

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 January 21, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Bob Bethell- excused
Representative Tom Moxley- 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

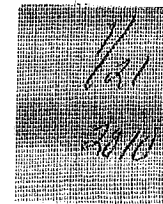
Conferees appearing before the Committee:

Dorothy Stucky-Halley, Director, Victims Services, Kansas AG's Office
Jaennie Marsh, Director, Victims Services, Kansas Department of Corrections

Others attending:

See attached list.

Dorothy Stucky-Halley, Director, Victims Services, Kansas AG's Office
Jaennie Marsh, Director, Victims Services, Kansas Department of Corrections



HB 2413 - Sub for H 2413 by Committee on Corrections and Juvenile Justice - Increasing traffic fines to fund increases in alcohol and drug therapy program for DUI offenders

Chairperson Colloton opened the meeting and announced to the Committee that the hearing from yesterday on **HB 2413** will be continued. The Office of Judicial Administration suggested to raise traffic fines by 10% then the percentage for the Department of Corrections could be increased and that would keep the others the same. We will continue the hearing when we get the information from the Office of Judicial Administration.

Chairperson Colloton then opened the floor for bill introductions and introduced Representative McCray-Miller. She requested a bill to change the penalty for raping someone in a correctional facility from a level 10 to a level 5.

Representative Kinzer moved the request as a committee bill. Representative Brookens seconded. Motion carried.

HB 2440 - Requiring the secretary of corrections to receive and give victim notification upon certain events while inmate is in the custody of the secretary of social and rehabilitation services.

Chairperson Colloton opened the hearing on **HB 2440** and introduced Dorothy Stucky-Halley, Director, Victims Services, Kansas Attorney General's Office, to give her testimony as a proponent of the bill. Ms. Stucky-Halley presented written copy of her testimony. (Attachment 1) She told her story of 40 years of terror due to multiple hostage taking scenarios, multiple stand-offs with police, multiple violent acts and personal assaults, and threats on their lives and the lives of their children too numerous to count.

She stated that at times when the family should have been able to feel some reprieve-those times when the perpetrator was confined-they could not feel safe, since they were always unsure and unaware of when he would be released. In closing, she asked the Committee to please support the bill.

Chairperson Colloton introduced Jennie Marsh, Director, Victims Services, Department of Corrections to give her testimony as a proponent of the **HB 2440**. Ms. Marsh presented written copy of her testimony. (Attachment 2) Ms. Marsh explained the bill provides for notifications to crime victims regarding the status of a defendant when the defendant is diverted from the criminal justice system for an evaluation of his or her competency to stand trial for involuntary commitment pursuant to the Care and Treatment Act for Mentally Ill persons.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on January 21, 2010, in Room 144-S of the Capitol.

Questions and answers followed.

Chairperson Colloton introduced Mr. Ray Dalton, Deputy Secretary, Department of Social and Rehabilitation Services, to give his testimony as a proponent of the bill. Mr. Dalton presented written copy of his testimony . (Attachment 3) He stated these changes to the statutes will allow for the notification of victims who are not currently being notified of a change in status of a person who has victimized them, because the offender is no longer in the criminal justice system.

Questions and answers followed.

Chairperson Colloton introduced Mr .Rick Cogan with the National Alliance on Mental Illness. He stated he was in support of this bill.

With no others to testify on HB 2440 Chairperson Colloton closed the hearing.

Chairperson Colloton referred the Committee to the new proportionality bill and offered to email it to the Committee members if they would like. She stated the hearing would be on January 27th.

Chairperson Colloton adjourned the meeting at 3:30 p.m. with the next meeting scheduled for January 25, 2010 at 1:30 p.m. in room 144 S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 1-21-10

NAME	REPRESENTING
Ed Klumpp	KACP / KPOB / KSD
Ran Dalton	SRS
Jennie Marsh	KDOC
JEREMY BARCLAY	KDOC
RICK CAGAN	NAMI Kansas
Lucy Mills	AG's Ofc.
NANCY TELLEZ	AG's Office
Steve Halley	
Dorothy Stucky Halley	AG Office
Kathy Holm	AG Office
Vicky Luthell	AG Office
Berend Koops	Hein Law Firm
C. David Rouner	Hearney & Assoc.
Jennifer Brown	Federico Consulting
Mark Gleason	Judicial Branch
Wendy Felt	Intern for Rep. McClay-Miller



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STEVE SIX
ATTORNEY GENERAL

Committee on Corrections and Juvenile Justice

HB 2440

Victims Services Director Dorthy Stucky Halley

Office of Attorney General Steve Six

January 21, 2010

Chairman Colloton, and members of the Committee, thank you for allowing me to speak today and submit this testimony in support of House Bill 2440.

