

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On February 12, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff - Excused
Representative Daniel Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jennifer Strait, Intern for Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Chuck Simmons, Secretary Department of Corrections
Barbara Tombs, Executive Director, Kansas Sentencing Commission
Representative Shari Weber
Kyle Smith, Kansas Bureau of Investigation
Shelia Walker, Director of Motor Vehicle
Detective David Falletti, Riley County Police Department
Kathy Olsen, Kansas Bankers Association
Ron West, Intrust Bank, Wichita
Sgt. Dan Hay, Financial Crimes Unit, Topeka Police Department
Lt. Tom Spencer, Financial Crimes Unit, Wichita Police Department
Susan Bechard, Kansas County & District Attorneys Association

Chuck Simmons, Secretary Department of Corrections, discussed the circumstances surrounding the error that was made by the Department of Corrections parole staff. He provided the committee with a copy of the press release which contains a chronology of events leading to Reginald Carr's discharge. (Attachment 1) The error resulting in the wrong discharge date from post-release supervision should not have happened and in response to that error they have discharged one personnel, gave another a seven day suspension without pay and are doing a review of 20% of their cases to determine if this was a one time error or something that has happened before, also they have modified the parole good time award sheet which determines when the discharge date is. He commented that the early discharge was not a cause of SB 323 rather an error by personnel.

Hearings on **HCR 5002 - declaring there shall be no amendments to the Kansas Sentencing Guidelines**, were opened.

Barbara Tombs, Executive Director, Kansas Sentencing Commission, explained that the Guidelines have been in effect for a period of seven years and that there has never been a legislative session where they weren't effected and the Legislature has never decreased a crime in severity level. There have been four basic types of changes that have occurred to the guidelines: modifying sentencing lengths by specific severity levels; reclassification of misdemeanor offenses to felony offenses & creation of new felony offenses; elevating severity levels for specific offenses; and changes in the periods of supervision. Anytime there is a policy change there are adjustments and modifications that need to happen and it has been difficult, with the continual changes, to determine if the Guidelines are effective.

She suggested that the Legislature craft changes so those who are non-violent be punished in another manner so as not to impact bed spaces. (Attachment 2)

Representative Shari Weber is a member of the Joint Committee on Corrections & Juvenile Justice Oversight which has determined that with the yearly changes in the Guidelines there is the inability to establish whether the underlying goals of the guidelines are being achieved. She support the Concurrent Resolution and urged the committee to report it favorably.

Hearings on **HCR 5002** were closed.

Hearings on **HB 2329 - allowing criminal justice agencies access to division of vehicle records**, were opened.

Kyle Smith, Kansas Bureau of Investigation, explained that the proposed bill would allow any criminal justice agency the authority to receive picture identification from the Department of Revenue's Drivers License Bureau. This would help to identify people who are wrongly accused. ([Attachment 3](#))

Shelia Walker, Director of Motor Vehicle, responded that these changes would probably increase the requests for the picture identifications and would therefor require additional monies to provided staff and electronic transfer of such data. If the DMV is updated with current computers that would aid in the electronic transfer of the photos they would have no opposition to the proposed bill. ([Attachment 4](#))

Mr. Smith noted that federal funds would be available to accommodate funding for a new system.

Hearings on **HB 2329** were closed.

Hearings on **HB 2328 - abusing toxic vapors**, were opened.

Detective David Falletti, Riley County Police Department, commented that chemicals used as inhalants are products that are used everyday such as: whiteout, nail polish, dry erase markers. The long term effects on the brain are irreversible. It's important to pass this legislation because it gives law enforcement a law they can enforce and will help protect our children. ([Attachment 5](#))

Hearings on **HB 2328** were closed.

Hearings on **HB 2296 - mandatory sentencing & fines for forgery**, were opened.

Kathy Olsen, Kansas Bankers Association, appeared as the sponsor of the proposed bill. She stated that check forgery is big business in Kansas. We're the only state of the surrounding states that do not require jail time upon conviction of a check forgery. The solution to the problem would be to treat repeat convicted offenders of check forgery more harshly and make those convicted of check forgery subject to the Kansas Civil Asset Seizure & Forfeiture Act. ([Attachment 6](#))

Sgt. Dan Hay, Financial Crimes Unit, Topeka Police Department, commented that part of the reason for the bill is restitution for those who's monies have been taken from them. ([Attachment 7](#))

Ron West, Intrust Bank, Wichita, has seen a recent surge of forgeries in the last four month from out of state people coming into the state because they know that they will serve no time for the crime. ([Attachment 8](#))

Lt. Tom Spencer, Financial Crimes Unit, Wichita Police Department, informed the committee that in 1998 the Wichita Police Department developed a Financial Crimes Unit and in 1999 they had six detectives and produced 600 warrants and last year they had 2,000 warrants. They are beginning to find a connection between forgery and meth labs in that they are using to money used from the forgery to set up the meth labs.

Susan Bechard, Kansas County & District Attorneys Association, requested two amendments. The replace the current language in the bill which makes forgery with a prior serve a shorter sentence. The second would have the time served be in a county jail or with conditions for probation so not to impact bed space. ([Attachment 9](#))

Hartland Community Bankers Association did not appear before the committee but requested that their written testimony in support of the bill be included in the minutes ([Attachment 10](#))

Hearings on **HB 2296** were closed.

Representative Long made the motion to approve the committee minutes from January 24, 25, 29, 30 & 31, 2001. Representative Shultz seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for February 13, 2001.



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
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(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: House Judiciary Committee
From: Charles E. Simmons, Secretary
Subject: Error in Computing Sentence Discharge Date
Date: February 12, 2001

I appreciate the opportunity to appear before the committee to discuss the circumstances surrounding the error that was made by KDOC parole staff regarding the amount of good time awarded to Reginald Carr. The error resulted in Carr's discharge from postrelease supervision on December 1, 2000 rather than June 1, 2001.

On January 26, 2001, the department issued a press release explaining the error that was made, detailing the chronology of events leading up to Carr's discharge from KDOC jurisdiction, and identifying the actions that the department has taken in response to the error. A copy of the press release is attached. Also attached is a copy of the Good Time Award Record worksheet—the KDOC form on which the error occurred—as an illustration showing where the erroneous entry was made

Since the press release was issued, the department has provided additional information regarding the disciplinary action taken against the two employees who were involved. One employee was terminated; the other received a seven-day suspension without pay. I have also confirmed that one of the employees involved in recommending, assessing and recording Reginald Carr's good time, at some point subsequent to the initial entry, recognized that the error had been made, but took no follow-up action to determine the impact of the error.

I would be pleased to respond to committee questions.

Attachments



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Bill Graves
Governor

Charles E. Simmons
Secretary

NEWS RELEASE

FOR IMMEDIATE RELEASE
January 26, 2001

FOR MORE INFORMATION CONTACT:
Bill Miskell
Public Information Officer
(785) 296-5873

KANSAS DEPARTMENT OF CORRECTIONS ANNOUNCES ERROR IN SENTENCE DISCHARGE COMPUTATION

Kansas Secretary of Corrections Charles E. Simmons today announced that an error occurred in the entering of data involving the amount of good time awarded to Reginald Carr, resulting in Carr's discharge from post-release supervision on December 1, 2000, rather than on June 1, 2001.

"This should not have happened," Simmons said. "We are taking a number of steps to confirm this is an isolated incident and to minimize the chances of such an incident occurring in the future."

"Reginald Carr's discharge from supervision was the result of human error made by two employees of the Kansas Department of Corrections," Simmons said.

Prior to enactment of Senate Bill 323 during the 2000 Legislative Session, the latest date that Reginald Carr could have been discharged from supervision was June 1, 2002. If he had earned and retained all available good time credits while under post-release supervision, the earliest date he could have been discharged from supervision was June 1, 2001.

Following the enactment of Senate Bill 323, the latest date that Reginald Carr could have been discharged from supervision was June 1, 2001. If he had earned and retained all available good time credits, the earliest date he could have been discharged from supervision was December 1, 2000.

“Based upon a review of data contained in the Department’s Offender Management Information System, Reginald Carr’s discharge initially appeared to be the result of the conversion of his period of post-release supervision pursuant to the provisions of Senate Bill 323 which was approved during the 2000 Legislative Session,” Simmons said. “A detailed review of all relevant documents has confirmed that if the award of good time credits had been accurately recorded and entered into the data system, Reginald Carr’s post-release supervision period would not have ended for another 180 days.”

Simmons provided the following chronology of events:

On September 28, 2000 Reginald Carr’s supervising parole officer completed a worksheet used for determining the award of good time. That document contained two spaces for entering the number of days of good time credits to be awarded or withheld for the first six months of supervision following Carr’s release from the Hutchinson Correctional Facility on March 28, 2000. In one of those spaces, the supervising parole officer correctly entered that zero days of good time should be awarded. In the second space, he mistakenly entered that 180 days of good time (the maximum allowable by law) should be awarded, rather than withheld. That document was forwarded to a parole supervisor who was responsible for entering the information into the OMIS.

On October 2, 2000 the parole supervisor entered 180 days of good time credits earned into the OMIS, instead of the zero days of good time actually earned. Carr’s sentence discharge date was then automatically calculated by the computer. Because the good time award was not correctly entered, the computer system calculated Reginald Carr’s sentence discharge date to be December 1, 2000, rather than the correct date of June 1, 2001.

On November 22, 2000 the Department of Corrections issued a warrant for Reginald Carr’s arrest on an allegation that he had violated the conditions of his post-release supervision due to local charges in Ford County.

On November 28, 2000 Carr was taken into custody and held in the Ford County Detention Center.

On December 1, 2000 the parole violation warrant was withdrawn and Carr was discharged from post-release supervision based upon the incorrect good time data entered into the OMIS.

In accordance with the Kansas Civil Service Act, disciplinary action involving the two employees involved in this case has been initiated.

Additional safeguards and checks have been initiated.

A case file review of a random sample of 20% of all offenders currently under supervision or who have been discharged from supervision since September 1, 2000 has been ordered to determine if other problems in the entering of good time credits can be identified. The need for further remedial action will be evaluated based upon the findings of the random sample file review.

The worksheet used by parole officers for determining good time awards has been modified. The parole officer will continue to complete the document and forward it to the parole supervisor, who will enter the information into the OMIS. The parole supervisor will then return the worksheet to the parole officer, who will now confirm that the correct number of days of good time credits have been entered into the data system, and acknowledge the accuracy of the information.

“The Vision Statement of the Kansas Department of Corrections is ‘A Safer Kansas Through Effective Correctional Services’,” Simmons said. “Our efforts to provide a safer Kansas did not meet our expectations in this case. This case demonstrates that effective correctional services include responsibilities as routine as proper recording and entering of basic information. Each employee of the Department of Corrections must recognize the most routine tasks may have an impact on public safety, and that we are accountable for the proper administration of all of our responsibilities, no matter the level of difficulty or discretion involved.”

KANSAS DEPARTMENT OF CORRECTIONS
GOOD TIME AWARD RECORD FOR SB 360 OFFENDERS

Work Sheet

ILLUSTRATION

Date: _____

Facility: _____ Office: _____

Offender Name: _____ Number: _____

Last Date of Admission to Facility: _____

Award Period: _____ to _____

The Parole Officer recommends that 0 days* of the 180 days maximum possible amount of good time be awarded. Since the last Good Time Award Record, 180 days have been withheld by the Parole Officer.

* If the maximum amount was not recommended, briefly state why.

