

## 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 5, 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:

Randy Hearrell, Kansas Judicial Council  
State Representative Scott Schawb  
Steve Howe, District Attorney, Johnson County  
Frank Denning, Sheriff, Johnson County  
Captain Bob Keller, Johnson County Sheriff's Office  
Helen Pedigo, Executive Director, Kansas Sentencing Commission

Others attending:

See attached list.

**HB 2059 - Proceeds derived from violation of the uniform controlled substances act or any substantially similar offense from another jurisdiction.**

Chairperson Colloton announced to the Committee they would be hearing four bills today. She opened the hearing on **HB 2059** and introduced Randy Hearrell, Kansas Judicial Council to testify on as a proponent on the bill. Mr. Hearrell provided a copy of his written testimony. (Attachment 1) Mr. Hearrell stated there is a gap in the Kansas Uniform Controlled Substance Act. The Criminal Law Advisory Committee and the Judicial Council are presenting this bill which will close the gap in K.S.A. 65-4142 by including proceeds derived from violations of drug laws from another jurisdiction.

Questions and answers followed.

There being no other proponents or opponents to testify, Chairperson Colloton called the Committee's attention to "written only" testimony of Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers Association, (Attachment 2) and closed the hearing on **HB2059**.

**HB 2236 - Recodification of Drug Crimes**

Chairperson Colloton opened the hearing on **HB 2236** and introduced Ed Klumpp, Kansas Criminal Code Recodification Commission, to give his testimony as a proponent of the bill. Mr. Klumpp explained this bill proposes to move all the criminal violations of the drug laws from Chapter 65 (Public Health) to Chapter 21 (Crimes and Punishment). He then introduced the Honorable John Judge White, retired, reporter of the Kansas Criminal Code Recodification Commission, to give his testimony as a proponent of the bill. Judge White provided a written copy of the testimony. (Attachment 3) He stated the work of the Kansas Criminal Code Recodification Committee (KCCRC) proposes the Legislature make the following changes to present drug crimes statutes:

- To move drug crimes from Chapter 65 to Chapter 21 of the Kansas statutes, and
- To group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.

Judge White reviewed the changes referring to a chart that shows how the drug crimes are scattered through out Chapter 65. (Attachment 4) Upon the conclusion of his testimony he stood for questions.

Questions and answers followed.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on February 5, 2009, in Room 535-N of the Capitol.

Chairperson Colloton called for opponents, and there being none, she recognized Helen Pedigo, Executive Director, Kansas Sentencing Commission, to give her testimony as a neutral party. Director Pedigo presented a written copy of her testimony. (Attachment 5) She stated she is offering technical amendments to the bill regarding pages 58 and 59.

Upon the completion of Director Pedigo's testimony, Chairperson Colloton called for any others to testify on the bill. There being no other persons to testify on **HB 2236**, Chairperson Colloton closed the hearing.

**HB 2040 - Giving the Kansas parole board the authority to defer subsequent parole hearings for up to 20 years for crimes involving two or more victims or a minor.**

Chairperson Colloton opened the hearing on **HB 2040** and recognized State Representative Scott Schawb to give his testimony as a proponent of the bill. Representative Schawb provided a written copy of his testimony. (Attachment 6) He explained the bill would give the Parole Board the ability to delay some of their hearings for offenders of serious crimes up to 20 years which would allow victim families to heal their hurts, rather than resurrect them every 10 years. During his testimony he referred the Committee to the "written only" testimony of Stacy Foster Sneed and Cindy Foster, private citizens. (Attachment 7)

Upon the conclusion of Representative Schawb's testimony, Chairperson Colloton called on Patty Biggs, member of the Kansas Parole Board, to give a general overview of the Parole Board. Ms. Biggs presented a written copy of her testimony. (Attachment 8) She stated the Parole Board consists of three members-no more than two of whom may be of the same political party. They are involved in release decisions and conditions that attempt to contain the risk of revictimization. This bill would apply to at least 80% of the cases the Board hears.

Next, Chairperson Colloton recognized District Attorney Howe, Johnson County, to give his testimony as a proponent of **HB 2040**. Mr. Howe provided a written copy of his testimony (Attachment 9) He stated that the people being affected by this bill are the "worse of the worst". Deferring parole eligibility up to 20 years has positive consequence for victims and victim's families. In closing, Mr. Howe offered amendments changing some of the language.

Chairperson Colloton called for opponents of the bill, seeing none she opened the floor for questions on **HB 2040**.

Upon the conclusion of the questions and answer session, Chairperson Colloton closed the hearing on **HB 2040**.

**HB 2039 - Identification of defendant by unique DNA profile sufficient for reasonable certainty requirement of warrant.**

Chairperson Colloton opened the hearing on **HB 2039** and called on State Representative Schwab to give his testimony as a proponent of **HB 2039**. Representative Schwab provided a copy of his written testimony. (Attachment 10) He stated the bill allows for a warrant of arrest to be issued to a person who meets a DNA profile.

Chairperson Colloton introduced Captain Bob Keller, Johnson County Sheriff's Office who appeared on behalf of Sheriff Denning, Johnson County, a proponent of the bill, who was unable to appear. Captain Keller referred the Committee to Sheriff Denning's written testimony. (Attachment 11) and stated the Sheriff supports this bill because it will be a valuable tool for public safety.

Chairperson Colloton recognized Steve Howe, Johnson County District Attorney, to give his testimony as a proponent of the bill. Mr. Howe provided a written copy of his testimony. (Attachment 12) He stated DNA identifies the perpetrator of a crime and in investigations where the suspect denies any physical/sexual contact with a victim, DNA can actually establish the fact of the crime itself. In closing, he stated the Office of the District Attorney of Johnson County supports this bill.

CONTINUATION SHEET

Minutes of the House Corrections And Juvenile Justice Committee at 1:30 p.m. on February 5, 2009, in Room 535-N of the Capitol.

Chairperson Colloton , recognized Ed Klumpp, Kansas Police Officer's Association and the Kansas Chief of Police Association, to give his testimony as a proponent of the bill. Mr. Klumpp provided a written copy of his testimony (Attachment 13) Mr. Klumpp stated the use of DNA, coupled with the capability of computerized national DNA offender database comparisons, provides opportunities to bring previously unidentified offenders to justice. In closing, he stated the Kansas Police Officer's Association and the Kansas Chiefs of Police Association support this bill and urged the Committee to pass it out of Committee favorable.

Question and answers for the proponents followed.

Chairperson Colloton called for opponents, there being none, she closed the hearing on **HB 2039** and announced the Committee would be working bills next week and there would not be a meeting on February 6, 2009. With that said, she adjourned the hearing at 3:00 p.m. with the next meeting scheduled for February 9, 2009 at 1:30 p.m. in room 535 N.







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### MEMORANDUM

**TO:** House Corrections and Juvenile Justice Committee  
**FROM:** Kansas Judicial Council - Randy M. Hearrell  
**DATE:** February 4, 2009  
**RE:** 2009 HB 2059 Relating to Sales Derived from Violation of Uniform Controlled Substances Act

In June 2008, Rep. Mike O'Neal, then Chair of the House Judiciary Committee, requested that the Judicial Council study K.S.A. 65-4142 which relates to unlawful acts involving proceeds derived from violations of the uniform controlled substances act. The request for a study came from the Shawnee County District Attorney's Office because of an apparent gap in K.S.A. 65-4142 which came to the attention of the District Attorney as the result of the Shawnee County District Court case,

*State v. Jose Dominguez-Pena*. The Judicial Council assigned the bill to the Council's Criminal Law Advisory Committee (a copy of the Committee members appears at the end of this testimony) .

