

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Vratil at 9:35 a.m. on January 23, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Oleen (E)
Senator Pugh (E)
Senator Schmidt (E)
Senator Umbarger (E)

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Charley Laman, General Counsel, Kickapoo Tribe
Ron Hein, Prairie Band Potawatomi Nation
Terry Scott, Police Chief, Prairie Band Potawatomi Nation
Whitney Damron, Kickapoo Tribe and Sac & Fox Nation
Representative Becky Hutchins
Daina Durham, Jackson County Sheriff (written testimony)
Ronald Kautz, Whiting, KS (written testimony)
Martha Dorsey, Legislative Research Department
Stuart Little, Kansas Community Corrections Association
Denise Everhart, Acting Commissioner, Juvenile Justice Authority (written testimony)
John Peterson, Kansas Assn. Of Homes & Services for the Aging
Marla Rhoden, KDHE, Bureau of Health Facilities, Health Occupations Credentialing
Ed Jaskinia, Associated Landlords of Kansas

Others attending: see attached list

The minutes for the January 22 meeting were approved on a motion by Senator Donovan, seconded by Senator Goodwin, and motion carried.

The Chair noted that the Committee members had been furnished with copies of three fiscal notes covering SB 11, SB 14, and SB 15. (Attachment 1)

SB 9 - Bill by Joint Comm. on State-Tribal Relations; Native American tribal law enforcement officers; jurisdiction

Chairman Vratil opened the hearing on SB 9. Conferee Laman testified in support of SB 9. He explained that this bill amends K.S.A. 22-2401a (commonly referred to as the "Campus Police" law) to include Tribal law enforcement officers. He stated that the bill promotes safety for the citizens of Kansas, as well as inter-cooperation between law enforcement. He said the passage of this law would allow Tribal officers to arrest persons utilizing the Kansas Criminal Codes, file the case with the Sheriff, and the County Attorney would then prosecute the cases. He urged the Committee to pass this proposed amendment. He pointed out that some adjustments should be made to Section 8(e) of SB 9 which limits the application of this law to the areas designated in the Kansas' Tribes Gaming Compacts. He suggested that the same be addressed by including not only the Indian Reservations as defined in the gaming compacts, but also each Tribe's trust lands. (Attachment 2)

Conferee Hein testified in support of SB 9 on behalf of the Prairie Band Potawatomi Nation. He told the Committee that this bill provides for tribal law enforcement officers to have statutory recognition as law enforcement officers on the reservation or when other circumstances exist. He stated that in light of new efforts to improve communication and cooperation between all law enforcement agencies as evidenced by the increased emphasis on Homeland Security, they believed this legislation was important and warranted to improve law enforcement for all Kansans. (Attachment 3)

Conferee Scott appeared before the Committee in support of SB 9, and gave some examples of the

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on January 23, 2003 in Room 123-S of the Capitol.

problems that currently exist which this proposed bill addresses and resolves. (Attachment 4)

The Chair asked Mr. Scott if the Potawatomi Nation have any concern about the definition of "reservation" in this bill, and Mr. Scott responded in the negative.

Conferee Damron testified in support of the proposed legislation on behalf of the Sac and Fox Nation, but expressed concern with some of the language since it was amended by the Joint Committee on State-Tribal Affairs to exclude "Indian Country". He explained that their concerns lie in the fact that most of their real property is not located within the recognized borders of their reservation as defined in their gaming compact with the State of Kansas. He suggested that the definition of "Indian Country" be written in language applicable to Reserve, Kansas. (Attachment 5)

Chairman Vratil shared with the Committee that the Joint Committee on State-Tribal Affairs considered this bill over the summer, and recommended it for introduction as it appears in the bill books. He reviewed how the bill was originally drafted to define reservation by referring to the federal definition of "Indian Country", and the Jt. Committee rejected that definition upon recommendation of Natalie Haag and Juliene Miller because of problems that it created in using that federal definition. He said that Mr. Damron has proposed an addition to the definition that appears in the Senate bill.

Representative Becky Hutchins briefly spoke to the Committee on **SB 9**. She submitted written testimony from two constituents who are in opposition to **SB 9**, but were unable to attend today's hearing. The first testimony was from Daina Durham, Jackson County Sheriff. Ms. Durham expressed concern as to whether the State was accepting liability for the wrongful acts of Tribal law enforcement officers, what redress citizens might have if civil rights have been violated, and the cost of likely increased dockets for the 1st and 2nd Judicial Districts. (Attachment 6)

Representative Hutchins explained the second written testimony she was submitting was from Ronald Kautz in the form of an email sent to her. The testimony related an incident he had with a Tribal officer on a state highway which occurred on January 20, in which the officer ticketed him for speeding. Mr. Kautz felt that the officer did not have jurisdiction to issue such tickets. (Attachment 7)

There being no Committee questions, the Chair closed the hearing on **SB 9**.

SB 11 - Bill by Joint Committee on Corrections & Juvenile Justice creating community advisory committee to participate in annual budget planning process of juvenile justice authority

Chairman Vratil opened the hearing on **SB 11**. Martha Dorsey, Legislative Research Department, gave a presentation on the Community Advisory Committee which **SB 11** creates in order to allow participation by community prevention and graduated sanctions service providers to participate in the Juvenile Justice Authority (JJA) annual budget planning process. She said the purpose also was in identifying new or enhanced community graduated sanctions and prevention programs. Ms. Dorsey outlined the membership requirements, annual report, and duties. (Attachment 8)

Conferee Little testified in support of **SB 11** on behalf of the Kansas Community Corrections Association (KCCA). He stated that the proposed bill establishes very specific and valued duties articulated in Section 1 (d). He said that KCCA sees value in committing the state to establish a means to receive comment, inform, and participation from community partners in the budget and policy process in two key areas: prevention programs and graduated sanctions. He added that nothing the Community Advisory Board will do infringes on the ultimate authority and responsibilities of the JJA to make final funding and program decisions. (Attachment 9)

Committee questions and discussion regarded establishment without statutory law, concerns of continuity with the recent change of administration within the JJA, and whether committee participants are compensated which they are not.

Conferee Everhart spoke briefly to the Committee in support of **SB 11**, and submitted written testimony. (Attachment 10)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on January 23, 2003 in Room 123-S of the Capitol.