CALCULATION OF SENTENCE DISCHARGE DATE

SENTENCE DISCHARGE DATE from previous award: 6/1/01

Minus number of days awarded this period: 180

NEW SENTENCE DISCHARGE DATE: 6/1/01

This number was in error. should have been 0

_____ Disapproved _____ Approved

Parole Officer

Parole Supervisor

The above computation has been verified and the entries made to the Sentence Discharge Date, and the computer database updated by:

Records Clerk/Designee

Date

Distribution: original - file
copy - offender



State of Kansas

KANSAS SENTENCING COMMISSION

Honorable Paul E. Miller, Chairman
District Attorney Paul Morrison, Vice Chairman
Barbara S. Tombs, Executive Director

MEMORANDUM

TO: House Judiciary Committee

FROM: Barbara Tombs, Executive Director

SUBJECT: Testimony HCR 5002

DATE: February 12, 2001

The Kansas Sentencing Guidelines Act was implemented on July 1, 1993, and designated a determinate sentencing structure for the state of Kansas. Among the underlying goals of the Guidelines was the premise that longer sentences be imposed for violent, chronic offenders and that nonviolent offenders be punished appropriately within the community, thus protecting public safety while maximizing limited state resources.

The determinate sentencing model adopted by the state utilizes dual sentencing grids that differentiate between Drug and Nondrug felony offenses. Each sentencing grid contains an incarceration line, which distinguishes between presumptive prison and nonprison sentences. The vertical axis of the sentencing grid displays the offense severity level, which is defined by statute, and the horizontal axis indicates the offender's criminal history category. At the intersection point on the sentencing grid of the vertical and horizontal axis is a grid cell, which indicates the sentencing range for a specific offender. The grid cell contains a mitigated, standard and aggravated sentence length in months. An offender can earn "good time" credits that are deducted from the imposed period of incarceration but added to the offender's period of postrelease supervision.

The Sentencing guidelines also designate certain types of murder and treason as Off-grid offenses that set forth a minimum period of incarceration, but release is determined by the Parole Board. Finally, a Non-grid felony classification is assigned to felony crimes that are not given a specific severity level by statute but retain a felony classification. For Non-grid felonies, incarceration occurs at the county level. Felony offenses are categorized as either person or non-person felonies. Person felonies include offenses that result in direct harm or threat of harm to one's person and are viewed as the more serious classification, as indicated in the criminal history scores. Non-person felonies represent offenses that are primarily property or financial in nature.

Parole was abolished under guidelines and replaced with a mandatory period of postrelease supervision for all offenders released from prison. In addition, the guidelines allow for a subsequent period of incarceration for offenders who violate the conditions of their postrelease supervision.

CHANGES TO SENTENCING GUIDELINES

There have been four basic types of changes that have occurred to the guidelines since their implementation in 1993. These changes have included: (1) modifying sentence lengths by specific severity level; (2) reclassification of misdemeanor offenses to felony offenses/ creation of new felony offenses; (3) elevating severity levels for specific offenses; and (4) changes in the periods of supervision. In addition, several offenses have been reclassified from a non-person felony to a person felony status.

Modifying Sentence Lengths

Attachment A presents the sentence lengths that were implemented on July 1, 1993, the effective date of the Sentencing Guidelines Act. The current lengths of sentences are presented in Attachment B. The most pronounced changes to sentence lengths are seen on severity levels 1 thru 3 of the Non-drug grid.

Under the original guidelines, the longest sentence for a non-drug grid crime was 17 years for a severity level one offense. In only three years, by July 1, 1996, that same 17-year sentence had been increased to 68 years (Attachment C). This increase was the result of legislative action that doubled all sentences on non-drug grid severity levels 1 through 5, criminal history categories A and B on July 1, 1994 and doubled again all sentence lengths on severity level 1 and 2, all criminal history categories on July 1, 1996. It should be noted that during that same time period the longest off-grid sentence for murder was designated as 40 years, thus an offender could actually receive a longer sentence for attempted first degree murder than for actually committing a first degree murder.

Legislation was passed in 1999 that decreased sentence lengths for severity level 1 and 2 offenses by twenty percent across all criminal history categories. This legislation designated the most serious severity one offense punishable by a 54.4 year sentence, slightly over three times as long as the original 1993 sentence length of 17 years.

These sentence increases across severity levels and criminal history categories are significant given that sentencing guidelines have only been in effect for seven years, with the most significant increases occurring within the first three years of their enactment. In addition, the notable increases in sentences on these severity levels have long-term impacts on correctional resource needs since sentence lengths have a direct correlation with the increase in the number of prison beds required in future years.

Reclassification of Misdemeanor Offenses and the Creation of New Felony Offenses

A review of the criminal statutes indicates that since the sentencing guidelines were enacted on July 1, 1993, there have been 34 new felonies added to our criminal code. Attachment D lists the individual felonies and the year created. In addition, there have been three new non-grid felonies and one new off-grid felony added to the criminal code. It should be noted that the new Intentional 2nd Degree Murder off-grid felony was reclassified in 1999 as a severity level one offense and the new Non-grid felony Criminal Deprivation of Property – Motor Vehicle was also reclassified as a misdemeanor in 1999.

Since 1993, thirteen misdemeanors have been elevated to felony classification, thus making these offenses subject to the provision of the Sentencing Guidelines Act. Most misdemeanors elevated to felony status were class A and B misdemeanors. However, there were some nonperson misdemeanors that were reclassified as person felonies, such as Violation of the Consumer Credit Code, Identity Theft and other financial types of offenses.

In 1999, two severity level nine, non-person felonies, Driving While Suspended and Habitual Violator were reclassified as misdemeanor offenses.

These new offenses and reclassifications of previous misdemeanor offenses have had the net effect of increasing the number of offenders subject to sentencing under the guidelines. Since the vast majority of these offenses fall beneath the incarceration line they have not had a direct impact on prison admissions. However, offenders convicted of these offenses have had a significant impact on prison admissions resulting from condition violations of their presumptive non-prison sentence.

Elevation of Severity Level

Legislative action has elevated or increased the statutorily defined severity level for 10 felony offenses (Attachment C). By elevating the severity level of a specific offense there can be one of two impacts. First, the length of sentence is increased due to the fact that a higher severity level will designate a longer sentence. Second, by elevating severity levels a sentence for a specific offense can be moved from a presumptive nonprison sentence to a presumptive prison sentence if the elevated severity level is above the incarceration line on the sentencing grid. This change has a direct impact on prison admissions and the need for additional prison beds. It should be noted that there have been no severity levels decreased for an offense since the passage of the Guidelines Act.

Modifications to Periods of Supervision

There are two types of supervision controlled by sentencing guidelines: Probation and Postrelease. Probation includes a period of supervision for an offender in lieu of a prison sentence and is indicated by sentences falling within grid cells that are below the incarceration line on the sentencing grid. Postrelease supervision is defined as a period of supervision an offender is subject to once the prison portion of the sentence is fulfilled. The length of both types of supervision are statutorily defined.

When guidelines were enacted, the statutorily defined period of postrelease supervision was set at 24 months for nondrug severity levels 1-6 and drug severity levels 1-3. Postrelease supervision

periods for nondrug severity levels 7-10 and drug severity level 4 were set at 12 months. In 1995, the periods of postrelease supervision were increased from the original months designated in the Sentencing Guidelines Act. In addition, the term of imprisonment for a condition violation was also increased from the original 90 days to 180 days, with the ability to earn back to 90 days through "good time" credits.

In 1995, "good time" earnings were also adjusted from a maximum of 20% of an offender's sentence to a maximum of 15% of the sentence. The result of that policy change was that every offender would serve longer prison time on a given sentence. The impact is marginal on relatively short sentences, however, the impact can be significant on sentences five years or longer.

Thus, within two years of the enactment of sentencing guidelines, some very significant changes were made to the period of postrelease supervision. Except for the limited retroactivity provision of the guidelines, an offender had to commit his/her offense on or after July 1, 1993, be arrested, convicted and serve the underlying prison sentence before being released to a period of postrelease supervision. By 1995, only a very limited number of offenders were subject to postrelease supervision. However, periods of postrelease supervision were increased significantly.

The sum effect of the changes imposed relating to postrelease supervision and incarceration time for condition violators of postrelease supervision resulted in a net increase in the pool of offenders subject to revocation and subsequent incarceration.

In 2000, the periods of postrelease supervision were statutorily changed to closely mirror the original periods of postrelease supervision contained in the original Guideline Act. However, the period of postrelease supervision for the more serious severity levels, non-drug severity level 1-4 and drug severity level 1-2, remain at the increased length of 36 months.

The recommended probation periods contained within the original Guidelines Act were either 24 or 36 months depending on the specific severity level, with a 60-month probation period for sex offenders. In 2000, probation periods were staggered by individual severity levels to reflect the seriousness of the offenses to the offender's need for supervision. Current probation periods are 12-18-24 and 36 months depending on the assigned severity level. The more serious the offense, as indicated by the severity level, the longer the period of supervision or probation required. This change allows for more intense supervision of offenders who pose the greatest threat to public safety.

Summary of Impact of Changes

The Sentencing Guidelines have been in effect for only seven years. Attachment E outlines the changes that have been enacted by individual year. Anytime a major policy change is implemented, there will undoubtedly be adjustments and changes that will be necessary. However, the danger of constant and continual changes and modifications is that the underlying policy becomes ineffective and threatened. It is difficult, if not impossible, to evaluate whether a policy is effective or ineffective if the policy is continually in a state of change. Less than one year after the guidelines were implemented major changes were enacted. In reality, within a single year a limited number of

offenders had even been sentenced under the guidelines. It appears as though efforts were being employed to fix something before a determination could be made as to whether it needed fixing.

There is no one change that has been enacted, that by itself would threaten the integrity of the Sentencing Guidelines Act. Some of the changes have had a more significant impact than others, such as the doubling of sentences by severity level and increasing postrelease supervision periods. What is of greater concern is the cumulative effect of the various changes that have been previously outlined. Often the impact of the changes introduced is not realized either fiscally or operationally until some point in the future. For example, the reclassification of nonperson felonies to person felonies impact criminal history categories and simultaneously sentence lengths that are not realized until a subsequent conviction at some point in the future.

It is important to review proposed changes to the guidelines in the context of the original goals of the guidelines. Incarceration should be reserved for the most serious and chronic offenders. This goal served as the basis for the development of the guidelines and should continue to serve as the basis of modifications and changes. Certainly there are offenders who have committed crimes that should never be released from prison. However, the really difficult task is to develop a rational sentencing policy that balances public safety with the effective use of the state's limited resources. It is reality that we will never be able to incarcerate every individual who commits a crime. Being smart about crime is just as important as being tough on crime.

Over the past 15 years it has been commonly viewed by many that the only acceptable form of punishment for criminal activity is incarceration. Incarceration carries a very high cost not only in fiscal resources but also in the residual effects to families, communities and society as a whole. The frustration felt by society and victims that perpetrators of violent crimes were sentenced to inappropriately short sentences has been addressed by sentencing guidelines. What we have failed to address is the development of punishment options for nonviolent offenders that make these offenders accountable and responsible to both society and their victims. The elevation of a severity level or the doubling of sentence length has little impact on an offender's perception of accountability for the offense he or she has committed.

The Sentencing Commission has devoted a considerable amount of time and resources in developing the tools and analytical skills necessary to do comprehensive and factual evaluations of sentencing policy. The state of Kansas is in a much better position than many states to undertake this type of analysis of its policy due to the creation of a comprehensive statewide sentencing database. The Commission has made an ongoing effort to provide valid and reliable information upon request to assist in the development of good public policy. However, the numerous and ongoing changes to the Sentencing Guidelines have placed serious limitations in providing the types of trend and broad overview analysis that are necessary to evaluate the effectiveness of the sentencing guidelines. The moratorium proposed in HCR 5002 would provide the opportunity for a comprehensive evaluation of the sentencing guidelines and the development of recommendations that would identify and address necessary changes or modifications. The Sentencing Commission respectfully requests the favorable passage of HCR 5002.