House Bill 2440 would provide notification to victims whose perpetrators are under the care and treatment of Social and Rehabilitative Services. This change would help victims feel safe while their perpetrator is being confined, as well as give them the opportunity to take necessary safety precautions when their risks increase.

While most persons who suffer from mental illness are no real danger to society, there is a small group that can be extremely dangerous. Additionally, it is most likely their victim is a family member, friend, or loved one. This increases the risk of future violence. Many of these victims are shocked when they learn that, despite the existence of laws designed to protect victims' rights, they are likely to receive no notification of release, and no opportunity to participate in the processes and decisions that impact their safety.

A victim who does not know when their perpetrator is going to be released or put in a less restrictive setting can never feel safe. I offer the following case study for illustration:

Case Study—Kansas Mennonite Family's Experience as
Victims of an Individual with Mental Illness*

** This time line has been produced to the best recollection of family members. Due to the length of time, actual dates and noted dates may vary slightly.*

- December 1967—Ernest assaulted and raped his fiancé, Leona. He used a hunting knife and graphically described the way he would kill her. He also threatened to kill her family.
- 1967-1970—He beat and raped Leona repeatedly. She became pregnant after being raped, and married him in 1968 believing she had no other choice.
- 1969—He sexually abused one of Leona's sisters who provided child care one evening. The abuse started while she was sleeping.

Corrections and Juvenile Justice

Date: 1-21-10

Attachment # 1

- April 1970—Leona left Ernest while they resided in Newton, KS. She and their child went into hiding.
- January 4, 1971—Ernest found Leona's apartment in Boston, MA, where she had fled. He forced entry with a loaded pistol. Police surrounded the apartment. A police officer posing as a priest was able to gain entry. Leona pressed charges but Ernest was not jailed.
- January 1971, less than two weeks later—He kidnapped Leona from a subway station in Somerville, MA at knifepoint, and forced her to walk to his apartment where he raped her. She escaped about 10 hours later. Leona pressed charges, and he was jailed, then transferred to Westboro State Hospital in MA.
- February 1971—Ernest escaped from Westboro's locked ward and was caught crawling in the window of Leona's apartment.
- Later, in 1971—He was declared incompetent to stand trial and was sent to Bridgewater Institute for the Criminally Insane; Bridgewater, MA.
- September 1972—He was released from Bridgewater, regardless of Leona's expressed concerns for her wellbeing as well as that of her family.
- September 1972 - Less than 1 week after his release from Bridgewater, Ernest abducted Leona's sister Ann at gunpoint from her bedroom in the middle of the night. He threatened to kill the whole family if she made a sound. He drove her to an isolated setting where he talked about raping her. She escaped when he ran out of gas. He got gas from a farmer, then returned to her parents' home and kept the police at bay for 6 hours with the gun pointed on himself. His mother spoke with the police and told them of his mental condition. He was not arrested at that time, but was later arrested and charged. Charges were then dropped when he agreed to counseling. Ernest received one 50 minute counseling session.
- 1972-74—He returned to Boston area searching for Leona. He was arrested in New Hampshire and spent time in a New Hampshire jail for bounced checks. The family received no notification of his release.
- 1974—After Leona's father died due to house fire, Ernest wrote letters claiming he was there. (This is not believed to be the case.)
- 1975—While Leona's mother was dying from multiple sclerosis, Ernest went to the nursing home she was residing in. He also attended her funeral against family's wishes. Leona was unable to attend her own mother's funeral due to his presence.
- 1977-1986—Ernest underwent psychiatric treatment for psychosis. He was noncompliant with treatment recommendations. He would go off his medication and go on trips to locate Leona's family members. He wrote many letters, with threats of increasing violence in them. Family members never knew when he might show up.
- 1984?—Ernest held up a radio/tv station in Colorado, demanding air time to contact Leona and sister Ann.
- April, 1985—Ann receives call from a cousin who stated Ernest was at her house that day and asked many questions about where Ann lived and where her young children went to school.
- April, 1985, two days later—Ann receives a call from her sister, LeAnn, who stated Ernest had called her and asked a lot of questions about Ann, including where her children went to school.
- April 23, 1985—Ann received a call in the early morning from her sister, LeAnn, who stated Ernest had been to her house and delivered a bizarre letter. He wanted her to give

