

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on February 11, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Bob Bethell- excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Jerry Donaldson, Kansas Legislative Research Department

Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

State Representative Sean Gatewood,

State Representative Sydney Carlin,

Secretary Roger Werholtz, Kansas Department of Corrections

Chris Clarke, Legislative Post Audit

Sandy Barnett, Kansas Coalition for Sexual and Domestic Violence

Mark Gleeson, Office of Judicial Administration

Helen Potage, Executive Director, Kansas Sentencing Commission

Others attending:

See attached list.

State Representative Sean Gadoid,

State Representative Sydney Carlin,

Secretary Roger Werholtz, Kansas Department of Corrections

Chris Clarke, Legislative Post Audit

Sandy Barnett, Kansas Coalition for Sexual and Domestic Violence

Mark Gleeson, Office of Judicial Administration

Helen Potage, Executive Director, Kansas Sentencing Commission

HB 2534 - Increasing criminal penalties for unlawful sexual relations.

Vice-Chair Patton called the meeting to order and announced that Chairperson Colloton was giving a presentation in another meeting and would be coming in shortly.

Vice Chair Patton opened the hearing on **HB 2534** and called on Jason Thompson, Office of the Revisor of Statutes, to explain the bill. Mr. Thompson stated this legislation would make sexual misconduct between an employee and an inmate, a level 5 felony, and there is a proposed amendment that would require the convicted to register as a sex offender.

Vice-Chair Patton introduced State Representative Sean Gatewood to give his testimony as a proponent of **HB 2534**. Representative Gatewood presented written copy of his testimony. (Attachment 1) He stated escalating incidents of sexual misconduct in the Department of Corrections have proven that our laws are not stringent enough to curb illegal sexual behavior. He went on to say that the vast majority of those who work for the Department of Corrections have never, nor will ever be, involved in an inappropriate conduct. He stated that this legislation would make sexual misconduct between an employee and an inmate, a level 5 felony and the proposed amendment would require the convicted to register as a sex offender. He endorsed the bill and urged the Committee to pass it out favorably.

Vice-Chair Patton, called the Committee's attention to the "written only" testimony of Kansas State Representative Sydney Carlin. (Attachment 2)

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on February 11, 2010, in Room 144-S of the Capitol.

Vice-Chair Patton called for Secretary Roger Werholtz, Kansas Department of Corrections, to give his testimony as a proponent of **HB 2534**. (Attachment 3) Tim Madden, Counsel for the Kansas Department of Corrections spoke on behalf of Secretary Werholtz. Mr. Madden stated the Secretary wanted the Committee to know that the Kansas Department of Corrections does not support this bill in this form. The crime committed by a parole officer engaging in unlawful sexual relation with a parolee under his or her supervision would only be increased from a severity level 10 person felony to a severity level 8 person felony. The Department feels that they should be treated the same as the correctional facility officer.

A lengthy question and answer session followed for Mr. Madden.

Upon the conclusion of the questions and answer session, Vice-Chair Patton turned the meeting over to Chairperson Colloton.

Chairperson Colloton introduced Chris Clarke, Legislative Post Audit to give her testimony as a neutral party of the bill. Ms. Clark presented written copy of her testimony. (Attachment 4) Ms. Clark stated that post audit completed that included looking into issues of unlawful sexual relations in corrections facilities. This bill would bring Kansas penalties for correctional staff unlawful sexual relations more in-line with those of other states and would partially implement the recommendations post audit made in their report.

Chairperson called the Committee's attention to the "written only" opponent of Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence. (Attachment 5)

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2534** and opened the hearing on **HB 2581**.

HB 2581 - Criminal procedure; correctional supervision fees; funding the use of a statewide, mandatory standardized risk assessment

Chairperson Colloton introduced Helen Pedigo, Executive Director, Kansas Sentencing Commission, to give her testimony as a proponent of the bill. Ms. Pedigo presented written copy of her testimony. (Attachment 6) She stated the bill raises misdemeanor probation fees from \$25.00 to \$60.00 and felony probation supervision fees from \$50.00 to \$120.00. The reason for the fee increase is to provide state-wide implementation of training for use of a risk needs assessment tool, the Level of Services Inventory. She urged the Committee to pass the bill out favorably.

A question and answer session followed.

Chairperson Colloton introduced Mark Gleeson, Office of Judicial Administration to give his testimony as a proponent of **HB 2581**. Mr. Gleeson presented written copy of his testimony. (Attachment 7) He stated increasing the probation supervision fees appears to be the only way the Judicial Branch will acquire the funding to pay for training and support for court services officers to administer the LSI-R and to adopt evidence based practices in the supervision of offenders. He believes that adopting these practices will save money by reducing probation violations and recidivism. He listed amendments in his testimony that he feels are essential for the legislation.

A lengthy question and answer session followed. It was noted that the bill was going by the statutes and the amendments being offered from the Office of Judicial Administration were not according to statute.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2581** and opened the floor for the consideration of **HB 2507**.

HB 2507 - Parole and postrelease conditions established by parole board

Chairperson Colloton stated there was some thought to consider keeping the GED and called on Jason

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on February 11, 2010, in Room 144-S of the Capitol.

Thompson, Office of the Revisor or Statutes, to explain the balloon amendment on the bill. Mr. Thompson presented written copy of the amendment. (Attachment 8) He stated that the amendment was reinstating GED by making it a choice and not demand.

Representative Moxley made a motion to move the amendment to the bill and pass it out favorably for passage. Seconded by Representative Brookens seconded.

A discussion followed.

Chairperson Colloton called for a motion on the vote on the floor. Motion carried.

Chairperson Colloton called the Committee's attention to a handout regarding NCSL information request related to Post Traumatic Syndrome Disease in sentencing. (Attachment 9)

Chairperson Colloton adjourned the meeting at 3:00 p.m. with the next meeting scheduled for February 12, 2010 at 12:00 p.m. in room 144S.

Committee on Corrections and Juvenile Justice
Representative Sean Gatewood

Current legislation regarding sexual misconduct by employees of the Department of Corrections are 17 years old and stem from an era when consensual staff-inmate sex was first made illegal. In the intervening time, escalating incidents of sexual misconduct have proven that our laws are not stringent enough to curb this illegal behavior. In an effort to correct this deficiency, I, at the request of the Department of Corrections, and by the suggestion of Legislative Post Audit, I drafted this bill.

As a result of a 2007 incident, involving an inmate becoming pregnant by an employee of the Department of Corrections, we have all been made aware of some of the problems in our prison system. Legislative Post Audit investigated the women's prison facility in Topeka to determine the cause and scope of this issue. Through their investigation, they were able to determine that per every 100 employees, the prison conducted 16 investigations into sexual misconduct between employees and inmates; when compared to the number of similar investigations at the El Dorado and Lansing prisons, 1 and 2 respectively, this figure is appalling. Further, of those investigations which were conducted at the Topeka facility that were found to be substantiated, only 62% resulted in the termination of the employee. In more that one third of those investigated in Topeka for: sexual misconduct, undue familiarity, or trafficking of contraband, were reinvestigated for one or more of the same issues.

Legislative Post Audit found that at the Topeka facility, punishment for such misconduct was dealt with in an inconsistent and lenient manner, when compared to other such facilities. They cite one example where an employee was merely counseled, after being found by his supervisor in an office with an inmate, with door closed and the lights turned off. Even more disturbing, Post Audit found that of the mere 37 cases referred for prosecution between January 2007 and October 2009, only 25 are known to have been prosecuted. The absence of proper discipline for criminal sexual misconduct has the effect of deterring both staff and inmates from reporting future incidents, and makes it more likely that they themselves will engage in similar activity.

