

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

September 13, 2010
Room 548-S—Statehouse

Members Present

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

Staff Present

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

Members Absent

Senator Dwayne Umbarger
Representative Scott Schwab

Others Attending

See attached list.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Committee on:

October 25, 2010
(Date)