Approved: April 4, 2008
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on January 24, 2008, in Room 123-S of the Capitol.

All members were present except:
Barbara Allen arrived, 9:38 A.M.
Derek Schmidt arrived 9:41 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:
Jennifer Roth, Legislative Committee Chair; Kansas Association of Criminal Defense Lawyers
Peter Ninemire, Families Against Mandatory Minimums
Tim Madden, Department of Corrections
Helen Pedigo, Kansas Sentencing Commission
Heather Morgan, Juvenile Justice Authority
Stuart Little, Kansas Community Corrections Associations
Kevin Murray, Chief Court Services Officer, 21st Judicial District
Alice Adams, Clerk of the District Court, Geary County

Others attending:
See attached list.

Ron Gaches, requested introduction of bill relating to the uniform trust code concerning irrevocable trust for the discretionary acceleration of remainder interest. Senator Umbarger moved, Senator Donovan seconded to introduce the bill. Motion carried.

The Chairman continued the hearing on **SB 409–Third or subsequent felony conviction, sentence**.

Jennifer Roth appeared in opposition, indicating the one size fits all approach in the proposed legislation does not address the difference between habitual offenders and those defendants with substance abuse or mental illness issues (Attachment 1). Incarceration of this type of offender is not a cure for recidivism. The bill does not provide resources for treatment therefore setting them up to re-offend upon release from prison. In addition, **SB 409** will be costly due to the increased number of prison beds required, and it will overwhelm the court system by defendants with no incentive to plea bargain their cases. Ms. Roth proposed inserting language similar to that found in Jessica's law to allow for a dispositional departure for probation upon finding a substantial and compelling reason. Her suggested amendments also address the issue of third lifetime offenses for petty theft.

Peter Ninemire testified in opposition, indicating **SB 409** will take discretion away from judges and hinder the successful work being done by the Kansas Sentencing Commission in substance abuse treatment (Attachment 2). Mr. Ninemire also voiced concern for the fiscal and social costs created by enactment of the bill.

Tim Madden testified in a neutral capacity raising the Department of Corrections' concern regarding the reference to the drug grid criminal history block 4-E and 4-F (Attachment 3). The Department feels placement in the bill is inappropriate and recommended placing the reference on page 9, line 36 and removing it from page 9, line 42.

There being no further conferees, the hearing on **SB 409** was closed.

The Chairman opened the hearing on **SB 418–Kansas sentencing commission; duty to annually produce official juvenile correctional facility population projections**.

Helen Pedigo appeared in support, stating the Kansas Sentencing Commission has been contracted annually for the several years by the Juvenile Justice Authority to perform juvenile population projections

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on January 24, 2008, in Room 123-S of the Capitol.

(Attachment 4). Annual projections should continue under the authority of Kansas Sentencing Commission in order to maintain objectivity. Ms. Pedigo suggested an amendment to the bill to include language regarding production of bed impact statements similar to those submitted for adult criminal sentencing bills and to include a specific date by which the projection would be completed.

Heather Morgan testified in support, indicating the Juvenile Justice Authority has found the reports to be useful and beneficial to the agency during the budget process to determine operational needs for the various facilities (Attachment 5).

There being no further conferees, the hearing on **SB 418** was closed.

The hearing on **SB 419–Criminal procedure; for and consent of journal entry** was opened.

Helen Pedigo spoke in favor, indicating **SB 419** is a technical "clean-up" based on recommendations by a subcommittee created by the Kansas Sentencing Commission to review the "journal of entry of sentencing" (Attachment 6).

There being no further conferees, the hearing on **SB 419** was closed.

The hearing on **SB 423–Notice of filing of foreign judgement** was opened.

Alice Adams appeared in support, stating enactment of this bill would simplify the process of notice of filing and remove the court clerk as an unnecessary middleman (Attachment 7).

There being no further conferees, the hearing on **SB 423** was closed.

The Chairman opened the hearing on **SB 422–Kansas Assault and battery against court services officers.**

Heather Morgan spoke in support of strengthening penalties for assault and battery against court officers. Ms. Morgan requested an amendment to include Kansas Justice Juvenile Authority employees, community corrections officers, juvenile community supervision officers and juvenile intake and assessment officers in the bill (Attachment 8).

Stuart Little spoke as a proponent, supporting the amendment requested by the Juvenile Justice Authority (Attachment 9).

Kevin Murray testified in support, relating recent statutory changes in which the severity levels of crimes have been enhanced for specific individuals and entities (Attachment 10). Mr. Little indicated court service officers should be specifically included in **SB 422**.

Written testimony in support of **SB 422** was submitted by:
Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 11)

There being no further conferees, the hearing on **SB 422** was closed.

The hearing on **SB 414– Electors of county or counties may establish an office of the district attorney; salary based on felony caseload** was opened.

Senator Derek Schmidt spoke in favor, indicating **SB 414** is a compromise worked out by the interim judiciary committee to establish a mechanism in which local voters may decide whether to move from a county attorney system to a district attorney system (Attachment 12).

There being no further conferees, the hearing on **SB 414** was closed.

The meeting adjourned at 10:32 A.M. The next scheduled meeting is January 28, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 24, 2008

NAME	REPRESENTING
Dennis L Bender	Parent
Chuck Sypher	FAMM
Jamie Jones	KS. Assoc. of Counties
Becky Topliff	KS. Ass. Dist Ct Clerk & Adm.
Mark Gleeson	Judicial Branch
Kevin Murray	KS Assn Court Services Officers
Stuart Little	Ks Community Correction Assoc
Travis Rodmon	Secretary of State
Heater Morgan	JJA
Tim Maddin	KDOC
Richard Sonnichsen	Kennedy & Assoc.

Senate Judiciary Committee
January 23, 2008

Jennifer Roth, Legislative Committee Chairperson
Kansas Association of Criminal Defense Lawyers (KACDL)
Opponent of Senate Bill 409

The KACDL has 275 members across the State of Kansas. We are dedicated to justice and due process for those accused of crimes. We oppose SB 409 because:

"Three strikes" will drain the State financially: A summary review of "three strikes" shows a need for 1,200 additional bed spaces in the first year. This is roughly the equivalent of two Topeka Correctional Facilities or one El Dorado Correctional Facility. Given the number of mentally ill defendants, the need for beds at an already-swamped Larned will also grow.

