

Approved: _____
Date 10-07-04

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on March 10, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Jerry Ann Donaldson, Legislative Research Department
Becky Krahl, Legislative Research Department
Nicoletta Buonasera, Legislative Research Department
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, KBI
Kevin Graham, Attorney General's Office
Sheriff Dick Barta, Shawnee County
Major Bob Hinshaw, Sedgwick County
Senator Hensley
Senator Brownlee
Cathy Thomas
Marie Gaston
Chaplin Jean Sullivan
Elizabeth Gillispie, Shawnee County DOC
Judy Smith, Concerned Women For America
Major Jackie Stuart, Sedgwick County
Tim Madden, DOC

Others attending:

See Attached List.

SB 111- Presumed imprisonment at minimum security correctional facility for certain persons convicted of burglary and construction of additional housing therefor

Chairman Loyd opened the hearing on **SB 111**.

Kyle Smith, Kansas Peace Officer's Association, appeared in support of the bill. The bill offers a practical approach to put a lid on these repeat offenders. (Attachment 1)

Kevin Graham, Assistant attorney General, spoke in support of the bill. The bill creates new specialized criminal sentencing rules that would apply in cases where an offender has been convicted of a new crime of burglary when that offender had previously been convicted of other burglary offenses and authorizes the Secretary of Corrections to build additional minimum security housing for inmates. The AG's office proposes an amendment adding Section 3 of **HB 2815**. (Attachment 2)

Sheriff Dick Barta, Shawnee County appeared as a proponent of the bill, and that repeat offenders are a menace to our communities. (Attachment 3)

Major Bob Hinshaw, Sheriff Sedgwick County, spoke in favor of the bill, under this bill incarceration in a minimum custody or security facility will become the norm. (Attachment 4)

Tom Drees, Ellis County Attorney, submitted written testimony in support of the bill. (Attachment 5)

Jeffery Bottenberg, Legislative Counsel State Farm Insurance Companies, submitted written testimony in support of the bill. ([Attachment 6](#))

Secretary Roger Werholtz, DOC, appeared neutral on the bill, but would like to bring to the committee's attention provisions pertaining to the presumption regarding the offender's custody classification. Also, a balloon deleting references to the custody and location for the incarceration of offenders subject to the presumptive sentencing is provided. ([Attachment 7](#))

Chairman Loyd closed the hearing on **SB 111**.

SB 469 – Inmate deaths, requiring investigation and report of findings

Chairman Loyd opened the hearing on **SB 469**.

Senator Hensley, appeared in support of the bill. ([No written testimony was provided](#))

Kyle Smith, KBI, appeared as a proponent, the bill would require the KBI to conduct investigations of in-custody deaths. ([Attachment 8](#))

Senator Karin Brownlee, spoke in favor of Section 3 of the bill on the issue of notification to schools of sexual predators. ([Attachment 9](#))

Cathy Thomas, appeared in support of the bill and how important an outside mandatory investigation is when a person dies in government custody. ([Attachment 10](#))

Sharon Vaughn, submitted written testimony in support of the bill. ([Attachment 11](#))

Marie Gaston, appeared in support of the bill and if one death can be avoided than it is worth it. ([Attachment 12](#))

Chaplain Jean Sullivan, spoke in favor of prison reform. ([Attachment 13](#))

Judy Smith, Concerned Women for America of Kansas, spoke in favor of Section 3 of the bill that deals with notifying that a registered sexual offender resides within 1000 feet of school property or licensed daycare facility. ([Attachment 14](#))

Elizabeth Gillespie, Director Shawnee County Department of Corrections, spoke in support of the bill and had no position on Section 3 as it does not apply to the Shawnee County Department of Corrections. ([Attachment 15](#))

Danielle Smith, submitted written testimony in support of the bill. ([Attachment 16](#))

Major Jackie Stuart, Sedgwick County Sheriff Department, spoke in opposition to Section 3 of the bill pertaining to notification, the utilization of existing public resources and information on the Internet would prevent duplication of work and needless expense. ([Attachment 17](#))

Tim Madden, Kansas Department of Corrections, presented neutral testimony for Secretary Werholtz, provided a balloon with language change on who receives reports and a balloon that reflects language to KSA 22-4909 that was already amended in **HB 2636**, that passed the House 125 - 0. ([Attachment 18](#))

Jo Rene Kerns, Correct Care Solutions, provided written information on the bill. ([Attachment 19](#))

The meeting was adjourned at 3:28 PM. The next meeting is March 11, 2004.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

GUEST LIST

DATE 3-10-04

NAME	REPRESENTING
Robert Hinshaw	SEdGWICK County Sheriff
Jackie Stuart	" " "
David Thompson	" " "
BE ELIZABETH GILLESPIE	SHAWNEE CO. DEPT. OF CORRECTIONS
Eddie Kyles	Bias Buster
Sonny Seungwon	Bias Buster
Cathy Thomas	mother of an inmate
Marie Masten	mother of Inmate
Angel Maston	Sister-in-law of an inmate
Joy E Bourdless	CWA of KS
Judy Smith	12105 PAUMotu SMKS CWA of KS
Tim Maddin	KDOC
JEREMY S BARCLAY	KDOC
Roger Werholtz	KDOC
KEVIN GRAHAM	K.A.G
Mark Gleeson	Judicial Branch
Jim Bebb	Lv. Co. Leadership Development
Maxine Bermudez	J.J.A.
Charlie Kellie	Hein Law Firm
Wanda Parker	Leavenworth Co.
John A. White	Leavenworth Co.
Nicole Swenson	Leavenworth Co.
Kyle Smith	KBI

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KANSAS PEACE OFFICER'S ASSOCIATION

Testimony in Support of SB 111

Before the House Corrections and Juvenile Justice Committee

Kyle G. Smith

Kansas Peace Officer's Association

March 10, 2004

Chairman Loyd and Members of the Committee:

On behalf of the Kansas Peace Officer's Association we urge your serious consideration and passage of SB 111. We realize that bed space is a premium now and for the foreseeable future. However, there must be a point where criminals discover there are consequences for repeatedly violating the law. Right now Kansas law is totally lacking in deterrence for some classifications of white collar crime. While most citizens would be shocked to know that you can continue to commit felony thefts and burglaries and never face prison time, let me assure you that the criminals are well aware of that fact.

The sentencing guidelines consider the seriousness of the offense. However, the guidelines lack components to consider the frequency of offenses or the need for deterrence. Under the current system we've lost our ability to deter what are considered 'minor' felonies. Even if caught, even if convicted, the only penalty is to pay back what you stole. So why not be a thief? Punishment must actually be punishment, and it must be certain. Currently, the only certainty for these offenses is leniency.

Attorney General Phill Kline's proposal to incorporate section 3 of HB 2815, mandating incarceration for criminals who commit new felonies while on probation or parole would restore some deterrence to a life of crime.

The SB 111 offers a practical approach to put a lid on these repeat offenders and we urge your support.

I'd be happy to stand for questions.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

TESTIMONY OF
ASSISTANT ATTORNEY GENERAL KEVIN GRAHAM
BEFORE THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
RE: SENATE BILL 111

March 10, 2004

Chairman Loyd and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Phill Kline to offer support for S. B. 111. This bill creates new specialized criminal sentencing rules that would apply in cases where an offender has been convicted of a new crime of burglary when that offender had previously been convicted of other burglary offenses and authorizes the Secretary of Corrections to build additional minimum security housing for inmates. The bill is clearly intended to address concerns expressed by many Kansans regarding offenders convicted of repeated crimes of burglary who currently receive presumptive non-prison sentences under the Kansas Sentencing Guidelines.

The bill would impose a presumptive sentence of imprisonment if an offender is convicted for a new residential burglary offense when the offender has at least one prior conviction for burglary or aggravated burglary. The bill would also impose a presumptive sentence of imprisonment if an offender is convicted for non-residential burglary or burglary of an automobile when the offender had previously been convicted three or more times of burglary or aggravated burglary. While the bill would create a presumption that inmates sentenced under these new provisions would be placed in a minimum security facility, the bill does provide the Secretary of Corrections with the authority to place the offender in a different custody classification if the Secretary determines it is not in the best interests of the inmate, the public or the Department of Corrections to place the inmate in a minimum security facility. Section 2 of the bill would authorize the Secretary of Corrections to construct additional minimum security correctional facility bedspace, subject to appropriations.

Attorney General Kline supports S.B. 111 because this bill would strengthen Kansas laws related to the sentencing of repeat felony offenders. In an effort to further fortify Kansas laws dealing with repeat felony offenders, Attorney General Kline would appreciate

the committee's consideration of an amendment to the language of S.B. 111. The proposed amendment would add a new section to S.B. 111 which would allow for firmer sentencing of all felony offenders who commit new felony crimes while those offenders are still on probation, parole, postrelease supervision or incarcerated for earlier felony offenses. The amendment Attorney General Kline suggests would be to add the provision from Section 3 of H. B. 2815, which was previously considered by this committee. The proposed amendment would make a change to K.S.A. 21-4603d at subsection (f) of the statute to require that an offender who is convicted of a new felony offense committed while the offender was still serving a sentence for an earlier felony "shall" be sentenced to prison for the new felony conviction. While this change in law would have a significant bed space impact at the Department of Corrections, this provision would be a major step forward in dealing seriously with repeat felony offenders. [The Kansas Sentencing Commission has estimated the bed space impact to possibly require as many as 767 beds by the year 2014.] Members of the committee, I submit to you that if you randomly asked Kansas citizens whether they believe that a criminal will go to prison if that criminal is convicted of a new felony while still serving a sentence on an earlier felony, the great majority of Kansans would respond, "Of course." However, under current Kansas law that is simply not the case. The amendment language being proposed by Attorney General Kline would close this loophole. The proposed amendment to K.S.A. 21-4603d would have the effect of locking up only those offenders who will have proven that they will continue to commit felony crimes and victimize the people of our State. This change in law would only affect felons who are convicted of committing new felony crimes while they are still serving a sentence on an earlier felony crime.

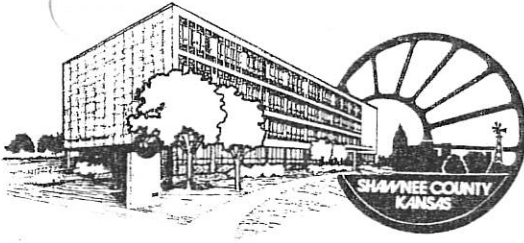
On behalf of Attorney General Kline I would like to thank you again for the opportunity to appear before the committee and urge your favorable consideration of S. B. 111 and ask for your favorable consideration of the proposed amendment.

Reference Material for the Committee:

K.S.A. 21-4603d, subsection (f), with the proposed amendment would read:

"When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court ~~may~~ **shall** sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a non-prison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on

release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a non-prison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.”



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**Shawnee County
Sheriff's Office
Sheriff Richard W. Barta
Law Enforcement Center**

320 S. KANSAS, SUITE 200
TOPEKA, KANSAS 66603-3641
785-368-2200

M E M O R A N D U M

March 10, 2004

TO: THE HONORABLE WARD LOYD, CHAIRMAN
HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

FR: SHERIFF RICHARD W. BARTA, SHAWNEE COUNTY SHERIFF'S OFFICE

RE: SB 111

Honorable Ward Loyd and members of the Committee: I appreciate the opportunity to testify in support of Senate Bill 111. My name is Dick Barta and I am Sheriff of Shawnee County. I have been a law enforcement officer for over 35 years, 29 of those with the Kansas Highway Patrol. I am here representing my office and the Kansas Sheriff's Association.

