

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 March 8, 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:

Hope Cooper, Director, Community Corrections, Kansas Department of Corrections
Beth Gillespie, Director, Department of Corrections, Johnson County
Keith Clark, director, Kansas Community Corrections Association

Others attending:

See attached.

Chairperson Colloton called the meeting to order and opened the hearing on **HB 2339-Criminal code trailer bill** and introduced Jill Wolters, Office of the Revisor of Statutes, to explain the bill. She presented written copy of her testimony (Attachment 1) and a copy of amendments (Attachment 2) which can be found in their entirety in the offices of Legislative Administrative Services.

A question and answer session followed.

With no others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2339** and opened the hearing on **HB 2371-Amending the provisions of community corrections grants and continuing such programs in certain counties**. The following testified as proponents of the bill. They presented written copy of their testimony which can be found in its entirety in the offices of Legislative Administrative Services:

- Hope Cooper, Director, Community Corrections, KS Department of Corrections (Attachment 3)
- Keith Clark, director, Kansas Community Corrections Association (Attachment 4)
- Beth Gillespie, Director, Department of Corrections, Johnson County (Attachment 5)

A question and answer session followed. With not others to testify or speak to the bill, Chairperson Colloton closed the hearing on **HB 2371** and opened the floor for further consideration of **HB 2321-Amendments to the recodified criminal code**.

Representative Smith moved to pass the bill out favorably as amended. Representative Pauls seconded. A discussion followed with motions being made to remove the following sections from the bill: 10; 11; 7; 1; 18; 14. All motions carried. Sections of the bill not removed are: 2; 3; 4; 5; 6; 8; 9; 12; 13; 15; 16; 17; 19; 20; 21; 22; 23. Representative Roth moved to pass the bill out favorably as amended. Representative Brookens seconded. Motion carried.

The meeting was adjourned at 3:10 pm with the next scheduled meeting for March 9, 2011 at 1:30 in room 144-S.

DATE: 3-8-11

DATE: 3-8-11

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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice
From: Jill Ann Wolters, Senior Assistant Revisor
Date: 6 March, 2011
Subject: House Bill No. 2339, Criminal Code trailer bill

During the 2010 Session, HB 2668 was enacted into law, making revisions to the Kansas criminal code. The revised code is the work product of the Criminal Justice Recodification, Rehabilitation and Restoration Project and the Criminal Code Recodification Commission.

The provisions of HB2339 fall into three categories

1. Errors and omissions in 2010 HB 2668. In reviewing the bill, some crimes were missing culpability terms, penalties or special sentencing rules. These omissions have been addressed. Example: Sec. 28, Blackmail. The culpability term assigned is 'intentional'.

2. Curing conflicts with other bills that were passed in the 2010 Session. Examples: House Sub. for SB 381, use of force; HB 2517, domestic violence designation; SB 67, mistreatment of dependent adults; Sub. SB 353, human trafficking; SB 434, traffic in contraband in a correctional institution or care and treatment facility;

3. Searching all the statutes outside of chapter 21, finding the references in those statutes, making a determination whether the prior law references need to be retained, and updating the references to the revised code.

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-8-11
Attachment # 1

HOUSE BILL No. 2339

By Committee on Appropriations

2-15

1 AN ACT concerning crimes, punishment and criminal procedure;
 2 amending K.S.A. 8-254, 8-285, 8-1450, 9-2004, 19-101d, 19-27.139,
 3 19-4804, 20-369, 22-2411, 22-2615, 22-2307, 22-2908, 22-3008, 22-
 4 3102, 22-3414, 22-3415, 22-3427, as amended by section 306 of
 5 chapter 136 of the 2010 Session Laws of Kansas. 22-3429, 22-3436,
 6 22-3439, 22-3602, 22-3701, 22-3725, 22-4807a, 34-228, 34-249a, 36-
 7 602, 38-1132, 39-720, 39-785, 41-206, 44-1039, 46-920, 47-653c, 47-
 8 1715, 50-618, 50-648, 50-651, 50-653, 57-227, 58-2573, 60-523, 60-
 9 1620, 60-2610, 60-4111, 60-4402, 60-4404, 60-4405, 65-444, 65-
 10 1120, 65-2006, 65-2859, 65-28.108, 65-28a05, 65-4209, 65-6703, 65-
 11 6721, 68-422a, 74-7325, 74-7333, 75-4004, 75-5233 and 75-5269;
 12 K.S.A. 2010 Supp. 8-116a, 8-255, 8-262, 8-287, 8-2.144, 8-1013, 8-
 13 1102, 8-1567, 8-2106, 8-2117, 8-2410, 12-16.119, 12-4104, 12-4516,
 14 12-4516a, 12-4517, 17-12a508, 20-2207, 20-2208, 20-3207, 21-
 15 3212a, 21-3220, 21-3221, 22-2310, 22-2410, 22-2512, 22-2802, 22-
 16 2901, 22-2909, 22-3212, 22-3303, 22-3426, 22-3716, 22-3717, 22-
 17 3727, 22-3727a, 22-4614, 22-4616, 22-4617, 22-4902, 22-4906, 28-
 18 177, 32-1013, 32-1047, 32-1063, 36-604, 38-2202, 38-2255, 38-2271,
 19 38-2302, 38-2303, 38-2309, 38-2310, 38-2312, 38-2313, 38-2326, 38-
 20 2331, 38-2355, 38-2356, 38-2361, 38-2364, 38-2365, 38-2371, 38-
 21 2377, 39-970, 40-252, 40-2.118, 40-1702, 40-3213, 41-346, 41-2611,
 22 41-2708, 41-2905, 41-2906, 44-5.125, 44-706, 44-719, 44-1131, 45-
 23 217, 45-221, 45-230, 47-1706, 47-1707, 58-3043, 58-3068, 58-4505,
 24 59-2132, 59-2948, 59-29a02, 59-29a07, 59-29a14, 59-29b48, 60-312,
 25 60-455, 60-1610, 60-1629, 60-3107, 60-31a06, 60-4104, 60-4105, 60-
 26 4113, 60-4119, 60-4403, 60-5001, 65-448, 65-516, 65-1436, 65-1627,
 27 65-2434, 65-2836, 65-5117, 66-2304, 72-1397, 72-5445, 74-4924, 74-
 28 5602, 74-7301, 74-7305, 74-8702, 74-9101, 75-452, 75-453, 75-755,
 29 75-7b01, 75-7b13, 75-7c03, 75-7c04, 75-7c05, 75-7c09, 75-7c17, 75-
 30 7c19, 75-7c26, 75-1508, 75-4362, 75-5133, 75-5218, 75-5291, 75-
 31 52.127, 75-52.144, 75-52.148 and 76-11a13; and Sections 2, 11, 21,
 32 22, 23, 24, 25, 26, 28, 33, 34, 35, 39, 47, 48, 49, 52, 53, 56, 57, 60, 61,
 33 62, 64, 67, 68, 70, 74, 76, 78, 88, 96, 98, 105, 136, 139, 141, 147, 158,
 34 159, 164, 177, 183, 186, 187, 188, 189, 190, 192, 194, 198, 209, 212,
 35 223, 225, 230, 232, 242, 243, 244, 247, 248, 254, 257, 259, 260, 262,
 36 266, 267, 268, 269, 271, 285, 291, 292, 294, 298, 299 and 302 of

