Approved: March 30, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 15, 2000 in Room 313-S of the Capitol.

All members were present except:
Representative John Edmonds - Excused
Representative Phill Kline - Excused
Representative Peggy Long - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Representative Sue Storm
Representative Bob Tomlinson
Paul Morrison, District Attorney Johnson County
Representative Larry Campbell
Representative Ted Powers
Rosalie Thornburgh, Chief of Bureau Traffic Safety, Kansas Department of Transportation
Sheila Walker, Division of Vehicles
Jerry Gentry, Kansas Ignition Interlock
Jolene Grabill, Kansas Coordinators of Alcohol Safety Action Program
Representative Doug Johnston
Tom Vohs, Deputy Secretary for Community Field Services

Hearing on **HB 2713** - unlawful sexual relations by a person of authority, was opened.

No conferees appeared before the committee but Representative John Ballou & Kansas Association of School Boards requested their testimony be included in the minutes. (Attachments 1 & 2)

Hearing on **HB 2713** was closed.

Hearing on **HB 2894** - sexual relations with a teacher, was opened.

Representatives Sue Storm & Bob Tomlinson appeared before the committee as the sponsors of the bill. They explained that the bill would allow the court to charge teachers with a severity level 10 person felony if they have had consensual sexual relations with a student. (Attachments 3 & 4)

Paul Morrison, District Attorney Johnson County, informed the committee that in 1999 two cases were brought to his office where a teacher had consensual sexual relations with a student. In both cases, the sexual activity started after the student turned sixteen. The trial judge ruled that the Legislature did not mean to include sixteen & seventeen year olds having sexual relations as being unlawful. In both of these cases the teachers resigned their jobs. He suggested that the penalty was a low-grade felony so it would not impact prison space. (Attachment 5)

Hearing on **HB 2894** was closed.

Hearing on **HB 2614** - eavesdropping to include videotaping a person under or through their clothes, was opened.

Representative Larry Campbell appeared as the sponsor of the bill. He stated that California passed similar legislation in their 1999 Session. It would simple expand existing law to include videotaping.

Hearing on **HB 2614** was closed.

Hearing on **HB 2908** - third or subsequent DUI, impoundment of vehicle, was opened.

Representative Ted Powers explained that in his area the police are having problems with chasing those who are eventually convicted of driving under the influence. This causes severe safety problems for the public. (Attachment 6)

Rosalie Thornburgh, Chief of Bureau Traffic Safety, Kansas Department of Transportation, informed the committee that the deadline for states to comply with The Transportation Equity Act for the 21st Century (TEA-21) is October 1, 2000. It requires that states must do the following:

- One year driver's license suspension
- Impoundment or immobilization of, or the installation of an ignition interlock
- assessment of the repeat intoxicated driver's degree of alcohol abuse, and treatment as appropriate, and
- the sentencing of the repeat intoxicated driver to minimum number of days of imprisonment or community service.

Kansas currently complies with three of the four criteria, leaving us in noncompliance with Criterion 2.

Any state that does not enact and enforce the Act would lose federal-aid for highways. Criterion must be imposed on all vehicles owned by the defendant, but there are exceptions for hardships. (Attachment 7)

Sheila Walker, Division of Vehicles, was concerned that their Vehicle Information Processing System and the Kansas Drivers License System would not be able to communicate. They estimated that it would take more than three years to do the programming to make the systems communicate with each other. (Attachment 8)

Jerry Gentry, Kansas Ignition Interlock, appeared in support of the bill and suggested that the committee impose the use of an ignition interlock device. (Attachment 9)

Jolene Grabill, Kansas Coordinators of Alcohol Safety Action Program, supported the impoundment of the vehicle, because they would continue to drink and drive. If there is not vehicle to drive there is less of a chance of an injury resulting from their driving. (Attachment 10)

The Kansas Sheriffs' Association did not appear before the committee but requested their written testimony be included in the minutes. (Attachment 11)

Hearing on **HB 2908** was closed.