Corrections and Juvenile Justice
Date: 2-11-10
Attachment # 1

When compared to other states, Kansas lags far behind in its penalties for staff sexual misconduct. In Kansas, such misconduct is only a level 10 personal felony, carrying only presumptive probation (the penalty for trafficking contraband is a level 5 personal felony that carries 32 months in prison.) All but 6 states have stronger penalties; in Idaho and Alaska, an offender can face up to life behind bars. This proposed legislation would make sexual misconduct between an employee and an inmate, a level 5 felony, and the proposed amendment would require the convicted to register as a sex offender.

We understand that the vast majority of those who work for the Department of Corrections have never been, nor will ever be, involved in any inappropriate conduct. The implementation of this legislation will let citizens know that we deal seriously with those who do engage in criminal sexual activity and will reduce negative views and harassment of upstanding corrections officers. This law, like any other, is merely designed to prevent a small group of individuals from doing harm to others. I respectfully request that you vote in favor of this bill.

STATE OF KANSAS



HOUSE OF
REPRESENTATIVES

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Committee Assignments:
Ranking Minority Member:
Agriculture and Natural Resources Budget
Member:
Appropriations
Aging and Long-Term Care
Joint Committee on Arts and Cultural Resources

February 11, 2010

Chairman Colloton, Vice Chair Patton, Ranking Minority Member McCray-Miller

Members of the House Corrections and Juvenile Justice Committee

Thank you for the opportunity to provide testimony on HB 2534 today.

I have reviewed "The Legislative Post Audit of the Department of Corrections: Reviewing allegations of Staff Misconduct." The audit describes numerous staff undue familiarity, sexual misconduct, and trafficking in contraband incidents that have been taking place in our corrections system. While many steps have been proposed and some are being implemented by the KDOC, it is our job to pass legislation that causes the perpetrators to reconsider the wisdom of such activities within the prisons.

The audit points out that far too many reported cases of sexual misconduct in our prisons are recorded as unsubstantiated. We know that it takes great courage to report such crimes within the prison walls! I am very concerned that women who are trying to pay their dues to society by serving time that fits their crimes are being abused, both sexually and otherwise, by those in authority over them. Why do so many prison guards feel they have a right to abuse? Are they trying to inflict their own judgments and punishment? Or are we dealing with just plain rapists?

Two wrongs never make a right. When a person is in the custody of the state of Kansas that person deserves all the protection of the law. We want those who are incarcerated to be able to one day leave the prison and start life anew without bearing the burdens of this kind of abuse.

I ask the committee to recommend HB2534 favorably for passage and to make sure that these perpetrators are appropriately punished.

Rep. Sydney Carlin, Dist. 66

Corrections and Juvenile Justice
Date: 2-11-10
Attachment # 2

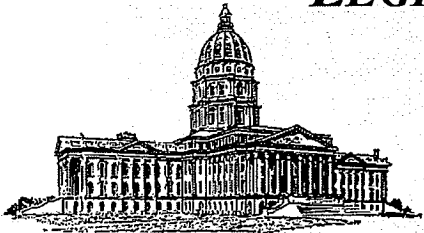
Testimony on HB 2534
to
The House Corrections and Juvenile Justice Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 11, 2010

HB 2534 provides for the increase of the penalty for unlawful sexual relations. However, unlike HB 2641 and SB 434, this bill distinguishes between staff engaging in unlawful sexual relations with a confined person from the situation where staff engages in unlawful sexual relations with a person who is under supervised release. This distinction by HB 2534 would result in the classification of the crime of unlawful sexual relations by a correctional officer with an inmate being increased from a severity level 10 person felony to a severity level 5 person felony while the crime committed by a parole officer engaging in unlawful sexual relations with a parolee under his or her supervision would only be increased from a severity level 10 person felony to a severity level 8 person felony.

The Department believes that the abuse of authority, the detriment to public safety, and the victimization caused by an act of unlawful sexual relations is the same irrespective of whether the staff member is a corrections officer or a parole officer. Therefore, the Department does not support the distinction made in HB 2534 which is dependant upon whether the person subject to the authority of the staff member was incarcerated or under release supervision. The Department supports the uniform application of the increased penalty applicable to staff of criminal justice agencies but defers to the judgment of SRS and school administrators regarding the appropriate criminal penalty applicable to the staff of those entities.

The Department of Corrections first requested legislation defining the crime of Unlawful Sexual Relations in 1992. While each chamber of the Legislature passed separate bills containing provisions prohibiting consensual sexual relations between corrections staff and offenders, a single bill was not passed by both chambers that session. The Department again requested that legislation in 1993 which was enacted into law. Since that time, the crime of unlawful sexual relations has been expanded to include a prohibition against officials working for jails, Juvenile Justice, court services, community corrections, the Department of Social and Rehabilitation Services and teachers sexually abusing persons under their supervision or control.



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**House Corrections and Juvenile Justice Committee
Testimony on HB 2534
Chris Clarke, Legislative Post Audit
February 11, 2010**

Madam Chair and members of the Committee, thank you for allowing me to provide neutral testimony on HB 2534. The bill amends the penalty for unlawful sexual relations from a level 10 to a level 5 person felony for employees and volunteers of the Department of Corrections and employees and volunteers of any contractors who provide services at correctional facilities (Section 1 (a) (1)).

Our office just completed an audit that included looking into issues of unlawful sexual relations in correctional facilities. As part of our audit work, we compared the statutory sanctions in Kansas to those of other states. We found the following:

- In Kansas, unlawful sexual relations by a correctional employee is a level 10 person felony with a presumptive sentence of probation.
- According to a 2009 survey by the National Institute of Corrections, all but six other states have stronger penalties for this type of correctional staff sexual misconduct than Kansas. In fact, Idaho and Alaska have maximum penalties of up to life in prison.
- Even states where this crime is a misdemeanor have penalties of up to a year in prison.
- 32 states also have mandatory registration as a sex offender. Kansas does not.

This bill would bring Kansas penalties for correctional staff unlawful sexual relations more in-line with those of other states and would partially implement the recommendations we made in our report related to K.S.A. 21-3520. The audit recommendations in this area (for correctional staff, volunteers and contractors) were:

- a. Amend K.S.A. 21-3520 to require individuals convicted under this statute to register as a sex offender.
- b. Amend K.S.A. 21-3520 to toughen the penalty for sexual misconduct, so it includes jail time rather than just presumptive probation.
- c. Amend K.S.A. 21-3520 to bring the penalty for sexual misconduct more in-line with the penalty for staff trafficking in contraband.

At its January 28 meeting, the Legislative Post Audit Committee voted to introduce legislation to implement these recommendations, and a recommendation related to staff trafficking in contraband.

Corrections and Juvenile Justice

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Attachment # 4

Kansas Coalition Against Sexual and Domestic Violence



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House Corrections and Juvenile Justice Committee
February 11, 2010
HB 2534

Opponent

The Kansas Coalition Against Sexual and Domestic Violence opposes HB 2534.

HB 2534 increases the penalties to a severity level 5 person felony for offenders convicted of engaging in unlawful sexual relations with persons who are in their care and custody. Section 1 (a)(1), (3), (4) and (5) address perpetrators who are employees, contractors, or volunteers of agencies that have custodial control over the victim such as: Kansas Department of Corrections officers and their contractors or volunteers; juvenile detention facility employees; law enforcement officers; jailers; and juvenile justice authority employees and contractors.

