

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 2, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Secretary Roger Werholtz, Kansas Department of Corrections
State Senator Jean Schodorf
Commissioner Russ Jennings, Kansas Juvenile Justice Authority

Others attending:

Secretary Roger Werholtz, Kansas Department of Corrections
State Senator Jean Schodorf
Commissioner Russ Jennings, Kansas Juvenile Justice Authority

See attached list.

Chairperson Colloton called the meeting to order and introduced Lynn Retz Auditor, Kansas Legislative Post Audit to brief the Committee. (Attachment 1) The entire Post Audit report is available in the Post Audit Offices. Ms. Retz stated that Post Audit was charged with answering the question "What happened in the Lansing, El Dorado and Topeka Correctional Facilities cases and what were the contributing factors? She explained three separate incidents at Kansas Correctional Facilities to the Committee and the recommendations of Post Audit. It was the conclusion of Post Audit that at both Lansing and Eldorado Correctional Facility staff failed to follow policies and procedures in place at the time of the incidents. The facilities and the Department of Corrections have taken steps to reduce the likelihood such incidents will happen in the future. At the Topeka Correctional Facility there were a variety of reasons that made conditions ripe for staff sexual misconduct. The Topeka Facility has made some changes but other systemic problems at the Topeka Correctional Facility may lead to more instances of staff misconduct.

In the course of the Post Audit review they noted additional areas of concerns. Statutory penalties in Kansas for staff sexual misconduct aren't as severe as other states and are even less severe than staff trafficking in contraband. They also found the Department lacks sufficient management information to ensure that officials are aware of the level of staff misconduct. There needs to be better consistency for tracking allegations and investigations, the investigative process and how staff discipline is determined. The Committee's questions were addressed by Ms. Retz during her briefing of the audit.

Upon the briefing by Post Audit, Chairperson Colloton introduced Secretary Werholtz, Kansas Department of Corrections, to give his response to the audit. Secretary Werholtz called the Committee's attention to written copies of the following information:

The National Institute of Corrections Technical Assistance Report on Kansas DOC (Attachment 2)
The NIC Report December 7-9: KDOC Progress Report (Attachment 3)
The Performance Audit Report January 2010: KDOC Progress Report (Attachment 4)
The Report for Governor-January 2010: KDOC Progress Report (Attachment 5)
Summary of Progress on Audit Reports and Governor Directives by KDOC (Attachment 6)

Secretary Werholtz stated the Kansas Department of Corrections appreciates the constructive approach of Post Audit and is committed to improve the things they could but they disagreed with Legislative Post Audit's interpretation of a few events. They do, however, agree with all the recommendations. He went on to explain the three incidents at the Lansing, El Dorado and Topeka Correctional Facilities while addressing the

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 2, 2010, in Room 144-S of the Capitol.

questions of the Committee.

Chairperson Colloton announced to the Committee she would suspend the briefing by Secretary Werholtz and opened the hearing on **SB 434** to allow State Senator Jean Schodorf give her testimony as a proponent of the bill.

SB 434 - Increasing criminal penalties for unlawful sexual relations

Chairperson Colloton opened the hearing on **SB 434** and called on Jason Thompson, Office of the Revisor of Statutes, to give a quick explanation of the bill. He stated that the bill would amend current law regarding unlawful sexual relations, traffic in contraband in a correctional institution or care and treatment facility, and the Kansas Offender Registration Act.

Chairperson Colloton introduced State Senator Jean Schodorf to give her testimony as a proponent of Senator Schodorf presented written copy of testimony. (Attachment 7) She highlighted on her testimony stating that the bill elevated the severity level from 10 to 5 for unlawful sexual relations in ten categories elevating the offenses to the same level as trafficking in contraband. In closing, she stated the Department of Corrections and Post Audit were in favor of this bill.

Chairperson Colloton continued with Secretary Werholtz's response to the Post Audit report. He stated that polices were being improved and put in place and stated they would do everything they could to put every recommendation of Post Audit in place.

A lengthy question and answer session followed.

Upon the completion of the question and answer session, Chairperson Colloton moved the Committee's attention back to the hearing on **SB 434** and introduced Commissioner Russ Jennings, Kansas Juvenile Justice Authority to give his testimony as a proponent of the bill. Commissioner Jennings presented written copy of his testimony. (Attachment 8) He stated they were in support of the bill and offered an amendment which is to convey the same authority to the commission of juvenile justice as is conveyed to the secretary of corrections and the secretary of social and rehabilitations services in adopting rules and regulations that define contraband.

A question and answer session followed.

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of Secretary Roger Werholtz, Kansas Department of Corrections. (Attachment 9)

Chairperson Colloton introduced Chris Clark, Legislative Post Audit to give her testimony as a neutral party of the bill. Ms. Clark presented written copy of her testimony. (Attachment 10) She stated that the bill would bring Kansas penalties for correctional staff unlawful sexual relations more in line with those of other states and would implement the recommendations that were made in the Post Audit report.

Chairperson Colloton called for any others wishing to testify, being none, she closed the hearing on **SB 434**.

SB 345 - H Sub for S 345 by Committee on Corrections and Juvenile Justice - Proportionality of sentencing; property and securities crimes

HB 2518 (2010)- Proportionality of sentencing; merging the drug and nondrug sentencing grids

Next, Chairperson Colloton called the Committee's attention to **SB 345** and announced she was opening the hearing. She called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill. Mr. Thompson presented written copy of his memorandum regarding **SB 345**. (Attachment 11) Mr. Thompson stated the bill, as introduced, would increase the probation service fee amount offenders are required to pay if convicted of a misdemeanor. These provisions would be deleted and the securities and property crime provisions from **HB 2518 (2010)** would be placed into **SB 345**. Mr. Thompson explained the securities and property crime

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 2, 2010, in Room 144-S of the Capitol.

penalties being placed in **SB 345**.

Chairperson Colloton called for anyone wishing to testify on **SB 345**, being none, she closed hearing and announced they would take up emergency action on the bill unless there were objections. There were no objections.

A discussion followed.

Chairperson Colloton called for a motion in regard to **SB 345**.

Representative Barnes moved to pass House Substitute for SB 345 out favorably for passage. Representative McCray-Miller seconded. Motion carried.

Chairperson Colloton adjourned the meeting at 3:15 p.m. with the next scheduled meeting March 3, 2010 at 1:30 p.m. in room 144-S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-2-10

NAME	REPRESENTING
Chris Mechlur	OJA
Kaylin McClrang	Guest
Levi Henry	Sandstone Group LLC
David Hutchings	KBI



Legislative Post Audit Performance Audit Report Highlights

Corrections and Juvenile Justice

Date: 3-2-10

Attachment # 1-1

Highlights

Department of Corrections:
Reviewing Allegations of Staff Misconduct

Report Highlights

January 2010 • 10PA08

Audit Concern

Over the last few years, there have been three highly publicized incidents occurring at three different correctional facilities – Lansing, El Dorado, and Topeka. Two of these incidents involved inmate escapes with the help of people associated with the correctional facilities. The third incident involved an inmate getting pregnant after having sexual relations with a correctional employee. These three incidents have caused legislators to question whether the State is doing enough to prevent misconduct by correctional employees.

Other Relevant Facts

We focused on allegations of staff undue familiarity, sexual misconduct, and trafficking in contraband.

The Department lacks sufficient management information to ensure that officials are aware of the level of staff misconduct. Because of a lack of good data, and the fact that some misconduct isn't reported, we can't say how prevalent staff misconduct is.

Investigations by facility staff result in findings of "substantiated" (proven true), "unfounded" (proven false) and "unsubstantiated" (can't be proven true or false).

