Approved: 03-17-09
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairperson Pat Colloton at 1:30 p.m. on February 3, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:
Kevin O'Connor, Assistant District Attorney, Sedgwick County
Carl Folsom, Kansas Association of Criminal Defense Lawyers

Others attending:
See attached list.

Chairperson Colloton called the Committee's attention to the handout she just received entitled *Kansas Department of Corrections Additional Budget Reductions Fiscal Year 2009* stating it was showing additional budget cuts and instructed the staff to make copies and distribute to the Committee before the end of the meeting. (Attachment 1)

HB 2097 - Criminal Jury Trials, Alternate or Additional Juror Selections

Chairperson Colloton then called on Jason Thompson to explain **HB 2097**. He stated current law authorizes a judge to select alternate or additional jurors immediately after the jury has been empaneled and sworn in. This bill would amend current law and also allow judges to select alternate or additional jurors at the same time as the regular jury is being selected.

Chairperson Colloton opened the hearing on **HB 2097** and recognized Kevin O'Connor, Deputy District Attorney, Sedgwick County testifying on behalf of Nola Tedesco Foulston, District Attorney, Sedgwick County, and representing the Kansas County and District Attorneys Association, to give his testimony as a proponent of the bill. Mr. O'Connor provided a written copy of his testimony. (Attachment 2) He stated this bill is just a common sense approach which is more efficient and effective use of Judicial resources and urged the Committee to pass the bill out favorably.

Chairperson Colloton asked for any more proponents or opponents to testify on the bill and there being none, she closed the hearing on **HB 2097.**

HB 2099 - Withdrawal of Guilty Plea, Time Limitation

Chairperson Colloton called on Jason Thompson to explain **HB 2099.** Mr. Thompson stated current law permits courts to allow a guilty plea to be withdrawn to correct a manifest injustice as a result of a court error. The bill would amend current law to require guilty pleas to be withdrawn within one year of the following: a Kansas appellate court's final order or termination of an appeal; or the U.S. Supreme Court's final order on or denial of an appeal. The time limit may be extended by the court if excusable neglect can be shown.

Chairperson Colloton recognized Kevin O'Connor, Deputy District Attorney, Sedgwick County testifying on behalf of Nola Tedesco Foulston, District Attorney, Sedgwick County, and representing the Kansas County and District Attorneys Association, to give his testimony as a proponent of the bill. Mr. O'Connor provided a written copy of his testimony. (Attachment 3) He stated this bill is another common sense bill. Time limits exist in all appellant matters. The lack of a time limit in the statute causes undue pain and suffering to victims and/or their families; places an undue burden on law enforcement; wastes limited resources; and runs contrary to the vital societal interest in finality in criminal judgements, particularly guilty pleas. He urged the Committee to pass this bill out favorably for passage.

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on February 3, 2009, in Room 535-N of the Capitol.

At the conclusion of Mr. O'Connor's testimony there was as question and answer session with the Committee. The Committee has some concerns regarding the language of the bill. Chairperson Colloton asked Mr. O'Connor to bring new language to address the intent of the bill and the concerns of the Committee when the bill is worked next week.

Chairperson Colloton introduced Carl Folsom representing the Kansas Association of Criminal Defense Lawyers, to give his testimony as an opponent of **HB 2099.** Mr. Folsom provided a written copy of his testimony (Attachment 4) He stated the Kansas Association of Criminal Defense Lawyers believe this bill alters the original intent of the statute by putting a expiration date on the showing manifest injustice.

A lengthy questions and answer session followed.

With no further questions, Chairperson Colloton closed the hearing on **HB 2099** and adjourned the meeting at 2:25 p.m. with the next meeting scheduled for February 5, 2009 at 1:30 p.m. in room 535N.

