

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on February 9, 2011 in Room 144-S of the Capitol.

All members were present

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Lauren Douglass, Legislative Research  
Robert Allison-Gallimore, Legislative Research  
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Major Bret Cortright, Johnson County Sheriff's Office  
Tim DeWeese, Director of Community Support Services, Johnson County  
Officer Kyle Shipps, Prairie Village Police Department  
Rick Cagan, Executive Director, National Alliance on Mental Illness (NAMI)  
Justin Edwards, Chief Attorney, Sedgwick County  
Tim Madden, Chief Counsel, Kansas Department of Corrections  
Joyce Grover, Kansas Coalition for Domestic Violence

Chairperson Colloton called the meeting to order and opened the floor for consideration of **HB 2038-Amending the procedure regarding jury trials for upward departure sentences. Representative Roth moved to pass the bill out favorably, for passage. Representative Goodman seconded. A discussion followed. Motion carried.**

Next, Chairperson Colloton moved the Committee's attention to **HB 2118-Amending the requirements of offender appearance bonds and supervision costs, for consideration. Sean Ostrow, Office of the Revisor of Statutes, explained the bill to the Committee. Representative Pauls moved to pass the bill out favorably for passage. Representative Roth seconded. A discussion followed and Representative Brookens moved an amendment to Page 4, line 15, to change the language to read "any such costs in addition to \$15.00 per week". Representative Roth seconded. Motion carried.**

**Representative Pauls moved an amendment to make it effective upon publication of the registry. Representative Brookens seconded. Motion carried.**

**Representative Brookens moved to pass the bill out favorably for passage as amended. Representative Kelly seconded. Motion carried.**

Chairperson Colloton opened the hearing on **HB 2104-Medical confidentiality exception for law enforcement at crime scenes.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill to the Committee. The following testified as proponent of the bill:

- Major Bret Cortright, Johnson County Sheriff's Office. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 1)
- Tim DeWeese, Director Community Support Services, Johnson County. He presented written copy of his testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 2)
- Kyle Shipps, Prairie Village Police Department. Officer Shipps presented written testimony, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 3)
- Rick Cagan, Executive Director, National Alliance on Mental Illness presented "written only" testimony as a proponent of the bill. His testimony can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 4)

A question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2104** and opened the hearing on **HB-2151-Concerning crimes; criminal procedure and punishment; relating to breach of privacy and blackmail.** Justin Edwards, Chief Attorney for Sedgwick County District Attorney's Office, representing The Kansas County and District Attorney's Association, testified as a proponent of the bill. He presented written copy, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 5)

A short question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2151** and opened the hearing on **HB 2055-Eliminating certain information sharing requirements for district and county attorneys.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill to the Committee. The following testified as proponents of the bill:

- Justin Edwards, Chief Attorney for Sedgwick County District Attorney's Office, representing The Kansas County and District Attorney's Association. He presented written copy, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 6)

The following appeared as an opponent of the bill:

- Tim Madden, Chief Counsel, Kansas Department of Corrections on behalf of the Secretary, Ray Roberts. He presented written copy, which can be found in its entirety in the offices of Legislative Administrative Services. (Attachment 7)

A question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2151** and opened the hearing on **HB 2138-Expanding crime of burglary to include entering to commit certain domestic crimes.** Sean Ostrow, Office of the Revisor of Statutes, explained the bill. The following testified as proponents of the bill:

- Steve Howe, District Attorney, Johnson County. He presented written copy of his testimony which can be found in the offices of Legislative Administrative Services. (Attachment 8)
- Joyce Grover, Kansas Coalition for Domestic Violence. She stated they supported the bill.

A question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2138.** **Representative Wolf moved to withdraw the bill request made by the Kansas Sentencing Commission regarding the LSIR exchanges between Community Corrections and Court Services.** **Representative Kinzer seconded. Motion carried.**

The meeting was adjourned at 3:00 pm with the next scheduled for February 11, 2009, upon the adjournment of the House.

DATE: 2/9/11

DATE: 2/9/11

[illegible]

FRANK P. DENNING  
SHERIFF

913-791-5805



KEVIN D. CAVANAUGH  
UNDERSHERIFF

913-715-5500

DUTY HONOR SERVICE

125 N. CHERRY  
OLATHE, KANSAS 66061  
WWW.JOCOSHERIFF.ORG

Date: February 8, 2011

To: Chairperson Colloton, Vice Chairperson Kinzer, and distinguished members of the Corrections and Juvenile Justice Committee:

Chairperson Colloton,

My name is Bret Cortright, and I am a Major with the Johnson County Sheriff's Office. I appear today in support of HB 2104 as it allows the law enforcement community exemption from the privileges detailed in KSA 65-5602 which protects the confidentiality of information as it pertains to mental health patients and their treatments.