"Three strikes" is not a deterrent to future offenses: This one-size-fits-all approach fails to recognize that a majority of criminal defendants are either battling substance addictions and/or mental illness. In fact, Douglas County District Attorney Charles Branson "estimated that about three-fourths of people in the criminal justice system have a mental health or drug abuse problem." *Lawrence Journal World*, January 21, 2007. Locking defendants up for their "third strike" is not a cure-all for recidivism – they will still be mentally ill and/or addicted when they leave prison. This bill provides no resources for treatment in prison for these 1,200 new inmates or additional treatment or mental health services to defendants once they leave prison. This bill sets people up to reoffend by failing to address what caused the person to offend in the first place. This bill denies defendants a chance on probation where they can attend programs and strive to live and function in the real world. "Three strikes" furthers the process of warehousing people with addictions and/or mental illness in prison.

"Three strikes" will overwhelm the court system: The need for prison beds will not be the only thing that explodes. With "three strikes," defendants will have no incentive to plea bargain their cases. There will be a huge increase in the number of jury trials and all of the resources associated with them (ex. judges, prosecutors, appointed counsel, experts, evaluators, jurors). Victims will not have their cases disposed of quickly and they will have to testify in court.

"Three strikes" is unnecessary: The Kansas Sentencing Guidelines Act (KSGA) already provides for upward dispositional departures. A court can order an otherwise presumptive probation defendant to prison upon finding substantial and compelling reasons. One such reason approved by our appellate courts is a defendant's "nonamenability to probation" because of prior offenses. Furthermore, there are more tailored ways to address the issue "three strikes" proposes to solve, such as requiring defendants to serve a certain number of days in jail before being allowed to begin probation (ex. 2007 HB 2301 and 2166 RE: theft). "Three strikes" increases penalties for ALL third and subsequent felonies – regardless of the type or age of priors or type of current conviction – with no real data and no real recognition of existing KSGA remedies.

Respectfully submitted,
Jennifer Roth
rothjennifer@yahoo.com
(785) 832-9583

Senate Judiciary
1-24-08
Attachment 1

Kansas Legislature

Alternative to SB 409
by KACDL

21-4704

Chapter 21.--CRIMES AND PUNISHMENTS
PART III.--CLASSIFICATION OF CRIMES AND SENTENCING
Article 47.--SENTENCING GUIDELINES

21-4704. Sentencing guidelines; grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition; nongrid crime. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than

the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer or K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: (A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (ii) at the time of the conviction under paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the conviction under paragraph (B) (i) has at least one

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conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in paragraph (2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

(m) The sentence for a violation of K.S.A 22-4903 or subsection (d) of K.S.A. 21-3812, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism, such program is available and the offender can be admitted to such program within a reasonable period of time; or

(2) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence pursuant to this section shall not be considered a departure and shall not be subject to appeal.

History: L. 1992, ch. 239, § 4; L. 1993, ch. 291, § 254; L. 1994, ch. 341, § 1; L. 1995, ch. 251, § 3; L. 1996, ch. 258, § 10; L. 1999, ch. 164, § 17; L. 2001, ch. 186, § 2; L. 2002, ch. 10, § 1; L. 2004, ch. 175, § 3; L. 2006, ch. 126, § 4; L. 2006, ch. 212, § 16; July 1.

(n) The sentence for a violation of subsections (b)(1), (b)(2), (b)(3) and (b)(4) of K.S.A. 21-3701 and amendments thereto when such person being sentenced has two or more prior conviction events for a violation of subsections (b)(1), (b)(2), (b)(3) and (b)(4) and amendments thereto shall be presumptive imprisonment. As used in this subsection, a "prior

conviction event" means one or more felony convictions of K.S.A. 21-3701 (b)(1), (b)(2), (b)(3) or (b)(4) occurring on the same day. These convictions may result from multiple counts within an information or complaint or from more than one information or complaint.

Kansas Legislature

Alternative to SB 409
by KACDL

21-3705

Chapter 21.--CRIMES AND PUNISHMENTS
PART II.--PROHIBITED CONDUCT
Article 37.--CRIMES AGAINST PROPERTY

21-3705. Criminal deprivation of property. (a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.

(b) Criminal deprivation of property that is a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson misdemeanor except as provided in (c). Upon a first conviction of this subsection, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than $100. Upon a second ~~or subsequent~~ conviction of this subsection, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than $200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

(d) ~~(c)~~ Criminal deprivation of property other than a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, is a class A nonperson misdemeanor. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than $100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

History: L. 1969, ch. 180, § 21-3705; L. 1972, ch. 116, § 2; L. 1992, ch. 298, § 42; L. 1993, ch. 291, § 67; L. 1995, ch. 251, § 1; L. 1999, ch. 164, § 9; July 1.

(c) Criminal deprivation of property that is a motor vehicle, as defined by K.S.A. 8-1437 and amendments thereto, is a Level 9 nonperson felony if committed by a person who, within five years immediately preceding commission of the crime, has been convicted of (b) two or more times.

1-6

Families Against Mandatory Minimums
FOUNDATION

January 23, 2008

Senator Vratil and Honorable Members of this Committee:

Thank you for this opportunity to testify today against SB409. I am taking this opportunity because I am in fact a three-time loser that this bill is targeting. I am only here and not in prison today because of luck, grace and blessings, and not the intent of the criminal justice system. After having three felony convictions for cultivation and/or sales of marijuana, I was sentenced to a 27-year federal mandatory minimum sentence for cultivation of marijuana in 1991. Two and a half years of that sentence was for failing to appear for the 24 ½ year sentence, which I was told upon my involuntary but blessed return to Kansas, had me number three on Kansas's Most Wanted list; a fact I can assure you I am not proud of.

(Nevertheless,) I am here today on behalf of Families Against Mandatory Minimums, a national sentencing reform organization headquartered in Washington, D.C. that was founded in 1991 to abolish the excessively harsh penalties required by mandatory minimums, and restore judicial discretion to sentencing. FAMM successfully advocated for my release, along with 20 other low-level non-violent drug offenders via a commutation of sentence miraculously granted by former President Clinton before he left office on January 20, 2001. Today, all 21 of us have successfully completed our supervised release and are productive and contributing members of society. Many of us gained some form of higher education, including law degrees for some.