SENTENCING RANGE - NONDRUG OFFENSES ATTACHMENT A 1993 GRID

2-6

Category→	A			B			C			D			E			F			G			H			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 + Misdemeanors			1 Misdemeanor No Record		
I	204	194	185	193	183	173	178	170	161	167	158	150	154	146	138	141	134	127	127	122	115	116	110	104	103	97	92
II	154	146	138	144	137	130	135	128	121	125	119	113	115	109	103	105	100	95	96	91	86	86	82	77	77	73	68
III	103	97	92	95	90	86	89	85	80	83	78	74	77	73	68	69	66	62	64	60	57	59	55	51	51	49	46
IV	86	81	77	81	77	72	75	71	68	69	66	62	64	60	57	59	56	52	52	50	47	48	45	42	43	41	38
V	68	65	61	64	60	57	60	57	53	55	52	50	51	49	46	47	44	41	43	41	38	38	36	34	34	32	31
VI	46	43	40	41	39	37	38	36	34	36	34	32	32	30	28	29	27	25	26	24	22	21	20	19	19	18	17
VII	34	32	30	31	29	27	29	27	25	26	24	22	23	21	19	19	18	17	17	16	15	14	13	12	13	12	11
VIII	23	21	19	20	19	18	19	18	17	17	16	15	15	14	13	13	12	11	11	10	9	11	10	9	9	8	7
IX	17	16	15	15	14	13	13	12	11	13	12	11	11	10	9	10	9	8	9	8	7	8	7	6	7	6	5
X	13	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

LEGEND	
Presumptive Probation	
Border Box	
Presumptive Imprisonment	

Recommended probation terms are:

- 36 months for felonies classified in Severity Levels 1 - 5
- 24 months for felonies classified in Severity Levels 6 - 10

Postrelease terms are:

- 24 months for felonies classified in Severity Levels 1 - 6
- 12 months for felonies classified in Severity Levels 7 - 10

SENTENCING RANGE - DRUG OFFENSES

Category ⇒	A	B	C	D	E	F	G	H	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	Misdemeanor 2+	Misdemeanor 1 No Record
I	204 194 185	196 186 176*	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

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LEGEND
Presumptive Probation
Presumptive Imprisonment

Recommended probation terms are:

36 months for felonies classified in Severity Levels 1 - 3
24 months for felonies classified in Severity Level 4

Postrelease supervision terms are:

For felonies committed before 4/20/95

24 months for felonies classified in Severity Levels 1 - 3
12 months for felonies classified in Severity Level 4

For felonies committed on or after 4/20/95

36 months for felonies classified in Severity Levels 1 - 3
24 months for felonies classified in Severity Level 4

SENTENCING RANGE - NONDRUG OFFENSES

Category→	A	B	C	D	E	F	G	H	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	Misdemeanor 2+	Misdemeanor 1 No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 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

LEGEND									
Presumptive Probation									
Border Box									
Presumptive Imprisonment									

Recommended probation terms are:
 36 months for felonies classified in Severity Levels 1 - 5
 24 months for felonies classified in Severity Levels 6 - 10

Postrelease terms are:
For felonies committed before 4/20/95
 24 months for felonies classified in Severity Levels 1 - 6
 12 months for felonies classified in Severity Level 7 - 10

For felonies committed on or after 4/20/95
 36 months for felonies classified in Severity Levels 1 - 6
 24 months for felonies classified in Severity Level 7 - 10

SENTENCING RANGE - DRUG OFFENSES

ATTACHMENT B

2000 GRID

Category →	A	B	C	D	E	F	G	H	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+ Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Recommended probation terms are:

36 months for felonies classified in Severity Levels 1 - 3

24 months for felonies classified in Severity Level 4

Postrelease supervision terms are:

For felonies committed before 4/20/95

24 months for felonies classified in Severity Levels 1 - 3

12 months for felonies classified in Severity Level 4

For felonies committed on or after 4/20/95

36 months for felonies classified in Severity Levels 1 - 3

24 months for felonies classified in Severity Level 4

SENTENCING RANGE - NONDRUG OFFENSES

Category⇒	A	B	C	D	E	F	G	H	I
Severity Level I	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
I	816 776 740	772 732 692	356 340 322	334 316 300	308 292 276	282 268 254	254 244 230	232 220 208	206 194 184
II	616 584 552	576 548 520	270 256 242	250 238 226	230 218 206	210 200 190	192 182 172	172 164 154	154 146 136
III	206 194 184	190 180 172	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 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

LEGEND

Presumptive Probation
Border Box
Presumptive Imprisonment

Recommended probation terms are:

- 36 months for felonies classified in Severity Levels 1 - 5
- 24 months for felonies classified in Severity Levels 6 - 10

Postrelease terms are:

For felonies committed before 4/20/95

- 24 months for felonies classified in Severity Levels 1 - 6
- 12 months for felonies classified in Severity Level 7 - 10

For felonies committed on or after 4/20/95

- 36 months for felonies classified in Severity Levels 1 - 6
- 24 months for felonies classified in Severity Level 7 - 10

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SENTENCING RANGE - DRUG OFFENSES

ATTACHMENT C

1996 GRID

Category →	A	B	C	D	E	F	G	H	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+ Misd.	1 Misd. No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
III	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
IV	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

Recommended probation terms are:

36 months for felonies classified in Severity Levels 1 - 3

24 months for felonies classified in Severity Level 4

Postrelease supervision terms are:

For felonies committed before 4/20/95

24 months for felonies classified in Severity Levels 1 - 3

12 months for felonies classified in Severity Level 4

For felonies committed on or after 4/20/95

36 months for felonies classified in Severity Levels 1 - 3

24 months for felonies classified in Severity Level 4

ATTACHMENT E

TIME LINE OF SELECTED EVENTS RELATED TO THE K.S.G.A.

July 1, 1993

Kansas Sentencing Guidelines Act became law.

March 24, 1994

The limited retroactivity provision of the KSGA found at K.S.A. 1993 Supp. 22-3717(f) was repealed. [This provision had allowed individuals on parole from indeterminate sentences to have their indeterminate sentences converted to a determinate sentence under the KSGA if convicted of a new crime while on parole.] Effective March 24, 1994, K.S.A. 1993 Supp. 22-3717(f) was amended so that preguidelines sentences would not be converted if new crimes were committed while on parole.

K.S.A. 1993 Supp. 21-4603d and 22-3717 were amended to eliminate the requirement that felony probation, parole, postrelease supervision, community corrections, or conditional release must be revoked due to a new conviction for a crime committed on one of these statuses before a nondeparture term of imprisonment may be imposed for the new conviction if a nonprison sanction is otherwise the presumed disposition.

July 1, 1994

Felony DUI offenses committed on or after this date are nongrid crimes with no guidelines severity level, and DUI sentencing is governed exclusively by the penalty provisions of K.S.A. 1994 Supp. 8-1567; a felony DUI conviction can no longer result in a state prison sentence.

The presumptive durations of sentences for crimes committed on or after this date for cases which fall in severity levels 1 thru 5 on the nondrug grid and within criminal history categories A and B are doubled.

April 20, 1995

For crimes committed on or after this date, inmates can earn only 15% "good time" by which the prison portion of their guidelines sentence can be reduced. Prior to this date an inmate could earn up to a 20% reduction for "good time." [Amending K.S.A. 21-4706 and 21-4722.]

For crimes committed on or after this date, the term of imprisonment for technical violations of the conditions of postrelease supervision will be 180 days, subject to a reduction of up to 90 days for good behavior. [K.S.A. 75-5217.]

For crimes committed on or after this date, the postrelease supervision term for crimes in nondrug severity levels 1 thru 6 and drug severity levels 1 thru 3 will be 36 months; the term for crimes in nondrug severity levels 7 thru 10 and drug severity level 4 will be 24 months. The postrelease term can be reduced by up to 12 months for good behavior. [Amending K.S.A. 22-3717.]

July 1, 1996

All presentence investigation, journal entry and journal entry of probation revocation forms are required to be on a form approved by the Kansas Sentencing Commission.

Presumptive sentence lengths for all nondrug grid severity level 1 and 2 sentences are doubled. [Amending K.S.A. 21-4704.]

"Border Boxes" are added to the drug grid at levels 3-E, 3-F, 3-G, 3-H, 3-I, 4-E and 4-F.

The pre-guidelines sentence conversion provision under subsection (c) of K.S.A. 21-4705 commonly referred to as the "small sale of marijuana exception" was repealed.

May 29, 1997

The sentencing court is prohibited from distinguishing between cocaine base (904 1 L000) and cocaine hydrochloride (904 1 L005) when sentencing within the sentencing range of the grid block. [Amending K.S.A. 21-4705(c).]

July 1, 1998

K.S.A. 1997 Supp. 22-3717 is amended to require that the conviction carrying the longest postrelease supervision period takes precedence when deciding which postrelease term will be controlling in a multiple conviction case. [The 60 month postrelease term for sex crimes may be imposed in a multiple conviction case, even though the sex crime may not have been the crime with the highest severity level.]

Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 4-E or 4-F of the sentencing guidelines grid for drug crimes, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center. **K.S.A. 1998 Supp. 21-4603d(a).**

July 1, 1999

The felony provision for a third or subsequent conviction for driving on a suspended license under K.S.A. 8-262(a)(1)(C) is eliminated. Hereafter a second or subsequent conviction for driving while suspended under K.S.A. 8-262 will be a class A, nonperson misdemeanor.

The penalty for a conviction under K.S.A. 8-287, the "Habitual Violator" statute, is changed from a severity level 9 felony to a class A, nonperson misdemeanor.

The crime of intentional murder in the second degree, K.S.A. 21-3402(a) is moved from an off-grid (Hard 10) offense to a nondrug grid severity level 1, person felony.

K.S.A. 1998 Supp. 21-4603d(a) is further amended to create a new special sentencing rule that provides the court with the discretion to sentence an offender to imprisonment for a new conviction committed while the offender was on felony bond, even if the offender's new crime and criminal history classification would otherwise presume a nonprison sentence.

Further, a decision by the court to order an imprisonment sentence in this type of case does not constitute a departure.

K.S.A. 21-4638 is likewise amended to allow for the sentence length increase from the "Hard 40" to the "Hard 50." This amended statute makes it clear that a person sentenced to the "Hard 50" shall not be eligible for parole prior to serving 50 years imprisonment, and such 50 years imprisonment shall not be reduced by the application of good time credits.

Important changes to K.S.A. 21-4704, included: (1) The presumptive sentence lengths for crimes committed on or after July 1, 1999, which have sentences on severity levels 1 and 2 of the nondrug grid are decreased by 20 percent; (2) the presumptive sentence lengths for crimes committed on or after July 1, 1999, which have sentences on severity level 3 of the nondrug grid are increased by 20 percent; (3) subsection (i) of the statute is amended to clarify that sentences for felony domestic battery, K.S.A. 21-3412(c)(3), shall not be served in a state facility in the custody of the secretary of corrections; and (4) a new subsection (l) is added to the statute which creates a new special sentencing rule requiring that a sentence for the commission of the burglary of a residence, K.S.A. 21-3715(a), shall be presumed imprisonment if the person being sentenced has a prior conviction for burglary of a residence or non-residence under subsections (a) or (b) of K.S.A. 21-3715 or a prior conviction under K.S.A. 21-3716.

The criminal history aggregation factor for prior convictions for assault, or juvenile adjudications for assault, found at K.S.A. 21-4711(a) is clarified to state that "every three prior adult convictions or juvenile adjudications of assault as defined by K.S.A. 21-3408 and amendments thereto occurring within a period *commencing* three years *prior to the date of conviction for the current crime of conviction* shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes."