Hearing on **HB 2820** - arrest for DUI or felony considered a violation of conditions of release & offender must return to prison, was opened.

Representative Doug Johnston appeared as a proponent of the bill. He explained that the bill would mandate any parolee who is convicted of a felony or DUI to be return to prison for a period of six months. He suggested an amendment that would require them to serve the remainder of their sentence.(Attachment 12)

Tom Vohs, Deputy Secretary for Community Field Services, was opposed to those parolees who are convicted of a DUI to be returned to prison because they might actually serve less time. (Attachment 13)

Hearing on **HB 2820** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 16, 2000.

STATE OF KANSAS

JOHN BALLOU
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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: TRANSPORTATION
VICE-CHAIR: FISCAL OVERSIGHT
MEMBER: EDUCATION
POST AUDIT

Mr. Chairman and committee members:

HB 2713 was brought about because of a problem that has occurred several times in the Kansas City area the past couple years. In Kansas it is not illegal for a teacher to have sexual relations with a student under eighteen. Because of this there has been two teachers who are still able to teach in Kansas who had sexual relations with sixteen year old girls from their class room. We all will agree this is unacceptable behavior for a class room teacher. These teachers were able to deafened their action by claiming it was consensual sex. We all know that many students have faith and trust in their teachers. Or could it be they were afraid that if they did not agree to have sexual relation with their teacher they would flunk their class. Which ever the case, it really does not matter. When we send our children to school we expect them to be safe. It's bad enough they have to worry about school violence, shouldn't we at least make sure they are safe from sexual advances from their teachers. Thank You for your consideration of HB 2713

Representative John Ballou

House Judiciary
2-15-2000
Attachment 1

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

TO: House Committee on Judiciary
FROM: Cynthia Lutz Kelly
DATE: February 15, 2000

RE: H.B. 2713 and H.B. 2894

Members of the Committee:

We appreciate the opportunity to comment on the bills before you today regarding changes in criminal law that would enhance the penalty when school employees engage in unlawful sexual relations with students. The Kansas Association of School Boards believes all students should attend school in a safe learning environment, free from sexual advances by teachers or other authority figures. Both H.B. 2713 and H.B. 2894 discourage school employees from engaging in conduct which harms students and destroys an appropriate learning environment. It is our belief that laws of this nature should cover a broad range of school employees.

To achieve this purpose, we would recommend that the word "full-time" be deleted from line 24 of H.B. 2713. The law should apply to both full and part-time employees.

Additionally, if the committee adopts the approach set forth in H.B. 2894, we believe the enhanced penalty should apply if a teacher engages in unlawful sexual relations with **any** student in the district, not just those in the same building where the teacher teaches. (The elementary or middle school teacher who coaches the high school track team should not be exempt from the penalty if s/he engages in unlawful sexual relations with a high school student.) This change can be incorporated into H.B.2894 by deleting the words "at the school where the offender teachers" and replacing them with the words "in the school district," on lines 23-24 on page 2 of the bill.

Thank you for your consideration of these recommendations.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
HEALTH & HUMAN SERVICES
GOVT. ORGANIZATIONS & ELECTIONS
LOCAL GOVERNMENT

Testimony on HB2894
House Judiciary Committee
February 15, 2000

Thank you, Mr. Chairman, for hearing testimony on HB2894. I appear before your committee as co-sponsor and proponent of this proposed legislation.

HB 2894 would simply add teachers and other education professionals to the list of those for whom it is a severity level 10 person felony to have consensual sexual relations with a person in their "charge" (for want of a better word).

Under this bill it would be unlawful for an educator to engage in consensual sexual intercourse, lewd fondling or touching or sodomy with a person 16 or 17 years old who is enrolled at the school where the offender teaches.

Currently, most local boards of education have policies in place that would allow such a person to be terminated. It is very likely that the offender will resign before he/she can be terminated. However, that is not the end of the problem. First, the educator's teaching credentials are not revoked or, I think, even placed at risk. Therefore, the offender can just move 100 miles down the road and get another teaching position, and with a growing teacher shortage, that is exactly what is likely to happen. The situation is further complicated by the caution with which business and professional institutions respond to a request for references. Very often, a reference includes date and length of employment and not much more.

