

Approved: \_\_\_\_\_  
Date

## MINUTES OF THE SELECT COMMITTEE ON CORRECTIONS REFORM AND OVERSIGHT

The meeting was called to order by Chairman Thomas C. Owens at 11:30 A.M. on February 19, 2008 in Room 531-N of the Capitol.

All members were present except:

Representative John Grange- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Jarod Waltner, Kansas Legislative Research Department  
Michael Steiner, Kansas Legislative Research Department  
Jill Wolters Revisor of Statutes Office  
Jason Thompson, Revisor of Statutes Office  
Cyndie Rexer, Committee Assistant

Conferees appearing before the committee:

Ed Klumpp, Kansas Society of Chiefs of Police and Kansas Peace Officers Association  
Pete Bodyk, Kansas Department of Transportation  
Roger Werholtz, Secretary of Department of Corrections

Others attending:

See attached list.

Jill Wolters, Revisor of Statutes, briefed the committee on the content of House Bill 2879. (Attachment 1) She also supplied the Committee with a copy of the fiscal note on this bill. (Attachment 2)

Ed Klumpp testified in support of the bill for the Kansas Association of Chiefs of Police who believe that treatment is a vital component of reducing recidivism and enhancing public safety and are not opposed to the decay provision. (Attachment 3) The Kansas Peace Officers' Association supports custody treatment. (Attachment 4)

Pete Bodyk stood in opposition to the bill due to the wording in line 35 on page 6 where the word "subsequent" is stricken and the word "third" is added. Based on information from the National Highway Traffic Safety Administration, the amendment will cause Kansas to be non-compliant with federal requirements regarding DUI convictions and penalties. (Attachment 5)

Stuart Little opposes HB 2879 as mandatory sentencing to a "state drug treatment facility" runs contrary to many of the public policies implemented in other treatment programs such as Senate Bill 67 and Senate Bill 123. There are no "state substance abuse treatment facilities" in Kansas. It is suggested the committee consider amending the bill to make the court's placement in future facilities an option and not mandatory. (Attachment 6) Mr. Little offered to supply Addiction Professionals to testify before the committee in regards to the treatment DUI offenders receive.

Secretary Roger Werholtz asked the committee the following questions regarding the bill (Attachment 7):

1. Will the Courts determine if the early release conditions regarding the absence of an accident or collision are applicable?
2. Will good time credits be available for either the 18 month sentence or the 12 month early release?
3. Will the concurrent jurisdiction available to a municipal court for DUI offense that would constitute a felony permit a municipal court to sentence a 4<sup>th</sup> or subsequent DUI offender to the department.

A period of questions and answers followed.

The next meeting will be Friday, February 22, 2008 at 11:00 a.m. in room 431-N.


The meeting was recessed to continue the hearing on Tuesday, February 26, 2008.



**Office of Revisor of Statutes**  
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**MEMORANDUM**

TO: Select Committee on Corrections Reform and Oversight

FROM: Jill Wolters, Senior Assistant Revisor 

DATE: February 18, 2007

RE: Brief of 2008 HB 2879

House Bill No. 2879 establishes a prison sanction of drug and alcohol treatment programs in a correctional institution for offenders who are convicted of a fourth or subsequent DUI, on and after January 1, 2009. The length of sentence is 18 months. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the mandatory sentence, unless following 12 months imprisonment the court finds that the: (1) Offender has been determined by the secretary of corrections, in consultation with the treatment providers, as suitable for discharge by successfully completing the drug and alcohol abuse treatment program; and (2) the DUI violation for which the offender has been sentenced did not involve a vehicle accident or collision resulting in property damage, personal injury or death. The offender shall not serve a period of postrelease supervision upon the completion of the prison portion of the sentence. The penalty provisions for a first, second and third DUI remain the same. The bill allows certain DUI convictions to decay. A first or second DUI conviction committed by an offender prior to reaching the age of 23, will decay if the current DUI conviction is committed after the offender reaches the age of 30.

