

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

November 2-3, 2009
Room 143-N—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson (November 2)
Representative Rocky Fund, Vice-Chairperson
Senator Terry Bruce
Senator Kelly Kultala
Senator Ty Masterson
Senator Dennis Pyle
Representative Bill Feuerborn
Representative Bob Grant
Representative Broderick Henderson
Representative Steve Huebert
Representative Jeff King (November 2)
Representative Rob Olson
Representative Joe Patton

Staff

Cindy Lash, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Mike Heim, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Kathy Letch, Committee Secretary

Others Attending

Libby Snider, Kansas Department of Corrections
Kim Brunewald, Attorney General's Office
Gregory C. Nye, Attorney
Steve Phillips, Attorney General's Office
Tim Riemann, Attorney General's Office
Alice Buess
Laura Graham, Kansas Bureau of Investigation
M. J. Willoughby, Kansas Judicial Branch
Debbie Strang
Lisa Jones, Wichita State University

Bill Pauzauskie, Attorney
Shaneek Jones
Rose Marino, University of Kansas
Oswald Dwyer, Kansas Department of Transportation
Larry Olson, B & B RV Park, Liberal
Tod Salfrank, Kansas Department of Transportation
Rod Lacy, Kansas Department of Transportation
Andy Schlapp, Wichita State University

**Monday, November 2
Morning Session**

The Chairperson called the meeting to order at 10:09 a.m.

Representative Grant moved that the minutes of the June meeting be approved as written; Representative Feuerborn seconded the motion; the motion carried.

The Chairperson explained that staff from the Office of the Revisor of Statutes was asked to write a bill draft changing the procedures of the Claims Committee. He asked Mike Heim of the Office of the Revisor of Statutes to explain further.

Mike Heim first introduced Daniel Yoza, Office of the Revisor of Statutes, who will now be staffing the Claims Committee with Mr. Heim.

Mr. Heim then addressed the changes that the bill draft provides (Attachment 1):

- The bill would give the Committee sole discretion whether to hear a claim; and
- The deadline for claims to be received would change from November 1 to August 1, as of 2011.

Cindy Lash, Kansas Legislative Research Department, explained the proposed new process for Claims (Attachment 2). The process would save the state money and increase efficiency. She directed the Committee to the timing of the effective dates of the proposed changes.

Under the new process, Committee members would be provided copies of the claims in advance, and they would decide at a meeting each September which claims they would hear. It is anticipated they would need only one or two days for hearings. It currently costs the state approximately \$2,600 each day the Committee meets.

Committee discussion addressed issues of an appeal process, how much notice is given, and how the review process would be set up.

Chairperson Owens explained that the claims would be scanned and e-mailed to Committee members. All claims that Committee members think should be heard would be set for hearing. Those claims not set for hearing would be denied, possibly by use of a consent agenda.

The Chairperson stated the money spent for this Committee to hear claims is significant, and some claims appear to be frivolous. If the claims were reviewed first, the Committee could use its meeting time to hear claims that are important to hear. An appeal process could also be implemented.

A Committee member noted that putting this change in a bill would allow for more input by other legislators on the proposed changes.

Mr. Heim suggested either the Committee rules or the bill could be an avenue for implementing an appeals process.

Mr. Heim next presented proposed changes to 2009 SB 93, which passed the Senate and is currently assigned to the House Judiciary Committee (Attachment 3). He explained that the bill would reduce the size of the Committee from 13 to seven members—three senators and four representatives.

There was discussion about the change in Committee size and about the new proposal to require the chairperson of the Committee to be an attorney and for the chairmanship to alternate between the chairs of the House and Senate Judiciary committees. The Chairperson asked Mr. Heim to take comments and ideas from Committee members. He also asked that Mr. Heim combine the two bills into a new draft, leaving out the chairmanship issue, and to send it electronically to the Committee. The Committee will revisit the issue at the December meeting.

The Chairperson opened the telephone hearings on the claims filed by inmates at **Topeka Correctional Facility**.

Lisa Renee Ross summarized Claim No. 6172 against Topeka Correctional Facility (TCF) for \$500,000 due to personal injury. She was never given kitchen rules or job training for her kitchen job, other than from other inmates. One day she burned a pan full of sausage. It was not intentional sabotage. She put the burned sausage down the disposal. After the incident, she had a meeting with her supervisor and came to agreement that she would do what he said; he was to respect her as an inmate, as she respected him; however, he did get irate and said he would like her to seek other employment. Ms. Ross stated that an inmate witness on Ms. Ross' behalf was threatened with loss of her job if she spoke up.

Libby Snider, Kansas Department of Corrections (KDOC), responded that Ms. Ross was not punished for burning sausages; she received a disciplinary report for disposing of the sausages without permission. Other inmates and staff said the sausages were not burned. It appeared she was deliberately concealing the sausages prior to disposing of them. Ms. Ross did not tell her supervisor the truth about burning them; instead, she said she had the wrong count. Ms. Snider recommended the claim be denied. Inmates have no right to employment, so loss of wages is not an issue.

Following discussion, the Joint Committee recommended that Claim No. 6172 be denied.
(See section captioned "Committee Action and Recommendation.")

Alesia Warrior summarized Claim No. 6183 against TCF for \$100,000 due to personal injury. Ms. Warrior, who is in a wheelchair, said KDOC is in violation of Americans with Disabilities Act (ADA) regulations. She is required to use her feet to open doors as there are no handicap buttons for electronically opening the doors. Some toilets are equipped for handicapped use. Doors

are not equipped. She gets caught in doors when trying to open them. She resides on the first floor, so does have emergency egress, but the ramp is too steep. The incline to the dining hall is too steep. Medications are dispensed in a different building; when winter arrives, the weather will make it dangerous and difficult for her to get around. In response to a member's question, she said the amount of the claim was an arbitrary figure she chose for compensation of her mental anguish.

