

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 8, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Kay Wolf- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Christine Ladner, Assistant Attorney General
Steve Sutton, Kansas Board of Emergency Medical Services

Others attending:

No List Available

The hard copy testimony from Senator Marci Francisco on **SB 368** on March 1 was distributed to the members of the committee.

A memorandum from Jill Ann Wolters, Senior Assistant Revisor, was provided to the members of the committee, with information addressing the questions asked during the Committee hearing on **HB 2651**, on March 1, 2010. This memorandum explained "Title IV-D" and information regarding the State of Colorado's program dealing with gambling licensees checking and collecting child support arrearage, and included a copy of Form W-2G and instructions, used for reportable gambling winnings. (Attachment 1)

Jerry Slaughter, representing the Kansas Medical Society, along with Tom Bell, Kansas Hospital Association appeared before the committee, to introduce a House Concurrent Resolution, a proposition to amend Article 2, Section 31 of the constitution of the state of Kansas by adding a new section thereto, affirming the legislature's authority to limit the amount of recovery for non-economic damages in any claim for personal injury. (Attachment 2)

Representative Kleeb made the motion to accept the Concurrent Resolution.

Representative Jack seconded the motion. Motion carried.

The hearing on **SB 455 - Civil commitment of sexually violent predators; expert testimony** was opened.

Jill Wolters, from Revisor of Statutes, provided an overview of the bill to the committee members, explaining this bill amends K.S.A. 59-29a03 concerning the civil commitment of sexually violent predators. The amendment is patterned after Federal Rule of Evidence No. 703 and would allow that, at any hearing held pursuant to K.S.A. 59-29a01 et seq., the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. Facts or data that are otherwise inadmissible could not be disclosed to the jury unless the court determines that probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. (Attachment 3)

Representative Goyle, testified, as the sponsor of the bill and gave a quick introduction, reminding the committee that last session this committee worked closely on a bill with the Attorney General's office regarding sex offenders. He stated this is a similar minded bill regarding sexually violent predators (SVP's), which is the worst type of sexual predators. He encouraged passage of this bill as it effectively does two things: (1) helps prosecutors convict SVP's, and (2) saves money by reducing the redundant costs associated in establishing testimony in these type of cases.

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Christine Ladner, Assistant General Attorney appeared before the committee as a proponent of the bill and stated she is responsible for prosecution of SVP's in the office of Attorney General Six. She stressed to the committee this bill would save costs and streamline presentation of evidence by amending the rules of evidence in SVP cases to mirror the Federal Rules of Evidence (FRE). She stated existing law is a problem because the hearsay objection makes foundation requirements for expert opinion in SVP cases, an extraordinary and huge task to satisfy the requirements. She also stated if they have to subpoena prior victims (particularly those who were children at the time of the prior molestations) or law enforcement officials who may no longer be available, the burden of having these declarants available is extremely difficult. She told the committee it seems a disservice to victims of violent sexual assaults, whose cases were long ago disposed of, to have to testify about the same facts again to establish SVP status on the same perpetrator; and, for those predators who have lengthy criminal histories, it surely is not the legislative intent behind the SVPA for predators to avoid commitment because they have outlived their victims. (Attachment 4)

Robbin L. Wasson, Assistant District Attorney, on behalf of Jerome Gorman, District Attorney, Twenty-Ninth Judicial District of Kansas, provided written testimony in strong support of the bill, because of other commitments, could not attend to testify in person. (Attachment 5)

There were no opponents.

After questions and discussion, Chairman Kinzer requested the staff to provide research and information as to whether there are any other cases of a state using two separate standards to apply the Rule of Evidence of Experts.

The hearing on **SB 455** was closed.

The hearing on **SB 222 - Emergency medical services, criminal history record checks** was opened.

Jason Long, from Revisor of Statutes, provided an overview of the bill to the committee members explaining this bill creates a new law authorizing the Emergency Medical Services Board (Board) to require applicants for licensure to submit to fingerprinting and a criminal history background check. He also stated the language of the bill is nearly identical to that already in statute granting the same authority to the State Board of Healing Arts and the Board of Nursing. The bill also contains provisions that the Board establish a fee to pay for the cost of fingerprinting, establish a new fund and administer the fund. (Attachment 6)

Steve Sutton, Interim Executive Director for the Kansas Board of Emergency Medical Services (KBEMS), appeared before the committee as a proponent and stated they requested this bill in order to ensure quality out-of-hospital care is available throughout Kansas. Although KBEMS requires those with felony convictions to "check the box" in regards to prior felony conviction, applicants may be motivated to not provide a complete truth. He also stated the surrounding states of Arkansas, Colorado, Idaho, Missouri, Nebraska and Texas require national criminal background checks for those individuals seeking EMS certification at any attendant level. He urged the committee to pass this bill as the KBEMS believes that access to all records of adult convictions and non-conviction history is paramount to having the necessary information to ensure public safety is held to the highest regard. (Attachment 7)

There were no opponents.

Questions and discussion by the committee determined two changes need to be amended into the bill, (1) on Line 15, change the word "licensure" to "certification", and (2) change the word "may" to "shall" on Line 21.

The hearing on **SB 222** was closed.

The hearing on **SB 369 - Open records; reconciling a conflict** was opened.

Jill Wolters, from Revisor of Statutes, provided an overview of the bill to the committee members, explaining this bill is really a lesson in conflict reconciliation than anything else. Last year there was a bill that talked about location, and what would not be subject to the open records act, and that was information that would

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reveal the location of a shelter, and it had originally said the name, address, location and other information of victims, or alleged victims of a crime, domestic violence or sexual assault. The intent all along had not been for it to be that broad, only alleged victims of stalking, domestic violence or sexual assault. There are two bills going through the process, this bill reconciles all conflicts having the language "a crime,"; the other bill running through the process is with the correct version that says stalking, domestic violence, or sexual assault. In going through the process of what actually happens, this bill that says "a crime," actually is the bill that was passed last, so even though it is merely a reconciliation bill, this is the bill that enacted the legislatures intent. There is some question of which is the final version of law and has a potential conflict, so what this bill does, repeal the bill that had the word "a crime" in it instead of stalking, domestic violence and sexual assaults. And so with just an outright repeal, you could see the bills two lines that outright repeals that section of the open records act, so those locations that would not be disclosed would still not be disclosed or the name, address, location and other contact information of victims of alleged victims of a crime, domestic violence or sexual assault.

There was also discussion of two balloons being amended into this bill when it is worked by the committee. One of the balloons was provided to the committee members so they could review it prior to working the bill. The balloon contains the contents of **HB 2529** which is a bill to renew certain exceptions to the open records act, and was passed out of the Judiciary committee, however, it did not get above the line prior to turn-around and that is a problem as these open record exceptions must get reaffirmed.