Because I was given another chance, my story is a success story. I earned my Masters of Social Work in 2006, and today am gaining the 4000 clinical hours necessary to become a Licensed Clinical Social Workerat the Wichita and Sedgwick County Day Reporting Centers. I was recently promoted to Supervisor of Substance Abuse Services for approximately 100 parolees, and up to 250 probationers from the District and Municipal courts in Wichita. I have the pleasure of working with and helping many of these people change their lives. I also work with others who, for a myriad of reasons, are not ready for change. On both ends of this spectrum we work through a series of graduated sanctions, proven to be most effective at effecting change. We don't easily give up on people struggling to overcome addictions, even when they backslide. We don't readily throw in the towel and send them back to a place that is the least likely to create change, which is prison. We work hard to provide opportunities for success but we also hold our clients accountable. Many of them need to learn how to be accountable and for some, that is a process of trial and error

Change is relative to the individual, and usually involves a process that includes some incarceration. I guarantee you that I was in need of some serious intervention, and that I did not change overnight. It happened over a process of 3 – 5 years of the 10 years I served when I was able to get past what I felt was overly harsh treatment by a criminal justice system that treated me as incorrigible. The criminal justice system had only one treatment for me and that was incarceration. But my judge did not feel this way. He explained to me that I needed to be held accountable. He also told me he did not like or agree with the sentence he was forced to hand down but that was what the law required. Ten years later based on both my

Senate Judiciary
1-24-08
Attachment 2

1612 K Street, NW • Suite 700 • Washington, D.C. 20006 • (202) 822-6700 • fax (202) 822-6704 • FAMM@famm.org • http:

transformation in prison and the injustices he perceived with mandatory minimums, he willingly wrote a letter on my behalf asking President Clinton to give me another chance at life he felt I deserved, but was unable to give.

FAMM's case files today are full of similar stories from both the state and federal level; cases where judges have apologized for the sentences they are forced to hand down because they lacked judicial discretion. I think this is a terrible statement about the criminal justice system; that judges cannot, in some cases, impose a punishment that is sufficient, but not greater than necessary to achieve the purposes of punishment. I believe if passed, SB409 will take us down the same road. Judges in Kansas should be able to consider the mitigating circumstances of each individual and case, and make a decision within the range of the Sentencing Guidelines.

SB409 not only takes discretion away from judges, but it takes the power away from one of the most respected Sentencing Commissions in the country established by the legislature for the very purpose that this legislation is attempting to circumvent. This bill starts us down a very slippery slope of amending the purpose and thoughts behind the widely recognized and supported guidelines. It is also contrary to the statutes that created one of the most competent and well-respected sentencing commissions in the country for this purpose. If passed, this bill will increase the prison population by an estimated 1200 prisoners in the first year alone. It will also single-handedly undo most of the model sentencing reforms efforts in Kansas undertaken the Sentencing Commission, the Secretary of Correction, and the Kansas Legislature. Many national organizations, such as FAMM, have proudly supported Kansas' sentencing guideline system. Others have provided the state with sentencing resources like the Council on State Governments, or huge financial contributions, like the JHET and the Pew Charitable Trusts.

Aside from the tremendous fiscal costs, as a Therapist and Substance Abuse Counselor, I am very much concerned about the social costs, and that SB409 will eliminate many from receiving mandatory drug treatment. As I noted in the attached nationally published article, "If there is one thing I am sure of, it is that prisons and jails do not cure addiction." They serve the useful purpose of removing people from their environments, associates, lifestyles and addictions, but real and lasting changes usually take place with these individuals receiving help in the community with supportive families and communities, coinciding with programs based on graduated sanctions and accountability, such as we see in Community Corrections and Day Reporting Centers, and in similar approaches by other agencies.

On all counts, I implore you to vote against SB409, before we deal with a whole new set of irreversible unintended consequences created by this legislation. Thank you.

Sincerely,

Peter Ninemire, LMSW, SAPTR
Midwest Regional Trainer/Organizer
Families Against Mandatory Minimums
1926 S. Estelle, Wichita, KS 67211
E-mail pninemire@famm.org
Ph: (316)651-5852

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 409
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 23, 2008

The Department appreciates the opportunity to raise with the Committee a technical concern regarding SB 409. The Department does not have a position relative to the policy considerations of SB 409.

The Department wishes to raise its concern regarding the deletion of the reference to the drug grid criminal history blocks 4-E and 4-F on page 9 line 36 and the insertion of the reference to those blocks into line 42. The Department is concerned that reference to drug grid blocks 4-E and 4-F is inappropriate as proposed in SB 409 since paragraph (a)(2) of K.S.A. 21-4729 involves the criteria that is to be employed by the court relative to the eligibility of defendants who have a criminal history of a person felony. In contrast, offenders with a criminal history falling in drug grid blocks 4-E and 4-F do not have a history of any person felonies. The Department recommends that reference to those grid blocks be retained in line 36 and their insertion into line 42 not be pursued.

DEPARTMENT OF CORRECTIONS
900 S.W. Jackson Street; Topeka, KS 66612-1284 • (785) 296-3317 • Fax: (785) 296-0014

Senate Judiciary
1-24-08
Attachment 3

KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chairman
Attorney General Paul Morrison, Vice Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

SENATE JUDICIARY COMMITTEE
The Honorable John Vratil, Chairman

TESTIMONY ON SENATE BILL 418
ADDING JUVENILE PROJECTIONS TO SENTENCING COMMISSION DUTIES
Helen Pedigo, Executive Director
Wednesday, January 23, 2008

Mr. Chairman and Committee members, thank you for the opportunity to appear before you today in support of Senate Bill 418, which adds juvenile correctional facility population projections to the duties of the Kansas Sentencing Commission.

This bill increases the duties of the Kansas Sentencing Commission to include producing juvenile correctional facility population projections annually. From 2003 to present, the Sentencing Commission provided these projections through a contractual agreement with the Juvenile Justice Authority. This fall, JJA officials brought to our attention a plan to discontinue this arrangement or to modify the contract to one in which the Sentencing Commission would assist JJA to produce their own projections at reduced rate for some period of time, and eventually to discontinue the relationship, as JJA would take over this responsibility. It is our understanding that JJA had identified another use for the money that funded the agreement between the agencies.

The Sentencing Commission felt strongly that facility projections should be objective, and that such objectivity is difficult to maintain when the duty is housed within the agency responsible for requesting funding for facility expansion. It is the position of the Commission that these projections should continue and that they should be carried out by the Sentencing Commission, as they have been for the last 4 years. Therefore, I ask that this duty be statutorily included with those of the Sentencing Commission.

I would also ask that you consider an amendment to the bill. Upon notification to JJA regarding the bill language, JJA officials pointed out that we should include language regarding production of bed impact statements, similar to those we submit for adult criminal sentencing bills. We also specified a date by which the projection would be completed. That language is attached.