Libby Snider, KDOC, responded that this is the first complaint regarding handicapped access at TCF of which she is aware. In investigating the claim, facility compliance with ADA was reviewed and ADA codes were studied. Ms. Warrior does not specify when and where the deficiencies exist. Ms. Snider recommended that this claim be denied.

A Committee member asked Ms. Warrior how she knew TCF is not in compliance with ADA regulations. Ms. Warrior replied that she had done some investigation. There are no handicapped doors and some doors open in, some open out; there are no electronic buttons.

Following discussion, the Joint Committee recommended that Claim No. 6183 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by a released inmate.

Loreatha M. Loyd summarized Claim No. 6176 against the State of Kansas for \$1 million due to personal injury. Her claim was that her sentence status was "three" on the sentencing grid, which means she should not have been sent to prison.

The Chairperson responded that the Claims Committee is not an appeals committee for sentences.

Kim Grunewold, Attorney General's Office, responded that Ms. Loyd was subject to a 14-16-month sentence and received a 15-month sentence. Ms. Loyd did not appeal her sentence at the time. Ms. Grunewold recommended that this claim be denied.

Ms. Loyd stated that she should not have been imprisoned. She filed an appeal, but the court did not act.

Chairperson Owens stated that an appeal is the appropriate process for this issue, not a claim through this Committee.

Following discussion, the Joint Committee recommended that Claim No. 6176 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by an inmate at **Ellsworth Correctional Facility**.

Carlos Esparza summarized Claim No. 6146 against Ellsworth Correctional Facility for \$42.54 due to loss of property. He explained that during a shakedown, the cord on his radio was inadvertently damaged. Facility investigators determined the facility was not responsible. After he repaired it himself, the facility determined his radio was "altered" and confiscated the property. His internal claim was denied.

Libby Snider, KDOC, responded that the investigation showed the cord was worn from being caught in a bedspring. She stated that the fact that the radio was "altered" made it contraband, so it was confiscated. She recommended that this claim be denied.

A Committee member asked if normal wear and fraying of a cord determines it to be altered.

Ms. Snider replied that inmates are responsible for requesting repair or replacement, and that a cord should not be placed through bedsprings. Requesting repair or replacement would keep items from becoming contraband. Wires are of special concern due to electrical danger.

Following discussion, the Joint Committee recommended that Claim No. 6146 be allowed for \$42.54. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by an inmate at **Norton Correctional Facility**.

Kenneth E. Ward summarized Claim No. 6185 against Kansas Department of Corrections for \$570,000 due to illegal incarceration. He explained he was not on parole, but after release he was picked up and put in prison, where he spent 57 days. Nine days prior to getting picked up, a notice was issued that he was not on post-release supervision. The amount of his claim is based on \$10,000 for each day he spent in prison when he should not have been there.

Libby Snider, KDOC, responded that Mr. Ward's probation was revoked. There was to be no post-release supervision term, but KDOC followed the erroneous court order. No correction was made to change his status to "no post-release supervision," so he remained on the 12 months post-release term. He absconded. KDOC was following the court's order. She recommended that this claim be denied.

Committee members asked Ms. Snider why a warrant was not issued until November, given that he absconded in July, and why KDOC did not call the court clerk, since there was a letter in the KDOC file saying "no post-release supervision."

Ms. Snider said she did not know the answers to the questions.

Mr. Ward explained that he could not get a lawyer to take his case. He was told by the facility that he was to report to a parole officer, but he knew he was not to have post-release supervision. He signed the paper, in anger and under duress, indicating he had been informed he was on post-release supervision.

Following discussion, the Joint Committee recommended that Claim No. 6185 be denied. (See section captioned "Committee Action and Recommendation.")

Olathe Medical Center submitted a letter withdrawing Claim No. 6181 against the Department of Social and Rehabilitation Services (Rainbow Mental Health Facility) for \$2,102.95 due to billing from a previous fiscal year. The parties reached a settlement prior to the hearing.

Following discussion, the Joint Committee recommended that Claim No. 6181 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by an inmate at **Wichita Work Release Center**.

Thomas Landwehr summarized Claim No. 6157 against the Kansas Department of Corrections for \$97.75 due to property damage. His property was packed up and stored. He was then transferred to Osawatomie. When he was given his television, he was not given the opportunity to plug it in to see if it worked, but had to sign release at that time. When he hooked up the television three days later, it would not work.

Libby Snider, KDOC, responded that the facility property claims officer stated there were outlets available, but the inmate did not ask to plug in the television. There is no way to substantiate that it was broken while in KDOC control. She recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6157 be denied.
(See section captioned "Committee Action and Recommendation.")

The Committee meeting recessed at 12:00 noon until 1:30 p.m.

Afternoon Session

Chairperson Owens called the meeting to order at 1:35 p.m.

The Chairperson opened the telephone hearings on the claims filed by inmates at **Lansing Correctional Facility**.

Jerry Bramlett summarized Claim No. 6174 against Lansing Correctional Facility for \$574.90 due to loss of property. He returned from work and found his cabinet had been broken into and items were missing. He has receipts for the missing items.

Libby Snider, KDOC, responded that she could not substantiate the loss. One staff member remembered someone reporting a loss, but could not recall who. Unless negligence by staff is shown, KDOC cannot be held liable. Also, many of the items claimed were purchased a number of years ago. Some of the items were used after the purchase dates. She recommended that this claim be denied.