Chairman Kinzer explained the reason it did not get moved above the line in time was due to some concerns related back to a statutory change back in 2004 , and there was concern if in the process of striking some statutory reference the committee was doing more than it intended to do. A second balloon was drafted that contains the contents of **HB 2583**, that dealt with some open record exceptions that was passed out of committee but did not get moved above the line in time to be acted upon.

The hearing on **SB 369** was closed.

SB 376 - Changing the name of the act for judicial review and civil enforcement of agency actions to the Kansas judicial review act.

Representative Colloton made the motion to report SB 376 favorably for passage and be placed on the consent calendar. Represent Pauls seconded the motion. Motion carried.

SB 440 - Repealing statutes on registration of insignias by secretary of state.

Representative King made the motion to report SB 440 favorably for passage and be placed on the consent calendar. Representative Talia seconded the motion. Motion carried.

The next meeting is scheduled for March 9, 2010.

The meeting was adjourned at 4:50 p.m.

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MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary
From: Jill Ann Wolters, Senior Assistant Revisor *JAW*
Date: 6 March, 2010
Subject: HB 2651, lotteries, dealing with debt setoff for child support

The following information is to address the questions that were asked during the Committee hearing on HB 2651, on March 1.

K.S.A. 23-4,106 (o) defines "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. 651 et seq.) and amendments thereto, as in effect on December 31, 1999. "Title IV-D cases" means those cases required by title IV-D to be processed by the department of social and rehabilitation services under the state's plan for providing title IV-D services.

This would include people receiving public assistance (such as Temporary Assistance to Families [TAF], Medical Assistance for children, Foster Care, and Child Care Assistance) and those persons who request from SRS assistance in establishing and collecting child support.

Colorado requires their department of revenue to create and maintain a registry for gambling licensees to check prior to making a payment to a winner. (CRSA 24-35-603 et seq. , see attached) The outstanding debt (child support arrearage) shall not be less than \$300. A payment is that amount for which the licensee is required to file an IRS form W-2G. The Colorado rules and regulations governing the program are promulgated at 1 CCR 210-1 et seq. (See attached)

A person is required to report gambling winnings on Form W-2G if:

1. The winnings (not reduced by the wager) are \$1,200 or more from a bingo game or slot machine,
2. The winnings (reduced by the wager) are \$1,500 or more from a keno game,
3. The winnings (reduced by the wager or buy-in) are more than \$5,000 from a poker tournament,
4. The winnings (except winnings from bingo, slot machines, keno, and poker tournaments) reduced, at the option of the payer, by the wager are:
 - a. \$600 or more, and
 - b. At least 300 times the amount of the wager, or
5. The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding). (Information from the 2010 instructions for W-2G and 5754) (See attached)

House Judiciary

Date 3-8-10

Attachment # 1

Part 6. Definitions.

As used in this part 6, unless the context otherwise requires:

(1) "Licensee" means a licensee as defined in section 12-60-102 (17), C.R.S., or an operator or retail gaming licensee under section 12-47.1-501 (1) (b) or (1) (c), C.R.S.

(2) (a) "Outstanding debt" means:

(I) Unpaid child support debt or child support costs to the state pursuant to section 14-14-104, C.R.S., and arrearages of child support requested as part of an enforcement action pursuant to article 5 of title 14, C.R.S., or arrearages of child support that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S.; and

(II) Restitution that a person has been ordered to pay pursuant to section 18-1.3-603 or 19-2-918, C.R.S., regardless of the date that the restitution was ordered.

(b) Notwithstanding any provision of paragraph (a) of this subsection (2), an outstanding debt shall not be less than three hundred dollars.

(3) "Payment" means cash winnings from limited gaming or from pari-mutuel wagering on horse or greyhound racing payable by a licensee for which the licensee is required to file form W-2G, or a substantially equivalent form, with the United States internal revenue service.

(4) "Registry" means the registry created and maintained by or for the department of revenue pursuant to section 24-35-604.

(5) "Registry operator" means the department of revenue or the private entity that maintains the registry under the direction and control of the department.

Source: L. 2007: Entire part added, p. 1661, § 19, effective January 1, 2008. L. 2009: (2) amended, (HB 09-1137), ch. 308, p. 1658, § 6, effective September 1.

Editor's note: Subsection (2) was amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of September 1, 2009, for this provision. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

24-35-604. Registry - creation - information.

(1) The department of revenue shall create and maintain, or contract with a private entity pursuant to section 24-35-607 to create and maintain, the registry in accordance with this section.

(1.5) On and after the date that the judicial department receives notice from the department of revenue pursuant to section 24-35-605.5 (2) (b) (I), the judicial department shall certify to the registry operator the information indicated in subsection (4) of this section regarding persons with an outstanding debt as specified in section 24-35-604 (2) (a) (II).

(2) The department of human services shall certify to the registry operator the information indicated in subsection (4) of this section regarding each child support obligor with an outstanding debt as specified in section 24-35-604 (2) (a) (I).

(3) The registry operator shall enter in the registry the information certified to the registry operator by the judicial department and the department of human services pursuant to subsections (1.5) and (2) of this section.

(4) The registry shall contain the following information:

(a) The name of each person with an outstanding debt;

(b) The social security number of each person with an outstanding debt;

(c) The account or case identifier assigned to the outstanding debt by the department that certified the information to the registry operator;

(d) The name, telephone number, and address of the department that certified the information to the registry operator regarding each person with an outstanding debt; and

(e) The amount of the outstanding debt.

(5) On and after the date that the judicial department receives notice from the department of revenue pursuant to section 24-35-605.5 (2) (b) (I), the registry operator shall add a fee of twenty-five dollars to each outstanding debt certified by a department pursuant to this section.

Source: L. 2007: Entire part added, p. 1662, § 19, effective January 1, 2008. L. 2009: (1.5) and (5) added and (2), (3), (4)(c), and (4)(d) amended, (HB 09-1137), ch. 308, p. 1659, §§ 7, 8, effective September 1.

Editor's note: Subsections (1.5) and (5) were added and subsections (2), (3), (4)(c), and (4)(d) were amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of September 1, 2009, for these provisions. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

24-35-605. Payments - limited gaming and pari-mutuel wagering licensees - procedures.

(1) On and after July 1, 2008:

(a) A licensee shall have the means to communicate with the registry operator.

(b) Before making a payment to a winner, the licensee shall obtain the name, address, and social security number of the winner from form W-2G, or a substantially equivalent form, to be filed with the United States internal revenue service and submit the required information to the registry operator. The registry operator shall inform the licensee whether the winner is listed in the registry. The licensee shall comply with subsection (2) of this section.

