

Approved:

Date

10-07-04

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on February 19, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Dale Swenson - absent.

Committee staff present:

Jill Wolters, Revisor of Statutes Office

Jerry Ann Donaldson, Legislative Research Department

Becky Krahl, Legislative Research Department

Connie Burns, Committee Secretary

Conferees appearing before the committee:

JaLynn Cobb, KS Criminal Justice Coordinating Council

Lt. Colonel Terry Maples, KS Highway Patrol

Representative Annie Kuether

Sargent Darin Scott, Topeka Police Dept.

Captain Gary Tabor, Wichita Police Department

Sharon Feary, Wichita City Council

Tim Madden, DOC

Representative Bill McCreary

Dan Hermes, KADSPA

Tom Stanton, Reno County

Mike Jennings, Sedgwick County

Stuart Little

Represent Jeff Goering

Mike Pepoon, Sedgwick County

Christine Kenney, KS County & DA Association

Representative Roger Reitz

Mike Kern, Riley County Commissioner

Others attending:

See Attached List.

HB 2790 – Criminal Justice Coordinating Council, membership and duties

Chairman Loyd opened the hearing on **HB 2790**.

JaLynn Copp, Kansas Criminal Justice Coordinating Council, appeared in support of the bill. The bill makes changes to the membership of the council, provides technical provisions to the duties of the council and clarifies the role of the governor in designating staff to the council. (Attachment 1)

Lieutenant Colonel Terry Maple, Kansas Highway Patrol, spoke in support of the bill. As members of the Council, inter-visibility of the grant programs could result in additional law enforcement agencies receiving equipment needed to maximize their effective provides effectiveness, improve officer safety and ultimately afford a higher level of safety and security to the public. (Attachment 2)

Chairman Loyd closed the hearing on **HB 2790**.

HB 2759 – Creating a grant program to target communities in the state with high criminal activity

Chairman Loyd opened the hearing on **HB 2759**.

Representative Annie Kuether spoke in favor of the bill. This is a statewide proposal that targets high-crime neighborhoods with a comprehensive array of enforcement and prevention strategies with the idea of cooperation among government agencies and citizens in the fight against crime. ([Attachment 3](#))

Sergeant J. Darin Scott, Topeka Police Department, spoke in favor of the bill in the spirit of cooperation. ([Attachment 4](#))

Sally Zellers, Safe Streets, spoke in support of the bill and gave a brief history and who Safe Streets is partnered with. ([Attachment 5](#))

Captain Gary Tabor, Wichita Police Department, appeared as a proponent for the bill. The bill is a mechanism to ensure the pro-active approach to problem solving and continued building of partnerships in an effort to prevent crime in our community. ([Attachment 6](#))

Sharon Feary, Wichita City Council, spoke in support of the bill and its intent of creating a program to target areas in the state with high incidences of crime. ([Attachment 7](#))

Chairman Loyd closed the hearing on [HB 2759](#).

HB 2766 – Defendant may petition the court to modify certain drug offense prison sentences to certified drug abuse treatment programs.

Chairman Loyd opened the hearing on [HB 2766](#).

Representative Bill McCreary, appeared in support of the bill. This bill is an amendment to [SB 123](#) and makes it possible for an inmate who was sent to prison for drug use, to be paroled to a drug rehabilitation center, if their case meets all the criteria and provisions of [SB 123](#). ([Attachment 8](#))

Dan Hermes, KADSPA, appeared in support of the recommended alternative sentences for selected offenders incarcerated in our state. ([Attachment 9](#))

Tim Madden, KDOC, provided comments for Secretary Roger Werholtz. The Department 's understanding of the intent of the bill is to provide the same criteria for the sentencing disposition provided by SB 123 to offenders sentenced prior to November 1, 2003. ([Attachment 10](#))

Tom Stanton, Reno County Deputy District Attorney, appeared as a opponent of the bill. He felt it was not appropriate to make the legislation retroactive. ([Attachment 11](#))

Mike Jennings, Kansas County and District Attorneys Association spoke in opposition to the bill. The bill second-guesses the decision to commit the defendant to prison rather than to give treatment another try. ([Attachment 12](#))

Stuart Little, Kansas Community Corrections Association provided written informational testimony on the bill. ([Attachment 13](#))

The hearing was closed on [HB 2766](#).

HB 2596 – The district attorney's office budget approved by board of county commissioners

Chairman Loyd opened the hearing on [HB 2596](#).

Representative Gering appeared in support of the bill, stating that the bill simply requires Districts Attorney in Kansas to submit a budget to the Boards of County Commissioners for approval. ([Attachment 14](#))

Michael Pepoon, Director of Governmental Relations Sedgwick County, appeared in support of the bill amending KSA 22a-106. ([Attachment 15](#))

Christine Kenney, Vice President of Kansas County & District Attorneys Association, opposes the bill.

The process proposed in the bill is essentially already followed by each District Attorney,. (Attachment 16)

Tom Stanton, Reno County Deputy District Attorney, spoke in opposition to the bill. (Attachment 17)

Robert Hecht, Shawnee County District attorney, provided written testimony in opposition to the bill. (Attachment 18)

Judy Moler, Kansas Association of Counties, submitted written testimony in support of the bill. (Attachment 19)

Chairman Loyd closed the hearing on **HB 2596**.

HB 2595 – State pays cost of litigation in civil commitment of sex predator cases.

Chairman Loyd opened the hearing on **HB 2595**.

Representative Roger Reitz introduced Mike Kern, Riley County Commissioner who spoke in favor of the bill. Because cases brought under authority of the Act are civil cases and Attorney General driven from start to finish, it is only appropriate that the State be the responsible party for payment of all costs in these cases. (Attachment 20)

Judy Moler, Kansas Association of Counties, submitted written testimony in support of the bill. (Attachment 21)

Chairman Loyd closed the hearing on **HB 2595**.

The meeting was adjourned at 3:30 PM. The next meeting is February 20, 2004.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 2-19-04

NAME	REPRESENTING
Randall Allen	Kansas Association of Counties
Mike Kearns	Riley County Commission
Corie Kangas	Attorney General's Office
T. Bob Harelisa	Little Government Relations
Mary Beth Kell	OJA
Norton J. Jurek	KCSIS
Rep. Ann Hutchinson	me
Sally Zellers	Safe Streets
Megan Dunn	Hein Law Firm
Dan Hermes	KANSFA
Mike Pepoa	Sedgewick County
KEVIN GRAHAM	AS



KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony of
JaLynn Copp, Governor's Designee for the
Kansas Criminal Justice Coordinating Council
Before the House Corrections & Juvenile Justice Committee
House Bill 2790
February 19, 2004

Chairman Loyd and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Kansas Criminal Justice Coordinating Council (KCJCC) in support of House Bill 2790. The KCJCC is responsible for overseeing the criminal justice federal funding made available to Kansas through the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. The KCJCC is representative of the governor, chief justice of the supreme court, the attorney general, the secretary of corrections, the secretary of social and rehabilitation services, the commissioner of juvenile justice and the director of the Kansas bureau of investigation. Attached is a list of the current members of the council. In addition to the oversight of the federal grants, the council also oversees the development and management of the Kansas Criminal Justice Information System (KCJIS).

House Bill 2790 amends K.S.A. 74-9501, which creates the criminal justice coordinating council. This bill makes changes to the membership of the council, provides technical provisions to the duties of the council and clarifies the role of the governor in designating staff to the council.

The bill would eliminate the secretary of social and rehabilitation services since that agency no longer has the duties of coordinating the juvenile justice services for the state. The bill would allow the superintendent of the highway patrol to be a member of the council. One of the primary functions of the council is to review and make recommendations regarding the criminal justice system and to oversee the management of the criminal justice information system database. The highway patrol is an integral part of these duties and should be an active participant and member of the council.

The highway patrol is also responsible for a majority of the homeland security grant funds awarded to the state. Including the superintendent on the KCJCC would assist in the

coordination of the homeland security grant funds and services, as well as the other six federal grant programs the council oversees.

Other changes outlined in the bill are technical in nature and clarifies the functions and duties of the council.

The Governor's Federal Grants Program staff manages the day-to-day functions of the grants. House Bill 2790 clarifies the role of the Governor in determining the staff for the council and it would mirror federal law which states the chief executive officer or governor of the state determines who shall administer these federal grants.

On behalf of the Kansas Criminal Justice Coordinating Council, I urge the Committee's support of House Bill 2790. Thank you for your consideration.

KANSAS CRIMINAL JUSTICE COORDINATING COUNCIL

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KANSAS

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2790
to
House Corrections and Juvenile Justice Committee**

**Presented by
Lieutenant Colonel Terry Maple
Kansas Highway Patrol**

February 19, 2004

Good afternoon Mr. Chairman and members of the committee. My name is Terry Maple and I appear before you today on behalf of Colonel William Seck and the Kansas Highway Patrol to express our support for HB 2790. I appreciate the opportunity to express the Patrol's position regarding the benefits we have to offer as a member of the Kansas Criminal Justice Coordinating Council.

The Council has historically been heavily involved in the development of the Kansas Criminal Justice Information System (KCJIS), which enables law enforcement agencies and other criminal justice entities to access and share information. The Patrol is a co-administrator of this system and serves as the State's Control Terminal Agency for the FBI's National Crime Information Center (NCIC) computer database. As a part of its KCJIS responsibilities, the Patrol provides the following services:

- Screens applications submitted by Kansas agencies requesting access to NCIC
- Approves applications requesting access to KCJIS
- Trains all Kansas criminal justice agencies on the use of KCJIS and NCIC
- Certifies all Kansas terminal operators on the use of NCIC
- Audits all Kansas criminal justice entities for compliance with KCJIS and NCIC policies
- Investigates misuse of KCJIS access or the misuse of information obtained from the system or NCIC
- Ensures the integrity of Kansas' data residing in the NCIC database

The Council also plays a key role in assisting law enforcement agencies across the state by providing Byrne grants through a competitive application process. The Patrol is similarly situated in its role as administrators of the State Homeland Security Grant Program. This program provides funds to first responders, including law enforcement, for the purpose of preventing, deterring, responding to and recovering from acts of terrorism. As a member of the Council, inter-visibility of these grant programs could result in additional law enforcement agencies receiving equipment needed to maximize their

effectiveness, improve officer safety and ultimately afford a higher level of safety and security to the public.

In addition to its responsibilities regarding KCJIS and the State Homeland Security Grant Program, the Patrol also believes that its position as a statewide, law enforcement agency, would be of value to the Council. Our command staff and troopers interact with law enforcement officers at all jurisdictional levels every day. Our intimate knowledge of the Kansas law enforcement community would be of great value in making decisions that have the potential to impact them.

Again, I appreciate having been given the opportunity to appear before you today and urge your support of HB 2790. I, along with any of the other Patrol personnel present here today, would be happy to answer any questions that you might have.

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The proposal is subject to the appropriations act.