In the *State v. Jose Dominguez-Pena* case, the defendant was arrested after a drug dog alerted on his truck and officers subsequently found a large quantity of U.S. currency in a false compartment in the truck's trailer. The state charged the defendant with possession of drug proceeds in violation of K.S.A. 65-4142. The defendant filed a motion to dismiss the case arguing that possessing drug proceeds was not illegal in Kansas unless the proceeds were derived from a violation of the Kansas Uniform Controlled Substance Act (UCSA). K.S.A. 65-4142 currently provides in pertinent part that:

“(a) It is unlawful for a person knowingly or intentionally to receive or acquire proceeds, or engage in transactions involving proceeds, known to be derived from any violation of the uniform controlled substances act, K.S.A. 65-4101 *et seq.* and amendments thereto.” (Emphasis added.)

The Court reviewed the statute and acknowledged that there does appear to be a gap in the law. In its current form, the statute indicates that possession of drug proceeds is only a violation if the proceeds relate to a violation or an intended violation of the Kansas Uniform Controlled

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Substance Act. The Court subsequently held that the State had failed to present sufficient evidence to establish probable cause to believe that the defendant transported the alleged drug proceeds with either the intent to use it to commit a violation of the Kansas UCSA or with the knowledge that the money had been used to violate the Kansas UCSA. Therefore, the defendant's motion to dismiss was granted.

After careful review of the statute in question, the *State v. Jose Dominguez-Pena* case and considerable discussion on the issue, the Criminal Law Advisory Committee and the Judicial Council are in agreement with the District Court's opinion and interpretation of K.S.A. 65-4142 and proposed the amendments contained in 2009 HB 2059.

Because of our location, large quantities of drugs are transported through Kansas from Mexico, California and the southwestern United States to Chicago, Philadelphia, New Jersey, New York and the eastern seaboard, and the proceeds of such sales are often transported back through Kansas.

Kansas law enforcement officers have become proficient at detecting, stopping and securing evidence of drug traffic and confiscating large amounts of drug money, which, if forfeited, can be a great benefit to the budgets of Kansas law enforcement agencies. Kansas does not want to be known as a "safe harbor" for transportation of proceeds of drug sales.

Under K.S.A. 21-3701, possession of stolen property is a crime regardless of where the property was stolen. Drug proceeds should be treated similarly. Passage of HB 2059 will close the gap that was revealed by the *Jose Dominguez-Pena* case.

**KANSAS JUDICIAL COUNCIL  
CRIMINAL LAW ADVISORY COMMITTEE**

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**Kansas Peace Officers Association**  
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**Testimony to the House Corrections and Juvenile Justice Committee  
In Support of HB 2059  
Proceeds Derived from Violation of the Uniform Controlled Substance Act**

February 4, 2009

Madam chair and committee members,

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association supports the proposed amendments to K.S.A. 65-4142 as presented in HB 2059. This statute is one of several tools we have to address drug manufacturing and distribution in our communities. We are aware of at least one Kansas district court decision where a charge of this statute was dismissed because the proceeds were derived in another state and therefore not from a violation of the "uniform controlled substances act" which the courts have ruled refers to the Kansas act and not to similar laws of other states.

This bill will clarify that the illegal conduct described in K.S.A. 65-4142 will also be illegal in furtherance of or resulting from illegal drug activities regardless of the jurisdiction where the illegal activity occurs. The proposed amendments clearly do no harm, and do not expand the base conduct this statute was designed to address. The passage of this bill will firmly clarify the point of law at question. The provisions of this bill will remedy what we believe is an unintended loophole in this statute. It will allow prosecution of those financially benefitting from illegal drug manufacturing and distributing, and those supporting or directing illegal drug manufacturing and distributing regardless of where the actual act of illegal drug manufacturing or distribution is taking place.

We respectfully, but strongly, urge you to pass this bill favorably.

A handwritten signature in black ink, appearing to read "Ed Klumpp".

Ed Klumpp  
Legislative Committee Chair-Kansas Association of Chiefs of Police  
Legislative Committee Chair-Kansas Police Officers Association  
eklumpp@cox.net  
Phone: (785) 640-1102

**Corrections and Juvenile Justice**  
**Date:** 2-5-09  
**Attachment #** 2



## Kansas Criminal Code Recodification Commission

Prof. Tom Stacy, Chair  
Ed Klumpp, Co-Chair  
Sen. John Vratil  
Sen. David Haley  
Rep. Lance Kinzer  
Rep. Jan Pauls  
Hon. Christel Marquardt  
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Hon. John W. White, Reporter  
Brett A. Watson, staff attorney

Ed Collister  
Prof. Michael Kaye  
Timothy Madden  
Steve Opat  
Kim Parker  
Debra Wilson  
Kristofer Ailslieger  
Tom Drees

TO: House Corrections and Juvenile Justice Committee

FROM: Kansas Criminal Code Recodification Committee

Appearing:

Ed Klumpp, Co-Chairman  
John W. White, Reporter  
Brett Watson, Staff Attorney

We appear on behalf of the Kansas Criminal Code Recodification Commission to speak in support of House Bill 2236, New Sections 1-17. New Sections 1 through 17 represent the work of the KCCRC in recodifying Kansas drug crimes.

The KCCRC's work proposes that the legislature make the following changes to present drug crimes statutes:

- To move drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes, and
- To group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.

### **Move drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes-**

First, speaking to the proposal moving drug crimes from Chapter 65 to Chapter 21. Cases involving drug crimes have a major impact on the work of law enforcement, the courts, the department of corrections, and other agencies of the criminal justice system. Although drug convictions account for approximately 18% of our prison population drug offenses are not in the criminal code but are found in Chapter 65 of Kansas statutes in the section generally devoted to regulation of pharmacists.

Highly technical definitions included in the definitions statute (K.S.A. 65-4101) are not easily understood by prosecutors, defense attorneys, judges, and jurors. Conduct considered criminal need not comport with highly technical definitions understood by chemists and pharmacists. Moving the drug offenses to the criminal code and providing traditional and readily understandable definitions of criminal conduct would improve and modernize our drug laws.

The Commission recommends that Chapter 65 drug offenses be moved to and become a part of the Kansas Criminal Code, Chapter 21 of the Kansas Statutes.

**Group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.**

Serious drug felonies currently are not grouped together in Chapter 65 and instead appear in different portions of that Chapter. Our proposed recodification groups all of these offenses together. In addition, it orders these offenses around the core offenses of manufacture, distribution, and possession. These changes make the drug provisions more coherent, clear, and user-friendly without revising current Kansas law.

The proposed statutes are incorporated into New Sections 1-17 of HB 2236. We have prepared a comparison table that enumerates the existing statute(s) included in the proposed statute (New Section).

In preparing New Sections 1-17, the Commission has solicited input from the KBI technology section, from Kyle Smith, formerly of the Kansas Bureau of Investigation, and from the Kansas Board of Pharmacy. Kyle Smith presented testimony to the Commission. His comments provided valuable assistance to the Commission in our work on the drug crimes statutes. He has been supportive of our proposals.

We have also met with a representative from the Kansas Board of Pharmacy. The Board of Pharmacy has no objections to our proposals.

