

Approved: 11-23-05 Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on February 3, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Becky Krahl, Kansas Legislative Research
Reagan Cussimano, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Representative Melody Miller
Kyle Smith, KBI
Rep. Huff
Captain John Meier, Lenexa Police Department
Chris Tymeson, Dept. Of Wildlife & Parks
John Badger, Chief Legal Counsel SRS
Chuck Simmons, KDOC

Others attending:

See attached list.

Representative Melody Miller, appeared before the committee to request a bill introduction for racial disproportionality in the juvenile justice system.

Representative Peterson made a motion that this request should be introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Kyle Smith, KBI, appeared before the committee to request a bill introduction providing that when the cause of death of an inmate is determined by an autopsy to be natural, no investigation by the KBI is required. (Attachment 1)

Representative Owens made a motion that this request should be introduced as a committee bill. Representative Decker seconded the motion. The motion carried.

Representative Kelsey, appeared before the committee to request a bill introduction that Kansas offender registration applies only to offenders 16 years and older.

Representative Owens made a motion that this request should be introduced as a committee bill. Representative Peterson seconded the motion. The motion carried.

Representative Decker, appeared before the committee to request a bill introduction concerning a controlled substance; relating to ingesting or injecting certain controlled substances.

Representative Petersen made a motion that this request should be introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

Representative Owens, appeared before the committee to request a bill introduction relating to juvenile offender classification relating to decaying sentences.

Representative Owens made a motion that this request should be introduced as a committee bill.

Representative Crow seconded the motion. The motion carried.

HB 2122 – Increasing from \$500 to \$1,000 the misdemeanor felony distinction in crimes involving a type of theft or loss of value.

Chairman Loyd opened the hearing on HB 2122.

Representative Huff appeared in favor of the bill. (Attachment 2) The legislature passed **HB 2271** in 2004 that increased the threshold distinction between misdemeanor and felony theft from \$500 to \$1,000 and was made to the crime of theft of services. To maintain uniformity, all similar crimes with similar threshold distinctions between misdemeanor and felony prosecution should be raised to \$1,000.

Christopher Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks, (Attachment 3) spoke in favor of the bill and proposed increasing the felony level threshold adjusting the commercial values of wildlife.

Captain John Meier, Lenexa Police Department, appeared in favor of the bill. (Attachment 4) The bill would establish the same dollar threshold for various crimes, and would benefit law enforcement officers by establishing the same criteria for various crimes involving theft or deception.

Scott Miller, City of Overland Park submitted written testimony in support of the bill. (Attachment 5)

Paul Morrison, District Attorney Johnson County, provided written testimony in support of the bill. (Attachment 6)

Chairman Loyd closed the hearing on HB 2122.

HB 2128 – Expansion of SRS access to criminal history records.

Chairman Loyd opened the hearing on HB 2128.

John Badger, Chief Counsel, Social and Rehabilitation Services (SRS), appeared in support of the bill. (Attachment 7) The bill would allow SRS to have increased access to state and national criminal history information in order to help insure the safety of children and vulnerable adults being cared for or served by the agency.

Chairman Loyd closed the hearing on HB 2128.

HB 2130 – Confidential mental health records; exchange of information between treatment facilities.

Chairman Loyd opened the hearing on HB 2130.

John Badger, Chief Counsel, Social and Rehabilitation Services (SRS), appeared in support of the bill. (Attachment 8) The bill would allow SRS sharing of forensic mental health records. This will support both more efficient management of the person's treatment related issues and more effective treatment outcomes for the patient.

Dr. John Randolph, Executive Director, Community Mental Health Centers of Kansas, provided information on the bill. (Attachment 9) An expected benefit would be enhanced mental health treatment of juveniles and adults in correctional settings. On the downside would be loss of privacy rights for persons in such settings.

Chairman Loyd closed the hearing on HB 2130.

HB 2147 – Psychiatric reports of defendants and inmates, disclosure of.

Chairman Loyd opened the hearing on HB 2147.