CORRECTIONS & JUVENILE JUSTICE
GUEST LIST

DATE: 02-03-09

NAME	REPRESENTING
Carl Folsom	KACDL
Kevin O'Connor	KCDAA - DA's office Wichita

Corrections and Juvenile Justice
Date: 2-3-09
Attachment # 1-1

KANSAS DEPARTMENT OF CORRECTIONS
ADDITIONAL BUDGET REDUCTIONS - FISCAL YEAR 2009

	1.0% Reduction ($2,721,000)	1.5% Reduction ($4,100,000)	3.4% Reduction ($9,300,000)	5% Reduction ($13,415,000)
Suspend operations of Stockton Correctional Facility, effective 4/1/2009	(339,000)	(339,000)	(339,000)	(339,000)
Suspend operations of Norton Correctional Facility, effective 4/1/2009	-	-	(2,489,000)	-
Suspend operations of Winfield Correctional Facility, effective 4/1/2009	-	(2,036,000)	(2,036,000)	(2,036,000)
Terminate all offender treatment and intervention programs and shift Correctional Industries Fund and inmate benefit fund financing to the food service contract, effective 4/1/2009	-	-	(2,430,000)	(1,830,000)
Accelerate FY 2010 program reductions	(625,000)	(625,000)		
Reduce parole and postrelease supervision, effective 4/1/2009; other reductions Capital outlay, reentry shrinkage, DRC backup	(345,000)	(345,000)	(1,251,000)	-
Abolish parole and postrelease supervision, effective 4/1/2009	-	-	-	(2,330,000)
Suspend operations of the Hutchinson Correctional Facility, effective 4/1/2009	-	-	-	(5,635,000)
Adjustments associated with facility closures/other reductions jail costs, IT, vehicles,	(755,000)	(755,000)	(755,000)	(1,245,000)
Undetermined reductions	(657,000)	-	-	-
Total	**$ (2,721,000)**	**$ (4,100,000)**	**$ (9,300,000)**	**$ (13,415,000)**

Office of the District Attorney
Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
535 N. Main
Wichita, Kansas 67203

Nola Foulston
District Attorney

Kevin O'Connor
Deputy District Attorney

February 3, 2009

Testimony in Support of HB 2097
Submitted by Kevin O'Connor, Deputy District Attorney
On Behalf of Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District
And
On Behalf of the Kansas County and District Attorneys Association

Honorable Chairwoman Colloton and Members of the House Corrections and Juvenile Justice Committee.

Thank you for the opportunity to address the House Corrections and Juvenile Justice Committee regarding House Bill 2097. On behalf of Nola Tedesco Foulston, District Attorney, Eighteenth Judicial District and the Kansas County and District Attorney Association, I am here today to express our support of House Bill 2097.

House Bill 2097 seeks to amend K.S.A. § 22-3412(c), relating to the selection of alternate or additional jurors by codifying a preferred and more efficient method of selecting alternate jurors. The current law states that alternate jurors may be selected "after the jury is empaneled and sworn." Selecting alternate jurors "after the jury is empaneled and sworn" is impractical and inefficient.

The current method identifies the alternate or additional jurors. Prosecutors and defense attorneys, in my experience, prefer the nondisclosure of the status of a juror as an alternate juror. Nondisclosure of the status of an alternate juror will negate the argument that the juror failed to pay close attention to the evidence because of his or her status as an alternate.

The current method requires the Court to practice an inefficient method of selecting alternate jurors. A second panel of jurors is necessary. A more efficient method, as contemplated by HB 2097, is to allow for the qualification of a sufficient number of potential jurors for the jury and the desired number of alternates. Preemptive strikes are first exercised from the jury pool. For example, in a first degree murder prosecution, the jury of twelve would be chosen from the first thirty-six (36) qualified individuals. The alternate or additional jurors are then chosen from the remaining qualified individuals.

When alternate jurors are desired, I have obtained a waiver of the statute by defendant. Defense attorneys routinely advise their clients to waive the statute and agree to the selection of alternate jurors in the manner described above. HB 2097 codifies the current practice of selecting alternates and promotes the efficient use of judicial resources.

Respectfully submitted,

_____

Kevin O'Connor
Deputy District Attorney

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Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
535 N. Main
Wichita, Kansas 67203

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Eighteenth Judicial District
And
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Honorable Chairwoman Colloton and Members of the House Corrections and Juvenile Justice Committee.

Thank you for the opportunity to address the House Corrections and Juvenile Justice Committee regarding House Bill 2099. On behalf of Nola Tedesco Foulston, District Attorney, Eighteenth Judicial District and the Kansas County and District Attorney Association, I am here today to express our support of House Bill 2099.

House Bill 2099 seeks to amend K.S.A. § 22-3210(d), relating to the withdrawal of a guilty plea by including a reasonable time limitation on requests to withdraw a plea after sentencing. The current law has been interpreted to allow a defendant to move for the withdrawal of a plea at any time. The ability of a defendant to move for the withdrawal of a plea years after the entry of plea runs contrary to the interest of finality of criminal judgments. The amendment is consistent with the original intent of the statute and similarly situated post-convictions motions.

The desirability of finality was stated to have "special force with respect to convictions based on guilty pleas." Easterwood v. Kansas, 273 Kan. 361 (2002). Finality is very important to the criminal justice system and impacts vital societal interests. Victims and/or victims' families are entitled to finality. Finality promotes the most efficient use of finite resources. A defendant's

ability to move for a withdrawal of plea at any time is contrary to the well-established and important interest of finality in criminal judgments, particularly guilty pleas.

