

# **PERFORMANCE AUDIT REPORT**

## **Examining the Statutory Requirements and Funding Sources for Background Investigations in Kansas**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
April 1998**

# ***Legislative Post Audit Committee***

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## ***Legislative Division of Post Audit***

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April 16, 1998

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Examining the Statutory Requirements and Funding Sources for Background Investigations in Kansas*.

The report also contains an appendix showing 43 statutory provisions related to records checks or background investigations in the State of Kansas.

We recommended that the Kansas Bureau of Investigation determine the number of staff needed to keep the criminal history database current, and provide that information to the Legislature as soon as possible. We also recommended that the Legislative Post Audit Committee either direct the Division of Post Audit or request the Secretary of Administration to study whether licensing fees charged by State agencies are sufficient to cover all costs. We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

  
Barbara J. Hinton  
Legislative Post Auditor



**EXECUTIVE SUMMARY**  
**LEGISLATIVE DIVISION OF POST AUDIT**

**Question 1: How Have the Number and Type of Criminal History Records Checks and Background Investigations Required by Law Changed Over the Past 10 Years, Who Conducts Them, and Who Pays for Them?**

**Kansas agencies conduct two types of reviews to verify good character: records checks and background investigations.** ..... page 2  
*A records check provides limited information, such as whether a person has any felony convictions. These are computerized searches and can take as little as 3 minutes. A background investigation may verify financial information, work history, and other types of information provided by the person being investigated, and can take as long as 80 hours. The Kansas Bureau of Investigation performs about 98% of the records checks and 59% of the background investigations performed by State agencies.*

**Since 1988, 25 new statutory provisions have required or allowed criminal history records checks or background investigations.** ..... page 4  
*The majority of those provisions (15 of 25) require mandatory records checks or background investigations for people who either work in or regulate gambling activities in Kansas. Other provisions relate to people in health professions or workers in adult care homes or home health agencies. In addition, four tribal gaming compacts have been signed requiring some type of background investigation of certain people working in tribal casinos.*

**New legislation enacted over the past decade has had little impact on the total number of criminal history records checks conducted, but it has significantly increased the number of background investigations that need to be performed.** ..... page 6  
*The total number of records checks the KBI performs—about 500,000 a year—has increased only slightly compared to five years ago, and the number the Bureau performed for State agencies actually declined. About 9% of all criminal history records checks done for State agencies in 1997 were done for those that didn't have a statutory requirement for records checks. New requirements related to racing and gaming in Kansas have nearly quadrupled the number of background investigations conducted in Kansas in the past five years—from 245 to 918. Casino, racing, lottery, or gaming agency employees were the subjects of most of these background investigations.*

**In 1997, about 29 more staff were performing background investigations and records checks than were doing that work five years ago.** ..... page 9  
*In all, 16 of those staff work for the Kansas Bureau of Investigation. (A multi-year federal grant the Bureau received to help it computerize criminal history data funds about 13 of those positions.) The 1997 Legislature gave the State Gaming Agency seven new positions so it could conduct some of the casino-related background investigations formerly done by the KBI.*

**The Department of Health and Environment and the Governor's Office are the only State non-criminal justice agencies requesting a significant number of records checks or background investigations that don't pay the KBI for those services.** ..... page 10  
*Most State agencies that request a*

lot of background investigations and criminal history records checks set aside money in their budgets to pay for those costs. In fiscal year 1997, the Bureau received enough in fees to cover the costs of its Gaming Unit and the non-criminal justice share of its Criminal History Records Unit. Some agencies' licensing fees appear to be too low to cover their application processing costs plus the cost of a KBI records check.

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**Question 2: How Much of a Backlog Exists for the Various Types of Background Investigations and Records Checks, and Is There a Potential to Scale Back the Requirements for Some Background Investigations?**

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**As of March 1, 1998, there were about 840 incomplete background investigations and about 10,000 unprocessed criminal history records checks.** ..... page 14  
*Nearly all the incomplete background investigations are related to tribal casinos and are to be performed by the KBI Gaming Unit or the State Gaming Agency. Since September 1997, the Gaming Agency has performed all investigations of mid-level gaming employees. Without a more detailed review, we couldn't determine whether one agency was performing background investigations more efficiently than the other. Bureau officials told us there's a backlog for records checks because the criminal history records database isn't fully computerized, the section hasn't been fully staffed, and staff must complete other work in addition to responding to records check requests.*

**We didn't find much potential for scaling back the number of records checks or background investigations being done.** ..... page 17  
*Most of the required records checks are being performed to protect vulnerable people, such as children in day care. Most of the background investigations are related to trying to keep gambling industries in Kansas from becoming corrupt. Kansas' background investigation requirements for employees who work in the gambling industry are similar to those in Iowa and Missouri. We identified only a few background investigations the Governor may request that don't seem crucial.*

**Conclusion** ..... page 18

**Recommendations**..... page 19

**APPENDIX A: Listing of Kansas Statutory Provisions Related to Records Checks or Background Investigations** ..... page 21

**APPENDIX B: Agency Responses** ..... page 25

This audit was conducted by Joe Lawhon, Jill Shelley, and Katrin Osterhaus. Leo Hafner was the audit manager. If you need any additional information about the audit's findings, please contact Mr. Lawhon at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call (785) 296-3792, or contact us via the Internet at: **LPA@mail.ksleg.state.ks.us.**

## **Examining the Statutory Requirements and Funding Sources for Background Investigations in Kansas**

State law requires background investigations to be conducted on some people before they can be employed in certain professions or licensed to own, operate, or work in certain types of businesses. These requirements are placed on people ranging from day care workers to casino and racetrack employees and owners. Although the Kansas Bureau of Investigation and the State Gaming Commission conduct most of these investigations, other agencies sometimes are involved.

Recently legislators have expressed concerns that a proliferation of statutory requirements for such investigations may be overburdening available resources and causing lengthy delays in completing some investigations. Other concerns focus on whether the full cost of conducting the investigations is being paid by those who require the service, and whether in-depth investigations are being done when they aren't necessary. Addressing those concerns, this performance audit answers these questions:

- 1. How have the number and type of records checks and background investigations required by law changed over the past 10 years, who conducts them, and who pays for them?**
- 2. How much of a backlog exists for the various types of background investigations and records checks, and is there a potential to scale back the requirements for some background investigations?**

To answer these questions, we reviewed statutes to determine which ones require or allow records checks or background investigations, we spoke with staff of the agencies that perform these investigations, and we gathered information about the numbers and types of records checks and background investigations performed, the costs, and the numbers of staff performing this work. We also contacted several nearby states to learn how Kansas' background investigation requirements for workers in racing- and gaming-related industries compare to those of the other states.

In doing this work, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office except that we didn't verify KBI computer-generated data on the numbers of records checks its staff performed and billed.

## **How Have the Number and Type of Criminal History Records Checks and Background Investigations Required by Law Changed Over the Past 10 Years, Who Conducts Them, and Who Pays for Them?**

At least 25 new statutory provisions have been enacted over the past decade requiring or allowing criminal history records checks and background investigations for certain individuals. These new provisions don't appear to have significantly increased the number of criminal history records checks conducted, but they have significantly increased the number of background investigations. Most of the increase in background investigations has been related to the racing and gaming industries in Kansas. The vast majority of the records checks and background investigations have been done by the Kansas Bureau of Investigation. But starting this fiscal year, the State Gaming Agency has begun taking over some of the background investigations related to tribal gaming.

Agencies have 29 more people performing records checks or background investigations than they did five years ago—although 13.5 of those are temporary positions at the Kansas Bureau of Investigation funded through a multi-year federal grant. Criminal history records checks are performed for criminal justice agencies at no charge. In most cases, non-criminal justice State agencies do pay for records checks; the notable exception is the Department of Health and Environment. State agencies are including funds in their budgets to pay for records checks or background investigations. However, some agencies might not always be passing the costs on to licensees when appropriate. These and related findings are discussed in the sections that follow.

### **Kansas Agencies Conduct Two Types of Reviews To Verify Good Character: Records Checks and Background Investigations**

State law requires or allows various agencies or individuals to check information to verify that individuals meet requirements for being licensed, or for other reasons. Information about individuals is checked two ways—a records check or a background investigation.

Sometimes only limited information is required—such as whether the individual in question has been convicted of a felony. In general, such requests can be met with a records check. In other cases, the information that must be obtained and checked is extensive, including criminal history, financial information, employment information, education, and the like. A background investigation usually is required to meet a need for more extensive information. The table on the next page summarizes some basic information about each type of check that is done.

### Differences Between Records Checks and Background Investigations

|                                      | Records check  | Background investigation  |
|--------------------------------------|--|---|
| What type of information is checked? | records on convictions, arrests, warrants, violations, etc. (The law defines what can be released to a particular type of requestor; e.g., few have access to juvenile records.) | information provided by the person being investigated, such as education, work history, financial situation, and criminal history; investigators usually also request a records check |
| How long does one take?              | computerized searches can take as little as 3 minutes  | 8-80 hours  |
| Which agencies do them?              | KBI<br>Highway Patrol<br>Securities Commission<br>Department of Revenue<br>(each searches its own records)   | KBI<br>Highway Patrol<br>State Gaming Agency<br>State Racing Commission<br>Lottery  |
| Who may request one?                 | anyone   | State agencies and the Governor's Office (for appointees)   |

**Not all records checks or background investigations performed by State agencies are equal.** For example, three levels of criminal history records checks are available through the Kansas Bureau of Investigation, as shown in the table below. The most extensive is based on identity (established by fingerprints) and includes information from all over the country. However, only a few statutes allow access to national data. The profile box on page 4 provides more information about the five Kansas statutes that authorize access to national criminal history information.