Websites to look at:

Office of Justice Programs: www.ojp.usdoj.gov

Bureau of Justice Association: www.ojp.usdoj.gov/BJA

Grant and Funding Information

U.S. Department of Justice Response Center: 1-800-421-6720

ANNIE KUETHER

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS

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 MEMBER: GEN. GOVT. & HUMAN RESOURCES
 BUDGET
 HIGHER EDUCATION
 NEW ECONOMY
 NCSL EDUCATION COMMITTEE ON
 STATE AND FEDERAL AFFAIRS
 LABOR AND WORKFORCE
 DEVELOPMENT COMMITTEE

HotSpot Communities – Strategy Elements

The Hotspot Communities Initiative is based on the efforts of Baltimore City community organizations in the early 1990's. The comprehensive strategies implemented by these communities included filing civil actions, boarding vacant houses, organizing community activities, installing environmental enhancements, and implementing police foot patrols. These initial strategies had six goals:

- Deny the drug trade and other criminal activities space to operate
- Maximize the accountability and participation of all stakeholders in the community.
- Remove the residents' sense of helplessness by providing access to the criminal justice system.
- Reclaim public spaces and express community intolerance for drug dealing.
- Provide positive alternatives for youth and adults (particularly recovering addicts.)
- Develop community capacity to sustain the strategy and promote neighborhood safety.

The HotSpot program has refined and expanded these early efforts and now focuses on the Core, Enhancing and Expanded Elements described below.

Core Elements

(Essential Elements of an Effective Local Crime Control and Prevention Initiative)

Element	Key Features
Community Mobilization	<ul style="list-style-type: none"> ● Active Organization of community residents willing and able to mobilize against crime ● Civic and religious activities to reclaim public space, including neighborhood watch ● Working relationship with police and other government agencies
Community Policing	<ul style="list-style-type: none"> ● Police officer assigned to neighborhoods with the responsibility of problem solving, preventing crime, maintaining community order, enforcing quality of life offenses and building community/police trust

- Community policing is defined as the philosophy that promotes proactive policing in a manner that involves community members in problem solving, information sharing and establishing community priorities in a collaborative effort to prevent crime, ensure the arrest of offenders and improve the quality of life in the community.
- Illegal gun possession and trafficking is responded to collaboratively by law enforcement and prosecutors.
- Comprehensive and collaborative relationships are in place to reduce youth gun possession.

Community Probation

- Intensive supervision of known adult and juvenile offenders on probation and parole, with joint themes of Parole & Probation, Juvenile Justice, Federal Probation Officers, to boost enforcement of conditions
- Agents based in community field offices and manage neighborhood caseload
- Routine formal and informal communication between agent and community

Community Maintenance

- Rapid response to “broken windows,” abandoned cars, littered lots and other public nuisances that attract criminal activity
- Use of all civil, zoning, health and housing codes and offender work crews to shut down drug houses and remove other nuisance conditions
- Active community involvement in identifying nuisances and monitoring solutions

Youth Prevention

- Structured after-school programs that improve risk and resiliency factors
- Truancy and local curfew enforcement

Local Coordination

- Close partnership between schools and law enforcement
- Designation of a senior local official to coordinate HotSpot activities and maximize strategy impact

Enhancing Elements

(Elements that can Significantly Boost the Effectiveness of the Core Strategy)

Element	Key Features
Community Prosecution	<ul style="list-style-type: none">● Prosecutors act as problem solvers with an ongoing relationship to the community.● Extensive community input into prosecution of dangerous offenders and use of civil, zoning, health and housing codes to remove public nuisances.● Routine formal and informal communication between prosecutor and community.
Juvenile Intervention	<ul style="list-style-type: none">● Sanctions emphasize restitution and accountability to victims in the community.● Heightened supervision and support for youth returning to community from secure detention.
Victim Outreach and Assistance	<ul style="list-style-type: none">● Victims become central players in the criminal justice process.● Victims receive practical information and assistance with concerns such as repair of broken locks.● Losses and damages are restored through offender restitution and other restorative justice approaches.● Crisis Intervention – Advocates will meet victims at hospitals and police stations.● Counseling and Support – Individual and group counseling● Shelters - Safe comfortable accommodations with high security and round the clock support.● Legal Programs - Assistance and accompaniment through legal proceedings.
Crime Prevention Through Environmental Design	<ul style="list-style-type: none">● Changes in lighting, fencing, streetscape, traffic patterns and other physical conditions to deter criminal activity, control access and promote natural surveillance.
Housing and Business Revitalization	<ul style="list-style-type: none">● Coordination with other initiatives to ensure maximum impact on economic opportunity and physical in community● Short & long term plans to improve housing conditions and job opportunities for community residents

Community Support for Addiction Recovery

- Network of community resources and programs that support addicted residents, including religious institutions through “One Church, One Addict”
- Dedication of treatment slots in community programs to addicted residents
- Drug-addicted offenders entering court-ordered treatment supported by swift, certain and increasingly stiff sanctions for positive urine screens
- Services that ensure addicts receive appropriate treatment and learn the importance of maintaining a program for recovery on a daily basis through:
- Coordinated treatment programs to ensure that clients are matched with the type of program appropriate to their needs
 - Guarantees that addicts move seamlessly from one program to another as their treatment needs change
 - Effective Treatment that includes access to self-help fellowships such as Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, Detoxification, Intensive Day Treatment Programs, Inpatient, Intensive Out-Patient Program and Aftercare that follows up all treatment modalities to reinforce recovery programs
 - Relapse Prevention Programs: Intensive education and additional aftercare relapse group that follows the recovering addict for at least one year after treatment
 - Relapse Prevention Weekend Programs: short-term stabilization and relapse counseling
 - Dual-Diagnosis Treatment for patients who have a secondary diagnosis involving emotional disorders
 - Community Services: Assessments, Family Education, Addiction Intervention, and Workshops/Training sessions

Expanded Elements
(Complementary elements for HotSpot Communities with Demonstrated Success in Achieving Strategy Goals)

- | | |
|--|--|
| Senior Support Services | <ul style="list-style-type: none">● Strategies to ensure senior citizens' safety and enhanced community services● Describe obstacles to senior citizen access to community service. |
| Offender Re-Entry | <ul style="list-style-type: none">● Offenders will experience a smooth transition from placement or incarceration to their communities. |
| Child Abuse | <ul style="list-style-type: none">● Children will live in safe and supportive homes and communities. |
| Prevention | <ul style="list-style-type: none">● Parents will receive appropriate support and education as they raise their children. |
| Civil & Criminal Legal Services | <ul style="list-style-type: none">● Residents will have access to a full range of legal services, from criminal defense to protective orders to housing to bankruptcy. |
| Employment Readiness | <ul style="list-style-type: none">● Youth, Young Adults and Adults enter the workforce with skills to ensure employment. |
| Faith-Based Partnerships | <ul style="list-style-type: none">● The Faith Community play an active role in the community through services and programs that support and enhance the well being of its residents. |



TESTIMONY HB # 2759
HOUSE COMMITTEE
ON
CORRECTIONS
AND JUVENILE JUSTICE
FEBRUARY 19, 2004

PRESENTED BY
SERGEANT J. DARIN SCOTT
TOPEKA POLICE DEPARTMENT

SPIRIT OF COOPERATION

(Story)...

Increasingly, concerns affecting our lives happen on a much broader scale. Agencies are finding, that unlike the days of old, they are having their resources stretched to the limits and occasionally exhausted. Many agencies have learned, sometimes by the school of hard knocks, they must reach out and seek the help and expertise from another agency. We in Law Enforcement have learned that a spirit of cooperation must be fostered with resources to gain acceptable outcomes.

The Topeka Police Department is involved and cooperates with many resources and other Law Enforcement Agencies. We have Officers assigned to the Joint Terrorism Task Force in cooperation with the Federal Bureau of Investigation, the Drug Task Force in cooperation with the Drug Enforcement Agency, Violent Crimes Task Force in cooperation with Alcohol, Tobacco and Firearms, Shawnee County Re-Entry Program with involvement in re-introducing convicted persons in the community. The Topeka Police Department is also heavily involved with community orientated projects and programs like Emergency Children's Project with Shawnee County Family Resource Center, Office of Juvenile Justice and Delinquency and Safe Streets which is the driving force behind Neighborhood Watches and Crime Free Multi-Housing. Through Homeland Security we participate in Citizens Corp, not only sitting on the Board, but with our Departments commitment to Volunteers in Police Service.

Ladies and Gentlemen, I am the Crime Prevention Unit for our Department and if it weren't for all the resources I directly cooperate with I would not be able to reach the vast amount of people that I do. I know all too well the importance of being able to or having the vehicle in place to pull all the resources together where each have a say and can implement action towards a common goal.

I would like to thank you for your time and consideration of this important step towards a revived spirit of cooperation. Thank you.

5

Safe Streets
2/19/04

Safe Streets was founded in 1995 at a time when Topeka's homicide rate was 27 and we were ranked in the top 5 most unsafe cities in the nation.

Our original partners were the City, Chamber of Commerce, Volunteer Center, Topeka Police Dept. and Shawnee Regional Prevention & Recovery Services.

We were originally funded by a small city grant and were adopted by Shawnee Regional Prevention and Recovery Services. This was done for two reasons, one because of our compatible missions reducing crime and ATOD (alcohol, tobacco and other drugs) associated with crime and second, the decision that the program should be a nongovernmental or neutral agency.

We have since grown to 300 partners and because of these collaborative efforts we have been able to obtain additional funding for our community through the City, County, a Federal Drug Free Communities grant, a Byrne grant, local donations and United Way funding.

We have several programs that we are involved with at Safe Streets and in July of 2001 we hosted a Crime Summit with 280 people attending to assess what our community felt was important to them in relation to crime. It reaffirmed the arenas in which Safe Streets and our partners were involved in.

- ❖ Landlord Education – Crime Free Multi-Housing Program, we've trained 348 landlords on screening tenants, leases, working with law enforcement, crime prevention through environmental design (CPTED) and methamphetamine awareness.
- ❖ Neighborhood Mobilization – we held 90 neighborhood watch meetings in 2003, 35 of which were new and 55 meetings spent on working to sustain ongoing neighborhood initiatives.
- ❖ Working with youth, Young Citizen's Academy (YCA), Students Taking Action in Topeka (STAT), Teen Leadership Academy and the Latino Youth Academy
- ❖ Education on current crime trends and strategies, Safe Streets gave 103 presentations on everything from current trends, identity theft, CPTED, senior safety, bullying, methamphetamine awareness, personal safety and others.
- ❖ Working with Businesses – BizLink with its Retail Association that deals with shoplifting, forgeries, employee thefts and business watches.
- ❖ Mediation – working with people in conflict to reduce calls to police and code services
- ❖ Methamphetamine Awareness Project with over 10 partners; the National Guard, Kansas Department of Health and Environment, Community Volunteers, Kansas Family Partnership, Regional Prevention Center, High Intensity Drug Trafficking Area, KBI, Treatment Providers, K-State Research & Extension, and Farm Bureau. This project was so successful in Shawnee County that it has been replicated statewide.

Can a Safe Streets program be replicated as well? Certainly and each community will do it differently. Challenges? Evaluation and assessment, how will communities measure prevention?