However, HB 2534 increases the penalties to a lesser level, a severity level 8 person felony, for offenders convicted of engaging in unlawful sexual relations with persons with whom the offender has a relationship of authority over the victim but is not incarcerated or otherwise in custody. Section 1 (a)(2), (6), (7), (8), (9) and (10) address supervision officers and contractors in the Department of Corrections, the juvenile justice authority, and community corrections agencies; employees and contractors of the Kansas Department of Social and Rehabilitation Services; teachers or those in authority over students; and court services officers.

The distinction drawn between these two groups of offenders is based on the status of the victim and seems to assume that there is more coercion¹ or more harm to the victim if they are incarcerated. This assumption is not valid, however. Regardless of the venue, the perpetrator is still violating or using their position of authority whether they are a parole officer, a case worker, a teacher, or correctional facility employee.

KCSDV supports the basic concept of increasing the penalties for conduct of those in authority over others engaging in unlawful sexual relations, but we oppose creating distinctions in the severity levels. KCSDV does support increasing the unlawful sexual relations penalty as proposed in HB 2641, which does not include those distinctions.

Submitted by:

Sandy Barnett
Executive Director

¹ Although K.S.A. 21-3520 assumes that unlawful sexual relations are voluntary, there are still elements of coercion based on real or perceived fear and promises of favors or contraband items that may not be clearly discernable to consider charges of rape.



KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chair
Honorable Richard M. Smith, Vice Chair
Helen Pedigo, Executive Director

MARK PARKINSON, GOVERNOR

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

Representative Pat Colloton, Chair

TESTIMONY IN SUPPORT OF

HB 2581 PROBATION SUPERVISION FEE INCREASE

Helen Pedigo, Executive Director

February 11, 2010

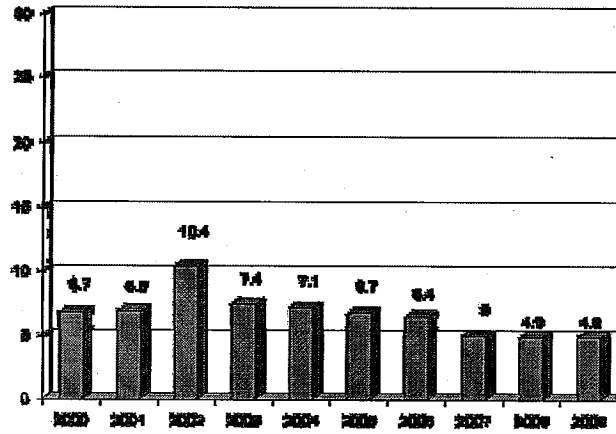
Madam Chair and committee members, thank you for the opportunity to testify before you today on behalf of the Kansas Sentencing Commission, a 17-member board comprised of criminal justice professionals, including local and state partners, members of all branches of State government, and the public.

This bill raises misdemeanor probation fees from \$25 to \$60 and felony probation supervision fees from \$50 to \$120. This statute was adopted in 1984, and in the intervening 24 years, these fees have not been increased. The reason for the fee increase is to provide state-wide implementation of and training for use of a risk needs assessment tool, the Level of Services Inventory – Revised (LSI-R).

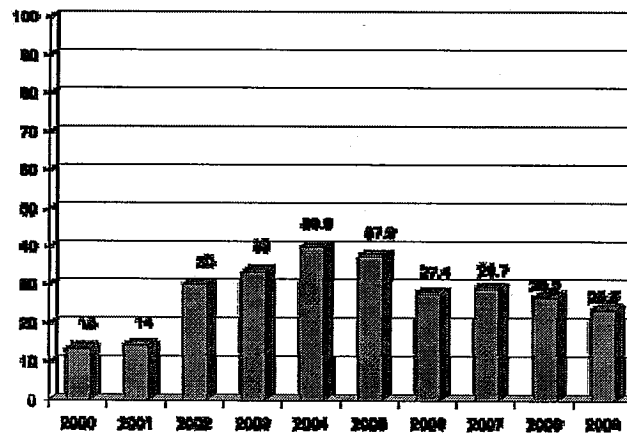
At the request of the Kansas Sentencing Commission, Johnson County initiated a pilot program in 2003 to assign supervision levels and specific probation conditions based on the risk assessment. This program provided a mechanism to allocate limited resources wisely and to supervise offenders at appropriate levels. Offenders in the pilot program are assigned to either court services or community corrections supervision, based upon their risk to reoffend and their supervision needs. Outcomes from this program are attached and demonstrate a reduction in revocations and an increase in successful completions. This initiative is one that the Kansas Sentencing Commission has advocated for many years, working smarter with the resources available, and thereby keeping the public safer.

Thank you for your time, and I'd be happy to answer questions.

Percent Revoke + Incarceration Rates* by Year: Court Services



Percent Revoke + Incarceration Rates* by Year: Community Corrections





State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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Testimony in Support of House Bill No. 2581

With Amendments

Mark Gleeson

Director of Trial Court Programs

Office of Judicial Administration

Thank you for the opportunity to testify in support of House Bill 2581. Although we have amendments, increasing the probation supervision fee is essential to our ability to train court services officers to administer the Level of Service Inventory – Revised, as required by K.S.A. 75-5291. Among states that charge a probation supervision fee, Kansas has the lowest probation fee in the country. The fee of \$50 for persons placed on probation following conviction for a felony and \$25 for persons placed on probation following conviction of a misdemeanor was established in 1984 and has remained unchanged since that time. Over the past three years, the probation fee for adult offenders generated \$425,098 in FY 2007, \$403,700 in FY 2008, and \$393,902 in FY 2009.

The Level of Service Inventory – Revised (LSI-R) is a quantitative survey of offender attributes and their situations relevant to supervision decisions. The results guide supervision officers in determining the appropriate level of supervision and treatment needs. The offenders are assessed on ten domains: criminal history, education/employment, financial, family/marital, accommodation, use of leisure time, companions, alcohol/drug problems, emotional/personal, and attitudes/orientation. The LSI-R assists the supervision officer in making effective use of limited resources by targeting specific needs of offenders. In jurisdictions where the LSI-R is used to determine levels of supervision, successful discharges have increased and revocations have decreased.

This is our sixth attempt at acquiring funding for court services officers to administer the LSI-R. In 2005, we submitted our first Byrne grant request for project funding. Two additional Byrne grant requests and two State General Fund requests later, we are making our sixth request to meet a legislative requirement to bring probation supervision practices on par with community corrections, parole, and inmate classification in Kansas prisons. Funding for this project is essential. We estimate it will require at least \$350,000 to purchase the software licenses and train the 275 court services officers who will administer these assessments by January 1, 2011.

Increasing the probation supervision fee appears to be the only way the Judicial Branch will acquire the funding to pay for training and support for court services officers to administer the LSI-R and to adopt evidence based practices in the supervision of offenders. I believe that adopting these practices will save money by reducing probation violations and recidivism. Without this fund or an appropriation, it will be virtually impossible for us to meet the requirement of K.S.A. 75-5291.