Mr. Bramlett explained that the cabinets are made from particle board. His entire cabinet was kicked in two. It had been locked. His cell is 30 steps from the location of a corrections officer. He conceded that some of his items had been used and that he was not asking for the entire amount.

Following discussion, the Joint Committee recommended that Claim No. 6174 be denied.
(See section captioned "Committee Action and Recommendation.")

Andrew Dickson summarized Claim No. 6180 against the Kansas Department of Corrections in the amount of \$180.00 for property damage. When he came back to his cell from work, his radio and headphones were missing. The cell door was not open; everything was still locked. He has four cabinets, but only two have locks.

Libby Snider, KDOC, responded that Mr. Dickson is assuming his cell door was left open while he was gone. This assumption is unsubstantiated. A locksmith was contacted and found no malfunction apparent. No staff negligence has been shown. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6180 be denied.
(See section captioned "Committee Action and Recommendation.")

Toby Dillingham summarized Claim No. 6189 against Lansing Correctional Facility for \$158.56 for loss of property. When he returned from the yard, items were missing from his lockers. The internal claim records were misplaced or never filed originally. He re-filed, was denied, and is now filing this claim. The only way a cell is opened is if a guard unlocks it.

Libby Snider, KDOC, responded that Mr. Dillingham claims the loss was filed 8/29/08, but the only claim KDOC found is dated May, 2009. His claim was investigated. No negligence was found. Nothing was substantiated as to the location of the missing properties. KDOC recommends pro rata depreciation of five-year-old items if the Committee decides to allow payment of this claim. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6189 be denied.
(See section captioned "Committee Action and Recommendation.")

Jason Gleason summarized Claim No. 6186 against Lansing Correctional Facility in the amount of \$180.00 due to property damage. His television was stolen. He reported it to an officer, but the claims officer said the loss was never reported. Later, another inmate was caught with his television. At that time, Mr. Gleason would have had to send his television out due to his severity level.

Libby Snider, KDOC, responded saying the facility response states Mr. Gleason started making payments on a television, but was not eligible to possess electronics due to his severity level. He did not submit a missing property claim until he received a level change that allowed him to own a television and discovered it was missing. She recommended that this claim be denied.

A Committee member asked if the television would have been on his property list, if he was able to mail out electronics.

Ms. Snider replied that they evidently did not review his property list. If the inmate reported a missing item, KDOC would have investigated the missing property.

Following discussion, the Joint Committee recommended that Claim No. 6186 be denied.
(See section captioned "Committee Action and Recommendation.")

Edward Hunter summarized Claim No. 6165 against the Kansas Department of Corrections in the amount of \$20.99 due to loss of property. When he was sent to segregation, the officers packed out the property Mr. Hunter could have in segregation. His other items were left all over his cell. When he got out of segregation, other inmates told him a lot of his property was missing. The officer told him he had to do a cell house shakedown and found a case of Mr. Hunter's Ramen soups in the trash. The other property was not located.

Libby Snider, KDOC, agreed with the facts Mr. Hunter conveyed. The process of property packing had begun when the evening meal was called. Officers locked up the cell and proceeded to the dining hall. They returned to find a case of soup missing. No negligence on the part of the State was found. KDOC took reasonable steps to secure the property. Mr. Hunter assumes the risk of ownership of property. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6165 be denied.
(See section captioned "Committee Action and Recommendation.")

Joseph Palmer summarized Claim No. 6190 against Lansing Correctional Facility in the amount of \$156.52 due to loss of property. He was to be moved to segregation for investigation, and watched officers pack out only the items he was permitted to take to segregation. One receipt brought to him for signature was a partial inventory. He was not given a copy of this receipt, but did get a copy of the second inventory list brought to him. Two days later, when he went to get his property, a large amount of his arts and crafts supplies were missing. Those items were noted. He was told to file a property claim by an officer who remembered the items that are missing. The facility denied his claim, saying that he had not shown negligence on the facility's part.

Libby Snider, KDOC, responded by stating that Mr. Palmer had signed the inventory sheets. At no time did he mention that items were missing from the sheets. Grievance officers spoke with the officer the inmate mentioned. He only offered information about the items the inmate took with him. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6190 be denied.
(See section captioned "Committee Action and Recommendation.")

Lansing Correctional Facility Medium Lifer's Organization, Michael Reedy, President submitted Claim No. 6191. Mr. Reedy summarized the claim against the Kansas Department of Corrections in the amount of \$81.47 due to loss of property. Before meetings begin, an officer opens the cabinet to allow Mr. Reedy to get out the items needed for meetings, and then locks it. When they arrived this day, the cabinet was standing open and coffee, creamer, tablets, and other items were missing. An officer said when cabinets were checked the night before around 6:30 p.m. or so, all cabinets were secure and locked. Sometime between 6:30 p.m. and 4:30 p.m. the next day, someone had unlocked the cabinets and removed items. Mr. Reedy is the only one who had been allowed in to remove anything from those cabinets for the last six years, as president of the organization.

Libby Snider, KDOC, responded stating an officer did do a security check at 11:30 the night before the meeting and all was secure. No negligence on the part of the state has been shown. Most of the 66 members of the organization could have had access to the locker on the day of the meeting after staff unlocked the cabinet. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6191 be denied.
(See section captioned "Committee Action and Recommendation.")

Shawn D. Smith summarized Claim No. 6179 against the Kansas Department of Corrections in the amount of \$125.79 due to damage and loss of property. Mr. Smith's typewriter was sent to a vendor to be repaired. When called to check on the status at Business Solutions, they said it was totally broken up when they received it. It must have been broken while in the possession of Goin' Postal. A claim was filed with the insurance.

