

Approved: 12-15-2010
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 1, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Melany Barnes- excused
Representative Charlie Roth- 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:

Robert Stephan, Chair, Governor's Domestic Violence Fatality Review Board
Judge Harold Flaigle,
Judge Sarah Welch,
Douglas J. Miles, Chief Deputy District Attorney, Retired
Steve Howe, Johnson County District Attorney
Jennie Marsh, Director, Crime Victim Services, Kansas Department of Corrections
Ed Klump, , KS Assoc. of Chiefs of Police, Kansas Sheriffs' Assoc. & KS Peace Officers' Assoc.
Travis Harrod, Assistant Kansas Attorney General,
Kari Ann Rinker, Kansas National Organization for Women
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence
Curt & Christie Brungardt, Private Citizens
Mark Gleeson, Director of Trial Court Programs, Office of Judicial Administration

Others attending:

See attached list.

Robert Stephan, Chair, Governor's Domestic Violence Fatality Review Board
Judge Harold Flaigle,
Judge Sarah Welch,
Douglas J. Miles, Chief Deputy District Attorney, Retired
Steve Howe, Johnson County District Attorney
Jennie Marsh, Director, Crime Victim Services, Kansas Department of Corrections
Ed Klump, KS Assoc. of Chiefs of Police, Kansas Sheriffs' Assoc. & KS Peace Officers' Assoc.

Travis Harrod, Assistant Kansas Attorney General,
Kari Ann Rinker, Kansas National Organization for Women
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence
Curt & Christie Brungardt, Private Citizens
Mark Gleeson, Director of Trial Court Programs, Office of Judicial Administration

HB 2517 -Domestic violence offenses; special sentencing provision.

Chairperson Colloton called the meeting to order and called the Committee's attention to the *Performance Audit Report Department of Corrections; Reviewing Allegations of Staff Misconduct*. (Copy can be found in the office of the Legislative Division of Post Audit State of Kansas) and *The National Institute of Corrections Technical Assistance Report on Technical Assistance No. 10B4606, Kansas Department of Corrections, Topeka Correctional Facility, Topeka, Kansas. (Attachment 1)*

Chairperson Colloton then opened the floor for bill introductions. She requested a drug cleanup bill.

Representative Bethell moved the request for a drug cleanup Committee bill. Representative Brookens seconded. Motion carried.



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

Chairperson Colloton requested another bill to change the work release while incarcerated statute.

Representative Bethell moved the request for a Committee bill to change the work release while incarcerated statute. Representative Brookens seconded. Motion carried.

Chairperson Colloton request another bill regarding good time credits while in jail.

Representative Bethel moved the request for a Committee bill regarding good time credits while in jail. Representative Brookens seconded. Motion carried.

Chairperson Colloton made her last request for a Committee bill that would require staff in the Kansas prisons who are convicted of sex abuse to register as sex offenders and the bill would also enhance the penalty for trafficking in contraband.

Representative Bethel moved a bill that would require staff in the Kansas prisons who are convicted of sex abuse to register as sex offenders and enhance the penalty against staff for trafficking in contraband. Representative Patton seconded. Motion carried.

Chairperson Colloton introduced Dave Hutchins, KBI, to request two bills. Mr. Hutchins requested a bill to amend KSA 28-176, lab fees.

Representative Brookens moved the request of the KBI for a bill to amend KSA 28-176, lab fees. Representative Bethell seconded. Motion carried.

Mr. Hutchens made his last request for a bill to amend KSA 75-724 regarding the \$100.00 collected for the DNA database.

Representative Bethel moved the request of the KBI to amend KSA 74-724 regarding the fee collected for the DNA database. Representative Spalding seconded. Motion carried.

Chairperson Colloton recognized Representative Spalding. **Representative Spalding made a motion to request a Committee bill regarding offender registration. Representative Bethell seconded. Motion carried.**

HB 2517 - H Sub for H 2517 by Committee on Corrections and Juvenile Justice - Domestic violence offenses; special sentencing provision

HB 2335 - Repealing the crime of domestic battery; battery includes domestic battery; domestic violence designation on criminal offenses; pleas

Chairperson Colloton called the Committee's attention to **HB 2517** stating that it contains the recommendations of the Judicial Council on **HB 2335** which is the bill the Committee voted to send to the Judicial Council to review and make recommendations from the 2009 session. The Judicial Council Criminal Law Advisory Committee has issued their report. (**Attachment 2**) Chairperson Colloton called on the Jason Thompson, Office of the Revisor of Statutes, to explain the report and the bill.

Mr. Thompson highlighted on the recommendations of the Judicial Council and how they are in the bill while addressing the questions of the Committee.

Upon the conclusion of Mr. Thompson review, Chairperson Colloton opened the hearing on **HB 2517** and introduced Robert Stephan, Chair, Governor's Domestic Violence Fatality Review Board, to give his testimony as a proponent of the bill. Mr. Stephan presented written copy of his testimony. (**Attachment 3**) He stated the Fatality Review Board reviews all deaths of adult domestic violence involving spouse and partner homicides in Kansas and recommends improvements to prevent further fatalities. The Fatality Review board believes that public policy should focus on all criminal violations related to domestic violence and not just battery. They feel this bill is a step in the right direction creating a better approach for addressing

CONTINUATION SHEET

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

domestic violence crimes occurring in intimate relationships. In closing he stated the Fatality Review Board would appreciate the Committee support of the bill with the amendments that Judge Harold Flaigle will be presenting.

A question and answer session followed.

Chairperson Colloton introduced Judge Harold Flaigle, Governor's Domestic Violence Fatality Review Board, to give his testimony as a proponent of **HB 2517**. Judge Flaigle presented written copy of his testimony. (Attachment 4) He stated the Fatality Review Board believes the best process for tracking all criminal cases involving domestic violence is to require each case that is filed to be labeled with a DV designation instead of CR which stands for Criminal. He offered amendments. He called the Committee's attention to the "written only" testimony of Sara Welch, District Judge, Division 19. (Attachment 5) and the "written only" proponent testimony of Douglas J. Miles, Chief Deputy District Attorney, Retired. (Attachment 6) In closing, he asked for the Committee's favorable consideration of the bill and the amendments they are offering.

Chairperson Colloton introduced Steve Howe, Johnson County District Attorney to give his testimony as a proponent of the bill. Mr. Howe did not present written copy of his testimony. Mr. Howe outlined the program on domestic tag they used in Johnson County which has been in place for quite some time. He stated the system worked very well and has not caused any problems, in fact, it has made things more efficient for the court and prosecutor in allowing them to be consistent on how they treat the cases. In closing, he invited everyone to Johnson County to see how the system works and began addressing earlier questions of the Committee.

A discussion followed.

Chairperson Colloton introduced Jennie Marsh, Director of Crime Victim Services, Kansas Department of Corrections to give her testimony as a proponent of **HB 2517**. Ms. Marsh presented written copy of her testimony. (Attachment 7) She stated the Kansas Department of Corrections supports this bill for the following:

1. The designation of the criminal case as involving domestic violence irrespective of how that behavior has manifested itself vis a vis the crime of conviction.
2. A requirement that a defendant engaged in domestic violence undergo a domestic violence assessment.

Ms. Marsh offered an amendment that would direct the court to provide the domestic violence offender assessment to any entity responsible for supervising the defendant. A copy of the amendment is attached to her testimony.

A short question and answer session followed.

Chairperson Colloton introduced Travis Harrod, Assistant Attorney General, to give his testimony as a proponent of the bill. Mr. Harrod presented written copy of his testimony. (Attachment 8) He stated the bill would establish a good framework for comprehensive domestic violence prosecution reforms. The bill would require a "DV Tag" to be placed on an offender's record when sentenced for a domestic violence offense. In closing, he stated the Attorney General's Office strongly supported the bill.

Questions and answers followed with Chairperson Colloton requesting the Attorney General's office to bring back amendments within a week regarding the rules and regs on the bill.

Chairperson Colloton introduced Mr. Brungardt and his wife Christie Brungardt to give their testimonies as proponents of **HB 2517**. (Attachment 9) Mr. & Mrs. Brungardt told of the tragic story of their daughter's death by her ex-boyfriend as in an act of domestic violence. They support the "Domestic Violence Tag" Bill (**HB 2517**) and urged the Committee to pass it out favorably so the state can send the message that domestic violence in the state of Kansas is not acceptable.

Upon the conclusion of the Brungardt's testimony, Chairperson Colloton continued the hearing on HB 2517 until tomorrow, February 2nd. She adjourned the meeting at 3:10 p.m. with the next scheduled meeting on February 2, 2010 at 1:30 p.m. in room 144-S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 2-1-10

NAME	REPRESENTING
Julienne Markin	Gov office - FRB
Janet Green	KCSOV
Sandy Barnett	KCSOV
Curt Brungardt	Jane's Campaign
Christie Brungardt	Jane's Campaign
Steve Howe	Johnson County D.A.
Dorothy Stucky Halley	AG Office
Nancy Tellez	AG Office
Liza N Webb	Office of Judicial Admin
Mark Gleeson	" "
Melissa DeDarden	KCSOV
DAVID HUTCHINGS	KBI
Julie Velez	Jane's Campaign Photography
Donald E. Dwyer	DISTRICT JUDGE
Bob Stephan	FRB

U.S. Department of Justice
National Institute of Corrections



THE NATIONAL INSTITUTE OF CORRECTIONS TECHNICAL ASSISTANCE REPORT ON

Technical Assistance No. 10B4606

Kansas Department of Corrections

Topeka Correctional Facility

Topeka, Kansas

December 7 - 9, 2009

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

DISCLAIMER

This technical assistance activity was funded by the Administration Division of the National Institute of Corrections. The Institute is a Federal agency established to provide assistance to strengthen state and local correctional agencies by creating more effective, humane, safe and just correctional services.

The resource persons who provided the onsite technical assistance did so through a cooperative agreement, at the request of the Kansas Office of the Governor, and through the coordination of the National Institute of Corrections. The direct onsite assistance and the subsequent report are intended to assist the agency in addressing issues outlined in the original request to enhance the effectiveness of the agency.

The contents of this document reflect the views of the resource persons associated with this technical assistance activity. The contents do not necessarily reflect the official views or policies of the National Institute of Corrections.

Executive Summary

Kansas Governor Mark Parkinson requested assistance from the National Institute of Corrections (NIC) to review the policies and training procedures related to staff sexual misconduct and cross gender supervision in the Kansas Department of Corrections, and in particular at the Topeka Correctional Facility. This Executive Summary provides an overview of the Departmental strengths, findings from the onsite work and document review, as well as a summary of the recommendations made by the consultant team to assist the Department in continuing to improve the sexual safety of inmates at the Topeka Correctional Facility.

Strengths

The consultants commend the Kansas Department of Corrections for their commitment to addressing the issue of sexual abuse, and would like to acknowledge the number of strategies that the Department has engaged in. They include: training their investigations staff in proper investigatory technique and process, changing the investigative processes and response timetables, developed an inmate orientation DVD, implementing a new PREA policy, developed training for volunteers, working with the community (Battered Women's group), implementing a sexual assault reporting hotline, institute a critical incident review process, implemented a medical protocol that includes a Sexual Assault Nurse Examiner (SANE), and are currently exploring a risk needs assessment to identify vulnerable and aggressive inmates. All of these efforts demonstrate the Department's awareness of this important issue, and their attention to continual improvement.

Findings and Recommendations

Policies and Procedures - The Kansas Department of Corrections written policies and procedures related to the prevention and detection of staff sexual abuse are generally consistent with national standards. The department leadership has progressively developed strategies to address issues of sexual abuse. Recommendations were made in the following areas regarding policies and procedures:

- Improving the notification, monitoring, and external access to Sexual Assault Hotline;
- Limiting cross gender pat searches to emergency situations, defining what circumstances constitutes an emergency, and augmenting training of staff in the proper technique for conducting such searches;
- Establishing a uniform process to ensure all inmates and staff are notified of policy changes; and
- Reviewing the 8 a.m. to 3 p.m. room restriction policy to see if changes are warranted or possible to reduce inmate idleness.

Training – The training curriculum for staff generally includes necessary components related to the prevention and detection of staff sexual misconduct. Recommendations were made in the following areas regarding training:

- Review the amount of time and delivery strategy for PREA-related training, and ensure that all staff participate in annual refresher training on the topic, including the prevention and detection of staff sexual misconduct.

- Develop a gender responsive training curriculum, potentially utilizing the National Institute of Corrections as a resource in this area to ensure most current information on research based training (including e-learning).
- Develop consistent volunteer training that minimally provides for full integration of the volunteer manual and adequate time to explore case examples related to sexual misconduct.

There has been a recent change in the leadership of the training department and, as a result, many staff are encouraged that there is a more intentional plan to develop gender responsive training materials and improve training delivery strategies.

Sexual Misconduct and Undue Familiarity - Inmate and staff discussion groups identified inconsistency in supervisory and leadership practices as barrier to reporting sexual abuse. Though most staff and inmates are generally familiar with PREA and DOC policies and procedures, an extensive review is necessary to determine (1) the application of these policies and procedures within the TCF, and (2) the willingness of staff and inmates to report inappropriate behavior. Recommendations were made in the following areas regarding sexual misconduct and undue familiarity:

- Clearly define for staff behaviors that would constitute undue familiarity, as well as those behaviors that would not.
- Consider a more extensive review of inmate perceptions and behavior regarding reporting staff sexual misconduct, as well as any barriers to reporting incidents when they occur.
- Consider a more extensive review of staff perceptions regarding reporting incidents of staff sexual misconduct.
- Review the grievance process to determine whether changes may be necessary to promote greater inmate confidence in the process, including additional means of providing assurances that there will be no retaliation for the filing of grievances.