Corrections and Juvenile Justice

Date: 2-11-10

Attachment # 7

Amendments to the bill are essential. It is impossible to hold the State General Fund harmless without amending K.S.A. 20-367. In order to understand why this is true, it is important to understand three things:

1. The probation fee (\$25 for misdemeanors and \$50 for felonies) has been the law since 1984 and those fees have been going into the State General Fund since 1984 as a component of docket fees.
2. So long as the entire amount of the probation supervision fee collected went to the State General Fund, it was not necessary to change the administrative practice by which we complied with K.S.A. 21-4610a when each of the special funds that receive a percentage split of the docket fees were created. While the proposed probation supervision fee increase could go to the State General Fund and we could then subsequently request a State General Fund appropriation to fund the LSI-R, we have been unsuccessful in those attempts before, as noted previously.
3. Since HB 2581 splits the fee and directs a portion into the State General Fund and a portion into the Correctional Supervision Fund, the only way to distribute receipts to both the Correctional Supervision Fund and to the State General Fund is to create the new fund in K.S.A. 20-367, establish a percentage to distribute the appropriate amount to the Correctional Supervision Fund, and adjust the percentages of the existing funds to hold each fund, including the State General Fund, harmless as we have done with the creation of each new fund supported by docket fees.

Attached are tables showing how the percentage splits included in K.S.A. 20-367 should be amended to direct the probation supervision fee increase into the Correctional Supervision Fund. Adopting our amendment uses current practice to accomplish what is proposed in HB 2581. Adding the proposed "Correctional Supervision Fund" to receive a percentage split of the funds remitted to the State Treasurer by clerks of the district court as recommended in our amendment allows court clerks in each courthouse to receipt the money and send it to the State Treasurer exactly as they have for the past 26 years. Our amendment adds the Correctional Supervision Fund to the funds receiving percentage splits, and adjusts the percentages to hold each fund, including the State General Fund, harmless by this change. Each of the existing funds gets their money. The State gets its money. Most importantly, HB 2581, as amended, becomes the vehicle by which court services officers across the state begin administering the LSI-R as required by K.S.A 75-5291 and implement best practices for the supervision of offenders.

Please let me know if you have questions.

HB 2581 New Fund

| | | | |
|--------------|------------------|---------------|------------------|
| | FY 2010 Estimate | Additional \$ | Proposed FY 2011 |
| Clerk's Fees | \$24,481,000 | \$551,463 | \$25,032,463 |

| Fund | Current % | Current Estimate | Proposed % | Proposed Estimate |
|---|-----------|------------------|------------|-------------------|
| Correctional Supervision Fund | | | 2.20% | \$551,463 |
| Judicial Performance Fund | 3.00% | \$734,430 | 2.93% | \$733,451 |
| Access to Justice Fund | 4.17% | \$1,020,858 | 4.08% | \$1,021,324 |
| Juvenile Detention Facilities Fund | 2.31% | \$565,511 | 2.26% | \$565,734 |
| Judicial Branch Education Fund | 1.78% | \$435,762 | 1.74% | \$435,565 |
| Crime Victims Assistance Fund | 0.47% | \$115,061 | 0.46% | \$115,149 |
| Protection from Abuse Fund | 2.27% | \$555,719 | 2.22% | \$555,721 |
| Judiciary Technology Fund | 3.60% | \$881,316 | 3.52% | \$881,143 |
| Dispute Resolution Fund | 0.29% | \$70,995 | 0.28% | \$70,091 |
| Kansas Juvenile Delinquency Prevention Trust Fund | 1.05% | \$257,051 | 1.03% | \$257,834 |
| Permanent Families Account in the Family and Children's Investment Fund | 0.18% | \$44,066 | 0.18% | \$45,058 |
| Trauma Fund | 1.25% | \$306,013 | 1.22% | \$305,396 |
| Judicial Council Fund | 0.94% | \$230,121 | 0.92% | \$230,299 |
| Child Exchange and Visitation Centers Fund | 0.57% | \$139,542 | 0.56% | \$140,182 |
| Judicial Branch Nonjudicial Salary Adjustment Fund | 15.29% | \$3,743,145 | 14.95% | \$3,742,353 |
| Judicial Branch Nonjudicial Salary Initiative Fund | 15.12% | \$3,701,527 | 14.79% | \$3,702,301 |
| State General Fund | 47.71% | \$11,679,885 | 46.66% | \$11,679,399 |
| | 100.00% | \$24,481,000 | 100.00% | \$25,032,463 |

7-2

HB 2581 New Fund
With Judicial Performance Sunset

| | | | |
|--------------|------------------|---------------|------------------|
| | FY 2011 Estimate | Additional \$ | Proposed FY 2014 |
| Clerk's Fees | \$25,032,463 | -\$733,451 | \$24,299,012 |

| Fund | FY 2011 % | FY 2011 Estimate | Sunset % | Sunset Estimate |
|---|-----------|------------------|----------|-----------------|
| Correctional Supervision Fund | 2.20% | \$551,462.80 | 2.27% | \$551,588 |
| Judicial Performance Fund | 2.93% | \$733,451.17 | | \$0 |
| Access to Justice Fund | 4.08% | \$1,021,324.49 | 4.20% | \$1,020,559 |
| Juvenile Detention Facilities Fund | 2.26% | \$565,733.66 | 2.33% | \$566,167 |
| Judicial Branch Education Fund | 1.74% | \$435,564.86 | 1.79% | \$434,952 |
| Crime Victims Assistance Fund | 0.46% | \$115,149.33 | 0.47% | \$114,205 |
| Protection from Abuse Fund | 2.22% | \$555,720.68 | 2.29% | \$556,447 |
| Judiciary Technology Fund | 3.52% | \$881,142.70 | 3.63% | \$882,054 |
| Dispute Resolution Fund | 0.28% | \$70,090.90 | 0.29% | \$70,467 |
| Kansas Juvenile Delinquency Prevention Trust Fund | 1.03% | \$257,834.37 | 1.06% | \$257,570 |
| Permanent Families Account in the Family and Children's Investment Fund | 0.18% | \$45,058.43 | 0.19% | \$46,168 |
| Trauma Fund | 1.22% | \$305,396.05 | 1.26% | \$306,168 |
| Judicial Council Fund | 0.92% | \$230,298.66 | 0.95% | \$230,841 |
| Child Exchange and Visitation Centers Fund | 0.56% | \$140,181.79 | 0.58% | \$140,934 |
| Judicial Branch Nonjudicial Salary Adjustment Fund | 14.95% | \$3,742,353.22 | 15.40% | \$3,742,048 |
| Judicial Branch Nonjudicial Salary Initiative Fund | 14.79% | \$3,702,301.28 | 15.24% | \$3,703,169 |
| State General Fund | 46.66% | \$11,679,398.62 | 48.05% | \$11,675,675 |
| | 100.00% | \$25,032,463 | 100.00% | \$24,299,012 |

7-4

8

HB 2507 Balloon Amendment

1 (k) Parolees and persons on postrelease supervision shall be assigned,
2 upon release, to the appropriate level of supervision pursuant to the cri-
3 teria established by the secretary of corrections.

4 (l) The Kansas parole board shall adopt rules and regulations in ac-
5 cordance with K.S.A. 77-415 et seq., and amendments thereto, not in-
6 consistent with the law and as it may deem proper or necessary, with
7 respect to the conduct of parole hearings, postrelease supervision reviews,
8 revocation hearings, orders of restitution, reimbursement of expenditures
9 by the state board of indigents' defense services and other conditions to
10 be imposed upon parolees or releasees. Whenever an order for parole or
11 postrelease supervision is issued it shall recite the conditions thereof.

