

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 16, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Helen Pedigo, Office of Revisor of Statutes

Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council

Jean Holthaus, Topeka Coalition on Adult Abuse

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

Tim Madden, Kansas Department of Corrections

Kyle Smith, Special Agent, Kansas Bureau of Investigation

Others attending:

See attached list.

Chairman Vratil opened the meeting and hearing on Sub HB 2457.

Sub HB 2457 Civil procedure; service of process, by return receipt delivery

Proponent:

Randy Hearrell, Kansas Judicial Council, testified that the bill contains technical amendments to a section of the Code of Civil Procedure. In 2000, "certified mail" was removed from the Civil Code as a defined term and replaced with the phrase "return receipt delivery". Mr. Hearrell stated that the bill amends K.S.A. 60-304 to insert "return receipt delivery" in ten places where "certified mail" appears in the section. (Attachment 1)

Chairman Vratil closed the hearing on Sub HB 2457 and opened the hearing on Sub HB 2038.

Sub HB 2038 Multidisciplinary teams for adults

Proponents:

Jean Holthaus, representing the Topeka Coalition on Adult Abuse, stated that one of the coalition's goals was the establishment of an adult multidisciplinary team (MDT). She stated they were patterning their team after the children's multidisciplinary team that is a very successful initiative in Shawnee County. (Attachment 2) Ms. Holthaus stated that the first adult MDT was formed about two weeks ago. A grant was received for \$14,000 from the Topeka Community Foundation to hire the Prairie Advocacy Center to do the recruiting, training and consultation. The team is made up of volunteers, and there is no cost to the State.

Chairman Vratil questioned why legislation was necessary to accomplish the establishment of an adult MDT. He questioned why the Secretary of Social and Rehabilitation Services (SRS) or the Secretary of the Department of Aging could not appoint these MDTs right now, without the intervention of a judge.

Dennis Priest, Program Administrator for SRS, stated that Secretary Daniels could not be present at the hearing but did submit written testimony in support of the bill. (Attachment 3) Chairman Vratil posed the same question to Mr. Priest, as to why this legislation is necessary. Mr. Priest stated that the bill was crafted after similar statutory authority that was placed for the creation of teams that deal with children. The Departments do not have direct authority over the disciplinary teams that are established on the children's side. The Department would be involved bringing cases before the team and using the team as a resource. SRS would be primarily a participant or partner rather than have direct oversight authority.

Chairman Vratil asked who was envisioned in the bill as having direct oversight and authority. Mr. Priest

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 16, 2005, in Room 123-S of the Capitol.

stated that the district court would have the initial oversight in terms of determining the makeup of the team. The court would formally appoint the team, and then the team would become a free-standing committee, one that would be independent and be able to investigate situations and cases of circumstance. Mr. Priest stated that the concept of the structure has evolved outside the structure of any of the state agencies. Mr. Priest believed that SRS wouldn't want any direct connection with the MDT, so the team would not be influenced by the Department.

Chairman Vratil asked for the Secretary of SRS and the Secretary of the Department on Aging to come before the Committee and address the question as to why this legislation is necessary.

Senator Bruce stated that when he looks at the children's MDT, many times they are called in to help resolve child abuse and child molestation cases, and he believes it is like comparing apples and oranges when comparing children to adult MDTs.

Senator Goodwin asked Ms. Holthaus about the Chief Judge making these appointments. Senator Goodwin stated that she knew of no Chief Judges that go out into the community and find out who does what, so she questioned who gives a Chief Judge the names that he is to appoint. Ms. Holthaus stated that the names would come through the Prairie Advocacy Center. Senator Goodwin questioned why the Chief Judge would then have oversight of the team when he probably doesn't know these people. Ms. Holthaus suggested that could be true, and suggested that when the Secretaries of SRS and Aging appear before the Committee, that the Board President of Prairie Advocacy Center, Sue Lockett, appear, who not only has an understanding of the child MDTs, but has been involved in recruiting members for the adult MDT.