Ladies and gentlemen, this is not a person I want to call my professional colleague. Sexual relationships between a teacher and a student can do nothing but erode the positive learning environment that most of us work very hard to achieve and maintain in our classrooms. Such relationships are not only damaging to the two people involved, but to everyone in the building. They create tension, mistrust, gossip—and an overall decline in the confidence we want to exist between teachers and their students.

The revisor has indicated that should HB2894 become law, this crime would be covered K.S.A. 72-1397, which delineates the conditions under which an educator can have the teaching certificate revoked.

I will let our District Attorney in Johnson County, Paul Morrison, describe the need for this legislation from his perspective.

I hope you will give your serious consideration to this proposal.

Sue Storm

House Judiciary
2-15-2000
Attachment 3

STATE OF KANSAS

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIR: INSURANCE
MEMBER: TAX COMMITTEE
FINANCIAL INSTUTIONS
AND INSURANCE
FISCAL OVERSIGHT

TESTIMONY
BEFORE THE HOUSE JUDICIARY

Thank you Chairman O'Neil. **HB 2894** is a bill which would make sexual relations between a teacher or school employee a level 10 person felony. Currently, there is no felony violation if the student has consented to the act and is 16 or 17 (above the age of consent).

HB 2894 is narrowly drafted so as to include only students of this age and only students attending school within the same building as the offending employee.

The purpose of this legislation, is not to fill our prisons, rather it is to ensure that there is no doubt that this kind of behavior is absolutely unacceptable. Further, conviction for this action should and shall mean that the school employee shall never be employed with young adults again.

House Judiciary
2-15-2000
Attachment 4

Testimony to the House Judiciary Committee

Regarding House Bill 2894

Paul J. Morrison,
District Attorney - Tenth Judicial District

The year 1999 brought two cases to our office involving what many believed one of the greatest breaches of trust imaginable: a teacher taking sexual advantage of a student entrusted to him. One case involved a long time teacher and coach at a Catholic high school. The other involved a forensics and debate coach at a public high school. Each situation involved the teacher lavishing extra attention on an attractive female student over a long period of time. Eventually, each teacher turned the friendship and trust into a sexual relationship.

In the case of the first teacher, the coach began grooming the student during her sophomore year in high school. Over the next two years his activities progressed from massages to hugs to kissing to lewd fondling and eventually oral sex and intercourse. Unfortunately for us, the girl was over the age of 16 at the time the sexual activity occurred.

In the case involving the forensics coach, the sexual activity occurred when the girl was encouraged to sneak out of her house at night and meet the coach. They would then go to the coach's apartment where sexual activity would occur throughout the night.

In both situations, the teachers waited until the girls were 16 years of age to begin their sexual trysts. Our office filed criminal charges in both cases, alleging violation of K.S.A. 21-3612, Contributing to a Child's Misconduct or Deprivation. In order to do that, our office had to allege that each of these males were sexually exploiting the girls, making them a Child in Need of Care under the statute. The trial judge dismissed both cases, citing that, in his opinion, the statute is

inapplicable to these types of situations. The judge specifically noted that he did not believe the legislature intended to criminalize consensual sexual relations between a teacher and a 16 or 17 year old student. That case is currently on appeal. We feel somewhat optimistic that the court's decision will be reversed. However, we will still be dealing with a misdemeanor crime.

In my opinion, they legislature needs to specifically state that the public policy of Kansas is to not only criminalize this type of sexual activity, but deem it to be a felony. This change could easily be made by amending K.S.A. 21-3520, the Unlawful Sexual Relations statute. That statute already covers a variety of other professions where one's power and authority can be abused to take advantage of someone sexually. This statute could easily be amended with the inclusion of the proposed language in Section (7) to include teachers. Because these cases are uncommon and the proposed felony is graded at a level 10, the impact on the prison population would be minimal. It is easy. It is simple. It is the right thing to do. I would urge that you pass this bill.

