

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 12, 2008 in Room 313-S of the Capitol.

All members were present except:

Annie Kuether- excused  
Marti Crow- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Representative Joe Patton  
Curtis Jacobs, Citizen  
Michael Burlison, Citizen  
Ed Klumpp, Kansas Association of Chiefs of Police  
Mark Gleeson, Office of Judicial Administration  
Kevin Murray, Kansas Association of Court Services Officer

The hearings on **HB 2732 - sentencing, mitigating factors, departure limitations on crime of extreme sexual violence & HB 2731 - sentencing, departure presentence report**, were opened.

Representative Joe Patton gave the committee a power point presentation. **HB 2731** establishes a comprehensive presentence report to assist judges in making a more informed decision when granting departures. **HB 2732** limits departures when a serious crime is committed and for those who have a serious criminal history. Its intent is to eliminate probation for extreme sexual violent types of crimes. (Attachment #1)

The fiscal note on **HB 2732** suggests that there would be an eight bed impact by 2009 and 121 by the end of 2018.

Curtis Jacobs, Citizen, appeared as a proponent of the bill. He provided the committee with statistics on rape. (Attachment #2)

Michael Burlison, Citizen, relayed the story of his daughter, who was 14, being stalked and preyed upon by a 38-year-old pedophile. The individual received a sentence of three year probation. He applauded Representative Patton for proposing the two bills today and for getting tougher on those who commit sexual type crimes. (Attachment #3)

Ed Klumpp, Kansas Association of Chiefs of Police, appeared before the committee in support of both of the proposed bills. The Association believes that the proposed changes in statute are reasonable and would protect citizens from bad judicial decisions. (Attachments #4 & 5)

Mark Gleeson, Office of Judicial Administration (OJA), appeared before the committee to point out that if **HB 2731** was signed into law it would require a tremendous amount of extra work for court services officers to complete the departure presentence report and that they would need an additional 28 full time employees and funding to handle the extra workload. OJA estimated that they would need to have an additional \$1,256,640 in funding. This additional funding need was based on 80% of the total number of felony cases filed in 2007. (Attachment #6) The committee asked for another fiscal note that would take into account only departure sentences from 2007.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 12, 2008 in Room 313-S of the Capitol.

Kevin Murray, Kansas Association of Court Services Officer, explained that **HB 2731** would require an additional four to six hours of work for each CSO. The courts are currently working on implementation of the LSI-R which also increases the workload significantly. (Attachment #7)

Written testimony from the Kansas Sentencing Commission requested an amendment to strike "support" in Section 4, line 20 and replace with "report". (Attachment #8)

Written testimony was also provided by the Kansas Association of Criminal Defense Lawyers. (Attachment #9)

The hearings on **HB 2731 & HB 2732** were closed.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for February 13, 2008.

**JOE PATTON**  
 REPRESENTATIVE, 54TH DISTRICT  
 800 S.W. JACKSON #1414  
 TOPEKA, KANSAS 66612

COMMITTEE ASSIGNMENTS  
 JUDICIARY  
 HEALTH AND HUMAN SERVICES



TOPEKA

HOUSE OF  
 REPRESENTATIVES

STATE CAPITOL  
 TOPEKA, KANSAS 66612  
 (785) 296-7663  
 patton@house.state.ks.us

February 11, 2008

Re: HB 2732 and HB 2731

Mr. Chairman and Members of the Committee:

Thank you for the hearing. I am here in support of HB 2732 and HB 2731. This legislation is a result of a series of community meetings this past summer in Topeka. In the community meetings citizens expressed alarm over certain cases including the following:

- Orlando Paul Cisneros, a 38-year-old Topeka man convicted by a jury of 17 counts of raping and sodomizing a 14-year-old girl, was granted only a three-year probation. He later had his probation revoked, after a public outcry.
- Probation was granted to Nicholas Lee Crites after he was convicted of aggravated indecent liberties against a 15-year-old girl. Sentencing guidelines called for a prison term of nearly five years.
- Federico Mendoza, a 34-year-old man convicted of electronic solicitation of a child; Mendoza was only granted a three-year probation term.