In 2002, Topeka and Shawnee County experienced 11,451 property crimes (from KBI reports, 2002). The Department of Justice estimates the average cost of a property crime is \$1,274. This equates to just under \$15 million in property crime in Topeka and Shawnee County.

(Note: this is a static cost calculation, it does not take into account other effects such as increased insurance premiums, lost of economic activity and just the sheer aggravation and indignity of being robbed).

Some people convicted of these crimes are not going through a revolving door as that implies they actually spend some time in prison. We catch them, the D.A. prosecutes them, but often times the sentence is probation.

Our detectives will tell you that, as a conservative estimate, they spend 75 to 80% of their time on repeat offenders. Of course, this has an impact on officer morale.

The bottom line, the repeat offenders are a menace to our communities. This is not solely a law enforcement problem--it's a problem in our society right here in Kansas. We need your help to find a remedy for the problem. Please support Senate Bill 111. Thank you



SEDGWICK COUNTY, KANSAS

SHERIFF'S OFFICE
GARY STEED
Sheriff

141 WEST ELM * WICHITA, KANSAS 67203 * TELEPHONE: (316) 383-7264 * FAX: (316) 383-7758

TESTIMONY SB 111
Before The House Corrections and Juvenile Justice Committee
March 10, 2004

Honorable Chairman Ward Loyd and members of the committee, I appreciate the opportunity to testify in support of SB 111. My name is Robert Hinshaw. I am a Major with the Sedgwick County Sheriff's Office and have served in several capacities within the department for the past twenty-five years. I am appearing on behalf of the Sheriff of Sedgwick County in support of this legislation.

SB 111 amends K.S.A. 2002 Supp. 21-4704, allowing the use of any comparable prior juvenile adjudication or out of state conviction to be used in sentencing guidelines when a person has been convicted of violation(s) of K.S.A. 21-3715(a). This particular subsection of the burglary statute addresses those persons who violate a person's home with the intent to commit a felony, theft or sexual battery. Allowing the use of a person's prior criminal history in this manner we feel is appropriate. Perhaps one of the most cherished beliefs is the right to feel safe and secure in one's own home. When someone has already violated the sanctity of a citizen's home once, more stringent punishment should be an option available to the courts, regardless of whether the prior conviction occurred out of state, or was the result of a juvenile adjudication. Previously, such conviction most often resulted in probation from adherence to the sentencing guidelines. Under this amendment incarceration in a minimum custody or security facility will become the norm.

Another change the amendment makes is to make a presumption of imprisonment for conviction of violating K.S.A. 21-3715 (b) or (c) when a person has three prior convictions under any subsections of K.S.A. 21-3715 or 21-3716. The amendment also allows for use of juvenile adjudications or out of state convictions of comparable violations when determining appropriate sentencing. Previously, the sentencing guidelines would result in a convicted person receiving probation, even after a fourth conviction. Under this amendment, incarceration in a minimum custody or security facility would become mandated. The Sheriff's Office worked three hundred and thirty-four burglaries last year; thirty-one individuals were held accountable for the one hundred and fifteen cases cleared. Incarceration under the current system is under-realized. The question becomes, after three prior convictions should not an individual begin to pay a debt to society? For the above reasons, the Sedgwick County Sheriff's Department strongly supports SB 111.

1204 Fort
Hays, Kansas 67601

Telephone (785) 628-9405
Fax (785) 628-9409

Ellis County Attorney

Tom Scott
Asst. County Attorney

Thomas J. Dress
Ellis County Attorney

Brenda L. Basgall
Asst. County Attorney

Monnie R. Schmitt
Office Manager
Victim/Witness Coordinator

David J. Basgall
Asst. County Attorney

March 10, 2004

Kansas House of Representatives
Committee on Corrections and Juvenile Justice
Representative Ward Lloyd, Chairman

RE: Testimony in support of Senate Bill 111 "Prison for Habitual Burglars"

Dear Representatives:

Thank you for allowing me to present my testimony in writing. I apologize for not being there in person, but my trial schedule does not allow for a personal appearance on this day.

Enclosed is an outline of my testimony explaining the need for Senate Bill 111, Prison Time for Habitual Burglars. By this cover letter, I wish to augment that testimony.

The current Kansas Sentencing Guidelines do not allow business and vehicle burglars to advance beyond history E, which means that all business and vehicle burglars remain on presumptive probation no matter how many offenses they commit. The Kansas Court of Appeals in three (3) recent cases contained in my outline (State v. French, State v. Hawes, State v. Meyer) has ruled that the State can not upward depart to imprisonment based on the number of prior convictions or current convictions for burglary, because the Kansas Sentencing Guidelines Grid takes into account all of their history.

Having prosecuted in Western Kansas for nearly fifteen (15) years, this statute has caused as much frustration for me and for the victims/citizens I deal with as any other. It is hard to explain to the businessmen on Main Street why an individual who burglarized forty (40) businesses can not be sent to prison. Under current law, a business/vehicle burglar who commits four (4) or five (5) burglaries and is caught and convicted, all of the convictions count as a first conviction or first sentencing event. Then a second sentencing event occurs where three (3) or four (4) more burglaries have been committed and prosecuted. That counts as a second conviction. Then the defendant commits several more burglaries and is caught, prosecuted and convicted, and that becomes the third sentencing event. The proposed legislation in Senate Bill 111 would allow the defendant to be sentenced to prison on a fourth sentencing event. While it is a fourth sentencing event, it may be his tenth, twentieth or thirtieth burglary.

I realize the intent of the Kansas Sentencing Guidelines is to reserve prison space for violent offenders and not property crime offenders. However, after a repeated history of property offenses, the victim and the public deserve some retribution. For a habitual burglar, a short prison sentence is warranted and necessary.

Again, thank you for allowing me to present this testimony in writing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Drees', with a long horizontal stroke extending to the right.

Thomas J. Drees
Ellis County Attorney

TJD/jao

Enclosure:

Testimony Supporting 2003 Senate Bill 111: "Prison for Habitual Burglars"

TESTIMONY SUPPORTING 2003 SENATE BILL 111: "Prison for Habitual Burglars"

by:

Thomas J. Drees*

- I. Current burglary law requires police, prosecutors and judges to practice "catch and release" of non-residential burglars.
 - A. Kansas Sentencing Guidelines Act (K.S.G.A.) history never advances beyond E-Presumptive Probation.
 - B. Court cannot upward depart to imprisonment under K.S.G.A. based on number of current convictions being sentenced. State v. French, 26 K.A.2d 24 (1999).
 - C. Court cannot depart upward under K.S.G.A. based on number of prior convictions because sentencing grid takes all history into account. State v. Hawes, 22 K.A.2d 837 (1996); State v. Meyer, 25 K.A.2d 195 (1998).
 - D. K.S.G.A. abolished "Habitual Violator Act" under K.S.A. 21-4504(e)(3).
- II. Senate Bill 111 would provide appropriate length of sentence considering prison bed limitations.
 - A. Punishment of crime remains at Level 7 (11-34 months) and Level 9 (5-17 months) on sentencing guidelines grid.
 - B. Sentence to be served at Kansas Department of Corrections minimum security facilities, which have bed space available.
 - C. Bill provides for prison for habitual violator, not self-enhancing statute violator.
- III. Bill provides for prison on fourth sentencing event, not fourth conviction.
 - A. Multiple convictions on same day constitute "one prior conviction" under self-enhancing punishment statute, State v. Rome, 269 Kan.47 (2000); which constitutes a single sentencing event. State v. Loudermilk, 221 Kan. 157 (1976).
 - B. Habitual burglars deserve imprisonment on fourth and subsequent sentencing event.
- IV. Suggested Improvement of Senate Bill 111 - Use graduated sanctions.
 - A. First sentencing event - Court Service probation.

- B. Second sentencing event - Community Corrections Probation Supervision.
- C. Third sentencing event - optional prison sanction (border-box).
- D. Fourth and subsequent sentencing event - Prison

Thomas J. Drees - Biographical Information:

Kansas County and District Attorneys Association Board of Directors - 1999 to present;
Northwest Kansas Community Corrections Governing Board - 1996 to present;
Ellis County Attorney - 1997 to present;
Trego County Attorney - 1997 - 2000;
Assistant Ellis County Attorney - 1989 - 1996;
Juris Doctorate Degree, University of Kansas School of Law - 1989.

Address - 1204 Fort, Hays, KS 67601
Phone - (785) 628-9405

Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: THE HONORABLE WARD LOYD, CHAIRMAN
HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

FROM: JEFFERY S. BOTTENBERG, LEGISLATIVE COUNSEL
STATE FARM INSURANCE COMPANIES

RE: SB 111

DATE: MARCH 9, 2004

Mr. Chairman, Members of the Committee: My name is Jeff Bottenberg and I represent State Farm Insurance Companies ("State Farm"). We appreciate the opportunity to appear in support of SB 111, which would require imprisonment at a state minimum correctional facility for repeat burglars. State Farm is the largest insurer of homes in the United States and Kansas, insuring one out of every four homes in the U.S.

State Farm supports legislation that would eliminate the potential for persons to burglarize the homes of our policyholders. The financial impact of unwarranted home invasions and burglaries is easy to calculate. In the year 2000 theft accounted for approximately 5 percent of homeowner insurance losses nationwide, and such losses totaled approximately 1.10 billion dollars. In Kansas, approximately 8 percent of homeowner insurance losses for 2001 and 2002 were due to theft. According to the FBI, in the year 2000 the most frequently stolen items were:

1. Jewelry and precious metals
2. Clothing and furs
3. Office Equipment
4. Televisions, radios, stereos, etc.
5. Firearms
6. Household goods

One AmVestors Place
555 Kansas Avenue, Suite 301
Topeka, KS 66603
Telephone: (785) 233-1446
Fax: (785) 233-1939

House Corr & JJ
Attachment 6

3-10-04

Although it is easy to calculate the financial impact of burglaries, the emotional component of such invasions is incalculable, and no amount of financial compensation can take the place of a person's sense of security and comfort, which in many cases is irretrievably lost.

Sending repeat burglars to state correctional facilities will not only reduce the frequency of such crimes, but will help give their victims a sense of security and relief that may not be accomplished through financial compensation alone. For the above reasons, State Farm strongly supports SB 111. Please do not hesitate to contact me if you have any questions regarding this or any other matter.

Respectfully Submitted,



Jeff Bottenberg

JSB

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KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 111
to
The House Committee on Corrections and Juvenile Justice

By Roger Werholtz
Secretary
Kansas Department of Corrections

March 10, 2004

SB 111 amends K.S.A. 21-4704 to include as criteria for a presumptive sentence of imprisonment for convictions of K.S.A. 21-3715 (a), burglary of an unoccupied dwelling; prior juvenile adjudications and out of state convictions for offenses comparable to K.S.A. 21-3715(a); 21-3715(b), burglary of an unoccupied nondwelling structure; or K.S.A. 21-21-3716, aggravated burglary. Current law provides for a presumption of imprisonment, but the criteria for the application of the presumption does not include juvenile adjudications or out of state convictions.