STATE OF KANSAS

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
ENVIRONMENT
GOVERNMENT ORGANIZATION AND
ELECTIONS
TRANSPORTATION
SPECIAL CLAIMS AGAINST THE STATE

House Judiciary Committee
3:30 p.m. - Room 313-S
February 15, 2000
Testimony on HR 2908

We continue to have problems in other areas and around the state with the "Chase" and DUI.

Hopefully, HB 2908 will be an added deterrent to these problems.

Sec. 1 deals with the DUI. On the 3rd offense the offender's vehicle would be impounded for one year, along with the license suspension. We have had some individuals still driving their vehicles after 2 or 8 DUI's.

Sec. 2 "The Chase". Here again we have had innocent people killed because of minor violations which turn into tragedies, most recently in Wichita and the Pittsburg area.

People who do not use their vehicles properly must have the air let out of their tires.

Should the bill need cleaning up, we would appreciate the Committee's help.

Thank you.

Ted Powers

Rep. Ted Powers and the
Citizens of Kansas

STATE OF KANSAS

KANSAS DEPARTMENT OF TRANSPORTATION
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E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE

REGARDING HOUSE BILL 2908 PENALTIES FOR DUI REPEAT OFFENDERS February 15, 2000

Mr. Chairman and Committee Members:

I am Rosalie Thornburgh, Bureau Chief of Traffic Safety. On behalf of the Department of Transportation, I am here today to testify on House Bill 2908 regarding enhanced criminal sanctions for DUI offenders and the federal requirement to enact a "repeat offender" law.

The Transportation Equity Act for the 21st Century (TEA-21) authorized Section 164 which encourages States to enact and enforce a repeat intoxicated driver law that establishes at a minimum, certain specified penalties for second and subsequent convictions for driving under the influence. These penalties include: 1) a one-year driver's license suspension, 2) the impoundment or immobilization of, or the installation of an ignition interlock system, 3) assessment of the repeat intoxicated driver's degree of alcohol abuse, and treatment as appropriate, and 4) the sentencing of the repeat intoxicated driver to a minimum number of days of imprisonment or community service. Currently, Kansas law complies with three of the four criteria, leaving us in noncompliance with Criterion 2. That criterion is detailed below.

Any state that does not enact and enforce a conforming repeat intoxicated driver law will be subject to a transfer of funds. If Kansas does not meet the statutory requirements on October 1, 2000 (FFY 2001) or October 1, 2001 (FFY 2002); one and one-half (1½) percent of certain federal-aid highway construction funds will be transferred to the State's Section 402 highway safety program. If the State does not meet the statutory requirements on October 1, 2002 (FFY 2003), three (3) percent will be transferred. Three percent will continue to be transferred on October 1 of each subsequent federal fiscal year, if the State does not meet the requirements on those dates. The funds transferred must be used for alcohol-impaired driving countermeasures or activities under Section 152 Hazard Elimination Program.

House Judiciary
2-15-2000
Attachment 7

Based upon current estimates, the penalty transfer amount for FFY 2001 would be $3.3 million. The penalty transfer in FFY2002 would be $3.4 million and beginning in FFY 2003 the penalty transfer amount would be $6.9 million per year.

The detailed federal requirement and compliance status for each criterion follows:

Criterion 1 requires the imposition of a mandatory minimum one-year "hard" drivers license suspension or revocation on all repeat intoxicated drivers. Kansas law complies with this criterion. House Bill 2908 would compromise our compliance status by amending the license suspension sanction for second offense for those under 21 years of age. House Bill 2908 allows a modification of the length of suspension to coincide with the length of the diversion period. This modified suspension period could possibly be less than the one year required by federal law.

