

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:37 A.M. on January 23, 2008, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen arrived, 9:45 A.M.

Phil Journey arrived, 9:42 A.M.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department

Bruce Kinzie, Office of Revisor of Statutes

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Ed Klumpp, Kansas Association of Chiefs of Police; Kansas Peace Officers

Tom Stanton, Kansas County and District Attorneys Association

Kenny McGovern, Sheriff, Douglas County

Jennifer Roth, Legislative Committee Chair, KS Assoc. Of Criminal Defense Lawyers

Peter Ninemire, Families Against Mandatory Minimums

Tim Madden, Department of Corrections

Others attending:

See attached list.

Chairman Vratil brought to the committee's attention a letter written by Senator Vicki Schmidt concerning a review of some proposed rules and regulations from the Kansas Department of Health and Environment (KDHE) on the testing of human breath for law enforcement purposes (Attachment 1). The Committee has doubts on the authority of KDHE to impose the rules and regulations. Senator Schmidt felt it important to notify the Judiciary Committee to determine if any statutory response is appropriate. The Chairman requests the committee to review the letter and attached information. He will write to the Secretary of KDHE to requesting the agency provide their rationale why these rules and regulations are within their authority.

Bill Introductions

Kathy Olson, Kansas Bankers Association, requested the introduction of a bill relating to the filing of notice of security interest on manufactured homes. Senator Donovan moved, Senator Umbarger seconded, to introduce the bill. Motion carried.

Tom Stanton, Kansas County and District Attorneys Association, requested introduction of five bills. The first bill would allow for verbal arrest and detain orders by probation and parole officers.

The second bill amends K.S.A. 65-4105 to include *salvia divinorum* and *datura stramonium* (commonly know as Gypsum weed or Jimsom weed) to schedule 1.

The third bill amends Alexa's law to exempt any lawful act of the mother of the unborn child.

The fourth bill amends K.S.A. 22-4902 of the Sex Offender Registry to include electronic solicitation.

The fifth bill amends K.S.A. 21-4608 to provide that offenders whose old sentence is life pursuant to 1993 Supp. 21-4629 prior to repeal or for which there is no conditional release or maximum sentence expiration shall remain on post supervision for life or until discharged by the Kansas Parole Board.

Senator Bruce moved, Senator Schmidt seconded, to introduce all five bills bill. Motion carried.

Susan Kang, Kansas Department of Health and Environment, requested introduction of a bill regarding name changes. Senator Haley moved, Senator Umbarger seconded, to introduce the bill. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:37 A.M. on January 23, 2008, in Room 123-S of the Capitol.

The Chairman called for final action on **SB 379—Contracts; indemnification clauses and additional insured requirements in construction contracts void.**

Chairman Vratil reviewed the bill which had been re-referred to the committee following discovery of a loophole during the 2007 Legislative session concerning construction contracts. The Chairman proposed removing the amendment the committee added and passed during final action on March 22, 2007.

Following discussion, Senator Goodwin moved, Senator Umbarger seconded, to remove from Section 1(4) (c) "...except that the provisions of this subsection shall not apply to a construction contract between the owner of the property and the general contractor". Motion carried.

Senator Bruce moved, Senator Umbarger seconded, to make a technical correction by striking the reference to "2006 Supp." on page 1, line 13; page 1, line 17; and page 2, line 11 and to change the effective date on page 2, line 13 to the year 2009. Motion carried.

Senator Goodwin moved, Senator Umbarger seconded, to recommend **SB 379** as amended, favorably for passage. Motion carried. Senator Journey voted no and requested his vote be recorded.

The Chairman opened the hearing of **SB 409—Third or subsequent felony conviction, sentence.**

Senator Derek Schmidt testified in support as sponsor of the bill, stating this legislation would provide certainty of punishment for repeat offenders (Attachment 2). For several years, in order to ration prison space, the legislature has repeatedly shifted the focus of prison time to violent, person felons. A consequence of this policy has created a repeating cycle of catch and release for non-violent offenders. Enactment of **SB 409** would be good for Kansas, victims and public policy.

