Approved: _	3-18-09
	Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:30 p.m. on February 10, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Christina Butler, Kansas Legislative Research Department
Jarod Waltner, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

State Representative Jeff King,

Captain Bob Keller, Johnson County Sheriff's Department

Ed Klumpp, Kansas Association of Chiefs of Police & Kansas Peace Officers Association

Tom Stanton, Kansas County & District Attorneys Association

Travis Elliott, Kansas Association of Court Services

Shannon Bell on behalf of Stuart Little, Johnson County Government

Russell Jennings, Commissioner, Juvenile Justice Authority

Others attending:

See attached list.

HB 2060 - Violation of battery against a law enforcement officer causing bodily harm, sentence is presumed imprisonment.

Chairperson Colloton opened the Hearing on <u>HB 2060</u> and introduced State Representative Jeff King to give his testimony as a proponent of the bill. Representative King provided a written copy of his testimony. (<u>Attachment 1</u>) Representative King stated the bill changes battery against a law enforcement officer that causes bodily harm from probation to presumed imprisonment.

Questions and answers followed.

Chairperson Colloton introduced Captain Bob Keller, Johnson county Sheriff's Office, to give his testimony as a proponent of the bill. Captain Keller provided a written copy of his testimony. (<u>Attachment 2</u>) He stated according to the U.S. Department of Justice, assaults on law enforcement officers in the Midwest are on the rise. He stated that 8,087 law enforcement officers were assaulted in the line of duty in 2007, an increase of 697 over the previous year. In closing he stated the bill would provide a great deterrent against attacks on law enforcement officers and urged the Committee to vote for it favorably.

Chairperson Colloton introduced Ed. Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers Association, to give his testimony as a proponent of the bill. Mr. Klumpp provided a copy of his written testimony. (Attachment 3) He stated the bill simply adds a special rule which will make the sentence for this offense presumptive imprisonment. He urged the Committee to vote favorably for this bill.

Chairperson Colloton called the Committee's attention to the fiscal note on HB 2060.

She call for anyone else to testify on the bill. There being none, she referred the Committee to the "written only" proponent testimony of Tom Stanton, Kansas County & District Attorneys Association and closed the hearing on <u>HB 2060.</u> (Attachment 4).

HB 2236 - Recodification of certain drug crimes.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on February 10, 2009, in Room 535-N of the Capitol.

Chairperson Colloton called the Committee's attention to <u>HB 2236</u> stating they would work the bill. She called on Jill Wolters, Revisor's Office, to review a balloon amendment on the bill. Ms. Wolters presented a written copy of the amendment. (<u>Attachment 5</u>) She began reviewing the amendment which was mostly technical clean up. Upon the completion of the review of the amendment, Ms. Wolters stood for questions.

Questions and answers followed.

<u>Representative Pauls made a motion to pass HB 2236 out favorably as amended. Representative Bethel</u> seconded. Motion carried.

HB 2113 - Assault and battery against court services officers.

Chairperson Colloton opened the hearing on <u>HB 2113</u> and introduced Travis Elliott, Kansas Association of Court Services, to give his testimony as a proponent of <u>HB 2113</u>. Mr. Elliott presented a copy of his written testimony (<u>Attachment 6</u>) Mr. Elliott stated the bill would identify any court service officers of the Judicial Branch as a law enforcement officer if that court service officer were subjected to assault, aggravated assault, battery or aggravated battery. This would apply when the officer was properly identified as a court services officer and was engaged in performing his or her duties. In closing, Mr. Elliott urged the Committee to pass the bill out favorably and stood for questions.

Questions and answers followed and it was noted by Mr. Elliott that they were not opposed to changing the language adding others.

Chairperson Colloton called for any other proponents or opponents of the bill to testify, there being none, she closed the hearing on **HB 2113.**

HB 2232 - Authorizing increased membership for corrections advisory boards.

Chairperson called the Committee attention to <u>HB 2232</u> and stated the bill would change the membership of the corrections advisory boards. She introduced Shannon Bell appearing on behalf of Stuart Little, Johnson County Government as a proponent of the bill. Ms. Bell referred the Committee to Mr. Little's written copy of testimony. (Attachment 7) She stated the bill would increase the membership from 12 to 15 and stood for questions.

Questions and answers followed.

Chairperson Colloton called for other proponents or opponents of the bill, being none she closed the hearing on **HB 2232**.

SB 14 - Interstate compact for juveniles; compact administrator; Kansas council for interstate juvenile supervision.

Next, she called the Committee's attention to <u>SB 14</u> and introduced Russell Jennings, Commissioner, Juvenile Justice Authority, to give his testimony as a proponent of the bill. Commissioner Jennings provided a written copy of his testimony. (<u>Attachment 8</u>) He stated the bill would create the Kansas Council for Interstate Juvenile Supervision to oversee and administer the state's participation in the interstate Compact for Juveniles, and to develop policies concerning the operations and procedures of the Compact within the state. In closing, he stated the fiscal impact would not create new expense.

Questions and answers followed.

Chairperson Colloton called for other proponents or opponents of the bill, there being none, she closed the hearing on $\underline{SB\ 14}$. Chairperson asked if the Committee has problems with working $\underline{SB\ 14}$ at this time. Being no objections, she called for a motion .

Representative Roth moved to pass SB 14 out favorably for passage. Representative McCray-Miller

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on February 10, 2009, in Room 535-N of the Capitol.

seconded.