SB 111 also provides for a presumption of imprisonment for violations of K.S.A. 21-3715(b), burglary of an unoccupied nondwelling structure and 21-3715(c), burglary of a vehicle or other conveyance. A presumption of imprisonment exists for offenders who have three or more prior convictions or juvenile adjudications for burglary or aggravated burglary, including out of state convictions for comparable offenses.

The provisions of SB 111 that the Department of Corrections wishes to bring to the Committee's attention pertain to the presumption regarding the offender's custody classification.

In regard to a presumption that offenders imprisoned for burglary are to be classified as minimum custody inmates, the Department is of the opinion that the custody classification for inmates should not be dependent on convictions for specific crimes. Rather, the Department utilizes an inmate classification manual that evaluates among other things, the length of sentence, time remaining to be served, behavioral characteristics of the individual, institutional behavior, past criminal record, gang

affiliations, detainers and other factors that are relevant to the safety of the facility and the public. The application of the Department's custody classification system to offenders whose most serious crime is burglary currently results in a custody distribution for male and female offenders respectively of 39% and 52% minimum custody; 34% and 23% medium custody; 23% and 23% maximum or special management; and 4% and 2% who are unclassified.

Additionally, the Department is uncertain of the intent behind the provision requiring that sentences of the offenders covered by the bill "shall be served at a correctional facility that houses inmates having a minimum custody or security classification". Since all KDOC facilities have living units classified as minimum security, our view is that this provision would have no operational impact on the department. If the intent, however, is to prohibit these minimum custody inmates from occupying higher custody beds, then there would be an adverse operational impact on the department. A related concern of the Department is whether the intent of this language is to require that offenders sentenced to the Department pursuant to SB 111 be incarcerated at a facility that only houses minimum custody offenders. With the exception of the Wichita Work Release Facility, Winfield Correctional Facility and satellite facilities such as those located in Stockton and Osawatomie, the Department's facilities are designed and operated to incarcerate inmates with various custody classifications. On any given day, minimum custody inmates occupy higher custody beds for a number of legitimate operational reasons, examples of which include: the need for access to a level of medical care that is only available in a higher custody setting; custody classification following admission to KDOC being determined prior to completion of the evaluation process; and, time required to make living unit reassignment following a downward adjustment in custody classification level. Furthermore, the majority of inmates classified as minimum custody are incarcerated in areas within a facility designed to hold multiple custody levels rather than at a facility that only houses minimum custody inmates.

While SB 111 provides for the authority of the Department to override the presumed minimum custody classification and that such overrides would not be subject to judicial review, the Department is concerned that SB 111 creates an expectation that is inconsistent with the Department's custody classification policies and practices.

The Department also has a concern regarding New Section 2, which provides for a priority for the expansion of facilities for minimum custody offenders. Currently, the Department has excess capacity for minimum custody offenders.

The Department notes that SB 111 may contain a grammatical error at page 6 lines 2 and 3. SB 111 states "...the secretary shall otherwise classify such person and serve in a correctional facility as determined by...". It is believed this provision should provide, "...the secretary shall otherwise classify such person to serve in a correctional facility as determined by..."

The Department is appreciative of the inherent recognition contained in SB 111, that sentencing provisions have an impact on prison capacity requirements, but recommends that its provisions pertaining to presumptions regarding custody classification be deleted. A balloon deleting references to the custody and location for the incarceration of offenders subject to the presumptive sentencing provided by SB 111 is attached.

SENATE BILL No. 111

By Committee on Judiciary

1-30

AN ACT concerning crimes, criminal procedure and punishment; relating to sentencing for burglary; expansion or construction of minimum security facilities; amending K.S.A. 2002 Supp. 21-4704 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

Category 8	A	B	C	D	E	F	G	H	I
Severity Level :	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 201	201 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38		
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25		21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	16 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	6 5 4	5 4 3

LEGEND
Presumptive Probation
Presumptive Imprisonment

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SENTENCING RANGE - NONDRUG OFFENSES

Category 8	A			B			C			D			E			F			G			H			I		
Severity Level	3 + Person Felonies			2 Person Felonies			1 Person & 1 Nonperson Felonies			1 Person Felony			3 + Nonperson Felonies			2 Nonperson Felonies			1 Nonperson Felony			2 + Misdemeanors			1 Misdemeanor No Record		
I	653	620	592	618	586	554	285	272	258	267	253	240	246	234	221	224	214	201	203	195	184	186	176	166	165	155	147
II	493	467	442	460	438	416	216	205	194	200	190	181	184	174	165	168	160	152	154	146	138	138	131	123	123	117	109
III	247	233	221	228	216	206	107	102	96	100	94	89	92	88	82	83	79	74	77	72	68	71	66	61	61	59	55
IV	172	162	154	142	134	124	75	71	68	69	66	62	64	60	57	59	56	52	52	50	47	48	45	42	43	41	38
V	136	130	122	128	120	114	60	57	53	55	52	50	51	49	46	47	44	41	43	41	38						
VI	66	63	60	61	59	57	38	36	34	36	34	32	32	30	28	29	27	25				21	20	19	19	18	17
VII	34	32	30	31	29	27	29	27	25	26	24	23	23	21	19	19	18	17	17	16	15	16	15	13	13	12	11
VIII	23	21	19	20	19	18	19	18	17	17	16	15	16	14	13	15	12	11	11	10	9	11	10	9	9	8	7
IX	17	16	15	15	14	13	13	12	11	13	12	11	11	10	9	10	9	8	9	8	7	8	7	6	7	6	5
X	13	12	11	12	11	10	11	10	9	10	9	8	9	8	7	8	7	6	7	6	5	7	6	5	7	6	5

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:

37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any de-
13 cision made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)
25 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
26 vided by the specific mandatory sentencing requirements of that section
27 and shall not be subject to the provisions of this section or K.S.A. 21-4707
28 and amendments thereto. If because of the offender's criminal history
29 classification the offender is subject to presumptive imprisonment or if
30 the judge departs from a presumptive probation sentence and the of-
31 fender is subject to imprisonment, the provisions of this section and
32 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
33 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
34 3710, and amendments thereto. Notwithstanding the provisions of any
35 other section, the term of imprisonment imposed for the violation of the
36 felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a
37 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
38 thereto shall not be served in a state facility in the custody of the secretary
39 of corrections.

40 (j) The sentence for any persistent sex offender whose current con-
41 victed crime carries a presumptive term of imprisonment shall be double
42 the maximum duration of the presumptive imprisonment term. The sen-
43 tence for any persistent sex offender whose current conviction carries a

1 ~~not in the best interests of the inmate, or the public or the department of~~
2 ~~corrections, the secretary shall otherwise classify such person and serve~~
3 ~~in a correctional facility as determined by the secretary. Such determi-~~
4 ~~nation of custody or security classification by the secretary is not subject~~
5 ~~to judicial review.~~

6 ~~New Sec. 2. Subject to the provisions of appropriation acts and the~~
7 ~~availability of appropriations therefor, the department of corrections is~~
8 ~~hereby authorized to initiate and complete capital improvements for the~~
9 ~~expansion or construction of additional housing for inmates having a min-~~
10 ~~imum custody or security classification. In making such expenditures the~~
11 ~~secretary shall give priority to such expansion or construction at correc-~~
12 ~~tional facilities that already house inmates having a minimum custody or~~
13 ~~security classification.~~

14 Sec. 3. K.S.A. 2002 Supp. 21-4704 is hereby repealed.

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

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1 presumptive nonprison term shall be presumed imprisonment and shall
2 be double the maximum duration of the presumptive imprisonment term.
3 Except as otherwise provided in this subsection, as used in this subsection,
4 "persistent sex offender" means a person who: (1) Has been convicted in
5 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
6 amendments thereto; and (2) at the time of the conviction under subsec-
7 tion (1) has at least one conviction for a sexually violent crime, as defined
8 in K.S.A. 22-3717 and amendments thereto in this state or comparable
9 felony under the laws of another state, the federal government or a for-
10 eign government. The provisions of this subsection shall not apply to any
11 person whose current convicted crime is a severity level 1 or 2 felony.

12 (k) If it is shown at sentencing that the offender committed any felony
13 violation for the benefit of, at the direction of, or in association with any
14 criminal street gang, with the specific intent to promote, further or assist
15 in any criminal conduct by gang members, the offender's sentence shall
16 be presumed imprisonment. Any decision made by the court regarding
17 the imposition of the optional nonprison sentence shall not be considered
18 a departure and shall not be subject to appeal. As used in this subsection,
19 "criminal street gang" means any organization, association or group of
20 three or more persons, whether formal or informal, having as one of its
21 primary activities the commission of one or more person felonies or felony
22 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
23 and amendments thereto, which has a common name or common iden-
24 tifying sign or symbol, whose members, individually or collectively engage
25 in or have engaged in the commission, attempted commission, conspiracy
26 to commit or solicitation of two or more person felonies or felony viola-
27 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
28 amendments thereto, or any substantially similar offense from another
29 jurisdiction.

30 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
31 and amendments thereto when such person being sentenced has a prior
32 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
33 3716 and amendments thereto *or any comparable juvenile adjudication*
34 *or out of state conviction* shall be presumed imprisonment ~~at a correc-~~
35 ~~tional facility that houses inmates having a minimum custody or security~~
36 ~~classification. The sentence for a violation of subsection (b) or (c) of K.S.A.~~
37 ~~21-3715, and amendments thereto, when such person has three prior con-~~
38 ~~victions for a violation of K.S.A. 21-3715 or 21-3716, and amendments~~
39 ~~thereto, or any comparable juvenile adjudication or out of state conviction~~
40 ~~shall be presumed imprisonment at a correctional facility that houses in-~~
41 ~~mates having a custody or security classification of minimum. There shall~~
42 ~~be a presumption of a minimum custody or security classification, except~~
43 ~~that if the secretary of corrections determines that such classification is~~



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Testimony in Support of SB 469
Before the House Corrections and Juvenile Justice Committee
Kyle G. Smith
Director of Public and Governmental Affairs
Kansas Bureau of Investigation
March 10, 2004

Chairman Loyd and Members of the Committee,

The Kansas Bureau of Investigation is not looking for more work. In fact, we are holding 15 of our 82 agent positions open now due to lack of funding and that puts additional burdens on the agents who have to pick up the slack. But, we are in support of SB 469, a bill that would require the KBI to conduct investigations of in-custody deaths. In the vast majority of cases, this bill will not change standard procedures. Currently the KBI is called upon by most agencies to investigate questionable in-custody deaths as a means of ensuring public confidence by having on outside agency conduct the investigation. Most of those agencies that do not request our assistance do so because they have sufficient resources in the form of their own professional standards unit.

The sound public policy of checks and balances makes our assumption of this additional duty logical and appropriate. Law enforcement professionals take great pride in holding ourselves to a higher standard and we should not shirk from a careful and thorough review of our actions. But even more importantly, this legislation would help ensure the public confidence and trust that is so essential for us to carry out our duties in the community.

