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TESTIMONY BEFORE THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE, SUPPORTING HB 2496 TO PLACE JJA SPECIAL INVESTIGATORS UNDER THE DEFINITION OF "LAW ENFORCEMENT OFFICER" IN THE KANSAS LAW ENFORCEMENT TRAINING ACT

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Members of the Committee,

This testimony is submitted to help outline the request for, and to demonstrate the need for, an amendment to K.S.A. 74-5602 and K.S.A. 38-2386, to permit the State of Kansas Juvenile Justice Authority (JJA) special investigator to become a certified law enforcement officer upon successful completion of all necessary training required by the Kansas Commission on Peace Officers' Standards and Training.

The Need for Certification

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

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

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

Current Law Enforcement Authority of JJA

In order to accomplish the goal of JJA becoming self-sufficient with certified law enforcement on staff, current Kansas law will need to be amended. Kansas law already gives all JJA employees law enforcement authority under K.S.A. 38-2386, which enables all JJA employees while acting within the scope of their duties as employees of the juvenile justice authority, to possess such powers and duties of a law enforcement officer as are necessary for performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner. K.S.A. 38-2386, however does not permit the JJA investigator to have the authority to make arrests, conduct searches and seizures or to have the general authority to enforce all the criminal laws of the state as violations of those laws are encountered by such special investigators during the routine performance of their duties. Additionally, the authority to investigate crimes committed at a juvenile correctional facility does not currently extend beyond the walls of the correctional facility, even though crimes such as trafficking contraband, witness intimidation, and unlawful sexual relations require investigative work in the community. Those current limitations on investigative jurisdiction greatly impede criminal investigations by JJA and need to be changed.

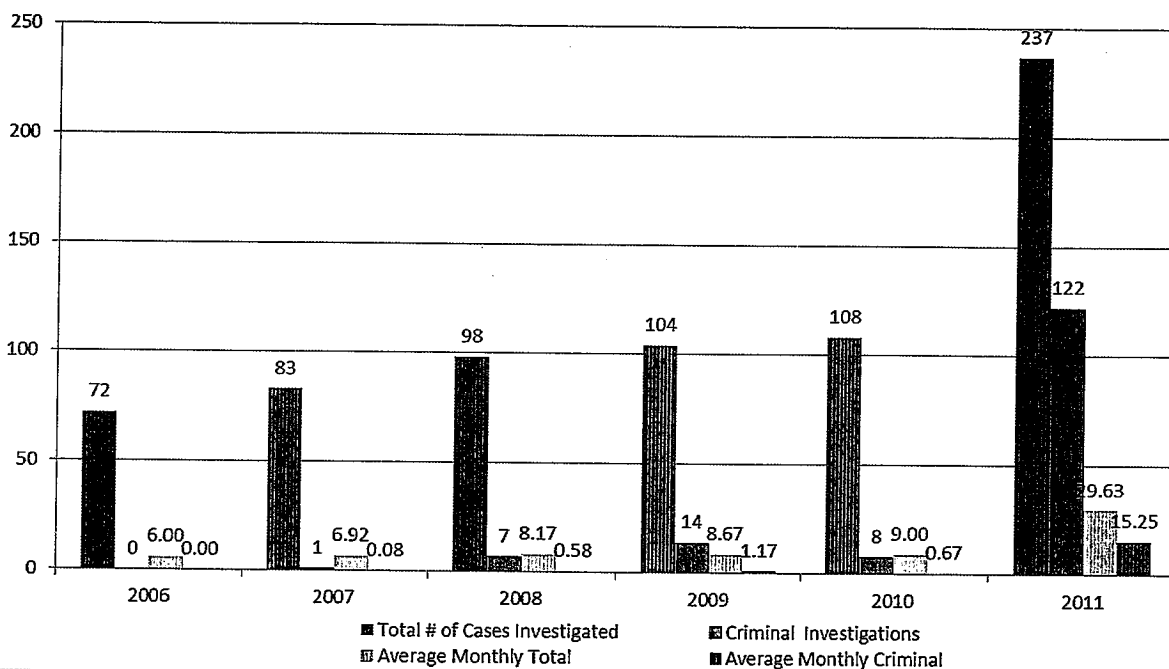
JJA has an ever increasing case load of criminal offenses to investigate and those cases continue to branch outside of the juvenile correctional facilities. The volume is a growing burden on outside law enforcement agencies, but that does not need to be the case. JJA can be, and needs to be able to have a well trained and certified law enforcement officer as a first responder and investigator who is available to respond to and investigate crimes that occur at JJA's juvenile correctional facilities, in order to comply with the new federal PREA requirements and to help investigate and preserve criminal cases so they may be prosecuted fully.

Current Volume of Criminal Investigations at Juvenile Correctional Facilities

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

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

Investigative Data



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

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

Source: JJA investigative data and records

What Needs To Be Done

To accomplish this effort, after consulting with the Kansas Law Enforcement Training Center and the Kansas Commission on Peace Officers' Standards and Training, JJA has introduced HB 2496 to amend the definition section of the Kansas Law Enforcement Training Center Act, K.S.A. 74-5602, to permit JJA investigators to be certified law enforcement officers.

Additionally, upon consultation with law enforcement officials, JJA is also seeking amendment of K.S.A. 38-2386 to permit JJA investigators to have full law enforcement authority. The following amendment to K.S.A. 38-2386 will delineate the law enforcement authority of the JJA special investigator from that of the general law enforcement authority of all JJA employees:

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

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

(b) The commissioner has the authority to appoint and designate special investigators. Each special investigator designated by the commissioner is hereby vested with the power and authority of peace and police officers and shall have the authority to make arrests, conduct searches and seizures and carry firearms while performing such duties for the purpose of regaining or maintaining custody, security and control of any person in the custody of the commissioner

and generally to enforce all the criminal laws of the state as violations of those laws are encountered by such special investigator during the routine performance of their duties. No special investigator of the commissioner shall be certified to carry firearms under the provisions of this section without having first successfully completed the training course or courses prescribed for law enforcement officers under the Kansas law enforcement training act, K.S.A. 74-5601 et seq. The commissioner may adopt rules and regulations prescribing other training required for such special investigators.

(c) Each special investigator designated by the commissioner under subsection (b), shall: (1) Be vested with law enforcement authority; (2) be in the classified service under the Kansas civil service act; and (3) be subject to the requirements of the Kansas law enforcement training act, K.S.A. 74-5601 et seq.

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

Respectfully submitted,



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