12 (m) Whenever the Kansas parole board orders the parole of an in-
13 mate or establishes conditions for an inmate placed on postrelease su-
14 pervision, the board:

15 (1) Unless it finds compelling circumstances which would render a
16 plan of payment unworkable, shall order as a condition of parole or post-
17 release supervision that the parolee or the person on postrelease super-
18 vision pay any transportation expenses resulting from returning the pa-
19 rolee or the person on postrelease supervision to this state to answer
20 criminal charges or a warrant for a violation of a condition of probation,
21 assignment to a community correctional services program, parole, condi-
22 tional release or postrelease supervision;

23 ~~(2) to the extent practicable, shall order as a condition of parole or~~
24 ~~postrelease supervision that the parolee or the person on postrelease su-~~
25 ~~pervision make progress towards or successfully complete the equivalent~~
26 ~~of a secondary education if the inmate has not previously completed such~~
27 ~~educational equivalent and is capable of doing so;~~

28 ~~(3)~~ may order that the parolee or person on postrelease supervision
29 perform community or public service work for local governmental agen-
30 cies, private corporations organized not-for-profit or charitable or social
31 service organizations performing services for the community;

32 ~~(4)~~ (3) may order the parolee or person on postrelease supervision to
33 pay the administrative fee imposed pursuant to K.S.A. 22-4529, and
34 amendments thereto, unless the board finds compelling circumstances
35 which would render payment unworkable; and

36 ~~(5)~~ (4) unless it finds compelling circumstances which would render
37 a plan of payment unworkable, shall order that the parolee or person on
38 postrelease supervision reimburse the state for all or part of the expend-
39 itures by the state board of indigents' defense services to provide counsel
40 and other defense services to the person. In determining the amount and
41 method of payment of such sum, the parole board shall take account of
42 the financial resources of the person and the nature of the burden that
43 the payment of such sum will impose. Such amount shall not exceed the

to the extent practicable, may order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

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Choose
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1 (k) Parolees and persons on postrelease supervision shall be assigned,
2 upon release, to the appropriate level of supervision pursuant to the cri-
3 teria established by the secretary of corrections.

4 (l) The Kansas parole board shall adopt rules and regulations in ac-
5 cordance with K.S.A. 77-415 et seq., and amendments thereto, not in-
6 consistent with the law and as it may deem proper or necessary, with
7 respect to the conduct of parole hearings, postrelease supervision reviews,
8 revocation hearings, orders of restitution, reimbursement of expenditures
9 by the state board of indigents' defense services and other conditions to
10 be imposed upon parolees or releasees. Whenever an order for parole or
11 postrelease supervision is issued it shall recite the conditions thereof.

12 (m) Whenever the Kansas parole board orders the parole of an in-
13 mate or establishes conditions for an inmate placed on postrelease su-
14 pervision, the board:

15 (1) Unless it finds compelling circumstances which would render a
16 plan of payment unworkable, shall order as a condition of parole or post-
17 release supervision that the parolee or the person on postrelease super-
18 vision pay any transportation expenses resulting from returning the pa-
19 rolee or the person on postrelease supervision to this state to answer
20 criminal charges or a warrant for a violation of a condition of probation,
21 assignment to a community correctional services program, parole, condi-
22 tional release or postrelease supervision;

23 ~~(2) to the extent practicable, shall order as a condition of parole or~~
24 ~~postrelease supervision that the parolee or the person on postrelease su-~~
25 ~~per vision make progress towards or successfully complete the equivalent~~
26 ~~of a secondary education if the inmate has not previously completed such~~
27 ~~educational equivalent and is capable of doing so;~~

28 ~~(3)~~ may order that the parolee or person on postrelease supervision
29 perform community or public service work for local governmental agen-
30 cies, private corporations organized not-for-profit or charitable or social
31 service organizations performing services for the community;

32 ~~(4)~~ (3) may order the parolee or person on postrelease supervision to
33 pay the administrative fee imposed pursuant to K.S.A. 22-4529, and
34 amendments thereto, unless the board finds compelling circumstances
35 which would render payment unworkable; and

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37 a plan of payment unworkable, shall order that the parolee or person on
38 postrelease supervision reimburse the state for all or part of the expend-
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40 and other defense services to the person. In determining the amount and
41 method of payment of such sum, the parole board shall take account of
42 the financial resources of the person and the nature of the burden that
43 the payment of such sum will impose. Such amount shall not exceed the

HB 2507 Balloon
Amendment

to the extent practicable, may order as a
condition of parole or postrelease
supervision that the parolee or the person
on postrelease supervision make
progress towards or successfully
complete the equivalent of a secondary
education if the inmate has not previously
completed such educational equivalent
and is capable of doing so;

Athena Andaya

From: Alison Lawrence [alison.lawrence@ncsl.org]
Sent: Friday, January 29, 2010 5:25 PM
To: Athena Andaya
Subject: NCSL info request: PTSD in sentencing

Corrections and Juvenile Justice
Date: 2-11-10
Attachment # 9

Athena,

I had a research intern run a statute search for aggravating and mitigating circumstances, she located one state – Massachusetts (in addition to Kansas) – who lists post traumatic stress disorder as a mitigating factor for the death penalty: chapter 279, § 69.

Also, below are some recent enactments related to sentencing active military or veterans with diagnosed mental illness or substance abuse:

California AB 2586 (2006): Provides that if a person is convicted of a criminal offense and alleges that he or she committed the offense as a result of post-traumatic stress disorder, substance abuse, or psychological problems stemming from service in combat in the United States military, the court shall hold a hearing prior to sentencing to make a determination about that allegation. If the court finds that the defendant's crime was committed as a result of one of those factors related to serving in combat, and the court places the person on probation, the bill authorizes the court to place the person into a treatment program, as specified.

Illinois HB 2281 (2009): Requires an officer preparing a pre-sentence investigation to inquire if a defendant is currently serving in or is a veteran of the Armed Forces of the United States and has been diagnosed as having a mental illness. Requires the officer to consult with the US Department of Veteran Affairs and the Illinois Department of Veterans' Affairs on treatment options available to the defendant. Instructs the court to consider treatment options when imposing the sentence.

Nevada AB 187 (2009): Authorizes district courts to establish a program for the treatment of certain eligible defendants who are veterans or members of the military who appear to be suffering from mental illness, alcohol or drug abuse or posttraumatic stress disorder. Prohibits defendants who committed an offense for which the suspension of sentence or the granting of probation is prohibited by existing law; committed an offense that involved the use of force or violence; or was previously convicted of a felony that involved the use or threatened use of force or violence. Upon successful completion and discharge from the program, the court will dismiss the proceedings and seal all documents related to the defendant's record.

New Hampshire HB 295 (2009): Requires a presentence report for defendants charged with a misdemeanor or felony who are members of the armed forces or veterans and have been diagnosed as mentally ill. Requires the presentence report to include treatment recommendations on available treatment options and instructs the court to consider the recommendations of any diagnosing or treatment mental health professional along with the available treatment options when imposing the sentence.

Texas SB 1940 (2009): Amends the Health and Safety Code to establish a pretrial veterans court program for a defendant in certain criminal cases who is a veteran or current member of the United States armed forces suffering from an injury or illness that resulted from the defendant's military service in a combat zone or hazardous area that materially affected the defendant's criminal conduct at issue in the case. The bill sets forth provisions outlining the essential characteristics of the program and the procedure by which proof of a defendant's eligibility in the program may be submitted to the court. The bill also sets forth provisions regarding the duties of the program, the establishment of a regional program in two or more counties, legislative oversight of the program, and the collection and payment of fees. The bill amends the Code of Criminal Procedure to make a conforming change.

