



TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY, SUPPORTING HB 2496,
AS AMENDED BY THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

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Members of the Committee,

This testimony is submitted to help outline the request for, and to demonstrate the need for, an amendment to K.S.A. 38-2386 and K.S.A. 74-5602, which will grant the Commissioner of the Juvenile Justice Authority (JJA) the authority to appoint special investigators who will have the ability to become certified law enforcement officers upon successful completion of all necessary training required by the Kansas Commission on Peace Officers' Standards and Training at the Kansas Law Enforcement Training Center.

The Need for Certification

Under the proposed National Standards To Prevent, Detect, and Respond to Prison Rape that are being developed in response to the Prison Rape Elimination Act of 2003 (PREA), [42 USC 15601 *et seq*], the JJA will soon be required under federal law to have a policy in place to ensure that all allegations of sexual abuse or sexual harassment in a juvenile correctional facility be investigated by an agency with the legal authority to conduct criminal investigations, and all such investigators will be required to be trained in conducting investigations in a confinement setting, along with specialized training in interviewing juvenile sex abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection, and the criteria and evidence required to substantiate a case for

administrative action or criminal prosecution. Furthermore, JJA will be required to investigate all allegations, including third-party and anonymous reports, of sexual abuse promptly, thoroughly and objectively using investigators who have received special training in sexual abuse investigations involving juvenile victims. JJA investigators will be required to gather and preserve all direct and circumstantial evidence including any available physical and DNA evidence and available electronic monitoring data; interview alleged victims, suspected perpetrators and witnesses; and will be required to review prior complaints and reports of sexual abuse involving the suspected perpetrator.

The practical implication of the upcoming mandate under PREA is that the JJA investigator will need to be a certified law enforcement officer. The alternative approach, which is not supported by JJA or the law enforcement community, is to flood local law enforcement agencies with first responder obligations and requests for investigations. The better approach is for JJA to become self-sufficient with certified law enforcement on staff with the necessary specialized training that most investigators and police officers do not possess. To accomplish that goal, JJA will need to begin with the foundational requirement of obtaining law enforcement officer certification for JJA's special investigator. Once the JJA special investigator becomes certified, additional specialized training can be sought which will serve two purposes: (1) It will bring JJA into compliance with PREA; and (2) It will empower JJA with highly trained and self-sufficient certified law enforcement, which will bring credibility and quality assurance to the criminal investigations conducted by JJA that fall outside of the PREA requirements. Additionally, the justification for allowing JJA special investigators to be certified as law enforcement officers is the same justification for any investigative agency to have certified law enforcement investigators. Certification carries with it quality assurance, better training and sound credentials. On a personal note, as a criminal prosecutor for ten years, I know first-hand the weight an investigation conducted by a certified law enforcement officer carries over an investigation conducted by non-certified investigators.

Current Law Enforcement Authority of JJA

In order to accomplish the goal of JJA becoming self-sufficient with certified law enforcement on staff, current Kansas law will need to be amended. Kansas law already gives all JJA employees law enforcement authority under K.S.A. 38-2386, which enables all JJA employees, while acting within the scope of their duties as employees of the juvenile justice authority, to possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner.

K.S.A. 38-2386. Law enforcement power

The superintendent of any juvenile correctional facility operated by the commissioner, all persons on the staff of the juvenile justice authority who are in the chain of command from the commissioner of juvenile justice to the juvenile corrections officer and every juvenile corrections officer, regardless of rank and every investigator, while acting within the scope of their duties as employees of the juvenile justice authority, **shall possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner and may exercise such powers and duties anywhere within the state of Kansas.** Such powers and duties may be exercised outside the state of Kansas for the purpose of maintaining custody, security and control of any person in the custody of the commissioner being transported or escorted by anyone authorized to so act. Such employees of the juvenile justice authority shall be responsible to and shall be at all times under the supervision and control of the commissioner of juvenile justice or the commissioner's designee. **[Emphasis added]**

The current law enforcement authority granted to JJA investigators and other employees under K.S.A. 38-2386, is limited to regaining or maintaining custody, security and control of the juvenile offenders who have been placed in the custody of the Commissioner. As currently written, K.S.A. 38-2386, does not permit the JJA investigator to have the authority to make arrests, conduct searches and seizures or to have the general authority to enforce all the criminal laws of the state as violations of those laws are encountered by such special investigators during the routine performance of their duties. Additionally, the authority to investigate crimes committed at a juvenile correctional facility does not

currently extend beyond the walls of the correctional facility, even though crimes such as trafficking contraband, witness intimidation, and unlawful sexual relations require investigative work in the community. Those current limitations on investigative jurisdiction greatly impede criminal investigations by JJA and need to be changed.