We have worked with the KU Workgroup to evaluate our program since our inception. We measure everything we do; the number of trainings (pre & post tests), media counts (last quarter of 2003) we were on TV 46 times, Radio 6, Capital Journal newspaper 13 articles, newsletters 5 articles and online stories 32 times.

We document services provided, resources generated and number of actual community changes.

We also use the Communities that Care School Survey Data and the Police Dept. Water bill Survey.

The bottom line is that in Shawnee County crime is down for the 6th year in a row and the request for services has increased. More partners are coming to the table and more citizens are willing to get involved. Since 9/11 and the push for increased homeland security, isn't this the perfect bottom up initiative that you want happening in communities across the state?

Success story: Out of 213 Drug Free grantee's across the United States Safe Streets was one of 23 intensive site studies and were picked as the most promising program because of our outcomes.

For further information contact:

Sally Zellers

Safe Streets

2209 SW 29th Street

Topeka, Kansas 66611

785-266-4606

szellers@safestreets.org

THE CITY OF WICHITA



POLICE DEPARTMENT
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

Representative Ward Loyd, Chairperson
Corrections and Juvenile Justice Committee
House of Representatives
State Capitol, Room 241-N
Topeka, Kansas

2/18/04

Subject: Testimony in Support of HB 2759 – An act concerning crime prevention; creating a program to target areas in the state with high incidences of crime.

The City of Wichita appears in support of HB 2579. This bill should help reduce crime, reduce the perception of crime and ensure the continued building of partnerships with other Criminal Justice entities, create relationships with other city and county agencies as well as neighborhoods to pro-actively problem solve in each respective locality.

This afternoon I will present information regarding the philosophy and current practices that the Wichita Police Department has used that mirrors HB 2579.

Current Philosophy

Over eleven years ago, the Wichita Police Department adopted the “Community Policing” philosophy. The Mission Statement of the Wichita Police Department and the accompanying Values directs this organizational philosophy. The mission of the Wichita Police Department is to “provide professional and ethical public safety services in partnership with citizens to identify, prevent and solve the problems of crime, fear of crime, social disorder and neighborhood decay, thereby improving the quality of life in our community”. HB 2579 parallels our mission.

In addition, HB 2579 enhances the opportunity of the governmental agencies to take a pro-active and problem-solving stance to prevent crime and address quality of life issues but more importantly mandates community mobilization and accountability.

Current Practice


The City of Wichita has 38 police beats. These beats are a "geographic area" within the city that the police officers are accountable for. The beat team concept has been established that places a beat coordinator and at least six (6) other beat officers in this area. The beat team has the responsibility of working the area and ensuring that crime, the perception of crime and quality of life issues are addressed. The beat team must also be pro-active, be able to problem solve, build partnerships with community members, outside agencies and any other available resources to prevent crime.

This approach has been truly effective and has just been recently recognized by the International Association of Chiefs of Police by awarding the Wichita Police Department with the prestigious "Webber Seavey Award" for quality policing for the "Planeview Project".

Conclusion

The Wichita Police Department supports HB 2579. We view this bill as a mechanism to ensure the pro-active approach to problem solving and continued building of partnerships in an effort to prevent crime in our community. With passage of this bill, everyone in the community should be able to positively impact crime, the fear of crime and the quality of life in our city.

Sincerely,



Gary W. Tabor
Captain

Wichita Police Department

As a member of the Wichita City Council and a resident of an inner-city neighborhood, I would like to speak this afternoon in support of House Bill 2759 and its intent of creating a program to target areas in the state with high incidences of crime.

Crime and the perception of crime in many inner-city neighborhoods, keep these areas from being able to establish themselves as viable, livable communities. This in turn depresses property values thus eroding the tax base of dollars going to our state, city and school district coffers. These neighborhoods are also often relegated to the most disenfranchised peoples of our cities. This makes it hard for our young people to have the role models and guidance they need to become productive citizens for the state of Kansas.

I have worked with neighborhoods and neighborhood issues for over 20 years. The number one issue in every neighborhood is crime prevention. The Community Policing philosophy that was initiated in Wichita over eleven years ago has done much to assist ^{residents in} crime-ridden areas of our city to take back their neighborhoods. Much, however, remains to be done. HB 2579 enhances and expands the efforts that are already taking place with the Community Police Officers and neighborhood residents and associations.

By bringing together groups such as the Department of Corrections, the Juvenile Justice Authority, KBI, and Federal law enforcement to work alongside community leaders, crime problems can and will be solved.

Requiring neighborhoods to develop a crime control and prevention strategy incorporating the six core elements listed ^{in the bill} will truly make this a partnership of people with the technical abilities and skills assisting people with the passion of their neighborhood in reducing crime and creating a bright future for our citizens.

Wichita has long shown its support of combining the efforts of our police department and our residents through our community policing efforts. This bill, if passed, will give our efforts new momentum and new strength as more partners ~~and, hopefully funding,~~ ^{are} put toward the goals of making our now high crime areas safer and giving our citizens the peace of mind that comes with low crime. I encourage the passage of this bill and thank you for the opportunity to speak in favor of it today.

BILL MCCREARY
REPRESENTATIVE, 80TH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
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TAX, TRANSPORTATION,
JUDICIAL AND KPERS

MEMBER HOUSE COMMITTEES
APPROPRIATIONS
ETHICS AND ELECTIONS

MEMBER JOINT COMMITTEES
POST AUDIT
PENSIONS, INVESTMENTS
AND BENEFITS

Mr. Chairman and members of the Committee:

I appear as a proponent of HB 2766. As you know, the Kansas Legislature passed SB 123 last session allowing those who are convicted of using drug to be sentenced to a drug rehabilitation center. This bill is really just an amendment of that bill. It makes it possible for an inmate who was sent to prison for drug use, to be paroled to a drug rehabilitation center, if the circumstances of their case would have met all the criteria and provisions of SB 123.

Mr. Chairman and committee, it is my belief that this is a fairness issue. We now have inmates in prison that committed the same crime for which we now send the violator to rehabilitation. Also, it is my understanding that the inmate gets no rehabilitation in prison. If this is a sickness, as many believe, it makes sense that we treat the illness and give these drug violators a chance to become productive citizens who will be taxpayers and not tax users.

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PUBLIC SOLUTIONS

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LEGISLATIVE TESTIMONY

TO: Chairman Ward Loyd and Members of the House Committee on Corrections and Juvenile Justice

DATE: February 19, 2004

SUBJECT: HB 2766

Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent KADSPA, the program administrator section of the Kansas Association of Addiction Professionals. In addition, I represent several organizations that provide substance abuse service to the offender population.

I appear today in support of the recommended alternative sentences for selected offenders incarcerated in our state. The research is in; treatment of drug offenders is more effective than incarceration in reducing crime.

In addition, it has been demonstrated to cost less than half than incarceration. According to the National Center on Addiction and Substance Abuse (CASA) at Columbia University, drug-addicted, non-violent felony offenders with five prior drug arrests and an average of four years behind bars achieved significantly lower recidivism rates and higher employment rates through a drug treatment program than comparable offenders that were sent to prison. These results were achieved at about half the cost of incarceration.

This five-year study of a program in New York, similar to the treatment required for offenders identified as eligible under HB 2766, found that participants who completed the program were 33 percent less likely to be rearrested, 45 percent less likely to be reconvicted, and 87 percent less likely to return to prison. In addition, program participants were three and one-half times more likely to be employed after completion than before their arrest.

Another important point to consider involves the current budget proposed for the Department of Corrections. Simply put, no dollars are budgeted in FY 2004 or FY 2005 for substance abuse treatment in facility-based programs. As recently as FY 2000, the Department was able to provide treatment services to just over 1,600 offenders. If programs are indeed effective, under the recommended budget, the offenders targeted by HB 2766 will receive no treatment for their substance abuse problems.

I thank the committee for its time and attention and I would stand for any questions.



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2766
to
The House Committee on Corrections and Juvenile Justice

By Roger Werholtz
Secretary
Kansas Department of Corrections

February 19, 2004

HB 2766 provides for the retroactive application of a nonprison sentencing disposition requiring offenders convicted of drug possession to participate in substance abuse treatment while the offender is under community corrections supervision. Representative McCreary has expressed to me that the intent of HB 2766 is to address the disparity in sentencing dispositions and the availability of substance abuse treatment to identically situated offenders caused by the inapplicability of SB 123 (now codified at K.S.A. 21-4729) to persons sentenced before November 1, 2003. It is the Department's understanding that the intent of HB 2766 is to provide the same criteria for the sentencing disposition provided by SB 123 to offenders sentenced prior to November 1, 2003.

To accomplish the uniformity in sentencing dispositions for possession drug offenses through retroactive application of SB 123, the Department recommends the following amendments to HB 2766:

1. Rather than enact legislation that merely references K.S.A. 21-4729, it is recommended that HB 2766 be amended so that it directly amends K.S.A. 21-4729 so that the criteria provided by that statute to define the types of offenses and offenders eligible for the nonprison treatment disposition is clear and consistent.
2. Limit application of the modification to those offenders who have least 180 days remaining to be served prior to their initial release date.
3. Reflect the two categories of offenders eligible for the nonprison treatment disposition provide by K.S.A. 21-4729 by providing different modification procedures for each category.

4. Require that disqualifications due to convictions for other offenses not decay or be effected by whether the sentence for the conviction is currently being served or has been served.
5. Provide sufficient temporary staff to the Department in order to conduct the reviews required by HB 2766.

Offenders Eligible for a Nonprison Treatment Disposition Should be Defined by K.S.A. 21-4729

The Department recommends that if the criteria for a retroactive application of a nonprison treatment sentence pursuant to HB 2766 is to be identical to that provided for sentencing dispositions pursuant to K.S.A. 21-4729, HB 2766 should provide for the amendment of K.S.A. 21-4729 relative to the sentencing date restriction currently provide by that statute. Use of K.S.A. 21-4729 as the vehicle for implementing the objective of HB 2766 ensures that the criteria regarding the offenses and offenders eligible for a nonprison treatment disposition is consistent between those offenders sentenced prior or subsequent to November 1, 2003. Therefore, it is the Department's recommendation that K.S.A. 21-4729 should be the statute addressed and amended by HB 2766.

Limit Retroactivity to Offenders with at Least 180 Days Remaining to be Served Prior to Their Initial Release

The Department notes that HB 2766 provides for the retroactive conversion of drug offenders who have violated a condition of their release supervision. In light of the fact that those offenders have been released to postrelease supervision, the Department is of the opinion that the remaining balance of their sentence obligation is not of a sufficient length to warrant modification. The postrelease supervision obligation for severity level 4 drug offenses is one year, which continues to run while the offender is in the community, during the revocation process and while incarcerated for the supervision violation. Therefore, it is the Department's recommendation that only those offenders who have at least 180 days remaining before their initial release date be eligible for retroactive modification.

Establish Two Distinct Procedures for Modification

K.S.A. 21-4729 classifies offenders convicted of possession offenses dependant upon whether the offender has a history of having committed a felony person offense. If the offender does not have a criminal history of having committed a person felony, the nonprison disposition is required. However, for those persons who have a criminal history of a person felony, only person felonies of a severity level 8, 9, 10, or nongrid classification are eligible for consideration which is further dependent upon a judicial finding that a nonprison treatment disposition would not jeopardize public safety.