In our work on drug crimes, and other crimes, we have met with members of the KBI technology section. We have attempted to avoid any changes that would affect the KBI's crime reporting and data collection systems.

This summarizes our work on New Sections 1-17 of House Bill 2236. We invite your questions.



## HB 2236 Comparison Chart

Section 1	K.S.A. 65-4101	Definitions
	K.S.A. 65-4150	Definitions
	K.S.A. 65-7003	Definitions
Section 2	New Statute	n/a
Section 3	K.S.A. 65-4159	Unlawful manufacturing or attempting such of any controlled substance; penalty
	K.S.A. 65-4159a	Same; violations on or before effective date; penalties
Section 4	K.S.A. 65-4158	Costs and expenses [clean up of meth labs]
Section 5	K.S.A. 65-4161	Unlawful acts relating to sale or distribution of opiates, opium, narcotic drugs or designated stimulants
	K.S.A. 65-4163	Unlawful acts relating to sale or distribution of depressants, stimulants or hallucinogenic drugs or other substances
	K.S.A. 65-4164	Unlawful acts relating to certain narcotic drugs
Section 6	K.S.A. 65-4160	Unlawful acts relating to possession of opiates, opium, narcotic drugs or designated stimulants
	K.S.A. 65-4162	Unlawful acts relating to possession of depressants, stimulants or hallucinogenic drugs or other substances
Section 7	K.S.A. 65-4141	Unlawfully arranging sales or purchases of controlled substances using a communication facility

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Section 8	K.S.A. 21-4214	Obtaining a prescription-only drug by fraudulent means
	K.S.A. 21-4215	Obtaining a prescription-only drug by fraudulent means for resale
Section 9	K.S.A. 65-4152	Simulated controlled substances and drug paraphernalia; use or possession prohibited
	K.S.A. 65-7006	Unlawful acts [regarding drug precursors]
Section 10	K.S.A. 65-4153	Prohibited acts [regarding drug paraphernalia]
	K.S.A. 65-7006	Unlawful acts [regarding drug precursors]
Section 11	K.S.A. 65-4151	Determination of what is "drug paraphernalia"; factors to consider
	K.S.A. 65-4152	Simulated controlled substances and drug paraphernalia; use or possession prohibited
Section 12	K.S.A. 65-4165	Abusing toxic vapors
Section 13	K.S.A. 65-4153	Prohibited acts [regarding drug paraphernalia]
Section 14	K.S.A. 65-4155	Representation that noncontrolled substance is controlled substance
Section 15	K.S.A. 65-4105a	Treatment of a controlled substance analog
Section 16	K.S.A. 65-4142	Unlawful acts involving proceeds derived from violations of the uniform controlled substances act
Section 17	K.S.A. 65-4166	Uniformity of act



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Section 5	K.S.A. 65-4161	Unlawful acts relating to sale or distribution of opiates, opium, narcotic drugs or designated stimulants
	K.S.A. 65-4163	Unlawful acts relating to sale or distribution of depressants, stimulants or hallucinogenic drugs or other substances
	K.S.A. 65-4164	Unlawful acts relating to certain narcotic drugs
Section 6	K.S.A. 65-4160	Unlawful acts relating to possession of opiates, opium, narcotic drugs or designated stimulants
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Section 10	K.S.A. 65-4153	Prohibited acts [regarding drug paraphernalia]
	K.S.A. 65-7006	Unlawful acts [regarding drug precursors]
Section 11	K.S.A. 65-4151	Determination of what is "drug paraphernalia"; factors to consider
	K.S.A. 65-4152	Simulated controlled substances and drug paraphernalia; use or possession prohibited
Section 12	K.S.A. 65-4165	Abusing toxic vapors
Section 13	K.S.A. 65-4153	Prohibited acts [regarding drug paraphernalia]
Section 14	K.S.A. 65-4155	Representation that noncontrolled substance is controlled substance
Section 15	K.S.A. 65-4105a	Treatment of a controlled substance analog
Section 16	K.S.A. 65-4142	Unlawful acts involving proceeds derived from violations of the uniform controlled substances act
Section 17	K.S.A. 65-4166	Uniformity of act



# KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman  
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

**HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE**  
The Honorable Pat Colloton, Chair

**WRITTEN TESTIMONY ON HOUSE BILL 2236**

**Drug Crimes**

**Helen Pedigo, Executive Director**

**Thursday, February 5, 2009**

Madam Chair and committee members, thank you for the opportunity to request technical amendments to HB 2236 regarding pages 58 and 59.

The amendments requested are incorrect references to statutes that include or exclude offenders from the Senate Bill 123 Substance Abuse Treatment Program. The program is available for offenders convicted of felony possession, located in Section 6 of the bill, rather than Section 3, manufacturing. Offenders who have the following felony convictions are excluded from the program: use of drug proceeds, manufacturing, sale, distribution or possession with intent to sell, and sale of prescription drugs. The correct section references on page 58, line 40 and page 59, line 3 should be 3, 5 and 16, rather than 3, 5 and 17. Mr. Klump of the Recodification Commission and The Revisor are aware of these changes. The proposed amendment is attached.

I would be happy to answer any questions about this proposal.

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

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

**Corrections and Juvenile Justice**

**Date:** 2-5-09

**Attachment #** 5-1

HB 2236

58

- 1 packaging material.
- 2 (E) Building acquisitions or building modifications including but not  
3 limited to painting, wiring, plumbing or lighting which advanced or fa-  
4 cilitated the commission of the offense.
- 5 (F) Possession of large amounts of illegal drugs or substantial quan-  
6 tities of controlled substances.
- 7 (G) A showing that the offender has engaged in repeated criminal  
8 acts associated with the manufacture, production, cultivation or delivery  
9 of controlled substances.
- 10 (2) The offender possessed illegal drugs:
- 11 (A) With intent to sell, which were sold or were offered for sale to a  
12 person under 18 years of age; or
- 13 (B) with the intent to sell, deliver or distribute or which were sold or  
14 offered for sale in the immediate presence of a person under 18 years of  
15 age.
- 16 (3) The offender, 18 or more years of age, employs, hires, uses, per-  
17 suades, induces, entices or coerces any individual under 16 years of age  
18 to violate or assist in avoiding detection or apprehension for violation of  
19 any provision of ~~the uniform controlled substances act, K.S.A. 65-4101 et~~  
20 ~~seq. sections 1 through 17,~~ and amendments thereto, or any attempt,  
21 conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-  
22 3303, and amendments thereto, to commit a violation of any provision of  
23 ~~the uniform controlled substances act sections 1 through 17, and amend-~~  
24 ~~ments thereto,~~ regardless of whether the offender knew the age of the  
25 individual under 16 years of age.
- 26 (4) The offender was incarcerated during the commission of the  
27 offense.
- 28 (b) In determining whether aggravating factors exist as provided in  
29 this section, the court shall review the victim impact statement.
- 30 Sec. 39. K.S.A. 21-4729 is hereby amended to read as follows: 21-  
31 4729. (a) There is hereby established a nonprison sanction of certified  
32 drug abuse treatment programs for certain offenders who are sentenced  
33 on or after November 1, 2003. Placement of offenders in certified drug  
34 abuse treatment programs by the court shall be limited to placement of  
35 adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-  
36 4162, ~~prior to such sections repeal or section 2,~~ and amendments thereto:
- 37 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or  
38 4-I of the sentencing guidelines grid for drug crimes and such offender  
39 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163  
40 or 65-4164, ~~prior to such sections repeal or section 3, 5 or 17,~~ and amend-  
41 ments thereto, or any substantially similar offense from another jurisdic-  
42 tion; or
- 43 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of

6

16

5-2

1 the sentencing guidelines grid for drug crimes and such offender has no  
2 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-  
3 4164, *prior to such sections repeal or section 3, 5 or 17*, and amendments  
4 thereto, or any substantially similar offense from another jurisdiction, if  
5 such person felonies committed by the offender were severity level 8, 9  
6 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug  
7 crimes and the court finds and sets forth with particularity the reasons  
8 for finding that the safety of the members of the public will not be jeop-  
9 ardized by such placement in a drug abuse treatment program.