AUDIT QUESTION: *What happened in the Lansing, El Dorado and Topeka cases and what were the contributing factors?*

AUDIT ANSWER and KEY FINDINGS:

- The three incidents we reviewed involved staff undue familiarity, sexual misconduct, and trafficking in contraband.

Lansing: Two facility staff failed to follow policies and procedures relating to reporting undue familiarity, and searching vehicles. This led to an inmate escaping by hiding in a vehicle.

El Dorado: Multiple staff at El Dorado, and Lansing staff failed to take action on reported undue familiarity. This led to two inmates escaping with the help of a former staff member who supplied bolt cutters and weapons, among other things.

Topeka: Facility staff had inappropriate contact with a female inmate, who became pregnant.
- All three cases had red flags facility officials should have recognized and acted upon which could have prevented each of the incidents.
- The Department and facilities have taken some steps to reduce the likelihood such incidents will happen in the future, but additional steps could be taken.
- When we compared the three facilities, we identified systemic issues at Topeka Correctional Facility, including:
 - more investigations related to allegations of sexual misconduct
 - more investigations ended with a finding of "unsubstantiated"
 - fewer employees dismissed even when allegations were substantiated
 - more employees investigated multiple times for undue familiarity, sexual misconduct and trafficking in contraband.

We Recommended

- The Legislature amend State law to require individuals convicted for sexual misconduct to register as a sex offender, and toughen the penalties for both sexual misconduct and trafficking in contraband.
- Department officials improve management information about staff involved in undue familiarity—including sexual misconduct—and trafficking in contraband.
- Department officials further review Topeka Correctional Facility to ensure the female inmates are protected.

Agency Response: *In its response, the Department disagreed with our interpretation of a few events but pointed out no factual inaccuracies. After a careful review of the Department's response we made no changes to the final report.*

Other Relevant Facts

(continued)

Statutory penalties in Kansas for staff sexual misconduct aren't as severe as other states and in fact are less severe than penalties for staff trafficking in contraband.

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audit report, please contact

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DO YOU HAVE AN IDEA FOR IMPROVED GOVERNMENT EFFICIENCY OR COST SAVINGS?

If you have an idea to share with us, send it to ideas@lpa.ks.gov, or write to us at the address shown. We will pass along the best ones to the Legislative Post Audit Committee.



THE NATIONAL INSTITUTE OF CORRECTIONS TECHNICAL ASSISTANCE REPORT ON

Technical Assistance No. 10B4606

Kansas Department of Corrections

Topeka Correctional Facility

Topeka, Kansas

December 7 - 9, 2009

Corrections and Juvenile Justice

Date: 3-2-10

Attachment # 27

DISCLAIMER

This technical assistance activity was funded by the Administration Division of the National Institute of Corrections. The Institute is a Federal agency established to provide assistance to strengthen state and local correctional agencies by creating more effective, humane, safe and just correctional services.

The resource persons who provided the onsite technical assistance did so through a cooperative agreement, at the request of the Kansas Office of the Governor, and through the coordination of the National Institute of Corrections. The direct onsite assistance and the subsequent report are intended to assist the agency in addressing issues outlined in the original request to enhance the effectiveness of the agency.

The contents of this document reflect the views of the resource persons associated with this technical assistance activity. The contents do not necessarily reflect the official views or policies of the National Institute of Corrections.

Executive Summary

Kansas Governor Mark Parkinson requested assistance from the National Institute of Corrections (NIC) to review the policies and training procedures related to staff sexual misconduct and cross gender supervision in the Kansas Department of Corrections, and in particular at the Topeka Correctional Facility. This Executive Summary provides an overview of the Departmental strengths, findings from the onsite work and document review, as well as a summary of the recommendations made by the consultant team to assist the Department in continuing to improve the sexual safety of inmates at the Topeka Correctional Facility.

Strengths

The consultants commend the Kansas Department of Corrections for their commitment to addressing the issue of sexual abuse, and would like to acknowledge the number of strategies that the Department has engaged in. They include: training their investigations staff in proper investigatory technique and process, changing the investigative processes and response timetables, developed an inmate orientation DVD, implementing a new PREA policy, developed training for volunteers, working with the community (Battered Women's group), implementing a sexual assault reporting hotline, institute a critical incident review process, implemented a medical protocol that includes a Sexual Assault Nurse Examiner (SANE), and are currently exploring a risk needs assessment to identify vulnerable and aggressive inmates. All of these efforts demonstrate the Department's awareness of this important issue, and their attention to continual improvement.

Findings and Recommendations

Policies and Procedures - The Kansas Department of Corrections written policies and procedures related to the prevention and detection of staff sexual abuse are generally consistent with national standards. The department leadership has progressively developed strategies to address issues of sexual abuse. Recommendations were made in the following areas regarding policies and procedures:

- Improving the notification, monitoring, and external access to Sexual Assault Hotline;
- Limiting cross gender pat searches to emergency situations, defining what circumstances constitutes an emergency, and augmenting training of staff in the proper technique for conducting such searches;
- Establishing a uniform process to ensure all inmates and staff are notified of policy changes; and
- Reviewing the 8 a.m. to 3 p.m. room restriction policy to see if changes are warranted or possible to reduce inmate idleness.

Training – The training curriculum for staff generally includes necessary components related to the prevention and detection of staff sexual misconduct. Recommendations were made in the following areas regarding training:

- Review the amount of time and delivery strategy for PREA-related training, and ensure that all staff participate in annual refresher training on the topic, including the prevention and detection of staff sexual misconduct.

- Develop a gender responsive training curriculum, potentially utilizing the National Institute of Corrections as a resource in this area to ensure most current information on research based training (including e-learning).
- Develop consistent volunteer training that minimally provides for full integration of the volunteer manual and adequate time to explore case examples related to sexual misconduct.

There has been a recent change in the leadership of the training department and, as a result, many staff are encouraged that there is a more intentional plan to develop gender responsive training materials and improve training delivery strategies.

Sexual Misconduct and Undue Familiarity - Inmate and staff discussion groups identified inconsistency in supervisory and leadership practices as barrier to reporting sexual abuse. Though most staff and inmates are generally familiar with PREA and DOC policies and procedures, an extensive review is necessary to determine (1) the application of these policies and procedures within the TCF, and (2) the willingness of staff and inmates to report inappropriate behavior. Recommendations were made in the following areas regarding sexual misconduct and undue familiarity:

- Clearly define for staff behaviors that would constitute undue familiarity, as well as those behaviors that would not.
- Consider a more extensive review of inmate perceptions and behavior regarding reporting staff sexual misconduct, as well as any barriers to reporting incidents when they occur.
- Consider a more extensive review of staff perceptions regarding reporting incidents of staff sexual misconduct.
- Review the grievance process to determine whether changes may be necessary to promote greater inmate confidence in the process, including additional means of providing assurances that there will be no retaliation for the filing of grievances.

Investigations - The investigative function within the DOC has been strengthened by recent restructuring. When made aware of staff sexual misconduct allegations, investigators have responded appropriately and have effectively used all available investigative tools such as interviews, surveillance, polygraphs, etc. Feedback in inmate and staff discussion groups indicated that there was inconsistency in the full understanding of what was a "reportable" incident, as well as a lack of confidence in the investigative process. Recommendations were made in the following areas regarding investigations:

- Ensure investigators have full access to video footage without going through administrators.
- Review proper installation of cameras with the retention schedule for camera videotapes ensured for the full allotted capacity of the equipment.
- Enhance the education of both staff and inmates about the investigative process and its purpose in protecting both staff and inmates.
- Establish guidelines for timely investigations and develop a process for monitoring those timelines.

