

## MINUTES

### SPECIAL COMMITTEE ON JUDICIARY

September 13, 2010  
Room 548-S—Statehouse

#### Members Present

Senator Thomas C. (Tim) Owens, Chairperson  
Representative Lance Kinzer, Vice-chairperson  
Senator David Haley  
Representative Sydney Carlin  
Representative David Crum  
Representative Aaron Jack  
Representative Melody McCray-Miller

#### Staff Present

Athena Andaya, Kansas Legislative Research Department  
Lauren Douglass, Kansas Legislative Research Department  
Jason Thompson, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jennifer Horchem, Kansas Legislative Research Department  
Karen Clowers, Committee Assistant

#### Members Absent

Senator Dwayne Umbarger  
Representative Scott Schwab

#### Others Attending

See attached list.

The meeting was called to order by Vice-chairperson Kinzer at 10:10 a.m. The Vice-chairperson announced Chairperson Owens would be late due to a schedule conflict.

Vice-chairperson Kinzer called on Jason Thompson, Office of the Revisor of Statutes, to brief the Committee on the Kansas Open Records Act exceptions scheduled for expiration in 2011. The

Committee was requested to conduct a review of all exceptions to determine if any statutory exceptions are unnecessary and may be discontinued (Attachment 1).

Vice-chairperson Kinzer opened the hearing regarding criminal background checks for potential employees of adult care homes.

Representative Bob Bethell appeared before the Committee providing background information on the development and intent of previous legislation concerning criminal background checks for potential employees of adult care facilities. The 2009 Legislative Session introduced HB 2323, which added felony theft to the list of prohibited crimes in KSA 39-970. The bill initiated discussion on several points and the topic was then referred to the Special Committee on Judiciary for a review during the Interim. The Committee was charged to determine whether state agencies or adult care home facilities requesting criminal background checks should receive a complete or redacted criminal history report; if juvenile adjudications or non-prohibited offenses should be included in the reports; if individuals should be notified of reasons for disqualification; and whether current procedures and differences between adult and child care facility reports are justified (Attachment 2).

Athena Andaya, Kansas Legislative Research Department (KLRD), provided the Committee with a review of 2010 HB 2323 and answered clarifying questions from the Committee (Attachment 3).

Mr. Thompson briefed the Committee on the current statutes requiring criminal background checks. The Committee discussed the possibility of rewriting the statute for clarification (Attachment 4).

The Committee recessed for lunch. The meeting reconvened at 1:35 p.m.

Chairperson Owens arrived to chair the meeting. The Chairperson called on Leslie Moore, Information Services Division Manager, Kansas Bureau of Investigation (KBI), to testify on criminal background checks. Ms. Moore provided information regarding criminal history checks for HB 2323, especially how criminal history records are redacted and the purpose of the record check fee. Ms. Moore provided examples of record checks on both the federal and state levels (Attachment 5).

Joseph Kroll, Director, Bureau of Child Care and Health Facilities, Department of Health and Environment (KDHE), testified regarding the criminal history requirements for adult care homes, home health agencies, and child care facilities. Mr. Kroll provided KDHE's current practice regarding the reporting of information to various agencies and the reporting differences between adult care facilities and child care facilities (Attachment 6).

Cindy Luxem, President, Kansas Health Care Association/Kansas Center for Assisted Living, testified before the Committee, indicating the current practice of receiving complete criminal histories appears to work well for adult care facilities. Ms. Luxem stressed the importance of facilities receiving requested information in a timely manner, since potential employees are allowed to work on probation until the report is received. She provided a summary of various states indicating if criminal background checks are required and the process used to obtain them (Attachment 7).

Debra Zehr, President, Kansas Association of Homes and Services for the Aging, appeared before the Committee, indicating while individual privacy rights are important, complete criminal history reports protect the vulnerable clients in their care. Ms. Zehr stated facilities need to be informed of all convictions that would preclude them from employment, and recommended the Committee review current requirements across all care facilities for uniformity (Attachment 8).

JoAnn Corpstein, Chief Counsel, Kansas Department on Aging, provided the Committee information on the criminal histories KDHE provides to adult care facilities and home health care agencies as provided by statute. KDHE may also provide requesting agencies with a redacted report if an applicant has a juvenile conviction for theft. This allows entities to make informed hiring decisions (Attachment 9).

Mr. Thompson provided the Committee with various samples of statutory language regarding criminal background checks in current statutes illustrating progression of changes in language (Attachment 10).

Following discussion, the Committee requested additional information and agreed to revisit the topic at the next meeting of the Committee.

The Committee decided to wait until the next meeting to make any formal recommendations regarding the Kansas Open Records Act.

The meeting adjourned at 4:00 p.m. The next meeting was scheduled for October 25, 2010.

Prepared by Karen Clowers  
Edited by Athena Andaya

Approved by Committee on:

October 25, 2010  
(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SPECIAL COMMITTEE ON JUDICIARY  
GUEST LIST

DATE: September 13, 2010

NAME	REPRESENTING
Martin Hancock	Hancock's Capital Resources
Bob Bethell	The People of Kansas
Rod Merritt	KENNEDY Assoc.
Jessica Clattenbuck	TFI Family Services
Matt Casey	GBA
Russell Ash	KDOT
Richard Gannon	KPA
Ed Klumpp	KSO/KACP/KPOA
Sean Miller	CAPITOL STRATEGIES
Barb Coxant	KPOA
Jeff Rottenberg	Stick Farm
Clyde Luxem	Kansas Health Care Assoc.
Turn Brown	The Cap Lab Group
Matthew Cooper	KDHE
Marla Rhoder	KDHE
Joseph F. Kusek	KDHE
Mary A Mungo	KDHE

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SPECIAL COMMITTEE ON JUDICIARY  
GUEST LIST

DATE: September 13, 2010

NAME	REPRESENTING
Dun Rose	DA

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MEMORANDUM

To: Special Committee on Judiciary  
From: Jason Thompson, Assistant Revisor  
Date: September 13, 2010  
Subject: Kansas Open Records Act (KORA)

The committee is asked to conduct any statutorily required legislative review of existing exceptions to the Kansas Open Records Act (KORA) that are scheduled for expiration in 2011. In recent years, the Legislature has undertaken a comprehensive review of KORA in order to determine if any statutory exceptions to the law are unnecessary and could be discontinued. The 2010 Legislature extended the existence of 206 statutory exceptions to KORA until July 1, 2015.

K.S.A. 45-229 provides that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception created by the legislature or substantial amendment to an exception, shall expire five years after creation or amendment, unless the legislature acts to continue the exception. In the year prior to the expiration, the Revisor of Statutes is required to certify the language and citation of each exception to the Speaker of the House of Representatives and the President of the Senate.

Subsection (h) further requires the legislature to:

“(1) ...review the exception before its scheduled expiration and consider as part of the review process the following:

- (A) What specific records are affected by the exception;
- (B) whom does the exception uniquely affect, as opposed to the general public;
- (C) what is the identifiable public purpose or goal of the exception;
- (D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An

identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.”

Attachment A lists the 28 existing statutory exceptions to the Kansas Open Records Act that are scheduled for expiration in 2011 and Attachment B provides a summary of each section.

KANSAS OPEN RECORDS ACT REVIEW - 2010

K.S.A. 45-229; Certified for Calendar Year 2010; Exceptions Expire July 1, 2011

Substantially Amended Exceptions (2006)

- 22-4906 Criminal offender registration
- 22-4909 Criminal offender registration
- 44-1132 Discrimination in employment
- 60-3333 Environmental audit report
- 75-712c Reports of missing persons

New Exceptions (2006)

- 12-5358 Audits of VoIP providers
- 12-5611 Topeka/Shawnee county riverfront authority
- 38-2310 Kansas juvenile justice code records
- 38-2311 Juvenile treatment records
- 38-2326 Juvenile offender information system
- 65-6154 Emergency medical services reports
- 71-218 Community colleges, employee evaluation documents
- 75-457 Substitute mailing addresses
- 75-723 AG abuse, neglect and exploitation of persons unit
- 75-7c06 Concealed firearms records

New Exceptions (2006) – Expiration by Separate Statute

- 9-513c Money transmission business
- 40-2,118 Fraudulent insurance acts

Exceptions Listed in K.S.A. 45-229(j)

(continued in existence in section 1 of chapter 87 of the 2006 Session Laws)

- 1-501 Accounting firms, peer review documents
- 9-1303 Banking code, information sharing with commissioner
- 12-4516a Expungement of city ordinance violations
- 38-1692 Repealed January 1, 2007 (Juvenile Justice Code revised)
- 39-970 Adult care home licensure act
- 40-4913 Insurance agents, termination reports and documents
- 65-525 Child care facilities, maternity centers, family day care homes
- 65-5117 Home health agency
- 65-6016 Infectious diseases, disclosure to corrections employees
- 65-6017 Medical tests or reports on offenders in custody
- 74-7508 Behavioral sciences regulatory board documents



## KANSAS OPEN RECORDS ACT EXCEPTIONS SUMMARY - 2010

Section	Who exception covers (provides protection to):	Government program affected:	Type of information excepted:	Notes & comments:
1-501	firms that provide certain financial statement services	Board of Accountancy	any reports, statements, memoranda, transcripts, findings, records, or working papers prepared and any opinions formulated, in connection with any peer review	
9-513c	persons engaged in money transmission business	State Bank Commissioner	all information or reports obtained by the commissioner in the course of licensing or examining a person engaged in money transmission business	
9-1303	financial institutions	State Bank Commissioner	information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group that includes a financial institution	
12-4516a	persons with expunged city ordinance vioaltions	records custodians	whenever records have been expunged, custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged	

12-5358	VoIP providers (voice over internet protocol)	Secretary of Administration	information provided pursuant to the VoIP enhanced 911 act or the wireless enhanced 911 act treated as proprietary records withheld from the public upon request of the party submitting such records	
12-5611	Topeka/Shawnee county riverfront authority board	Topeka/Shawnee county riverfront authority	documents and records kept or prepared by the board for use in negotiations, actions or proceedings to which the authority is a party.	
22-4906	certain juvenile offenders (sexually violent crime, but not off-grid or severity level 1)	sheriff's offices, KBI	court may order certain juvenile offenders to register with the sheriff, but such registration information shall not be open to inspection by the public or posted on any internet website	
22-4909	crime victims	sheriff's offices, KBI	name, address, telephone number, or other information that specifically/individually identifies victim of offender required to register, other than to law enforcement agencies	
38-1692				Repealed January 1, 2007 (with enactment of Revised Juvenile Justice Code)
38-2310	certain juveniles	law enforcement officers and agencies and municipal courts	limited disclosure of records when offender under 14; same disclosure as for adults when offender over 14; information identifying victims and alleged victims of sex offenses shall not be disclosed or open to public inspection under any circumstances; records, reports and information obtained as part of juvenile intake and assessment process shall be confidential	

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38-2311	certain juveniles	courts	limited disclosure of diagnostic, treatment or medical records	
38-2326	juvenile offenders	law enforcement agencies, KBI	limited disclosure of juvenile offender information maintained in the juvenile offender information system	
39-970	applicants for employment in adult care homes	adult care home operators	criminal history record information received by operators	
40-2,118	insurers	Commissioner of Insurance	any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only	
40-4913	insurers	Commissioner of Insurance	any document, material or other information in the control or possession of the department that is furnished by an insurance entity or an employee or agent thereof acting on behalf of such insurance entity, or obtained by the insurance commissioner in an investigation	
44-1132	victims of domestic violence or sexual assault	employers	To the extent allowed by law, employer shall maintain the confidentiality of any employee requesting leave for certain purposes related to domestic violence or sexual assault, as well as the confidentiality of any supporting documentation provided by the employee to the employer relating to such leave	
60-3333	businesses	government employees and regulatory agencies	material that is included in an environmental audit report generated during an environmental audit (a voluntary, internal assessment, evaluation or review)	

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65-525	child care facilities, maternity centers, family day care homes	Department of Health and Environment	records in the possession of the department of health and environment or its agents regarding child care facilities, maternity centers or family day care homes; records containing the name, address and telephone number of a child care facility, maternity center or family day care home in the possession of the department of health and environment or its agents	
65-5117	applicants for employment in home health agency	home health agency operators	criminal history record information received by operators	
65-6016	persons in custody of the commissioner of juvenile justice or the secretary of corrections	corrections employees and physicians	a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had a positive reaction to an infectious disease test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient; information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient	
65-6017	persons in custody of the commissioner of juvenile justice or the secretary of corrections	corrections employees and courts	results of tests or reports, or information therein, obtained under court order when a corrections employee has been placed in contact with body fluid from one or more offenders while performing duties within the scope of such employee's duties as a corrections employee	

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65-6154	persons using emergency medical services	Board of Emergency Medical Services	limited disclosure of emergency medical services information provided to the board	
71-218	full-time employees of community colleges	board of trustees of a community college	Except by order of a court of competent jurisdiction, evaluation documents and responses thereto shall be available only to the evaluated employee, the board, the appropriate administrative staff members designated by the board, the community college attorney upon request of the board, the board and the administrative staff of any community college to which such employee applies for employment, and other persons specified, in writing, by the employee to the employee's board.	
74-7508	practitioners of the behavioral sciences	behavioral sciences regulatory board	limited disclosure of any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the behavioral sciences regulatory board	
75-457	victims of domestic violence, sexual assault, trafficking or stalking	Secretary of State	any records in a program participant's file except: if requested by a law enforcement agency; if directed by a court order; or if requested by a state or local agency, to verify the participation of a specific program participant, in which case the secretary may only confirm participation in the program	

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75-712c	victims of domestic violence or sexual assault	law enforcement agencies	The law enforcement agency investigating the report shall not give information to the reporting party if the law enforcement agency has reason to believe the missing person is an adult or an emancipated minor and is staying at or has made contact with a domestic violence or sexual assault program and does not expressly consent to the release of this information.	
75-723	abused, neglected, exploited persons	Attorney General; abuse, neglect and exploitation of persons unit	the information obtained and the investigations conducted by the unit shall be confidential as required by state or federal law	
75-7c06	licensees under the personal and family protection act	Attorney General	persons applying for licenses or persons who have had a license denied shall be confidential and shall not be disclosed in a manner which enables identification of any such person	

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COMMITTEE ASSIGNMENTS  
 CHAIR: AGING AND LONG TERM CARE  
 MEMBER: COMMERCE AND LABOR  
 CORRECTIONS AND JUVENILE  
 JUSTICE  
 ELECTIONS

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TOPEKA

## SPECIAL COMMITTEE ON JUDICIARY

September 13, 2010  
 Room 548-S—Statehouse

Good morning, I am Representative Bob Bethell. I appear to give you a “brief” background for the topic of Criminal Background Checks before you today.

Representative Dixie Tolkes of Topeka in the mid 1990’s was unfortunately brought into the arena of nursing home regulation by a family situation that played out very badly.

In 1998 I was elected to the Kansas House of Representatives and one of the first things I proceeded to work on was Statute 39-970.

**Chapter 39.—MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE Article 9.—ADULT CARE HOMES.**

It was not my purpose to eliminate or abolish the Statute but to make it more workable for the Nursing Home Industry. The result of that attempt was HB 2700 of 1999. If you check the history of HB 2700 you will note that it was vetoed. That was for the record at my request. Yes I authored the bill and thought that it at the end of the 1999 Session needed to be vetoed due to an interpretation of the bill by the Kansas Department of Health and Environment. The problem centered around the word “redacted”.

In the 2009 Session HB 2323 was introduced to add Felony Theft into the list of prohibited crimes in 39-970. That brings us to the reason you are reviewing the topic today. There was a discussion of the scope of HB 2323 in a hearing conducted by Senate Public Health and Welfare concerning the difference between the “adult” and “child” background checks. Senator Kelsey is with us today and will give you a history of some of the concerns that he has because of situations in the care of children in Kansas.

Mr. Chairman, I would stand for questions at this time.

Special Committee on Judiciary

9-13-2010  
 Attachment 2

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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September 13, 2010

**To:** Special Committee on Judiciary

**From:** Iraida Orr, Research Analyst

**Re:** Brief on 2010 HB 2323

HB 2323, approved by the Governor on March 10, 2010, became effective on July 1, 2010. The bill amends the law concerning providers of adult care services as it relates to employment of persons by such providers. HB 2323 amends the adult care home and home health agency background check statutes, found at K.S.A. 2009 Supp. 39-970 and 65-5117. The bill makes the following amendments:

- Felony theft is added to the list of criminal convictions with a five year employment prohibition. The prohibition against employment by an adult care home or a home health agency of an applicant with a felony theft conviction does not apply if a minimum of five years has passed since the applicant satisfied the terms of the imposed sentence;
- A person who has been employed by the same adult care home or home health agency since July 1, 1992, is not subject to the five year ban on employment;
- The definition of the criminal history record information is expanded from "felony convictions" to "any criminal history information";
- An operator of an adult care home or a home health agency may request criminal history record information on home or agency volunteers and persons employed by the home or agency who are currently licensed or registered by an agency of the state to provide professional services in the state; and
- The Kansas Bureau of Investigation (KBI) is required to report "any criminal history information" to the Secretary of Health and Environment when a background check is requested by an operator of an adult care home. A similar amendment was not enacted requiring the KBI to report "any criminal history information" to the Secretary of Health and Environment when a background check is requested by an operator of a home health agency.

In a January 2007 Report to the Governor, the Kansas Interagency Council on Abuse, Neglect and Exploitation, created by Executive Order 06-05 on April 26, 2006, recommended adding "theft" to the list of prohibited crimes for which perpetrators would be added to the Abuse, Neglect and Exploitation (ANE) perpetrator registry.