Senator Umbarger stated that the Committee is supportive of the concept, and are just trying to understand how the MDT will work. He asked about Ms. Holthaus' written comments that state, "the legislation will also provide additional resources...", and were those resources coming from SRS. Mr. Priest, stated that they were regarding the resources as being the team, itself.

Written testimony was provided by Secretary Pamela Johnson-Betts, Department on Aging. (Attachment 4) Chairman Vratil indicated that he would not close the hearing yet, in hopes that the Secretaries and Ms. Lockett could appear before the Committee.

Chairman Vratil opened the hearing on **Sub HB 2051**.

Sub HB 2051 Timing of offender release notification

Proponent:

Tim Madden, Kansas Department of Corrections (DOC), stated that Secretary Werholtz submitted written testimony in support of **Sub HB 2051**. In that testimony, the Secretary describes an unfortunate situation where an inmate was placed on a community corrections work crew in the Kansas City, Kansas, area, and NCIC wants a warrant check conducted by the DOC to see if there were any outstanding warrants. That inquiry came back that there were no warrants for that person. Unfortunately, warrants had been issued by the district court charging this individual with aggravated battery, aggravated robbery, kidnaping, criminal possession of a firearm, rape, aggravated criminal sodomy, and aggravated intimidation of a witness. The Department did not know about the existence of that warrant. The offender escaped from the Kansas City, Kansas work crew. (Attachment 5)

The Department recommended to the House Committee that the substitute bill be introduced. The substitute bill basically looks at the Criminal History Records Information Act (CHRIA) as a vehicle to share information between the KBI's central repository and the DOC. The CHRIA lists a number of events that law enforcement agencies and courts are to provide to the KBI's central repository. One of those events is the issuance of an arrest warrant. Another event is the imposition of a sentence. The bill also provides that the KBI will provide information regarding the issuance of an arrest warrant for the imposition of a sentence to the DOC within seven days of receiving that information. There is also a provision that codifies the KBI's current practice of not charging law enforcement agencies for criminal record history information.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 16, 2005, in Room 123-S of the Capitol.

Chairman Vratil questioned whether there was any anticipated bed space impact, and Mr. Madden stated there is no anticipated bed space impact under **Sub HB 2051**.

Senator Bruce questioned that it would be up to the local law enforcement agency to contact the DOC if they want an offender. Mr. Madden stated under current law, that information is required by CHRIA. This bill provides for the sorting and communication of that information to the DOC on a weekly basis. Senator Bruce questioned that if there was an execution of sentence at the local level, wouldn't the charges pending and the court issuing a warrant appear in the NCIC system. Mr. Madden stated not necessarily, because there is certain criteria for the inputting of a warrant in NCIC, including a commitment to extradite the prisoner from another state; secondly, NCIC is for fugitives. As soon as that person is arrested, that person's name has to be removed from NCIC. The issuance of an arrest warrant is, under current law, a reportable event to the central repository of the criminal history records information.

Neutral:

Kyle Smith, Special Agent, Kansas Bureau of Investigation, stated that the KBI supports addressing the problems of timely information flow to better enhance parole planning. However, the KBI is not convinced that the bill will accomplish that goal. Departments issue warrants through the courts, enter the outstanding warrants (if a misdemeanor) to the KBI's local state-held file, because there is no extradition involved, or, if it is a felony, it is entered into the federal data bank, NCIC. (Attachment 6)

Mr. Smith stated that Kansas has been a leader in establishing a web-based linked series of databases shared by all criminal justice agencies. The Criminal Justice Information System (CJIS) allows the DOC to access the KBI database regarding criminal history information. Right now, the DOC runs an inquiry on any or all their inmates and identify outstanding warrants that might effect parole plans. Some local agencies do not forward in a timely manner local warrants to the KBI so the checks by the DOC are inadequate. There are a lot of cases on misdemeanor warrants where the department doesn't do anything because it is a misdemeanor warrant, and/or they do not plan to spend money to extradite the offender for a minor warrant. This is why some warrants are not entered into the database.