Ed Klumpp appeared in support, indicating enactment **SB 409** will provide law enforcement with the ability to aggressively handle repeat felony offenders (Attachments 3 & 4). As a result of implementation of the sentencing grid several years ago, many repeat offenders remain on probation resulting in higher crime rates and the continued victimization of our citizens.

Tom Stanton testified in favor, stating **SB 409** is good public policy aimed at the protection of citizens from (Attachment 5). Mr. Stanton questioned the possibility of inconsistencies in the bill regarding the sentencing grid for non-drug felony offenses and requested the committee review the statute.

Kenny McGovern spoke in support, stating enactment of **SB 409** will address the issue of theft and make a strong statement to repeat offenders (Attachments 6). Sheriff McGovern also voiced support of the drug treatment programs included in the bill which may not always be available at the county level.

The Chairman indicated the committee was out of time and will continue with **SB 409** at the next meeting.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is January 24, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: JANUARY 23 '08

NAME	REPRESENTING
LINDA WUSH	OJA
SWITZKY	KDHE
Ron Seebert	Helm Law Firm
Heather Morgan	JSH
Peter Ninemire	FAMM
Radwan Sypher	FAMM
Chuck Sypher	FAMM
Dennis L Bender	FAMM
Jim May	Spirit AeroSystems
KEVIN GREGG	KMCA
SEAD MILLER	CAPITOL STRATEGIES
JEREMY S BARCLAY	KDOC
TIM MADDEN	KDOC
Ed Klumpp	KAP KPOA
BOB TOTTEN	Ks Contractors Assoc.
JEFFREY ALDERMAN	KANSAS BAR ASSOCIATION
Jeff Bottenberg	KS Sheriffs' Ass'n
Ken McGovern	KS Sheriff Assoc.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-23-08

NAME	REPRESENTING
Scott Heidner	ACEC Kansas
Ken DANIEL	TIBA
Kathryn Damon	KDJA
Jennifer Roth	KS Assoc. of Criminal Defense Lawyers
Callie Denton Hartle	KS Assoc. of Justice (KS AJ)
J.P. SMALL	KOCH INDUSTRIES, INC
Helen Pedigo	KSC
Brenda Harmon	KSC
Eric Stafford	AGC of KS
Philip A. Hurley	Patrick J. Hurley & Co.
Jessica Concannon	Intern - Sen. Lynn
Dan Murray	Federico Consulting

VICKI SCHMIDT
SENATOR, 20TH DISTRICT
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STATE OF KANSAS



SENATE CHAMBER

January 18, 2008

COMMITTEE ASSIGNMENTS
CHAIRMAN: JT. COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS
VICE-CHAIR: PUBLIC HEALTH AND WELFARE
MEMBER: CAPITOL AREA PLAZA AUTHORITY
FINANCIAL INSTITUTIONS AND
INSURANCE
HEALTH CARE STRATEGIES
JT. COMMITTEE ON INFORMATION
TECHNOLOGY
STATE ADVISORY COUNCIL ON AGING
TRANSPORTATION
WAYS AND MEANS

Senator John Vratil, Chairperson
Senate Judiciary Committee
Room 281-E, Statehouse
BUILDING MAIL

Dear Senator Vratil:

At the January 14, 2008 meeting of the Joint Committee on Administrative Rules and Regulations, the Kansas Department of Health and Environment (KDHE) reviewed proposed rules and regulations concerning the testing of human breath for law enforcement purposes.