K.S.A. 1998 Supp. 22-3717(b)(2) is amended to increase the length of the off-grid 15 year "life" sentence to 20 years before an offender is eligible for parole for qualifying crimes committed on or after July 1, 1999. Subsection (b)(3) of K.S.A. 1998 Supp. 22-3711 is also amended, for the purpose of specifying that the prior off-grid "Hard 10" life sentence for intentional second degree murder shall not apply to crimes committed on or after July 1, 1999.

K.S.A. 1999 Supp. 21-3522 was created and has been referred to as the "Romeo and Juliet" statute. This new, very specific statute, known as Unlawful Voluntary Sexual Relations, applies to situations where there is voluntary sexual contact between a child who is 14 years of age but less than 16 years of age and an offender who is less than 19 years of age and less than four years of age older than the child. The statute also requires that the child and the offender be the only parties involved in the sexual contact and that the child and the offender are members of the opposite sex. In such cases, if the voluntary sexual contact involves sexual intercourse, the offender will be guilty of a severity level 8, person felony. If the voluntary sexual contact involves sodomy, the offender will be guilty of a severity level 9, person felony. If the voluntary sexual contact involves lewd fondling or touching, the offender will be guilty of a severity level 10, person felony.

In light of the fact that K.S.A. 1999 Supp. 21-3522 is not listed as a crime requiring registration under the Kansas Offender Registration Act at K.S.A. 22-4902, an offender convicted under this section would not be required to register under the Act.

K.S.A. 1998 Supp. 65-4159(b) is amended to provide that a violation of the prohibition against the manufacture of a controlled substance shall be a drug grid severity level 1 felony. (Previously a first conviction under K.S.A. 1998 Supp. 65-4159 was a drug grid severity level 2 felony, and a second or subsequent conviction carried a drug grid severity level 1 penalty.)

K.S.A. 1998 Supp. 21-4705 is amended by the addition of a new subsection (e) which creates a special rule for the sentencing of second or subsequent convictions for the manufacture of a controlled substance under K.S.A. 65-4159. Under this special sentencing rule a second or subsequent violation will be a drug grid severity level 1 offense, but the judge will be required to double the presumptive sentence length. However, the special rule permits the sentencing judge to order a reduction of not to exceed 50 percent of the mandatory sentence length increase if mitigating circumstances exist. Any decision made by the court regarding the allowed reduction will not be considered a departure and will not be subject to appeal.

May 25, 2000

House Substitute for Senate Bill 323 contained a number of significant changes to the Kansas Sentencing Guidelines and related sentencing laws during the 2000 Kansas legislative session. A summary of the changes are outlined below:

Increase in County Jail Time – The amount of time an offender can be sentenced to county jail as a condition of an original probation is increased from the current 30 days to 60 days. In addition, an offender may also be sentenced to 60 days jail time for each probation revocation.

- ◆ The increase in county jail time is not retroactive. This change is effective upon publication in the Kansas Register.

Mandatory Placement in Community Corrections - Condition probation violators are required to be placed in a community corrections program prior to a revocation resulting in an offender's placement in a state correctional facility.

- ◆ There is an option for the court to make a public safety exception for direct placement in a state correctional facility.
- ◆ The provision requiring mandatory placement in Community Corrections is not retroactive. This change is effective upon publication in the Kansas Register.

Modified Periods of Probation – Probation periods for lower severity levels are modified as follows:

Drug Severity Level 3	From 36 Months to 18 Months
Nondrug Severity Level 8	From 24 Months to 18 Months
Nondrug Severity Level 9	From 24 Months to 12 Months
Nondrug Severity Level 10	From 24 Months to 12 Months
Drug Severity Level 4	From 24 Months to 12 Months

Probation periods for all other severity levels remain unchanged. There is a public safety provision that allows the court to impose a longer probation period, which will not be considered a departure.

- ◆ This provision of the bill is retroactive and will apply to any offender sentenced under the Sentencing Guidelines Act.
- ◆ The bill sets forth September 1, 2000 as the date by which all conversions or modification to prior probation sentences must be completed.
- ◆ This change is effective upon publication in the Kansas Register.

No Period of Postrelease Supervision for Conditional Probation Violators- Condition probation violators who are subject to a probation revocation that results in the imposition of the underlying prison sentence to be served in a state correctional facility, will not be placed on a period of postrelease supervision upon their release from prison.

- ◆ This provision will not apply to an offender who receives a nonprison sentence as the result of a dispositional departure or is sentenced for a sexually violent offense as defined in K.S.A. 22-3717.
- ◆ This provision will not apply to an offender who receives a nonprison sentence whose sentence falls within a border box on either sentencing grid.
- ◆ This provision will not apply to an offender whose revocation to prison was the result of a conviction for a new misdemeanor or felony offense.
- ◆ The Department of Corrections shall review all persons in custody as a result of a nonprison sanction revocation and discharge all such offenders by September 1, 2000.
- ◆ This provision of the bill is retroactive and will apply to any offender sentenced under the Sentencing Guidelines Act and will be effective upon publication in the Kansas Register.

Modified Periods of Postrelease Supervision - Established periods of postrelease supervision are modified as follows:

Non-drug Severity Levels 5-6	From 36 Months to 24 Months
Drug Severity Level 3	From 36 Months to 24 Months
Non-drug Severity Levels 7-10	From 24 Months to 12 Months
Drug Severity Level 4	From 24 Months to 12 Months

- ◆ Unless indicated above, all remaining periods of postrelease supervision remain unchanged. The modified periods of postrelease supervision will be eligible for the same good time reduction in supervision periods as set forth in current statute.
- ◆ The bill contains a phase-in implementation period for conversion of periods of postrelease supervision as follows:

Nondrug Severity Levels 9 and 10	By September 1, 2000
Drug Severity Level 4	By September 1, 2000
Nondrug Severity Level 7 and 8	By November 1, 2000
Nondrug Severity Level 5 and 6	By January 1, 2001
Drug Severity Level 3	By January 1, 2001

- ◆ This provision of the bill is retroactive and applicable to any offender sentenced under the Sentencing Guidelines Act and will be effective upon publication in the Kansas Register.

Target Population for Community Corrections – This provision of the bill defines the target offender population for placement in Community Corrections programs. Adult offenders convicted of felony offenses who meet one of the following criteria will be eligible for placement in community corrections:

- ◆ Offenders whose sentence falls within the designated border boxes on both the drug and nondrug sentencing grids;
 - ◆ Offenders whose sentence falls within nondrug grid boxes 6-H, 6-I, 7-C, 7-D, 7-E, 7-G, 7-H, or 7-I;
 - ◆ Offenders whose severity level and criminal history classification designate a presumptive prison sentence but receive a nonprison sentence as the result of a dispositional departure;
 - ◆ Offenders who receive a nonprison sentence and are convicted of a severity level 7 or higher sex offense as defined in K.S.A. 22-4902, regardless of the manner in which the sentence is imposed;
 - ◆ Any offender who violates conditions of release or assignment or presumptive nonprison sentence prior to revocation to a state correctional facility;
 - ◆ Any offender determined to be high risk/high needs or both by the use of a statewide mandatory standardized risk assessment tool or instrument validated for community corrections placement. A validated risk assessment tool will be provided by the Department of Corrections;
 - ◆ Any offender who successfully completes an assignment to a conservation camp program.
-
- ◆ The bill contains a provision that allows the placement of juvenile offenders in Community Corrections programs if the local community corrections advisory board approves. However, grants from the community corrections fund administered by the Secretary of Corrections can not be used for this service.
 - ◆ The bill contains a public safety provision that allows direct placement in prison if the court sets forth with particularity why placement in community corrections would jeopardize public safety or would not be in the best interest of the offender.
 - ◆ This provision of the bill is not retroactive and shall be effective upon publication in the Kansas Register.

New felonies after 1993:

1. Unlawful Sexual Relations: 21-3520: Nondrug 10: (1994)
2. Aggravated Abandonment of a Child: 21-3604a: Nondrug 5: (1994)
3. Criminal Use of Explosives; intend for crime, put public safety officer at risk: Nondrug 6: (1994)
4. Welfare Fraud: 39-0717: Nondrug levels 7 and 9: (1994)
5. Insurance; fraudulent acts: 40-2,118: Nondrug levels 7, 8, 9: (1994)
6. Worker's Compensation; filing false statements: 44-5,125: Nondrug 9: (1994)
7. Injury to a Pregnant Woman in the Commission of a Felony: 21-3440: Nondrug 4: (1995)
8. Injury to a Pregnant Woman in the Commission of Certain Misdemeanors or DUI: 21-3440: Nondrug 5: (1995)
9. Securities: intentional filing of false or misleading statements: 17-1264: Nondrug 10: (1994)
10. Securities: intent violate rule or regulation adopted for Securities Act: 17-1267: Nondrug 7: (1995)
11. Knowingly Violate Air Quality Control Act: 65-3026: Nondrug 10: (1995)
12. Medicaid Fraud; false claim, statement, representation: 21-3846: Nondrug levels 7 and 9: (1996)
13. Medicaid Fraud; offering false record to audit, etc.: 21-3846: Nondrug 9: (1996)
14. Medicaid Fraud; destruction of record, concealment; 21-3849: Nondrug 9: (1996)
15. Involuntary Manslaughter during DUI: 21-3442: Nondrug 4: (1996)
16. Battery against City/County Correctional Officer or Employee: 21-3413(a)(5): Nondrug 7: (1996)
17. Rape; knowingly misrepresenting sexual intercourse as medically necessary: 21-3502(a)(3): Nondrug 2: (1996)
18. Rape; knowingly misrepresenting sexual intercourse within legal authority: 21-3502(a)(4): Nondrug 2: (1996)
19. Criminal Discharge of a Firearm at Occupied Dwelling or Vehicle; "great bodily harm": 21-4219(b): Nondrug 3: (1996)
20. Oil & Gas; removal of seal without KCC approval: 55-162(e): Nondrug 9: (1996)
21. Knowing and Intentional Receive Proceeds or Engage in Transactions Derived from Violation of Uniform Controlled Substances Act: 65-4142(e): Levels 4D, 3D, 2D, 1D: (1996)
22. Drugs; possess paraphernalia w/intent plant, grow harvest, etc. any controlled substance:
65-4251: Level 4D: (1996)
23. Pyramid Promotional Scheme; 21-3762: Nondrug 9: (1997)
24. Unlawful Administration of a Substance; 21-3445: Nondrug 7: (1998)
25. Unlawful Voluntary Sexual Relations; lewd fondling or touching; 21-3522; Nondrug 10: (1999)
26. Unlawful Voluntary Sexual Relations; sodomy; 21-3522; Nondrug 9: (1999)
27. Unlawful Voluntary Sexual Relations; intercourse; 21-3522; Nondrug 8, person: (1999)

28. Possession of Chemicals as Precursor to Methamphetamine; with intent to manufacture; 65-7006; D1: (1999)
29. Unlawful Endangerment; build, erect device to cause injury; 21-4220; Nondrug 8, nonperson: (1999)
30. Unlawful Endangerment; device causes physical injury; 21-4220; Nondrug 7, person: (1999)
31. Unlawful Endangerment; device causes serious physical injury; 21-4220; Nondrug 5, person: (1999)
32. Unlawful Possession of Anhydrous Ammonia; 65-4152(a)(4); D4: (1999)
33. Counterfeiting; HB2596; three levels, depending on value of merchandise and how many prior convictions; class A misdemeanor, Nondrug 9 and Nondrug 7: (2000)
34. Unlawful Manufacture or Sale of Theft Detection Shielding Device or Theft Detection Device Remover; HB 2805, Sec. 1; Nondrug 9: (2000)

Felonies with severity level raised after 1993:

1. Contracts; unlawful acts related to investment certificates: 16-633; 16-634; 16-635; 16-640: Went from unranked felonies to Nondrug level 7 for four separate crimes.
2. Drugs; possession of opiates: 65-4160: Levels 4D, 2D, 1D: (1994)
3. Drugs; opiates, intent to sell: 65-4161: Levels 3D, 2D, 1D: (1994)
4. Unlawful Manufacture Controlled Substance: 65-4159: Levels 2D, 1D: (1994)
5. Worker's Compensation Fund Fraud: 44-5,125: Nondrug levels 9, 7, 6, 5 (1998)
6. Traffic in Contraband in a Correctional Institution; firearms, ammunition, explosives, controlled substances; 21-3826; Nondrug 5 (1997) [Raised from a Nondrug 6.]
7. Battery Against a Law Enforcement Officer; juvenile correctional facility or juvenile detention center officer or employee; 21-3413: Nondrug 6: (1997)
8. Battery Against a Law Enforcement Officer; corrections officers; 21-3413: Nondrug 5: (1999)
9. Aggravated Escape from Custody; from state institution when held for felony, or if utilized violence or threat of violence to escape; 21-3810: Nondrug 5: (1999) [These types of offenses were previously either Nondrug 8 or Nondrug 6 offenses.]
10. Unlawful Manufacture of a Controlled Substance; 65-4159; D1: (1999) [First offense went from a D2 to a D1; Second or subsequent went from a D1 to double a D1.]