Chairman Vratil closed the hearing on **SB 11**.

SB 14 -Criteria for employment in adult care homes and by home health agencies

Chairman Vratil opened the hearing on **SB 14**. Conferee Peterson submitted written testimony on behalf of the Kansas Association of Homes & Services for the Aging in support of **SB 14**. Mr. Peterson explained the purpose of the bill which adds non-felony theft to the list of prohibited offenses, in order to protect vulnerable persons who reside in adult care homes or receive home health care. (Attachment 11)

Conferee Rhoden testified as neutral on **SB 14**, and stated that the Kansas Department of Health and Environment (KDHE) is fulfilling the very requirements specified by this proposed legislation. She said KDHE currently provides the adult criminal history to the requesting adult care home or home health agency, along with notification as to whether or not the individual is prohibited from employment. Ms. Rhoden pointed out that this bill as written would not prohibit an individual with a conviction for theft from employment in an adult care home or home health agency, and it also makes no changes to the current procedures for criminal record checks. (Attachment 12)

The Chair closed the hearing on **SB 14**.

SB 15 - Warning to tenants relating to termination notices with new conditions not contained in rental agreement

Chairman Vratil opened the hearing on **SB 15**. The Chair reviewed the proposed bill requested by Senator Schmidt. There were no proponents to speak in support of the bill, and the Chair announced that due to Senator Schmidt's absence, he would allow him to speak on the bill at a later date.

Conferee Jaskinia testified in opposition to **SB 15** on behalf of The Associated Landlords of Kansas (TALK). He stated that this was a cleanup bill, and that the law already exists to cover these issues. He said that this bill is just explanation of what the law already is, but it does give a breakdown of expenses that the tenant will incur. Mr. Jaskinia explained that the Kansas Landlord/Tenant law was probably the best in the country, and it came from the federal government in 1975. He also said that TALK's position is to not open this law unless it is extremely important. He testified that the changes in the notice appeared to be mostly reminders and clarification of responsibility. He also pointed out that a notice of termination does not have to be signed by the recipient, and that a tenant signature on the notice of termination with additional provisions should bind them to all of the new agreement. He said it was a voluntary addendum to the rental agreement.

After brief Committee discussion and questions, Chairman Vratil closed the hearing on **SB 15**.

The Chair announced that due to time restraints, the Committee would consider potential amendments to the "No-Call" Act in the near future.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is January 27, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 23, 2003

NAME	REPRESENTING
Robert Choromanski	KT LA
Rep Becky Hutchins	50 th Dist
Katrina Osterhaus	deg. Post Audit
Becky Mann	Hein Law Firm
Arthur GARDER	SEN. HOKINS
Charley Laman	Kickapoo Tribe
Whitney Zamora	Kickapoo Tribe / Sac: Fox Nation
Steve Inoué	KDHE
Marla Rhoden	KDHE
D. A. Everhart	Jud Justice Auth
Richard Kline	Jud. Justice Authority
Jamie Corkhill	SRS
John Badger	SRC
Christina Collins	KMS
John Peterson	Ks Governmental Consult
Colleen Harrell	KCC
Jonathan Mitchell	Flint Hills Regional Leadership
Adalgisa R. Paquette	" " "
Aylene DeRochoux	" " "

Carrie Ohm

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 22, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 11 by Joint Committee on Corrections and Juvenile Justice Oversight

In accordance with KSA 75-3715a, the following fiscal note concerning SB 11 is respectfully submitted to your committee.

SB 11 would require the Commissioner of the Juvenile Justice Authority to establish a Community Advisory Committee. The Community Advisory Committee would be responsible for identifying new or enhanced community-based graduated sanctions and prevention programs. The Committee would consist of ten members, all appointed by the Commissioner. Eight members would represent four community corrections associations, with two members representing each association. Of the two members assigned to each association, one would represent graduated sanction program providers and one would represent prevention program providers. The final two members would represent the state at-large. Each member would serve a three-year term and would be eligible for reappointment.

The Committee, in conjunction with the Deputy Commissioner of Contracts and Community Programs, would be required to examine and report to the Commissioner the effectiveness of the delivery of community supervision services, including graduated sanctions and prevention; the effectiveness and potential enhancements of existing graduated sanctions and prevention programs; and the identification of new intervention programs. The report to the Commissioner must also include measurable goals and objectives, projected costs, and the expected effect on public safety. The bill would require that the report be submitted to the Commissioner on or before July 15 of each year.

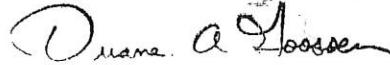
Senate Judiciary

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 6 1-23-03
Voice 785-296-2436 Fax 785-296-0231 <http://da.s> Attachment 1-1

The Honorable John Vratil, Chairperson
January 22, 2003
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The Juvenile Justice Authority would absorb any fiscal effect resulting from SB 11.

Sincerely,

A handwritten signature in black ink that reads "Duane A. Goossen". The signature is written in a cursive style with a large initial 'D'.

Duane A. Goossen
Director of the Budget

cc: Lynaia South, JJA

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 22, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

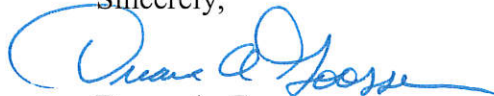
SUBJECT: Fiscal Note for SB 14 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 14 is respectfully submitted to your committee.

Current law requires adult care homes and home health agencies to have criminal record checks performed on their non-licensed and non-registered personnel before they can become permanent employees. SB 14 would add the crime of theft to the types of convictions that are required to be included in criminal history information.

The Kansas Bureau of Investigation states that conviction information for all crimes is already provided by the KBI when a record check is requested. Therefore, passage of SB 14 would require no change in current practices and would have no fiscal effect.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Linda Durand, KBI
Lynaia South, Juvenile Justice Authority
Doug Farmer, Department on Aging
Jerry Sloan/Ami Hyten, Judiciary
Jan Johnson, Department of Corrections
David Dallam, Department of Health & Environment

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 22, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: **Fiscal Note for SB 15** by Senate Committee on Judiciary

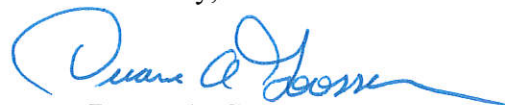
In accordance with KSA 75-3715a, the following fiscal note concerning SB 15 is respectfully submitted to your committee.