A discussion followed.

Representative Pauls made a substitute motion to strike line 34 and 35. Representative Dillmore seconded.

A discussion followed.

<u>Chairperson Colloton called for a vote on the substitute motion by a show of hands. The vote was a tie with 4 voting for and 4 voting against. Chairperson Colloton, voting in a "tie vote situation", voted no. Motion failed.</u>

<u>Chairperson Colloton called for a vote on the original motion on the floor to move SB 14 out favorably.</u>

Motion carried.

Chairperson Colloton adjourned the meeting at 2:30 with the next meeting February 11, 2009 at 1:30 p.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

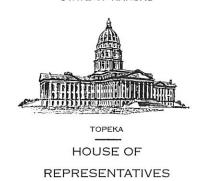
DATE: 2-10-09

NAME	REPRESENTING
Brett Water	KCCRC
Russ Jannings	LIA
Br. an Demsey	SQS
Es Krumps	KCCRC KACP & KPOD
Portableathernous	Sidecial
Chins Mechier	- Sudicial
Levin Muray	LACSO
Travis Elliott	KACSO
Jane Cartu	108E
Carolyn Applegate	Nortan Co. Cammissianer
7	

JEFF KING
REPRESENTATIVE, 12TH DISTRICT

Home Address: 1212 N. SECOND ST. INDEPENDENCE, KANSAS 67301 (620) 331-9888

Office: STATE CAPITOL BUILDING TOPEKA, KANSAS 66612 (785) 296-7663 1-800-432-3924



COMMITTEE ASSIGNMENTS TAXATION TRANSPORTATION GOVERNMENT EFFICIENCY

Testimony in Support of the HB 2060

Representative Jeff King

February 5, 2009

Chair Colloton & Members of the House Corrections Committee;

Thank you for this opportunity to testify before you today in favor of HB 2060. This bill would end the presumption that a criminal receives only probation for battery against a law enforcement officer that causes bodily harm. By amending the state Sentencing Guidelines, HB 2060 would alter this presumption and recommend imprisonment for battery convictions that result in bodily harm to a law enforcement officer.

Under current Kansas law, it is a level VII felony to commit battery causing bodily harm against an on-duty law enforcement officer. Because the Sentencing Guidelines specifically provide for presumptive probation, however, almost no criminals convicted of this level VII felony serve jail time. HB 2060 changes this result. It provides a statutory presumption that these offenders will serve time in prison for their crime.

HB 2060 is narrowly tailored. It applies only to battery convictions that result in bodily harm to an officer. Situations that do not result in bodily harm will not receive presumptive imprisonment. Also, judges retain the discretion under HB 2060 to sentence an offender to probation if extenuating circumstances exist.

HB 2060 would amend Kansas law to more closely mirror statutes in our neighboring states. HB 2060 establishes a system for punishing battery crimes against law enforcement officers similar to that currently used in Nebraska, which mandates imprisonment for these offenders. If adopted, HB 2060 would still provide penalties that are <u>less</u> stringent than those in many states, including Missouri, Texas, Arkansas, and Oklahoma. For your reference, I have attached to this testimony a sheet detailing the current statutes addressing battery against a law enforcement officer in our neighboring states.

Police officers put their lives on the line every day to protect Kansans. Although battery against a law enforcement officer is a felony, only a small number of convicted offenders, if any, spend time in prison. This is an injustice that merits change. HB 2060 would

Corrections and Juvenile Justice
Date: 2-10-09
Attachment # 1-1

ensure that criminals who cause our officers bodily harm spend time in prison for their crime. To support the safety and the fine work of our law enforcement officers, I urge this committee to adopt HB 2060.

ARKANSAS

5-13-202. Battery in the second degree.

- "(a) A person commits battery in the second degree if
- (4) The person knowingly, without legal justification, causes physical injury to a person he or she knows to be:
- (A) (i) A law enforcement officer, firefighter, or employee of a correctional facility while the law enforcement officer, firefighter, or employee of a correctional facility is acting in the line of duty.
- (ii) As used in this subdivision (a)(4)(A), "employee of a correctional facility" includes a person working under a professional services contract with the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services
 - (b) Battery in the second degree is a Class D felony."

5-4-401. Sentence.

- "(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations:
 - (5) For a Class D felony, the sentence shall not exceed six (6) years; and

MISSOURI

565.082. Assault of a law enforcement officer, emergency personnel, or probation and parole officer in the second degree, definition, penalty.

- "1. A person commits the crime of assault of a law enforcement officer, emergency personnel, or probation and parole officer in the second degree if such person:
- (2) Knowingly causes or attempts to cause physical injury to a law enforcement officer, emergency personnel, or probation and parole officer by means other than a deadly weapon or dangerous instrument;
- 3. Assault of a law enforcement officer, emergency personnel, or probation and parole officer in the second degree is a class B felony unless committed pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which case it is a class C felony."

558.011. Sentence of imprisonment, terms--conditional release.

1.2

- "1. The authorized terms of imprisonment, including both prison and conditional release terms, are:
- (2) For a class B felony, a term of years not less than five years and not to exceed fifteen years;
- (3) For a class C felony, a term of years not to exceed seven years;

OKLAHOMA

§21-649. Assault, battery or assault and battery upon police officer or other peace officer - Penalties.