Criterion 2 requires that a State provide for one of three sanctions: the impoundment or immobilization of, or the installation of, an ignition interlock on all motor vehicles owned by the repeat intoxicated drivers. States may provide limited exceptions to the impoundment or immobilization requirement installed on an individual basis, to avoid undue hardship to an individual, including a family member of the repeat intoxicated driver, or a co-owner of the motor vehicle. Exceptions must be made in accordance with statewide, published guidelines developed by the State and in exceptional circumstances specific to the offender. No exception to the installation of the ignition interlock system, however, is acceptable. Kansas's law does not currently comply with this criterion. House Bill 2908 imposes vehicle impoundment on third and subsequent offense. The sanction must be imposed upon all second and subsequent offenders to comply with federal law.

Criterion 3 requires that all repeat intoxicated drivers undergo an assessment of their degree of alcohol abuse and the State must authorize the imposition of treatment as appropriate. Kansas law complies with this criterion.

Criterion 4 requires the imposition of a mandatory minimum sentence on all repeat intoxicated drivers. Kansas law complies with this criterion.

In summary, passage of conforming legislation would bring Kansas into compliance with the federal requirements contained in Section 164. Compliance with Section 164 would prevent a penalty transfer from federal-aid highway funds on October 1, 2000, thus preserving the federal-aid highway construction dollars.

S TE OF KANSA
B aves, Governor

DEPA MENT OF REVE IE
Karla J. Pierce, S ry

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Division of Vehicles

TESTIMONY

TO: Chairman Mike O'Neal
Members of the House Judiciary Committee

FROM: Sheila J. Walker, Director of Vehicles Sheila J. Walker

DATE: February 15, 2000

SUBJECT: House Bill 2908

Chairman O'Neal and members of the House Judiciary Committee, my name is Sheila Walker, and I serve as Director of the Kansas Division of Vehicles. Thank you for allowing me to provide testimony today regarding House Bill 2908. The division will implement impoundment if that's what the Legislature wants us to do. But I would respectfully like to express the division's concerns about this bill.

Effective administration of impoundment is virtually impossible. There is no common link between the Kansas Driver's License System (KDLS) and the Vehicle Information Processing System (VIPS). In other words, we have no effective way of matching drivers to their vehicles.

For example, of the 1.9 million licensed drivers in this state, there are at least 354 Kansans with some form of the name "John Smith" on their drivers' licenses. Meanwhile, 822 of the 2.6 million vehicles registered in this state are registered in some form of the name "John Smith." Matching the 354 "John Smith" drivers to their 822 vehicles would be extremely problematic, likely resulting in errors and an increase in irate phone calls.

Our Information Systems Bureau estimates that it would take more than three years to do the programming to make these systems "talk" to each other.

Not only is there no common link between our two systems, the office assistants in our Driver Control Bureau have no experience in the process of impounding vehicles. They are in the business of restricting, suspending, revoking, and reinstating drivers' licenses – administrative functions, not law enforcement functions. Another concern is the storage of impounded vehicles. If these vehicles are impounded statewide, storage facilities would need to be located throughout the state. In summary, the division does not have the capability or the resources to coordinate, carryout and monitor the impoundment of vehicles. It would essentially be cost-prohibitive.

Thank you for taking our concerns into consideration as you debate this bill.

House Judiciary
2-15-2000
Attachment 8

Testimony of Jerry Gentry
House Judiciary Committee
February 15, 2000

Chairman O'Neal and members of the House Judiciary Committee:

I am Jerry Gentry with Kansas Ignition Interlock and I am here to offer comments regarding House Bill 2908. House Bill 2908 while well intentioned leaves the State of Kansas without other options for repeat DUI offenders. I have attached a copy of Senate Bill 553 for you consideration as an alternative to House Bill 2908. Senate Bill 553 as proposed would offer the option of **three** alternatives as additional sanctions following the one year suspension of a person's driving privileges following the second offense. The alternative of impoundment, immobilization or the installation of a state approved interlock device for an additional year following the one year suspension will bring the State of Kansas into compliance with the federal law that encourages states to enact certain penalties for DUI repeat offenders.

The use of approved ignition interlock devices is the single alternative of the three proposed that will give the State of Kansas feedback on the drivers conduct and driving habits as it relates to continuing to attempt to operate their car with any concentration of alcohol in their system. Ignition interlock devices provide accountability concerning an offenders conduct during the period of installation. Studies show that interlock devices impact the drivers behavior and aid in keeping drivers that have been drinking from being able to start their vehicles and operate them endangering others.

