

## MINUTES

### SPECIAL COMMITTEE ON JUDICIARY

October 6-7, 2008  
Room 143-N—Statehouse

#### Members Present

Representative Michael O'Neal, Chairperson  
Senator John Vratil, Vice-Chairperson  
Senator Terry Bruce  
Senator Greta Goodwin  
Representative Marti Crow  
Representative Peggy Mast  
Representative Joe Patton (October 6)  
Representative Vern Swanson

#### Members Absent

Representative Delia Garcia

#### Staff Present

Jerry Ann Donaldson, Kansas Legislative Research Department  
Athena Andaya, Kansas Legislative Research Department  
Melissa Doeblin, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Cindy O'Neal, Committee Assistant

#### Conferees

Gordon Fell, Belle Plaine Police Department  
Jeff Brandau, Kansas Peace Officers Association  
Bob Keller, Kansas Sheriff's Association  
Marilyn Goodheart, citizen  
Tamara Samuels, citizen  
K.C. Blodgett, citizen  
Kansas State Troopers Association, written testimony  
Angela Wilson, Deputy Attorney General  
Ron Gaches, Consumer Data Industry Association  
Maren Turner, American Association of Retired Persons  
Norm Crawford, citizen  
Don Jordan, Secretary, Department of Social and Rehabilitation Services  
Debi Hatfield, Kansas Department of Health and Environment  
Representative Ann Mah  
Nellie Hogan, citizen

Chris Irwin, citizen  
Mary Kibbee Ellis, citizen  
Leslie White, citizen  
Julie and Tommy Bevan, citizens

**Monday, October 6  
Morning Session**

Chairperson O'Neal called the meeting to order at 10:00 a.m. and opened the hearing on Topic No. 2 - Benefits for Law Enforcement Officers Killed or Injured in the Line of Duty.

**Topic 2 - Benefits for Law Enforcement Officers  
Killed or Injured in the Line of Duty**

Melissa Doebelin, Revisor of Statutes Office, reported that HB 2902 was requested by the House Judiciary Committee during the 2007 Legislative Session. The provisions of the bill would create the Law Enforcement Family Support Act by:

- Providing a cash payment of \$100,000 within 45 days of the law enforcement officer's death;
- Mandating health insurance coverage for the law enforcement officer and the officer's family;
- Providing for reimbursement of expenses for children under the age of 15 who attend a licensed child care facility;
- Allowing for reimbursement of mileage and other expenses for the spouse incurred traveling to a state or national law enforcement ceremony where the law enforcement officer's name is added to a memorial; and
- Granting reimbursement for the cost of books, equipment, and materials for postsecondary and undergraduate education of the law enforcement officer's children.

Any of the above benefits would cease if a law enforcement officer recovered from a disability (Attachment 1).

Staff informed the Committee that the above benefits are intended to be additional benefits, beyond workers compensation and health insurance. The bill would only apply to law enforcement officers and any officer of the Department of Wildlife and Parks.

Gordon Fell, Kansas Association of Chiefs of Police, stated that his organization believes that there are gaps in the provisions regarding financial care of law enforcement officers who have been permanently disabled or who have lost their lives in the line of duty. This bill would provide the ability for the remaining spouse to remain employed or find employment following the incident and not have to worry about whether he or she is going to be able to afford a mortgage and monthly bills.

According to the conferee, there are 26 states that currently provide some type of lump sum cash benefit to the surviving spouse or children. These benefits range between \$1,000 and \$263,000, regardless of other eligible benefits (Attachment 2). The federal government also provides

benefits under the Public Safety Officers Act. These benefits are received if the injury or death happened while in the line of duty. As of October 7, 2007, affected families, under the Act, are eligible to receive a maximum amount of \$303,064.

Mr. Fell stated that since 2000, there have been 11 officers killed in the line of duty, but he was not sure how many were injured and determined disabled and therefore could not return to work.

Jeff Brandau, Kansas Peace Officers Association, provided the Committee with an Internet address ([www.nationalcops.org/deathbenefits](http://www.nationalcops.org/deathbenefits)) to show what other states do when benefits are provided. Mr. Brandau added that the federal benefits also provide \$3,000 to assist with funeral expenses and provide some college benefits (Attachment 3).

