

Approved: April 28, 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 March 13, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused
Representative Phill Kline - Excused
Representative Rick Rehorn - 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:

Barbara Tombs, Executive Director, Kansas Sentencing Commission
Representative Shari Weber
Charles Simmons, Secretary, Department of Corrections
Chris Mechler, Shawnee County Court Services Officer
Kathy Porter, Office of Judicial Administration
Kyle Smith, Kansas Bureau of Investigations
Adjutant General Greg Gardner, Kansas National Guard

Hearings on **SB 488 - sentencing in multiple conviction cases**, were opened.

Representative Shari Weber appeared before the committee as a proponent of the bill. She explained that it would clarify the law with regard if the primary crime of conviction in multiple crime conviction case was reversed, the appellate court would be required to remand the case to district court for re-sentencing. The bill would also target a population for community corrections to ease prison overcrowding. It would also increase the length of time an offender can be confined in a county jail from 30 to 120 days as a condition of probation. (Attachment 1)

Barbara Tombs, Executive Director, Kansas Sentencing Commission, believes the bill should be passed to ensure that the proper sentence is imposed when a single conviction in a multiple conviction case is overturned on appeal. (Attachment 2)

Hearings on **SB 488** were closed.

Hearings on **SB 423 - KBI laboratory analysis fees**, were opened.

Kyle Smith, Kansas Bureau of Investigations, appeared as a proponent of the bill. He stated that it would require that a \$150 analysis fee be assessed against a defendant to cover all DUI cases involving a conviction or diversion. (Attachment 3)

Hearings on **SB 423** were closed.

Hearings on **SB 526 - use of forfeited property by the Kansas National Guard**, were opened.

Adjutant General Greg Gardner, Kansas National Guard, explained to the committee that they currently have a fund which includes monies seized in drug raids. However, the statute does not allow the expenditures of the funds. The proposed bill would allow the Adjutant General to issue vouchers to be paid through the fund. (Attachment 4). The expenditures would be to buy equipment, buy & train drug detection dogs, and help with law enforcement training.

Hearings on **SB 526** were closed.

Hearings on **SB 490 - placement of offenders in community correctional programs**, were opened.

CONTINUATION SHEET

Barbara Tombs, Executive Director, Kansas Sentencing Commission, believes that anyone who receives a boarder box would benefit from community corrections. For those who are concerned, an amendment would allow judges to override the placement of those who are violent offenders and place them in prison. The bill would enable community corrections to develop a program for a specific designated offender population, saving prison bed for those who are the most violent and chronic offenders. (Attachment 5)

Charles Simmons, Secretary, Department of Corrections, informed the committee that he recommended a target population be set for community corrections. The suggested targeted populations consist of those offenders who do not require confinement by the Department of Corrections but would need more intensive supervision than provided by standard probation. (Attachment 6)

Chris Mechler, Shawnee County Court Services Officer, appeared before the committee with concerns on the bill. She believes that the criteria in the proposed bill is limiting and would result in an increase in offenders assigned to Court Services. By using grid boxes to define placement in Community Corrections the plea bargain would focus on where the offender will fall on the grid, not their risk or need. (Attachment 7)

Kathy Porter, Office of Judicial Administration, was concerned that while the Department of Corrections has a risk assessment tool it would need to be validated for the specific assessment of those who would be assigned to community corrections. (Attachment 8)

Hearings on **SB 488** were closed.

STATE OF KANSAS

Rep. Shari Weber
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HOUSE OF REPRESENTATIVES
68TH DISTRICT
Assistant Majority Leader

TESTIMONY ON SB 488/490/491
HOUSE JUDICIARY COMMITTEE
March 13, 2000

Thank you, Mister Chairman and members of the committee, for the opportunity to appear before you today in support of Senate Bills 488/490/491. My interest in these bills comes from my involvement with the Joint Committee on Corrections and Juvenile Justice Oversight. Over the interim, the Sentencing Commission made periodic reports about the current prison population. We also reviewed changes in current law that might help to deal more efficiently and effectively with the prison population.