The Department recommends that HB 2766 provide distinct procedures relative to whether a modification can be administratively implemented by the Department if no objection is made to the Department's report. In situations where the offender has no person felony criminal history, the Department recommends that modification be implemented in the event there is no challenge to the Department's findings relative to the offender's current drug offense and his or her criminal history. However, in regard to persons who have a person felony criminal history falling within a severity level 8, 9, 10, or nongrid classification, the Department recommends that no modification be implemented

unless and until the sentencing court finds that a nonprison treatment disposition would not jeopardize public safety.

Require that Disqualifications due to Convictions for other Offenses not Decay or be Effected by Whether the Sentence for the Conviction is Currently being Served or has been Served.

Courts in decisions regarding the retroactive application of the Kansas Sentencing Guidelines Act have separated multiple consecutive sentences and made distinctions between which of the multiple sentences is being served at a given time. The Department strongly recommends that any retroactivity provision negate such distinctions and clearly indicate that all of an offender's convictions, prior and current, be considered when determining whether that offender is eligible for modification of his or her sentence.

Provide Sufficient Temporary Staff to the Department in Order to Conduct the Reviews Required by HB 2766

The review of Department records to determine eligibility for conversion is a staff intensive activity. Therefore the Department recommends additional staff resources. The Department believes that two (2) Administrative Assistant positions and one (1) Corrections Counselor I for a period of 6 months are necessary. Additionally, the Department believes that information technology programming services will be required for one (1) month. It is anticipated that the Department would contract for this service. The Department anticipates that up to 394 offenders would be affected by the modification and therefore be supervised by community corrections program. These offenders would not have otherwise been supervised by community corrections. The community corrections unit cost calculated for SB 123 offenders was \$2,906 per person per year for supervision only; \$4,300 per offender for treatment and \$200 for evaluations per offender. The increase to community corrections case loads and treatment services due to retroactive application of SB 123 would end no later than 18 months from the modification depending on how long a particular offender required substance abuse treatment.

Retroactive Eligibility Provisions

The following language is designed to address the issues identified above. The Department, if requested, will provide any assistance to the Committee or the Revisor's Office that may aid in the drafting of any amendment to HB 2766 desired by the Committee.

- Provide a new section that states: "Persons who were convicted of a felony violation of K.S.A. 65-4160 or 65-4162, committed on or after July 1, 1993 but prior to July 1, 2003, or committed such offense on or after July 1, 2003 and were sentenced prior to November 1, 2003 may have their sentences modified according to this act, provided the offender meets the requirements of subsection (a) and
- Such offender has no felony convictions for an off grid offense; severity levels 1, 2, 3, 4, 5, 6, or 7 nondrug grid offense; or severity level 1, 2, or 3 drug grid offense; and

Modification Process and Additional Criterion

- For offenders convicted of severity level 8, 9, 10, and nongrid person felonies, who have no convictions for violation of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, or any substantially similar offense from another jurisdiction and on the effective date of the bill, and the offender has greater than 180 days to serve on such inmate's sentences prior to such inmate's initial release date, the Department of Corrections shall report to the sentencing court, the offender, the offender's attorney, and the county or district attorney the offender's custody classification, institutional disciplinary record, and sentencing dispositions to the Department of Corrections. Such offenders may within 60 days of the issuance of such report, request a hearing by filing a motion with the sentencing court, regarding the modification of the sentence under this section to be held in the jurisdiction where the original criminal case was filed. If a request for a hearing is not filed within 60 days of the issuance of the report, the person is not eligible for such modification of sentence. In the event a hearing is requested and held, the court shall determine whether the safety of the members of the public will be jeopardized by such modification of sentence. In the event a hearing is requested, the court shall schedule and hold the hearing within 60 days after it was requested and shall rule on the issues raised by the parties within 30 days after the hearing. The burden of proving that the safety of the members of public will not be jeopardized by such modification of sentence shall be on the offender. Such offender shall be represented by counsel pursuant to the provisions of K.S.A. 22-4501 et seq. and amendments thereto. If the court determines that the safety of the members of the public will be jeopardized by such modification of sentence, the court shall enter an order denying the person's modification of sentence and the person shall remain in the custody of the department of corrections. If the court determines that the safety of the members of the public would not be jeopardized by such modification of sentence, the court shall enter an order granting the person's modification of sentence and provide a copy of such order to the department of corrections.
- The Department shall complete and submit a report to the sentencing court, the offender, the offender's attorney, and the county or district attorney for those offenders whom the Department believes meet the criteria of subsection (a)(1) and on the effective date of the bill, has greater than 180 days to serve on such inmate's sentences prior to such inmate's initial release date.
- The reports required by the Department of Corrections shall be submitted based on such inmate's custody or security classification on the effective date of this act in the following order: minimum, within 60 days of the effective date of this act; medium, within 90 days of the effective date of this act; and maximum, within 120 days of the effective date of this act.
- Within 60 days of the issuance of such report, the parties shall have the right to request a hearing by filing a motion with the sentencing court, regarding the department's report of its opinion that the inmate meets the requirements of subsection (a)(1) and is not otherwise ineligible for the modification of the sentence, to be held in the jurisdiction where the original criminal case was filed. The secretary of corrections shall be provided written notice of any request for a hearing. In the event a hearing is requested, the court shall schedule and hold the hearing within 60 days after it was requested and shall rule on the issues raised by the parties within 30 days after the hearing. In the event a hearing is requested and held, the court shall determine whether the inmate meets the requirements of subsection (a)(1) or is otherwise disqualified from the

modification of such inmate's sentence within 30 days after the hearing. Such offender shall be represented by appointed counsel pursuant to the provisions of K.S.A. 22-4501 *et seq.*, and amendments thereto. Nothing contained in this section shall be construed as requiring the appearance in person of the offender or creating such a right of appearance in person of the offender at the hearing provided in this section regarding the modification of a sentence under this section. The court shall enter an order regarding the person's modification of sentence and forward that order to the secretary of corrections.

- Reports of the department of corrections finding that the offender meets the eligibility requirements of (a)(1) and that the offender does not have convictions for an off grid offense; severity levels 1, 2, 3, 4, 5, 6, or 7 nondrug grid offense; severity level 1, 2, or 3 drug grid offense; violation of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164 or any similar offense in any other jurisdiction; or a person felony shall be deemed to be correct unless objection thereto is filed by either the person or the prosecution officer within the 60-day period provided to request a hearing. If an objection is filed, the sentencing court shall determine if the person is eligible for a modification of sentence. The burden of proof shall be on the prosecution to prove that the person is not eligible for such modification of sentence pursuant to this subsection.

The Department appreciates the Committee taking into consideration the Department's comments and recommendations in its deliberations on HB 2766.

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February 19, 2004

To: Community Corrections and Juvenile Justice Committee

TESTIMONY REGARDING HOUSE BILL 2766

Thank you for the opportunity to testify regarding House Bill 2766. My understanding of the purpose of this Bill is to make Senate Bill 123 from last session retroactive on persons who may be in custody for crimes for possession of a controlled substance. I truly believe that it is not appropriate to make this legislation retroactive.

Senate Bill 123 was an attempt to ease the burden on prison space by requiring that persons convicted of a crime of possession of a controlled substance be sentenced to a specific drug rehabilitation program rather than face a prison sentence. It is important to note that these persons may still be incarcerated if the attempts at rehabilitation fail. It would appear that the belief of the legislature at the time this Bill was passed was persons were being convicted of possession of controlled substance charges and sent directly to serve prison terms. This was an incorrect perception. Senate Bill 123 allows for the revocation of probation and incarceration in the Department of Corrections when a defendant "has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding." I believe it is safe to say that the vast majority of those who are in the custody of the Department of Corrections have had numerous chances at drug rehabilitation and are currently incarcerated only because they have shown a pattern of intentional conduct that demonstrated the defendant's refusal to comply with or participate in the treatment programs that had been offered them. At some point the courts must determine that a person is not amenable to probation or treatment, and the courts that have remanded persons to serve time for these crimes have done so because of the fact that these defendants have failed at repeated treatment attempts. It makes no logical sense to place persons who have already failed to take advantage of treatment options resulting in their incarceration in the Department of Corrections back into communities that have suffered because of their criminal conduct.

It also appears that the legislature failed to understand that persons involved in the possession of controlled substances create a threat to the communities wherein they reside. I will give you a few examples of situations that have occurred in Reno County in the recent past. In one case, a defendant burglarized his parents home in order to obtain property to sell in order to buy drugs. The defendant was convicted of

that burglary and placed on probation. While on probation, the defendant has been re-arrested for possession of methamphetamine. In another case, a defendant was convicted on multiple possession cases. That defendant has been arrested on charges of committing twenty-seven forgeries while awaiting sentencing in the drug cases. This defendant was also involved in a methamphetamine laboratory where the methamphetamine cook is now serving a significant sentence in the Department of Corrections. In another case, a defendant was convicted of forgery, presumably committed to obtain money to buy drugs. While on probation, the defendant committed seven additional forgeries. When the defendant was arrested on the new charges, officers found a methamphetamine lab and the victim's checkbook from the forgeries in the probationer's possession. This defendant has a prior conviction for manufacturing. Additionally, this defendant's first case was being investigated when officers discovered a significant methamphetamine lab with sophisticated equipment used to manufacture large amounts of methamphetamine for distribution in the community. The person responsible for that meth lab was convicted of manufacture of methamphetamine and possession of methamphetamine with intent to sell, third offense, after officers seized three ounces of methamphetamine from the refrigerator of the defendant's house. In still another case, a defendant, who was pending trial on possession of methamphetamine, committed forgeries of approximately fifty checks along with a co-defendant. In another case, two persons who were pending prosecution in drug cases conspired with others to commit a burglary of a local business in which the loss in subsequent forgeries ran into the thousands of dollars. In one interesting case, an inmate who had been released from the Department of Corrections went to the residence where he was assigned to live on parole with his parole officer. This occurred the day the inmate was released from incarceration. When the parole officer entered the house to insure it was a proper setting for the inmate to live, he discovered the inmate's ex-girlfriend with a man who was a parole absconder. Both were in possession of methamphetamine. In another case, a defendant who was on parole for possessing methamphetamine with intent to sell and simple possession of methamphetamine was out of prison only a short time when he picked up a new count of possession of methamphetamine. In this case, the defendant also possessed a handgun. Finally, a police department investigation in Hutchinson resulted in the arrest of a local man who, in the estimation of police, committed at least forty residential burglaries in order to obtain property to trade or sell in order to get drugs. The investigation showed that the defendant would enter a residence with a "shopping list" of items that he knew drug dealers would trade for drugs. In many instances he traded the property stolen directly for drugs, and in other instances he pawned the property to obtain cash with which to purchase drugs. It is fantasy to believe that persons involved in the simple possession of drugs go to work everyday, earn money with which they go out and purchase their drugs, and go home and use the drugs with no harm to anyone but themselves. Placing persons who are in prison for possession of drugs back into the community will result in an enormous increase in crime.

