

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 1, 2005, in Room 123-S of the Capitol.

All members were present except:

Greta Goodwin- excused  
Donald Betts- excused  
David Haley- excused  
Derek Schmidt- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Wade Bowie, Staff Counsel, Juvenile Justice Authority  
John Badger, Chief Legal Counsel, Department of Social and Rehabilitation Services  
Tim Madden, Senior Legal Counsel, Department of Corrections

Others attending:

See attached list.

Chairman Vratil opened the meeting and hearing on **HB 2034**.

**HB 2034 Judicial review and civil enforcement of agency actions**

Proponent:

Wade Bowie, Staff Counsel for the Juvenile Justice Authority, testified on behalf of the bill. The bill exempts the Juvenile Justice Authority from judicial review, similar to procedures already set in place for the Department of Corrections. The Juvenile Justice Authority was required by statute to create regulations, which go into effect in April 8, 2005, governing the Juvenile Justice Authority. In the process of doing that, it was discovered that, under current law, there is no protection of the Agency's disciplinary action, which means that any offender unsatisfied with the discipline imposed would have the ability to appeal to the district court. This corrects the due process procedures, eliminating the appeal process at the district court level, leaving in place three levels of due process review within the Juvenile Justice Authority. (Attachment 1)

Chairman Vratil closed the hearing on **HB 2034** and opened the hearing on **HB 2130**.

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

Proponents:

John Badger, Chief Legal Counsel for The Department of Social and Rehabilitation Services, testified in support of the bill. The bill changes K.S.A. 65-5603, expanding the ability to promote continuity of care by allowing the exchange of needed treatment-related information for patients being seen in state psychiatric hospitals or other treatment facilities, including jails and correctional facilities. (Attachment 2)

Wade Bowie, Staff Counsel for the Juvenile Justice Authority, stated the Juvenile Justice Authority supported the bill, but he was requesting a minor amendment be made on page 2, lines 33, 37, and 40, specifically replacing the word "centers" with "facilities" when reference is made to juvenile detention facilities. Mr. Bowie stated that the language error was just realized and needed to be changed in order to be correct. (Attachment 3)

Chairman Vratil closed the hearing on **HB 2130** and opened the hearing on **HB 2147**.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 1, 2005, in Room 123-S of the Capitol.

**HB 2147 Psychiatric reports of defendants and inmates, disclosure of**

**Proponent:**

Tim Madden, Senior Legal Counsel, Department of Corrections, testified in support of the bill. The bill 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 upon authorization by the inmate or defendant or their family. (Attachment 4)

Chairman Vratil closed the hearing on **HB 2147** and opened the hearing on **HB 2206**.

**HB 2206 Disposal of abandoned inmate property**

**Proponent:**

Tim Madden, Department of Corrections, testified in support of the bill. The bill amends K.S.A. 75-5257 so that the disposition of unclaimed property of an inmate would be consistent with the provisions of K.S.A. 75-52,135 and in conformity with the Disposition of Unclaimed Property Act. (Attachment 5)

Chairman Vratil closed the hearing on **HB 2206**.

Chairman Vratil asked the Committee to consider final action on the bills heard and there were no objections.

**Final Action:**

**HB 2206 Disposal of abandoned inmate property**

There was a motion to recommend the bill favorably and put it on the Consent Calendar. Senator Donovan moved, seconded by Senator Bruce, and the motion carried.

**Final Action:**

**HB 2147 Psychiatric reports of defendants and inmates, disclosure of**

There was a motion to recommend the bill favorably and put it on the Consent Calendar. Senator Bruce moved, seconded by Senator Donovan, and the motion carried.

**Final Action:**

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

There was a motion to amend the bill in the manner proposed by Mr. Bowie in his balloon amendment. Senator Bruce moved, seconded by Senator Journey, and the motion carried. There was a motion to recommend the bill favorably as amended. Senator Journey moved, seconded by Senator O'Connor, and the motion carried.