Chuck Simmons, KDOC, appeared before the committee in support of the bill. (Attachment 10) The bill amends KSA 75-5266 to condition the discretionary release of an inmate's or defendant's psychological evaluation report to the inmate's or defendant's friends to be upon authorization by the inmate or defendant, or their family. The Department recommends a technical amendment to the bill that references KSA 75-5266 regarding correctional facilities conducting psychological evaluations be generic, rather than to a specific correctional facility.

Representative Kinzer, appeared in support of the bill and to answer the question on originality of the bill. The bill originated in the Interim Committee on Local Government.

Chairman Loyd closed the hearing on HB 2147.

The Chairman appointed Representative Horst, Representative Owens, and Representative Faust-Goudeau to the subcommittee for **HB 2038**.

The meeting was adjourned at 3:05 pm. The next meeting is February 7, 2005.

**HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST**

DATE 2/3/2005

NAME	REPRESENTING
J BUTLER	KSC
Caryn Carter Gomar	Intern - Rep. Paul's
Amy Campbell	KS mental Health Coalition
Richard A. Samanilo	Kearney and Assoc
Elisa Rawls	intern KNASW
Sky Wentz	KNASW
Kelly Greinke	Governor's Fellow
Shelbi Sweeney	Assoc. of Community Mental Health (K+S)
John Randolph	Assoc of Community Mental Health (K+S) OF KS
Brian Nye	Intern - Rep Huff
Jeff Wenger	IJA
Emily Mueller	intern - Rep. Huntington
John Maier	Lenexa Police Dept.
Marcy Knight	City of Lenexa
Ron Seeber	Hein Law Firm
Kyle G. Smith	KBI
Chris Tymeson	KDWP
Kevin Jones	KDWP
Jane Ruthenford	Little Girl's Rel.
Puski Kwopie	Intern Rep Owens.



Kansas Bureau of Investigation

Larry Welch
Director

**House Committee on Corrections and Juvenile Justice
Bill Request
Kyle G. Smith**

Phill Kline
Attorney General

February 3, 2005

Chairman Loyd and members of the committee,

On behalf of the Kansas Bureau of Investigation I would request this committee introduce a bill, which would eliminate some unnecessary waste of the KBI's already taxed resources.

Last year the legislature passed two provisions in HB 2638 requiring the KBI to conduct an investigation into every death of a person who is in custody of the state. And the KBI supported that bill as an appropriate crosscheck to ensure the public's confidence in the system. However, there have not only been several more such investigations required than we anticipated, 31 from July 1, 2004 to January 1, 2005, but many have turned out to be from natural causes. We've even had to investigate the deaths of prisoners who die in hospice, with their families present and agreeing to 'pulling the plug.'

We do not believe that was the intent of the legislation and would ask that, where the cause of death is determined by an autopsy to be natural, no investigation by the KBI is required. I've attached a balloon with some suggested language.

Thank you for your consideration.

ices and shall determine the semiannual payment amount each such county is entitled to receive after making any adjustments for reductions or charges as required by or in accordance with this such act and applicable rules and regulations.

(c) Semiannual grant payments for counties entitled thereto under this such act shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of corrections or by a person or persons designated by the secretary of corrections to the county treasurers of such counties.

New Sec. 4. On and after July 1, 2004, whenever death occurs of an inmate, who is in the custody of the secretary of corrections and who resides in a correctional facility or boot camp operated by or contracted through the secretary or of a juvenile, who is in the custody of the commissioner of juvenile justice and who resides in an institution operated by or contracted through the commissioner, an investigation regarding the circumstances of the death shall be initiated by the Kansas bureau of investigation. A report of the findings of the investigation shall be made available to the chairperson of the senate judiciary committee and the house corrections and juvenile justice committee of the Kansas legislature and shall be subject to the open records act, K.S.A. 45-215, and amendments thereto.

New Sec. 5. On and after July 1, 2004, whenever the death of a prisoner in the custody of a city or county and residing in jail or in a facility contracted through the city or county, or both, occurs, an investigation regarding the circumstances of the death shall be initiated by the Kansas bureau of investigation. A report of the findings of the investigation shall be made available to the chairperson of the senate judiciary committee and the house corrections and juvenile justice committee of the Kansas legislature and shall be subject to the open records act, K.S.A. 45-215, and amendments thereto.