One of the proposed rules and regulations (KAR 28-32-13, copy enclosed) deals with the issue of certain records and reports. Specifically, the proposed rule would require each agency custodian or the agency custodian's designee to maintain certain records for at least three years. Those records include records of each current certified operator; records showing that a quality control check was completed at least once each week for each evidential breath alcohol test device (EBAT) assigned to the agency; and records documenting any maintenance or repair made to each EBAT device. Further, the proposed rule would require each agency custodian or the agency custodian's designees to maintain a record of the number of individuals tested by each certified operator under the certified agency's supervision and would be required to submit a quarterly report to KDHE.

The members of the Joint Committee do not believe that the agency has authority to promulgate the rule and regulation and informed the agency to that effect. In addition, the members of the Committee believed it was important to inform the chairpersons, vice-chairpersons, and the ranking minority members of the Judiciary Committees of this apparent lack of authority and allow them to determine whether any statutory response is appropriate.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions regarding this issue.

Sincerely,

A handwritten signature in cursive script that reads "Vicki Schmidt by D.L.A." The signature is written in black ink.

Senator Vicki Schmidt, Chairperson
Joint Committee on Administrative Rules
and Regulations

VS/RLG/jl

Enclosure

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HOME

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STA Senate Judiciary
STATE CAF 1-23-08
TOPEKA, K/ Attachment 1
(785)

Proposed

Kansas Department of Health and Environment
Proposed New Regulation

Article 32. Testing Human Breath for Law Enforcement Purposes

28-32-13. Records and reports. (a) Records.

(1) Each agency custodian or the agency custodian's designee shall maintain the following records on file at the certified agency's office for at least three years:

(A) Records of each current certified operator;

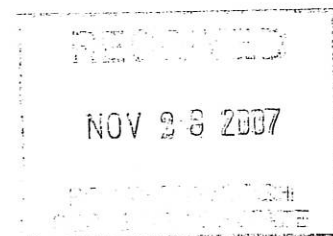
(B) records showing that a quality control check was completed at least once each week for each EBAT device assigned to the agency; and

(C) records documenting any maintenance or repair made to each EBAT device.

(2) The records specified in this subsection shall be subject to inspection by the secretary at least annually.

(b) Reports. Each agency custodian or the agency custodian's designee shall maintain a record of the number of individuals tested by each certified operator under the certified agency's supervision and shall submit a quarterly report to the department on forms provided by the department. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective

P-_____.)



ATTORNEY GENERAL

NOV 27 2007

APPROVED BY *cm*

DEPT. OF ADMINISTRATION

NOV 26 2007

APPROVED BY FDL

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Senator Derek Schmidt
Majority Leader

Committee Assignments

Chair: Confirmation Oversight
Vice Chair: Assessment & Taxation
Organization Calendar & Rules
Member: Judiciary
Agriculture
Legislative Post Audit

Message Only (800) 432-3924
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Testimony in support of Senate Bill 409
Presented to the Senate Judiciary Committee
by Senator Derek Schmidt

January 23, 2008

Mr. Chairman, members of the committee, thank you for the opportunity to testify today on Senate Bill 409.

This legislation would provide that people convicted of three or more felonies would be sentenced to time in prison according to their most recent crime of record. It would eliminate the possibility that a person could be sentenced to probation for a third or subsequent crime, although it would preserve the opportunity for a court to depart downward on the duration of the prison sentence.

This legislation is about providing certainty of punishment; it is not about the severity of punishment. It is aimed at providing some point of certainty where the revolving door of crime, apprehension, prosecution, conviction and release on probation to re-offend is finally closed.

The main area affected by this proposed sentencing change would be repeat property offenders. The reality of our sentencing policy over the past two decades is that, in order to ration prison space, the legislature has repeatedly shifted the focus of prison time to violent, person felons. That makes sense. But the consequence of that is that non-person felons have, at the same time, been slowly shifted away from incarceration as an option.

Unfortunately, many criminals whose "business" is property crimes know this. Law enforcement officials have many troubling stories about criminals literally laughing on the courthouse steps because they know that, despite being apprehended, prosecuted and convicted, they will never see the inside of a prison.