(2) (a) If the registry operator replies that the winner is not listed in the registry or if the licensee is unable to receive information from the registry operator after attempting in good faith to do so, the licensee may make the payment to the winner.

(b) If the registry operator replies that the winner is listed in the registry:

(I) The reply from the registry operator to the licensee shall indicate the name, telephone number, and address of the department that certified the information to the registry and the amount of the winner's outstanding debt.

(II) The licensee shall withhold from the amount of the payment an amount equal to the amount certified pursuant to section 24-35-604. If the amount of the payment is less than or equal to the amount certified, the licensee shall withhold the entire amount of the payment. The licensee shall refer the winner to the department that reported the outstanding debt to the registry.

(III) Within twenty-four hours after withholding a payment pursuant to subparagraph (II) of this paragraph (b), the licensee shall send the amount withheld to the registry operator and report to the registry operator the full name, address, and social security number of the winner, the account or case identifier assigned by the department that reported the outstanding debt to the registry, the date and amount of the payment, and the name and location of the licensee.

(IV) The registry operator shall send to the certifying department the moneys and information received from a licensee pursuant to subparagraph (III) of this paragraph (b). If more than one department certified a winner, the registry operator shall send the information to each certifying department and distribute the moneys among the departments as follows:

(A) The registry operator shall send to the department of human services any amount certified by the department of human services.

(B) Of any moneys remaining after the distribution, if any, to the department of human services pursuant to sub-subparagraph (A) of this subparagraph (IV), the registry operator shall send to the judicial department any amount certified by the judicial department.

(V) The department of human services shall process moneys received from the registry operator pursuant to subparagraph (IV) of this paragraph (b) in accordance with section 26-13-118.7, C.R.S. The judicial department shall process moneys received from the registry operator pursuant to subparagraph (IV) of this paragraph (b) in accordance with the rules of the department.

(3) The registry operator shall deduct an amount equal to the fee added to the outstanding debt pursuant to section 24-35-604 (5) from each payment received from a licensee and forward such amount to the state treasurer for deposit in the gambling payment intercept cash fund created in section 24-35-605.5.

Source: **L. 2007:** Entire part added, p. 1662, § 19, effective January 1, 2008. **L. 2009:** (2)(b) amended and (3) added, (HB 09-1137), ch. 308, p. 1659, § 9, effective September 1.

Editor's note: Subsection (2)(b) was amended and subsection (3) was added in a 2009 act that was passed without a safety clause. The act establishes an effective date of September 1, 2009, for these provisions. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

DEPARTMENT OF REVENUE**EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE** *Eff 07/01/2008***GAMBLING PAYMENT INTERCEPT** *Eff 07/01/2008***1 CCR 210-1** *Eff 07/01/2008**[Editor's Notes follow the text of the rules at the end of this CCR Document.] Eff 07/01/2008***BASIS AND PURPOSE**

These rules and regulations are adopted by the Executive Director of the Department of Revenue to govern the collection of unpaid child support or child support costs on cash winnings from limited gaming and from pari-mutuel wagering under the provisions of the Gambling Payment Intercept Act, part 6, article 35, title 24, C.R.S. The statutory basis for 1 CCR 210-1 is found in section 24-35-601, et seq, C.R.S. *Eff 07/01/2008*

01 Construction.

Nothing contained in these regulations shall be so construed as to conflict with any provision of the Gambling Payment Intercept Act or of any other applicable statute. *Eff 07/01/2008*

02 Definitions.

The following definitions of terms, in addition to those set forth in section 24-35-603, C.R.S., shall apply to all rules and regulations promulgated pursuant section 24-35-607, C.R.S.: *Eff 07/01/2008*

- (1) "Cashprize payment" means any cash award that results from a specific wager connected with limited gaming or pari-mutuel wagering for which the licensee is required to file form W-2G, or a substantially equivalent form with the United States Internal Revenue Service (IRS). Cash prize payment does not apply to the awarding of merchandise or other non-cash items. Cash prize payment does not apply to promotional awards, loyalty program awards or other cash prize awards not associated with a specific wagering event. *Eff 07/01/2008*
- (2) "Payout amount" means the amount of any cash prize payment due to the winner of the cash prize, minus all state and federal taxes withheld, if such taxes are withheld. *Eff 07/01/2008*

03 Registry Operator.

The Colorado Department of Revenue shall contract with Colorado Interactive, dba "Colorado.gov" as the State Internet Portal Authority, to serve as the registry operator to provide and maintain a web-based gambling payment intercept system. *Eff 07/01/2008*

04 Required Use of Registry.

- (1) Licensees are required to use the web-based registry to verify whether the winner of a cash prize payment is listed in the registry and to submit cash intercept payments to the registry operator. Licensees must ensure internet connectivity is available to access the registry during all of the licensees' normal business hours. *Eff 07/01/2008*
- (2) Licensees must verify whether the winner is listed in the registry each time that a cash prize is won, even if the winner's name has been verified by the licensee in the past. *Eff 07/01/2008*
- (3) In order to register with and gain access to the registry, licensees must pay a standard annual fee of \$75.00 for a standard number of individual sign ons for the licensee's designated employees to use to access and utilize the registry. A licensee can acquire additional sign ons in excess of the standard number by paying additional fees. *Eff 07/01/2008*

05 Inaccessibility of Registry.

The registry operator shall make every effort to have the registry accessible to licensees 24 hours a day on each calendar day of the year. If a licensee cannot access the registry for a 24-hour period for any reason, the licensee shall notify the Department of Revenue through the licensee's relevant licensing authority that the licensee has been unable to access the registry for 24 hours. *Eff 07/01/2008*

Any period of inaccessibility that occurs through no fault of the licensee shall be considered an acceptable period of inaccessibility for that licensee. Any denial of access to the registry because the licensee has either failed to pay the annual fee required to access the registry or has failed to maintain internet service, shall not constitute an acceptable period of inaccessibility under these rules. *Eff 07/01/2008*

During any acceptable period of inaccessibility of the registry to a licensee, the licensee may handle its payments to cash prize payment winners without recourse to the provisions of the Gambling Payment Intercept Act, except that the licensee must maintain a listing of cash prize payment winners during the inaccessibility period and maintain documentation explaining why the licensee was not accountable for the period of inaccessibility. *Eff 07/01/2008*

06 Information Required.

- (1) Licensees must provide, at minimum, the following information to the registry: *Eff 07/01/2008*