Currently under Kansas law, judges may depart from the guidelines set forth by the Legislature down to and including probation even for serious crimes.

HB 2732 would limit departures for the most serious crimes, and for those with the most serious criminal history. It would allow departures only for the reasons expressly stated in the law. The bill is intended to eliminate probation for crimes of extreme sexual violence and would not allow departures at all for such crimes without the agreement of the prosecutor. Some technical amendments will be offered so the language is clear.

HB 2731 would establish a more comprehensive pre-sentence report to assist judges in making better informed decisions when granting departures.

I would appreciate your consideration and favorable passage of HB 2732 and HB 2731.

House Judiciary  
 Date 2-12-08  
 Attachment # 1

**HOUSE BILL 2732**

**CURTIS W. JACOBS**

**RAPE VICTIM COST STATISTICS**

**ORAL TESTIMONY**

House Judiciary  
Date 2-12-08  
Attachment # 2

**<http://www.psicopolis.com/statistiche/rape.htm>**

Victims of rape often manifest long-term symptoms of chronic headaches, fatigue, sleep disturbance, recurrent nausea, decreased appetite, eating disorders, menstrual pain, sexual dysfunction, and suicide attempts. In a longitudinal study, sexual assault was found to increase the odds of substance abuse by a factor of 2.5.

Victims of marital or date rape are 11 times more likely to be clinically depressed, and 6 times more likely to experience social phobia than are non-victims. Psychological problems are still evident in cases as long as 15 years after the assault.

The National Public Services Research Institute estimates the lifetime cost for each rape with PHYSICAL injuries which occurred in 1987 to be \$60,000.

**<http://www.ncdsv.org/images/SexualAssaultStatistics.pdf>**

The cost of rape and sexual assault, excluding child sexual assault, per criminal victimization is \$87,000 per year. For the victim, the average rape or attempted rape costs \$5,100 in tangible, out-of-pocket expenses.

There is at least a 50 percent likelihood that a woman will develop Post Traumatic Stress Disorder (PTSD) after being raped. Sexual assault is also closely associated with depression and anxiety disorders.

Only 16% of rapes are ever reported to the police. In a survey of victims who do not report rape or attempted rape to the police, the following was found as to why no report was made: 43% thought nothing could be done.

**<http://www.ccasa.org/statistics.cfm>**

Colorado Coalition Against Sexual Assault

Researchers estimate that the 1.1 million rape victims suffer 1.45 million rape victimizations annually. That means annual rape victimizations estimated QUALITY OF LIFE LOSSES of \$103,400 per rape victim. (Victim Costs and Consequences: A New Look, Series: NIJ Research Report, January 1996)

My name is Curtis Jacobs, and I strongly endorse House Bill 2732.

Most of you know who I am. I have testified several times.

Before you, I have cried, and I have shown a LOT of anger. I have sent the entire Kansas Legislature numerous spam emails, some of them rather harsh.

I have provided tons of research to the Kansas Legislature on rape statistics and especially juvenile rape recidivism.

For the record, I want to remind you that I do have three college degrees, including a Masters. I have a BS Degree in Criminal Justice in which I studied sexual assault. In college debate, my CMSU "Talking Mule" debate team took 2nd place at nationals. My affirmative topic on "Penal Reform" was for the mandatory adult adjudication of juveniles that rape and murder.

For those of you that do not know me, or do not remember, I am the father of a rape victim. Many of you consider me an angry father because of the crime that was committed against my daughter.

Just as you may have been miscalculating my message to you, I feel you have had a huge disconnect with your own citizens of Kansas. This legislation indicates to me that you are FINALLY starting to get the message, and you are making movements in the right direction.

The citizens of Kansas feel, just as I do, that certain crimes rise to the level of needing punishment, not rehabilitation and reform. It is of the opinion of most in the State of Kansas that you, our legislatures, have seemed to have forgotten that ONE of the reasons for sentencing is to seek justice. The term justice means, "To cause to come before a court for trial or to receive **punishment** for one's misdeeds".