Sec. 6. K.S.A. 74-9501 is hereby amended to read as follows: 74-9501. (a) There is hereby established the Kansas criminal justice coordinating council.

(b) The council shall consist of the governor or designee, the chief justice of the supreme court or designee, the attorney general or designee, the secretary of corrections, the secretary of social and rehabilitation services superintendent of the highway patrol, the commissioner of juvenile justice and the director of the Kansas bureau of investigation.

(c) The director and all existing employees of the Kansas sentencing commission governor shall serve as designate staff to the Kansas criminal justice coordinating council, while continuing to serve at the will of the Kansas sentencing commission pursuant to K.S.A. 74-9103 and amendments thereto in the performance of its duties as outlined in K.S.A. 74-9101, 74-9106 and 21-4725 and amendments thereto. The director staff

No such investigation by the Kansas bureau of investigations shall be required if the cause of death is determined to be natural, by a qualified autopsy.

No such investigation by the Kansas bureau of investigation shall be required if the cause of death is determined to be natural, by a qualified autopsy.

HB 2122

Thank you Chairman Loyd, Vice Chairman Owens and Ranking member Davis.

As you will recall, HB2271 passed last year which increased the threshold distinction between misdemeanor and felony theft from \$500 to \$1,000. This adjustment was made last year to the crime of theft of services.

We believe that to maintain uniformity, all similar crimes with similar threshold distinctions between misdemeanor and felony prosecution should be raised to \$1,000. In essence, all of the crimes that we are including in this draft bill involve some type of theft or loss of value. For example, we feel that someone who damages their neighbor's property to the extent of \$800, or one who writes a bad check for \$800, or takes property valued at \$800, have all essentially committed the same crime and should be punished equally.

However, under the current statutory scheme, the person who actually stole the property (or committed “theft”) would only face misdemeanor prosecution; all of the others would face felony prosecution. We would like to see the punishment for these similar violations become more consistent.

Mr Chairman, the Department of Wildlife and Parks has ask me to tag along with this bill and they are asking for some increases beginning on page 12 of this bill.

Mr. Chairman, I would like to defer questions on this bill until the other conferees have given testimony.

Thank you Mr. Chairman,

Rep. David Huff

KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2122 relating to the Felony Provisions To House Committee on Corrections and Juvenile Justice

By Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks
3 February 2005

House Bill 2122 seeks to raise the monetary threshold for felony provisions from \$500 to \$1,000. As part of this legislation, K.S.A. 32-1005 is being recommended for revision to meet this standard. In addition to increasing the felony level threshold, the Kansas Department of Wildlife and Parks requests adjusting the commercial values of wildlife.

The current law establishes monetary values for wildlife, to be used in determining whether or not illegal commercial acts were committed and whether the illegal acts constitute felony crimes. The recommendations being made by the Department are based on the most current information available through the U. S. Fish and Wildlife Service. That information, published in August 2003, provides the values placed on various species and classifications of wildlife across the nation. Not all states have established values and when necessary, values for restitution or penalties are left to the individual courts. The remaining states have established values set by law or regulation. In considering the Department's recommendations, available values were calculated to obtain a mean average of all applicable categories. Values within the information relating to Kansas were not included in the calculations. The following information lists, by group classification or individual species, the comparison of wildlife values.

Summary Of Average Values For Wildlife By Classification

Animal Group	Average Value	KDWP Recommendation
Eagle	\$ 1,791.70	\$ 1,000.00
Deer	\$ 1,151.26	\$ 1,000.00
Antelope	\$ 1,019.15	\$ 1,000.00
Elk	\$ 2,098.28	\$ 1,500.00
Buffalo	\$ 2,435.71	\$ 1,500.00
Furbearers	\$ 95.99	\$ 25.00
Bobcat	\$ 335.75	\$ 200.00
Wild turkey	\$ 373.84	\$ 200.00
Raptors	\$ 555.13	\$ 500.00
Gen. Game & Non-game animals	\$ 154.87	\$ 50.00
Turtle	\$ 45.50	\$ 25 each or \$16/lbs processed
Frogs	\$ 20.08	\$ 4.00
Threatened & Endangered	\$ 1,358.70	\$ 500.00
Any wildlife not included above	\$ 39.42	\$ 25.00