- (a) Winner's full name; *Eff 07/01/2008*
- (b) Winner's social security number; and *Eff 07/01/2008*
- (c) Payout amount. *Eff 07/01/2008*

Licensees must update the winner's full address information when the information obtained by the licensee does not match the information provided by the registry. *Eff 07/01/2008*

- (2) If the winner is a foreign person not subject to IRS reporting and withholding requirements, the licensee is not required to verify if the person is listed in the registry. *Eff 07/01/2008*

07 Identification Requirements.

Licensees must adhere to the IRS requirement to list two types of identification on the W-2G form. It is recommended that one of these two forms of identification contain a photo to verify the identity of the cash prize winner. *Eff 07/01/2008*

08 Confidentiality.

Information provided to and accessed through the registry is considered confidential. Licensees and the registry shall have procedures in place to ensure the confidentiality of the information and to restrict access to the system to individuals with job duties that require access to the registry. Licensees shall not allow employees to share account sign ons or passwords. Licensee employees shall be held liable for violating confidentiality policies. *Eff 07/01/2008*

09 Update of Registry.

The registry operator shall ensure that the information provided in the registry is updated to include any previous gambling payment intercept payments in a timely manner. *Eff 07/01/2008*

10 Intercept Payments.

Upon verification that a cash payment winner is listed in the registry, the licensee must submit payment electronically to the registry operator in the amount indicated by the registry within 24 business hours. The registry shall provide the licensee with a receipt for its records and a letter to be provided to the cash payment winner detailing the winnings withheld and the contact information for the Department of Human Services. *Eff 07/01/2008*

11 Licensee Costs.

To cover the cost for the licensee's compliance with the Gambling Payment Intercept Act and these regulations, the licensee shall retain \$25.00 from the cash payment intercept. A total of \$10.00 of the \$25.00 withholding shall be submitted to the registry operator with the intercept payment as a payment processing cost. The remaining \$15.00 shall be retained by the licensee as a licensee compliance cost. *Eff 07/01/2008*

12 Retention of Compliance Records.

Licensees shall maintain registry-generated reports and records showing compliance with the Gambling Payment Intercept Act and these regulations for a period of three years. *Eff 07/01/2008*

Editor's Notes

History *Eff 07/01/2008*

Entire Rule eff. 7/1/2008. *Eff 07/01/2008*

Show/Hide IDs

Block 1 of 1



Instructions for Forms W-2G and 5754

Section references are to the Internal Revenue Code unless otherwise noted.

Reminder

In addition to these specific instructions, you should also use the 2010 General Instructions for Certain Information Returns (Forms 1098, 1099, 3921, 3922, 5498, and W-2G). Those general instructions include information about the following topics.

- Backup withholding.
- Electronic reporting requirements.
- Penalties.
- When and where to file.
- Taxpayer identification numbers.
- Statements to recipients.
- Corrected and void returns.
- Other general topics.

You can get the general instructions from the IRS website at www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Specific Instructions for Form W-2G

File Form W-2G, Certain Gambling Winnings, to report gambling winnings and any federal income tax withheld on those winnings. The requirements for reporting and withholding depend on the type of gambling, the amount of the gambling winnings, and generally the ratio of the winnings to the wager. File W-2G with the IRS. You must provide a statement to the winner (Copies B and C of Form W-2G).

The types of gambling are discussed in these instructions under the following four headings.

1. *Horse Racing, Dog Racing, Jai Alai, and Other Wagering Transactions Not Discussed Later.*
2. *Sweepstakes, Wagering Pools, and Lotteries.*
3. *Bingo, Keno, and Slot Machines.*
4. *Poker Tournaments.*

Reportable Gambling Winnings

Report gambling winnings on Form W-2G if:

1. The winnings (not reduced by the wager) are \$1,200 or more from a bingo game or slot machine,
2. The winnings (reduced by the wager) are \$1,500 or more from a keno game,
3. The winnings (reduced by the wager or buy-in) are more than \$5,000 from a poker tournament,
4. The winnings (except winnings from bingo, slot machines, keno, and poker tournaments) reduced, at the option of the payer, by the wager are:
 - a. \$600 or more, and
 - b. At least 300 times the amount of the wager, or
5. The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding).

Tax-Exempt Organizations

A tax-exempt organization conducting gaming activities may be required to withhold income tax and report on Form W-2G. See Pub. 3079, Gaming Publication for Tax-Exempt Organizations.

Withholding

There are two types of withholding on gambling winnings: (a) regular gambling withholding at 25% (33.33% for certain noncash payments) and (b) backup withholding at 28%. If a payment is already subject to regular gambling withholding, it is not subject to backup withholding.

Regular Gambling Withholding

You may be required to withhold 25% of gambling winnings for federal income tax. This is referred to as regular gambling withholding. Withhold at the 25% rate if the winnings minus the wager are more than \$5,000 and are from:

- Sweepstakes,
- Wagering pools,
- Lotteries, or
- Other wagering transactions if the winnings are at least 300 times the amount wagered.

Do not withhold at the 25% rate on winnings from bingo, keno, slot machines, or any other wagering transaction if the winnings are \$5,000 or less. However, see *Backup Withholding* below.

Regular gambling withholding is figured on the total amount of gross proceeds (the amount of winnings minus the amount wagered), not merely on the amount in excess of \$5,000.

Report the amount you withheld in box 2 of Form W-2G. Also file Form 945, Annual Return of Withheld Federal Income Tax, to report all your gambling withholding.

Noncash payments. A noncash payment, such as a car, must be taken into account at its fair market value (FMV) for purposes of reporting and withholding. If the FMV exceeds \$5,000, after deducting the price of the wager, the winnings are subject to 25% regular gambling withholding. The tax you must withhold is computed and paid under either of the following two methods.

1. The winner pays the withholding tax to the payer. In this case, the withholding is 25% of the FMV of the noncash payment minus the amount of the wager.
2. The payer pays the withholding tax. In this case, the withholding is 33.33% of the FMV of the noncash payment minus the amount of the wager.

If you use method 2, enter the sum of the noncash payment and the withholding tax in box 1 of Form W-2G and the withholding tax paid by the payer in box 2.

Backup Withholding

You may be required to withhold 28% of gambling winnings (including winnings from bingo, keno, slot machines, and poker tournaments) for federal income tax. This is referred to as backup withholding. You should backup withhold at the 28%

winner does not furnish a correct taxpayer identification number (TIN),

- 25% has not been withheld, and
- The winnings are at least \$600 and at least 300 times the wager (or the winnings are at least \$1,200 from bingo or slot machines or \$1,500 from keno or more than \$5,000 from a poker tournament).