### Differences in the Types of Criminal History Records Checks

|                                      |  |
|--------------------------------------|--|
| most extensive<br>KBI records check  | <b>Fingerprint Check (National)</b> is based on identity as established by fingerprints; both Kansas criminal records and records from other states kept by the Federal Bureau of Investigation are reviewed |
| ↕                                    | <b>Fingerprint Check (Kansas)</b> is based on identity as established by fingerprints; only Kansas criminal records are reviewed   |
| least extensive<br>KBI records check | <b>Name Check (Kansas)</b> is based on name (including aliases); only Kansas criminal records are reviewed   |

Background investigations also vary. Some require extensive checking of lots of information, while others verify only a limited amount of information. For example, a background investigation performed on a gubernatorial appointee to a judgeship asks more questions about financial situation and interests than does a background investigation of a mid-level casino employee. Also, the Highway Patrol asks applicants for trooper positions many questions about education and use of alcohol and illegal drugs; applicants for non-law-enforcement positions aren't asked those questions.

## Since 1988, 25 New Statutory Provisions Have Required or Allowed Criminal History Records Checks or Background Investigations

Of those 25, nine were for records checks and 16 were for background investigations. The chart on the next page summarizes these statutes.

As the chart shows, 19 of the 25 provisions call for a mandatory records check or background investigation, and the vast majority of those relate to racing and gaming and the agencies that regulate those industries. In addition to the statutory provi-

### Many Records Check Requests by Non-Criminal Justice Agencies Access Only Kansas Criminal History Information

State law requires the Kansas Bureau of Investigation (KBI) to maintain information about Kansas warrants, arrests, convictions, pardons, sentences, and the like. Information about crimes that occurred in all states is contained in the National Criminal History Record Database which is maintained by the Federal Bureau of Investigation (FBI).

Federal Public Law 92-544 allows law enforcement and criminal justice agencies to obtain information from the FBI. For a non-criminal justice agency to have access to the FBI's national criminal history data, three things must happen:

- State law must clearly specify that the criminal history check is based on a fingerprint search. Only a fingerprint search can provide an absolute identity.
- People whose criminal history will be reviewed must be clearly defined within that statute.
- The U.S. Justice Department must approve such legislation before the FBI will approve access to its database.

Currently, **only five Kansas statutes** allow the State's non-criminal justice agencies to access national criminal history data:

| <u>Topic Area</u>   | <u>Statute</u>       | <u>Reason</u>  |
|---|----------------------|--|
| Municipalities licensing merchant or security police                    | K.S.A. 12-1679(b)    | Determining qualifications for security personnel                              |
| Certain employment candidates of the Kansas Department of Credit Unions | K.S.A. 17-2234(c)    | Verifying identity, determining qualifications for employment                  |
| Employees and other people who work in sensitive areas of the Lottery   | K.S.A. 74-8704(a)(9) | Verifying identity, determining qualifications for employment                  |
| Employees and licensees of the Racing Commission                        | K.S.A. 74-8804(n)    | Verifying identity, determining the qualifications for employment or licensing |
| Employees of the State Gaming Agency                                    | K.S.A. 74-9805(l)    | Verifying identity, determining qualifications for employment                  |

Most non-criminal justice agencies in Kansas don't have access to national criminal data, but instead have access only to Statewide criminal history data. This severely limits the amount of information they can receive about any individual, and may add to the risk for certain individuals. For example, the Department of Health and Environment requests criminal history checks from the KBI because State law mandates that no one who has a felony conviction for a crime against persons can reside, work, or volunteer for a child care facility. The records check performed for the Department searches only Kansas criminal history records. As a result, someone who had committed a crime in another state could be cleared to work in a child care facility in Kansas.

**Statutory Provisions Enacted in the Past Decade Calling for Background Investigations or Record Checks**

| #                                      | State Agency                         | Statutory Cite  | Year Enacted | Person/ Entity Checked   | Mandatory or Optional | Agency Doing Check          | When Done?                          | Number Done in Calendar Year 1997                           |
|--|--------------------------------------|-----------------|--------------|--|-----------------------|-----------------------------|-------------------------------------|---|
| <b>Criminal History Records Checks</b> |                                      |                 |              |  |                       |                             |                                     |   |
| 1                                      | Department of Credit Unions          | 17-2234(b)(c)   | 1995         | Prospective employees for the Department   | Mandatory             | KBI and FBI                 | Before employment                   | 0   |
| 2                                      | Racing Commission                    | 74-8804 (n)     | 1995         | Prospective employees of the Commission and applicants for any license issued by the Commission  | Mandatory             | KBI and FBI                 | Before employment, before licensing | See Racing and Gaming Commission below                      |
| 3                                      | Racing Commission                    | 74-8805(g)      | 1995         | Any employee of the Racing & Gaming Commission   | Mandatory             | KBI                         | Before employment                   |   |
| 4                                      | State Gaming Agency                  | 74-9805(l)      | 1996         | Prospective employees of the Gaming Agency, and those applying for a license to be issued pursuant to a tribal gaming compact                        | Mandatory             | KBI and FBI                 | Before employment                   | See State Gaming Agency below                               |
| 5                                      | Department of Health and Environment | 39-870          | 1997         | Employees of Adult Care Homes  | Mandatory             | KBI                         | Before employment                   | 0   |
| 6                                      | Department of Health and Environment | 65-5117         | 1997         | Any employee of Home Health Agencies   | Mandatory             | KBI                         | Before employment                   | 0   |
| 7                                      | Department of Health and Environment | 65-3503(d)      | 1995         | Licenses of and applicants for licensure of adult care home administrator  | Optional              | KBI                         | Before or after licensing           | 0   |
| 8                                      | Board of Nursing                     | 65-1120(f)      | 1995         | Nursing applicants   | Optional              | KBI                         | Before or after licensing           | 37 Record checks  |
| 9                                      | Board of Nursing                     | 65-4209(f)      | 1995         | Applicants for a mental health technician's license  | Optional              | KBI                         | Before or after licensing           |   |
| <b>Background Investigations</b>       |                                      |                 |              |  |                       |                             |                                     |   |
| 10                                     | Board of Healing Arts                | 65-2839a(c)     | 1992         | Doctors, applicants for licensure (medical doctors)  | Optional              | KBI                         | Before or after licensing           | 0   |
| 11                                     | Department of Health and Environment | 65-3407(d)      | 1992         | Any person applying to construct, alter or operate a solid waste processing facility or solid waste disposal area of a solid waste management system | Optional              | KBI                         | Upon application for permit         | 0   |
| 12                                     | Governor                             | 75-712          | 1997         | Various persons appointed by the Governor  | Optional              | KBI                         | Before appointment                  | 0   |
| 13                                     | Racing & Gaming Commission           | 74-8805(a)(1)   | 1995         | Executive Director   | Mandatory             | KBI                         | Before appointment                  | 1,078 records checks<br>63 background investigations (Est.) |
| 14                                     | Racing & Gaming Commission           | 74-8805(b)(1)   | 1995         | Inspector of Parimutuels   | Mandatory             | KBI                         | Before appointment                  |   |
| 15                                     | Racing & Gaming Commission           | 74-8805(c)(1)   | 1995         | Director of Security   | Mandatory             | KBI                         | Before appointment                  |   |
| 16                                     | Racing & Gaming Commission           | 74-8805(d)(1)   | 1995         | Director of Racing Operations  | Mandatory             | KBI                         | Before appointment                  |   |
| 17                                     | Racing & Gaming Commission           | 74-8805(h)      | 1995         | Numerous positions including the deputy director, legal assistant, auditors, accountants, racing judges, and any others defined as sensitive         | Mandatory             | KBI                         | Before employment                   |   |
| 18                                     | Racing & Gaming Commission           | 74-8805(i)      | 1995         | Animal health officer, inspector of parimutuels, office supervisor, HR manager, office specialist  | Mandatory             | KBI                         | persons having that position        |   |
| 19                                     | Racing & Gaming Commission           | 74-8806(a)      | 1995         | Animal health officer  | Mandatory             | KBI                         | Before employment                   |   |
| 20                                     | Racing & Gaming Commission           | 74-8814(c)(1)   | 1989         | President, VP, Secretary, treasurer and other members of a fair association  | Mandatory             | KBI                         | Before licensing                    |   |
| 21                                     | Racing & Gaming Commission           | 74-8814(c)(2)   | 1992         | Officers and directors of nonprofit horsemen's organization, and such other members...   | Mandatory             | KBI                         | Before licensing                    |   |
| 22                                     | Retirement System                    | 74-4905(h)      | 1992         | Board of Trustees, KPERS (9 members, 4 appointed by Governor)  | Mandatory             | KBI                         | Before appointment                  |   |
| 23                                     | State Gaming Agency                  | 74-9804(a)(1)   | 1996         | Executive Director of Gaming Agency  | Mandatory             | KBI                         | Before appointment                  | 1,139 background investigations (Est.)                      |
| 24                                     | State Gaming Agency                  | 74-9804(b)(1)   | 1996         | Director of Compliance (Gaming Agency)   | Mandatory             | KBI                         | Before employment                   |   |
| 25                                     | State Gaming Agency                  | 74-9804(c)(1)   | 1996         | Compliance Inspectors  | Mandatory             | KBI                         | Before employment                   |   |
| 26                                     | State Gaming Agency                  | Tribal compacts | 1995         | Various persons associated with ownership or operations of casinos   | Mandatory             | KBI and State Gaming Agency | Generally, before employment        |   |

sions, four tribal gaming compacts signed in early 1995 require background investigations of various casino employees. A complete listing of all the statutory provisions that we found related to records checks or background investigations can be found in Appendix A.