You see victims and society want justice. We do seek punishment for hideous crimes. Society could care less if a perpetrator has mitigating circumstances when the crime is horrendous. Take the recent case here in Kansas with Edwin Hall and Kelsie Smith. Assume for a moment that Kelsie Smith had lived. The citizens of Kansas would still care less if Edwin Hall had no prior adult felonies. The

citizens of Kansas were actually quite upset that his juvenile record, which included an assault on a young girl using a knife, was withheld from their knowledge. We learned of his past as a juvenile, NOT from the state of Kansas, but rather from his own adopted parents, who volunteered this information. The citizens of Kansas are tired of hearing the mitigating circumstances being used for light sentences in violent crimes. We are tired of hearing things like they had no prior record, or they are only a juvenile, or that they had mental problems, or they were abused as a child. Individuals that rape know the difference between right and wrong regardless of any mental state or age. But often because of these mitigating circumstances, the victim and their family must seek other means, rather than the Kansas courts, to seek justice. For example, we end up on Bill O'Reilly, and the question is asked before the entire nation, "What is wrong with Kansas?".

You see, society and especially the victim and their families, we want justice. We want vindication. We want peace of mind that the perpetrator that committed these hideous crimes gets punished.

I wasn't planning on testifying today. That was until I watched a movie last week about Deb Smith, who lobbied successfully to get the federal funding for DNA sampling. I had an epiphany from the movie. I know the Kansas Legislature must look at dollars and cents. Consider the following. In the movie, as well as her web site, Deb Smith states that it took her a full eight years to recover from her rape. She is an adult woman. Imagine how long it would take a young girl, say the age of 15, to recover from rape. It is therefore no surprise that so many of these young rape victims end up in prostitution, drugs, or prison. It is your call on how to spend our tax dollars. But consider this, if a young girl is raped at 15 and it takes her a full eight years to recover, as it did Deb Smith, then this woman will most likely be using public funds, one way or the other, for the rest of her adult life. Many studies, just as a few I have provided in my written testimony, have been done to prove this statement.

I have said this before, but I will say this again. Of the 85% of rapes that are not reported, about half of them are not reported because the victim feels nothing will be done.

Once again, I will stress that the victim, the family, and society, all we want is for justice to be served.

God grants Grace, when He gives things for which we do not deserve. God grants Mercy, when He does NOT give us what we have deserved. God gives Justice, when He does give us what we honestly do deserve. We ask nothing different from our legislature.

One last comment, if I may. I would like to publicly thank Donna Roberts, Michael Roberts, and others who lobby after their assault and justice. Most often when a victim and their family get their justice, they **TRY** to move on with their lives. Deb Smith was the same way. She didn't want to lobby, but she knew she had to for others. Victims and their families don't want to relive what they went through every single time they lobby for change. It is painful to come and testify, regardless of how long ago it was. Yet these individuals, like myself, do what is needed to try and help others get the justice that they deserve.

Although this legislation is a move in the right direction, I will not be ending my efforts to have the victims of juvenile rapists get their justice as well.

Thank you for your time.



2/12/08

Dear Friends, Fellow Victims Rights Advocates,  
and Legislative Committee Members,

Thank You first for taking your time to listen to the thoughts of concerned citizens of Kansas and also for your efforts to make updated and direly needed corrections to current law as well as continuing to work toward trying to have the best Laws and Judicial system that is possible for our state and for the citizens of our state. Out of just the few examples of cases which so happen to come close in proximity of time to each other, they also shared the common subject of sexual violence and/ or attempted illegal sexual acts from adult males on minor female children. My daughter, who was just 14 by less than a week was stalked and preyed upon by a 38 year old pedophile, Orlando Paul Cisneros. Her Physical victimization took place over aprox. a 1 month period of time. Without getting into the specifics of the case in which some or all of you may know about or at least have heard of, Lawmakers and other misguided individuals out there need a firm and clear, concise understanding of the Law. There can be no "mutual" relationship between a child of this age or in my opinion anyone under the age of 18, if the child is still living at home and attending High School. In my opinion,

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Attachment # 3

it would have been just as disgusting and repulsive with a 16-17 yr. old child being preyed upon by an adult close to 40. There should be no gray area here, its black and white, right and wrong.