The conferee expressed concern that local units of government are not able to make health care payments for law enforcement officers, and the fact that there is no agency that overlooks law enforcement officers that are disabled in the line of duty.

The Committee discussed the fact that if law enforcement officers and employees of the Department of Wildlife and Parks are covered under the proposed bill, then corrections officers and firefighters also would want to be included, thereby increasing the costs to the state.

Mr. Brandau commented that workers compensation only pays a percentage due to a disability. The Kansas Public Employees Retirement System (KPERs) usually does not start paying until six months after the annual salary of the deceased stops. Surviving spouses receive only a small portion of the current household salary, so they basically end up with less income, with higher expenses. In addition, health insurance through the Consolidated Omnibus Budget Reconciliation Act (COBRA) is expensive, but families do not want to do without it. The conferee stressed that there needs to be some type of financial help provided for these families as quickly as possible.

Bob Keller, Johnson County Sheriff's Office and Kansas Sheriff's Association, stated his organization would not be opposed to having some type of state life insurance policy. He was most concerned about the affordability of health insurance (Attachment 4).

Marilyn Goodheart, citizen, relayed the story of her husband being killed in the line of duty. She was surprised to learn that she would have to pay for her health insurance. The retirement she receives from her husband is \$1,795 per month, plus \$255 as a lump sum payment from Social Security, minus \$416 for health insurance. That leaves only \$1,634 to live on, which is not very much (Attachment 5).

Tamara Samuels, citizen, stated that individuals should be prepared for the time when a spouse passes away, but that it is usually unexpected. She stated that, when a person is serving the state, keeping the citizens of Kansas safe, the state should provide additional benefits for the surviving spouse. Mrs. Samuels received workers compensation but no Social Security. The workers compensation benefit is not enough to pay for health insurance, according to the conferee. Mrs. Samuels said she waited 18 months for her federal benefits and was just about completely broke. Mrs. Samuels said she received no help with the funeral expenses (Attachment 6).

Written support was provided by the Kansas State Troopers Association and Kansas State Lodge of the Fraternal Order of Police (Attachments 7 and 8).

Chairperson O'Neal opened for hearing Topic No. 3 - Identity Theft.

### Topic No. 3 - Identity Theft

Jill Wolters, Revisor of Statutes Office, provided a briefing on SB 644 which amends the Fair Credit Reporting Act to allow for the placement of a security freeze on a consumer credit report within 15 minutes after receiving a written or telephoned request. This security freeze would prohibit any consumer reporting agency from releasing all or any part of a person's consumer credit report. A consumer reporting agency may advise the requesting agency that there is a security freeze in place. The bill also would require law enforcement agencies to file a police report for victims of identity theft.

Angela Wilson, Deputy Attorney General, suggested that identity theft has become a serious threat to the financial security of Kansans. According to the conferee, with the passage of SB 644, the Committee could make it harder for criminals to commit identity theft and make the public safer. This bill would allow for a faster response time on the part of credit agencies when theft happens. The conferee informed the Committee that many law enforcement agencies will not fill out an incident report because they do not understand what identity theft means (Attachment 9).

The Attorney General has just released an "Identity Theft Repair Kit" which includes an educational brochure aimed at preventing and repairing damage caused by identity thieves. It provides a step-by-step guide to repairing credit (Attachment 10).

The Committee requested clarification as to who would have the ability to request a credit freeze, specifically, whether a child of an elderly parent or deceased individuals could request the freeze. Committee members suggested that the bill should be amended so that a designee can file with the credit reporting agency.

Maren Turner, American Association of Retired Persons (AARP), informed the Committee that research shows 81 percent of consumers are concerned about becoming a victim of identity theft. Forty-six states have enacted security freeze laws, while Kansas is one of four states that limits access to freezing accounts until the person has been a victim (Attachment 11).

AARP is requesting to have the language redrafted and will request introduction of a bill during the 2009 Legislative Session. The bill would have the following provisions:

- Propose a \$5.00 fee for the initial freeze, a \$5.00 fee for removing the freeze permanently, and a \$5.00 fee for a lost PIN number. There would be no fee for a temporary freeze.
- Provide that a freeze could be requested by regular mail, certified mail, website, fax, and telephone calls.
- Mandate that law enforcement agencies file a police report for victims.