Libby Snider, KDOC, responded that the problem was with the shipper; the packing was done properly. Mr. Smith was advised how to make a claim against Goin' Postal. He was advised it could take 45 days. He was further advised to stay on top of the claim. He did not file a claim against Goin' Postal. No staff negligence was shown. She recommended that this claim be denied.

Mr. Smith replied that an officer told him that he had submitted a property claim. A letter was sent to Goin' Postal; the reply stated that they did not receive a claim within 30 days after the incident.

Following discussion, the Joint Committee recommended that Claim No. 6179 be denied. (See section captioned "Committee Action and Recommendation.")

William Snavelly did not come to the phone to summarize Claim Nos. 6169 and 6170 against Kansas Department of Corrections, each in the amount of \$5,000 due to personal injury. He was not feeling well enough to leave his cell.

Following discussion, the Joint Committee recommended that Claim Nos. 6169 and 6170 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on **Claim No. 6014** filed by former inmate **Nichole M. Reed** against the State of Kansas in the amount of \$10,000 due to violation of due process, mental anguish, lost wages, and property loss. Ms. Reed did not answer her telephone.

Tim Riemann, Attorney General's Office, stated Ms. Reed also did not answer her phone last year, when this claim was initially set for hearing. He recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6014 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the hearing on the claim filed by **Harvey County, Kansas**. Mr. Gregory Nye, Attorney, was present to represent Harvey County on **Claim No. 6132** against the State of Kansas for \$1,237.64 in reimbursement of costs expended regarding the Sexual Predator legal case.

Steve Phillips, Attorney General's Office, recommended that this claim be allowed for \$1,237.64. He explained that the Legislature created the fund, but no money has been put into the fund. It was to be funded by legislative appropriation. Another county is on the December agenda of this Committee claiming over \$20,000.

Following discussion, the Joint Committee recommended that Claim No. 6132 be allowed for \$1,237.64. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the hearing on Claim No. 6119 filed by former inmate **Alice Buess** against the Kansas Department of Corrections, the Kansas Courts, and the Kansas Bureau of Investigation (KBI) in the amount of \$417,447.35 for personal injuries and property damage.

Senator Kultala asked to recuse herself (she has a relative connected with this claim).

Chairperson Owens read aloud a staff summary of the history of this claim.

Ms. Buess summarized her claim, saying she was wrongfully held beyond her sentence in prison and on parole because of a failure to convert her sentence to sentencing guidelines.

M. J. Willoughby, Judicial Branch, stated that the decision on whether to convert Ms. Buess' sentence was made by KDOC and upheld in District Court. Based on a previous case (*Hackler*), the court concluded that sentencing guidelines require a finding that rehabilitation is possible before a sentence can be eligible for conversion. The district court did not make this finding in Ms. Buess' case. The Court of Appeals upheld this decision. Later Ms. Buess filed another motion for conversion and the County Attorney, who previously had opposed the conversion, agreed to the motion, and the district court converted the sentence. Ms. Willoughby noted that a lower court cannot overturn a higher court, and recommended this claim be denied.

A Committee member asked for insight into why the county attorney changed his opinion on the sentence conversion.

Ms. Willoughby did not know; she could say only that the county attorney signed-off on the journal entry allowing the sentence to be converted.

Laura Graham, KBI, stated that Ms. Buess' sample of DNA was submitted to the database in 2002 per statute. She knows of no basis other than expungement of conviction or dismissal of charges that allows the KBI to erase information from the database. She recommended this claim be denied.

Libby Snider, KDOC, stated that according to the sentencing guidelines, because of the severity level of her drug conviction, Ms. Buess was not eligible for conversion. She was entitled to request a hearing regarding the KDOC conversion decision within 30 days of the decision, but she did not do so. She later requested KDOC conversion based on the amount of marijuana she possessed, however Ms. Snider noted none of the court documents spoke to the specific amount of marijuana with which she was found. The KDOC staff member advised Ms. Buess she might appeal if the quantity was less than the amount specified in the statute. The small quantity exception statute might apply, but it has a number of criteria that must be met. Ms. Snider said KDOC has complied with the court orders in effect, and recommended this claim be denied.

Ms. Buess said when she was on probation, the court considered her a treatable person; the court sent her to treatment. Further, it is her understanding that the district court can set aside an appellate court decision if it considered the case to not have been fully litigated, which is what her attorney argued. Ms. Buess said the Judicial Branch inferred that the court finally agreed to the conversion as a mercy change. She disputes this, saying, if it was a mercy change, the judge would have just changed the sentence to "time served." Instead, he lowered the 53 months to 15 months incarceration and the 60 months to 12 months probation.

In response to Committee questions, Ms. Willoughby said the trial judge did file a motion for sentence conversion; however, this was done long after the appellate decision, and the two decisions do not relate. The 1997 decision is based on consideration of *Hackler* and *Gonzales* (two different cases and two different approaches) as to whether additional findings are required. In the 2004 order, they did not make these findings regarding rehabilitation. Ms. Willoughby said the case was fully litigated in the 1997 opinion. A member noted that in 2004, the parties agreed and the court ordered the sentence converted. The member asked whether that was some sort of retroactive determination that she spent too much time in prison. Ms. Willoughby said the way she views it is that in 2004 the parties agreed "enough is enough," so they would not have to have any more motions. She said in 2004, the district court did not have jurisdiction or authority to overrule the 1997

court decision. She said the 2004 decision does not mean the incarceration was wrongful, or if it was, when it became wrongful.

