

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:37 A.M. on February 7, 2008, in Room 123-S of the Capitol.

All members were present except:

Donald Betts- excused

Julia Lynn arrived, 9:42 A.M.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department

Bruce Kinzie, Office of Revisor of Statutes

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

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

Capt. Bob Keller, Johnson County Sheriff's Office

Jennifer Roth, Kansas Association of Criminal Defense Lawyers

Gerald Gilkey, Sheriff, Sumner County

Others attending:

See attached list.

Bill Introductions

Senator Lee requested introduction of a bill regarding trafficking of contraband at Larned State Hospital. Senator Goodwin moved, Senator Umbarger seconded, to introduce the bill. Motion carried.

The Chairman opened the hearing on **SB 483– Substance abuse treatment for violation of conditions of release.**

Ed Klumpp requested that his testimony be written rather than oral to allow other conferees to testify and he would address this bill during the hearing on **SB 484 (Attachments 1 & 2).**

Capt. Bob Keller testified in support, indicating there were a number of prisoners currently in the Johnson County jail who would benefit from intensive substance abuse treatment in response to post release violations (Attachment 3). Re-directing violators would allow jail bed space to remain available for those that pose a more immediate risk to our communities.

Jennifer Roth appeared in a neutral capacity, addressing her remarks to both bills, **SB 483** and **SB 484** (Attachment 4 & 5). She stated support of treatment for individuals with substance abuse problems but expressed concern that treating offenders in a DOC facility would move them away from home, jobs, and family. Individuals fighting addiction need treatment paired with supervision in the place they live. They need the support of their communities while getting treatment and to have a better chance of success. Ms. Roth urged the committee to expand treatment options in communities.

Written testimony in support of **SB 483** was submitted by:

Tom Stanton, President, Kansas County & District Attorneys Association (Attachment 6)

Written neutral testimony on **SB 483** was submitted by:

Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 7)

There being no further conferees, the hearing on **SB 483** was closed.

The hearing on **SB 484– Driving under the influence, substance abuse treatment facility** was opened.

Ed Klumpp spoke in support, indicating the proposal of “incarceration with treatment” combination provides the best hope for successful results (Attachments 8 & 9). Enactment of this bill will result in fewer offenders going to the general prison population, fewer innocent people will suffer from the offenders’ acts, relieve the

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:37 A.M. on February 7, 2008, in Room 123-S of the Capitol.

strain currently on county jails, while retaining imprisonment sentencing for those that continue to be non-responsive to treatment.

Gerald Gilkey appeared in favor, stating treatment of repeat DUI offenders is good public policy having the potential to benefit communities across the state (Attachment 10). Current law has increased pressure on local jail populations and the proposed legislation will aid in relieving the situation.

Written testimony in opposition to **SB 484** was submitted by:
Douglas E. Wells, Attorney, Topeka, Kansas (Attachment 11)

Written neutral testimony on **SB 484** was submitted by:
Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 12)

There being no further conferees, the hearing on **SB 484** was closed.

The Chairman announced the formation of a Judiciary sub-committee consisting of Senator Journey, Senator Goodwin and himself to study **SB 409, SB 482, SB 483, SB 484** as well as proposals by the Sentencing Commission, and other related items. The first meeting will be held some time next week.

The Chairman called for final action on **SB 448–Applicability of Kansas general corporation code to certain cooperative**. The Chairman reviewed the bill.

Senator Haley moved, Senator Bruce seconded, to recommend SB 448 favorably for passage. Motion carried.

The Chairman called for final action on **SB 449–UCC secured transactions, striking forms**. The Chairman reviewed the bill.

Senator Lynn moved, Senator Haley seconded, to recommend SB 449 favorably for passage and place it on the consent calendar. Motion carried.

The Chairman called for final action on **SB 450–Cemetery corporations, investment of permanent maintenance fund**. The Chairman reviewed the bill indicating a corrected version had been printed.

Senator Goodwin moved, Senator Donovan seconded to recommend the corrected version of SB 450 favorably for passage. Motion carried.

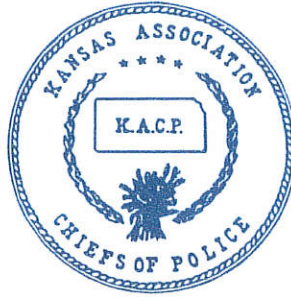
The meeting adjourned at 10:17 A.M. The next scheduled meeting is February 11, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 7, '08

NAME	REPRESENTING
Roger Werholtz	KDOC
[Signature]	Sumner County Sheriff office
SEAN MILER	CAPITOL STRATEGIES
Jenny D. Osborn	SUMNER Co SHERIFF DEPT
Jamie Jack	federico Consulting
[Signature]	KDOC
Melissa Mounts	KDOC
[Signature]	PREGAN SMITH ASSOC.
Philip A. Hurley	PATRICK J. HURLEY & Co.
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Vernon Ralston
Region VI
St. John Police Dept.

