

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Jay Emler at 10:30 a.m. on February 8, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Alan Conroy, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Michael Steiner, Kansas Legislative Research Department
Dylan Dear, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Melinda Gaul, Chief of Staff
Shirley Jepson, Committee Assistant

Conferees appearing before the Committee:

Roger Werholtz, Secretary, Department of Corrections
Rita Moore, Director of Unclaimed Property, State Treasurer
Dennis McKinney, State Treasurer
Richard Cram, Department of Revenue

Others attending:

See attached list.

Introduction of Legislation

Senator Emler moved to introduce legislation concerning the employment security law; maximum weekly benefits (9rs1773). The motion was seconded by Senator Teichman. Motion carried on a voice vote.

Referral of Legislation

SB 527 was referred to the KPERs Issues Subcommittee.

Update on Department of Corrections

Roger Werholtz, Secretary, Department of Corrections, presented an update on Legislative Post Audits and recent developments within the Department of Corrections (Attachment 1). Secretary Werholtz stated that the Department is taking steps to correct issues that have been brought to the Department's attention by recent audits of the Legislative Division of Post Audit. The Secretary indicated that the agency is working with new and current staff to place greater emphasis on reporting inappropriate activities. The Department has also installed approximately 250 additional security cameras.

Responding to a question from the Committee regarding the purchase of the security cameras, Secretary Werholtz indicated that funding for the additional cameras came from a bonding program passed 3 years ago by the Legislature for the purpose of purchasing equipment. The Secretary noted that because the Topeka Correctional Facility is old and has many "nooks and crannies", it is very difficult to have security cameras in all areas. Removing those areas would be the best way to eliminate the incidences. Secretary Werholtz indicated that the Department does not have the staff to monitor all of the cameras on a continuous basis, using the majority of the recordings to investigate concerns that are brought to their attention. The Secretary noted that the Department does not have storage room to retain most recordings for more than 30 days, indicating also that the images deteriorate after 30 days. Responding to a question concerning employing only males at the men's correctional facilities and women at the women's correctional facility, Mr. Werholtz stated that it is a issue of an individual's "right of employment", also noting that it would be difficult to adequately staff facilities with only one gender. The Secretary noted that the Department instructs employees of the correctional facilities to make sure that every interaction of a staff member with an inmate has a connection to the correctional system and not involve any personal information or comments. Secretary Werholtz stated

CONTINUATION SHEET

Minutes of the Senate Ways and Means Committee at 10:30 a.m. on February 8, 2010, in Room 548-S of the Capitol.

that additional resources and staff would help to alleviate the incidents of misconduct.

The Committee voiced a concern that the Department of Corrections was not allowed sufficient time to respond to the audits before the Legislative Post Audit Committee.

Hearing on SB 479 - Permitting the secretary of revenue to disclose certain tax information to the state treasurer for the purpose of locating owners of unclaimed property.

Jill Wolters, Office of the Revisor of Statutes, explained that **SB 479** amends current law to allow the secretary of revenue to provide taxpayer information to the state treasurer for the sole purpose of carrying out the provisions of the unclaimed property act (Attachment 2).

Rita Mohr, Director Unclaimed Property, State Treasurer's Office, presented testimony in support of **SB 479** (Attachment 3). Ms. Mohr stated that the legislation would allow the Treasurer's Unclaimed Property Division to match reported information in the State Treasurer's office against records of the Department of Revenue to identify the most current mailing address for the listed property owner. Ms. Mohr noted that the program can be implemented without any additional cost to either agency.

Responding to questions from the Committee, Ms. Mohr stated that there is approximately \$212 million of unclaimed property currently held by the State Treasurer with approximately \$20 million added annually. Ms. Mohr indicated that an estimated 50 percent of the each year's receipts is successfully returned to the owner.

Dennis McKinney, State Treasurer, stated that the State Treasurer must verify the ownership of unclaimed property before it can be released.

The Committee voiced concern that there should be a procedure in place in those cases where the owner cannot be located or the amount is so small that the owner does not want to complete the necessary procedure to retrieve the property for the property to be donated to the State.

Richard Cram, Department of Revenue, appeared before the Committee in support of **SB 479**.

There were no other proponents, opponents or neutrals to appear before the Committee.

The hearing on SB 479 was closed.

The Committee agreed to allow the Revisor of Statutes to correct language on Page 3, Lines 38 and 41, to change "associated individuals" to read "associated persons" on both lines.

Senator Teichman moved to recommend SB 479 favorably for passage as amended. The motion was seconded by Senator Lee. Motion carried on a voice vote.

Adjournment

The next meeting is scheduled for February 9, 2010.

The meeting was adjourned at 11:45 a.m.