- Develop a standard process for notifying staff and inmates about ongoing and concluded investigations.
- Ensure that all investigations are carried through to a final disposition even if a staff member resigns their position during the investigation.
- Increase confidence in investigations (see reporting recommendations).
- Build upon the newly-established process for reviewing sexual abuse incidents at both the facility and departmental level, and continue to emphasize the importance of the strategy.

Inmate Education - Inmate orientation materials, brochure, and video, adequately cover issues of sexual abuse and reporting of incidents. Not all long-term inmates have had the opportunity to receive PREA orientation training. A recommendation was made in the following area regarding inmate education about PREA and sexual abuse:

- Develop a single policy clearly delineating requirements for inmate orientation and education, as well as defining the entity responsible for providing such information.

Monitoring Systems - TCF has installed a number of new cameras within the facility, yet there are a number of areas that remain unmonitored, either by direct staff supervision and/or camera. Recommendations were made in the following areas regarding monitoring systems:

- Establish a set schedule for maintenance of the camera system to ensure that cameras are not out of service.
- Review the construction and placement of officer stations to ensure optimal viewing of inmate activity.
- Secure resources to install additional cameras in isolated areas where inmate movement and activity is frequent.
- Review all enclosed areas to determine whether blinds or other obstructions can be removed to facilitate effective monitoring.
- Conduct a comprehensive review of key control within the facility.

Staffing Plans – Current custody staffing levels are insufficient to effectively monitor activities at TCF – even considering the use of cameras throughout the facility. This impairs the safety of both staff and inmates, including sexual safety. Recommendations were made in the following areas regarding staffing plans:

- Review their current staffing plan and redistribute staff to increase inmate supervision.
- Review all post orders and determine whether they are reasonable and feasible for staff to adhere to.
- Undertake a comprehensive staffing study to determine sufficient staffing levels at TCF.
- Endeavor to fill all the positions that are currently approved but remain vacant or unfunded.

The consultant team recommends the Department and facility leadership prioritize these recommendations and explore additional support from the National Institute of Corrections to assist them in the prevention, detection, and response to instances of sexual abuse.

Consultant Team

The National Institute of Corrections team was comprised of the following four criminal justice consultants: Anadora (Andie) Moss, Susan Poole, David Marcial, and Jeff Shorba.

Background

Kansas Governor Mark Parkinson requested assistance from the National Institute of Corrections (NIC) to review the policies and training procedures related to staff sexual misconduct and cross gender supervision in the Kansas Department of Corrections, and in particular at the Topeka Correctional Facility (TCF). The letter of request specifically asked for a review of the following:

1. Effectiveness of departmental policies and procedures;
2. Consistency with generally accepted national practices of department training on sexual misconduct and undue familiarity;
3. Staff and inmate knowledge and understanding regarding sexual misconduct and undue familiarity;
4. Facility responses to specific allegations of staff sexual misconduct, particularly focusing on recent incidents at the Topeka Correctional Facility. Were the events, investigations and personnel actions handled in accordance with department policies and procedures?
5. Systems in place for inmate education regarding sexual abuse and reporting of incidents;
6. Adequacy of monitoring systems (camera, contraband controls, technology); and
7. Staffing plans for adequacy of coverage and supervision.

NIC contracted four nationally-recognized criminal justice consultants to conduct a review of the items requested by Governor Parkinson. The consultant team spent three days in Topeka meeting with Kansas Department of Corrections (DOC) and Topeka Correctional Facility (TCF) officials, holding discussion groups with staff and inmates and reviewing facility operations during all three shifts. As part of the review, the consultants analyzed over one hundred DOC policies, procedures, investigations, training materials, reports, statutes, etc. Some of the document review occurred on-site at TCF, with the majority of the review taking place in advance of the site work. This report organized around the issues raised in Governor Parkinson's request, containing the following seven areas of review:

1. DOC Policies and Procedures
2. DOC Staff Training
3. Staff and Inmate Knowledge of Sexual Misconduct and Undue Familiarity

NIC Report December 7-9, 2009: KDOC PROGRESS REPORT

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

1) POLICIES and PROCEDURES

Sexual Assault Hotline

The DOC should consider changing its posters and other information advertising the sexual assault line. It is not clear from the posting that callers may leave information anonymously and that callers using an inmate telephone will not have their identity recorded.

Sexual assault posters (Spanish and English) have been revised to clearly indicate that calls are anonymous and can be confidential. **COMPLETED.**

Notice of the sexual assault line should also be placed directly on the inmate phones so it is easily visible to inmates.

Signs distributed to correctional facilities on 2/1/10 and posted on inmates phones. **COMPLETED.**

The DOC should also ensure that only designated Central Office EAI Division staff are able to retrieve messages from the sexual assault line.

The #50 helpline has been modified effective 1/27/2010. Only Central Office EAI staff have access. **COMPLETED.**

The DOC should consider establishing a way for non-inmates (staff, visitors, family members, etc.) to report to a sexual assault line. These individuals may also be good sources of confidential information.

The public toll-free hotline was fully functioning effective February 2, 2010. Posters advertising the hotline have been created and posted in visiting and administrative areas. **COMPLETED.**

Corrections and Juvenile Justice
 Date: 3-2-10
 Attachment # 3-1

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

1) POLICIES and PROCEDURES (CON'T)

Pat Search Recommendation

The DOC should revise its pat search policy to limit cross gender pat searches only to emergency situations - and define what circumstances would constitute emergency situations. This would be consistent with current operational practice in most women's facilities. If these limitations are not imposed, at a minimum, the DOC should enhance its training of staff to ensure that proper techniques are used when conducting pat searches.

Reviewing best practices from other correctional agencies. We have received numerous policies/lesson plans from other state DOCs and the Bureau of Prisons (BOP). We have requested a video of cross gender pat searches from the BOP. **IN PROGRESS.**

Review cross gender pat search training content and implementation, including a recommendation within six (6) months regarding the adoption of a policy for no cross gender pat searches, except in cases of emergency.

Same as above action item. Recommendation is pending a complete review. **IN PROGRESS.**

Review policy change notification procedures

The DOC should establish a uniform process to ensure all inmates and staff are notified of policy changes.

IMPP 01-101 has been revised to require each facility to identify three methods of distributing policy changes to staff and offenders. The policy will become effective on 2-26. **COMPLETED.**

Room restrictions policy

TCF should review its 8 a.m. to 3 p.m. room restriction policy to see if changes are warranted or possible. The review should include an analysis of additional full- and part-time work assignments that could be structured, particularly in support of facility maintenance. Inmate idleness can contribute to increased sexual vulnerability.

Acting Warden Pellant reviewing the room restriction policy. During interim, TCF has expanded job opportunities for inmates thus reducing inmate idleness. **IN PROGRESS.**

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ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

2) STAFF TRAINING

Annual Training Recommendations

Review the amount of time dedicated to PREA issues during annual training, the delivery strategy and the use of an evaluation tool

A standardized two-hour annual training lesson plan is under development. The basic training lesson plan has been reviewed and is being revised. An evaluation tool is available and will be used. Training on PREA or sexual misconduct is prohibited from being taught as a "self-study" module. IN PROGRESS.

Gender Responsive Training Recommendation

The DOC should develop a curriculum to use in training all TCF staff on working with female inmates.

Requested technical assistance from NIC. Letter dated 1/28/2010. Staff also developing a lesson plan and will deliver training to Unit Team, Non-Uniform and Uniform staff on "Women Offenders and Responsivity". Due date is 6/30/2010. IN PROGRESS.

The DOC should develop consistent volunteer training. The training should provide for full implementation of the volunteer manual and adequate time to explore case examples related to sexual misconduct.