I encourage your consideration of amending House Bill 2908 to embrace the broader approach contained in Senate Bill 553.

Thank you for your time.

Kansas Coordinators of
Alcohol Safety Action Projects

Testimony before the House Judiciary Committee

February 15, 2000

Chairman O'Neal, Rep. Pauls and members of the committee, thank you for the opportunity to testify before you today. My name is Jolene Grabill. I am here to testify in support 1 on behalf of the Kansas Coordinators of Alcohol Safety Action Projects. A more familiar face to you on these issues, Gene Johnson, retired last fall after a distinguished career promoting alcohol safety in our state. I am pleased to succeed him as ASAP's voice in the Kansas Legislature.

Kansas ASAP coordinators are dedicated to the promotion of highway safety through responsible use of alcoholic beverages and/or other drugs while operating a motor vehicle. ASAP coordinators and staff provide alcohol and drug evaluations and monitoring services for all thirty-one judicial districts in Kansas. They evaluate persons who have been arrested for DUI as well as other alcohol and drug offenses.

Kansas ASAP coordinators support **HB 2908** which requires the impoundment of the vehicle for the third or subsequent DUI. It is an appropriate strategy to address the activities of the offender.

Kansas ASAP coordinators also commend the authors of HB 2820 for recognizing that DUI's are in fact crimes when considering violations of conditions of release by DUI offenders .

Thank you.

Legislative Office: Jolene M. Grabill ● Legislative Representative
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POLSINELLI
WHITE
VARDEMAN &
SHALTON

Memorandum

TO: THE HONORABLE MICHAEL O'NEAL, CHAIRMAN
HOUSE JUDICIARY COMMITTEE

FROM: JEFFERY S. BOTTENBERG, LEGISLATIVE COUNSEL
KANSAS SHERIFFS' ASSOCIATION

RE: HB 2908

DATE: FEBRUARY 13, 2000

Mr. Chairman, member of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Sheriffs' Association ("KSA"). KSA is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff departments throughout the entire state. We appreciate the opportunity to appear in support of HB 2908.

KSA supports enhanced penalties for intoxicated drivers, for we feel stricter penalties are the best deterrent to prevent people from driving under the influence of alcohol or drugs. Therefore we support restricting access to an automobile after a person receives his or her third DUI conviction.

We also support punishing those drivers that purposely evade police demands to stop their vehicles. Such drivers are a menace and a danger to police officers and other drivers, and the Legislature should appropriately punish their reckless actions.

However while we support increased penalties for intoxicated and irresponsible drivers, we want to make sure that the Kansas Division of Motor Vehicles ("Division"), and not the arresting sheriff department, has the responsibility to impound and store the automobiles of drivers that have lost their driving privileges. We believe this is the intent of House Bill 2908, but we want to express our concerns in case the Division was not the intended impounding agency.

We are concerned about local sheriff departments impounding the automobiles of drivers convicted under the provisions of this bill due to the fact that many of our departments do not have the necessary facilities to adequately impound automobiles. Indeed, in order to impound automobiles for one year pursuant to House Bill 2908, many sheriff departments would have to buy land and install electronic fencing, security alarms, and possibly contract with private security companies to ensure restricted access to such automobiles. Therefore the requirement that a sheriff department impound and store automobiles would constitute an un-funded mandate on such department.

With these concerns in mind, KSA supports House Bill 2908 and urges its favorable consideration and passage. Please feel free to contact me if you have any questions.