Figure any backup withholding on the total amount of the winnings reduced, at the option of the payer, by the amount wagered. This means the total amount, not just the payments in excess of \$600, \$1,200, \$1,500, or \$5,000, is subject to backup withholding at 28%.

Report the amount you withheld in box 2 of Form W-2G. Also file Form 945 to report all backup withholding. You may use Form W-9, Request for Taxpayer Identification Number and Certification, to request the TIN of the recipient.

See the instructions on the following pages for each type of gambling for detailed rules on backup withholding.

Foreign Persons

Payments of gambling winnings to a nonresident alien individual or a foreign entity are not subject to reporting or withholding on Form W-2G. Generally, gambling winnings paid to a foreign person are subject to 30% withholding under sections 1441(a) and 1442(a) and are reportable on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Winnings of a nonresident alien from blackjack, baccarat, craps, roulette, big-6 wheel, or a live dog or horse race in the United States from legal wagers initiated outside the United States in a parimutuel pool are not subject to withholding or reporting. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

State Tax Information

If state income tax withholding is required on gambling winnings in your state, you may want to complete boxes 13 and 14 on Form W-2G. Copy 1 of the form may be used to provide information to the state, and Copy 2 may be used as the winner's copy for use in filing a state income tax return. A state identification number is assigned by each individual state.

Form 5754

If the person receiving the winnings is not the actual winner, or is a member of a group of winners, see *Specific Instructions for Form 5754* on page 4.

Statements to Winners

If you are required to file Form W-2G, you must also provide a statement to the winner. For information about the requirement to furnish a statement to the winner, see part M in the 2010 General Instructions for Certain Information Returns. You may furnish Copies B and C of Form W-2G.

1. Horse Racing, Dog Racing, Jai Alai, and Other Wagering Transactions Not Discussed Later

File Form W-2G for every person to whom you pay \$600 or more in gambling winnings if the winnings are at least 300 times the amount of the wager. If the person presenting the ticket for payment is the sole owner of the ticket, complete Form W-2G showing the name, address, and TIN of the winner. If regular gambling withholding is required, the winner must sign Form W-2G, under penalties of perjury, stating that he or she is the sole owner and that the information listed on the form is correct.

Withholding

You must withhold federal income tax from the winnings if the winnings minus the wager exceed \$5,000 and the winnings are at least 300 times the wager. Withhold 25% of the proceeds (the winnings minus the wager). This is regular gambling withholding.

If the winner of reportable gambling winnings does not provide a TIN, you must backup withhold at the rate of 28% on any such winnings that are not subject to 25% regular gambling withholding. That is, backup withholding applies if the winnings are at least \$600 but not more than \$5,000 and are at least 300 times the wager. Figure the 28% backup withholding on the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Multiple Wagers

For multiple wagers sold on one ticket, such as the \$12 box bet on a Big Triple or Trifecta, the wager is considered as six \$2 bets and not one \$12 bet for purposes of computing the amount to be reported or withheld. Winnings on a \$12 box bet must be reported if they are \$600 or more, and federal income tax must be withheld if the proceeds total more than \$5,000 or, if the proceeds do not exceed \$5,000, if the recipient fails to provide a TIN.

Identical Wagers

Winnings from identical wagers (for example, two \$2 bets on a particular horse to win the same race) are added together for purposes of the reporting and withholding requirements. Also, winnings from identical wagers that are not part of the payment for which the Form W-2G is being prepared are added together for purposes of withholding to determine if the total amount of proceeds from identical wagers is more than \$5,000.

Box 1

Enter payments of \$600 or more if the payment is at least 300 times the wager.

Box 2

Enter any federal income tax withheld, whether 25% regular gambling withholding or 28% backup withholding.

Box 3

Enter the type of wager if other than a regular race bet, for example, Daily Double or Big Triple.

Box 4

Enter the date of the winning event. This is not the date the money was paid if it was paid after the date of the race (or game).

Box 5

Not applicable.

Box 6

Enter the race (or game) applicable to the winning ticket.

Box 7

Enter the amount of additional winnings from identical wagers.

Box 8 or 10

Enter the cashier and/or window number making the winning payment.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding* earlier on this page.

Boxes 11 and 12

As verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. The identification may be from a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

1 (optional)

Enter the amount of state income tax withheld.

2. Sweepstakes, Wagering Pools, and Lotteries

File Form W-2G for each person to whom you pay \$600 or more in gambling winnings from a sweepstakes, wagering pool, or lottery (including a state-conducted lottery) if the winnings are at least 300 times the amount of the wager. The wager must be subtracted from the total winnings to determine whether withholding is required and, at the option of the payer, to determine whether reporting is required. The wager must be subtracted at the time of the first payment.

The requirements in this section apply to church raffles, charity drawings, etc. In the case of one wager for multiple raffle tickets, such as five for \$1, the wager is considered as \$.20 for each ticket.

Withholding

You must withhold federal income tax from the winnings if the winnings minus the wager exceed \$5,000. Withhold 25% of the proceeds (the winnings minus the wager). This is regular gambling withholding. If the winner of reportable gambling winnings does not provide a TIN, you must backup withhold at the rate of 28% on any such winnings that are not subject to 25% regular gambling withholding. That is, backup withholding applies if the winnings are at least \$600 but not more than \$5,000 and are at least 300 times the wager. Figure the 28% backup withholding on the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Installment payments of \$5,000 or less are subject to 25% regular gambling withholding if the total proceeds from the wager will exceed \$5,000.

If payments are to be made for the life of a person (or for the lives of more than one person), and it is actuarially determined that the total proceeds from the wager are expected to exceed \$5,000, such payments are subject to 25% regular gambling withholding. When a third party makes the payments, for example, an insurance company handling the winnings as an annuity, that third party must withhold.

When Paid

A payment of winnings is considered made when it is paid, either actually or constructively, to the winner. Winnings are constructively paid when they are credited to, or set apart for, that person without any substantial limitation or restriction on the time, manner, or condition of payment. However, if not later than 60 days after the winner becomes entitled to the prize, the winner chooses the option of a lump sum or an annuity payable over at least 10 years, the payment of winnings is considered made when actually paid. If the winner chooses an annuity, file Form W-2G each year to report the annuity paid during that year.

Box 1

Enter payments of \$600 or more if the payment is at least 300 times the wager.

Box 2

Enter any federal income tax withheld, whether 25% regular gambling withholding or 28% backup withholding.

Box 3

Enter the type of wager (such as raffle or 50-50 drawing) or the name of the lottery (such as Instant, Big 50, Baker's Dozen, or Powerball) and the price of the wager (\$.50, \$1, etc.).