B. Every person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other state peace officer employed or duly appointed by any state governmental agency to enforce state laws while said officer is in the performance of his duties, upon conviction, shall be guilty of a felony punishable by imprisonment of not more than five (5) years in a state correctional institution or county jail for a period not to exceed one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

C. As used in this section and in Section 650 of this title, "corrections personnel" means any person, employed or duly appointed by the state or by a political subdivision, who has direct contact with inmates of a jail or state correctional facility, and includes but is not limited to, Department of Corrections personnel in job classifications requiring direct contact with inmates, persons providing vocational technical training to inmates, education personnel who have direct contact with inmates because of education programs for inmates, and persons employed or duly appointed by county or municipal jails to supervise inmates or to provide medical treatment or meals to inmates of jails."

Iowa

708.3A. Assaults on Persons Engaged in Certain Occupations.

- "1. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter and with the intent to inflict a serious injury upon the peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter, is guilty of a class "D" felony.
- 3. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter, whether paid or volunteer, by a person who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, member or employee of the board of parole, health care provider, employee of the department of human services, employee of the department of revenue, or fire fighter, is a serious misdemeanor..."

708.1. Assault Defined.

"An assault as defined in this section is a general intent crime. A person commits an assault when, without justification, the person does any of the following:

Any act which is intended to cause pain or injury to, or which is intended to result in physical contact
which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

903.1 Maximum Sentence for Misdemeanants.

2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years. There shall be a fine of at least six hundred twenty-five dollars but not to exceed six thousand two hundred fifty dollars. When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.

Texas

§ 22.01. Assault.

- "(a) A person commits an offense if the person:
- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:
- (1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;
- (4) a person the actor knows is a security officer while the officer is performing a duty as a security officer..."

§ 12.34. Third Degree Felony Punishment.

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

"(a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000."

NEBRASKA

28-931 Assault on an officer in the third degree; penalty.

- "(1) A person commits the offense of assault on an officer in the third degree if he or she intentionally, knowingly, or recklessly causes bodily injury to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.
 - (2) Assault on an officer in the third degree shall be a Class IIIA felony."

28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.

"(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:

"... Class IIIA felony Maximum - five years imprisonment, or ten thousand dollars fine, or both

Minimum - none"

COLORADO

18-3-203. Assault in the second degree.

"PART 2 ASSAULTS

- (1) A person commits the crime of assault in the second degree if:
- (c) With intent to prevent one whom he or she knows, or should know, to be a peace officer or firefighter from performing a lawful duty, he or she intentionally causes bodily injury to any person...
- (c) If a defendant is convicted of assault in the second degree pursuant to paragraph (b), (c), (d), or (g) of subsection (1) of this section or paragraph (b.5) of this subsection (2), except with respect to sexual assault or sexual assault in the first degree as it existed prior to July 1, 2000, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406. A defendant convicted of assault in the second degree pursuant to paragraph (b.5) of this subsection (2) with respect to sexual assault or sexual assault in the first degree as it existed prior to July 1, 2000, shall be sentenced in accordance with section 18-1.3-401 (8) (e) or (8) (e.5). "

18-1.3-401. Felonies classified - presumptive penalties.

"PART 4 SENTENCES TO IMPRISONMENT

"(IV) If a person is convicted of assault in the first degree pursuant to section 18-3-202 or assault in the second degree pursuant to section 18-3-203 and the victim is a peace officer or firefighter engaged in the

performance of his or her duties, as defined in section 18-1.3-501 (1.5) (b), notwithstanding the provisions of subparagraph (III) of paragraph (a) of this subsection (1) and subparagraph (II) of this paragraph (b), the court <u>shall</u> sentence the person to the department of corrections. In addition to a term of imprisonment, the court may impose a fine on such person pursuant to subparagraph (III) of paragraph (a) of this subsection (1)...."

FRANK P. DENNING SHERIFF

> TELEPHONE 913-791-5800

FAX 913-791-5806



DUTY HONOR SERVICE

125 N. CHERRY OLATHE, KANSAS 6606.1 WWW.JOCOSHERIFF.ORG DAVID A. BURGER UNDERSHERIFF

KEVIN D. CAVANAUGH UNDERSHERIFF

Date: February 10, 2009

Madam Chairwoman and distinguished members of the Committee,

My name is Bob Keller and I am the Commander of the Investigations Division for the Johnson County Sheriff's Office. Thank you for allowing me the opportunity to testify today in support of HB 2060.

According to the U.S. Department of Justice, assaults on law enforcement officers in the Midwest are on the rise. 8087 law enforcement officers were assaulted in the line of duty in 2007, an increase of 697 over the previous year. Additionally, there was a 14% increase in the number of Midwest law enforcement officers assaulted in the line of duty in the last decade. This unfortunate trend is dangerous for two reasons. First, it calls into question the effectiveness of the current sentencing guidelines that mandate presumptive probation for offenders. Second, the financial cost associated with in-the-line-of-duty injuries places a burden on Kansas taxpayers.