With the information available through this exemption, law enforcement officers will be better prepared to pursue avenues of evaluation and treatment for subjects exhibiting signs of mental illness rather than that of incarceration in adult and/or juvenile detention facilities if appropriate. This exemption becomes more critical to the increasing numbers of officers who are becoming certified in Crisis Intervention Training (CIT). This exemption coupled with CIT certification is not only beneficial to those with mental illness who encounter law enforcement, but with this added information can provide additional officer safety.

In Johnson County, the average daily population of the Adult Detention Center for 2010 was 801. Approximately 17 percent of that population was diagnosed with some type of mental illness. With the information available through this exemption, it is quite probable that some of those individuals incarcerated may have been diverted to treatment rather than being booked into jail.

Thank you for your time and consideration in this matter.

Major Bret Cortright  
Johnson County Sheriff's Office

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 2-9-11  
Attachment # 1

**Testimony Provided to the Committee of Corrections and Juvenile Justice**  
**Regarding House Bill No. 2104**  
**Tuesday, February 08, 2011**

Madame Chair and members of the Committee, my name is Tim DeWeese; I am the Director of Community Support Services for Johnson County Mental Health Center. Our Center is the public mental health safety net for Johnson County and provides services to over 11,000 County residents each year. In my role I also oversee the Center's After Hours Emergency Service and our Mobile Crisis Response Team. These services respond to over 15,000 requests for emergency assistance annually. I want to thank you for this opportunity to appear before you today, and provide comments regarding House Bill 2104.

Unfortunately people with mental illnesses come into frequent contact with law enforcement and the criminal justice system. An increasing number of the inmate population within the Johnson County Detention facility as well as individuals within facilities operated by the county Department of Corrections receive on-site psychiatric services. More importantly, the courts, correctional agencies and law enforcement are the some of the most frequent sources of referrals to Johnson County Mental Health Center. Of the 15,000 calls received by our emergency services each year approximately 5,000 are from local law enforcement requesting assistance or consultation.

Recently a community planning process facilitate by United Community Services of Johnson County was completed to identify improvements in the response to individuals with mental illness in the criminal justice system. We believe that by working collaboratively, strategies could be indentified and implemented to reduce the number of individuals with a mental illness who are involved in the criminal justice system. The Sequential Intercept Model, developed by SAMHSA National GAINS Center provided the conceptual framework for this process to examine and propose ways to "intercept" individuals with mental illness has they move through the criminal justice system.

The first point and arguable the most important "intercept" is at the point that an individual comes into contact with Law Enforcement. Police Departments within Johnson County have become very adept at identifying situations that may involve mental illness through training, specifically Crisis Intervention Team (CIT) training. Thus the very large number of calls we receive from these agencies. Unfortunately, current privacy regulations prohibit open communication between law enforcement and treatment providers' necessary to make the best disposition of the situation. In most instances we are not even able to confirm that the individual the police are dealing with is or is not known to us.

House Bill 2104 bill will create an additional exception to privilege within the existing exceptions already in place. If passed House Bill 2104 will allow the sharing of necessary information-to assure the most appropriate outcome when mentally ill individuals become involved with law enforcement agencies and their officers.

House Corrections and Juvenile Justi  
Committee  
2011 Session  
Date 2-9-11  
Attachment # 2



## PRAIRIE VILLAGE POLICE DEPARTMENT

**WES JORDAN, CHIEF OF POLICE**

7710 Mission Road • Prairie Village, Kansas 66208  
Phone: 913/642-6868 ext. 4615 • Fax: 913/385-7710

**OFFICER KYLE SHIPPS #76**  
**TECHNICAL OPERATIONS**



Date: February 8, 2011

To: Chairperson Colloton, Vice Chairperson Kinzer, and distinguished members of the  
Corrections and Juvenile Justice Committee

Chairperson Colloton,

My name is Kyle Shipps, and I am a Police Officer with the Prairie Village Police Department. I appear before you today in support of HB 2104, which allows law enforcement officers access to certain mental health records.