My daughters rape case became a high profile case because I made it that way, as a father who has seen their child victimized by first a pedophile, and then the Judicial System, I was stunned and shocked as was the community, the District Attorneys Office, the Local and then the National Media. 'What's wrong with Kansas?' was asked by Bill O`Reilly, wish there was a good answer and so do the citizens of Kansas, when a Judge will Let A 17 time Felony Convicted Rapist, a Sodomist, a Pedophile walk free on May 25, 2007 on just 3 years probation. Free to as we know, immediately upon release begin partaking in illegal drug use, the very day of release and then another positive U/A test 41 days later I believe it was, 41 days this man could have been out raping or sexually assaulting other minor children, even his own as he was continuing illegal drugs and seeking custody of his 2 small children at the same time. 41 days, longer than it took to get guilty verdicts on 17 felony counts of Rape, Sodomy, Agg. Indec. Liberties W/minor, etc, etc. A lot of bad

things can happen in 41 days and for the feeble, demented reasons given by Mathew Dowd, who to this day, I can't understand why this man hasn't been impeached, disbarred, some type of admonishment for his, not just this case, but many others where he has placed the rights of the criminal above the rights of decent citizens and endangered them. As it sits, I think we all know how this story turned out, my fight for justice for my daughter and our family was brought finally to some closure. But the reality of the situation is this Child Rapist Cisneros was not sent to prison for the crimes he committed against my daughter, he went to prison because of a long chain of hand slapping through probation was made a mockery of by Cisneros, Dowd recused himself from the case he had taken and made 1000,s if not millions of people angry and disgusted when they learned what he had done and he left it fortunately for a Judge that did the right thing and what should have been done from the beginning and said enough is enough. Off to prison where you belong and again in my opinion, not nearly for the amount years he deserved. My closing message will be that the devastation this man caused to my daughter and to my family and especially to myself her father, she is my first born child and I couldn't be there to protect her from this coersive, sick, sexual nightmare that she was exposed to as more and more kids are being exposed to on a daily

basis. IT`S CALLED PEDOPHILIA!!!!!!!!!!!!!! But as a career Law Enforcement Officer myself, I chose the best, most mature, responsible way I knew how to bring awareness to this injustice as well as others in the most professional way I could. I can't count the times I was told how I should, shall we say, partake in vigilante justice, but that's easy for people to say until they're put in that position. I stand for Honor, Integrity and always trying to do the right thing.

I`ll close by giving my positive endorsement for the proposed Legislation (House Bills 2731, 2732 and 2733) and I`d again like to thank Rep. Joe Patton as well as all the other Representatives signed on as co-sponsors of these bills, as I as well as many others I talk to and network with throughout the Country as a Victims Rights Advocate. I see nothing but positive, and much needed change and this would be a great place to start.

Sincerely,  
Michael L. Burlison-Victims Rights Advocate  
Aff: KOVA/KCSDV/SGT KDOC



**OFFICERS**

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Rose Hill Police Dept.

Jay Reyes  
Vice President  
Derby Police Dept.

Todd Ackerman  
Sergeant at Arms  
Marysville Police Dept.

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SACOP Representative  
Salina Police Dept.

William "Mike" Watson  
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Doyle King  
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Newton Police Dept.

Frank Gent  
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**TESTIMONY TO THE HOUSE JUDICIARY  
COMMITTEE  
IN SUPPORT OF HB2732  
Presented by Ed Klumpp  
On behalf of the  
Kansas Association of Chiefs of Police**

February 12, 2008

This testimony is in support of the provisions of HB2732. Downward departures have their place and they are necessary to allow the courts flexibility to apply appropriate sentences in unusual cases. But like any good thing, they can be bad if taken to an excess. This bill seeks to provide limits to the downward departures of serious crimes and for the worst of criminals. It is not only reasonable, it is necessary to protect from the worst of judicial decisions.