Another consideration for this debate is the fact that many persons who are incarcerated for possession of drugs are in prison based on plea agreements crafted in drug cases. When the statutes required enhancement for second or third time possession charges, prosecutors often entered into plea agreements that resulted in a reduction from a more serious charge to a possession charge because the parties knew the defendant would be incarcerated. These periods of incarceration were for less time than the sentence would be had the defendant been convicted of the more serious offense. I do not believe that the figures supplied on bed space can possibly reflect the increase in prison time that is going to result from prosecutors no longer having an option for a shorter period of incarceration in prison. Cases that would have resulted in lower sentences prior to the enactment of Senate Bill 123 will now be prosecuted on the

original charge, resulting in longer prison sentences for those involved in drug related crimes. I no longer have the option of a presumptive prison sentence for a possession crime when someone is arrested and charged with possession of a controlled substance with the intent to sell. If I agree to reduce the charge to possession of a controlled substance, the defendant will receive probation. It is not in the best interests of my community that persons arrested and charged with crimes involving the distribution of controlled substances should be given a non-prison sanction. Therefore, those persons will be tried and likely convicted of a crime resulting in a longer prison sentence. I also do not have the option of having a defendant plead to a second time possession of methamphetamine, for example, formerly a level 2 drug felony, instead of pursuing them for assisting in the manufacture of methamphetamine. Not every person involved in manufacture of methamphetamine ultimately gets convicted of that crime. When a person is a small player in the manufacturing process, for example, someone who is obtaining pseudoephedrine tablets for the manufacture of the methamphetamine exchange for a finished product, I used to be able to offer that person a second time possession of methamphetamine count if, indeed, they had a prior conviction for possession. I no longer have that option. Those persons will now be prosecuted for manufacture of methamphetamine. This is not to say they will all receive prison sentences, but the sentences they do receive will probably be longer than they would have otherwise received and any chance that they have at probation will not fall under Senate Bill 123, and the possibility exists that these persons will end up serving longer sentences if they fail on probation. The problem with releasing those who are now in prison because of possession charges is that those who received significant reductions in plea agreements will now be freed when the intent of the plea agreement was to insure the defendant's incarceration.

Another factor for you to consider is the impact that freeing persons with possession of controlled substances convictions will have on the resources of community corrections. At this point, there is insufficient funding to insure Senate Bill 123 treatment for those committing new crimes. Placing persons who have already failed at very similar programs back into treatment and requiring the citizens of the State of Kansas to pay for that treatment is unrealistic. The money is simply not available.

I ask that you take these arguments into consideration when determining whether making Senate Bill 123 retroactive is a wise move for the people of the State of Kansas. Please do not let bed space control this issue.

Respectfully submitted,



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OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

NOLA FOULSTON
District Attorney

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TO: Chairman Loyd and the Members of the House Committee on Corrections and Juvenile Justice

FROM: Mike Jennings, Legislative Chair, Kansas County and District Attorneys Association

RE: H.B. 2766, a Bill to allow inmates to petition for release from prison and enroll in drug treatment

DATE: February 19, 2004

Thank you for the opportunity to state our opposition to this Bill. This appears to be an attempt to have the provisions of S.B. 123 applied retroactively. This is something the Legislature was unwilling to do last year. The reasons counseling against retroactivity last year counsel against retroactivity this year as well, even on a case by case basis.

Furthermore, it is probable that a significant percentage of those eligible to apply for release under the Bill have already had an opportunity for drug treatment.

In addition, allowing the inmates to have their sentences modified undermines the Guidelines. Inmates will no longer know with certainty when they will be released. Instead, their fates will be returned to the discretion of a judge who may be influenced by matters other than criminal history and the severity of the offense.

It is likely that the judge who sent the inmate now applying for release to treatment has already rejected the treatment option and decided instead to commit the defendant to the custody

of the Secretary of Corrections. This Bill second-guesses the decision to commit the defendant to prison rather than to give treatment a(nother) try.

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STUART J. LITTLE, Ph.D.
Little Government Relations

February 19, 2004

**House Committee on Corrections and Juvenile Justice Oversight
Testimony on House Bill 2766**

Mr. Chairman and Members of the Committee,

I appear before you today on behalf of the Kansas Community Corrections Association (KCCA) to provide informational testimony on HB 2766. Whether this committee and the Legislature concur or reject the merits of HB 2766 as potential public policy, KCCA seeks to provide some additional information for your review.

HB 2766 would make the drug treatment instead of incarceration a retroactive application for some offenders. We have not seen Kansas Sentencing Commission projections on the impact of HB 2766, but we believe your consideration of this bill, designed perhaps to reduce the demand for costly prison construction, does not come without a cost. The substance abuse treatment program passed in SB 123 requires, as HB 2766 confirms, that these offenders will be supervised by community corrections.

When SB 123 passed last year, \$1.6 million of the \$5.4 million appropriated for SB 123 was for the increased supervision of the projected 800 new offenders coming to community corrections. The full year funding needed in FY 2005 was estimated at \$8.0 million for treatment and substance abuse, including \$2.4 million for supervision. As community corrections agencies slowly begin to receive the offenders under SB 123, new offenders added to the eligible population will require more funding for treatment and programs.

We trust an affirmative vote for HB 2766 will be matched by an affirmative vote for additional revenue for treatment and supervision. Otherwise, HB 2766 will simply release some offenders from prison.

JEFF GOERING

REPRESENTATIVE, 105TH DISTRICT
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENT

MEMBER CORRECTIONS AND JUVENILE JUSTICE
 JUDICIARY
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Mr. Chairman, and members of the Committee:

Thank you for the opportunity to testify in favor of HB 2596. This bill is relatively straight forward, and simply requires Districts Attorney in Kansas to submit a budget to the Boards of County Commissioners for approval.

Under current law, County Commissioners are statutorily required to "determine and allow such reasonable sums from funds of the county" necessary for the operation of the office of District Attorney. The problem with the law is that there is no statutory requirement for the District Attorney to submit a budget to the County Commissioners. It is axiomatic that without some kind of an itemized budget from the District Attorney, the County Commissioners are unable to fulfill their statutory obligation to determine and provide the money necessary to fund the office of District Attorney.

One of the first things you learn as a freshman legislator is that the appropriation process is inherently a difficult and painful process. Those agencies that depend upon the State for funding often times ask for more money than the State can afford to spend, and in many cases the State appropriates less money than Agencies believe they need to operate. This tension is simply part of the process. And the same kind of tension is part of the budgeting process at the county level as well.

While the process of putting together a budget at the county level will probably always be a difficult one (as it is for us at the State level), we can make this task less troublesome by making sure that the law is clear on the obligations of the parties involved in this process. As regards the office of District Attorney, I believe that the law needs to clearly identify the obligation of the District Attorney to provide the County Commissioners with a budget which itemizes the funds necessary to operate the office.

I have been made aware of some objections to this bill, which I would like to take a moment to address.

The first objection is that since the office of District Attorney is a state office, the proposed amendments violate the separation of powers doctrine since the amendment would require a state official to submit a budget for the approval of local officials. I must confess that I don't fully understand this objection.

Under current law, the County Commissioners (i.e. local officials) have the statutory obligation to determine and allow such funds as are necessary to operate the office of District Attorney. Thus, under current law, the level of funding for the office of a state official is determined by local elected officials. All HB 2596 does is simply require the District Attorney to submit a budget. The separation of powers objection is really an objection with the way that current law is written, which establishes power with the County Commissioners to determine and allow those funds necessary to operate the office of District Attorney. It should be noted here that the Districts Attorney, to my knowledge, have never requested revision to current law to address any perceived separation of powers issues.

The second objection is that HB 2596 would prevent Districts Attorney from using funds appropriated for one purpose for another purpose. It is argued that the office of District Attorney may be confronted with unusual expenditures in one area which would require using funds appropriated for other purposes.

I am somewhat troubled by this argument. The office of District Attorney is funded with tax payer dollars. As such, there must be some oversight as to how that money is spent. Under current law, the County Commissioners have the statutory obligation to "determine and allow" reasonable funds necessary for the operation of the office. The County Commissioners' duty to exercise oversight with regard to how tax payer dollars are spent is, to a degree, frustrated when a District Attorney spends money appropriate for one purpose on another unrelated purpose.

If you take the two arguments against HB 2596 outlined above together, they are essentially an argument that the District Attorney should be permitted to request of the County Commissioners a lump sum of money for the operation of their office, that the District Attorney should not have to disclose what expenses were taken into account in reaching the amount of that lump sum of money, and should be free to spend that money without oversight. This is basically a request for a blank check.

Finally, it is argued that line item budgets are being submitted already, and that nothing in HB 2596 will change anything regarding line item budget submissions. This is the old saw: "If it ain't broke, don't fix it." The fact of the matter is that the ambiguity in current law has created problems. The arguments that have been discussed above best describe the potential for future problems if current law is not clarified.

For the last two years we in the legislature have cut the demand transfer payments to the counties. In my opinion, it is unlikely that the demand transfer payments will be restored in the future. As a result, the counties have been asked to meet the needs of the citizens in those counties with less money. In Sedgwick County, the funds appropriated by the county to the District Attorney

exceed \$6 million dollars. It is simply good government to require the District Attorney to submit a budget itemizing the expenditures necessary to run the office, so that the County Commissioners can fulfill their obligation to fund the office, and so that the tax payers can be confident that someone is watching how their hard earned money is spent.



GOVERNMENT RELATIONS

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Michael D. Pepoon
Director

TESTIMONY ON HB 2596 Before The House Committee on Corrections and Juvenile Justice February 19, 2004

Chairman Loyd and members of the committee, I appreciate the opportunity to testify in support of HB 2596—a bill amending K.S.A. 22a-106 to require a district attorney to submit a budget for the financing of the operations of the district attorney's office to the board of county commission for the board's approval. This bill would provide that the budget process for the funding of the district attorney's office would be on equal footing with Kansas statutes relating to funding the county clerk, county treasurer, sheriff and register of deeds.

I'd first of all like to make it clear that the Board of County Commissioners of Sedgwick County and the County Manager have a great deal of respect for Sedgwick County District Attorney, Nola Foulston. Our support of this bill is in no way intended to be a criticism of Ms. Foulston or the professionalism and integrity she has brought to the office of district attorney. There was a budget dispute in the summer of 2003 that was finally resolved to the satisfaction of the county and the district attorney. Our support of HB 2596 is based solely on the fact that we believe it to be good law and will hopefully resolve such disputes in the future—regardless of whom might be in office at any given time.

The language in HB 2596 that the "...district attorney shall submit a budget for the financing of the operation of the district attorney's office to the board of county commissioners for the board's approval" is virtually identical to language for the sheriff (K.S.A. 19-805), county clerk (K.S.A. 19-302), county treasurer (K.S.A. 19-503), and register of deeds (K.S.A. 19-1202). This language also puts the authority over the district attorney's budget squarely on the county commission.