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 483 Presented by Ed Klumpp

February 7, 2008

This testimony is in support of SB 483 which proposes to increase the treatment options for persons violating substance abuse conditions while under the supervision of community corrections or under post release supervision. We have repeatedly been told short term incarceration without treatment has little chance of yielding a change in the offender.

These offenders who are under supervision often times find themselves in the same life environment and under the same social pressures from family and friends while they face the enormous challenge of overcoming addictions. When the local treatment programs are not being effective, the offenders and society will be better served with a stronger in custody treatment option.

These offenders on release in our communities who continue with substance abuse problems frequently are persons law enforcement encounters in their daily responses to crime and disorder. They are the offenders most at risk for reoffending and creating more victimization.

We believe the treatment option contained in this bill adds an important component to the condition violation response and sets the stage to accomplish this critical step in rehabilitation of the offender.

We encourage the Committee to recommend this bill to pass.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

Legislative Committee Chair
Kansas Association of Chiefs of Police
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Senate Judiciary

2-7-08

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Kansas Peace Officers' Association

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Testimony to the Senate Judiciary Committee In Support of SB483

February 7, 2008

The Kansas Peace Officers Association supports the provisions of SB483. How we deal with condition violators has been a hot topic of discussion the past few years. The Department of Corrections has engaged in a strong effort to improve how we handle condition violators. The large impact of condition violators on prison space has been discussed.

The DOC effort is aimed at optimizing the change in behavior in a manner that reduces the number of condition violations committed, reduces the number of offenders returning to prison due to condition violations, and reducing the frequency of reoffending. But to accomplish this we must have more alternatives available, especially in the area of evaluation and treatment. If local conditions and treatment is not producing the desired result, in custody treatment is a reasonable next step. It is also a step that stands to be more effective and more fiscally responsible than the final step of general imprisonment.

If the proposed amendments provide the incentive and capability of just some of the offenders committing substance abuse related condition offenses to change their lifestyle the people of Kansas will benefit. The result should be a reduction in offenders returning to prison and an increase of offenders achieving personal success with rehabilitation.

We encourage you to recommend this bill to pass.

Handwritten signature of Ed Klumpp in blue ink.

Ed Klumpp
Legislative Committee Chair, Kansas Peace Officers' Association
E-mail: eklumpp@cox.net
Phone: (785)235-5619

Senate Judiciary

2-7-08
Attachment 2

In Unity There Is Strength

Kansas Sheriffs Association

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Director Ed Pavey
Director Larry Welch (Ret)

February 6, 2008

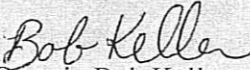
To: Senate Judiciary Committee
Testimony of Captain Bob Keller, Johnson County Sheriff's Office
Regarding SB 483

Chairperson Vratil, Vice Chairperson Bruce, and distinguished members
of the Committee:

My name is Captain Bob Keller of the Johnson County Sheriff's Office.
Thank you for allowing me the opportunity to testify in support of Senate
bill 483.

Johnson County is currently housing 30 offenders for parole violations on
felony convictions. These offenders would be better served if they
received intensive substance abuse treatment in response to post release
violations. Kansas jails are not designed or staffed to provide the type of
long-term treatment programs described in SB 483.

Redirecting the violators allows valuable jail bedspace to remain
available for those that pose a more immediate risk to our communities. I
encourage you to support the initiative in SB 483 that provides for an
alternative sanction for substance abuse violators. At this point I am
happy to stand for questions.