We ask this committee to consider this bill and recommend it favorably as amended. I would be happy to answer your questions.

700 SW Jackson Street, Suite 501, Topeka, KS 66603-3714

Voice 785-296-0923 Fax 785-296-0927 http://www.kansas.gov/ksc

Senate Judiciary
1-24-08
Attachment 4

Session of 2008

SENATE BILL No. 418

By Committee on Judiciary

1-15

AN ACT concerning the Kansas sentencing commission; relating to the duties thereof; amending K.S.A. 2007 Supp. 74-9101 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2007 Supp. 74-9101 is hereby amended to read as follows: 74-9101. (a) There is hereby established the Kansas sentencing commission.

(b) The commission shall:

(1) Develop a sentencing guideline model or grid based on fairness and equity and shall provide a mechanism for linking justice and corrections policies. The sentencing guideline model or grid shall establish rational and consistent sentencing standards which reduce sentence disparity, to include, but not be limited to, racial and regional biases which may exist under current sentencing practices. The guidelines shall specify the circumstances under which imprisonment of an offender is appropriate and a presumed sentence for offenders for whom imprisonment is appropriate, based on each appropriate combination of reasonable offense and offender characteristics. In developing its recommended sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities. In its report, the commission shall make recommendations regarding whether there is a continued need for and what is the projected role of, if any, the Kansas parole board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued;

(2) consult with and advise the legislature with reference to the implementation, management, monitoring, maintenance and operations of the sentencing guidelines system;

(3) direct implementation of the sentencing guidelines system;

(4) assist in the process of training judges, county and district attorneys, court services officers, state parole officers, correctional officers, law enforcement officials and other criminal justice groups. For these purposes, the sentencing commission shall develop an implementation

before six weeks following the date of receipt of the data from the department of corrections. When the commission's projections indicate that the inmate population will exceed available prison capacity within two years of the date of the projection, the commission shall identify and analyze the impact of specific options for (A) reducing the number of prison admissions; or (B) adjusting sentence lengths for specific groups of offenders. Options for reducing the number of prison admissions shall include, but not be limited to, possible modification of both sentencing grids to include presumptive intermediate dispositions for certain categories of offenders. Intermediate sanction dispositions shall include, but not be limited to: intensive supervision; short-term jail sentences; halfway houses; community-based work release; electronic monitoring and house arrest; substance abuse treatment; and pre-revocation incarceration. Intermediate sanction options shall include, but not be limited to, mechanisms to explicitly target offenders that would otherwise be placed in prison. Analysis of each option shall include an assessment of such options impact on the overall size of the prison population, the effect on public safety and costs. In preparing the assessment, the commission shall review the experience of other states and shall review available research regarding the effectiveness of such option. The commission's findings relative to each sentencing policy option shall be presented to the governor and the joint committee on corrections and juvenile justice oversight no later than November 1;

(16) at the request of the governor or the joint committee on corrections and juvenile justice oversight, initiate and complete an analysis of other sentencing policy adjustments not otherwise evaluated by the commission;

(17) develop information relating to the number of offenders on post-release supervision and subject to electronic monitoring for the duration of the person's natural life;

(18) determine the effect the mandatory sentencing established in K.S.A. 21-4642 and 21-4643, and amendments thereto, would have on the number of offenders civilly committed to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq., and amendments thereto; ~~and~~

(19) assume the designation and functions of the state statistical analysis center. All criminal justice agencies, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, and the juvenile justice authority shall provide any data or information, including juvenile offender information, requested by the commission to facilitate the function of the state statistical analysis center*; and*

(20) produce official juvenile correctional facility population projections annually on or before six weeks following the receipt of the data

November 1, not more than

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from the juvenile justice authority.

Sec. 2. K.S.A. 2007 Supp. 74-9101 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

, and develop bed impacts regarding legislation that may affect juvenile correctional facility population

Testimony on SB 418 – An Act Concerning the Kansas Sentencing Commission

Senate Judiciary Committee

by Heather Morgan

January 23, 2008

J. Russell Jennings
Commissioner
785-296-0042
rjennings@ksjja.org

Heather Morgan
Director of Public and Legislative Affairs
785-296-5543
hmorgan@ksjja.org

Senate Judiciary
1-24-08
Attachment 5

SB 418 adds the performance of juvenile population projections to the Sentencing Commissions duties. Unlike adult corrections, the Juvenile Justice Authority (JJA) has no bed space issues; in fact JJA has excess bed capacity. Therefore, JJA does not utilize these projections to determine if there is a need to build new facilities, but instead this information is viewed as an independent third party examination of what the population of each facility may be and is used during JJA's budget appeal process or in the budget process for the following fiscal year to determine the operational budgeting needs for each facility. In addition to the juvenile population projections it is important that juvenile bed impact statements be available during the legislative session if significant changes were made to the juvenile sentencing matrix or other statutory changes. The Sentencing Commission providing these services allows the legislature to have an independent view of the juvenile correctional facilities population and the impact policy decisions would have on the populations of the facilities. JJA finds the projections useful, is pleased with the projections produced by the Sentencing Commission and supports this bill.

KANSAS

KANSAS SENTENCING COMMISSION
Honorable Ernest L. Johnson, Chairman
Attorney General Paul Morrison, Vice Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

SENATE JUDICIARY COMMITTEE
The Honorable John Vratil, Chairman

TESTIMONY ON SENATE BILL 419
CRIMINAL SENTENCING JOURNAL ENTRY REQUIREMENTS
Helen Pedigo, Executive Director
Wednesday, January 23, 2008

Mr. Chairman and Committee members, thank you for the opportunity to appear before you today in support of Senate Bill 419, which amends the statutory requirements of the journal entry of criminal sentencing. This is a technical clean-up amendment.

During the past year, the Sentencing Commission implemented a subcommittee to review the journal entry of sentencing. The subcommittee, chaired by the Honorable Larry Solomon, Kingman, Kansas, included prosecutors, judges and defense counsel, who provided input into a new sentencing journal entry format. In addition, the subcommittee reviewed the journal entry statute and recommended this amendment. The Sentencing Commission supports this amendment as well.