Each year the county commissioners rely on professional budget staff to go through the budgets of the various county departments and elected officials to determine their respective budget needs. These department heads and elected officials are expected to submit a budget consistent with target amounts set by budget staff. The target amounts are set for each department or elected office by considering inflationary trends, expenditure growth trends and revenue growth trends. Obviously the revenue trends have been down in large part due to the loss of approximately \$10 million in demand transfer money over the past 18 months. In fact, the general fund portion of the county budget for 2004 was \$7 million less than it was in 2003.

"Sedgwick County...working for you."

House Corr & JJ
Attachment 15

2-19-04

County departments and elected officials are expected to prioritize their budgets based on the target amounts and then request additional needed funds through supplemental budget requests.

Last June, in preparation for the 2004 budget, the Sedgwick County District Attorney was the only elected official who refused to present a budget that conformed to the target amounts set by budget staff. It was only after the county manager threatened publicly to reconstruct a budget for her office and present that to the county commission that she was able to work it out with budget staff and submit a budget to the county commission. But even when this finally occurred, the district attorney's office and the budget department merely arrived at a lump sum figure and then backed their way into the details of her budget to be consistent with that figure.

This is not the way that a county should handle a budget that for the year 2004 was over \$6.2 million dollars. Certainly the taxpayers of Sedgwick County should expect more of their county officials than to merely rubber stamp a lump sum amount. Ms. Foulston was quoted in the Wichita Eagle on June 18, 2003, as indicating that as the district attorney she was "a different animal" from other county officials and unlike county department heads, she was a state official and not a county official. Ms. Foulston further indicated that as a state official she was not required by law to submit a budget to the county manager. If that is indeed the case, and as a state official she does not want to be responsible to the county commission, through its budget staff, to provide a detailed budget, then Sedgwick County would support further legislation allowing the state of Kansas set her budget each year.

In summary, Sedgwick County urges your support of HB 2596.

Gerald W. Woolwine, President
Christine Kenney, Vice-President
Thomas J. Drees, Secretary/Treasurer
Steve Kearney, Executive Director
John M. Settle, Past President

Edmond D. Brancart
Douglas Witteman
Thomas Stanton
David Debenham



Kansas County & District Attorneys Association

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February 19, 2004

Committee on Corrections and Juvenile Justice
Hearing on HB 2596, Amendments to K.S.A. 22a-106
Testimony of Christine E. Kenney, Douglas County District Attorney

Dear Chairperson Loyd and Committee Members:

As you know, HB 2596 addresses the budget process in six of the 105 counties in Kansas. I am the District Attorney of one of those counties. However, as Vice President of Kansas County & District Attorneys Association (KCDA), I am here to speak on behalf of the elected officials across the State. KCDA opposes the passage of HB2596 for the reasons stated below.

HB 2596 makes significant changes to the way District Attorneys' office budgets are approved by the board of county commissioners (commissioners). Currently, K.S.A. 22a-106 requires that the expenditures of the District Attorney's office be "Within the limits of appropriations therefore". In other words, the commissioners approve an amount for the expenses of the office, including salaries, overhead, witness fees, etc., and the District Attorney's expenditures must not exceed the amount appropriated. If the expenditures of the office will exceed the amount appropriated, then the District Attorney must obtain approval for that expenditure from the commissioners.

Although the current law does not explicitly require it, all six District Attorneys submit a budget for approval to his or her respective commissioners. In fact, the process proposed in HB 2596 is essentially already followed by each District Attorney. There is no need for this legislation.

Under HB 2596 "expenditures outside the budget" must be approved by the commissioners. This language is at a minimum ambiguous, and appears to require the District Attorneys to take every line item change to the commissioners. In other words, instead of making spending adjustments within the total amount appropriated, the District Attorney would be required to obtain

the commissioners approval each time spending exceeds the budgeted line item. This process would add an unnecessary burden on both the commissioners, and on the District Attorneys, public servants who already juggle very busy schedules.


Another important consideration is that criminal cases are under strict time constraints. Because of these constitutional time limitations, decisions are often made very quickly regarding the presentation of evidence. Any delays in obtaining experts, for example, could compromise our ability to successfully prosecute our cases. In addition, many of our cases involve confidential information, either because they are still at the investigative stage, or because of the subject matter of the case (e.g., child in need of care, care and treatment). It would violate the statutory requirement of confidentiality to address the details of these cases in a public setting in order to explain adequately the additional expenditures.

The type of decisions that the District Attorneys must make are very likely the type of decisions the commissioners do not want to make. As a prosecutor, we must make decisions on cases that are based in law. Whether or not to hire experts, whether or not to seek the death penalty or a hard 50 sentence are decisions that the District Attorney is elected to make. Those are decisions that must be made based upon the facts and circumstances of each case and these are decisions that, as prosecutors, we are trained to make.

Attached are copies of the 2004 budget worksheets submitted by Shawnee County District Attorney Robert Hecht, and by me. I have also included the approved 2004 budget for my office since there was a reduction in the amount I requested.

I would be happy to try to address any questions or concerns that you have.

Sincerely,



Christine Kenney
Vice President
KCDAA

2004 BUDGET WORKSHEET							
DISTRICT ATTORNEY	100 124 2						
OBJECT OF EXPENDITURE	MSA	ACTUAL 2002	BUDGET 2003	REQUEST 2004	BCC ADJ	F/A ADJ	ADJUSTED 2004
PERSONAL SERVICES	1						
UNCLASSIFIED	100	118,544	98,744	104,080			
PROFESSIONAL	103	673,811	761,719	800,451			
TEMPORARY / SEASONAL	104	881,852	1,013,430	1,195,330			
EMPLOYEE BENEFITS	105	70,460	33,800	36,180			
	116	344,597	449,122	491,888			
MSA TOTAL		2,089,064	2,356,815	2,627,929			
OTHER SERVICES & CHARGES	2						
PROFESSIONAL SERVICES	200	16,955	16,000	18,000			
FEES FOR SERVICE	210	10,417	10,000	18,000			
WITNESS	212	-	500	500			
REPAIRS & SERVICING	220	11,819	2,000	2,000			
CONTRACTUAL SERVICES	230	17,946	14,000	21,500			
PRINTING & ADVERTISING	240	4,973	3,000	4,500			
TRAVEL AND SUBSISTENCE	250	40					
MEALS	251	18,252	17,264	18,000			
ACCOMMODATIONS & SUBSISTENCE	252	-	1,000	1,000			
TRAINING	260	100					
MEMBERSHIP	261	217	2,233	-			
LIBRARIES	262	2,410	100	2,961			
SUBSCRIPTIONS	263	151	150	-			
RENTALS	270	37					
TELEPHONE	284	10,422	9,000	10,000			
POSTAGE / FREIGHT / DRAYAGE	285	395	700	488			
INSURANCE PREMIUMS	290	-	488	488			
MSA TOTAL		94,134	76,435	97,435			
SUPPLIES / MATERIALS / PARTS	3						
BOOKS & REFERENCE MATERIALS	320	15,258	10,400	13,000			

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2004 BUDGET WORKSHEET							
DISTRICT ATTORNEY	100 124 2						
OBJECT OF EXPENDITURE	MSA	ACTUAL 2002	BUDGET 2003	REQUEST 2004	BCC ADJ	F/A ADJ	ADJUSTED 2004
OFFICE & SHOP SUPPLIES	330	22,777	15,600	26,000			
SPECIAL SUPPLIES & MATERIALS	340	119					
VEHICLE & EQUIPMENT SUPPLIES	360	-	500	500			
FUEL	362	-	625	625			
REPAIRS	364	-					
COMPUTER SOFTWARE	374	391					
STATIONERY ITEMS	377	13,031	5,000	3,000			
EQUIPMENT LEASES	381	15,689	18,144	20,731			
MSA TOTAL		68,063	50,269	63,856			
CAPITAL OUTLAY	8						
OFFICE FURNITURE & EQUIPMENT	830	-					
EQUIPMENT	850	9,533					
MSA TOTAL		9,533					
TOTAL BUDGET		2,260,794	2,483,519	2,789,220			

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DOUGLAS COUNTY

16-5

FY 2004 Budget Request													
General - District Attorney				% change over 2003 Budget	2004 Budget	2003 Estimated	2003 Adjusted Budget	2003 Budget	2002 Actual	Narrative	2001 Actual	2000 Actual	1999 Actual
100	15000	50107	SECRETARY/RECEPTIONIST	4.97%	29,780	29,780	29,780	29,780	28,782		27,871	3,548	0
100	15000	54006	VICTIM/WITNESS PROG. CO	4.24%	42,510	42,510	42,510	42,510	41,269		39,953	37,913	36,241
100	15000	54007	VICTIM WITNESS ADVOCATE	4.68%	33,520	33,520	33,520	33,520	0		0	0	0
100	15000	55005	UNCLASSIFIED CLERICAL	NA	0	0	0	0	0		0	0	241,076
100	15000	55008	FILE CLERK	-2.03%	20,452	20,452	20,452	20,452	19,079		21,116	23,126	0
100	15000	55013	EXECUTIVE ASSISTANT	4.50%	38,247	38,247	38,247	38,247	37,553		35,819	34,142	0
100	15000	55014	TRIAL ASSISTANT	41.64%	66,075	66,075	66,075	66,075	96,536	2004 includes 20,000 for new position to be created expanded diversion program	92,420	91,001	0
100	15000	55015	INVESTIGATORS	3.69%	39,717	39,717	39,717	39,717	38,547		37,300	35,536	34,475
100	15000	55016	ASST CHECK INVESTIGATOR	4.68%	31,377	31,377	31,377	31,377	30,307		29,120	27,771	0
100	15000	55017	DIVERSION COORDINATOR	2.89%	26,379	26,379	26,379	26,379	25,487		24,172	61,176	0
100	15000	55025	K.U. PROGRAM PERSONNEL	NA	0	0	0	0	0		0	0	17,078
100	15000	55026	TECHNOLOGY/TRIAL ASSIST	4.47%	39,738	39,738	39,738	39,738	38,576		37,239	31,938	0
100	15000	55030	LAW CLERKS	9.58%	32,750	32,750	32,750	32,750	24,152		15,399	13,418	0
100	15000	55050	OVERTIME	0.00%	4,000	4,000	4,000	4,000	2,370		2,401	1,414	1,840
100	15000	55060	ASSISTANT DISTRICT ATTY.	4.14%	583,671	583,671	583,671	583,671	540,629		487,533	490,901	417,172
100	15000	58600	DISTRICT ATTORNEY	0.47%	101,234	101,234	101,234	101,234	99,124		97,113	64,813	61,071
100	15000	59052	MAXIMUM SICK LEAVE PAID	NA	0	0	0	0	0		1,827	1,717	1,538
100	15000	59091	LONGEVITY PAY	9.09%	8,250	8,250	8,250	8,250	8,250		7,750	7,750	6,000
100	15000	59092	MERIT PAY	NA	0	0	0	0	0	In 2004 Salary Basis is Merit 2003	0	0	0
Total				6.16%	1,652,638	1,652,638	1,652,638	1,652,638	1,600,956		1,528,666	1,488,666	1,400,000
100	15000	60100	TRAVEL TRAINING EDUCATION	NA	0	0	0	0	23		(1,069)	1,069	1,210
100	15000	60210	POSTAGE	NA	0	0	0	0	0		7	0	4,250
100	15000	60310	PRINTING & BINDING	100.00%	750	750	750	750	1,650		321	729	669
100	15000	60322	CLASSIFIED ADS	0.00%	450	450	450	450	380		360	330	437
100	15000	60410	ASSOCIATION DUES	20.00%	3,500	3,500	3,500	3,500	4,171		3,281	3,061	2,347
100	15000	60420	SUBSCRIPTIONS	0.00%	3,750	3,750	3,750	3,750	1,722	Comptroller's research tool for legal analysis exists online	0	238	523
100	15000	60551	LIABILITY INSURANCE	NA	0	0	0	0	0		0	0	11,120
100	15000	60714	MOBILE TELEPHONES	-100.00%	480	480	480	480	0		464	0	0
100	15000	60801	EQUIPMENT RENTAL	0.00%	3,500	3,500	3,500	3,500	2,508		2,527	2,756	4,235
100	15000	60800	MAINTENANCE	NA	0	0	0	0	0		0	0	110
100	15000	61111	LEGAL WRITING	0.00%	500	500	500	500	0		0	0	0
100	15000	61112	COURT COSTS FOR LIBRARY	0.00%	4,000	4,000	4,000	4,000	1,989		0	0	0
100	15000	61130	INVESTIGATIONS & LEGAL F	0.00%	15,000	15,000	15,000	15,000	4,602		15,174	12,803	12,098