16

10 (b) As a part of the presentence investigation pursuant to K.S.A. 21-  
11 4714, and amendments thereto, offenders who meet the requirements of  
12 subsection (a) shall be subject to:

13 (1) A drug abuse assessment which shall include a clinical interview  
14 with a mental health professional and a recommendation concerning drug  
15 abuse treatment for the offender; and

16 (2) a criminal risk-need assessment, unless otherwise specifically or-  
17 dered by the court. The criminal risk-need assessment shall assign a high  
18 or low risk status to the offender.

19 (c) The sentencing court shall commit the offender to treatment in a  
20 drug abuse treatment program until determined suitable for discharge by  
21 the court but the term of treatment shall not exceed 18 months.

22 (d) Offenders shall be supervised by community correctional services.

23 (e) Placement of offenders under subsection (a)(2) shall be subject  
24 to the departure sentencing statutes of the Kansas sentencing guidelines  
25 act.

26 (f) (1) Offenders in drug abuse treatment programs shall be dis-  
27 charged from such program if the offender:

28 (A) Is convicted of a new felony; or

29 (B) has a pattern of intentional conduct that demonstrates the of-  
30 fender's refusal to comply with or participate in the treatment program,  
31 as established by judicial finding.

32 (2) Offenders who are discharged from such program shall be subject  
33 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and  
34 amendments thereto.

35 (g) As used in this section, "mental health professional" includes li-  
36 censed social workers, licensed psychiatrists, licensed psychologists, li-  
37 censed professional counselors or registered alcohol and other drug abuse  
38 counselors licensed or certified as addiction counselors who have been  
39 certified by the secretary of corrections to treat offenders pursuant to  
40 K.S.A. 2008 Supp. 75-52,144, and amendments thereto.

41 (h) (1) The following offenders who meet the requirements of sub-  
42 section (a) shall not be subject to the provisions of this section and shall  
43 be sentenced as otherwise provided by law:

6

STATE OF KANSAS

SCOTT SCHWAB  
REPRESENTATIVE, 49RD DISTRICT  
P.O. BOX 2672  
OLATHE, KANSAS 66063



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN: ELECTIONS  
MEMBER: AGING AND LONG TERM CARE  
COMMERCE AND LABOR  
HEALTH AND HUMAN SERVICES

CAPITOL BUILDING  
TOPEKA, KANSAS 66612  
(785) 296-7655

Dear Madam Chair and members of the committee,

I introduced HB 2040 after an experience I had last July with the Parole Board. Before you is submitted testimony from a dear Olathe family who had to go before the Parole Board and drudge up painful memories to keep a murderer of their family members behind bars. Their written testimony is before you.

There are certain criminals who are and will be behind bars that will most likely never be released. For victim families to have to come before the board and relive horrible experiences every 10 years is asking a bit much, especially when there is little to no chance of a release.

HB 2040 would give the board the ability to delay such hearings for serious crimes 20 years. This allows the victim families to heal there hurts, rather than resurrect them.

Thank you and I will take questions.

Corrections and Juvenile Justice  
Date: 2-5-09  
Attachment # 6

Whom It May Concern:

In the early morning hours of September 20, 1980, Danny Crump placed a gift wrapped, homemade bomb on my grandparent's car. My uncle carried it in my grandparent's house, and when my aunt opened it, it exploded, killing my grandpa, grandma, 2 of my aunts, and 2 of my uncles and injuring 3 other people that were in the house, 2 of them critically. He was charged and convicted of 6 counts of first degree murder, 3 counts of aggravated battery, one count of arson, and one count of attempted arson. Considering that he was sentenced to 6 life sentences plus an additional 80 years for the remaining 5 counts against him, my family thought we would never have to deal with Danny Crump again. We were wrong.

Every 3 to 10 years Danny Crump comes up for parole, so every 3 to 10 years my family is forced to relive the nightmare that played out that fateful September morning. We have to throw ourselves in front of the media and tell our story over and over again in an attempt to muster all the support we can. Wounds are constantly reopened, wounds that we had hoped to allow to heal by now. Imagine having to repeatedly recount the very worst day of your life in front of friends, family, even complete strangers, all to try to keep a mmalicious cold blooded killer in prison where he belongs. The pain is more than anyone can ever imagine. My family dreads it; but we do it because we have to. We have no other choice. But you have the ability to change that for us. You have the ability to help us heal.

Thank you for your time and consideration. It is very appreciated.

Sincerely,

Stacy (Foster) Sneed  
1044 W. Ashbury  
Olathe, KS 66061

Cindy Foster  
1047 W. Ashbury  
Olathe, KS 66061

**Corrections and Juvenile Justice**

**Date:** 2-5-09

**Attachment #** 7



Paul Feleciano, Chairperson  
Robert Sanders, Member  
Patricia Biggs, Member

**MEMORANDUM**

TO: MEMBERS OF HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE,  
REPRESENTATIVE PAT COLLOTON, CHAIR; REPRESENTATIVE JOE PATTON, VICE-CHAIR

FROM: PAUL FELECIANO, JR., CHAIRPERSON, KANSAS PAROLE BOARD  
ROBERT SANDERS, MEMBER  
PATRICIA BIGGS, MEMBER

DATE: FEBRUARY 5, 2009

RE: AGENCY OVERVIEW: KANSAS PAROLE BOARD

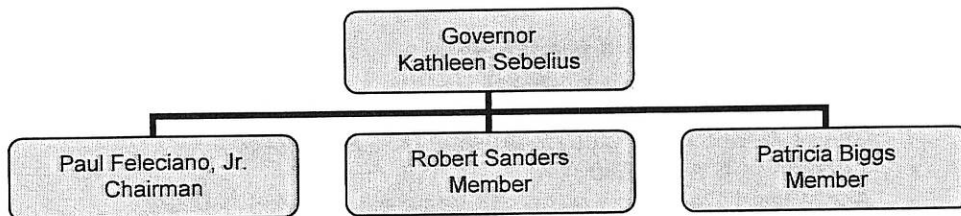
**I. GENERAL OVERVIEW**

The Kansas Parole Board's history may be traced to as early as 1864 when it focused its work strictly on commutations and in 1885 it was titled "Board of Pardons." In 1903 it was called the "Prison Board," and in 1957 it was called the "Board of Probation and Parole." The "Kansas Adult Authority" was its title beginning in 1974 and by 1986 it was renamed the current "Kansas Parole Board."

The Board varied in size and required constitution ranging most often between 3 and 5 members, most typically with no more than a one-seat majority held by any political party, sometimes even requiring membership inclusive of ministers, farmers, or attorneys.