K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter
153 of the 2010 Session Laws of Kansas;

21-36a03

79,

228,

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-8-11
Attachment # 2-1

chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 22-3220, K.S.A. 2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, 21-3412a, as amended by section 6 of chapter 101 of the 2010 Session Laws of Kansas, 21-4603d, as amended by Section 7 of chapter 101 of the 2010 Session Laws of Kansas, 21-4704, as amended by section 6 of chapter 147 of the 2010 Session Laws of Kansas; K.S.A. 2010 Supp. 21-3105, 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218, 21-3301, 21-3302, 21-3303, 21-3437, 21-3446, 21-3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516, 21-3520, 21-3608a, 21-3826, 21-4018, 21-4201, 21-4203, 21-4204, 21-4218, 21-4226, 21-4311, 21-4316, 21-4603d, 21-4610a, 21-4619, 21-4623, 21-4624, 21-4632, 21-4634, 21-4642, 21-4643, 21-4704, 21-4710, 21-4718, 22-3212a, 22-3717c, 38-2255a and 65-516b and repealing the existing section.

8-1567

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

New Section 1. (a) Maintenance of a common nuisance is maintaining or assisting in the maintenance of a common nuisance as described by K.S.A. 22-3901, and amendments thereto.

(b) Maintenance of a common nuisance is a class A, nonperson misdemeanor. In addition to the sentence authorized by law, the defendant may be fined in an amount not exceeding \$25,000.

(c) This section shall be part of and supplemental to article 39 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 21-3212a is hereby amended to read as follows: 21-3212a. (a) For the purposes of K.S.A. 21-3211 and 21-3212, prior to their repeal, or sections 21 and 22 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied vehicle of the person using force; or

(B) has removed or is attempting to remove another person against such other person's will from the dwelling, place of work or occupied vehicle of the person using force; and

(2) the person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

(b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

1 same;

2 (2) defendant is an officer, director, trustee or employee of a public
3 library and the allegedly obscene material was acquired by such library
4 and was disseminated in accordance with regular library policies
5 approved by its governing body; or

6 (3) allegedly obscene material or obscene device was purchased,
7 leased or otherwise acquired by a public, private or parochial school,
8 college or university, and that such material or device was either sold,
9 leased, distributed or disseminated by a teacher, instructor, professor or
10 other faculty member or administrator of such school as part of or
11 incidental to an approved course or program of instruction at such school.

12 (h) Notwithstanding the provisions of section 15 of chapter 136 of
13 the 2010 Session Laws of Kansas, and amendments thereto, to the
14 contrary, it shall be an affirmative defense to any prosecution for
15 promoting obscenity to minors that:

16 (1) The defendant had reasonable cause to believe that the minor
17 involved was 18 years old or over, and such minor exhibited to the
18 defendant a draft card, driver's license, birth certificate or other official or
19 apparently official document purporting to establish that such minor was
20 18 years old or more; or

21 (2) an exhibition in a state of nudity is for a bona fide scientific or
22 medical purpose, or for an educational or cultural purpose for a bona fide
23 school, museum or library.

24 (i) The provisions of this section and the provisions of ordinances of
25 any city prescribing a criminal penalty for exhibit of any obscene motion
26 picture shown in a commercial showing to the general public shall not
27 apply to a projectionist, or assistant projectionist, if such projectionist or
28 assistant projectionist has no financial interest in the show or in its place
29 of presentation other than regular employment as a projectionist or
30 assistant projectionist and no personal knowledge of the contents of the
31 motion picture. The provisions of this section shall not exempt any
32 projectionist or assistant projectionist from criminal liability for any act
33 unrelated to projection of motion pictures in commercial showings to the
34 general public.