Senate Bill 488 would clarify the law with regard to the scenario that if the primary crime of conviction in a multiple crime conviction case is reversed, the appellate court is required to remand the case to district court for re-sentencing.

Senate Bill 490 would suggest a target population for community corrections programs and provide for a risk assessment tool for use by court services offices to determine high risk or high needs.

Senate Bill 491 increases the length of time an offender can be confined in a county jail from 30 days to 120 days as a condition of probation. It also requires the use of community corrections as an intermediate sanction for probation violations. The change would also reduce the length of time certain offenders must remain under postrelease supervision.

In listening to the supporting rationale for these changes, I believe you will find that these suggestions would give more flexibility for the use of sanctions in the community and

divert offenders from the Department of Corrections' custody. With an eye first to public safety, these changes lean toward successful management of those who break our laws within sanctions that are community based. These offenders come out of communities and even if they are incarcerated on the state level, they go back to communities. Allowing sanctions in the community may hold certain offenders more accountable than incarceration in a state institution.

I thank you for your time and ask for your favorable consideration of Senate Bills 488/490/491.

Sincerely,



Shari Weber



State of Kansas

KANSAS SENTENCING COMMISSION

Honorable Richard B. Walker, Chair
District Attorney Paul Morrison, Vice Chair
Barbara S. Tombs, Executive Director

**Testimony on Senate Bill 488
House Judiciary Committee
March 13, 2000**

The Kansas Sentencing Commission is testifying in support of Senate Bill 488. The proposed bill clarifies the procedure the courts should follow when an offender is convicted of multiple crimes and properly sentenced for those crimes but the primary crime is subsequently overturned on appeal. The proposed bill contains language that specifies that when a sentence is remanded for re-sentencing, the sentencing court will determine a new primary crime to which an offender's full criminal history would be applied and then sentence the remaining crimes according to the applicable statute.

The following hypothetical example illustrates the need for clarification to the current statutory language:

A defendant is convicted for the multiple crimes of rape, robbery and burglary all arising out of one case. The defendant is appropriately sentenced with the rape offense designated as the primary crime, using the full criminal history score. The crimes of robbery and burglary are designated as non-base crimes and sentenced consecutively using criminal history category "T". On appeal, the defendant's conviction for rape is overturned. The Court of Appeals orders the conviction for rape reversed but the robbery and burglary convictions are upheld. The Court of Appeals orders the case reversed and remanded for re-sentencing but does not instruct the District Court how to proceed.

Under this hypothetical example, upon remand for re-sentencing, the District Court judge may be unclear whether he/she is required to re-sentence the defendant using the full criminal history for the robbery conviction and the burglary conviction sentenced using criminal history category "T" or whether to leave both the robbery and burglary sentences at criminal history category "T" due to the fact that the Court of Appeals did not find any errors with those convictions.

The Kansas Sentencing Commission feels this bill should be passed to clarify procedures for the district courts in the previously described situation and to ensure that the proper sentence is imposed when a single conviction in a multiple conviction case is overturned on appeal.



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
IN SUPPORT OF SB 423
MARCH 13, 2000

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General and Special Agent with the Kansas Bureau of Investigation (KBI), and appear today in support of SB 423. As every member of this committee is painfully aware, the state is facing a severe financial shortfall and significant cuts have imposed in a number of agency budgets. The KBI has been cut approximately 4.6% of its general fund money for FY 2000, about \$527,000, and is facing substantial shortages for next year as well.

Repeatedly, in the reviews of our budget by the Budget Division and in previous contact with legislators, we have been encouraged to seek alternative funding sources, other than state general funds. In response, the KBI has not only pursued and obtained millions of dollars in federal grants, but we have explored fee funding when appropriate, to provide additional resources for the operation of the KBI.

