



# Kansas 911 Act draft bill

November 2, 2018

Scott Ekberg, Kansas 911 Administrator

On November 2, 2018, the Kansas 911 Coordinating Council ("Council") met via web conference and reviewed all comments received regarding the proposed legislative changes that will be presented during the Kansas 2019 Legislative Session. Each of the comments was discussed and consensus of the Council regarding action to be taken on each comment was captured. The following is a listing of all comments received and the action taken by the Council regarding each.

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Comments from Karolyn Kinsey/Lane County 9/25/2018

Editing suggestions on the language throughout the document.

The language and structure of the proposed legislation is the work product of the Revisor of Statutes and as such will remain as presented.

Concern with council members reimbursement versus the legislators being compensated.

Legislative pay is controlled by other statute and is not within the purview of the Council to change.

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Comments from Wendy Dedeke/Leavenworth County 9/25/2018

Page 24 section c, include the word *additional*, as the payment is in addition to Public Safety Answering Points (PSAPs) paying back their 911 account.

The Council's legal counsel is preparing language to replace the existing language regarding expenditures, so we will wait for that language and vet it through the stakeholder group before incorporating into the draft bill. Agree that the proposed penalty is "in addition" to the repayment and should be clarified.

Will MARC receive any of the \$.10 to sustain the 911 system?

No. Because the MARC (Mid-America Regional Council) is not a PSAP as defined by the 911 Act, and because the Kansas PSAPs within the MARC will receive an increase in the 911 fee under the proposed legislation.

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Comments from BJ Tracy/Sumner County 9/24/18

Allowing 911 centers to purchase portable radios for COOP (Continuity of Operations).



While the Council agrees with the logic of Mr. Tracy, the consensus is that changing the statute to allow the purchase of portable subscriber radios endangers the passage of the needed legislative changes. When the 911 Act was passed in 2011, the wireless lobby and several of the Legislators had very strong opinions regarding the prohibition of subscriber radio purchase, maintenance, and upgrade. It is believed that these opinions will continue to be promoted in the upcoming Session.

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Comments from Mark Tucker/Cox Business on behalf of Carriers 9/21/18

Caution legislators on diverting any 911 funds.

This advice is well taken by the Council. Consensus is that the current 911 Act language provides strong support for not diverting funds, as the 911 fee funds are outside of the State Treasury.

Caution against using "pay all expenses" to should be paid where they are direct and reasonable to task.

This advice is well taken by the Council. Consensus is that the current 911 Act language is specific to allowable uses and does not include the cautioned against language.

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Comments from Liz Phillips/University of Kansas Public Safety 10/24/18

Include a non-traditional PSAP as a council member voting or non-voting.

After considerable debate, the Council reached consensus that including non-traditional PSAPs as non-voting members would be included in the proposed bill. One of the two new non-voting positions will be reserved for Tribal representation. As a part of adding these two positions, a definition of non-traditional PSAP will be added.

Additionally, the current, "PSAP regardless of size", voting position on the Council will be recognized within the proposed bill as a Kansas Association of Public Safety Communications Officials (KS-APCO) representative.

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Comments from Josh Michaelis/Rice County 10/24/18

Rice County would support an increase to the 911 fee in the amount of \$1.20 per device.

Following lengthy debate, the Council reached consensus that the proposed increase should be \$1.20 or in agreement with the Legislative Division of Post Audit (LPA) audit report if it recommends less than \$1.20. Of this increase, \$1.00 would go to PSAPs and \$.20 to the Council Operations Fund.



Rice County supports the implementation of mandatory training standards for Kansas Public Safety Telecommunicators.

The Council concurs that mandatory training standards for Public Safety Telecommunicators is critical to providing a standard level of 911 service across Kansas. Because some members of the 911 stakeholder community do not believe that the Council is the appropriate authority to manage mandatory training, the Council will create a joint committee tasked with developing a bill to implement mandatory training standards, which is acceptable to the 911 stakeholder community. Members of the stakeholder groups will be members of this committee. The timeline for completion of this proposed legislation will be the 2020 Legislative Session.

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Comments from Mike Henning/Jefferson County 10/23/18

Questioned if we had a mandatory training program/certification and if not, how many hours were spent creating the training program.