SB 15 would amend the Residential Landlord and Tenant Act with regard to notice of termination of tenancy. The bill provides that a tenant's signature on a notice of termination provided by the landlord would not bind the tenant to terms not included in the original rental agreement.

According to the Judiciary, SB 15 does not create any new substantive rights or procedural processes under the Kansas Residential Landlord and Tenant Act. As a result, the Judiciary does not believe the enactment of this bill would have a fiscal effect on its operations.

The Department of Commerce & Housing states that enactment of the bill would not have a fiscal effect on its operations.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Jerry Sloan/Amy Hyten, Judiciary

Rae Anne Davis, Commerce & Housing

KICKAPOO TRIBE IN KANSAS
A Sovereign People

Charley Laman
General Counsel
Kickapoo Reservation
Tribal Administration Annex
1107 Goldfinch Road
P.O. Box 110
Horton, KS 66439

PHONE: (785) 486-2131 Ext. 244
FAX: (785) 486-3125
e-mail: kicklaw@hotmail.com

TRIBAL LAW ENFORCEMENT INITIATIVE

INTRODUCTION:

The following materials are presented to the Kansas Senate Judiciary Committee on January 22, 2003 in support of Senate Bill 9 ("SB 9"), by Charley Laman, General Counsel for the Kickapoo Tribe in Kansas with the assistance of Police Chief Tom Conklin, Kickapoo Tribal Police; and Whitney Damron, lobbyist for the Kickapoo Tribe in Kansas. SB 9 amends K.S.A. 22-2401a (commonly referred to as the "Campus Police" law) to include Tribal law enforcement officers.

BACKGROUND ANALYSIS:

All four of the Kansas Tribes have fully equipped law enforcement agencies with officers certified by the State of Kansas. Many of these officers are also certified as Bureau of Indian Affairs ("BIA") law enforcement officers. All Tribal Officers must comply with same continuing education requirements as any other Law Enforcement Officer to maintain their certification as a Tribal Law Enforcement Officer. All are trained professionals.

These Tribal officers have criminal jurisdiction pursuant to their Tribal laws over all Native Americans on their Reservations¹. If the officer is also BIA certified, then the officer has criminal federal law jurisdiction over any person on the Reservation². These officers have no general felony jurisdiction over all persons on the Reservation.

This lack of general felony jurisdiction causes a delay in police protection in rural areas of Brown, Jackson, and Doniphan Counties. The sheriffs' offices are more than fifteen (15) miles from the Reservations, so the response time is at best fifteen minutes or more.

The jurisdictional scheme is a checkerboard in codes, territory, and officers because of this Tribal, Federal, and State jurisdiction with a major gap in general felony codes and police authority. The largest gap is the one created between the Tribal law enforcement over Native Americans under Tribal codes and the BIA enforcement of federal major felony crimes over any person within Indian Country. In between the Tribal misdemeanor codes covering only Native Americans and the federal major felony codes covering everyone, there is a large criminal code chasm – no codes for general felony crimes unless a State officer makes the arrest.

1 The Tribal codes are limited to misdemeanor violations.

2 The federal codes address primarily major crimes.

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Attachment 2-1

This multi-dimensional checkerboard effect results in confusing and limited law enforcement protection within Indian Country in Kansas. This is not safe.

THE SOLUTION:

The State Criminal Code can only fill this gap if the officers are available. Presently, the State lacks sufficient resources to provide additional State officers. The Tribal officers can fill this need if they are authorized to arrest under the State Criminal Codes just like university officers and municipal officers.

This law would allow Tribal officers to arrest persons utilizing the Kansas Criminal Codes, and file the case with the Sheriff. The County Attorney would then prosecute the cases. The Tribal officers would assist in all law enforcement duties from initial arrest through trial, sentencing, and post conviction hearings at no expense to the State³.

This legislation solves the multi-dimensional checkerboard jurisdictional problem by providing the following:

- Complete criminal jurisdiction (Tribal, State and Federal Code authority).
- All persons now subject to State Criminal law.
- Enhanced safety to everyone on the Reservation.
- No additional fiscal impact to the State.
- No duplication of services.
- Promotes law enforcement inter-cooperation.

PROPOSED AMENDMENT TO K.S.A. 22-2401a:

The proposed amendment to the Campus Police Statute, SB 9, is attached hereto. It simply modifies K.S.A. 22-2401a to authorize the Tribes' law enforcement officers to make arrests under the Kansas Criminal Codes like other officers authorized under this same law, including the campus and municipal law officers. This bill enhances the safety of everyone at no expense to any one.

LIMITATIONS:

Section 8 (e) of SB 9 limits the application of this law to the areas designated in the Kansas' Tribes Gaming Compacts (The Reservations or trust lands designated in Appendix d of each Tribe's Gaming Compact). This area limits the same to the Kansas Reservations of the Iowa, Potawotami, and Kickapoo Tribes. It does not include the Kickapoo Nation School just North of the Kickapoo Reservation in Powhattan, Kansas, and it does not include the Reserve, Kansas trust lands which accounts for the actual residences and administrative facilities of the Sac and Fox Tribe and its members.

Despite these limitations, the Kickapoo Tribe in Kansas supports SB 9, but would suggest that the same be addressed by including not only the Indian Reservations as defined in the gaming compacts but also each Tribe's trust lands.

³ The Tribes pay all of the Tribal law enforcement officers. Tribal Governments not State or local governments provide all of their equipment.

CONCLUSION:

SB 9 is a major step in providing more efficient and expeditious law enforcement to the citizens of the State of Kansas and should be enacted. If you have additional questions, I will endeavor to answer them. Thank you for your consideration.

H N LAW FIRM, CHARTER ()

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

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Ronald R. Hein
Attorney-at-Law
Email: rhein@hwchtd.com

**Testimony re: SB 9, Tribal Law Enforcement Officers
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Prairie Band Potawatomi Nation
January 22, 2003**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of the four Kansas Native American Indian Tribes.