This bill requires the sentencing court to note in its journal entry of judgment a statement that the defendant has stated on the record or in writing that the defendant did not want representation of counsel and, and to record the case transaction number for felony convictions and for probation revocations involving crimes committed on or after July 1, 1993. This bill also requires an order of commitment to the custody of the secretary of corrections shall record, in a judgment form, if used, all the information required under K.S.A. 21-4620 and amendments thereto. The bill strikes the requirement to identify the name and residence of those presiding at preliminary trial and trial stages and witnesses sworn at trial, as that information would be part of the conviction journal entry and would already be journalized by the time sentencing takes place.

I ask this committee to consider this bill and recommend it favorably. I would be happy to answer your questions.

700 SW Jackson Street, Suite 501, Topeka, KS 66603-3714

Voice 785-296-0923 Fax 785-296-0927 http://www.kansas.gov/ksc

Don... wald, President
Atchison County
423 N 5th
PO Box 408
Atchison, Ks. 66002
913-367-7400

Phil Fielder, ...ent-Elect
Ellis County
1204 Fort Street, 3rd Floor
PO Box 8
Hays, Ks. 67601
785-628-9415

FOREIGN JUDGMENTS – NOTICE OF FILING
SB 423 – K.S.A. 60-3003
TESTIMONY
By: Alice Adams, Clerk of the District Court
Geary County District Court – 8th Judicial District

K.S.A. 60-3003 concerns the notice of filing of a foreign judgment. It requires that the judgment creditor or his or her attorney shall make and file with the clerk of the court an affidavit, setting forth the name and last known address of the judgment debtor and the judgment creditor.

Currently, section (b) requires that the clerk mail to the judgment debtor a notice of filing, including the name and address of the judgment creditor. Section (b) further states that the judgment creditor may mail a notice as well, and the lack of mailing of the notice of filing by the clerk of the district court shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Our association recommends that Section (b) read: "Promptly upon the filing of the foreign judgment and the affidavit, the judgment creditor or the judgment creditor's lawyer shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state."

Upon reviewing the bill draft, it became apparent that an additional amendment is needed. We are requesting the deletion of additional language in current law that would no longer be needed. The two sentences that begin on line 26 of the bill should be amended to read as follows: "In addition, the judgment creditor may mail a notice of the filing of the judgment to the ~~judgment debtor~~ *clerk of the district court* and may file proof of mailing with the clerk of the district court. ~~Lack of mailing notice of filing by the clerk of the district court shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.~~

It makes sense that if the judgment creditor supplies the information and is already allowed by statute to send the notice of filing, he or she could be required to send the notice of filing, thus removing one step and simplifying the process. At present the clerk is acting as an unnecessary middleman in this process. KADCCA feels that the statute no longer reflects current practice and should be changed to require the notice be mailed by the party filing the foreign judgment.

Ann McNett, Secretary
Barber County
118 E. Washington
Medicine Lodge, Ks. 67104
620-886-5639

Kathleen Collins, Treasurer
Wyandotte County
710 N. 7th St., Mezzanine
Kansas City, KS 66101
913-573-2946

Jane E Hrabik, Immed. Past Pres.
Rice County
101 W Cor...

Senate Judiciary
1-24-08
Attachment 7

Testimony on SB 422 – An Act Concerning Crimes against Court Service Officers

Senate Judiciary Committee

by Heather Morgan

January 24, 2008

J. Russell Jennings
Commissioner
785-296-0042
rjennings@ksjja.org

Heather Morgan
Director of Public and Legislative Affairs
785-296-5543
hmorgan@ksjja.org

SB 422 adds a properly identified court services officer (CSO) engaged in official duty into the definition of assault and battery on a law enforcement officer. This change would make assault of a CSO a *class A person misdemeanor* and aggravated assault a *severity level 6 person felony*. SB 422 also makes battery which is defined in subsection (a)(2) of K.S.A. 21-3412 as "intentionally causing physical contact with another person when done in a rude, insulting or angry manner," a *class A person misdemeanor* and battery which is defined in subsection (a)(1) of K.S.A. 21-3412 as "intentionally or recklessly causing bodily harm to another person" *a severity level 7 person felony* when committed against a CSO.

The bill also makes intentionally causing bodily harm with a vehicle and aggravated battery which is defined in subsection (a)(1)(A) of K.S.A. 21-3414 as "intentionally causing great bodily harm to another person or disfigurement of another person" against a CSO *severity level 3 person felonies*. SB 422 would make aggravated battery which is defined in subsection a(1)(B) or a(1)(C) of K.S.A. 21-3414 as "intentionally causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or intentionally causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted" *a severity level 4 person felony* when committed against a CSO.

The Juvenile Justice Authority (JJA) supports strengthening the penalties for assault and battery against court service officers. However, JJA requests amendments be made to this bill which would also cover Kansas Juvenile Justice Authority employees, community corrections officers, juvenile community supervision officers, and juvenile intake and assessment officers to strengthen the penalties for assault or battery against these groups of people. Currently in K.S.A. 21-3110 (10)(b), (page 2, line 12 of SB 422) Department of Corrections (DOC) employees are defined as being law

enforcement officers. JJA would like to also include Juvenile Justice Authority employees in this definition.

Additionally, JJA seeks to include community corrections officers, juvenile community supervision officers, and juvenile intake and assessment officers in the definition of a law enforcement officer to ensure the penalties for assault or battery of these individuals is the same as SB 422 proposes for court service officers. JJA believes that these groups of employees face inherent dangers on a daily basis and work with offenders who often have a history of dangerous behavior. While assault or battery of these individuals is rare, the strengthening of these penalties makes sense to ensure offenders will be held accountable for their actions. These amendments help ensure that someone who harms a JJA employee, a community corrections officer, a juvenile community supervision officer, or a juvenile intake and assessment officer is held to the same standard as someone who harms a DOC employee or court service officer. JJA urges your support of this amendment. Please see the attached amendment language.

Session of 2008

SENATE BILL No. 422

By Committee on Judiciary

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AN ACT concerning crimes and punishment; relating to certain crimes against court services officers; amending K.S.A. 21-3110, 21-3409, 21-3411, 21-3413 and 21-3415 and K.S.A. 2007 Supp. 75-5133 and repealing the existing sections; also repealing K.S.A. 21-3110b.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

(6) To "deprive permanently" means to:

(a) Take from the owner the possession, use or benefit of property, without an intent to restore the same; or

(b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(7) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

(8) "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

~~(8)~~ *(9)* "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated bat-

tery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(9)~~ *(10)* "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(10)~~ *(11)* "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments thereto, any employee of the Kansas department of corrections; ~~or~~

(c) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto~~.~~*;* ~~or~~

(d) any court services officer of the Kansas judicial branch for the purposes of K.S.A. 21-3409, 21-3411, 21-3413 and 21-3415, and amendments thereto.