A state-wide volunteer coordinator has been identified. The volunteer manual and lesson plan have been revised and updated. The volunteer coordinator will monitor delivery of training. COMPLETED.

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

3) STAFF and INMATE KNOWLEDGE

of SEXUAL MISCONDUCT and UNDUE FAMILIARITY

Undue Familiarity
Recommendation

The DOC and TCF Administration should clearly define for staff behaviors that would constitute undue familiarity, as well as those behaviors that would not. Orientation materials should be reviewed for gender appropriateness.

Kevin Smith has been assigned to develop a two-hour standardized training module for FY 2011 delivery statewide. Will clarify definitions and provide real examples. Due date is June 30, 2010. IN PROGRESS.

Inmate Reporting
Recommendation

The DOC should consider a more extensive review of inmate perceptions and behavior regarding reporting staff sexual misconduct.

Requested technical assistance from NIC to address this issue. Letter submitted 2/8/2010. IN PROGRESS.

Staff Reporting
Recommendation

The DOC should consider a more extensive review of staff perceptions regarding reporting incidents of staff sexual misconduct.

Requested technical assistance from NIC. Letters submitted 2/8/2010. IN PROGRESS.

Grievance Process
Recommendation

The DOC and TCF should review its grievance process to determine whether changes may be necessary to promote greater inmate confidence.

Liz Rice has been assigned to examine the grievance process. We are waiting a recommendation from the Moss Group regarding an offender survey design. May try to include this as part of NIC technical assistance request. IN PROGRESS.

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ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

4) FACILITY RESPONSE to ALLEGATIONS

Camera Recommendation	The DOC should review investigator access to cameras, proper installation and maintenance and retention schedules.	Major Essman is developing a standard to allow a minimum 30-day retention period of all video. Investigative staff can now access video from their desktop. COMPLETED.			
Orientation Recommendation	The DOC should enhance its efforts to educate both staff and inmates about the investigative process.	EAI staff will develop an investigations brochure for distribution to both staff and offenders. IN PROGRESS.			
Investigation Timeline	The DOC should establish guidelines for timely investigations and develop a process for monitoring those guidelines.	EAI staff is investigating whether protocols can be incorporated into investigative software. May 2010 completion. IN PROGRESS. POSSIBLY RESOURCE DEPENDENT.			
Notice Recommendation	The DOC should develop a process for notifying staff and inmates about ongoing and concluded investigations.	Incorporating appropriate language into IMPP 22-103. May 2010 completion. IN PROGRESS.			
Staff Resignation Recommendation	The DOC should ensure that all documentation to substantiate investigations is easily retrievable, including when a staff member resigns during the investigation.	Information management software has been purchased. Waiting for software to be installed and staff training. May 2010 completion. IN PROGRESS.			
Incident Review Recommendation	Incident reviews should include all investigations related to sexual abuse and should be monitored by senior staff	IMPP 10-103 was revised in October 2009 and requires that a Serious Incident Review take place in all instances where abusive sexual contact or any acts of staff sexual misconduct are confirmed. COMPLETED.			

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

5) INMATE EDUCATION

Orientation Materials

Provide update brochures/video to long-term inmates.

COMPLETED at TCF. IN PROGRESS AT OTHER LOCATIONS.

The DOC should develop a single policy clearly delineating requirements for inmate orientation and education, as well as defining the entity responsible for providing such information.

Bob Harrison has identified a work group. Meeting scheduled March 3. Completion date May 2010. IN PROGRESS.

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ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

6) MONITORING SYSTEMS

TCF should establish a set schedule for maintenance of the camera system.

Met with Bill Noll / Brian Pond. Maintenance and supervision of the cameras system is a system-wide issue. This item will need additional discussion and a long-term plan. **RESOURCE DEPENDENT.**

TCF should review the construction and placement of officer stations to ensure optimal viewing of inmate activity.

TCF staff are currently evaluating various options. Decision is pending. **RESOURCE DEPENDENT.**

The DOC should secure resources to install additional cameras in isolated areas.

Warden Pellant was directed to formulate a camera plan by August 2010. **RESOURCE DEPENDENT.**

TCF should review all enclosed areas to determine whether blinds or other obstructions can be removed to facilitate effective monitoring.

Review completed and blinds have been removed. **COMPLETED.**

TCF should conduct a comprehensive review of key control within the facility.

A comprehensive review of key control at TCF was conducted on January 28-29, 2010. **COMPLETED.**

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

7) STAFFING PLANS

Review the current staffing plan and redistribute staff to increase inmate supervision.

Requested technical assistance from NIC on 2/8/2010. IN PROGRESS. Resource Dependent

Review all post orders to determine whether they are reasonable for staff to adhere to.

Recommendation related to staffing and will be conducted in conjunction with a staffing analysis (see item below). IN PROGRESS. Resource Dependent

Undertake a comprehensive staffing study to determine sufficient staffing levels at TCF.

Requested technical assistance from NIC on February 8, 2010. IN PROGRESS. Resource Dependent

Endeavor to fill all positions that are currently approved but remain vacant or unfunded.

RESOURCE DEPENDENT.

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Performance Audit Report January 2010: KDOC PROGRESS REPORT

Legislative Post Audit

ISSUE	RECOMMENDATION	ACTION			
		February	March	April	May
<p>1) To help ensure that Department policies and procedures are in-line with best practices and provide appropriate guidance to staff, the Department of Corrections should do the following:</p>	<p>a) Review and amend any policies that are ambiguous or outdated, or that don't adequately address volunteers or contractors.</p>	<p>Bob Harrison to identify work group to accomplish this task. Completion date of 4/1/2010. IN PROGRESS. Partially Completed.</p>			
	<p>b) Implement policies that adequately and completely outline training standards for investigative staff.</p>	<p>Investigative staff are working on developing training standards. This is a priority and will be completed by 7/1/2010. IN PROGRESS.</p>			
<p>2) To help ensure that Department officials have good management information about staff involved in undue familiarity - including sexual misconduct and trafficking in contraband - the Department should do the following:</p>	<p>a) Require investigative staff at all facilities to fully use the investigative computer system to allow better tracking of all investigative files, from the time the investigation starts to completion.</p>	<p>Information management software has been purchased to track staff misconduct. Following installation of the software, staff will be trained and protocols developed. A May 2010 completion date is expected. IN PROGRESS.</p>			
	<p>b) Establish a consistent training curriculum for all investigative staff.</p>	<p>Staff is gathering sample curriculum from various sources. Due to specialized nature, outside assistance may be required. IN PROGRESS. Resource Dependent.</p>			
	<p>c) Require investigative staff to track all allegations of undue familiarity, sexual misconduct and trafficking in contraband, not just those that are investigated. If these allegations aren't investigated, that tracking system should capture the reason(s) why.</p>	<p>Effective 2/15 all allegations of undue familiarity, sexual misconduct and trafficking have been entered into the EAI automated case log. The action taken regarding each allegation is recorded. COMPLETED.</p>			