Our understanding of the motivation for this bill was to bring in outside review of 'questionable' or 'suspicious' deaths that occur while in custody. In our fiscal note we estimated about 5 death investigations a year and that we were probably doing most of those already. However, D.O.C. has clarified with us that they also have 20 or so 'natural' deaths each year from heart attacks, cancer and other medical conditions. I presume there are probably one or two similar juvenile deaths each year as well. The extent of an investigation will probably be determined by the specific facts of the case – we won't put as much time in on a cancer death of an elderly inmate – but sufficiency of resources may be an issue with the addition of these additional 'natural death' cases.

Thank you for your time and consideration. I would be happy to stand for questions.

KARIN BROWNLEE

SENATOR, 23RD DISTRICT
14725 S. CHALET DRIVE
OLATHE, KANSAS 66062
913-782-4796; FAX 913-782-1085

STATE CAPITOL—136-N
TOPEKA, KANSAS 66612-1504
KS METRO TOLL-FREE: 913-715-5000
OFFICE: 785-296-7358 FAX: 785-368-7119
CAPITOL HOTLINE: 1-800-432-3924



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
COMMERCE, CHAIRPERSON
PUBLIC HEALTH AND WELFARE
UTILITIES

JOINT COMMITTEES:
LEGISLATIVE RULES & REGULATIONS
ECONOMIC DEVELOPMENT
CORRECTIONS AND JUVENILE JUSTICE

EMAIL: HOME -brownlee@ink.org
CAPITOL: brownlee@senate.state.ks.us
Website: www.ink.org/public/legislators/kbrownlee

TESTIMONY ON SB 469

House Committee on Corrections & Juvenile Justice

March 10, 2004

Chairman Loyd and members of the committee, thank you for the opportunity to testify on SB 469. I had originally introduced SB 497 on the issue of notification to schools of sexual predators. The Senate Judiciary committee did not have time to hear the bill so I amended it onto SB 469.

This bill grew out of a situation in my senate district which occurred this past fall. A sexual predator lived so close to a daycare center that he could stand on his balcony and watch the children play. A local TV station was horrified and wondered why Kansas did not prohibit sexual predators from living so close to a daycare or school. Twelve states have some type of prohibition on sexual offenders living within a certain distance of a school or daycare. A few of these states' laws have been determined to be unconstitutional. Therefore, I chose to have some type of notification of predators within a distance of facilities with children.

1000 feet was the distance chosen because this is consistent with the Drug Free School zones. Allowing the counties to collect a fee from the predator when they register on this list was requested by the JO CO sheriff as a means to pay for the cost they might incur. We chose to allow each county to set this fee up to \$50. The amendment also reflects that email can be utilized for notification.

This morning it was pointed out to me that we should consider a means by which schools and daycares would let the sheriff know of their interest in being notified. In some counties, this notification would be quite cumbersome. Asking facilities which care for children to notify the sheriff would be a reasonable amendment.

I would ask for your support in taking this step to further help protect our children. Thank you for your time and interest.

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Cathy Thomas
1194 Boswell
Topeka Kansas 66604
(785)354-8643

My name is Cathy Thomas I am here today to tell you how important an outside mandatory investigation is when a person dies in government custody. My son Anthony Stapleton was being detained at the Shawnee County Jail. I was so concerned about his mental well being; when he first went in I contacted his probation officer and asked him to make sure Tony was on suicide watch. After a few weeks Tony quit eating and a guard called me at home and said they had made an agreement with Tony, if he could talk to me on the phone he would start eating again. I was very concerned they had let him go three days without eating, but the guards assured me he was on a "special" module and would be Ok. On several occasions I talked to the guards on the phone because of letters or conversations I had with Tony, but they always assured me he would be ok because he was on this "special" unit.

Two days before Thanksgiving I talked to a guard and he informed me that I needed to let Tony "Grow Up". The day after Thanksgiving 2002 my son hung himself in this "special" module. I asked jail personal how this could happen since my son was on suicide watch. They said they would have an internal investigation. Unfortunately this is not an isolated incident. There are hundreds of inmates dying with out an outside investigation. If a jail reports that an inmate died of natural causes but the inmate wasn't given there medications then is that still "natural"? The jails and prisons in Kansas are not inspected by any outside agency so they are not made to be accountable to anybody. This hardly seems fair since the Humane Society and even nail salons are inspected. But yet the place that houses the biggest population of human lives is not being inspected or made to be accountable to anybody.

The only communication I got from the jail was a phone call to tell me he was dead and a letter that gave me 30 days to pick up his belongings or they would be discarded in the trash. The facts speak for themselves, but the number of deaths at the Shawnee County Jail in such a short period of time speaks volumes. When a child dies in parental custodial care, there is a mandatory outside investigation, but when somebody's child dies in Govt. custody they investigate themselves. The only people that would object to an outside investigation are the people that have something to hide. Our neighbors to the north (Nebraska) have the humanity and fairness to establish a Federal Grand Jury investigation when a person dies in govt. custody. Even with a record number of inmates being detained there inmate deaths have decreased. Suicides are preventable with the right programs and policies in place and as long as jail personnel are following these policies and procedures. This has been proven by the research Lindsay Hayes has done, the number one expert in the Country on suicides in jails and prisons. I might never get answers but I don't want to see another family have to go through what we did as a family.

I even went as far to ask our County DA (Robert Hecht) for answers and an investigation into my son's death. He first told me he didn't have the authority to investigate the jail then in another breath told me "what makes you think we are not investigating our jail". I was very confused to say the least after talking to him. So if our

Cathy Thomas
1194 Boswell
Topeka Kansas 66604
(785)354-8643

own County DA won't investigate the jail or is not aware of his capability of investigating the jail I had no where else to turn. I had chosen to leave my son in jail thinking that was a safe place for him to be until we could get him in drug treatment. Had I known that the jail was not going to do there job I would have gotten my son out of jail. Senator Hensley at the first hearing made some comments about my son. He had in the past been my son's teacher. He is the only person that has ever acknowledged my son and said some very caring words about him. I feel like that to everyone else he is just another statistic But my son was a very important part of my life and I feel like his death could have been and should have been avoided. To the County and the Director of the jail all they have done is denied responsibility and accountability for his death. They never once said they were sorry this happened or even acknowledged that he was a human being and someone's son. All he has been to them was a liability, but to our family he was a very important part of our life and someone that is loved and missed every day. Please pass this bill so that other families will have the answers that they so desperately need when something like this happens.

11

Sharon Vaughn
2732 SE 33rd Terr
Topeka Kansas 66605
(785) 267-5286

I am in support of the Scroggins Initiative Bill that makes it a mandatory outside investigation whenever anybody dies in Govt. custody. My son William Vaughn was detained at the Shawnee County Jail on Oct. 3, 2003 on misdemeanor charges. He asked to be segregated from the other inmates after having problems with staff. Even though my son could have bonded out something conspired between him and staff and then he was no longer bondable. The way I found out my son was dead on Oct. 4th, one day later, at 9:40p.m. was when they sent a chaplain to my house. Even though my son was at the hospital for an hour before he died. I was not notified till after 9:30p.m. . I never got to tell my son goodbye, I never received any written communication from the jail about my son's death. His own 4 year old daughter never got to tell her dad goodbye or that she loved him one last time.

Two weeks following my son's death I went to the jail and tried to get my son's personal belongings, I was confronted by 3 officers; one of them said I could not pick up his belongings until after their own internal investigation. A jail investigating their own self is like putting a fox in charge of a hen house. I was then told if I didn't leave the jail they could arrest me on a old bunch warrants concerning a over due bill. When my son passed away an inmate had contacted me and told me that the guards were an hour late doing their 15 min mandatory health and well being checks. Before you pass this bill is it going to take a well known privileged son or daughter to die?

The Shawnee County Jail was not only deliberately indifferent to the needs of my son, but they were deliberately indifferent to the needs of many inmates who have lost their life in the Shawnee County Jail. I am raising my 4 year old granddaughter Kiara (my sons daughter) so when you decide on to pass this bill or not I just hope you think of her and all the questions she will ask me when she gets older that I have no answers to. If the bill gets passed then at least I can tell her another family at least got the answers they deserved even if we didn't.

Marie Gaston
707 Virginia Street
Morrill, Kansas 66515
785-459-2306

I am here today in support of Bill 469. My son was in the County jail in Hiawatha Kansas. Even though he exhibited several warning signs on August 14th 2002 and was moved 3 times in one day to different cells he finally hung himself in the last cell he was in that day. It has been almost two years and as of today I still have no answers on what happened or why my son was allowed to do this even with the warning signs he exhibited. It is only fair to the family that a mandatory outside investigation be done when ever anybody dies in Gov.custody . My sons name was Jeffrey Belden , the only explanation I got was that facility didn't have a suicide watch program , even though my son exhibited signs of suicidal behavior they still gave him a sheet the number one instrument used in jail suicides and then left him in a cell and didn't check on him for a long time. My family and I deserved answers which we never got. I think the only people objecting to the Bill would be the ones that are trying to hide something or will be scrutinized over the way there facility is being ran.

If the jails and prisons know that someone else besides them self is looking at what happened then maybe they will take there job more seriously. If this bill can avoid one death than its worth it!

To: Chairman Ward Lloyd & Committee
 From: chaplain Jean (Wynn) Sullivan (CPR - Ks. Mo.)
 subject: Bill # 469 - Proponent
 Background: B.S. in Education, Major - (drug & juvenile rehabilitation), minors (Psych. / Soc.).

Honorable Chairman & Committee,

I represent the Coalition for Prison Reform (CPR) (Ks., Mo. Chapter) and support bill 469.

1. There must be accountability
 - A. It will save lives (Case: Omar Paisley)
 - B. It will educate the state on how to avoid needless deaths and or tragedies.
 - C. It will provide a non-threatening and legitimate format for complaints, grievances, and possible wrongful death suits.
 - D. It is much more cost effective to the state to prevent wrongful, or negligent deaths, rather than deal with the many lawsuits that will continue to grow in the days & years ahead.

2. There must be Prison reform (2004).
 - A. Those incarcerated, have a right to have adequate food, housing, protection from assaults, and medical care.
 - B. (CRIPA) Federal statute - Civil Rights of Institutionalized Persons act. This was enacted for the reasons below.
 1. In mates have certain rights
 2. This is what separates us from third world Prisons.

3. Bill # 497. Fuse, Confuse, Diffuse

CAPITOL OFFICE
State Capitol Room 113
201 West Capital Avenue
Jefferson City, MO 65101-6806
Tele: 573-751-2851
FAX: 573-526-1684
Email: ctroupe@services.state.mo.us



HOME ADDRESS
5353 Union
St. Louis, MO 63120
314-383-3814
For information & fax:
314-389-2225

CHARLES QUINCY TROUPE

State Representative District 62

January 23, 2002

Gary Kempker, Director
Department of Corrections
2729 Plaza Drive
Jefferson City, MO 65102

Dear Gary:

I am requesting a full investigation of the following incident that was brought to my attention. Approximately 3 weeks ago, a female inmate by the name of Lavenia Populus, #1005817, died screaming on the floor of the infirmary where she was housed at WERDCC in Vandalia.

Someone who cleans the infirmary witnessed Inmate Populus' death, and reported that the room looked like a slaughter house, that Ms. Populus has been crying and pleading for help all day, telling them she was in severe pain. It is also reported that a doctor's answer was to prescribe Maalox. Apparently, Inmate Populus died in a pool of blood, hemorrhaging from every orifice, and there was blood on the walls and what was believed to be human tissue matter mixed with the blood on the floor.