Chairman Vratil questioned Mr. Madden about the bill requiring the central repository to identify persons committed to a correctional facility and then report to the DOC within seven days of the central repository receiving any reportable event. Why couldn't the DOC once a week identify the new inmates who have been committed to the custody of the DOC and run their names through the central repository to see if there is any arrest warrant or imposition of sentence recorded there.

Mr. Madden stated the DOC doesn't have access to the CJIS system, and the bill would give the authority of the KBI to enforce jurisdictions to comply with that act. Chairman Vratil questioned how the KBI could force a sheriff or chief of police to enter the issuance of an arrest warrant. Mr. Madden stated the statute provides that the KBI may do that through regulation and through its policies.

Chairman Vratil closed the hearing on **Sub HB 2051** and asked the Committee to consider final action on **HB 2262**.

Final Action:

HB 2262 Legal holidays include holidays observed by the supreme court by order

Chairman Vratil stated that there was a proposed amendment to the bill, on page 1, line 29, at the end of the sentence, where the last word was "court"; the amendment was to add the phrase, "or the Governor." A motion was made to accept the amendment. Senator O'Connor moved, seconded by Senator Bruce, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Goodwin moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **HB 2180**.

Final Action:

HB 2180 Inherently dangerous felonies

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 16, 2005, in Room 123-S of the Capitol.

Chairman Vratil stated that the bill expands the list of inherently dangerous felonies to include “fleeing or attempting to elude a police officer”. Fleeing or attempting to elude a police officer would also be considered as an act to support the charge of involuntary manslaughter.

Senator Donovan stated that he had several people contact him, from sheriff’s offices to police departments, in favor of the bill. A motion was made to recommend the bill favorably for passage. Senator Bruce moved, seconded by Senator O’Connor, and the motion carried.

Chairman Vratil asked the Committee to consider **HB 2386**.

Final Action

HB 2386 Unlawful sexual relations includes court services officers and community correctional officers

Chairman Vratil stated that he asked the revisor’s office to prepare an amendment, which he handed out. (Attachment 7) Revisor Helen Pedigo summarized the revisions made: on page 2, line 36, the word “direct” was taken out leaving only the word “supervision”; line 37, the words “the offender” were changed to read “court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services”; the same type of correction that was made on page 2, line 36, was made on page 3, line 1; also, on page 3, definitions were added for “community corrections,” court services,” and “law enforcement officer”.

A motion was made to adopt the balloon amendment. Senator Donovan moved, seconded by Senator Umbarger, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator Goodwin 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 17, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/16/05

| NAME | REPRESENTING |
|-----------------|---------------------------------|
| Kyle Smith | KBI |
| Jim Clark | KBA |
| Dr. M. Harrell | Judicial Council |
| Tim Madden | KNOC |
| Jean Hotthaus | Prevention & Recovery Services |
| Dennis Priest | SRS |
| Robert Smiley | SRR Kansas |
| Joseph Banguin | KBC |
| Kevin Barone | KTLA |
| Jeff Bottenberg | Polsinelli, Smith, White, Smith |
| Lana Walsh | OTA |
| Lucas Bell | Keamey and Associates |
| | |
| | |
| | |
| | |
| | |
| | |



KANSAS JUDICIAL COUNCIL

JUSTICE DONALD L. ALLEGRUCCI, CHAIR, TOPEKA
JUDGE JERRY G. ELLIOTT, WICHITA
JUDGE C. FRED LORENTZ, FREDONIA
JUDGE JEAN F. SHEPHERD, LAWRENCE
SEN. JOHN VRATIL, LEAWOOD
REP. MICHAEL R. O'NEAL, HUTCHINSON
J. NICK BADGEROW, OVERLAND PARK
GERALD L. GOODELL, TOPEKA
JOSEPH W. JETER, HAYS
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center
301 S.W. Tenth Street, Suite 262
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us
www.kscourts.org/council