Today's Parole Board consists of three members – no more than two of whom may be of the same political party – with no specific legislative requirements regarding academic training or employment of the members. Today's Board is involved in release decisions and conditions that attempt to contain the risk of revictimization. Today's Board travels the state, meets with offenders, with victims, with family members, public officials and citizens. Today's Board uses the best technology at hand and evidence based practice to deliver fair and rational decisions, to do so from the most informed research-based perspective possible, and to contribute to the safety of the citizens of the State of Kansas.

**Kansas Parole Board: Membership and Organization**



Paul Feleciano, Jr.	Appointed: September 2003	Term expiration: January 2007
Robert Sanders	Appointed: September 2004	Term expiration: January 2012 <sup>1</sup>
Patricia Biggs	Appointed: September 2006	Term expiration: January 2010

<sup>1</sup> Pending Senate Confirmation

---

## AGENCY VISION

The Kansas Parole Board contributes to protecting the safety of citizens of the state of Kansas by the exercise of sound, rational decision making.

## AGENCY MISSION

Parole privilege shall be extended to those offenders who demonstrate suitability by having served incarceration time set forth by the courts and who have demonstrated a reduction in risk to re-offend such that re-victimization is minimized and rehabilitation and successful reentry are maximized; similarly, parole suitability shall be rescinded in cases where an offender demonstrates increasing risk in the community. These decisions shall be made in concert with evidence based practice of criminal justice.

## AGENCY VALUES

- We believe that the parole process is essential to a fair and just criminal justice system that enhances public safety.
- We believe in effective reentry planning, offender risk reduction and an ability to minimize re-victimization by the employment of demonstrated best practices.
- We believe in the human dignity of all and shall demonstrate this belief by showing respect to the community, victims and offenders through our practices.
- We are dedicated to the professional advancement of parole board members.
- We believe in the stewardship of scarce resources.

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## II. BACKGROUND: PAROLE BOARD WORK IN CONTEXT OF SENTENCING LAWS

### Indeterminate Sentenced Offenders – “Old Law”

- The Parole Board must determine parole suitability (“prison release”) for offenders convicted of crimes committed prior to July 1, 1993 – the date of the Kansas Sentencing Guidelines implementation.
  - “Life” = mandatory minimum (no good time) of 15 years.
  - Minimum & Maximum Sentence (*does not apply to “life”*)
    - ½ minimum yields initial parole eligibility,
    - ½ maximum yields necessary conditional release (regardless of suitability).

### Indeterminate Sentenced Offenders – “New Law”

- The Parole Board must determine parole suitability (“prison release”) for offenders convicted of the most serious crimes committed on/after July 1, 1993 and sentenced to “Off Grid” terms of imprisonment.
  - Off Grid Terms: Life 15, Hard 10 (2<sup>nd</sup> degree intentional murder), Hard 25, Hard 40, Hard 50
  - Present Off-grid Crimes:
    - First Degree Murder (K.S.A. 21-3401)
    - Capital Murder (K.S.A. 21-3439)
    - Terrorism (K.S.A. 21-3449),
    - Use of Weapons of Mass Destruction (K.S.A. 21-3450)
    - Treason (K.S.A. 21-3801),
    - Aggravated Trafficking victim <14 years old (K.S.A. 21-3447),
    - “Jessica’s Law”:
      - Rape victim <14 ((K.S.A.21-3502a2),
      - Agg Indecent Libs victim <14 (K.S.A.21-3504a3),
      - Agg criminal sodomy victim <14 (K.S.A.21-3506),
      - Promoting prostitution victim <14 (K.S.A.21-3513),
      - Sexual Exploitation of Child victim <14 (K.S.A.21-3516)

g.d.

### III. PAROLE BOARD EFFORTS

Nine categories encompass the majority of the Board's work. These categories include parole suitability hearings, special hearings, full board reviews, final violation hearings and revocation consideration, public comment sessions, special conditions of post-incarceration supervision, file reviews, committees and special projects (inclusive of reentry work), and travel .

Historically, the Board's primary responsible focuses on prison release decisions-making and case management for adult felony offenders incarcerated in a Kansas correctional facility. These decisions of parole suitability are made when an offender reaches a parole eligibility date as determined by Kansas statute and applied by the Court or subsequent to a prior parole denial ("pass") by the Board. Parole suitability determinations predicate prison release for incarcerated adult felony offenders with an indeterminate term of imprisonment<sup>2</sup>.

#### 1. Parole Suitability Hearings

Parole suitability hearings are conducted monthly at each of the nine physically located Kansas state prison facilities. Hearings may occur in person or through video conference technology (K.S.A. 22-3717 (j)). Each hearing affords parole eligible offenders a face-to-face opportunity with Board members to discuss matters pertinent to his or her potential release, identify programs which have contributed to lowering risk and identify a plan for reentry into the community. The 2007 Kansas Legislature increased the scope of factors the Board considers when making determinations of parole suitability (2007-SB 411; K.S.A. 223717 (h)). These factors, as of July 1, 2007, are as follow:

1. circumstances of the offense;
2. previous criminal record and social history of the inmate;
3. programs and program participation;
4. conduct, employment, attitude, disciplinary history during incarceration;
5. reports of physical and mental examinations
6. risk factors identified by risk assessments, and factors addressing such risks (e.g., parole plan including housing, social support and employment availability);
7. comments from public officials, victims or their family, offender family or friends, or any other interested member of the general public;
8. any recommendation by staff of the facility where the inmate is incarcerated
9. proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration
10. capacity of the state correctional institutions.

Purpose: Sentenced adult felony offenders with an indeterminate term of imprisonment must be determined parole suitable by the Kansas Parole Board sometime after the parole eligibility as was established by the court at sentencing. The Board conducts Parole Hearings for offenders for information to be used in its decision making regarding the offender's suitability for parole.

Outcome: (a) Parole, (b) Continue, (c) Pass

Parole:	specified conditions – risk reduction/Containment
Continue:	Additional information or Deliberation
Pass:	A/B Felony up to 3 years; up to 10 years with extended reasons C/D/E Felony up to one year; up to 3 years with extended reasons

General Description: In order to determine suitability for parole, a face-to-face interview is conducted with the offender eligible for parole during the month prior to his/her potential release. This process must occur for all indeterminate sentenced cases and occurs at each of the KDOC nine physical facility locations each month.

<sup>2</sup> Offenders sentenced to a penalty of "Death" and those sentenced to a penalty of "Life No Parole" constitute indeterminate-sentenced offenders who *do not* see the Kansas parole board for determination of parole suitability; the Kansas Legislature and Courts determined these offenders to have no potential for future community release.

Points of Interest:

- On June 30, 2008, 14.5% (1258) of incarcerated Kansas prisoners require a parole hearing for release suitability determination<sup>3</sup>. The number of hearings is expected to increase steadily in the coming years due to the increase in the number of offenses with off-grid sentences (see also Kansas Sentencing Commission prison population projections by offense severity level – “Off-Grid”).
  - Of these 1258 offenders, 866 have yet to achieve parole suitability while 392 have been readmitted as a violator of a previously granted parole or conditional release.
- Parole Rate: The parole rate for FY 08 was 35.6% whereas the rate in FY 07 was 43%.

**2. Final Violation Hearings and Revocation Consideration.**

Purpose:

- a) To consider, by preponderance of the evidence, allegations brought against the offender by the supervising parole officer regarding violations of conditions of community supervision
- b) Should violations be found, to consider withdrawal of community liberty (i.e., “revocation to prison”).

Certain offenders<sup>4</sup> may waive due process rights by submitting a guilty plea on alleged violations. Violators who waive due process rights are not heard by the Board thus, determinations of community risk and strategies for such risk mitigation are left unexplored.