It was reported that Inmate Populus had Hepatitis C. Is this a natural end to people who are infected with the Hepatitis C disease, and if this is the case, explain the blood on the walls and the lack of assistance for an obviously pleading and dying woman. Further, not being a medical person, I would like a medical explanation from the doctor as to how Maalox would help the pain from an obviously hemorrhaging person, and if death were imminent, then the humane thing to do would have been to make death as painless as possible. That was supposed to have been the intention of the misguided legislature when they enacted lethal injections as a way of bringing about death. Was Inmate Populus sentenced to death by the state? If not, then I believe that the state has an obligation to use every means necessary to maintain life as long as possible.

I await the results of your investigation.

Sincerely,

CHARLES QUINCY TROUPE

State Representative District 62

<http://www.leviticus11.com/Lavenia.htm>

7/13/2003

11

Exclusive: Feds Investigating Missouri Women's Prison

By Victor Ojeda

The U.S. Department of Justice has confirmed it is investigating a women's prison in Missouri for civil rights violations.

WB 11 News has learned a federal investigation is underway at the Women's Eastern Rehabilitation and Correctional Center in Vandalia, Missouri. The U.S. Department of Justice is looking into several counts of alleged civil rights violations. In the last five years, there have been eight suspicious inmate deaths.

Sources say on Tuesday, investigators from the Department of Justice in Washington, D.C., descended on the women's prison, interviewing nearly 70 female inmates. A spokesman would only confirm there is "an open investigation."

"We are authorized under the CRIPA Act, which calls for the U.S. Attorney General to investigate the pattern or practice of unlawful conditions," spokesman Jorge Martinez said. CRIPA is the Civil Rights of Institutionalized Persons Act.

But a former women's prison chaplain provided more clues into the investigation. Jean Sullivan, who has worked in almost every Missouri prison in her 18 years as a chaplain, said the investigation stems from prison officials withholding life-saving medical treatment from inmates.

As a result, she says eight women have died in the last five years in Vandalia. "In some cases, what I've learned, there's even negligent homicide involved," she said.

In January of 2002, State Representative Charles Quincy Troupe sent a letter of inquiry to Gary Kempker, the director of the Missouri Department of Corrections. Troupe asked him to investigate the lack of medical assistance provided to Lavenia Populus, a female inmate who died at Vandalia.

Troupe cited a staff member at the prison who reported the room where Populus died looked like a slaughterhouse. Populus died in a pool of blood, "hemorrhaging from every orifice, and there was blood on the walls," Troupe wrote. The only treatment the woman received, according to the staff member, was Maalox.

"I would like a medical explanation from the doctor as to how Maalox would help the pain from an obviously hemorrhaging person... and explain the blood on the walls and the lack of assistance for an obviously pleading and dying woman," he wrote.

Sullivan cited her own stories of unanswered cries from an inmate who died of a brain aneurysm just this month. "She screamed and cried for days that she was going blind and they wouldn't give her the meds," she said.

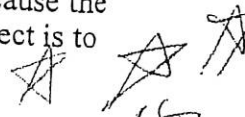
The ACLU in St. Louis is also conducting its own investigation after receiving numerous complaints. Executive director Denise Lieberman said, "These complaints have caught our eye because of the

consistency and nature of complaints and the breadth of complaints from numerous inmates in the facility as well as the gravity of the complaints we received."

"Simply because they are in prison doesn't mean they have to live in substandard conditions or be subject to medical care that threatens their very lives," she said.

A prison spokesman said at this point he couldn't comment directly on the investigation because the Justice Department has not communicated the source of their investigation or what the subject is to prison officials.

But Missouri Department of Corrections spokesman Jim Kniest said the state has fully cooperated, and he also defended the medical treatment prisoners receive. "The number of deaths at the prisons in general in Missouri are far less than the rate of death in the normal population," he said. "Many of the people that come to prison are not in particularly good health to begin with. They've spent years abusing their body. Many times they come to us with health problems that they have not sought treatment for in years," he said.



That shall not lie

↳ This is true - however, this does not negate

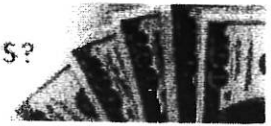
The Justice Department said there is no time frame to conduct this investigation. your responsibility

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when people who are incarcerated under the care of the D.C. are left screaming & crying for days in a small cell until they die.



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Vandalia Prisoner Speaks Out

By Victor Ojeda

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A female prisoner is speaking out on the suspicious deaths of nine of her fellow inmates. She blames the Missouri Department of Corrections.

Vicki McElroy was medically paroled Wednesday. The first thing she wanted to do was talk.

McElroy is on her way home in Kansas City to die. She is in the late stages of a Hepatitis C infection. She was paroled because she's too sick to be cared for at the Women's Eastern Correctional Center in Vandalia, Missouri. She says she's sick because the doctors at the prison ignored her complaints for years. "The medical care at the prison is abhorrent," McElroy said.

In fact, the U.S. Department of Justice is investigating nine suspicious deaths believed to be due to medical neglect. McElroy will be number ten.

"As a human being, each one of us under the prison's responsibility and care deserve adequate treatment. You can't justify it by saying she's an inmate, so her life is worthless or her life doesn't mean anything," she said.

Despite the number of deaths, the Missouri Department of Corrections has not allowed the Justice Department inside the prison to investigate. Sources inside the investigation say you have to wonder, if the state has nothing to hide, then why not open the gates and let them in?

Retired volunteer prison chaplain Jean Sullivan said, "They're suffering from what I call the LDDD syndrome. They lie. Then they deny. Then they deny. And then you deny. And that is what we've heard the whole time."

Some investigators say the tactics used by the Department of Corrections is an undue and unjust barrier. But federal investigators can't force the state to

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grant access because it is a civil matter rather than a criminal one. Prison officials say the investigators aren't being allowed in due to safety and security reasons.

Corrections spokesman Tim Kniest said, "We can't allow people to walk into the prison system by themselves. It's a danger for them, it is a disruption to the normal course of business." But Sullivan doesn't buy that.

"In my 33 years connected to the criminal justice system, I have never run up against such a group of mean, corrupt and cruel individuals as I have at the vandalia prison," she says.

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WEBPOINT ® Entertainment News



Chairman Loyd and members of the Corrections and Juvenile Justice Committee:

My name is Judy Smith and I am State Director of Concerned Women for America of Kansas. CWA of Kansas has been researching the impact of sexual predators on women and children for several years. On a personal level, as a neighbor of the family of Ali Kemp, I am constantly reminded of the danger that lurks even in our quiet suburbs. I used to love to walk on the path along Tomahawk Creek in Leawood; I no longer feel safe to walk there alone. The person who killed her will more than likely re-offend because that is what sex offenders often do.

CWA of Kansas would like to rise in favor of this bill, in particular the section amended to the bill that deals with notifying schools and daycare facilities of a registered sexual offender within 1000 feet of these facilities. (Section 3 a. and b.) Actually, we would prefer that the distance be made even more extensive, but we feel this is an effective start toward protecting children from those who prey on them. We also feel that libraries, an attraction for children, should also be notified. A recent incident (February, 2004) in Philadelphia shows that molesters often frequent libraries in search of victims. In this case the molester followed an eight-year-old girl into the restroom after she had entered with a key, assaulted her sexually and beat her almost to death with her mother and aunt sitting outside unaware. Schools and parents need to be aware of these predators because we cannot place the burden of defense on children who do not have the life experiences, coping skills, or strength to effectively dissuade those who are quite skilled in luring and intimidating children.

We feel that this provision is essential because:

- According to the Center for Sex Offender Management, 60% of all sex offenders managed by the United States correctional system are under some form of conditional supervision in the community
- 50% of child molesters commit a new sexual offense while under supervision in the community according to research by Rice, Quinsey and Harris who tracked a group of child molesters.
- In a study conducted by Prentky, Lee, Knight and Cerce, child molesters who were followed for a 25 year period had a 52% re-conviction rate.
- In a survey taken of Kansas counties, on average, approximately 71% of the registered sexual offenders have committed crimes against children.
- The Center for Sex Offender Management has concluded from the statistics: "Some sex offenders will inevitably commit subsequent sex offenses, in spite of our best efforts to identify risk factors and institute management and treatment processes aimed at minimizing these conditions."
- In Kansas, the sex offender recidivism rate ranges between 32.3% and 48.5% depending on sex offender treatment program exposure. [Kansas Department of Corrections: "Program Evaluation Volume IV" p. 40.]
- A recent study by Gene G. Abel and Nora Harlow of 2,429 adults who admitted to having molested children for more than a year showed that those who molested only girls averaged over 34 acts upon more than five victims each. Those who reported molesting both boys and girls averaged over 120 acts upon more than 27 victims each. Most sexual abuse of children goes unreported and some estimate that the actual number of sex offenses committed is more than 2.4

times higher than official statistics show. Bureau of Justice Statistics National Crime Victimization Surveys indicate that **68% of sexual assaults against persons 12 or older are not reported**. One can only imagine what the statistics are for children under 12.

- One study showed that offenders often commit sex crimes for an average of 16 years before being caught.

It is obvious that our children are at risk and the state should do all it can to protect them. A society is judged by how it cares for its children. One of the best indicators of a declining culture is when it fails to protect the most helpless members of society. As one daycare mom in Seattle stated, where safe zones mandated by law are not being enforced, "Our children are a precious commodity. You don't get a second chance with them. Once they're screwed up, then we're working for crisis intervention."

We urge you to consider these facts and those on the accompanying fact sheet when you regard this bill.

Thank you



Judy Smith

Judy Smith, State Director
Concerned Women for America of Kansas
P.O. Box 11233
Shawnee Mission, KS 66207
913-491-1380



“Sexual Offenders & Victims”

Sexual predators have easy access to our children.

- In Kansas, an average of 71% of sex crimes are committed against children.¹
- Nationwide, 60% of all sex offenders are in community supervision, and ½ of that 60% are re-offending.²
- Child molesters average over 120 acts upon more than 27 victims before being caught.³
- Pedophiles victimize an average of 16 years before their first apprehension.⁴
- In Kansas, sex offender recidivism is nearly 50%, holding with national averages.⁵
- Child molesters, who were followed for a 25 year period, had a 52% reconviction rate.⁶
- Child molesters also commit violent crimes against adults, including rape, and battery of women, and sadistic physical assaults against men. Studies show that rates of violent crimes among child molesters can be as high as 71%.⁷
- Abel and Harlow estimated that in 1999, there were 1,004,117 sexually abused boys, and 2,231,372 sexually abused girls, under the age of 13.⁸
- ***“Children . . . cannot sign legal documents. They cannot sign consent forms for surgery. They cannot be responsible of their own bank account or drive a car. And they have no ability – being children – to consent to sexual interactions either with much older children or with adults. Their agreement to such an interaction does not constitute consent. The adult’s role is to protect the child from the dangers of engaging in behavior with potentially serious consequences.”*** - Abel and Harlow.⁹
- Almost half of the self-admitted child molesters in the Abel and Harlow study had been sexually abused as children.¹⁰
- “It’s like, where is my childhood? It feels like somebody put it in a box somewhere and I’m not allowed to look at it. Like it’s locked up . . . It’s like I want my box, I know I got one. And who took it and who had the right to steal it from me?” An adult male survivor of child sexual abuse.¹¹

Stop the Cycle of Abuse!