35 Sec. 58. Section 223 of chapter 136 of the 2010 Session Laws of
36 Kansas is hereby amended to read as follows: Sec. 223. (a) Cruelty to
37 animals is:

38 (1) Knowingly and maliciously killing, injuring, maiming, torturing,
39 burning or mutilating any animal;

40 (2) knowingly abandoning any animal in any place without making
41 provisions for its proper care;

42 (3) having physical custody of any animal and knowingly failing to
43 provide such food, potable water, protection from the elements,

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1 opportunity for exercise and other care as is needed for the health or well-
2 being of such kind of animal;

3 (4) intentionally using a wire, pole, stick, rope or any other object to
4 cause an equine to lose its balance or fall, for the purpose of sport or
5 entertainment;

6 (5) knowingly but not maliciously killing or injuring any animal; or

7 (6) administering any poison to any domestic animal.

knowingly and maliciously

8 (b) Cruelty to animals as defined in:

9 (1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon
10 conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to
11 not less than 30 days or more than one year's imprisonment and be fined
12 not less than \$500 nor more than \$5,000. The person convicted shall not
13 be eligible for release on probation, suspension or reduction of sentence
14 or parole until the person has served the minimum mandatory sentence as
15 provided herein. During the mandatory 30 days imprisonment, such
16 offender shall have a psychological evaluation prepared for the court to
17 assist the court in determining conditions of probation. Such conditions
18 shall include, but not be limited to, the completion of an anger
19 management program; and

20 (2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) ~~are~~ is a:

21 (A) Class A nonperson misdemeanor, except as provided in
22 subsection (b)(2)(B); and

23 (B) nonperson felony upon the second or subsequent conviction of
24 cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).
25 Upon such conviction, a person shall be sentenced to not less than five
26 days or more than one year's imprisonment and be fined not less than
27 \$500 nor more than \$2,500. The person convicted shall not be eligible for
28 release on probation, suspension or reduction of sentence or parole until
29 the person has served the minimum mandatory sentence as provided
30 herein.

31 (c) The provisions of this section shall not apply to:

32 (1) Normal or accepted veterinary practices;

33 (2) bona fide experiments carried on by commonly recognized
34 research facilities;

35 (3) killing, attempting to kill, trapping, catching or taking of any
36 animal in accordance with the provisions of chapter 32 or chapter 47 of
37 the Kansas Statutes Annotated, and amendments thereto;

38 (4) rodeo practices accepted by the rodeo cowboys' association;

39 (5) the humane killing of an animal which is diseased or disabled
40 beyond recovery for any useful purpose, or the humane killing of animals
41 for population control, by the owner thereof or the agent of such owner
42 residing outside of a city or the owner thereof within a city if no animal
43 shelter, pound or licensed veterinarian is within the city, or by a licensed

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1 veterinarian at the request of the owner thereof, or by any officer or agent
2 of an incorporated humane society, the operator of an animal shelter or
3 pound, a local or state health officer or a licensed veterinarian three
4 business days following the receipt of any such animal at such society,
5 shelter or pound;

6 (6) with respect to farm animals, normal or accepted practices of
7 animal husbandry, including the normal and accepted practices for the
8 slaughter of such animals for food or by-products and the careful or
9 thrifty management of one's herd or animals, including animal care
10 practices common in the industry or region;

11 (7) the killing of any animal by any person at any time which may
12 be found outside of the owned or rented property of the owner or
13 custodian of such animal and which is found injuring or posing a threat to
14 any person, farm animal or property;

15 (8) an animal control officer trained by a licensed veterinarian in the
16 use of a tranquilizer gun, using such gun with the appropriate dosage for
17 the size of the animal, when such animal is vicious or could not be
18 captured after reasonable attempts using other methods;

19 (9) laying an equine down for medical or identification purposes;

20 (10) normal or accepted practices of pest control, as defined in
21 subsection (x) of K.S.A. 2-2438a, and amendments thereto; or

22 (11) accepted practices of animal husbandry pursuant to regulations
23 promulgated by the United States department of agriculture for domestic
24 pet animals under the animal welfare act, public law 89-544, as amended
25 and in effect on July 1, 2006.

26 (d) The provisions of subsection (a)(6) shall not apply to any person
27 exposing poison upon their premises for the purpose of destroying
28 wolves, coyotes or other predatory animals.

29 (e) Any public health officer, law enforcement officer, licensed
30 veterinarian or officer or agent of any incorporated humane society,
31 animal shelter or other appropriate facility may take into custody any
32 animal, upon either private or public property, which clearly shows
33 evidence of cruelty to animals, ~~as defined in this section~~. Such officer,
34 agent or veterinarian may inspect, care for or treat such animal or place
35 such animal in the care of a duly incorporated humane society or licensed
36 veterinarian for treatment, boarding or other care or, if an officer of such
37 humane society or such veterinarian determines that the animal appears to
38 be diseased or disabled beyond recovery for any useful purpose, for
39 humane killing. If the animal is placed in the care of an animal shelter,
40 the animal shelter shall notify the owner or custodian, if known or
41 reasonably ascertainable. If the owner or custodian is charged with a
42 violation of this section, the board of county commissioners in the county
43 where the animal was taken into custody shall establish and approve

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1 procedures whereby the animal shelter may petition the district court to
2 be allowed to place the animal for adoption or euthanize the animal at any
3 time after 2021 days after the owner or custodian is notified or, if the
4 owner or custodian is not known or reasonably ascertainable after 2021
5 days after the animal is taken into custody, unless the owner or custodian
6 of the animal files a renewable cash or performance bond with the county
7 clerk of the county where the animal is being held, in an amount equal to
8 not less than the cost of care and treatment of the animal for 30 days.
9 Upon receiving such petition, the court shall determine whether the
10 animal may be placed for adoption or euthanized. The board of county
11 commissioners in the county where the animal was taken into custody
12 shall review the cost of care and treatment being charged by the animal
13 shelter maintaining the animal.