Misdemeanors raised to felony after 1993:

1. Stalking: 21-3438: Nondrug 8, 9, 10: (In 1993 there was an A and a B misdemeanor – this crime was significantly expanded in 1994 and the new severity levels were created.)
2. Criminal Disposal of Explosives: 21-4209: Nondrug 10: (In 1993 this was an A misdemeanor, but was raised to a 10 in 1994.)

3. Official Misconduct, destroy, tamper, conceal crime evidence: 21-3902: Nondrug 8: (In 1993 it appears this crime would have been an A misdemeanor. The statute was more specifically defined and new severity levels assigned in 1995.)
4. Official Misconduct, submit false expenses claim, over 25K: 21-3902: Nondrug 7: (In 1993 this was an A misdemeanor. The statute was more specifically defined and new severity levels assigned in 1995.)
5. Official Misconduct, submit false expenses claim, over \$500 but less than 25K: 21-3902: Nondrug 9: (In 1993 this was an A misdemeanor. The statute was more specifically defined and new severity levels assigned in 1995.)
6. Aggravated Criminal Threat; criminal threat against a public, commercial or industrial building, etc.; 21-3419a: Nondrug levels 6, 5, 4: (1997) [This type of crime – making bomb threats against buildings, etc. – formerly was covered under K.S.A. 21-4110 as a Class A misdemeanor.]
7. Lewd and Lascivious Behavior; in the presence of a person under 16; Nondrug 9, person (1998) [Previously a B, nonperson misdemeanor.]
8. Knowingly Exposing Another Person to a Life Threatening Communicable Disease; 21-3435; Nondrug 7: (1999) [Previously this was a class A, person misdemeanor.]
9. Failure to Register when Required by Kansas Offender Registration Act; 22-4903; Nondrug 10, nonperson: (1999) [Previously a class A, nonperson misdemeanor.]
10. Violation of Uniform Consumer Credit Code; second or subsequent offense; 16a-5-301; Nondrug 7, nonperson: (1999) [Previously, all offenses under this statute were class A, nonperson misdemeanors.]
11. Identity Theft; 21-4018; Nondrug 7, person: (2000) [Previously Identity Theft was a class A, person misdemeanor.]
12. Knowingly and Willfully Obtaining Information from a Consumer Reporting Service Under False Pretenses; 50-718; Nondrug 7, person: (2000) [Previously a class A, nonperson misdemeanor.]
13. Officer or Employee of a Consumer Reporting Service who Knowingly and Willfully Provides Information Concerning an Individual from the Agency Files to a Person Not Authorized to Receive the Information; 50-719; Nondrug 7, person: (2000) [Previously a class A, nonperson misdemeanor.]

New Nongrid or Offgrid felonies:

1. 3rd DUI: 8-1567: Nongrid; Crime carries its own specific penalty provisions: (1994) [This crime was a Nondrug level 9 in 1993.]
2. Intentional 2nd degree murder: 21-3402(a): Offgrid: (1996) [Made a Nondrug severity level 1 felony in 1999.]
3. Criminal deprivation of property – motor vehicle: 21-3705(b): Nongrid; Crime has its own specific penalty provisions: (1995) [Made a Class A misdemeanor in 1999.]
4. 3rd Domestic Battery in 3 years: 21-3412(c)(3): Nongrid; Crime carries its own specific penalty provisions: (1996)

Non-person Crimes made Person Crimes after 1993:

1. Lewd and Lascivious Behavior; in the presence of a person under 16; Nondrug 9, person (1998) [Previously a B, nonperson misdemeanor.]
2. Arson; Against a Dwelling; 21-3718; Nondrug 6: (2000) [Previously, all convictions for the crime of Arson were nonperson convictions.]
3. Knowingly and Willfully Obtaining Information from a Consumer Reporting Service Under False Pretenses; 50-718; Nondrug 7, person: (2000) [Previously a class A, nonperson misdemeanor.]
4. Officer or Employee of a Consumer Reporting Service who Knowingly and Willfully Provides Information Concerning an Individual from the Agency Files to a Person Not Authorized to Receive the Information; 50-719; Nondrug 7, person: (2000) [Previously a class A, nonperson misdemeanor.]



Kansas Bureau of Investigation

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Testimony in support of HB 2329
Before the House Judiciary Committee
Kyle G. Smith
Kansas Bureau of Investigation
February 12, 2001

Chairman O'Neal and Members of the Committee,

I am pleased to appear today on behalf of Director Larry Welch and the KBI in support of HB 2329, which would standardize access to drivers license photos within the criminal justice system. All other information within the department of Revenue's DL database, such as height weight, address, etc., is available courts, probation officers and prosecutors but the photographs are only available to law enforcement agencies for use in criminal investigations

The KBI, along with those other participants of the Kansas Criminal Justice Information System (KCJIS), have been working with DMV on adding the digital photos to the KCJIS database. For the newer members of the committee, KCJIS is an integrated distributed database where all aspects of the criminal justice system, law enforcement, jails, prosecutors, courts, probation, parole and corrections will all be able to access the information maintained by the different parts on one system. Quickly obtaining a good quality photograph will be of great benefit to all criminal justice agencies in making faster identifications of suspects, probationers, defendants, etc. Cases of people wrongfully held would certainly plummet if a judge could immediately pull up the photo of a suspect and compare it to the person claiming he is not the man they wanted. The computer people involved agree that technically there is no problem in adding this valuable resource to the KCJIS system.

However, the current statute, K.S.A. 74-2012, restricts access to these photographs to "law enforcement agencies for use in criminal investigation". HB 2329 would slightly broaden the language, to "criminal justice agencies for official use" so that all the agencies connected through CJIS, courts, prisons, court service officers and prosecutors, could use this feature when necessary.

Thank you for your consideration. I would be happy to answer any questions.

House Judiciary
2-12-01
Attachment 3

Sheila J. Walker, Director
Division of Vehicles
915 SW Harrison St.
Topeka, KS 66626-0001



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Division of Vehicles

TESTIMONY

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

FROM: Sheila J. Walker, Director of Vehicles

Sheila J. Walker

DATE: February 12, 2001

RE: House Bill 2329

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 Motor Vehicles. Thank you for the opportunity to provide testimony today on House Bill 2329.

This bill allows driver's license photos to be used by "criminal justice agencies" for "official use." Currently, the use of photos is limited to "law enforcement agencies" for "criminal investigations."

Driver's Licensing in the Division of Vehicles currently processes all photo requests from law enforcement agencies. We get about 35 to 50 requests a day. Substituting the phrase "criminal justice agencies" for "law enforcement agencies," and changing the term "criminal investigation" to "official use" has the potential to increase these requests.

At a minimum, if these requests double, we can expect to need an additional Office Specialist to handle the additional requests. The total fiscal note on this bill is estimated at \$39,034 for the first year, and an ongoing cost of \$32,714.

Thank you for your consideration.

February 12, 2001

TO: Chairperson and Members

Subject: Inhalant Abuse Legislation

I am a Detective with the Riley County Police Department and work primarily with juveniles. I believe that the abuse of chemical vapors by our youth is on the rise and have seen reports of such activity in our community. It is difficult to evaluate the problem as there is no law against such activity and reports by police are not usually filed. To my knowledge thirty-seven states have enacted legislation against the use and possession with the intent to use these products for the purposes discussed here. It is my belief that we, as a state, need to pursue such laws for the protection of our youth and their future.

Inhalants are volatile substances that can be inhaled to induce a psychoactive or mind-altering affect. National surveys indicate that more than 12 ½ million Americans have abused inhalants at least once in their lifetime. According to the National Institute on Drug Abuse, 20 percent of 8th graders have abused inhalants. Local statistics, obtained from the Kansas Communities That Care Survey, show that 21.6 % of 8th graders polled in the year 2000 state 'yes' when asked if they have sniffed glue, breathed the contents of aerosol spray cans, or inhaled other gasses or sprays in order to get high in their lifetime.

The chemicals used for inhaling are readily available within products located in our homes, offices, and schools and include products such as white-out, paint thinner, nail polish, and dry erase markers. The chemicals in these products are rapidly absorbed through the bloodstream and quickly distributed to the brain and other organs. Within minutes the user experiences intoxication along with other effects similar to those produced by alcohol. The long term effects are devastating and irreversible. These range from brain damage, to the destruction of the kidneys and liver.

I believe that it is important that we pursue laws that protect our children, although these laws should include all ages, not just juveniles. The laws should also mandate abuse education to instill the dangers of these substances. I would like to thank you for your time and consideration in this matter.



David A. Falletti
Detective
Criminal Investigations Division
Riley County Police Department



February 12, 2001

TO: House Committee on Judiciary

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: HB 2296: Check forgery

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2296**, which addresses the criminal action of check forgeries.

The KBA has been working with the Topeka Police Department's Financial Fraud Unit to develop possible solutions to the increasing number of check forgeries being experienced across the state. We have tried to be creative with our thinking in trying to find something that would truly serve as a deterrent to individuals thinking about committing check forgery. We have come up with what we believe is a reasonable solution.

This bill addresses check forgery in two ways:

- 1) We have proposed amendments to KSA 21-3710 to address the penalties for a check forgery convictions. Our proposal is to treat individuals who are repeatedly convicted of check forgery more harshly by requiring some jail time before probation can be granted.
- 2) We have proposed an amendment to KSA 60-4104 that would make check forgery subject to the provisions of the Kansas Civil Asset Seizure and Forfeiture Act.

The Penalty.

Current law provides that forgery is a severity level 8, nonperson felony. What we know and what the individuals who repeatedly are convicted of check forgery also know is that with this penalty, the person convicted of check forgery is subject to presumptive probation. This is true regardless of the number of times the person is convicted of this crime and regardless of the financial loss involved in the crime.

It is our intent by our amendments, to provide a possibility of real jail time being served for repeat offenders. The Committee will hear from other conferees that there are individuals who are able to make a living committing this crime. They have no fear of the consequences as there are virtually none. Unfortunately, the word gets around. There is evidence that people are bringing this way of life to Kansas because it is well known that this is a state where the penalty for forgery is relative mild.

I have attached a chart showing the laws of our surrounding states. As you can see, we are the only state that does not at least recommend some jail time for check forgeries. I have also attached some local articles that emphasize the fact that forgery is indeed, a problem in this state – and one that is escalating.

HB 2296: Check Forgery

February 12, 2001

Page Two

Civil Asset Seizure and Forfeiture Act.

We believe that another reason this crime has become so popular is that technology advances have made it much easier. Software programs allowing law-abiding people to print their own checks are also purchased by those with other intentions. All the check forger needs once he or she has purchased the software is one stolen check, a computer, a printer and appropriate paper and they are in business.