February 19, 2008

The Honorable Thomas C. Owens, Chairperson  
House Select Committee on Corrections Reform and Oversight  
Statehouse, Room 446-N  
Topeka, Kansas 66612

Dear Representative Owens:

SUBJECT: Fiscal Note for HB 2879 by House Select Committee on Corrections Reform and Oversight

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2879 is respectfully submitted to your committee.

HB 2879 would require a prison sentence of 18 months, without the possibility of release on probation, suspension or reduction of sentence or parole, for a fourth or subsequent conviction of driving under the influence (DUI) that is committed on or after January 1, 2009. The bill would require a drug and alcohol abuse treatment program to be established at a correctional institution. An offender could be released following 12 months imprisonment if the offender successfully completed the program and the DUI violation did not involve a vehicle accident or collision resulting in property damage, personal injury or death. Upon completion of the sentence, there would be no requirement for post release supervision, provided the offender has not been convicted of another felony that requires post release supervision.

HB 2879 would also allow cities to provide by ordinance for the prosecution of DUI offenses that would be felony offenses in municipal court. The bill would also provide that a first or second DUI conviction committed prior to a person's 23rd birthday would decay, if the current crime was committed after the offender reached the age of 30.

The Office of Judicial Administration states that passage of HB 2879 would have no fiscal effect on the courts. The Kansas Sentencing Commission estimates that passage of the bill would result in 331 additional prison admissions by the end of FY 2009 and 706 additional prison admissions by the end of FY 2018. The Kansas Sentencing Commission estimates that passage of HB 2879 would require an additional 331 adult prison treatment beds in FY 2009, increasing to an additional 1,958 adult prison treatment beds by FY 2018.

The Department of Corrections has not yet provided information on how this bill will affect the agency. However, since the bill would require a drug and alcohol abuse treatment program to be established at a correctional institution, it is assumed that the Department would have additional costs that are not included in *The FY 2009 Governor's Budget Report*. When considered by custody level, the Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates. Nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual costs to staff and operate the additional capacity would be required.

If the bill does not contribute to the need for capacity expansion, additional annual costs of approximately \$2,000 per inmate for basic support, including food service, would be needed. Additional expenditures for health care also could be incurred, if the increase in the inmate population required adjustments in the medical contract. The health care contract provides that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment in contract payments is made. The amount of any adjustment would depend on the specific facility involved. Any fiscal effect resulting from this bill has not been included in *The FY 2009 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Helen Pedigo, Sentencing Commission  
Jeremy Barclay, Department of Corrections  
Mary Rinehart, Judiciary  
Judy Moler, Kansas Association of Counties  
Larry Baer, League of Kansas Municipalities





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## WRITTEN TESTIMONY TO THE HOUSE SELECT COMMITTEE ON CORRECTIONS REFORM AND OVERSIGHT

### IN SUPPORT OF HB 2879

Presented by Ed Klumpp

February 19, 2008

This testimony is in support of HB 2879. The Kansas Association of Chiefs of Police has long believed that treatment is a vital component of reducing recidivism and enhancing public safety. We also realize that persons needing treatment respond to different treatment incentives, programs, and environments. The persons who will benefit from the treatment have had the opportunity for community treatment programs. The fact that they have once again been convicted shows the defendant has failed to positively respond to those community corrections programs. This program will provide a new step to curb the repeat DUI offender. The bed impact information on SB409 indicates that 2/3 of the bed impact is from 3<sup>rd</sup> and subsequent DUI offenders. This in itself speaks loudly for a need to do something in the treatment area beyond failed attempts at community based treatment.

We also are not opposed to the decay of certain DUI cases at an early age when there is a period of time free of any further convictions or test failures. However, we believe the rules for such decay on page 9 line 43 through page 10 line 3 should include:

- The decay does not occur if there is another DUI conviction, test refusal, or test failure while the person is ages 23-29. Without this, as written, a person could have a DUI prior to turning 23 and continue to have a DUI every two or three years and still allow the first two to decay.
- The early DUI convictions do not decay if they involved a motor vehicle collision resulting in injury or death.