SENATE WAYS AND MEANS COMMITTEE

GUEST LIST

DATE: February 8, 2010

NAME	REPRESENTING
Mike Shuddy	14th News
Julia Thomas	DOR
JEREMY S BARCLAY	KDOC
ROGER BONNER	KDOC
ROGER WERHOLTZ	KDOC
CHUCK SIMMONS	KDOC
SEAN MILNE	CAPITOL STRATEGIES
Lynn Letz	SAA
Chris Clarke	"
Richard Cram	KDOZ
Dennis McInnery	Treasurers Office
Rita Mohr	" "
Mark Boranyak	CAPITOL STRATEGIES
Patrick Woods	SIS
Levi J. Henry	Sandstone Group LLC
Paul STEVENSON	STU
Scott Gates	STO
Joe Mosimann	PMCA
Kendra Hanson	Hein Law Firm

MEMORANDUM

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

The following is submitted to supplement the Department's response to the audit's findings regarding the department's investigative process and information management as set forth on pages 32-33 of the report.

"The Department has a policy that says investigators will receive specialized training, doesn't specify what the training will be."

The investigation division has submitted a proposal to the Secretary for a revision in the training received by investigators. The proposal includes all mandated training for facility personnel. Job-specific training will need to be determined each year based on training needs and the availability of classes. This will also be driven by funding availability.

"Some facility officials said they don't feel like they get as much information from the investigators as they used to."

Investigators should be reporting staff investigations to the Warden as they are opened. At some facilities the day-to-day contacts have been delegated by the Wardens to a Deputy Warden. When the new investigation system is fully operational the Wardens will have access to their own facility investigation database. They will be able view the investigation progress from start to finish.

"The Department lacks sufficient management information regarding staff misconduct."

The weekly report is simply a snapshot of the past week's activity, it was never intended to be a comprehensive report. Each facility EAI section routinely updates their respective Warden with information regarding staff misconduct cases. The new case log system that was recently initiated and the database system that is in the process of being built are both designed to consolidate information from all of the facilities.

All of the facilities submit these reports to central office, as well as reports from the Field Special Agent Supervisors from the Northern and Southern parole regions. These reports provide a snapshot of the facility/region activity to provide an overall general view of EAI activity in the department. They allow us to identify trends and provide global information on the investigative and criminal activity in the department.

The reports include new cases that are being investigated and any ongoing case that has a new development or disposition. Listing all of the active cases would produce a very lengthy document with no new relevant information.

There is a standard form for submitting the information from the facilities. Each facility is to provide the information requested on the form as appropriate on Friday afternoon of each week.

“Improvements are needed to ensure that the officials are aware of the level of potential staff misconduct.”

Information tracking has been identified as an area that needs attention, including information that is part of an investigation. The case logs system and upcoming database will be used to address that issue.

“The department needs better consistency and accuracy in the information facilities report.”

The system that we started using in November is simply a system for logging cases. It is not the investigative/intelligence software that we are in the process of obtaining (i2). The current system allows us to see what cases are being worked and the status of those cases. Basic instruction has been given on the entry of items, however fine tuning the input of data has been slowed due to work being performed for various audits/reports being conducted. The information in this system is case information, predominately on completed cases at this time. Eventually, we will be able to track cases as they are being worked and search for particular types of investigative cases and/or individuals that are involved in investigations.

The i2 database software has been purchased and is the build and design phase. The timeline for implementation of the system is between March and May 2010.

DEPARTMENT OF CORRECTIONS

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.

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MEMORANDUM

To: Chairman Emler and members of the Senate Ways and Means Committee
From: Jill Ann Wolters, Senior Assistant Revisor
Date: February 8, 2010
Subject: SB 479

Senate Bill No. 479 amends K.S.A. 79-3234 to allow the secretary of revenue to provide taxpayer information to the state treasurer for the sole purpose of carrying out the provisions of K.S.A. 58-3934 et seq., the unclaimed property act. The information would include, but not be limited to, current and prior addresses of taxpayers or associated individuals, including spouses or dependents listed on income tax returns, who may have knowledge as to the location of an owner of unclaimed property.

The act would take effect upon publication in the Kansas register.

Senate Ways & Means Cmte
Date 2-08-2010
Attachment 2



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STATE OF KANSAS
Dennis McKinney
TREASURER

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Senate Bill 479
February 8, 2010
By Rita Mohr Director of Unclaimed Property
For
Kansas State Treasurer Dennis McKinney

Chairman Emler and members of the committee:

Senate Bill 479 would amend K.S.A. 79-3234 relating to the Tax information; preservation; limits on dissemination and use.

This proposal would allow the Treasurer's Unclaimed Property division to match reported information to our office by holders of unclaimed properties against Department of Revenue records to identify the most current mailing address for the listed property owner.

If the Treasurer's records do not contain any matching information when reported, no Department of Revenue records would be searched.

This is an effective and efficient way to do business by protecting owner's privacy by not sending information to the wrong address, reducing the cost of postage and handling of return mail, resending forms, and strengthening our outreach efforts without increasing staff.

This program can be implemented without any additional cost to either agency.

Thank you for the opportunity to appear before you today.

Senate Ways & Means Cmte
Date 2-08-2010
Attachment 3