This bill would break that catch-and-release cycle. By doing so, I believe it would have a substantial deterrent effect. That would be good for Kansas, good for victims, and good public policy.

I appreciate this chance to testify and would stand for questions.

Senate Judiciary
1-23-08
Attachment 2



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Region VI
St. John Police Dept.

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 409 Presented by Ed Klumpp

January 23, 2008

This testimony is in support to the provisions of SB409 which enhances public safety by more aggressively handling all repeat felony offenders. We recognize the challenge this bill presents in regards to prison bed space. But we also see every day the harm to victims and the losses society suffers at the hands of career criminals. These losses include financial, emotional, and physical.

When the state moved from indeterminate sentencing to the sentencing grids of determinate sentencing many years ago, they established a priority of violent crimes for the use of prison bed space. While we certainly could not disagree with that as a priority, we believe the repeat non-violent criminals have fallen too far off the imprisonment radar. The result has been far too many repeat offenders remaining on probation. The net result of weak handling of non-violent criminals is further victimization of our citizens and our businesses by these repeat offenders.

We have attached two documents showing how Kansas crime compares to other jurisdictions. The data on these reports are directly from FBI crime data reports. We have not in any way manipulated the data or interpreted the data beyond our statement of conclusions. The 2006 report uses crime rates which are the amount of crime reported per 100,000 population. This allows for fair comparisons to other jurisdictions. The 2007 report shows the change in crime and compares Kansas to comparable groups. The FBI 2007 preliminary report data does not include crime rates and only considers reports for jurisdictions of 100,000 or greater population. You will see that in 2006 the Kansas crime rate in several serious crime categories is higher than those of other comparison groups. The 2007 chart demonstrates we are falling further behind. In fact, on both charts we are behind in more areas than we are ahead.

We must take steps to turn this around, to reduce the Kansas crime rate, reducing the victimization of our citizens and businesses. This bill is obviously aimed at the repeat offenders; an area which we agree should be the target. The offenders targeted on this bill are ones showing they are not responding to the non-prison sanctions. These offenders need our attention regardless of whether they are violent or non-violent offenders.

We urge you to recommend SB 409 to be passed.

Ed Klumpp
Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair, Kansas Association of Chiefs of Police
E-mail: eklumpp@cox.net
Phone: (785) 235-5619
Cell: (785) 640-1102

Senate Judiciary

1-23-08

Attachment 3

2006 Crime Rates per 100,000 population

	United States	Midwest Region ¹	West North Central Sub-Region ²	Kansas
All violent crime	473.5	419.1	377.8	425.0
Homicide	5.7	5.0	3.7	4.6
Forcible Rape	30.9	35.4	32.9	44.8
Robbery	149.4	132.1	87.8	67.9
Agg. Assault	287.6	246.6	253.4	307.7
All Property Crime	3334.8	3271.2	3281.4	3750.2
Burglary	729.4	692.1	638.5	723.3
Theft	2206.8	2246.5	2345.6	2712.0
Motor Vehicle Theft	398.4	332.6	297.3	314.9
TOTAL RATE FOR ALL LISTED CRIMES	3808.3	3690.3	3659.2	4175.2

¹The Midwest Region includes: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin

²The West North Central Sub-region includes: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

Kansas crime rates are higher
Kansas crime rates are lower

Data from the FBI 2006 Crime in the United States Report

NOTE: All crimes listed are felonies except theft and motor vehicle theft include misdemeanors.

Burglaries to a motor vehicle are included in thefts in FBI statistics.

CONCLUSIONS:

The Kansas crime rate is 14% higher than that of the sub-region we are in.

The Kansas crime rate is 13% higher than that of the region we are in.

The Kansas crime rate is nearly 10% higher than that of the nation.