Office of the Secretary

1020 S Kansas Ave., Ste. 200, Topeka, KS 66612-1327

Phone 785-296-2281 Fax 785-296-6953 www.kdwp.state.ks.us

House C & JJ
2-3-05
Attachment 3

4

TO: House Corrections and Juvenile Justice Committee

FROM: Captain John Meier Lenexa Police Department

RE: HB2122

February 1, 2005

The City of Lenexa and the Lenexa Police Department support HB2122. This piece of legislation would establish the same dollar threshold for various crimes, as was established last year for theft. Last session the legislature passed HB2271 which changed the value and severity levels for theft and theft of services. In that piece of legislation theft became a felony when the value of the property taken reached \$1000; this replaced the previous amount of \$500. HB2122 addresses other crimes, including some other forms of theft, which were not impacted by last year's bill and attempts to standardize the \$1000 felony threshold among these various property crimes.

This bill would benefit law enforcement officers by establishing the same criteria for various crimes involving theft or deception. As the law now stands giving a worthless check for \$550 is a felony whereas if an individual just stole the same \$550 worth of property it would be a misdemeanor. This bill would eliminate confusion over the dollar criteria for each type of theft and bring conformity to the statutes. Another advantage of this bill is that a number of cases would be transferred from the district court to municipal court where they could be dealt with in a more expedient manner.

I thank the committee for the opportunity to speak today and respectfully request this committee report this bill favorably to the House.



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Overland Park, Kansas 66212
• Fax: 913-895-5003
www.opkansas.org

February 3, 2005

Kansas House Corrections and Juvenile Justice Committee
Kansas State Capitol
300 SW 10th St.
Topeka, Kansas 66612

RE: HOUSE BILL NO. 2122

Dear Chairperson Loyd and Hon. Members of the Committee:

My name is Scott Miller. I have been a Kansas prosecutor for more than ten years and am currently employed in that capacity by the City of Overland Park. I am writing in support of House Bill No. 2122, currently under consideration by your committee.

Bill No. 2122 increases the monetary threshold that divides felony and misdemeanor levels of certain property offenses to be the same as the one found in our theft statute, K.S.A. 21-3701. I believe this change benefits Kansas law enforcement and the public.

Municipal court jurisdiction over these types of offenses is in large part defined by their felony or misdemeanor status. Police officers are regularly called upon to decide whether a certain offense should be charged through municipal court or referred to district court for prosecution, and having one consistent dividing line for financial value helps guarantee that a law enforcement officer's decision about which prosecution agency to refer a case to is the correct one.

Public belief in the fundamental fairness of the legal system should also be enhanced by this bill, as similarly situated defendants will face identical penalties for identical ranges of financial loss, regardless of the title or specific elements of the crime.

For these reasons, I would ask that House Bill No. 2122 be given favorable consideration.

Sincerely,
Scott J. Miller

House C & JJ
2-3-05
Attachment 5

OFFICE OF DISTRICT ATTORNEY
PAUL J. MORRISON, DISTRICT ATTORNEY

February 1, 2005

Corrections and Juvenile Justice Committee
STATE OF KANSAS

RE: House Bill 2122

Dear Committee Members:

I'm writing this letter to offer my support for House Bill 2122. As you are aware, last year the legislature amended the Theft statute (K.S.A. 21-3701) by raising the threshold level for a felony from \$500 to \$1,000. This brought Kansas more in line with what most other states have done in the last few years. I believe it was a good change.

As you are aware, there are many other statutes that are tied to the \$500 level as the felony threshold. As an example, the threshold amount for felony Criminal Damage to Property is raised from \$500 to \$1,000. This bill, "cleans up", many of these inequities, which will provide for consistency in our Criminal Code. I believe it's the right thing to do and support this bill.