- **Release kids and parents from a prison of fear**
- **Keep the OFFENDERS in prison. When they are released into community supervision, make sure that people know that they are near schools, day-cares and libraries so that parents and kids can be forewarned and take appropriate measures.**
- **Make the punishment fit the crime. No restitution can be made to a child for their loss of innocence perpetrated by an adult who gains their trust.**
- **Children cannot be OVER-PROTECTED by the law. Government has a solemn duty to protect children from those who would exploit their innocence.**

To assume that a child can give consent to sexual abuse is giving a blank check to a thief . . . in this case the bank account is the life of a trusting child. It is the duty of government to protect the innocent and helpless.

To assume that a child has the life experiences to resist an adult who preys on the child’s fears/or entices with attractive lures is not good government policy. Children are our legacy for the future...they deserve to be protected.

¹ Sample survey of Kansas counties with metropolitan areas conducted in November, 2002.

¹ "Recidivism of Sex Offenders", Center for Sex Offender Management (CSOM), p 1, findings of Greenfeld, 1997.

¹ *The Stop Child Molestation Book, What Ordinary People Can Do In Their Everyday Lives To Save Three Million Children*, Gene G. Abel, M.D. and Nora Harlow www.stopchildmolestation.org/pages/study3.html.

¹ "Recidivism of Sex Offenders", Center for Sex Offender Management (CSOM), p3; <http://www.csom.org/pubs/recidsexof.html>; findings of Ahlmeyer, English, and Simons, 1999.

¹ Kansas Department of Corrections "Program Evaluation Volume IV", p40. <http://docnet.dc.state.ks.us/RESEVAL.htm>.

¹ "Recidivism of Sex Offenders", Center for Sex Offender Management (CSOM), p5; <http://www.csom.org/pubs/recidsexof.html>; findings of Prentky, Lee, Knight, and Cerce 1997.

¹ "Recidivism of Sex Offenders", Center for Sex Offender Management (CSOM), p 6, findings of Ahlmeyer, English, and Simons 1999; "The Psychological Impact of Sexual Abuse: Content Analysis of Interviews with Male Survivors" David Lisak; Journal of Traumatic Stress, Vol. 7, No. 4, 1994. [http://www.jimhopper.com/pdfs/Lisak \(1994\) Male Survivor Interviews.pdf](http://www.jimhopper.com/pdfs/Lisak (1994) Male Survivor Interviews.pdf).

¹ Abel and Harlow <http://www.stopchildmolestation.org/pages/study2.html>.

¹ Abel and Harlow, www.stopchildmolestation.org, excerpted from "The Stop Child Molestation", Gene Abel, M.D. and Harlow, Nora, 2001, revised 2002. Dr. Gene Abel developed the Abel Assessment used by the Kansas sexual predator treatment program used to evaluate the likelihood of a repeat offense.

¹ Abel and Harlow <http://www.stopchildmolestation.org/pages/study4.html>.

¹ "The Psychological Impact of Sexual Abuse: Content Analysis of Interviews with Male Survivors" David Lisak; Journal of Traumatic Stress, Vol. 7, No. 4, 1994. [http://www.jimhopper.com/pdfs/Lisak \(1994\) Male Survivor Interviews.pdf](http://www.jimhopper.com/pdfs/Lisak (1994) Male Survivor Interviews.pdf).

Kansas.com

Posted on Sun, Feb. 22, 2004

Reported rapes of children multiply

About a third of Wichita's 66 reported cases in 2003 resulted in charges.

BY TIM POTTER
The Wichita Eagle

The number of reported child rape victims in Wichita more than doubled last year, rising to the highest level in at least a decade, police records show.

There were 66 reported victims age 15 and younger. The youngest was 1 year old.

There were 28 reported child rapes in 2002 and 22 to 26 a year since 1999. The previous high was 43, in 1994.

Experts estimate that reported rapes represent only one-third to one-half of the actual number of crimes because many victims keep quiet.

Although rape of children is an uncomfortable subject, ignoring the problem won't help, said Kathy Williams, executive director of the Wichita Area Sexual Assault Center.

"The more we have our head in the sand... the more kids are going to be perpetrated against," Williams said.

While reported rapes of girls increased last year, reported rapes of women 16 and over declined. A count of similar sex crimes against boys was unavailable.

It's impossible to determine why the number of child rape cases doubled, Williams and others say. The spike could be attributed to more rapes, increased reporting, heightened awareness or any number of factors, said Wichita police Lt. Roy Mitchell, who oversees investigations of child abuse and exploitation.

Delores Craig-Moreland, an associate professor of criminal justice at Wichita State University, wonders if the increase reflects more people coming forward to report the crime. That would be a positive development, she said.

She noted that some schools have done more to educate girls about date rape.

A child's trust

About a third of last year's cases resulted in charges, police said. Because people who rape children often have the trust of their victims, because they often prey secretly, it can be one of the most difficult crimes to prevent, detect and prove, experts say.

"You can't get a burglar alarm for it," Mitchell said.

And often, the victim doesn't realize she is a victim. Children can be raped or abused so young, so long, they believe it is natural, Mitchell said.

For Diana Schunn, Mitchell's point brings to mind the case of a 12-year-old girl abused by her father. It wasn't until the girl heard other girls in a gym class talking about relations with boys that "she realized that her life was very different than everybody else's," said Schunn, director of the sexual assault victims program for Via Christi Regional Medical Center.

Because the rapists can be parents or other close relatives, the victims can love their offenders, she said. "They just don't want the abuse to continue."

Schunn, a certified sexual assault nurse examiner, said rapists can leave their child victims with sexually transmitted diseases.

Most often, the child victims show little outward emotion about the abuse, she said. They stifle their feelings. But the abuse can lead them to substance abuse or cause difficulty in concentrating at school.

Think of this, she said: Think of the child who lies awake at night knowing her abuser might come into her room. "Now they're functioning on two or three hours of sleep."

'Tell someone'

Education is the best way to combat rapes of children, said Terri Moses, a deputy Wichita police chief.

The sexual assault center, whose services are free, educates parents through community groups and children through school presentations.

The children learn things like: "You have a right to your body" and "If someone touches you in an uncomfortable or confusing way, it's important to tell someone."

The sexual assault center responded more often last year -- 242 times compared with 146 the year before -- to all kinds of sexual abuse of people 13 to 18. That abuse included fondling, sodomy and sexual harassment.

Although investigators and sexual assault center advocates play different roles in their dealings with reported child victims, they both have to approach the children with a special sensitivity.

Investigators must ask questions without making the reported victims feel they are being doubted, Mitchell said. Only if investigators find continual inconsistencies in their investigation do they begin to wonder whether a rape occurred.

To make younger children feel more comfortable, the detectives interview them in a carpeted room with low tables and child-sized chairs.

No matter how emotional or angry an investigator might feel after learning details of a sex crime against a child, he must keep those feelings in check so he can objectively gather facts, Mitchell said.

"You have to keep in mind you're working for the victim. You can't lose your composure. It doesn't help the victim."

At the emergency room

As detectives pursue cases, sexual assault center staff and volunteers try to comfort rape victims and their families.

The center's advocates usually meet the victims at emergency rooms, where physical evidence of a rape can be collected. While medical staff treat the physical injuries, the advocates tend to the children's and parents' feelings. They are first responders to the emotional and psychological trauma.

An advocate might tell a child: "What happened is not your fault." The advocates say that, Williams said, "because we know kids assume a lot of responsibility for things they do not have control over."

An advocate will ask the child to think of a trusted person she can talk to.

Advocates also try to assist parents, by listening and by calmly providing information about how they can help themselves and their children.

The parents might feel guilt for not preventing the rape, overwhelming sadness for what happened to their child -- and "terrific anger," Williams said.

Although it is natural to feel angry, she said, "It may not be very helpful for that 12-year-old victim to see Dad mad." It only upsets the child more.

The advocate might advise the parent to seek another adult to talk to.

If a suspect is charged, an advocate might accompany the child and parent through the preliminary hearing, the trial and the sentencing.

For children, testifying in court can seem scary. They've most likely never been in a courtroom before.

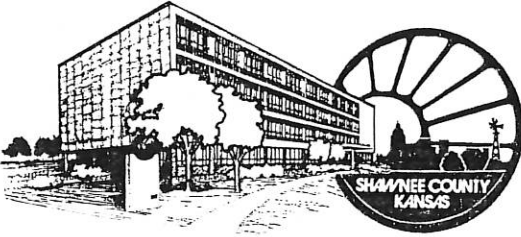
The children often ask: "Do I have to look at him?" referring to the defendant in the courtroom. "Will I have to see him?"

But the advocate can be a familiar and friendly face in the courtroom.

The advocate can tell the child: "You can look at me, you can look for my face."

Reach Tim Potter at 268-6684 or tpotter@wichitaeagle.com.

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(15)

**Shawnee County
Department of Corrections**

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

Elizabeth Gillespie, Director

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

DATE: March 10, 2004

TO: House Corrections and Juvenile Justice Committee

FROM: Elizabeth Gillespie, Director *Elizabeth Gillespie*
Shawnee County Department of Corrections

SUBJECT: **Senate Bill 469**

On behalf of Shawnee County, I am providing written testimony in support of Sections 1 and 2 of Senate Bill 469 as amended by the Senate. I have no position on Section 3 of this bill since it does not apply to the Shawnee County Department of Corrections.

I am the Director of the Shawnee County Department of Corrections and have served in this capacity since August 2000. Shawnee County is unique because its Department of Corrections is the agency that manages the adult detention center as well as the juvenile detention center. Our department is a separate agency from the Shawnee County Sheriff's Office. In most other counties of this state, the sheriff's office also manages the adult jail.

Since I have been in this position, there have been five (5) deaths of adult inmates in the custody of the adult detention center. The causes of two of the deaths were natural and three were deaths by suicide. The Shawnee County Sheriff's Office investigated each death and in each case, the County Coroner performed an autopsy. Because the Sheriff's Office is considered a "sister" county agency, the County has recently received some criticism that the results of the investigations may be biased. For those who know Sheriff Richard Barta and his professional staff, such claims of bias are completely unfair and false. In most other counties of the state where the sheriffs operate the jails, the sheriffs usually request the Kansas Bureau of Investigation to investigate inmate deaths.

Shawnee County favors this bill because we believe that having one agency conduct investigations of all deaths of inmates in county jails, state prisons, and juvenile correctional facilities makes a lot of sense. One agency can provide consistency in the process of investigation and can collect data that will provide a better overall picture for legislators and local policy makers in making very important decisions about offender management.

Our support of these sections of this bill is not, however, based upon our beliefs that there are problems with the ways inmates are managed in the State's county jails and state correctional facilities. I can tell you with absolute confidence that the administrators of the state's correctional facilities and the county sheriffs that I know personally throughout the state share great concerns about the deaths of inmates in their facilities and do everything within their powers and resources to prevent them. Like people in all walks of society, inmates do become ill and die for medical reasons. They also commit suicide despite our best efforts to prevent.

