

## MINUTES

### JOINT COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT

November 24-25, 2003  
Room 123-S—Statehouse

#### Members Present

Representative Ward Loyd, Chair  
Senator Pete Brungardt, Vice Chair  
Senator Greta Goodwin  
Senator David Haley  
Senator Kay O'Connor  
Senator Lana Oleen  
Senator Jean Schodorf  
Representative Doug Gatewood  
Representative Jan Pauls  
Representative Dale Swenson

#### Members Absent

Senator Nancey Harrington  
Representative Thomas Klein  
Representative Bill Light  
Representative Dean Newton

#### Staff

Dr. Becky Krahl, Kansas Legislative Research Department  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Martha Dorsey, Kansas Legislative Research Department  
Jill Wolters, Office of the Kansas Revisor of Statutes  
Art Griggs, Office of the Kansas Revisor of Statutes  
Gary Deeter, Committee Secretary

#### Conferees

Gary Rowden, Director of Contracts, Wackenhut Corrections  
Reed Smith, Director of Operations, Wackenhut Corrections  
William Rich, Professor, Washburn University School of Law  
Randy Hearrell, Executive Director, Kansas Judicial Council  
Kyle Smith, Director of Public and Governmental Affairs, Kansas Bureau of Investigation  
Roger Werholtz, Secretary, Kansas Department of Corrections  
Cristi Cain, State Coordinator, Kansas Methamphetamine Prevention Project  
Denise Everhart, Commissioner, Kansas Juvenile Justice Authority

## Others Attending

See attached list.

### Monday, November 24 Morning Session

Jerry Ann Donaldson, Kansas Legislative Research Department reviewed **Topic No. 2 Records of Children in Need of Care and Juvenile Offenders** assigned to the committee by the Legislative Coordinating Council (LCC): ([Attachment 1](#)). She said that current laws require that all records and reports concerning a child in need of care (CINC) must be kept confidential; however, the statutes provide a number of exceptions, allowing certain Department of Social and Rehabilitation Services (SRS) staff, court officials, law enforcement officers, and health care providers access to privileged information. Regarding juvenile offenders 14 years of age or older, Ms. Donaldson said one file (the Official File) is open to the public; the second file (the Social File) is not; nevertheless, a judge is allowed discretion to close the first or open the second to the public. In explaining the confidentiality of the adoption process, Ms. Donaldson noted that all adoption proceedings are closed except to involved parties, their attorneys, and SRS representatives. Answering a question, she noted that [KSA 59-2122](#) allows SRS to act as a conduit of information between genetic and adoptive parents, but prohibits direct contact between genetic and adoptive parents. She replied to another question that legislators have statutory access to CINC records. A member expressed concern that such information could be released by legislators after they leave office. Members discussed the implications of allowing wider access to records and how [SB 67](#) would affect access.

Ms. Donaldson referred to: [Attachment 2](#), in which the National Center for Juvenile Justice reviewed confidentiality issues; [Attachment 3](#), where the National Conference of State Legislatures summarizes various state legislation regarding public disclosure of information in child-fatality or near-fatality cases; and [Attachment 4](#), a listing by the National Clearinghouse on Child Abuse and Neglect and the National Adoption Information Clearinghouse of federal legislation concerning child protection, child welfare, and adoption.

Jill Wolters, Revisor of Statutes Office, explained [SB 67](#), a bill introduced by Senator David Adkins during the 2003 Legislative Session amending [KSA 38-1507](#) and [38-1508](#), relating to the confidentiality of CINC records ([Attachment 5](#)). She said the bill, presently in a Senate-House conference committee, would open CINC records when a child under SRS custody suffers a life-threatening injury or dies as a result of abuse or neglect. Noting that various amendments created several versions of the bill, she said the conference committee version ([Attachment 6](#)) narrows the focus of the bill to apply only to records of a victim of child abuse or neglect which results in a near fatality or fatality and the victim has previously been adjudicated a child in need of care. Members discussed the possibility of the bill having a chilling effect on those considering adoption and, conversely, without the bill, protecting unfit parents from scrutiny. The Chair noted that current law ([KSA 59-2122](#)) allows latitude for the court to open certain records regarding such issues. Members postponed further discussion pending a report from afternoon conferee Randy Hearrell.