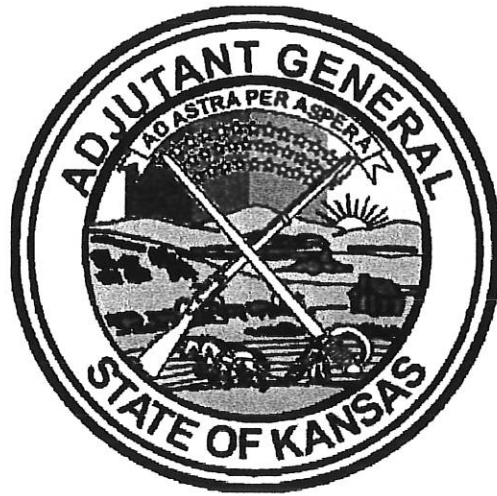
K.S.A. 28-176 is the outgrowth of one of those initiatives. It shifts some of the costs for doing forensic laboratory examinations from the taxpayers of Kansas to those persons who are convicted of criminal activity by, in part, those scientific exams. For example, the rapist who is convicted in part from the DNA analysis done by the KBI is assessed with a \$150 separate court

House Judiciary
3-13-2000
Attachment 3

cost which goes to a special forensic laboratory materials fee fund. These costs are only assessed when individuals are convicted. The primary use of this fund in the past has been as match money in obtaining federal grants, so this alternate funding source turns into even more alternate source funding. The statute sets out restrictions on how the money can be spent. The fee has proven a useful source of funds for purchasing and maintaining equipment and providing necessary educational training for laboratory personnel.

SB 423 expands the types of convictions for which these fees may be assessed to include all driving under the influence cases. Currently, only those DUI cases that are based on misuse of drugs or controlled substances are covered. Last year the KBI conducted just over 2,500 blood analyses for alcohol DUI investigations. By striking the limiting language in line 20, section 1, in those cases resulting in convictions, the court costs could be assessed. Obviously, not every test that is conducted is positive, nor are all positive tests followed with a conviction, nor do all convicted criminals pay their court costs. However, an assessment of the examinations conducted in the chemistry division of the KBI lab, indicates approximately 25% of lab tests result in payment of the lab fee. Applying that same ratio to the case of the 2,500 alcohol DUI cases, this legislation could provide approximately \$94,000 for the forensic laboratory materials fee fund.

As mentioned previously, the statute sets out restrictions as to how the money may be spent, but let me assure the committee that the money is desperately needed, particularly in these tough economic times. I would be happy to answer any questions. With me is Larry Mann, who supervises the toxicology division of the KBI forensic lab, to answer any technical questions.



**Maj General (KS)
Gregory B. Gardner
Adjutant General**

**Testimony for SB 526
House Judiciary Committee
March 13, 2000**



Testimony on SB 526
Amends 60-4117 Allocation of Forfeited Assets
House Judiciary Committee
March 13, 2000

Maj General (KS) Greg Gardner
Adjutant General



Who we are

Mission

What we do

Professionals:

- ◆ Providing military capability for our nation
- ◆ Protecting life and property in our state
- ◆ Adding value to our community.

Kansas National Guard Counterdrug Program

- ◆ **Two Sections**
 - ◆ Drug Demand Reduction
 - ◆ Drug Supply Reduction
- ◆ **\$1.75 million Federal funds**
 - ◆ 87% Pay & Allowances
 - ◆ 13% Operations & Maintenance

Drug Demand Reduction

- **1999 Missions**
 - 73 Schools
 - 250,000 Red Ribbons
 - 27 Community
 - 7 Workshops
 - 12 Fly-ins
 - 50 Awareness
 - 6 Support Coalitions