This bill will expand the authority of JJA special investigators appointed by the Commissioner, and will allow such investigators to become certified law enforcement officers with all of the powers and duties that are associated with being a certified law enforcement officer. The added responsibility and authority is necessary both under PREA, and is necessary in order to manage the ever growing caseload of criminal activity that occurs in JJA's correctional facilities and crimes committed in the community that are JJA related. Current law does not give JJA investigators the authority to conduct such criminal investigations and instead requires JJA to seek assistance from outside law enforcement agencies. This bill will help make JJA self-sufficient and lessen the burden on outside law enforcement agencies.

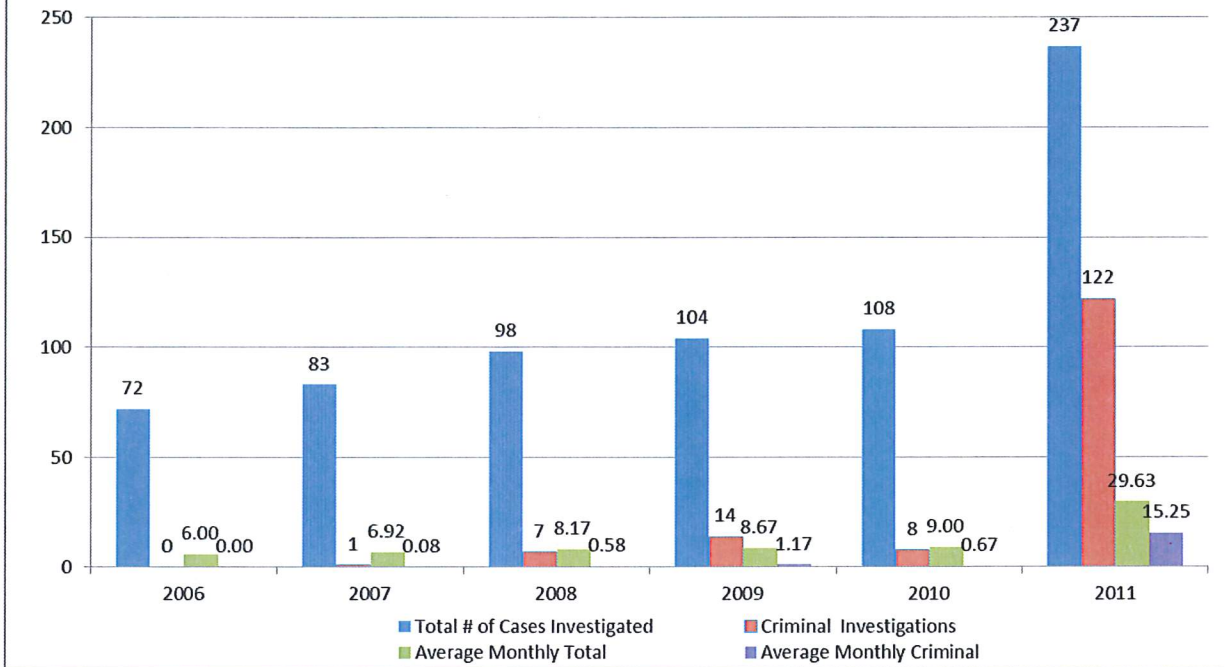
JJA has an ever increasing case load of criminal offenses to investigate, and those cases continue to branch outside of the juvenile correctional facilities. The volume of JJA criminal investigations is a growing burden on outside law enforcement agencies, but that does not need to be the case. JJA can be, and needs to be, able to have well trained and certified law enforcement officers on staff to serve as first responders and investigators that are available to respond to and investigate crimes that occur at JJA's juvenile correctional facilities and other crimes involving JJA in the community. Furthermore, such law enforcement authority is necessary in order to comply with the upcoming federal PREA mandates, and to help investigate and preserve criminal cases so they may be prosecuted fully.

Current Volume of Criminal Investigations at Juvenile Correctional Facilities

As previously stated, the volume of criminal investigations generated out of JJA correctional facilities continues to increase. As the chart below demonstrates, JJA has experienced more than a doubling of the total number of cases that have been investigated by JJA's investigator. The number of criminal cases investigated has gone from 8 in 2010, to 122 in 2011. The total number of administrative cases investigated between 2010 and 2011 also increased (100 administrative investigations in 2010 and 115 total cases in 2011). The dramatic increase in total investigations is primarily due to a very significant increase in the number of and type of criminal cases being reported by each JJA facility. The new JJA administration has made a concerted effort to educate facility and central office staff on mandatory reporting requirements and the new PREA reporting requirements. Additionally, the JJA administration is committed to investigating all allegations of criminal conduct that occurs within a juvenile correctional facility, in order to regain and maintain safety and security of the youth, staff and visitors. Under previous administrations, criminal allegations rarely made it past the correctional facility Superintendent, and were instead handled "in-house," without referral to the county or district attorney. Cases such as battery on corrections officers, aggravated battery and youth-on-youth violence often simply went unreported. Now, JJA has adopted a policy that requires all crimes that are committed in a juvenile correctional facility be reported and fully investigated. Such reports are now directed to the JJA investigator and legal division, in addition to the facility superintendents.