Captain Bok Keller
Johnson County Sheriff's Office

Executive Director Darrell Wilson Officer Manager Carol Wilson Legal Counsel Bob Stephan

Senate Judiciary Committee
February 7, 2008

Testimony prepared by
Jennifer Roth, Legislative Committee Chairperson
Kansas Association of Criminal Defense Lawyers
Neutral conferee of Senate Bill 483

KACDL has 275 members across the State of Kansas. We are dedicated to justice and due process for those accused of crimes. We want people faced with substance abuse problems to get treatment and succeed in their recovery; therefore, **we appreciate the Legislature working to get people much needed treatment.**

SB 483 gives courts power to place probationers with a substance abuse probation violation in a state substance abuse treatment facility established by the Department of Corrections. **We ask this Committee to approach this solution with caution.**

A move toward consolidating all like offenders in a DOC treatment facility is a move away from community-based approaches. If the trend becomes sending people away, there will be jobs lost, families split up and support systems breaking down. This is not a recipe for recovery. Furthermore, people will come back and have to deal with the stressors involved in reuniting with family, finding/reconnecting with support networks, establishing new treatment relationships and so on. This, too, will strain a person's recovery.

People trying to overcome an addiction need treatment paired with supervision in the place they live. They need the support of their communities **while** getting treatment for their addictions, not just **after** their return from a non-local treatment prison. It is one thing to be sober when you live in a locked facility; it is another thing altogether to remain sober when you are trying to deal with all that life throws at you.

According to the Kansas Sentencing Commission, the bed impact of SB 483 is anywhere from 309 to 462 beds by the end of FY 2009. SB 483 would result in 921 additional prison admissions by the end of FY 2009. **Instead of going down the path of sending people to treatment prisons, we ask you to consider expanding options in people's communities so they can receive uninterrupted support and treatment in the place they live.**

Thank you for your consideration,

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

Senate Judiciary Committee
February 7, 2008

Testimony prepared by
Jennifer Roth, Legislative Committee Chairperson
Kansas Association of Criminal Defense Lawyers
Neutral conferee of Senate Bill 484

KACDL has 275 members across the State of Kansas. We are dedicated to justice and due process for those accused of crimes. We want people faced with DUI convictions to succeed in their quest for reformation and sobriety; therefore, **we appreciate the Legislature considering ways to get people treatment.**

Last year, the Legislature amended K.S.A. 8-1567 to allow courts to order felony DUI offenders to serve their term of imprisonment in a facility designated by the Secretary of Corrections to provide substance abuse treatment. (See SB 31.)

SB 484 provides for an actual substance abuse treatment facility established by the Department of Corrections where courts could order felony DUI offenders to go. **We ask this Committee to approach this solution with caution.**

Any move toward consolidating all like offenders is a move away from community-based approaches. Before the change made in SB 31 (and the change proposed here), DUI offenders served their time locally. For the most part, they were near their families, their jobs and/or schools, their support networks and so on. **If the trend continues to be one of sending people away, there will be careers lost, families split up and an interruption in local treatment services.** This is not a recipe for reformation and sobriety. Furthermore, people will come back and have to deal with the stressors involved in reuniting with family, finding/reconnecting with support networks, establishing new treatment relationships and so on. This, too, will strain a person's recovery.

It is also important to note that **there is a lifetime lookback on DUI cases.** In other words, whether a DUI happened 30 years ago or 30 days ago, they all count as prior offenses. A person could have two DUIs from younger days, pick up a third one decades later and be sent to a substance abuse treatment facility far from family, work and home.

According to the Kansas Sentencing Commission, the bed impact of SB 484 is anywhere from 496 to 741 beds by the end of FY 2009. SB 484 would result in 1,476 additional prison admissions by the end of FY 2009. **Instead of continuing to go down the path of sending people to prison, we ask you to consider expanding options in people's communities so they can receive uninterrupted support and treatment in the place they live.**

Thank you for your consideration,
Jennifer Roth
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Kansas County & District Attorneys Association

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MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas County and District Attorneys Association – Tom Stanton, President
DATE: February 7, 2008
RE: Written Testimony in Support of SB 482, SB 483 and SB 484

Chairman Vratil and committee members:

Thank you for the opportunity to present written testimony in support of SB 482, 483, and 484 relating to substance abuse treatment for offenders.

The Kansas County and District Attorneys Association strongly supports strict penalties for repeat offenders. SB 484, 483, and 484 provides treatment options for repeat offenders coupled with incarceration to ensure enforcement of our laws.

We appreciate your consideration of this legislation and urge your full support and favorable recommendation. The Association would be happy to answer any questions upon request.

Senate Judiciary

2-7-08

Attachment 6



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 483
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 7, 2008

The Department greatly appreciates the opportunity to comment regarding the implementation of SB 483. The Department's concerns involve its understanding that a substance abuse treatment facility would be a minimum custody facility with minimal medical resources. Additionally, the Department believes that treatment comparable resources and sentencing options should be available to both male and female offenders.