The amendment is consistent with the original intent of the legislature. In 1970, the legislature amended the statute in response to ever increasing questions concerning pleas of guilty. In an effort to promote the timely filing of requests to withdraw pleas, the legislature established one standard for withdrawal of plea requests made before sentencing and a much more difficult standard for requests made after sentencing. A defendant need only show good cause prior to sentencing. After sentencing, a defendant is burdened with showing manifest injustice. Timely requests to withdraw plea were the goal. Timely requests serve the interests of justice. The Legislature clearly did not intend to allow for requests made years after the plea.

Time bars exist in all appellate matters. The lack of a time bar in the statute is counter intuitive. Why should a defendant that enters a plea be treated differently than a defendant that is convicted after trial and appeals his conviction? A defendant convicted after a trial will face time bars throughout the appellate process. K.S.A. 60-1507 motions have a one year time limitation. The language in the amendment mirrors the recent amendment to K.S.A 60-1507.

The failure to include a time bar to requests to withdraw plea allows for manipulation and abuse of the criminal justice system and the important desire for finality. Case preparation and preservation are fundamentally different in cases that result in pleas than cases that proceed to trial. A dissenting opinion in a recent appellate case frustratingly recognized that "[w]hen viewing charges of aggravated criminal sodomy, attempted rape, and aggravated burglary that took place in 1986, I agree with the State that it would be difficult to reconstruct the evidence, and the doctrine of laches should be applied." Laches is similar to 'statute of limitations' and is based upon the maxim that equity aids the vigilant and not those who procrastinate regarding their rights. The doctrine of laches recognizes that neglect to assert a right or claim, together with the lapse of time, prejudices an adverse party. Neglecting to do what should or could be done to assert a claim for an unreasonable and unjustified amount of time causes an unnecessary and unfair disadvantage to an opposing party.

The lack of a time bar in the statute causes undue pain and suffering to victims and/or their families; places an undue burden on law enforcement; wastes limited resources; and runs contrary to the vital societal interest in finality in criminal judgments, particularly guilty pleas.

Respectfully submitted,

Kevin O'Connor
Deputy District Attorney

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House Committee on Corrections and Juvenile Justice
February 3, 2009
Testimony of the Kansas Association of Criminal Defense Lawyers
by Carl Folsom, III, Legislative Committee Member
Opponent of HB 2099

KACDL is a 300-person organization dedicated to justice and due process for those accused of crimes. Members practice all over Kansas, from big cities to rural counties. KACDL opposes any time limitation on motions to withdraw pleas that does not provide an exception to prevent manifest injustice.

K.S.A. 22-3210 already requires a showing of manifest injustice to withdraw a plea after sentencing, which is a very difficult standard to meet.

K.S.A. 22-3210(d)(2) currently allows the withdrawal of a plea after sentencing if doing so will correct a manifest injustice. "Manifest injustice" has been defined by the courts as "something obviously unfair or shocking to the conscience." State v. Barahona, 35 Kan. App. 2d 605, 608-09, 132 P.3d 959, rev. denied 282 Kan. 791 (2006). This standard is very difficult to meet. Although we do not have statistics, courts rarely allow post-sentencing plea withdrawals. Nonetheless, the standard allows the court to prevent obviously unfair and shocking outcomes in extremely rare circumstances.

The timeliness of the motion is already a factor regarding whether to grant a post-sentencing plea withdrawal motion.

The passage of time between sentencing and the post-sentencing plea withdrawal motion is already a factor that is considered by a reviewing court when determining whether manifest injustice requires a plea to be set aside. State v. Moses, 280 Kan. 939, 953, 127 P.3d 330 (2006). The court can examine why there was delay and how the delay may have prejudiced the State in determining whether the case still represents a manifest injustice. However, a time limitation that rigidly denies review of cases that shock the conscience offends the notions of due process of the law that our justice system was designed to uphold.

Other statutory time limitations on collateral attacks of convictions have a manifest injustice exception.

K.S.A. 60-1507 allows prisoners in custody to petition the court for relief when their sentence violates the state or federal constitution. K.S.A. 60-1507(f)(1) requires a motion under the statute to be filed within one year of the termination of the appellate jurisdiction for the direct appeal (just like the proposed change to K.S.A. 22-3210(d)(2)). However, K.S.A. 60-1507(f)(2) states that, "[t]he time limitation herein may be extended by the court only to prevent a manifest injustice." KACDL asks that any timeliness requirement that is added to K.S.A. 22-3210(d) be accompanied with an exception to prevent manifest injustice, similar to that in K.S.A. 60-1507.

Thank you for your consideration.

Carl Folsom, III
carlfolsom@gmail.com
785-691-7808

Corrections and Juvenile Justice
Date: 2-3-09
Attachment # 4