Law enforcement officers such as myself, whether in a field assignment or a correctional setting, face the daily challenge of providing equal opportunity policing services to our mentally ill citizens, while also not violating the privacies afforded each of us. Often times, the officers are stymied in their efforts to gather information regarding a person's mental health status, which could ultimately aid the officer in getting the person the care and treatment required, because of rules and provisions governing the release of such information. An example of the information that could aid the officer is whether or not the person is, or has been, a client of the local mental center, or is, or has been, a patient in state mental health hospital.

HB 2104 seeks to allow law enforcement officers access to these vital pieces of information in order to ensure a process in which, if an involuntary mental health committal is required, that the officer has all pertinent information in hand. Having this information will aid the officer, and any mental health workers or health care providers involved in the process, in making the most accurate and informed decision regarding the care and treatment of the citizen.

HB 2104 also continues to take patients' privacy rights into consideration, by ensuring that they are notified of the release of their records to the requesting law enforcement entity. Passage of HB 2104 will be a mutually beneficial act for both law enforcement officer and the citizens they are sworn to protect and serve.

Thank you for your time and consideration in this matter.

Officer Kyle Shipps  
Prairie Village Police Department

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 2-9-11  
Attachment # 3



## **Committee on Corrections & Juvenile Justice**

February 8, 2011

Presented by:  
Rick Cagan  
Executive Director

NAMI Kansas is a statewide grassroots membership organization dedicated to improving the lives of individuals with mental illness. Our members are individuals who are living with mental illnesses and the family members who provide care and support. NAMI Kansas provides peer support through a statewide network of local affiliates. We sponsor educational programs targeted at consumers of mental health services, their family members, and the general public. We advocate for individuals who are living with mental illness to ensure their access to treatment and supportive services.

We work closely with the law enforcement community on the implementation of Crisis Intervention Teams which are represented in the counties of Johnson, Lyon, Reno, Sedgwick and Shawnee. CIT programs represent a local partnership between law enforcement agencies, mental health providers, and consumer and family organizations with two primary objectives: public safety and the diversion of mental health consumers from the criminal justice system and into treatment. CIT programs establish law enforcement protocols for handling crisis situations involving persons with mental illness. CIT Councils provide training for law enforcement officers to understand mental illness, handle crisis situations, and locate resources for assistance.

Although more than 700 law enforcement and criminal justice professionals have been trained to respond to persons with mental illness through local CIT programs, there will continue to be encounters every day with law enforcement officials who have not experienced CIT training. We stand in support of House Bill 2104 and the need to enhance the information provided to law enforcement officers about individuals with a serious mental illness at the point at which they are being lawfully detained.

Our support for this measure is tempered by our belief in the privacy of medical information and the right of all adults to determine who may have access to confidential medical records. It is our understanding in supporting this measure that information to be shared with law enforcement officers will be limited to what they need to know in order to render a more appropriate outcome to their contact with the individual being detained and that this information will be treated confidentially by the officer. In particular, we understand that the intent of the legislation is to facilitate diversion of the individual being detained into the mental health treatment system rather than being arrested.

Thank you for the opportunity to provide information to the Committee for your deliberations.

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2-9-11  
Attachment 4



Office of the District Attorney  
Eighteenth Judicial District of Kansas  
*at the Sedgwick County Courthouse*  
535 N. Main  
Wichita, Kansas 67203

Nola Foulston  
*District Attorney*

Marc Bennett  
*Deputy District Attorney*

February 4, 2010

**Testimony Regarding HB 2151  
Submitted by Marc Bennett, Deputy District Attorney  
On Behalf of Nola Tedesco Foulston, District Attorney  
Eighteenth Judicial District  
And the Kansas County and District Attorneys Association**

Honorable Chairwoman Colloton and Members of the House Committee on Corrections and Juvenile Justice:

Thank you for the opportunity to address you regarding House Bill 2151. On behalf of the Kansas County and District Attorneys Association, I would like to bring to your attention issues related to the new Breach of Privacy statute (formerly Eavesdropping & Blackmail) now found at sections 64 and 171 of chapter 136 of the 2010 Session Laws of the State of Kansas.

The proposal contained in HB 2151 adds "disseminating or permitting the dissemination of any video tape, photograph, film or image obtained in violation of subsection(a)(6)" (page 2 lines 1-2) to the portion of the law formerly known as Eavesdropping and adding the same basic language to the portion containing the former Blackmail statute (page 2, lines 31-33). Additionally, felonies are suggested at various severity levels for violations of the statute.