~~(11)~~ *(12)* "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

~~(12)~~ *(13)* "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(13)~~ *(14)* "Owner" means a person who has any interest in property.

~~(14)~~ *(15)* "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

~~(15)~~ *(16)* "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

~~(16)~~ *(17)* "Property" means anything of value, tangible or intangible, real or personal.

~~(17)~~ *(18)* "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

~~(18)~~ *(19)* "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

~~(19)~~ *(20)* "Public officer" includes the following, whether elected or appointed:

; (e) any officer of the juvenile justice authority or, for the purposes of K.S.A. 21-3409, 21-3411, 21-3413 and 21-3415, and amendments thereto, any employee of the juvenile justice authority;
(f) any officer of a community corrections agency or other employee responsible for supervising adult or juvenile offenders for confinement, detention, care or treatment, subject to conditions ; imposed by the court pursuant to the community corrections act, K.S. A. 75-5290 et seq., and amendments thereto, and the Kansas juvenile justice code, pursuant to K.S.A. 38-2301 et seq., and amendments thereto, for the purposes of K.S.A. 21-3409, 21-3411, 21-3413 and 21-3415, and amendments thereto; or
(g) any juvenile intake and assessment worker pursuant to K.S.A. 38-2302, and amendments thereto, for the purposes of K.S.A. 21-3409, 21-3411, 21-3413 and 21-3415, and amendments thereto.

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(a) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(c) A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(d) A hearing officer or presiding officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

(f) Any other person exercising the functions of a public officer under color of right.

~~(20)~~ *(21)* "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

~~(21)~~ *(22)* "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

~~(22)~~ *(23)* "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(23)~~ *(24)* "Stolen property" means property over which control has been obtained by theft.

~~(24)~~ *(25)* "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

~~(25)~~ *(26)* "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 2. K.S.A. 21-3409 is hereby amended to read as follows: 21-3409. (a) Assault of a law enforcement officer is an assault, as defined in K.S.A. 21-3408 and amendments thereto:

(1) Committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty; ~~or~~

(2) committed against a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty~~;~~ ~~or~~

(3) committed against a properly identified court services officer

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while such officer is engaged in the performance of such officer's duty;

(b) Assault of a law enforcement officer is a class A person misdemeanor.

Sec. 3. K.S.A. 21-3411 is hereby amended to read as follows: 21-3411. (a) Aggravated assault of a law enforcement officer is an aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto:

(1) Committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty; ~~or~~

(2) committed against a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty~~;~~ *; or*

(3) committed against a properly identified court services officer while such officer is engaged in the performance of such officer's duty.

(b) Aggravated assault of a law enforcement officer is a severity level 6, person felony. A person convicted of aggravated assault of a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704, and amendments thereto.

Sec. 4. K.S.A. 21-3413 is hereby amended to read as follows: 21-3413. (a) Battery against a law enforcement officer is:

(1) Battery, as defined in subsection (a)(2) of K.S.A. 21-3412, and amendments thereto, committed against: (A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; ~~or~~ (B) a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or *(C) a properly identified court services officer while such officer is engaged in the performance of such officer's duty; or*

(2) battery, as defined in subsection (a)(1) of K.S.A. 21-3412, and amendments thereto, committed against: (A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; ~~or~~ (B) a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or *(C) a properly identified court services officer while such officer is engaged in the performance of such officer's duty; or*

(3) battery, as defined in K.S.A. 21-3412, and amendments thereto,

or (4) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties.

or (4) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties.

(D) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties; or

(D) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties; or

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committed against: (A) A state correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) committed against a juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) committed against a juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) committed against a city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(b) Battery against a law enforcement officer as defined in subsection (a)(1) is a class A person misdemeanor. Battery against a law enforcement officer as defined in subsection (a)(2) is a severity level 7, person felony. Battery against a law enforcement officer as defined in subsection (a)(3) is a severity level 5, person felony.

(c) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(2) "State correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

(3) "Juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto.

(4) "Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto.

(5) "City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

Sec. 5. K.S.A. 21-3415 is hereby amended to read as follows: 21-3415. (a) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed

or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; ~~or~~ (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; *or (C) a properly identified court services officer while such officer is engaged in the performance of such officer's duty;*

(2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; ~~or~~ (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or *(C) a properly identified court services officer while such officer is engaged in the performance of such officer's duty; or*

(3) intentionally causing, with a motor vehicle, bodily harm to: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; ~~or~~ (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty*; or (C) a properly identified court services officer while such officer is engaged in the performance of such officer's duty.*

(b) (1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level 4, person felony.

(3) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

Sec. 6. K.S.A. 2007 Supp. 75-5133 is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

or (D) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties; or

(D) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties; or

(D) committed against a properly identified juvenile intake and assessment worker while such officer or employee is engaged in the performance of such officer's or employee's duties.

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 et seq. and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item

number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both, information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606, and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, or to any law enforcement officer, as defined in ~~subsection (c)(10) of~~ K.S.A. 21-3110, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation; and

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department.

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if the offender is a city or county clerk or treasurer or finance officer of a city or county.

Sec. 7. K.S.A. 21-3110, 21-3110b, 21-3409, 21-3411, 21-3413 and 21-3415 and K.S.A. 2007 Supp. 75-5133 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

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

January 24, 2008

Testimony in Support of Senate Bill 422

Senate Judiciary Committee

Chairman Vratil and Members of the Senate Judiciary Committee,

I appear before you today on behalf of the Kansas Community Corrections Association in support of Senate Bill 422 with the amendments offered by the Juvenile Justice Authority.

SB 422 is a valuable addition to the public safety area by strengthening penalties for assaulting court service officers. An amendment to include adult Intensive Supervision Officers and juvenile community corrections officers in the bill extends the protection to others who work in similar dangerous environments.

Adult and juvenile community corrections officers serve offenders who are not going to prison but the courts have determined need enhanced supervision. Offenders in community corrections for adults are defined by statute and they tend to be higher risk, higher severity offenders, with a greater likelihood of re-offending or violating the conditions of their supervision. Community corrections officers use intensive supervision tactics, for example, which involve evening and night visits to offenders' homes that place these officers into occasionally stressed and potentially volatile situations. The support of a stronger penalty will provide some comfort to community corrections officers and hopefully serve as a deterring factor.