**Final Action:**

**HB 2034 Judicial review and civil enforcement of agency actions**

There was a motion to recommend the bill favorably. Senator Bruce moved, seconded by Senator O'Connor, and the motion carried.

Chairman Vratil stated that minutes for January 18, 2005, were distributed to the Committee. There was a motion to approve the minutes. Senator O'Connor moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 2, 2005.



# KANSAS

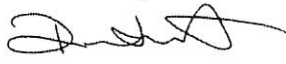
JUVENILE JUSTICE AUTHORITY  
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

Submitted by  
Wade Bowie

## MEMORANDUM

**TO:** Senator John Vratil, Chair  
Members of the Senate Committee on Judiciary

**FROM:** Denise L. Everhart, Commissioner 

**DATE:** March 1, 2005

**SUBJECT:** Testimony on HB 2034

Mr. Chairman and members of the Committee, I appreciate the opportunity to offer testimony in support of House Bill 2034.

HB 2034 proposes to modify K.S.A. 77-603 to exempt the Juvenile Justice Authority (JJA) from the act for judicial review and civil enforcement of agency actions (KJRA), K.S.A. 77-601 *et seq.*, but only as to those actions concerning the management, discipline or release of persons in the custody of the commissioner.

The proposed amendment to K.S.A. 77-603 is necessitated by a series of pending regulations promulgated by JJA complying with the legislature's intent that regulations be written to govern the conduct and discipline of juvenile offenders committed to the Commissioner's custody. See, *e.g.*, K.S.A. 2003 Supp. 75-7024 and K.S.A. 76-3203.

Unless HB 2034 is enacted, any offender dissatisfied with the outcome of disciplinary proceedings may be expected to routinely seek review of the agency action before the district court. JJA facility operations will be adversely affected by having to divert personnel and resources during the normal business day to transport offenders and provide security at hearings before the district court. This will also disrupt educational and treatment plans of those offenders involved and, in all probability, indirectly impact other offenders whose education and treatment plans are in consonance with those of the absent offenders.

Similarly, there may be a budgetary impact on local communities since a juvenile offender's attorney of record continues as the offender's attorney for all purposes related to the case. See K.S.A. 38-1606(b). While generally institutional disciplinary proceedings do not demand or otherwise require counsel be available to the offender, see *Wolff v. McDonnell*, 418 U.S. 539 (1974), judicial review of final disciplinary orders pursuant to the KJRA may be viewed as legal

Juvenile Justice Authority  
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activity related to or associated with the underlying juvenile case, especially to the extent that a disciplinary penalty involves the loss of good time. To the extent that is so, there may be an impact on the workload of the attorney of record of those offenders who seek judicial review.

This bill does not completely foreclose an offender's access to the courts on matters related to disciplinary proceedings, as an offender would still have the ability to challenge a disciplinary conviction by seeking a writ of habeas corpus pursuant to K.S.A. 60-1501, *et seq.*

There would be negligible budget impact on JJA in particular or the state in general if HB 2034 were enacted.

However, if the proposed legislation is not enacted, it is expected that juvenile offenders will seek judicial review of adverse disciplinary findings and orders arising out of any class I or class II disciplinary violations that were unsuccessfully appealed within the established agency appeals process. Such appeals could have a substantial budgetary impact on the agency, whose legal counsel would be required to appear and defend the action in the venue in which the disciplinary proceedings occurred. Additionally, costs will be incurred in the transportation and security of the juvenile offender who are required to appear in district court to testify in any proceedings held in the judicial review action.

The Juvenile Justice Authority requests your favorable consideration of House Bill 2034.