The stories about specific incidents regarding some offenders that you sometimes hear through the media and other sources can lead you to believe that adult inmates and juvenile offenders are being locked in cells and completely ignored. You hear sensational claims about how inmates ask for help but receive none. This is simply not true. When there are allegations that an inmate is not receiving medicine, you envision that staff are willfully withholding necessary medication. What really may be happening is that the offender is not receiving sleeping pills that he/she had become addicted to when living in the community. Or reality may be that the offender is receiving a generic form of the medication that he/she was taking when in the community.

Corrections and detention management has come a long way in the past several years and in the vast majority of situations, offenders are receiving good medical care while they are incarcerated. In many cases, the care they receive while incarcerated is much better than what they received in the community.

In the cases of suicides, family members and friends of the deceased inmates are upset and angry about the death. They go through the same types of emotions that families experience when a loved one commits suicide in the community. This is very natural. It is also natural to want to place blame. In the cases of offenders committing suicide while in custody, the blame is usually directed towards the agency that held the person. In reality, the staff must assess hundreds or thousands of inmates that are incarcerated in their units and somehow determine which ones are potentially suicidal. In reality, if the offender displays any symptoms, the offender is placed on some type of close monitoring. In reality, offenders can learn the system so well that they know the symptoms that staff are watching for and then mask the symptoms.

You will likely hear several accusations today made by the mothers of two of the inmates that committed suicide in the Shawnee County Adult Detention Center. Because both mothers have filed lawsuits against the County, I cannot speak to the specific details of the allegations. Departmental staff and I are very sorry that the deaths occurred. Suicide

is a tragedy for everyone. The staff that worked closely with both inmates have been traumatized by the experience. Please don't assume that the deaths are suspicious in nature because the mothers have made very public allegations. Please don't assume that our silence means guilt. We have nothing to hide and welcome investigation by an outside agency. In fact, we voluntarily asked the national accrediting agency for correctional medical and mental services (NCCHC) to inspect our policies and practices against the highest standards set and have received full accreditation. Out of 1300 local jails in the nation, 233 are accredited by this organization. Out of 97 jails in Kansas, 5 are accredited.

I have studied the issues of suicide in the community and in jails and prisons. Suicide is the leading cause of death in the nations jails. It is the third leading cause of death in the nation's prisons. The suicide rate in jails is approximately 9 to 22 times higher than in the community. Shawnee County itself has a higher rate of suicide than other communities in Kansas. This is likely because the community has long been a recognized center for mental health services. Considering the population of Shawnee County, the rate of suicide that would meet the national average for a community is 20 suicides per year. In 1998 there were 28 suicides, in 1999 there were 25, in 2000 there were 34, in 2001 there were 20, and in 2002 there were 25 suicides in the community. In each of those years except 1998, only one of the suicides occurred in the county jail. The real tragedy is that people are so depressed that they see no way out and no peace without ending their lives.

On any given day, the staff of the department are managing 4-8 inmates on full suicide watch and 10-15 inmates on close observation status. We receive 30 to 50 new inmates each day and must assess and attempt to determine which ones need to be watched more carefully. We conduct medical screenings on each new offender and provide 24-hour medical care to all inmates and juveniles. The cost of medical and mental health care in the Shawnee County Department of Corrections in 2003 alone exceeded \$1.5 million for an average daily population of 450 adult inmates and 32 juveniles.

As you consider this proposed legislation, I ask that you recognize the compassion and the efforts of the staff that perform very difficult jobs in the management of inmates. If you decide to move this bill to the next stage, please do so because it provides for more efficiency and consistency, not because you believe that the staff who operate these facilities are ignoring the medical and mental health needs of inmates or because you believe that previous investigations have been biased.

Thank you for your time and consideration.

EG:eg

Danielle Smith
1194 Boswell
Topeka Kansas 66604
(785) 354-8643

PLEASE READ

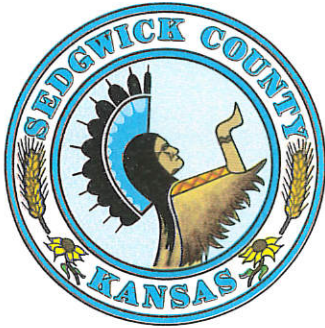
My brother Anthony Stapleton was in the Shawnee County Jail. While he was on suicide watch our family was being assured he would be ok and not to worry, he hung himself. Out of respect for my brother the bill should be passed to make it mandatory for an independent outside investigation whenever anybody dies while in Governments custody. Although I am only 16 I realize how important this is.

If they had followed their own policies and procedures then my brother would not be dead. They were deliberately indifferent to the needs of my brother. When I do not do things right I'm to be held accountable for it and so should they. I hope and pray this bill gets passed so other families will have the answers they deserve.

I miss my brother so much I still cry almost every day. After having my brother my mother couldn't have any more children so she adopted me. She hates it when I bring up the fact that he was her only biological child but it needs to be known. I know my mother loves me just as much as she did him. I can hear my mother crying in her bedroom at night and wonder if she had the answers that she deserved if this would bring some closure for her. I just hate to see another family have to go through what we have gone through. If it's a question of cost then is there a price we put on someone's life? Since the jails and prisons in Kansas are not inspected or held accountable to anybody it just seems to make sense if they know that they will have to answer to someone they might just do a better job. I called my brother "Tony" and so when you are considering this bill I just hope and pray you remember his name and our family when you make a decision on passing this. Please don't let another family go through what we have.....

I was at the house when my mother talked to the guards on the phone and they assured her he would be all right because he was on suicide watch and on a special "module". I even told her she was worrying to much that they would take care of him.

I was at the house the day the Jail told her on the phone he was dead. I will never forget the look in my mother's eyes or the cries I heard from her that day. I think a part of my mom died that day to. To make the worse day in her life even worse was the fact that since my brother died which has been over a year they have never spoken with her to explain how my brother committed suicide on suicide watch and why they gave him a cloth sheet. The only communication she ever got was a letter telling her she had 30 days to pick up his personal belongings.



SEDGWICK COUNTY, KANSAS

SHERIFF'S DEPARTMENT

GARY STEED

Sheriff

141 WEST ELM ★ WICHITA, KANSAS 67203 ★ TELEPHONE: (316) 383-7264 ★ FAX: (316) 383-7758

Testimony SB 469
Before the House Corrections and Juvenile Justice Committee
March 10th, 2004

Honorable Chairman Loyd and members of the committee, I appreciate the opportunity to testify in regards to Senate Bill 469. I am Major Jackie Stuart of the Sedgwick County Sheriff's Office. I have served in various positions within the department over the past seventeen years. Today I am appearing on behalf of the Sheriff of Sedgwick County in opposition to this legislation.

Senate Bill 469 requires the Sheriff to notify in writing or by electronic mail any licensed daycare provider or school where a student between kindergarten and grade 12 may receive instruction or attend an extracurricular activity that a registered sex offender lives within 1,000 feet. Within Sedgwick County there are currently 509 registered sex offenders, 188 public and private schools, and 1,253 licensed daycare facilities. According to Sedgwick County Sheriff's records supervisors hundreds of changes are made to the offender database each month. Most changes reflect residential moves by offenders.

Requiring notification to each school, and daycare center would present an incredible burden of work hours and administrative duties to an already taxed system that an offender fee would not be able to recoup. In addition, the liability issues presented by this bill as written are enormous. One administrative error in notification could result in a costly liability lawsuit against a county.

The information required to be released about the offender is lengthy and includes: name of the offender, date of birth, dates of convictions, offenses committed, sex and age of victims, various physical characteristics of the offender including blood type, the place of employment of the offender, driver's license and vehicle information and a photograph of the offender. Most of these items of information are readily available on the Kansas Bureau of Investigations website at this time.

The goal of keeping our children safe is an honorable one; however, placing the responsibility of notification solely on the Sheriff's shoulders is not the solution to this problem. Full utilization of existing public resources and information on the Internet would prevent duplication of work and needless expense. For this reason the Sedgwick County Sheriff's Office opposes Senate Bill 469.



KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 469
to
The House Committee on Corrections and Juvenile Justice
By Roger Werholtz
Secretary
Kansas Department of Corrections

March 10, 2004

SB 469, as amended by the Senate, addresses three distinct areas concerning convicted offenders. First, SB 469 provides procedures to be followed when a person dies in custody. Second, the Bill amends the Kansas Offender Registration Act. Finally, SB 469 requires sheriffs to notify certain day care facilities and schools within 1,000 feet of a registered offender's residence.

The Department of Corrections has concerns regarding the provisions of SB 469 pertaining to the report of the findings of the Kansas Bureau of Investigation regarding an inmate's death being an open record. One concern involves investigations into homicides, specifically regarding the disclosure of KBI investigation reports during the pendency of a criminal investigation and prosecution. The Department also wishes to raise the issue of the privacy of the medical and mental health records of the decedent and the privacy of the surviving family members arising from situations where an inmate's death does not involve a homicide, but rather was the result of suicide or natural causes. The privacy of both the decedent and his or her family is contrary to the provision of SB 469 that makes the full investigation report of the death an open record.

Kansas has experience in providing Legislative oversight and review of materials while at the same time protecting the privacy of the individuals involved. Legislative committees receiving and discussing confidential information may recess into closed or executive meetings pursuant to K.S.A. 75-4319.

The Department recommends that the preservation of the confidentiality of information regarding identifiable individuals afforded through the use of the closed or executive meeting provisions of K.S.A. 75-4319 be applied to reports regarding the death of persons in custody. Additionally, the Department recommends in regard to the House Committee to receive the reports of the KBI, that the Committee on Corrections and Juvenile Justice be substituted for the House Judiciary Committee. A balloon amending

K.S.A. 75-4319 to provide for closed or executive meetings for the receipt and discussion of information from the KBI as well as amending SB 469 to designate the House Committee on Corrections and Juvenile Justice as the House Committee to receive reports regarding custodial deaths is attached.

SB 469 does not make a distinction between the causes of death (i.e. natural causes, suicide, homicide or accidental). Therefore, SB 469 requires a KBI investigation into all of the aforementioned examples of deaths that occur within a KDOC correctional facility, boot camp, or jail. The Department does not have a concern relative to the KBI conducting an investigation into the death of anyone who dies in custody. Hopefully, the KBI will adopt protocols and procedures so that its investigative resources are appropriately applied.

The Department has addressed what the Department believes is the State's interest in determining the cause of death of anyone in its custody. To that end, the Department proposed legislation to allow for correctional administrators to order an autopsy independent of the county or district attorney, or coroner. That proposal resulted in amendment of K.S.A. 22a-233 in 2000. Pursuant to this statutory authority, the Department orders an autopsy of all inmates who die while in the Department's custody. Additionally, all deaths are subject to a mortality review by the agency's external medical contract monitor, the Kansas University Physicians, Inc. In regard to deaths that give rise to a suspicion of homicide, the Department coordinates a criminal investigation into the death with the KBI. The Department conducts a departmental review on all suicides that take place within the Department's facilities. The Department believes that it can coordinate its routine procedures with any investigative protocols that the KBI may adopt.