There is no mandatory training or certification program for Telecommunicators at this time. The Council is currently working on a voluntary certification program for training programs and Telecommunicators, which will act as an interim solution until the passage of the legislation referenced above. Because all the work that went into development of the mandatory program, that was recommended last session, can be utilized in both the voluntary program and the contemplated mandatory program, the effort to date is a valuable starting point.

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Comments from Tasha Rogers/Coffey County 10/22/18

On page 7 d1 (A) Creating a uniform reporting form designating how ~~moneys, including~~ 911 fees, have been spent by the PSAPs. **In my opinion it is not the council's business how we spend other monies.**

The Council is required to report the total cost of providing 911 service in the State of Kansas each year to the Federal Communications Commission (FCC). It is also imperative that the Council be able to report the actual cost of providing 911 service to the Legislature. For these reasons, it is the consensus of the Council that the language regarding expenditures of monies other than 911 fees in the proposed bill, be left intact.

On page 7 d1 (D) recommending standards for general operations training of PSAP personnel ?? **when on Page 8 (G) 2 you say but the Council shall not adopt any rules and regulations or any other requirement that creates a mandatory certification program of PSAP operations or PSAP emergency communication personnel.**

Council consensus is that the perceived conflict between (d)(1)(D) on page 7 and (G)(2) on page 8 is resolved by the standards proposed in (d)(1)(D) being recommended. Since these proposed standards are only recommendations, they do not contradict (G)(2).



On page 7 d1 (E) establishing training standards and programs related to the technology and operation of the NG-911 hosted solution, ~~same as above~~

Council consensus is that this language is directly related to mandating training standards and programs for operation of the technology provided by the NG911 hosted solution. The Council believes that it is a duty to ensure that the equipment provided by the Council for PSAP use through the hosted solution is used correctly and efficiently.

Starting on page 7 and continuing on page 8 d1(F) establishing data standards, *recommend* maintenance policies and data reporting requirements for GIS data.

It is the consensus of the Council that GIS data is imperative to the proper routing of 911 calls and that standards, maintenance and reporting requirements for GIS data must be a mandate, not a recommendation.

On page 9 l(1) The council shall designate the content and form of such report. ~~But in my opinion the and any associated documentation that is required to finalize such report. Is not going to take place prior to March 1<sup>st</sup> because you later ask for it, it is vague, and is time consuming and redundant.~~

The addition of the language regarding associated documentation was made based on an LPA audit finding that the Council needed to do more to verify that 911 fee fund expenditures made by Kansas PSAPs were within the eight allowable uses for those funds. Because this was a requirement of the audit, the consensus of the Council is that the language should remain in the proposed bill.

On page 10 l (2) If a PSAP fails to file and finalize an annual report, the council shall provide notice to the PSAP and the governing body of such PSAP of such failure. If such PSAP fails to file or finalize an annual report within 60 days of receiving such notice, 10% of each subsequent distribution of 911 fees to such PSAP pursuant to KSA 12-5373, and amendments thereto, shall be withheld by the LCPA and only distributed to such PSAP once the report has been submitted. ~~While I understand you may need some "teeth" to get PSAPs to get their reports in, who do you mean by the governing body? The Sheriff? The Commission? The police chief? The Council? The Administrator? Because in if it is the Commission they have no authority over the Sheriff or his staff, and on the city side of things do you readily know who each PSAP's governing body is? Just wondering how this would be instituted?~~

The Kansas 911 Act defines a PSAP as being an entity administrated by a city or county. Therefore, based on this definition, the only governing body of a PSAP would be the city or county. While the Council recognizes that the County Commission has little authority over an elected official, it is the consensus of the Council that providing notice of failure to meet the statutory obligation of filing the annual expenditure report and impending withholding of 10% of 911 fee fund payments to the city or county governing body is appropriate.

On page 10 l (2)m ~~who is the provider in the first sentence?~~



12-5363 (l) "Provider" means any person providing exchange telecommunications service, wireless telecommunications service, VoIP service or other service capable of contacting a PSAP. This would be the Provider referenced in the questioned sentence.