Justifiable departures exceeding 50% of the grid recommendation for the highest levels of felonies, generally for crimes of violence, should be extremely rare. The limits placed on departures by the provisions of this bill will assure defendants convicted of serious crimes, and defendants with multiple felony person offenses, serve at least a significant portion of the sentence the legislature intended.

Justice requires balance. In the case of departures, that balance is between what is best for the defendant, the victim, and the public. This bill assures the scales of justice don't tip too far in departures favoring the serious convicted felon and assures the weight of the safety of the public is appropriately applied.

We encourage you to recommend this bill favorably to pass.

Ed Klumpp  
Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair  
E-mail: eklumpp@cox.net  
Phone: (785) 235-5619  
Cell: (785) 640-1102

House Judiciary

Date 2-12-08

Attachment # 4



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## TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF HB2731 Presented by Ed Klumpp On behalf of the Kansas Association of Chiefs of Police

February 12, 2008

This testimony is in support of the provisions of HB2731. This proposal is one of the results of Rep. Patton's meetings examining the circumstances of several cases in which serious criminal sex offenders were placed on probation. It is also a matter I became aware of during my work with the Sentencing Commission's Proportionality Subcommittee.

In the current process, there are many times the court is faced with decisions in response to motions to depart from sentencing but the information before the court is lacking. For example, there is frequently no verification of programs intended for the defendant.

It is hard to imagine how anyone could oppose this proposal to put more complete and accurate information in possession of the court deciding a request for departure. These are important decisions. They are important to protect the public from a defendant who should not be released or receive a downward departure. They are also important to a defendant who should have an opportunity for a reasonable departure based on fact. Justice demands the courts to make difficult decisions. But those decisions should not be more difficult due to the lack of information easily obtainable given the time and resources to gather it.

Would the provisions of this bill have changed the sentencing decisions in the series of Shawnee County child sex cases? We will never know for sure. But clearly the court would have been better equipped with accurate information as that decision was made.

The details of this bill regarding the information to be collected are best left to the professionals involved in this process every day. But the concepts of this bill are clearly appropriate. We encourage you to pass this bill to mandate a presentence report with all applicable and meaningful information so the courts may make a well informed decisions to assure justice for the victims, the public and for the defendant.

Ed Klumpp  
Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair

E-mail: [eklumpp@cox.net](mailto:eklumpp@cox.net); Phone: (785) 235-5619; Cell: (78

House Judiciary

Date 2-12-08

Attachment # 5



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

House Judiciary Committee  
Tuesday, February 12, 2008

Testimony Concerning the Fiscal and Workload Impact of House Bill 2731

Mark Gleeson  
Office of Judicial Administration

Thank you for the opportunity to testify on House Bill 2731, which would obligate the court to order court services officers to prepare a new "departure presentence report" whenever the court is considering a dispositional or durational departure. This bill would have a significant impact on current sentencing practices and on the workload of court services officers (CSOs) throughout the state.

Before I speak on the specific merits of this bill, please allow me to introduce myself. Between 1979 and 1994, I worked as a court services officer, CSO supervisor, and chief CSO. During this time a significant part of my job was writing presentence investigation reports for adult and juvenile offenders. Almost all of this time was prior to the implementation of the Sentencing Guidelines Act in 1993. In 1994 I joined the Office of Judicial Administration and currently supervise the unit responsible for managing court services officers.

Beginning July 1, 1993, the Kansas Sentencing Guidelines Act substantially changed the felony presentence investigation, resulting in a reduction in time spent interviewing offenders and writing presentence investigation reports. Sentencing guidelines eliminated narrative descriptions of an offender's family history and current relationships, education, employment, substance abuse treatment, and medical history. In short, anything that was not the offender's crime of conviction and criminal history was eliminated.

Currently, presentence investigations in most judicial districts take approximately three to six hours to prepare. This involves acquiring and reviewing the criminal history record received from the KBI and FBI, tracking down and verifying the criminal history obtained from local records, matching out-of-state convictions with Kansas crimes, working with victims, and writing the report. Based on our pre-1993 experience, it will take four to six additional hours to meet the departure presentence report requirements of HB 2731. This time would be spent conducting interviews, verifying employment, financial, education, and treatment information, and writing the report. HB 2731 also requires the use of a risk needs assessment instrument in conjunction with the departure presentence investigation. The Office of Judicial Administration is currently working to implement the statewide use of the Level of Service Inventory – Revised (LSI-R), which should satisfy this requirement.