Investigations - The investigative function within the DOC has been strengthened by recent restructuring. When made aware of staff sexual misconduct allegations, investigators have responded appropriately and have effectively used all available investigative tools such as interviews, surveillance, polygraphs, etc. Feedback in inmate and staff discussion groups indicated that there was inconsistency in the full understanding of what was a "reportable" incident, as well as a lack of confidence in the investigative process. Recommendations were made in the following areas regarding investigations:

- Ensure investigators have full access to video footage without going through administrators.
- Review proper installation of cameras with the retention schedule for camera videotapes ensured for the full allotted capacity of the equipment.
- Enhance the education of both staff and inmates about the investigative process and its purpose in protecting both staff and inmates.
- Establish guidelines for timely investigations and develop a process for monitoring those timelines.

- Develop a standard process for notifying staff and inmates about ongoing and concluded investigations.
- Ensure that all investigations are carried through to a final disposition even if a staff member resigns their position during the investigation.
- Increase confidence in investigations (see reporting recommendations).
- Build upon the newly-established process for reviewing sexual abuse incidents at both the facility and departmental level, and continue to emphasize the importance of the strategy.

Inmate Education - Inmate orientation materials, brochure, and video, adequately cover issues of sexual abuse and reporting of incidents. Not all long-term inmates have had the opportunity to receive PREA orientation training. A recommendation was made in the following area regarding inmate education about PREA and sexual abuse:

- Develop a single policy clearly delineating requirements for inmate orientation and education, as well as defining the entity responsible for providing such information.

Monitoring Systems - TCF has installed a number of new cameras within the facility, yet there are a number of areas that remain unmonitored, either by direct staff supervision and/or camera. Recommendations were made in the following areas regarding monitoring systems:

- Establish a set schedule for maintenance of the camera system to ensure that cameras are not out of service.
- Review the construction and placement of officer stations to ensure optimal viewing of inmate activity.
- Secure resources to install additional cameras in isolated areas where inmate movement and activity is frequent.
- Review all enclosed areas to determine whether blinds or other obstructions can be removed to facilitate effective monitoring.
- Conduct a comprehensive review of key control within the facility.

Staffing Plans – Current custody staffing levels are insufficient to effectively monitor activities at TCF – even considering the use of cameras throughout the facility. This impairs the safety of both staff and inmates, including sexual safety. Recommendations were made in the following areas regarding staffing plans:

- Review their current staffing plan and redistribute staff to increase inmate supervision.
- Review all post orders and determine whether they are reasonable and feasible for staff to adhere to.
- Undertake a comprehensive staffing study to determine sufficient staffing levels at TCF.
- Endeavor to fill all the positions that are currently approved but remain vacant or unfunded.

The consultant team recommends the Department and facility leadership prioritize these recommendations and explore additional support from the National Institute of Corrections to assist them in the prevention, detection, and response to instances of sexual abuse.

Consultant Team

The National Institute of Corrections team was comprised of the following four criminal justice consultants: Anadora (Andie) Moss, Susan Poole, David Marcial, and Jeff Shorba.

Background

Kansas Governor Mark Parkinson requested assistance from the National Institute of Corrections (NIC) to review the policies and training procedures related to staff sexual misconduct and cross gender supervision in the Kansas Department of Corrections, and in particular at the Topeka Correctional Facility (TCF). The letter of request specifically asked for a review of the following:

1. Effectiveness of departmental policies and procedures;
2. Consistency with generally accepted national practices of department training on sexual misconduct and undue familiarity;
3. Staff and inmate knowledge and understanding regarding sexual misconduct and undue familiarity;
4. Facility responses to specific allegations of staff sexual misconduct, particularly focusing on recent incidents at the Topeka Correctional Facility. Were the events, investigations and personnel actions handled in accordance with department policies and procedures?
5. Systems in place for inmate education regarding sexual abuse and reporting of incidents;
6. Adequacy of monitoring systems (camera, contraband controls, technology); and
7. Staffing plans for adequacy of coverage and supervision.

NIC contracted four nationally-recognized criminal justice consultants to conduct a review of the items requested by Governor Parkinson. The consultant team spent three days in Topeka meeting with Kansas Department of Corrections (DOC) and Topeka Correctional Facility (TCF) officials, holding discussion groups with staff and inmates and reviewing facility operations during all three shifts. As part of the review, the consultants analyzed over one hundred DOC policies, procedures, investigations, training materials, reports, statutes, etc. Some of the document review occurred on-site at TCF, with the majority of the review taking place in advance of the site work. This report organized around the issues raised in Governor Parkinson's request, containing the following seven areas of review:

1. DOC Policies and Procedures
2. DOC Staff Training
3. Staff and Inmate Knowledge of Sexual Misconduct and Undue Familiarity

4. Facility Response to Allegations
5. Inmate Education
6. Monitoring Systems
7. Staffing Plans

1. DOC Policies and Procedures

Consultants reviewed DOC policies related to the detection and prevention of staff sexual misconduct. A broad range of policies were analyzed in the review, with policy issues that are directly related to the request of the technical assistance discussed below.

Overall Finding: *The Kansas Department of Corrections written policies and procedures related to the prevention and detection of staff sexual abuse are generally consistent with national standards. The department leadership has progressively developed strategies to address issues of sexual abuse.*

The DOC has a broad policy covering the prevention of sexual assault – *Internal Management Policy and Procedure (IMPP) 10-103: Sexual Assault Prevention and Intervention Program*. This policy covers items that should be included in a policy of this type – reference to state statutes, prevention and screening of inmates, staff training and inmate education, reporting incidents and response, and tracking incidents and reporting. The policy reflects mandated components of the recently developed *National Prison Rape Elimination Act (PREA) Commission Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Adult Prisons and Jails (PREA Commission Draft Standards)*. The policy could be made to be clearer with a definition of the word “staff.” The policy should specifically state that the policy covers all employees, volunteers, and contractors when the word ‘staff’ is used. It is important to ensure that all staff are included and understand the Department’s sexual abuse policy.

The DOC has established a departmental PREA coordinator who recently attended the first national PREA Coordinator’s Meeting in order to stay current on national practice. Also, the DOC has assigned facility level PREA coordinators. This represents best practice and seems to have resulted in a coordinated focus on systemic change.

The DOC has a number of policies addressing the investigations process. *IMPP 22-103: Enforcement, Apprehension and Investigation Division: Investigation Procedures* provides general guidance on the initiation and completion of investigations. The policy provides for essential items such as initiation of the investigation, assignment of investigators, use of surveillance and polygraphs, use of *Miranda* and *Garrity* warnings and completion of investigative reports. In the last year, the DOC has centralized oversight of its investigative functions under a Director of the Enforcement, Apprehension and Investigation (EAI) Division. This new oversight has helped to provide a more consistent approach to investigations across the DOC and is consistent with the direction many state corrections agencies are taking.

The DOC has established a Central Office Sexual Assault Line. The line is accessible from any inmate phone and there are posters present around the facility advertising how to report sexual abuse via the sexual assault line. Individuals calling the sexual assault line can leave a message on an answering machine that is monitored by central office staff in the

EAI Division. Consultants were concerned, however, with not only the placement of posters advertising the sexual assault line but also the content of the posters.

The posters do not clearly indicate that the line is confidential and a message can be left anonymously. This was confirmed in discussion groups with inmates during the assessment period. When the consultants accessed the hotline from one of the housing units, the voicemail instructed the inmate caller to leave identifying information. Such a practice may deter inmates from reporting incidents of sexual abuse, and may cause them to feel re-victimized by the conflicting messages. Consideration should be given to implementing a sexual assault hotline that provides for anonymous reporting with opportunities to provide more identifying information if desired.

There was also some indication that information left by a caller on the sexual assault line could be accessed directly by facility staff. This could compromise the integrity of the line since individuals may only feel comfortable reporting to an entity outside the facility, especially if an incident involves high-level facility staff. The DOC should ensure that calls are accessed and monitored only by EAI central office staff. This practice should also be clearly communicated to the inmate population. Consistent with the draft PREA Commission standards the DOC may also want to consider some way for individuals to report outside the DOC altogether or at least some way to allow non-inmates to report confidentially and anonymously.

Sexual Assault Hotline Recommendations: (1) *The DOC should consider changing its posters and other information advertising the sexual assault line. It is not clear from the postings that callers may leave information anonymously and that callers using an inmate telephone will not have their identity recorded in any way.* (2) *Notice of the sexual assault line should also be placed directly on the inmate phones so it is easily visible to inmates.* (3) *The DOC should also ensure that only designated central office EAI Division staff are able to retrieve messages from the sexual assault line.* (4) *The DOC should consider establishing a way for non-inmates (staff, visitors, family members, etc.) to report to a sexual assault line. These individuals may also be good sources of confidential information.*

DOC policy currently allows for cross gender pat searches of inmates. The majority of states have eliminated this practice in facilities housing women, except in cases of emergency. Limiting cross gender searches to cases of emergency is also consistent with the PREA Commission Draft Standards and existing case law. In those jurisdictions that allow cross gender pat searches, it is imperative that staff receive training on the proper method for conducting a pat search and that supervisors regularly observe staff conducting these searches.

Though the DOC is in the process of updating its training video on conducting pat searches, the current one is outdated. The inmates in the discussion groups were quite concerned with the use of cross gender pat searches and the methods currently employed by staff to conduct them. The DOC has recently implemented a rule that all pat searches must be conducted in front of cameras so that they can be reviewed if issues or complaints arise. While this is a positive step, many of the cameras used for monitoring are quite far from the locations where the inmates are undergoing pat searches (see Exhibits A and B).

Exhibit A – I Building “X” Indicating Where Inmates are to Stand in the Corridor for Routine Pat Searches

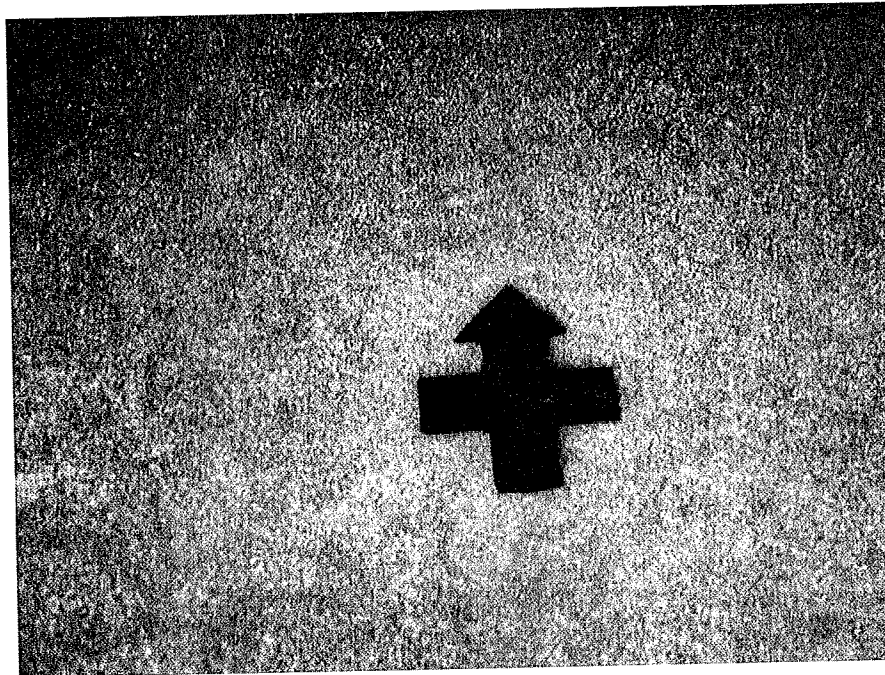
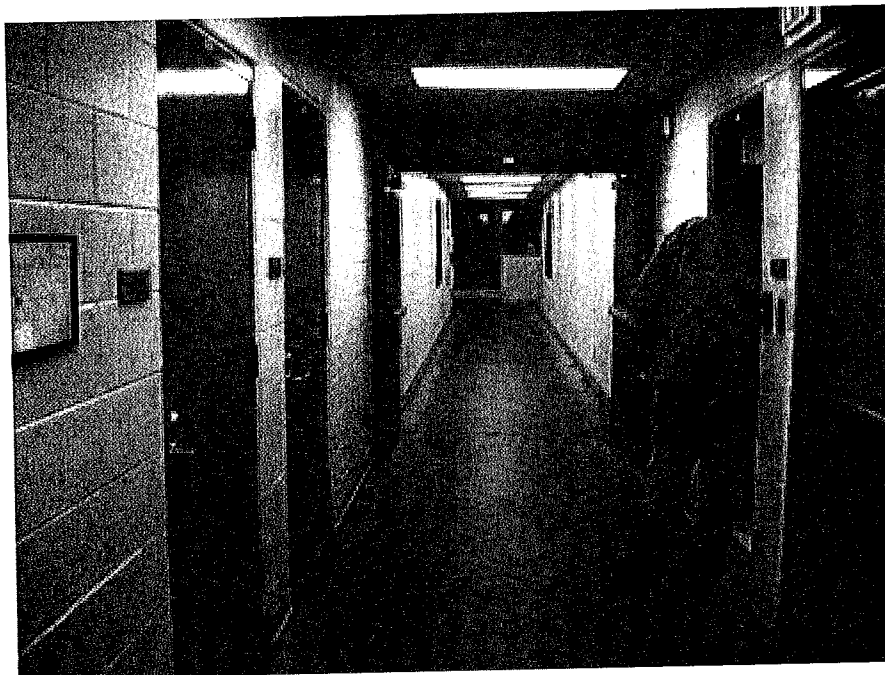


Exhibit B – I Building Corridor Where Pat Searches are Monitored at the Opposite End of Hallway (Consultant Standing on Red 'X' for Photo)



Pat Search Recommendation: *The DOC should revise its pat search policy to limit cross gender pat searches only to emergency situations – and define what circumstances would constitute emergency situations. This would be consistent with current operational practice in most women’s facilities. If these limitations are not imposed, at a minimum, the DOC should enhance its training of staff to ensure that proper techniques are used when conducting pat searches.*

The DOC maintains policies on its public website: www.doc.ks.gov. This helps family members, visitors, and staff obtain access to policies. Inmates report they have access to policies through the library but they are often unaware that a policy has been changed or updated. Staff also reported difficulty in knowing about policy changes. This results in inconsistent practices in facility operations.