**New Legislation Enacted Over the Past Decade Has Had Little Impact on The Total Number of Criminal History Records Checks Conducted, But Has Significantly Increased the Number of Background Investigations that Need to Be Performed**

Several State agencies perform records checks. However, when all records checks are taken into account, the Kansas Bureau of Investigation processes about 98% of the total done in a year by State agencies. Therefore, we focused our review on the Bureau's workload. The box below provides information about other types of records checks performed by other State agencies.

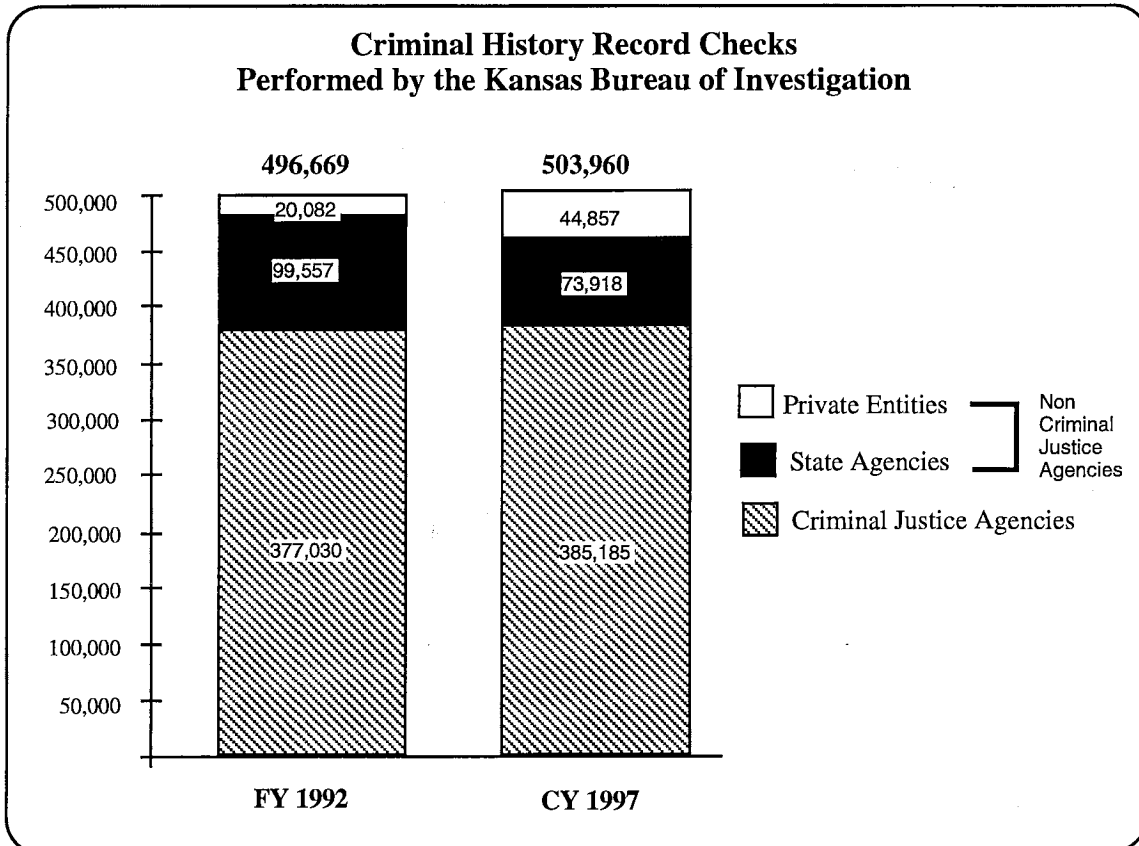
**Other Agencies Check Their Own Records**

At least three State agencies in addition to the KBI perform significant numbers of records checks of their own data: the Securities Commissioner, Alcoholic Beverage Control in the Department of Revenue, and the Highway Patrol. All of these checks are based on identification by name, not by fingerprint.

- The Securities Commissioner's office searches the Central Registration Depository, a database of the National Association of Securities Dealers, for information on each applicant for Kansas registration as a broker-dealer, agent, investment adviser, or investment adviser representative. This nationwide database includes information on topics including education, convictions, Commission orders, and complaints—information used in the Commission's decision to grant or deny a license. The Commissioner's staff also will search this database when a member of the public requests information on a specific investment professional. Commission staff performed nearly 5,300 such searches in 1997; each takes 20 minutes or longer.
- The Division of Alcoholic Beverage Control must determine whether applicants for various licenses meet residency requirements, and it uses a check of the Department's computerized driver's license files to do that. Additional work is done if the information in the driver's license files doesn't match the information the applicant gave. Division staff estimate they did more than 5,700 computerized records checks in 1997, with each taking "about a minute." In addition, the Division, as a criminal justice agency, submits criminal history records checks to the KBI to determine whether applicants have felony convictions.
- The Kansas Highway Patrol checks its internal records for information including violations, accidents and, on the positive side, whether the subject provided assistance at the scene of an accident. Some of the files checked are computerized, but others have only paper records. The Patrol's records staff performed 161 of these checks in 1997, most of them on job applicants at law enforcement agencies. To search the records, prepare a response, and have that response reviewed takes about an hour.

Information maintained by the Bureau wasn't specific enough to allow us to identify how many records checks could be attributed to changes in State law in recent years, so we looked at how the total number of criminal history records checks performed had changed. Because most of these newer statutory provisions had been enacted in 1995-1997, we compared the number of records checks done in calendar year 1997 with the number performed about five years ago. That comparison is shown in the chart on the next page.

The Bureau keeps track of its records check requests by the type of entity making the request. Basically there are two types of requestors--criminal justice agencies and non-criminal justice agencies. Criminal justice agencies include local law enforcement agencies as well as some State agencies that have law enforcement powers such as the Department of Corrections and the Division of Alcoholic Beverage Control. Non-criminal justice agencies include State agencies without law enforcement powers and entities like private-sector employers.



As the chart shows, the total number of criminal history records checks hasn't changed much; it hovered around 500,000 in both years we reviewed. About three-fourths of all records checks performed were done for criminal justice agencies. The chart also shows that the only category of records checks that appeared to be growing substantially was the number submitted by private entities. The number of records checks performed on behalf of State agencies actually declined by about 26% by 1997. This is the category we'd have expected to see significant growth in if the statutory provisions had had a significant impact on the number of criminal history records checks.

**About 9% of all the criminal history records checks done for State agencies in calendar year 1997 were done for those that didn't have a statutory requirement for those checks.** For example, the Department of Social and Rehabilitation Services and the Kansas State School for the Blind have adopted policies that new employees will be "checked-out" before being hired. Other agencies have sub-

mitted names for other reasons. For example, the Adjutant General did a records check on its armed security guards at Forbes Field because federal law specifies that no one convicted of a domestic violence crime can carry a concealed weapon. Also, the Consumer Credit Commissioner's Office has decided to request a records check as a part of its licensing practice.

**New requirements relating to racing and gaming in Kansas have caused a nearly fourfold increase in the number of background investigations performed.** Four agencies conducted background investigations in 1997. The number each agency has performed in recent years is shown in the accompanying table.

**Comparison of the Number of  
Background Investigations Performed (a)**

| <u>Agency Performing<br/>Background Investigations</u> | <u>A 12-month<br/>Period in<br/>1992 or 1993</u> | <u>A 12-month<br/>Period in<br/>1996 or 1997</u> | <u>Percent<br/>Change</u> |
|--|--|--|---------------------------|
| <b>KBI</b>   |  |  |                           |
| Internal or for Attorney General                       | 36   | 74   |                           |
| For Gubernatorial Appointees                           | 41   | 60   |                           |
| For the Racing and Gaming Commission                   | 17   | 31   |                           |
| For the Gaming agency (b)                              | 0  | 363  |                           |
| Other  | 0  | 16   |                           |
| <b>KBI Total</b>                                       | 94   | 544  | 479%                      |
| <b>Highway Patrol</b>                                  | 99   | 262  | 185%                      |
| <b>Lottery</b>   | 20   | 80   | 300%                      |
| <b>Racing</b>  | 32 (est.)  | 32   | 0%                        |
| <b>Total</b>   | 245  | 918  | 275%                      |

(a) Because each agency maintains its records differently, some are on a fiscal year basis and others are on a calendar year basis. We tried to compare the periods closest to fiscal year 1992 and 1997.