Special Committee on Judiciary

9-13-10  
Attachment 3



HOUSE BILL No. 2323

AN ACT concerning providers of care services; relating to employment of persons by such providers; amending K.S.A. 2009 Supp. 39-970 and 65-5117 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 39-970 is hereby amended to read as follows: 39-970. (a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government. *The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by an adult care home on the effective date of this act and while continuously employed by the same adult care home.*

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) *K.S.A. 21-3701, and amendments thereto;* (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; ~~(D)~~ (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; ~~(E)~~ (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or ~~(F)~~ (G) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding ~~felony convictions~~ *any criminal history information*, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications

of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding ~~only felony convictions~~ *any criminal history information*, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning ~~felony convictions~~ *any criminal history information* and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this

section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2009 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) *An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).*

~~(j)~~ (j) No person who has been employed by the same adult care home ~~for five consecutive years immediately prior to the effective date of this act since July 1, 1992,~~ shall be subject to the provisions of this section while employed by such adult care home.

~~(k)~~ (k) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

~~(l)~~ (l) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

~~(m)~~ (m) For purposes of this section, the Kansas bureau of investigation shall ~~only report felony convictions~~ *any criminal history information*, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

~~(n)~~ (n) This section shall be part of and supplemental to the adult care home licensure act.

Sec. 2. K.S.A. 2009 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pur-

suant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government. *The provisions of subsection (a)(2)(C) shall not apply to any person who is employed by a home health agency on the effective date of this act and while continuously employed by the same home health agency.*

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) K.S.A. 21-3701, and amendments thereto; (D) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; ~~(E)~~ (E) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; ~~(F)~~ (F) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or ~~(G)~~ (G) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding ~~felony convictions~~ *any criminal history information*, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding ~~only felony convictions~~ *any criminal history information*, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender

which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning ~~felony convictions~~ *any criminal history information* and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2009 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator

would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) *An operator may request from the department of health and environment criminal history information on persons employed under subsections (g) and (h).*

~~(j)~~ (j) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act since July 1, 1992, shall be subject to the requirements of this section while employed by such home health agency.

~~(k)~~ (k) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

~~(l)~~ (l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

~~(m)~~ (m) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

Sec. 3. K.S.A. 2009 Supp. 39-970 and 65-5117 are hereby repealed.

HOUSE BILL No. 2323—page 7

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*

Criminal History Record Checks in Current Statutes

Prepared for the Special Committee on Judiciary - September 13, 2010

K.S.A. 7-127	Admission to practice law (Supreme Court and State Board of Law Examiners)
K.S.A. 12-1,120	Chief of police (city clerk and Attorney General)
K.S.A. 17-2234	Department of credit unions employees (Department of Credit Unions)
K.S.A. 19-826	Sheriffs (county election officer and Attorney General)
K.S.A. 39-969	Adult care home licensure act (Secretary of Health and Environment)
K.S.A. 40-5504	Public adjusters licensing act (Commissioner of Insurance)
K.S.A. 41-311b	Liquor control act (Director of Alcoholic Beverage Control)
K.S.A. 46-3301	Joint committee on Kansas security (Kansas Bureau of Investigation)
K.S.A. 58-3039	Real estate brokers' and salespersons' license act (Kansas Real Estate Commission)
K.S.A. 65-516	Child care facilities (Secretary of Health and Environment)
K.S.A. 65-1120	Licensure by the board of nursing (State Board of Nursing)
K.S.A. 65-1696	Licensure by state board of pharmacy (State Board of Pharmacy)
K.S.A. 65-2402	Office of vital statistics employees (Secretary of Health and Environment)
K.S.A. 65-2839a	Licensure by state board of healing arts (State Board of Healing Arts)
K.S.A. 65-28,129	Licensure by state board of healing arts (State Board of Healing Arts)
K.S.A. 65-3407	Permits to construct, alter or operate solid waste processing facilities and solid waste disposal areas (Secretary of Health and Environment)
K.S.A. 65-3503	Licensure as an adult care home administrator (Board of Adult Care Home Administrators)
K.S.A. 65-4209	Mental health technicians (State Board of Nursing)
K.S.A. 65-5117	Home health agency (Secretary of Health and Environment)
K.S.A. 73-1210a	Certain Kansas commission on veterans affairs office employees (Kansas Commission on Veterans Affairs)
K.S.A. 74-1112	Applicants for licensure as a professional nurse, practical nurse or mental health technician (State Board of Nursing)



K.S.A. 74-4905 Board of trustees of the Kansas public employees retirement system  
(designated Kansas Senate committee)

K.S.A. 74-50,184 Boxing commissioner (Athletic Commission, Department of Commerce)

K.S.A. 74-8705 State Lottery, major procurement contracts  
(Executive Director of the Kansas Lottery)

K.S.A. 74-8763 Expanded Lottery Act (Executive Director of the Kansas Lottery)

K.S.A. 74-8769 Expanded Lottery Act  
(Executive Director of the Kansas Racing and Gaming Commission)

K.S.A. 74-8803 Kansas racing and gaming commission (Governor)

K.S.A. 74-8805 Executive director of the racing and gaming commission (Governor)  
Certain employees (Executive Director)

K.S.A. 74-8806 Animal health officer (Kansas Racing and Gaming Commission )

K.S.A. 74-8816 Occupation licenses issued by Kansas racing and gaming commission  
(NOTE: not explicitly authorized to run record/background check, but are  
authorized to take fingerprints)

K.S.A. 74-9804 Executive Director of the State Gaming Agency (Governor)  
Certain employees (Executive Director)

K.S.A. 74-9805 Employment by state gaming agency or qualification for any license issued  
pursuant to a tribal-state gaming compact (State Gaming Agency)

K.S.A. 75-7b04 Licensure as a private detective or private detective agency  
(Attorney General)

K.S.A. 75-7b21 Licensure to train private detectives (Attorney General)

K.S.A. 75-7c05 Application for licensure under the personal and family protection act  
(Attorney General)

K.S.A. 75-4315d Nongubernatorial appointments subject to confirmation by senate  
(appointing authority)

K.S.A. 75-53,105 Employment or participation in SRS program for placement, safety,  
protection or treatment of vulnerable children or adults (Secretary of SRS)

**22-4707. Restrictions on dissemination of criminal history record information; penalties.** (a) A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information.

(b) Noncriminal justice persons and agencies may receive criminal history record information for such purposes and under such conditions as may be authorized by law, including rules and regulations adopted pursuant to this act.

(c) In addition to any other remedy or penalty authorized by law, any individual violating or causing a violation of the provisions of this section shall be deemed guilty of a class A nonperson misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license.

**History:** L. 1978, ch. 118, § 7; L. 1995, ch. 251, § 18; July 1.

**75-712. Same; powers and duties; criminal information records; background investigations, contents, reports.** (a) It is the duty of the members of the bureau to make full and complete investigations at the direction of the attorney general. Each member of the bureau shall possess all powers and privileges which are now or may be hereafter given to the sheriffs of Kansas.

(b) The bureau shall acquire, collect, classify and preserve criminal identification and other crime records, and may exchange such criminal identification records with the duly authorized officials of governmental agencies, of states, cities and penal institutions.

(c) For purposes of carrying out the powers and duties of the bureau, the director may request and accept grants or donations from any person, firm, association or corporation or from the federal government or any federal agency and may enter into contracts or other transactions with any federal agency in connection therewith.

(d) The bureau shall conduct background investigations of: (1) Appointees to positions which are subject to confirmation by the senate of the state of Kansas; and (2) at the direction of the governor, all judicial appointments. The bureau shall require the appointee to be fingerprinted. The fingerprints shall be submitted to the bureau and to the federal bureau of investigation for the identification of the appointee and to obtain criminal history record information, including arrest and nonconviction data. Background reports may include criminal intelligence information and information relating to criminal and background investigations. Except as provided by this subsection, information received pursuant to this subsection shall be confidential and shall not be disclosed except to the appointing authority or as provided by K.S.A. 2009 Supp. 75-4315d, and amendments thereto. If the appointing authority is the governor, information received pursuant to this subsection also may be disclosed to the governor's staff as necessary to determine the appointee's qualifications.

(e) Reports of all investigations made by the members of the bureau shall be made to the attorney general of Kansas.

**History:** L. 1939, ch. 310, § 2; L. 1997, ch. 60, § 1; L. 1999, ch. 104, § 1; L. 2008, ch. 121, § 18; L. 2009, ch. 126, § 2; July 1.



## Kansas Bureau of Investigation

Robert E. Blecha  
*Director*

Steve Six  
*Attorney General*

TESTIMONY  
Before the Special Committee on Judiciary  
To provide information for HB 2323  
Leslie Moore  
Information Services Division Manager  
Kansas Bureau of Investigation  
September 13, 2010

Chairman Owens and Members of the Committee:

I appear here today to provide information regarding criminal history record checks for HB 2323. The information provided includes how criminal history records are redacted and the purpose of the record check fee.

### Adult Care Homes and Facilities

K.S.A. 39-970 and K.S.A. 65-5117 currently gives KDHE the ability to request Kansas criminal history records for the purpose of determining employment qualifications for employees of adult care homes and home health agencies. The statute allows KDHE to receive adult convictions and juvenile adjudications for felonies, mistreatment of dependant adults, sexual battery and theft.

KDHE electronically submits batches of record checks to the Kansas Bureau of Investigation (KBI) with the applicant's name, date of birth, and social security number. KBI sends back the results to KDHE electronically with either a "no record" or "rapsheet" response. The "rapsheet" explains the details of the conviction or adjudication. Most responses are received by KDHE within 24 hours. KDHE pays a batch fee of \$7 per request. In calendar year 2009 KBI processed 24,341 adult care record checks.

KBI releases adult convictions and juvenile adjudications to KDHE for all Kansas felonies, class A and B misdemeanors, and class C assault.

### Child Care Homes and Facilities

K.S.A. 65-516 currently gives KDHE the ability to request Kansas criminal history records for the purpose of determining employment qualifications for employees of child care facilities or family daycare homes. The statute allows KDHE to receive adult convictions, adult diversions, and juvenile adjudications; however, the statute does not specifically state the crimes that should be released.

Special Committee on Judiciary

9-13-2010

Attachment 5

KDHE also submits electronic batches of record checks and receives electronic results for these searches. Most responses are received in 24 hours. KDHE began doing record checks for child care before the KBI began charging for this service. Child care record checks were grandfathered in to continue to get these record checks for free. In calendar year 2009 KBI processed 64,643 child care record checks.

KBI releases to KDHE adult convictions, adult diversions and juvenile adjudications for all Kansas felonies, class A and B misdemeanors, and class C assault.

In addition to the name searches this statute also allows for KDHE to submit fingerprints for a state and federal search. The cost is \$50 per request. The results would include information from both Kansas and other states and take 7-10 business days to receive. KDHE has not submitted any fingerprint requests since it went into effect.

### **National Child Protection Act/Volunteers for Children Act(NCPA/VCA)**

Another option KDHE has is to submit fingerprint record checks under NCPA/VCA. NCPA/VCA, public law 109-251, is a federal act that allows qualifying agencies to submit federal record checks for people that work/ volunteer with children, elderly, or disabled people. KDHE would qualify for this type of record checks for both adult care and child care licensing.

The FBI has several requirements for NCPA/VCA record checks.

- Requests are submitted with a fingerprint card.
- The applicant must sign a release form acknowledging the record check is being requested.
- The results of the fingerprint request can only be submitted to a qualifying agency to determine fitness of employees or volunteers. The qualifying agency must be a governmental agency.
- The qualifying agency cannot forward the federal result to the client agency. The qualifying agency can only tell the client agency that the applicant meets/does not meet the fitness requirements.

Under the NCPA/VCA provision KDHE would receive both the Kansas criminal history and the federal criminal history records. The KBI would release convictions for all Kansas and federal felonies, class A and B misdemeanors, and class C assault. The cost is \$50 per request. The results take 7-10 business days to receive.

KDHE does not currently submit fingerprint record checks. Schools and the Board of Education submit fingerprint record checks under NCPA/VCA to background for teachers and other school employees.

### **Redaction of Criminal History Records**

The KBI redacts criminal history records according to the reason the request is made and the corresponding statute. KDHE adult care statutes state that the KBI will only release specific crimes to KDHE; however, the KBI does not release criminal history records by specific charges. In addition to KDHE other agencies also have statutes that list crimes that disqualify an individual. The programming that would be required to accommodate the release specific crimes

Each agency would be time consuming, complicated, and require an enormous amount of memory for the rapsheet program.

Instead, the KBI looks at the statute to find type of information the agency is requesting to receive - such as convictions, diversions, dismissals, acquittals, expungements, and juvenile adjudications. The KBI releases all felonies, class A and B misdemeanors, and class C assault for the type of information requested.

### **Record Check Fee**

In prior years the KBI Information Services Division (ISD) was funded under State general funds and the record check fee fund. When budget cuts began ISD was removed from general funds and was funded solely by the Record Check Fee fund. ISD consists of the Criminal Records Department, Identification Department (fingerprints), Incident Based Reporting Department (statistics), Registered Offender Department, and the Missing Persons Department. The record check fee is used to maintain all the departments within the division to pay for salaries, programming, and operating expenses. The fee does not generate additional money to be used elsewhere at the KBI.

KBI charges all agencies and individuals the same fees for requesting criminal history records for non-criminal justice purposes. The fees are:

- Fingerprint based Kansas/Federal search \$50 (32.75 to KBI, 17.25 to FBI)
- Fingerprint based Kansas only search \$35
- Name based Kansas only search \$20 (18.25 to KBI, 1.75 to Kansas.gov)
- Name based Kansas only batch \$7

### ***Detailed information of the \$50 fingerprint fee:***

\$50 record check fee

- \$17.25 = FBI fingerprint processing fee
- \$32.75 = KBI fingerprint processing fee
  - Skilled clerical staff
    - to data enter civil card information (descriptors, billing information, etc)
    - to process fingerprints through AFIS
    - to automate records, as needed
    - to research missing dispositions, as needed
    - to print and mail Kansas and federal responses
  - Maintenance of automated systems – CCH, AFIS, the interface between CCH and AFIS, and the interface between KBI and FBI.
  - Computer/printer maintenance
  - Paper
  - Toner

### ***Example of automated systems maintenance:***

AFIS maintenance contract paid to MorphoTrak in 2009

\$191,013.47

Thank you for your time.

## Kansas Department of Health and Environment

5-4

	K.S.A. 39-970 and K.S.A. 65-5117	K.S.A. 65-516	
Facility	Adult Care Homes and Home Health Agencies	Child Care Facilities and Family Daycare Homes	
Type of record check	name based record checks	name based record checks	fingerprint based record checks <sup>1</sup>
	Kansas only	Kansas only	Kansas and federal <sup>1</sup>
Fee	\$7 each (batch rate)	Free	\$50 <sup>1</sup>
Information Requested	felonies mistreatment of dependant adults sexual battery theft	none specified	
	adult convictions juvenile adjudications	adult convictions adult diversions juvenile adjudications	
Information Received	all felonies all class A and B misdemeanors class C assault	all felonies all class A and B misdemeanors class C assault	all felonies all class A and B misdemeanors class C assault <sup>1</sup>
	adult convictions juvenile adjudications	adult convictions adult diversions juvenile adjudications	adult convictions adult diversions juvenile adjudications <sup>1,2</sup>

<sup>1</sup> Same for NCPA/VCA, public law 105-251

<sup>2</sup> Federal records do not include juvenile offenses unless the juvenile is convicted as an adult.

# Record Check Requests

**2009**

Non-Criminal Justice Requests					
FP KS only	FP KS/FBI	Name mailed	Name on-line	Name batch	
Jan	130	2645	393	9398	8090
Feb	129	2351	527	9435	8582
Mar	134	2926	715	9249	10218
Apr	119	2287	588	9291	9558
May	168	2932	483	8914	13679
Jun	150	2905	593	9821	10777
Jul	138	2476	543	11554	10575
Aug	141	3277	625	11743	10499
Sep	133	2865	791	11973	10288
Oct	142	2559	278	10500	11505
Nov	105	2117	230	8684	8187
Dec	131	2617	132	7563	7886
<b>Total</b>	<b>1620</b>	<b>31957</b>	<b>5898</b>	<b>118125</b>	<b>119844</b>

Criminal Justice Requests					
FP KS only	FP KS/FBI	Name mailed	Name on-line	Name batch	
Jan	28	329	45	36240	0
Feb	22	401	50	34422	0
Mar	21	419	19	38055	0
Apr	31	386	32	37114	0
May	25	283	45	34664	0
Jun	63	381	36	32822	0
Jul	34	248	43	37588	0
Aug	28	290	26	35471	0
Sep	14	223	32	35388	0
Oct	27	262	27	36224	0
Nov	15	400	15	31378	0
Dec	10	304	93	33565	0
<b>Total</b>	<b>318</b>	<b>3926</b>	<b>463</b>	<b>422931</b>	<b>0</b>

Jan - Oct Fee	29.75	29.75	20.00	15.75	5.00
Oct - Dec Fee	35.00	32.75	20.00	18.25	5.00
<b>Total fee by category</b>	<b>50179.50</b>	<b>972599.75</b>	<b>117960.00</b>	<b>1927336.25</b>	<b>599220.00</b>
<b>Total fee</b>	<b>3667295.50</b>				

	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00
	0.00				

Total Combined Requests					
FP KS only	FP KS/FBI	Name mailed	Name on-line	Name batched	
Jan	158	2974	438	45638	8090
Feb	151	2752	577	43857	8582
Mar	155	3345	734	47304	10218
Apr	150	2673	620	46405	9558
May	193	3215	528	43578	13679
Jun	213	3286	629	42643	10777
Jul	172	2724	586	49142	10575
Aug	169	3567	651	47214	10499
Sep	147	3088	823	47361	10288
Oct	169	2821	305	46724	11505
Nov	120	2517	245	40062	8187
Dec	141	2921	225	41128	7886
<b>Total</b>	<b>1938</b>	<b>35883</b>	<b>6361</b>	<b>541056</b>	<b>119844</b>

<b>Total fee by category</b>	50179.50	972599.75	117960.00	1927336.25	599220.00
<b>Total fee</b>	<b>3667295.50</b>				

Record Check Fee Salary 2517559.44
OOE 1695109.00
Total 4212668.44
Record Check Fees 3667295.50
Salary and OOE 4212668.44
-545372.94

Average fee per request				
25.89	27.10	18.54	3.56	5.00



**Three NCPA/VCA Record Check Examples:**

1. Kansas and federal "no record"
2. Kansas "rapsheet" and federal "rapsheet" with only Kansas information
3. Kansas "rapsheet" and federal "rapsheet with Kansas and another state's information



KS response  
'no records'

## Kansas Bureau of Investigation

Robert E. Blecha  
*Director*

September 03, 2010

Steve Six  
*Attorney General*

KANSAS STATE BOARD OF EDUCATION  
120 SE 10TH AVENUE  
TOPEKA, KS 66612

Dear Contributor:

The fingerprints submitted for the following individual were searched in the Kansas Central Repository. No criminal history record was found. The fingerprint card will not be returned.