PBPN supports SB 9 which provides for tribal law enforcement officers to have statutory recognition as law enforcement officers on the reservation or when other circumstances exist. Law enforcement officers and agencies have suggested the language which serves as the basis for this legislation which was reviewed and introduced by the Joint Committee on State-Tribal Relations. PBPN supports the legislation as drafted.

Legislation relating to tribal law enforcement officers was first reviewed and discussed by the Joint Committee on State-Tribal Relations in the 1999 interim, and that committee introduced SB 543 in the 2000 Session. SB 543 passed out of the Senate 40-0. There was no committee action on that bill in the House committee. In 2001, SB 74 was reintroduced by the Joint Committee on State-Tribal Relations exactly like 2000 SB 543 as it passed out of the Senate. Senate Judiciary approved SB 74 and it passed the Senate again 38-2. The House Federal and State Affairs Committee approved SB 74 on a voice vote, with some dissenting votes in 2001, but the bill was never brought up on the House floor. At the end of the 2001 Session, SB 74 was re-referred to committee, and no action was taken on it in the 2002 session.

This bill amends the laundry list of recognized law enforcement officer in K.S.A. 22-2401a to add Tribal law enforcement officers who have successfully completed the law enforcement training pursuant to K.S.A. 74-5601 *et seq.* SB 9 sets out the state law enforcement jurisdiction for such tribal law enforcement officers. Specifically, such tribal law enforcement officers are granted jurisdiction on their reservation, when there has been a request for assistance, when in fresh pursuit, on streets and highways immediately adjacent to the boundaries of the reservation, and when transporting persons in custody to an appropriate facility.

Currently there are no existing statutes that authorize Tribal LEO's the jurisdiction set out in SB 9. K.S.A. 22-2407 permits a law enforcement officer to command the assistance of any individual when making an **arrest** only. SB 9 solves the problems currently facing law enforcement in Kansas with regards to Tribal law enforcement officers.

Tribal law enforcement personnel are already fully trained, and are required by the compacts to pass the same law enforcement training as other law enforcement personnel in the state. SB 9 also requires such training prior to this statute b

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Attachment 3-1

This bill does not mandate any law enforcement officer or agency to request assistance from the tribal police—it is permissive only. So if a law enforcement agency does not desire to seek assistance, that agency is not required to request such assistance.

However, for those law enforcement agencies in the state who recognize that the tribal police officers have considerable experience, expertise, and competency, and who desire assistance for a number of reasons, this bill would authorize in statute such assistance. SB 9 insures that they would be acting as professional law enforcement officers, and not just as armed citizens.

Why would other law enforcement officers and agencies ask the tribal police officers for assistance? First of all, there is a strong professional bond in the law enforcement community. When an officer needs help, he or she wants a trained professional for assistance and city, county, or other legal boundaries mean little. Oftentimes, tribal officers are the nearest to an accident, or a crime, and can respond more quickly. Oftentimes, it can be a question of needing more manpower. The tribal officers who will testify today can cite situations where they have been asked to assist in the past.

In light of new efforts to improve communication and cooperation between ALL law enforcement agencies as evidenced by the increased emphasis on homeland security, we believe this legislation is important and warranted to improve law enforcement for all Kansans.

Speaking generally to the relationship between the State of Kansas and its political subdivisions in relation to the Native American Indian Tribes, it is our hope, goal, and intention, that the relationship between the respective governments can be improved at all levels. This bill would be one more step in an ongoing effort to improve relationships and to have better intergovernmental cooperation between the Indian Tribes in Kansas and other units of government in Kansas.

The Prairie Band Potawatomi Nation fully supports SB 9 as written. However, we are aware that the Sac and Fox have some concerns about the language defining the reservation. We have no objection to, and, in fact, we would support, any solutions to their problem that they and this committee would approve to resolve their concern.

We respectfully request the committee to approve SB 9 with the recommendation that it be passed.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Prairie Band Potawatomi Police Department
16344 "Q" Road
Mayetta, Kansas 66509



Chief of Police
785-966-3024
Fax 966-2585

January 22, 2003

Mr. Chairman and members of the Judiciary Committee:

We appear in support of SB 9, which would extend Kansas Law Enforcement authority to Tribal police officers of the four Kansas Tribes. We do not intend to go into the make up of Tribal police other than to assure the committee that Tribal officers have received the same basic police training that any other Kansas law enforcement officer has been given. Our department has two officers who will graduate from KLETC next month.

We would take this opportunity to provide this committee with some insight into the problems that currently exist that this bill addresses and resolves, which in turn provides citizens of the Reservations, both Indian and non-Indian, more access to law enforcement services that are available to other Kansas citizens. Additionally, we would point out resources that Tribal police have that will become available to other Kansas law enforcement agencies at no cost to the State of Kansas or its citizens.

As you're aware, Reservations in Kansas are open to all citizens, land within the exterior boundaries can be and is, in fact, owned and occupied by non-Indians. In addition to these residents, non-Indians visit the Reservations every day for business, recreational and personal reasons. While the majority of these residents and visitors are decent, law-abiding citizens, Reservations have their share of those who violate our laws and endanger the lives and property of others. Violations range from traffic offenders who may inadvertently drive too fast, to career criminals who commit any crime one can name. While we must deal with all violators, it's with these latter individuals, that Tribal police are most concerned, irregardless of what their race may be.

It is said, that justice is blind and does not recognize color. On Reservations, this is simply not true. Non-Indians who commit crimes on Indian Reservations are subject to the jurisdiction of the State and in certain instances, the Federal government. The only Tribal codes that affect non-Indians are only those "civil" codes for which there is no criminal penalty.

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For instance, a non-Indian who is issued a speeding ticket on the Reservation refuses to appear in Tribal court. Since this is a "civil" violation, the court has no authority to issue an arrest warrant for the individual and unless the Tribal court is recognized by the Department of Revenue, which ours currently is not, then the individual's driver's license cannot be suspended for failing to appear. The result is that the speeder can ignore the traffic ticket and do so with impunity.

In more serious matters, our department has on several occasions, come upon or been summoned to crimes ranging from clandestine drug labs to rape to homicide. In addition, persons with arrest warrants from various jurisdictions off of the Reservation are routinely discovered on the Reservation.