General Description:

*Old Law:* For all offenders under the pre-guidelines, old law sentencing structures, a revocation decision must be made by the parole board. The term of revocation is at the discretion of the Board, within the boundaries of the sentence imposed by the court.

*New Law:* Revocation of post release supervision for offenders sentenced under the sentencing guidelines may or may not include seeing the Parole Board as part of the revocation process.

Points of Interest:

- In FY 08, there were a total of 1439 post-incarceration supervision violators; in FY 07, there were a total of 1234 post-incarceration supervision violators.
- In FY08, 810 of these violators opted to waive final revocation while 629 were heard by the board. In FY07, 751 of these violators opted to waive final revocation while 483 were heard by the board.
  - The number of offenders heard by the Board for revocation consideration increased by 146 or 30% between FY 2007 and FY 2008.
- 12.4 % of all post-incarceration violators were returned to prison following a new felony conviction in FY 08 whereas that rate was 16% in FY 07.

Future Work

- The Board is interested in increased discretion of revocation terms for the most serious, violent offenders within the context of sentencing guidelines. In researching this possibility, legal issues have been introduced that remain unresolved thus inhibiting our progress on this topic. (see *Court decisions Apprendi v. New Jersey.*) New potential through Proportionality Subcommittee exists to re-energize this effort.

<sup>3</sup> This includes both offenders sentenced for crimes which occurred prior to the enactment of Kansas Sentencing Guidelines (07/01/1993) as well as offenders sentenced to “Off-Grid” terms under the provisions of the Kansas Sentencing Guidelines Act (i.e., those determined to be the most severe crimes occurring on or after 07/01/1993).

<sup>4</sup> Offenders who have the option of waiving due process rights and entering a guilty plea include only those sentenced under the provisions of the Kansas Sentencing Guidelines to a determinate term of incarceration and post-release supervision and are without allegations of violations of “laws” including new charges or convictions for felony or misdemeanor crimes.

### 3. Special Conditions of Post-Incarceration Supervision.

Purpose: The Kansas Parole Board has the responsibility, as described in K.S.A. 22-3717 (i), to review the parole plan of all releasing offenders and assign conditions of post-incarceration supervision. These conditions are set to facilitate successful community reentry and to minimize future re-offending behaviors and must be followed for the duration of an offender's community supervision unless deemed no longer beneficial in case management.

General Description:

*Determinate Sentenced Offenders.* Generally, the Board's responsibility with regard to this process commences six-months prior to an offender's anticipated guidelines release date and may be revisited several times within that six month time frame as new or amended information becomes available. These offenders rarely, if ever, meet with the board and conditions are set based upon risk assessment, need demonstration, prison behaviors, and victim input.

*Indeterminate Sentenced Offenders.* The Board also imposes conditions of supervision for offenders for whom a parole suitability determination is made. In these cases as well conditions are set based upon risk assessment, need demonstration, prison behaviors, and victim input.

Points of Interest:

- In FY08, the Board was responsible for the assignment of special conditions to 3436 offenders who released that fiscal year as compared to 3365 in FY 07.
  - An unmeasured number of these required multiple revisions to special conditions due to process challenges. We are working presently to coordinate stakeholders and conceptualize an alternative, more efficient methodology of case communication, planning, and management.

### 4. Full Board Reviews

Purpose & General Description: Full Board Reviews is a group-based analysis method wherein the primary board member on a case presents a comprehensive assessment of the case to all Board members. Based on the presentation and analysis and the employment of evidenced-based methods, a group consensus on the case is sought. Oftentimes, these reviews generate not only a decision regarding incarceration status, but also recommendations to assist in the offender's case management so that long-term risk of re-offense or of generating new victims is minimized.

### 5. Special Hearings.

Purpose: When new information becomes available for indeterminate sentenced offenders, a special hearing may be called by the Board to consider that new information and to reconsider a decision previously rendered. New information may be positive in nature (e.g., successful programmatic completion leading to a decrease in re-offending risk) or it may be negative in nature (e.g., found guilty of a serious facility-based disciplinary report).

General Description: In the special hearing, the Board makes clear the purpose of the special hearing and the new information received. A supplementary interview is conducted with the offender to ensure that his/her voice is heard as the result has the potential to impact a determination of suitability for facility release.

### 6. Public Comments.

Purpose & General Description: The Kansas Parole Board seeks comments from victims, family, friends, public officials, or any other member of the community relative to the potential parole of eligible offenders. Public Comment Sessions occur at five locations across the state, including Kansas City, Topeka,



Wichita, Garden City, and Hays. These open-meeting sessions provide a forum for access to the Board by any interested party for input offender parole suitability decisions.

Public comment sessions present an additional venue through which interested individuals may provide input requesting special conditions for supervision upon facility release of that offender. Most typically, this option is exercised by victims or the family of victims.

Secondary Purpose: Parole officers utilize these sessions to facilitate specific areas of case management with a particular offender. Additionally, public comment sessions allow parolees an opportunity to meet with the Board to request early discharge from parole supervision obligations. Early discharge from parole supervision may be made in accordance to K.S.A. 22-3717 and K.S.A. 22-3722 at which point the Board must conduct an in-depth file review including, but not limited to the offender's history, progress since release, status of fines, and employment status.

**7. File Reviews for Additional Purposes**

Purpose & General Description: Additional duties which require file reviews that were not previously discussed include, but are not limited to Functional Incapacitated Release and Sex Offender Override.

- Sex Offender Override: relates to management of offenders while in the custody of the Secretary of Corrections.
- Functionally Incapacitated Release: applications are reviewed to make a determination about the true likelihood of functional incapacitation as well as a determination that, because of such incapacitation, the offender does not represent a future risk to public safety.
- Early Discharge from Post-Incarceration Supervision: The Parole Board has the statutory authority to allow for an early discharge from parole for indeterminate sentenced offender or for offenders sentenced to a term of post-release supervision that is a departure from the term presumed under the Kansas Sentencing Guidelines. The rationale behind early discharge considerations is to provide an incentive for, and encouragement of the long-term adoption of pro-social behaviors and attitudes.
- Clemency Recommendations to the Governor: The Kansas Parole Board is responsible for receiving requests for executive clemency and preparing recommendations for the Governor. This analysis is conducted through in-depth file review as well as a review of the application and rationale for making the clemency request.

**8. Committees and Special Projects**

The Kansas Parole Board engages in additional work and projects so that an enhanced perspective and focus may be brought to work being done in the state on processes related to the criminal justice system or offender-based initiatives. The Board shall be integrated and immersed in the work of the State of Kansas to make our communities safer places with regard to offender-based initiatives, victim initiatives and other criminal justice process.