Submitting Agency:	KANSAS STATE BOARD OF EDUCATION-902KS1600
Name:	[REDACTED]
Race:	WHITE
Sex:	FEMALE
DOB:	12/29/1959
Social Security:	[REDACTED]
Date Fingerprinted:	8/18/2010
Reason Fingerprinted:	NCPA/VCA EMPLOYEE
AFIS PCN:	200020203691

This record should only be used for the current purpose for which the check was requested. Since criminal histories can change at any time, a future check will require a new search of the Central Repository.

This fingerprint submission is also to being sent to the Federal Bureau of Investigation for a national search, you will receive another response when that action is completed.

Criminal History Records  
Kansas Central Repository  
Kansas Bureau of Investigation



Federal Response  
'no record'

## Kansas Bureau of Investigation

Robert E. Blecha  
*Director*

September 03, 2010

Steve Six  
*Attorney General*

KANSAS STATE BOARD OF EDUCATION  
120 SE 10TH AVENUE  
TOPEKA, KS 66612

Dear Contributor:

The fingerprints submitted for the following individual were searched in the national criminal history record database maintained by the Federal Bureau of Investigation. No criminal history record was found.

Submitting Agency:	KANSAS STATE BOARD OF EDUCATION-902KS1600
Name:	[REDACTED]
Race:	WHITE
Sex:	FEMALE
DOB:	12/29/1959
Social Security:	[REDACTED]
Date Fingerprinted:	8/18/2010
Reason Fingerprinted:	NCPA/VCA EMPLOYEE
AFIS PCN:	200020203691
Date of FBI Response:	9/3/2010 8:58:59 AM

The fingerprint card will not be returned.

This record check should only be used for the current purpose for which the check was requested. Since criminal histories can change at any time, a future check will require a new search.

Criminal History Records  
Kansas Central Repository  
Kansas Bureau of Investigation



Kansas r xns  
'record'

# Kansas Bureau of Investigation

Robert E. Blecha  
Director

Steve Six  
Attorney General

To: USD 475

Re: [REDACTED]

Reason fingerprinted:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> CJ Employee               | <input type="checkbox"/> Lottery Employee              | <input type="checkbox"/> Carry Concealed Handgun        |
| <input type="checkbox"/> Non CJ Employee           | <input type="checkbox"/> Racing Commission Employee    | <input type="checkbox"/> SRS Caregiver                  |
| <input type="checkbox"/> PI License                | <input type="checkbox"/> State/Tribal Gaming Employee  | <input type="checkbox"/> Attorney Admission             |
| <input type="checkbox"/> Merchant/Security Police  | <input type="checkbox"/> Credit Service Org Reg        | <input type="checkbox"/> Commission on Veterans Affairs |
| <input checked="" type="checkbox"/> NCPA/VCA       | <input type="checkbox"/> Mortgage Business App         | <input type="checkbox"/> Board of Nursing               |
| <input type="checkbox"/> Adam Walsh Act            | <input type="checkbox"/> Consumer Credit Lender App    | <input type="checkbox"/> Board of Healing Arts          |
| <input type="checkbox"/> Real Estate Brokers/Sales | <input type="checkbox"/> Division of Vehicles Employee |   |
| <input type="checkbox"/> Governor Appointment      | <input type="checkbox"/> Liquor Distributor License    |   |

The attached abstract of criminal history ("rap sheet") provides the KBI's response to the criminal history record check of the above referenced subject. Identification is based on the civil fingerprint card your agency submitted. The rap sheet is a summary of the criminal history record information on file in the Kansas Central Repository.

You may provide the subject with a copy of the rap sheet. Under the provisions of Kansas Administrative Regulations (K.A.R.) 10-13-1, the subject of the record check is entitled to challenge the accuracy and completeness of the record. If the subject believes the rap sheet is incomplete or inaccurate:

- The subject may make application for changes, corrections and updates directly to the arresting agency, prosecutor, court or correctional facility that contributed the disputed information to the Kansas Central Repository.
- The subject may also choose to contact the KBI to challenge the record. Requests for correction of records must be submitted in writing by the subject, must identify the record being challenged, must include the details of the subject's request for modification of the record and must include valid official documents supporting the action requested. All such communications are to be directed to:

Kansas Bureau of Investigation  
Attn: Criminal History Records Unit  
1620 SW Tyler  
Topeka, KS 66612-1837

Kansas Bureau of Investigation  
Criminal Records Section  
1620 SW Tyler, Topeka Kansas 66612-1837  
(785) 296-8200

**Section 1 - Introduction**

Date RAP Sheet Produced: Sep 2, 2010 11:58 AM  
Requested by: 806KS0475  
Attention:

Purpose: Public Record - NCPA

Information used in the search:

Requested KBI Number: KS [REDACTED]

This record is being provided under the provisions of K.S.A. 22-4704, 22-4707 and K.A.R. 10-12-1, which entitles you to receive conviction data and summaries of arrests that are less than one year old without final dispositions on file at the Kansas Central Repository. Additional data may also be provided if you are statutorily entitled to other categories of criminal history record information.

If neither fingerprints nor an identifying number indexed in our files accompanied your request, the KBI cannot guarantee that the contents of this record pertain to the individual in whom you are interested.

Both federal and Kansas laws regulate the use of this record. This record and the data contained herein may only be used for the purpose requested. Violation of these conditions may result in prosecution.

Should the subject of this record dispute the contents, fingerprints should be submitted to the Kansas Bureau of Investigation for comparison against the fingerprints that support the record at the Central Repository.

Since additions and deletions may be made at any time, a new record should be requested for each new use.

**Section 2 - Identification**

KBI #: KS [REDACTED]

Names Used

[REDACTED]

Birth Dates

May 21, 1987

Races and Ethnicities

White

Sex

Male

Height

5'08"

Weight

165 lbs.

Eye Color

Hair Color

**Section 3 - Summary**

Date of Last Reported Event: Sep 17, 2009 - Prosecution  
Reported By: KS081011A MANHATTAN CITY PROSECUTOR'S OFFICE  
Case Number: [REDACTED]

**Section 4 - Criminal Justice Cycles**

Cycle 1            *Adult Offense*

## Arrest/Charge Data

Name Used: [REDACTED]  
Date of Arrest: Sep 12, 2009  
Date of Fingerprinting: Sep 12, 2009  
Booking Control Number: [REDACTED]  
Arresting Agency: KS0810000 RILEY COUNTY POLICE DEPARTMENT  
Arresting Agency Case Number: 09-007637

Arrest Disposition: Referred to prosecutor

## Prosecution

Prosecuting Agency: KS081011A MANHATTAN CITY PROSECUTOR'S OFFICE  
Case filed on: Sep 17, 2009  
Prosecution Case Number: [REDACTED]  
Diversion of Prosecution Initiated on: Nov 5, 2009  
Length of Diversion: 12 Months  
Charges Diverted:

1. KSA 08-1567 (1 Count) Diversion pending  
Driving under influence of alcohol or drugs; Unknown severity  
Non-Person
2. KSA 08-1545 (1 Count) Diversion pending  
Improper turn or approach  
Infraction

Projected Diversion Completion Date: Nov 5, 2010  
Pre-Trial Status: Not applicable or unknown (Bond: \$750.00)  
Comments: A/D Eval/Ed; Fines \$500; CSW

End of Record



Federal response

'KS only - no other state info'

# Kansas Bureau of Investigation

Robert E. Blecha  
Director

Steve Six  
Attorney General

To: USD. 475

Re:

Reason fingerprinted:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> CJ Employee               | <input type="checkbox"/> Lottery Employee              | <input type="checkbox"/> Carry Concealed Handgun        |
| <input type="checkbox"/> Non CJ Employee           | <input type="checkbox"/> Racing Commission Employee    | <input type="checkbox"/> SRS Caregiver                  |
| <input type="checkbox"/> PI License                | <input type="checkbox"/> State/Tribal Gaming Employee  | <input type="checkbox"/> Attorney Admission             |
| <input type="checkbox"/> Merchant/Security Police  | <input type="checkbox"/> Credit Service Org Reg        | <input type="checkbox"/> Commission on Veterans Affairs |
| <input checked="" type="checkbox"/> NCPA/VCA       | <input type="checkbox"/> Mortgage Business App         | <input type="checkbox"/> Board of Nursing               |
| <input type="checkbox"/> Adam Walsh Act            | <input type="checkbox"/> Consumer Credit Lender App    | <input type="checkbox"/> Board of Healing Arts          |
| <input type="checkbox"/> Real Estate Brokers/Sales | <input type="checkbox"/> Division of Vehicles Employee |   |
| <input type="checkbox"/> Governor Appointment      | <input type="checkbox"/> Liquor Distributor License    |   |

The attached document is the national abstract of criminal history ("rap sheet") for the above referenced individual based on the civil fingerprint card your agency submitted. This is the summary of the criminal history record information available through the Interstate Identification Index.

The FBI permits you to release a copy of the rap sheet to the subject of the record. If you do so, you should provide the subject a copy of this page as well.

If the subject believes the record to be incomplete or inaccurate:

- The subject may make application for changes, corrections and updates directly to the arresting agency, prosecutor, court or correctional facility that contributed the disputed information to the Kansas Central Repository.
- The subject may also choose to contact the KBI to challenge the record. Requests for correction of records must be submitted in writing by the subject, must identify the record being challenged, must include the details of the subject's request for modification of the record and must include valid official documents supporting the action requested. All such communications are to be directed to:

Kansas Bureau of Investigation  
Attn: Criminal History Records Unit  
1620 SW Tyler  
Topeka, KS 66612-1837

- The subject may also choose to contact the FBI to challenge the record. Requests are to be directed to:

FBI, CJIS Division  
Attn: SCU, Mod D-2  
1000 Custer Hollow Road  
Clarksburg, WV 26306

Received Time: Sep 3, 2010 10:02:41  
 Summary: QR: PUR=I FBI=[REDACTED] REA=806KS0475  
 Destination(s): TPKKB093A  
 MKE: QR Source: CMS  
 Reference: QR Msg ID: 1115  
 Station: TPKKB093A

TPKKB093A.MRI6944991.NCIC.QR.KSKBI0000.FBI/[REDACTED].PUR/I.ATN/PUBLIC RECORD  
 MKS.REA/806KS0475

--CCH--

THIS RECORD IS BASED ONLY ON THE FBI NUMBER IN YOUR REQUEST-  
 FBI/[REDACTED]

KANSAS BUREAU OF INVESTIGATION  
 CRIMINAL RECORDS SECTION  
 1620 SW TYLER, TOPEKA KANSAS 66612-1837  
 (785) 296-8200

SECTION 1 - INTRODUCTION

REQUESTED BY: TPKKB093A  
 ATTENTION: PUBLIC RECORD MKS

PURPOSE: INTERSTATE - NON CRIMINAL JUSTICE RAP SHEET

INFORMATION USED IN THE SEARCH:  
 REQUESTED FBI NUMBER: [REDACTED]

(ACCORDING TO THE INTERSTATE IDENTIFICATION INDEX (III), THE SUBJECT OF THIS  
 RECORD DOES NOT HAVE ADDITIONAL CRIMINAL HISTORY RECORD INFORMATION ON  
 FILE IN THE NATIONAL DATABASE. KANSAS IS THE ONLY STATE HOLDING CRIMINAL  
 HISTORY RECORD INFORMATION ON THIS SUBJECT.)

THIS RESPONSE CONTAINS THE COMPLETE ADULT HISTORY THAT IS ON FILE  
 AT THE KANSAS CENTRAL REPOSITORY AT THE KANSAS BUREAU OF INVESTIGATION.

IF NEITHER FINGERPRINTS NOR AN IDENTIFYING NUMBER INDEXED IN OUR FILES  
 ACCOMPANIED YOUR REQUEST, THE KBI CANNOT GUARANTEE THAT THE CONTENTS OF THIS  
 RECORD PERTAIN TO THE INDIVIDUAL IN WHOM YOU ARE INTERESTED.

THE INFORMATION PROVIDED IN THIS DOCUMENT IS FURNISHED FOR OFFICIAL USE  
 ONLY, AND HAS BEEN PROVIDED BY CONTRIBUTING CRIMINAL JUSTICE AGENCIES. ANY  
 INACCURACIES SHOULD BE REPORTED TO THE KANSAS CENTRAL REPOSITORY AT THE  
 KBI.

SHOULD THE SUBJECT OF THIS RECORD DISPUTE THE CONTENTS, FINGERPRINTS SHOULD  
 BE SUBMITTED TO THE KANSAS BUREAU OF INVESTIGATION FOR COMPARISON AGAINST  
 THE FINGERPRINTS THAT SUPPORT THE RECORD AT THE CENTRAL REPOSITORY.

SINCE ADDITIONS AND DELETIONS MAY BE MADE AT ANY TIME, A NEW RECORD SHOULD  
 BE REQUESTED FOR EACH NEW USE.

SECTION 2 - IDENTIFICATION

KBI: KS [REDACTED]  
 FBI: [REDACTED]

NAMES USED  
 -----  
 [REDACTED]

DATE OF BIRTH  
 -----  
 MAY 21, 1987

SOCIAL SECURITY NUMBER  
 -----  
 [REDACTED]

RACE AND ETHNICITY  
 -----  
 WHITE

SEX



MALE

HEIGHT

WEIGHT

5'08"

165 LBS

EYES

HAIR

BLUE

BROWN

DRIVERS LICENSE

MISCELLANEOUS NUMBERS

NO DATA

PLACE OF BIRTH

TACOMA, WASHINGTON (REPORTED: SEP 12, 2009)

CITIZENSHIP

UNITED STATES OF AMERICA

MONIKERS

NO DATA

FINGERPRINT CLASS

NO DATA

SCARS, MARKS AND TATTOOS

SCAR, ARM, LEFT, NONSPECIFIC (REPORTED: SEP 12, 2009)

SCAR, FINGER(S), LEFT HAND (REPORTED: SEP 12, 2009)

SCAR, CALF, RIGHT (REPORTED: SEP 12, 2009)

TATTOO, SHOULDER, RIGHT (REPORTED: SEP 12, 2009)

PHOTO ON FILE

KS0810000 RILEY COUNTY POLICE DEPARTMENT (REPORTED: SEP 12, 2009)

PALM PRINTS ON FILE

KS0810000 RILEY COUNTY POLICE DEPARTMENT (REPORTED: SEP 12, 2009)

DNA ON FILE

NO DATA

RESIDENCE

(REPORTED: SEP 12, 2009)

OCCUPATION

NO DATA

EMPLOYER AND ADDRESS

NO DATA

SECTION 3 - SUMMARY

DATE OF LAST REPORTED EVENT: SEP 17, 2009 - PROSECUTION

5-14

CYCLE 1 ADULT OFFENSE

ARREST/CHARGE DATA

NAME USED: [REDACTED]  
DATE OF ARREST: SEP 12, 2009  
DATE OF FINGERPRINTING: SEP 12, 2009  
BOOKING CONTROL NUMBER: [REDACTED]  
ARRESTING AGENCY: KS0810000 RILEY COUNTY POLICE DEPARTMENT  
ARRESTING AGENCY CASE NUMBER: 09-007637  
ARREST CHARGES:

1. KSA 08-1567 (1 COUNT)  
DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; UNKNOWN SEVERITY  
NON-PERSON  
DATE OF OFFENSE: SEP 12, 2009

ARREST DISPOSITION: REFERRED TO PROSECUTOR

PROSECUTION

PROSECUTING AGENCY: KS081011A MANHATTAN CITY PROSECUTOR'S OFFICE  
PROSECUTION CASE NUMBER: [REDACTED]  
DIVERSION OF OF PROSECUTION INITIATED ON: NOV 5, 2009  
LENGTH OF DIVERSION: 12 MONTHS  
CHARGES DIVERTED:

1. KSA 08-1567 (1 COUNT) DIVERSION PENDING  
DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; UNKNOWN SEVERITY  
NON-PERSON
2. KSA 08-1545 (1 COUNT) DIVERSION PENDING  
IMPROPER TURN OR APPROACH  
INFRACTION

PROJECTED DIVERSION COMPLETION DATE: NOV 5, 2010  
PRE-TRIAL STATUS: NOT APPLICABLE OR UNKNOWN (BOND: \$750.00)  
COMMENTS: A/D EVAL/ED; FINES \$500; CSW

END OF RECORD

--END--

MRI 6945075 IN: KSCPISVR1 19145 AT 10:02 03SEP10  
OUT: TPKKB093A 3 AT 10:02 03SEP10



KS response  
"record"

# Kansas Bureau of Investigation

Robert E. Blecha  
Director

Steve Six  
Attorney General

To: Board of Ed

Re: [REDACTED]

Reason fingerprinted:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> CJ Employee               | <input type="checkbox"/> Lottery Employee              | <input type="checkbox"/> Carry Concealed Handgun        |
| <input type="checkbox"/> Non CJ Employee           | <input type="checkbox"/> Racing Commission Employee    | <input type="checkbox"/> SRS Caregiver                  |
| <input type="checkbox"/> PI License                | <input type="checkbox"/> State/Tribal Gaming Employee  | <input type="checkbox"/> Attorney Admission             |
| <input type="checkbox"/> Merchant/Security Police  | <input type="checkbox"/> Credit Service Org Reg        | <input type="checkbox"/> Commission on Veterans Affairs |
| <input checked="" type="checkbox"/> NCPA/VCA       | <input type="checkbox"/> Mortgage Business App         | <input type="checkbox"/> Board of Nursing               |
| <input type="checkbox"/> Adam Walsh Act            | <input type="checkbox"/> Consumer Credit Lender App    | <input type="checkbox"/> Board of Healing Arts          |
| <input type="checkbox"/> Real Estate Brokers/Sales | <input type="checkbox"/> Division of Vehicles Employee | <input type="checkbox"/> Board of Pharmacy              |
| <input type="checkbox"/> Governor Appointment      | <input type="checkbox"/> Liquor Distributor License    |   |

The attached abstract of criminal history ("rap sheet") provides the KBI's response to the criminal history record check of the above referenced subject. Identification is based on the civil fingerprint card your agency submitted. The rap sheet is a summary of the criminal history record information on file in the Kansas Central Repository.