(b) In fiscal year 1998, the State Gaming Agency began performing some of the investigations for Indian casinos that previously had been done by the Kansas Bureau of Investigation.

As the table shows, most of the new investigations were performed by the Kansas Bureau of Investigation in connection with the opening of Indian casinos in Kansas. Highway Patrol officials told us their background investigations increased primarily because they needed to screen a larger class of trooper applicants in 1997 than they did in 1993. Although the number of investigations for the Lottery quadrupled, that was only 60 additional investigations. Lottery officials told us their background investigations increased because several major procurement contracts expired in that year, and with the submission of new bids many individuals had to be investigated.

**In 1997, About 29 More Staff Were Performing Background Investigations and Records Checks Than Five Years Ago**

The following table shows changes during the past five years in the number of staff conducting background investigations or criminal history records checks.

| <b>Estimated Number of Staff Allocated to Background Investigations and Records Checks</b> |                       |             |                          |
|--|-----------------------|-------------|--------------------------|
| <b>Agency</b>  | <b>Five Years ago</b> | <b>1997</b> | <b>Increase/Decrease</b> |
| <b>Background investigations</b>   |                       |             |                          |
| KBI Gaming   | 3                     | 6           | 3                        |
| State Gaming Agency  | 0                     | 7           | 7                        |
| Highway Patrol   | 3                     | 8           | 5                        |
| Lottery  | 1                     | 2           | 1                        |
| KBI for Gov. etc.  | 2                     | 1           | -1                       |
| Racing agency  | 3                     | 3           | 0                        |
| <b>Subtotal</b>  | <b>12</b>             | <b>27</b>   | <b>15</b>                |
| <b>Records checks</b>  |                       |             |                          |
| KBI Criminal History Section   | 25                    | 38.5        | 13.5                     |
| <b>Total</b>   | <b>37</b>             | <b>65.5</b> | <b>28.5</b>              |

**Most of the additional staff—a total of about 16 positions—work for the Kansas Bureau of Investigation.** All of the positions added to the Criminal History Records Section are temporary positions funded through a multi-year federal grant the Bureau received in fiscal year 1997 to help it fully computerize criminal history data. The Bureau's Gaming Unit also used the equivalent of about three more full-time positions to conduct background investigations for the Lottery, casinos, and racetracks.

**The 1997 Legislature gave seven new positions to the State Gaming Agency so it could conduct some of the casino-related background investigations formerly done by the KBI.** The Gaming Agency didn't actually begin doing those investigations until September 1997. In his fiscal year 1999 budget, the Governor also has proposed adding 10 more positions for background investigation work: seven to the State Gaming Agency and three to the Racing and Gaming Commission.

If these positions are added, it will eliminate most of the Bureau's involvement with background investigations for these agencies. Bureau officials told us the Racing and Gaming Commission anticipates taking over responsibility for all background investigations in June 1998. KBI officials also said the KBI plans to finish the background investigations they've received from the Gaming Agency. They added that the KBI's Gaming Unit staff, which currently is doing the background investigation work, will be shifted to other criminal investigative work in 1999. The proposed budget for fiscal year 1999 allows the Gaming Unit to keep all 14 of its positions, but funds only 8.5 positions through the General Fund.

**The Department of Health and Environment and the Governor's Office  
Are the Only State Non-Criminal Justice Agencies  
Requesting a Significant Number of Records Checks or  
Background Investigations That Don't Pay the KBI for Those Services**

The Kansas Bureau of Investigation charges the following fees for criminal history records checks, depending on the type and scope of the check performed.

- \$10 for a name-based records check (one name or two names for the same person, e.g., married name and maiden name) (Kansas records only)
- \$17 for a fingerprint-based records check (Kansas records only)
- \$41 for a fingerprint-based records check (nationwide)

The Bureau charges its actual costs for conducting background investigations, which in fiscal year 1998 were estimated to be \$41 per hour.

The table on the next page shows the number of records checks and background investigations requested by various agencies and individuals during 1997, and whether those agencies or individuals paid the Bureau for the work involved.

As the table shows, the following agencies don't pay the Bureau for records checks or background investigations.

- Criminal Justice Agencies. Bureau officials told us criminal justice agencies aren't charged for records checks because the purpose of the criminal history database is to serve these agencies in the course of their normal law enforcement duties. Also, criminal justice agencies submit information to the Bureau which becomes a part of the criminal history database.
- The Department of Health and Environment. The Department requests a significant number of records checks on individuals operating or working in day care facilities, but it has never paid for these checks, a fact that has been a point of contention between the Department and the Bureau for many years. The profile box on page 12 provides more information on this topic.
- The Governor. By law the Governor can request background investigations of individuals appointed to certain boards or State positions. KBI officials told us that it has been the agency's practice to not bill for these services.
- The Historical Society and the Division of Information Systems and Computing. The Bureau performs background investigations of employees of these agencies who will have access to confidential information.

**The fees the Bureau received in fiscal year 1997 were sufficient to cover the costs of the Gaming Unit, and the non-criminal justice portion of the Criminal History Records Unit.** During fiscal year 1997 the Bureau spent about \$1.5 million on background investigations and criminal history records checks, and collected about \$1.3 million in fees, as shown below.

| KBI Unit                                | Revenues    | Expenditures | Difference  |
|---|-------------|--------------|-------------|
| Criminal History Records Section        | \$482,394   | \$846,466    | (\$364,072) |
| Gaming Unit (Background Investigations) | \$763,999   | \$676,612    | \$87,387    |
| Totals                                  | \$1,246,393 | \$1,523,078  | (\$276,685) |

## Summary of Record Checks & Background Investigations Done by KBI

| <b>Who Pays the KBI?</b>               | <b>Does the Agency Charge a fee to the Person who is being checked?</b> | <b>Record Checks Billed by the KBI in Calendar 1997</b> | <b>Background Investigations Fiscal 1997</b> |
|--|---|---|--|
| <u>State Agencies</u>                  |   |   |  |
| Consumer Credit Commissioner           | Yes   | 290   |  |
| Gaming                                 |   | 1,139   | 363  |
| Insurance Department                   | Yes   | 1,839   |  |
| Kansas Neurological Institute          |   | 213   |  |
| Larned State Hospital                  |   | 278   |  |
| Lottery                                |   | 129   |  |
| Osawatomie State Hospital              |   | 156   |  |
| Parsons State Hospital                 |   | 199   |  |
| Pittsburg State University             |   | 165   |  |
| Racing & Gaming Commission             |   | 1,078   | 31   |
| Real Estate Commission                 | Yes   | 112   |  |
| School for Visually Handicapped        |   | 182   |  |
| Social and Rehabilitation Services     |   | 2,337   |  |
| State Bank Commissioner                | Yes   | 210   |  |
| All Other Agencies                     |   | 432   |  |
| <u>Private Individuals or Entities</u> |   | 44,857  |  |
| Total                                  |   | 53,616  | 394  |

## Who Doesn't Pay the KBI?

|  |  |         |     |
|--|--|---------|-----|
| <u>State Agencies</u>                        |  |         |     |
| Attorney General                             |  |         | 5   |
| Governor                                     |  |         | 60  |
| Health and Environment                       |  | 65,159  |     |
| Historical Society                           |  |         | 2   |
| Division of Information Services & Computing |  |         | 14  |
| KBI internal use                             |  |         | 69  |
| <u>Criminal Justice Agencies</u>             |  | 385,185 |     |
| Total  |  | 450,344 | 150 |

## Other Agencies That Perform Their Own Background Investigations

|                              | <b>Is a Fee Charged To the Person Investigated?</b> | <b>Who They Investigate</b> | <b>Number Done in Calendar '97</b> |
|------------------------------|---|-----------------------------|------------------------------------|
| Highway Patrol               | No  | applicants for employment   | 262                                |
| Lottery                      | No  | employees and vendors       | 80                                 |
| Racing and Gaming Commission | No  | track and agency employees  | 32                                 |

The table at the bottom of page 10 shows that the expenditures of the Criminal History Records Section exceeded revenues in fiscal year 1997. In recent years, appropriation acts have authorized the Bureau to collect fees in order to recover all or part of the operating expenses for criminal history records checks conducted for non-criminal justice agencies. The bar chart on page 7 shows that only about 25% of the total records checks performed in calendar year 1997 were done for non-criminal justice agencies. As the table shows, the Bureau's revenues from criminal history records checks covered more than half the Criminal History Records Section's costs.

The table also shows that in fiscal year 1997 revenues for the Gaming Unit exceeded its costs by almost \$90,000. This surplus occurred because the Gaming Unit received more money from the State Gaming Agency, the Lottery, and the Racing and Gaming Commission than it spent on the background investigations it conducted for those agencies. Since the start of fiscal year 1998, however, the Bureau has been billing the Lottery, the Racing and Gaming Commission, and the State Gaming Agency for actual costs incurred in conducting background investigations. KBI officials noted that the Unit will operate at a deficit in fiscal year 1998 because the 1997 Legislature required the Bureau to transfer \$253,000 to the State Gaming Revenues Fund to repay excess amounts paid to the Bureau by those agencies.