Sincerely,



Paul J. Morrison,
District Attorney

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Kansas Department of

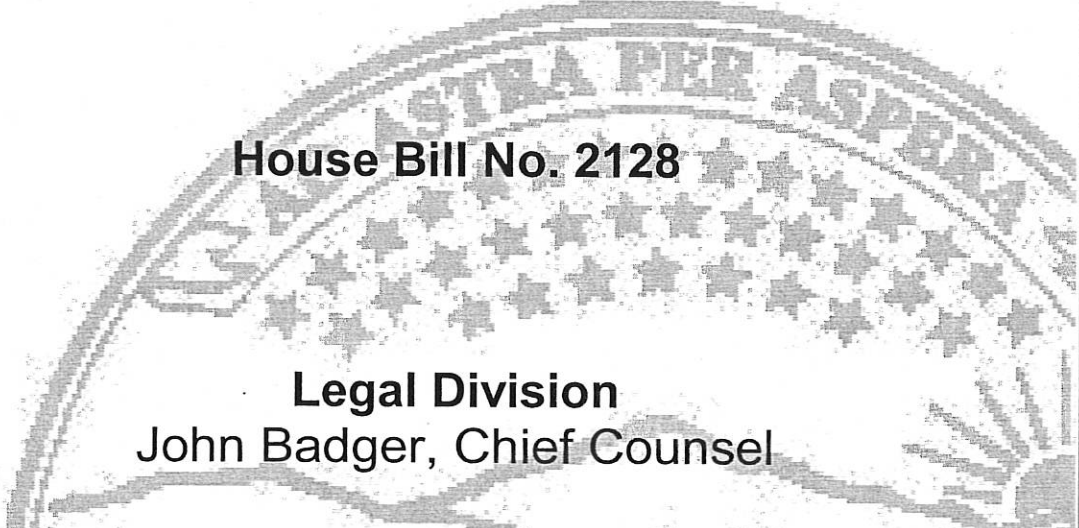
Social and Rehabilitation Services

Gary Daniels, Acting Secretary

**House Committee on Corrections and Juvenile
Justice**
February 3, 2005

House Bill No. 2128

Legal Division
John Badger, Chief Counsel



For additional information contact:
Public and Governmental Services Division
Kyle Kessler, Director of Legislative and Media Affairs

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House C & JJ
2-3-05
Attachment 7

**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

House Committee on Corrections and Juvenile Justice
February 3, 2005

House Bill No. 2128 - Access to Criminal History Records

Chairman Loyd and members of the Committee, I am John Badger, Chief Counsel with Social and Rehabilitation Services (SRS). Thank you for the opportunity to appear before you today in support of HB 2128, which was introduced by this Committee at the request of SRS. The bill would allow SRS to have increased access to state and national criminal history information in order to help insure the safety of children and vulnerable adults being cared for or served by the agency.

Under current law, SRS is generally able to obtain criminal history information relating primarily to convictions occurring within the state of Kansas. This bill would clarify what we can now get, and expand access to include information involving such things as arrests, expungements, juvenile offenses, diversions and other criminal history record information in the possession of the KBI. Additionally, this legislation would allow SRS, if the Secretary determines it necessary, to access these same records on a nationwide basis. Having authority to obtain this additional information would add an important tool in protecting children and vulnerable adults by more accurately determining the qualifications of individuals providing care and services to them.

In implementing subsection (c) of this bill involving a nationwide criminal records check, SRS intends to develop specific policy defining when this expanded access will be utilized. The primary need will occur when an employee or other individual has recently come to Kansas from another state and a thorough background check is needed to determine if he or she has committed a prohibited crime in another jurisdiction.

In developing this legislation, the agency worked closely with the KBI to make sure it meets all requirements for accessing the intended information. Further, the language was approved by the FBI for purposes of obtaining nationwide criminal records information.

For the reasons stated above, it is respectfully requested the Committee act favorably on HB 2128.

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

Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

House Corrections and Juvenile Justice Committee

February 3, 2005

House Bill 2130

Division of Health Care Policy
John Badger, SRS General Counsel
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For additional information contact:
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**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

House Corrections and Juvenile Justice Committee
February 3, 2005

House Bill 2130

Chairman Loyd and members of the committee, I am John Badger, chief legal counsel at SRS. I appreciate the opportunity to appear before you today in support of HB 2130 which allows for sharing of forensic mental health records.