Since, the Department believes that the proposed male substance abuse treatment facility would be a minimum custody facility with minimal medical support, that facility would not be suitable for an offender with increased security or medical needs. The Department has prepared a balloon amendment that would clearly provide the Department with the authority to transfer an inmate from a substance abuse treatment facility to any of the Department's other facilities.

Since comparable treatment resources and sentencing options should be available to both male and female offenders the resources to provide those comparable services for women at Topeka Correctional Facility or some other location would be required.

1 in custody at such institution pending transfer to the reception and di-
 2 agnostic unit when space is available therein. The expenses of any such
 3 conveyance shall be charged against and paid out of the general fund of
 4 the county whose sheriff conveys the offender to the institution as pro-
 5 vided in this subsection.

6 (b) Any female offender sentenced according to the provisions of
 7 K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff
 8 having such offender in custody directly to a correctional institution des-
 9 ignated by the secretary of corrections, subject to the provisions of K.S.A.
 10 75-52,134 and amendments thereto. The expenses of such conveyance to
 11 the designated institution shall be charged against and paid out of the
 12 general fund of the county whose sheriff conveys such female offender
 13 to such institution.

14 (c) Each offender conveyed to a state correctional institution pursu-
 15 ant to this section shall be accompanied by the record of the offender's
 16 trial and conviction as prepared by the clerk of the district court in ac-
 17 cordance with K.S.A. 75-5218 and amendments thereto.

18 (d) If the offender in the custody of the secretary is a juvenile, as
 19 described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such
 20 juvenile shall not be transferred to the state reception and diagnostic
 21 center until such time as such juvenile is to be transferred from a juvenile
 22 correctional facility to a department of corrections institution or facility.

23 (e) *Any offender sentenced to a state substance abuse treatment fa-
 24 cility established by the department of corrections shall not be transferred
 25 to the state reception and diagnostic center but directly to such state
 26 substance abuse treatment facility.* ✓

27 Sec. 4. K.S.A. 22-3716 and K.S.A. 2007 Supp. 75-5210 and 75-5220
 28 are hereby repealed.

29 Sec. 5. This act shall take effect and be in force on and after July 1,
 30 2010, and its publication in the statute book.

The secretary may transfer the housing and confinement of any offender sentenced to a state substance abuse treatment facility to any institution or facility pursuant to K.S.A. 75-5206 and amendments thereto.



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TESTIMONY TO THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SB 484 Presented by Ed Klumpp

February 7, 2008

This testimony is in support of SB 484 which proposes to increase the treatment options for third or subsequent DUI offenders. Our Association has long recognized the threat of impaired driving to public safety. Repeat offenders not only need to be removed from the opportunity to harm others, but they also need assessment and treatment. Third and subsequent DUI offenders have already had opportunities for assessments and where appropriate treatments in the community environment. In nearly every case of these multiple DUI offenders the community setting is not working and something more stringent must occur to have hope of providing them an opportunity to change their life style and overcome their addiction.

This proposal combines incarceration with treatment. This is the combination providing the best hope for a successful result. A successful result will mean fewer DUI offenders going to the general prison population for subsequent DUI offenses. It also means fewer innocent people will suffer from their acts.

If this proposal is properly implemented it will also relieve the enormous strain on local jails created by numerous statutes enacted over the past few years requiring local jail sentencing for state felony violations.

This proposal still retains the imprisonment sentencing for those that continue to be non-responsive to treatment. A sanction we hope will be needed in fewer cases.

We encourage you to forward this bill with a recommendation to pass.

Ed Klumpp
Chief of Police-Retired
Topeka Police Department

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Senate Judiciary

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Testimony to the Senate Judiciary Committee In Support of SB484

February 7, 2008

The Kansas Peace Officers Association supports the provisions of SB484. The target of this bill, the chronic DUI offender, needs a stepped approach including increasing pressure to accept evaluation and treatment. By the time a DUI offender is convicted of their third or fourth DUI, they have placed an enormous number of people at risk. While increased incarceration times is one way to remove the risk, the gains are limited if the underlying cause of the repeated violations is not treated. The provisions of this bill ensure that opportunity is going to be provided and accompanied by an incentive for these offenders to make a positive change in their lives.

Enforcement of our laws is not about putting people in jail. The goal of all enforcement actions should be foremost to protect the public and secondly to correct unacceptable social behavior while maintaining a just process. This bill offers increased opportunities to achieve both.

Treatment will not work if we don't get the people needing it into treatment programs. Simply increasing the local jail population with state mandated jail time will not, by itself, achieve positive results. In custody treatment is the appropriate option to maximize the opportunity for long term change in behavior and for minimizing the risk of reoffending with alcohol or drug abuse as the root cause.