Tribal officers investigate those crimes, but are themselves handcuffed when the perpetrator has left the Reservation. For instance, two residential burglaries are currently being investigated. One was at the home of a Tribal member, the other a non-Tribal member. The Tribal member's home was broken into by a non-Indian who does not reside on the Reservation. The non-Indian residence was broken into by two Indians, one of which, lives on the Reservation, the other doesn't. Consider that Tribal officers are not recognized as Police officers by Kansas when they cross the Reservation boundary and one doesn't need to be clairvoyant to see the difficulties Tribal officers are facing in their efforts to investigate these crimes and deal with the perpetrators.

In performing these investigations, our department has had exceptional cooperation from other Kansas law enforcement agencies outside of our county. Topeka Police Department, Shawnee County Sheriff, Lawrence Police Department, Jefferson County Sheriff and many, many more have assisted our officers in interviews of suspects, obtaining arrest and search warrants for perpetrators in their jurisdiction and any other area that they could provide assistance for. We sincerely regret and find ourselves apologizing for the necessity for taking one of their officers away from their own duties to assist with tasks that we are perfectly capable of performing but lack authority to do so. We have, on many occasions, found it necessary to explain to those other agencies why we're requesting them to devote their energy and resources to duplicate what we should be able to do for ourselves.

As a matter of courtesy, law enforcement agencies notify the home agency if the first agency intends to enter that jurisdiction to interview a suspect, serve a warrant, inspect pawn shop records, etc. In most instances, the home agency offers assistance and in some cases, it is needed, however, many times, it's not needed and if the crime doesn't affect the home agency, they would prefer not to tie up their resources on someone else's problems.

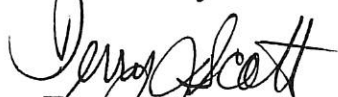
Very few law enforcement agencies, in our experience, have fewer problems than they have personnel to deal with, as most are overwhelmed with their own issues.

We could talk for several hours about the difficulties we encounter as Tribal police and this is a very short summation of just a few of the problems we face that SB9 would provide resolution for.

Now for the good news! Tribal police have a number resources, both in personnel and equipment that would become available to other Kansas law enforcement agencies as a result of SB9.

Due to the nature of the Reservation, the majority of our patrol vehicles are four-wheel drive. In my own law enforcement experience, there were times that this resource alone would have been invaluable, in man hunts, crime scene access, searches for lost children or many, many other times when a Crown Vic patrol car simply couldn't go there. Other resources include a five-man Entry Team, fully equipped, with training provided by the Nebraska State Highway Patrol, which would be made available for any department that had need of our assistance. Thermal imaging equipment and fully trained personnel in its use, breath alcohol testing equipment approved and certified by the Kansas State Dept. of Health and Environment and a certified drug canine are just a few of the resources which would become available for Kansas agencies to utilize. Each of our Tribal Police agencies has personnel that would become available for manhunts, searches, disasters such as tornados and other special events that can overwhelm local law enforcement agencies that have limited personnel to deal with them. Each of these resources and equipment would become available, best of all, during this time of limited state revenues, at no cost to the State or Kansas citizens.

Tribal Police have a great deal to offer to the State of Kansas. SB9 is the vehicle that will deliver those resources to Kansas citizens at no additional cost to them. We urge favorable consideration of this legislation and thank you for the opportunity to appear before you today.



Terry J. Scott, Acting Chief
Prairie Band Potawatomi Tribal Police

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PROPOSED AMENDMENT TO SB 9

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

**FROM: Whitney Damron
On Behalf Of The
Sac and Fox Nation of Missouri in Kansas and Nebraska**

RE: SB 9 - Proposed Amendment to Tribal Law Enforcement Issue

DATE: January 22, 2003

As discussed earlier in this hearing by Mr. Charley Laman, General Counsel for the Kickapoo Tribe in Kansas and perhaps others, the Sac and Fox Nation have expressed concern with SB 9 since it was amended by the Joint Committee on State-Tribal Affairs to exclude "Indian Country". There concerns lie in the fact that most of their real property is not located within the recognized borders of their reservation as defined in their gaming compact with the state of Kansas. As a result, SB 9 in its current form would provide little assistance to the law enforcement community of Reserve, Kansas and Brown County as it relates to the Sac and Fox Nation.

These properties include the Tribal offices, police department, fire department, housing authority, community center, museum, individual homes and other properties located within Reserve, Kansas.

Accordingly, we have taken from the definition of "Indian Country" as defined in U.S.C. Title 18, Part I, Chapter 53, Section 1151 (b) that was referenced in the Joint Committee hearings last fall and made that language applicable to Reserve, Kansas. Before you today are two proposals that would address this situation, either of which are acceptable to the Sac and Fox Nation. Also attached is a copy of the pertinent section of the U.S. Code referenced in this proposal.

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Those of you on this Committee who serve on the Joint Committee will recall there was some degree of confusion and/or concerns as to the potential application of the term "Indian Country" throughout the state of Kansas. For those reasons, we have limited its application of this term exclusively to the jurisdictional limits of Reserve, Kansas.

On behalf of the Sac and Fox Nation, I thank you for your consideration of this proposal.

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Amend Page 3, Section (8) (e) as follows:

(e) "Reservation" means that portion of a Native American Indian tribe's reservation as described in the gaming compact entered into between the tribe and the state of Kansas *and Indian Country located within the jurisdictional limits of Reserve, Kansas.*

New Section (f) "Indian Country" means that definition ascribed to in U.S.C. Title 18, Part I, Chapter 53, Section 1151 (b).

OR

(e) "Reservation" means that portion of a Native American Indian tribe's reservation as described in the gaming compact entered into between the tribe and the state of Kansas *and shall include all dependent Indian communities within the borders of Reserve, Kansas whether within the original or subsequently acquired territory thereof.*

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(785) 354-1354

On Behalf Of The Sac and Fox Nation of Missouri in Kansas and Nebraska

JANUARY 21, 2003

TO: SENATE JUDICIARY COMMITTEE

RE: TESTIMONY ON SENATE BILL 9

MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

AS SHERIFF OF JACKSON COUNTY, KANSAS, A COUNTY THAT ENCOMPASSES A FEDERALLY RECOGNIZED INDIAN RESERVATION, I ADDRESS SENATE BILL 9 WITH FOUR YEARS OF HISTORY NEGOTIATING THE ISSUE OF TRIBAL LAW ENFORCEMENT POWERS AND JURISDICTION. I HAVE THREE QUESTIONS WITH REGARD TO THE PROPOSED LEGISLATION AND ITS UNINTENDED CONSEQUENCES.