16-6

FY 2004 Budget Request													
General - District Attorney				% change over 2003 Budget	2004 Budget	2003 Estimated	2003 Adjusted Budget	2003 Budget	2002 Actual	Narrative	2001 Actual	2000 Actual	1999 Actual
100	15000	61140	SEXUAL ASSAULT EXAM FEE	0.00%	12,500	12,500	12,500	5,537			5,418	621	440
100	15000	61152	VICTIM COMPENSATION	0.00%	400	400	400	100			200	300	75
100	15000	61204	TRANSCRIPTS	0.00%	9,500	9,500	9,500	7,630			7,077	5,858	9,001
100	15000	61910	CONTRACT LABOR	0.00%	2,500	2,500	2,500	0			0	582	105
100	15000	62200	PUBLIC EDUCATION	0.00%	350	350	350	0			0	135	67
100	15000	69000	OTHER CONTRACTUAL	66.67%	3,000	3,000	3,000	6,285			8,166	1,080	1,985
100	15000	69080	TRAINING & EDUCATION	NA	0	0	0	0			0	35	732
			Total	4.94%	28,250	28,250	28,250	15,552			11,826	8,523	13,184
100	15000	70100	OFFICE SUPPLIES	NA	0	0	0	0			0	0	9,788
			Total	NA	0	0	0	0			0	0	9,788
100	15000	81000	FURNITURE & EQUIPMENT	0.00%	3,000	3,000	3,000	976			1,726	503	2,267
			Total	0.00%	3,000	3,000	3,000	976			1,726	503	2,267
100	15000	91221	TRANSFER TO EQUIPMENT	NA	0	0	0	0			30,000	10,000	0
100	15000	99094	PETTY CASH	NA	0	0	0	0			0	19	0
			Total	NA	0	0	0	0			30,000	10,019	0
			Grand Total	6.08%	31,250	31,250	31,250	16,528			14,826	9,542	15,451

DOUGLAS COUNTY

General Fund - Fund 100
District Attorney - Dept 15000

Acct	Description	2002 Actual	2003 Adopted Budget	2003 Estimated Budget	2004 Adopted Budget
50000	Personnel Expenses				
50107	Secretary/Receptionist	28,783	29,780	29,786	31,103
54006	Victim/Witness Prog Coord	41,269	42,510	42,224	44,092
54007	Victim/Witness Advocate	0	33,520	33,447	34,914
55008	File Clerk	19,079	20,452	19,095	19,937
55013	Executive Assistant	37,553	38,247	38,085	39,768
55014	Trial Assistant	96,536	66,075	65,645	93,123
55015	Investigators	38,547	39,717	39,250	40,978
55016	Asst Check Investigator	30,307	31,377	31,304	32,680
55017	Diversion Coordinator	25,487	26,379	25,855	27,105
55026	Technology/Trial Assistant	38,576	39,738	39,561	41,306
55030	Law Clerks	24,152	32,750	33,540	35,701
55050	Overtime	2,370	4,000	4,000	4,000
55060	Assistant District Attys	540,629	583,671	579,370	600,175
58600	District Attorney	99,124	101,234	98,759	101,712
59091	Longevity Pay	8,250	8,250	8,500	9,000
		<u>1,030,662</u>	<u>1,097,700</u>	<u>1,088,421</u>	<u>1,155,594</u>
60000	Contractual Expenses				
60100	Travel-Training-Education	23	0	0	0
60310	Printing & Binding	1,650	750	750	1,500
60322	Classified Ads	390	450	450	450
60410	Association Dues	4,171	3,500	4,000	4,200
60420	Subscriptions	1,722	3,750	3,500	3,750
60714	Mobile Telephones	0	480	0	0
60801	Equipment Rental	2,508	3,500	3,000	3,500
61111	Legal Writing	0	500	500	500
61112	Court Costs for Library	1,989	4,000	3,500	4,000
61130	Investigations & Legal Fee	4,602	15,000	15,000	15,000
61140	Sexual Assault Exam Fees	5,537	12,500	12,000	12,500
61152	Victim Compensation	100	400	400	400
61204	Transcripts	7,630	9,500	9,500	9,500
61910	Contract Labor	0	2,500	2,500	2,500
62200	Public Education	0	350	350	350
69000	Other Contractual	6,285	3,000	4,750	5,000
		<u>36,607</u>	<u>60,180</u>	<u>60,200</u>	<u>63,150</u>
70000	Commodities				
70100	Office Supplies	0	0	0	0
		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

General Fund - Fund 100
District Attorney - Dept. 15000

Acct	Description	2002 Actual	2003 Adopted Budget	2003 Estimated Budget	2004 Adopted Budget
80000	Capital Outlay				
81000	Furniture & Equipment	976	3,000	3,000	3,000
		<hr/>	<hr/>	<hr/>	<hr/>
		976	3,000	3,000	3,000
90000	Miscellaneous Expenses				
91221	Transfer to Equipment Reserve	0	0	0	0
99000	Miscellaneous Expenses	0	0	0	0
		<hr/>	<hr/>	<hr/>	<hr/>
		0	0	0	0
	Total Dept Expenses	1,068,245	1,160,880	1,151,621	1,221,744
	Encumbrances	0			
	Total Expenditures	1,068,245	1,160,880	1,151,621	1,221,744

Budget Highlights

- This budget finances the operations of the office of the District Attorney for the 7th Judicial District of Kansas. Under Kansas law the District Attorney establishes the rates of compensation of personnel in the D.A.'s office.
- Account 55013 Trial Assistant includes an increase for a new position for proposed expanded diversion program. An increase in the DA's Diversion Chgs revenue, account 44902, is expected to cover this cost.
- Account 81000 Furniture and Equipment is for new furniture.

DISTRICT ATTORNEY

Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY

Thomas R. Stanton

ASSISTANT DISTRICT ATTORNEYS

Benjamin J. Fisher

Faith A. J. Maughan

Karen S. Smart

Bryan C. Hitchcock



17

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Juvenile: (620) 694-2760

February 18, 2004

TO: Corrections and Juvenile Justice Committee

TESTIMONY REGARDING HOUSE BILL 2596

Thank you for the opportunity to testify regarding House Bill 2596. As the chief drug prosecutor in our office, I have been asked by the Reno County District Attorney, Keith E. Schroeder, to present our view regarding this bill.

K.S.A. 22a-106 currently controls the appointment of assistant district attorneys and staff by the district attorney in each judicial district wherein a district attorney's office has been established. The statute does not affect any judicial district or county that is currently serviced by a county attorney rather than a district attorney. The substance of the act requires the district attorney to hire competent, qualified assistants and suggests that the county commission be required to pay reasonable salaries for the services of a district attorney's assistants and staff.

House Bill 2596 would amend K.S.A. 22a-106 to require that the district attorney present a very specific budget to the county commissioners for approval before the district attorney's office can operate. There is no need for such an amendment. Each district attorney's office currently submits a budget to the county commissioners that is subject to review and/or modification by the commissioners. House Bill 2596, however, would go further in granting commissioners control over the budget of a district attorney's office. The Bill would require an itemization of all funds required to run the office. The amendment transcends the scope of the original statute by expanding into the area of all expenses to be paid by the county instead of the current scope which is limited to the issues of compensation of personnel. The Bill goes further and would vest strict control of all aspects of the district attorney's budget in the county commissioners. The provision that would require a district attorney to get approval in advance for all expenditures made by his or her office is a relinquishment of all control over the expenditures within the office.

Several problems arise from these restrictions. First of all, the requirement that the district attorney obtain advance approval for expenditures outside the budget could easily result in a situation where the prosecutor would have to go to the county commissioners to obtain funding to prosecute a case. The way that the proposed statute is constructed would limit the discretion of the district attorney

to spend funds within his budget if those funds were to be used for an item for which there was no itemization. The situation would also occur if the district attorney had money in his or her budget for the needed expense, but the subject of the expense fell into a line item where the maximum approved funds had already been expended. The district attorney could not use money from another line item to spend the money needed for operation of the office or prosecution of criminal cases. This could force the district attorney to have to argue the facts and circumstances of a criminal case to the county commission in order to obtain witnesses or pay for other expenses directly related to a pending case. The rules of professional conduct forbid the district attorney from discussing the facts and circumstances of a case in a public forum. He/she would be required to do so in order to get approval for expenditures by the commission.

The second problem inherent in House Bill 2596 is the possibility that the county commission would be given control over a district attorney in the prosecution of a given case. The Reno County District Attorney's Office recently required the use of an expert and expert testing for DNA in a first degree murder case. The case eventually went to trial and the information provided by the expert testing and the expert conducting the testing was crucial to the presentation of the state's case. It is easily conceivable that the expenditure of the funds for the testing and the expert testimony would be required to be approved by the county commission under the provisions under House Bill 2596. This would put the county commission in a position of making prosecutorial decisions. This would be improper.

Additionally, non-budgeted expenditures such as those made from the Prosecuting Attorney's Training Fund (K.S.A. 28-170a), Administrative Check Fee Handling Fund (K.S.A. 21-3707) and Special Prosecutor's Trust Fund for Drug Asset Forfeitures (K.S.A. 65-4173) would have to be approved in advance by the county commissioners. The county commission would then be in a position to define the quality and quantity of the training prosecutors would receive.