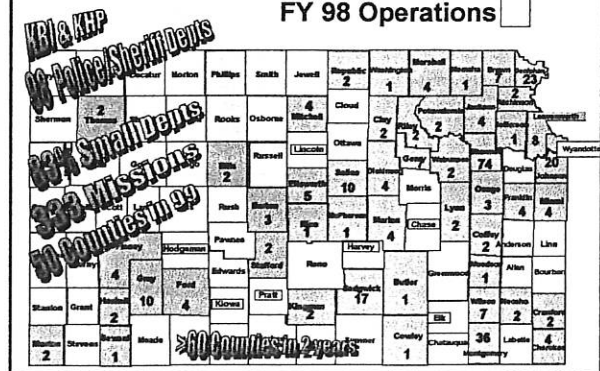
Supply Reduction Results

Fiscal Years 91-99

<u>Seized</u>	<u>Value</u>
Cocaine/Crack	\$ 31 mil
Marijuana	\$ 33 mil
Methamphetamine	\$ 2.5 mil
<u>Eradicated</u>	
Marijuana	\$194 mil
Total	\$261.5 mil

FY 99 Operations

FY 98 Operations



Supply Reduction

- ◆ **FY 99 Operations**
 - ◆ Intelligence analysis, operational support, training, liaison, etc
 - ◆ **15 Fed Agencies**
 - ◆ FBI, HUD, FAA, DEA (KC, Wichita, Topeka, Garden City) US Postal Service, US Customs, etc

Supply Reduction Mission

- **Marijuana Eradication**
 - Nearly 195,665 plants since 1990
 - Valued at \$194 million
 - Cut with machetes & weed trimmers, etc
 - Burn (Guardsmen upwind) or haul to LEA
- **Example '99 Mission**
 - For Kickapoo Reservation Police
 - Cut & burned 136,000 plants in 2 days

Supply Reduction Mission

- **Package Profiling**
 - Guardsmen augment US Postal service
 - Watch packages flowing through major distribution centers
 - Identify packages that fit a profile to Postal Inspector for action
- **15 missions inspected > 60,000 packages**
 - Identified 10 packages
 - 4 Drug Seizures made

Supply Reduction Mission

- **Watching Anhydrous Ammonia Tanks**
 - Kansas a leading state in meth production
 - Precursor Chemical available in Kansas
 - Meth manufacturers steal from farmers
 - Difficult to catch due to limited manpower
 - 24 Meth missions since Oct 99
 - 24 seizures valued at \$287,890

Federal Asset Sharing

- ◆ **Department of Justice (DOJ) Program**
 - ◆ Approved Kansas National Guard counter-drug participation July 2, 1998
 - ◆ We do NOT compete with state LEAs
 - ◆ Share based on support %
 - ◆ Compare hours expended
 - ◆ Asset forfeiture \$ designed to enhance not replace LEA resources
 - ◆ Funds we receive will benefit state LEAs & community organizations

DOJ Permitted Use of \$

- **Drug Detection Dogs**
 - Deterrent to drug use at Annual Training
 - Enhance our support of small rural LEAs
- **Drug Demand Reduction Programs**
- **Buy Equipment (radios, vehicles, etc)**
- **Facility Support**
- **LEA Training**
- **Travel in support of LEAs**

Summary

- ◆ Forfeited Asset Account balance = \$20k
- ◆ \$132k potential (cases filed with DOJ)

But we can not spend it

Request You Amend K.S.A. 60-4117

- ◆ Add *Kansas National Guard counter drug state forfeiture fund*
- ◆ To existing funds for KBI, KDP, KDOC



? 'S

Maj Gen (KS) Greg Gardner
Adjutant General
greg.gardner@ks.ngb.army.mil

Legal Authority for Counterdrug Operations

K.S.A. 48-241

The Commander in Chief shall have power to order into the active service of the state any and all of the units of the national guard, any member of the national guard...

(1) A request by civil authorities to support federal or state law enforcement agencies in counter-drug and drug interdiction operations when such request is approved by the Commander in Chief.

Legal Authority for Counterdrug Operations

- ◆ Kansas Attorney General opinion # 97-7
- ◆ *Kansas National Guard is law enforcement agency for limited purpose of drug interdiction*

Example Cases on File with DOJ

- April 98: DEA Maryland \$70-80k
- Nov 98: DEA Kansas City \$7



State of Kansas
KANSAS SENTENCING COMMISSION

Honorable Richard B. Walker, Chair
District Attorney Paul Morrison, Vice Chair
Barbara S. Tombs, Executive Director

**Testimony on Senate Bill 490
House Judiciary Committee
March 13, 2000**

The Kansas Sentencing Commission is testifying today in support of Senate Bill 490, which was introduced by the Commission. The proposed bill identifies a target offender population for placement in Community Corrections Programs.