There is a moral imperative to deal effectively with those that would attack law enforcement officers. The knowledge that imprisonment is the presumptive sentence for battering a law enforcement officer will dissuade would-be attackers. Additionally, a convicted offender would be less prone to recidivate having experienced a sentence of presumed imprisonment as opposed to a sentence that presumed probation. The reduction in attacks on law enforcement officers would result in safer and more secure Kansas communities

In addition to providing a greater deterrent against attacks on law enforcement officers, HB 2060 is fiscally responsible. In-the-line-of-duty injuries are inherently associated to worker's compensation claims. According to the Kansas Division of Worker's Compensation, the mean total cost of a worker's compensation claim in 2007 was \$21,686.76. Analysts agree that there is a strong correlation between crime rates and the economy. In slow economic times, it is essential that our efforts are focused on providing services in a fiscally responsible manner. HB 2060 meets these objectives very efficiently with minimal bed space impact at the state level.

In closing, I urge the committee to vote favorably on HB 2060. I'm happy to stand for any questions you may have.

Respectfully,

Captain Bob Keller

Johnson County Sheriff's Office

Corrections and Juvenile Justice

Date: <u>2-10-09</u> Attachment # 2



Kansas Association of Chiefs of Police PO Box 780603, Wichita, KS 67278 (316)733-7301

Kansas Peace Officers Association PO Box 2592, Wichita, KS 67201 (316)722-8433



February 10, 2009

Testimony to the House Corrections and Juvenile Justice In Support of HB 2060 Presumptive Imprisonment for Battery to a Law Enforcement Officer

Madam chair and committee members.

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association support the provisions of SB 2060. The bill is relatively simple in nature. It does not create a new crime and it does not increase the severity level of the crime. It does simply add a special rule which will make the sentence for this offense presumptive imprisonment.

THE PROBLEM: Since this crime is a SL7 person crime, an offender is sentenced as presumptive probation for the first and second offenses unless they have prior person felony convictions. But for a lesser battery to a law enforcement officer, a judge could sentence the offender to some local jail time if they found that appropriate. But the more serious battery offense at SL7 a judge must find aggravating factors to do so.

THE SOLUTION: As with most problems there are multiple solutions, but the most acceptable solution appears to be the one proposed in this bill. It also retains the sentencing level recommendation for this crime proposed by the Kansas Sentencing Commission Proportionality Subcommittee and the Kansas Recodification Commission.

RATIONALE: Two times of receiving presumptive probation for injuring a law enforcement officer by assault is not right and does nothing to deter the offender from committing the crime. Nor does it provide appropriate punishment for an offense against the representative of the people in a law and order role. This bill will assure a just result for the perpetrators of this crime. The estimated 7-11 prison beds required is not prohibitive.

We respectfully encourage you to recommend this bill favorably for passage.

Ed Klumpp

Legislative Committee Chair - Kansas Association of Chiefs of Police

Legislative Committee Chair – Kansas Peace Officers Association

eklumpp@cox.net

Phone (785) 640-1102

Kupp

Corrections and Juvenile Justice

Date: 2 - 10 - 09 Attachment # 3



Kansas County & District Attorneys Association

1200 SW 10th Avenue Topeka, KS 66604 (785) 232-5822 Fax: (785) 234-2433 www.kcdaa.org

TO:

The Honorable Representatives of the Committee on Corrections and Juvenile

Justice

FROM:

Thomas R. Stanton

Deputy Reno County District Attorney

President, Kansas County and District Attorneys Association

RE:

House Bill 2060

DATE: February 10, 2009

Chairman Colloton and Members of the Committee:

Thank you for allowing me to submit testimony regarding House Bill 2060. The bill makes one substantive change to K.S.A. 21-4704, making the sentence for a conviction of K.S.A. 21-3413(a)(2) a presumptive prison sentence. The Kansas County and District Attorneys Association supports this legislation.

K.S.A. 21-3413(a)(2) makes it unlawful to intentionally or recklessly cause bodily harm to a police officer, and penalizes such activity as a severity level 7, person felony. It is our opinion that the passage of this legislation would recognize the sound public policy of protecting the men and women who put themselves on the line in order to protect us all. A strong message should be sent that battering law enforcement officers will not be tolerated, and will result in a presumptive prison sentence.

As a former police officer, I can tell you that protecting the public is a dangerous proposition. Any call, traffic stop or chance encounter has the potential for an officer being battered in the performance of his or her duty. Altercations between officers and those they are trying to control or arrest can happen in an instant, while other such altercations are preceded by communication between the officer and the suspect. I believe that the latter of such altercations could sometimes be avoided if the suspect were to be informed during that communication of the

> **Corrections and Juvenile Justice** Date: 2-10-09Attachment # 4-1

fact a presumptive prison sentence would result from an ill-advised attack on an officer. My experience also tells me that it will not take long for the community to become aware of the fact that battering a police officer will result in a presumptive prison sentence. There will be a deterrent effect under either circumstance.

Prosecutors support this legislation because it is good for law enforcement officers. It is also a benefit to the legal system. Prosecutors are always aware of the need to insure justice is done in every case, and not all batteries against law enforcement officers will result in a remand to the department of corrections at sentencing. The disposition of each case is based on the particular facts of that case, and there will be some instances in which the prosecutor, in consultation with the victim, will suggest a disposition of the case other than presumptive prison. The presumptive prison sentence prescribed for this crime will speed the disposition of the case in those circumstances.

I have reviewed the Fiscal Note supplied by the Director of Budget on this legislation. I am not convinced there will be an increase in the number of jury trials for persons charged with this crime if this legislation passes. It is my experience that many of these cases go to trial under the current law because of the nature of the crime. I certainly must disagree with the concept that another attorney would be required to defend such cases, however. These cases are spread throughout the State, and there would be no concentration of such crimes in any one jurisdiction which would support the actual hiring of a new attorney. Finally, while I am not in a position to debate the effect of this legislation on prison bed-space, I believe the suggested impact is minimal. There are times when good public policy should override the possible bed-space impact of legislation. This is one of those instances. Please support House Bill 2060.

