNA samples shall  
5 be maintained by the Kansas bureau of investigation. The Kansas bureau  
6 of investigation shall establish, implement and maintain a statewide au-  
7 tomated DNA databank and DNA database capable of, but not limited  
8 to, searching, matching and storing DNA records. The DNA database as  
9 established by this act shall be compatible with the procedures specified  
10 by the federal bureau of investigation's combined DNA index system  
11 (CODIS). The Kansas bureau of investigation shall participate in the  
12 CODIS program by sharing data and utilizing compatible test procedures,  
13 laboratory equipment, supplies and computer software.

14 (g) The DNA records obtained pursuant to this act shall be confi-  
15 dential and shall be released only to authorized criminal justice agencies.

16 (h) The Kansas bureau of investigation shall be the state central re-  
17 pository for all DNA records and DNA samples obtained pursuant to this  
18 act. The Kansas bureau of investigation shall promulgate rules and reg-  
19 ulations for the form and manner of the collection, maintenance and  
20 expungement of DNA samples and other procedures for the operation of  
21 this act. These rules and regulations also shall require compliance with  
22 national quality assurance standards to ensure that the DNA records sat-  
23 isfy standards of acceptance of such records into the national DNA iden-  
24 tification index. The provisions of the Kansas administrative procedure  
25 act shall apply to all actions taken under the rules and regulations so  
26 promulgated.

27 Sec. 2. K.S.A. 2002 Supp. 21-2511 is hereby repealed.

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



# Kansas Bureau of Investigation

Larry Welch  
Director

Phill Kline  
Attorney General

**Testimony in Support of HB 2091**  
Before the House Corrections and Juvenile Justice Committee  
Kyle G. Smith  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
February 4, 2003

Chairman Lloyd and Members of the Committee,

I am very pleased on behalf of Director Welch and the KBI to support of this bill. DNA technology is probably the most successful and exciting evolution in criminal justice this century. Not only has DNA identified suspects to crime scenes but it also has the ability to prove someone's innocence. In addition, we have the DNA databank which requires persons convicted of specified offenses to provide DNA samples which are collected, analyzed and placed in a databank for comparison to past and future crimes. DNA testing and the use of the CODIS databank is the most effective new tool in our efforts against violent crime.

To illustrate how the databank should work, the first Kansas 'cold case' involved a person convicted of a stabbing and so required to give a genetic sample. Running that sample through the databank matched him to other serious crimes: a murder and 2 rapes. Solving those crimes and getting such serial rapist off the streets is what DNA databank is all about. Other states are solving hundreds of such crimes each year utilizing DNA databanks.

The legislature has recognized the value of the DNA databank as evidenced by expanding the list of convictions for which DNA must be taken to all person felonies two years ago to all felonies and a handful of misdemeanors last year in HB 2880. More convicts in the DNA databank means more crimes being solved and more crimes being prevented.

While authority to take samples has been quickly granted, funding for the expensive technology has not been so easy to obtain. Currently the KBI is budgeted to receive no state general funds to collect, store, analyze DNA information in either criminal investigations or databank collections. HB 2880 authorized the collection and analysis 'as funding becomes available' - i.e., federal grants. Federal grants have been instrumental in setting up our DNA program, training our scientists and paying for outside contractors to do the database analysis. We currently have 13,000 samples awaiting analysis through a federal grant that we hope to receive this spring. While very thankful for the federal funding, it is frustrating to realize that somewhere in Kansas, someone will be killed this spring that we might have gotten off the streets if we had been able to immediately tested the samples as they came in. Since there are no federal grants to pay for collection or criminal investigative use of DNA, we have utilized our Laboratory Fee Fund to pay for those operating expenses even though it was set up to be an *additional* resource to replace equipment, training, etc.

H. Corr & J.J.  
2.4.03  
Attachment 13

This technology is expensive. Attached is a sheet explaining how even taking a sample for the DNA databank would cost us \$150. Criminal investigations are much more expensive, around \$900 per sample, and a case may have many samples, victims and suspects. A good example on the high side was last year's investigation of the Carr brothers, the KBI spent over \$31,000 in DNA analysis alone – and that does not include the instruments or scientists' time!

The bad news is that the free ride is coming to an end. The federal grant programs that have paid for so much of our DNA program, everything from collection kits to analysis, are slated to end in 2 years.

So how will we continue this crucial investigative tool when the federal funding runs out? HB 2091 is a first step addressing the collection, but not the analysis, expenses. As drafted the bill would make the convicted person responsible for "the costs of collection". This is an approach that most other states have adopted. Also attached is a chart showing some research we've done on how other states have addressed funding of databank laws. 27 states have passed such legislation and set fees from \$2 on all civil and criminal case to \$500 to the registrant. The KBI pays for contract phlebotomists to do blood draws from about 3,300 DOC prisoners a year. In addition, there are about another 6000 draws done locally from persons convicted but not sent to DOC. Please remember HB 21091 only deals with the relatively minor expense of collection, not analysis.

Obviously we support HB 2091 as a good first step. The costs of collection will vary widely from an 'assembly line' operation at a prison to a higher expense of drawing blood for one probationer in a rural county. For ease of operation we would recommend amending the bill to set a flat fee, sort of a 'liquidated damages' as most other states have done. As to the amount, the first attachment shows collection and storage processing costs to be between \$25 and \$40. We would suggest that sheriffs or other agencies retain \$10 or \$15 of that fee when they do the collection.

But the federal funds are running out and this may be a time and opportunity to go further, as other states have done and set the fee at \$150 to cover all costs, both collection and analysis. The timing on this isn't critical yet, but having the mechanism in place and funds on hand when needed would be a major boon to our investigations.