Ron Gaches, Consumer Data Industry Association, provided generic material concerning current trends on identity theft, such as the following:

- Javelin Strategy and Research, the Federal Trade Commission, and the U.S. Department of Justice all report the number of identity victims has decreased between 2002 and 2007;
- 77 percent of consumers believe that identity theft is increasing while rates are actually declining;

- The Federal Trade Commission reports a 7 percent decrease in complaints of identity theft;
- There has been a 41 percent decrease in the annual costs of identity theft; and
- Lost or stolen wallets account for 38 percent of compromise in security; 15 percent by friends, family, or co-workers; and 15 percent during in-store transactions.

Mr. Gaches suggested that credit reporting agencies only request that an individual provide a law enforcement incident report in order for them to put a freeze on their report. Mr. Gaches' organization expressed concern about providing a free "service" for doing freeze reports ([Attachment 12](#)).

Norm Crawford, citizen, shared his identity theft experience. The conferee stated that getting his credit report cleared and making corrections that were needed have cost him over \$500,000 in lost income.

The Chairperson closed the hearing on Topic No. 3 and called a recess for lunch. The Committee reconvened at 1:30 p.m.

## **Afternoon Session**

### **Topic 1 - Kansas Open Records Act**

Jill Wolters, Revisor of Statutes Office, explained that in recent years, the Legislature has undertaken a comprehensive review of the Open Records Act to determine whether any statutory exception to the law is unnecessary and could be deleted ([Attachment 13](#)). SB 702 would allow the open records exceptions for another year for the following:

- KSA 8-240 - Application for drivers' licenses and instruction permits. All applicants are required to list their social security number;
- KSA 8-247 - Driver's license renewals. The Division of Motor Vehicles (DMV) is required to notify drivers of the ability to make an anatomical gift. The DMV is required to forward applicable information to an organ donor registry;
- KSA 8-1324 - Non-driver identification card, with a social security number;
- KSA 8-1325 - Non-driver identification card, with provisions for an anatomical gift;
- KSA 12-17,150 - Redevelopment project area or transportation development district where tax revenues are pledged or used to pay bonds shall remain confidential;
- KSA 12-2001 - Cities granting franchise agreements to telecommunications local exchange service providers shall be governed by confidentiality procedures;

- KSA 40-5006 - Viatical settlement or insurance company or any other person with actual knowledge of the insured's identity, shall not disclose the identity of the insured;
- KSA 40-5108 - Insurance score models are considered a trade secret and shall be kept confidential unless the insurer has taken an adverse action based on credit information;
- KSA 41-2905 and KSA 41-2906 - Keg registration and cereal malt beverage record shall include a person's name, address, and driver's license number. The records should be kept but are not subject to subpoena in any civil or administrative criminal or civil action;
- KSA 44-706 - Under the employment security law, no domestic violence experienced by an individual who left work voluntarily shall be disclosed unless there is consent from the individual;
- KSA 44-1518 - Uniform Athletic Agents Act;
- KSA 65-3239 - Statewide organ and tissue donor registry, under which no donation organization may obtain information from the organ and tissue donor registry for the purpose of fundraising; and
- KSA 66-1233 - KCC is authorized to allow public utilities and natural gas utilities to adjust the utility customer's bill to recover the utility's prudent expenditures for security measures.

While the above statutes were intended to expire in July 2008, those statutes listed below are scheduled to expire in July 2009.

- KSA 8-255c - Division of Motor Vehicle Medical Advisory Board gives advisory opinions to the Director of Motor Vehicles in the case where any person licensed to operate a motor vehicle has been suspended, revoked, or reviewed for good cause shown. Good cause can include that the operation of a motor vehicle on a highway by such person would be inimical to public safety and welfare.
- KSA 12-5332 - Wireless Enhanced 911 Act records.
- KSA 17-12a607 - Uniform Securities Act records are presumed to be public, subject to the following exceptions:
  - Audits and inspections to investigate violations of the Act;
  - Trade secrets;
  - Records that are not required to be provided under the Act;
  - Nonpublic records shared with other agencies; and
  - Social Security number and address.
- KSA 38-1008 - Pursuant to the Interstate Compact for Juveniles, the commission allows the exemption from disclosure of any information or official records to the extent that they would affect adversely personal privacy rights or proprietary interests.