Policy Recommendation: *The DOC should establish a uniform process to ensure all inmates and staff are notified of policy changes.*

The TCF has established a policy that all inmates who remain in the unit and are not assigned work must remain in their rooms from 8 a.m. to 3 p.m. This mix of idleness and lack of direct supervision adds to the vulnerability of sexual safety of inmates. This policy was instituted in an effort to encourage inmates to participate in work assignments by restricting their mobility. At the time of the assessment, it was reported by many inmates and staff that there are fewer job opportunities at TCF. Inmates stated that, even if they choose to work, employment opportunities are not available. Inmates have significant concerns with this policy since it appears to be a punishment even if they are willing to work. Facility staffing may limit changes to this policy since one staff member in each unit may not be able to monitor all inmates.

Room Restriction Recommendation: *TCF should review its 8 a.m. to 3 p.m. room restriction policy to see if changes are warranted or possible. The review should include an analysis of additional full and part-time work assignments that could be structured, particularly in support of facility maintenance. Inmate idleness can contribute to increased sexual vulnerability.*

2. DOC Staff Training

Consultants reviewed training curriculum for staff, contractors and volunteers as well as department policies related to staff training. This review was conducted both off site in advance of the assessment via materials sent to the consultant team by the DOC, and on site via materials available at central office and TCF.

Overall Finding: *Training curriculum for staff generally includes necessary components related to the prevention and detection of staff sexual misconduct. Improvements could be made in training related to best practices in working with women offenders, training provided to non-custody staff, training provided to facility volunteers and overall delivery strategies. Often staff are provided training through self-study with little guidance. There has, however, been a recent change in the leadership of the training department. Many staff are encouraged that there is a more intentional plan to develop gender responsive training materials and improve training delivery strategies.*

There is no central training academy for the Kansas Department of Corrections. Hiring is done locally at the facility, with staff receiving training and orientation directly at the facility at which they are hired. The number of training hours is established at the facility and varies according to job classification. All staff receives one week of orientation. As new training mandates occur, it is left to the discretion of the local training division how to integrate new curriculum into the allocated number of training hours. This practice results in inconsistent delivery and integration of training outcomes.

Annual training is conducted at the facility and includes a session related to the prevention of sexual abuse. Non-custody staff are not mandated to have this training. This is a limitation of the current training plan. It can substantially limit the staff's understanding of their roles and their consistency in reporting and responding to incidents of sexual violence.

Annual Training Recommendations: Annual training at TCF and other facilities should be reviewed to ensure there is appropriate focus on prevention and detection of staff sexual misconduct for all staff, including custody, non-custody, volunteer, and contractors (see additional recommendation specific to volunteer staff on page 11). The DOC should also review the following: (1) amount of time dedicated to PREA issues during annual training, (2) the delivery strategy and (3) the use of an evaluation tool for feedback from participants. This foundational material is necessary for a consistent response across all groups working with inmates to addressing the prevention, detection, and reporting of sexual abuse.

In their review, consultants learned that several representatives of the TCF management team have attended NIC training on both *Agency Planning and Operational Practices in Women's Prisons*. These programs provide participants with the opportunity to develop action plans during the training for implementation at their facilities or organizations. One of the prime focus areas of these courses is the need to ensure staff working in female facilities receives training on gender responsive principles. Information obtained from the staff discussion groups revealed little training for TCF staff on working with female inmates representing current national practice. Additionally, the Department should consider accessing the National Institute of Corrections' online e-learning training, *Your Role: Responding to Sexual Abuse*, which is available at no charge to the field.

Gender Responsive Training Recommendation: The DOC should develop a curriculum to use in training all TCF staff on working with female inmates. NIC would be a valuable resource to request assistance in the development and delivery of gender responsive training for staff. This foundational material is integral to the development of communication skills in working with a female offender population and in developing a basic understanding of the day-to-day dynamics that emerge between staff and inmates as well as between inmates.

Under DOC policy, volunteers receive an orientation program as determined by their appointing authority or designee. All volunteers given clearance to work in a facility are provided with a Volunteer Manual, which provides an overview of the department, its mission, volunteer rules of conduct, undue familiarity and its consequences, and scenarios for volunteers to review. Though there are general guidelines in DOC policy providing topics, which should be addressed in volunteer orientation, there is considerable discretion left to each facility in the delivery of the orientation and the quality control processes used. Broad discretion of this type among correctional facilities results in considerable variation across the state.

Volunteer Training Recommendation: *The DOC should develop consistent volunteer training. The training should, at a minimum, (1) provide for full implementation of the volunteer manual and (2) provide for adequate time to explore case examples related to sexual misconduct.*

3. Staff and Inmate Knowledge of Sexual Misconduct and Undue Familiarity

Consultants held discussion groups with both staff and inmates to determine their understanding of sexual misconduct and undue familiarity.

Overall Finding: *Though most staff and inmates are generally familiar with PREA and DOC policies and procedures, an extensive review is necessary to determine (1) the application of these policies and procedures within the TCF, and (2) the willingness of staff and inmates to report inappropriate behavior. In discussion groups, some inmates and staff believed there to be inconsistency in supervisory and leadership practices, creating a barrier to reporting sexual abuse.*

All staff, either through orientation or annual training, receives some information regarding staff sexual misconduct and undue familiarity. Most staff have a general understanding of both PREA and departmental policies related to the prevention and detection of sexual misconduct.

Staff expressed some confusion about the definition of undue familiarity, particularly with respect to their role in restricting personal contact with inmates. Some staff believe that all communication with inmates is to be limited to very brief interactions. These staff report feeling limited in their capacity to obtain information and follow up with inmates due to these restrictions. In instances where there have been allegations of staff sexual misconduct, administration and staff can sometimes overcompensate by limiting even legitimate contact with inmates.

New inmates also receive orientation about these issues in both oral and written formats. Every Thursday, a representative from the Battered Women's task force delivers a presentation on the cycle of abuse. Two inmate peers talk to the new inmates about how to handle relationships while incarcerated. The consultants did not observe these discussions, but acknowledge the Department's effort in this area.

Further, an orientation DVD is available to inmates, with a statement made by the Secretary that emphasizes the Department's zero tolerance policy. While this creates a strong statement from the agency leadership, the DVD focuses primarily on inmate-on-inmate abuse, and is more identified with male sexual violence. Augmenting the video with more gender-responsive case examples and discussion is recommended.

Undue Familiarity Recommendation: *The DOC and TCF Administration should clearly define for staff behaviors that would constitute undue familiarity, as well as those behaviors that would not. Orientation materials should be reviewed for gender appropriateness.*

Inmates receive a general orientation to PREA at intake as well as various written materials. Inmates in focus groups had a general understanding of PREA, though they felt somewhat reluctant to report staff misconduct. Some inmates feared either retaliation or disciplinary

violations if they were to report staff misconduct. Some inmates also did not appear to understand what happens when a complaint is made via the sexual assault line.

Inmate Reporting Recommendation: *The DOC should consider a more extensive review of inmate perceptions and behavior regarding reporting staff sexual misconduct, as well as any barriers to reporting incidents when they occur.*

Staff in discussion groups indicate familiarity with PREA and believe that if staff becomes aware of misconduct they will report it. The DOC should be acknowledged for implementing a 120-day review process, and should consider evaluating its effectiveness as some staff members reported that the women were reluctant to use it for reporting. It was not clear if staff who were found to have known about misconduct and did not report it were subjected to any type of discipline. Despite a general sense by staff that misconduct would be reported, there were some discrepancies in what staff felt was reportable behavior. Some staff were concerned with false reporting by inmates and many staff felt inmates were not being disciplined appropriately for false reporting.

Staff Reporting Recommendation: *The DOC should consider a more extensive review of staff perceptions regarding reporting incidents of staff sexual misconduct. Some correctional systems have found value in distributing surveys to both inmates and staff to determine perceptions of sexual safety. These surveys, in turn, provide baseline information that can be utilized to gain a deeper understanding of the reporting culture at an institution.*

Inmates discussed strong mistrust of the grievance process. They do not feel that grievances are answered, and some inmates communicated their fear of retaliation from staff for filing grievances. As documented in the Inmate Rule Book (*Section 44-15-104: Reprisals Prohibited*), the DOC provides strong statements prohibiting staff from retaliating against an inmate who files a grievance against a staff member. However, consistent comments from all inmate discussion groups warrant a review of the grievance process. An effective grievance process is a critical tool for management to identify potential areas of concern related to sexual abuse. Therefore, it is important that the department actively encourage confidence in the process.

Grievance Process Recommendation: *The DOC and TCF should review its grievance process to determine whether changes may be necessary to promote greater inmate confidence in the process, including additional means of providing assurances that there will be no retaliation for the filing of grievances.*

4. Facility Response to Allegations

Consultants reviewed both past and present investigations at TCF involving allegations of staff sexual misconduct. Consultants also held extensive interviews with EAI investigators at central office and TCF to review investigative materials. Staff and inmate discussion groups were also asked about the investigative process. As mentioned earlier in this report, the DOC recently restructured its investigative operation by centralizing oversight in a Director of EAI who provides direction to investigators located at each correctional facility. Though in its early stages of implementation, the consultants believe this new organizational structure has helped to provide better oversight, greater consistency, and more accountability for investigations across the DOC.

Overall Finding: The investigative function within the DOC has been strengthened by recent restructuring. When made aware of staff sexual misconduct allegations, investigators have responded appropriately and have effectively used all available investigative tools such as interviews, surveillance, polygraphs, etc. Feedback in inmate and staff discussion groups indicated inconsistency in the full understanding of what qualifies as a "reportable" incident, as well as a lack of confidence in the investigative process.

Investigative staff at TCF has been there for a number of years and understand the facility and the investigative process. Looking at formal investigative files there is no evidence to suggest that either investigators or the administration have ignored allegations brought forward to them. In, reviewing investigative files, it was clear that a variety of techniques were used to pursue information in individual cases. Some of these techniques have been limited in recent years. For example, due to state law and collective bargaining agreement changes, polygraphs can no longer be used without the consent of an employee. Additionally, under state statute, an alleged victim of a sex crime can not be forced to submit to a polygraph examination.

The DOC did receive funding over the past few years to install additional cameras at TCF, which have been effective tools in conducting investigations. The process can be streamlined, however, to ensure that investigators have independent access to cameras and do not have to go through other administrators to review any tapes. Efforts should also be made to ensure that the full 27 – 33 day storage capacity for maintaining videotape footage from the cameras is utilized. It was reported by security staff across a number of levels within the institution that the current practice for maintaining videotape footage is approximately 15 days.

Investigative Process – Camera Recommendation: The DOC should review investigator access to cameras, proper installation and maintenance of cameras, and the retention schedule for camera videotapes for the full allotted capacity of the equipment. Many systems are implementing a minimum retention period of 30 days.

Although investigative techniques used at TCF were generally effective, the Department must ensure that both staff and inmates feel comfortable reporting information. Reporting of allegations could be enhanced by developing a greater understanding of the investigative process among both staff and inmates. This would increase the prevention, detection, and reporting of sexual abuse.

Many individuals in discussion groups indicated they are not sure how the investigative process works. Consultants were told that there is some discussion of the investigative process at both staff and inmate orientation, but it is limited.

Investigative Process – Orientation Recommendation: The DOC should enhance its efforts to educate both staff and inmates about the investigative process and its purpose in protecting both staff and inmates.

Another issue raised by staff in discussion groups was the time it takes to conduct an investigation and the notification process to staff members during an investigation or at its conclusion. When an investigation drags on it leaves both those under investigation and those making allegations in a state of uncertainty. Delays may also compromise the statements and memories of witnesses and the ability to influence behavior through prompt

and effective discipline of staff and inmates. Investigations are complex and take time to resolve, it is important to have a clear timeline established with guidelines for adhering to the timeline. The Enforcement, Apprehensions, and Investigations Division (EAI) Director should analyze compliance with these guidelines on a regular basis. This would increase confidence in the investigatory process.

Investigative Process – Timeline Recommendation: *The DOC should establish guidelines for timely investigations and develop a process for monitoring those timelines.*

In addition, a process should be developed for ensuring that those under investigation are notified on developments – when appropriate – in the investigation and are provided written results when an investigation is concluded. The DOC will have to weigh issues related to confidentiality and the need to ensure that an ongoing investigation is not compromised in doing so. However, to promote greater trust in the investigative process, the DOC needs to ensure that those under investigation are kept informed and receive a written notice of substantiated, unsubstantiated, or unfounded when the investigation is concluded. A process should be developed for both staff and inmate notifications. This recommendation is also consistent with the draft PREA Commission standards.