Addressing LCC **Topic No. 1—Additional Inmate Capacity**, Gary Rowden, Director of Contracts, and Reed Smith, Director of Operations, Wackenhut Corrections Corporation (WCC), presented the option of a private corporation building additional prison space ([Attachment 7](#)). Mr. Rowden said that WCC, which began in 1986 in Aurora, Colorado, now has 56 contracts world-wide with over 40,000 prison beds and is the 10<sup>th</sup> largest correctional organization in the U.S. He said the company offers a cafeteria plan tailored to the needs of each client that is cost-effective and creative, offering financing through General Obligation Bonds, Certificate of Participation Bonds, or private

financing. Answering questions, Mr. Smith said the corporation assumes financial liability for inmate lawsuits and provides data on recidivism.

### **Afternoon Session**

*The minutes for the October 30-31 meeting were approved as amended. (Motion made by Senator Schodorf seconded by Representative Gatewood.)*

William Rich, Professor, Washburn University School of Law, addressed LCC **Topics No.3 and No. 4, the Adequacy of Mental Health Programs and Facilities for Adult Inmates**, noting that dramatic changes have occurred in the past ten years because of the closing of mental hospitals and the focus on community treatment programs (Attachment 8). He said that because of the deinstitutionalization of the mentally ill and the increased use of incarceration to solve social problems, at least 20 percent of present Kansas inmates have a serious mental illness and, among the female population, 40 percent, further noting that two-thirds of the total prison population needs mental health care. Based on the 8<sup>th</sup> Amendment, Mr. Rich said national initiatives have found that segregation, over-medication, inadequate standards for mental-health care, and inadequate transition programs have been found to violate a prisoner's constitutional rights. Recommendations by Mr. Rich included a thorough assessment of mental health services in Kansas prisons by an expert, improved mental health training of correctional staff, assessment of transitional and long-term mental health care for individuals on probation or parole, development of pre-sentencing assessment for those convicted of crimes (with concomitant consideration of mental illness as a basis for diversion or mitigation of sentencing guidelines), and improved screening, treatment, and community placement for juveniles. Answering questions, Mr. Rich said an expert evaluation would cost between \$15,000-\$20,000 and suggested Dr. Jeffrey Mentner from Colorado. Representative Gatewood requested a statement from the Kansas Department of Corrections (DOC) as to how the Department defines mental illness.

Staff provided Attachment 9 responding to members' questions regarding DOC inmates with mental health issues, those requiring treatment, and what facilities are presently available to treat mental illness. Members discussed options for screening inmates before and after sentencing.

Randy Hearrell, Executive Director, Kansas Judicial Council, commented on two topics before the committee: Regarding **Topic No. 5—Capital Punishment Where the Defendant is Mentally Retarded**, he said the Council is presently studying the relation of the 8<sup>th</sup> Amendment to the execution of a mentally retarded person; the Council will have a report available on the Council's website by December 5, 2003. He said the Council will also recommend legislation addressing the issue for the 2004 Legislative Session. Regarding **Topic No. 2—Records of Children in Need of Care and Juvenile Offenders**, he noted that the Judicial Council is reviewing CINC and juvenile statutes, is restructuring the CINC confidentiality section, and expects to have a draft ready for submission to the 2004 Legislature.