On page 15 (3) d **as I have disagreed with since the inception the statement** that distribution of grant funds shall not include expenditures to procure, maintain or upgrade subscriber radio equipment. Along with the statement on Page 24 Section 13(8) include expenditures to purchase procure, maintain or upgrade subscriber radio equipment. **As it is just as important to receive information from a 911 call in the field, as it is to broadcast it...**

As previously addressed on another comment, while the Council does not necessarily disagree with the logic of allowing subscriber radios, the consensus of the Council is that changing the statute to allow the purchase, procurement, maintenance or upgrade of subscriber radio equipment endangers the passage of the needed legislative changes. When the 911 Act was passed in 2011, the wireless lobby and several of the Legislators had very strong opinions regarding the prohibition of subscriber radio purchase, maintenance, and upgrade. It is believed that these opinions will continue to be promoted.

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Comments from Susan Alig/WY Co Unified Government (UG) 9/20/18

There are a few places in this draft that give the Council the ability to assess penalties or costs against governing bodies for failing to comply. For example, on page 8, it says they can assess the full costs of updating GIS data that's older than a year. I'm not too worried for us; UG uses GIS data extensively and keeps it updated.

The Council did not necessarily see this comment as being a recommendation for change. Consensus of the Council is that the language will be left as is. There are only two places within the proposed bill that provide for assessment of penalties or costs against the PSAPs. One is a discretionary penalty for misspending 911 fees and one for ensuring GIS data is updated should the PSAP fail to do so. Note: the other places within the proposed bill that address penalties are those levied against Providers.

On page 10, section M talks about civil penalties for violating any provision and doesn't give any limits or amounts for the civil penalties, and they've removed a "good faith" exception. It would be good to have that good faith exception put back in.

Section M is directed at Providers, not PSAPs, and the good faith exception was removed because it had expired in January of 2013. This exception was initially in place because of the change in procedure created by the 911 Act's implementation. For these reasons, Council consensus is to leave the language as is.

They've also added a section saying they can withhold 10% of the money if we don't submit the reports they want. Have we had any problems with the reporting requirements?

This language is intended to provide incentive to PSAPs to file their annual expenditure report. It is not a penalty, as the funds will be disbursed to the PSAP upon receipt of their



annual report and supporting documentation. Council consensus is to maintain this language as is.

As we start moving into next gen 911 and people start submitting photos and videos during their calls, that data is going to be subject to Kansas Open Records Act (KORA). So we'll have similar storage and redaction issues to what we'll be dealing with on the body cameras. I note that the 911 fees can't pay for salaries. We'll have to hire new personnel to deal with the additional information, so that's going to be an unfunded part of the mandate.

The Council agrees that the data records, such as photos and videos, delivered via the NG911 network may create an unfunded mandate on the PSAPs to deal with KORA requests and other aspects of maintaining and securing the data. The Council will work with its attorney and the Kansas Sheriff's Association (KSA) and Kansas Association of Chiefs of Police (KACP) to identify appropriate measures to exempt or otherwise deal with the KORA implications of the data.

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Comments from Ed Klumpp on behalf of KSA and KACP

10/25/18

Page 8, section 2, subsection (f) regarding GIS updates: This was a point of concern last year in discussions that took place during the 2018 session. We understand the critical need for these files to be up-to-date and support a mechanism to assure they are. Those discussions led to some thoughts about additional language that would provide a mechanism for the local authority over the GIS data to submit a letter stating they have reviewed the GIS data and there are no changes required. The letter of the proposed amendment appears to authorize the Council to hire someone at the expense of the local governments to review the data possibly only resulting in a report no changes are needed. Concern was expressed that notice should be given with an opportunity to comply prior to the Coordinating Council taking independent action at local government expense. We propose additional language be incorporated into the proposed bill. For example:

*After giving written notice to the governing body that oversees the PSAP and not receiving an acceptable proposal within 60 days of such notice for the GIS data to come into compliance, the 911 coordinating council may engage a contracting firm to review and update the GIS data for a PSAP with GIS data that has not been updated in more than a year and no letter has been received during the past year attesting to the data having been reviewed and remains up-to-date. The council shall assess the governing body that oversees the PSAP for the full costs of updating the GIS data.*