Corrections and Juvenile Justice
 Date: 3-2-10
 Attachment # 4-1

ISSUE	RECOMMENDATION	ACTION			
		February	March	April	May

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| 2) To help ensure that Department officials have good management information about staff involved in undue familiarity - including sexual misconduct and trafficking in contraband - the Department should do the following (con't): | d) Establish a system where management separately reviews unsubstantiated allegations that repeatedly involve the same correctional staff member(s), to ensure that management evaluate any patterns of conduct or take appropriate actions to reduce continued areas of concern. | The new management information system will auto-notify the Warden when repeated allegations are made. IN PROGRESS. | | | |
| | e) Require weekly reports submitted to the warden and central office show the status of <u>all</u> cases, including age, and any new developments. | Investigating capabilities of new management information software. Anticipate the software will produce weekly reports as indicated. IN PROGRESS. Possibly Resource Dependent. | | | |
| 3) To help ensure that staff are consistently and appropriately disciplined: | a) The Department should require all facilities to track, in an appropriate computer format, all disciplinary actions taken by the facility. Department officials should periodically review this information to ensure consistency from case to case and facility to facility. | Warden Emmalee Conover has been assigned to this task. Warden Conover will provide an estimated completion date as soon as the necessary information is obtained. IN PROGRESS. | | | |
| 4) To help ensure that inmates receive proper notice about their rights to be free from sexual violence while in prison, and to conform to the Prison Rape Elimination Act of 2003: | a) The Department should update the information DVD for inmates to include additional information about staff-on-inmate violations. | The orientation video has been updated and now includes information related to staff-on-inmate violations. The DVD was distributed to facilities on Feb. 23rd. Old DVDs will be discarded and replaced with the updated version. COMPLETED. | | | |
| 5) To help ensure that Prison Rape Elimination Act information is properly and consistently reported: | a) The Department should put out additional guidance to the facilities on what incidents to report and the proper format for doing so. | Currently reviewing areas of inconsistency. Will provide additional guidance needed. IN PROGRESS. | | | |

4-2

ISSUE	RECOMMENDATION	ACTION			
		February	March	April	May
6) To help ensure that all facility failures are detected and that unbiased recommendations are made, all Serious Incident Review Boards should:	a) Be provided with a complete investigative file and not be limited to the investigative records the facility determines to be relevant.	IMPP 12-118, <i>Serious Incident Review</i> revised to require a complete investigative file be available to the board. COMPLETED 2/11/2010.			
	b) Be made up of members who don't have any connection to the issues or individuals under review.	IMPP 12-118 revised to indicate that membership on the review board should consist of those with no connection to the issues or individuals involved. COMPLETED 2/11/2010.			
7) To further protect the female inmates at Topeka Correctional Facility and require additional accountability of facility maintenance staff, the Department should do the following:	a) Implement a process for tracking inmates as they perform work order duties with maintenance staff. This tracking should include, but not necessarily be limited to, staff name, type of work, location of work, and time in and time out.	The Deputy Secretary has recommended a plan of action. Waiting on response from Acting Warden Pellant. IN PROGRESS.			
	b) Secure any buildings that are used by maintenance or other staff when accompanied by inmates.	Appropriate procedures have been implemented. Awaiting confirmation from TCF. IN PROGRESS. Potentially Resource Dependent.			
	c) Increase the training and supervision of maintenance staff who work in the vocational programs with inmates.	Becky Galbraith reviewing training requirements and will provide recommendations by 6/1/2010. IN PROGRESS. Has Resource Implications.			

4-3

ISSUE	RECOMMENDATION	ACTION			
		February	March	April	May

- | | | | | | |
|---|--|--|--|--|--|
| <p>8) To further protect the female inmate population, the Department of Corrections should do the following:</p> | <p>a) Identify and provide specialized training for male staff working with female prisoners.</p> <p>b) Conduct a review of investigative and disciplinary cases at Topeka Correctional Facility to determine why fewer cases are substantiated, and why more staff are repeatedly investigated for misconduct issues.</p> | <p>The Secretary of Corrections requested Technical Assistance from NIC to develop a "gender specific training curriculum." We anticipate the request will be awarded and are waiting on a reply. IN PROGRESS.</p> | <p>Review team identified. Review is scheduled to be completed by 3/15/2010. The team will review unsubstantiated cases covering a two-year period. IN PROGRESS.</p> | | |
|---|--|--|--|--|--|

17-1

Report for Governor - January 2010: KDOC PROGRESS REPORT

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May
A)	Implement the following NIC report recommendations:				
	1) Sexual assault hotline, pg. 7.	1) Posters have been revised and clearly indicate that calls are anonymous and can be confidential. 2) Notices of the sexual assault line have been posted on inmate phones. 3) Access to the sexual assault line has been limited to two central office positions. 4) A public hot-line has been established and posters displayed. COMPLETED.			
	2) Review cross gender pat search training content and implementation, including a recommendation within 6 months regarding the adoption of a policy for no cross gender pat searches, except in cases of emergency, pg. 9.	We are reviewing Best Practices from other state DOCs as well as the Bureau of Prisons. A recommendation will be made following analysis. IN PROGRESS.			
	3) Review policy change notification procedures, pg. 9.	IMPP 01-101 revised to provide that each facility identify three methods of distributing policy changes to staff and offenders. COMPLETED.			
	4) Room restrictions policy, pg. 9.	The Warden is reviewing the policy. A decision is pending. Job opportunities have been expanded job which will decrease the level of offender idleness. IN PROGRESS.			
	5) Clarify definitions of undue familiarity and review related training and orientation for staff and inmates, pg. 11.	Staff have been identified to develop a two-hour standardized training module for delivery statewide beginning 7/1/2010. Definitions will be clarified and real life examples provided. IN PROGRESS.			

Corrections and Juvenile Justice
 Date: 3-2-10
 Attachment # 5-1

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

A) Implement the following NIC report recommendations (con't):

- | | |
|--|--|
| <p>6) Evaluate the effectiveness of the 120 day review process for inmate reporting of sexual misconduct, pg. 12.</p> | <p>Department requested technical assistance from NIC in conducting an analysis of inmate and staff perceptions regarding reporting of sexual misconduct and barriers to reporting. IN PROGRESS</p> |
| <p>7) Conduct a more extensive review of the effectiveness of staff and inmate reporting mechanisms for sexual misconduct, pg. 12.</p> | <p>Same as #6. Requesting technical assistance. IN PROGRESS.</p> |
| <p>8) Investigation, pg. 13-16.</p> | <p></p> |
| <p>a) Camera and data storage systems</p> | <p>TCF staff is developing standards for visual clarity and storage which will allow for 30 day retention of all video. COMPLETED.</p> |
| <p>b) Process orientation</p> | <p>EAI staff will develop an orientation brochure for both staff and offenders. IN PROGRESS.</p> |
| <p>c) Timeline and Notice</p> | <p>EAI staff investigating whether timeline protocols can be incorporated into the investigative software. Established 5/1/2010 completion date. IN PROGRESS. Possibly Resource Dependent.</p> |
| <p>d) Review investigation completion process and post resignation</p> | <p>Information management software has been purchased. Installation and training is pending. IN PROGRESS.</p> |
| <p>e) Complete installation and provide periodic updates on the investigative software.</p> | <p>Estimated completion date is May 2010. Will continue to monitor. IN PROGRESS.</p> |
| <p>f) Inmate orientation</p> | <p>Assigned to Bob Harrison. Estimated completion date is 3/15/2010. IN PROGRESS.</p> |
| <p>9) Maintenance for surveillance systems - key control, pg. 16, 20 and 22</p> | <p>An assessment of key control was conducted January 28-29, 2010 with five major changes recommended. TCF has assigned staff to monitor cameras weekly to ensure they are properly functioning. COMPLETED.</p> |
| <p>10 Review post orders, pg. 23</p> | <p>Department requested NIC technical assistance to determine appropriate staffing levels. Post orders to be reviewed as part of staffing analysis. IN PROGRESS.</p> |

5-2

ITEM	RECOMMENDATION	ACTION			
		February	March	April	May

5-3

C) As resources are available, the Department of Corrections should proceed with the following:

- 1) Additional staff training
 - a) Annual, pg. 10
 - b) Gender Responsive, pg. 10
 - c) Volunteer, pg. 11
- 2) Monitoring systems, pg. 16-17, 2-22
 - a) Maintenance
 - b) Officer station
 - a.) Enclosed areas
 - b.) Additional cameras
 - 3) Fill vacant or unfunded staffing positions, pg. 22-23
 - 4) Review Staffing plan and seek NIC assistance, pg. 22-23

A standardized two-hour lesson plan under development. Bob Harrison reviewing basic lesson plan. "Self-Study" eliminated. **IN PROGRESS.**

Technical Assistance requested. **IN PROGRESS.**

State-wide volunteer coordinator identified. The volunteer manual and lesson plan has been updated. Volunteer coordinator will monitor delivery. **COMPLETED.**

Deputy Secretary Simmons requested a report regarding placement of additional cameras. Blinds removed from enclosed areas. Key control review completed. Requested technical assistance to complete staffing analysis. Officer stations being evaluated. **PARTIALLY COMPLETED.**

TCF has established a process to review all cameras weekly to ensure proper functioning. **COMPLETED.**

Staff examining various options. Using closed dorms to "experiment" with the various options. Decision pending. **IN PROGRESS. Resource Dependent.**

COMPLETED.