**Most State agencies that request a lot of background investigations and criminal history records checks set aside money in their budgets to pay for those costs.** This was one of the points we were asked to check in this audit. We contacted officials from 13 agencies that paid for a significant number of requests for records checks or background investigations to find out whether they budgeted for the expense. All the agency officials we contacted said they anticipate these expenses and budget funds for them each year.

**Some agencies' licensing fees appear to be too low to cover their application processing costs plus the cost of a KBI records check.** We asked agencies

**The Department of Health and Environment Hasn't Paid  
The KBI for Child Care Records Checks**

During the 1985 legislative session, legislation was passed prohibiting felons from working or regularly volunteering in a licensed day care facility. Because this law was expected to increase the number of records checks done for the Department to an estimated 30,000 per year, the Legislature also raised day care license fees and gave the KBI two additional clerical positions to help process records checks. The understanding was that the increased fees would help defray the cost of the additional clerks. That's because day care license fees are deposited into the State's General Fund, and these two positions were funded by the General Fund.

During the 1986 legislative session, the KBI got legislative authority to begin charging non-criminal justice agencies a fee for records checks, and it began billing State agencies in fiscal year 1987. The KBI billed the Department for the first time in February 1987. The Department refused to pay the bill and wrote a letter to the Budget Division explaining why the Department considered this billing unfair. The KBI didn't bill the Department again, but it has continued to maintain information about the number of records checks performed for the Department.

Bureau records show that the Bureau performed almost 74,000 records checks for non-criminal justice State agencies in calendar year 1997. The Department's 65,000 records checks represent about 88% of that total.

**Several Bills Considered During the 1998 Legislative Session  
Would Impact Background Investigations**

**Senate Bill 322 and House Bill 2497**—These bills would amend the laws under which private detectives are licensed and regulated. One of the new provisions would require the applicant's fingerprints to be submitted to the FBI for a criminal history records check. Also, the proposed legislation would require new applicants to be subject to a complete background investigation by the Attorney General. Officers and other principals of a detective firm—who now get a full background investigation as well—would be subject to a background check only if they are actively involved in the detective business.

**House Bill 2986**—This bill changes State law to require law enforcement agents of the Racing and Gaming Commission to conduct criminal history records checks and background investigations on certain employees and licensees, rather than having the Kansas Bureau of Investigation conduct those checks and investigations.

**House Bill 2858**—This bill would allow local law enforcement agencies to conduct a criminal history records check of any individual who is applying to be a coach, manager, or trainer or any other position directly associated with a public recreation commission player, contestant, or team when such a check is requested by the county or municipal public recreation commission or its designee.

**Substitute for House Bill 2972**—This bill amends the State law prohibiting adult care homes or home health agencies from employing people who have been convicted or adjudicated a juvenile offender for certain crimes. This law doesn't substantially change the requirements for criminal history records checks; what changes is the language specifying certain crimes. One thing that is new is that this bill would allow adult care homes or home health agencies to release the results of a background check on an applicant or employee to another adult care home or home health agency where that person was applying for a job, if that background check was done within the previous year.

with a significant volume of records checks—the Department of Health and Environment, the Insurance Department, the Consumer Credit Commissioner, the Real Estate Commission, and the Office of the State Bank Commissioner—how much they charge applicants for licenses. We wanted to determine whether the license fee was at least enough to cover the cost of the records check. With the exception of the Department of Health and Environment, those agencies have license fees higher than the \$10 fee the Bureau charges for each records check.

The Department of Health and Environment licenses several categories of day care facilities. The licensing fees for these facilities ranged from \$5 for registered day care homes to \$75 for licensed day care centers. In fiscal year 1997, the Department took in approximately \$200,000 in licensing fees from all classes of day care facilities. Those moneys are deposited into the General Fund.

In 1997, the Department electronically submitted about 65,000 names associated with day care licenses to the KBI for a records check. (For requests submitted electronically, the KBI charges only \$3.75 per name check because its costs are lower.) Hence the cost of those records checks was about \$244,000.

Thus, it appears the State subsidized the cost of conducting records checks for day care facilities in 1997 by about \$44,000. In addition, the State would incur other costs for processing day care applications that wouldn't be covered by the fees generated. In the time available for this audit, we weren't able to look at these other processing costs.

## **How Much of a Backlog Exists for the Various Types of Background Investigations and Records Checks, and Is There a Potential to Scale Back the Requirements For Some Background Investigations?**

As of March 1998, there were about 840 uncompleted background investigations—270 at the Kansas Bureau of Investigation's Gaming Unit and 570 at the State Gaming Agency. About 80% of the open background investigations were category II investigations. The Bureau's Criminal History Records Section also had about 10,000 unprocessed criminal history records checks. Bureau officials estimate it would take about 480 staff hours to eliminate this backlog, and about 6,100 staff hours to eliminate the backlog of all work in the Criminal History Records Section.

We didn't find much potential for scaling back the number of records checks or background investigations being done. None of the statutory provisions for records checks appeared to be unnecessary. We identified a few background investigations that in our opinion didn't appear to be critical, but eliminating them wouldn't have a significant impact on the overall workload. These and other findings are presented in the sections that follow.

### **As of March 1, 1998, There Were About 840 Uncompleted Background Investigations and About 10,000 Unprocessed Criminal History Records Checks**

Although several agencies do background investigations, only two—the KBI Gaming Unit and the State Gaming Agency—had a significant number of backlogged cases. No other State agency reported more than four open cases.

Bureau data showed that all but five of its open background investigations related to tribal casinos. (Those five came from the Racing and Gaming Commission.) According to the tribal compacts, background investigations for casino operations can be broken down into three categories, as follows:

**Category I investigations**—These are the most comprehensive. They're performed for all employees of the State Gaming Agency, for upper-level management positions at casinos, and for certain vendors. At present, all category I background investigations are being performed by staff in the KBI's Gaming Unit.

**Category II investigations**—These intermediate-level investigations are performed for many casino employees directly involved in the games. Since September 1, 1997, the State Gaming Agency has been performing all category II background investigations; before then, these background investigations were sent to the KBI.

**Category III investigations**—These are the lowest level investigations, which involve little more than a fingerprint-based criminal history records check. These are done for persons without access to restricted areas at the casinos. They include persons like janitors, kitchen employees, and hostesses. The State Gaming Agency has submitted about 1,000 names to the KBI for a category III background investigation. No other meaningful data were available concerning category III background investigations, so the information provided in the remainder of this section deals only with category I and II investigations.

The following table shows the number of open background investigations for the Bureau and the State Gaming Agency as of March 1.

| <b>Kansas Bureau of Investigation and State Gaming Agency<br/>Number of Uncompleted Background Investigations<br/>As of March 1, 1998</b> |                                     |   |                     |
|---|-------------------------------------|---|---------------------|
|   | <b><u>KBI Gam-<br/>ing Unit</u></b> | <b><u>State Gam-<br/>ing Agency</u></b> | <b><u>Total</u></b> |
| <b><u>Category I Investigations (1)</u></b>   |                                     |   |                     |
| Not yet started   | 94                                  | Not Applicable                          | 94                  |
| Started but not finished  | <u>63</u>                           | Not Applicable                          | <u>63</u>           |
| <b>Subtotal Category 1</b>  | <b>157</b>                          |   | <b>157</b>          |
| <b><u>Category II Investigations</u></b>  |                                     |   |                     |
| Not yet started   | 89                                  | 0                                       | 89                  |
| Started but not finished  | <u>24</u>                           | <u>571</u>                              | <u>595</u>          |
| <b>Subtotal Category 2</b>  | <b>113</b>                          | <b>571</b>                              | <b>684</b>          |
| <b>Total</b>  | <b>270</b>                          | <b>571</b>                              | <b>841</b>          |
| (1) Includes five investigations referred by the Racing and Gaming Commission   |                                     |   |                     |

Data provided by the Gaming Agency indicated that work had begun on all its category II background investigations and that it hadn't sent any category II cases to the KBI since September 1, 1997. KBI data showed that the Bureau hadn't started to work on 89 of 113 category II background investigations.

The next table provides information about the age of some of the background investigations and the time it has taken to process them.

| <b>Average Times for Background Investigations<br/>Completed or On-Hand as of March 1, 1998</b> |                                   |                                       |
|---|-----------------------------------|---------------------------------------|
|   | <b><u>KBI<br/>Gaming Unit</u></b> | <b><u>State Gaming<br/>Agency</u></b> |
| <b><u>Category I Investigations</u></b>   |                                   |                                       |
| Avg. days on hand for cases not yet started   | 134                               | not applicable                        |
| Number of unstarted cases more than 6 mos. old  | 18                                | not applicable                        |
| Avg. days on hand for cases started but not finished  | 196                               | not applicable                        |
| Avg. hours spent on cases closed so far in FY98   | 51                                | not applicable                        |
| Avg. days to complete cases closed in FY98  | 202                               | not applicable                        |
| <b><u>Category II Investigations</u></b>  |                                   |                                       |
| Avg. days on hand for cases not yet started   | 258                               | all started                           |
| Number of unstarted cases more than 6 mos. old  | 87                                | 0                                     |
| Avg. days on hand for cases started but not finished  | 302                               | 102                                   |
| Avg. hours spent on cases closed so far in FY98   | 17                                | not available                         |
| Avg. days to complete cases closed in FY98  | 276                               | 67                                    |

The table shows that so far in fiscal year 1998, an average of 276 days had elapsed from the time a case was submitted to the KBI's Gaming Unit until it was completed. The comparable figure for the State Gaming Agency was 67 days. This

difference in times doesn't necessarily mean that the Gaming Agency is more efficient than the Bureau at completing the actual investigation work. In part, the longer average time for the Bureau could be the result of how long cases were on hand before they could actually be started. The table shows that on average the Bureau spent about 17 hours on each investigation. The State Gaming Agency didn't have similar information we could use for comparison purposes. Without this information, and without a more detailed review about the thoroughness of each agency's investigation procedures, it's not possible to conclude whether one is more efficient than the other.