Following discussion, the Joint Committee recommended that Claim No. 6119 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson addressed claims with legal action pending.

Lisa Jane Graham: *following discussion, the Joint Committee recommended that Claim No. 5721 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")*

Bobby B. White: *following discussion, the Joint Committee recommended that Claim No. 5914 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")*

Woodrow W. McCoy: *following discussion, the Joint Committee recommended that Claim No. 6160 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")*

Janice Lynn King: *following discussion, the Joint Committee recommended that Claim No. 6187 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")*

Mary Patillo: *following discussion, the Joint Committee recommended that Claim No. 6194 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")*

The meeting was adjourned at 4:20 p.m.

Tuesday, November 3

Vice-Chairperson Rocky Fund called the meeting to order at 9:10 a.m.

The Chairperson opened the telephone hearings on the claims filed by inmates at **El Dorado Correctional Facility.**

Cristobal Barraza summarized Claim No. 6164 against El Dorado Correctional Facility in the amount of \$500 due to personal injury. He said his sick call request for stomach pain was ignored by the facility. In 2000, liquid medicine fixed the same health problem, but in 2008 it went too long before he received medical attention. Medicine could not then correct the issue. He underwent surgery due to failure to receive timely medical attention.

Libby Snider, KDOC, stated that medical staff responded when it was apparent that Mr. Barraza needed attention. She recommended this claim be denied.

A Committee member asked if Mr. Barraza had eaten on the 13th and 14th, prior to medical attention on the 15th. Ms. Snider did not know.

Mr. Barraza replied that he had refused meals on the 13th, 14th, and 15th; he could not eat without vomiting.

Following discussion, the Joint Committee recommended that Claim No. 6164 be denied.
(See section captioned "Committee Action and Recommendation.")

Nasif Gadelkarim summarized Claim No. 6161 against El Dorado Correctional Facility in the amount of \$974 due to loss of property. When he came back from court, his photographs were missing from his property. He was told he had too many and that he would have to send some of them out. In the process of sending them out, the facility found the pictures were lost. There is not a monetary amount that can replace his pictures, but since claims only deal with money, he assigned a value of \$974. His internal claim was denied.

Libby Snider, KDOC, responded that the IMPP sets departmental values for items, and these values are not exceeded when reimbursing inmates. The IMPP does not assign any value to photos. Inmates are limited to 50 photographs. Mr. Gadelkarim stated that some of his photographs were professional portraits. Something of such value should not be kept at the facility. The inventory shows four envelopes of pictures were confiscated. The facility lost the pictures. By regulation, those items have no monetary value that the Department can compensate. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6161 be allowed for \$150.
(See section captioned "Committee Action and Recommendation.")

Louis Galloway summarized Claim No. 6188 against El Dorado Correctional Facility in the amount of \$1,000 due to personal injury. He has requested, but not been afforded, protective custody. He has received disciplinary reports and restriction for refusing to go into general population, even though he told officers he was suffering from mental problems and paranoia. When in general population, he had a mental health order against him. His cellmate was due to leave within 90 days, so he asked that he be allowed to approve his next cellmate. Instead, another cellmate was placed in his cell within 20 minutes.

Libby Snider, KDOC, said admission to protective custody is only given when no alternative is available and the need is proven. Mr. Galloway's pattern is that he takes whatever action guarantees that he remains in a single cell. He prefers segregation to having a cellmate. He could give no verification of being threatened. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6188 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearings on the claims filed by inmates at **Hutchinson Correctional Facility.**

Ronald Hailes summarized Claim No. 6152 against Hutchinson Correctional Facility in the amount of \$4,000 due to being prohibited from sending out legal mail. He stated that he is indigent and that KDOC is supposed to mail out his legal mail. They have not done so for eight months. He has been required to get stamps from other inmates to mail his legal mail.

Libby Snider, KDOC, responded that Mr. Hailes attached no documentation, such as refusal

of postage by the facility, grievances against the facility, or any documentation that he has been denied due process. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6152 be denied.
(See section captioned "Committee Action and Recommendation.")

Michael Dupree summarized Claim No. 6182 against the Kansas Department of Corrections in the amount of \$70 due to loss of property. He was transferred from Washington State Penitentiary. He spent one night at Lansing Correctional Facility before arriving at El Dorado Correctional Facility. All his property arrived except his stereo. Upon receiving Ms. Snider's recommendation to deny his claim, he wrote to Washington State Prison but has not yet heard back from them.

Libby Snider, KDOC, responded that Mr. Dupree's four boxes were received from Washington State Prison, but his stereo was not there. The boxes were not opened at Lansing. There is no record that the stereo was ever received from Washington. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6182 be denied.
(See section captioned "Committee Action and Recommendation.")

Emory Walker summarized Claim No. 6163 against Hutchinson Correctional Facility in the amount of \$81.56 due to loss of property. Officers inventoried his property and packed it out. Some items were missing when his property was returned.

Libby Snider, KDOC, responded saying that the officers said the allegedly missing items were not there when Mr. Walker's property was secured. The unit is open and other inmates would have had access to the property prior to the packout. She recommended this claim be denied.

Mr. Walker said he signed the property list they gave him because they gave him the items that were on the list. The items missing were not on the inventory sheet. Photos that were missing were returned to him two weeks later. He filed an internal facility claim after that.

Following discussion, the Joint Committee recommended that Claim No. 6163 be denied.
(See section captioned "Committee Action and Recommendation.")

Tyron James summarized Claim No. 6184 against Lansing Correctional Facility in the amount of \$31.83 due to property damage. He stated that his fan was broken intentionally by officers while he was in segregation.