I would be happy to stand for questions.

800 SW JACKSON, SUITE 914 • TOPEKA, KANSAS 66612
OFFICE 785.235.8187 • MOBILE 785.845.7265 • FAX 785.435.3390

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
KEVIN MURRAY, LEGISLATIVE CHAIRPERSON
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS
ON SB 422 – ASSAULT AND BATTERY AGAINST COURT SERVICES OFFICER
JANUARY 24, 2008

Chairman Vratil and Members of the committee:

Good morning, I am Kevin Murray, Legislative Chair for the Kansas Association of Court Services Officers. I would like to thank the committee for giving me the opportunity to appear and present testimony in support of this very important issue. I am here today to voice the support for the inclusion of court services officers in those statutes relating to the assault and battery of law enforcement officers.

Court services officers work within all 31 judicial districts and provide valuable services to the district courts and to the citizens of the State. All CSOs conduct presentence investigation reports and provide supervision to adult and juvenile offenders, oftentimes including bond and diversion supervision. In addition to those statutory duties, many districts conduct child custody investigations, provide mediation services, Child in Need of Care services, and other duties as directed.

Historically, the status of court services officers as law enforcement officers has been somewhat inconsistent and determinations have been made on local jurisdictional levels. Court services officers are currently defined as law enforcement officers in the criminal procedure statute of K.S.A. 22-2202, which states that a "Law enforcement officer means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority."

In addition, K.S.A. 22-3716 grants limited arrest authority to court services officers; and pursuant to 38-1624 court services officers are granted the authority to take juveniles into custody. However, by not specifically mentioning court services officers within chapter 21, Crimes and Punishments of the Kansas Statutes Annotated, and the fact that court services officers are not "certified" law enforcement officers as defined by statute, protection afforded to other law enforcement officers has not been equally applied when court services officers have been victims of physical assault and battery.

"Victimization" as defined by Dr. William Parsonage of Pennsylvania State University in his groundbreaking study concerning the issue of worker safety in probation and parole, is "any violence, threat of violence, intimidation, extortion, theft of property, damage to one's reputation, or any other act which inflicts damage, instills fear, or threatens one's sensibilities." (Parsonage. W., 1990. Worker Safety in Probation and Parole. A monograph prepared for the

National Institute of Corrections. Washington, D.C.) Nearly 50% of all probation officers will be victimized while performing their duties over the course of his/her career and over one half of these incidents will be comprised of physical assaults. (Thornton, R., & Shireman, J., 1993. New Approaches to Staff Safety. A monograph prepared for the National Institute of Corrections. Washington, D.C.)

Granted, these incidents range from non-physical to physical in nature and appropriate statutes are in place for those instances that involve non-physical assaults. However there is a current void regarding those incidents in which court services officers have been the victim of assaults of a physical nature. When court services officers have been victims of physical assaults, there has been inconsistency on the application of charges regarding their classification of law enforcement.

Presently, the Office of Judicial Administration and the Kansas Bureau of Investigation has no critical incident reporting system which tracks those instances in which court services officers have been the victims of physical assaults. However, a recent inquiry of all 31 chief court services officers in each judicial district has provided anecdotal evidence of instances in which court services officers were assaulted and simple battery, if any, charges were subsequently filed.

Several of these incidents consisted of assaults and batteries of a minimal nature which resulted in no serious physical injury. However, there have been a few more serious assaults. One such instance involved a court services officer who was working with a juvenile female who had been placed into custody and ordered into an out of home placement. In the interest of brevity, the juvenile attempted to flee and, upon doing so, battered the court services officer and a deputy who had been serving as stand-by security. The court services officer suffered from a dislocated jaw, which initially resulted in TMJ issues and migraine headaches. Her condition worsened and eventually resulted in surgery which required both sides of her jaw to be broken and wired shut for six weeks. Not only did this incident create a tremendous amount of physical and financial costs, but the emotional impact can not even begin to be measured. Even though the deputy suffered only minor injuries, the prosecutor opted to pursue charges resulting from the attack on the deputy because it was the more serious offense and dismissed the simple battery charge in which the court services officer was the victim.

With the recent statutory changes which have occurred (most notably the 2006 Legislature's addition of police, arson, game warden, search and rescue and assistance dogs) in which the severity levels of crimes has been enhanced for specific individuals and entities, the Kansas Association of Court Services Officers would like court services officers to be specifically included in the proposed statutory language before you.

In conclusion, I would like to thank you once again for this opportunity to appear before your committee and your consideration of this issue will be greatly appreciated. I will be happy to stand for questions.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 422
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 24, 2008

The Department of Corrections supports SB 422. SB 422 as introduced includes court services officers within the prohibitions concerning assault on a law enforcement officer, aggravated assault on a law enforcement officer, battery on a law enforcement officer, and aggravated battery on a law enforcement officer. It is understood by the Department that it will be requested that SB 422 be amended to include community corrections officers as well. The Department would also support that proposed amendment.

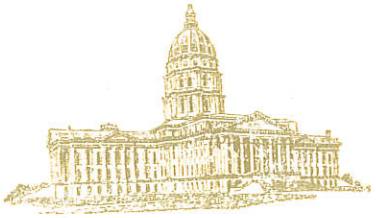
SB 422, as introduced, would clearly define court service officers as law enforcement officers relative to these crimes and would do likewise for community corrections officers if SB 422 is amended. These release supervision officers would be treated the same as the Department's parole officers under current law.

The Department supports the inclusion of both court services officers and community corrections officers within the prohibitions against threats and force against law enforcement officers.

DEPARTMENT OF CORRECTIONS
900 S.W. Jackson Street; Topeka, KS 66612-1284 • (785) 296-3317 • Fax: (785) 296-0014

Capitol Office
State Capitol, Room 390-E
Topeka, Kansas 66612-1504
(785) 296-2497

15th District Office
P.O. Box 747
Independence, Kansas 67301-0747
(620) 331-1800



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
Fax: (785) 296-6718
Email: schmidt@senate.state.ks.us

Testimony in support of Senate Bill 414 Regarding a District Attorney System by Senator Derek Schmidt

January 24, 2008

Mr. Chairman, members of the committee, thank you for having this hearing today.

The legislation before you is a compromise worked out by the interim judiciary committee. It establishes a standing mechanism by which local voters may decide whether to move from a county attorney system to a district attorney system. It is consistent with our longstanding policy of allowing local citizens to determine their own form of government and to move toward consolidation of services if they so choose.