House Judiciary

Date 2-12-08

Attachment # 6

The cost of implementing the sentencing departure presentence report is detailed in the attached fiscal note.

In addition to the workload concerns, allowing family history, employment, education, physical and mental health, financial condition, and future prospects will likely negate one of the major reasons for sentencing guidelines, which was the virtual elimination of racial and geographic disparities in sentencing. Fair and equal treatment under the law is one of the highest principles in our democracy. I urge you to consider how allowing family history, employment, education, physical and mental health, financial condition, and future prospects will impact the perception or reality of fair and equal sentencing in our Kansas courts.

Another issue is that HB 2731 does not appear to allow judges to order a departure presentence report when a person's conviction and criminal history result in a placement in a border box. K.S.A. 21-4704 (sentencing guidelines for non-drug crimes) and 4705 (sentencing guidelines drug crimes grid) specifically state that a presumptive sentence in one of these border boxes cannot result in a departure. This appears to provide an unintended exemption from the departure presentence report requirement.

New Section 1(b)(3), which requires the CSO to confirm the existence of the treatment program, the capacity, availability, and financial suitability of the program, is a good idea. While CSOs are likely to know most of the treatment programs located in their area, it is not unusual for a defendant or his or her attorney to propose during the sentencing hearing that the defendant go to a treatment program that is unknown to the court or to the CSO. New Section 1(b)(3) would significantly limit the risk of a departure based on an inappropriate, unavailable, or non-existent treatment program or provider.

Requiring a Departure Presentence Investigation as suggested in HB 2731, although well-intended, could create a situation in which offenders with identical crimes and criminal histories are given different sentences based on their family history, employment, education, physical and mental health, financial condition, and future prospects. In addition, the bill would have a significant fiscal impact if the number of court services officers needed to complete the departure presentence report were added to the Judicial Branch budget. If court services officers are not added for this purpose, then the already limited time for direct supervision of offenders in the community and other duties will be ever further stretched.

Thank you for your consideration of these issues. I would be happy to stand for questions.

Attachment





State of Kansas

**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

February 11, 2008

To: Duane Goossen  
Director of the Budget

From: Jerry Sloan  
Budget & Fiscal Officer

Re: HB 2731

HB 2731 would enact new law regarding departure presentence reports. In addition to the presentence investigation report (PSI) ordered pursuant to K.S.A. 21-4714, whenever the court is considering a dispositional or durational departure, the court shall order preparation of a departure presentence report by the court services officer as soon as possible after conviction of the defendant.

Each departure presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 2008, shall include, but not be limited to, the following information:

- (1) The social history of the defendant, with an emphasis on family history, employment, education, physical and mental health, financial condition, and future prospects.
- (2) A criminal risk-need assessment.
- (3) If any treatment program is being proposed, a confirmation of the existence of such program, the capacity of the program to meet the defendant's needs, the availability of the program to the defendant, and how the cost of the program will be paid. The court shall have discretion to order inclusion of any other information it considers proper.

The departure presentence report shall become part of the court record but shall not be accessible to the public and shall be accessible only to the parties, the sentencing judge, the Department of Corrections, and, if requested, the Kansas Sentencing Commission. If the offender is committed to the custody of the Secretary of Corrections, the report shall be sent to the Secretary and, in accordance with K.S.A. 75-5220 and amendments thereto, to the warden of the state correctional institution to which the defendant is conveyed. All departure presentence reports shall be on a form approved by the Kansas Sentencing Commission.

When the court is required to forward a copy of the presentence investigation report, the court shall also forward a copy of the departure presentence report, if any.