**Bureau officials estimate they have a backlog of about 10,000 unprocessed criminal history records checks.** KBI officials told us they try to address the most pressing requests first but balance those with the needs of other requestors. In general, records checks needed for presentence investigations and checks submitted electronically by the Department of Health and Environment get the highest priority. Some requests may take as long as 6-8 weeks to be processed. KBI officials cited several reasons for the backlog:

- The criminal history records database isn't fully computerized. Only about 65,000 criminal history records are fully automated at present. The KBI has more than 1 million names in its database, and information about 170,000 of those names has been requested in the past several years. When Bureau staff run a name submitted as part of a records check against the name list and get a "hit," they often must manually check paper records to ensure that complete and accurate criminal history information is provided to the requesting entity. (Data looked up manually then are entered into the database.)
- The Bureau hasn't been able to keep the criminal history records section fully staffed. Officials said they frequently lose records staff to other employers because their employees must pass a background investigation, which makes these workers attractive to outside employers who can offer higher wages. The need for a complete background investigation also slows the process of filling vacant positions. Also, because of the workload and limited space, the criminal history records section works two shifts, and Bureau officials said it is especially difficult to keep the second shift fully staffed. Training for new employees may slow work as well.
- The database needs to be updated with new criminal history information as it comes in. For example, prosecutors send information on the dispositions of criminal cases, and criminal justice agencies send information about arrests on forms called fingerprint cards. At present, that information must be manually entered into the system. This information must be entered promptly in order for criminal history data to be up-to-date, and the Bureau has no control over how much is sent in at any one time. About 13,000 fingerprint cards and 112,000 dispositions needed to be entered into the database at the time of this audit. Staff assignments can change daily to address the most pressing tasks.

Bureau officials estimated that the backlog of work to be done in the records section, including entering data, developing and releasing responses to requests, reviewing automated records, and other activities, totaled about 6,100 staff hours (more than 3 people working full time for a year). This includes about 480 hours to complete the unprocessed criminal history records checks. Until at least most of this work is up-to-date, the Bureau won't be able to process records checks as efficiently as it could.

Looking forward, Bureau officials said they were working on a project that has the potential to reduce manual data entry for new cases by 60%. That project involves having some criminal justice agencies submit information electronically. In addition, KBI officials hope that within the next few months some users will have direct limited access to the Bureau's database through an Internet connection. A pilot

project with court services officials is under way. As more agencies get such connections with the KBI's computer system, the amount of manual paperwork is likely to be reduced.

### **We Didn't Find Much Potential for Scaling Back the Number of Records Checks or Background Investigations Being Done**

In making this determination, we first spoke with officials from the KBI, the Racing and Gaming Commission, and the State Gaming Agency to see if they thought any checks seemed to be unnecessary. They told us they thought the checks and investigations now being done all were necessary.

We also reviewed all the State laws listed in Appendix A that allow or call for background investigations or records checks to see if, potentially, any could be eliminated or reduced.

**Most of the required records checks are being performed to protect vulnerable populations like children or the aged.** The majority of those come from the Department of Health and Environment for licensing day care workers. Statutory requirements added in 1997 to check workers in adult care homes and home health agencies will add to the number of checks already being done. It seems reasonable to require people working with vulnerable populations to be checked.

Other records checks requirements include checking people applying for liquor licenses, certain law enforcement positions, securities advisors, and security guards. It's difficult to argue that people in these types of professions shouldn't be checked for felony convictions.

**Most of the background investigations are related to trying to keep gambling industries in the State from becoming corrupt.** As mentioned earlier in this report, most Kansas statutory provisions for background investigations relate to the lottery, racing and gaming industries. We surveyed officials in three nearby states (Missouri, Nebraska, and Iowa) that have these activities to determine how Kansas requirements compare. We learned that Kansas requirements for background investigations are similar to those in Iowa and Missouri. Nebraska differs from the other states in that it relies mainly on a criminal history records check and doesn't do extensive background investigations. The following paragraphs show that how Kansas' requirements are similar to those in Iowa and Missouri.

- Iowa and Missouri, like Kansas, have background investigations performed on the employees of their state agencies whose duty it is to regulate the lottery, racing and gaming industries.
- Iowa and Missouri, like Kansas, have background investigations performed on upper- and mid-level employees that work in casinos and racetracks. The comprehensiveness of the background investigations declines as job responsibilities decline. For example, these states would conduct a high level background investigation on owners or directors, or facility positions like General Manager, Director of Security, or Controller, but would conduct a "reduced" investigation on positions like dealers or slot machine technicians.

For some nonsensitive positions with limited or no access to restricted areas, these states do a records check and little more. This would include positions such as janitors, hostesses and kitchen employees. These are similar to the Category III background investigations Kansas performs for these types of employees.

- Iowa and Missouri, like Kansas, perform background investigations on vendors that provide key equipment, or the winner of any major procurement contract.

**We identified a few background investigations that in our opinion didn't appear to be critical, but eliminating them wouldn't have a significant impact on the overall workload.** K.S.A. 75-712(d) requires the KBI to conduct background investigations of gubernatorial appointees at the request of the Governor. Kansas statutes include at least 46 sections that allow the Governor to appoint people to certain positions or boards. While background investigations seem to make sense for some of these positions such as Trustees for the Retirement System who make decisions about billions of dollars in State retirement funds, investigations for some other positions seemed less critical.

Some of the gubernatorial appointees we noted that didn't seem to warrant having an extensive background investigations included the following:

- The Director of the Kansas Water Office
- The Secretary of Agriculture
- The State Fire Marshal
- The State Librarian
- The Secretary on Aging

For these types of positions, a criminal history records check would probably be sufficient. However, background investigations for these positions are already optional rather than mandatory, and eliminating these investigations wouldn't significantly reduce the annual number of background investigations performed by the Bureau.

### **Conclusion**

It's clear that there's been a proliferation of statutes either mandating or allowing records checks or background investigations to be done on individuals or entities. That trend is likely to continue as legislators and others become more concerned about protecting vulnerable populations and the general public from criminals or unscrupulous individuals.

With those requirements has come an increased workload for the Kansas Bureau of Investigation, the State Gaming Agency, and other agencies that have to perform records checks and background investigations. In fiscal year 1997, there were about 29 more people doing this work than there were just five years ago. Still there can be a 6-8 week wait to get the results of a criminal history records check for non-criminal

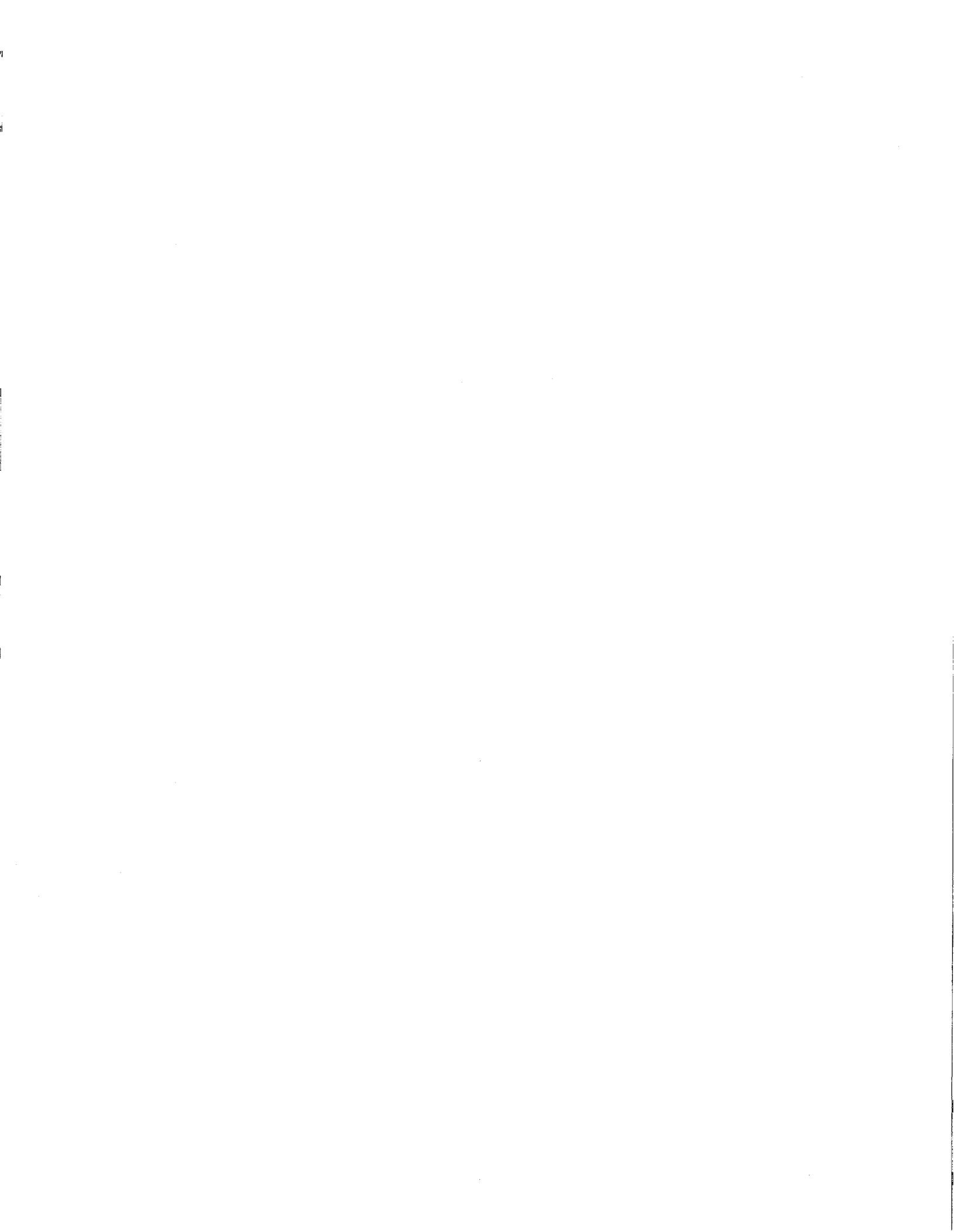
justice agencies, and some background investigations have taken as long as six months to complete. These time lags can present a problem for individuals who are waiting on a license to be able to start work in Kansas. Although automation of records checks should help the Bureau handle increasing workloads and lessen the wait, additional staff may be needed in the meantime. The Governor's budget has proposed adding positions for the State Gaming Agency, which should help reduce the time it takes to complete background investigations related to the tribal casinos.