Texas HB 4833 (2009): Amends the Health and Safety Code to authorize the commissioners court of a county to establish a veterans court program, which must have certain essential characteristics, for persons who are veterans or current members of the United States armed forces, who have a certain mental illness, and who are arrested for or charged with any misdemeanor or felony offense. The bill requires the court in which a criminal case is pending to dismiss the action

against a defendant if the defendant successfully completes a veterans court program and the court determines that dismissal is in the best interest of justice. The bill sets forth the duties of a veterans court, the authority of counties to establish a regional veterans court program, oversight of the programs by committees assigned by the lieutenant governor and the speaker of the house of representatives, and program participation fees.

Please let me know if you have any questions or would like additional information.

Best, Alison

Alison Lawrence

From: Athena Andaya [mailto:Athena.Andaya@KLRD.KS.gov]
Sent: Wednesday, January 27, 2010 8:55 AM
To: 'alison.lawrence@ncsl.org'
Subject: RE: Web Request for Civil & Criminal Justice - Corrections and Sentencing: Civil & Criminal Justice - Corrections and Sentencing

Alison,

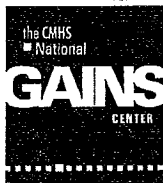
Friday is very timely. Thanks for your help!

Sincerely,

Athena Andaya
Principal Analyst
Kansas Legislative Research Department
Statehouse, Room 068-W
300 SW 10th Avenue
Topeka, Kansas 66612-1504
(785) 296-4420
Athena.Andaya@klrd.ks.gov

From: alison.lawrence@ncsl.org [mailto:alison.lawrence@ncsl.org]
Sent: Wednesday, January 27, 2010 9:49 AM
To: Athena Andaya
Subject: Fw: Web Request for Civil & Criminal Justice - Corrections and Sentencing: Civil & Criminal Justice - Corrections and Sentencing

Athena, my apologies for not getting back to you sooner. I am traveling and accidentally sent my response to the wrong email. Please see my original response below and advise if the time frame fits your schedule.
Best, Alison



Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions

A Consensus Report of the CMHS National GAINS Center's Forum on Combat Veterans, Trauma, and the Justice System

August 2008

... The 33-year-old veteran's readjustment to civilian life is tormented by sudden blackouts, nightmares and severe depression caused by his time in Iraq. Since moving to Albany last June ... [he] accidentally smashed the family minivan, attempted suicide, separated from and reunited with his wife and lost his civilian driving job.

In June ... [he] erupted in a surprisingly loud verbal outbreak, drawing police and EMTs to his home.

War's Pain Comes Home

Albany Times Union – November 12, 2006

... His internal terror got so bad that, in 2005, he shot up his El Paso, Texas, apartment and held police at bay for three hours with a 9-mm handgun, believing Iraqis were trying to get in ...

The El Paso shooting was only one of several incidents there, according to interviews. He had a number of driving accidents when, he later told his family, he swerved to avoid imagined roadside bombs; he once crashed over a curb after imagining that a stopped car contained Iraqi assassins. After a July 2007 motorcycle accident, his parents tried, unsuccessfully, to have him committed to a mental institution.

The Sad Saga of a Soldier from Long Island

Long Island Newsday – July 5, 2008

On any given day, veterans account for nine of every hundred individuals in U.S. jails and prisons (Noonan & Mumola, 2007; Greenberg & Rosenheck, 2008). Although veterans are not overrepresented in the justice system as compared to their proportion in the United States general adult population, the unmet mental health service needs of justice-involved veterans are of growing concern as more veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) return home with combat stress exposure resulting in high rates of posttraumatic stress disorder (PTSD) and depression.

OEF/OIF veterans constitute a small proportion of all justice-involved veterans. The exact numbers are not known—the most recent data on incarcerated veterans is from 2004 for state and Federal prisoners (Noon & Mumola, 2007) and 2002 for local jail inmates (Greenberg & Rosenheck, 2008) before OEF/OIF veterans began returning in large numbers.

Some states have passed legislation expressing a preference for treatment over incarceration (California and Minnesota) and communities such as Buffalo (NY) and King County (WA) have

implemented strategies for intercepting veterans with trauma and mental conditions as they encounter law enforcement or are processed through the courts. However, most communities do not know where to begin even if they recognize the problem.

This report is intended to bring these issues into clear focus and to provide local behavioral health and criminal justice systems with strategies for working with justice-involved combat veterans, especially those who served in OEF/OIF.

Combat Veterans, Trauma, and the Criminal Justice System Forum

The CMHS National GAINS Center convened a forum in May 2008 in Bethesda, MD, with the purpose of developing a community-based approach to meeting the mental health needs of combat veterans who come in contact with the criminal justice system. Approximately 30 people participated in the forum, representing community providers, law enforcement, corrections, the courts, community-based veterans health initiatives, peer support organizations, Federal agencies, and veteran advocacy organizations. See Appendix.

We begin with the recommendations that emerged from this meeting and then provide the data that support them.

Recommendations for Screening and Service Engagement Strategies

The following recommendations are intended to provide community-based mental health and criminal justice agencies with guidance for engaging justice-involved combat veterans in services, whether the services be community-based or through the U.S. Department of Veterans Affairs's healthcare system—the Veterans Health Administration (VHA).

➤ **Recommendation 1: Screen for military service and traumatic experiences.**

The first step in connecting people to services is identification. In addition to screening for symptoms of mental illness and substance use, it is important to ask questions about military service and traumatic experiences. This information is important for identifying and linking people to appropriate services.

The Bureau of Justice Statistics of the U.S. Department of Justice, Office of Justice Programs, has developed a set of essential questions for determining prior military service (Bureau of Justice Statistics, 2006). These questions relate to branch of service, combat experience, and length of service. See Figure 1 for the questions as they were asked in the 2002 Survey of Inmates in Local Jails. One question not asked in the BJS survey, but worth asking, is:

Did you ever serve in the National Guard or Reserves?

Yes
No

A number of screens are available for mental illness and co-occurring substance use. Refer to the CMHS National GAINS Center's website (www.gainscenter.samhsa.gov) for the 2008 update of its monograph on behavioral health screening and assessment instruments. The National Center for PTSD of the U.S. Department of Veterans Affairs provides the most comprehensive information on screening

Did you ever serve in the U.S. Armed Forces?

Yes
No

In what branch(es) of the Armed Forces did you serve?

Army (including Army National Guard or Reserve)
Navy (including Reserve)
Marine Corps (including Reserve)
Air Force (including Air National Guard and Reserve)
Coast Guard (including Reserve)
Other – Specify

When did you first enter the Armed Forces?

Month
Year

During this time did you see combat in a combat line unit?

Yes
No

When were you last discharged?

Month
Year

Altogether, how much time did you serve in the Armed Forces?

of Years
of Months
of Days

What type of discharge did you receive?

Honorable
General (Honorable Conditions)
General (Without Honorable Conditions)
Other Than Honorable
Bad Conduct
Dishonorable
Other – Specify
Don't Know

Figure 1. Military Service Questions from the Bureau of Justice Statistics 2002 Survey of Inmates in Local Jails (Bureau of Justice Statistics, 2006)

instruments available for traumatic experiences, including combat exposure and PTSD. Many of the screens are available for download or by request from the Center's website (<http://www.ncptsd.va.gov>). Comparison charts of similar instruments are provided, rating the measures based on the number of items, time to administer, and more. Measures available from the Center include:

- PTSD Checklist (PCL): A self-report measure that contains 17 items and is available in three formats: civilian (PCL-C), specific (PCL-S), and military (PCL-M). The PCL requires up to 10 minutes to administer and follows DSM-IV criteria. The instrument may be scored in several ways.
- Deployment Risk and Resilience Inventory (DRRI): A set of 14 scales, the DRRI can be administered whole or in part. The scales assess risk and resilience factors at pre-deployment, deployment, and post-deployment.
- Clinician Administered PTSD Scale (CAPS): A 30-item interview that can assess PTSD symptoms over the past week, past month, or over a lifetime (National Center for PTSD, 2007).