You may provide the subject with a copy of the rap sheet. Under the provisions of Kansas Administrative Regulations (K.A.R.) 10-13-1, the subject of the record check is entitled to challenge the accuracy and completeness of the record. If the subject believes the rap sheet is incomplete or inaccurate:

- The subject may make application for changes, corrections and updates directly to the arresting agency, prosecutor, court or correctional facility that contributed the disputed information to the Kansas Central Repository.
- The subject may also choose to contact the KBI to challenge the record. Requests for correction of records must be submitted in writing by the subject, must identify the record being challenged, must include the details of the subject's request for modification of the record and must include valid official documents supporting the action requested. All such communications are to be directed to:

Kansas Bureau of Investigation  
Attn: Criminal History Records Unit  
1620 SW Tyler  
Topeka, KS 66612-1837

Kansas Bureau of Investigation  
Criminal Records Section  
1620 SW Tyler, Topeka Kansas 66612-1837  
(785) 296-8200

Section 1 - Introduction

Date RAP Sheet Produced: Sep 12, 2010 3:34 PM  
Requested by: 902KS1600  
Attention:

Purpose: Public Record - NCPA

Information used in the search:

Requested KBI Number: KS [REDACTED]

This record is being provided under the provisions of K.S.A. 22-4704, 22-4707 and K.A.R. 10-12-1, which entitles you to receive conviction data and summaries of arrests that are less than one year old without final dispositions on file at the Kansas Central Repository. Additional data may also be provided if you are statutorily entitled to other categories of criminal history record information.

If neither fingerprints nor an identifying number indexed in our files accompanied your request, the KBI cannot guarantee that the contents of this record pertain to the individual in whom you are interested.

Both federal and Kansas laws regulate the use of this record. This record and the data contained herein may only be used for the purpose requested. Violation of these conditions may result in prosecution.

Should the subject of this record dispute the contents, fingerprints should be submitted to the Kansas Bureau of Investigation for comparison against the fingerprints that support the record at the Central Repository.

Since additions and deletions may be made at any time, a new record should be requested for each new use.

Section 2 - Identification

KBI #: KS [REDACTED]

Names Used

[REDACTED]

Birth Dates

Jan 5, 1982

Races and Ethnicities

Black

Sex

Male

Height

5'10"

Weight

210 lbs.

Eye Color

Hair Color

**Section 3 - Summary**

Date of Last Reported Event: Jun 11, 2008 - Prosecution  
Reported By: KS052031A LANSING CITY PROSECUTOR'S OFFICE  
Case Number: [REDACTED]

**Section 4 - Criminal Justice Cycles**

*Cycle 1                  Adult Offense*

**Arrest/Charge Data**

Name Used: [REDACTED]  
Date of Arrest: Apr 1, 2006  
Date of Fingerprinting: Apr 1, 2006  
Booking Control Number: [REDACTED]  
Arresting Agency: KS0030000 ATCHISON COUNTY SHERIFF'S OFFICE

Arrest Disposition: Referred to prosecutor

**Prosecution**

Prosecuting Agency: KS003013A ATCHISON COUNTY ATTORNEY'S OFFICE  
Case filed on: Apr 1, 2006  
Prosecution Case Number: [REDACTED]  
Pre-Trial Status: Released, private bond (Bond: \$2,500.00)

**Court**

Court: KS003015J ATCHISON CO DISTRICT COURT 1ST JUD DIST  
Court Case Number: [REDACTED]  
Date of Judgement: Apr 18, 2006  
Date of Sentencing: Apr 18, 2006  
Fine: \$100.00  
Charges Disposed of:

- 1. KSA 21-3720 (1 Count)  
Criminal damage to property; Misdemeanor  
Non-Person Misdemeanor: Class B  
Disposition: Convicted

*Cycle 2                  Adult Offense*

**Arrest/Charge Data**

Name Used: [REDACTED]  
Date of Arrest: May 3, 2008  
Date of Fingerprinting: May 3, 2008  
Booking Control Number: [REDACTED]  
Arresting Agency: KS0520300 LANSING POLICE DEPARTMENT

Arrest Disposition: Referred to prosecutor

Prosec

Prosecuting Agency: KS052031A LANSING CITY PROSECUTOR'S OFFICE  
Case filed on: Jun 11, 2008  
Prosecution Case Number: [REDACTED]  
Pre-Trial Status: Not applicable or unknown

Court

Court: KS052031J LANSING MUNICIPAL COURT  
Court Case Number: [REDACTED]  
Date of Judgement: Jun 11, 2008  
Fine: \$290.00  
Charges Disposed of:

1. KSA 08-0235 (1 Count)  
Operating a motor vehicle w/o valid license  
Non-Person Misdemeanor: Class B  
Disposition: Guilty of charges as amended by court
2. KSA 08-1558 (1 Count)  
Maximum speed limits  
Infraction  
Disposition: Guilty of lessor included offenses

End of Record



Federal Response  
"KS & other state"

# Kansas Bureau of Investigation

Robert E. Blecha  
Director

Steve Six  
Attorney General

To: Board of Ed

Re: [REDACTED]

Reason fingerprinted:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> CJ Employee               | <input type="checkbox"/> Lottery Employee              | <input type="checkbox"/> Carry Concealed Handgun        |
| <input type="checkbox"/> Non CJ Employee           | <input type="checkbox"/> Racing Commission Employee    | <input type="checkbox"/> SRS Caregiver                  |
| <input type="checkbox"/> PI License                | <input type="checkbox"/> State/Tribal Gaming Employee  | <input type="checkbox"/> Attorney Admission             |
| <input type="checkbox"/> Merchant/Security Police  | <input type="checkbox"/> Credit Service Org Reg        | <input type="checkbox"/> Commission on Veterans Affairs |
| <input checked="" type="checkbox"/> NCPA/VCA       | <input type="checkbox"/> Mortgage Business App         | <input type="checkbox"/> Board of Nursing               |
| <input type="checkbox"/> Adam Walsh Act            | <input type="checkbox"/> Consumer Credit Lender App    | <input type="checkbox"/> Board of Healing Arts          |
| <input type="checkbox"/> Real Estate Brokers/Sales | <input type="checkbox"/> Division of Vehicles Employee | <input type="checkbox"/> Board of Pharmacy              |
| <input type="checkbox"/> Governor Appointment      | <input type="checkbox"/> Liquor Distributor License    |   |

The attached document is the national abstract of criminal history ("rap sheet") for the above referenced individual based on the civil fingerprint card your agency submitted. This is the summary of the criminal history record information available through the Interstate Identification Index.

The FBI permits you to release a copy of the rap sheet to the subject of the record. If you do so, you should provide the subject a copy of this page as well.

If the subject believes the record to be incomplete or inaccurate:

- The subject may make application for changes, corrections and updates directly to the arresting agency, prosecutor, court or correctional facility that contributed the disputed information to the Kansas Central Repository.
- The subject may also choose to contact the KBI to challenge the record. Requests for correction of records must be submitted in writing by the subject, must identify the record being challenged, must include the details of the subject's request for modification of the record and must include valid official documents supporting the action requested. All such communications are to be directed to:

Kansas Bureau of Investigation  
Attn: Criminal History Records Unit  
1620 SW Tyler  
Topeka, KS 66612-1837

- The subject may also choose to contact the FBI to challenge the record. Requests are to be directed to:

FBI, CJIS Division  
Attn: SCU, Mod D-2  
1000 Custer Hollow Road  
Clarksburg, WV 26306

Received Time: Sep 12, 2010 15:33:27

Summary: QR: PUR=I FBI=[REDACTED] REA=BOARD OF EDUCATION

View Message Details

Destination(s): TPKKB085A

MKE: QR Source: CMS

Reference: QR Msg ID: 16

Station: TPKKB085A

TPKKB085A.MRI7596451.NCIC.QR.KSKBI0000.FBI/[REDACTED].PUR/I.ATN/PUBLIC  
RECORD.REA/BOARD OF EDUCATION

--CCH--

THIS RECORD IS BASED ONLY ON THE FBI NUMBER IN YOUR REQUEST-  
FBI/[REDACTED]

KANSAS BUREAU OF INVESTIGATION  
CRIMINAL RECORDS SECTION  
1620 SW TYLER, TOPEKA KANSAS 66612-1837  
(785) 296-8200

SECTION 1 - INTRODUCTION

REQUESTED BY: TPKKB085A  
ATTENTION: PUBLIC RECORD

PURPOSE: INTERSTATE - NON CRIMINAL JUSTICE RAP SHEET

INFORMATION USED IN THE SEARCH:

REQUESTED FBI NUMBER: [REDACTED]

(ACCORDING TO THE INTERSTATE IDENTIFICATION INDEX (III), THE SUBJECT OF THIS  
RECORD MAY HAVE ADDITIONAL CRIMINAL HISTORY RECORD INFORMATION ON FILE IN  
ONE OR MORE OTHER STATES. ACCESS TO THIS ADDITIONAL INFORMATION, IF ANY,  
IS AVAILABLE THROUGH A III QUERY.)

THIS RESPONSE CONTAINS THE COMPLETE ADULT HISTORY THAT IS ON FILE  
AT THE KANSAS CENTRAL REPOSITORY AT THE KANSAS BUREAU OF INVESTIGATION.

IF NEITHER FINGERPRINTS NOR AN IDENTIFYING NUMBER INDEXED IN OUR FILES  
ACCOMPANIED YOUR REQUEST, THE KBI CANNOT GUARANTEE THAT THE CONTENTS OF THIS  
RECORD PERTAIN TO THE INDIVIDUAL IN WHOM YOU ARE INTERESTED.

THE INFORMATION PROVIDED IN THIS DOCUMENT IS FURNISHED FOR OFFICIAL USE  
ONLY, AND HAS BEEN PROVIDED BY CONTRIBUTING CRIMINAL JUSTICE AGENCIES. ANY  
INACCURACIES SHOULD BE REPORTED TO THE KANSAS CENTRAL REPOSITORY AT THE  
KBI.

SHOULD THE SUBJECT OF THIS RECORD DISPUTE THE CONTENTS, FINGERPRINTS SHOULD  
BE SUBMITTED TO THE KANSAS BUREAU OF INVESTIGATION FOR COMPARISON AGAINST  
THE FINGERPRINTS THAT SUPPORT THE RECORD AT THE CENTRAL REPOSITORY.

SINCE ADDITIONS AND DELETIONS MAY BE MADE AT ANY TIME, A NEW RECORD SHOULD  
BE REQUESTED FOR EACH NEW USE.



SECTION 2 - IDENTIFICATION

KBI: [REDACTED]  
FBI: [REDACTED]

NAMES USED

[REDACTED]  
[REDACTED]

DATE OF BIRTH

JAN 5, 1982

SOCIAL SECURITY NUMBER

[REDACTED]  
[REDACTED]

RACE AND ETHNICITY

BLACK

SEX

MALE

HEIGHT

5'10"

WEIGHT

210 LBS

EYES

BROWN

HAIR

BLACK

DRIVERS LICENSE

NO DATA

MISCELLANEOUS NUMBERS

NO DATA

PLACE OF BIRTH

KANSAS

CITIZENSHIP

UNITED STATES OF AMERICA

MONIKERS

NO DATA

FINGERPRINT CLASS

NO DATA

SCARS, MARKS AND TATTOOS

-----  
SCAR, SHOULDER, LEFT (REPORTED: MAY 3, 2008)

PHOTO ON FILE

-----  
KS1050000 WYANDOTTE COUNTY SHERIFF'S OFFICE (REPORTED: FEB 17, 2007)

PALM PRINTS ON FILE

-----  
NO DATA

DNA ON FILE

-----  
NO DATA

RESIDENCE

-----  
[REDACTED] (REPORTED: FEB 17, 2007)

[REDACTED] (REPORTED: MAY 3, 2008)

OCCUPATION

-----  
MANAGER (REPORTED: MAY 3, 2008)

EMPLOYER AND ADDRESS

-----  
[REDACTED] (REPORTED: MAY 3, 2008)

### SECTION 3 - SUMMARY

DATE OF LAST REPORTED EVENT: JUN 11, 2008 - COURT

### SECTION 4 - CRIMINAL JUSTICE CYCLES

#### CYCLE 1 ADULT OFFENSE

#### ARREST/CHARGE DATA

NAME USED: [REDACTED]

DATE OF ARREST: APR 1, 2006

DATE OF FINGERPRINTING: APR 1, 2006

BOOKING CONTROL NUMBER: [REDACTED]

ARRESTING AGENCY: KS0030000 ATCHISON COUNTY SHERIFF'S OFFICE

ARREST CHARGES:

1. KSA 21-3720 (1 COUNT)  
ATTEMPTED CRIMINAL DAMAGE TO PROPERTY; MISDEMEANOR

NON-PERSON MISDEMEANOR: CLASS C  
DATE OF OFFENSE: APR 1, 2006

ARREST DISPOSITION: REFERRED TO PROSECUTOR

PROSECUTION

PROSECUTING AGENCY: KS003013A ATCHISON COUNTY ATTORNEY'S OFFICE  
CASE FILED ON: APR 1, 2006  
PROSECUTION CASE NUMBER: [REDACTED]  
PRE-TRIAL STATUS: RELEASED, PRIVATE BOND (BOND: \$2500.00)

COURT

COURT: KS003015J ATCHISON CO DISTRICT COURT 1ST JUD DIST  
COURT CASE NUMBER: [REDACTED]  
DATE OF JUDGEMENT: APR 18, 2006  
DATE OF SENTENCING: APR 18, 2006  
FINE: \$100.00  
CHARGES DISPOSED OF:

1. KSA 21-3720 (1 COUNT)  
CRIMINAL DAMAGE TO PROPERTY; MISDEMEANOR  
MISDEMEANOR  
DISPOSITION: CONVICTED

CYCLE 2 ADULT OFFENSE

ARREST/CHARGE DATA

NAME USED: [REDACTED]  
DATE OF ARREST: MAY 3, 2008  
DATE OF FINGERPRINTING: MAY 3, 2008  
BOOKING CONTROL NUMBER: [REDACTED]  
ARRESTING AGENCY: KS0520300 LANSING POLICE DEPARTMENT  
ARREST CHARGES:

1. KSA 08-0262 (1 COUNT)  
DRIVING WHILE LICENSE CANCELLED/SUSPENDED/REVOKED; MISD; UNK CONV  
NON-PERSON MISDEMEANOR: CLASS C  
DATE OF OFFENSE: MAY 3, 2008
2. KSA 08-1557 (1 COUNT)  
BASIC RULE GOVERNING SPEED OF VEHICLES  
INFRACTION  
DATE OF OFFENSE: MAY 3, 2008

ARREST DISPOSITION: REFERRED TO PROSECUTOR

PROSECUTION

PROSECUTING AGENCY: KS052031A LANSING CITY PROSECUTOR'S OFFICE

CASE FILED ON: JUN 11, 2008

PROSECUTION CASE NUMBER: [REDACTED]

CHARGES FILED:

1. KSA 08-0262 (1 COUNT)  
DRIVING WHILE LICENSE CANCELLED/SUSPENDED/REVOKED; MISD; UNK CONV  
NON-PERSON MISDEMEANOR: CLASS C  
DATE OF OFFENSE: MAY 3, 2008  
AMENDED TO:

1. KSA 08-0235 (1 COUNT) CHARGE AMENDED BY PROSECUTOR  
OPERATING A MOTOR VEHICLE W/O VALID LICENSE  
NON-PERSON MISDEMEANOR: CLASS B

2. KSA 08-1557 (1 COUNT)  
BASIC RULE GOVERNING SPEED OF VEHICLES  
INFRACTION  
DATE OF OFFENSE: MAY 3, 2008  
AMENDED TO:

2. KSA 08-1558 (1 COUNT) CHARGE AMENDED BY PROSECUTOR  
MAXIMUM SPEED LIMITS  
INFRACTION

PRE-TRIAL STATUS: NOT APPLICABLE OR UNKNOWN

COURT

COURT: KS052031J LANSING MUNICIPAL COURT

COURT CASE NUMBER: [REDACTED]

DATE OF JUDGEMENT: JUN 11, 2008

FINE: \$290.00

CHARGES DISPOSED OF:

1. KSA 08-0235 (1 COUNT)  
OPERATING A MOTOR VEHICLE W/O VALID LICENSE  
MISDEMEANOR  
DISPOSITION: GUILTY OF CHARGES AS AMENDED BY COURT

2. KSA 08-1558 (1 COUNT)  
MAXIMUM SPEED LIMITS  
INFRACTION  
DISPOSITION: GUILTY OF LESSOR OR INCLUDED OFFENSES

END OF RECORD

--NCIC--

NCIC.QR MESSAGE HAS BEEN SENT TO NCIC.