The cost required to undertake this important treatment opportunity should result in fewer DUI victims and safer streets and highways. If effective, they will also reduce bed space by positively impacting future repeat offenses.

We urge you to consider our recommendation in the second paragraph above, and to recommend HB 2879 favorably for passage.

Ed Klumpp

Chief of Police-Retired, Topeka Police Department

Legislative Committee Chair, Kansas Association of Chiefs of Police

E-mail: [eklumpp@cox.net](mailto:eklumpp@cox.net); Phone: (785) 235-5619; Cell: (785) 640-1102

Select Committee on  
Corrections Reform and Oversight  
2-19-08  
Attachment 3

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Kansas Bureau of Investigation  
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Pratt Police Department  
Pratt, KS 67124

AL THIMMESCH, Secretary Treasurer  
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Wichita, KS 67201

TOM PRUNIER, [unclear] at Arms  
Derby Police Dept. (Ret.)  
Derby, KS 67037

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Garden City, KS 67846

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St. John, KS 67576

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Park City, KS 67219

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KS Bureau of Investigation  
Winfield, KS 67156

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Girard, KS 66743

STEVE BERRY  
Caney Police Dept.  
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KEITH RATHER  
KS Dept. of Wildlife & Parks  
Chanute, KS 66720

# Kansas Peace Officers' Association

INCORPORATED

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## TESTIMONY TO THE HOUSE SELECT COMMITTEE ON CORRECTIONS REFORM AND OVERSIGHT IN SUPPORT OF HB 2879

Presented by Ed Klumpp

February 19, 2008

The problem with 3<sup>rd</sup> and subsequent DUI offenders continues despite the treatment assessments, community treatment programs, and mandatory local jail time for first and second DUI offenses. After the offenders have had those opportunities and shown they are unwilling to change their behavior, the next logical step is an in custody treatment step. We know not every offender will respond to in custody treatment either, but some will. And every one that does means a life turning more productive, fewer DUI victims, and ultimately less bed space needed for the person had they continued to reoffend.

The practice of placing these offenders for fairly lengthy local jail sentences does not work well. Few local jails can provide any treatment. This results in the person being punished but sent back out with either no treatment or just another dose of community treatment that has not produced results twice before.

We agree with the change allowing the decay of some DUI convictions at an early age. We do share the concerns of the Kansas Association of Chiefs of Police and support the amendments they have proposed to that section.

In addition, this approach will alleviate the local jail overcrowding that has been compounded by statutes directing lengthy mandatory local jail time for numerous offenses, especially felony offenses which should be served in a DOC facility.

Therefore, we support this bill and encourage you to recommend it to pass.

Ed Klumpp  
Legislative Committee Chair

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Select Committee on  
Corrections Reform and Oversight  
2-19-08  
Attachment 4

*In Unity There Is Strength*



**TESTIMONY BEFORE  
HOUSE SELECT COMMITTEE ON CORRECTIONS REFORM AND OVERSIGHT**

**REGARDING HOUSE BILL 2879  
Related to DUI convictions and penalties**

**February 19, 2008**

Mr. Chairman and Committee Members:

I am Pete Bodyk, Chief of the Bureau of Traffic Safety. On behalf of the Kansas Department of Transportation (KDOT), I am here to provide testimony in opposition to House Bill 2879.

Based on past discussions with the National Highway Traffic Safety Administration (NHTSA), we believe the amendment referenced below will cause Kansas to be non-compliant with federal requirements regarding DUI convictions and penalties. The penalty for non-compliance is a transfer of three percent of the state's core highway construction funds to safety programs, which may address either alcohol-impaired driving or hazard elimination projects. The penalty would amount to a transfer of approximately \$7.9 million in FY 2009, FY 2010 and FY 2011 based on currently authorized federal funding levels through FY 2009 and the assumed reauthorization of similar federal funding levels in FY 2010 and FY 2011. The transfer would continue as long as the state remains non-compliant.

