Senate Judiciary Committee March 14, 2017 House Bill 2092

Testimony of the Kansas Association of Criminal Defense Lawyers
Proponent
(written only)

Dear Chairman Wilborn and Members of the Committee:

Last year, the Legislature passed HB 2462, which increased the felony threshold for theft from \$1,000 to \$1,500. This bill would increase the threshold for 12 additional property crimes from \$1,000 to \$1,500. Currently,11 out of 12 of these crimes are Class A misdemeanors if the value is under \$1,000. 11 out of 12 of these crimes are severity level nine felonies if the value exceeds \$1,000. KACDL supported HB 2462 last year, and we support HB 2092 this year.

At the time HB 2462 was being considered, the Pew Charitable Trusts came out with a report called The Effects of Changing State Theft Penalties.² Pew examined crime trends in the 23 states that raised their felony theft thresholds between 2001 and 2011. Pew also compared trends in states that raised their thresholds during this period with states that did not. The report illustrated three important conclusions: 1) Raising the felony theft threshold has no impact on overall property crime or larceny rates; 2) states that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws; and 3) the amount of a state's felony theft threshold—whether it is \$500, \$1,000, \$2,000, or more—is not correlated with its property crime and larceny rates. Granted, this study looked at theft and not all property crimes. Nevertheless, this data is relevant to the policy question presented to the Committee by this bill.

Notably, last year's threshold increase was not met with resistance from prosecutors because most defendants (ones in criminal history categories C-I for certain) can be incarcerated longer for these misdemeanor property crimes than for the low-level felony version. For example, misdemeanor giving a worthless check is a Class A misdemeanor, which carries a maximum jail sentence of 12 months. Misdemeanants do not earn good time nor program credits (although a court can, upon a motion, parole a misdemeanant at any time). Felony giving a worthless check (currently from \$1,000-\$24,999) is a severity level nine felony, which carries a sentence of 5-17 months, depending on the criminal history score. (See non-drug sentencing grid on reverse side.) Offenders imprisoned for a SL 9 felony can earn 20% good time and up to 120 days of program credit. If an offender with a criminal history score of A got the maximum sentence of 17 months, she could earn up to 3.4 months of good time plus four months of program credit, which could bring her sentence down to 9.6 months.

¹ The exceptions are criminal damage to property, the misdemeanor version of which is a Class B, and mistreatment of a dependent adult, the low-level felony version of which is a SL 7.

² http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/02/the-effects-of-changing-state-theft-penalties.

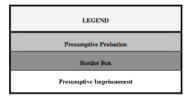
SENTENCING RANGE - NONDRUG OFFENSES

$Category \rightarrow$	A	В	С	D	E	F	G	н	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
1	653	618	285	267	246	226	208	186	165
	620	586	272	253	234	214	195	176	155
	592	554	258	240	221	203	184	166	147
11	493	460	216	200	184	168	154	138	123
	467	438	205	190	174	160	146	131	117
	442	416	194	181	165	152	138	123	109
ш	247	228	107	100	92	83	77	71	61
	238	216	102	94	88	79	72	66	59
	221	206	96	89	82	74	68	61	55
īv	172	162	75	69	64	59	52	48	43
	162	154	71	66	60	56	50	45	41
	154	144	68	62	57	52	47	42	38
v	136	128	60	55	51	47	43	38	34
	130	120	57	52	49	44	41	36	32
	122	114	53	50	46	41	38	34	31
VI	46	41	38	36	32	29	26	21	19
	43	39	36	34	30	27	24	20	18
	40	37	34	32	28	25	22	19	17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16	14 18 12	18 12 11
VIII	28 21 19	20 19 18	19 18 17	17 16 15	15 14 13	18 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	18 12 11	18 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
х	18 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terma are:
36 months recommended for felonies classified in Severity Levels 1-5
24 months recommended for felonies classified in Severity Levels 6-7
18 months (up to) for felonies classified in Severity Level 8
12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are: 36 months for felonies classified in Severity Levels 1-4 24 months for felonies classified in Severity Levels 5-6 12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/96 are: 24 months for felonies classified in Severity Levels 1-6 12 months for felonies classified in Severity Level 7-10



KSG Desk Reference Manual 2016 Appendix E

In addition, HB 2092 produces overall savings to the limited time and resources in our criminal justice system. When felony cases are prosecuted, then felony resources are consumed, including: district court time, district/county attorney resources, state public defender resources, felony probation staff, law enforcement officers coming to court for felony proceedings, and prison beds. (Not to mention the long-lasting impacts of a felony conviction on an offender and his/her family and/or community.) HB 2092 is good public policy, striking a balance between use of resources and public safety.

Thank you for your consideration,

Jennifer Roth

co-chair, Legislative Committee of the Kansas Association of Criminal Defense Lawyers jrothlegislative@gmail.com 785.550.5365

P.O. Box 296

Lawrence, Kansas 66044