Many local jails are at maximum capacity. Many communities are looking for ways to increase local jail capacity at a significant cost to local taxpayers. In some cases, pretrial release decisions are based too heavily on maintaining the jail population rather than on determining whether or not an alleged felon presents a public risk.

We recognize the difficult task of balancing the many facets of this part of our justice system. But a balance including community corrections, community treatment, in custody treatment, and general imprisonment appears to be a commendable approach.

We encourage you to recommend this bill to pass.

Ed Klumpp
Legislative Committee Chair

Senate Judiciary

2-7-08

Attachment 9

In Unity There Is Strength

Kansas Sheriffs Association

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Before the Kansas Senate Committee on the Judiciary
The testimony of Sheriff Gerald Gilkey, Sumner County, Kansas
Regarding Senate Bill 484, An ACT amending KSA 21-4704 relating to
substance abuse treatment of certain offenders.

Chairman Vratil, ViceChairman Bruce and distinguished members of the
committee:

My name is Gerald Gilkey. I am the duly elected Sheriff of Sumner
County, Kansas. I stand in support of SB 484 for a couple of reasons that
I would like to bring before the committee.

First, as an attempt to address a serious problem, that of the repeat DUI
offender, from a treatment perspective is sound public policy, and at that,
is much overdue. If properly and adequately funded, this type of program
has the potential of being of considerable benefit to communities across
this state.

Second, inasmuch as the statute in its current form has increased the
pressure on local jail populations, the proposed bill seems to address this
issue. As I indicated above, adequate funding of the programs
downstream from the sentencing court is critical for this proposal to have
any positive effect at all, and I would urge the committee to advocate for
that funding.

Sheriff Gerald Gilkey
Sumner County, Kansas

Executive Director Darrell Wilson Officer Manager Carol Wilson Legal Counsel Bob Stephan

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February 5, 2008

Senate Judiciary Committee
Capitol Building
Topeka KS 66603

Re: SB 484

Dear Committee members,

As a lifetime resident of Kansas who practices law in the area of DUI defense, I will describe reasons that SB 484 should not be approved. Reasons that this Bill should not be approved include the following:

Existing statutes adequately address the issues

Under existing law, a person can be ordered to serve house arrest or work release. When house arrest or work release are served, the defendant is permitted to work to earn an income to support their family and pay creditors. Incarceration in a state penal facility, whether it be a substance abuse treatment facility or any other penal environment, would burden the families and creditors of the defendant because the ability to earn income and pay for family bills and pre-established bills would be eliminated. A defendant's ability to care for their family, providing physical and emotional support, would be also eliminated through the sentencing of a defendant to the secretary of corrections.

Currently, there are many outpatient and inpatient treatment facilities that provide quality treatment for alcohol and drug use and abuse. These private facilities would suffer by the elimination of their clients through state incarceration rather than permitting them to obtain inpatient, outpatient, and aftercare treatment while on parole or probation. Diminishment of clients for these existing treatment institutions could cause these valuable sources of assistance to dissolve because their ability to generate sufficient income would be diminished by a reduction of the client base.

Senate Judiciary

2-7-08

Attachment 11

It is in the best interest of the citizens of the state and the patients to have ready access to treatment facilities throughout the state to address issues of alcohol/drug consumption within the local community. Maintenance of local, non custodial treatment facilities should be encouraged, not discouraged. Retention of more private facilities would encourage treatment before conviction for more people. If there are less private facilities, less people will be treated.

Treatment in a vacuum is less successful than treatment in a real world situation. Persons receiving treatment while in custody would be receiving treatment in a vacuum because they are not confronted with day to day opportunities for consumption, day to day relationships between family, friends, and associates, and pursuit of day to day employment and social activities. When released from incarceration, these people would be less equipped to deal with these real world pressures and opportunities than a person would be who receives treatment from the private sector while maintaining their freedom and contact with these real world experiences and people. Treatment through an in-custody program such as proposed would be less effective than existing treatment in the private sector.

The cost does not justify any benefit

There is no limitation of the treatment term for in-custody treatment. Under the proposed changes of K.S.A. 21-4704(i), the Secretary of Corrections determination of placement is not reviewable. Accordingly, a term of treatment could last for up to the maximum term of incarceration, 1 year.