- KSA 38-2209 - Child in Need of Care records are confidential except as necessary for the exchange of information between interested parties to provide necessary services to the child and the child's family.
- KSA 45-221(a)(44) - The amount of franchise tax paid to the Secretary of Revenue or the Secretary of State shall not be required to be disclosed.
- KSA 45-221(a)(45) - Records, other than criminal investigation records that would pose a substantial likelihood of revealing security measures, shall not be disclosed.
- KSA 45-221(a)(46) - Information and material received by the register of deeds of a county from military discharge papers shall not be disclosed except to the military dischargée, the dischargée's family, lineal descendants, such heirs, agents or assigns, or funeral director.
- KSA 45-221(a)(47) - Information that would reveal the location of a shelter or safe house or similar place where persons are provided protection from abuse shall not be disclosed.
- KSA 56-1a610 - Limited partnership income tax filing extension applications filed with the Secretary of State shall be confidential and disclosed only when the limited partnership obtains proper judicial order.
- KSA 56a-1204 - Limited liability partnership income tax filing extensions.
- KSA 65-1,243 - Records received and information assembled by the birth defects information systems are confidential medical records. Medical records reviewed and maintained by the Department of Health and Environment shall be kept confidential and not disclosed except upon the order of a court of competent jurisdiction and shall not be subject to subpoena.
- KSA 74-50,184 - The Athletic Commission may receive criminal and juvenile proceedings background information to determine the qualifications of a person for the appointment as the Boxing Commissioner.
- KSA 74-8134 - Kansas Angel Investor Tax Credit Act, portions of documents and other materials submitted to KTEC that contain trade secrets shall be kept confidential.
- KSA 74-99b06 - Kansas Bioscience Authority shall not be subject to the provision of the Open Records Act when, in the opinion of the board, the disclosure of the information in the records would be harmful to the competitive position of the authority.
- KSA 82a-2210 - Horsethief Reservoir Benefit District sales tax.

After Committee discussion, *Senator Vratil made the motion to have the Committee recommend a bill be drafted for the 2009 Session to reflect the extension of the first group of 14 Open Records Exceptions for four more years and the extension of the second group of 16 Open Records Exceptions for five years. Representative Mast seconded the motion. The motion carried.*

The Committee adjourned at 2:45 p.m.

**Tuesday, October 7  
Morning Session**

Chairperson O'Neal called the meeting to order at 9:00 a.m. and opened the hearing on Topic No. 4 - Review of the Foster Care System.

**Topic 4 - Review of the Foster Care System**

Don Jordan, Secretary, Department of Social and Rehabilitation Services (SRS), explained that the purpose of SRS's Child Welfare Department is to protect children and support families. In conjunction, Kansas Department of Health and Environment (KDHE) licenses child care facilities (Attachment 14).

SRS contracts with foster care re-integration programs. The state is divided into five regions and provides a total of 55 licensed child-placing agencies in Kansas. Case management contracts are paid by per-child per-month rate. A contract does not cover education and medical, but covers everything else. SRS manages the child's case, living, clothing, and any deficiencies within the home. On average, 12-20 children are assigned to one case worker.

Chairperson O'Neal suggested that the next set of contracts might want to provide incentives for keeping children with family instead of placing them into traditional foster care homes.

Secretary Jordan responded that they are in the process of rebidding the contracts. SRS' primary safeguard is to keep kids at home; however, SRS does not have any authority to remove a child from a home. Removal can only be done in two circumstances: in an emergency for protective custody, or ordered by a judge. On the front end of the system, he indicated, there is no real way for a contractor to take advantage of the system.

Mr. Jordan also stated that when SRS actually gets custody, state law requires anyone providing care for a child under the age of 16, unrelated by blood, marriage, or adoption, to be licensed by KDHE. Federal rule (4-E) requires a background check be conducted on all members living in a home where the child may be placed. The conferee suggested that it would be better to have local resources involved in order to see whether there can be family placement before the child is drawn into SRS.