Respectfully submitted,

Thomas R. Stanton

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

New Section 1. As used in sections 1 through 17, and amendments thereto:

- (a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.
- (b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:
- (A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;
- (B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or
- (C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, de-

Technical Amendments
February 9, 2009
Prepared by the Office of the Revisor of Statutes

and 65-7006

- (2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
- (4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
- (5) scales and balances used or intended for use in weighing or measuring controlled substances;
- (6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;
- (7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;
- (8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;
- (9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;
- (10) containers and other objects used or intended for use in storing or concealing controlled substances;
- (11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;
- (12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phenylaeetone (PCP), methamphetamine or amphetamine into the human body, such as:
- (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls:
- (B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
- (C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;
 - (D) smoking and carburetion masks;
- (E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (F) miniature cocaine spoons and cocaine vials;
- (G) chamber smoking pipes;
- 41 (H) carburetor smoking pipes;
- 42 (I) electric smoking pipes;

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43 (J) air-driven smoking pipes;

phencyclidine

- (4) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or
- (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.
 - (c) (1) Violation of subsection (a) is a drug severity level 4 felony;
- (2) violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162 prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana or tetrahydrocannabinol as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

New Sec. 7. (a) It shall be unlawful for any person to knowingly or intentionally use any communication facility:

- (1) In committing, causing, or facilitating the commission of any felony under section 3, 5 or 6, and amendments thereto; or
- (2) in any attempt to commit, any conspiracy to commit, or any criminal solicitation of any felony under section 3, 5 or 6, and amendments thereto. Each separate use of a communication facility may be charged as a separate offense under this subsection.
- (b) Violation of subsection (a) is a nondrug severity level 8, nonperson felony.
- (c) As used in this section, "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers and all other means of communication.

New Sec. 8. (a)—Unlawful obtaining and distributing a prescriptiononly drug is:

- (1) Making, altering or signing of a prescription order by a person other than a practitioner or a mid-level practitioner;
- (2) distribution of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;
- (3) possession of a prescription order with intent to distribute it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

Unlawfully

(B) damaging any building or property which is a dwelling with intent

to injure or defraud an insurer or lienholder;

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(C) damaging any building or property which is not a dwelling in which another person has any interest without the consent of such other person; or

(D) damaging any building or property which is not a dwelling with intent to injure or defraud an insurer or lienholder;

accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159 section 3, and amendments thereto, damaging any building or property which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159 section 3, and amendments thereto, damaging any building or property which is not a dwelling.

(b) (1) Arson, as described in subsection (a)(1)(A) or (a)(1)(B), is a severity level 6, person felony.

(2) Arson, as described in subsection (a)(1)(C), (a)(1)(D) or (a)(3), is a severity level 7, nonperson felony.

(3) Arson, as described in subsection (a)(2), is a severity level 7, person felony.

Sec. 27. K.S.A. 21-3826 is hereby amended to read as follows: 21-3826. (a) Traffic in contraband in a correctional institution is introducing or attempting to introduce into or upon the grounds of any correctional institution or taking, sending, attempting to take or attempting to send from any correctional institution or any unauthorized possession while in any correctional institution or distributing within any correctional institution, any item without the consent of the administrator of the correctional institution.

- (b) For purposes of this section, "correctional institution" means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail.
- (c) (1) Traffic in contraband in a correctional institution of firearms, ammunition, explosives or a controlled substance which is defined in subsection (e) of K.S.A. 65-4101 section I, and amendments thereto, is a severity level 5, nonperson felony.
- (2) Traffic in any contraband, as defined by rules and regulations adopted by the secretary, in a correctional institution by an employee of a correctional institution is a severity level 5, nonperson felony.
 - Except as provided in subsection (c), traffic in contraband in a

any or controlled substance analog any

be limited to the following information:

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- (1) A summary of the factual circumstances of the crime or crimes of conviction.
- (2) If the defendant desires to do so, a summary of the defendant's version of the crime.
- (3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.
- (4) An appropriate classification of each crime of conviction on the crime severity scale.
- (5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.
- (6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.
- (7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.
- (8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.
- (9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or section 3, and amendments thereto, and meet the requirements of K.S.A. 21-4729, and amendments thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.
- (10) For defendants who are being sentenced for a third or subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-4162, *prior* to such sections repeal or section 3, and amendments thereto, the drug

- (c) The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. 75-5220, and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed.
- (d) The criminal history worksheet will not substitute as a presentence report.
- (e) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.
- (f) The court can take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.
- (g) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.
- Sec. 38. K.S.A. 21-4717 is hereby amended to read as follows: 21-4717. (a) The following aggravating factors, which apply to drug crimes committed on or after July 1, 1993, under the sentencing guidelines system, may be considered in determining whether substantial and compelling reasons for departure exist:
- (1) The crime was committed as part of a major organized drug manufacture, production, cultivation or delivery activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, production, cultivation or delivery activity:
- (A) The offender derived a substantial amount of money or asset ownership from the illegal drug sale-activity.
- (B) The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.
- (C) The presence of drug transaction records or customer lists that indicate a drug sale activity of major size.
- (D) The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or