RANDY M. HEARRELL
EXECUTIVE DIRECTOR
NANCY J. STROUSE
RESEARCH ATTORNEY
JANELLE L. WILLIAMS
ADMINISTRATIVE ASSISTANT
MARIAN L. CLINKENBEARD
ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: Senate Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 16, 2005

RE: Substitute for 2005 HB 2457

2005 HB 2457 contains technical amendments to a section of the Code of Civil Procedure. In 2000, "certified mail" was removed from the Civil Code as a defined term and replaced with the defined phrase "return receipt delivery". There are a number of places in K.S.A. 60-304 where the change was not made. HB 2457 amends K.S.A. 60-304 to insert "return receipt delivery" in the ten places "certified mail" appears in the section.

Prior to 2000, obtaining service solely by mail pursuant was limited to the use of certified mail via the U.S. Postal Service, either using certified mail evidenced by a return receipt signed by any person or using restricted delivery, which allows delivery only to the person to whom the letter is addressed. In 2000, HB 2905 changed the name of this type of service to "service by return receipt delivery" and expanded the allowable methods to include:

"... priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery."

The Judicial Council recommends passage of HB 2457.

Senate Judiciary
3-16-05
Attachment 1

Senate Judiciary Committee

March 16, 2005

by Jean Holthaus

HB 2038 – Establishment of an adult multidisciplinary team

Chairman Vratil, and members of the Senate Judiciary Committee, thank you for this opportunity to provide comments on behalf of the Topeka Coalition on Adult Abuse in support of HB 2038. I am Jean Holthaus and I serve on the Topeka Coalition on Adult Abuse. Our coalition is an action team in the *Success 4 Life* United Way Community Initiative. Our coalition's mission is to form a community partnership of individuals and agencies dedicated to the reduction of abuse of vulnerable adults through advocacy, education, service development and political and legal involvement. Attached is a list of agencies who compose our coalition. One of our goals is the establishment of an adult multidisciplinary team (MDT). MDTs have become a hallmark of adult abuse prevention programs, reflecting growing consensus that no single agency or discipline has all the resources or expertise needed to effectively resolve all forms of abuse and neglect.

Supporters of HB 2038 include 100% of the representatives in the Shawnee County Delegation. The MDT will include professionals from multiple disciplines and agencies, who serve as a resource to community agencies that refer cases of adults in need of protective services. The team's purpose is:

- to offer advice and consultation
- to identify system gaps and barriers in service delivery
- to advocate for adult safety and well-being
- to educate and increase public awareness about adult abuse, neglect, exploitation and fiduciary abuse

The need for and benefits of multidisciplinary teams have increasingly been acknowledged by federal, state and local governments. The Department of Health and Human Services, Administration on Aging, the National Center on Elder Abuse, the Clearinghouse on Elder Abuse and Neglect, the National Committee for the Prevention of Elder Abuse and the Office for Victims of Crime of the U.S. Department of Justice have all supported, encouraged or, in some cases, required the development of local community multidisciplinary teams. Research, resources and promising practices are well documented by these federal agencies.

All agencies will donate their time and expertise. There is no cost to the State of Kansas.

Passage of this bill is a move toward reducing adult abuse, neglect, exploitation and fiduciary abuse. I respectfully encourage this committee to pass HB 2038. Thank you.

Jean Holthaus, M.Ed., LSCSW, Chair of the Adult MDT Committee of the Topeka Coalition on Adult Abuse; Director of SPICE (Senior Prevention Intervention Counseling Education) at Prevention and Recovery Services; Trainer and member of the Kansas Mental Health and Aging Coalition; and member of the Kansas Connecting Services and Research Team of SRS Addiction and Prevention Services.