The proposed legislation addresses a shortcoming in current law if the state were to encounter a situation akin to the Rutgers University case, wherein one student surreptitiously recorded his 18 yr old roommate engaged in a consensual sexual encounter then disseminated the recording onto the internet. Currently, we could only charge the recording as a class A misdemeanor under Eavesdropping while no crime specifically exists to address the dissemination of the recording onto the internet.

The proposal would make the acts already set forth in (a)(6) -- surreptitiously using devices to "videotape, film, photograph or record" someone (no matter the victim's age) "in a state of undress" -- severity <sup>level & person</sup>

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 2-9-11  
Attachment # 5



felonies. The proposal also suggests that the act of disseminating said material would be a severity level 5 person felony.

Additionally, there are situations – unrelated to the Rutgers University case – where Defendants surreptitiously record themselves in a sexual act with a victim then threaten to show the recording to others unless the victim agrees to engage in additional sexual acts, submit to additional photos, et cetera. In such a circumstance, current Kansas law would only criminalize such conduct as a class A misdemeanor under Blackmail (or the amended Breach of Privacy under subsection [b]). We propose this behavior be set as a severity level 4 person felony.

One final note – there is always the concern that a statute like this could criminalize “sexting” engaged in by age-mate teens. The language in the current statute, “. . . with the intent to invade the privacy of that other person,” has protected against this potentiality in the past and would continue to do so under the proposed revision(s).

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Marc Bennett  
Deputy District Attorney  
Eighteenth Judicial District



Office of the District Attorney  
Eighteenth Judicial District of Kansas  
*at the Sedgwick County Courthouse*  
535 N. Main  
Wichita, Kansas 67203

Nola Foulston  
*District Attorney*

Justin R. Edwards  
*Chief Attorney*

February 8, 2011

**Testimony Regarding HB 2055**  
**Submitted by Justin Edwards, Chief Attorney**  
**On Behalf of the Kansas County and District Attorneys Association**

Madam Chair and members of the committee:

The Kansas County and District Attorney Association is seeking through HB 2055 to repeal K.S.A. 22-3432 and amend K.S.A. 2010 Supp K.S.A. 21-4632(c). K.S.A. 22-3432, requires the county or district attorney to furnish certain information to the secretary of corrections regarding the individuals that have been convicted of a felony and sentenced to imprisonment. K.S.A. 2010 Supp. 21-4632(c), requires that the court provide similar information to the secretary of corrections including the county or district attorney report. The proposal would remove "county and district attorney reports" from the statute.

K.S.A. 22-3432 currently states that:

It shall be the duty of the county or district attorney of the county in which a person has been convicted of a felony and sentenced to imprisonment to **furnish to the secretary of corrections information pertaining to the facts and circumstances surrounding the commission of the offense, including any aggravating or mitigating circumstances, and such other information which has come to the attention of the county attorney which might have a bearing in determining the possibility of the inmate thereafter becoming a useful citizen.** This information shall be set forth on forms provided by the secretary and shall be submitted at the time the inmate is committed. Such information shall be forwarded by the secretary to the correctional institution receiving such inmate.

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 2-9-11  
Attachment # 6

K.S.A. 2010 Supp. 21-4632(c), as amended by last year's SB 346 requires that,

[t]he court shall forward a copy of all *complaints, supporting affidavits, county and district attorney reports*, presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

It is doubtful that the information required by K.S.A. 22-3432 or the "county and district attorney reports" included in K.S.A. 2010 Supp. 21-4632(c), provide any additional details of the matter which cannot already be gleaned from the materials provided by the court to the secretary of corrections.

The typical content in the reports (commonly called DOC sheets) is information readily available in the Journal Entries of Judgment and other documents provided under K.S.A. 2010 Supp. 21-4632(c). In the rare case where particular information about an inmate such as gang affiliation, codefendants, or special mental needs of a defendant may be important for the Department of Corrections to know, the court's comments may be included in the Journal Entry and other documents provided under K.S.A. 21-4632(c). Such information may be included in the "Additional Comments" section of the Recap of Sentence in the Journal Entry of Judgment located on the signature page of the court and counsel.

The continuance of the K.S.A. 22-3432 and the surplus language regarding county and district attorney reports in K.S.A. 2010 Supp. 21-4632(c) is unnecessary and an administrative burden compared to the benefits. Therefore, KCDA respectfully request that HB 2055 be passed in order to repeal K.S.A. 22-3432 and to strike "county and district attorney reports" from K.S.A. 21-4632(c).