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distribution

1	packaging material.		~
1	(E) Building acquisitions or building modifications including but not		1
3	limited to painting, wiring, plumbing or lighting which advanced or fa-		10
4	cilitated the commission of the offense.	å .	U
5	(F) Possession of large amounts of illegal drugs or substantial quan-		
6	tities of controlled substances.		
7	(G) A showing that the offender has engaged in repeated criminal		
8	acts associated with the manufacture, production, cultivation or delivery	distribution	
9	of controlled substances.		
10	(2) The offender possessed illegal drugs:	the intent to distribute or which were distributed or offered for distribution	
11	(A) With intent to sell, which were sold or were offered for sale to a		
12	person under 18 years of age; or	distributed	
13	(B) with the intent to sell, deliver or distribute or which were sold or		
14	offered for sale in the immediate presence of a person under 18 years of		
15	age.	distribution	
16	(3) The offender, 18 or more years of age, employs, hires, uses, per-		
17	suades, induces, entices or coerces any individual under 16 years of age		
18	to violate or assist in avoiding detection or apprehension for violation of		
19	any provision of the uniform controlled substances act, K.S.A. 65-4101 et		
20	seq. sections 1 through 17, and amendments thereto, or any attempt,		
21	conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-		
22	3303, and amendments thereto, to commit a violation of any provision of		
23	the uniform controlled substances act sections 1 through 17, and amend-		
24	ments thereto, regardless of whether the offender knew the age of the		
25	individual under 16 years of age.		
26	(4) The offender was incarcerated during the commission of the		
27	offense.		
28	(b) In determining whether aggravating factors exist as provided in		
29	this section, the court shall review the victim impact statement.		
30	Sec. 39. K.S.A. 21-4729 is hereby amended to read as follows: 21-		
31	4729. (a) There is hereby established a nonprison sanction of certified		
32	drug abuse treatment programs for certain offenders who are sentenced		
33	on or after November 1, 2003. Placement of offenders in certified drug		
34	abuse treatment programs by the court shall be limited to placement of	processor and a second	
35	adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, prior to such sections repeal or section 3, and amendments thereto:	6	
36	(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or		
37	4-I of the sentencing guidelines grid for drug crimes and such offender		
38	has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163		
39 40	or 65-4164, prior to such sections repeal or section 3, 5 or 17, and amend-	16	
41	ments thereto, or any substantially similar offense from another jurisdic-		
42	tion; or		
43	(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of		
10	(Those offense is emission in Sine blocks 1-11, 1-15, 1-0 of 4-15 of		

- the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
- 4164, prior to such sections repeal or section 3, 5 or 47, and amendments thereto, or any substantially similar offense from another jurisdiction, if such person felonies committed by the offender were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeop-8 ardized by such placement in a drug abuse treatment program.
 - (b) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to:
 - (1) A drug abuse assessment which shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the offender; and
 - (2) a criminal risk-need assessment, unless otherwise specifically ordered by the court. The criminal risk-need assessment shall assign a high or low risk status to the offender.
 - (c) The sentencing court shall commit the offender to treatment in a drug abuse treatment program until determined suitable for discharge by the court but the term of treatment shall not exceed 18 months.
 - (d) Offenders shall be supervised by community correctional services.
 - (e) Placement of offenders under subsection (a)(2) shall be subject to the departure sentencing statutes of the Kansas sentencing guidelines act.
 - (f) (1) Offenders in drug abuse treatment programs shall be discharged from such program if the offender:
 - (A) Is convicted of a new felony; or

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- (B) has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding.
- (2) Offenders who are discharged from such program shall be subject to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and amendments thereto.
- (g) As used in this section, "mental health professional" includes licensed social workers, licensed psychiatrists, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2008 Supp. 75-52,144, and amendments thereto.
- (h) (1) The following offenders who meet the requirements of subsection (a) shall not be subject to the provisions of this section and shall be sentenced as otherwise provided by law:

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- (4) any person who, on and after the effective date of this act, is convicted of any of the following crimes when the victim is less than 18 years of age:
- (A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;
- (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or
- (C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;
- (5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

- (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
- (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;
- (C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;
- (D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;
- (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto; or
- (F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;
- (6) any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;
- (7) any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;
- (8) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);
- (9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);
- (10) any person who has been convicted of aggravated trafficking as defined in K.S.A. 21-3447, and amendments thereto; or
- (11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance as defined by K.S.A. 65-4159, prior to its repeal or section 3, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's

or controlled substance analog

personal use;

- (B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by K.S.A. 65-7006, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or
- (C) K.S.A. 65-4161, prior to its repeal or section 5, and amendments thereto.