The bill was drafted in response to a request from the Joint Committee on Corrections and Juvenile Justice Oversight that the Sentencing Commission review and identify a target population for Community Corrections programs that would enable the most efficient use of limited resources and provide the level of supervision necessary for high-risk offenders. At the current time, criteria for placement in community corrections vary tremendously across the state. Community Corrections populations may include conditional violators, drug offenders, sex offenders, property offenders, juvenile offenders and intensive supervision offenders. Given the wide variation of supervision levels and program needs required for these different populations, the effectiveness of community corrections could be enhanced considerably if a target population for placement in community corrections was defined. In addition, a designated population for placement in community corrections would help define the core continuum of sanctions that should be developed and ensure program availability for offenders who pose the greatest risk to public safety.

The Sentencing Commission appointed a Subcommittee that included representatives from the judiciary, community corrections, court services, parole board, corrections and prosecutors to review and identify the offender population which would be best served by the level of supervision and programs available through community corrections. The target population identified for placement in community corrections is as follows:

1. Adult offenders convicted of felony offenses.
2. Offenders whose sentence falls within designated border boxes on both the Nondrug and Drug sentencing grids. Sentencing Grid boxes included are: 5-

H, 5-I or 6-G of the Nondrug grid and 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the Drug grid.

3. An offender whose severity level and criminal history classification designates a presumptive prison sentence on either sentencing grid but the offender receives a nonprison sentence as a result of a dispositional departure.
4. An offender convicted of a sex offense designated severity level 7 or higher and the sentence is presumptive nonprison on the sentencing grid.
5. Condition violators of a probation sentence who have not been convicted of a new offense, prior to revocation and imposition of the underlying prison sentence to be served in a state correctional facility.
6. Any offender who is determined to be "high risk/need" by the use of a statewide mandatory validated risk assessment tool or instrument utilized by court services.

There were several amendments to this bill that were passed by the Senate Judiciary Committee. Section I of the bill was amended to state that the Kansas Supreme Court shall establish a risk/needs assessment tool or instrument assessing the level of risk and needs of an offender by January 1, 2001. This standardized tool would be used by all court service officers when considering placement of offenders in community corrections programs. By developing and utilizing a risk/needs assessment tool, offenders not specifically identified in the designated target group, such as high risk drug offenders, would still be eligible for placement in community corrections if the assessment tool indicated they were high risk/need.

A second amendment identifies offenders that successfully complete the state's conservation camp program (boot camp) be placed in community corrections as a condition of supervision. This permits a higher level of supervision for a specific offender group. In addition, language was struck that would prohibit the placement of an offender in a community corrections program if the offender had committed a new felony while on probation or assignment. This change would allow the court to make the decision whether the offender should be revoked and sent to prison or placed in a suitable community corrections program.

Although the target population for placement in community corrections is identified as adult offenders with felony convictions, a provision was amended into the bill that would not prohibit a community corrections program from providing services to juvenile offenders if approved by the local community advisory board. However, grants from the community corrections fund administered by the Secretary of Corrections would not be expanded for services provided to juvenile offenders.

Concern has been expressed by some members of the judiciary, that the definition of a target population for placement in community corrections limits their discretion to

sentence certain high risk offenders or condition probation violators directly to a state correctional facility. However, it should be noted that the bill does contain a provision at Section 1, subsection (a)(3) at line 22 that addresses that concern. The court may require an offender for whom a violation of conditions of release or assignment, or a nonprison sanction has been established, as provided in K.S.A. 22-3716 and amendments thereto, to serve any time for the sentence imposed or which might originally have been imposed in a state correctional facility without prior assignment to a community corrections program if the court finds and sets forth with particularity the reasons for the finding that public safety will be jeopardized or the welfare of the inmate would not be served by assignment to community corrections.