The departure presentence support shall be privileged and shall not be disclosed directly or indirectly to anyone other than the Parole Board, the judge, the Attorney General or others entitled to receive the information, except that the Parole Board, Secretary of Corrections, or court may permit the inspection of the report or parts of it by the defendant, inmate, defendant's or inmate's attorney, or other person having a proper interest in it, whenever the best interest or welfare of a particular defendant or inmate makes the action desirable or helpful.

In determining whether substantial and compelling reasons exist for a departure from the presumptive postrelease supervision period, the court shall consider the departure presentence report, if any.

At parole hearings, the Parole Board shall consider the departure presentence report, if any.

The term "departure presentence reports" would not fall under the definition of "criminal history record information" under K.S.A. 22-4701.

The Kansas Sentencing Commission shall receive departure presentence reports for all persons who are sentenced for crimes committed on or after July 1, 1993, to develop post-implementation monitoring procedures and reporting methods to evaluate guideline sentences.

This would require substantial additional work for the court system in preparing these departure presentence reports. It is likely that defense attorneys would nearly routinely ask for a downward departure so nearly all guilty verdicts would result in the preparation of such a report.

Using FY 2007 statistics, there were 14,008 felony cases that ended in a guilty verdict. Assuming 80% of these cases would require a PSI, that would require about 11,200 to be completed. It is estimated that each one would average approximately four to six hours of a court services officer's time (CSO). If one used five hours as an average amount of time to complete one of these, it would require about 56,000 hours of court services time to comply with this bill. That equates to 28 full time positions. The cost for one CSO I is \$44,880. To fund the 28 CSOs, it would take \$1,256,640.

JS:ae

6-41

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE  
KEVIN MURRAY, LEGISLATIVE CHAIRPERSON  
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS  
ON HB 2731 – DEPARTURE PRESENTENCE INVESTIGATION REPORTS  
FEBRUARY 12, 2008

Chairman O'Neal and Members of the Committee:

Good afternoon. I would like to thank you for this opportunity to appear and present testimony on this issue. My name is Kevin Murray, and I am the Chief Court Services Officer for the 21<sup>st</sup> Judicial District, comprised of Riley and Clay counties. In addition, I am the legislative chair for the Kansas Association of Court Services Officers, and it is in that capacity that I appear here today.

The Kansas Association of Court Services Officers would like to provide information to the committee regarding HB 2731 on the following issues: 1) workload impact on CSOs; 2) training impact on CSOs; 3) social history of the defendant; 4) risk-need assessment of the defendant; and 5) confirmation of proposed treatment.

With the implementation of Kansas Sentencing Guidelines in 1993, the format of felony presentence investigations was dramatically changed in that all social information was removed. This social history is the information now being proposed in HB 2731. This will require additional time and work by CSOs.

Currently, presentence investigations in most judicial districts take approximately six hours to complete. This involves interviewing and/or obtaining information from the defendant; acquiring current conviction data from the court and/or prosecutor; requesting and/or running local and national criminal history records checks through the Kansas Bureau of Investigation, Federal Bureau of Investigation, and the National Law Enforcement Telecommunication System. All conviction data obtained must be verified, and oftentimes we are provided with incomplete data which requires extensive follow-up confirmation. Adding this requirement to presentence investigations would require an estimated four to six additional hours of work for each report. This work would include the further interviewing of defendants, their family members, treatment providers, employers, and compiling verified documentation of employment history, education and finances. This information would then need to be written into a narrative summary which adequately reflects the defendant's situation.

Presently, approximately 14% of the CSOs in the state were employed by the Kansas Judicial Branch prior to the Kansas Sentencing Guidelines Act. In addition, it would be estimated that the majority of those officers are presently in management and/or supervisory positions in which they are not responsible for completing presentence investigations. This will create the need to augment CSO training, as a large percentage of CSOs who complete adult offender presentence investigations have been employed post sentencing guidelines.

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The inclusion of social history information as called for in HB 2731 is in direct contradiction of those issues identified within sentencing guidelines. Very briefly, there were concerns regarding disproportionate sentencing of defendants when social history was included, and the removal thereof was an impetus in the creation of guidelines.