- it to Leona. LeAnn was fearful, thinking he was dangerous. She contacted the police, but nothing was done. She asked Ann for help. Ann told her she would drive there the next day and try to help LeAnn get the police to take the matter more seriously.
- April 23, 1985—Ann received a call at 4 pm from her sister Leona telling her that their sister LeAnn died that afternoon. (LeAnn did have serious health problems. An autopsy did not prove foul play.)
 - April 23-April 26, 1985—Ann worked with law enforcement to obtain protection so Leona could attend LeAnn's funeral and burial safely. Burial was in neighboring county. The Sheriff's office left the procession at the county line. Ernest took a different route and went to the burial site.
 - 1985—Ernest was sent to Topeka State Hospital for an unknown reason. The family received no notification.
 - August 1986—Ann received recognition in her local paper. Two days later, her brother-in-law received a letter from Ernest that described Ann as dead.
 - August 1986, a week later—Ernest tied up his mother, choked her until she thought she would die, killed their pet dog, and threatened to kill his mother. Police used tear gas. Had homemade gun. He was sent to Topeka State Hospital. The family received no notification.
 - September 1986-1989—Ernest sent many letters to Leona's family members. Some were sent while he was in Topeka State Hospital. Others were sent at times when he was released. There was a general escalation in the threat of violence in the letters. The family never knew when he was in state hospital, or when out until he made some contact. There were times the family was promised notification when it did not occur. The county attorney was contacted repeatedly, to no avail. It was later confirmed by law enforcement that Ernest had been used as an informant. The family was repeatedly told there was nothing that could be done. As soon as he was medication compliant, he was not seen as a danger to himself or others, so the State Hospital would release him, unannounced. He would then go off his medication and the cycle would continue.
 - September 1989—Leona and Ann both wrote chronological histories of events and provided them to his therapist, the county attorney, and Harvey County Judge Ice.
 - August 1990—Ernest was released. Judge Ice sent Leona and Ann notification that the State Hospital discharged him without notifying anyone in Newton, so Ernest was no longer under any court order. The judge reported he wrote a letter of complaint to the hospital's medical director and advised law enforcement of situation.
 - 1990-2007—There were continued episodes of attempted contact by Ernest, but they began to diminish. His son was grown and the family felt somewhat safer.
 - December 2007—Law enforcement informed Ann that a few years ago, when President Clinton gave a speech in Tulsa, two FBI agents were sent to Newton to keep tabs on Ernest. Law enforcement also reported that Ernest was very crippled with gout. He was reported to have difficulty getting around at that time.
 - 40 years have gone by.

As you can see, for forty years this family endured ongoing terror due to multiple hostage taking scenarios, multiple stand-offs with police, multiple violent acts and personal assaults, and threats on their lives and the lives of their children too numerous to count. But, worst of all, at times when they should have been able to feel some reprieve—those times when the perpetrator was

confined—they could not feel safe, since they were always unsure and unaware of when he would be released.

This case study is one I remember quite well. Leona is my sister, and I am “Ann” (Dorothy Ann). As a victim advocate, I am relieved that these cases are unusual, but they do happen more often than we think. I have worked with quite a few of their victims. The lack of notification is often a problem. When seeking assistance, these victims, more than any others, will be instructed to be patient while the medications and treatments reduce their risk. Sometimes, the risk remains. Services available tend to focus on the rights and needs of the hospitalized patient, which is very important. But we must stop turning a deaf ear toward their victims.

I am pleased that Victim Services in the Department of Corrections is the selected service provider for this notification. Their staff has the experience and protocol established to do so effectively.

Thank you for your time today. I would sincerely appreciate your support of House Bill 2440.

THEODORE B. ICE

District Court Judge
Harvey County Courthouse
Newton, Kansas 67114

JUDGES OF THE NINTH JUDICIAL DISTRICT
Harvey and McPherson Counties
ADMINISTRATIVE JUDGE
CARL B ANDERSON, JR.
DISTRICT JUDGES
THEODORE B. ICE, Division I
RICHARD B. WALKER, Division II

TELEPHONE
(316) 283-6900

August 9, 1990

Ms. Leona Abbott
Safehouse
Box 313
Pittsburg, KS 66762

PERSONAL & CONFIDENTIAL

Re: Ernest Gibbens
Case No. 86-CT-328

Dear Ms. Abbott:

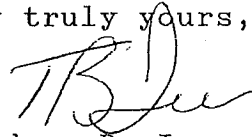
I have spent the last two days on the telephone checking on the status of Ernest Gibbens.