Kansas Department of

# Social and Rehabilitation Services

Gary Daniels, Acting Secretary

**Senate Judiciary Committee**  
March 1, 2005

**House Bill 2130**

**Division of Health Care Policy**  
John Badger, SRS General Counsel  
785.296.3967

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

Docking State Office Building  
915 SW Harrison, 6<sup>th</sup> Floor North  
Topeka, Kansas 66612-1570  
phone: 785.296.0141  
fax: 785.296.4685  
[www.srskansas.org](http://www.srskansas.org)

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3-1-05

Attachment 2

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

Senate Judiciary Committee  
March 1, 2005

**House Bill 2130**

Chairman Vratil 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.



Submitted by  
WADE Bowie

Session of 2005

## HOUSE BILL No. 2130

By Committee on Corrections and Juvenile Justice

1-21

10 AN ACT concerning confidential communications and information; re-  
11 relating to treatment facility patients; amending K.S.A. 2004 Supp. 65-  
12 5603 and repealing the existing section.

13

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

15 Section 1. K.S.A. 2004 Supp. 65-5603 is hereby amended to read as  
16 follows: 65-5603. (a) The privilege established by K.S.A. 65-5602 and  
17 amendments thereto shall not extend to:

18 (1) Any communication relevant to an issue in proceedings to invol-  
19 untarily commit to treatment a patient for mental illness, alcoholism or  
20 drug dependency if the treatment personnel in the course of diagnosis or  
21 treatment has determined that the patient is in need of hospitalization;

22 (2) an order for examination of the mental, alcoholic, drug depend-  
23 ency or emotional condition of the patient which is entered by a judge,  
24 with respect to the particular purpose for which the examination is  
25 ordered;

26 (3) any proceeding in which the patient relies upon any of the afore-  
27 mentioned conditions as an element of the patient's claim or defense, or,  
28 after the patient's death, in any proceeding in which any party relies upon  
29 any of the patient's conditions as an element of a claim or defense;

30 (4) any communication which forms the substance of information  
31 which the treatment personnel or the patient is required by law to report  
32 to a public official or to be recorded in a public office, unless the statute  
33 requiring the report or record specifically provides that the information  
34 shall not be disclosed;

35 (5) any information necessary for the emergency treatment of a pa-  
36 tient or former patient if the head of the treatment facility at which the  
37 patient is being treated or was treated states in writing the reasons for  
38 disclosure of the communication and makes such statement a part of the  
39 treatment or medical record of the patient;

40 (6) information relevant to protect a person who has been threatened  
41 with substantial physical harm by a patient during the course of treatment,  
42 when such person has been specifically identified by the patient, the treat-  
43 ment personnel believes there is substantial likelihood that the patient

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1 will act on such threat in the reasonable foreseeable future and the head  
2 of the treatment facility has concluded that notification should be given.  
3 The patient shall be notified that such information has been  
4 communicated;

5 (7) any information from a state psychiatric hospital to appropriate  
6 administrative staff of the department of corrections whenever patients  
7 have been administratively transferred to a state psychiatric hospital pur-  
8 suant to the provisions of K.S.A. 75-5209 and amendments thereto;

9 (8) any information to the patient or former patient, except that the  
10 head of the treatment facility at which the patient is being treated or was  
11 treated may refuse to disclose portions of such records if the head of the  
12 treatment facility states in writing that such disclosure will be injurious  
13 to the welfare of the patient or former patient;

14 (9) any information to any state or national accreditation, certification  
15 or licensing authority, or scholarly investigator, but the head of the treat-  
16 ment facility shall require, before such disclosure is made, a pledge that  
17 the name of any patient or former patient shall not be disclosed to any  
18 person not otherwise authorized by law to receive such information;

19 (10) any information to Kansas advocacy and protective services, inc.  
20 which concerns individuals who reside in a treatment facility and which  
21 is required by federal law and federal rules and regulations to be available  
22 pursuant to a federal grant-in-aid program;

23 (11) any information relevant to the collection of a bill for profes-  
24 sional services rendered by a treatment facility; or