Investigative Process – Notice Recommendation: *The DOC should develop a standard process for notifying staff and inmates about ongoing and concluded investigations.*

Consultants discussed with investigative staff the process for continuing investigations once an individual resigns from their position. In reviewing investigative files, it is clear that some staff choose to resign when confronted with allegations. Consistent with the draft PREA Commission standards and current accepted practice, it is important that all investigations are carried through to completion even if an individual resigns in the middle of an investigation. If an allegation of staff sexual misconduct or other inappropriate behavior is substantiated through the investigatory process, it is important that information be conveyed to future employers, ensuring that such employees are not permitted to re-enter the system. The consultants learned that – in such substantiated cases – employees are required, before a resignation will be accepted, to sign a document that they will not seek employment in the future with any Kansas Department of Corrections facility. In some instances, this document will also authorize the department to notify other law enforcement agencies who seek employment references for the individual of the reason the individual's employment with the Kansas Department of Corrections ended.

To facilitate the retrieval of such information, it is recommended that all final dispositions be documented in a centralized location (see Staff Resignation Recommendation on page 14).

Investigative Process – Staff Resignation Recommendation: *The DOC should ensure that all documentation to substantiate investigations is easily retrievable, including circumstances where a staff member resigns their position during the investigation.*

The process used by consultants to review investigations required discussions with both investigative and human resources staff. Investigators were able to provide a summary of the investigative work but they were not able to provide a disposition in each case. Human resources staff with input from the TCF Warden was able to provide information on the dispositions of each case. There appeared to be little sharing of information with

investigative staff about what actually happened with respect to staff members whose cases had been closed.

Periodically reviewing investigations for patterns is crucial to identify trends in the behavior of staff and inmates, gaps in the investigative process or ways to improve the detection, reporting and response to incidents of staff sexual misconduct. The draft PREA Commission standards requires that a team of upper level facility managers conduct sexual abuse incident reviews to determine policy, training or other issues related to these incidents. The standards also require a review at the departmental level. A recent Departmental policy revision has implemented a review process. This will enable the Department to identify trends and patterns in the data and assist in their responses to sexual abuse. The consultants were further informed that the Department has recently purchased new software for building the internal capacity for tracking and analyzing investigations patterns.

Investigative Process – Sexual Abuse Incident Review Recommendation: The DOC recently established a process for reviewing sexual abuse incidents at both the facility and departmental level, and should continue to emphasize the importance of the strategy. The review process should include all investigations related to sexual abuse and should be monitored by senior staff.

5. Inmate Education

Overall Finding: Inmate orientation materials, brochure, and video, adequately cover issues of sexual abuse and reporting of incidents. Not all long-term inmates have had the opportunity to receive PREA orientation training addressing the prevention and reporting of sexual abuse.

Inmates are educated about PREA and reporting of sexual abuse at facility inmate orientation. It appeared from discussion with inmates and a review of orientation materials that inmates who arrived at the facility subsequent to the passage of PREA have viewed a PREA video and also received a brochure entitled "Offender's Guide to Sexual Assault Prevention." TCF staff told consultants that this brochure was recently updated and handed out to all inmates within the last month. Not all long-term inmates have had the opportunity to receive PREA orientation training. The department has identified these inmates and is currently developing an action plan to address this need. This is critical in encouraging a reporting environment.

Consultants reviewed the inmate brochure and it appears adequate to address issues of inmate-on-inmate sexual abuse as well as staff sexual misconduct. As mentioned earlier in this report, the brochure should be updated to clarify that calls to the sexual assault line are confidential and clarify whether the call can be made anonymously. The brochure may also be a vehicle for the DOC to address explanations of the investigative process.

The DOC Sexual Assault Prevention and Intervention Program provides that inmate orientation must include the following elements: (1) how inmates can protect themselves from being victims; (2) treatment options available to victims; (3) methods of reporting incidents of sexual abuse/assault; (4) information on service and programs for sexually assaultive or aggressive inmates; (5) information on monitoring, discipline and or prosecution of sexual perpetrators; and (6) the DOC brochure, Offender's Guide to Sexual

Assault Prevention. Some of these topics are covered in orientations conducted by health services or mental health staff.

There is not a single policy where all inmate orientation requirements are described in detail in their entirety. Some information is provided in writing and some information is provided by staff in face-to-face discussions with inmates. Consistent with the draft PREA Commission standards information should be provided in formats accessible to all inmates including those who may be deaf, learning disabled, visually impaired, unable to read English, etc. The DOC should also ensure that all inmates, including those who have been incarcerated for long periods of time, receive the same orientation materials.

Inmate Orientation Recommendation: *The DOC should develop a single policy clearly delineating requirements for inmate orientation and education, as well as defining the entity responsible for providing such information.*

6. Monitoring Systems

Overall Finding: *TCF has installed a number of new cameras within the facility, yet there are a number of areas that remain unmonitored, either by direct staff supervision and/or cameras. Steps should be taken to review camera maintenance and placement, key control and methods to improve monitoring from officer stations and within all isolated areas.*

The Topeka Correctional Facility has installed over 250 new cameras within the last few years as the result of federal PREA grant funding. These cameras were installed to improve staff and inmate safety due to the fact that the facility has a number of isolated areas. Staff were not able to provide consultants with a schematic that delineated the placement of all cameras.

Due to insufficient staffing, the majority of the cameras are not simultaneously monitored. The camera system is set up to record activity; however, as mentioned earlier in this report this information is not currently archived for a sufficient time to aide in the investigative process. Maintenance of the cameras is done only when (1) a technician is in an area working on another project and checks the camera or (2) when a specific work order is submitted. There is no set maintenance schedule.

Use of the monitoring equipment was discussed in both staff and inmate discussion groups. Both groups expressed frustration with the camera system when necessary to validate claims or allegations. Complaints were raised about the time it takes to obtain approval to view camera recordings and often it was too late or the tape had been reused. Inmates complained that they were told cameras "were not working" when they asked to have allegations verified. In general the cameras have improved safety and security in the facility. Ensuring that cameras are in working order would enhance monitoring system.

Maintenance Recommendation: *TCF should establish a set schedule for maintenance of the camera system to ensure that cameras are not out of service and impacting the prevention, detection, and response to sexual abuse and physical safety.*

Correctional officer posts are located in or immediately adjacent to inmate living areas to permit officers to monitor inmate activity. However, in several units toured by the

consultants the officer station was enclosed with solid partitions that were almost six feet high (see Exhibit C).

Exhibit C – G Housing Unit Officer's Desk

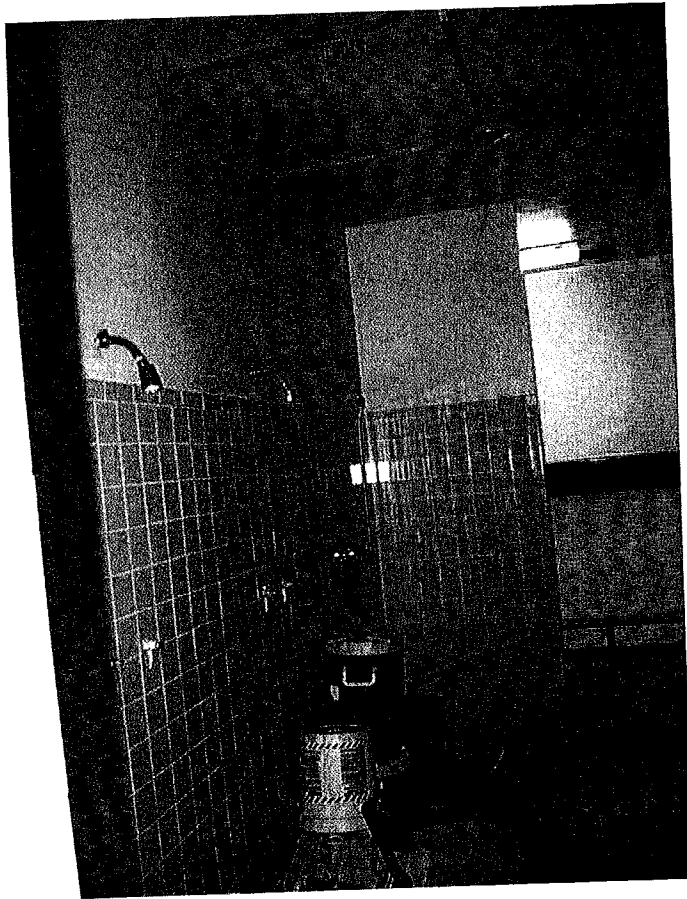


The size of these partitions made it virtually impossible for staff to see out into the living units unless they were standing. Officers were forced to rely on video cameras to see into the units and down the hallways. The video feed from multiple cameras is often viewed on a single screen with small picture tiles. This can make monitoring of behavior challenging, and can diminish the level of inmate supervision. While cameras can be a useful management tool, adequate staffing to monitor key areas and provide inmate supervision is essential. Staffing will be addressed in the next section of this report.

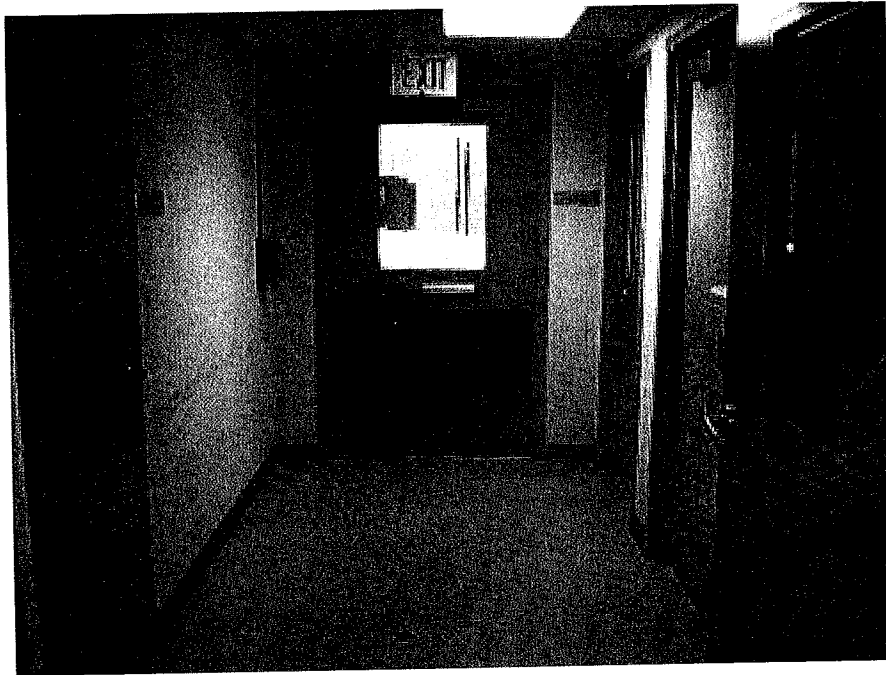
Officer Station Recommendation: TCF should review the construction and placement of officer stations to ensure optimal viewing of inmate activity.

Although a number of cameras have been installed throughout the facility there are many isolated areas with inmate movement and activity not covered by cameras (see Exhibits D, E, and F).

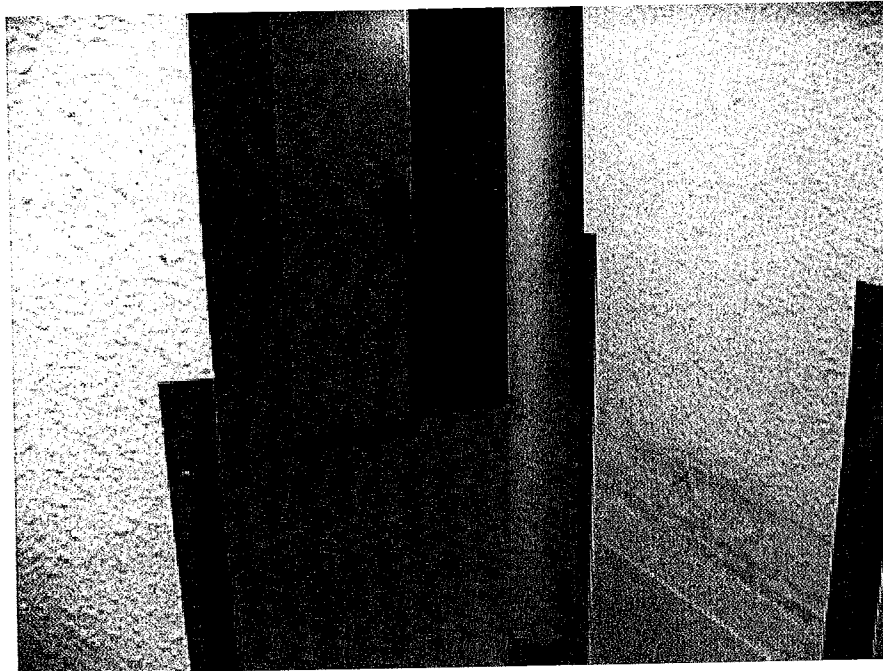
**Exhibit D – Obsolete Showers Adjacent to Recreation Room/Gymnasium
(No Camera Present)**



**Exhibit E – J Building Hallway with Elevator Entrance to the Right of the Exit Sign
(Camera Placed Directly Overhead of Photo Location)**