The Topeka Coalition on Adult Abuse Member Agencies

SRS Adult Protective Services
Kansas Department on Aging
District Attorney's Office
Attorney General's Office
Kansas Department of Health and Environment
Topeka Rescue Mission
Shawnee County Health Agency
Sheltered Living, Inc.
Bank of America
TARC
Topeka Police Department
Breakthrough House
United Way
Shawnee County Sheriff Department
Catholic Charities
Gatekeeper Program
Prevention and Recovery Services, S.P.I.C.E.
Capital Federal Savings
Jayhawk Area Agency on Aging
Community Resources Council
Battered Women Task Force
VA Hospital
Valeo
Sheriff's Office

Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

Senate Judiciary Committee

March 16, 2005

Sub HB 2038 - Adult Multi-Disciplinary Team

Integrated Service Delivery Division

Candy Shively, Deputy Secretary

785.296.3271

For additional information contact:

Public and Governmental Services Division

Kyle Kessler, Director of Legislative and Media Affairs

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.0141
fax: 785.296.4685
www.srskansas.org

Senate Judiciary

3-16-05

Attachment 3

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

Senate Judiciary Committee
March 16, 2005

Sub HB 2038 - Adult Multi-Disciplinary Team

Mr. Chairman and members of the Committee, thank you for the opportunity to provide written testimony regarding the Substitute for HB 2038 which establishes a multi-disciplinary team for adults in need of protective services.

The Department provides adult protective services which are directed towards safeguarding the well being and general welfare of adults (age 18 and older) in need of protection from abuse, neglect, exploitation or fiduciary abuse. SRS social workers investigate reports and provide protective services to adults who reside in the community and in facilities licensed/certified by SRS. Emergency support services as well as guardianship/conservatorship services are also available.

Sub HB 2038 establishes the statutory authority for multi-disciplinary teams which would bring together professionals with expertise in working with adults who are in need of support or services to provide advice regarding cases referred to the team. The team would provide recommendations to the referring entity that empowers the adult to be provided support and services in the least restrictive setting. The statutory authority would also provide free exchange of information within the team and a process for obtaining additional information necessary to help resolve case situations.

A similar structure has been in place for children and has worked effectively to provide more comprehensive resolutions for children in need of protective services. The Department believes the same results can be achieved for adults and has worked in collaboration with the authors of this legislation to develop the substitute version.

SRS is supportive of establishing a multi-disciplinary team process for vulnerable adults and believes the structure provided for in this legislation will also provide additional resources to assist in resolving instances of abuse, neglect, and exploitation in Kansas.

Thank you for the opportunity to provide this written input.



KANSAS

DEPARTMENT ON AGING
PAMELA JOHNSON-BETTS, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony before Senate Judiciary Committee
Sub. House Bill 2038
Secretary Pamela Johnson-Betts
March 16, 2005**

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to submit written testimony in support of the establishment of multidisciplinary teams for adults as proposed in Sub. HB 2038.

The responsibilities of the Kansas Department of Aging are three-pronged – the department is an advocate for seniors, a purchaser of services and a regulator of services provided by adult care homes. Our philosophy encourages collaborations that strengthen the department's capability to be responsive to the social, health care, nutritional, housing and transportation needs of the senior citizens of Kansas.

The establishment of multidisciplinary teams as proposed in Sub. HB 2038 provides communities another tool to assure that seniors who may be abused or neglected, or at risk of being abused or neglected, have the support and resources needed to keep their senior citizens safe and secure.

Thank you again for the opportunity to express our support for this bill.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Submitted by
Tim Madden

Testimony on Sub HB 2051
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

March 16, 2005

Substitute for HB 2051 is designed to aid the Department in addressing warrants lodged against inmates shortly before their release that could have been resolved at an earlier time or at least taken into consideration in formulating the inmate's release plan. The Department greatly appreciates the interest in having the existence of outstanding warrants identified prior to an offender's release. Sub HB 2051 would benefit public safety by ensuring that the existence of outstanding warrants and the imposition of sentences, though not executed by the Department, are brought to the Department's attention, not only as the date of the offender's release approaches, but also throughout the inmate's incarceration, thus enhancing the Department's ability to make appropriate custody classification decisions.