Pending funding availability. **RESOURCE DEPENDENT.**

Pending funding availability. **RESOURCE DEPENDENT.**

Technical assistance letter has been requested. **IN PROGRESS.**

D) In accordance with the report, I also direct you to conduct a system-wide review of all state correctional facilities to ensure that none of the issues identified at the Topeka facility are present in other facilities.

Bob Harrison to assign a team to conduct review. **IN PROGRESS.**

DATE: January 28, 2010
TO: Joint Committee on Legislative Post Audit
FROM: Roger Werholtz, Secretary of Corrections



I would like to take the opportunity to submit some additional written comments regarding the contents of the Post Audit report on Department of Corrections: Reviewing Allegations of Staff Misconduct. I regret that we did not include these in the initial response, but we became convinced, upon further review and analysis, that we should make these observations in writing since time to discuss everything is obviously limited.

The issues of Department of Corrections staff sexual misconduct, undue familiarity, and trafficking in contraband are not new issues to the Department of Corrections or to the Legislature. The Department has had, for many years, a rule prohibiting staff from engaging in actions of undue familiarity with inmates. In the early 1990s the Department sought legislation to criminalize sexual relationships between staff and inmates. This law was eventually enacted in 1993. In 1997 the Department requested legislation, which was enacted that same year, to increase the severity level for the crime of trafficking in contraband.

The policy regarding undue familiarity and the statutes regarding sexual misconduct and trafficking in contraband have been strictly enforced by all facilities of the Department. When allegations have been brought forward they have been investigated. When the allegations have been substantiated, sanctions have been imposed. As I noted in my response of January 21, 2010, we have not seen any credible evidence to suggest that undue familiarity or sexual misconduct is condoned or tolerated at any Kansas correctional facility, nor have we seen any credible evidence to indicate that undue familiarity or sexual misconduct is widespread among staff.

There is no denying that on occasion employees of the Department of Corrections have violated their public trust by engaging in improper and sometimes illegal conduct. The Department has discussed incidents of this nature openly with the Legislature and the media as they have occurred over the years. As a case in point, the Gallardo incident at Topeka Correctional Facility (TCF) was referred to the Topeka Police Department for investigation and was prosecuted by the Shawnee County District Attorney. The Young matter at Lansing and the Goff matter at El Dorado were also addressed in public venues. It is not possible to make all personnel records public due to statutes and regulations governing employee privacy, but those that are appealed to the Civil Service Board or are filed in court are public. The records and actions of the Department in seeking tools to assist in addressing these issues and in responding to specific incidents show that the Department has been open and active in attempting to resolve such issues with the resources available.

Because of the potential adverse impact on security resulting from even one incident involving this type of conduct, we sought assistance from the Legislature to give us these additional tools to utilize for deterrent or response purposes. We also sought assistance from the Legislature during the 2007 session with a request for funding for security enhancements at all KDOC correctional facilities. This funding, in combination with a grant provided through the Prison Rape Elimination Act, allowed us to install cameras, metal detectors, package scanners, and other security equipment that we previously lacked the resources to acquire. These enhancements have greatly improved our security posture with respect to these issues.

There is a statement on page 18 of the audit report that "conditions were ripe for staff misconduct to have occurred." One of the reasons cited in support of that statement is that cameras are not located in various areas. At the time of the Gallardo incident in October, 2007, Topeka Correctional Facility basically had only a handful of cameras for the entire facility. Now it has approximately 250. However, given the physical layout of the facility, we were told by consultants with the Moss Group that over 1000 cameras would be needed to adequately cover all areas of the facility. This would be a significant resource issue.

Also listed as a reason in support of the statement is that supervisors "received sporadic supervision and no additional monitoring." Work details at TCF are supervised in the same manner as work details at other correctional facilities. Supervision of detail supervisors is not ongoing on a constant basis. Staffing limitations do not allow for such intensive supervision. If constant supervision or tracking of movement is desired, additional staff will be necessary, or tracking technology will need to be acquired. We can log who went where, for what purpose, and how long they stayed, but that type of logging would not have prevented the Gallardo incident from having occurred.

Another reason cited in support of the conclusion that conditions were "ripe for misconduct" was that three male staff members had been "investigated" for improper behavior. One of the three was not an instructor with the program in question. Being investigated does not imply guilt. Until a matter can be substantiated, disciplinary action, including possible termination, cannot be taken. Considering all of the factors listed in the report, it appears that the conclusion that "conditions were ripe for staff misconduct" may be overstated.

In a number of places in the report, the auditors discuss discrepancies between data bases and reports. We do not want to leave the committee with the impression that numbers do not match up. We believe that the numbers were reconciled and the information was provided to the auditors. In one instance (pg. 2) the differences noted were the result of investigative data being kept by one set of staff while dispositional data was kept by another set of staff in a separate set of files. We agree this is not a desirable practice, but do want to make clear that complete information did, and does exist, on cases that show the sequence of events from allegation to investigation to disposition in cases at Topeka Correctional Facility.

On page 12, we find an example of what we see as a larger problem in discussing what are the appropriate responses to issues involving staff undue familiarity and those involving sexual misconduct. We believe that, too often, the terms are used interchangeably and that this blurring of distinctions leads to some conclusions about the appropriateness of the actions taken in response. We believe the report on page 4 accurately articulates the distinctions between the broader term of undue familiarity and the more specific term of sexual misconduct. We believe that the analysis done to reach some of the conclusions lumps these two categories together, when the Civil Service Board and a more complete understanding of the events would not. Our impression is that the auditors feel that TCF was not severe enough in their disciplinary actions taken in response to undue familiarity. We do not see any criticism in response to actions taken on cases of sexual misconduct. We would point out that during the five-year period of review requested by the auditors, a total of 19 cases of discipline from TCF were appealed to the Civil Service Board. Of those 19 cases, 15 were upheld by the Board. Three were modified to a less severe penalty (termination from a CO II position was reduced to placement in a "non-security" position at TCF; a three-day suspension was reduced to a one-day suspension; and a termination was reduced to a ten-day suspension). One was withdrawn in a settlement to a 30-day suspension in lieu of termination. Of the 19 cases, eight involved undue familiarity. Of the eight cases that involved undue familiarity, four were upheld by the Board, three were modified by the Board, and one was settled. In other words, all of the disciplinary cases modified by the Civil Service Board to a lesser sanction than that originally imposed by TCF involved undue familiarity.