Very truly yours,

Jeffery S. Bottenberg

JSB

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State of Kansas

TOPEKA

House of Representatives

COMMITTEE ASSIGNMENTS
MEMBER: TAXATION
TRANSPORTATION
ENVIRONMENT
GOVERNMENTAL ORGANIZATIONS AND ELECTIONS
ADMINISTRATIVE RULES AND REGULATIONS

TESTIMONY IN FAVOR OF HOUSE BILL 2820
HOUSE JUDICIARY COMMITTEE
FEBRUARY 15, 2000

REP. DOUGLAS JOHNSTON

Thank you for this opportunity to testify in favor of House Bill 2820. This legislation would make it mandatory for parolees who are convicted of a felony or DUI while on parole or post-release supervision to be automatically returned to prison for the remainder of their sentence. Please note this is the intent of my proposal, but that the language in the bill is inappropriate. I have met with Charles Simmons, the Secretary of the Department of Corrections and heard his concerns with the language. I've asked Jill Wolters to prepare an amendment to correct the language to properly reflect my intent and to address the Secretary's concerns with the language.

See on page 4, lines 2-8:

(h) If the violation does result from a conviction for violating K.S.A. 8-1567, and amendments thereto, or any felony, such conditional release shall be revoked and such offender shall return to the correctional institution to serve at least six months in the correctional institution, notwithstanding any term of imprisonment the offender may receive for the new conviction or even if the new conviction did not result in the imposition of a new term of imprisonment.
Sec. 2. K.S.A. 1999 Supp. 75-5217 is hereby repealed.
Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

The amendment being prepared by Jill Wolters will clearly indicate that parolees who are convicted of a felony or DUI while on parole or post-release supervision will automatically return to prison for the remainder of their post-release supervision.

House bill 2820 is necessary because the reality is that too many parolees re-commit crimes while out on parole. State policy should be that parolees who commit these types of crimes should be returned to prison. There should be no exceptions.
Please consider a few facts about DUI:

House Judiciary
2-15-2000
Attachment 12

In 1998 15,935 people were killed in alcohol-related traffic crashes---an average of one every 33 minutes. These deaths constituted approximately 38.4% of the total 41,471 total traffic fatalities. (NHTSA, 1999)

In 1998 About 1,058,990 were injured in alcohol-related crashes-an average of one person injured approximately every 30 seconds. About 30,000 people a year will suffer permanent work-related disabilities. (Miller et al, 1996b)

About three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. (NHTSA, 1999)

In 1998, there were nearly 2 alcohol-related traffic deaths per hour, 44 per day and 306 per week. That is the equivalent of 2 jetliners crashing week after week. (NHTSA, 1999)

While most drivers involved in fatal crashes have no prior conviction for DWI, those who do are at significantly greater risk of causing a drunk driving crash. (NHTSA, 1997)

During the period 1982 through 1999, approximately 349,472 persons lost their lives in alcohol-related traffic crashes. (NHTSA, 1999)

More Americans have died in alcohol-related traffic crashes than in all the wars the United States has been involved in since our country was founded. (NHTSA, 1996)

IN KANSAS:	1998 Total Traffic Deaths	1997 Total Traffic Deaths
	493	482
	1998 Alcohol Related Deaths	1997 Alcohol Related Deaths
	174	139
	Percent Alcohol-Related Traffic Deaths	Percent Alcohol-Related Traffic Deaths
	35.3%	28.8%

Source: NHTSA/FARS Data, Mothers Against Drunk Driving:
http://www.madd.org/stats/98statchart.html

Please consider this additional fact:

Feb. 10, 2000; Hans H. Chen, NEW YORK (APBnews.com)
Nearly 60 percent of criminals are now committing new crimes within three years of their release from prison.
(http://www.apbnews.com/company/index.html)

And consider this statement from Mothers Against Drunk Driving:

"Drunk driving is the nation's most frequently committed violent crime." (MADD, 1998)

Mr. Chairman and members of the committee I strongly encourage the adoption HB 2820.

4101 *et seq.* and amendments thereto.