Unfortunately, I must report to you that Topeka State Hospital discharged him without notifying anyone in Newton. The effect of this is that Mr. Gibbens is no longer under any court order.

I am extremely upset and agitated over this matter and am writing a letter of complaint to the medical director of the hospital. I have also held a meeting with the law enforcement people here to advise them of the situation.

The purpose of this letter is to advise you of what has happened.

Very truly yours,


Theodore B. Ice
District Judge

TBI/jr

cc: Dorthy Miller, Safehouse

The Hutchinson News

Saturday, August 30, 1986, Hutchinson, Kansas, Year 115 No. 58

Police flush man from home

Newton ordeal ends peacefully

By Mark Enoch
The Hutchinson News

NEWTON — Police used tear gas Friday evening to force an enraged Newton man out of his home after he barricaded himself inside.

Earlier, he had handcuffed his mother to a chair.

The tense drama began Friday afternoon in a quiet neighborhood on South Walnut in Newton. The mother, Arlene Gibbens, was not injured after her son, Ernest "Buster" Gibbens, handcuffed her to a bedroom chair.

Mrs. Gibbens said Ernest also fought with his brother, Lewis "Barney" Gibbens. Lewis received a cut on his forehead, but was not seriously hurt.

Police chief Bill Smith said Ernest was taken to Newton's Prairie View Mental Health Center and later will be taken to the state mental hospital in Topeka.

There was one fatality. Ernest killed the family dog.

"He's been sick a long time," Mrs. Gibbens said after her ordeal. "I had him committed to Topeka (the same mental hospital) a year ago. He's not a drug addict. He's not a paranoid schizophrenic. He's not a criminal because of his illness. He is not a violent person."

But the hospital released him. The staff claimed 37-year-old Ernest wasn't violent, Mrs. Gibbens said.

"He's so intelligent and he can fool you," she said.

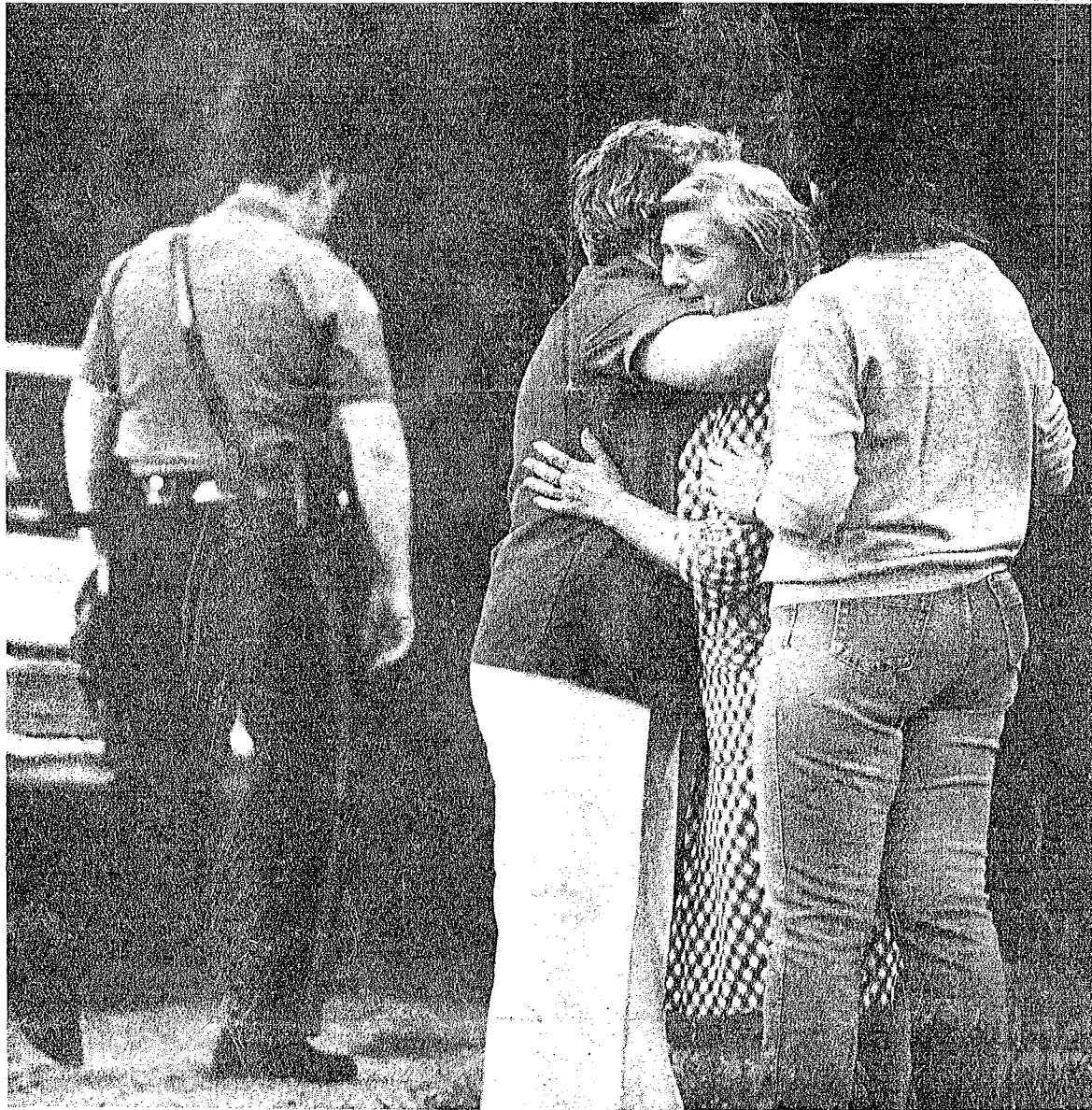
Mrs. Gibbens said she was out of the house Friday, but returned about 2:30 or 3 p.m. and planned to rest. But Ernest was acting strange. She said he yelled at her and shoved her, so she tried to slap him, but missed.