In addition to other state and federal legal protections afforded psychiatric and substance abuse treatment records, K.S.A. 65-5601 through 65-5605 provide privileged status to those records, with important practice exceptions. SRS has requested limited changes to KSA 65-5603, part (13), expanding the ability to promote continuity of care by communicating treatment information and thus to more effectively meet the needs of a growing number of patients at the state psychiatric hospitals. The changes proposed in this bill – to allow the exchange of needed treatment-related information for patients being seen in state psychiatric hospitals or other treatment facilities, and also held in jails or correctional facilities – will assist practitioners in all of those arenas to be better informed about and thus better address the mental health needs of the patients involved. This will support both more efficient management of the person's treatment related issues and more effective treatment outcomes for the patient.

To explain the context of these patient needs: The number of individuals with significant mental illness associated with the criminal justice system has increased across the nation and continues to rise. In an October 2003 study which reported extensive data from states, the American Psychiatric Association and the United States Justice Department, the Human Rights Watch reported that:

- As many as one in five people in America's prisons and jails have mental illness
- The level of mental illness of people in those settings has been growing more severe in the past few years.

Social barriers and support needs, such as the lack of affordable housing, limited employment opportunities, substance abuse, limited access to affordable psychotropic medications, and challenges in accessing treatment especially in the rural communities increase the likelihood of increased involvement of the mentally ill with the criminal justice system.

Kansas has consistent experiences. According to the January 2004 Kansas Jail Survey completed by SRS and the Governor's Mental Health Services Planning Council - Forensic Subcommittee:

- 60 percent of respondents indicated there has been an increase in inmates with mental illness booked into county jails within the last five years,
- And many reported the severity of the mental illnesses had increased as well.

In its 2004 annual report, the Kansas Department of Corrections (KDOC) noted:

- 10 percent of 6000 offenders released annually are severely and persistently mentally ill;
- A total of 20 percent of released offenders require mental health care;
- At least 16 percent of all offenders in the KDOC require a psychotropic medication;
- Offenders with mental illness return to state correctional facilities on condition violations at the rate of 75-80 percent, compared to a rate of 40-45 percent for offenders without a mental illness.

The number of people being committed to Kansas' state psychiatric hospitals in direct connection with a pending criminal case likewise has risen significantly. In calendar years 2004,

- 369 people were admitted to state hospitals for forensic services – such as competency evaluation or treatment, treatment for people found not guilty of serious felony crimes because of mental disease, or similar services in connection with a criminal case.
- The number of forensic admissions at Osawatomie State Hospital has increased nearly twofold in the past two years.
- Larned State Hospital reports increased requests for forensic services and implemented a waiting list for people needing such services due to the growth.

In addition, people committed for forensic services often have complex, multiple mental illnesses and other significant life issues which require intense psychiatric care and careful discharge or other aftercare planning. Often people involved with pending criminal cases are necessarily sent back and forth between correctional facilities or jails and state psychiatric treatment facilities in order to fully assess and then respond to their psychiatric needs. When such a patient returns to a local jail or correctional facility, his or her mental illness can worsen if continuity of care is not in place. This in turn results in negative outcomes for the patient as well as inefficiency for the judicial system in getting the person's status assessed and adjudicated.

This concludes my testimony. I will be glad to stand for questions.



Association of Community Mental Health Centers of Kansas, Inc
720 SW Jackson, Suite 203, Topeka, Kansas 66603
www.acmhck.org

Keith Rickard, President
Michael J. Hammond, Executive Director

Testimony on House Bill 2130
To the House Corrections and Juvenile Justice Committee
February 3, 2005

For more information contact Michael Hammond or Sheli Sweeney
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House C & JJ
2-3-05
Attachment 9

Testimony to the House Corrections and Juvenile Justice Committee February 3, 2005

Mr. Chairman and members of the Committee, thank you for the opportunity to provide testimony on House Bill 2130. I am Dr. John Randolph, Executive Director of the Mental Health Center of East Central Kansas, representing the Association of the Community Mental Health Centers of Kansas, Inc. (ACMHCK). Our Mental Health Center, along with 26 others and two affiliates, comprise the membership of the Association of Community Mental Health Centers of Kansas, Inc.

In Kansas, there are 29 CMHCs, all of which provide services to meet the particular needs of their local communities. According to K.S.A. 65-5603, Community Mental Health Centers in Kansas and State Hospitals already share treatment information as needed for clients, to ensure appropriate and timely treatment of those with mental illness.