14 (f) The owner or custodian of an animal placed for adoption or killed
15 pursuant to subsection (e) shall not be entitled to recover damages for the
16 placement or killing of such animal unless the owner proves that such
17 placement or killing was unwarranted.

18 (g) Expenses incurred for the care, treatment or boarding of any
19 animal, taken into custody pursuant to subsection (e), pending
20 prosecution of the owner or custodian of such animal for the crime of
21 cruelty to animals, shall be assessed to the owner or custodian as a cost of
22 the case if the owner or custodian is adjudicated guilty of such crime.

23 (h) Upon the filing of a sworn complaint by any public health
24 officer, law enforcement officer, licensed veterinarian or officer or agent
25 of any incorporated humane society, animal shelter or other appropriate
26 facility alleging the commission of cruelty to animals, the county or
27 district attorney shall determine the validity of the complaint and shall
28 forthwith file charges for the crime if the complaint appears to be valid.

29 (i) If a person is adjudicated guilty of the crime of cruelty to
30 animals, and the court having jurisdiction is satisfied that an animal
31 owned or possessed by such person would be in the future subjected to
32 such crime, such animal shall not be returned to or remain with such
33 person. Such animal may be turned over to a duly incorporated humane
34 society or licensed veterinarian for sale or other disposition.

35 (j) As used in this section:

36 (1) "Equine" means a horse, pony, mule, jenny, donkey or hinny; and

37 (2) "maliciously" means a state of mind characterized by actual evil-
38 mindedness or specific intent to do a harmful act without a reasonable
39 justification or excuse.

40 Sec. 59. Section 225 of chapter 136 of the 2010 Session Laws of
41 Kansas is hereby amended to read as follows: Sec. 225. (a) Unlawful
42 conduct of dog fighting is:

43 (1) Causing, for amusement or gain, any dog to fight with or injure

, with no requirement of culpable mental state

1 another dog;

2 (2) knowingly permitting such fighting or injuring on premises
3 under one's ownership, charge or control; or

4 (3) training, owning, keeping, transporting or selling any dog with
5 the intent of having it fight with or injure another dog.

6 (b) Unlawful possession of dog fighting paraphernalia is possession,
7 with the intent to use in the unlawful conduct of dog fighting, any
8 breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or
9 other paraphernalia.

10 (c) Unlawful attendance of dog fighting is, entering or remaining on
11 the premises where the unlawful conduct of dog fighting is occurring,
12 whether the person knows or has reason to know that dog fighting is
13 occurring on the premises.

14 (d) (1) Unlawful conduct of dog fighting is a severity level 10,
15 nonperson felony.

16 (2) Unlawful possession of dog fighting paraphernalia is a class A
17 nonperson misdemeanor.

18 (3) Unlawful attendance of dog fighting is a class B nonperson
19 misdemeanor.

20 (e) When a person is arrested under this section, a law enforcement
21 agency may take into custody any dog on the premises where the dog
22 fight is alleged to have occurred and any dog owned or kept on the
23 premises of any person arrested for unlawful conduct of dog fighting,
24 unlawful attendance of dog fighting, or unlawful possession of dog
25 fighting paraphernalia.

26 (f) When a law enforcement agency takes custody of a dog under
27 this section, such agency may place the dog in the care of a duly
28 incorporated humane society or licensed veterinarian for boarding,
29 treatment or other care. If it appears to a licensed veterinarian that the dog
30 is diseased or disabled beyond recovery for any useful purpose, such dog
31 may be humanely killed. The dog may be sedated, isolated or restrained if
32 such officer, agent or veterinarian determines it to be in the best interest
33 of the dog, other animals at the animal shelter or personnel of the animal
34 shelter. If the dog is placed in the care of an animal shelter, the board of
35 county commissioners in the county where the animal was taken into
36 custody shall establish and approve procedures whereby the animal
37 shelter may petition the district court to be allowed to place the dog for
38 adoption or euthanize the dog at any time after 2021 days after the dog is
39 taken into custody, unless the owner or custodian of the dog files a
40 renewable cash or performance bond with the county clerk of the county
41 where the dog is being held, in an amount equal to not less than the cost
42 of care and treatment of the dog for 30 days. Upon receiving such
43 petition, the court shall determine whether the dog may be placed for

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1 secretary, within 30 days prior to release, shall provide the county or
2 district attorney of the county where the inmate was sentenced written
3 notice of the release date.

4 (q) Inmates shall be released on postrelease supervision upon the
5 termination of the prison portion of their sentence. Time served while on
6 postrelease supervision will vest.

7 (r) An inmate who is allocated regular good time credits as provided
8 in K.S.A. 22-3725, and amendments thereto, may receive meritorious
9 good time credits in increments of not more than 90 days per meritorious
10 act. These credits may be awarded by the secretary of corrections when
11 an inmate has acted in a heroic or outstanding manner in coming to the
12 assistance of another person in a life threatening situation, preventing
13 injury or death to a person, preventing the destruction of property or
14 taking actions which result in a financial savings to the state.

15 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and
16 (d)(1)(E) shall be applied retroactively as provided in subsection (t).

May 25, 2000

17 (t) For offenders sentenced prior to the effective date of this act who
18 are eligible for modification of their postrelease supervision obligation,
19 the department of corrections shall modify the period of postrelease
20 supervision as provided for by this section for offenders convicted of
21 severity level 9 and 10 crimes on the sentencing guidelines grid for
22 nondrug crimes and severity level 4 crimes on the sentencing guidelines
23 grid for drug crimes on or before September 1, 2000; for offenders
24 convicted of severity level 7 and 8 crimes on the sentencing guidelines
25 grid for nondrug crimes on or before November 1, 2000; and for
26 offenders convicted of severity level 5 and 6 crimes on the sentencing
27 guidelines grid for nondrug crimes and severity level 3 crimes on the
28 sentencing guidelines grid for drug crimes on or before January 1, 2001.