--END--

MRI 7596457 IN: KSCPISVR1 21410 AT 15:33 12SEP10

OUT: TPKKB085A 1 AT 15:33 12SEP10

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Received Time: Sep 12, 2010 15:33:29  
Summary: QR: PUR=I FBI=[REDACTED] REA=BOARD OF EDUCATION  
\*View Message Details

TPKKB085A.MRI7596451.  
--NCIC--  
CR.WVFBINF00  
13:33 09/12/2010 39835  
13:33 09/12/2010 66790 KSKBIO000  
TXT

HDR/2L01KSIII0267024610

ATN/PUBLIC RECORD

\*\*\*\*\* CRIMINAL HISTORY RECORD \*\*\*\*\*

Data As Of 2010-09-12

\*\*\*\*\* Introduction \*\*\*\*\*

This rap sheet was produced in response to the following request:

FBI Number [REDACTED]  
Request Id  
Purpose Code I  
Attention PUBLIC RECORD

The information in this rap sheet is subject to the following caveats:  
This record is based only on the FBI number in your request-[REDACTED].  
Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. (US; 2010-09-12)  
This record is subject to the following use and dissemination restrictions: Under provisions set forth in Title 28, Code of Federal Regulations (CFR), Section 50.12, both governmental and nongovernmental entities authorized to submit fingerprints and receive FBI identification records must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. Identification records obtained from the FBI may be used solely for the purpose requested and may not be disseminated outside the receiving department, related agency or other authorized entity. If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so. An individual should be presumed not guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined. If the applicant wishes to correct the record as it appears in the FBI's CJIS division records system, the applicant should be advised that the procedures to change, correct or update the record are set forth in Title 28, CFR, Section 16.34. (US; 2010-09-12)

This record must be used only in conjunction with the current application - a new record must be requested for future use. (US; 2010-09-12)

All arrest entries contained in this FBI record are based on fingerprint comparisons and pertain to the same individual. (US; 2010-09-12)

The use of this record is regulated by law. It is provided for official use only and may be used only for the purpose requested. (US; 2010-09-12)

\*\*\*\*\* IDENTIFICATION \*\*\*\*\*

Subject Name(s)  
[REDACTED]  
[REDACTED] (AKA)  
[REDACTED] (AKA)

[REDACTED] (AKA)

Subject Description

FBI Number [REDACTED] State Id Number [REDACTED] (KS)

Social Security Number [REDACTED]

Sex Male Race Black Height 5'09" Weight 180 Date of Birth 1982-01-05 Hair Color Black Eye Color Brown Fingerprint Pattern RS RS RS RS RS LS LS LS LS AU (Other)

Scars, Marks, and Tattoos

Code SC L SHLD Description, Comments, and Images , SCAR ON LEFT SHOULDER

Place of Birth CA Citizenship US

Fingerprint Images

\*\*\*\*\* CRIMINAL HISTORY \*\*\*\*\*

==== Cycle 001 =====

Earliest Event Date 2002-08-13

Arrest Date 2002-08-13 Arrest Case Number 02047894 Arresting Agency CA043083C DEPT OF CORR SAN JOSE Charge 01 Charge Literal 001 COUNTS OF MINOR POSSESS ALCOHOL Agency CA043083C DEPT OF CORR SAN JOSE Severity

Charge 02 Charge Literal 001 COUNTS OF TAMPER W/VEH Agency CA043083C DEPT OF CORR SAN JOSE Severity

==== Cycle 002 =====

Earliest Event Date 2002-10-06

Arrest Date 2002-10-06 Arrest Case Number 02058470 Arresting Agency CA043083C DEPT OF CORR SAN JOSE Subject's Name [REDACTED] Charge 01 Charge Literal 001 COUNTS OF CHALLENGE/FIGHT IN PUB PL Agency CA043083C DEPT OF CORR SAN JOSE Severity

\*\*\*\*\* INDEX OF AGENCIES \*\*\*\*\*

Agency Address FBI-CJIS DIV-CLRKSBG CLARKSBURG; WVFBINF00; 1000 CUSTER HOLLOW RD CLARKSBURG, WV 26306

Agency Address DEPT OF CORR SAN JOSE; CA043083C; 150 W HEDDING ST SAN JOSE, CA 951101700

\* \* \* END OF RECORD \* \* \* --END--

MRI 7596459 IN: KSCPISVR1 21412 AT 15:33 12SEP10 OUT: TPKKB085A 3 AT 15:33 12SEP10



Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

www.kdheks.gov

**Criminal History Information  
Presented to  
Special Committee on Judiciary**

**By  
Joseph F. Kroll  
Director, Bureau of Child Care and Health Facilities**

**September 13, 2010**

Chairman Owens and members of the committee, I am Joseph Kroll and I appreciate the opportunity to present information on criminal history requirements for adult care homes, home health agencies and child care facilities. The issues the committee is examining are important policy issues that have been established by previous legislatures, and my goal is to provide the committee with background information to assist in this review.

My bureau is responsible to administrate criminal history information requirements found in 5 statutes. These statutes apply to adult care home administrators, adult care home operators, adult care homes, home health agencies and child care facilities. The purpose of these statutes is to identify persons who have a criminal history which would prohibit licensing of administrators, employment in adult care homes and home health agencies, or employment, volunteering or living in a child care facility. A copy of these statutes accompanies this testimony.

Also accompanying this testimony is a listing of those crimes which are prohibiting in adult care homes and home health agencies, a listing of those crimes which are prohibiting in child care facilities and a listing of how the prohibiting crimes differ. If an adult care home administrator has a criminal history, the Board of Adult Care Home Administrators determines if it is a licensing factor.

Also included is a time line for major legislative or program changes to the statutes or administration of the programs.

There are 3 major components of the committee charge I would like to provide information on specifically:

BUREAU OF CHILD CARE AND HEALTH FACILITIES  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1368

Voice 785-296-1270 Fax 785-296-3075

Special Committee on Judiciary

9-13-10  
Attachment 6

The **first** is whether state agencies or facilities requesting a criminal history background check should receive a complete or a redacted criminal history report from the KBI, and whether the report should include juvenile adjudications or non-prohibited offenses.

For adult care homes and home health agencies, statute requires that all criminal history information in the possession of the KBI, except juvenile convictions other than juvenile theft, be provided facilities requesting criminal history. This is pursuant to K.S.A. 39-970 and 65-5117. AG opinion 2001-29 affirmed this interpretation at the request of KDHE.

For child care facilities all information is also provided to us by the KBI, but statute does not require it be provided the child care facility.

The **second** component of the committee's charge is to review those situations when a criminal history reveals information that would disqualify an applicant from employment or licensure, and to determine whether the pending employee or requesting adult care home should receive notification of the reasons for the denial of the employment or licensure.

Adult care homes and home health agencies always receive notification of the reason for a prohibiting crime. This is a requirement of statute. When a prohibiting crime is identified KDHE provides the requesting facility a "letter of prohibition" which identifies the individual and a copy of the abstract showing the criminal history. The only exception to this is for juvenile convictions other than felony theft. In these cases the requesting facility only receives a notice of prohibition.

If an individual is a nurse aide and is found to have a prohibiting crime this information is added to the nurse aide registry.

For child care facilities notice depends on whether the prohibited person is an employee or volunteer, or resides in the facility. If the person is an employee or volunteer, a notice of non-compliance is sent which identifies the individual as a prohibited person and requires their removal. The facility must respond within 5 days. The prohibiting crime is not identified, nor is an abstract provided. If the prohibited person contacts KDHE that information is provided.

If the prohibited person resides in the facility a notice of intent to deny license or intent to revoke is issued. These orders identify the person but do not disclose the prohibiting crime or include the abstract. Unlike adult care homes and home health law, the statute does not require providing the specific information to the facility.

The **third** component of the committee's charge is to review whether the current differences in the procedure and type of criminal record check provided to child care and adult care facilities is justified.

As explained above, the differences in type of record check provided and the procedures used are primarily a matter of law. Other procedural and administrative differences are due to the fact the child care and adult care home/home health programs originated at different times, were developed and matured under different programs and are served by different software. The child care program information needs to interface with a different database, facilities are identified differently and prohibiting offenses differ. Adult care home and home health record checks are



assessed a fee by the KBI, and KDHE charges a fee to the requestor. Child care record checks are not assessed a fee by the KBI and KDHE does not charge a fee to the facility. Another significant difference is in the automation of the adult care home/home health program, which is more advanced than in child care.

Finally, I would like to provide a summary of how the processes work. Administrative details between the KBI and KDHE are articulated in a memorandum of agreement between our agencies. For adult care homes and home health agencies a criminal history can be requested either on-line or by mail; if on-line, the facility enters the identifying information, which is transmitted immediately through Kansas.Gov to KDHE and then to the KBI. Results of no match (no criminal history) are usually available to the requestor within 24-36 hours. If the facility uses mail the identifying data is manually entered by KDHE staff with no match results available in 2-3 days.

Match results (a criminal history, prohibiting or not) are made available by the KBI in daily batches which are processed by staff. The KBI abstract is uploaded into our database and attached to the individual's file. The abstract is reviewed by staff, and if there is no prohibiting conviction a match letter is printed and mailed to the facility along with the abstract. If the crime is a prohibiting crime, a notice of prohibition is prepared and reviewed by our legal office. If all is in order, a letter is signed by legal and program staff and sent to the facility with a copy of the abstract. We also send a copy to any facility that has requested a check on the same individual within the last year.

For child care, operators submit identifying information on all individuals who reside, work or regularly volunteer upon initial application, upon renewal or anytime a new individual begins residing, working or volunteering. This is a hard copy form, which prompts the operator to query the individual regarding any criminal history.

When the form is received the identifying information is entered by staff into the child care software system and submitted electronically to the KBI. The KBI returns the results, and if a criminal history is identified the abstract is reviewed by KDHE legal staff to identify any prohibiting crimes. If a prohibiting crime is identified, one of the enforcement actions mentioned previously is commenced.

For adult care homes and home health over 99% of prohibitions are issued within 3 days of receipt of the request. From the program's inception in 1998 to July of this year 315,843 record checks have been processed, with 968 prohibited persons, or fewer than 1% being prohibited.

In child care we have processed over 500,000 record checks since 1998. For the 3 fiscal years ending June 30, 2010 child care processed 124,929 checks resulting in 1,240 prohibitions, also less than 1%.

Thank you for the opportunity to provide testimony and information today. I will now stand for questions. Also with me today are program experts and legal staff to assure we can respond to any questions the committee may have.

## Kansas Legislature

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**65-3503****Chapter 65.--PUBLIC HEALTH****Article 35.--LICENSURE OF ADULT CARE HOME ADMINISTRATORS**

**65-3503. Duties of board of adult care home administrators; criminal history record information.** (a) It shall be the duty of the board to:

(1) Develop, impose and enforce standards which shall be met by individuals in order to receive a license as an adult care home administrator, which standards shall be designed to ensure that adult care home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as adult care home administrators;

(2) develop examinations and investigations for determining whether an individual meets such standards;

(3) issue licenses to individuals who meet such standards, and revoke or suspend licenses issued by the board or reprimand, censure or otherwise discipline a person holding any such license as provided under K.S.A. 65-3508, and amendments thereto;

(4) establish and carry out procedures designed to ensure that individuals licensed as adult care home administrators comply with the requirements of such standards; and

(5) receive, investigate and take appropriate action under K.S.A. 65-3505, and amendments thereto, and rules and regulations adopted by the board with respect to any charge or complaint filed with the board to the effect that any person licensed as an adult care home administrator may be subject to disciplinary action under K.S.A. 65-3505 and 65-3508, and amendments thereto.

(b) The board shall also have the power to make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to have subpoenas issued pursuant to K.S.A. 60-245, and amendments thereto, in the board's exercise of its power and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the social security act, the federal rules and regulations promulgated thereunder and other pertinent federal authority.

(c) The board shall fix by rules and regulations the licensure fee, temporary license fee, renewal fee, late renewal fee, reinstatement fee, reciprocity fee, sponsorship fee, wall or wallet card license replacement fee, duplicate wall license fee for any administrator serving as administrator in more than one facility and, if necessary, an examination fee under this act. Such fees shall be fixed in an amount to cover the costs of administering the provisions of the act. No fee shall be more than \$200. The secretary of health and environment shall remit all moneys received from fees, charges or penalties under this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) The board upon request shall receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

**History:** L. 1970, ch. 265, § 3; L. 1975, ch. 328, § 4; L. 1978, ch. 255, § 2; L. 1984, ch. 313, § 127; L. 1990, ch. 230, § 1; L. 1993, ch. 64, § 2; L. 1995, ch. 143, § 7; L. 1998, ch. 200, § 2; L. 2001, ch. 5, § 254; L. 2003, ch. 71, § 1; July 1.

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**39-969****Chapter 39.--MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE****Article 9.--ADULT CARE HOMES**

**39-969. Criminal history record information.** (a) The secretary of health and environment shall upon request receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of an operator.

(b) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1995, ch. 143, § 8; L. 2003, ch. 149, § 24; July 1.

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**39-970****Chapter 39.--MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE****Article 9.--ADULT CARE HOMES**

**39-970. Operation of adult care home precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; certain persons in custody of secretary of corrections exempt; report of convictions and adjudications by the Kansas bureau of investigation.** (a) (1) No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a) (1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate an adult care home if such person has been found to be in need of a guardian or conservator, or both as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working in an adult care home: The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history

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record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2009 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

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(j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(k) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(l) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(m) This section shall be part of and supplemental to the adult care home licensure act.

**History:** L. 1997, ch. 161, § 1; L. 1998, ch. 144, § 1; L. 2001, ch. 197, § 1; L. 2002, ch. 114, § 55; L. 2003, ch. 98, § 1; L. 2006, ch. 169, § 112; Jan. 1, 2007.

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**65-5117****Chapter 65.--PUBLIC HEALTH****Article 51.--HOME HEALTH AGENCIES**

**65-5117. Operation of home health agency precluded, when; access of secretary of health and environment to certain records; background check of employees, civil liability, fee for information request; provision of criminal history record information by secretary; licensed or registered professional service providers, volunteers and certain employees exempt; report of convictions and adjudications by the Kansas bureau of investigation.** (a) (1) No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide, pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3301, and amendments thereto, a conspiracy to commit any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3302, and amendments thereto, or criminal solicitation of any of the crimes listed in this subsection (a)(1), pursuant to K.S.A. 21-3303, and amendments thereto, or similar statutes of other states or the federal government.

(2) A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) Article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a) (1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes listed in this subsection (a)(2) pursuant to K.S.A. 21-3301, and amendments thereto; (D) a conspiracy to commit any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3302, and amendments thereto; (E) criminal solicitation of any of the crimes listed in subsection (a)(2) pursuant to K.S.A. 21-3303, and amendments thereto; or (F) similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto. The provisions of this subsection shall not apply to a minor found to be in need of a guardian or conservator for reasons other than impairment.

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation regarding felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

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(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information regarding only felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, and which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, the operator of a home health agency shall receive from any employment agency which provides employees to work for the home health agency written certification that such employees are not prohibited from working for the home health agency under this section. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.

(e) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.

(f) (1) The secretary of health and environment shall provide each operator requesting information under this section with the criminal history record information concerning felony convictions and convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, in writing and within three working days of receipt of such information from the Kansas bureau of investigation. The criminal history record information shall be provided regardless of whether the information discloses that the subject of the request has been convicted of an offense enumerated in subsection (a).

(2) When an offense enumerated in subsection (a) exists in the criminal history record information, and when further confirmation regarding criminal history record information is required from the appropriate court of jurisdiction or Kansas department of corrections, the secretary shall notify each operator that requests information under this section in writing and within three working days of receipt from the Kansas bureau of investigation that further confirmation is required. The secretary shall provide to the operator requesting information under this section information in writing and within three working days of receipt of such information from the appropriate court of jurisdiction or Kansas department of corrections regarding confirmation regarding the criminal history record information.