➤ **Recommendation 2: Law enforcement, probation and parole, and corrections officers should receive training on identifying signs of combat-related trauma and the role of adaptive behaviors in justice system involvement.**

Knowing the signs of combat stress injury and adaptive behaviors will help inform law enforcement officers and other frontline criminal justice staff as they encounter veterans with combat-related trauma. Such information should be incorporated into Crisis Intervention Team (CIT) trainings. The Veterans Affairs Medical Center in Memphis (TN) has been involved in the development of the CIT model, training officers in veterans crisis issues, facilitating dialogue in non-crisis circumstances, and facilitating access to VA mental health services for veterans in crisis.

The Veterans Health Administration has committed to outreach, training, and boundary spanning with local law enforcement and other criminal justice agencies through the position of a Veterans' Justice Outreach Coordinator (Veterans Health Administration, 2008a). Each medical center is recommended to develop such a position. In addition to training, a coordinator's duties include facilitating mental health assessments for eligible veterans and participating in the development of plans for community care in lieu of incarceration where possible.

➤ **Recommendation 3: Help connect veterans to VHA healthcare services for which they are eligible, either through a community-based benefits specialist or transition planner, the VA's OEF/OIF Coordinators, or through a local Vet Center.**

Navigating the regulations around eligibility for VHA services is difficult, especially for those in need of services. To provide greater flexibility for combat veterans in need of health care services, enrollment eligibility has been extended to five years past the date of discharge (U.S. Department of Veterans Affairs, 2008) by the National Defense Authorization Act (Public Law 110-181). Linking a person to VHA health care services is dependent upon service eligibility and enrollment. Community providers can help navigate these regulations through a benefits specialist or by connecting combat veterans to a VA OEF/OIF Coordinator or local Vet Center.

Vet Centers, part of the U.S. Department of Veterans Affairs, provide no-cost readjustment counseling and outreach services for combat veterans and their families. Readjustment counseling services range from individual counseling to benefits assistance to substance use assessment. Counseling for military sexual trauma is also available. There are over 200 Vet Centers around the country. The national directory of Vet Centers is available through the national Vet Center website (<http://www.vetcenter.va.gov/>).

OEF/OIF Coordinators, or Points of Contact, are available through many facilities and at the network level (Veterans Integrated Service Network, or VISN). The coordinator's role is to provide OEF/OIF veterans in need of services with information regarding services and to connect them to facilities of their choice—even going so far as to arrange appointments.

In terms of access to VA services among justice-involved veterans, data are available on one criterion for determining eligibility: discharge status. Among jail inmates who are veterans, 80 percent received a discharge of honorable or general with honorable conditions (Bureau of Justice Statistics, 2006). Inmates in state (78.5%) or Federal (81.2%) prisons have similar rates (Noonan & Mumola, 2007). Apart

from discharge status, access to VA health care services is dependent upon service needs that are a direct result of combat deployment and enrollment within in a fixed time period after discharge. So despite this 80 percent figure, a significant proportion of justice-involved veterans who are ineligible for VA health care services based on eligibility criteria or who do not wish to receive services through the VA will depend on community-based services.

➤ **Recommendation 4: Expand community-based veteran-specific peer support services.**

Peer support in mental health is expanding as a service, and many mental health–criminal justice initiatives use forensic peer specialists as part of their service array. What matters most with peer support is the mutual experience—of combat, of mental illness, or of substance abuse (Davidson & Rowe, 2008). National peer support programs such as Vets4Vets and the US Department of Veteran Affairs’s Vet to Vet programs have formed to meet the needs of OEF/OIF veterans. It is important that programs such as these continue to expand in communities around the country.

➤ **Recommendation 5: In addition to mental health needs, service providers should be ready to meet substance use, physical health, employment, and housing needs.**

Alcohol use among returning combat veterans is a growing issue, with between 12 and 15 percent of returning service members screening positive for alcohol misuse (Milliken et al, 2007). Based on a study of veterans in the Los Angeles County Jail in the late 1990s, nearly half were assessed with alcohol abuse or dependence and approximately 60 percent with other drug (McGuire et al, 2003). Moreover, the same study found that of incarcerated veterans assessed by counselors, approximately one-quarter had co-occurring disorders. One-third reported serious medical problems. Employment and housing were concerns for all the incarcerated veterans in the study.

Available information suggests that comprehensive services must be available to support justice-involved veterans in the community.

Background

Since the transition to an All Volunteer Force following withdrawal from Vietnam, the population serving in the U.S. Armed Forces has undergone dramatic demographic shifts. Compared with Vietnam theater veterans, a greater proportion of those who served in OEF/OIF are female, older, and constituted from the National Guard or Reserves. Fifteen percent of the individuals who have served in OEF/OIF are females, almost half are at least 30 years of age, and approximately 30 percent served in the National Guard or Reserves.

From the start of combat operations through November 2007, 1.6 million service members have been deployed to Iraq and Afghanistan, with nearly 500,000 from the National Guard and Reserves (Congressional Research Service, 2008). One-third have been deployed more than once. For OEF/OIF, the National Guard and Reserves have served an expanded role. Nearly 40 percent more reserve personnel were mobilized in the six years following September 11, 2001 than had been mobilized in the decade beginning with the Gulf War (Commission on the National Guard and Reserves, 2008). The National Guard, unlike the active branches of the U.S. Armed Forces and the Reserves, serves both state and Federal roles, and is often mobilized in response to emergencies and natural disasters.

Combat stress is a normal experience for those serving in theater. Many stress reactions are adaptive and do not persist. The development of combat-related mental health conditions is often a result of combat stress exposure that is too intense or too long (Nash, n.d.), such as multiple firefights (Hoge et al., 2004) or multiple deployments (Mental Health Advisory Team Five, 2008).

A recent series of reports and published research has raised concerns over the mental health of OEF/OIF veterans and service members currently in theater. The Army’s Fifth Mental Health Advisory Team report (2008) found long deployments, multiple deployments, and little time between deployments contributed to mental health conditions among those currently deployed for OEF/OIF. The survey found mental health problems peaked during the middle months of deployment and reports of