FIRST, AND MOST IMPORTANT, IS THE STATE ACCEPTING LIABILITY FOR THE WRONGFUL ACTS OF TRIBAL LAW ENFORCEMENT OFFICERS? CITY, SHERIFF AND STATE LAW ENFORCEMENT OFFICERS ARE SUBJECT TO CIVIL LIABILITY FOR ACTS OF MISCONDUCT OR VIOLATION OF A CITIZEN'S CIVIL RIGHTS. BECAUSE OF TRIBAL SOVEREIGN IMMUNITY THE SAME IS NOT TRUE OF A TRIBAL OFFICER. INDIAN TRIBES HAVE SOVEREIGN IMMUNITY FROM CIVIL LIABILITY. THE TRIBE, ITS OFFICIALS ACTING WITHIN THEIR OFFICIAL CAPACITY, TRIBAL AGENCIES AND IN SOME JURISDICTIONS TRIBAL CORPORATIONS ARE IMMUNE TO CIVIL SUIT. DUE TO THE TRIBE'S SOVEREIGN IMMUNITY, TRIBAL OFFICERS WHO MAY VIOLATE THE CIVIL RIGHTS OF A CITIZEN OF KANSAS WHILE OPERATING WITHIN ITS TRIBAL JURISDICTION ARE NOT SUBJECT TO THE SAME LIABILITIES AS OTHER LAW ENFORCEMENT OFFICERS. THERE IS NO REDRESS FOR THE WRONGED PARTY IN THE FORM OF CIVIL SUIT. IF A TRIBAL OFFICER IS RECOGNIZED BY AND COMMISSIONED BY THE STATE OF KANSAS, DOES KANSAS BECOME THE INEVITABLE DEEP POCKETS THAT ATTORNEYS WILL GO AFTER IF ONE OF THE TRIBAL OFFICERS VIOLATES A CITIZEN'S RIGHTS? IF THE STATE DOES NOT ACCEPT LIABILITY, WHAT REDRESS DOES A CITIZEN FOR A WRONGFUL ACT BY A TRIBAL OFFICER HAVE? IN A TIME OF BUDGET SHORTFALLS AND FISCAL BELT TIGHTENING, I WOULD THINK IT IMPORTANT TO DETERMINE THE POSSIBLE FINANCIAL CONSEQUENCES OF THIS PROPOSED LEGISLATION. IT MIGHT BE WORTHWHILE TO CHECK HOW MANY POLICE MISCONDUCT OR CIVIL RIGHTS CIVIL CASES HAVE BEEN FILED AGAINST LAW ENFORCEMENT OFFICERS WITHIN KANSAS IN THE LAST FIVE YEARS. DUE TO THE TRIBE'S SOVEREIGN IMMUNITY, IT MIGHT BE IN THE BEST INTEREST OF THE STATE TO REQUIRE THE TRIBES REQUESTING

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CERTIFICATION AS LAW ENFORCEMENT OFFICERS TO WAIVE IMMUNITY AND INDEMNIFY THE STATE PRIOR TO THEM BEING CERTIFIED. THE STATE, AS A MATTER OF GOOD PUBLIC POLICY, SHOULD PROTECT THE TAXPAYERS BEFORE ENTERING INTO AGREEMENTS WITH SOVEREIGN POLITICAL ENTITIES.

SECOND, I REALIZE THAT THE DRAFTERS OF THIS LEGISLATION COPIED THE LANGUAGE AND FORMAT OF THE UNIVERSITY POLICE, BUT THE SITUATION IS DIFFERENT. I QUESTION THE NEED FOR THE TRIBE'S JURISDICTION TO EXTEND BEYOND THEIR RESERVATION BOUNDARIES, i.e. '*(c) on the streets and highways that are immediately adjacent to the boundaries of the reservation of the tribe employing such tribal law enforcement officer*'. UNIVERSITY PROPERTY MAY BE LAND LOCKED OR DISPLACED FROM THE UNIVERSITY'S OTHER PROPERTY. THE RESERVATION IS A GEOPOLITICALLY DETERMINED AREA THAT IS MARKED BY SIGNS AND RECOGNIZED BY THE PUBLIC.

JUSTIFICATION FOR TRIBAL JURISDICTION ON STREETS AND HIGHWAYS IMMEDIATELY ADJACENT TO THE BOUNDARIES IS VAGUE AND MOST PROBABLY SUBJECT TO FUTURE COURT DETERMINATION AND INTERPRETATION. WHY DO THE TRIBES NEED JURISDICTION OVER NON-TRIBAL MEMBERS OUTSIDE OF THE RESERVATION? WHY DO THE TRIBAL POLICE NEED JURISDICTION GREATER THAN THE LOCAL SHERIFF OR CITY DEPARTMENTS? UNDER THIS LEGISLATION, TRIBAL LAW ENFORCEMENT OFFICERS WOULD HAVE THE RIGHT OF HOT PURSUIT AND IF A CURRENT INVESTIGATION TAKES THEM OUTSIDE OF THEIR JURISDICTION THEY SHOULD COORDINATE WITH SURROUNDING LAW ENFORCEMENT JURISDICTIONS PRIOR TO ENTERING ANOTHER JURISDICTION ANYWAY. I FEAR THIS ARRANGEMENT MAY PROVE TO BE CUMBERSOME AND LEAD TO CONFLICT AND CONFUSION.