**Current Kansas Parole Board Criminal Justice Involvements**

LOCAL KDOC/KPB INVOLVEMENT		
Committee/Group/Activity	Frequency	KPB Member Assigned
Conditions of Community Risk Reduction	Monthly & as needed * suspended presently *	All: Paul Feleciano Robert Sanders Patricia Biggs
LSI-R© Validation, Quality Assurance, and Evaluation Project	As necessary	Patricia Biggs
Parole Management Team	Quarterly	Paul Feleciano

BROAD BASED KANSAS CRIMINAL JUSTICE INVOLVEMENT		
Kansas Reentry Policy Council	Quarterly	Paul Feleciano

8-6



Kansas Reentry Policy Steering Committee	Monthly at minimum; often more frequently	Robert Sanders
Kansas State Council for the Interstate Adult Offender Supervision Compact (K.S.A. 22-4111)	As needed	Robert Sanders, Chairman
Sentencing Commission (K.S.A. 74-9101)	Monthly	Patricia Biggs
Proportionality Subcommittee of Sentencing Commission	On Call (Phase II of project currently underway)	Patricia Biggs
LSI-R © Statewide Implementation Subcommittee of the Sentencing Commission	* suspended presently due to budgetary considerations *	Patricia Biggs, Chair of subcommittee
Sex Offender Override Committee	Monthly	Rotates between KPB members
Community Accountability Panels	As needed	Robert Sanders
Victim Advisory Council	Quarterly	Robert Sanders

NATIONAL & INTERNATIONAL INVOLVEMENTS		
Sponsorship and Group Title	Description of Work	KPB Member
National Institute of Justice - Community Corrections Technology Working Group  <b>Design Goal:</b> To further the field in the area of technology, research, development and evaluation.	The Corrections Technology Working Group is responsible for identifying technology needs and defining operational requirements for corrections related technologies. The output of your work will be used to inform the Research, Development, Test and Evaluation process within the Office of Science and Technology at the National Institute of Justice.	Robert Sanders
Center for Effective Public Policy (National Institute of Corrections supported) Set of Five Papers  <b>Design Goal:</b> To provide a comprehensive training to parole boards and related stakeholders so as to improve the performance of Boards.	To provide a resource for paroling authority members, their executive staff, governors, governors' staff, and appointing authorities. The five papers are under development presently but would cover topics like: (a) Core Competencies of Paroling Authority Members and Their Executive Staff, (b) Evidence Based Practices for Paroling Authorities, (c) Strategic Planning and Management for Results, (d) Addressing the Emerging Challenges Facing Paroling Authorities, (e) Higher Performing Parole Systems	Patricia Biggs
Association of Paroling Authorities International ("APAI") with US Department of Justice-National Institute of Corrections: Designing a Business Plan for APAI	Initial meeting is planned for this spring	Patricia Biggs

<p><b>Design Goal:</b> to consider the business operation of the APAI organization in its representation of the international group of paroling authorities.</p>		
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The Parole Board, both historically and currently, makes determination regarding parole suitability of particular offenders. The Parole Board, both historically and currently, marshals resources to plan for and facilitate the reentry of indeterminate sentenced offenders in their release to the community. As such the Board engages in the use of valid measures of propensity to re-offend and makes recommendations and conditions for offenders to follow to enhance successful reentry.

Toward this goal, the Board must remain abreast of risk assessment tools of many types – with particular emphasis being given to those that measure an offender’s propensity to re-victimize. Bearing in mind that these tools reflect dynamic factors, recommendations for programmatic work or individualized work are made by the Board with an objective of the offender’s mitigation of such re-offending probabilities.

**Technical Assistance Grant through the US Department of Justice/National Institute of Corrections:** The Kansas Parole Board has sought out and been approved for a Technical Assistance Grant from the National Institute of Corrections. As the first step, this technical assistance involves bringing in national-level experts to Kansas to conduct an assessment of the Board in three strategic areas: (1) Practice of Evidence-based principles; (2) Potential Tools for quantifying the decision-making process; (3) Organizational Culture and Structure assessment. This tripartite goal was derived based on NIC’s 2008 publication of *“Comprehensive Framework for Paroling Authorities in and Era of Evidence-Based Practice”* (Feb., 2008; Nancy M. Campbell, National Institute of Corrections).

**9. Travel & Business Practices**

Purpose & General Description: To conduct the business required of the board, monthly travel around the state is required for hearings, public comment sessions, committee meetings and to remain knowledgeable in the field of corrections in general and, more specifically, in release decision making competencies and in effective reentry strategies.

The Board views its budget as a device which enables service to the citizens of the State of Kansas. Our service is embodied in our mission statement. We remain aware of the necessity for efficient and effective use of each dollar, each person, and each hour to achieve the highest degree of quality of service possible.

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OFFICE OF DISTRICT ATTORNEY  
STEPHEN M. HOWE, DISTRICT ATTORNEY

February 5, 2009

To: House Committee Members

From: Steve Howe Johnson County District Attorney

Re; Comments on House Bill 2040: Deferring Parole Hearings for 20 years

The bill proposes to amend K.S.A. 2008 Supp. 22-3717(j) by deferring parole eligibility for 20 years for criminal acts involving:

- A. Multiple persons;
- B. 2 or more acts or transactions constituting a common scheme or conduct;
- C. Involving victims under the age of 18.

Deferring parole eligibility up to 20 years has positive consequence for victims and victim's families. Each and every time these families receive notice of a parole hearing, it causes these families to relive the tragic events. It provided real relief to families who have been forever scarred by the defendant's criminal acts. The factors listed deal with some of the more egregious situations. This amendment to the existing statute would impact murder convictions that occurred pre-sentencing guidelines. It would afford these families of the same peace of mind that are now experienced for current victims of like crimes. It is also consistent with the legislature's decision to pass the hard 40 and 50 rule.

Our office believes that similar results could be achieved by merely changing (j)(2) from 10 to 20 years. If the committee wishes to keep the proposed section (j) (3) intact, we would suggest the following changes in the original proposal:

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- Modify the language; If parole is denied for an inmate sentenced for a crime involving more than one *person* to **victim**... This would clarify that more than one victim is needed.
- Add the language; or involving a victim who is under the age of 18, **at the time of the offense, ...** This modification would avoid any ambiguity in the law, which would be interpreted in favor of the defendant.

I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

Stephen M. Howe  
Johnson County District Attorney  
P.O. Box 728  
Olathe, KS 66051  
913-715-3000

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STATE OF KANSAS

COMMITTEE ASSIGNMENTS

SCOTT SCHWAB  
REPRESENTATIVE, 49RD DISTRICT  
P.O. BOX 2672  
OLATHE, KANSAS 66063

VICE CHAIRMAN: ELECTIONS  
MEMBER: AGING AND LONG TERM CARE  
COMMERCE AND LABOR  
HEALTH AND HUMAN SERVICES



TOPEKA

HOUSE OF  
REPRESENTATIVES

CAPITOL BUILDING  
TOPEKA, KANSAS 66612  
(785) 296-7655

Dear Madam Chair and members of the committee,

I introduced HB 2039 to help utilize technology to execute on justice. The bill allows for a warrant of arrest to be issued to a person who meets a DNA profile. Currently we can issue such a warrant for an individual by name. This would all by DNA.

So, if an individual has committed a crime and left their DNA, we could then issue a warrant. If his name is Dave Smith, the DNA is actually more accurate than the name on identifying the individual.

Also, if that warrant is issued and 12 years later their DNA shows up in the national data base and a warrant is attached, the individual with that profile can be detained or extradited, depending to the situation. This would also lock in the statute of limitations on certain crimes because a warrant was issued.

I stand for questions.

Thank you and I will take questions.

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FRANK P. DENNING  
SHERIFF

GARY R. HOWELL  
LABORATORY DIRECTOR

TELEPHONE  
913-826-3209

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DUTY HONOR SERVICE

CRIMINALISTICS LABORATORY  
6000 LAMAR  
MISSION, KANSAS 66202  
WWW.JOCOSHERIFF.ORG

DAVID A. BURGER  
UNDERSHERIFF

KEVIN D. CAVANAUGH  
UNDERSHERIFF

Date: February 2, 2009

To: Chairperson Colloton, Vice-Chairperson Patton, and distinguished members of the Corrections and Juvenile Justice Committee.