During the last three years, seventy-three (73) deaths have occurred within state correctional facilities, and of those deaths, five (5) were suicides, one (1) was an accidental death, and sixty-seven (67) were due to natural causes. The Department is concerned with the public disclosure of the medical, psychological, and substance abuse treatment records of those persons. We believe such public disclosure would invade the privacy of the decedent and his or her family contrary to federal and state law. The Department believes that the privacy issues pertaining to the death of a person who dies in custody should be addressed. Additionally, an investigation into a death occurring in a correctional facility may entail review of security measures and personnel matters which would not be subject to an open records request. Legislative review of custodial deaths in closed sessions would provide the necessary confidentiality while at the same time providing the Legislative oversight sought by SB 469.

The Department notes that current law requires that the coroner be notified of all deaths of persons in custody and that the coroner may conduct an investigation into the circumstances of the death. K.S.A. 22a-231. Therefore, it appears that SB 469 and current law would provide for two possibly independent investigations, one conducted by the K.B.I. and the other by the coroner.

Finally, in conducting its investigation, the Kansas Bureau of Investigation should have access to the information and records that it needs. Therefore, the Department recommends that specific authorization for access to those records be provided. A balloon incorporating this provision is attached.

SB 469 also amends K.S.A. 22-4909 of the Kansas Offender Registration Act. The amendment of that statute by SB 469 only clarifies that the "act" referred to in the statute is the "Kansas Offender Registration Act". The Department wishes to bring to the Committee's attention that K.S.A. 22-4909 is

amended by HB 2636 to provide the Secretary of Social and Rehabilitation Services with access to crime victim information in order for SRS to provide notifications to victims of offenders committed pursuant to the Sexually Violent Predators Commitment Act. HB 2636 was passed by the House by a vote of 125 – 0. It is the Department's recommendation that any amendment to K.S.A. 22-4909 provided by SB 469 be in conformity to that provided by HB 2636. A balloon incorporating the relevant provisions of HB 2636 is attached.

The Department urges consideration of these issues in the Committee's deliberations on SB 469.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 469

By Senators Schmidt and Hensley

2-6

12 AN ACT [concerning crimes, punishment and criminal procedure;
13 relating to offender registration;] requiring investigation and report
14 of findings regarding investigation into the circumstances of inmate
15 deaths in department of corrections facilities and jails[; amending
16 K.S.A. 2003 Supp. 22-4909 and repealing the existing section].
17

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

19 Section 1. Whenever death occurs of an inmate, who is in the cus-
20 tody of the secretary of corrections and who resides in a correctional
21 facility or boot camp operated by or contracted through the secretary or
22 of a juvenile, who is in the custody of the commissioner of juvenile
23 justice and who resides in an institution operated by or contracted
24 through the commissioner, an investigation regarding the circumstances
25 of the death shall be initiated by the Kansas bureau of investigation. The
26 A report of the findings of the investigation shall be made available to
27 the chairperson of the senate and house judiciary committees of the Kan-
28 sas legislature and shall be subject to the open records act, K.S.A. 45-
29 215, and amendments thereto.

30 Sec. 2. Whenever the death of a prisoner in the custody of a city or
31 county and residing in jail or in a facility contracted through the city
32 or county, or both, occurs, an investigation regarding the circumstances
33 of the death shall be initiated by the Kansas bureau of investigation. The
34 A report of the findings of the investigation shall be made available to
35 the chairperson of the senate and house judiciary committees of the Kan-
36 sas legislature and shall be subject to the open records act, K.S.A. 45-
37 215, and amendments thereto.

38 [Sec. 3. K.S.A. 2003 Supp. 22-4909 is hereby amended to read
39 as follows: 22-4909. (a) The statements or any other information
40 required by this the Kansas offender registration act shall be open to
41 inspection by the public at the sheriff's office, at the headquarters
42 of the Kansas bureau of investigation and on any internet website
43 sponsored or created by a sheriff's department or the Kansas bureau

and house committee on corrections and juvenile justice

and house committee on corrections and juvenile justice

The Kansas Bureau of Investigation shall have access to all records relevant to its investigation. Information acquired by, and records and reports of, the Kansas Bureau of Investigation shall be confidential. Information and records disclosed to the chairperson of the senate judiciary committee and the house committee on corrections and juvenile justice and their committees shall be received and discussed in closed or executive meetings in accordance with K.S.A. 75-4319 and amendments thereto.

Information, documents and records otherwise available from other sources are not immune from discovery or use in a civil or criminal action solely because they were presented during an investigation by the Kansas Bureau of Investigation. A person who presented information to the Kansas Bureau of Investigation or who conducted the investigation shall not be prevented by this section from testifying about matters within the person's knowledge.

Sec. 4.

18-4

5-81

1 of investigation that contains such statements or information, and
2 specifically are subject to the provisions of the Kansas open records
3 act, K.S.A. 45-215 et seq., and amendments thereto, except that the
4 name, address, telephone number, or any other information which
5 specifically and individually identifies the victim of any offender
6 required to register as provided in this act shall not be disclosed
7 other than to law enforcement agencies. ✓

and the secretary of social and rehabilitation services.

8 [(b) If an offender resides within 1,000 feet of any licensed child care
9 facility or any school property upon which is located a structure used by
10 a unified school district or a nonpublic school for student instruction or
11 attendance or extracurricular activities of pupils enrolled in kindergarten
12 or any of the grades one through 12, the sheriff of the county in which
13 the facility or school is located shall communicate in writing or by elec-
14 tronic mail to the administrator of such facility or school the following
15 information concerning such offender: Name; date of birth; offense or
16 offenses committed, date of conviction or convictions obtained; city or
17 county of conviction or convictions obtained; sex and age of victim; cur-
18 rent address; identifying characteristics such as race, skin tone, sex, age,
19 hair and eye color, scars, tattoos and blood type; occupation, name of
20 employer and place of employment; drivers license and vehicle informa-
21 tion; and a photograph. The sheriff may collect a fee not to exceed \$50
22 from the offender to cover the costs of implementing this subsection. If a
23 fee is collected, the fee shall be set by the board of county commissioners
24 by resolution. Such fee shall be deposited in the county general fund.

25 [~~Sec. 4.~~ K.S.A. 2003 Supp. 22-4909 is hereby repealed.]

5

26 Sec. 3 [~~5~~]. This act shall take effect and be in force from and after
27 its publication in the statute book.

6

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 38-1507 and amendments thereto or subsection (f) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to the security of a public body or agency, public building or facility or the information system of a public body or agency, if the discussion of such matters at an open meeting would jeopardize the security of such public body, agency, building, facility or information system; ~~and~~

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto. ^

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

and

(15) matters to be discussed in a closed or executive meeting pursuant to SB 469 of the 2004 legislative session and amendments thereto.



19
Reply to: Correct Care Solutions.
534 S Kansas Ave., #800
Topeka, KS 66603
Phone: 785-234-5100
Fax: 785-234-2549

To: Members of the Committee on Corrections and Juvenile Justice

From: Jo Rene Kerns
Executive Vice President
Correct Care Solutions

RE: Senate Bill No. 469

Date: March 8, 2004

Mr. Chairman and Members of the Committee:

Correct Care Solutions ("CCS") is a private corporation that provides medical and mental health care and treatment to inmates incarcerated within the State's correctional facilities. As such, it is the authorized custodian of medical records for inmates incarcerated therein.

Senate Bill No. 469 would require an investigation by the Kansas Bureau of Investigation into the circumstances of all inmate deaths in Department of Correction's facilities and jails. It further would require the findings to be made available to the chairperson of the Senate and House Judiciary Committees and would require the findings to be subject to the Kansas Open Records Act, K.S.A. 45-215, et seq.

This bill would require the disclosure of personal medical, psychiatric, psychological, and/or substance abuse treatment records of readily identifiable inmates. These records are excluded from the duty to disclose by at least five exceptions found within the Kansas Open Records Act at K.S.A. 45-221.

The first exception specifically prohibits disclosure of such information. K.S.A. 45-221(a)(1) provides that a public agency shall not be required to disclose records that are specifically prohibited or restricted from disclosure by federal law. Congress has now implemented the Health Information Portability and Accountability Act ("HIPAA"), a federal law that was enacted to protect the privacy interest of a person's medical records. In general, HIPAA prohibits the disclosure of a person's medical information except under certain stringent exceptions. It further requires that in the event an exception applies, that reasonable efforts must be made to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. 45 CFR 164-502. More importantly, it provides that to the extent HIPAA is contrary to state law, which it would be if this Bill is passed, HIPAA preempts the provision of state law. 45 CFR 160.203.

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The second exception that applies to the records maintained by CCS is K.S.A. 45-221(a)(2). That exception provides that a public agency is not required to disclose records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure. The medical records of inmates that are maintained by CCS are protected by the physician-patient privilege found within K.S.A. 60-427. As such, they fall within this exception and should not be subject to the disclosure requirement. Attorney General Opinion 139 (1987) addressed this issue in the context of intake medical examinations performed on inmates of county jails. It concluded that even these benign records may invoke the physician-patient privilege to prevent disclosure of confidential information. The Kansas Court of Appeals also relied on this provision in finding that a deceased's medical records are covered by the physician-patient privilege and could be made available only to the holder of the privilege. Burroughs v. Thomas, 23 Kan.App.2d 769 (1997)

The third exception to disclosure that applies is K.S.A. 45-221(a)(3). That exception provides that a public agency is not required to disclose records that consist of medical, psychiatric, psychological or alcoholism or drug dependency treatment records that pertain to identifiable patients. Clearly, the records maintained by CCS fall squarely within this exception to disclosure.

The fourth exception that applies is K.S.A. 45-221(a)(29). That exception provides that a public agency is not required to disclose correctional records pertaining to an identifiable inmate other than general information. That section specifically excludes from the disclosure requirement mental health or substance abuse counseling records of an inmate or release. Again, mental health and/or substance abuse counseling records are the types of records maintained by CCS. They must be excluded from the disclosure requirement.

Finally, the fifth exception that applies is K.S.A. 45-211(a)(30). That exception provides that a public agency is not required to disclose public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. An inmate's medical records should not be considered "public records." It is difficult to image a clearer invasion of one's personal privacy than allowing for public disclosure of the contents of one's medical files.

It should be noted that currently all deaths of inmates are investigated by the county coroner. The coroner's findings and investigative records, other than the inmate's privileged medical records, were found in the Burroughs case to be subject to disclosure upon proper request pursuant to the Kansas Open Records Act. In addition to this oversight, the Secretary of Corrections has jurisdiction over a third party review board that is statutorily authorized to monitor the delivery of health care at correctional

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institutions. (K.S.A. 60-4915(a)(4)(B). This organization's findings and other records are statutorily privileged and are not subject to release to any person or entity. K.S.A. 65-4915(b). The Kansas Bureau of Investigation would not qualify as a proper party to hold this "peer review" privilege. Therefore, the integrity of any internal investigation could not be protected by the peer review privilege. Thus, two mechanisms of review are already in place that allow for disclosure of information while excluding protected personal information. These two methods of oversight ensure protection of the policy of the public's right to know versus an individual's right to personal privacy. It is not necessary to permit a third method for review.

In order to ensure that inmates will know that their communications with health care providers are privileged so that they can continue to receive appropriate quality health care, they must be assured that they will be afforded the same privacy protections as all citizens. CCS is committed to protecting the privacy interests of its patients. Your attention to this serious matter is greatly appreciated.