Substitute for HB 2051 uses the Criminal History Record Information Act (CHRIA) as a vehicle to accomplish these goals. The Criminal History Record Information Act currently requires that all law enforcement agencies report to the Kansas Bureau of Investigation the issuance of arrest warrants and sentencing dispositions including sentences imposing a term of incarceration. Sub HB 2051 amends the Criminal History Record Information Act to require that reports of the issuance of arrest warrants for persons committed to a correctional facility currently provided to the KBI's central repository be forwarded to the Department of Corrections on a weekly basis. Utilization of the information mandated to be provided by every law enforcement agency in the state would provide comprehensive information regarding pending criminal charges irrespective of jurisdiction, in a timely and proactive manner. Sub HB 2051 also provides for the communication of information concerning the imposition of sentences not executed by the Department, which are likewise submitted to the KBI under current law. Information disclosing that an offender has a sentence remaining to be served in another jurisdiction after the completion of his KDOC sentence is relevant to both the inmate's custody classification and to ensure that the offender is properly released to the other jurisdiction.

The importance of utilizing the criminal history record information to the fullest extent possible and Department receiving information proactively cannot be overstated. Recently, the public safety interest in having the Department informed of warrants manifested itself in the escape of a minimum custody inmate from a community work crew in Kansas City, Kansas. Prior to the inmate's placement on the minimum custody work crew, the Lansing Correctional Facility queried the NCIC "wants and warrant" file. Unfortunately, while a warrant had been issued by the Court for the crimes of aggravated battery, aggravated robbery, kidnapping, criminal possession of a firearm, rape, aggravated criminal sodomy, aggravated kidnapping, aggravated intimidation of a witness, that warrant was not entered into NCIC. The inmate was not a fugitive because he was already in the Department's custody. Since KDOC had not been advised of the issuance of that warrant, KDOC classified the inmate as being minimum custody and placed him on a community work crew. The issuance of a warrant by any law enforcement agency is an event that is to be reported to the KBI. Sub HB 2051 provides that integrated data, in a useful format, be provided to the Department thus preventing improper releases and inappropriate custody classifications while at the same time enhancing the Department's release planning for offenders.

The Department has modified its records system in order to provide more information in a more useful format to serve the public and public safety. The Department has created a computer program accessible by the public listing all offenders under supervision by either the Department or Community Corrections. This listing can be sorted by county or judicial district. Daily, the Department transmits electronically to the KBI a listing of every person in the Department's custody so that the KBI's reportable event records concerning incarceration is always up to date. At the request of the Attorney General, the Department lists all parole and community corrections absconders on the public access KASPER system. Sub HB 2051 would provide a comparable exchange of information in a timely and proactive manner.

Since the Criminal History Record Information Act currently requires law enforcement agencies to report to the KBI the issuance of arrest warrants as well as commitments to a correctional facility, the sorting and dissemination of that information to the Department would provide information relevant at the time of the inmate's release, as well as proactively provide information relevant to the inmate's custody classification throughout his or her confinement. Finally, due to the Bureau's authority to impose sanctions against agencies that fail to provide required information to the central repository, the Criminal History Record Information Act already provides a mechanism to enhance the comprehensive nature of the system's information.

As originally introduced, HB 2051 provided that the Department or the Kansas Parole Board was to give notice six months prior to an inmate's release to the prosecuting attorney of the county from where the inmate was sentenced. This was to enable that prosecutor to decide whether to file detainers against the inmate in any unresolved matters. However, that provision did not address charges arising in other counties, warrants in the possession of the sheriff, or issued by municipal courts and did not provide information in a timely manner that could be used throughout the offender's incarceration for custody classification. Additionally, information provided by prosecutors would be a reactive response to a KDOC request concerning a specific inmate and would not disclose relevant pending criminal charges levied against any of the other

Sub HB 2051
March 16, 2005
Page 3

inmates in the Department's custody. Furthermore, HB 2051 as introduced did not mandate that the information regarding pending charges be provided to the Department or Parole Board by prosecutors. Finally, as a practical matter, the requirement of HB 2051 as introduced, regarding the granting of parole six months prior to the release of the offender would entail the Parole Board conducting a second hearing shortly before the offender's actual release to ensure that subsequently received information did not change the release decision.

