

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 March 16, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
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:

Patricia Biggs, Kansas Parole Board
Tom Williams, Allen County Sheriff
Ed Klumpp, Kansas Association of Police Chiefs
Kyle Smith, Kansas Peace Officers Association

Others attending:

See attached list.

HB 2340 - Sub. For H 2340 by Committee on Corrections and Juvenile Justice - Legislative review of parole board factors and rationale for granting or denying parole.

Chairperson Colloton opened the continued hearing on **HB 2340** and introduced Patti Biggs, Parole Board, to continue her testimony as an opponent of the bill. Ms. Biggs opened by explaining the guide the Parole Board uses to determine eligibility for a parole hearing. During Ms. Biggs' testimony she took questions from the Committee. The Committee has concerns if proportionality is a part of the consideration for a parole hearing. In closing Ms. Biggs called the Committee's attention to a handout she provided entitled *Kansas Parole Board Notes and Case Review (Confidential)*, (Attachment 1) and stated the Parole Board uses it as an interview guide. She reviewed the interview guide which is made up of ten factors. During the review she explaining all ten factors and how they are used.

There being no others wishing to testify on **HB 2340** Chairperson Colloton closed the hearing.

Chairperson announced to the Committee that Helen Pedigo, Executive Director, Kansas Sentencing Committee, would come before the Committee tomorrow to explain the bed impact of the proportionality bill.

SB 26 - Additional months added to sentences for certain drug felonies involving firearms.

Chairperson Colloton opened the hearing on **SB 26** and introduced Tom Williams, Sheriff, Allen County, to give his testimony as a proponent of the bill. Sheriff Williams provided written copy of his testimony. (Attachment 2) He stated the bill places the responsibility for violations exactly where it should rest, on the individual that decides to use a firearm in a drug crime. Upon the completion of his testimony, Sheriff Williams asked the Committee to support the bill.

There being no questions for Sheriff Williams, Chairperson Colloton introduced Ed Klumpp, Kansas Association of Chiefs of Police, to give his testimony as a proponent of **SB 26**. Mr. Klumpp provided written copy of his testimony. (Attachment 3) Mr. Klumpp stated they were in support of the bill but are concerned with the reduction of the sentence, which, was done by the Senate Judiciary Committee. They feel it will reduce the effectiveness of the bill. He urged the Committee to consider an increase in the sentencing. In closing, he said the bill is good for law enforcement and for the public safety.

A short question and answer session followed.

Chairperson Colloton introduced Kyle Smith, Kansas Police Officer's Association and the Topeka Police

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 16, 2009, in Room 535-N of the Capitol.

Department, to give his testimony as a proponent of the bill. Mr. Smith provided written copy of his testimony. (Attachment 4) Mr. Smith stated they are in strong support of the bill. The bill would deter some drug dealers from carrying guns and would increase the safety of the public and police officers. In closing, he encouraged the Committee to pass the bill with some friendly amendments.

A lengthy discussion followed.

Upon the conclusion of the discussion, Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of Tom Stanton, Deputy District Attorney, Reno County (Attachment 5) and the "written only" opponent testimony of Jennifer Roth, Kansas Association of Criminal Defense Lawyers. (Attachment 6)

Chairperson Colloton adjourned the meeting at 2:40 p.m. with the next meeting scheduled for March 17, 2006 at 1:30 p.m. in room 535 N.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 03-16-09

NAME	REPRESENTING
KEITH PARSONS	KEARNEY & ASSOC

**Kansas Parole Board
Hearing Notes and Case Review
(Confidential)**

Inmate Name:	KDOC #: 00
KPB Present:	Date:
Others Present:	

Crime(s):		
Sentence:	Time Served:	CR/Max:
Age at time of Offense:	Now:	
Times Down	Date of Last Hearing:	KPB Appearances:
Recommendations from last hearing:		

1. OFFENSE:	Trial? Y <input type="checkbox"/> N <input type="checkbox"/>

2. PRIOR RECORD:	Age @ 1 st Offense:																																													
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 10%;">Date</th> <th style="width: 20%;">Jurisdiction</th> <th style="width: 40%;">Description</th> <th style="width: 15%;">Disposition</th> <th style="width: 15%;">comment</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>		Date	Jurisdiction	Description	Disposition	comment																																								
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Release History:	Corrections and Juvenile Justice Date: <u>3-16-09</u> Attachment # <u>1-1</u>																																													

3. PROGRAMS

IPA Complete?