Further we would request that a new section be added creating a "KBI DNA Technology Fund", authorizing and restricting expenditures from that fund to offset the collection, storage and analysis of DNA samples.

Thank you for your attention and I would be glad to stand for any questions.

**Summary of State Databank Laws  
Fee Collection – January 2003**

STATE	FEE	PAYMENT	SPECIAL FUND
ALABAMA	\$2	All civil and criminal cases Collected by court clerk	DNA Database Fund
ALASKA			
ARIZONA	\$500	Offender	DNA Identification System Fund
ARKANSAS	\$250	Offender – court	DNA Detection Fund
CALIFORNIA			
COLORADO	Not Set	Offender	Offender Identification Fund
CONNECTICUT			
DELAWARE			
FLORIDA	Not Set	Offender	
GEORGIA			
HAWAII	\$500/cost	Offender-court	DNA Registry Special Fund
IDAHO			
ILLINOIS	\$200	Offender – court	Offender DNA Identification System Fund
INDIANA			
IOWA			
KANSAS			
KENTUCKY	Not Set	Collecting Agency/ Offender	
LOUISIANA	\$250	Offender	
MAINE			
MARYLAND	Reasonable	Offender – court	DNA Technology Fund
MASSACHUSETTS	Not Set	Offender	
MICHIGAN	\$60	Offender – court	Provision – Funds used for DNA
MINNESOTA			
MISSISSIPPI			
MISSOURI			
MONTANA	Not Set	Offender	
NEBRASKA			
NEVADA	\$250	Offender - court	
NEW HAMPSHIRE	Not Set	Offender – court	
NEW JERSEY	Not Set	Offender Seizure/Forfeiture	Funds used for first year to implementing Act
NEW MEXICO	\$100	Offender - court	DNA Identification System Fund

**Summary of State Databank Laws  
Fee Collection – January 2003**

STATE	FEE	PAYMENT	SPECIAL FUND
NEW YORK			
NORTH CAROLINA			
NORTH DAKOTA	Not Set	Offender	Forensic Division – State Health
OHIO			
OKLAHOMA	\$150	Offender to DOC	OSBI for DNA Lab and Offender Database
OREGON	Collection	Offender	
PENNSYLVANIA	\$250	Offender	DNA Detection Fund
RHODE ISLAND			
SOUTH CAROLINA	\$250	Offender – court	State Law Enforcement – to offset costs of Act (includes testing)
SOUTH DAKOTA	Collection	Offender	
TENNESSEE			
TEXAS	\$50 or \$250 Offense dependent	Offender	
UTAH	\$75	Offender	DNA Specimen Restricted Account \$15 to collection agency / \$60 to fund
VERMONT			
VIRGINIA			
WASHINGTON	\$100	Offender	State DNA Data Base Account
WEST VIRGINIA			
WISCONSIN	\$250	Offender –court	
WYOMING			

Summary:

27 states require fee payment

16 states require fee payment to be in fund to support DNA testing

Fee range from \$2 (every civil or criminal case) - \$500

\$250 most common fee

23 states collect from all felonies of these 14 have fee payment

Fee collection has been successful in all 27 states, stated funds are covering costs of collection and testing, the remaining funds support general DNA testing (equipments, supplies, etc)



Summary of State Databank Laws  
Collection Agency – January 2003

STATE	COLLECTION AGENCY
ALABAMA	
ALASKA	
ARIZONA	
ARKANSAS	
CALIFORNIA	
COLORADO	
CONNECTICUT	
DELAWARE	
FLORIDA	
GEORGIA	
HAWAII	
IDAHO	
ILLINOIS	
INDIANA	
IOWA	
KANSAS	
KENTUCKY	
LOUISIANA	
MAINE	
MARYLAND	
MASSACHUSETTS	
MICHIGAN	
MINNESOTA	
MISSISSIPPI	
MISSOURI	
MONTANA	
NEBRASKA	
NEVADA	
NEW HAMPSHIRE	
NEW JERSEY	
NEW MEXICO	

## Cost to Collect & Analyze DNA Samples

<b>Collection of Offender sample</b>	\$15
collection kit, and cost for phlebotomist or qualified medical technician	
<b>Processing of DNA sample for storage</b>	\$25
cost for laboratory technician, and robotic supplies to process DNA samples	
<b>DNA profiling</b>	\$50
cost for DNA profiling kit, and reagents for 310 Genetic Analyzer	
<b>Compliance with Quality Assurance standards</b>	\$15
costs related to reviewing data, re-analysis of samples required by DNA Advisory Board national standards	
<b>Participate in CODIS program</b>	\$20
software upgrades to maintain continual compatibility with CODIS	
<b>Replace &amp; upgrade DNA technology</b>	\$25
costs to continue compatibility with CODIS	
<b>TOTAL COST</b>	<b>\$150</b>

### Note:

By K.S.A. 21-2511, the KBI is mandated to establish, implement, and maintain a statewide automated DNA databank capable of searching, matching, and storing DNA records for the criminal justice system.

- currently all KBI employees involved in the collection and processing of DNA samples for CODIS are special project employees who are not funded through the State General Fund.
- approximately 3,300 DNA samples are collected yearly from inmates at Kansas DOC;
- approximately 6,000 DNA samples are collected yearly from convicted felons who are not sentenced to Kansas DOC;
- currently, 27 states require a fee payment from offenders for the collection, processing, and storage of DNA samples for CODIS;
- the amount collected by these states ranges upwards to \$500, with the most common fee being \$250 per DNA collection;
- presently, there are 13,000 DNA samples awaiting profiling.