**Exhibit F – Hallway Elevator Entrance Blind Spot
(Camera Located Around Corner to the Right)**

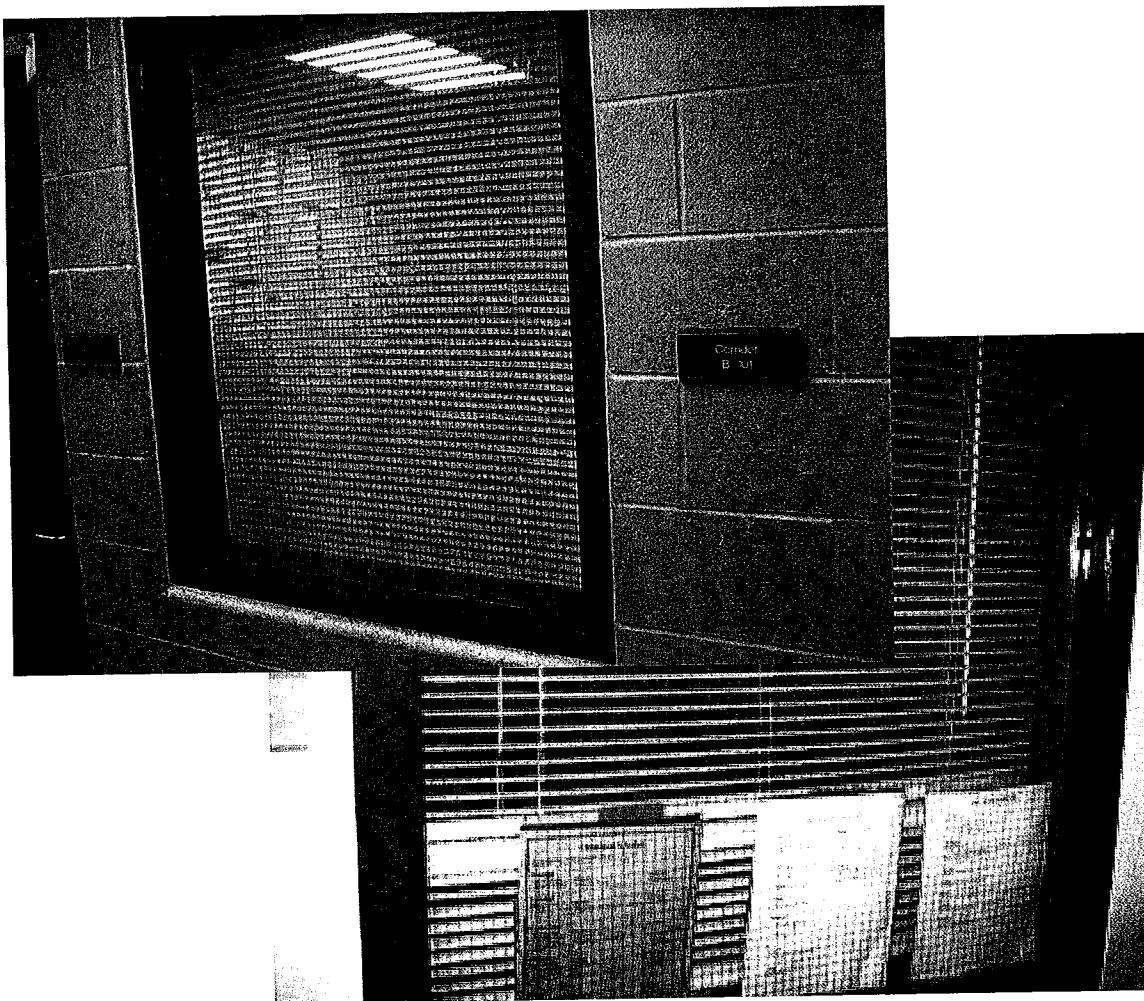


Additionally, inmates regularly move between I and J units for a variety of services including medical line, pill line, programming and library services. Much of this movement is outside the viewing area of cameras. In addition there are areas where cameras are only located in hallways and cannot capture events in offices and program rooms.

Camera Recommendation: *The DOC should secure resources to install additional cameras in isolated areas where inmate movement and activity is frequent. This recommendation should be implemented in concert with recommendations on staffing in Section 7.*

Monitoring of activity would also be facilitated by removal of blinds and other obstructions that limit viewing of activities in offices and enclosed program areas (see Exhibit G).

**Exhibit G – Office Blinds in I Building (top left)
and Program Office Blinds (bottom right)**

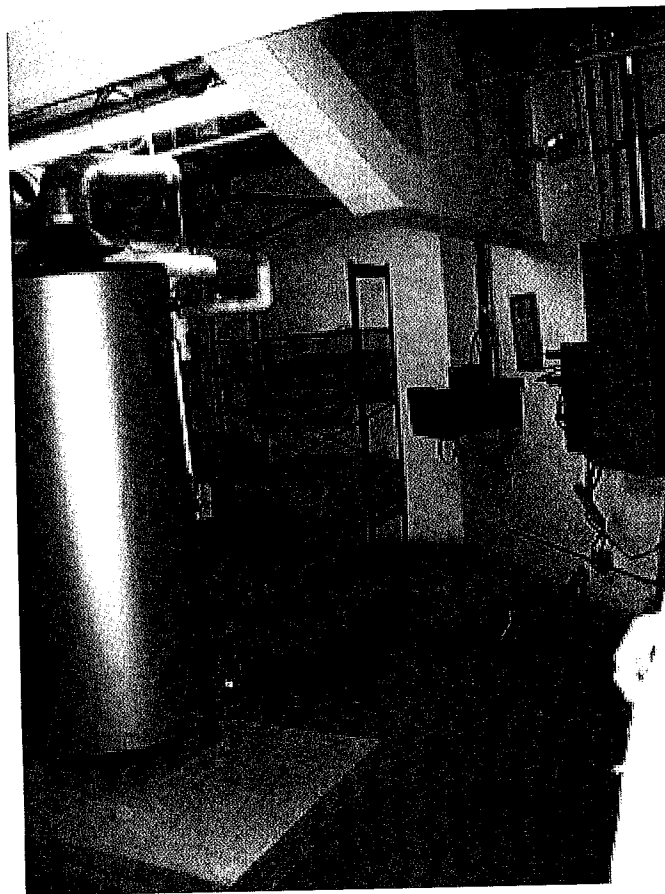


Some offices may need to have blinds for privacy when medical procedures or other similar activities are being conducted. However, in the majority of situations offices should be viewable by officers and others to reduce incidents of misconduct.

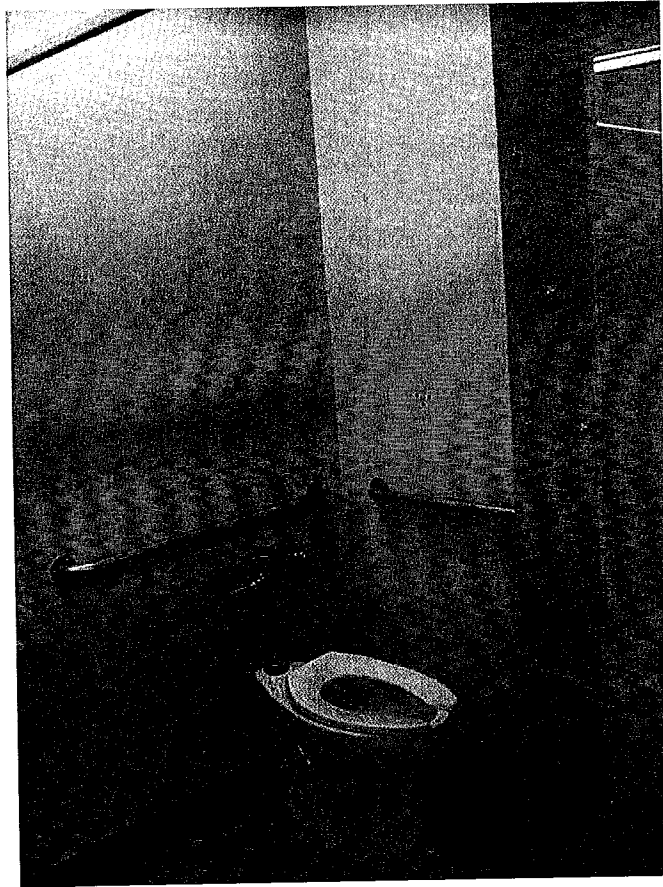
Enclosed Areas Recommendation: *TCF should review all enclosed areas to determine whether blinds or other obstructions can be removed to facilitate effective monitoring of these areas.*

The facility also has a number of closets, mechanical rooms and other enclosed spaces that could be used for inappropriate activity (see Exhibits H and I).

Exhibit H – Mechanical Area



**Exhibit I – Obsolete Bathroom Adjacent to Recreation Room/Gymnasium
(No Camera Installations Permitted)**



Many of these areas are locked but it appears there may be gaps in key control process within the facility. Consultants were told that there are approximately six “grand master” key sets that are issued as take home keys to the Warden, various management staff and the electronic technician. These key sets open approximately 80% of the doors within the facility, but will not open any gates. In addition there are keys issued to unit staff that may also open offices, supply rooms, etc. Consultants were not able to conduct a full review of key control but we recommend TCF conduct such a review. Access to keys should be limited to necessary work related activity and should be logged in a manner which ensures accountability for keys and records who has access to specific areas of the facility at any given time.

Key Control Recommendation: TCF should conduct a comprehensive review of key control within the facility.

7. Staffing Plans

According to staff rosters for the week the consultants were at TCF, the facility had 140 custody staff with 100 of those staff providing direct custodial supervision.

Preliminary review of staffing and the layout of the facility indicate that it would be very difficult to effectively monitor inmates with the current level of direct supervision staff. For example, the I housing unit has four housing pods and one central control center. The general population pod houses 80 inmates and has only one officer assigned. One officer is also assigned to the segregation pod and to the control center. Certain officers are specially trained to work in the mental health pod. However, there are no trained relief officers for these posts so when the trained officers are off they are one officer short in this pod.

When a facility is short-staffed, as TCF appears to be, custody staff cannot adhere to and complete the mandated tasks as outlined in the post orders. For example, the post orders for the I housing unit mandate that every inmate returning to the pods on a pass are to be pat searched. With only one officer present in the unit, it is not possible for her or him to execute this function. Similarly, on days that the mental health pod officers are off, the segregation officer is left to manage and supervise three pods that are comprised of new Reception and Diagnostic (R&D) inmates along with inmates in the segregation and mental health units. As thirty-minute checks and the required fifteen-minute watches required for inmates who may pose a danger to themselves, that one officer is often times walking around constantly from one pod to another and not able to execute the remainder of his or her duties as prescribed under the post orders. Some of the inmates in these units are also required to be fed directly in their cells – which is another task that the single officer is expected to do.

In addition the staffing pattern in the J housing unit was set up for a system where the vast majority of inmates were absent from the unit each day for work. This is no longer the case. Another concern with many facility posts is that there is little or no direct contact with other staff members while an officer is on duty. The absence of support or contact with other staff may contribute to a staff member's vulnerability with the inmate population.

Overall Finding: Current custody staffing levels are insufficient to effectively monitor activities at TCF – even considering the use of cameras. This impairs the safety of both staff and inmates, including sexual safety.

Staffing Recommendations: The DOC should: (1) review their current staffing plan and redistribute staff to increase inmate supervision, (2) review all post orders and determine whether they are reasonable and feasible for staff to adhere to, (3) undertake a comprehensive staffing study to determine sufficient staffing levels at TCF, and (4) endeavor to fill all the positions that are currently approved but remain vacant or unfunded. The National Institute of Corrections Prisons Division could be contacted regarding potential assistance for a full and comprehensive gender responsive staffing analysis.

Conclusion

The consultants would first like to convey their appreciation to the Secretary and Deputy Secretary of Corrections, the Topeka Correctional Facility Warden, and staff at all levels of the organization for their cooperation with this review. The consultants were provided unencumbered access to all areas of the facility and conducted interviews with any staff or inmates requested. All documents requested by consultants were provided in an expedited manner. All of these efforts enabled the consultants from the National Institute of Corrections to meet the objectives of this review and gain valuable insight into the policies and training

procedures related to staff sexual misconduct and cross- gender supervision in the Kansas Department of Corrections, and in particular at the Topeka Correctional Facility.

The consultants commend the Kansas Department of Corrections for their commitment to addressing the issue of sexual abuse, and would like to acknowledge the number of strategies that the Department has engaged in. They include: training their investigations staff in proper investigatory technique and process, changing the investigative processes and response timetables, developed an inmate orientation DVD, implementing a new PREA policy, developed training for volunteers, working with the community (Battered Women's group), implementing a sexual assault reporting hotline, institute a critical incident review process, implemented a medical protocol that includes a Sexual Assault Nurse Examiner (SANE), and are currently exploring a risk needs assessment to identify vulnerable and aggressive inmates. All of these efforts demonstrate the Department's awareness of this important issue, and their attention to continual improvement.

Over the course of the review, the consultants identified a number of findings related to the prevention, detection, and response to instances of sexual abuse. We recommend the Department and facility leadership prioritize these recommendations and explore additional support from the National Institute of Corrections to assist with:

- a full and comprehensive gender responsive staffing analysis;
- an extensive review of both staff and inmate perceptions and behaviors related to reporting staff sexual misconduct, as well as any barriers to reporting incidents when they occur;
- the design and delivery of gender-responsive training; and
- accessing and implementing the online e-learning training, *Your Role: Responding to Sexual Abuse*, which is available at no charge to the field.

The consultant team hopes these recommendations enhance the Department's efforts in addressing sexual safety at the Topeka Correctional Facility. Again, on behalf of the consultant team, we appreciate the professionalism and openness of the Kansas Department of Corrections and the Topeka Correctional Facility staff throughout the review.

Report submitted by:

/s/

Anadora "Andie" Moss
Criminal Justice Consultant

AGENDA ITEM #

**REPORT OF THE JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
ON 2009 HB 2335**

~~1-877-278-868~~

(December 4, 2009)

~~Pr 535-106~~

In May, 2009, the House Committee on Corrections and Juvenile Justice requested advice and recommendations on 2009 House Bill 2335. HB 2335 contemplates placing a "domestic violence tag" on all criminal cases involving domestic violence. The study was assigned to the Criminal Law Advisory Committee.