Finally, the effective date of the bill has been designated as January 1, 2001. This implementation date will permit the development of the risk/needs assessment tool prior to the bill taking effect to ensure that all high risk/need offenders are identified and assigned the proper level of supervision.

The Sentencing Commission requests your support and passage of Senate Bill 490. The bill identifies a specific offender population for which more intense supervision is warranted for both public safety and the offender's successful completion on community supervision. In addition, the bill enables community corrections programs to focus their limited resources on specific program development for the designated offender population groups, while reserving limited prison beds for the most violent and chronic offenders.

For more information contact:

Barbara Tombs, Executive Director
Kansas Sentencing Commission



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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: March 13, 2000

TO: House Judiciary Committee

FROM: Charles E. Simmons 
Secretary of Corrections

RE: SB 490

Last May I recommended to the Joint Committee on Corrections and Juvenile Justice Oversight that a target population for community corrections be established. The Sentencing Commission proposed SB 490 to accomplish this recommendation and supports the bill as amended by the Senate. SB 490 limits the use of community corrections as a supervision alternative to specific offender populations. The targeted populations for community corrections placement consist of those offenders who do not require confinement by the Department of Corrections but need more intensive supervision than provided by standard probation.

Community corrections was established by the 1978 Legislature as an alternative to incarceration for non-violent offenders. Community corrections was designed to fill the gap between regular probation and prison, by providing more intensive supervision of offenders than probation. Although Sentencing Guidelines, which became effective in 1993, provides for community supervision for certain offenders convicted of non-violent crimes, it does not specify whether placement is with court services or community corrections. Currently, community corrections does not have a clearly defined target population.

SB 490, as amended by the Senate, restricts the use of community corrections service programs to those adult felony offenders sentenced to a nonprison sentence:

- as a Sentencing Guidelines dispositional departure;
- whose offense and criminal history falls within a Guidelines "border box";

- whose offense is a severity level 7 or higher and is defined by the Violent Offender Registration Act;
- who through a standardized risk assessment instrument have been identified as being “high risk” or having “high needs”;
- who have violated a condition of their release; or
- who have been placed in a community correctional service program as a condition of supervision following the successful completion of a conservation camp program.

In order to identify those offenders eligible for placement into a community corrections program due to their being “high risk” or having “high needs”, SB 490 requires the Kansas Supreme Court to establish by January 1, 2001 a risk assessment tool or instrument to be used by all court service officers. The department has established a risk assessment instrument, which it and the community corrections programs utilize. That instrument has been validated through the National Council on Crime and Delinquency (NCCD).

SB 490 also restricts courts from placing offenders who have violated a condition of a nonprison sanction into the custody of the department. Offenders on probation or serving other nonprison sentences who violate a condition of their release may not be placed into the custody of the department unless the offender had first been assigned to a community corrections program or the court finds that the safety of the public would be jeopardized or the welfare of the inmate would not be served by an assignment to a community correctional services program.

SB 490 does not prohibit community corrections programs from contracting with the Juvenile Justice Authority for the provision of services to juvenile offenders if approved by the local community corrections advisory board. However, grants from community corrections funds administered by the secretary of corrections cannot be expended for such services.

SB 490 passed the Senate by a vote of 39 to 0. The Department of Corrections urges favorable consideration of SB 490.

CES/TGM/ll

cc: Legislation file



KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE
CHRIS MECHLER, LEGISLATIVE CHAIRPERSON
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS
ON SENATE BILL 490
MARCH 13, 2000

Chairman O'Neal and Members of the Committee:

I am Chris Mechler, Legislative Chair for the Kansas Association of Court Services Officers. Today, I would like to address SB 490.