On page 6, line 35 the word "subsequent" is stricken, and the word "third" is added. This means that for a fourth or for subsequent convictions the individual's vehicles will not be impounded, immobilized, or have an ignition interlock installed. A requirement in 23 USC 164 of the federal code states that "*an individual convicted of a second or subsequent offense for driving under the influence shall be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles.*"

Thank you for your time, I will gladly stand for questions.



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

**House Select Committee on Corrections Reform**

**Testimony on House Bill 2879**

February 19, 2008

Chairman Owens and Members of the Committee,

I appear today on behalf of the Kansas Association of Addiction Professionals (KAAP), a statewide organization comprised of over 850 members including individual counselors in private practice and large treatment programs. KAAP has not officially taken a position on House Bill 2879 but I have been asked to enter in the record of this bill KAAP's position on most of the substance abuse treatment professionals in the state.

House Bill 2879 and various other bills in the Senate are part of a multi-fronted effort to address legislative interest in enhancing public safety, which KAAP agrees is a laudable goal. Mandatory sentencing to a "state drug treatment facility" however runs contrary to many of the public policy implemented in other treatment programs such as Senate Bill 67 which began the 4<sup>th</sup> time DUI treatment program as well as Senate Bill 123 which diverts certain offenders from prison and places them in intensive substance abuse treatment programs. A shift away from these programs suggests a significant policy shift and should be considered carefully. No "state substance abuse treatment facilities" exist in Kansas and such a significant policy change should consider the absence of any programs. At the least, the Committee should consider amending the bill to make the court's placement in these future facilities an option and not mandatory.

If you would like to hear from individuals in the treatment field with greater technical expertise, please feel free to let me know and I will be happy to provide some experts.

Thank you for your time and I would be happy to answer questions.

Testimony on HB 2879  
to  
The House Select Committee on Corrections Reform and Oversight

By Roger Werholtz  
Secretary  
Kansas Department of Corrections  
February 19, 2008

The department greatly appreciates the opportunity to comment regarding HB 2879. The department's comments concern issues that would confront the department in its execution of sentences imposed pursuant to HB 2879.

The department understands that 4<sup>th</sup> and subsequent DUI offenders would be sentenced to the custody of the department for service of a sentence of 18 months. These offenders could be incarcerated in any of the department's facilities.

HB 2879 provides that the offender may be released by the Court after serving 12 months if the defendant has completed treatment and the offense did not involve an accident or collision resulting in property damage, personal injury or death. While pursuant to HB 2879, the Court would determine if the early release conditions regarding the absence of an accident or collision were applicable, the department in scheduling the participation of the offender in treatment would benefit from knowing in advance whether the offender could be released after 12 months as opposed to having to serve the full 18 months. Offenders who could not be released early due to the existence of an accident or collision might be scheduled to begin treatment later in their sentence than an offender who could be released after 12 months. Thus, a requirement in HB 2879 that a court indicate in the sentencing order whether an accident or collision occurred would aid the department. The ineligibility for an earlier release dependent upon the existence of an accident might have *Apprendi* ramifications if that would have to be determined by the fact finder during trial.

The department is unclear as to whether good time credits would be available for either the 18 month sentence or the 12 month early release. Violations of the DUI law are not assigned a severity level, thus rules regarding 20% good time rates for SL 7-10 of the non drug grid or SL 3-4 of the drug grid would not be applicable.

The department also is not clear whether the concurrent jurisdiction available to a municipal court for DUI offense that would constitute a felony would permit a municipal court to sentence a 4<sup>th</sup> or subsequent DUI offender to the department.

Finally, the department wishes to remind the committee that treatment resources will need to be available including comparable resources for female offenders.