Respectfully submitted,

Justin R. Edwards  
Chief Attorney  
Eighteenth Judicial District

6-17

Landon State Office Building  
900 SW Jackson, 4<sup>th</sup> Floor  
Topeka, KS 66612



phone: (785) 296-3317  
fax: (785) 296-0014  
kdocpub@doc.ks.gov  
www.doc.ks.gov

Ray Roberts, Secretary of Corrections

Department of Corrections

Sam Brownback, Governor

Testimony on HB 2055  
to  
The House Corrections and Juvenile Justice Committee

By Ray Roberts  
Secretary  
Kansas Department of Corrections  
February 4, 2011

The Department of Corrections respectfully opposes the repeal of K.S.A. 22-3432 and K.S.A. 2010 Supp. 21-4632. The department, however, wishes to stress that it does not wish to create an unreasonable burden upon prosecutors or the court in providing relevant information to the department necessary for public safety both while the offender is incarcerated as well as upon his or her release. Since, K.S.A. 22-3432 and 21-4632 are to some degree interrelated, the department supports amendment of K.S.A. 21-4632 to avoid the involvement of the court in providing the prosecutor's report required by K.S.A. 22-3432 but again strongly urges the retention of the provisions of both statutes relative to providing information to the department.

In considering the merits of HB 2055, the department urges the committee to consider the value of the information at issue, whether the information had already been prepared for other purposes, and whether the information would be obtainable from other sources. The department believes that all of the information to be provided to the department is of great value to the safe and effective management of offenders while both incarcerated and upon their release, that the vast majority of information sought has been generated for other uses in the criminal justice process and thus is readily available for transmission to the department, and that the little information sought by the department that has not previously been reduced to a report should be readily known by prosecutors and may be critical to safety within a prison and eventually the community, yet not be available from other sources.

**K.S.A. 2010 Supp. 21-4632 Should Not be Repealed.**

HB 2055 proposed repeal of K.S.A. 21-4632 in its entirety. K.S.A. 21-4632 governs the court's preparation of sentencing document evidencing the conviction and sentence imposed upon an offender. This fundamental document is of course critical for the department to fulfill its duty to incarcerate the offender for the proper length of time. Prior to the 2010 amendment, the court was also required to forward to the department information that the court had received regarding the offender's mental health status and presentence reports. The 2010 amendment of K.S.A. 21-4632 retained those requirements and added a requirement for the provision of the complaint, supporting affidavit, and county and district attorney report.

The complaint and supporting affidavit are generated to initiate the criminal prosecution. Therefore, K.S.A. 21-4632 relative to the complaint and supporting affidavit does not require the court or the

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2-9-11  
Attachment 7-1*

prosecutor to generate a document just for the department's use. A criminal complaint and supporting affidavit provide invaluable information to the department in its determination of the offender's custody classification, treatment programming needs, risk assessment, release supervision conditions, and if a nongrid or offgrid offender, his or her suitability for parole release.

For example, a complaint and affidavit setting out the sexual abuse suffered by a victim is critical in determining whether an offender convicted of only kidnapping should be considered a sex offender. Additionally, since sex offender treatment requires a full understanding of the offender's deviant behavior, a mere recitation of the statutory definition of the crime is not sufficient in forcing the offender to acknowledge his or her deviant behavior in treatment. The complaint and affidavit of prosecution provided critical information to the department when it was required to determine the retroactive application of sentencing guidelines based upon the age of the victim. This information was not contained in the sentencing journal entry. That information is still important to the Parole Board in making release decisions and the department's supervision of offenders. Finally, information in the complaint and supporting affidavit are critical in identifying and providing information to crime victims.

The department supports amendment of K.S.A. 21-4632 to delete the court's role in transmitting the "county and district attorney" report. However, the department wishes to emphasize that it does not support repeal of the requirement that such report be prepared and transmitted to the department as required by K.S.A. 22-3422. The removal of the court in transmitting the prosecutor's report to the department would address a concern raised by a prosecutor that involvement of the court in "processing/filing" the prosecutor's report rendered that report into a judicial document and therefore was subject to a hearing and adjudication regarding statements made in the report. To avoid that argument, the department has no objection to deleting reference to the county and district attorney's report in K.S.A. 21-4632, provided that the statutory requirements that prosecutors prepare the reports and provide them to the department pursuant to K.S.A. 22-3432 is retained. A balloon amendment for that proposal is attached.