My name is Frank Denning and I am the Sheriff of Johnson County. I offer testimony today in support of House Bill 2039, which seeks to amend K.S.A 22-2304 to specify that a defendant may be identified in a warrant by a description of the defendant's unique DNA profile.

The Fourth Amendment to the United States Constitution and K.S.A 22-2304 require an arrest warrant to contain the name of the defendant or, if the name is unknown, any name or description by which the defendant can be identified with reasonable certainty. John Doe warrants, in which a description of a DNA profile is used as a unique description of the defendant when the name of the individual is unknown, have been legally accepted in the United States and are used increasingly. The DNA profile is searched in national DNA databases continuously in the hopes that a match to a convicted offender or a match to genetic material in other criminal cases will be made.

Legal challenges demand the inclusion of specific language regarding an individual's unique genetic profile in the language of a warrant. On March 28, 2008 the Supreme Court of the State of Kansas handed down an opinion in the case of State vs. Douglas S. Belt, in which the Supreme Court upheld the defense assertion that the defendant, Mr. Belt, was not identified with reasonable certainty in the original "John Doe" warrant. The defense effectively argued the fact that in the John Doe warrant the mere listing of DNA loci, or genetic locations at which a DNA profile is developed for forensic identification purposes, was not sufficient to identify Mr. Belt. The court determined that the actual description of the perpetrator DNA profile that was developed at these genetic locations is necessary for identification with reasonable certainty, a fact that the Johnson County Sheriff's Office agrees with. Charges against Mr. Belt were dropped in six sexual assault cases from three Kansas counties as a result of the opinion determining that the statute of limitations had run out due to inefficient identification in the warrant. House Bill 2039 seeks to specify information needed in a warrant to identify a defendant with reasonable certainty in order to toll, or suspend, the statute of limitations and commence prosecution.

The Johnson County Sheriff's Office supports House Bill 2039 and the amendment to K.S.A 22-2304. The field of forensic science currently utilizes state-of-the-art PCR/STR DNA analysis technology that can provide a description of a specific perpetrator genetic profile identifying an individual to a reasonable degree of scientific certainty. An individual's genetic profile is unchanged throughout the lifetime of the individual. Genetic profiles are generated every day as part of forensic DNA analysis and are easily included in or attached to a warrant. Inclusion of the unique genetic profile in the language of the warrant will effectively identify a defendant with reasonable certainty and will toll the statute of limitations in cases in which DNA evidence is available but a perpetrator name is unknown. Including a description of the unique genetic profile in a warrant will preserve the statute of limitations in many different types of criminal cases, including serious violent crimes such as the sexual assaults involving Douglas Belt.

Respectfully,  
Frank Denning  
Sheriff, Johnson County, KS Sheriff's Office

Corrections and Juvenile Justice

Date: 2-5-09

Attachment # 11



OFFICE OF DISTRICT ATTORNEY  
STEPHEN M. HOWE, DISTRICT ATTORNEY

February 5, 2009

To: House Committee Members

From: Steve Howe Johnson County District Attorney

Re; Comments on House Bill 2039: DNA profiles used in criminal complaints

With the exception of confessions, DNA has become the most influential, and most trustworthy, evidence in a prosecution. This is especially true in sexual assault/abuse cases. DNA cannot only identify the perpetrator of a crime, in those investigations where a suspect denies any physical/sexual contact with a victim, DNA can actually establish the fact of the crime itself. Johnson County has at least three cases right now where the suspect denied any contact with the victim, and the State can establish the fact that he did through DNA evidence.

In most cases the victim knows his/her assailant. In most cases the victim can identify who attacked him/her, and the prosecution has no problem getting the case filed within the statute of limitations. However this is not always the case. Sometimes the assailant is a complete stranger. Sometimes a child is too young, or too traumatized, to identify his/her assailant. Sometimes the victim is killed during the attack. In many of these types of cases, if the suspect's DNA is present, the prosecution can still proceed. However the case still has to be filed, and an arrest warrant still has to issue, within the statute of limitations.

Being able to issue "John Doe" warrants, using a description of the suspect's unique DNA profile as the identification, is essential to prosecuting cases where the suspect is unknown to the victim. Investigations can last beyond the statute of limitations, but unless the State is able to issue a warrant within the statute, that victim will never receive justice. DNA is unique to every individual (except identical twins), and warrants issued with descriptions of the suspect's unique DNA profile identify a specific person. Those warrants, therefore, comply with the law.

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I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation

Sincerely,

Stephen M. Howe  
Johnson County District Attorney  
P.O. Box 728  
Olathe, KS 66051

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**Kansas Association of Chiefs of Police**  
PO Box 780603, Wichita, KS 67278 (316)733-7301

**Kansas Peace Officers Association**  
PO Box 2592, Wichita, KS 67201 (316)722-8433



February 5, 2009

**Testimony to the House Corrections and Juvenile Justice Committee  
In Support of HB 2039  
Arrest Warrants Using DNA Identification**

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association support the amendments to K.S.A. 22-2304 as proposed in HB 2039. Today's use of DNA, coupled with the capability of computerized national DNA offender database comparisons, provides opportunities to bring previously unidentified offenders to justice. DNA evidence provides methods to positively and uniquely identify the perpetrator even without knowing the name or other common identifiers. In 2008, the Kansas Supreme Court ruled DNA identifiers meet the constitutional and statutory tests for identification purposes in arrest affidavits and warrants. In *State v. Belt* the court states that "an arrest warrant's or a supporting affidavit's inclusion of a unique DNA profile can qualify as a description by which a defendant can be identified with reasonable certainty; mere listing of DNA loci in the warrant or in a supporting affidavit cannot." While specifying the DNA loci was insufficient, the court did not specify what had to be present in the DNA descriptor to be "a unique DNA profile." The court does state that a complete description was available but not used in the *Belt* case which offers insight into what the court requires. The court's terminology is not foreign to DNA scientists and practitioners who believe the proposed language captures the level of identification required by the court in the *Belt* case.

The proposed amendment will not only help law enforcement and prosecutors to assure the proper information is included in the affidavit and arrest warrant, but it will also help the courts in determining if an acceptable standard is met. More importantly, this bill will do no harm. While it establishes a standard that appears to meet the level of identification the court required in *Belt*, we may not know for sure until another case reaches appellate courts. However, it will not have caused any harm and may support a positive appellate court outcome since it sets a standard above that used in the *Belt* case.

This is an important issue for law enforcement and for public safety. The public and the victims deserve to see the accused tried in court on the factual merits of the evidence. They do not deserve to have a potentially dangerous felon turned loose on society due to a technical shortfall. We cannot afford to replicate this outcome. The *Belt* case represents exactly what the legislature intended to prevent when passing the current language of K.S.A. 21-2304. This bill will reinforce that legislative intent while providing further guidance and clarity to the criminal justice system.

At our Joint Law Enforcement Legislative Conference the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association identified this bill as one of six legislative priorities for the 2009 session.

We encourage you to recommend this bill favorably for passage to the full House.

Ed Klumpp  
Kansas Association of Chiefs of Police Legislative Committee Chair  
Kansas Peace Officers Association Legislative Committee Chair  
eklumpp@cox.net  
Phone: (785) 640-1102

**Corrections and Juvenile Justice**  
Date: 2-5-09  
Attachment # 13