Mr. Jordan understood that while "family preservation" is the goal of SRS, it seems that, at times, children are being maintained in foster care instead of with family members. The Secretary stated that, in many cases, the child abuse usually is done by a boyfriend, girlfriend, or stepparent, and usually happens within three to six months after these individuals are introduced to the child. According to the Secretary, the community needs to be made aware to keep watch for abuse, but parents also need to be prepared to protect their children. Moving children around a lot is not good for them. According to Mr. Jordan, SRS tries to limit movement to twice a year. Findings show that the older children and children with behavioral and mental issues are more likely to have more than two placements during the first 12 months.

Secretary Jordan believes that privatization of foster care has worked in Kansas, but there is room for improvement, such as doing a better job at placing children with family members, and help is needed with the courts not ordering out-of-home placements.

Mr. Jordan explained that the program "Grandparents as Caregivers" is much cheaper by \$200-\$600 per month, instead of foster care. However, this program has been struggling. Grandparents have to be over age 50, with legal custody, and at 50 percent of poverty level. Because of these restrictions, the program has kept down the number of grandparents applying. SRS



wants to see changes to allow more people into the program. There have been 170 grandparents or other caregivers who have served on the program and there are 3,004 non-parent caregivers in the Temporary Assistance to Needy Families (TANF) program, which does the same thing and is federally funded. He suggested that Kansas does not need two similar programs, and should keep the name of Grandparents as Caregivers, but use the TANF rules and money to fund it. This would be a policy issue for the Legislature. The connection to family is very strong.

Mr. Jordan spoke of a program in California called Kinship Care Program, which allows individuals who are in foster care to look at their file and find out where family members live so when they get out of foster care they can contact them. The Secretary thought this was something Kansas should look into and could possibly use some of the current funding for Grandparents as Caregivers toward a similar program.

Debi Hatfield, Kansas Department of Health and Environment (KDHE), confirmed that the Department licenses and registers approximately 11,000 homes, facilities, and agencies. Of these, approximately 2,438 are foster care homes. KDHE conducts initial, annual, and complaint investigations involving allegations of noncompliance for child-placing agencies. In 2008, there were over 950 complaint investigations ([Attachment 15](#)).

The conferee stated that through interagency agreements, KDHE and SRS work together to ensure that standards of care are appropriate and that children are safe in their placement. SRS is responsible for contracting for child welfare services, conducting child abuse and neglect investigations, and then sharing this information with KDHE. KDHE provides background checks on all foster care placement and provides regulatory oversight for all homes. Typical things that would disqualify a home from being a child care facility would be the size of a bedroom, whether the people who reside in the home have previous drug or physical abuse charges, or child care practices in the home that are not adequate due to hazards and unsafe environment standards. KDHE, rather than SRS, determines if a home is adequate for child care.

Dr. Kathy Beougher, Junction City, has been a foster parent for over 20 years. Her experiences with SRS and Kansas Children's Service League have been positive in nature. Several years ago, Kaw Valley Center was awarded the foster care contract and removed children from her home because they wanted to place the children closer to the parents. These children were in her home for over six months. She believes that Kaw Valley Center is incompetent, ineffective, and inappropriate in their conduct and decision making as to what is in the best interest of these children ([Attachment 16](#)).

Representative Ann Mah believes that the problems in the foster care system are wide and it is a complicated system. She introduced the next two conferees.

Mary Kibbee Ellis, citizen, explained that in many emergency situations, placement of a child can be out of town or county. She was concerned that many times children are moved from one foster care home to another without good reason ([Attachment 17](#)).

Nellie Hogan, citizen, receives \$18.00 a day, which is pretty much the minimum amount one can receive. Ms. Hogan stated that kids today are expensive and the allowance one receives does not even start to cover the cost of raising a child in today's society. She encouraged the Committee to increase the amount ([Attachment 18](#)).

Written testimony was provided by Chris Irwin, Dean Dunlap, Leslie White, and Tommy and Julie Bevan, all current or previous foster parents. Their concerns ranged from the financial amount one receives daily to take care of a child, which they stated is inadequate, to services SRS should be providing to help an individual who is about to leave the foster care system to be able to make it on their own ([Attachments 19, 20, 21, and 22](#)).