29 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
30 4643, prior to its repeal, or section 267 of chapter 136 of the 2010
31 Session Laws of Kansas, and amendments thereto, for crimes committed
32 on or after July 1, 2006, shall be placed on parole for life and shall not be
33 discharged from supervision by the Kansas parole board. When the board
34 orders the parole of an inmate pursuant to this subsection, the board shall
35 order as a condition of parole that the inmate be electronically monitored
36 for the duration of the inmate's natural life.

37 (v) Whenever the Kansas parole board or the court orders a person
38 to be electronically monitored, the board or court shall order the person to
39 reimburse the state for all or part of the cost of such monitoring. In
40 determining the amount and method of payment of such sum, the board
41 or court shall take account of the financial resources of the person and the
42 nature of the burden that the payment of such sum will impose.

43 Sec. 137. K.S.A. 22-3725 is hereby amended to read as follows: 22-

1 violate" includes, but is not limited to, any intent to evade,
2 misrepresentation or willful nondisclosure.

3 (4) (A) In addition to, or in lieu of, any civil penalty imposed by
4 paragraph (1) if, the director of employment security or a special assistant
5 attorney general assigned to the department of labor, has probable cause
6 to believe that a violation of this subsection (f) should be prosecuted as a
7 crime, a copy of any order, all investigative reports and any evidence in
8 the possession of the division of employment security which relates to
9 such violation, may be forwarded to the prosecuting attorney in the
10 county in which the act or any of the acts were performed which
11 constitute a violation of this subsection (f). Any case which a county or
12 district attorney fails to prosecute within 90 days shall be returned
13 promptly to the director of employment security. The special assistant
14 attorney general assigned to the Kansas department of labor shall then
15 prosecute the case, if, in the opinion of the special assistant attorney
16 general, the acts or practices involved still warrant prosecution.

17 (B) Violation of this subsection (f) shall be a level 9, nonperson
18 felony.

19 (5) The secretary shall establish procedures to identify the transfer or
20 acquisition of a business for purposes of this section.

21 (6) For purposes of subsection (f):

22 (A) "Person" has the meaning given such term by section 7701(a)(1)
23 of the internal revenue code of 1986;

24 (B) "trade or business" shall include the employer's workforce; and

25 (C) the provisions of ~~K.S.A. 21-3206 and K.S.A. 21-3207~~ sections
26 31 and 32 of chapter 136 of the 2010 Session Laws of Kansas, and
27 amendments thereto, shall apply.

28 (7) This subsection (f) shall be interpreted and applied in such a
29 manner as to meet the minimum requirements contained in any guidance
30 or regulation issued by the United States department of labor.

31 Sec. 189. K.S.A. 44-1039 is hereby amended to read as follows: 44-
32 1039. Any person ~~willfully, knowingly, intentionally~~ and falsely swearing,
33 testifying, affirming, declaring or subscribing to any material fact upon
34 any oath or affirmation required by the Kansas act against discrimination
35 shall be deemed guilty of perjury as defined by ~~K.S.A. 21-3805~~ in section
36 128 of chapter 136 of the 2010 Session Laws of Kansas, and ~~any~~
37 amendments thereto.

38 Sec. 190. K.S.A. 2010 Supp. 44-1131 is hereby amended to read as
39 follows: 44-1131. As used in K.S.A. 44-1131 and 44-1132, and
40 amendments thereto:

41 (a) "Domestic violence" means abuse as defined in K.S.A. 60-3102,
42 and amendments thereto.

43 (b) "Sexual assault" means any crime defined in K.S.A. 21-3502, *or*

prior to its repeal.

and amendments thereto,

prior to its repeal,

section 67 of chapter 136 of the 2010 Session Laws of Kansas, (rape), 21-3503, or subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, (indecent liberties with a child), 21-3504, or subsection (b) of section 70 of chapter 136 of the 2010 Session Laws of Kansas, (aggravated indecent liberties with a child), 21-3505, or subsection (a) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, (criminal sodomy), 21-3506, or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, (aggravated criminal sodomy), 21-3602, or subsection (a) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, (incest) or 21-3603, or subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of Kansas, (aggravated incest), and amendments thereto.

Sec. 191. K.S.A. 2010 Supp. 45-217 is hereby amended to read as follows: 45-217. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Clearly unwarranted invasion of personal privacy" means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

(c) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701, and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405, prior to its repeal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(d) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian of this act.

(e) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(f) (1) "Public agency" means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public

2-10

1 federal government of an act similar to any act described in this
 2 subsection; or (9) has entered into a criminal diversion agreement after
 3 having been charged with any offense described in this subsection.