House Bill 2130 amends the privileged communication statutes to allow exchange of treatment information and confidential communications between treatment facilities (defined in 65-5601) and jails and other correctional facilities, without patient consent. An expected benefit would be enhanced mental health treatment of juveniles and adults in correctional settings. An inevitable downside would be loss of privacy rights for persons in such settings.

Please consider the following questions and issues in your deliberations.

- Which persons in jails, juvenile and adult facilities would have access to mental health records?
- Which parts of such records would be shared?
- What are the ramifications of some treatment facilities restricting communications to a summary statement, or declining to provide clinical information without patient release?
- Has it been determined whether H.B. 2130 provisions are consistent with HIPAA restrictions?

Please consider these questions in deciding the language to use in House Bill 2130 as you proceed in deliberations.

Mr. Chairman and members of the Committee, thank you for the opportunity to share some information with you on this bill. I appreciate your time and consideration. If the Association can be of additional assistance to the Committee, please feel free to contact Michael Hammond or Sheli Sweeney at (785) 234-4773.

10



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2147

House Committee on Corrections and Juvenile Justice

By Roger Werholtz
Secretary
Kansas Department of Corrections

February 3, 2005

HB 2147 amends K.S.A. 75-5266 to condition the discretionary release of an inmate's or defendant's psychological evaluation report to the inmate's or defendant's friends to be upon authorization by the inmate or defendant, or their family. The provisions of K.S.A. 75-5266 which govern the persons who have unrestricted access to those reports; courts, prosecutors, defense counsel, parole board, corrections staff, and others authorized by the Secretary remain unchanged.

HB 2147 presents no operational concern to the Department. Historically, the Department has not been presented with a situation whereby compelling reasons have caused the Department to release psychological reports to friends of an inmate. However, in evaluating the release of a psychological report to a friend of the subject of the report, the Department would of course consider the extremely personal nature of report. HB 2147 statutorily recognizes that concern and requires the consent of the inmate or his or her family.

The Department recommends a technical amendment to HB 2147 in order to alleviate the need to amend the references to specific correctional facilities. The Department proposes that references in K.S.A. 75-5266 regarding correctional facilities conducting psychological evaluations be generic rather than to a specific correctional facility. A balloon amendment incorporating this recommendation is attached.

The Department urges favorable consideration of HB 2147 and the proposed amendment.

W/attachment

Cc: Legislation file w/attachment

HOUSE BILL No. 2147

By Committee on Governmental Organization and Elections

1-25

9 AN ACT concerning psychiatric evaluation reports of defendants and
10 inmates; relating to the disclosure thereof; amending K.S.A. 75-5266
11 and repealing the existing section.
12

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

14 Section 1. K.S.A. 75-5266 is hereby amended to read as follows: 75-
15 5266. Psychiatric evaluation reports of ~~the Topeka correctional facility~~ facilities
16 ~~and the Lansing correctional facility~~ shall be privileged and shall not be
17 disclosed directly or indirectly to anyone except as provided herein. The
18 court, the district or county attorney, the attorney for the defendant or
19 inmate, the Kansas parole board and its staff, the wardens and classifi-
20 cation committees of the state correctional institutions and those persons
21 authorized by the secretary shall have access to such reports. Such reports
22 may be disclosed to: (1) The defendant or inmate, ~~the~~ or members of the
23 ~~defendant's or inmate's family or the;~~ (2) ~~the~~ defendant's or inmate's
24 friends ~~or when authorized by the defendant or inmate or the defendant's~~
25 ~~or inmate's family;~~ or (3) the superintendent or director of any other state
26 institution when authorized by the warden, ~~of the Topeka correctional~~
27 ~~facility,~~ secretary of corrections ~~or the warden of the Lansing correctional~~ or
28 ~~facility.~~ Employees of the correctional institutions under the supervision
29 of the secretary are expressly forbidden from disclosing the contents of
30 such reports to anyone except as provided herein. Nothing in this section
31 shall be construed as preventing the attorney for the defendant or inmate
32 from discussing such reports with the defendant or inmate.

33 Sec. 2. K.S.A. 75-5266 is hereby repealed.

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