Kyle Smith, Director of Public and Governmental Affairs, Kansas Bureau of Investigation (KBI), reviewed issues related to **Topic No. 6—Developing a Statewide Policy to Address Methamphetamine Abuse** (Attachments 10 and 11). He said the growing meth problem is especially virulent in rural areas, increasingly so, because of the 38 authorized KBI positions for narcotic agents, nine of the 25 state-funded positions are unfilled because of budget constraints, and, of the 13 agents funded with federal resources, six will have their grant funds Community-Oriented Police Services (COPS), expire in April, 2004. He recommended legislation to fund the COPS meth positions, which include four chemist positions, passage of Drug-Endangered Children legislation, and limiting access to precursor chemicals ephedrine and pseudoephedrine at either the retail or

distributor level. He noted that two conflicting Kansas court decisions (*State v. Frazier* and *State v. Campbell*) may be resolved by the Kansas Supreme Court, thus clarifying the penalty regarding the possession and manufacture of methamphetamine.

Cristi Cain, Coordinator of the Kansas Methamphetamine Prevention Project, reported that the Project has lost its funding source, a federal grant of \$350,000 per year, a loss that will decimate the Project. She noted that, in the past year, the Project has involved 46 counties in prevention efforts (Attachment 12). She stated that, after a Byrne grant runs out in June 2004, without supplemental funding the Project will die.

The Chair referred to written testimony regarding methamphetamine by Tess Bennett, Smoky Hill Foundation, and Douglas Murphy, representing the Kansas Peace Officers Association and the Quad County Drug Task Force (Attachments 13 and 14).

Representative Gatewood distributed Attachment 15 in response to discussion at a previous meeting on residential facilities for juveniles. Members also received written information on Kansas Advocacy and Protective Services (KAPS), a private legal advocacy agency for Kansans with disabilities (Attachment 16).

## **Tuesday, November 25 Morning Session**

Roger Werholtz, Secretary, Kansas Department of Corrections, provided a status update on DOC facility capacities, saying that the raw numbers were misleading because of the retention of some inmates at El Dorado for diagnostic purposes, noting that the numbers under "adjusted capacity" were more nearly accurate (Attachment 17). Answering questions, Mr. Werholtz said that maximum-custody males at El Dorado were moved to Lansing, since the larger maximum-security cells in El Dorado could then be used to double-bunk medium security males, thus relieving some medium-custody overcrowding. Regarding identifying inmates with mental illness, he said before the new sentencing guidelines, past procedures allowed the court to retain custody over an inmate for 120 days after sentencing and, after diagnosis, the court could refer an inmate to a mental-health facility, a process no longer statutorily possible. He said with increased diagnostic staff, DOC could identify inmate mental illness at the beginning of his or her incarceration. Replying to a question from the Chair, Mr. Werholtz said that since FY 2000, the DOC budget had been cut a total of 47 percent.

The Chair opened the meeting for committee discussion and final recommendations.

### **TOPICS No. 7, No. 8, and No.10: Sentencing Policies and Proportionality**

The Chair noted that other factors were in process that would make any committee recommendations premature. There was a consensus among committee members expressing confidence in the Sentencing Commission which, when its findings were complete, should be the proper voice to speak to the Kansas Legislature.

### **TOPIC No. 1: Additional Inmate Capacity**

Members noted that, with a new building ready by July 2004, the overcrowding at the Wichita facility would be resolved.

Members discussed how mentally ill inmates exacerbate the burgeoning prison population, acknowledging that present mental-health resources are inadequate and recognizing that present identification and treatment of mental illness among the prison population falls far short of the ideal. The consensus of the committee was to recommend to the legislature to employ an expert to provide options in dealing with mental-health issues and to seek partnerships with KAPS, the Sunflower Foundation, and the Mental Health Foundation for funding assistance. Mr. Werholtz said that \$5.6 million in funding would provide a full range of mental health programs for inmates. The Chair requested research information that would identify which mental-health programs and treatments have been effective in lowering recidivism and noted that the programs at the Larned Correctional Mental Health Facility were impressive.