After considerable discussion, the Council requested that proposed language to allow for the PSAP to certify that no changes have taken place within the jurisdiction for the full year. The proposed language will modify this section as follows:

*If a PSAP's GIS data is found to be out of standard or has not been updated for one year or more, and after giving written notice to the governing body that oversees the PSAP and not receiving an acceptable proposal within 60 days of such notice for the GIS data to come into compliance, the 911 coordinating council may engage a contracting firm to*



*review and update the GIS data. A PSAP with GIS data that has not been updated for one year or more, may provide a certification attesting that the GIS data has been reviewed and remains up-to-date. If, after receiving such certification, the council has information the data may not be up-to-date, the Council shall provide a written notice describing the areas believed to be out of date and setting a deadline of 30 days for the submission of updated GIS data. If the updated GIS data is not received after the 30-day deadline, the Council may engage a contracting firm to review and update the GIS data. In either case, the council shall assess the governing body that oversees the PSAP for the full costs of updating the GIS data.*

Page 24, section 13, subsection (c):

a. To allow for accounting errors and to place into statute the practice of the Council in handling these in the past, we recommend adding a provision to allow the Council to point out an inappropriate expenditure to the PSAP with an option to allow the funds to be placed back into the local 911 fund without penalty. However, recognizing there needs to be safeguards against intentional attempts to use the funds to circumvent clearly established prohibited expenses, we suggest leaving the proposed penalty section in place for assessment if such an intentional misuse of funds occurs. For example:

*If the 911 coordinating council, based upon information obtained from the PSAP reports or an audit of the PSAPs, determines that any PSAP has used any 911 fees for any purpose other than those authorized in this act, the governing body for such PSAP shall repay all such funds used for any unauthorized purposes to the 911 fee fund of such PSAP. The 911 coordinating council may require such PSAP to pay, plus the lesser of \$500 or 10%, of such misused funds, to the LCPA for deposit in the 911 state grant fund **upon a finding the expenditure was made intentionally from the 911 fee fund of such PSAP for a purpose clearly established as an unauthorized expenditure.** No such repayment of 911 fees shall be imposed pursuant to this section except upon the written order of the council. Such order shall state the unauthorized purposes for which the funds were used, the amount of funds to be repaid and the right of such PSAP to appeal to a hearing before the council. Any such PSAP may, within 15 days after service of the order, make a written request to the council for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.*

[The Council is currently awaiting a draft of appropriate language from its attorney that is intended to codify the current expenditure review practices that the Council has followed since 2012. When this language is received, it will be vetted through the stakeholder group before inclusion in the draft bill.](#)

b. We believe the 911 Coordinating Council's intentions in the 2018 proposed bill was to amend the provisions for penalties under this section for the 2017 review period. Recognizing the failure of the bill to pass left the Council in an awkward position of recognizing their process may have conflicted with the existing statute, we suggest a way to remedy this for the 2017 expenditures. Our recommendation is to make these changes retroactive to avoid the dilemma the Council now finds itself in. For example, add at the end of the subsection:

*The provisions of this subsection are effective for expenditures made on and after January 1, 2017.*



The Council is currently awaiting a draft of appropriate language from its attorney that intended to codify the current expenditure review practices that the Council has followed since 2012. When this language is received, it will be vetted through the stakeholder group before inclusion in the draft bill.

The catch word in government the past few years has been “transparency.” It is our understanding it has been years since any grants were awarded out of the 911 grant fund. We suggest as an action to create transparency the funds for grants and the funds for Council Operations and contracts be split into two separate and distinct funds. One fund should be for the Council Operations and state 911 system contracts for services. Perhaps it could be the “911 operations fund,” but the title you choose is irrelevant. The other fund would be the grant fund used solely for the purpose of grants to PSAPS as intended. Our point is if you aren’t going to provide grants or you are going to use the bulk of those funds first for general operation expenses and contracts, then quit calling it a grant fund. We do believe there should be a grant process and grant funds made available and are pleased to see the proposal at least provide an avenue for these grants to become a reality. We believe this is important, especially to small PSAPS that may be facing one-time equipment replacement expenses.

The Council concurs with this comment and will incorporate it into the proposed draft bill.

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