(3) Whenever the criminal history record information reveals that the subject of the request has no criminal history on record, the secretary shall provide notice to each operator requesting information under this section, in writing and within three working days after receipt of such information from the Kansas bureau of investigation.

(4) The secretary of health and environment shall not provide each operator requesting information under this section with the juvenile criminal history record information which relates to a person subject to a background check as is provided by K.S.A. 2009 Supp. 38-2326, and amendments thereto, except for adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto. The secretary shall notify the operator that requested the information, in writing and within three working days of receipt of such information from the Kansas bureau of investigation, whether juvenile criminal history record information received pursuant to this section reveals that the operator would or would not be prohibited by this section from employing the subject of the request for information and whether such information contains adjudications of a juvenile offender for an offense described in K.S.A. 21-3701, and amendments thereto.

(5) An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information. A violation of this paragraph (5) shall be an unclassified misdemeanor punishable by a fine of \$100.

(g) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(h) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such home health agency.

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(j) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the operator of a home health agency where the applicant is currently applying.

(k) For purposes of this section, the Kansas bureau of investigation shall only report felony convictions, convictions under K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, adjudications of a juvenile offender which if committed by an adult would have been a felony conviction, and adjudications of a juvenile offender for an offense described in K.S.A. 21-3437, 21-3517 and 21-3701, and amendments thereto, to the secretary of health and environment when a background check is requested.

(l) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

**History:** L. 1997, ch. 161, § 2; L. 1998, ch. 144, § 2; L. 2001, ch. 197, § 2; L. 2002, ch. 114, § 75; L. 2003, ch. 98, § 2; L. 2006, ch. 169, § 118; Jan. 1, 2007.

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**65-516****Chapter 65.--PUBLIC HEALTH****Article 5.--MATERNITY CENTERS AND CHILD CARE FACILITIES**

**65-516. Restrictions on persons maintaining or residing, working or volunteering at child care facility or family day care home; criminal history check by secretary of health and environment; information to be provided sponsoring child placement agency.** (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:

(1) (A) has a felony conviction for a crime against persons, (B) has a felony conviction under K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any such act or a conviction of conspiracy under K.S.A. 21-3302, and amendments thereto, to commit such act, or similar statutes of other states or the federal government, or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or similar statutes of other states or the federal government, or is any act described in K.S.A. 21-4301 or 21-4301a, and amendments thereto, or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse and who is listed in the child abuse and neglect registry maintained by the department of social and rehabilitation services pursuant to K.S.A. 2009 Supp. 38-2226, and amendments thereto, and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child removed from home based on a court order pursuant to K.S.A. 2009 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child to be deprived or a child in need of care based on a finding of physical, mental or emotional abuse or neglect or sexual abuse and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 2009 Supp. 38-2266 through 38-2270, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 2009 Supp. 38-2346, and amendments thereto, involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

(b) No person shall maintain a child care facility or a family day care home if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto.

(c) Any person who resides in a child care facility or family day care home and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection, the secretary of health and environment shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information including, but not limited to, diversion agreements, in the possession of the Kansas bureau of investigation and any report of investigations as authorized by K.S.A. 2009 Supp. 38-2226, and amendments thereto, in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility or a family day care home. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 59-2132, 65-503, 65-508, 65-516 and 65-519, and amendments

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thereto.

(e) In accordance with the provisions of this subsection, the secretary is authorized to conduct national criminal history record checks to determine criminal history on persons residing, working or regularly volunteering in a child care facility or family day care home. In order to conduct a national criminal history check the secretary shall require fingerprinting for identification and determination of criminal history. The secretary shall submit the fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation and receive a reply to enable the secretary to verify the identity of such person and whether such person has been convicted of any crime that would prohibit such person from residing, working or regularly volunteering in a child care facility or family day care home. The secretary is authorized to use information obtained from the national criminal history record check to determine such person's fitness to reside, work or regularly volunteer in a child care facility or family day care home.

(f) The secretary shall notify the child care applicant, licensee or registrant, within seven days by certified mail with return receipt requested, when the result of the national criminal history record check or other appropriate review reveals unfitness specified in subsection (a)(1) through (7) with regard to the person who is the subject of the review.

(g) No child care facility or family day care home or the employees thereof, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such facility's or home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

(h) For the purpose of subsection (a)(3), a person listed in the child abuse and neglect central registry shall not be prohibited from residing, working or volunteering in a child care facility or family day care home unless such person has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.

(i) In regard to Kansas issued criminal history records:

(1) The secretary of health and environment shall provide in writing information available to the secretary to each child placement agency requesting information under this section, including the information provided by the Kansas bureau of investigation pursuant to this section, for the purpose of assessing the fitness of persons living, working or regularly volunteering in a family foster home under the child placement agency's sponsorship.

(2) The child placement agency is considered to be a governmental entity and the designee of the secretary of health and environment for the purposes of obtaining, using and disseminating information obtained under this section.

(3) The information shall be provided to the child placement agency regardless of whether the information discloses that the subject of the request has been convicted of any offense.

(4) Whenever the information available to the secretary reveals that the subject of the request has no criminal history on record, the secretary shall provide notice thereof in writing to each child placement agency requesting information under this section.

(5) Any staff person of a child placement agency who receives information under this subsection shall keep such information confidential, except that the staff person may disclose such information on a need-to-know basis to: (A) The person who is the subject of the request for information, (B) the applicant or operator of the family foster home in which the person lives, works or regularly volunteers, (C) the department of health and environment, (D) the department of social and rehabilitation services, (E) the juvenile justice authority, and (F) the courts.

(6) A violation of the provisions of subsection (i)(5) shall be an unclassified misdemeanor punishable by a fine of \$100 for each violation.

**History:** L. 1980, ch. 184, § 2; L. 1982, ch. 259, § 2; L. 1983, ch. 140, § 46; L. 1984, ch. 225, § 1; L. 1985, ch. 210, § 1; L. 1987, ch. 233, § 1; L. 1988, ch. 232, § 10; L. 1991, ch. 185, § 1; L. 1994, ch. 279, § 15; L. 1996, ch. 229, § 117; L. 2002, ch. 114, § 74; L. 2006, ch. 169, § 116; L. 2007, ch. 147, § 1; L. 2009, ch. 32, § 53; July 1.

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## KSA 39-970 & 65-5117: Prohibited Offenses

Below is the complete list of prohibited offenses. This list of prohibited offenses is subject to modification by the Kansas Legislature. To look up a statute listed below, click on this link. [Look up State Statutes](#)

KSA	Offense	Prohibited?
21-3301	Attempt to commit a prohibited offense <sup>1</sup>	Length subject to underlying offense
21-3302	Conspiracy to commit a prohibited offense <sup>2</sup>	Length subject to underlying offense
21-3303	Criminal solicitation to commit a prohibited offense <sup>3</sup>	Length subject to underlying offense
21-3401	Murder in the first degree	Yes
21-3402	Murder in the second degree	Yes
21-3403	Voluntary manslaughter	Yes
21-3404	Involuntary manslaughter	5 Years*
21-3406	Assisting suicide	Yes
21-3410	Aggravated assault	5 Years*
21-3411	Aggravated assault on a law enforcement officer	5 Years*
21-3412a(b)(3)	Domestic Battery (felony)	5 Years*
21-3413	Battery against a law enforcement officer (felony)	5 Years*
21-3414	Aggravated battery	5 Years*
21-3415	Aggravated battery against a law enforcement officer	5 Years*
21-3419	Criminal threat	5 Years*
21-3419a	Aggravated criminal threat	5 Years*
21-3420	Kidnapping	5 Years*
21-3421	Aggravated kidnapping	5 Years*
21-3422	Interference with parental custody (felony)	5 Years*
21-3422a	Aggravated interference with parental custody	5 Years*
21-3426	Robbery	5 Years*
21-3427	Aggravated robbery	5 Years*
21-3428	Blackmail	5 Years*
21-3435	Exposing another to a life threatening communicable disease	5 Years*

21-3437	Mistreatment of a dependent adult (misdemeanor or felony)	Yes
21-3438	Stalking	5 Years*
21-3439	Capital murder	Yes
21-3440	Injury to a pregnant woman (felony)	5 Years*
21-3441	Injury to a pregnant woman by vehicle (felony)	5 Years*
21-3442	Involuntary manslaughter while driving under the influence	5 Years*
21-3446	Trafficking	5 Years*
21-3447	Aggravated Trafficking	5 Years*
21-3448	Battery against a mental health employee	5 Years*
21-3449	Terrorism	5 Years*
21-3450	Illegal use of weapons of mass destruction	5 Years*
21-3451	Furtherance of Terrorism or Illegal Use of Weapons of Mass Destruction	5 Years*
21-3502	Rape	Yes
21-3503	Indecent liberties with a child	Yes
21-3504	Aggravated indecent liberties with a child	Yes
21-3505	Criminal sodomy (felony)	5 Years*
21-3506	Aggravated criminal sodomy	Yes
21-3508	Lewd and lascivious behavior (felony)	5 Years*
21-3510	Indecent solicitation of a child	Yes
21-3511	Aggravated indecent solicitation of a child	Yes
21-3513	Promoting prostitution (felony)	5 Years*
21-3516	Sexual exploitation of a child	Yes
21-3517	Sexual battery	Yes
21-3518	Aggravated sexual battery	Yes
21-3520	Unlawful sexual relation	5 Years*
21-3522	Unlawful voluntary sexual relations	5 Years*
21-3523	Electronic solicitation	5 Years*
21-3601	Bigamy	5 Years*
21-3602	Incest	5 Years*
21-3603	Aggravated incest	5 Years*

21-3604	Abandonment of a child	5 Years*
21-3604a	Aggravated abandonment of a child	5 Years*
21-3608a	Aggravated endangering a child	5 Years*
21-3609	Abuse of a child	5 Years*
21-3610b	Furnishing alcoholic beverages to a minor for illicit purpose	5 Years*
21-3612	Contributing to a child's misconduct or deprivation (felony)	5 Years*
21-3701	Theft (felony)**	5 Years*

\* Note: This type of conviction is prohibited until five years have passed since the terms of the conviction (sentencing) have been completed.

\*\* Note: A prohibition for this offense became effective on July 1, 2010. Further, an individual shall not be prohibited due to a conviction of Felony Theft if the individual is employed by an adult care home or home health agency on July 1, 2010, and continuously employed by the same adult care home or home health agency.

<sup>1,2,3</sup> Convictions for attempt to commit, conspiracy to commit, or criminal solicitation to commit any offense listed above which carries a permanent prohibition will result in a permanent prohibition. Convictions for attempt to commit, conspiracy to commit, or criminal solicitation to commit any offense listed above which carries a five year prohibition will result in five year prohibition.

Following are the crimes which would prohibit a person from residing, working, or volunteering in a child care facility pursuant to K.S.A. 65-516:

- K.S.A. 21-3301 Attempt to Commit a Prohibited Offense
- K.S.A. 21-3302 Conspiracy
- K.S.A. 21-3401 Murder in the First Degree
- K.S.A. 21-3402 Murder in the Second Degree
- K.S.A. 21-3403 Voluntary Manslaughter
- K.S.A. 21-3404 Involuntary Manslaughter
- K.S.A. 21-3405 Vehicular Homicide
- K.S.A. 21-3406 Assisting Suicide
- K.S.A. 21-3408 Assault
- K.S.A. 21-3409 Assault of a Law Enforcement Officer
- K.S.A. 21-3410 Aggravated Assault
- K.S.A. 21-3411 Aggravated Assault of a Law Enforcement Officer
- K.S.A. 21-3412 Battery
- K.S.A. 21-3412a Domestic Battery
- K.S.A. 21-3413 Battery Against a Law Enforcement Officer [LEO]
- K.S.A. 21-3414 Aggravated Battery
- K.S.A. 21-3415 Aggravated Battery Against a Law Enforcement Officer

K.S.A. 21-3416 Unlawful Interference with a Firefighter

K.S.A. 21-3418 Permitting Dangerous Animal to be at Large

K.S.A. 21-3419 Criminal Threat

K.S.A. 21-3419a Aggravated Criminal Threat

K.S.A. 21-3420 Kidnapping

K.S.A. 21-3421 Aggravated Kidnapping

K.S.A. 21-3422 Interference with Parental Custody

K.S.A. 21-3422a Aggravated Interference with Parental Custody

K.S.A. 21-3423 Interference with Custody of Committed Person

K.S.A. 21-3424 Criminal Restraint

K.S.A. 21-3425 Mistreatment of a Confined Person

K.S.A. 21-3426 Robbery

K.S.A. 21-3427 Aggravated Robbery

K.S.A. 21-3428 Blackmail

K.S.A. 21-3430 Income Tax Returns: Disclosure or Use for Commercial Purposes Information Obtained in Preparing

K.S.A. 21-3434 Promoting or Permitting Hazing

K.S.A. 21-3435 Exposing another to a Life Threatening Communicable Disease

K.S.A. 21-3436 Inherently dangerous felony

K.S.A. 21-3437 Mistreatment of a Dependent Adult

K.S.A. 21-3438 Stalking



K.S.A. 21-3439 Capital Murder

K.S.A. 21-3442 Involuntary Manslaughter While Driving Under the Influence of Alcohol or Drugs

K.S.A. 21-3443 Battery Against a School Employee

K.S.A. 21-3444 Unlawful Interference with an Emergency Medical Services Attendant

K.S.A. 21-3445 Unlawful Administration of a Substance

K.S.A. 21-3446 Trafficking

K.S.A. 21-3447 Aggravated Trafficking

K.S.A. 21-3448 Battery Against a Mental Health Employee

K.S.A. 21-3449 Terrorism

K.S.A. 21-3450 Illegal Use of Weapons of Mass Destruction

K.S.A. 21-3451 Furtherance of Terrorism or Illegal Use of Weapons of Mass Destruction

K.S.A. 21-3452 Application of Certain Crimes to an Unborn Child (Alexa's Law)

K.S.A. 21-3502 Rape

K.S.A. 21-3503 Indecent Liberties with a Child

K.S.A. 21-3504 Aggravated Indecent Liberties with a Child

K.S.A. 21-3505 Criminal Sodomy

K.S.A. 21-3506 Aggravated Criminal Sodomy

K.S.A. 21-3507 Adultery

K.S.A. 21-3508 Lewd and Lascivious Behavior  
K.S.A. 21-3510 Indecent Solicitation of a Child  
K.S.A. 21-3511 Aggravated Indecent Solicitation of a Child  
K.S.A. 21-3512 Prostitution  
K.S.A. 21-3513 Promoting Prostitution  
K.S.A. 21-3515 Patronizing a Prostitute  
K.S.A. 21-3516 Sexual Exploitation of a Child  
K.S.A. 21-3517 Sexual Battery  
K.S.A. 21-3518 Aggravated Sexual Battery  
K.S.A. 21-3520 Unlawful Sexual Relations  
K.S.A. 21-3522 Unlawful Voluntary Sexual Relations  
K.S.A. 21-3523 Electronic Solicitation  
K.S.A. 21-3601 Bigamy  
K.S.A. 21-3602 Incest  
K.S.A. 21-3603 Aggravated Incest  
K.S.A. 21-3604 Abandonment of a Child  
K.S.A. 21-3604a Aggravated Abandonment of a Child  
K.S.A. 21-3605 Nonsupport of a Child or Spouse  
K.S.A. 21-3608 Endangering a Child  
K.S.A. 21-3608a Aggravated Endangering a Child

- K.S.A. 21-3609 Abuse of a Child
- K.S.A. 21-3610 Furnishing Alcoholic Liquor or Cereal Malt Beverage to a Minor
- K.S.A. 21-3610b Furnishing Alcoholic Beverages to a Minor for Illicit Purposes
- K.S.A. 21-3610c Unlawfully Hosting Minors Consuming Alcoholic Liquor or Cereal Malt Beverage
- K.S.A. 21-3612 Contributing to a Child's Misconduct or Deprivation
- K.S.A. 21-36a05 Unlawful Cultivation or Distribution of a Controlled Substances
- K.S.A. 21-36a06 Unlawful Possession of Controlled Substances
- K.S.A. 21-36a07 Unlawful Manufacture, Distribution, Cultivation or Possession of Controlled Substances Using a Communication Facility
- K.S.A. 21-36a08 Unlawfully Obtaining and Distributing a Prescription-Only Drug
- K.S.A. 21-36a09 Unlawful Possession of Certain Drug Precursors and Drug Paraphernalia
- K.S.A. 21-36a10 Unlawful Distribution of Certain Drug Precursors and Drug Paraphernalia
- K.S.A. 21-36a12 Unlawful Abuse of Toxic Vapors
- K.S.A. 21-36a13 Unlawful Distribution or Possession of a Simulated Controlled Substance
- K.S.A. 21-36a14 Unlawful Representation that Noncontrolled Substance is a Controlled Substance
- K.S.A. 21-36a16 Unlawful Acts Involving Proceeds Derived from Violations of 21-36a01 through 21-36a17

Additional Prohibited Offenses

K.S.A. 21-4301 Promoting Obscenity

K.S.A. 21-4301a Promoting Obscenity to Minors

Felony Crimes Against Persons Which Do Prohibit Persons

K.S.A. 21-3715(a) Burglary of a dwelling used as a residence – Person Felony

K.S.A. 21-3716 Aggravated Burglary – Person Felony

K.S.A. 21-3719 Aggravated Arson – Person Felony

K.S.A. 21-3731(a) Criminal Use of Explosive – Person Felony

K.S.A. 21-3801 Treason – Person Felony

K.S.A. 21-3810(b) Aggravated Escape from Custody – Person Felony

The Differences Between Child Care Prohibiting Crimes and Health Facility Crimes Are as Follows:

The following are prohibited child care offenses

5 Years - this type of conviction is prohibited until 5 years have passed since the terms of the conviction (sentencing) have been completed for Health Facilities

- K.S.A. 21-3301      Attempt to Commit a Prohibited Offense
- K.S.A. 21-3302      Conspiracy
- K.S.A. 21-3401      Murder in the First Degree
- K.S.A. 21-3402      Murder in the Second Degree
- K.S.A. 21-3403      Voluntary Manslaughter
- K.S.A. 21-3404      Involuntary Manslaughter    - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3405      Vehicular Homicide
- K.S.A. 21-3406      Assisting Suicide
- K.S.A. 21-3408      Assault
- K.S.A. 21-3409      Assault of a Law Enforcement Officer
- K.S.A. 21-3410      Aggravated Assault - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3411      Aggravated Assault of a Law Enforcement Officer
- K.S.A. 21-3412      Battery
- K.S.A. 21-3412a      Domestic Battery (felony level convictions for health facilities only) After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3413      Battery Against a Law Enforcement Officer [LEO] - (felony level convictions for health facilities only) After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3414 Aggravated Battery - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3415 Aggravated Battery Against a Law Enforcement Officer - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3416 Unlawful Interference with a Firefighter - Not found in Health Facility Offenses

K.S.A. 21-3418 Permitting Dangerous Animal to be at Large - Not found in Health Facility Offenses

K.S.A. 21-3419 Criminal Threat - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3419a Aggravated Criminal Threat - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3420 Kidnapping - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3421 Aggravated Kidnapping - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3422 Interference with Parental Custody - (felony level convictions for health facilities only) After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3422a Aggravated Interference with Parental Custody - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3423 Interference with Custody of Committed Person - Not found in Health Facility Offenses

K.S.A. 21-3424 Criminal Restraint - Not found in Health Facility Offenses

K.S.A. 21-3425 Mistreatment of a Confined Person - Not found in Health Facility Offenses

K.S.A. 21-3426 Robbery - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3427 Aggravated Robbery - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3428 Blackmail - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3430 Income Tax Returns: Disclosure or Use for Commercial Purposes Information Obtained in Preparing - Not found in Health Facility Offenses

K.S.A. 21-3434 Promoting or Permitting Hazing - Not found in Health Facility Offenses

K.S.A. 21-3435 Exposing another to a Life Threatening Communicable Disease - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3436 Inherently dangerous felony - Not found in Health Facility Offenses

K.S.A. 21-3437 Mistreatment of a Dependent Adult - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3438 Stalking - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3439 Capital Murder

K.S.A. 21-3442 Involuntary Manslaughter While Driving Under the Influence of Alcohol or Drugs - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3443 Battery Against a School Employee - Not found in Health Facility Offenses

K.S.A. 21-3444 Unlawful Interference with an Emergency Medical Services Attendant - Not found in Health Facility Offenses

K.S.A. 21-3445 Unlawful Administration of a Substance - Not found in Health Facility Offenses

K.S.A. 21-3446 Trafficking - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

K.S.A. 21-3447 Aggravated Trafficking - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

- K.S.A. 21-3448 Battery Against a Mental Health Employee - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3449 Terrorism - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3450 Illegal Use of Weapons of Mass Destruction - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3451 Furtherance of Terrorism or Illegal Use of Weapons of Mass Destruction - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3502 Rape
- K.S.A. 21-3503 Indecent Liberties with a Child
- K.S.A. 21-3504 Aggravated Indecent Liberties with a Child
- K.S.A. 21-3505 Criminal Sodomy - (felony level convictions for health facilities only) After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3506 Aggravated Criminal Sodomy
- K.S.A. 21-3507 Adultery - Not found in Health Facility Offenses
- K.S.A. 21-3508 Lewd and Lascivious Behavior - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3510 Indecent Solicitation of a Child
- K.S.A. 21-3511 Aggravated Indecent Solicitation of a Child
- K.S.A. 21-3512 Prostitution - Not found in Health Facility Offenses
- K.S.A. 21-3513 Promoting Prostitution - (felony level convictions for health facilities only) After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3515 Patronizing a Prostitute - Not found in Health Facility Offenses
- K.S.A. 21-3516 Sexual Exploitation of a Child
- K.S.A. 21-3517 Sexual Battery



- K.S.A. 21-3518      Aggravated Sexual Battery
- K.S.A. 21-3520      Unlawful Sexual Relations - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3522      Unlawful Voluntary Sexual Relations - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3523      Electronic Solicitation - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3601      Bigamy - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3602      Incest - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3603      Aggravated Incest - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3604      Abandonment of a Child - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3604a      Aggravated Abandonment of a Child - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3605      Nonsupport of a Child or Spouse - Not found in Health Facility Offenses
- K.S.A. 21-3608      Endangering a Child - Not found in Health Facility Offenses
- K.S.A. 21-3608a      Aggravated Endangering a Child - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3609      Abuse of a Child - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3610      Furnishing Alcoholic Liquor or Cereal Malt Beverage to a Minor - Not found in Health Facility Offenses
- K.S.A. 21-3610b      Furnishing Alcoholic Beverages to a Minor for Illicit Purposes - After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense
- K.S.A. 21-3610c      Unlawfully Hosting Minors Consuming Alcoholic Liquor or Cereal Malt Beverage - Not found in Health Facility Offenses

K.S.A. 21-3612      Contributing to a Child's Misconduct or Deprivation - (felony level convictions for health facilities only) After 5 Years have passed since sentencing completed - Health Facilities no longer list this as a prohibited offense

## KDHE Criminal Record Check Program Timeline

### Adult Care Facilities and Home Health Agencies

- 1997 legislative session – HB 2278 passes, establishing the criminal record check (CRC) program
- 1998 (July 1) – law becomes effective
- 2001 legislative session – HB 2700 enacted; amends CRC law to require KDHE to supply Match and No Match information to requestor along with the criminal history abstract. Also, attempt, conspiracy, and solicitation to commit a prohibited offense were added as prohibited offenses. (effective July 1, 2001) This legislation also added a provision to KSA 39-970: 2002 (July 1) – KDHE increases fee from \$7.50 per individual checked to \$10.00 (maximum allowed by statute), \$5.00 of which goes to KBI and \$5.00 of which is retained by KDHE for administrative expenses, from a split of \$3.75 each to KBI and KDHE.
- 2001 (July 12, 2001) – AG issued Opinion No. 2001-29. Points of note: 1) With regard to juvenile offenders convicted of prohibited offenses, KDHE is *...limited to only advising whether the individual in question is eligible for employment...specifics of the juvenile history record information may not be revealed.* 2) With regard to the extent of criminal history information KDHE may receive from the KBI, *...the conviction and adjudication information provided by the KBI to KDHE may include arrest and disposition data.* 3) With regard to legislative concern that operators of facilities do not receive information that would normally be confidential and unavailable to the public generally, *...KBI regulations provide that a 'criminal justice agency may provide any conviction information in its possession to any individual who makes a written request'. Thus, any individual may obtain from the KBI any person's criminal history record information, which would include information relating to any conviction, whether felony or misdemeanor.* Additionally, KBI's system is not able to sort felony convictions from misdemeanor convictions, or to pull out certain misdemeanor convictions; that would have to be done manually. 4) An operator receiving criminal history record information may release a copy of the information received from KDHE to another operator pursuant to statute without violating confidentiality requirements.
- 2003 legislative session – SB 14 enacted; allows the release of juvenile theft conviction information to requestor, effective July 1, 2003. 2004 (September) – KDHE enters into a contract with GL Suite for new database system.
- 2005 (April) – Data conversion completed, GL Suite database fully functional, Kansas Nurse Aide Registry is automated and accessible 24 hours/day, 7 days/week.

- 2005 (fall) – No Match criminal history available to facilities via the Nurse Aide Registry.
- 2008 (August) – Online submission of criminal record checks available.
- 2009 (October) – KBI increases their fee to KDHE from \$5.00 to \$7.00 per individual for CRC.
- 2010 legislative session – HB 2323 enacted; adds felony theft as a prohibited offense (five-year prohibition from employment). In addition, submission of licensed and registered individuals as well as volunteers may be submitted for CRC through KDHE.

As of July 1, 2010:

- |   |         |
|---|---------|
| ▪ Number of CRCs conducted since program inception:       | 315,843 |
| ▪ Number of individuals in database with CHRI:            | 69,781  |
| ▪ Number of individuals prohibited:                       | 968     |
| ▪ Percentage of CRC requests submitted online in FY 2010: | 54      |

LEGISLATIVE HISTORY FOR K.S.A. 65-516

1980 Legislative Session – HB 2872, establishing prohibited persons who are not allowed in the day care home. Prohibited offenses include: *any person convicted of child abuse, convicted of a sexual offense or who has an infectious or contagious disease.*

1982 Legislative Session – SB 656, additional prohibited persons added to list of persons not allowed in day care homes. Additional offenses include: *who has had a child declared deprived or removed from the home pursuant to the Kansas juvenile code, who has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq. involving a charge of child abuse or a sexual offense, who has been found to be an incapacitated person in need of a guardian or conservator, or both, pursuant to the act for obtaining a guardian or conservator, or both, who has been found to be unfit to have custody of a minor child pursuant to K.S.A. 1981 Supp. 60-160*

1983 Legislative Session – SB 105 included having a child in need of care or removed pursuant to the Kansas code for care of children

1984 Legislative Session – HB 2695 added persons who *works or volunteers* to the people who reside in the day care home. Additional prohibited offenses added to 65-516(a)(1): *of a felony conviction or any conviction of any act described in articles 34, 35, or 36 of chapter 21 of the Kansas State Statutes Annotated or has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by SRS.*

(c) *Any person found to be disabled or in need of a guardian or conservator or both shall not be allowed to operate a day care home.*

(d) Also added: the secretary shall have access to any court orders, or adjudications of any court of record or any records of such orders or adjudications and any report of investigations as authorized by subsection (e) of K.S.A. 1983 Supp. 38-1523 and amendments thereto in the possession of the department of SRS concerning persons residing in a boarding home for children or a family day care home in order to determine whether or not the home meets the requirements of K.S.A. 65-516 and 65-519 and amendments thereto.

1985 Legislative Session – HB 2145 added to 65-516(a)(1)(A) *felony conviction for a crime against persons, 65-516(a)(2)(B) has a felony conviction under the uniform controlled substances act.*  
*Also added was persons who have been adjudicated a juvenile offender for any act described in articles 34, 35, or 36 of chapter 21*

1987 Legislative Session - HB 2488 amended the section dealing with SRS 65-516(a)(3): *and (A) the person who has failed to successfully complete a corrective action plan which had been deemed appropriated and approved by the department of SRS, or (B) the record has not been expunged pursuant to the rules and regulations adopted by the secretary of SRS*

1988 Legislative Session – SB 686 amended 65-516(a)(7) to read *has an infectious or contagious disease*

1991 Legislative Session – HB 2485 65-516(f)(2) was removed

1994 Legislative Session – House substitute for SB 615 – The term *boarding home for children* was replaced with ***child care facility***

1996 Legislative Session – HB 2900 – the only change made was to 65-516(a)(6) – or *an immediate intervention agreement* was added

2002 Legislative Session – HB 2469 changes made: and acts amendatory thereof or supplemental was changed to

2006 Legislative Session – SB 261 – KSA 38-1635 was replaced w/*section 46*

2007 Legislative Session – SB 201 – many changes made 65-516(a) in *this state or in other states or the federal government*  
*65-516(a)(1)(A) or a conviction of conspiracy under K.S.A. 21-3302, and amendments thereto, to commit such act, or similar statutes of other states or federal government*  
*65-516(a)(2) or similar states of other states or the federal government*  
*65-516(a)(3) and who is listed in the child abuse and neglect registry maintained*

65-516(a)(4) *removed from home based on – pursuant to K.S.A. 2006 Supp. 38-2251, and amendments thereto, in this state, or a court order in any other state based upon a similar statute that finds the child – and the child has not been returned to the home or the child reaches majority before being returned to the home and the person has failed to satisfactorily complete a corrective action plan approved by the department of health and environment*

65-516(e) secretary is authorized to conduct national criminal history record checks to determine criminal history record checks

65-516(f) person must be notified within in 7 days by certified mail the result of the criminal history check

65-516(i) Deals with child placement agencies

2009 Legislative Session HB 2232

KSA 65-516(a)(1)(A) – uniformed controlled substances act – removed & replaced w/ sections 1 through 17, and amendments thereto

2010 Legislative Session - SB 376 *Kansas judicial review* replaced act for judicial review and civil enforcement of agency actions.

2010 Legislative Session HB 2661 added *or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009,*



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September 13, 2010

Special Committee on Judiciary  
Chairman Owens

On behalf of the Kansas Health Care Association and Kansas Center for Assisted Living membership and residents, I appreciate the opportunity to provide testimony on criminal background checks for Adult Care Home employees.

The question for discussion about the complete or redacted criminal background checks has been interesting issue for our providers. After researching for this testimony we believe the common practice of sending complete information to the providers seems to be working. The issue providers have expressed concern to the association is concerning the time involved in getting the background check information back to the requesting employer. The homes are allowed to hire people with the understanding of the employee hiring is contingent on the background check being clean. When the background check takes too long the employee might very well be there up to a month without the provider being aware of any issues.

The juvenile issue is really of no concern to our members. All kids make mistakes and it would certainly bog down the system if they had to worry about juvenile adjudications also. Some homes actually allow young people to serve community service hours as long as they are not involved in any prohibited offense issues. And if homes hire juveniles to work they follow the same guidelines of checking on their background.

There is a great need to make the background check information available on a nation-wide basis and we believe that is where we are headed with the background check process. Currently, providers also are required by law to check the Office of the Inspector General (OIG) because they post monthly those individuals and entities excluded from participation in any Federal health care program.

It is very important to have our residents and staff in a safe environment.

Thank you again for the opportunity to provide testimony.

Cindy Luxem  
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Special Committee on Judiciary

9-13-2010  
Attachment 7





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**Employee Criminal Background Checks – Survey Results**

**September 2009**



***Iowa is having problems getting potential employees cleared through the criminal background & dependent adult abuse/child abuse checks. The process sometimes takes three weeks to get someone cleared to work in LTC.***

**1) Does your state have a process that is taking two (2) days or less to clear potential employees? Yes or No  
If yes, please describe briefly or attach the process.**

**AL**

- 1) Yes
- 2) We have a company in Alabama that several of our facilities use that usually gives them an answer the same day. Bullet Investigations – 205-823-5551 or [sammons@bulletinvestigations.com](mailto:sammons@bulletinvestigations.com)

**AR**

- 1) In Arkansas, we are permitted to offer temporary employment until the results of the background checks come in. Then, if it comes in with a criminal record, the employee is terminated. The check has to be requested within five days of the offer of employment. If the facility is employing the individual while waiting for the results, it must show periodic inquiries into the status of the request - not by law, but by surveyor expectation. Our facilities can now do state criminal record checks on-line, so they get instantaneous results. For those few facilities that do not have Internet capacity, it takes the state about three to four weeks to deliver the results. We do federal checks by paper, and the results take about a month to return.

**AZ**

- 1) No

**CA**

- 1) Not currently. In this state, criminal background checks in SNFS are required only for CNAs and all direct care staff of ICFs/MR. The Department of Public Health (CDPH) does not directly process such clearances. They must receive criminal background clearance information from the Department of Justice (DOJ). The information from DOJ is uploaded to the CDPH system every 72 hours. That said, there are many factors that interfere with timely transmittal of this information so clearance information could be pending for days or weeks. In CA all CNAs must receive clearances prior to enrolling in CNA classes, so the only facility types impacted by the need to obtain timely clearances are the ICFs/MR. Existing statute deems these facilities in compliance if they submit electronic fingerprints of employees upon hire. However, two years ago, the legislature passed legislation that requires potential ICF/MR employees receive clearances prior to hiring. CAHF inserted language into the bill requiring that CDPH demonstrate they can process such clearances within 72 hours in 90% of cases, over a three month period. To date, the CDPH has not done so, and the statute has not been implemented.

**DE**

- 1) No. Criminal Background Checks (State and FBI) can run anywhere from two weeks to one month. The Adult Abuse Registry within the State can take from three days to a week depending on when it is sent in. The process is improving but still slow. We are permitted to hire all conditionally until results are received.

**HI**

1) The response for Criminal Justice Information Service (CJIS) and the OIG/GSA checks which are obtained from their internet sites is immediate. The response for FBI checks takes one to two weeks. The Adult Protective Services (APS) checks take three to four days.

**ID**

1) Yes  
2) Idaho uses the FBI background check system. The Health Department purchased digital fingerprint scanners for all their metropolitan area offices. Results are back in about two days. The most rural areas still have to do a paper print and mail them and that does take two weeks or more.

**IN**

1) We are not aware of any process taking two days or less.  
2) N/A

**KS**

1) Yes  
2) If a criminal record check is submitted through the online system then the facility should have the results in about 36 hours if the individual has no criminal history, which is about 80% of the requests submitted. The process is as follows:  
1. A facility submits a criminal record check via the online system.  
2. The information on the submitted individual is transmitted to KBI each night.  
3. The following day, the individual's information is run through KBI's Central Repository database to look for matching information.  
4. At approximately 2:00am the next day results are received electronically from the KBI. If the individual has no criminal history, the view results button appears by the submitted individual's name on the Kansas Nurse Aide Registry. If the individual has some type of criminal history, we are prohibited from transmitting that information electronically so it must be sent via regular mail. There are a couple conditions on the time frame I have to mention: One condition on the processing time frame is that it refers to business days. The KBI does not run our criminal record checks through their system on weekends. The other difference concerning the Iowa situation is that our record check does not include the adult abuse or child abuse check. Those databases are maintained through the SRS. Their information is not easily accessed or available to the public. Our contact person in Kansas with the Kansas Department of Health and Environment/Health Occupations Credentialing is: Steve Irwin, M.S., Health Program Analyst - (785) 296-6647.