COMMITTEE MEMBERS

1. **Stephen E. Robison, Chair**, Wichita; practicing attorney and member of the Judicial Council.
2. **James W. Clark**, Lawrence; attorney for the Health Care Stabilization Fund.
3. **Edward G. Collister**, Lawrence; practicing attorney.
4. **Representative Pat Colloton**, Leawood; Kansas State Legislator.
5. **Jim D. Garner**, Coffeyville; Secretary, Kansas Department of Labor.
6. **Patrick M. Lewis**, Olathe; practicing attorney.
7. **Hon. Marla Luckert**, Topeka; Kansas Court of Appeals.
8. **Hon. Michael Malone**, Lawrence; District Judge in the 7th Judicial District.
9. **Joel Meinecke**, Topeka; practicing attorney.
10. **Steven L. Opat**, Junction City; Geary County Attorney.
11. **Senator Tim Owens**, Overland Park; Kansas State Legislator.
12. **John M. Settle**, Larned; Pawnee County Attorney.
13. **Ann Swegle**, Wichita; Sedgwick County Deputy District Attorney.
14. **Loren L. Taylor**, Kansas City; Attorney and Police Trainer.
15. **Debra J. Wilson**, Topeka; Appellate Defender's Office.
16. **Ron Wurtz**, Topeka; Federal Public Defender's Office.

Corrections and Juvenile Justice

Date: 2-1-10

Attachment # 2

DISCUSSION

The Criminal Law Advisory Committee met in July, September, and October, 2009 and discussed 2009 Senate Bill 272 in those meetings. The committee also reviewed written testimony provided to the House Committee and included representatives from the Kansas Association of Chiefs of Police, Kansas Peace Officer's Association, Governor's Fatality Review Board and the Kansas Coalition against Sexual and Domestic Violence in the discussions. During the discussions on this bill Representative Colloton informed the committee that she had been working with staff of the Fatality Review Board to address some of the concerns that had arisen during hearings on the bill in 2009. The staff of the Fatality Review Board (FRB) advised the committee that it intends to introduce a revised version of the bill in the 2010 legislative session due to the work that had been done on the bill since the 2009 session.

After significant discussion on various aspects of the bill, Representative Colloton clarified that her legislative committee would like advice from the Criminal Law Advisory Committee on the constitutional issues raised by the bill as well as the advisability of eliminating the crime of domestic battery. In addition, she asked for input on the following questions:

- 1) Does the procedure adopted in the bill satisfy procedure due process requirements?
- 2) Is the definition of "domestic violence" clear enough to avoid a substance due process challenge?
- 3) Does the imposition of costs for evaluation and treatment ordered by the court create a penalty enhancement for which a substantive finding of fact must be made on the record?
- 4) How would courts handle the indigent cases where evaluation and treatment are needed? Does the legislature need to allocate funds for this?

The committee first took on the question of whether the process adopted in the bill would satisfy due process requirements. Discussion centered on whether placing a domestic violence tag on a case prior to any sort of adjudication or finding of fact would have an effect on the individual involved. If so, it could easily amount to a violation of due process protections.

The bill currently proposes that the domestic violence tag would be placed on a case at the time of arrest if the law enforcement officer determined that the case involved domestic violence. One problem with this proposal is that most of the time the law enforcement officer has to deal in the moment and make quick decisions based on the information that is given him at the time, whether it is accurate or not. This means that it is possible that an officer could place the domestic violence tag on a case when it truly does not belong there and at this point, there is no real way to tell what kind of impact that tag could have on the wrongly tagged individual down the road. Ten years from now, the impact could be far different than anything we could contemplate now. The committee agreed that when the "tagging" occurs prior to any kind of factual adjudication by a fact-finder or court, or even prior to a person stipulating to the facts and pleading to a case or taking a diversion, it really leads one to question where the due process protections are. It was suggested that if law enforcement is going to have to bear the responsibility of tagging these cases then we need to include a requirement that an amended arrest report shall be filed if it is later determined, from further investigation, that a tag was placed on a case and it should not have been.

It was argued that the bill actually contemplates putting the domestic violence tag on the legal documentation involved in a case, and not the person individually. It was agreed that the goals of the legislation are not punitive but rather, the goals are to provide a method by which we can monitor and track data that can eventually be used to provide meaningful information to

policy-makers. However, a majority of the committee agreed that the tag would still inevitably have an effect on the individual involved.

The bill currently provides a mechanism for the judge to remove the domestic violence tag after making a finding of whether it should apply. However, there isn't any similar mechanism that law enforcement officers or prosecutors could use to do the same if it becomes apparent during the investigation that the case really does not involve domestic violence. It was suggested that if law enforcement is going to have to bear the responsibility of tagging these cases at arrest, then there should be a requirement that an amended arrest report be filed if further investigation reveals that the tag was placed on a case and it should not have been. Unfortunately, while the judge can remove the tag after a hearing and law enforcement could file an amended report, there does not seem to be a remedy for situations where the prosecutor declines to prosecute a case or otherwise determines that the domestic violence tag should not apply in a particular case.

It is this type of situation that the committee fears could result in unintended consequences. For instance, if a case is tagged with a domestic violence designation upon arrest and the prosecutor ultimately decides to dismiss the case, the arrest report will still be in the criminal justice system and it will still have the domestic violence tag. This could have an adverse impact if that person later applies for job which requires a license to carry a weapon.

The background check would show an arrest with a domestic violence designation and that individual would likely not get the job because he would be denied the required license. In fact, it is possible that this domestic violence tag could prevent one from ever having a firearm again due to the federal firearms restrictions and this could have a very real impact law enforcement, military, security officers, and others.

The rule of law has always been that we do not label someone until we adjudicate them. We do not label someone as mentally ill until a judge adjudicates them mentally ill and we do not label someone a sex offender or sex predator until they are adjudicated as such. The committee agreed that if the domestic violence tag is applied at arrest as proposed, we risk labeling someone a domestic violence offender before there is ever an adjudication on that issue and this definitely has due process implications.

It was suggested that these due process concerns could be alleviated if the domestic violence tag were placed on the case at sentencing rather than at the beginning of the process. Placing the domestic violence tag on the case at sentencing would ensure that the defendant would have had the opportunity to have attorney representation, to put on a defense, and to have an actual adjudication based on the proved facts of the case.

The committee was informed that the Kansas Standard Offense Report (SOR) as well as arrest reports currently have a box that is to be checked when the law enforcement officer believes that there is domestic violence involved in a case. In fact, law enforcement has been utilizing these check boxes for quite some time now because there are specific bonding requirements that come into play in domestic violence cases. The committee noted that since these reports already have a check box for domestic violence, it appears that the only information needed to help with tracking domestic violence is whether there is an intimate relationship. Therefore, since all law enforcement agencies are supposed to complete a SOR in each case, the committee recommended that the SOR and the arrest reports be amended in some fashion so that they would also collect information on the relationship between the victim(s) and defendant(s) involved in the case. However, the committee was advised that although the arrest reports are reported to the KBI, currently the KBI data collection program does not capture relationship information.

Therefore, revising the arrest reports and the SORs to capture this information may only be helpful if the KBI data collection program can be expanded to capture the relationship information as well.

The committee then turned to the second question regarding whether the definition of "domestic violence" was clear enough to avoid challenge. The committee was concerned that the definition contained too many vague terms and it recommended that at the very least the term "pattern" in the definition be changed back to the original term "method". However, the committee also thought that the phrase "method of control, coercion, punishment, intimidation or revenge" language seems to beg the question of how one would prove those terms and also seems to engraft an intent element onto the definition. The committee was concerned that this would make prosecution of the cases much more difficult because that intent element would now have to be proved. Therefore, the committee recommended that the domestic violence definition be revised to add back in the first two sentences and to strike the "method of control, coercion, . . ." language altogether. This revision should result in something similar to the following definition:

"Domestic violence means an act or threatened act of violence against a person with whom the offender is involved or has been involved in an intimate relationship. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in an intimate relationship. For the purposes of this definition, the offender shall be 18 years of age or older."

The committee recognized that this definition could create some proof problems but it seems to be clearer than the proposed amended version.

The committee then turned to the issue of whether the imposition of costs for evaluation and treatment ordered by the court would create a penalty enhancement for which a substantive finding of fact must be made on the record. The committee agreed that if the tag is applied at sentencing, as was recommended previously, rather than at the beginning of the case then any of these *Apprendi*-like concerns should be alleviated. Therefore the committee did not consider this to be an issue as long as the tag was placed at sentencing.

The committee briefly considered how courts would handle the indigent cases where evaluation and treatment are needed and whether the legislature would need to allocate funds for this. It was pointed out that currently we assess a lot of these costs as court costs and expect them to get paid back as a condition of probation. The costs for this legislation could likely be handled in a similar manner. The committee agreed that although it would be nice to have state funds for this, the costs could probably be absorbed as a cost of the action as with any other case.

The committee then turned to discussion on the advisability of repealing the domestic battery statute. It was reported that only 2 people are currently serving prison time due to a third domestic battery conviction. Although the committee recognizes that many times domestic battery charges are pleaded down to other crimes, it was also argued that the penalty enhancements contained in the domestic battery statute are valuable tools to deter repeated domestic battery crimes. The committee also agreed that domestic violence can be involved in many other crimes rather than just domestic battery. Therefore, it was suggested that if the goal is to expand the net so that we can capture data on the many different crimes that could involve domestic violence, the domestic battery statute could be amended to include a domestic violence

element that could be applied to specific statutory violations, or a separate domestic violence statute could be created for use when charging any crime that involves domestic violence.

If the domestic battery statute is amended, it should provide that one could charge crimes X, Y, Z including the domestic violence element, or one could charge domestic battery and still utilize the enhanced penalties that are currently provided for domestic battery. The problem with this proposal is that the Recodification Commission has already completed its work on the section of statutes that contain domestic battery so it may be difficult to amend that statute in the near future. Regardless of whether the domestic battery statute is amended or a new domestic violence statute is created, the committee agreed that the element of domestic violence should be required to be proved so that due process protections are satisfied.

The committee also discussed the arrest standards proposed in the legislation. The proposed language indicates that "when a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence . . . has been committed, the officer shall without undue delay arrest the person suspected of its commission."

(Emphasis added). The committee is concerned that this arrest standard is in direct conflict with the probable cause standard in K.S.A. 22-2401 and could cause confusion for law enforcement.

Therefore, the committee recommends that this language be amended to require probable cause to believe a crime has been committed and probable cause to believe the person committed the crime before an arrest shall be made.

Finally, the committee discussed the predominant aggressor language proposed in the bill. The committee is concerned that the list of considerations included in the proposed language could be interpreted to be an exclusive list which would mean that those items are the only things that the officer can consider when trying to determine who the predominant

aggressor is. This could be problematic because many times there are numerous things to consider when evaluating these situations and limiting an officer to only those few items listed could require the officer to make an incorrect decision. In addition, the committee had some concerns specific to the considerations listed. The committee was not convinced that all of the items were really relevant to the determination of which party is the predominant aggressor. Therefore the committee recommends that the predominant aggressor language be revised to strike the considerations listed and simply leave the instruction that the officer shall arrest whomever the officer determines to be predominant aggressor.

CONCLUSION

The committee understands that the goals of this legislation are; 1) to provide a method for tracking and collecting data on all types of domestic violence related crimes so that better information may be provided to policy-makers in the future, and 2) to identify all domestic violence related crimes and require that domestic violence assessments and evaluations are done on those offenders in order to prevent escalation of the domestic violence. The committee recognizes that these are very positive goals. However, it is unconvinced that the current proposed legislation will reach these goals without creating due process issues. In light of the foregoing discussion, the committee makes the following recommendations:

- 1) Place the domestic violence tag on the case at sentencing rather than upon arrest;
- 2) Revise the Kansas Standard Offense Report and arrest reports so that they capture intimate relationship information;
- 3) Revise the domestic violence definition to reinstate the original language and remove the language that adds an intent element to the definition;

4) Do not repeal domestic battery. Create a separate statute for domestic violence that can be applied to a number of additional crimes that could involve elements of domestic violence;

5) Revise the arrest language so that it requires the officer to have probable cause to believe a crime has been committed and that the person to be arrested committed the crime; and

6) Remove the list of considerations in the predominant aggressor language so that it simply states that the officer is required to arrest the person he believes to be the predominant aggressor.

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Mark Parkinson, Governor

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GOVERNOR'S DOMESTIC VIOLENCE FATALITY REVIEW BOARD

Testimony of
Robert T. Stephan, Chair
Governor's Domestic Violence Fatality Review Board
Before the House Committee on Corrections and Juvenile Justice
House Bill 2517
February 1, 2010

Chair Colloton and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Governor's Domestic Violence Fatality Review Board (FRB). Former Governor Kathleen Sebelius created the FRB by Executive Order 04-11 in October 2004. It is a 14 member board comprised of professionals working in the field of domestic violence at the community level.

The FRB reviews all deaths of adult domestic violence involving spouse and partner homicides in Kansas and recommends improvements to prevent future fatalities. According to the Kansas Bureau of Investigation, 233 adult domestic violence-related fatalities have occurred in Kansas from 1999 through 2009, with last year being one of the deadliest in recent history with 34 adults and 14 children murdered.

The FRB has two principal goals: (1) to inform the public about the insidious nature of domestic violence and motivate the public to find solutions to end it; and (2) to identify systemic changes within all organizations and agencies that work with domestic violence victims, offenders and families to learn new ways of reducing the number of fatalities by better identification of risk factors and improvement in the coordination of services that our state provides.

Since 2004 the FRB has reviewed, researched and discussed the tragedy of domestic violence crimes. It became very clear that there is not a systematic manner to track and report criminal data when it involves domestic violence related crimes. When I was Attorney General I requested and the 1991 Legislature passed a bill requiring all law enforcement agencies to have written policies regarding domestic violence and when probable cause existed an arrest must be made. However, through the years we have focused more on responding to the crime of domestic battery and not other crimes that domestic violence offenders commit.