The enactment of Sentencing Guidelines left Community Correction Programs without a statutorily mandated target population. I believe that we can all agree that Community Corrections is in need of definition. However, the criteria contained in SB 490 are extremely limiting and will result in a significant increase in offenders assigned to Court Services. Last year the average caseload for a Court Services Officer was 153. At that level, it is difficult to adequately supervise offenders. Simply put, the State will need more Court Services Officers.

There are two concerns that Kansas Association of Court Services Officers has with this bill. Using the sentencing grid boxes to define placement of offenders and the statewide, mandatory, standardized risk assessment tool.

First, by using grid boxes to define placement in Community Corrections, the plea bargain will then focus on where the offender will fall on the grid, not their level of risk or need. I did a quick review of cases assigned to Court Services in Shawnee County out of 100 random cases, 90 were pled down while 10 were convicted as charged. I can only see this trend increasing if the focus were placed only on grid boxes. Kansas Association of Court Services Officers would urge the committee to explore current "best practices" in the supervision of offenders. Such as the Level of Service Inventory (LSI-R) being used in Minnesota or The Matrix being used in Iowa. Both of these tools assess and evaluate the offender then make recommendations based on the data rather than on the crime of conviction.

Second, developing a statewide, mandatory, standardized risk assessment tool to be used in determining placement is a good idea. The key words here being developing, standardized, and mandatory. Currently, the Office of Judicial Administration does not have a standardized risk/needs tool and would need funding to develop one. Further, there would need to be a statutory requirement that offenders participate in an interview by Court Services before sentencing to determine placement. In many cases, defense attorneys do not allow their clients to be interviewed prior to sentencing or the presentence report is waived.

Thank you for your consideration. I will now stand for questions.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
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March 13, 2000

House Judiciary Committee

Testimony on SB 490
Kathy Porter
Office of Judicial Administration

SB 490 is intended to clarify those offenders who should be sent to community corrections. The language of the bill, however, limits placement in community corrections to those offenders specified in Section 1 (2). Section 1(2)(E) would allow judges to place in community corrections programs any offenders determined to be "high risk or needs, or both" by the use of a statewide, mandatory, standardized risk assessment tool or instrument to be established by the Kansas Supreme Court. No such tool currently exists.

Although different forms of risk assessment tools are available from other states, any risk assessment tool used must be validated for use on the specific population with whom it is to be used. The Department of Corrections recently worked with the National Council on Crime and Delinquency to construct and validate a similar instrument for use with parole populations. The total cost was \$64,000. Although the fiscal impact of a bill is usually considered separately from the merits of a bill, I must bring this to your attention because, unless funding for such a tool is forthcoming, there will be no risk assessment tool. The Judicial Branch's FY 2001 budget, as it currently stands, will require a 60-day hiring freeze on all vacant positions. There is no funding, no amount to be "squeezed out" of somewhere else in the budget, for this item.

Without the risk assessment tool, this public safety exception is not available to judges. Offenders who do not meet the criteria listed in the bill cannot be placed in a community corrections program, regardless of the public safety risk they might pose, and regardless of the offender's need for services that might be available through a community corrections program. The definition of those who may be placed in community corrections programs (those whose offense is classified in grid blocks 5-H, 5-I, or 6G of the sentencing guidelines grid for nondrug crimes and other grid blocks for drug crimes) would exclude many felons who had been charged with higher level felonies, but who pled down to a lesser felony. The fact that these felons pled down does not diminish the severity of their crimes, the safety threat they might pose, or their need for services offered by community corrections programs.

Testimony on SB 490
March 13, 2000
Page 2

Those offenders will, most likely, be placed on probation under the supervision of a court services officer (CSO). In the urban areas, non-supervisor CSOs averaged an active caseload of at least 153 adult probationers in FY 1999. As I mentioned before, the impending FY 2001 60-day hiring freeze will only make the current bad situation worse.

The provisions of SB 490, if permissive, would serve as guidelines for district judges. As the bill stands, however, the limitation on offenders who may be placed in community corrections programs would only serve to further overburden court services officers and would pose a potential threat to public safety.

KP:mr