Libby Snider, KDOC, responded saying staff members interviewed said they did not break Mr. James' fan. It was confiscated due to wiring issues and a confiscation slip was given to Mr. James. The photograph of the fan does not show that the fan was in pieces. She recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6184 be denied.
(See section captioned "Committee Action and Recommendation.")

Gary Gillom summarized Claim No. 6177 against Lansing Correctional Facility in the amount of \$13.77 due to property damage. Officers broke the seals and lost the screws from the base of his lamp when searching for contraband. The lamp was used only once.

Libby Snider, KDOC, responded saying that the officers were looking for further contraband, but say they did not break the seal on the lamp base or remove screws. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6177 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the personal appearance hearings.

Vickie Stacker, claimant on Claim No. 6138, did not appear for the hearing. *Following discussion, the Joint Committee recommended that Claim No. 6138 be dismissed without prejudice.* (See section captioned "Committee Action and Recommendation.")

Daniel Lee Shanklin, claimant on Claim No. 6167, did not appear for the hearing. *Following discussion, the Joint Committee recommended that Claim No. 6167 be dismissed without prejudice.* (See section captioned "Committee Action and Recommendation.")

Leticia Mitchell, Claim No. 6155 against Topeka Correctional Facility in the amount of \$121,000 due to illegal incarceration and mental anguish, did not answer her phone.

Following discussion, the Joint Committee recommended that Claim No. 6157 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Shaneek Jones, Claim No. 6166 against Topeka Correctional Facility in the amount of \$10,000 due to personal injury, was present with her attorney, William Pauzauskie. Mr. Pauzauskie summarized Ms. Jones' claim. Ms. Jones was trained for the concrete-laying crew and had signed-off on this training, not for the tree-cutting crew. She was not trained to be around a chainsaw. She was wearing safety glasses and chaps, and was picking up branches behind the chainsaw operator. The chainsaw operator finished cutting and turned off the saw. He turned, swivelling the saw into Ms. Jones' face. She had significant damage to her right eye and scarring. She went to the University of Kansas Medical Center for medical treatment. There appears to be no permanent disability, just a scar.

Mr. Pauzauskie said the \$10,000 claim amount was calculated as follows: the claimant was found to be one-third at fault; a normal claim amount for this type of claim would be \$15,000; therefore, her final claim is for \$10,000. There may be a lawsuit, if satisfaction is not found with this Committee. He also asked that the Committee not deny the claim without prejudice, as he has had difficulties in court previously due to that determination.

Libby Snider, KDOC, responded that no negligence was found and safety practices were followed. Ms. Jones' previous claims did not mention lack of training. The chainsaw operator was putting a safety lock on the machine. She recommended this claim be denied.

Mike Heim, Office of the Revisor of Statutes, asked Ms. Snider if inmates are considered employees under workman's compensation. She replied that KDOC's work crews are not.

Following discussion, the Joint Committee recommended that Claim No. 6166 be denied.
(See section captioned "Committee Action and Recommendation.")

Jacqueline C. Kotsch's Claim No. 6173 against the University of Kansas (KU) in the amount of \$976.33 due to personal injury was summarized by Amy Deckard, Kansas Legislative Research Department. Ms. Kotsch was at a percussion band camp at KU (required prior to being in the KU marching band) when she experienced pinched nerves and pain in her back due to the long hours carrying the percussion equipment and being on her feet.

Rose Marino, University of Kansas, responded saying the first that KU had heard about this claim was the following January when Ms. Kotsch's father wrote to the band leader. He asked the percussion camp leader whether the rehearsal was handled the same with the same leaders. They were the same. No one was aware of Ms. Kotsch's injuries until further rehearsals. At that time they told her to either not hold the cymbals or that she should take breaks as needed. It was not until her father's insurance did not cover the medical bills that KU was informed that a claim was being made against the university. Ms. Kotsch had not signed any waiver. Ms. Marino recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6173 be denied.
(See section captioned "Committee Action and Recommendation.")

Debbie Lynn Strang summarized Claim No. 6175 against Wichita State University (WSU) in the amount of \$200,000 due to personal injury. As a student on campus, she fell on a wet floor in a classroom building. Her insurance paid a portion of her resulting medical bills, but she has spent over \$1,500 out-of-pocket and will incur at least \$30 per month for the rest of her life for the TENS unit she is required to use to keep her back muscles from becoming tense and painful. The three torn muscles in her shoulder have now healed. She did not go for medical attention immediately. Ms. Strang was studying to be a nurse, but due to physical limitations she now has, she may not be able to be a nurse and will need further education to be trained to do something else. She has also had pain and suffering.

She said the floor may have been recently mopped, but there were no puddles. She was wearing boots with tread, as there was snow on the ground outside, but the sidewalks had been shoveled. She wiped her feet twice on the indoor mats. The janitor heard her fall. There was a "wet floor" sign ten feet away leaning up against shelves. Ms. Strang's garments were wet when she got up.

In response to Committee questions about whether she had a pre-existing back condition, she said she has two bulging discs from previous car wrecks. She has had four years without pain, though. She still gets her back adjusted regularly.

Ms. Strang said she knew she would need permission from WSU to be seen by a physician, due to it being an accident on university grounds. She does have permanent damage and requires a TENS unit, which she will have to have the rest of her life to keep her back from tightening up.

A Committee member asked if she received any award after the car accidents. She answered that she did not.

Andy Schlapp, Wichita State University, responded that the campus maintenance crews do everything they can to keep people as safe as possible (*i.e.* shovel walks, replace wet door mats, mop up spills, etc.).