THIRD, WITH THE INCREASE IN LAW ENFORCEMENT OPERATIONS WITHIN PREDOMINATELY RURAL COUNTIES, IT IS LIKELY THAT THE DOCKETS FOR THE 1ST AND 2ND JUDICIAL DISTRICTS WOULD INCREASE GREATLY. DOES THE LEGISLATURE INTEND ON ASKING FOR FINANCIAL ASSISTANCE FROM THE TRIBES RECEIVING CERTIFICATION FOR THE INCREASED WORKLOAD ON THE TAXPAYER FUNDED COURT SYSTEM? ANY KNOWLEDGEABLE MEMBER OF THE JUDICIAL BRANCH CAN ATTEST TO THE FACT THAT IN THE CONTEMPORARY BUDGETARY ENVIRONMENT OF SHRINKING DOLLARS AND INCREASING DOCKETS, THE FEES IMPOSED DO NOT COVER CURRENT COSTS. WHAT ABOUT THE INCREASED CASE-LOAD FOR JUVENILE INTAKE, COURT SERVICES OFFICERS, COURT CLERKS AND OTHER RIPPLE EFFECTS ONCE THE DECISION IS MADE?

I, AS A TAXPAYER AND MEMBER OF THE LAW ENFORCEMENT COMMUNITY, DO NOT DISAGREE WITH THE DESIRABILITY OF INCREASED LAW ENFORCEMENT WITHIN MY JURISDICTION, AS LONG AS THE ISSUE OF COST, OVERSIGHT, CITIZEN'S REDRESS AND INCREASED BURDEN ON THE COURT SYSTEM HAVE BEEN THOROUGHLY VETTED OUT. I HOPE THIS TESTIMONY HAS BEEN OF VALUE AND I APPRECIATE YOUR ALLOWING ME TO PRESENT MY WRITTEN TESTIMONY.

SINCERELY,



DAINA DURHAM
JACKSON COUNTY SHERIFF

From: "cjk" <rkautz@rainbowtel.net>
To: <jhutchins@holtonks.net>
Date: Tue, Jan 21, 2003, 9:25 PM
Subject: Senate Bill 9

Senate Judiciary Committee re: Senate Bill 9

On Monday January 20th, 2003 I was traveling westbound on K20 hwy about 2 miles east of 75 hwy when I noticed a Kickapooo patrol vehicle sitting east/west, facing west, blocking the intersection of the road going north. He was approximately 1/4 mile ahead of me when I noticed him. I automatically looked down at my speedometer and it read 59 to 60 mph and I have passed them many times at that rate so I just continued on. After I went by him he pulled out and followed me. He followed me almost a mile then turned his lights on wanting me to stop. There was nowhere on that highway to pull off the road so I just waited until I came to the stop sign at 75 hwy.

After I pulled over he got out of his vehicle and came up to my truck and addressed himself as officer Wawahsuck then told me he clocked me going 65 in a 55. I told him there wasnt any way. He then told me that my tags were expired and the tag on my truck was registered to a chevy. I told him my tags were not expired, that I had until February 15th to get new tags, and that I was the only one that ever owned my truck and it is a dodge and not a chevy. I then showed him my proof of registration, which was accurate and registered to my truck. He then took my registration and drivers license back to his vehicle and after about 15 minutes he came back and gave me a ticket for 65 in a 55. At that time he told me "I usually give warnings for this but since you didnt pull over when I first put my lights on I am going to give you a ticket". I told him "Im not going to sign this ticket" and he told me I had to sign the ticket or he wasnt going to give me my drivers license back. I was on a state highway and driving within the law and I do not feel I have to give the Indian tribe money for a ticket on a state highway that I pay taxes on. Regardless of what law enforcement officer was behind me I would not have stopped any sooner because there was no safe place to pull over.

This happens to many people all the time. They are stopping people daily on that highway. Another man that I work with was going down K20 about a month ago when they turned off on a county road to go home and a KPO followed him and his wife off of K20 about 2 miles on the county road then turned his lights on to stop them. When they stopped he told them he was pulling them over for speeding on K20. They refused to show him their drivers license and told him to call Brown County Sheriff. The KPO told them he wouldnt call Brown County, that he needed to see their drivers license. They then replied they werent going to show him anything, that he could call Br. County to come out and they would just get it straightened out. The KPO wouldnt call Br. County and told them to just go on. There are many others I work with that have gotten tickets and just paid them because they thought they had to. They also stop alot of out of state people. It is not safe and it is not right that they do this. They do not have jurisdiction to do it, they do not work for the State.

Sincerely,

Ronald E. Kautz

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January 22, 2003

To: Senate Judiciary Committee

From: Martha Dorsey, Senior Fiscal Analyst; Nicoletta Buonasera, Fiscal Analyst;
and Jerry Ann Donaldson, Principal Analyst

Re: SB11—Community Advisory Committee

Laws 1998, Chapter 153, Section 1 marked the establishment of the Community Corrections Advisory Committee, the purpose of which is to establish a mechanism for community correctional services to participate in the Kansas Department of Corrections (KDOC) annual budget planning process. The statute containing this authorization, KSA 75-5291, was amended by the 2000 Legislature to reflect its current form.

2003 SB 11, modeled after this statute, creates a similar committee to allow participation by community prevention and graduated sanctions service providers to participate in the Juvenile Justice Authority (JJA) annual budget planning process. The bill directs the Commissioner of the Juvenile Justice Authority to establish a community advisory committee (hereinafter referred to as the Juvenile Justice Community Advisory Committee, or JJCAC), which, in addition to providing a mechanism for participation in the JJA budgeting process, is also for the purpose of identifying new or enhanced community graduated sanctions and prevention programs.

During the 2002 Interim, the Joint Committee on Corrections and Juvenile Justice Oversight agreed to introduce the contents of SB 11. The bill was requested by the Kansas Community Corrections Association, in conjunction with the Juvenile Justice Authority.

Membership

SB 11 requires the JJA Commissioner to appoint **ten members** to the JJCAC, *eight* of whom must be appointed from the four geographical regions of the state corresponding to the Southeast, Northeast, Central, and Western community corrections association regions. The other *two* members must be Community Corrections Association members from the state at large. The JJCAC is required to reflect the geographic and offender population diversity of juvenile offender community services.

Members are to serve three-year terms. The initial committee members' appointments must be staggered as determined by the Commissioner. Existing members will be eligible for reappointment.

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Duties

In cooperation with the JJA Deputy Commissioner of Contracts and Community Programs or the Commissioner's designee, the JJCAC must routinely examine and report to the Commissioner on the following issues:

- Efficiencies in the delivery of community supervision services;
- Effectiveness and enhancement of existing prevention, intervention, and graduated sanctions; and
- Identification of new interventions.