That apparently provoked Ernest into a fit of rage. Mrs. Gibbens said her son shoved her across the kitchen and choked her. "I thought, 'This is it.'"

She doesn't know how she got into the bedroom, but that is where Ernest handcuffed her to a chair and again yelled at her. She said Ernest also showed her what appeared to be two homemade guns.

"I was saying my prayers. I prayed a lot to save him. I was praying that nobody would come. I actually think he could have killed me anytime he wanted to. I was trying to be calm because I tend to get very hyper and very hysterical. I was praying. I was praying a lot — for his safety as well as mine."

Mrs. Gibbens didn't want any-



Arlene Gibbens is comforted by a friend and her daughter, Rhonda Hudson, in gray shirt, as she watches her son, Ernest, being taken away in an ambulance from

the family home in Newton Friday evening. Earlier, Gibbens had held his mother hostage and attacked his brother.

By Greg Peters

one else to come inside the house and get hurt. But she said Ernest appeared to be getting calmer and even brought her a sandwich.

Then her 23-year-old son, Lewis, arrived. She said the brothers fought on the bed, while she slipped out of the handcuffs. She tried to call the police, but Ernest had disconnected the telephone, so she ran to her next-door neighbor's house.

That neighbor, Eob Swatek, said it was about 5 p.m. when Mrs. Gibbens ran to his house. He

doesn't have a telephone, but his wife, Roxanna, ran to a neighbor's home to call police.

Swatek said one Newton police officer arrived, and soon was met by two other officers and a Kansas Highway Patrol trooper.

"It was pretty quiet," Swatek said. "He had barricaded himself in the house."

Shortly before 7 p.m., police fired one canister of tear gas into the house. Ernest was alone inside. Chief Smith said Ernest soon removed the barricade and gave

himself up. He was strapped to a stretcher and taken to an ambulance.

Mrs. Gibbens, 58, is not in good health. She has heart trouble and said she has been sick with pneumonia all summer. She became hysterical for a few minutes when she learned that Ernest killed the dog.

Mrs. Gibbens works as the animal abuse officer for Harvey County.

"He had to kill somebody so he killed the dog," she said. "He hated the dog, poor little thing."

Mrs. Gibbens said she thought Ernest's problems began in high school.

"He hasn't worked for several years. He sells his blood to live on."