This is just a good-government bill. Attached to this testimony is my testimony from the summer interim committee that sets forth in more details my thoughts on this issue.

Senate Judiciary
1-24-08
Attachment 12

Testimony in support of 2007 Senate Bill 254
Presented to the Special Committee on Judiciary
by Senator Derek Schmidt

August 17, 2007

Mr. Chairman, members of the committee, thank you for the opportunity to appear today and present this testimony in support of legislation to allow local voters to decide whether to move from a county attorney system to a district attorney system for handling criminal prosecutions.

As you know, Kansas has a blended system of prosecution. We have six district attorneys and all other prosecutors are county attorneys. The six district attorneys offices have been established ad hoc by the legislature and, not surprisingly, are all in single-county judicial districts. Previous ad hoc efforts to establish multi-county district attorney offices have failed, usually because of the complexity of blending a system that is county-based with multiple counties. In government as in life, it is difficult to serve two masters.

Prior House of Representatives consideration

In years past, there have been efforts to put in place a general, standing process by which local officials could establish a multi-county district attorney's office without having to come to the legislature and embroil it in whatever may be the dynamics of local politics. The most recent of these attempts was 2005 House Bill 2062, which would have established a process by which local units of government could use interlocal agreements to move to a multi-county district attorney system. That legislation was considered but not acted upon in the House of Representatives and was referred to the Judicial Council's Criminal Law Advisory Committee for review. That advisory committee made several specific recommendations regarding the particulars of 2005 House Bill 2062, but the overall recommendation was favorable. Two of the general conclusions of the committee are notable:

1. "The majority of the Committee agreed that the basic idea of enacting legislation to authorize multi-county agreements to establish a district attorney offic3e was a workable premise..."; and

2. "A majority of the Committee would not at this time support legislation for a mandatory statewide district attorney system.

The Judicial Council committee's recommendations never were translated into legislation, and the issue went idle.

Last year's Interim Assessment and Taxation

The issue remained idle until last fall, when it became part of the deliberations of the Interim Assessment and Taxation Committee. That committee was charged by the Legislative Coordinating Council, in part, with examining options that could reduce reliance on property

taxes to fund government services. The committee considered a wide range of options.

One option considered was to as this basic question: What functions that are financed by local units of government would be financed by the state today if they were being established for the first time, but are instead still financed by local property taxes because we always have done it that way?

In other words, the Tax Committee concluded that a review of government structure was necessary in order to begin lightening local property tax loads.

The Tax Committee than turned its attention to the possibility of shifting financing of the prosecution function from county property taxpayers to the state general fund. The rationale was as follows: First, there is no logical reason that county commissioners should be responsible for financing the enforcement of state criminal laws. Criminal conduct is defined by the legislature and it is reasonable to expect the legislature to pay for its enforcement and also to promote its uniform enforcement throughout the state.

Second, this was a manageable place to start the discussion about the "offloading" of local services to the state in order to begin a process of property tax relief. True, other areas of local budgets are much larger and could result in greater property tax relief, but they would tend to be more controversial. Attached to this testimony is a chart indicating in rough figures how much property tax relief could be accomplished by this approach; in general, it is between 1 and 3 mills.

Third, this issue is somewhat developed and may be ripe for action. That is indicated by the previous legislative and judicial council consideration of the concept.

For those reasons, the 2006 Interim Tax Committee recommended introduction of legislation that would establish a process by which local jurisdictions could decide, by public referendum (not unlike the process of local voters deciding between elected or appointed judges) whether to retain their individual county attorneys or to switch to a multi-county district attorney system. The "carrot" in the mix would be that the state would finance a district attorney's office. It would be local voters deciding the proper balance between local control, on the one hand, and property tax relief, on the other.

2007 Senate Bill 254

Last year's Interim Tax Committee recommendations led to introduction of 2007 Senate Bill 254, which is before this committee today. That bill was introduced in the Senate Judiciary Committee but did not receive hearings. Today is its first full airing.

The concept has, in general, been favorably received. It received, for example, favorable editorial comment in the Topeka Capital Journal and the Manhattan Mercury.

There are, no doubt, many particulars of the proposal that can be improved by action of this committee.

Advantages of the General Approach

The general approach of 2007 Senate Bill 254 is sound and is not revolutionary. Consider the following:

- It is consistent with the general approach the legislature has taken of empowering, but not mandating, consolidation of local government services. In other areas of local government, the legislature has moved away from ad hoc approaches and has established general authority that empowers local citizens to pursue reorganization of their local services.

- It avoids the pitfalls of proposals from earlier years by avoiding mandates. There will, no doubt, be areas of the state that choose this approach and others that do not. Past efforts to mandate a statewide switch to a district attorney system have always failed as opponents could rally around valued principles of local control. To insist upon an all-or-nothing approach is to insist upon failure. Our status quo proves that a blended system of prosecution is quite functional and, even if not ideal, legislation that moves us in the right direction of establishing district attorneys should be viewed favorably.

- It is consistent with the general approach the legislature has taken of paying higher salaries to key officials in the criminal justice system in order to ensure that we attract and retain the best and most talented people to those positions. In the past two years, for example, the legislature has by large margins approved substantial pay increases for state judges (who already were the highest-paid officials not only in the criminal justice system but in all of state government) in large part out of concern that failure to do so would weaken the quality of the criminal justice system. Yet, under our current system, we have a true patchwork of low salaries for the prosecutors in most of our state's counties. It makes no sense to believe that better-paid judges result in better justice but that the salaries of prosecutors are immaterial to the equation. Consider, for example, one heavy-workload county in my Senate district - where there is a single county attorney making about $45,000 per year while there are three district judges each making about $110,000. On the whole, we have top-quality prosecutors in the state, but it is despite the system we cause them to work in – not because of it.

- It provides a useful tool to those low-population counties that have great difficulty finding a county attorney and often must rely on a non-resident county attorney. In my Senate district, some of those counties express significant frustration that they must pay for a non-local prosecutor with their local property tax dollars.

- It is a logical place to begin the effort to realign state/local service delivery in order to reduce local property tax burdens. If we are unwilling to take this modest step, there is little chance we ever will deliver meaningful property tax relief to our constituents.

Mr. Chairman, thank you for the opportunity to testify today. This bill, as drafted, is not perfect – far from it. But I believe it is time for us to focus on this important issue of modernizing the prosecution function in those parts of our state where voters desire it, and I thank the committee

for its attention to this matter.