4 ~~Sec. 285. Sec. 285.~~ K.S.A. 8-254, 8-285, 8-1450, 9-2004, 19-
 5 101d, 19-27,139, 19-4808, 20-369, 22-2411, 22-2615, 22-2307, 22-2908,
 6 22-3008, 22-3102, 22-3220, 22-3414, 22-3415, 22-3427, as amended by
 7 section 306 of chapter 136 of the 2010 Session Laws of Kansas, 22-3429,
 8 22-3436, 22-3439, 22-3602, 22-3701, 22-3725, 22-4807a, 34-228, 34-
 9 249a, 36-602, 38-1132, 39-720, 39-785, 41-206, 44-1039, 46-920, 47-
 10 653c, 47-1715, 50-618, 50-648, 50-651, 50-653, 57-227, 58-2573, 60-
 11 523, 60-1620, 60-2610, 60-4111, 60-4402, 60-4404, 60-4405, 65-444,
 12 65-1120, 65-2006, 65-2859, 65-28,108, 65-28a05, 65-4209, 65-6703, 65-
 13 6721, 68-422a, 74-7325, 74-7333, 75-4004, 75-5233 and 75-5269;
 14 K.S.A. 2010 Supp. 8-116a, 8-255, 8-262, 8-287, 8-2,144, 8-1013, 8-1102,
 15 8-1567, 8-2106, 8-2117, 8-2410, 12-16,119, 12-4104, 12-4516, 12-4516a,
 16 12-4517, 17-12a508, 20-2207, 20-2208, 20-3207, 21-3105, 21-3211, 21-
 17 3212, 21-3212a, 21-3213, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218,
 18 21-3220, 21-3221, 21-3301, 21-3302, 21-3303, 21-3437, 21-3446, 21-
 19 3447, 21-3449, 21-3450, 21-3502, 21-3504, 21-3506, 21-3513, 21-3516,
 20 21-3520, 21-3608a, 21-3826, 21-4018, 21-4201, 21-4203, 21-4204, 21-
 21 4218, 21-4226, 21-4311, 21-4316, 21-4603d, 21-4610a, 21-4619, 21-
 22 4623, 21-4624, 21-4632, 21-4634, 21-4642, 21-4643, 21-4704, 21-4710,
 23 21-4718, 22-2310, 22-3410, 22-2512, 22-2802, 22-2901, 22-2909, 22-
 24 3212, 22-3212a, 22-3303, 22-3426, 22-3716, 22-3717, 22-3717c, 22-
 25 3727, 22-3727a, 22-4614, 22-4616, 22-4617, 22-4902, 22-4906, 28-177,
 26 32-1013, 32-1047, 32-1063, 36-604, 38-2202, 38-2255, 38-2255a, 38-
 27 2271, 38-2302, 38-2303, 38-2309, 38-2310, 38-2312, 38-2313, 38-2326,
 28 38-2331, 38-2355, 38-2356, 38-2361, 38-2364, 38-2365, 38-2371, 38-
 29 2377, 39-970, 40-252, 40-2,118, 40-1702, 40-3213, 41-346, 41-2611, 41-
 30 2708, 41-2905, 41-2906, 44-5,125, 44-706, 44-719, 44-1131, 45-217, 45-
 31 221, 45-230, 47-1706, 47-1707, 58-3043, 58-3068, 58-4505, 59-2132,
 32 59-2948, 59-29a02, 59-29a07, 59-29a14, 59-29b48, 60-312, 60-455, 60-
 33 1610, 60-1629, 60-3107, 60-31a06, 60-4104, 60-4105, 60-4113, 60-4119,
 34 60-4403, 60-5001, 65-448, 65-516, 65-516b, 65-1436, 65-1627, 65-2434,
 35 65-2836, 65-5117, 66-2304, 72-1397, 72-5445, 74-4924, 74-5602, 74-
 36 7301, 74-7305, 74-8702, 74-9101, 75-452, 75-453, 75-755, 75-7b01, 75-
 37 7b13, 75-7c03, 75-7c04, 75-7c05, 75-7c09, 75-7c17, 75-7c19, 75-7c26,
 38 75-1508, 75-4362, 75-5133, 75-5218, 75-5291, 75-52,129, 75-52,144,
 39 75-52,148 and 76-11a13; K.S.A. 2009 Supp. 21-3110, as amended by
 40 section 5 of chapter 101 of the 2010 Session Laws of Kansas, 21-3412a,
 41 as amended by section 6 of chapter 101 of the 2010 Session Laws of
 42 Kansas, 21-4603d, as amended by section 7 of chapter 101 of the 2010
 43 Session Laws of Kansas, and 21-4704 as amended by section 6 of chapter

Sec. 285. Section 79 of chapter 136 of the 2010 Session Laws of
 Kansas is hereby amended to read as follows: Section 79.

Sec. 286. Section 228 of chapter 136 of the 2010 Session Laws of
 Kansas is hereby amended to read as follows: Section 228.

Sec. 287. K.S.A. 2010 Supp. 21-36a03 is hereby amended to read as
 follows: 21-36a03.

SEE ATTACHED

Renumber remaining sections accordingly.

21-36a03,

8-1567, as amended by section 3 of chapter 153 of the
 2010 Session Laws of Kansas;

2-11

1 147 of the 2010 Session Laws of Kansas; and Sections 2, 11, 21, 22, 23,
2 24, 25, 26, 28, 33, 34, 35, 39, 47, 48, 49, 52, 53, 56, 57, 60, 61, 62, 64,
3 67, 68, 70, 74, 76, 78, 88, 96, 98, 105, 136, 139, 141, 147, 158, 159, 164,
4 177, 183, 186, 187, 188, 189, 190, 192, 194, 198, 209, 212, 223, 225, ^
5 230, 232, 242, 243, 244, 247, 248, 254, 257, 259, 260, 262, 266, 267,
6 268, 269, 271, 285, 291, 292, 294, 298, 299 and 302 of chapter 136 of the
7 2010 Session Laws of Kansas are hereby repealed.