2007 PRELIMINARY CRIME REPORT
Cities over 100,000 population
January through June 2007

State	City	Population ¹	Violent crime	Murder	Forcible rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny-theft	Motor vehicle theft		
TOTAL all Kansas cities included in report			2006	903,503	2,850	31	240	622	1,957	22,005	3,900	15,484	2,621
(KC, Topeka, Wichita, Olathe, Overland Park)			2007		2,782	42	220	710	1,847	21,673	4,191	14,806	2,676
CHANGE					-2.4%	35.5%	-8.3%	14.1%	-5.6%	-1.5%	7.5%	-4.4%	2.1%

CHANGE IN REPORTED CRIME (1st 6 months of 2007 compared to 1st six months of 2006)

Metropolitan Counties	Nationwide	1304 agencies reporting	52,214,353	Violent crime	Murder	Forcible rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny-theft	Motor vehicle theft
				-1.9	+4.9	-6.0	-0.6	-2.0	-2.6	-3.6	-1.7	-5.1
National Change	2007/2006			-1.8	-1.1	-6.1	-1.2	-1.7	-2.6	-1.3	-2.1	-7.4

NOTE: Only includes first six months of each year and only includes cities over 100,000 population

CHANGE IN REPORTED CRIME BY GEOGRAPHIC REGION (1st 6 months of 2007 compared to 1st six months of 2006)

Midwest Region (Includes: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin)	Violent crime	Murder	Forcible rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny-theft	Motor vehicle theft
	-2.6	-2.8	-11.6	-4.0	-0.6	-5.0	-3.7	-4.5	-10.3

CHANGE IN REPORTED CRIME BY POPULATION GROUP (1st 6 months of 2007 compared to 1st six months of 2006)

Population group	Number of agencies	Population	Violent crime	Murder	Forcible rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny-theft	Motor vehicle theft
Cities:											
250,000 to 499,999	35	12,312,747	-5.1	0.0	-6.8	-3.4	-6.2	-4.8	-3.1	-4.1	-9.4
100,000 to 249,999	185	27,606,579	+0.1	+0.9	-7.1	+2.4	-0.4	-2.2	-0.1	-1.9	-7.0
Counties:											
Metropolitan ¹	1,304	52,214,353	-1.9	+4.9	-6.0	-0.6	-2.0	-2.6	-3.6	-1.7	-5.1

¹ Includes crimes reported to sheriffs' departments, county police departments, and state police within Metropolitan Statistical Areas.

² Includes crimes reported to sheriffs' departments, county police departments, and state police outside Metropolitan Statistical Areas.

Data from the FBI 2007 Preliminary Semi-Annual Crime in the United States Report

NOTE: All crimes listed are felonies except theft and motor vehicle theft include misdemeanors.

Burglaries to a motor vehicle are included in thefts in FBI statistics.

Change in crime worse in Kansas
 Change in crime better in Kansas

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Kansas C-POST
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Liberal, KS 67901

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Kansas City, KS 66101

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Kansas Highway Patrol
Salina, KS 67401

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Hays Police Dept.
Hays, KS 67601

RICH SCHNEIDER
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DELBERT HAWEL
KS Bureau of Investigation
Hays, KS 67601

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Garden City, KS 67846

LARRY COLE
Kansas Highway Patrol
Garden City, KS 67846

MATT COLE
Garden City Police Dept.
Garden City, KS 67846

DISTRICT 6
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Barton County Sheriff's Office
Great Bend, KS 67530

STEVE BILLINGER
Kansas Highway Patrol
Ellinwood, KS 67526

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St. John Police Dept.
St. John, KS 67576

DISTRICT 7
DON READ
Cowley County Sheriff's Office
Winfield, KS 67156

BILL EDWARDS
Park City Police Dept.
Park City, KS 67219

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Crawford County Sheriff's Office
Girard, KS 66743

STEVE BERRY
Caney Police Dept.
Caney, KS 67333

KEITH RATHER
KS Dept. of Wildlife & Parks
Chanute, KS 66720

Kansas Peace Officers' Association

INCORPORATED
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TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 409 Presented by Ed Klumpp