Mrs. Gibbens said Ernest married after graduating from high school, but his wife left him about four years later. Since then, he has not seen his son. She said that is when Ernest started to go downhill.

"It's just gradually getting worse in the last five to 10 years," she said.

Testimony on HB 2440
to
The House Corrections and Juvenile Justice Committee

By Jennie Marsh
Director of Victim Services
Kansas Department of Corrections
January 21, 2010

HB 2440 provides for notifications to crime victims regarding the status of a defendant when the defendant is diverted from the criminal justice system for an evaluation of his or her competency to stand trial or for involuntary commitment pursuant to the Care and Treatment Act for Mentally Ill Persons. Notification would be provided by the Department of Corrections. In addition to HB 2440 addressing notification to crime victims, this bill also amends K.S.A. 22-3428 at page 6, line 18 to extend from 30 to 45 days the time period for the Secretary of Social and Rehabilitation Services to prepare recommendations to the court regarding a suitable reentry program for a patient who is to be conditionally released from a treatment facility. The Department of Corrections supports HB 2440.

Current law provides for notification to crime victims regarding the status of the perpetrator after a criminal conviction, particularly when the convicted defendant is remanded to the custody of the Department of Corrections. However, current law does not address notification to crime victims regarding the status of those criminal defendants who are placed in the custody of the Department of Social and Rehabilitation Services or other mental health treatment facilities for an evaluation as to whether the defendant is competent to stand trial or is acquitted due to the defendant's lack of mental capacity and subsequently committed pursuant to the Care and Treatment Act for Mentally Ill Persons.

While criminal defendants whose status is to be reported to victims pursuant to HB 2440 are not in the custody of the Department of Corrections, the Department of Corrections currently provides notifications to crime victims regarding offenders in its custody. Therefore, the Department has established a confidential database regarding crime victims or their surviving family members and is well suited to being a statewide entity to provide notifications to crime victims regarding the status of offenders. The efficiency and effectiveness of the Department of Corrections serving as a central point for disseminating crime victim notifications is exemplified by a Memorandum of Agreement between KDOC and SRS whereby KDOC has for the last several years provided victim notification services on behalf of the Department of Social and Rehabilitation Services regarding persons civilly committed for treatment as Sexually Violent Predators. The KDOC Victim Services unit expects that this new responsibility would be an increase of

DEPARTMENT OF CORRECTIONS

at most 400 new notification letters per year in the out years, and that increase can be absorbed within existing resources.

The Department urges favorable consideration of HB 2440.



KANSAS

DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Don Jordan, Secretary

House Corrections and Juvenile Justice Committee

January 21, 2010

HB 2440 – Victim Notification

Disability & Behavioral Health Services

Deputy Secretary Ray Dalton

For Additional Information Contact:
Katy Belot, Director of Public Policy
Docking State Office Building, 6th Floor North
(785) 296-3271

Corrections and Juvenile Justice
Date: 1-21-10
Attachment # 2

HB 2440 – Victim Notification

House Corrections and Juvenile Justice Committee

January 21, 2010

Madame Chair, and members of the Committee, I am Ray Dalton, Deputy Secretary of Disability and Behavioral Health Services (DBHS) with the Department of Social and Rehabilitation Services (SRS), and I thank you for the opportunity to testify today in support of House Bill 2440. House Bill 2440 would require the State Mental Health Hospitals to report to the Department of Corrections, Victim Notification Unit, admissions, discharges, movements of patients between facilities, and hearings, for the purpose of victim notification.

These changes to the forensic statutes will allow for the notification of victims who are not currently being notified of a change in status of a person who has victimized them, because the offender is no longer “in the criminal justice system.” This occurs when an individual is being evaluated or treated for competency, found not guilty for lack of mental state, or involuntarily committed. Under these proposed changes notification will start when an offender enters the custody of the state hospital, either at a §3302 competency evaluation or a §3303 treatment order.

Notification to the victim will be provided by the Department of Corrections Office of Victims Services, with status information provided by the state hospitals, and victim information provided by the District Attorney.

The SRS Forensics Coordinator, representatives from the State Mental Health Hospitals, and I participated in a workgroup which looked at the issues and gaps around the notification of victims of persons who were committed to the state hospitals under the forensic commitment statutes. SRS is in agreement with the proposed changes to the statutes. These new notification requirements will have a minimal impact on the State Hospitals.

Thank you for the opportunity to testify. I would be happy to answer any questions.