The FRB believes that public policy should focus on all criminal violations related to domestic violence and not just battery. This bill is a step in the right direction. It allows for the court to establish if the criminal act resulted from domestic violence and would require the domestic violence offender to receive an assessment.

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The FRB voted to propose a few amendments and bring forth a few suggestions to the bill but overall, the FRB believes this bill would be a step in creating a better approach for addressing domestic violence crimes occurring in intimate relationships.

We appreciate the work of the Judicial Council and the suggestions of its Criminal Law Advisory Council. On behalf of the FRB, we would appreciate the Committee's support of House Bill 2517 with the amendments that will be discussed by Judge Harold Flaigle. Johnson County District Attorney Steve Howe will also testify on the process used in his county for tracking domestic violence cases. We will be pleased to answer any questions you might have.

GOVERNOR'S DOMESTIC VIOLENCE FATALITY REVIEW BOARD

Testimony of
Judge Harold Flaigle
Governor's Domestic Violence Fatality Review Board
Before the House Committee on Corrections and Juvenile Justice
House Bill 2517
February 1, 2010

Chair Colloton and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Governor's Domestic Violence Fatality Review Board (FRB) on House Bill 2517. If you will recall, I had the privilege of testifying last year on similar legislation. As you may also recall, I have been interested in domestic violence issues for more than 20 years. My experience and continued work with the FRB leads me to believe we must advocate for victims by seeking domestic violence law reform and holding all domestic offenders accountable.

In 2005 the FRB began searching for a statutory model that would ultimately recognize and better protect victims of all domestic violence crimes, not just victims of domestic battery. The FRB chose Colorado for that statutory model because its domestic violence laws comprehensively track and recognize all domestic violence related crimes and provide early domestic violence offender intervention. Those laws have been in place for more than 16 years. In addition, prior to enacting significant changes to its domestic violence laws, Colorado had a law similar to Kansas' current domestic battery statute. Based on the research on Colorado law and the prior bill the FRB drafted, we asked Doug Miles, retired Deputy District Attorney in Colorado to review HB 2517 and his written testimony has been provided to you.

The FRB supports House Bill 2517, however, there are a few suggestions and amendments the FRB would like the Committee to consider.

- The FRB believes the best process for tracking all criminal cases involving domestic violence is to require each case that is filed to be labeled with a DV designation instead of CR. Steve Howe, Johnson County District Attorney, will testify on how this process has worked since 1996 in his county. Also, Judge Sara Welch, of the 10th Judicial District has provided written testimony on how the court addresses crimes related to domestic violence in Johnson County.

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- The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is proposing an amendment to the domestic violence definition on page 2 of the bill. The FRB believes that the contextual analysis of a domestic violence event is critical to the appropriate person being charged with a crime and therefore, the FRB supports KCSDV's amendment that includes contextual analysis language. Understanding the underlying conduct of why a person committed a crime and putting it into context is critical with a domestic violence situation

Should the Committee choose to keep the definition of domestic violence on page 2, lines 24 through 31, the FRB proposes an amendment to line 24 of the definition by striking ~~an act or threatened act of violence~~ and using Domestic Violence means **any crime or attempted crime committed against a person...**" While the definition in the bill is less complex, the contextual piece is important and should be clarified as part of the legislative intent that this is understood.

- The FRB is supportive of KCSDV's proposed amendments to the definition of intimate relationship. The amendment mirrors the definition of dating relationship in the Protection from Abuse Act statute and the FRB believes it is important to keep the definition similar.
- If the Legislative Committee believes the domestic battery statute should not be repealed, then the definition within the statute should be amended to reflect the new definitions proposed in HB 2517.

The FRB would like to propose the following amendments to House Bill 2517:

Amendments to HB 2517:

- Add to definitions Section 3, page 2 line 34
Domestic Violence Offender: "a person who has been convicted of or entered into a diversion agreement for any domestic violence offense."
- Insert in Section 4 (p) page 12 line 1
"...assessment and *any other evaluation* prior to sentencing that would assist the court in determining an appropriate sentence." The court may find that other evaluations may be helpful such as drug/alcohol evaluation.
- Amendment to include diversion agreements
Amend 22-2908 (b) new (3) "the complaint alleges a crime whereby the definition of domestic violence, as defined in K.S.A. 21-3110, is applicable and the defendant has participated in two or more diversions in the previous five year

period upon complaints alleging a crime whereby the definition of domestic violence was applied.”

- Amend 22-2909 new (e) “If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a crime whereby the definition of domestic violence, as defined in K.S.A. 21-3110, is applicable the agreement shall require the defendant to undergo a domestic violence offender assessment and complete all recommendations. The defendant shall be required to pay for such assessment and recommendations.”

Amending the diversion language is significant to victim safety by limiting the number of domestic violence diversions which an offender is allowed to enter. Also, the FRB believes it is important that an offender be required to undergo a domestic violence offender assessment and follow all subsequent recommendations as a condition of diversion.

If this bill is adopted, we will work closely with the domestic violence training efforts currently provided throughout Kansas to ensure that judges, prosecutors, law enforcement, advocates, corrections and others in the criminal justice system are properly trained.

The FRB has dedicated an extensive amount of time and research on domestic violence laws and related issues with one goal in mind, how can domestic violence victims be better served and protected. On behalf of the FRB, we believe this bill, along with the amendments proposed by the FRB and KCSDV, will work to achieve justice for domestic violence victims and hold domestic violence offenders accountable.

We ask for your favorable consideration of House Bill 2517 and the suggestions and amendments brought forth by the FRB. I would be willing to answer any questions.



DISTRICT COURT OF KANSAS

TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

CHAMBERS OF:
SARA WELCH
DISTRICT JUDGE
DIVISION NO. 19
(913) 715-3740 Fax (913) 715-3749

JUDY HAMONS
ADMINISTRATIVE ASSISTANT

January 26, 2010

The Honorable Pat Colloton
Chair of House Committee on Corrections and Juvenile Justice
Statehouse, Room 151 South
Topeka, KS 66612

Dear Chair Colloton and Members of the Committee:

1. The Tenth Judicial District currently has nineteen district judges and four district magistrate judges. In the district court, six of the 19 judges hear criminal cases on a full-time basis. Of those six district judges, one judge's docket is dedicated to hearing only domestic violence cases, both felony and misdemeanor. Additionally, we have one district magistrate judge whose docket consists entirely of misdemeanor domestic violence cases and protection from abuse/stalking cases. These two courts will hereinafter be referred to as "domestic violence courts." Finally, domestic violence first appearances are heard each day by another of our district court magistrates. The D.V. first appearances are heard separately from the general criminal first appearances.

2. "Domestic violence" is defined by Johnson County Local Court Rule #3 as any harmful physical contact, threat of harmful contact, harassment or destruction of property between associated individuals or formerly associated individuals used as a method of coercion, control, revenge, or punishment which includes:

Spouses, whether residing together or not;

- a. Former spouses, whether residing together or not;
- b. Persons who are involved in ongoing, intimate relationships with each other, regardless of whether they currently live together or have done so in the past;
- c. Persons who have in the past had an ongoing, intimate relationship with each other, regardless of whether they lived together or not;
- d. Persons, eighteen years of age or older who are blood or step-related to one another (e.g., father/daughter, step-son/step-father, brother/sister, etc.).

3. A criminal case which meets the definition of "domestic violence" as set forth above will be assigned to one of the two domestic violence courts. The unique identifying case number assigned to that case will have a "DV" designation. As an example, the fifteenth (15th) domestic violence case filed in the year 2010 will have a case number designation of 10DV15. The fifteenth (15th) non-

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domestic violence criminal case which was filed in 2010 will have a case number designation of 10CR15.

4. Local Court Rule #3 also provides that homicide and sexual abuse cases which fall within the definition of domestic violence will be randomly assigned among the criminal courts. The docket time and legal research time which these cases can require would create a disproportionate burden on a single judge if they were assigned to just one court.

5. The Tenth Judicial District has been filing domestic violence cases with the identifying "DV" tag since January of 1996. I was not on the bench when this change was instituted. Therefore, the information I have to share about why that change took place is based upon historical information I have gathered from people who participated in the creation of the specialized domestic violence courts.

6. The DV tag system was implemented for the following reasons:

A. To reduce docket delay by not dispersing D.V. cases throughout the six criminal courts. By removing domestic violence cases from the general criminal docket, the time between arrest and disposition of the case is reduced.

B. To increase the uniformity of case disposition by having judges and courts dedicated to hearing only domestic violence cases.

C. To better enable all participants in the criminal justice system to track domestic violence trends in the community including offender demographics and recidivism rates.

7. Lastly, I am not aware of any issues or problems which have arisen as a result of the DV filing system.

Respectfully submitted,

/s/ Sara Welch

Sara Welch
District Court Judge
Tenth Judicial District

COMMENTS ON HOUSE BILL NO. 2517

Douglas J. Miles

Chief Deputy District Attorney, Retired

Colorado Springs, Colorado

Domestic Violence Specialist

After reviewing House Bill N. 2517, I provide the following observations and comments:

1. Generally, the new statutory scheme recognizes that domestic violence is not limited to assaultive behavior. When crimes are used as a means of control or domination, they can take many forms. Crimes such as cruelty to animals, child abuse, damage to property, theft and even reckless driving can be the means by which domestic violence offenders attempt to influence and punish their intimate partners. This Bill recognizes the reality of the dynamics of domestic violence and attempts to comport the criminal law to that reality.

2. New Section 1 (a)

Because the domestic violence determination is placed in the province of the trier of fact, the legislation avoids Blakely issues. Presumably, a defendant could be found guilty of the underlying offense but not the domestic violence designation. I assume the process will be to submit a special interrogatory to the jury with regard to the domestic violence designation (or a judge acting as trier of fact would make a specific finding as to that issue).

1. Sec. 3, KSA §21-3110 (7) (pg 2, lines 27-30)

The statutory change includes two aspects of "other crimes" of domestic violence. It distinguishes the nature of crimes "committed against" a person or property and also "directed against" a person within the intimate relationship definition. In my experience the crime can be "committed against" one person but "directed against" someone who is a present or former intimate partner, even though the intimate partner is not the actual victim of the crime. For example, a former husband may slit the tires on his ex-wife's new boyfriend's car; the crime is "committed against" the new boyfriend, but the crime is clearly "directed against" his ex-wife (usually an attempt to interfere with her ability to pursue a new relationship. If this distinction is, in fact, what the Legislature intends, a clear legislative history will assist courts in their interpretation of the language. These terms will, no doubt, be the source of litigation should the Bill pass. It is, in my opinion, less confusing and burdensome than the "for the purpose of control, retaliation, revenge, etc." language originally considered.

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1. Sec 3, KSA §21-3110 (13) (pg 3, lines 6-8)

“Dating relationship” is characterized by “affectional or sexual involvement”. Because these terms are separated by the disjunctive coordinating conjunction “or”, I interpret this to mean that a dating relationship where sexual involvement exists would fall under the definition of an intimate relationship, but that sexual involvement is not required if there is some other form of “affectional” involvement. The term “affectional” is not defined and will likely be subject to judicial interpretation. Again, some legislative history may be of help to the courts as they attempt to interpret the statutory language. It seems clear that, through the use of the term “or”, the Legislature is not requiring that a dating relationship be sexual, as that would create a disincentive for an individual to break off a bad dating relationship early on and thereby avoid more serious violence.

Douglas J. Miles
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Testimony on HB 2517
to
The House Corrections and Juvenile Justice Committee

By Jennie Marsh
Director of Crime Victim Services
Kansas Department of Corrections
February 1, 2010

The Department supports HB 2517. The provisions of HB 2517 which impact the Department of Corrections and cause it to support this bill are:

1. The designation of the criminal case as involving domestic violence irrespective of how that behavior has manifested itself vis a vis the crime of conviction.
2. A requirement that a defendant engaged in domestic violence undergo a domestic violence offender assessment.

The crimes committed against domestic violence victims can be diverse ranging from homicide, kidnapping, sex offenses, and battery to arson and criminal damage to property. The common element is the motivation to victimize a particular person due to a past or current domestic relationship. The determination and designation that the criminal case involves the dynamics of domestic violence at the trial court level aids the gathering of statistical data for the evaluation of the prevalence of domestic battery locally and statewide and would enhance the allocation of resources. Additionally, the early determination and designation that a criminal case involves domestic violence would enhance the case planning and supervision of the offender by facility and release supervision officers.

The Department also supports the provision of HB 2517 requiring that offenders engaged in domestic violence undergo a domestic violence offender assessment. The Revisor's office has prepared a balloon amendment dated 02/01/10 which is attached. This proposed amendment at page 12 would direct the court to provide the domestic violence offender assessment to any entity responsible for supervising the defendant. The Department supports this proposed amendment. This amendment would aid criminal justice entities responsible for the incarceration and release supervision of an offender by providing information that would assist those entities in determining the risks and needs of an offender for programming, release planning and supervision.

The Department urges favorable consideration of HB 2517 and the proposed amendment prepared by the Revisor's office which is attached.

HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-22

HB2517-Balloon1.pdf
RS - JThompson - 02/01/10

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to domestic violence; amending K.S.A. 20-369, 22-2307 and 22-
11 2401 and K.S.A. 2009 Supp. 21-3110, 21-4603d and 75-712 and re-
12 pealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) In all criminal cases, if there is evidence that the
16 defendant committed a domestic violence offense, the trier of fact shall
17 determine whether the defendant committed a domestic violence of-
18 fense. If the trier of fact determines that the defendant committed a
19 domestic violence offense, the court shall place a domestic violence des-
20 ignation on the criminal case and the defendant shall be subject to the
21 provisions of subsection (p) of K.S.A. 21-4603d, and amendments thereto.