January 23, 2008

The Kansas Peace Officers' Association supports the provisions of SB409. Kansas continues to lag behind other jurisdictions in crime rates, particularly those for non-violent crimes. Law enforcement recognizes many of the victims of crime are suffering from the actions of felons who have demonstrated their lack of desire or ability to correct their behavior with non-prison sanctions. While we understand the efforts to change criminal behavior through non-prison sanctions, we believe it is time to reserve that for first and second time offenders and to consider prison sanctions for the repeat felons targeted in this bill—even the non-violent criminals—who show those sanctions don't work for them.

We recognize the impact this bill will have on prison bed space. But the bed impact itself speaks to the need to do something more. It shows the number of people who are not seeing prison today who have three or more felony convictions. Data repeatedly shows that repeat property felons commit many times more crimes than they are ever charged with of convicted for. A three time felon has committed many, many crimes probably victimizing hundreds of our citizens for every crime for which they are convicted.

The information on prison cost is always readily available to legislators as these issues are considered. Unfortunately, the costs of allowing repeat offender felons to continue to prey on our citizens and businesses are not that easy to gather. The additional costs to repair damage, replace stolen items, medical costs, mental health treatment costs, increased insurance costs, loss of productivity, and more add up quickly. The bed space costs must be weighed against the cost to the victims and to society as bills like this are considered. It is difficult at best to estimate what these costs are, but we know they are enormous. Your Kansas law enforcement officers see the impact of that cost every day as we take more reports of criminal activity from the victims and see the emotional impact of crime on their lives.

We urge you to recommend SB409 to pass.


Ed Klumpp
Legislative Committee Chair
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Senate Judiciary
1-23-08
Attachment 4



Kansas County & District Attorneys Association

1200 SW 10th Avenue
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(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

TO: The Honorable Senators of the Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
President, KCDA

RE: Senate Bill 409

Chairman Vratil and members of the Committee:

The Kansas County and District Attorney's Association supports the passage and implementation of Senate Bill 409. The KCDA supports the public policy represented by this bill, that policy being the protection of the citizens of our communities from persons who commit repeated felony crimes. The object of sound criminal policy within the State of Kansas should be the protection of its citizens, and a message must be sent by the legislature that persons who commit felony crimes in this State who have two or more prior convictions for felony offenses should expect that their criminal activities will result in incarceration with the Kansas Department of Corrections. The provisions of Senate Bill 409 would send that message.

Having indicated my organization's support for the public policy embodied by Senate Bill 409, I would like to draw your attention to an inconsistency within the bill itself. Subsection 1(a) of the bill shows a sentencing grid for non-drug felony offenses. This sentencing grid is consistent with the grid which currently controls sentences in this State. Subsection 1(n), the meat of the "three strikes" provisions of this bill, makes the sentence for a "violation of a non-drug felony when such person being sentenced has two or more prior convictions of any felony" a presumptive prison sentence. This language effectively amends the drug grid so that all sentences for offenses falling in boxes for criminal history categories F through A will be presumed imprisonment. The grid as depicted in Section 1(a) of the statute does not show this change in the grid. In order to be internally consistent, therefore, the grid for non-drug offenses in Subsection 1(a) of Senate Bill 409 must be redrawn to show all boxes from criminal history categories F to A in all crime severity categories as presumptive prison.

The same issue exists for Section 2 of Senate Bill 409. Section 2(a) shows a presumptive probation designation for criminal history categories E and F of severity level 4 in the drug grid. The drug grid also shows a border box designation for severity level 3 offenses with criminal

history categories E and F. Those four grid boxes must be redrawn to reflect presumptive prison in order to be internally consistent with the language of Subsection 2(g) of the proposed statute. The boxes for criminal history categories E and F for crime severity level 3 of the drug grid must be changed to presumptive prison boxes in order to be consistent with the language of Subsection 2(g). This would also require an amendment to Subsection 2(d) which currently gives a border box designation to boxes 3E and 3F of the drug grid.