The Department supports Sub HB 2051 and urges its favorable consideration.

Cc: Legislation file



Kansas Bureau of Investigation

Larry Welch
Director

Testimony regarding Substitute for House Bill 2051

Kyle Smith
Kansas Bureau of Investigation
Senate Judiciary Committee
March 16, 2005

Phill Kline
Attorney General

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation (KBI) in a neutral stance on HB 2051. The KBI supports addressing the problem of timely information flow to better enhance parole planning, but we are not convinced that HB 2051 really accomplishes that goal.

The KBI has no objection to the first proposed amendment in the bill found at page 2, lines 3-4. The proposed language added to K.S.A. 22-4704 would merely codify the longstanding policy of the KBI that justice should not depend on the size of a city's or county's tax base. Forensic examinations conducted by our scientists or record checks performed in our function as the central repository should be available to all law enforcement agencies that need them and so it would be bad public policy to charge fees.

However, the House was less successful in drafting the second amendment in the bill, a change to K.S.A. 22-4705 found at page 3, lines 2-5. The Department of Corrections (DOC) does need current and accurate information regarding outstanding warrants so their parole plans can make the best use of their limited resources. However, the language chosen is for the most part unnecessary and inappropriate. Kansas has been a national leader in the establishment of a web based linked series of databases shared by all criminal justice agencies. The Criminal Justice Information System (CJIS) has received national awards and allows the Department of Corrections to already access the KBI's database regarding criminal history information.

Right now the DOC can run an inquiry of any or all their inmates and identify outstanding warrants that might effect parole plans. Frankly, I suspect the information technology division at DOC is substantially larger than that of the KBI and quite capable of running their own inquiries. The problem really is that some local agencies don't timely forward local warrants to the KBI so the checks by the DOC are inadequate.

What is needed is more training for the local agencies so they realize the capabilities of CJIS and the importance of entering outstanding warrants. HB 2051 fails to address the real problem.

I'd be happy to stand for questions.

HOUSE BILL No. 2386

By Committee on Corrections and Juvenile Justice

2-9

10 AN ACT concerning crimes and punishment; relating to unlawful sexual
11 relations; amending K.S.A. 2004 Supp. 21-3520 and repealing the ex-
12 isting section.

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

15 Section 1. K.S.A. 2004 Supp. 21-3520 is hereby amended to read as
16 follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual
17 sexual intercourse, lewd fondling or touching, or sodomy with a person
18 who is not married to the offender if:

19 (1) The offender is an employee of the department of corrections or
20 the employee of a contractor who is under contract to provide services
21 for a correctional institution and the person with whom the offender is
22 engaging in consensual sexual intercourse, lewd fondling or touching, or
23 sodomy is a person 16 years of age or older who is an inmate; or

24 (2) the offender is a parole officer or the employee of a contractor
25 who is under contract to provide supervision services for persons on pa-
26 role, conditional release or postrelease supervision and the person with
27 whom the offender is engaging in consensual sexual intercourse, lewd
28 fondling or touching, or sodomy is a person 16 years of age or older who
29 is an inmate who has been released on parole or conditional release or
30 postrelease supervision under the direct supervision and control of the
31 offender; or

32 (3) the offender is a law enforcement officer, an employee of a jail,
33 or the employee of a contractor who is under contract to provide services
34 in a jail and the person with whom the offender is engaging in consensual
35 sexual intercourse, lewd fondling or touching, or sodomy is a person 16
36 years of age or older who is confined by lawful custody to such jail; or

37 (4) the offender is a law enforcement officer, an employee of a ju-
38 venile detention facility or sanctions house, or the employee of a con-
39 tractor who is under contract to provide services in such facility or sanc-
40 tions house and the person with whom the offender is engaging in
41 consensual sexual intercourse, lewd fondling or touching, or sodomy is a
42 person 16 years of age or older who is confined by lawful custody to such
43 facility or sanctions house; or