Chairperson Owens asked Ms. Strang if she had a statement from a doctor that stated the \$30 monthly charge would be for the rest of her life. She answered she did not.

Following discussion, the Joint Committee recommended that Claim No. 6175 be denied.
(See section captioned "Committee Action and Recommendation.")

William and Betty Booth were represented by Larry Olson, Executive Director, RV of Kansas, Liberal. He summarized Claim No. 6192 against the Kansas Department of Transportation (KDOT) in the amount of \$508,103 due to loss of business and incurred signage costs since the rerouting of Highway 54. He explained that KDOT moved Highway 54 one-quarter mile away from B & B RV Park. In doing so, it nullified 85 percent of their business. This rerouting put two other businesses totally out of business, leaving only B & B RV Park on old Highway 54. The 85 percent loss of business came to \$42,486 per year loss of income based on the last ten years. The cost of signage they have to pay will be \$1,000 per year. In addition, the state is requiring water work be done.

Oswald Dwyer, KDOT, responded saying they see no dispute between KDOT and the Booths; KDOT took no property; KDOT did not change the entrance of their property. The Secretary of Transportation created new alignments to maintain safe roadways. The state made calculated decisions to accommodate safety, provide growth in towns, and provide access control. The state has not taken anything tangible from the Booths. They are not entitled to compensation. The brown and blue signs installed by the state could have B & B RV Park on them; it appears they would qualify. Under the state's police power, diminished business due to new alignment is not at the state's cost.

Chairperson Owens asked Mr. Dwyer if he had accident count records with him.

Mr. Dwyer replied accident statistics are available, but he did not bring them with him. Attachment A of KDOT's response shows part of the reason for the new alignment was the proximity of the railroad lines. KDOT would have had to purchase additional property to add more lanes which could have caused the relocation of other businesses. He also noted that another RV Park business was established in 2005 in the area, which may have contributed to the change in business the Booths have experienced.

Committee members noted that if traffic is taken away from business areas, it makes sense that the businesses will suffer. Too often these projects are looked at from the engineers' perspective, and the economic development of the community is not considered.

Rod Lacy, KDOT engineer, road design leader, stated that it is the plan to have four lanes of Highway 54 meet up with Oklahoma's new Highway 54 four-lane. North of Liberal is still two-lane highway. There was significant public involvement in the public meetings about this plan. The city of Liberal requested five bypasses around the town. Twenty percent of the traffic around Liberal is trucks. A benefit of this design is to allow safe access and open up areas for future development.

A Committee member said it appears economic impact is evaluated based on speculative gains for the state concerning businesses that might come in vs. the effect on the existing local community. A member asked if the Booths attended the public meetings. Mr. Lacy said they did. Over seven new alignment plans were looked at; this is the one decided upon.

Following discussion, the Joint Committee recommended that Claim No. 6192 be denied.
(See section captioned "Committee Action and Recommendation.")

The meeting was adjourned at 12:30 p.m.

Prepared by Kathy Letch
Edited by Cindy Lash

Approved by Committee on:

December 3, 2009
(Date)

BILL NO. _____

By

AN ACT concerning the joint committee on special claims against the state; relating to hearing procedures; amending K.S.A. 46-914, 46-915 and 46-918 and repealing the existing sections.

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

Section 1. K.S.A. 46-914 is hereby amended to read as follows: 46-914. (a) Each claim shall be considered by the joint committee as soon as practicable after it is filed. If the joint committee deems a hearing to be necessary or advisable on any claim ~~or if the claimant requests the same~~, it shall provide for the holding of a hearing and shall give the claimant and the state agency involved, if any, at least fifteen days notice by certified mail of the time and place thereof.

(b) The joint committee shall not be bound by the strict rules of evidence, except when specifically required by its rules but shall admit all testimony having reasonable probative value, and shall conduct all hearings in a fair and impartial manner, giving full opportunity for presentation of evidence and argument.

(c) All officers and employees of the state shall provide such information and assistance as may be deemed necessary by the joint committee in the investigation and determination of claims filed under the provisions of this act.

Sec. 2. K.S.A. 46-915 is hereby amended to read as follows: 46-915. On and after November 1, 2010, the joint committee shall make a determination if a hearing is necessary or advisable on all claims submitted to it and shall submit to all claimants who are not granted a hearing notice of such determination within 20 days after the joint committee makes such determination. The joint committee ~~on special claims against the state~~ shall make determination of all claims submitted to it

Joint Committee on
Special Claims Against the State
November 2-3, 2009
Attachment 1

for which the joint committee has deemed a hearing to be necessary or advisable pursuant to K.S.A. 46-914, and amendments thereto, and a copy of its determination and recommendations shall be submitted to the claimant within 20 days after the joint committee makes its determination. Whenever the joint committee shall determine that the state should pay any amount to any claimant it shall recommend that an award be made in the amount so determined. All recommendations for awards shall be included in a bill or bills which shall be introduced in the name of the joint committee in either house of the legislature and referred to the committee on ways and means of the senate if introduced in the senate or the committee on appropriations of the house if introduced in the house of representatives for report and recommendations as on other bills referred to it. In determining amounts of awards for claims for injury, death and disability, the joint committee may use the workmen's compensation act as a guide, where applicable. No award shall be recommended for payment to any claimant unless the claimant has submitted a written application therefor which has been verified by the claimant and acknowledged before a notary public or other officer authorized by law to administer oaths.