## **Afternoon Session**

Chairperson O'Neal closed the hearing on **Topic No. 4 - Review of the Foster Care System**, and called a recess for lunch. The afternoon session began at 1:30 p.m.

Secretary Jordan spoke on the issue of the reimbursement being established by the child placing agencies to compensate families for their costs. The bid process anticipates certain levels of expenditures. However, SRS does not set the daily rates thus allowing agencies to pay whatever they want, within reason. Rules and regulations explain how rates are set but do not actually list the rates because it would cause SRS to change every year. The contracts are for a period of 4-8 years. Contracts generally provide a base rate and then allow for increases for different types of extra care. Each agency has its own pay scale. There is really no way to determine what would be a fair and reasonable rate to pay, that everyone would agree with is fair. The current rates have been remained the same for the past several years.

The agencies were asked whether they provide foster families with lists of support agencies. Secretary Jordan responded that these programs are no longer being accessed because they do not have the list. By statute, KDHE is not allowed to release the names of those in foster care. KDHE can only share lists with licensed child care and state agencies. Any agency can contact the sponsoring agency in that area and the agency would be able to get in touch with support agencies and provide information.

The Committee expressed concern that many of their homes would not meet KDHE rules and regulations with regard to being a foster care home. The Committee wondered whether so many regulations would seem to be driving individuals away from applying to be foster parents.

Debi Hatfield stated that KDHE has developed new rules and regulations. The agency wants to provide for fire and safety standards and basic normalcy for families. One ruling, for example, does not necessarily state that two handrails will be required on a stairway; rather, it requires one handrail and a wall on the other side. Some of the new regulations would not apply if they have been previously approved as a foster care family. There is some confusion on some of the new regulations and it would be helpful to clarify these so individuals would understand them.

Chairperson O'Neal opened the meeting for discussion and decision making regarding recommendations on the various topics.

### **Topic 3 - Victim of Identity Theft**

The Committee expressed disappointment that a specific bill was not assigned to the Committee. AARP provided a newly written bill but others did not have time to comprehend it nor to discuss it with other individuals.

However, the Committee believes there will be sufficient movement from both sides toward agreement on what the bill should reflect. Both sides are encouraged to continue to meet before session and if no agreement has been met, then the parties can request a bill be introduced at the start of the 2009 Legislative Session.

### **Topic 2 - Benefits for Law Enforcement Officers Killed or Injured in the Line of Duty**

The Committee recognized that there are terrible tragedies that occur while protecting the individuals of the state and that benefits are not adequate, nor are the benefits that are received done

so in a timely manner. The Committee recommends that these law enforcement groups explore their options on the private market, including those who are members of associations, and report back as to whether they found a solution. The Committee believes that these issues generally are a local issue, except for the Kansas Highway Patrol. The Committee stated that at this time, the state is reluctant to get into the self-insurance business.

#### **Topic 4 - Review of the Foster Care System**

For out-of-home placements, neither SRS nor KDHE has any say. It was reported that this is done only in two circumstances: an emergency for protective custody or ordered by a judge. Therefore, no recommendation is needed on this issue.

For compensation of services, the matter is determined by contracts between SRS and agencies. The issue of compensation is not necessarily within the Legislature's scope. Therefore, there is no recommendation on this issue.

The Committee recommended the report reflect that the concerns heard today are real concerns, and acknowledges that there are probably greater problems with the foster care system than what has been heard. The Committee encouraged KDHE, SRS, and contracting agencies to all be on the same page. The Committee strongly advised that reimbursements are insufficient in today's society and when new contracts are being discussed, the reimbursement rates need to be increased. Seventy-five percent of child-placing agencies receive an average of \$50 per day per child, with about \$40 going toward the foster care family. The Committee also would like contracting agencies to address how they are going to help out in certain specific instances, such as graduation costs.

The Committee commends SRS for the rate of transfers declining below the national average and the Committee encourages SRS to continue making child placement moves decline even more.

The Committee meeting adjourned.

Prepared by Cindy O'Neal  
Edited by Jerry Donaldson

Approved by Committee on:

November 24, 2008

(Date)