**KY**

1) No

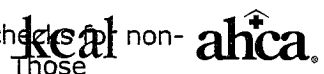
**MD**

1) The system used by the Maryland Board of Nursing (BON) experiences delays and complications similar to Iowa.  
2) Anecdotally, most criminal background checks have been taking at least two to three weeks for the BON to send data to and receive reports from our Criminal Justice Information System (CJIS). CJIS is responsible for handling the actual background checks and, when issues arise due to bounced checks or other financial matters, the BON sometimes does not handle the matter in a timely or appropriate manner. This is indicated through a general lack of communication with the applicant and/or his/her employer and a lack of response from the BON when the applicant and/or his/her employer contacts the BON directly. Delays have also been the result of bad fingerprint submissions and transmittals. Digital scanning equipment has proven to be most reliable and additional stations and systems are expected to become available within the next several years. Additionally, CJIS now has the authority to authorize qualified private providers to offer fingerprinting services and



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...ent of... data collection to applicants for criminal history records checks for non-criminal justice purposes (basically for licensing and employment use). Those proposed (and recently promulgated) regulations are **attached**. We have addressed this issue by reaching out to the BON and serving as a "mediator" in extreme situations. I have personally resolved several background check-related issues for our members simply by using our contacts at the Board to properly address the situation. The regulations related to nurse fingerprinting and background check requirements are **attached**.

**MN**

1) If providers use the MN Department of Human Services on-line background study process (which is free), most providers receive responses within 48 hours (90% are cleared to work without direct supervision). Paper background checks usually take closer to 20 days.

2) **Attached** is an article I wrote for our newsletter regarding the process used in Minnesota.

Specific information regarding the background study system used in Minnesota is found at the following web site:

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_054413](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_054413)

Common MN background study Q&A's may be found at this web site:

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_008631](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_008631)

**MO**

1) Yes

2) One of the benefits for members of the Missouri Health Care Association is a quick turnaround on criminal background checks. MHCA members submit their information to our office, then our staff takes that information to the Missouri State Highway Patrol to process, and then we send the results back to the facility. Any criminal background check that is submitted before 10:00am will be processed that day and the facility receives the results on the following day. For checks submitted after 10:00am, they are processed on the following day and the facility receives the results on the third day. For non-MHCA members, the turnaround time may be a little longer, but I have not heard of any major complaints. MO facilities can also conduct a criminal background check through the Family Care Safety Registry, but I have heard that the turnaround time is pretty slow and that facilities don't like the amount of information that they receive.

**NC**

1) No

**ND**

1) ND just implemented Criminal History record checks for newly licensed nurses and unlicensed assistive persons. I understand the process is taking more than two days because of fingerprinting and FBI Checks. I'm anticipating the entire process may take up to a week. We are given four months to complete the process so we shouldn't have a delay in hiring anyone.

**NJ**

1) NJ does not have a two day CBI process.

**NM**

1) No

**NY**

1) We have a CHRC, but it does not take only two days for a return. We do have an expedited part of the CHRC and that is for a new employee that has their fingerprints

on file from a previous employment in a SNF in NYS. When they are already in the system we can get a quick response. For a new one, it can be 120 days or more. The employee can work at the facility under supervision until the CHRC comes back as a temporary employee

**OH**

1) No. Ohio uses an electronic fingerprint system for background checks on prospective employees, but it generally takes 48-72 hours. A facility may hire an individual while awaiting the background check; by law, background checks must be completed within 30 days or the facility must remove the individual from direct care. A copy of Ohio's background check law is **attached**.

**OK**

1) Oklahoma's law allows for "temporary" hiring until the criminal arrest check is returned to the facility. In most cases checks are returned within 24 hours - unless the system is down.

**PA**

1) No

**VA**

1) No  
2) Virginia's law requires long term care facilities to obtain an original criminal background check from the state police within 30 days of employment. The request can be made in writing, which can take weeks for a response, but there is an additional means of obtaining the results electronically. We understand that the electronic response takes several days.

**WA**

1) Our process, at this time, takes considerably longer than two days.

**WV**

1) WV does not have a process that provides results within two days. Employees are allowed to begin employment after they have been finger printed and the request submitted, on a good faith basis. Results are generally received between two and four weeks.



To: Chairman Tim Owens and Members  
Special Committee on Judiciary  
From: Debra Harmon Zehr, President  
Date: September 13, 2010

**Criminal Record Checks for Potential  
Adult Care Home Employees**

Thank you, Chairman Owens and Members of the Committee, for this opportunity to speak with you today. I am Debra Zehr, the President and CEO of the Kansas Association of Homes and Services for the Aging (KAHSA.) KAHSA represents 160 not-for-profit aging service providers throughout the state. Our members provide nursing home care, assisted living services, hospital-based long term care, supportive housing and a variety of community-based services to over 20,000 Kansans each day.

The statute that created the criminal record check program for adult care homes over a decade ago is an important tool to help assure that vulnerable persons are not put at risk of harm by persons providing their care. Prohibited convictions include a multitude of crimes against persons, and now, with the passage of HB 2323, limited property-related crimes. The criminal record check program has limitations, however. For instance it only screens for convictions in Kansas. (Note: The Patient Protection and Affordable Care Act requires establishment of a national system to screen direct care workers in nursing homes against the FBI's national database of criminal history records.) Employers use additional tools, such as careful interviewing, and credential and reference checks to make safe and sound employment decisions.

I would like to provide comment on the three questions that have been posed to this Committee for study:

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Special Committee on Judiciary

9-13-2010  
Attachment 8

*Question 1: Should facilities requesting a criminal record check receive a complete or redacted criminal history report and should the report include juvenile adjudications or non-prohibited offenses?*

This reflects the fundamental question of individual privacy rights versus the need to protect vulnerable populations. I would offer that, from my members' perspective, the more complete the criminal conviction information provided, the more informed employment decisions can be... and the greater the protection of the vulnerable persons in their care.

*Question 2: When a criminal record check reveals information that disqualifies an applicant from employment, should the prospective employee or requesting facility receive notification of the reasons for the denial of employment?*

Prospective employees should be informed of convictions that statutorily preclude them from employment. Beyond that, unless a much broader policy change is made; individual Kansas employers should be able to continue to determine if/how to share information about their employment decisions.

*Question 3: Are current differences in the procedures and type of criminal record check information provided to child care facilities and adult care facilities justified?*

There are differences in statutory requirements across a multitude of care settings, not just adult care homes and child care facilities. Statutes governing various settings have been created and revised over time without reference to one another. It may be helpful for the Committee to examine current requirements across all health care and other types of care settings for uniformity and legitimate population-distinct variations.

I would be happy to stand for questions.



DEPARTMENT ON AGING

Mark Parkinson, Governor  
Martin Kennedy, Secretary

www.agingkansas.org

**Before the Special Committee on Judiciary  
By Joann E. Corpstein, Chief Counsel  
Kansas Department on Aging  
September 13, 2010**

Chairman Owens and Members of the Committee, I am Joann Corpstein, Chief Counsel for the Kansas Department on Aging. Thank you for this opportunity to comment on criminal background record checks.

KDOA supports the amendments to K.S.A. 39-970 and K.S.A. 65-5117 which were made during the 2010 legislative session as reflected in House Bill 2323. In addition to adding felony theft under the five year prohibitive crimes, the amendments clarified that the Kansas Department of Health and Environment (KDHE) shall provide to adult care homes (ACH) and home health agencies (HHA) the criminal history information it receives from the Kansas Bureau of Investigation (KBI).

The information KDHE receives from the KBI is the same criminal history information that is available upon request to the general public. According to the KBI, this public information contains convictions that are felonies or class A or B misdemeanors, class C misdemeanor assaults, convictions of municipal or county resolutions, confinements to the Kansas Department of Correction facilities and active diversions that have not yet been successfully completed. The general public is not permitted to receive arrests that have been disposed of that did not result in a court conviction, successfully completed diversions, expunged arrests or convictions, or juvenile offender records. (See <http://www.kansas.gov/kbi/criminalhistory>.)

The key difference is that KDHE may receive certain juvenile conviction information that it is allowed, by statute, to disclose to ACHs and HHAs. Specifically, KDHE can advise the ACH or HHA that a job applicant has a juvenile theft conviction or if a job applicant has a juvenile conviction - that if committed by an adult - would be a prohibitive crime. The Kansas Attorney General, in an opinion dated July 12, 2001, (Attorney General Opinion No. 2001-29), opined that KDHE may notify an ACH or HHA if a person's juvenile criminal history information would or would not prohibit employment under K.S.A. 39-970 or K.S.A. 65-5117. These entities do not receive the underlying details of the individual's juvenile record. This information is redacted by KDHE.

While ACHs and HHAs could potentially receive a very limited amount of a person's juvenile record, these entities are required to keep any criminal history information they receive confidential, unless allowed by law to disclose it to another potential employer.

Regarding the difference in prohibitive crimes between adult care homes and child care facilities, it appears the main difference is that child care facilities consider both misdemeanor and felony convictions whereas adult care homes focus on felonies convictions only.

By providing the publicly available criminal history information to ACHs and HHAs, including the very limited exception for certain juvenile felony information, this allows these entities to make informed hiring decisions. In furtherance of this, HB 2323 now allows ACHs and HHA the discretion to request criminal history information on licensed staff and volunteers. Prior to this change, criminal history information requests were limited to non-licensed staff.

Thank you again for the opportunity to provide this information to the committee. I will now stand for any questions you may have.



HOUSE BILL No. 2454

AN ACT concerning the secretary of health and environment; relating to office of vital statistics; amending K.S.A. 65-177 and 65-2402 and K.S.A. 2009 Supp. 65-2422d and repealing the existing sections; also repealing K.S.A. 2009 Supp. 65-2422d, as amended by section 138 of 2010 Senate Bill No. 376.

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

Section 1. K.S.A. 65-177 is hereby amended to read as follows: 65-177. (a) The term "data" as used in ~~this act~~ K.S.A. 65-177 through 65-179, and amendments thereto, shall be construed to include all facts, information, records of interviews, written reports, statements, notes, or memoranda secured in connection with an authorized medical research study.

(b) The secretary of health and environment ~~may~~ shall receive data secured in connection with medical research studies conducted for the purpose of reducing morbidity or mortality from maternal, perinatal and anesthetic causes. Such studies may be conducted by the secretary of health and environment and his staff or with other qualified persons, agencies or organizations. ~~If such studies are conducted with any funding not provided by the state of Kansas, then the source of such funding shall be clearly identified in such study.~~ Where authorization to conduct such a study is granted by the secretary of health and environment, all data voluntarily made available to the secretary of health and environment in connection with such study shall be treated as confidential and shall be used solely for purposes of medical research. Research files and opinions expressed upon the evidence found in such research shall not be admissible as evidence in any action in any court or before any other tribunal. ~~Provided, however, That any, except that statistics or tables resulting from such data shall be admissible and may be received as evidence. Provided, That this act.~~ This section shall not affect the right of any patient or his such patient's guardians, representatives or heirs to require hospitals, physicians, sanatoriums, rest homes, nursing homes or other persons or agencies to furnish his such patient's hospital record to his such patient's representatives upon written authorization, or the admissibility in evidence thereof.

(c) No employee of the secretary of health and environment shall interview any patient named in any such report, nor any relative of any such patient. ~~Provided, That unless otherwise provided in K.S.A. 65-2422d, and amendments thereto.~~ Nothing in this act section shall prohibit the publication by the secretary of health and environment or a duly authorized cooperating person, agency or organization, of final reports or statistical compilations derived from morbidity or mortality studies, which reports or compilations do not identify individuals, associations, corporations or institutions which were the subjects of such studies, or reveal sources of information.

Sec. 2. K.S.A. 65-2402 is hereby amended to read as follows: 65-2402. (a) The secretary shall: (1) Establish within the division of health suitable offices properly equipped for the preservation of official records. (2) Maintain a complete cross-index on all records filed under the provisions of this act. (3) Install a statewide system of vital statistics. (4) Make and may amend, after notice and hearing, necessary regulations, give instructions and prescribe forms for collection, transcribing, compiling and preserving vital statistics. (5) Enforce this act and the regulations made pursuant thereto.

(b) Any person offered a position of employment in the office of vital statistics, subject to a criminal history records check, shall be given a written notice that a criminal history records check is required. The secretary shall require such applicant to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The secretary shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the secretary in taking and processing of fingerprints of applicants. The secretary may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the applicant and in the official determination of the eligibility of the applicant to perform tasks within the office of vital statistics. If the

*criminal history record information is used to disqualify an applicant, the applicant shall be informed in writing of that decision.*

Sec. 3. K.S.A. 2009 Supp. 65-2422d is hereby amended to read as follows: 65-2422d. (a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of ~~this the uniform vital statistics act~~ and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by ~~this the uniform vital statistics act~~ and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose, or except that employees of the office of child support enforcement of the federal department of health and human services shall be provided information when the information is necessary to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act or except that the secretary of social and rehabilitation services or the secretary's designee performing child support enforcement functions pursuant to title IV-D of the federal social security act shall be provided information and copies of birth certificates when the information is necessary to establish parentage in legal actions or to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act. Nothing in this subsection shall be construed as exempting such employees of the federal department of health and human services or the secretary of social and rehabilitation services or the secretary's designee from the fees prescribed by K.S.A. 65-2418, and amendments thereto.

(c) Except as provided in subsection (b), and amendments thereto, the state registrar shall not permit inspection of the records or issue a certified copy or abstract of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the ~~Kansas judicial review act for judicial review and civil enforcement of agency actions~~, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made. *The secretary shall permit the use of birth, death and still birth certificates as identifiable data for purposes of maternal and child health surveillance and monitoring. The secretary or the secretary's designee may interview individuals for purposes of maternal and child health surveillance and monitoring only with an approval of the health and environmental institutional review board as provided in title 45, part 46 of the code of federal regulations. The secretary shall inform such individuals that the participation in such surveillance and monitoring is voluntary and may only be conducted with the written consent of the person who is the subject of the information or with the informed consent of a parent or legal guardian if the person is under 18 years of age. Informed consent is not required if the person who is the subject of the information is deceased.*

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and stillbirth certificate data to federal, state or municipal agencies.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county and the clerk of the district court in each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the preceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and shall be used solely by the election officer for the purpose of correcting

**65-2839a. Investigations and proceedings conducted by board; access to evidence; subpoenas; access to criminal history; confidentiality of information.** (a) In connection with any investigation by the board, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained by and in possession of any clinic, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the boards duly authorized agent to produce evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(c) The board may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining initial and continuing qualifications of licensees and registrants of and applicants for licensure and registration by the board. Disclosure or use of any such information received by the board or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license or registration issued under this act. Nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the board in a hearing held pursuant to this act.

(d) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the

investigation procedure outlined in this section shall be confidential and shall not be disclosed.

(e) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

**History:** L. 1986, ch. 229, § 39; L. 1992, ch. 253, § 3; July 1.

**65-28,129. State board of healing arts; fingerprinting and criminal history.** (a) As part of an original application for or reinstatement of any license, registration, permit or certificate or in connection with any investigation of any holder of a license, registration, permit or certificate, the state board of healing arts may require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The state board of healing arts is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of healing arts may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, registration, permit or certificate.

(b) Local and state law enforcement officers and agencies shall assist the state board of healing arts in taking and processing of fingerprints of applicants for and holders of any license, registration, permit or certificate and shall release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the state board of healing arts.

(c) The state board of healing arts may fix and collect a fee as may be required by the board in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history record check. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the healing arts fee fund.

(d) This section shall be part of and supplemental to the Kansas healing arts act.

**History:** L. 2008, ch. 154, § 2; July 1.

**75-53,105. Secretary access to criminal history, court records; nationwide search; fees; unauthorized disclosure, penalty.** (a) The secretary of social and rehabilitation services shall upon request receive from the Kansas bureau of investigation such criminal history record information as necessary for the purpose of determining initial and continuing qualification for employment or for participation in any program administered by the secretary for the placement, safety, protection or treatment of vulnerable children or adults.

(b) The secretary shall have access to any court orders or adjudications of any court of record, any records of such orders, adjudications, arrests, nonconvictions, convictions, expungements, juvenile records, juvenile expungements, diversions and any criminal history record information in the possession of the Kansas bureau of investigation concerning such employee or individual.

(c) If a nationwide criminal records check of all records noted above is necessary, as determined by the secretary, the secretary's request will be based on the submission of fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for the identification of the individual and to obtain criminal history record information, including arrest and nonconviction data.

(d) Fees for such records checks shall be assessed to the secretary.

(e) Disclosure or use of any such information received by the secretary or a designee of the secretary or of any record containing such information, for any purpose other than that provided by this act is a class A misdemeanor and shall constitute grounds for removal from office or termination of employment. Nothing in this act shall be construed to make unlawful or prohibit the disclosure of any such information in a hearing or court proceeding involving programs administered by the secretary or prohibit the disclosure of any such information to the post auditor in accordance with and subject to the provisions of the legislative post audit act.

**History:** L. 2005, ch. 168, § 1; July 1.