Another specific example of why this legislation would create bad law is the Allen White capital murder case that was prosecuted in Saline County several years ago. This was a tragic case in which a 5-year-old child and that child's mother and great-grandmother being viciously slain. If ever the death penalty was a proper consequence for a crime, this was that case. Because of the publicity in the matter, the case had been transferred to Topeka on a change of venue motion. The defense in the case filed a motion in which they improperly described plea negotiations that had occurred between the defendant and the state and indicated in a motion sent directly to the local newspaper that the defendant had offered to plead guilty to three counts of first degree murder, rape and other related charges and would agree to life in prison without the possibility for parole in exchange for the state's agreement not to seek the death penalty. Based on this information, one commissioner approached a member of the victim's family and subtly suggested that the state should adopt the plea agreement as outlined in the defense motion in order to avoid the expense of a capital murder prosecution. A second commissioner, at an open forum, noted that only one of the three victims was a resident of Saline County. He argued that, because two of the three victims were non-Saline County residents

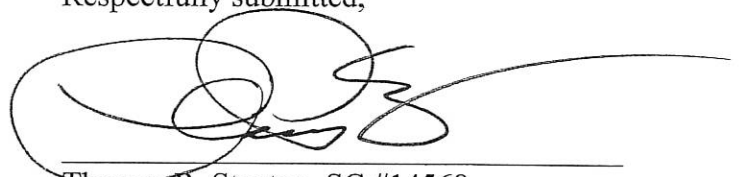
and many of the family members of the victims were not Saline County or Kansas residents, perhaps the family should bear a portion of the burden of the cost of prosecuting the defendant. While this conduct was outrageous, it should serve as a glaring example of what could happen if the legislature passes House Bill 2596.

A concern this body should recognize here is that no county commissioner will want to be placed in a position where the commissioners will be making - and be held responsible for - a decision regarding the prosecution of criminal cases. This Bill flies in the face of the current public policy that prosecutors should be autonomous in the conduct of their elected office.

In conclusion, it is the opinion of the prosecutors in Reno County that the legislation suggested by House Bill 2596 is neither needed for the purposes stated nor designed in a manner consistent with sound public policy. We ask you to defeat any effort to pass House Bill 2596.

Thank you for the opportunity to submit our position on this issue.

Respectfully submitted,



Thomas R. Stanton, SC #14568
Deputy Reno County District Attorney
Reno County District Attorney's Office
210 West First Avenue
Hutchinson, KS 67501
620/694-2715

To: Corrections and Juvenile Justice Committee
 Kansas House of Representatives

From: Robert D. Hecht, District Attorney

Date: February 19, 2004

TESTIMONY IN OPPOSITION TO HOUSE BILL 2596

Good afternoon Chairman Ward and Committee Members of the Corrections and Juvenile Justice Committee. I'm Robert Hecht, District Attorney for the Third Judicial District, otherwise known as the Shawnee County District Attorney. I appreciate the opportunity to appear before this Committee with written testimony in regards to House Bill 2596 as I am out of town this date with a scheduling conflict.

Previously, I had provided to Representative Burgess and his committee members my viewpoints and historical background as to why I am opposed to House Bill 2596 and would submit the foregoing to you for your consideration:

First: When the office of district attorney was created by K.S.A. 22a-101, etc., great thought had gone into its design, intent and purpose, although some forget [particularly county commissions] by law the district attorney and the office thereof are not "county" officers or offices. The only county involvement is the funding requirement and the requirement of providing suitable space and or worker and unemployment compensation purposes - for all other purposes it is a state office.

District attorney offices are limited to prosecuting violations of state statutes [not city ordinances or county resolutions], as well as certain civil laws, i.e., consumer protection, vice injunctions, civil nuisances (substantial health hazards), price fixing, anti-trust, etc. The law and its obvious purposes is a separation of power between state officers and those who have state law enforcement obligations and local government. For these reasons, I strongly suggest HB 2596 would be invalid as a violation of that separation of powers, duties and obligations of which more will hereafter be outlined.

Second: Presently, all district attorneys throughout the State of Kansas do, and have always, submitted "line item" budget proposals to the county commissions. The "flap" in Sedgwick County was occasioned by an erroneous statement by the county manager that that district attorney had failed to submit a line item budget, a statement for which he has since apologized. In fact, that line item budget had been submitted to the chief

financial officer for the county. There are those who believe that such erroneous statement was then glommed onto by some who may be seeking to enhance their political visibility.

HB 2596 will change nothing regarding line item budget submissions.

HOWEVER, its purpose and the seeds of its invalidity are in the amendments to K.S.A. 22a-106(a) and (b) [Section 1] and (c), for they seem to prevent the district attorney from moving funds from one line item to another, as may be determined necessary throughout the fiscal year as changing circumstances, in the district attorney's discretion, necessitates without going to the county commission with a public request and justification and seeking its approval. **A requirement not imposed on any elected county officer.** Why is this an issue of concern? None of us know what an office such as the district attorney [or police agencies] may be confronted with during any given year and which may require unusual expenditures from one line item compared to another. Because of the nature of many such issues and because they may be investigative in nature, or involve trial issues, they may not be publicly disclosed. Let me give you some particular examples:

1. This office was recently required to commence certain investigations, later becoming inquisitions, into the conduct of certain local governmental agencies/departments, as well as certain elected officials, the cost of which exceeded the line item budgets - to have been required to publicly seek and for the county commission to have authority to decline - would have destroyed some individual reputations unjustifiably and in other circumstances could have caused a veto of the legally required performance of the responsibilities of this office.

2. We have two (2) double-homicide and one triple homicide case which require extensive work in four (4) different states, necessitating unanticipated expenses, yet, we would be prohibited from disclosing our needs to a county commission without jeopardizing a subsequent conviction. There are also ethical standards that may be compromised.

3. In an usual cases, unanticipated experts may be needed - a baby homicide, certain forensics not available by the technology within the purview of state agencies - i.e., mitochandrial DNA; certain firearm evaluations, neutron activation analysis, and certain psychiatric evaluations by experts in sexual offenses and crimes against children. Furthermore, auditing to prove financial crimes against the elderly or embezzlement from governmental agencies or private employers may well require unanticipated expenses.

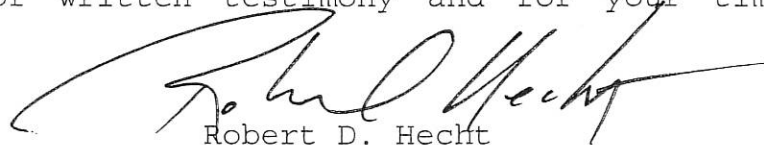
The foregoing is a mere sampling of what may (and does) occur and for which we may need to transfer funds from one line item to another. Clearly, the most dramatic would be the needs that will occur in a capital case. This jurisdiction has three cases (a triple murder and two double murders), which legally qualify for capital punishment for which no such decision has yet been made. No "permission" of the county commission can be required.

Then we go to the unanticipated requirement of having to retry an old case. State v. Kevin Cook, an example, a case in which the defendant was convicted of murder 11 years ago, goes through the Kansas Supreme Court - twice, the U.S. District Court - and then the U.S. Court of Appeals requires a new trial - unanticipated cost of tens of thousands of dollars in transcripts, locating witnesses, interviewing them and in transporting them from other states.

Clearly, we cannot, whether we make line item transfers or not, exceed the total amount of our budget and if under some unusual circumstances a district attorney reaches that point, clearly there would have to be a proposal made to the county commission to determine whether or not funds are available from other sources within the county general fund for such unanticipated expenditures in excess of the budget and public justification for the same would be required.

Before voting for HB 2596 and impairing our abilities and creating a statute the validity of which is problematic, talk to the Chief Financial Officer of Sedgwick County and see if they, in fact, do not receive line item budgets from the Sedgwick County District Attorney. I know one is submitted and, from personal experience, I know that for the last 40 years such has here been true. The present system is not broke, works, and should not be tinkered with.

I appreciate the opportunity of appearing before the Committee by way of written testimony and for your time and attention.



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Written Testimony on HB 2596
Before the Corrections and Juvenile Justice Committee
By Judy A. Moler
General Counsel/Legislative Services Director
February 19, 2004

The Kansas Association of Counties supports the passage of HB 2596. The purpose of this bill is to clarify the statutes as to the budgetary responsibilities related to the office of the District Attorney. Presentation and adoption of the annual county budget is the single most important recurring responsibility of the Board of County Commissioners. The budget sets the work program and financial plan for the county for the coming year.

Last year during the setting of local budgets, it became an issue as to who approved the District Attorney's Budget. While it is clear that the Board of County Commissioners is responsible for all county budgets, K.S.A. 22a-106 regarding the approval of budget of District Attorney's budget does not specifically have the Board of County Commissioners approving the budget of the District Attorney. This caused some disagreement between offices. The Kansas Association of Counties urges you to act favorably on HB 2596 which would simply clarify the statutes and allow for business-like control of the entire county budget.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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House Corr & JJ
Attachment 19
2-19-04

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**Testimony before the Corrections and Juvenile Justice Committee
Regarding House Bill 2595
February 19, 2004**

**Michael B. Kearns
Chairman, Riley County Board of Commissioners**

Chairman Loyd and distinguished members of this Committee. My name is Michael B. Kearns and I am the Chairman of the Riley County Board of Commissioners.

Riley County is requesting an amendment to K.S.A. 59-29a04. The issue we are addressing is the unreasonable financial burden placed on counties by the Commitment of Sexually Violent Predators Act, K.S.A. 59-29a01 *et seq.* (The "Act"). As you know, under the Act if someone is convicted in a county as a sex offender, the Kansas Attorney General has the sole discretion to determine whether to file proceedings to designate the individual a "sexual predator." These proceeding can be very expensive. Since 1998 Riley County has had six sexual predator cases brought in our District Court. The total expenses to Riley County for these cases have been \$56,648.38. In 2003 alone, we had two cases that cost the county \$20,049.78.

The local Court Administrator for the 21st Judicial District has advised us that as a result of a new law that went into effect on July 1, 2003, which requires an annual review of the status of the committed person, we can expect larger expenditures per year in this area. As a result of the anticipated increase due to the yearly review, plus the anticipated cost of initial litigation concerning sexual predator designation, we have been advised to include in our budget an annual amount of \$40,000 just for sexual predator cases.

Because cases brought under authority of the Act are civil cases brought to protect all Kansans from these transitory predators, and since these cases are Attorney General driven from start to finish, we believe it is only appropriate that the State be the responsible party for payment of all costs in these cases. We respectfully urge that the Act be amended to require the state to pay the cost of cases filed under this act.

Thank you for considering House Bill 2595.



KANSAS
ASSOCIATION OF
COUNTIES

Written Testimony on HB 2595
Before the House Corrections and Juvenile Justice
By Judy A. Moler
General Counsel/Legislative Services Director
February 19, 2004

The Kansas Association of Counties thanks the Committee for the opportunity to submit written testimony on HB 2595. This bill is supported by the Kansas Association of Counties' platform. This legislation would amend K.S.A. 59-29a01 et seq (Commitment of Sexually Violent Predators Act) to require the state to pay the costs associated with the civil cases filed under this Act. While the Kansas Association of Counties is supportive of the Act, it is an undo burden and an unfunded mandate to expect counties to bear the burden of the civil litigation surrounding these cases.

The Kansas Association of Counties urges you to act favorably on HB 2595.

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House Corr & JJ
Attachment 21
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