

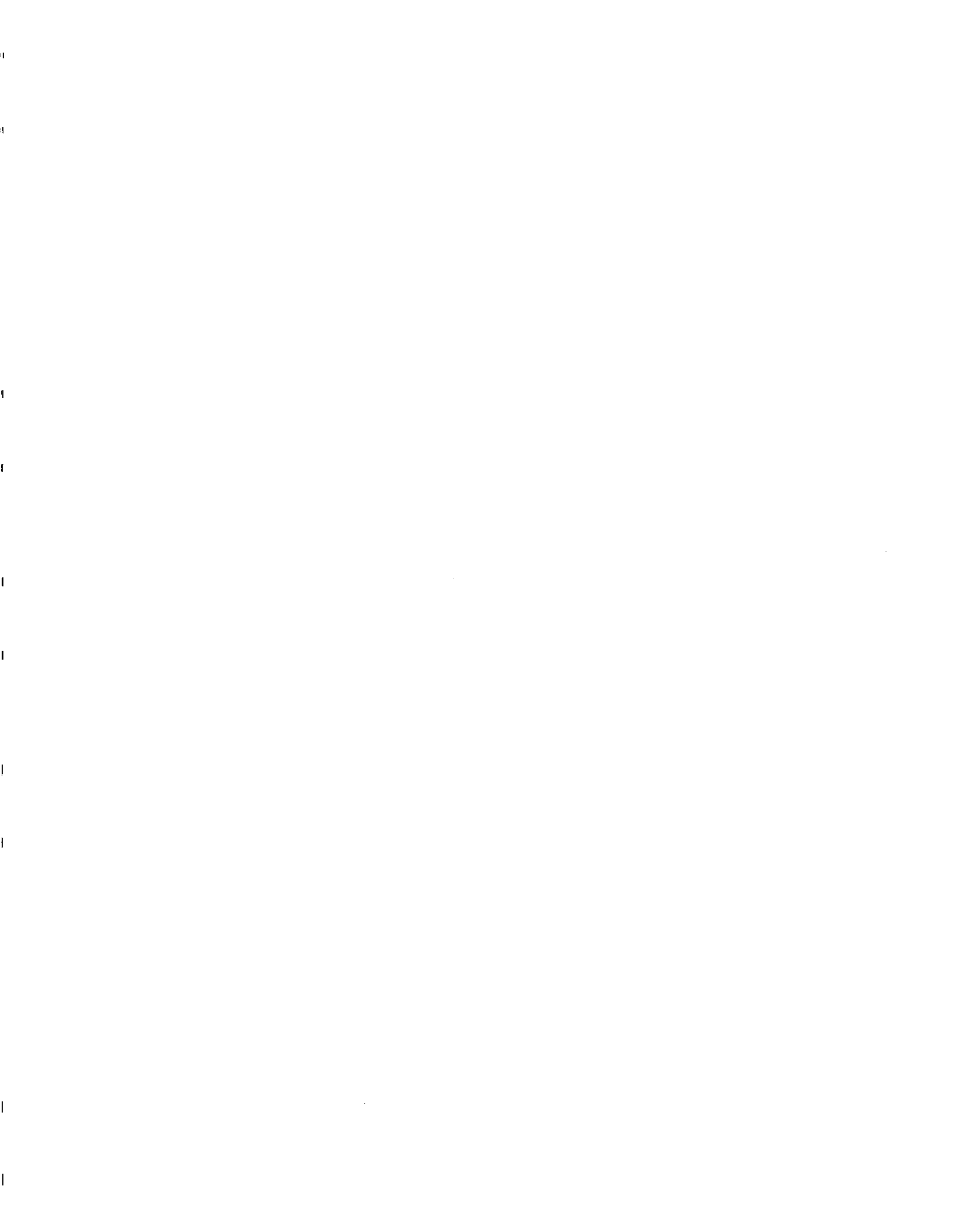
PERFORMANCE AUDIT REPORT

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

Executive Summary

with Conclusion and Recommendations

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



Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$7 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

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LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (785) 296-3792
FAX (785) 296-4482
E-mail: LPA@mail.ksleg.state.ks.us

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LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

MERCANTILE BANK TOWER
800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (913) 296-3792
FAX (913) 296-4482
E-MAIL: LPA@postaudit.ksleg.state.ks.us

April 22, 1998

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, 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.

If you would like a copy of the full audit report, please call our office and we will send you one right away. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

A handwritten signature in black ink, reading "Barbara J. Hinton". The signature is written in a cursive, flowing style.

Barbara J. Hinton
Legislative Post Auditor

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

**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. *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.* page 10

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?

As of March 1, 1998, there were about 840 incomplete background investigations and about 10,000 unprocessed criminal history records checks. *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.* page 14

We didn't find much potential for scaling back the number of records checks or background investigations being done. *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.* page 17

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.* page 18

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 noncriminal 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. 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. page 19

The KBI agreed with the report's findings and conclusions, and the Secretary of Administration replied that the Division of Post Audit would be better positioned to study the cost issues raised in the audit report.

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.