We need to give law enforcement the ability to take away these tools in addition to not letting the criminals keep the fruits of their crime.

Conclusion.

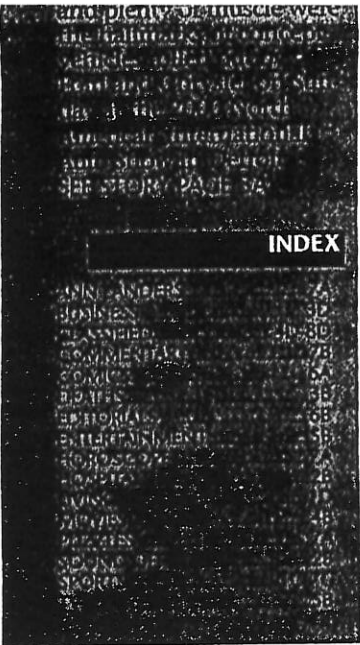
Forgery is a crime that affects a lot of innocent people. It affects the person whose check is stolen, the business that cashes the check and the bank where the check is drawn. The KBA has made it a priority this year to try to at least slow the professional check forger down with these two measures.

We are asking for your support in supporting the passage of **HB 2296**. Thank you for your time and attention.

CHART OF SURROUNDING STATES' FORGERY LAWS

STATE	PENALTIES
Oklahoma	<p>Forgery of a check is forgery is the second degree punishable by imprisonment for up to 7 years.</p> <hr/> <p>Forgery is also subject to the "3 strikes, you're out" rule.</p>
Colorado	<p>If the check amount is from \$50-\$200: imprisonment in county jail for not less than 3 months nor more than 12 months; or a fine of not less than \$250 nor more than \$1,000; or both.</p> <p>If the check amount is \$200 or more: imprisonment in state penitentiary for not less than 1 year nor more than 5 years; or a fine of not less than \$1,000 nor more than \$15,000; or both.</p> <p>Upon third conviction: imprisonment in state penitentiary for not less than 1 year and not more than 10 years; or a fine of not less than \$2,000 nor more than \$30,000; or both.</p>
Missouri	<p>If the check amount is less than \$150: up to a \$500 fine; or 6 months in jail; or both.</p> <p>If the check amount is \$150 or more: up to a \$1,000 fine; or 1 year in jail; or both.</p>
Nebraska	<p>If the check amount is \$75 or less: Class I misdemeanor.</p> <p>If the check amount is between \$76 and \$299: Class IV felony.</p> <p>If the check amount is \$300 or greater: Class III felony.</p>

LAWRENCE, KS
Journal-World
1-10-2000



...maria Pope, kindergarten teacher at Kennedy School, ...
Nations University, has worked for the Lawrence School District for three years. The children are, from left, James McClurkin, 6, Karrera Radford, 5, Kyleigh Turner, 5, Branden Lewis, 6, and Rodney Robinson, 6. Pope praises a federal initiative to hire more minority teachers like herself.

Haskell graduate praises initiative

● **Less than 1 percent** of teachers are American Indians, but a \$10 million federal program hopes to add 1,000 more within five years.

By CHRIS KOGER
JOURNAL-WORLD WRITER

As one of only 18,000 American Indian teachers across the United States, Maria Pope is a minority within a minority group. During the next five years, a federal initiative seeks to add 1,000 more Maria Pops to the ranks of 2.5 million teachers; a move she and other educators applaud as a way of

boosting opportunities for American Indian students who face dropout rates ranging from 36 percent to 50 percent, according to the American Indian College Fund.

"They have role models. They have moms and dads, brothers and sisters, and aunts and uncles," said Pope, a 1997 Haskell Indian Nations University graduate who teaches kindergarten students at Kennedy School.

"But when you're a child, it's nice to have a teacher of color, specifically an Indian teacher, that understands you, someone you can relate to. It helps your learning experience."

Congress established the initiative, the American Indian Corps of Teachers, with a \$10 million appropriation in November. The plan is part of President Clinton's push to create at least 100,000 new teachers in the United States.

Haskell's part in training the new teachers remains to be seen; plans are too preliminary to know exactly where the money will go. The U.S. Department of Education is coordinating the \$10 million effort, and it's likely grants will go to teacher programs at four-year tribal colleges and universities

See Initiative, page 3A

Forgers consume time, pay little consequences

● **The crime of forgery** is growing in Lawrence, but law-enforcers say investigating it is a time-consuming process that usually winds up with a forger getting off with probation.

By DONNA BERGMANN
JOURNAL-WORLD WRITER

Nine months ago, someone stripped the back door off of Dale Willey Pontiac-Buick-Cadillac-GMC and took two cars, 30-day paper license tags and 100 blank checks.

In the end, the checks forged from the heist proved to be the costliest and most aggravating of the losses to deal with, said Dick Luman, comptroller for the Lawrence automobile dealership. And, on top of that, the forger has yet to be caught.

"I had to make 30 trips to the bank to sign 30 affidavits to verify the checks were forgeries," Luman said. "Most were for small amounts. The range was from \$15 to \$1,200 though."

"I also spent hours and hours talking to police," he said. Lawrence Police Chief Ron Olin knows all about forgeries. Too much for his own liking.

"Forgeries amount to 5 to 10 percent of our daily reports, and that's too much," Olin said.

The time invested and end result gained from forgery investigations just don't balance out, Olin said. The

"I had to make 30 trips to the bank to sign 30 affidavits to verify the checks were forgeries. I also spent hours and hours talking to police."

— Dick Luman, comptroller for the Lawrence automobile dealership

reason: Under Kansas sentencing guidelines, a convicted forger is almost guaranteed to be placed on probation instead of being incarcerated.

That, says the chief, makes forgery a "no-consequences" crime, and it sends the wrong message to law enforcers and law

breakers.

"This has a ripple effect through the system," Olin said. "We don't want to waste time on cases with no consequences, and our officers may do a less-than-stellar job on them because (forgers) see no consequence at the end."

Knowledge that prosecution fails to keep violators off the street has its affect on enforcers.

"The problem we see," Douglas County Dist. Atty. Christine Kenney Tonkovich said, "is forgery is a relatively easy crime to commit and then it involves a lot of paperwork to put together a case to prosecute. It's a huge burden on law enforcement because (forgery cases) are complicated to investigate," she said.

Tonkovich and Olin said career forgers know the odds are good they'll never go to prison. That encourages more forgeries that, in turn, lead to other crimes.

"This easy money becomes the primary source for soft money to go

See Forgers, page 3A



Mixa

toward drugs and it is the easiest source of criminal profit with immediate monetary rewards," Olin said.

"We see a clear connection between forgery rings and known individuals involved in drug use," Tonkovich said.

Difficult answers

Police and prosecutors are aiming for tougher sentences for forgers.

But "tougher sentencing for forgery may not be the answer," said Lawrence attorney John Solbach. "Prison doesn't do anything for the victim of the forgery."

Solbach, former chairman of the House Judiciary Committee, helped draft in the early 1990s the Kansas sentencing guidelines that made forgery a presumptive-probation offense.

"We were experiencing a growing population in our prisons that no one knew how to control," Solbach said, defending the guidelines.

"We weren't using prison sentence alternatives," he said. "This was causing sentence inflation, and we don't have any evidence that that approach helps society."

Should the Legislature choose to toughen sentencing for any crime, it must look at all ramifications of an increased prison population, he said.

"The pie is only so big," Solbach said. "Buildings, beds and prison personnel are not the only things affected. It takes money away from probationary and counseling personnel."

"Arrest and trial are consequences. Probation is also a consequence. And, the court can require as part of the probation that the criminal be required to seek and obtain a job and make restitution," Solbach said. "This can deter the forger from doing it again and deter others."

Restitution is usually ordered of those convicted of forgery, Tonkovich said. But career forgers typically ignore the restitution order.

"The criminal's method of income is the forgery," she said. "It is difficult for victims to get paid back."

Another critic of the state's forgery laws is Sandra Studley, senior vice president at Douglas County Bank. In her position, she comes face to face with the crime and its ramifications on Douglas County Bank.

"There are very few instances when we have received any restitution," Studley said. "Probation and restitution has done nothing. If (forgers) had a job, and therefore money, they wouldn't need to steal the checks in the first place."

Growing problem

Studley spent six years working in Garden City before coming to Lawrence nine years ago. The problem of forgery is worse here than there and continues to escalate, she said.

"We have more forgery problems going around this community than we did in my previous experience," she said. "The numbers of forgery losses in the last 10 years in our bank have increased five-fold," Studley said. "We have low five-figure numbers for a single year's loss."

"It is very easy for forgers to acquire checks and pass them for cash, and there are repeat offenders in the area," she said.

Forgery almost always involves multiple victims: the person whose checks were stolen, the business that cashed the check, and the bank where the account is drawn on, Studley said.

The person whose checkbook is stolen will have to sign an affidavit for each check that has been forged. It's a disruptive process that requires the crime victim to go to the bank and verify each individual check.

When the victim knows his or her checks are missing and has notified the bank, the merchant that took the check will take the loss.

"It's a cost of doing business," Studley said.

"Sometimes individuals only learn their checks have been heisted and forged after receiving a bank statement or overdraft notice. In cases where the check has cleared before the bank customer is aware of the loss, the bank absorbs the loss."

ID, please

Luman, the Dale Willey comptroller, said he believes there's a sure-fire means to stop check forgers in their tracks: "If every merchant would ask for identification. ...

"If forgers can't cash a forged check then they won't have to steal them. That makes us all safer."

Simply asking for identification may help, but "there is a sense among some merchants

that asking for identification from customers offends people," Tonkovich said. "As a consumer, I don't mind when people ask for my identification."

"We need to be more willing to show identification," Studley said. "We need to eliminate our expectation that we can walk in anywhere and write a check without showing identification."

Area businesses may be contributing to the problem, Studley said.

"There are certain businesses that pretend they are banks," she said. "It is very easy in certain businesses to pass a forged check."

Some nonbank businesses that offer check-cashing services would rather not talk about the problem.

Dillons grocery stores "do not release numbers of forged checks" received in their stores and "don't talk about those issues," said Dillons corporate spokesman Dennis Gaschler.

"We feel confident in our policies and procedures for accepting checks," he said. "Our check policies are posted in the stores and check cashing is an important part of our service."

Alternative time uses

Neither police nor the district attorney could be specific about the number of forgeries in Lawrence or the cost of those crimes. Yet Olin said the cost to his department in time is phenomenal.

He said he would like to free up the manpower used to investigate forgeries and "use those resources toward other crimes that do have consequences."

"We would like to impact the community in different ways," Olin said. "For example, an officer walking up and down Massachusetts, visiting with vendors and shoppers, would impact the community in a very positive way."

In the meantime, they'll continue to investigate forgeries and send the results of those investigations onto the district attorney for prosecution.

"The police do what they can within the constraints of their resources," Studley of Douglas County Bank said. "I have been most pleased with our police department in my dealings with them. They do what they can."

— Donna Bergmann's phone message number is 832-7165. Her e-mail address is dbergmann@ljworld.com.

8 Billion worth of bad checks written in Wichita each year

Wichita Business Journal

12-10-99

DAVE KRATZER

Bad checks used to drive liquor store owner like Dreiling nuts. Now, however, he's learned to live with the problem that cost him \$6,000 a year.

You might say he's developed sort of a philosophical attitude about the widespread problem many retailers say has reached epidemic proportions.

"I don't wake up with an ulcer anymore," said Dreiling, who has operated Dreiling

Liquor, Wine and Beer on South Oliver for four years. "There's not much you can do about it. Unfortunately you have to build it into your costs."

Dreiling gets stuck with as many as 20 bad checks a month, he said, and at Christmas time checks tend to be bigger, losses more pronounced.