### **County and District Attorney Reports**

HB 2055 also provides that K.S.A. 22-3432 is to be repealed in its entirety. The department opposes repeal of K.S.A. 22-3432. The statutory requirement for the preparation and submission of the county and district attorney's report was enacted in 1970. As explained in the department's letter to Mr. Steve Kearney of Kearney and Associates, Inc., who represented the County and District Attorney's Association; the purpose of the prosecutor's report is to receive information regarding the circumstances of the crime, the particular offender and finally any codefendant or associates. As pointed out by the department, typically information regarding the crime and the offender's role is adequately set out in the complaint and supporting affidavit. Historically, prosecutors in response to a request for information regarding the circumstances of the offense would simply reference an attached copy of the complaint and supporting affidavit which was sufficient to provide that necessary information to the department. With the amendment of K.S.A. 21-4632, whereby the court is to provide the complaint and supporting affidavit to the department, prosecutors need not attach or even refer to those documents in their report. It is only when there are exceptional aggravating or mitigating aspects of a particular case that are not set out in the complaint or affidavit that the prosecutor would need to submit that information in his or her report. A copy of the department's August 19, 2010 letter to Mr. Kearney and the prosecuting attorney report form is attached.

In addition to the nature of the offender's criminal behavior relative to a specific criminal prosecution, the department also solicits information that the prosecutor may have regarding the offender's gang

affiliations, special needs/disabilities, other family or victim issues of which the department should be aware and if there were any adverse witnesses who are subject to incarceration with the department. Again, the department does not wish to burden prosecutors by requesting them to undertake a significant research project, rather our goal is to facilitate the transmission of information that may be readily apparent to prosecutors that would aid the department in its public safety mission. Information that a prosecutor may have had regarding gang retribution as the motive for a crime or if a codefendant is at risk for having testified against an offender should be transmitted to the department and the prosecutor's report is a suitable vehicle to convey that information.

The department urges the committee to not pass out the HB 2055 repealing K.S.A. 22-3432 and K.S.A. 2010 Supp. 21-4632 but rather only amend K.S.A. 21-4632 to remove the role of the court in transmitting the prosecutor's report to the department.

## HOUSE BILL No. 2055

By Committee on Corrections and Juvenile Justice

1-21-

AN ACT repealing K.S.A. 22-3432 and K.S.A. 2010 Supp. 21-4632; concerning criminal procedure; relating to offender information sharing,

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

Section 1. K.S.A. 22-3432 and K.S.A. 2010 Supp. 21-4632 are hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Delete and modify to reflect amendment of K.S.A. 2010 Supp. 21-4632.

Section 1. K.S.A. 21-4632 is hereby amended to read as follows: 21-4632. (a) If the defendant is to be sentenced to the custody of the secretary of corrections, the court may prepare a judgment form which shall be signed by the court and filed with the clerk. If prepared, the judgment form shall reflect the conviction, the sentence and the commitment, and shall contain the following:

(1) The pronouncement of guilt including:

(A) The title of the crime;

(B) the statute violated; and

(C) the date the offense occurred.

(2) The sentence imposed including:

(A) The severity level of the crime of conviction, criminal history designation and grid block or departure sentence;

(B) if applicable, a description of any increase in sentence because of departure criteria;

(C) if applicable, a statement that this defendant has been convicted of severity levels 1 through 5 by reason of aiding, abetting, advising or counseling another to commit a crime, or by reason of the principle provided in subsection (2) of K.S.A. 21-3205 and amendments thereto;

(D) a statement of the effective date of the sentence indicating whether it is the date of imposition or some date earlier to give credit for time confined pending disposition of the case pursuant to K.S.A. 21-4614 and amendments thereto or credit for time on probation or assignment to community corrections pursuant to K.S.A. 21-4614a and amendments thereto.

(3) The order of commitment to the custody of the secretary, if not issued as a separate order.

(b) The court may attach to or include in the judgment form any of the following:

(1) A statement of reasons for imposing a departure sentence;

(2) a description of aggravating or mitigating circumstances the court took into consideration when ordering the commitment;

(3) the copy of the evidence from trial or part thereof transmitted pursuant to K.S.A. 75-5219 and amendments thereto.