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

- (b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).
 - (c) "Sexually violent crime" means:
 - (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;
- (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto:
- (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;
- (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;
- (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;
- (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;
- (7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;
- (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;
- (9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;
- (10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;
 - (11) aggravated incest as defined by K.S.A. 21-3603 and amendments

prior to its repeal or section 9 or 10,

- damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor; (2) upon an issue as to the validity of a document as a will of the patient; or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.
- (d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

- (e) There is no privilege under this section: (1) As to blood drawn at the request of a law enforcement officer pursuant to K.S.A. 8-1001 and amendments thereto; and (2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.
- (f) No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.
- (g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician's agent or servant gained knowledge through the communication.
- (h) Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any prosecution for obtaining a prescription-only drug by fraudulent means under K.S.A. 21-4214 section 8, and amendments thereto.
- Sec. 53. K.S.A. 2008 Supp. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who in this state or in other states or the federal government:
- (1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under the uniform controlled substances act sections 1 through 17, and amendments thereto, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301, and amendments thereto, to commit any

unlawfully

or distributing

- 1 Sec. 64. K.S.A. 12-4419, 12-4509, 21-2501, 21-3436, 21-3608a, 21-3718, 21-3826, 21-4203, 21-4204, 21-4214, 21-4215, 21-4226, 21-4502, 21-4603d, 21-4708, 21-4713, 21-4717, 21-4729, 22-2512, 22-2515, 22-2909, 22-3901, 36-601, 36-604, 60-427, 65-4102, 65-4105a, 65-4127c, 65-4127d, 65-4139, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164, 65-4165 and 79-5201 and K.S.A. 2008 Supp. 8-2,128, 8-1567, 12-4104, 21-4704, 21-4705, 21-4714, 22-4902, 38-2255, 44-706, 59-2132, 59-29b46, 60-4104, 65-516, 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-4166, 65-4168, 65-4168a, 72-1397, 72-5445, 72-89c01, 75-7c04, 75-52,144 and 76-11a13 are hereby
- repealed.
 Sec. 65. This act shall take effect and be in force from and after its
- 12 Sec. 65. This act shall take effect and be in force from and after it publication in the statute book.

65-7006,



KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

TESTIMONY TO THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE TRAVIS ELLIOTT, LEGISLATIVE CHAIRPERSON KANSAS ASSOCIATION OF COURT SERVICES OFFICERS ON HB 2113 – ASSAULT AND BATTERY AGAINST COURT SERVICES OFFICER FEBRUARY 10, 2009

Chairwoman Colloton and Members of the committee:

Good morning, I am Travis Elliott, Legislative Chair for the Kansas Association of Court Services Officers. I would like to thank the committee for giving me the opportunity to appear and present testimony in support of this very important issue. I am here today to voice the support for the inclusion of court services officers in those statutes relating to the assault and battery of law enforcement officers.

Court services officers (CSOs) work within all 31 judicial districts and provide valuable services to the district courts and to the citizens of this state. All CSOs conduct presentence investigation reports and provide supervision to adult and juvenile offenders, oftentimes including bond and diversion supervision. In addition to those statutory duties, CSOs in many districts conduct child custody investigations, provide mediation services, child in need of care services, and other duties as directed.

The current statutory status of court services officers as law enforcement officers is somewhat inconsistent. Court services officers are defined as law enforcement officers in K.S.A. 22-2202, a criminal procedure statute, which states that a "Law enforcement officer means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority."

In addition, K.S.A. 22-3716 grants limited arrest authority to court services officers, and pursuant to 38-1624 court services officers are granted the authority to take juveniles into custody. However, because court services officers are not specifically mentioned within chapter 21 of the Kansas Statutes Annotated (Crimes and Punishments) and because court services officers are not "certified" law enforcement officers as defined by statute, some protections afforded to other law enforcement officers has not been equally applied when court services officers have been victims of physical assault and battery.

"Victimization," as defined by Dr. William Parsonage of Pennsylvania State University in his groundbreaking study concerning the issue of worker safety in probation and parole, is "any violence, threat of violence, intimidation, extortion, theft of property, damage to one's reputation, or

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Attachment # 6-/

any other act which inflicts damage, instills fear, or threatens one's sensibilities." (Parsonage, W., 1990. Worker Safety in Probation and Parole. A monograph prepared for the National Institute of Corrections. Washington, D.C.) Nearly 50% of all probation officers will be victimized while performing their duties over the course of the officer's career, and over one half of these incidents will be comprised of physical assaults. (Thornton, R., & Shireman, J., 1993. New Approaches to Staff Safety. A monograph prepared for the National Institute of Corrections. Washington, D.C.)

Granted, these incidents range from non-physical to physical in nature and appropriate statutes are in place for those instances that involve non-physical assaults. However, there is a current void regarding those incidents in which court services officers have been the victim of assaults of a physical nature. When court services officers have been victims of physical assaults, there has been inconsistency in the application of charges resulting from the failure to classify court services officers as law enforcement officers.

Presently, the Office of Judicial Administration and the Kansas Bureau of Investigation have no critical incident reporting system which tracks those instances in which court services officers have been the victims of physical assaults. However, a recent inquiry of all 31 chief court services officers in all judicial districts has provided anecdotal evidence of instances in which court services officers were assaulted and simple battery, if any, charges were subsequently filed.

Several of these incidents consisted of assaults and batteries that resulted in no serious physical injury. However, there have been a few more serious assaults. One such instance involved a court services officer who was working with a juvenile female who had been placed into custody and ordered into an out of home placement. In the interest of brevity, the juvenile attempted to flee and, upon doing so, battered the court services officer and a deputy who had been serving as stand-by security. The court services officer suffered from a dislocated jaw, which subsequently resulted in TMJ issues and migraine headaches. Her condition worsened and eventually resulted in surgery that required both sides of her jaw to be broken and wired shut for six weeks. Not only did this incident create a tremendous amount of physical and financial costs, but the emotional impact can not even begin to be measured. Even though the deputy suffered only minor injuries, the prosecutor opted to pursue charges resulting from the attack on the deputy because it was the more serious offense and dismissed the simple battery charge in which the court services officer was the victim.