In addition, adding staff for records checks and background investigations costs money, which makes it important that licensing fees be set at a level to recover not only the cost of the record or background checks, but also agencies' internal processing costs.

Finally, it should be noted that State agencies and the general public may be getting a false sense of security from the criminal history records checks that currently are being done. Most of those check only for criminal activity that occurred in Kansas. Someone could have committed numerous crimes in another state and still apply for and be cleared to receive certain licenses in Kansas. This presents a policy issue that the Legislature and State agency officials will need to grapple with as they decide whether it's worth the cost to provide nationwide records checks for certain individuals.

### **Recommendations**

1. To ensure that the Kansas criminal history database is kept current and to help reduce the delay in providing the results of criminal history records checks to non-criminal justice agencies, the Kansas Bureau of Investigation should assess what level of staffing it would need to make the database current, eliminate the backlog of requests, and keep the database current in the future. The Bureau should provide that information to the Legislature as soon as possible.
2. To ensure that State licensing agencies have set licensing fees at a level that covers the cost of records checks and background investigations--plus the cost of any normal processing of the license applications--the Legislative Post Audit Committee should either:
  - a. Direct the Legislative Division of Post Audit to conduct additional audit work looking at whether licensing fees charged by State agencies are sufficient to cover all costs.
  - b. Request the Secretary of Administration to conduct a review of State licensing agencies to determine whether licensing fees are covering all costs, and report that information back to the Legislative Post Audit Committee.



## **APPENDIX A**

### **Listing of Kansas statutory provisions related to records checks or background investigations**

Listed in this Appendix are 43 Kansas statutes that mandate or allow background investigations or records checks on various persons or entities. The appendix also lists the agency involved, year the statute was enacted, who recommends the check, and when the check is done.

| State Agency   | Statutory Cite | Year Enacted | Person/ Entity Checked   | Type of Check            | What statutes require: Mandatory or Optional | Who recommends check to be done          | Agency Doing Check    | When Done                              | #  |
|--|----------------|--------------|--|--------------------------|--|--|-----------------------|--|----|
| Attorney General   | 75-7b20        | Pre-1988     | Applicants for private detective license and officers, directors, partners or associates   | Background Investigation | Mandatory                                    | Attorney General                         | KBI                   | Before issuing license                 | 1  |
| Credit Union, Department of  | 17-2234(b)(c)  | 1995         | Certain employee candidates for the department of credit unions  | Records Check            | Mandatory                                    | State Department of Credit Unions        | KBI and FBI           | Before employment                      | 2  |
| Governor   | 75-712         | 1997         | Various officials appointed by the Governor  | Background Investigation | Optional                                     | Governor                                 | KBI                   | Before appointment                     | 3  |
| Healing Arts, State Board of Health and Environment, Department of | 65-2839a(c)    | 1992         | Doctors, applicants for licensure (medical doctors)  | Background Investigation | Optional                                     | Board of Healing Arts                    | KBI                   | Before or after licensing              | 4  |
| Health and Environment, Department of                              | 39-970         | 1997         | Any employee of adult care homes   | Records Check            | Mandatory                                    | Dept. of Health and Environment          | KBI                   | Before employment                      | 5  |
| Health and Environment, Department of                              | 65-3407(d)     | 1992         | Any person applying to construct, alter or operate a solid waste processing facility or solid waste disposal area of a solid waste management system | Background Investigation | Optional                                     | Dept. of Health and Environment          | KBI                   | Upon application for permit            | 6  |
| Health and Environment, Department of                              | 65-3503(d)     | 1995         | Adult care home administrator licensees and applicants   | Records Check            | Optional                                     | Board of Adult Care Home Administrator   | KBI                   | Before or after licensing              | 7  |
| Health and Environment, Department of                              | 65-5117        | 1997         | Any employee of Home Health Agencies   | Records Check            | Mandatory                                    | Dept. of Health and Environment          | KBI                   | Before employment                      | 8  |
| Health and Environment, Department of                              | 65-516         | Pre-1988     | Persons maintaining, residing, working or volunteering at a child care facility or family day care home  | Records Check            | Mandatory                                    | Dept. of Health and Environment          | KBI                   | Before employment, annually thereafter | 9  |
| Investigation, Kansas Bureau of (KBI)                              | 75-711         | Pre-1988     | Director and other potential appointees to any position within the KBI   | Background Investigation | Mandatory                                    | KBI                                      | KBI                   | Before employment                      | 10 |
| Kansas Highway Patrol  | 74-2113(c)     | Pre-1988     | Troopers of the Kansas Highway Patrol  | Background Investigation | Mandatory                                    | Kansas Highway Patrol                    | Kansas Highway Patrol | Before employment                      | 11 |
| Local Government   | 12-1,120       | Pre-1988     | Chief of Police  | Records Check            | Mandatory                                    | City Clerks                              | KBI                   | Before employment                      | 12 |
| Local Government   | 12-1679(b)     | Pre-1988     | Merchant or security police  | Records Check            | Mandatory                                    | Municipality                             | KBI and FBI           | Before licensing                       | 13 |
| Local Government   | 19-826         | Pre-1988     | Sheriffs and candidates for office of sheriff  | Records Check            | Mandatory                                    | County Election Officers                 | KBI                   | Before being placed on the ballot      | 14 |
| Lottery, Kansas  | 74-8704(a)(9)  | Pre-1988     | Employees and such other persons who work in sensitive areas within the lottery  | Records Check            | Optional                                     | Executive director of lottery commission | KBI and FBI           | Before and after employment            | 15 |
| Lottery, Kansas  | 74-8705 (c)    | Pre-1988     | For major procurement contracts: The vendor, its officers and major owners   | Background Investigation | Mandatory                                    | commission of lottery                    | KBI and Lottery       | Before awarding contract               | 16 |
| Lottery, Kansas  | 74-8705 (c)    | Pre-1988     | Persons having a beneficial interest in a vendor   | Background Investigation | Optional                                     | commission of lottery                    | KBI and Lottery       | Before awarding contract               | 17 |
| Lottery, Kansas  | 74-8708(h)     | Pre-1988     | Lottery Retailers  | Background Investigation | Mandatory                                    | Executive director of lottery commission | KBI and Lottery       | Before selected as retailer            | 18 |
| Nursing, Board of  | 65-1120(f)     | 1995         | LPNs and RNs and applicants for such positions   | Records Check            | Optional                                     | Board of Nursing                         | KBI                   | Before or after licensing              | 19 |