79,

228,

8 Sec. 286. This act shall take effect and be in force from and
9 after its publication in the statute book.

10
11

2-18

Sec. 285. Section 79 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 79. (a) Abuse of a child is knowingly:

(1) Torturing; or cruelly beating or shaking any child under the age of 18 years which results in great bodily harm to the child;

(2) shaking any child under the age of 18 years which results in great bodily harm to the child; or

~~(2)~~ (3) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

(b) Abuse of a child is a severity level 5, person felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

Sec. 286. Section 228 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 228. (a) Unlawful conduct of cockfighting is:

(1) Causing, for amusement or gain, any gamecock to fight with or injure or kill another gamecock, with no requirement of culpable mental state;

(2) knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or

(3) training, grooming, preparing or medicating any gamecock with the intent of having it fight with or injure or kill another gamecock.

(b) Unlawful possession of cockfighting paraphernalia is possession of, with the intent to use in the unlawful conduct of cockfighting, spurs, gaffs, swords, leather training spur covers or anything worn by a gamecock during a fight to further the killing power of such gamecock.

(c) Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring, whether or not the person knows or has reason to know that cockfighting is occurring on the premises.

(d) (1) Unlawful conduct of cockfighting is a level 10, nonperson felony.

(2) Unlawful possession of cockfighting paraphernalia is a class A nonperson misdemeanor.

(3) Unlawful attendance of cockfighting is a class B nonperson misdemeanor.

(e) As used in this section, "gamecock" means a domesticated fowl that is bred, reared or trained for the purpose of fighting with other fowl.

(f) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for cruelty to animals.

Sec. 287. K.S.A. 2010 Supp. 21-36a03 is hereby amended to read as follows: 21-36a-03. (a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a drug severity level 1 felony. The provisions of subsection (d) of ~~K.S.A. 21-3301~~ Section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

(c) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant

is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program.

(d) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(e) The sentence of a person who violates this section or K.S.A. 65-4159 prior to its repeal, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to such sections repeal, or K.S.A. 2010 Supp. 21-36a05, and amendments thereto.



Testimony on HB 2371
to
The House Committee on Corrections and Juvenile Justice

By Ray Roberts
Secretary
Kansas Department of Corrections
March 8, 2011

The Department of Corrections supports HB 2371. HB 2371 amends K.S.A. 2010 Supp. 75-5291 and 75-52,112. The amendment to K.S.A. 75-5271 extends the Johnson County pilot program to January 2013, whereby the decision as to whether an offender in that county sentenced to community supervision is to be supervised by court services or community corrections is to be based upon local court rules. K.S.A. 75-52,112 governs the community corrections grant funding administered by the Department of Corrections and the department supports its amendment by HB 2371. The language in HB 2371 is recommended by the Community Corrections Advisory Committee.

K.S.A. 75-52,112 (also referred to as SB 14) was enacted in 2007 to provide funding criteria for community corrections programs. The focus of funding was to target the successful rehabilitation of higher risk offenders under community corrections supervision. Supervision management of offenders in the community that targets curtailing criminal behavior enhances public safety without incurring incarceration costs. Achieving public safety by reducing recidivism is a cornerstone in the department's management of parolees and postreleasees and was the basis for SB 14.

The community corrections funding priority of SB 14 was for a 20% reduction in the revocation rate from that of FY 2006. Needless to say, a five year old bench mark is out dated. HB 2371 provides a priority benchmark of achieving and maintaining a supervision success rate of at least 75% or improvement of the success rate by at least 3% from the previous year. Since these bench marks are conditioned on either the number of offenders currently under supervision or the revocation rate of the previous year, they will not become outdated.

Both current law and HB 2371 also provide a funding priority for programs which due to various demographics might not be able to reach a 75% successful supervision rate or a revocation rate reduction of 3% but nevertheless target the successful reentry of offenders who are considered medium or high risk for revocation. HB 2371 is a continuation of the policy that community corrections funding should be directed towards efficient and effective offender management.

The department urges favorable consideration of HB 2371

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-8-11
Attachment # 3

March 8, 2011

**House Corrections and Juvenile Justice Committee
Testimony in Favor of Successful Completion Language
House Bill 2371**

Chairwoman Colloton and Members of the Committee,

On behalf of the Kansas Community Corrections Association (KCCA) I appreciate the opportunity to offer some written comments regarding House Bill 2371 that proposes changes to the recidivism reduction language.

Overview

Community Corrections agencies in every jurisdiction are required to submit a comprehensive plan to the Secretary of Corrections each fiscal year. These plans identify strengths, current practices / resources, gaps in service, strategies to fill the gaps and program goals and objectives. The plans also include personnel data, budget documents and district funding considerations. Using FY2006 baseline data for conditional violators (the number of offenders sentenced to a KDOC facility for violating their probation), each jurisdiction is required to submit an objective to reduce the FY2006 baseline number by a minimum of 20%. A judicial district's annual allocation is based on the contents of the comprehensive plan, funding considerations and their level of achievement as it relates to reducing the number of conditional violators in their district.

Recommendations

The KCCA is respectfully recommending a language change that will utilize a district's percentage of successful completions as the measurement, as opposed to lowering the number of conditional violators annually or from the FY2006 baseline.

This change is being recommended in an effort to provide a more accurate measurement of the work being done in each jurisdiction and throughout the State of Kansas. The KCCA believes that the percentage of successful closures and conditional violators takes into account the fluctuation in a districts average daily population and the naturally resulting increase or decrease in the number of case closures. The current formula of 20% does not. The table outlined below is a hypothetical situation that is being provided as an illustration of this concept:

Target Reduction (30 conditional violators x 20% = 6) (FY2006 Baseline of 30 - 6) = (24)					
Fiscal Year	Case Closures	Conditional Violators (CV)	Successful Completion # & %	Conditional Violator # & %	CV Reduction
FY2006	100	30	(70) or 70%	(30) or 30%	BASELINE
FY2010	125	25	(100) or 80%	(25) or 20%	5

House Corrections and Juvenile Justice
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In this scenario the judicial district actually increased their FY2010 successful completion rate from 70% to 80% and reduced their conditional violator percentage from 30% to 20%, as compared to the FY2006 baseline. However, the current 20% reduction formula used to measure success does not take into account an increase in caseload assignments and subsequently the increase in the number of case closures. As a result this judicial district was more successful in FY2010, but failed to meet the target reduction of 20% or 6. The district experienced 25 revocations and needed 24 to meet its goal.