Box 4

Enter the date of the winning transaction, such as the date of the drawing of the winning number. This might not be the date the winnings are paid.

Box 5

For a state lottery, enter the ticket number or other identifying number.

Boxes 6 Through 8 and 10

Not applicable.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding* earlier on this page.

Boxes 11 and 12

For other than state lotteries, as verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. The identification may be from a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

Box 14 (optional)

Enter the amount of state income tax withheld.

3. Bingo, Keno, and Slot Machines

File Form W-2G for every person to whom you pay \$1,200 or more in gambling winnings from bingo or slot machines, or \$1,500 or more from keno after the price of the wager for the winning keno game is deducted. If the winnings are not paid in cash, the FMV of the item won is considered the amount of the winnings. Total all winnings from each bingo or keno game. Winnings and losses from other wagering transactions are not to be taken into account in arriving at the \$1,200 or \$1,500 figure.

Withholding

Regular gambling withholding (25%) does not apply to winnings from bingo, keno, or slot machines. However, if the recipient of reportable gambling winnings from bingo, keno, or slot machines does not provide a TIN, you must backup withhold at the rate of 28%. That is, if the winnings are at least \$1,200 from bingo or slot machines or \$1,500 from keno, 28% backup withholding applies to the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Box 1

Enter payments of \$1,200 or more from bingo or slot machines or payments of \$1,500 or more from keno.

Box 2

Enter any 28% backup withholding.

Box 3

Enter the type of wager (that is, bingo, keno, or slot machines) and the amount of the wager.

Box 4

Enter the date of the winning transaction.

Box 5

Enter the ticket number, card number (and color, if applicable), machine serial number, or any other information that will help identify the winning transaction.

Boxes 6 and 7

Not applicable.

Box 8

Enter the initials of the person paying the winnings.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup

ding applies. See *Withholding under Bingo, Keno, and Slot Machines* on page 3.

Box 10

Enter the location of the person paying the winnings, if applicable.

Boxes 11 and 12

As verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. The identification may be from a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

Box 14 (optional)

Enter the amount of state income tax withheld.

4. Poker Tournaments

File Form W-2G for each person to whom you pay more than \$5,000 in winnings, reduced by the amount of the wager or buy-in, from each poker tournament you have sponsored. Winnings and losses of the participant from other poker tournaments you have sponsored during the year are not taken into account in arriving at the \$5,000 amount.

Withholding and backup withholding. If you file Form W-2G for the person to whom you pay more than \$5,000 in net winnings from a poker tournament, and provide a copy of Form W-2G to such person, regular gambling withholding does not apply to such winnings. However, if the person who wins more than \$5,000 does not provide a TIN, you must apply 28% backup withholding to the full amount of the winnings from the tournament. Net winnings of \$5,000 or less are not subject to reporting, withholding, or backup withholding.

Box 1

Enter payments of more than \$5,000 in net gambling winnings from a poker tournament.

Box 2

Enter zero as the amount, unless the winning person has not provided a TIN. If the winning person has not provided a TIN, enter the 28% backup withholding amount.

Box 3

Enter "poker tournament" in the entry space.

Box 4

Enter the date of the poker tournament.

Box 5

Enter the name of the tournament and its sponsor.

Boxes 6 through 8 and Box 10

Not applicable.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding and backup withholding* on this page.

Boxes 11 and 12

As verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. The identification may be from a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

Box 14 (optional)

Enter the amount of state income tax withheld.

Specific Instructions for Form 5754

Use Form 5754, Statement by Person(s) Receiving Gambling Winnings, only to prepare Form W-2G when the person receiving gambling winnings subject to reporting or withholding is not the actual winner or is a member of a group of two or more people sharing the winnings, such as by sharing the same winning ticket. The payer is required to file Forms W-2G based on Form 5754.

The person receiving the winnings must furnish all the information required by Form 5754. However, a recipient of winnings from a state-conducted lottery need not provide identification other than his or her taxpayer identification number (TIN).

Part I lists the identification of the person to whom the winnings are paid, and Part II lists the actual winners, their respective shares of the winnings, and any additional winnings from identical wagers.

In Part II, the person receiving the winnings must provide the name, address, TIN, respective share of the winnings, and additional winnings from identical wagers for each of the winners. In addition, if regular gambling withholding is required, the form must be signed, under penalties of perjury, and dated by the person receiving the winnings.

The form must be returned to the payer for preparation of Form W-2G for each of the persons listed as winners. Forms W-2G may be issued immediately or by January 31 following the year of the payment.

Do not send Form 5754 to the IRS. Keep it for your records.

Withholding and Forms W-2G for Multiple Winners

If more than one person shares in the winnings from a single wager, the total amount of the winnings (minus the amount wagered) will determine the amount of the proceeds for purposes of reporting and withholding. Do not allocate winnings to each winner before determining whether the withholding or reporting thresholds were reached.

For example, E purchases a sweepstakes ticket for \$1 on behalf of himself and S, who contributes an equal amount of the ticket price and who will share equally in any winnings. The ticket wins \$5,002. Because the winnings ($\$5,002 - \$1 = \$5,001$) are more than \$5,000, you must withhold 25% of \$5,001. You must prepare a separate Form W-2G for E and for S using the information furnished to you on Form 5754.

HOUSE CONCURRENT RESOLUTION No.

A PROPOSITION to amend article 2 of the constitution of the state of Kansas by adding a new section thereto, affirming the legislature's authority to limit the amount of recovery for noneconomic damages in any claim for personal injury.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the House of Representatives and two-thirds of the members elected (or appointed) and qualified to the Senate concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 2 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“§ 31. Limitation on noneconomic damages. (a) The legislature may enact laws limiting the amount of noneconomic damages awarded for any claim for personal injury. No provision of this constitution shall limit the powers of the legislature herein conferred, including the power of the legislature to specify circumstances in which such limitations would not apply.

“(b) Noneconomic damages, including damages for pain and suffering, are losses for which there is no unit value, mathematical formula or rule of calculation and include but shall not be limited to mental anguish, disability, disfigurement, inconvenience, humiliation, loss of capacity to enjoy life, bereavement, loss of society, loss of companionship, loss of reputation, and all other losses which are intangible in nature.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“Explanatory statement. This amendment would allow the legislature to limit awards for pain and suffering, or noneconomic damages, that a person could recover in a personal

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Date 3-8-10

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injury action. The amendment also allows the legislature to specify circumstances in which the limitations would not apply, for example when the conduct of the party causing the injury was due to criminal acts, or negligence due to substance abuse or impairment. Nothing in this amendment would affect awards or recovery of actual economic losses, such as lost wages, past or future medical bills, rehabilitation and long term care costs, nor would this amendment affect awards for punitive damages in any way.