HB 2731 requires that a risk need assessment be completed on the defendant. The Kansas Sentencing Commission has identified the Level of Services Inventory-Revised (LSI-R) as the risk-needs assessment. Presently, the judicial branch does not utilize the LSI-R, however there are plans for implementation. However, the implementation of the LSI-R carries with it a significant workload and personnel concerns.

Confirming the proposed treatment of defendants has many positives on merit. Providing the court with objective information concerning the capacity of the program to meet the defendant's needs, the availability of the program, and how the defendant proposes to pay for it would be very beneficial. However, again, the issue of concern is the workload impact that this will have on CSOs.

In conclusion, the Kansas Association of Court Services Officers would oppose this bill in its present form, as there are no considerations and/or accommodations for training and/or personnel. Granted, supervision entities within the state, as well as the judicial branch, are moving toward a system of assessing risk and need based on individual criminogenic needs. This bill may be attempting to move in that direction as well; however, without proper training and an adequate number of CSOs, the bill's intent may be compromised and has the potential to result in a disservice not only to the courts and the defendants, but to our citizens as well.

I would like to thank you once again for this opportunity to appear before your committee. I will now stand for questions.



# KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman  
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

**HOUSE JUDICIARY COMMITTEE**  
**Representative Mike O'Neal, Chairman**

**TESTIMONY ON HOUSE BILL 2731**  
**Departure Presentence Report**  
**Helen Pedigo, Executive Director**  
**Tuesday, February 12, 2008**

Mr. Chairman and Committee members, thank you for the opportunity to apprise you of what appears to be a need for a technical amendment on HB 2731. In Section 4, on page 3, line 20, it appears that the word "support" should be stricken and replaced with the word "report". The amendment is attached below.

18 that final disposition.

19 Sec. 4. K.S.A. 22-3711 is hereby amended to read as follows: 22-

20 3711. The presentence report, *the departure presentence*  
[~~support~~], the

report

21 preparole report, the pre-postrelease supervision report and the super-

22 vision history, obtained in the discharge of official duty by any member

23 or employee of the Kansas parole board or any employee of the depart-

24 ment of corrections, shall be privileged and shall not be disclosed directly

I would be happy to answer any questions about this proposed amendment.

House Judiciary

Date 2-12-08

Attachment # 8

House Judiciary Committee  
February 12, 2008

Kansas Association of Criminal Defense Lawyers  
**Neutral conferee of House Bill 2731**

The KACDL has 275 members across the State of Kansas. HB 2731 would require a “departure presentence report” to be prepared by court services in each case in which the court is considering a departure. While having more information about a defendant may be a benefit to all parties involved in a case, some of the provisions of HB 2731 raise important questions:

**Costs/resources:** This bill will require a big increase in court services officers across the state. Preparing these PSIs should require court services officers to have special training. What special qualifications will a court services officer need to have? In order to gather all of the information required by a departure PSI will require time and energy on the part of court services officers.

**“Criminal risk-need assessment”:** This bill would require this in each PSI. What is this? How does it work? Who creates it? Who is trained to make such an assessment?

**Create backlog:** Requiring a departure PSI in all cases – even ones in which the state agrees or does not object to a departure – will likely cause sentencing delays. Is requiring them in all cases necessary considering that prolonging disposition of a case can mean a defendant takes up a jail bed for longer, does not get into a treatment bed sooner, etc.? Is requiring them in all cases best for victims seeking closure as soon as possible?

**Consider other changes first:** According to the Kansas Sentencing Commission’s 2008 Report to the Legislature, “[d]ata reviewed by the Proportionality Subcommittee shows a large number of sentencing departures, especially on the drug grid, the majority of which are downward. The number of downward departures suggests a disconnect between the current law on the books and the law in practice; or the possibility that the current severity level is not supported by the proportionality rationale that punishment should be relational to the degree of harm inflicted by the offense.” Perhaps the reasons behind the current number of departures across the state should be considered prior to or in tandem with HB 2731.

Thank you for considering our thoughts and including us in this important process.

Respectfully submitted,



Jennifer Roth  
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Kansas Association of Criminal Defense Lawyers  
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House Judiciary  
Date 2-12-08  
Attachment # 9