25 (12) any information sought by a coroner serving under the laws of  
26 Kansas when such information is material to an investigation or proceed-  
27 ing conducted by the coroner in the performance of such coroner's official  
28 duties. Information obtained by a coroner under this provision shall be  
29 used for official purposes only and shall not be made public unless ad-  
30 mitted as evidence by a court or for purposes of performing the coroner's  
31 statutory duties;

32 (13) any communication and information ~~by and between or among~~ *facilities*  
33 ~~treatment facilities, correctional institutions, jails or juvenile correctional~~ *, juvenile detention centers,*  
34 ~~facilities~~ regarding a proposed patient, patient or former patient for pur-  
35 poses of promoting continuity of care ~~by and between the state psychiatric~~  
36 ~~hospitals and the community mental health centers~~ *treatment facilities,*  
37 ~~correctional institutions, jails or juvenile correctional facilities;~~ *, juvenile detention centers,*  
38 proposed patient, patient, or former patient's consent shall not be necessary  
39 to share evaluation and treatment records ~~by and between or among~~ *facilities*  
40 ~~treatment facilities, correctional institutions, jails or juvenile correctional~~ *, juvenile detention centers,*  
41 ~~facilities~~ regarding a proposed patient, patient or former patient; ~~as used~~  
42 ~~in this paragraph (13), "proposed patient" and "patient" shall have the~~  
43 ~~meanings respectively ascribed thereto in K.S.A. 2004 Supp. 59-2946 and~~

- 1 ~~amendments thereto;~~  
2 (14) the name, date of birth, date of death, name of any next of kin  
3 and place of residence of a deceased former patient when that informa-  
4 tion is sought as part of a genealogical study; or  
5 (15) any information concerning a patient or former patient who is a  
6 juvenile offender in the custody of the juvenile justice authority when the  
7 commissioner of juvenile justice, or the commissioner's designee, re-  
8 quests such information.  
9 (b) The treatment personnel shall not disclose any information sub-  
10 ject to subsection (a)(3) unless a judge has entered an order finding that  
11 the patient has made such patient's condition an issue of the patient's  
12 claim or defense. The order shall indicate the parties to whom otherwise  
13 confidential information must be disclosed.  
14 Sec. 2. K.S.A. 2004 Supp. 65-5603 is hereby repealed.  
15 Sec. 3. This act shall take effect and be in force from and after its  
16 publication in the statute book.

# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

*Submitted by  
Tom Madden*

Testimony on HB 2147  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

March 1, 2005

HB 2147 as Amended by the House, 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 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 recommended a technical amendment to the House Committee on Corrections and Juvenile Justice to alleviate the need to amend the references to specific correctional facilities. The Department proposed to that Committee, that references in K.S.A. 75-5266 regarding correctional facilities conducting psychological evaluations, be generic rather than to a specific correctional facility. HB 2147 as Amended by House Committee adopted that recommendation.

HB 2147 as Amended passed in the House by a vote of 118 to 0. The Department urges favorable consideration of HB 2147 as Amended.

Cc: Legislation file

# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

*Submitted by  
Tim Madden*

Testimony on HB 2206  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

March 1, 2005

HB 2206 amends K.S.A. 75-5257 so that the disposition of unclaimed property of an inmate pursuant to that statute would be consistent with the provisions of K.S.A. 75-52,135 and in conformity with the Disposition of Unclaimed Property Act. Currently, K.S.A. 75-5257 provides that money and property of persons who die in custody, if unclaimed within a year, shall be applied to the department's revolving fund. In contrast, K.S.A. 75-52,135 provides that such property, if unclaimed within 90 days, is to be reported to the State Treasurer and disposed of in accordance with the Disposition of Unclaimed Property Act. The department follows the provisions of K.S.A. 75-52,135 in regard to the disposition of unclaimed property.

The amendment of K.S.A. 75-5257 by HB 2206 would not affect the provisions of that law governing the department's obligations relative to the control and preservation of inmate money and property while the inmate is in custody. HB 2206 passed out of the House by a vote of 120-0. The Department urges favorable consideration of HB 2206.