The bill further requires that the committee's report, which must be submitted on or before July 15 of each year, address measurable goals and objectives, projected costs, public safety impact, and the impact on the valuation process.

Effective Date

SB 11 would be effective upon publication in the statute book.

STUART J. LITTLE, Ph.D.
Government Relations Consultant

Senate Judiciary Committee

Testimony in Support of Senate Bill 11

January 22, 2003

Thank you Chairman Vratil and Members of the Committee. I appear before you on behalf of the Kansas Community Corrections Association in support of Senate Bill 11.

The Kansas Community Corrections Association (KCCA) is a statewide group with membership who provide intensive community supervision for adult and juvenile offenders, as well as residential programs for adults. We are funded by state and local government and are governed by local advisory boards and county commissions. We are a key community partner in the juvenile justice system providing intensive supervised probation, intake and assessment, and programs. Senate Bill 11 is based on an existing statute that provides for a Community Corrections Advisory Board for the Department of Corrections (KSA 75-5291 (b)). KCCA sees great value in establishing a similar advisory board for the Juvenile Justice Authority.

Senate Bill 11 establishes a "Community Advisory Board" with very specific and valued duties articulated in section 1 (d). We see value in committing the state to establish a means to receive comment, inform, and participation from community partners in the budget and policy process in two key areas: prevention programs and graduated sanctions. Nothing the Community Advisory Board will do infringes on the ultimate authority and responsibilities of the Juvenile Justice Authority to make final funding and program decisions. The Community Advisory Board recommendations are advisory only, but with this statutory change, these valued partners are guaranteed a voice.

For the Department of Corrections, the Community Corrections Advisory Committee has evolved into a valued ad hoc group for the Secretary of Corrections to explore ideas and changes, in addition to a review of the annual budget process. We believe the Juvenile Community Advisory Board will serve an equally valuable purpose.

I appreciate your time, support for SB 11, and welcome your questions.




JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, ACTING COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

To: Senator John Vratil, Chairperson
Senate Judiciary Committee

From: Denise Everhart, Acting Commissioner
Juvenile Justice Authority 

Date: January 21, 2003

Subject: Senate Bill 11

Thank you for this opportunity to present written testimony regarding SB11. The agency was briefed by the Kansas Community Corrections Association (KCCA) about this initiative prior to them testifying before the Joint Committee on Corrections and Juvenile Justice Oversight. The agency supported their proposal and spoke in favor of it to the Joint Committee. The Juvenile Justice Authority continues to be in support of this legislative initiative.

This bill statutorily establishes an advisory board consisting of representatives from local community prevention and graduated sanctions (intake, juvenile intensive probation, community case management) programs to the Commissioner of the Juvenile Justice Authority. This committee will be advisory in nature for the purpose of providing recommendations to the Commissioner on matters relating to:

- agency budget
- identification of new/enhanced juvenile community based programs
- identification of efficiencies, effectiveness and enhancements in the in the delivery of existing prevention and graduated sanctions programs.

The committee shall develop a report annually with recommendations to the Commissioner

An important initiative of the agency that has been in place since its creation has been to ensure communication, collaboration and on-going planning takes place with community agency partners. The Juvenile Justice Authority meets on a regular basis with representatives from the community agencies. There are also times when we have found it necessary and helpful to identify focus groups for specific topics on which we need community input. This bill helps to establish a formal structure and process by which this will happen. It will ensure a means to receive regular input from community agency representatives from all sectors of the state in an efficient and effective manner.

I appreciate the opportunity to share my input on this legislation.

DE:RK:bt

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KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

Testimony in Support of Senate Bill 14

**To: Senator Vratil, Chair, and Members,
Senate Judiciary Committee**

From: John Peterson

Date: January 23, 2003

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Thank you Chairman Vratil, and Members of the Committee. The Kansas Association of Homes and Services for the Aging represents over 160 not-for-profit long-term care providers. Our goal is to assist our members to provide high quality, cost effective services for the elderly Kansans in their care.

We support Senate Bill 14, which appears to add non-felony theft to the list of prohibited offenses. It is in keeping with the 1997 Legislature's original intent to protect vulnerable persons who reside in adult care homes or receive home health care. Under the existing statute, employers are notified of non-felony theft and other non-prohibitive convictions, and they have discretion to make an employment decision taking this information into account, as well reference checks, interview results, the nature of the position to be filled and other information.

Thank you. I would be pleased to answer any questions.

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K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Senate Bill No. 14

to the Senate Committee on Judiciary

**Marla Rhoden, Director, Health Occupations Credentialing
January 23, 2003**

Mr. Chairperson, I am pleased to appear before the Senate Committee on Judiciary to discuss Senate Bill No. 14. This bill would add theft to the list of crimes for which there are specific requirements concerning the release of criminal history to the operators of adult care homes and home health agencies.

Since the beginning of fiscal year 1998, adult care homes and home health agencies have been required to perform criminal record checks on their non-licensed and non-registered employees. Any employees with convictions for certain criminal offenses are prohibited from employment in adult care homes and home health agencies. During the 2001 legislative session, additional changes were made to the criminal record check laws. In addition to expanding the list of offenses which prohibit employment, language was added which requires the Kansas Department of Health and Environment (KDHE) to provide to the operator of an adult care home or home health agency, the adult criminal history information KDHE receives from the Kansas Bureau of Investigation (KBI). This information must be provided within three business days following the receipt from KBI.

Since July 1, 2001, KDHE has been fulfilling the very requirements specified by this proposed legislation. KDHE currently provides the adult criminal history to the requesting adult care home or home health agency, along with notification as to whether or not the individual is prohibited from employment. Juvenile criminal history is not released, however, notification is provided stating whether or not the individual is prohibited. In addition, KDHE also provides notification when an individual has no criminal history on file.

This bill, as it is written, would not prohibit an individual with a conviction for theft from employment in an adult care home or home health agency. It also makes no changes to the current procedures for criminal record checks. The Kansas Department of Health and Environment has no position on this bill.

Thank you again for the opportunity to comment on this legislation. I would gladly respond to any questions you may have (or defer to other staff present, or a later time).

DIVISION OF HEALTH
Bureau of Health Facilities, Health Occupations
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