As stated in our earlier response included with the audit report, part of the consideration when imposing a disciplinary sanction, is what sanction will the Board support if the decision is appealed? Looking at the chart prepared by Post Audit on page 27 of the report, it appears that the one piece of data that creates the impression of TCF being less severe for cases of undue familiarity is the number of suspensions as opposed to terminations or resignations when compared to Lansing and El Dorado. In looking at the actions taken by the Civil Service Board, the only cases in which a less severe penalty was imposed were those for undue familiarity. It would appear that the Board reached a conclusion opposite that of Post Audit and Board decisions clearly influence actions we will propose in subsequent cases. In some instances, the decision was made to proceed to terminate because we suspected, but could not prove, more serious misconduct (as the report suggests we should have done in some cases cited). However, our experience has been that such actions likely will not be upheld by the Board. We have conferred with the auditors and believe we are in agreement as to who the employee is in each case cited. We would be happy to discuss any of the individual cases with the committee and receive feedback on what we should have done differently in response to specific acts of misconduct.

Finally, the example cited on page 12 characterizes the relationship between an officer and a volunteer as "a subtle form of undue familiarity". This is not the case. Undue familiarity, by definition, involves an offender and a staff member, volunteer or other

person. The example cited on page 12 is an example of a staff member failing to perform a critical security procedure for whatever reason, but it is not an example of undue familiarity.

On page 33, the Post Audit report states, "The Department's rape allegation database and survey data the Department reports to the Department of Justice are inconsistent." An explanation regarding this difference was provided to Post Audit. We believe the data reported to the Justice Department is accurate and that data entry issues account for the difference. The information was also available from records maintained by investigators.

Finally, we would ask the committee to consider what was known and could be proven at the time a particular decision was made as opposed to what became known later. Hindsight is always much clearer. Staff and supervisors must make many decisions each day regarding where to intervene, what to prioritize, what action is sufficient to resolve a problem, what needs further follow up, when to intervene directly to prevent misconduct and salvage an employee, or when to continue to observe and monitor to prove misconduct in order to terminate and/or prosecute an employee.

I appreciate the opportunity to present these additional observations for the committee's consideration.

6-4

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Testimony before
HOUSE CORRECTIONS COMMITTEE

Senate Bill 434

Senator Jean Kurtis Schodorf

March 2, 2010

SB 434 elevates the severity level from 10 to 5 for unlawful sexual relations in ten categories, to include the following:

1. the offender is an employee or volunteer of the department of corrections,
2. the offender is a parole officer,
3. the offender is an employee of a jail,
4. the offender is an employee of a juvenile detention facility,
5. the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility,
6. the offender is an employee of the juvenile justice authority or an employee of a contractor who provides direct supervision and offender control services,
7. the offender is an employee of the Department of Social and Rehabilitation Services,
8. the offender is a teacher or a person in a position of authority,
9. the offender is a court services officer or the employee of a contractor providing such services, or
10. the offender is a community correctional services officer.

This bill would elevate this offense to the same level as trafficking in contraband. Frequently, these two offenses occur at the same time.

Ninety-nine percent of our employees are honest and hardworking in the Department of Corrections. However, a person who is in a position of authority must be held to a higher standard in terms of working with a person in a subservient, dependent position, or even a student.

I have been working with the Corrections Department concerning this bill. They also feel that the felony level should be at level 5. The recent recommendations of the Post Audit Committee upheld raising the severity level.

Corrections and Juvenile Justice
Date: 3-2-10
Attachment # 7

TESTIMONY ON SB 434
TO THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
BY COMMISSIONER J. RUSSELL JENNINGS
KANSAS JUVENILE JUSTICE AUTHORITY
MARCH 2, 2010

Employees and contractors working within the confines of a juvenile correctional facility are expected to maintain a professional relationship with the youth committed to such facilities. When the boundary between professional and personal relationship is crossed the welfare of the youth and facility staff is compromised in a significant way. SB 434 increases the penalty provision for the crime of unlawful sexual relations from a severity level 10 person felony to a severity level 5 person felony. The essence of enhancing the severity level will be to create a potential for prison time where one does not currently exist. Rather than a presumption of probation, a maximum term of confinement of 34 months could be imposed by the court upon a first offense with no criminal record.

The Juvenile Justice Authority (JJA) believes it is not unreasonable to increase the penalty for this offense as individuals working within juvenile correctional facilities are in a unique position of being able to exert a certain level of power over the youth in a place where the doors are locked and the public does not have access. JJA expects employees to model behavior for youth that serves to improve the capability of youth to change behavior and avoid future offending. Engaging in unlawful sexual relations with youth in facilities only serves to undermine efforts to change the behavior of youth and likely reinforces negative behavior in the youth.

Parents of youth committed to a juvenile correctional facility are often fearful of what their child will experience while in a facility. Instances of staff conduct involving the act of unlawful

sexual relations serves to increase the fear of parents. The very least we owe youth and their family is to hold offending employees to the same level of accountability as the youth themselves. If a youth committed to a facility committed this offense, they would likely be subjected to prosecution that would lead to a longer term of confinement. Adults who violate their role as a juvenile corrections professional should also expect a term of confinement for this offense.

JJA does wish to offer a balloon amendment to page five as attached. The purpose of the amendment is to convey the same authority to the commissioner of juvenile justice as is conveyed to the secretary of corrections and secretary of social and rehabilitation services in adopting rules and regulations that define contraband.

1 [(2) severity level 5, nonperson felony if such items are:
2 [(A) Firearms, ammunition, explosives or a controlled substance which
3 is defined in K.S.A. 2009 Supp. 21-36a01, and amendments thereto, except
4 as provided in subsection (b)(3);

5 [(B) defined as contraband by rules and regulations adopted by the
6 secretary of corrections, in a correctional institution by an employee of a
7 correctional institution, except as provided in subsection (b)(3); or

or

8 [(C) defined as contraband by rules and regulations adopted by the
9 secretary of social and rehabilitation services, in a care and treatment
10 facility by an employee of a care and treatment facility, except as provided
11 in subsection (b)(3); and

(D) defined as contraband by rules and regulations adopted by the commissioner of the juvenile justice authority, in a correctional institution by an employee of a correctional institution, except as provided by subsection (b)(3); and

12 [(3) severity level 4, nonperson felony if such items are firearms, am-
13 munition or explosives, in a correctional institution by an employee of a
14 correctional institution or in a care and treatment facility by an employee
15 of a care and treatment facility.

16 [(c) The provisions of subsection (b)(2)(A) shall not apply to the pos-
17 session of a firearm or ammunition by a person licensed under the per-
18 sonal and family protection act, K.S.A. 75-7c01 et seq., and amendments
19 thereto, in a parking lot open to the public if the firearm or ammunition
20 is carried on the person while in a vehicle or while securing the firearm
21 or ammunition in the vehicle, or stored out of plain view in a locked but
22 unoccupied vehicle.

23 [(b) (d) For purposes of this section:

24 [(1) "Correctional institution" means any state correctional in-
25 stitution or facility, conservation camp, juvenile correctional facil-
26 ity, community correction center or facility for detention or con-
27 finement, juvenile detention facility or jail.

28 [(2) "Care and treatment facility" means the state security hos-
29 pital provided for under K.S.A. 76-1305 et seq., and amendments
30 thereto, and a facility operated by the department of social and
31 rehabilitation services for the purposes provided for under K.S.A.
32 59-29a02 et seq., and amendments thereto.

33 [(e) (1) Traffic in contraband in a correctional institution or care and
34 treatment facility of firearms, ammunition, explosives or a controlled sub-
35 stance which is defined in K.S.A. 2009 Supp. 21-36a01, and amendments
36 thereto, is a severity level 5, nonperson felony. This paragraph shall not
37 apply to the possession of a firearm or ammunition by a person licensed
38 under the personal and family protection act, K.S.A. 75-7c01 et seq., and
39 amendments thereto, in a parking lot open to the public if the firearm or
40 ammunition is carried on the person while in a vehicle or while securing
41 the firearm or ammunition in the vehicle, or stored out of plain view in
42 a locked but unoccupied vehicle.