The following graph demonstrates the dramatic increase in the total number of investigations conducted by JJA from 2006 through 2011. The data is compiled from JJA investigative records:

Investigative Data



Juvenile Correctional Facility Investigate Data				
	Total Number of Cases Investigated	Total Number of Criminal Investigations	Average Monthly Total of All Cases	Average Monthly Total of Criminal Cases
2006	72	Not tracked	6.00	Not tracked
2007	83	1	6.92	0.08
2008	98	7	8.17	0.58
2009	104	14	8.67	1.17
2010	108	8	9.00	0.67
2011	237	122	29.63	15.25

Notes: In 2006 there were two JJA investigators for part of the year (criminal investigations were not tracked). From late 2006 to mid-2007 there was one JJA investigator (criminal investigations were not tracked). From mid-2007, Deputy General Counsel and General Counsel conducted investigations (criminal investigations were not tracked). Beginning December 9, 2007; JJA investigator conducted 9 investigations including 1 criminal investigation. JJA has maintained one investigator since December 2007 to present. Beginning January 2011, the new administration instructed the agency to investigate and track all alleged criminal offenses that took place in one of JJA's correctional facilities. The number of investigations increased significantly.

Source: JJA investigative data and records

What Needs To Be Done

To accomplish this effort, and after consulting with the Kansas Law Enforcement Training Center and the Kansas Commission on Peace Officers' Standards and Training, JJA asked the House Committee on Corrections and Juvenile Justice to introduce HB 2496 to broaden the existing law enforcement authority of JJA investigators in K.S.A. 38-2386, and to amend the definition section of the Kansas Law Enforcement Training Center Act, K.S.A. 74-5602, to permit JJA investigators to be certified law enforcement officers. That bill passed the House on a final action vote of 118 – 0.

K.S.A. 74-5602(g) of the Kansas Law Enforcement Training Act currently prohibits any JJA employee from being a law enforcement officer, by statutory definition. JJA is seeking an amendment to K.S.A. 74-5602 to permit special investigators appointed by the Commissioner to fall within the definition of “police officer” and “law enforcement officer.” A similar exception has already been made for conservation officers of the Kansas Department of Wildlife and Parks, agents of the Alcoholic Beverage Control, agents of the Secretary of Revenue, agents of the Kansas Lottery, agents of the Kansas Racing Commission, deputies and assistants of the Kansas Fire Marshal, and agents of the Adjutant General, all under K.S.A. 74-5602(g).

The reason that JJA special investigators were not included under the original definition of “police officer” and “law enforcement officer” under the Kansas Law Enforcement Training Act seems to be either a miscommunication, or a simple lack of interest on the part of JJA at the time the definition was drafted to exclude JJA. Discussions with the Kansas Commission on Peace Officers' Standards and Training indicate that JJA was originally excluded from the definition of “police officer” and “law enforcement officer” because JJA has a separate statute for certifying corrections officers which is found at K.S.A. 38-2385. K.S.A. 38-2385, however, is insufficient to address the needs of JJA relating to criminal investigations. The JJA special investigator position is an investigative FTE, not a juvenile corrections officer position. Additionally, JJA juvenile corrections officers are not trained

investigators. JJA correctional officers are tasked to maintain custody, security and control of juvenile offenders who are in the custody of the commissioner and placed at a juvenile correctional facility. The JJA investigator, as previously stated, has duties such as evidence collection, questioning witnesses, applying for and conducting search warrants. HB 2496, as amended, will create the necessary framework and will grant the necessary authority to enable JJA to become self-sufficient and better accountable when investigating alleged criminal activity that occurs in JJA's correctional facilities and crimes committed in the community that are JJA related.

No Fiscal Impact

The agency will not have a cost to train the special investigators beyond the already budgeted wage of each investigator, which will be paid during training, because state agencies do not pay tuition at the KLETC. Furthermore, any continuing courses to maintain certification and any specialized training will be absorbed by existing agency resources, primarily because there are numerous free courses available to law enforcement officers in the State of Kansas.

Your support is critical in accomplishing this effort. Thank you for your time and consideration. I stand for questions.

Respectfully submitted,



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