The Chair outlined four responses for additional inmate capacity: 1) Wait for more information; 2) modify the sentencing options; 3) authorize new prison construction; or 4) authorize a private entity to construct additional prison space. *By motion of Senator Oleen, seconded by Representative Gatewood, recognizing that inmate population is nearing capacity, the committee recommends building an addition to the El Dorado facility. The motion passed unanimously.* Mr. Werholtz noted that the state's contract with Medical Services (\$25 million annually) would end in 2005, and he anticipated a 10-15 percent increase in the cost of a new contract.

#### **TOPIC No. 11: Extending the Prison Fellowship Program Statewide**

Roger Werholtz noted that the Prison Fellowship IFI program required about 200 inmates to be viable and that the program is not appropriate for short-term offenders. Members referred to a Topeka *Capital-Journal* article and commended the program as having a positive effect on inmates, reducing recidivism, and having all the components of a model program (Attachment 18). The consensus of the committee was to continue the Prison Fellowship program as presently administered by the DOC.

#### **TOPIC No. 9: Review the Juvenile Justice Authority Act**

Members noted that a bill to repeal the sunset of the Juvenile Justice Authority was ready to be introduced. *The committee recommends introducing the bill in the House of Representatives to repeal the sunset provision of the Juvenile Justice Authority. The motion passed. (Motion made by Representative Pauls, seconded by Senator Brungardt).*

Denise Everhart, Commissioner, Juvenile Justice Authority (JJA), answering a question, said that JJA is reconvening the Community Planning Teams, which are presently working through the agency, and that she preferred the structure to remain as it is. Senator Oleen noted that the committee had determined that the JJA is subject to the K-Goals statutes of accountability (KSA 74-72,106). *Senator Oleen made a motion, seconded by Senator Goodwin, that the committee recommend JJA continue as a statutory agency. The motion passed.*

#### **TOPIC No. 5: Capital Punishment Where the Defendant is Mentally Retarded**

*Because the Judicial Council is studying this issue and two legislative bills are presently extant, the committee, by of Representative Gatewood, seconded by Representative Swenson, recognizes the need to modify Kansas laws in the light of recent Supreme Court cases related to the issue; however, rather than making specific recommendations on specific elements, the committee recommends waiting for the Judicial Council's final report on the subject. The motion passed.*

**TOPIC No. 2: Records of Children in Need of Care and Juvenile Offenders**

The Chair presented several options: the committee could take no action, could recommend opening records, could recommend opening the proceedings, or could recommend opening both the records and the proceedings. *By of Senator Goodwin and seconded by Senator Oleen, the committee agreed to make no recommendation on this issue pending receipt of the Judicial Council Report. The motion passed.* Regarding **SB 67** now in conference committee, the consensus was to allow the conferees to continue the conference committee process.

**TOPIC No. 6: Statewide Policy to Address Methamphetamine Abuse**

The Chair outlined the issues: education and public awareness, adequate support for law enforcement, interdiction, and adequate treatment for offenders. The committee recognized the significance of the meth abuse problem statewide, the lack of a coherent meth policy, and that current efforts to prevent meth abuse are based on grants that have expired. *After discussion on and clarification of the , Senator Brungardt moved and Senator O'Connor seconded that the committee recommend providing \$750,000 in funding to the KBI to fund the COPS meth positions, including the four chemists, and \$350,000 to replace lost grant funding for the Kansas Meth Prevention Project. The motion passed.*

*Further, by of Senator O'Connor, seconded by Representative Pauls, the committee recommends development of a bill draft requiring wholesalers or distributors to register their sales of ephedrine and pseudoephedrine in Kansas. The motion passed.*

**TOPIC No. 3 and No. 4: Adequacy of Mental Health Programs and Facilities for Adult Inmates**

(See TOPIC No. 1, page 5 above.)

Prepared by Gary Deeter  
Edited by Martha Dorsey

Approved by Committee on:

December 29, 2003

(date)