| State Agency                           | Statutory Cite          | Year Enacted | Person/ Entity Checked   | Type of Check            | What statutes require: Mandatory or Optional | Who recommends check to be done         | Agency Doing Check        | When Done                                  | #  |
|--|-------------------------|--------------|--|--------------------------|--|---|---------------------------|--|----|
| Nursing, Board of                      | 65-4209(f)              | 1995         | Mental health technician licensees and applicants  | Records Check            | Optional                                     | Board of Nursing                        | KBI                       | Before or after licensing                  | 20 |
| Racing and Gaming Commission           | 74-8804 (n)             | 1995         | Potential Commission employees and licensees   | Records Check            | Mandatory                                    | Racing Commission                       | KBI and FBI               | Before employment, before licensing        | 21 |
| Racing and Gaming Commission           | 74-8805 (a)(1)          | 1995         | Executive Director of the Commission   | Background Investigation | Mandatory                                    | Governor                                | KBI                       | Before appointment                         | 22 |
| Racing and Gaming Commission           | 74-8805(b)(1)           | 1995         | Inspector of Parimutuels   | Background Investigation | Mandatory                                    | Executive Director of Racing Commission | KBI                       | Before appointment                         | 23 |
| Racing and Gaming Commission           | 74-8805(c)(1)           | 1995         | Director of Security   | Background Investigation | Mandatory                                    | Commission of Racing                    | KBI                       | Before appointment                         | 24 |
| Racing and Gaming Commission           | 74-8805(d)(1)           | 1995         | Director of Racing Operations  | Background Investigation | Mandatory                                    | Commission of Racing                    | KBI                       | Before appointment                         | 25 |
| Racing and Gaming Commission           | 74-8805(g)              | 1995         | Any employee of the Commission   | Records Check            | Mandatory                                    | Racing Commission                       | KBI                       | Before employment                          | 26 |
| Racing and Gaming Commission           | 74-8805(h)              | 1995         | Applicants for positions of: Dep. dir., accountant, computer system analyst, legal assistant, auditor, racing judge, steward, enforcement agent, office supervisor, human resource manager, office specialist, and any others defined as sensitive | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Before employment                          | 27 |
| Racing and Gaming Commission           | 74-8805(i)              | 1995         | Persons holding positions of: Animal health officer, inspector of parimutuels, office supervisor, human resource manager, office specialist  | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Persons holding these jobs on July 1, 1995 | 28 |
| Racing and Gaming Commission           | 74-8806(a)              | 1995         | Animal health officer  | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Before employment                          | 29 |
| Racing and Gaming Commission           | 74-8814(c)(1)           | 1989         | President, VP, Secretary, treasurer and such other members of fair association   | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Before licensing                           | 30 |
| Racing and Gaming Commission           | 74-8814(c)(2)           | 1992         | Officers and directors of nonprofit horsemen's organization, and such other members as the commissioner considers necessary  | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Before licensing                           | 31 |
| Racing and Gaming Commission           | 74-8815(f)(2) (3)       | Pre-1988     | Applicant for a facility owner/manager's license or other stakeholder having a financial interest in the applicant   | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Before licensing                           | 32 |
| Racing and Gaming Commission           | 74-8816(e)(1)(2)        | Pre-1988     | Applicants for an occupation license   | Background Investigation | Mandatory                                    | Racing Commission                       | KBI and Racing Commission | Before licensing                           | 33 |
| Racing and Gaming Commission           | 74-8817(b) and(d)(1)(2) | Pre-1988     | Applicants for a concessionaire's license  | Background Investigation | Mandatory                                    | Racing Commission                       | KBI and Racing Commission | Before licensing                           | 34 |
| Racing and Gaming Commission           | 74-8818(d)(1)           | Pre-1988     | Applicants for steward and racing judge license  | Background Investigation | Mandatory                                    | Racing Commission                       | KBI                       | Before licensing                           | 35 |
| Retirement System, KS Public Employees | 74-4905(h)              | 1992         | Board of Trustees, KPERS (9 members, 4 appointed by Governor)  | Background Investigation | Mandatory                                    | Governor                                | KBI                       | Before appointment                         | 36 |
| Revenue, Department of                 | 41-311 (a) (2)          | Pre-1988     | Applicants for liquor license  | Records Check            | Mandatory                                    | ABC staff                               | KBI                       | Before licensing                           | 37 |

| State Agency            | Statutory Cite | Year Enacted | Person/ Entity Checked   | Type of Check            | What statutes require: Mandatory or Optional | Who recommends check to be done        | Agency Doing Check    | When Done                 | #  |
|-------------------------|----------------|--------------|--|--------------------------|--|--|-----------------------|---------------------------|----|
| Securities Commissioner | 17-1254(m)(3)  | Pre-1988     | Broker/Dealers, agents, investment advisers, and investment adviser representatives                    | Records Check            | Mandatory                                    | Commissioner                           | KBI                   | Before or after licensing | 38 |
| State Gaming Agency     | 74-9804(a)(1)  | 1996         | Executive Director of Gaming Agency  | Background Investigation | Mandatory                                    | Governor                               | KBI                   | Before appointment        | 39 |
| State Gaming Agency     | 74-9804(b)(1)  | 1996         | Director of Compliance of the Gaming Agency  | Background Investigation | Mandatory                                    | Executive Director of Gaming Agency    | KBI                   | Before employment         | 40 |
| State Gaming Agency     | 74-9804(c)(1)  | 1996         | Compliance Inspectors of Gaming Agency   | Background Investigation | Mandatory                                    | Executive Director of Gaming Agency    | KBI                   | Before employment         | 41 |
| State Gaming Agency     | 74-9805(l)     | 1996         | All persons necessary to verify qualifications for employment at the Gaming Agency                     | Records Check            | Mandatory                                    | Gaming agency                          | KBI and FBI           | Before employment         | 42 |
| University of Kansas    | 74-5605(b)     | Pre-1988     | Police officers (applicants to Kansas Law Enforcement Training Center or other state or local academy) | Background Investigation | Mandatory                                    | Kansas Law Enforcement Training Center | Kansas Highway Patrol | Before admission          | 43 |

## **APPENDIX B**

### **Agency Responses**

On March 24, 1998, we provided a copy of the draft audit report to the Kansas Bureau of Investigation, the Kansas State Gaming Agency, and the Kansas Racing and Gaming Commission. In response to a suggestion from Bureau officials, we made a minor clarification that did not affect the report's findings or conclusions. The Bureau's response is shown in this Appendix. The Kansas State Gaming Agency and the Kansas Racing and Gaming Commission chose not to provide a written response.

At the same time, we provided the Department of Administration a draft of the audit section related to that agency. The Department's response is included in this Appendix.



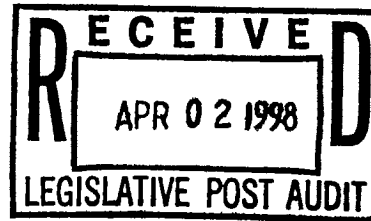
## Kansas Bureau of Investigation

Larry Welch  
Director

April 1, 1998

Carla J. Stovall  
Attorney General

Barbara J. Hinton  
Legislative Post Auditor  
Legislative Division of Post Audit  
800 SW Jackson Street, Suite 1200  
Topeka, KS 66612-2212



Dear Ms. Hinton:

The Kansas Bureau of Investigation is in receipt of the draft copy of the recently completed performance audit entitled *Examining the Statutory Requirements and Funding Sources for Background Investigations in Kansas*.

After review of this document, one clarification was requested in reference to a transfer of funds from the KBI General Fees Fund to the State Gaming Revenue Fund at the conclusion of FY1997 which resulted in a shortage of KBI Gaming Unit operating capital in the current fiscal year. Your staff agreed to modify the draft language regarding this specific issue which is addressed on page 12 (second paragraph) of the report.

Compliments are extended to your team of personnel who worked on this project. They were cordial and professional. Their report accurately reflects the tremendous challenges the KBI has faced in managing the progressive number of background checks and background investigations placed within our realm of responsibility the past several years.

If the KBI can be of further assistance regarding this matter, you or members of your staff may contact me at 296-8206.

Sincerely,

Dale A. Finger  
Associate Director

cc: Attorney General Carla Stovall  
Leo Hafner; Joseph Lawhon; Jill Shelley; Katrin Osterhaus @ Legislative Post Audit



## DEPARTMENT OF ADMINISTRATION

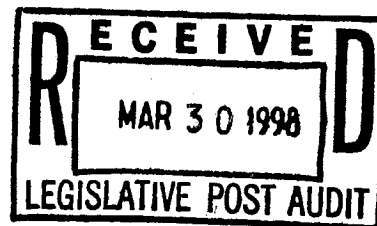
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DAN STANLEY, *Secretary*

March 26, 1998

BILL GRAVES, *Governor*

Barbara J. Hinton  
Legislative Post Auditor  
Legislative Division of Post Audit  
Mercantile Bank Tower  
800 SW Jackson, Suite 1200  
Topeka, Kansas 66612-2212



Dear Ms. Hinton:

Thank you for providing us the opportunity to review your Legislative Post Audit Report. We are pleased to respond to the audit "Examining Statutory Requirements and Funding Sources for Background Investigations in Kansas." Your audit is comprehensive and well researched. The part I would like to briefly address is recommendation two.

The audit's second recommendation is for the Legislative Division of Post Audit or the Secretary of Administration to further study the licensing fees of State licensing agencies. I would suggest the Legislative Division of Post Audit is the more appropriate entity to do this type of study. From looking at your study, it appears the Division of Post Audit has already established some familiarity with these agencies that would be helpful in doing such a study. In addition, since the recommendation is coming from a Post Audit study, we believe Post Audit would be more familiar with what you would like to have the study achieve.

It appears to us the second recommendation would be an audit of these agencies' licensing fees. Since the Legislative Post Audit is really the auditing entity for the Legislature, it appears to us that you are in a better position to conduct the audit. It would be very unusual for our Department to do an audit with a scope as outlined in the recommendation. However, if the Legislative Post Audit Committee recommends the Department of Administration perform this audit, we will try to get the information you are looking for.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Dan Stanley".

Dan Stanley  
Department of Administration