It should also be noted that the language in Subsection 2(i) appears to modify or amend the current statute regarding the power of the Secretary of Corrections to determine placement for persons convicted of felony DUI pursuant to K.S.A. 8-1567. This language appears to be identical to language in Chapter 181, Section 10, Subsection (i) of the 2007 Session Laws of Kansas. I suspect that this was a section which remained italicized during the drafting of Senate Bill 409 and is language that was enacted last year.

The Kansas County and District Attorney's Association is well aware of the possible fiscal implications of this legislation. However, my Association's support for this legislation has its origin in a desire to protect citizens of Kansas, as well as deal with persons who find it convenient to take advantage of the presumptive probation implications of the Kansas Sentencing Guidelines Act as a license to continually commit felonies within our State. Criminal history classifications of G, indicating at least one felony prior conviction, and higher are extremely common when sentencing persons convicted of committing new felony crimes. It is, frankly, frustrating these persons come before the court time and time again only to be sentenced pursuant to the guidelines to new probationary sentences. The frustration of prosecutors, however, is of small consequence when compared with the frustration expressed by victims of crime when those victims discover that the person responsible for committing a felony crime against them has multiple prior felony convictions.

Senate Bill 409 has wisely given the courts the ability to consider circumstances involving each individual case. This law would allow the courts to grant a durational departure in order to assure the facts of each case are taken into account in arriving at a just sentence. It should be noted that there is no basement to these departures, and that these would be departures that would not be appealable by the State. The language would allow an individual judge to keep a defendant from serving any prison time under this provision by simply sentencing an offender to time served. It is unclear how post-release supervision would affect a defendant under those circumstances. It should also be noted that on certain drug crimes, specifically possessory crimes falling in severity level 4 of the drug grid, the legislature has previously determined there would be no post-release supervision. It is clear that, under those circumstances, a judge could sentence a third time offender to a minimal amount of time, possibly time served, at which point the defendant would be under no obligation to the court system. A concern here would be that the person would receive neither treatment nor incarceration.

I urge this committee to review this statute and consider the technical issues I have raised regarding its passage. It is my hope that this legislation will be modified to deal with these issues, and that this legislature would indeed pass a three strikes statute this session.

Respectfully submitted,

Thomas R. Stanton
Deputy Reno County District Attorney



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To: The Members of the Senate Judiciary Committee

Re: Senate Bill 409

January 22, 2008

To the Senate Judiciary Committee Members:

On behalf of the Kansas Sheriff's Association and as Sheriff of Douglas County, I support the passage of Senate Bill 409. The changes to the sentencing guidelines, which provides imprisonment of persons who have been previously convicted of at least one count of burglary (KSA 21-3715) to prison rather than what is currently in the statute which requires two or more previous convictions of burglary. The legislature and law enforcement are making a strong statement that burglaries to the homes of our citizens is unacceptable and convicted perpetrators will be sent prison.

The change to the non-drug and drug related felonies continue in the spirit of being resolute regarding these criminal acts. It is our obligation as lawmakers and law enforcement officers to keep our communities safe and the changes to imprisonment after two or more felony convictions will help to again, send the same important message.

As Sheriff of one of the larger jails in the state of Kansas, I further appreciate another element of Senate Bill 409 concerning treatment programs available through KDOC for those inmates convicted three or more times of driving while intoxicated, who currently serve their sentence in county jail. The proposed bill allows these inmates substance abuse treatment at an approved KDOC treatment center, which lifts the burden from the county jails and this allows the inmate to receive the necessary treatment, which may not be available at a county facility.

In closing, I support Senate Bill 409 and welcome the opportunity to testify on its behalf.

Sincerely,

A handwritten signature in black ink that reads "Ken McGovern". The signature is written in a cursive, flowing style.

Sheriff Ken McGovern