7.2

1 (5) the offender is an employee of the juvenile justice authority or
2 the employee of a contractor who is under contract to provide services in
3 a juvenile correctional facility and the person with whom the offender is
4 engaging in consensual sexual intercourse, lewd fondling or touching, or
5 sodomy is a person 16 years of age or older who is confined by lawful
6 custody to such facility; or

7 (6) the offender is an employee of the juvenile justice authority or
8 the employee of a contractor who is under contract to provide direct
9 supervision and offender control services to the juvenile justice authority
10 and the person with whom the offender is engaging in consensual sexual
11 intercourse, lewd fondling or touching, or sodomy is 16 years of age or
12 older and (A) released on conditional release from a juvenile correctional
13 facility under the direct supervision and control of the offender or (B)
14 placed in the custody of the juvenile justice authority under the direct
15 supervision and control of the offender;

16 (7) the offender is an employee of the department of social and re-
17 habilitation services or the employee of a contractor who is under contract
18 to provide services in a social and rehabilitation services institution and
19 the person with whom the offender is engaging in consensual sexual in-
20 tercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502,
21 and amendments thereto, lewd fondling or touching, or sodomy, not oth-
22 erwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments
23 thereto, is a person 16 years of age or older who is a patient in such
24 institution: or

25 (8) the offender is a teacher or a person in a position of authority and
26 the person with whom the offender is engaging in consensual sexual in-
27 tercourse, lewd fondling or touching or sodomy is 16 or 17 years of age
28 and a student enrolled at the school where the offender is employed. If
29 the offender is the parent of the student, the provisions of K.S.A. 21-
30 3603, and amendments thereto, shall apply, not this subsection;

31 (9) **the offender is a court services officer or the employee of a**
32 **contractor who is under contract to provide supervision services**
33 **for persons under court services supervision and the person with**
34 **whom the offender is engaging in consensual sexual intercourse, lewd**
35 **fondling or touching, or sodomy is a person 16 years of age or older who**
36 **has been placed on probation under the [direct] supervision and control of**
37 **[the offender]; or**

38 (10) **the offender is a community correctional services officer or the**
39 **employee of a contractor who is under contract to provide super-**
40 **vision services for persons under community corrections supervi-**
41 **sion and the person with whom the offender is engaging in consensual**
42 **sexual intercourse, lewd fondling or touching, or sodomy is a person 16**
43 **years of age or older who has been assigned to a community correctional**

court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services

7-3

1 services program under the ~~direct~~ supervision and control of ~~the offender~~.

2 (b) For purposes of this act:

3 (1) "Correctional institution" means the same as prescribed by K.S.A.
4 75-5202, and amendments thereto;

5 (2) "inmate" means the same as prescribed by K.S.A. 75-5202, and
6 amendments thereto;

7 (3) "parole officer" means the same as prescribed by K.S.A. 75-5202,
8 and amendments thereto;

9 (4) "postrelease supervision" means the same as prescribed in the
10 Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments
11 thereto;

12 (5) "juvenile detention facility" means the same as prescribed by
13 K.S.A. 38-1602, and amendments thereto;

14 (6) "juvenile correctional facility" means the same as prescribed by
15 K.S.A. 38-1602, and amendments thereto;

16 (7) "sanctions house" means the same as prescribed by K.S.A. 38-
17 1602, and amendments thereto;

18 (8) "institution" means the same as prescribed by K.S.A. 76-12a01,
19 and amendments thereto; and

20 (9) "teacher" means and includes teachers, supervisors, principals,
21 superintendents and any other professional employee in any public or
22 private school.

23 (c) Unlawful sexual relations is a severity level 10, person felony.

24 Sec. 2. K.S.A. 2004 Supp. 21-3520 is hereby repealed.

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

community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision of community corrections

;
(10) "community corrections" means the entity responsible for supervising adults and juveniles for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto;
(11) "court services" means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state; and
(12) "law enforcement officer" means the same as prescribed by K.S.A. 21-3110, and amendments thereto