“Noneconomic damages” are commonly referred to as pain and suffering, but also can include mental anguish, disability, disfigurement, inconvenience, humiliation, loss of capacity to enjoy life, bereavement, loss of society, loss of companionship, loss of reputation, loss of consortium, and other losses for which there is no unit value, mathematical formula or known rule for calculation. A “personal injury” includes all actionable injuries to an individual as distinguished from injuries to the individual’s property, and includes bodily and emotional injuries as well as injuries to reputation and character.

“A vote for this amendment would affirm the authority of the legislature to limit the amount of noneconomic damages a person could recover in any claim for personal injury.

“A vote against this amendment would leave the legislature without the express authority to adopt limits on awards for noneconomic damages in personal injury claims.

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2010 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

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MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary
From: Jill Ann Wolters, Senior Assistant Revisor
Date: 1 March, 2010
Subject: Senate Bill No. 455

SB 455 amends K.S.A. 59-29a03 concerning the civil commitment of sexually violent predators. The amendment is patterned after Federal Rule of Evidence No. 703 [see below]. The amendment would provide that at any hearing held pursuant to K.S.A. 59-29a01 et seq., including, but not limited to, probable cause hearings, trials, annual reviews, petitions for transitional release and petitions for final discharge, the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Finally, the bill amends KSA 60-456 to clarify that the expert witness testimony standard established in K.S.A. 59-29a03 would apply in the civil commitment of sexually violent predators cases, not the general rule.

The act would take effect upon publication in the statute book, July 1, 2010.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect

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OFFICE OF THE ATTORNEY GENERAL

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House Judiciary Committee
SB 455
Assistant Attorney General Christine Ladner
March 8, 2010

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Steve Six in support of Senate bill 455. I am the Assistant Attorney General responsible for prosecution of sexually violent predators (SVPs) in the office of Attorney General Six.

SB 455 would save costs and streamline presentation of evidence by amending the rules of evidence in SVP cases to mirror the Federal Rules of Evidence (FRE). Expert testimony of psychologists are at the heart of SVP cases. If the Respondent objects to a psychologist's testimony as hearsay, presentation of the expert opinion soon becomes unwieldy depending upon the source of the information in the prior records. In Kansas, "experts' opinions based upon hearsay are not admissible in any court proceedings." *In re Care & Treatment of Foster*, 280 Kan. 845, Syl. ¶ 9 (2006).

Existing law is a problem because the hearsay objection makes foundation requirements for expert opinion in SVP cases extraordinary foundation. If we must subpoena records custodians in order to satisfy foundation requirements, cost, travel and efficiency are issues. Even more problematic, if we have to subpoena prior victims (particularly those who were children at the time of the prior molestations) or law enforcement officials who may no longer be available, the burden of having these declarants available is enormous. It seems a disservice to victims of violent sexual assaults, whose cases were long ago disposed of, to have to testify about the same facts again to establish SVP status on the same perpetrator. For those predators who have lengthy criminal histories, it surely is not the legislative intent behind the SVPA for predators to avoid commitment because they have outlived their victims.

In litigating SVP cases, the State relies heavily upon psychological experts. Before an inmate is released from custody for a sexually violent offense, the inmate is interviewed and evaluated by a psychologist employed by the Department of Corrections (DOC). The psychologist prepares a Clinical Services Report (CSR). The CSR includes the diagnosis, progress in Sex Offender Treatment while in DOC and risk assessment. These

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psychologists rely on DOC records and other treatment records of the inmate in making their assessments.

If the State files a Petition pursuant to the KSVPA and a court finds probable cause that the inmate meets the criteria for a Sexually Violent Predator, the inmate is further evaluated by psychologists at Larned State Security Hospital (LSSH). If the LSSH evaluation determines that the respondent meets the criteria for SVP status, we proceed to trial. These psychologists rely on volumes of prior treatment records.

K.S.A. 60-456(b) controls the admission of testimony of expert opinion. The testimony must be: (1) based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of special knowledge, skill, experience or training possessed by the witness.

This proposal does not change K.S.A. 60-456(b), but amends the rule only in SVP cases to conform with the Federal Rules of Evidence on the admission of expert opinion. Justice Beier in *In Re Care and Treatment of Colt* recognized that FRE 703 is more in line with the practice of experts.

The rationale of the Federal Rule is that judicial practice should be brought in line with the practice of experts themselves when not in court, who, in the case of physicians, may make life and death decisions on the basis of hearsay statements.

Under the federal rule, if it is the customary practice in the expert's specialty to consider reports from nontestifying third parties in formulating an opinion, the expert's testimony may be based on such reports. Under such circumstances, however, evidence of the report is not admitted as substantive proof of the report's truth but for the limited purpose of showing the basis of the expert's opinion.

Office of the District Attorney
Twenty-Ninth Judicial District of Kansas
at the Wyandotte County Courthouse
710 N. 7th Street
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Jerome Gorman
District Attorney

Robbin L. Wasson
Assistant District Attorney

March 8, 2010

Testimony In Support of SB 455
Submitted by Robbin L. Wasson, Assistant District Attorney
On Behalf of Jerome Gorman, District Attorney
Twenty-Ninth Judicial District
And the Kansas County and District Attorneys Association

Honorable Chairman Kinzer and Members of the House Judiciary Committee:

Thank you for the opportunity to address you regarding SB 455. On behalf of Jerome Gorman, Wyandotte County District Attorney, and the Kansas County and District Attorney's Association, I would like to bring to your attention specific issues related to section 1(f), proposing changes to the admissibility of expert testimony.

The changes address the testimony of expert witnesses in Sexually Violent Predator Civil Commitment proceedings. Specifically, these changes address the material upon which an expert may rely when giving testimony in any hearing pursuant to the civil commitment of a sexually violent predator. Essentially, the proposed language would permit an expert to rely upon historical information including prior evaluations, interviews with the Respondent, and other relevant information in offering an opinion as to whether the Respondent does or does not meet the criteria to be committed as a sexually violent predator. For several reasons, we support this legislation.

First, the impact of this legislation is not speculative, but very real. In October 2006, the Kansas Supreme Court rendered their decision in the criminal appeal of *State v. Gonzalez*. Therein, the court held that Expert opinions may not be based upon past reports and information concerning a defendant which were not actually admitted into evidence. Respondents in Sexual Predator proceedings are seizing upon that language to urge the courts to disallow State experts testimony that is not based upon personal observations and treatment.