Sec. 3. K.S.A. 46-918 is hereby amended to read as follows: 46-918. All claims filed prior to November 1 in any year shall be considered by the joint committee for consideration and recommendation to the ensuing session of the legislature, except that on and after November 1, 2010, all claims filed prior to August 1 in any year shall be considered for recommendation to the ensuing session of the legislature by the joint committee in accordance with the provisions of K.S.A. 46-914 and 46-915, and amendments thereto. Claims filed after November 1 ~~in any year, 2010,~~ and prior to the adjournment of the ensuing session of the legislature shall be considered by the joint committee during such session only if the president of the senate and the speaker of the house of representatives

authorizes the holding of meetings therefor. Claims filed after August 1, 2011, and claims filed after August 1 of each ensuing year and prior to the adjournment of the ensuing session of the legislature shall be considered by the joint committee during such session only if the president of the senate and the speaker of the house of representatives authorizes the holding of meetings therefor.

Sec. 4. K.S.A. 46-914, 46-915 and 46-918 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

Proposed New Process for Claims

All Claims

Committee members would individually receive and review the documentation for claims submitted. The claims and supporting documentation would be distributed to members electronically.

The Committee would meet in September. Members would identify any claims they would like to have set for hearing. (Determine if hearing is necessary or advisable)

No hearing necessary; denied on the record

Send notice of determination w/i 20 days of decision

Set for hearing

Hearing process does not change, but would expect to conduct hearings on fewer claims. Committee would have same options for decisions - approve, deny, dismiss without prejudice, carryover.

Depending on the number of claims set for hearing, the Committee is likely to need only one to two days for hearings. This would be a significant decrease from the six to eight days the Committee has met in past years. Over the last three years, Committee expenses (mileage, per diem and subsistence) have averaged \$2,600/day.

This process would reduce the workload of executive branch agencies and officials who currently must investigate and prepare a recommendation for every claim that is submitted. It would reduce workload somewhat for the Research Department and the Revisor's Office. In addition, it would reduce the number of hearing notices, which must be sent by certified mail at a cost of about \$5.00/notice.

Implementation Timing

If the 2010 Legislature approves the bill as currently drafted, the changeover could work as follows:

<u>Claims filed between these dates</u>	<u>would be heard during this interim</u>	<u>and presented to this Legislature.....</u>
11/2/08 - 11/1/09 (Current)	2009	2010
11/2/09 - 11/1/10 (No change from current)	2010	2011
11/2/10 - 8/1/11 (Transition year - 9 months of claims)	2011	2012
8/2/11 - 8/1/12 (1 st full year under new system)	2012	2013

Kansas Legislative Research Department

November 2, 2009

SENATE BILL No. 93

By Committee on Ways and Means

1-26

10 AN ACT concerning the joint committee on special claims against the
11 state; relating to membership thereof; amending K.S.A. 46-912 and
12 repealing the existing section.

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

15 Section 1. K.S.A. 46-912 is hereby amended to read as follows: 46-
16 912. There is hereby established the joint committee on special claims
17 against the state which shall have ~~13~~ [seven] members consisting of five
18 [three] members of the senate and ~~eight~~ [four] members of the house
19 of representatives. ~~The representative members shall be appointed by the~~
20 ~~speaker, and the senator members shall be appointed by the senate com-~~
21 ~~mittee on organization, calendar and rules. Not less than two one repre-~~
22 ~~sentative members and two senator members member and one senator~~
23 ~~member shall be attorneys licensed to practice law in the state of Kansas.~~
24 Not less than one representative member shall be a member of the house
25 committee on appropriations and not less than one senator member shall
26 be a member of the senate committee on ways and means. In the bien-
27 nium commencing with the convening of the regular session of the leg-
28 islatre in ~~1979~~, and in the biennium commencing with the convening of
29 the regular session of the legislature each four years thereafter, the chair-
30 person of the joint committee shall be a representative member desig-
31 nated by the speaker of the house of representatives. In the biennium
32 commencing with the convening of the regular session of the legislature
33 in ~~1981~~, and in the biennium commencing with the regular session of the
34 legislature each four years thereafter, ~~the senate committee on organi-~~
35 ~~zation, calendar and rules shall designate a senator member to be the~~
36 ~~chairperson of the joint committee. If a chairperson shall die, resign or~~
37 ~~otherwise be incapable of serving as chairperson for the full two year~~
38 ~~period, a successor shall be designated to fill the unexpired portion of~~
39 ~~such period in the same manner as the original chairperson was selected.~~
40 The members appointed from each house shall include minority party
41 representation thereon. The joint committee shall meet in the interim
42 between legislative sessions on the call of the chairperson as authorized
43 by the legislative coordinating council. Any seven [four] members of the

The chairperson of the house of representatives committee on
judiciary and the chairperson of the senate committee on judiciary
shall be members of the joint committee.

remaining

2011

the chairperson of the house of representatives committee on
judiciary

2013

the chairperson of the joint committee shall be the
chairperson of the senate committee on judiciary

Joint Committee on
Special Claims Against the State
November 2-3, 2009
Attachment 3

1 joint committee shall constitute a quorum. Any action of such joint com-
2 mittee may be taken by an affirmative vote of a majority of the members
3 present, if a quorum is present.

4 The provisions of article 12 of chapter 46 of the Kansas Statutes An-
5 notated, and amendments thereto, applicable to special committees shall
6 apply to the joint committee on special claims against the state to the
7 extent the same do not conflict with the specific provisions of this act
8 applicable to such committee.

9 Sec. 2. K.S.A. 46-912 is hereby repealed.

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

The ranking minority member of the joint committee shall be a member of the senate when the chairperson is a member of the senate or a member of the house of representatives when the chairperson is a member of the house of representatives.

3-2