"Most retailers tell you it doesn't pay to go after these people," Dreiling said. "There's just no good way to collect on bad checks."

Dreiling said he has had no luck collecting on bad checks he has turned over to the police department for investigation.

"Some people have just found a way to get over," Dreiling said. "They know they're not going to get caught or punished."

Nationwide, retailers lose \$12 billion a year because of bad checks. What's worse, experts say \$6 billion can be chalked up to fraud, and that the problem grows by 25 percent each year.

Wichita's share of those losses is \$8 million annually, according to Linda Davis, vice president of Check Center, a third-party debt collection agency on north West Street.

"It's a real problem and nothing to laugh at," Davis said. "Any loss from bad checks is catastrophic to small business owners."

Check collection, check verification and check guarantee services are weapons businesses — retailers

Bad checks

Cost to business nationwide:
\$12 billion year.

Cost to Wichita businesses:
\$8 million a year.

Typical fee for collection agency:
\$30 per check.

sort of manual approval method; and 13 percent used in-house approval methods.

Some businesses ask customers to authorize electronic check collection, allowing the merchant to electronically debit the customer's bank account if the check is returned. The National Automated Clearing House Association says electronic collection can improve the recovery of bad checks by as much as 50 percent.

Dreiling subscribes to a check service that charges a \$30 fee to collect on bad checks, like many retailers. Businesses can use a check verification service, comparing a check writer's name against a database of people who have written bad checks in the past. Companies that run check guarantee businesses actually purchase the face value of the check from the merchant, then attempt to collect on the bad check.

All of these weapons and techniques can be effective if the retailer isn't confronted by professional criminals who have elevated what investigators call "hanging paper" to an art form.

Detective Shawn Bostwick has been with the Wichita Police Department for nine years. He is assigned to the financial crimes division and said bad checks, in the police department's eyes, fall into three main categories: insufficient funds, forgeries, and worthless checks.

Insufficient funds checks are precisely that, and can include honest mistakes or bad checks written by people who have no financial problems.

Terry Holovach, 15-year owner of Sure Check, a local bad check and collection agency, said he's collected for bad checks from judges and doctors.

Said Holovach: "Some people are just absent-minded. Some people equate having checks with having money. Some people have a lot of money and it doesn't matter to them whether they write a bad check. They think they deserve a break."

Holovach's company, like most collection agencies, makes its money by collecting the full amount of the bad check, plus a \$30 service charge. He returns the amount of the check to the merchant and pockets the service charge.

Holovach once collected on a bad check worth 54 cents that was written at a local McDonald's. His fee: \$30. And he once collected on a bad check worth \$50,000, written for airplane parts by an out-of-town company, he said. His fee: again, \$30.

Forgeries are completely different. Julie Haig, a manager for a Checkers supermarket on east Pawnee, has seen all kinds of bad checks. But counterfeit checks are now the store's biggest problem.

"It's worse now than ever," she said. "I've noticed more and more counterfeit and forged checks. People don't seem to be worried about getting caught, and if you can get away with it, why not do it?"

Experts say more than half of all forged checks were passed with an expired driver's license. Other experts say it's imperative that merchants match the addresses and phone numbers on the check with the check writer's identification card, typically a driver's license.

Mike Dreiling shines another light on the subject. He said people who want to write bad checks go to the driver's license bureau and use fake addresses and personal information to get new driver's licenses they can use to go on bad check-writing sprees.

Bad check rings that pass through Wichita periodically use advanced laser printers and computers that make it possible to create checks from scratch, complete with magnetic inks that read in verification systems as authentic, according to Check Center's Davis.

Michell Yentes is collections manager for A-OK Check Cashing. She goes after people who cash all kinds of bad checks at her company's check-cashing outlets on both sides of town: bad payroll checks, bad money orders, bad business checks. She's also had experience with bad check rings that blow into town for a couple days passing bad checks and then disappear as quickly as they arrived.

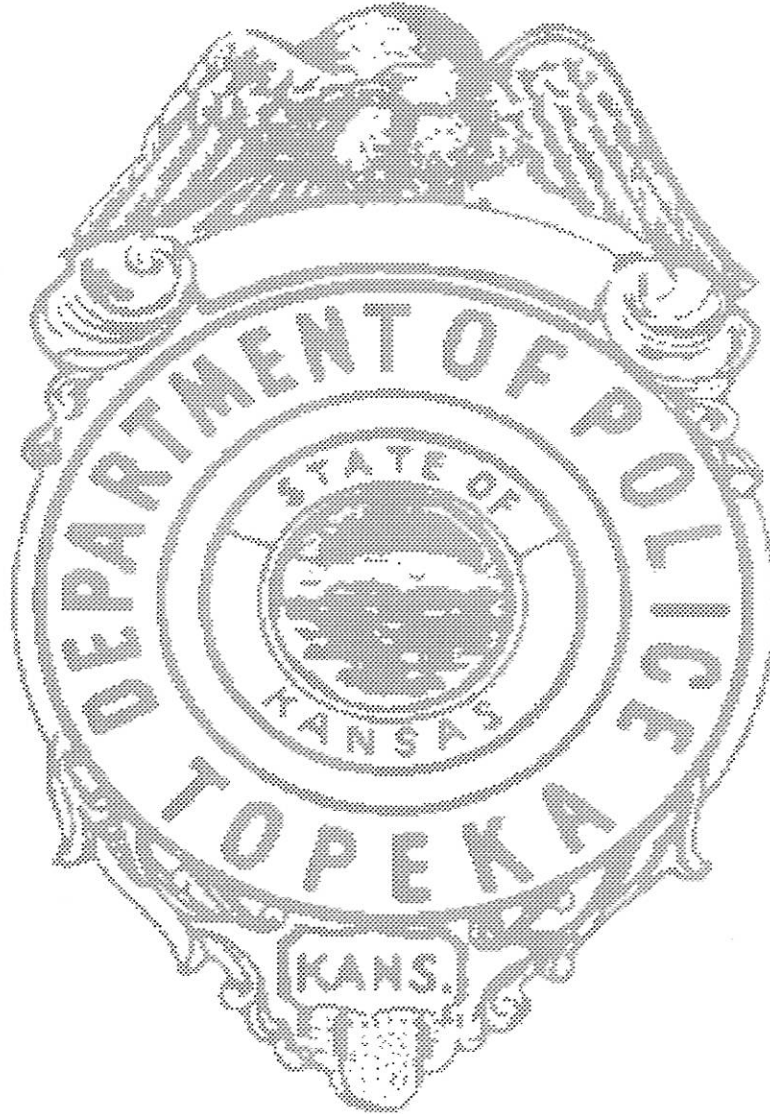
"Compared to other businesses," Yentes said, "we get a small percentage of bad checks. The majority of our bad checks are just mistakes, but you can tell that people are finding new ways of forging checks and getting away with it."

Worthless checks take on differing guises. Checks from existing and closed checking accounts get stolen, then passed. Senior citizens leave useless checks from closed accounts around their homes. Burglars steal them and use them, Dreiling said.

Davis said less than 1 percent of all checks written in the U.S. bounce. Nonetheless, it's a huge problem, a costly one that isn't going to go away. Credit and debit cards may be popular, but checks are still king, she said.

"When merchants incur debt from bad checks, the rest of us unfortunately pay for it," Davis said. "I feel it every time I go to the grocery store."

TOPEKA POLICE DEPARTMENT



Sgt Dan Hay

368-9036

Bookkeeper

In December 1997, a bookkeeper for a company that operates statewide started siphoning money from the company's accounts. Over the next several years, he took more than \$250,000 dollars.

We were able to find that with proceeds from this money this person obtained real estate and vehicles in another state.

Under Kansas law we were unable to go after those assets, and this individual will receive probation for the crime. He will be able to retain those assets he purchased with ill-gotten monies.

Office Manager

An office manager for a medical clinic was able to pocket more than \$68,000 dollars over a two year period. The proceeds from that money went to pay off bills and other household furnishings.

Upon conviction this individual received a 12 month probation and was ordered to pay \$15,000 in restitution.

We were unable to seize any of the real property obtained via this crime.

Bank Teller

In 1999 a bank teller walked out of the bank with \$38,000 dollars. We were able to trace the money and found that the money was used as a down payment on a house. Part of the money was used to pay off some bills so that they were able to get a loan for the balance of the payment.

We were able to charge this person in Federal Court but we still were unable to recover those assets for the financial institution that suffered the loss.

Elderly

On July 4th, 2000 an 82 year old woman in Topeka was found by her neighbor. The woman had fallen in her home, and had been left laying there for two days developing compression blisters in her chest, stomach, arms, and legs which took a hospital stay, and over a month to heal. The health care worker hired to take care of the woman was found to be at the casino from June 29th to July 6th using the woman's checks and credit card for his source of money. Further investigation showed a loss from January 2000 to July 2000 on the woman's accounts totaling \$16,895.70. This case is still under investigation for 'mistreatment of a dependent adult' 21-3437 subsection(2) a class A person misdemeanor, and the non-person felonies of forgery, theft, and unlawful use of a credit card. (Under present sentencing guidelines this would fall to 13-15 months probation)

Lawyer

From 1997 until November 1999 a Topeka lawyer used his control over the accounts of 14 different clients for his financial advantage. The most devastating of these crimes involves five minors who had received monies upon the deaths of their parents, and one 95 year male subject trying to send funds overseas to family members. The attorney involved siphoned and shifted funds between eight different checking accounts that either belonged to him, or he was given control of by the court. The motive for the attorney stealing the money was to start his own nightclub business. His business failed. The victim's losses are listed as follows:

Minor[1] - loss = \$10,581.17

Minor[2] - loss = \$6,263.62

Sibling Minors[3,4,5] - loss = \$45,000.00

Elderly male = \$ 240,325.37

This case has been forwarded to the US Attorney's office for their consideration. To file this case with the State District Court would bring six charges of felony theft (five thefts at level 9, and one theft at level 7) under the present sentence guidelines this would fall under 19 to 23 months probation.

For each of the cases cited above there are hundreds more. In the City of Topeka for the year, 2000 there was a reported loss from citizens and merchants that exceeded **\$2,000,000 dollars**. The problem has become so prevalent that some agencies have done away with their financial crimes unit, because it is not worth investing the manpower for the results of the investigation. The Topeka Police Department is unable to work $\frac{3}{4}$ of the cases in this area due to volume and manpower requirements. Approximately 60% of the cases we work are by repeat offenders who are well acquainted with the system.

The impact to an individual that has had either their checkbook or their identity stolen lasts long after the case is closed. If their name gets into the credit bureau system for fraudulent activity, not of their own making, it takes a very long time to get it out of the credit bureau system. In some cases, this process will take years to completely cleanse itself.

The bigger retail stores have adopted the philosophy that it is not worth paying their employee to go to court when they cannot get their product back or their money back. They no longer report the crime and just absorb the loss as an operating cost.

The actual loss to citizens and merchants is considerably higher than what is being reported.

The pictures that are included in this packet are from a typical check making operation set up in a motel room.

The first picture that you see shows a scanner, monitor and typewriter on the table. Directly under the table is the hard drive for the computer and CD software used in the manufacturing of the checks. On the floor directly in front of the table is a printer with the business style checks in a position to be made. On the nightstand next to the bed is another printer that they were using to produce individual type of checks.

All the items show here were taken from business burglaries or from stolen rental trucks from people that were staying in Topeka motels as they were passing through Kansas.

In the second picture, you can see the checks that they were using to practice on to get the type set up correctly. Also pictured is a "Check Protector". This is used to stamp the checks to make them look more authentic. The "Check Protector" was also stolen in a burglary.