(c) The court shall forward a copy of all complaints, supporting affidavits, security and district attorney reports, presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the Topeka correctional facility or the state security hospital, to the officer having the offender

Delete

# KANSAS

DEPARTMENT OF CORRECTIONS

Mark Parkinson, Governor  
Roger Werholtz, Secretary

[www.doc.ks.gov](http://www.doc.ks.gov)

August 19, 2010

Steve Kearney  
Kearney and Associates Inc.  
1200 S.W. 10<sup>th</sup> Ave.  
Topeka, Ks 66604

Re: County and District Attorney's Association  
SB 346 (2010) County and District Attorney's Report

Dear Mr. Kearney,

Secretary Werholtz requested that I review and respond to questions posed by prosecutors regarding the provision of a "*County or District Attorney Report*" provided by SB 346. Recently, the Department of Corrections sent a letter to prosecuting attorneys, judges and jail administrators regarding the 2010 Legislative provisions regarding the documents to be delivered with the offender upon his or her admission into a KDOC facility as well as the authority of the secretary to discharge an inmate held in a jail awaiting transfer to KDOC if the prison portion of the sentence has a balance of 10 or fewer days remaining to be served. These provisions were enacted in SB 346.

The department has received inquiries from county/district attorneys regarding the amendment of K.S.A. 21-4632 which provides that "*County and District Attorney Reports*" are to be delivered along with the inmate upon admission to a KDOC facility. The department hopes this letter will aid the Association and its member prosecutors resolve any confusion that may exist regarding the "*County and District Attorney Reports*" referred to by K.S.A. 21-4632 as amended by SB 346. Additionally, the department seeks input from the Association regarding a proposed change to the "*County and District Attorney Report*" promulgated by the department.

First of all, SB 346 did not change existing law regarding the preparation of a report by prosecutors for the department regarding offenders sentenced to the department's custody. The provision of a "*County and District Attorney Report*" to the department was established in 1970 by enactment of K.S.A. 22-3432. K.S.A. 22-3432 provides:

"22-3432. Information for secretary of corrections concerning person convicted. It shall be the duty of the county or district attorney of the county in which a person has been convicted of a felony and sentenced to imprisonment to furnish to the secretary of corrections information pertaining to the facts and circumstances surrounding the commission of the offense, including any aggravating or mitigating circumstances, and such other information which has come to the attention of the county attorney which might have a bearing in determining the possibility of the inmate thereafter becoming a useful citizen. This information shall be set forth on forms provided by the secretary and shall be submitted at the time the inmate is committed. Such information shall be forwarded by the secretary to the correctional institution receiving such inmate."

A copy of the current "*County and District Attorney's Report*" form is attached for your convenience.

DEPARTMENT OF CORRECTIONS

900 S.W. Jackson Street, 4<sup>th</sup> Floor • Topeka, Kansas 66612-1284 • Tel: (785) 296-3317 • Fax: (785) 296-0014

7-5



The current form attempts to gather information from prosecutors regarding the circumstances of the crime, the particular offender, and finally any codefendant or associates. Generally, it has been the department's experience that the circumstances of the offense are suitably described by the prosecutor attaching a copy of the affidavit that was filed with the complaint. However, if the particular circumstances of an offense are so egregious as to not be adequately described by the recitation of the facts necessary to establish probable cause for the elements of the crime, the department and the Kansas Parole Board would greatly appreciate that information in the prosecutor's report.

Again, use of the complaint affidavit to describe the circumstances of the offense, has historically been used by prosecutors in preparing their report and will continue to be sufficient relative to the circumstances of the offense unless there are exceptional aggravating or mitigating aspects to the particular case warranting additional information to be provided.

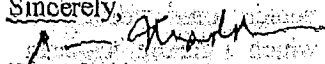
In addition to providing information regarding the circumstances of the offense, the prosecutor's report also aids the department in the management of the offender. The information that can be provided by prosecutors is beneficial in decisions regarding parole (if applicable), release supervision conditions (even if subject to a guidelines sentence), housing/custody classification and program needs. For example, a prosecutor advising the department that codefendants testified against each other may be significant in the housing locations of those offenders. Likewise, gang affiliations or special needs of an offender may cause the department to take certain steps.

In order to more adequately solicit information from prosecutors, the department is considering modifying the "County and District Attorney's Report" form. The proposed modifications to the report form are intended to solicit information that would aid the department in managing the offender while incarcerated and under release supervision. The department does not wish to burden prosecutors by requesting them to undertake a significant research project, rather, our goal is to facilitate the transmission of information that may be readily apparent to prosecutors that would aid the department in its public safety mission. The department would greatly appreciate the Association reviewing the attached draft of the proposed form and providing the department with any suggestions that the Association might have regarding modification.