Second, by its very nature, proceedings pursuant to the Sexually Violent Predator Act are unique. While neither purely civil nor criminal in nature, the act seeks to address the particular danger posed by untreated sexual offenders who have a mental abnormality or personality disorder which makes it likely that such individuals will re-

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offend. The determination of whether a particular offender should be committed for further treatment comes only at the end of their criminal sentence.

Because the sentences for such crimes are often quite lengthy, there are often many years, or decades of historical data relating to such offenders diagnosis and treatment. Such information is critical for an expert to accurately assess an individual's proper diagnosis and likelihood to re-offend. This would include offense records, any sex offender treatment attended during incarceration and all records attendant thereto. Such an offender may be treated by any number of providers over the course of that term of incarceration. As a practical matter, it may be extraordinarily difficult if not impossible for the State or Respondent to secure the presence of each and every individual who participated in the care and treatment of the offender.

Third, mental health professionals routinely rely upon historical information when making any evaluation of a person's mental condition. Without doing so, it is impossible for the expert to develop a complete and accurate view of an offender's condition. For instance, the diagnosis of an abnormality such as pedophilia involves an examination of the offender's life history of sexually-based offenses in order to determine whether the individual has an actual attraction to young victims, or whether the crimes were more opportunistic with regard to the choice of victim. The addition of the proposed language in K.S.A. 59-29a03 would allow experts in these cases to give the fact-finder a well-rounded opinion that reflects all the necessary considerations in arriving at a diagnosis.

For the above stated reasons, we support section SB 455, regarding K.S.A. 59-29a03.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Robbin L. Wasson
Assistant District Attorney
Twenty-Ninth Judicial District

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REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
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OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

Brief on Senate Bill 222
Background Checks By Emergency Medical Services Board

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

March 8, 2010

SB 222 creates new law authorizing the Emergency Medical Services Board (Board) to require applicants for licensure to submit to a fingerprinting and a criminal history background check. The language of the bill is nearly identical to that already in statute granting the same authority to the State Board of Healing Arts (K.S.A. 65-28,129) and the Board of Nursing (K.S.A. 74-1112).

The bill mandates the Board require all applicants submit to being fingerprinted and to a criminal history background check. The Board is authorized to work with the Kansas Bureau of Investigation, the Federal Bureau of Investigation and local law enforcement in implementing the provisions of the bill.

The Board is required to establish a fee to pay for the cost of fingerprinting. The fees are to be credited to the emergency medical services criminal background and fingerprinting fund. This is a new fund created by the bill, which will be administered by the Board.

The Senate Committee on Federal and State Affairs made two amendments. First, is the change in line 14 from “may” to “shall.” This would require the Board to perform the background checks. The second amendment was to add “emergency medical services” to the name of the fee fund to distinguish it from a fund that already exists.



KANSAS

DENNIS ALLIN, M.D., CHAIR
STEVEN SUTTON, INTERIM EXEC. DIRECTOR

MARK PARKSINON, GOVERNOR

BOARD OF EMERGENCY MEDICAL SERVICES

Testimony

Date: March 4, 2010
To: House Judiciary Committee
From: Steven Sutton, Interim Executive Director
Re: 2009 Senate Bill (SB) 222

Chairman Kinzer and members of the Judiciary Committee, my name is Steven Sutton. I am the Interim Executive Director for the Kansas Board of Emergency Medical Services (KBEMS). I would like to provide testimony on 2009 Senate Bill 222.

The mission of the Board of Emergency Medical Services is to ensure that quality out-of-hospital care is available throughout Kansas. This care is based on the optimal utilization of community resources that are consistent with the patient's needs. The delivery of optimal care is supported through the adoption of standards; definition of scopes of practice; and provision of health, safety, and prevention education and information to the public, and is achieved in collaboration with Emergency Medical Services services/agencies, Emergency Medical Services providers/instructors, related health care professionals, and other public service, health care and political entities.

Teachers, banking and financial institutions, law enforcement, and some motor carriers require criminal history background checks. The surrounding states of Arkansas, Colorado, Idaho, Missouri, Nebraska, and Texas require national criminal history background checks for those individuals seeking EMS certification at any attendant level. Additionally, over the last 2 years, Board of Healing Arts, Board of Nursing, Kansas Regents Institutions, and Board of Pharmacy have been granted this authority. Although, KBEMS requires those with felony convictions to "check the box" in regards to prior felony conviction, to later be reviewed and a determination of certification made by the KBEMS Investigation Committee, applicants may motivated to not provide a complete truth. Criminal history background checks provide validity and security to the citizens of the State in ensuring that the person providing them intimate and personal pre-hospital care has both been truthful in the information provided on their application, but more important, is trustworthy to perform an adequate assessment, which requires visualization and hands on the patient, regardless of sex or age, to determine appropriate intervention. As KBEMS moves to allow a more "open state" in regards to legal recognition/reciprocity (found in 2008 SB 512), the disclosure of arrests and convictions becomes critical.

Annually, KBEMS process 1,500+ initial certifications, legal recognition/reciprocity (out-of-state)

regain requests, and increases in the level of certification applications per year. According to our investigation statistics, in CY 2005, the KBEMS Investigation Committee reviewed 8 “reported” (check the box) felony applications, 16 in CY 2006, and 14 in CY 2007, 17 in CY 2008, 20 in CY 2009, and already 6 in the first two months of CY 2010. Of those, the Investigation Committee reviewed felony cases involving aggravated robbery, aggravated child endangerment, breaking and entering, sexual exploitation of a minor, aggravated sexual battery, child endangerment, and numerous drug possession charges. However, the concern for the Board are the number of felony charges the Board has not been able to review or been “notified” of their existence. A recent instance occurred in January 2010, where an “individual” checked no to the felony question on both their emergency medical technician (EMT) and emergency medical technician – intermediate (EMT-I) applications. After, enrolling at Hutchinson Community College (HCC), a background check was run by the school which determined that the individual had a felony arrest on their criminal record. HCC contacted the Board of Emergency Medical Services, and upon an “open records request” by the school, it was confirmed that the individual had made two different false statements on those individual applications (failure to identify a felony arrest). KBEMS is currently investigating the incident in preparation for review by the KBEMS Investigation Committee. Unfortunately, the only way KBEMS was informed of the felony was by word of mouth, as opposed to the initiation and verification that a criminal background check provides. The Board believes that access to all records of adult convictions and non-conviction history is paramount to having the necessary information on an applicant to ensure public safety is held to the highest regard.

Amendments

None

Conclusion

Simply, members of the Committee, the passage of 2009 Senate Bill 222 provides assurance to the general public that KBEMS has provided the appropriate screening of applicants and ensured KBEMS’ responsibility to public safety

Cordially,

Steven Sutton
Interim Executive Director