(h) If the violation does result from a conviction for violating K.S.A. 8-1567, and amendments thereto, or any felony, such conditional release shall be revoked and such offender shall return to the correctional institution to serve ~~*at least six months in the correctional institution*~~, *notwithstanding any term of imprisonment the offender may receive for the new conviction or even if the new conviction did not result in the imposition of a new term of imprisonment.*

Sec. 2. K.S.A. 1999 Supp. 75-5217 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

the entire remaining balance of the period of post-release supervision

12-3

STATE OF KANSAS

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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: February 15, 2000

TO: House Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: HB 2820

HB 2820 pertains to penalties for violations of postrelease supervision. HB 2820 mandates that the postrelease supervision for offenders convicted of driving under the influence of alcohol or drugs, or any felony be revoked irrespective of the sentence imposed. Additionally, as introduced HB 2820 may reduce the penalty for postrelease supervision revocations resulting from a conviction for either a misdemeanor DUI or a felony. Current law provides that if postrelease supervision is revoked as a result of either a misdemeanor or felony conviction, the offender must serve the remaining balance of his or her postrelease supervision period. HB 2820 would permit offenders convicted of a DUI misdemeanor or felony to be released after having served only 6 months of the remaining balance of their postrelease supervision obligation. This would result in the possibility of offenders whose postrelease supervision was revoked due to a misdemeanor conviction for a crime other than DUI to receive a greater penalty than those offenders whose supervision was revoked due to a DUI or felony conviction.

HB 2820 mandates that all DUI and felony convictions resulting from crimes committed while on postrelease supervision result in the revocation of the postrelease supervision. The Department of Corrections requires parole officers to utilize a Condition Violation Intervention Grid when responding to violations of an offender's conditions of release. The grid currently allows parole officers to use alternatives to revocation, such as electronic monitoring, as an intervention in response to a DUI conviction. Additionally, a parole officer may also require the offender to participate in substance abuse treatment either on an outpatient or inpatient basis. If, however, a DUI conviction is consistent with the offender's previous criminal convictions or previous postrelease supervision behavior, the grid requires a recommendation for revocation. The grid also requires parole officers to recommend revocation when an offender is convicted of a new felony unless a Parole Director or their designee authorizes a departure. Departures are rarely authorized. While revocation lies within the discretion of the Kansas Parole Board, the board generally revokes an offender's post-incarceration supervision when the offender's violation results from a new felony conviction.

The Department of Corrections wishes to bring to the Committee's attention the following issues:

- The department assumes that HB 2820 intends to impose a harsher penalty for offenders who are convicted of DUI misdemeanors and felonies committed while on postrelease supervision. However, since a determinate sentence imposed pursuant to the Sentencing Guidelines Act is fully served upon the completion of the postrelease supervision period, such sentences cannot be extended past that date.

Pursuant to HB 2820 offenders whose postrelease supervision is revoked as a result of a misdemeanor conviction for an offense other than DUI would continue to be required to serve the remaining balance of their postrelease supervision period, which may be as long as 24, 36 or 60 months depending on the severity level or whether offense was sexually motivated. However, HB 2820 would permit offenders whose release is revoked due to a DUI or felony conviction to be released after having served only 6 months even though the remaining balance of their postrelease supervision obligation is longer.

- HB 2820 at page 4, line 3 uses the term "conditional release". "Conditional release" is only applicable to indeterminate sentences imposed for crimes committed prior to July 1, 1993. For crimes sentenced pursuant to the Kansas Sentencing Guidelines Act, the post confinement supervision is called "postrelease supervision". It is assumed that since HB 2820 amends the penalties to be imposed upon postrelease supervision violators by amendment of section (c), the more appropriate designation for the community supervision affected would be "postrelease supervision". However, if the intent of the bill is to impose a minimum mandatory violation penalty for all types of supervision releases, the appropriate phrase relative to page 4, line 3 would be "parole, conditional release, or postrelease supervision". I would like to bring to the committee's attention a possible constitutional issue raised when a release date established by the law in existence at the time of the commission of an offense is delayed by a subsequently enacted law.

- SB 472 which is supported by the Kansas Sentencing Commission and the Kansas Parole Board, permits the board to reincarcerate an offender for less than the remaining balance of his or her postrelease supervision period if the violation results from a misdemeanor conviction.

The department wishes to thank the committee for allowing it to bring these issues to the committee's attention.

CES/TGM/ll

cc: Legislation file