In 2007, there were almost 1500 felony DUI offenders. This number can only be expected to increase now that Kansas has adopted a lifetime look back for enhancement of penalties rather than the 5 year look back that the statute previously provided. For instance, a person who had 2 DUIs while they were in their early 20's would become a felon if 40 years later they were convicted of DUI. Since the change of the look back period to a lifetime term, greater care is being kept to maintain records of conviction for DUI, thereby further increasing expected felony conviction numbers in future years.

There is currently insufficient bed space within the penal system to house the felony convicts that could require this DUI treatment within the state penal system. Construction, maintenance, staffing, and operation of a new penal system to house these inmates would be cost prohibitive, particularly when existing treatment options currently exist within the drug and alcohol treatment community without incarceration. Housing these DUI inmates in existing penal facilities would further strain the budgets, manpower and space of those penal institutions on an ever increasing basis.

The cost for housing these ever increasing numbers of DUI convicts substantially outweighs any purported benefit that may be received. The treatment will furthermore be less effective than existing treatment, thereby reducing any purported benefit that may be received.

Retroactive jurisdictional enlargement will not work.

Changes proposed in K.S.A. 8-1567(p)(1) that provide for the retroactive enlargement of jurisdiction of a municipal court commencing on a date of July 1, 2006 would not be enforceable. Jurisdiction is determined at the time of an event. Jurisdiction cannot retroactively be enlarged. Such retroactive enlargement would violate ex post facto and due process constitutional provisions. These jurisdictional changes can be made prospectively only, not retroactively. Substantial litigation costs would be incurred in trying to defend this proposed change.

For the reasons outlined above, SB 484 should not be approved.

Sincerely,



Douglas E. Wells

DEW/teb



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 484
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
February 7, 2008

The Department greatly appreciates the opportunity to comment regarding SB 484. SB 484 contains provisions enacted in 2007 SB 35, specifically, that the sentencing provisions for felony DUI offenders are contingent upon the existence of a substance abuse treatment facility or the availability of resources and capacity at a facility designated by the Secretary. Additionally, if the offender is disruptive, refuses to participate in treatment or has a medical condition that renders placement at a substance abuse treatment facility unsuitable, the offender is to be returned to the custody of the sheriff. These provisions address the Department's understanding that a substance abuse treatment facility would be a minimum custody facility with minimal medical support and thus inmates unsuitable for the facility would be returned to the Sheriff. However, if the authority to return the offender to the county were amended, the Department would recommend that its authority to transfer such offenders to another correctional facility be clearly provided. The Department has prepared a balloon amendment setting out that the Department could transfer an offender from a substance abuse treatment facility to any other correctional facility.

Finally, the Department wishes to remind the committee that comparable treatment resources and sentencing options need to be made available to female offenders as well.

1 conveyance shall be charged against and paid out of the general fund of
 2 the county whose sheriff conveys the offender to the institution as pro-
 3 vided in this subsection.

4 (b) Any female offender sentenced according to the provisions of
 5 K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff
 6 having such offender in custody directly to a correctional institution des-
 7 ignated by the secretary of corrections, subject to the provisions of K.S.A.
 8 75-52,134 and amendments thereto. The expenses of such conveyance to
 9 the designated institution shall be charged against and paid out of the
 10 general fund of the county whose sheriff conveys such female offender
 11 to such institution.

12 (c) Each offender conveyed to a state correctional institution pursu-
 13 ant to this section shall be accompanied by the record of the offender's
 14 trial and conviction as prepared by the clerk of the district court in ac-
 15 cordance with K.S.A. 75-5218 and amendments thereto.

16 (d) If the offender in the custody of the secretary is a juvenile, as
 17 described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such
 18 juvenile shall not be transferred to the state reception and diagnostic
 19 center until such time as such juvenile is to be transferred from a juvenile
 20 correctional facility to a department of corrections institution or facility.

21 (e) *Any offender sentenced to a state substance abuse treatment fa-*
 22 *ility established by the department of corrections shall not be transferred*
 23 *to the state reception and diagnostic center but directly to such state*
 24 *substance abuse treatment facility. ✓*

25 Sec. 6. K.S.A. 21-4704 and 21-4704b and K.S.A. 2007 Supp. 8-1567,
 26 8-1567b, 75-5206, 75-5210 and 75-5220 are hereby repealed.

27 Sec. 7. This act shall take effect and be in force on and after July 1,
 28 2010, and its publication in the statute book.

The secretary may transfer the housing and confinement of any offender sentenced to a state substance abuse treatment facility to any institution or facility pursuant to K.S.A. 75-5206 and amendments thereto.