The ramifications from forgery ranges far wider then just the loss to the merchant that took the check or the bank that lost the money. These checks come from your house or your business. Several years ago, if your house or your business was broken into the thieves would take anything that was not nailed down. Now days they are after your computer and your check book. A blank personal check sells anywhere from 1-5 dollars on the street, and blank business checks go from 10-20 dollars on the street.

These checks are then cashed or traded for drugs, purchase vehicles, or used to set up accounts in other banks under the name of the person or business that had their checks stolen.

Interviewing forgery suspects is one of the easiest interviews to do. The repeat offenders know exactly what will happen to them and can tell you where they will fall in the presumptive probation chart. They readily confess their crime to try to keep down the bail when they are booked into jail. In most cases, this is the only jail time that they will receive.

In two separate drug raids, we found the attached documents on how to defraud banks and cheat retailers. These documents have made the rounds through the drug community and are common knowledge on the street.

1. GET NEW IDENTIFICATION COST APPROXIMATELY \$10.00
 - A. GO TO DMV
 - B. PUT A PHONEY ADDRESS ON IDENTIFICATION
 - C. GET A COMPUTER GENERATED NUMBER ON IDENTIFICATION (K00 - - - - -)
2. GO TO A NATION BANK, ANY WILL DO (MAKE YOU START ON
 - A. TELL LADY YOU WANT TO OPEN A CHECKING ACCOUNT
 - B. WHEN GIVING INFORMATION, GIVE A PHONEY PHONE NUMBER AND ADDRESS ON YOUR IDENTIFICATION.
 - C. GIVE THIS SSN 509 80 8699, MAKE SURE YOU HAVE THIS NUMBER COMMITTED TO MEMORY, SHE WILL ASK FOR IT AGAIN!
 - D. ASK TO HAVE CHECKS MAILED TO BANK, YOU ARE HAVING PROBLEMS WITH KIDS STEALING YOUR MAIL.
 - E. WHEN YOU GET YOUR ATM CARD, PICK AN EASY PIN NUMBER TO REMEMBER!
 - F. GIVE LADY \$25.00 TO OPEN ACCOUNT.
3. CHECK ATM CARD TO MAKE SURE IT IS ACTIVE.
 - A. GO TO ANY NATION'S BANK ATM MACHINE.
 - B. PUT IN CARD
 - C. PUT IN PIN NUMBER
 - D. PUSH BUTTON TO CHECK BALANCE. IT WILL SHOW YOU WHICH ONE TO PUSH.
4. MAKING FIRST DEPOSIT
 - A. ON MONDAY, TAKE A BLANK STARTER CHECK (YOU WILL HAVE 8 OF THEM) AND GO TO ANY ATM BEFORE 2PM.

- B. Get ~~street~~ Deposit envelope from the bin.
You will see them.
- C. Put on envelope the amount of deposit. This will be \$750.00!
- D. Put blank check into envelope and seal it. Make sure the check is Blank!
- E. Put ATM card into machine and put in your PIN number.
- F. Push Deposit when asked for selection.
- G. Put in amount of \$750.00
- H. Follow instructions on screen. Remember, this must be before 2 pm!
5. Next Deposit and First Withdrawal on Tues.
- A. Go to ATM in QT. and withdraw \$500.00. DO BEFORE 2 pm. This is to be done on TUES!
- B. Go to a different ATM and follow the first steps for your next deposit. This one is for \$450.00
6. Next Deposit and 2nd Withdrawal. This on Wed.
- A. Follow above steps. Withdraw \$500.00 and then make a deposit for \$650.00. DO BEFORE 2 pm.
7. Next Deposit and 3rd Withdrawal. This on Thurs
- A. Follow above steps. Withdraw \$500.00 and then deposit \$750.00. DO BEFORE 2 pm.
8. Next Deposit and 4th Withdrawal. This on Fri.
- A. Follow above steps. Withdraw \$500.00 and then deposit \$400.00. DO BEFORE 2 pm.

9. Final Withdrawal. This is on Sat.
- Go to ATM and withdraw \$500.00 DO before 2 pm.
 - You should have approximately \$500.00 left over. Go to Walmart and buy some stuff use ATM CARD at the checkout counter.
 - ONCE you do this, destroy CARD AND ALL REMAINING INFORMATION REGARDING YOUR ACCOUNT You must do this!
10. Total amount of Deposits and Withdrawals
- | | | |
|-------|-----------------------------|--------------------------|
| MON. | \$ 750.00/ Deposit | First ONE |
| TUES. | \$ 500.00/ withdraw | \$ 450.00/ Deposit |
| WED. | \$ 500.00/ withdraw | \$ 650.00/ Deposit |
| THUR. | \$ 500.00/ withdraw | \$ 750.00/ Deposit |
| FRI. | \$ 500.00/ withdraw | \$ 400.00/ Final Deposit |
| SAT. | \$ 500.00/ Final Withdrawal | |
 - Total amount of withdraw \$2500.00/
 - Total amount of Deposit \$3000.00/

* REMEMBER *

All Deposits must be before 2 pm!

Do not go to ANY National Bank to make Deposits or Withdrawals. Go to QT to make Withdrawals and any other bank ATM to make Deposits

Do Not deviate from this Out Line!!!! DONT SPEND YOUR MONEY ALL IN

1. Get information on somebody (Soc. Sec. Number }
D. of Birth }
Full Name }

2. Make fake copy birth certificate

3. Send to BMG or Columbia House to receive a bill

4. Get I.D. made at D.M.V. or Washburn university

5. Get information ready 4 months before Xmas

6. Go to bank start checking account with \$500

7. Buy 2 or 3 boxes of checks

8. Tell Bank to start check numbers at 500

9. Draw \$475 out Friday before I start

Go thru drive thru to get money out of bank

10. Write checks for small shit Saturday

morning till bank closes, then start

writing for big shit till stores close

Sunday night, Monday morning write

for small shit till 10 o'clock a.m. then

get rid ~~one~~ of all excess shit

11. When I'm going to start ~~write~~ writing

be sure to only have fake I.D. on me

+ not any of my information

12. If store has me call some phone number

don't freak out, call the number to verify

that it's me writing the checks, they'll probably

want to know my account number &

bank name

13. ~~Code~~ Red ^{Alert} Code 1 & 2 get check back & leave

caution

14. Dress Nice when I'm shopping
15. Practice writing on 1 book before I start at stores.

16. Always ask to write checks for over the amount of the check.

17. Start 2 checking accounts at different banks use 1 for 1 week at home, & the other to hit Lawrence up the following weekend

~~18. Fill Out Signature & date on checks before I go to the stores, write one checkbook's date for Saturday & the second checkbook for Sunday's date~~

Might look suspicious

Rent Ryder Truck Under Fake name with check
Rent Storage Unit under my name cash

HOUSE COMMITTEE JUDICIARY

FEBRUARY 12, 2001

The overwhelming majority of Fraud Suspects are never Apprehended or Prosecuted

I. Sentencing Guidelines - White Collar Crime

- White Collar Crime creates substantial monetary losses to Businesses and Individuals.

- Counterfeit Checks, Property Thefts and Identity Thefts create financial and personal problems for victims, businesses and financial institutions.

- Identification of suspects is difficult, due to checks being passed at any business.

- Suspects recruit young adults to pass counterfeit and forged checks for a small percentage of the money received.

- Suspects continue to commit frauds after being arrested and released on bond.

- Mail Thefts from residential mailboxes provide stolen identities and bank account numbers for suspects to use.

- Stolen business checks provide bank routing and account numbers for counterfeit checks.

- Counterfeit check operations have been linked back to illegal drug activity.

- Suspects arrive in Kansas to commit the Frauds, due to the lenient penalties if apprehended and convicted.

- Suspects continue to commit frauds after being arrested and released on bond.

- Mail Thefts from residential mailboxes provide stolen identities and bank account numbers for suspects to use.

- The majority of frauds are never prosecuted, due to lack of witnesses, physical evidence and apprehension of suspects.
 - Victims are subjected to continuous harassing verbal and mail contacts from collection agencies. They are subjected to filing numerous forgery affidavits for counterfeit checks and stolen identity.
 - Counterfeit check operations are usually well organized and primary suspect is removed from suspects passing checks.
1. Asian counterfeit ring (\$25,000+)- - 2 females, 4 males.
Primary Suspects – 2 males, Los Angeles, Cal.
Dallas, Texas
“Connected with two other groups on other banks”
 2. White counterfeit ring (\$200,000+- - 26 suspects
Primary Suspects – - 3 Texas – Mexico
“Involved in numerous banks in Wichita”



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February 12, 2001

To: Chairman O'Neal and Members of the House Judiciary
 From: Kansas County and District Attorneys Association
 Re: Testimony on HB 2296 (neutral)

Mr. Chairman and Members of the Judiciary Committee,

The Kansas County and District Attorneys Association would like to thank you for taking time to hear our testimony on HB 2296.

Forgery currently is a level eight non-person felony and with prior history the sentence could be higher than the one year that is currently set out in the bill on lines 30 and 36. Therefore, the KCDA would like to recommend the following changes:

1. Strike lines 29-34 and replace with the following language:
 On a ^{second} ~~first~~ conviction of a violation of this section a person shall be required to serve a minimum of 30 days in the prison of the county jail as a condition of probation unless the court finds compelling circumstances not to impose the mandatory condition of probation and fined not less than the amount of the forged instrument nor more than \$1,000.
2. Strike lines 35-40 and replace with the following language:
 On a second conviction of a violation of this section a person shall be required to serve a minimum of 60 days in the prison of the county jail as a condition of probation unless the court finds compelling circumstances not to impose the mandatory condition of probation and fined not less than the amount of the forged instrument nor more than \$2500.

With subsequent convictions the individuals should have revocations and should land in prison. These changes would leave the classification of the crime alone and still allow for mandatory minimums.

Thank You,

Susan Bechard
 KCDA

House Judiciary
 2-12-01
 Attachment 9

To: House Committee on Judiciary

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 12, 2001

Re: House Bill 2296

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Judiciary to express our support for **House Bill 2296**.

House Bill 2296 increases the criminal penalties for forgery and subjects forgers to Kansas asset seizure and forfeiture laws. Specifically, the bill requires that on a second conviction for forgery a person be imprisoned between 30 days and one year and fined not less than the amount of the forged instruments, up to a maximum of \$1,000. On a third or subsequent conviction for forgery, a person is imprisoned between 90 days and one year and fined not less than the amount of the forged instruments, up to a maximum of \$2,500.

HCBA realizes that there is a finite amount of space in our prisons and jails and that the incarceration of violent and dangerous criminals takes precedence over so-called "white collar" criminals, such as forgers. However, because of limited resources and the fact that the punishment for forgers is minimal, many law enforcement agencies will not investigate or prosecute forgery. This means that criminals are in fact going unpunished. It is the hope of HCBA that HB 2296 will provide a starting point for providing real punishment for those convicted of forgery.

The year 2000 was actually not a bad year for HCBA members in terms of losses due to forgery. We estimate that HCBA's 16 Kansas members lost slightly over \$100,000 last year in forgery cases. According to a survey conducted by the American Bankers Association, 33 percent of check-related crimes in 1999 were either forged signatures or forged endorsements. The survey also reported that nationwide check fraud dollar losses at commercial banks in 1999 were \$679 million, up from \$512 million in 1997. Calculating that one-third of fraud losses comes from forgeries, total losses for commercial banks in 1999 exceeded \$226 million.

In addition to providing jail time to convicted forgers, HB 2296 also subjects their equipment and the proceeds of the commission of their crime to forfeiture. While in years past forgers may have stolen checks or manipulated the writing on one, in 2001 they are just as likely to make their own checks using a home computer. HCBA estimates that half the losses attributable to forgery result from perpetrators stealing information off an innocent person's check and then, using that information, printing their own checks.

We respectfully request that the House Committee on Judiciary recommend HB 2296 favorable for passage.

Thank you.