22 (b) The term "domestic violence offense" shall have the meaning
23 provided in K.S.A. 21-3110, and amendments thereto.

24 (c) This section shall be a part of and supplemental to the Kansas
25 code for criminal procedure.

26 Sec. 2. K.S.A. 20-369 is hereby amended to read as follows: 20-369.

27 (a) If a judicial district creates a local fund ~~under this act~~, the court may
28 impose a fee as provided in this section against any defendant for crimes
29 involving a family or household member as provided in K.S.A. 21-3412a,
30 and amendments thereto, *and against any defendant found to have com-*
31 *mitted a domestic violence offense pursuant to section 1, and amendments*
32 *thereto*. The chief judge of each judicial district where such fee is imposed
33 shall set the amount of such fee by rules adopted in such judicial district
34 in an amount not to exceed \$100 per case.

35 (b) Such fees shall be deposited into the local fund and disbursed
36 pursuant to recommendations of the chief judge under this act. All mon-
37 eys collected by this section shall be paid into the domestic violence spe-
38 cial programs fund in the county where the fee is collected, as established
39 by the judicial district ~~and as authorized by this act~~.

40 (c) Expenditures made in each judicial district shall be determined
41 by the chief judge and shall be paid to domestic violence programs ad-
42 ministered by the court and to local programs within the judicial district
43 that enhance a coordinated community justice response to the issue of

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1 vided in paragraph (1), the judge of the court in which such person was
2 convicted may enter an order which places conditions on such person's
3 privilege of operating a motor vehicle on the highways of this state, a
4 certified copy of which such person shall be required to carry any time
5 such person is operating a motor vehicle on the highways of this state.
6 Any such order shall prescribe the duration of the conditions imposed,
7 which in no event shall be for a period of more than one year.

8 (B) Upon entering an order restricting a person's license hereunder,
9 the judge shall require such person to surrender such person's driver's
10 license to the judge who shall cause it to be transmitted to the division
11 of vehicles, together with a copy of the order. Upon receipt thereof, the
12 division of vehicles shall issue without charge a driver's license which shall
13 indicate on its face that conditions have been imposed on such person's
14 privilege of operating a motor vehicle and that a certified copy of the
15 order imposing such conditions is required to be carried by the person
16 for whom the license was issued any time such person is operating a motor
17 vehicle on the highways of this state. If the person convicted is a nonres-
18 ident, the judge shall cause a copy of the order to be transmitted to the
19 division and the division shall forward a copy of it to the motor vehicle
20 administrator, of such person's state of residence. Such judge shall furnish
21 to any person whose driver's license has had conditions imposed on it
22 under this paragraph a copy of the order, which shall be recognized as a
23 valid Kansas driver's license until such time as the division shall issue the
24 restricted license provided for in this paragraph.

25 (C) Upon expiration of the period of time for which conditions are
26 imposed pursuant to this subsection, the licensee may apply to the divi-
27 sion for the return of the license previously surrendered by such licensee.
28 In the event such license has expired, such person may apply to the di-
29 vision for a new license, which shall be issued immediately by the division
30 upon payment of the proper fee and satisfaction of the other conditions
31 established by law, unless such person's privilege to operate a motor ve-
32 hicle on the highways of this state has been suspended or revoked prior
33 thereto. If any person shall violate any of the conditions imposed under
34 this paragraph, such person's driver's license or privilege to operate a
35 motor vehicle on the highways of this state shall be revoked for a period
36 of not less than 60 days nor more than one year by the judge of the court
37 in which such person is convicted of violating such conditions.

38 (4) As used in this subsection, "highway" and "street" have the mean-
39 ings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

40 (p) *In addition to any of the above, for any criminal offense that*
41 *includes the domestic violence designation pursuant to section 1, and*
42 *amendments thereto, the court shall require the defendant to undergo a*
43 *domestic violence offender assessment and complete all recommendations.*

7-3

1 *The court may order a domestic violence offender assessment prior to*
2 *sentencing if the assessment would assist the court in determining an*
3 *appropriate sentence. A defendant ordered to undergo a domestic violence*
4 *offender assessment shall be required to pay for the assessment and for*
5 *completion of all recommendations.*

6 Sec. 5. K.S.A. 22-2307 is hereby amended to read as follows: 22-
7 2307. (a) All law enforcement agencies in this state shall adopt written
8 policies regarding domestic violence calls as provided in subsection (b).
9 These policies shall be made available to all officers of such agency.

10 (b) Such written policies shall include, but not be limited to, the
11 following:

12 (1) A statement directing that the officers shall make an arrest when
13 they have probable cause to believe that a crime is being committed or
14 has been committed *in accordance with K.S.A. 22-2401, and amendments*
15 *thereto;*

16 (2) a statement defining domestic violence *in accordance with K.S.A.*
17 *21-3110, and amendments thereto;*

18 (3) a statement describing the dispatchers' responsibilities;

19 (4) a statement describing the responding officers' responsibilities
20 and procedures to follow when responding to a domestic violence call
21 and the suspect is at the scene;

22 (5) a statement regarding procedures when the suspect has left the
23 scene of the crime;

24 (6) procedures for both misdemeanor and felony cases;

25 (7) procedures for law enforcement officers to follow when handling
26 domestic violence calls involving court orders, including protection from
27 abuse orders, restraining orders and a protective order issued by a court
28 of any state or Indian tribe;

29 (8) a statement that the law enforcement agency shall provide the
30 following information to victims, in writing:

31 (A) Availability of emergency and medical telephone numbers, if
32 needed;

33 (B) the law enforcement agency's report number;

34 (C) the address and telephone number of the prosecutor's office the
35 victim should contact to obtain information about victims' rights pursuant
36 to K.S.A. 74-7333 and 74-7335 and amendments thereto;

37 (D) the name and address of the crime victims' compensation board
38 and information about possible compensation benefits;

39 (E) advise the victim that the details of the crime may be made
40 public;

41 (F) advise the victim of such victims' rights under K.S.A. 74-7333 and
42 74-7335 and amendments thereto; and

43 (G) advise the victim of known available resources which may assist

The court shall provide the domestic violence offender assessment to any entity responsible for supervising such defendant.



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STEVE SIX
ATTORNEY GENERAL

House Corrections & Juvenile Justice Committee
HB 2517
Assistant Attorney General Travis Harrod
February 1, 2010

Madam Chair and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Steve Six in support of House Bill 2517. I am the Assistant Attorney General responsible for domestic violence prosecution in the office of Attorney General Six.

HB 2517 would establish a good framework for comprehensive domestic violence prosecution reform. Specifically, the bill would require a "DV Tag" to be placed on an offender's record when sentenced for a domestic violence offense. This will enhance the criminal justice system's ability to track domestic violence and ensure that repeat offenders face the full force of the law. The bill would also better reflect the reality that domestic violence does not just occur as a battery, as currently codified, but may take the form of other offenses as well, such as criminal damage, criminal restraint, aggravated battery, rape and murder.

Although HB 2517 is not a perfect bill, it would provide a solid foundation for future DV legislation. Ultimately, Attorney General Six would like the following goals to be achieved in the area of domestic violence prevention: (1) provide the justice system with the ability to track repeat offenders and (2) encourage assessment and effective intervention for these offenders. These goals should be universal and I look forward to working with interested parties in this area of law to move legislation forward.

Corrections and Juvenile Justice

Date: 2-1-10

Attachment # 8



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House Committee on Corrections and Juvenile Justice HB2517

Curtis L. Brungardt
Christie J. Brungardt
February 1st, 2010

Chairman Colloton, and members of the Committee, thank you for allowing us to speak today and submit this testimony in support of House Bill 2517.

On July 3, 2008, we received news that is every parent's worst nightmare. Our 25-year old daughter Jana Mackey, a KU law student, had been killed by her ex-boyfriend in Lawrence.

As her parents, we are committed to continuing Jana's work of protecting women. Jana was well known throughout Kansas for her advocacy for women. As a young adult, Jana served as a sexual assault and domestic violence advocate and was one of the youngest lobbyists at the Kansas State Capitol working on issues important to Kansas women.

Last March, we stood in front of you and other members of the Kansas House of Representatives to accept a certificate in honor of Jana. In addition, Governor Sebelius proclaimed March 8th, 2009, as "Jana Mackey Day in Kansas."

In honor of Jana, we are now leading a small committed group of advocates who have created "Jana's Campaign to Stop Domestic Violence." Our purpose is to encourage and promote a public policy response to domestic violence. We believe it is our responsibility to use the story of Jana's life, and the story of Jana's death, to help reduce violence against women. It is our deep desire to turn this tragedy into something positive. The goal of Jana's Campaign is to support legislation and other government action that promotes safety and justice for victims of domestic violence.

The actions of government bodies – their laws, practices, regulatory measures, and funding priorities – profoundly affect how women and their families experience life and freedom from domestic violence.

We stand here today and ask you to support House Bill 2517, "The Domestic Violence Bill." If adopted, this new law would ensure that the criminal justice system document crimes associated with domestic violence and track repeat offenders. Originally recommended by the Governor's Domestic Violence Fatality Review Board, and revised by the Judicial Council, this bill is one of the most comprehensive pieces of domestic violence legislation ever proposed in Kansas.

Corrections and Juvenile Justice

Date: 2-1-10

Attachment # 7

This legislation requires a domestic violence designation be placed on the criminal case. Having the domestic violence designation is especially important as offenders often repeat their crimes against victims. Therefore, this legislation encourages sanctions be put in place before violence escalates. This bill also requires the courts to order an assessment of the domestic violence offender and recommend interventions and treatments of the offender. Again, the hope is to reduce and eliminate repeat offenses and end the cycle of violence.

As we look and study HB2517, we have two recommendations on how this legislation could be better.

- First, we agree with the Governor's Domestic Violence Fatality Review Board that the best process for tracking all criminal cases involving domestic violence is to require each case that is filed to be labeled with a DV designation.
- We again agree with the Governor's Domestic Violence Fatality Review Board and recommend that an amendment be added to the bill that addresses issues of diversion in domestic violence cases. We strongly believe that to reduce repeat offenders, evaluation and treatment programs must be encouraged at all levels.

In the United States, domestic violence is one of the leading causes of injury to women. Data from the U.S. Department of Justice says that on the average, three women are killed every day by their current or former partners. In a recent report by the Docking Institute, over 100,000 Kansas women become victims of domestic violence each year. On average, 20 Kansas women are killed by their current or former partners each year. In 2009 however, 34 adults and 14 children have died in Kansas as a direct result of domestic violence.

While we recognize that HB2517 alone will not stop domestic violence, we do believe that it is an important step in the right direction. Would this bill have prevented Jana's death? Of course we cannot answer this question. We do know however, that Jana's killer had a previous record of violence with a previous girlfriend and that his record was not known by many both inside and outside the justice system.

Let me take a moment and try to clarify our perspective on the changes, recommendations, and suggested amendments to this bill mentioned in earlier testimony. This discussion is about how to make HB2517 better. Over the past year we have discussed this bill with many of the players in attendance today. What we have found is some consistencies and some differences of opinion on "how this bill can be improved". What we have learned, however, is that even without a single change to the current HB2517, this bill is a big step in the right direction. It will make a difference in addressing repeated abuse.

Finally, let me conclude my portion of this testimony by talking about something that has rarely been mentioned about this bill. What I'm talking about is the symbolic nature of this action. By acting on this legislation, you will be sending a strong message throughout Kansas that domestic violence is unacceptable. When Lyndon Johnson signed the 1964 Civil Rights Act and the 1965 Voting Rights Act, he ended institutional acceptance of racism. However, these historical

measures also began the process of establishing new norms, attitudes and behaviors throughout the South and the rest of the country.

This past year, the Oklahoma legislature passed a new domestic violence law unanimously; making a first offense of domestic abuse a felony. Republican Senator Jonathan Nichols (the sponsor of the bill) believes equally in the importance of the message this legislation sends to all of Oklahoma. I ask you not to underestimate the symbolic power of this action. Christie and I ask that your voices be heard throughout the halls of this great historical building. We ask you that your voices sing throughout every city and rural community in this state...that domestic violence is unacceptable.

My name is Christie Brungardt. I am Jana Mackey's mom. Jana became a domestic violence fatality statistic on July 3, 2008. Seven months later on February 16, 2009, Curt and I attended the hearing on this bill. We understood that last year's version of the bill had many ideas that all parties agreed on, yet a few parts where consensus could not be reached. No further action was taken.

Since that day, more adults have died in Kansas as a result of domestic violence than in any single year since 1994. My message to you today is very simple. The cost of doing nothing on this bill, is FAR too high in human tragedy.

Over the past year and a half, Curt and I have worked tirelessly to learn more about the issues of domestic violence in the state of Kansas. The most important lesson we have learned is this: the status quo is unacceptable.

Continuing to do the same things over and over yet getting a similar or increasingly worse result, is just not acceptable for someone who was born and raised in this state and believes we are better than these statistics suggest. Far too many women are still being battered, children are still witnessing this, and many people are dying.

The state of Kansas needs to take a stronger stand on the issue of domestic violence. We need to catch these offenders earlier, we need to assess them earlier and we need to get them into treatment earlier – before the violence escalates.

Curt and I both teach at a state university. We are certainly familiar with the issues you are dealing with in terms of the state budget. Yet I am asking you today to remember what we have all learned throughout our lives – money is not everything. Jana did the hard part. Now it is our turn to do our part. Please act on this bill. Families – just like mine – are depending on it.