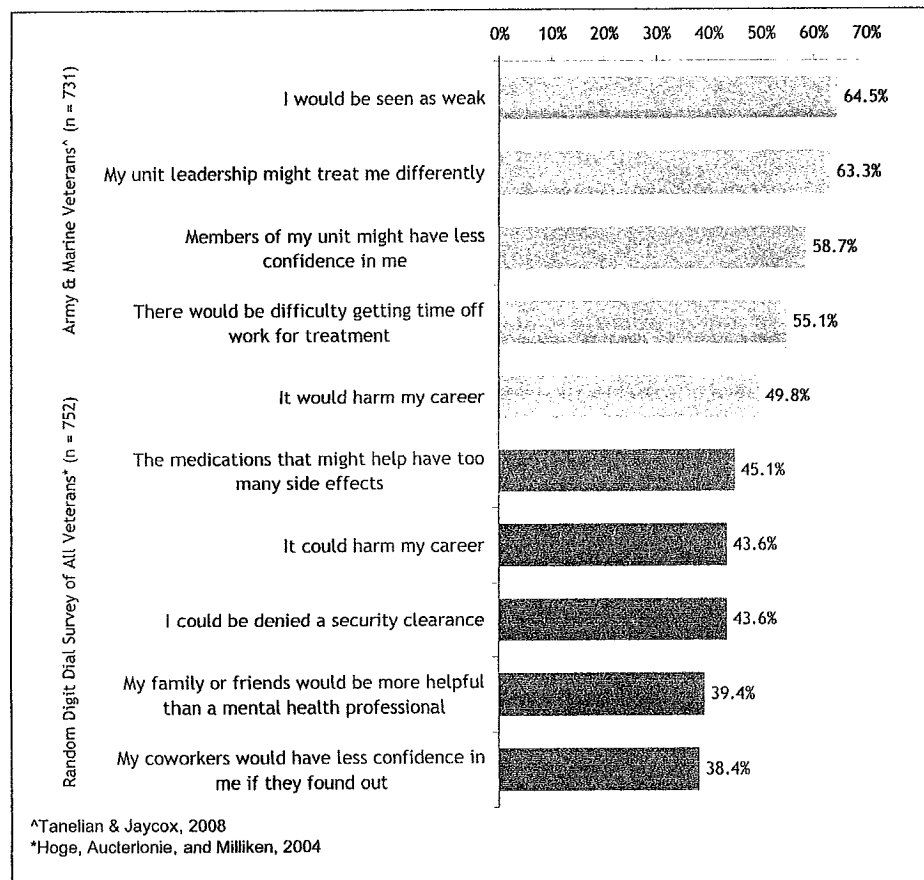


Figure 2. Most Reported Barriers to Care from Two Surveys of Individuals Who Served in OEF/OIF & Who Met Criteria for a Mental Health Condition

problems increased with successive deployments. In terms of returning service members, a random digit dial survey of 1,965 individuals who had served in OEF/OIF found approximately 18.5 percent had a current mental health condition and 19.5 percent had experienced a traumatic brain injury (TBI) during deployment. The prevalence of current PTSD was 14.0 percent, as was depression (Tanelian & Jaycox, 2008).

Reports of mental health conditions have increased as individuals have separated from service. By Department of Defense mandate, the Post-Deployment Health Assessment is administered to all service members at the end of deployment. Three to six months later, the Post-Deployment Health Reassessment is re-administered. From the time of the initial administration to the reassessment, positive screens for PTSD jumped 42 percent for those who served in the Army's active duty (from

12% to 17%) and 92 percent for Army National Guard and Army Reserve members (from 13% to 25%) (Milliken, Auchterlonie, & Hoge, 2007). Depression screens increased as well, with Army National Guard and Army Reserve members reporting higher rates than those who were active duty.

In addition to the increase in mental health conditions, the post-deployment transition is often complicated by barriers to care and the adaptive behaviors developed during combat to promote survival.

Behaviors that promote survival within the combat zone may cause difficulties during the transition back to civilian life. Hypervigilance, aggressive driving, carrying weapons at all times, and command and control

interactions, all of which may be beneficial in theater, can result in negative and potentially criminal behavior back home. Battlemind, a set of training modules developed by the Walter Reed Army Institute of Research, has been designed to ease the transition for returning service members. Discussing aggressive driving, the Battlemind literature states, "In combat: Driving unpredictably, fast, using rapid lane changes and keeping other vehicles at a distance is designed to avoid improvised explosive devices and vehicle-borne improvised explosive devices," but "At home: Aggressive driving and straddling the middle line leads to speeding tickets, accidents and fatalities." (Walter Reed Army Institute of Research, 2005).

Many veterans of OEF/OIF in need of health care services receive services through their local VHA facilities, whether the facilities be medical centers or outpatient clinics. Forty percent of separated active

duty service members who served in OEF/OIF use the health care services available from the VHA. For National Guard and Reserve members, the number is 38 percent (Veterans Health Administration, 2008b).

A number of barriers, however, reduce the likelihood that individuals will seek out or receive services. According to Tanelian and Jaycox (2008), of those veterans of OEF/OIF who screened positive for PTSD or depression, only half sought treatment in the past 12 months. To compound this treatment gap, the authors determined that of those who received treatment, half had received only minimally adequate services. In an earlier study of Army and Marine veterans of OEF/OIF with mental health conditions, Hoge and colleagues (2004) found only 30 percent had received professional help in the past 12 months despite approximately 80 percent acknowledging a problem. Even among OEF/OIF veterans who were receiving health care services from a U.S. Department of Veterans Affairs Medical Center (VAMC), only one-third of those who were referred to a VA mental health clinic following a post-deployment health screen actually attended an appointment (Seal et al., 2008). Based on surveys (Hoge, Auchterlonie, & Milliken, 2004; Tanelian & Jaycox, 2008) of perceived barriers to care among veterans of OEF/OIF who have mental health conditions, the most common reasons for not seeking treatment were related to beliefs about treatment and concerns about negative career outcomes.¹ See Figure 2 for a review of the two surveys' findings.

Justice System Involvement Among Veterans

At midyear 2007, approximately 1.6 million inmates were confined in state and Federal prisons, with another 780,000 inmates in local jails (Sabol & Couture, 2008; Sabol & Minton, 2008). Based

1 In May 2008, Department of Defense Secretary Robert Gates, citing the Army's Fifth Mental Health Advisory Team report (2008) findings on barriers to care, announced that the question regarding mental health services on the security clearance form (Standard Form 88) would be adapted (Miles, 2008). The adapted question will instruct respondents to answer in the negative to the question if the delivered services were for a combat-related mental health condition. Those whose mental health condition is not combat related will continue to be required to provide information on services received, including providers' contact information and dates of service contact.

on Bureau of Justice Statistics data (Noonan & Mumola, 2007; Greenberg & Rosenheck, 2008), on any given day approximately 9.4 percent, or 223,000, of the inmates in the country's prisons and jails are veterans. Comparable data for community corrections populations are not available.

The best predictor of justice system involvement comes from the National Vietnam Veterans Readjustment Study (NVVRS). Based on interviews conducted between 1986 and 1988, the NVVRS found that among male combat veterans of Vietnam with current PTSD (approximately 15 percent of all male combat veterans of Vietnam), nearly half had been arrested one or more times (National Center for PTSD, n.d.). At the time of the study, this represented approximately 223,000 people.

Veterans coming into contact with the criminal justice system have a number of unmet service needs. A study by McGuire and colleagues (2003) of veterans in the Los Angeles County Jail assessed for service needs by outreach workers found 39 percent reported current psychiatric symptoms. Based on counselor assessments, approximately one-quarter had co-occurring disorders. Housing and employment were also significant issues: one-fifth had experienced long term homelessness, while only 15 percent had maintained some form of employment in the three years prior to their current jail stay. Similar levels of homelessness have been reported in studies by Greenberg and Rosenheck (2008) and Saxon and colleagues (2001).

Conclusion

This report provides a series of recommendations and background to inform community-based responses to justice-involved combat veterans with mental health conditions. Many combat veterans of OEF/OIF are returning with PTSD and depression. Both for public health and public safety reasons, mental health and criminal justice agencies must take steps to identify such veterans and connect them to comprehensive and appropriate services when they come in contact with the criminal justice system. ■

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Appendix
Participants of the CMHS National GAINS Center
Forum on Combat Veterans, Trauma, and the Criminal Justice System
May 8, 2008, Bethesda, MD

A. Kathryn Power, MEd, Director of the Center for Mental Health Services at the Substance Abuse and Mental Health Services Administration, provided the opening comments at the forum.

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