With the recent statutory changes which have occurred (most notably the 2006 Legislature's addition of police, arson, game warden, and search and rescue and assistance dogs) in which the severity levels of crimes has been enhanced for specific individuals and entities, the Kansas Association of Court Services Officers would like court services officers to be specifically included in the proposed statutory language before you.

In conclusion, I would like to thank you once again for this opportunity to appear before your committee and your consideration of this issue will be greatly appreciated. I will be happy to stand for questions.

The mission of the Kansas Association of Court Services Officers is to challenge, educate, support and advocate for the membership by promoting fellowship and professionalism, providing relevant training opportunities and maintaining communication with all members. The organization will further this mission by encouraging collaboration with our Court Services Officers and professional organizations and by recognizing member excellence.

STUART J. LITTLE, Ph.D. Little Government Relations

February 10, 2009

Testimony on House Bill 2232 House Corrections and Juvenile Justice Committee

Madame Chair Colloton and Members of the Committee

I appear today on behalf of Johnson Count Government in support of House Bill 2232 that we requested for introduction.

Currently, community corrections agencies across the state who are currently supervising high risk offenders and facing budget cuts, are aided in their work by statutorily mandated advisory boards. Current law caps membership on those committees at 12 members and HB 2232 allows for an increase up to 15 members. The local Board of County Commissioners will be allowed but not required to appoint three additional members to the Advisory Board.

The bill is permissive, not mandatory, and the positions are non-paid appointments.

The membership of the Juvenile Justice Advisory Board was changed in a similar fashion several years ago.

Thank you for the opportunity to testify and I would be happy to stand for questions.

800 SW JACKSON, SUITE 914 . TOPEKA, KANSAS 666 OFFICE 785.235.8187 · MOBILE 785.845.7265 · FAX 785.4! Corrections and Juvenile Justice

Date: 2-10-09

Attachment # 1

TESTIMONY ON SB14

HOUSE CORRECTIONS AND JUVENILE JUSTICE

February 12, 2009



J. Russell Jennings Commissioner 785-296-0042 rjennings@jja.ks.gov

Corrections and Juvenile Justice
Date: 2-/0-09
Attachment # 8-/

The 35th state to adopt the provisions of the Interstate Compact for Juveniles occurred in September 2008. The compact is now being implemented. When Kansas adopted the new Interstate Compact a number of statutes were repealed that established the appointing authority for the position of Compact Administrator. JJA supports SB14, as amended by Senate Committee and adopted by the Senate, which establishes a process for appointment of the Compact Administrator as well as establishment of the Kansas Council for Interstate Juvenile Supervision. In making a recommendation to the Joint Committee on Corrections and Juvenile Justice Oversight during the interim, JJA looked to the adult compact provisions for guidance.

The provisions of SB14 as amended will authorize the Governor to appoint the Compact Administrator. The Interstate Compact for Juveniles applies primarily to the juvenile offender population; therefore, we expect an executive level member of the Juvenile Justice Authority will serve as the Compact Administrator. The Governor recently appointed Dennis A. Casarona, Deputy Commissioner of the Juvenile Justice Authority, as the Compact Administrator for Kansas. This appointment was made in reliance upon the terms of the Interstate Compact as it exists today. The new compact will not take full effect until December 2009 at which time the provisions of the current compact will expire. This appointment was necessary in order to qualify an individual for participation and representation of Kansas in the organizational meeting of the National Interstate Commission for Juveniles who will undertake establishing operating policy and procedure among the participating states. The first meeting of the commission was in December. The Council of State Governments serves as the parent organization for the commission. During the December meeting, Dennis A. Casarona, Deputy Commissioner, was elected as a member of the executive committee of the commission as treasurer.

Kansas is also required to establish a state level council for interstate juvenile supervision. Minimum membership in the state council is established by the terms of the compact. Minimum membership includes: the compact administrator and at least one representative from the legislative, judicial and executive branches of government and victims groups. SB14 as amended provides for appointment of members as follows:

- (1) The compact administrator or the compact administrator's designee;
- (2) the chief justice of the supreme court or the chief justice's designee;
- (3) the attorney general or the attorney general's designee;
- (4) a person representing crime victims groups appointed by the attorney general;
- (5) the commissioner of the juvenile justice authority or the commissioner's designee;
- (6) one member of the house of representatives appointed by the speaker of the house of representatives; and
- (7) one member of the senate appointed by the president of the senate.

The proposed membership of the Juvenile state level council differs from the adult model. JJA supports membership being limited to the number of individuals required to meet the membership requirements as stated in the interstate compact. Additionally, JJA supports one legislative member from each house of the Legislature rather than four legislative members as is the case in the composition of the adult board.

Limiting the size of the council will reduce the costs of operations as well as reduce instances of scheduling conflicts which make meeting quorum requirements difficult. Quorum challenges occur currently in the case of the adult interstate council.

It should be noted that the state will have a \$17,000 annual dues requirement to support operations at the national level. In addition to the annual dues, attendance at certain national meetings by the compact administrator will be required and expenses for per diem and travel for state council members will also be required. Implementation of the new compact will require training of community level agencies and staff as well. JJA anticipates an additional operational expense of \$20,000 annually to fully implement the new compact. The expenses associated with this can be absorbed through existing resources with no additional funding being requested.