A copy of the proposed report form is attached.

I hope this letter clarifies the history of the *District and County Attorney's Report* and I look forward to any suggestions the Association may have in regard to the prosecutor's report so that significant information regarding the characteristics and background of offenders is provided to the department without placing an undue burden on prosecutors.

Sincerely,

  
Tim Madden  
Sr. Counsel to the Secretary

W/attachments

Cc: Allen Shelton, Smith County Attorney  
Thomas Drees, Ellis County Attorney  
SB 346 file

STATE OF KANSAS  
COUNTY/DISTRICT ATTORNEY'S REPORT FOR  
SECRETARY OF CORRECTIONS  
PURSUANT TO K.S.A. 22-3432

Defendant's Name:

Case No.

Date Sentenced:

Viol. Sec.

Offense:

Term Imposed:

Plea:

Defense Attorney:

Trial Judge:

Prosecuting Attorney:

Judicial District No.

County:

City:

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1. Give date and detail of offense(s) committed, including any aggravating or mitigating circumstance. Please avoid legal phraseology. Attach additional pages if necessary.

2. Additional information pertinent to determining suitability for parole, or impacting release supervision, or facility management. (For example; offense committed while under release supervision, extent of public injury, public reaction to offense, criminal associations, etc.)

3. Co-defendants and associates (if any), gang affiliations, adverse witnesses subject to incarceration with KDOC and sentence imposed:

4. Is this a special needs offender (e.g., mentally ill, developmentally disabled, behaviorally disordered, etc.)?

5. Do you know of any significant family or victim issue of which we should be aware that will not naturally show up in the routine paperwork?

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Date Prepared

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Prosecuting Attorney

STATE OF KANSAS  
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY  
STEPHEN M. HOWE, DISTRICT ATTORNEY

February 9, 2011

House Judiciary Committee  
Attention: Lance Kinzer, Chairman  
District 14 State Capital, Room 531N  
Topeka, Kansas 66612

Re: House Bill 2138

Dear Chairman Kinzer,

Thank you for the opportunity to submit our written response in support of HB 2138.

Honorable members of the Committee on Corrections and Juvenile Justice, we are here today to discuss the expansion of the crimes of Burglary and Aggravated Burglary. The proposed changes greatly benefit victims of domestic violence. All of us want to feel safe and secure in the comforts of our homes. The proposed changes reinforce those thoughts.

As prosecutors know all too well, protective orders are no guarantee that a person is going to be safe from another individual. However, the proposed changes give prosecutors the additional tools needed to address public safety issues in domestic violence cases. If a protective order is in place, we would no longer be required to show the perpetrator intended to commit a felony, a theft or a sexual battery. Instead, we would be required to show that an order was in place and the perpetrator knowingly violated that order by going into the residence of the victim. This would also hold true in cases where a perpetrator enters the home of the victim to batter them or in their efforts to stalk the victim.

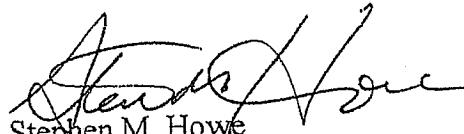
This expansion would allow prosecutors to charge the suspect with a felony instead of a couple of misdemeanors (violation of a protective order and criminal trespass). Felony charges bring more serious sanctions and potentially diffuse future escalating violence. We often see cases where a person that is subject to a protective order breaks into another's house. They leave messages or destroy a couple of photos or property. These are extremely dangerous situations and if left unchecked can lead to additional violence towards the victim. Because the underlying act does not rise to the level of a felony, we cannot charge them with Burglary or Aggravated Burglary. By expanding the scope of those statutes, we are given the opportunity to use our discretion and charge those felonies when appropriate.

House Corrections and Juvenile Justice  
Committee  
2011 Session  
Date 2-9-11  
Attachment # 8-1

As mentioned previously, no statute or protective order will ever guarantee a person's safety. However, the proposed changes give victims of domestic violence hope that tougher penalties will deter suspects from destroying the peacefulness and safety they hope to have in their own homes. It is our hope that these additional penalties could help prevent further escalation of criminal acts against domestic violence victims.

We would ask this committee to support this bill as drafted. I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,



Stephen M. Howe  
Johnson County District Attorney  
P.O. Box 728  
Olathe, KS 66051