43 [(2) Traffic in any contraband, as defined by rules and regulations

Testimony on SB 434
to
The House Corrections and Juvenile Justice Committee

By Roger Werholtz
Secretary of Corrections
March 2, 2010

The Department of Corrections supports SB 434. SB 434 was unanimously passed by the Senate.

SB 434 increases the penalty for engaging in unlawful sexual relations; provides a sentencing presumption of imprisonment and requires registration as a sex offender for that crime; as well as increasing the penalty for contraband trafficking by employees. Additionally, SB 434 in its provisions regarding unlawful sexual relations contains beneficial language in its definitions pertaining to parole officers, teachers, court services officers and community corrections officers relative to those officials and the persons who could be abused by them.

Instead of defining the prohibited relationship as involving an official and a person over whom the official has "direct supervision and control", SB 434 employs a culpability requirement that the official need only know that the other person is under the supervision of the agency. This language, the Department believes, properly expands the scope of officials who could be criminally punished for unlawful sexual relations to include those officials who abuse their authority by engaging in sexual relations with a person who though is under parole or community corrections supervision is not on that particular officer's case load and thus not under that officer's "direct supervision and control". At the same time, the language of SB 434 avoids criminalizing situations where, for example, a court services officer had no knowledge that the other person was under the supervision of a separate and independent judicial district.

The Department believes the crimes of unlawful sexual relations and introduction of contraband by staff are serious offenses warranting significant penalties and supports SB 434. The Department particularly supports SB 434 due to its treatment of the offense of unlawful sexual relations the same irrespective of whether the official is working in a confinement setting or supervising persons in the community.

The Department of Corrections first requested legislation defining the crime of Unlawful Sexual Relations in 1992. While each chamber of the Legislature passed separate bills containing provisions prohibiting consensual sexual relations between corrections staff and offenders, a single bill was not passed by both chambers that session. The Department again requested that legislation in 1993 which was enacted into law. Since that time, the crime of unlawful sexual relations has been expanded to include a prohibition against officials working for jails, Juvenile Justice, court services, community corrections, the Department of Social and Rehabilitation Services and teachers sexually abusing persons under their supervision or control.

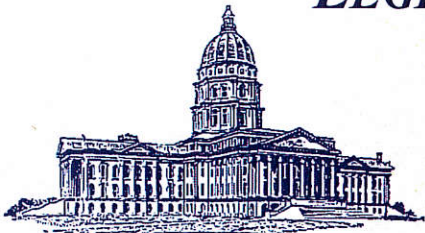
Corrections and Juvenile Justice

Date: 3-2-10

Attachment # 9

DEPARTMENT OF CORRECTIONS

LEGISLATIVE DIVISION OF POST AUDIT



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**House Corrections and Juvenile Justice Committee
Testimony on SB 434
Chris Clarke, Legislative Post Audit
March 1, 2010**

Madam Chair and members of the Committee, thank you for allowing me to provide neutral testimony on SB 434. The bill, as it relates to correctional facility staff and volunteers, does several things, including:

- Amends the penalty for unlawful sexual relations from a level 10 to a level 5 person felony.
- Makes the sentence for any such violation presumptive imprisonment
- Includes such a crime in the definition of "sexual offender" for purposes of the Kansas offender registration act
- Amends the penalty for trafficking in contraband to a level 4 nonperson felony if such items are firearms, ammunition or explosives

Our office just completed an audit that included looking into issues of unlawful sexual relations in correctional facilities. As part of our audit work, we compared the statutory sanctions in Kansas to those of other states. We found the following:

- In Kansas, unlawful sexual relations by a correctional employee is a level 10 person felony with a presumptive sentence of probation.
- According to a 2009 survey by the National Institute of Corrections, all but six other states have stronger penalties for this type of staff sexual misconduct than Kansas. In fact, Idaho and Alaska have maximum penalties of up to life in prison.
- Even states where this crime is a misdemeanor have penalties of up to a year in prison.
- 32 states also have mandatory registration as a sex offender. Kansas does not.


This bill would bring Kansas penalties for correctional staff unlawful sexual relations more in-line with those of other states and would implement the recommendations we made in our report related to K.S.A. 21-3520 and K.S.A. 21-3826. The audit recommendations were:

- a. Amend K.S.A. 21-3520 to require individuals convicted under this statute to register as a sex offender.
- b. Amend K.S.A. 21-3520 to toughen the penalty for sexual misconduct, so it includes jail time rather than just presumptive probation.
- c. Amend K.S.A. 21-3520 to bring the penalty for sexual misconduct more in-line with the penalty for staff trafficking in contraband.
- d. Amend K.S.A. 21-3826 to provide proper consideration and allow a tougher sentence when staff trafficking in contraband could put lives in direct jeopardy, such as staff trafficking in guns, ammunition, or other weapons.

Corrections and Juvenile Justice
Date: 3-2-10
Attachment # 10

MEMORANDUM

To: Chairperson Colloton and Members of the
House Corrections and Juvenile Justice Committee

From: Jason Thompson, Assistant Revisor 

Date: March 2, 2010

Subject: SB 345 and Proposed House Substitute (9rs1947)

Senate Bill 345 contains the same concept already passed by the House in HB 2581 (Criminal procedure; correctional supervision fees; funding the use of a statewide, mandatory standardized risk assessment).

The proposed House Substitute for SB 345 (9rs1947) contains the property and securities crimes provisions of HB 2518, the proportionality bill.

- Securities law changes (Sec. 3, p.3)
(as recommended by Commissioner Biggs in 2009)
 - (1) Amends K.S.A. 17-12a508 (a)(1), intentional securities violation, from a severity level 7, nonperson felony to severity level 8.
 - (2) Amends K.S.A. 17-12a508 (a)(2), conviction for an intentional violation of 17-12a501 or 17-12a502. New severity levels:
 - Loss of < \$25,000 = severity level 8, nonperson felony;
 - \$25,000 but less than \$50,000 = severity level 7, nonperson felony;
 - \$50,000 but less than \$75,000 = severity level 6, nonperson felony;
 - \$75,000 but less than \$100,000 = severity level 5, nonperson felony;
 - \$100,000 but less than \$250,000 = severity level 4, nonperson felony;
 - \$250,000 but less than \$1,000,000 = severity level 3, nonperson felony;
 - \$1,000,000 or more = severity level 2, nonperson felony.
 - (3) Amends K.S.A. 17-12a508(a)(4), intentional violation of cease and desist order, from severity level 8, nonperson felony to severity level 6.

Corrections and Juvenile Justice

Date: 3-2-10

Attachment # 11

• Property offenses (Sections 1-2 and 4-32)

Several amendments in chapter 21, as well as amendments to K.S.A. 9-2012, 16-305, 17-1311a, 19-3519, 39-717, 39-720, 40-2,118, 40-247, 40-5013, 44-5,125, 44-719, 47-1827 and 65-4167, creating different penalty levels based on the amount of loss:

- Less than \$500 is a class B nonperson misdemeanor;
- at least \$500 but less than \$1,000 is a class A nonperson misdemeanor;
- at least \$1,000 but less than \$2,000 is a level 10, nonperson felony;
- at least \$2,000 but less than \$25,000 is a level 9, nonperson felony;
- at least \$25,000 but less than \$50,000 is a level 8, nonperson felony;
- at least \$50,000 but less than \$75,000 is a level 7, nonperson felony;
- at least \$75,000 but less than \$100,000 is a level 6 nonperson felony; and
- \$100,000 or more is a severity level 5, nonperson felony.