The KCCA would also like to take this opportunity to recommend that the "supervision success rate" be identified as the percentage of those persons under probation supervision whose probation is not revoked and remanded to the custody of the Department of Corrections for imprisonment. This provision, if adopted, will ensure that all 31 judicial districts are identifying case closures in a consistent manner.

I would be happy to stand for questions at the appropriate time.

Keith R. Clark, Director
Fourth Judicial District Community Corrections



Johnson County Department of Corrections

206 West Loula Street • Olathe, KS 66061
Elizabeth Gillespie, Director of Corrections
(913) 715-4500 Fax (913) 829-0107

DATE: March 8, 2011

TO: Honorable Chair and Members
Committee on Corrections and Juvenile Justice Oversight

FROM: Elizabeth Gillespie, Director *Elizabeth Gillespie*
Johnson County Department of Corrections

SUBJECT: **House Bill 2371**

On behalf of Johnson County, I am providing testimony today in **support of House Bill 2371** regarding Community Corrections and the extension of the expiration date for the Johnson County LSIR project.

In **Section 1.(a)(3)** of KSA 2010 Supp. 75-5291, a different method for sentencing adult felony probation offenders was approved beginning in 2002 as specified by court rules issued by the chief judge of the 10th judicial district. Through that rule, adult felony offenders in Johnson County are sentenced to Court Services probation, Community Corrections Intensive Supervision Probation, or the Community Corrections Adult Residential Center based upon their scores on the Level of Services Inventory-Revised (LSIR). The higher the score, the more need for a higher level of placement and services. This law was originally implemented as a pilot project in Johnson County to determine how well this method of sentencing would work. It follows evidence-based practices by placing lower risk offenders on lower levels of supervision and higher levels of supervision for higher risk offenders.

Because the Legislature has not yet approved statutory language as to how the LSIR will be utilized on a statewide basis, there is a need to extend the expiration date of the Johnson County project so that the 10th Judicial District may continue to operate as they currently are doing. The Kansas Sentencing Commission began working on proposed statutory language for statewide use of the LSIR but was unable to finalize the proposal this Legislative session. I understand that the Sentencing Commission will be working on the language between now and the 2012 Legislative session. I am also requesting that rather than extend the expiration date to January 1, 2013, as stated within this bill, that the date be changed to **July 1, 2013**. Johnson County is recommending this additional amount of time to ensure that any law passed next session regarding statewide application of the LSIR tool will have adequate time for implementation. The new language could be approved for implementation on July 1, 2012 or even January 1, 2013, but we just want to ensure that in case implementation of the new law is delayed that we will not have need to return to the Legislature for an additional extension of our pilot project.

The changes made through this bill for Community Corrections in **Section 2**, page 5 of this bill, were recommended by the Community Corrections Advisory Committee (CCAC) to the Kansas Department of Corrections. I am a member of this committee. Once the proposal was finalized, the Committee presented the proposed changes at the October 2010 Community Corrections Directors meeting and at

the Kansas Community Corrections Association meeting also held in October. We then forwarded the recommendations to Keven Pellant, Acting Secretary of Corrections in December 2010.

The goal of the current law to increase public safety and decrease offender risk by targeting and maintaining a 20% reduction in community corrections revocation rates from the State Fiscal Year 2006 revocation number for each agency will not adequately measure performance over time. Each agency's population of offenders served fluctuates from year to year. If we continue to base each agency's success for funding considerations as compared to the SFY 2006 revocation numbers, the outcomes will frequently be misleading. For instance, if an agency's population was much higher in SFY 2006 than in another year, a reduced number of revocations could be more easily accomplished. If the population is significantly higher than it was in SFY 2006, then achieving the revocation reduction rate would be much more difficult.

In addition to population fluctuations, the current goal does not take into account those agencies that already had outstanding outcomes in SFY 2006. In SFY 2006, only a few agencies had revocation rates that were well below the 20% goal. These agencies were asked to decrease revocations at the same percentage as those with revocations rates that were above 50%. Those agencies with higher revocation rates may have achieved the reduction much more easily since they previously were revoking a much higher percentage of their populations.

The CCAC believes that the changes proposed in the bill will provide for a much more appropriate and fair method of meeting the overall goal of increasing public safety, reducing the risk of offenders on community supervision, and reducing revocations. We are proposing that we focus first on the positive by setting a goal for each agency to achieve and maintain a 75% success rate. Success is defined as the percentage of those under probation supervision whose probation is not revoked and the offender is not remanded to the custody of the department of corrections for imprisonment. Each new fiscal year will be based upon the data from the previous fiscal year for that agency. If the agency has not yet achieved a 75% success rate, then the agency will be expected to make progress each subsequent year of an increase of 3% in the agency's success rate until the 75% goal is achieved. There are a few agencies that have already achieved the 75% success rate and many others that have not. While some community corrections directors continue to worry that their agencies' funding may be significantly, negatively impacted by this method, the same was true for the previous method. We believe that this method sets very reasonable expectations towards achievement of the ultimate goals. We know that we must be held accountable for our agencies' outcomes.

I thank you for your time and consideration and request that you consider this bill for passage with only the one modification to the date for expiration of the pilot project.