Y N

Substance Abuse Treatment

Latest Successful Completion Date:
Modality:
Number of prior incarcerated substance abuse treatment episodes:
Number with Successful completion:

Prognosis from Discharge Summary:
RPP Completed: Y N

AA/NA: Y N

Comments:

My two relapse warning signs:
1. _____
2. _____

Strategies to use when I experience these warning signs
1. _____
2. _____

Appears to have Need Remaining?

No
 Yes

If Yes: describe briefly:

Sex Offender Treatment

SOTP – Most recent Completion Date:
Number of times of SOTP program enrollment:
Number of successful terminations:

Prognosis from Discharge Summary:

Results of Sex Hx Polygraph:

None Completed
 Completed
 Disclosive
 Non Disclosive
 Other: (describe) _____

Results of arousal control to deviant stimuli:

None Completed
 Completed
 Able to control
 Not able to control
 Other: (describe) _____

RPP: Y N

Describe degree to which RPP appears to address issues sufficiently, needs work, or has garnered particular input from therapist regarding quality.

Comments:

Two of my triggers of sexually deviant cycle:
1. _____
2. _____

Strategies to use when I experience these warning signs
3. _____
4. _____

Does offender appear to have remaining needs?

Y
N

If Yes: explain

Appears to have Need Remaining?

No
 Yes

Hearing Date: _____

	If Yes: describe briefly:
<p>Mental Health Counseling</p> <p>MH – Completion Date: Individual or Group Focusing on what issue(s)?</p>	<p>Comments:</p> <p>Appears to have Need Remaining? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes: describe briefly:</p>
Job & Job History:	
Other Programs & relationship to risk:	
<p>Bank:</p> <p>Transactions</p> <p>Additional finances or assets held on the outside? By whom? How acquired? For what use?</p>	

4. INSTITUTIONAL ADJUSTMENT: Current Custody Level:
Staff Comments (see 120 day review in OMIS; see Facility Contact Notes - TOADS)
Verbal/Written:
Disciplinary Reports since last hearing: (KASPER – details in imaging Tab L-3)

Hearing Date: _____

Summary of Behavior with regard to accumulated disciplinary reports

Triggers?

Responses?

Insight to this pattern by the offender?

5. Reports of Physical and Mental Health:
a. Mental Health

Latest clinical evaluation: (type: CSR, RDU, other?)	
Date:	
Risk Level:	
Mental Health Diagnosis: (date)	Medications:
Axis I:	History of Psychotropic Meds: Y <input type="checkbox"/> N <input type="checkbox"/>
Axis II:	Voluntary <input type="checkbox"/> Involuntary <input type="checkbox"/>
Behaviors indicative of Ax I/II dx?	Prescription(s):
Ax V (GAF) score:	Describe history of compliance:
Prognosis:	
	Describe risk-based behaviors demonstrated when not compliant (if applicable):

b. Physical Health

Challenges:	Risk Implications:

Hearing Date: _____

	Plans to mitigate that risk:
	Supports in place:
	Additional Supports needed:

c. Parole Plan & Social Support
Parole Plan : Primary & Secondary

Primary Parole Plan:	Secondary Parole Plan:

<p>Is town same as "fall" location? <input type="checkbox"/>yes <input type="checkbox"/>No If yes: Is this anticipated to cause problems with community, victim, victim family, others?</p> <p>Is the Parole Plan sufficiently adequate to mitigate areas of risk and introduce no additional areas of risk? <input type="checkbox"/> Yes <input type="checkbox"/> No: describe</p>	Work Skills:

Social Support indicated:

6. COMMENTS– Support or Weakness relative to parole plan

Judge:	Police:
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Hearing Date: _____

CA:	Sheriff:
Victim:	Family/Friends:
Other Comments:	

7. Prison Capacity & Population (date: 03/15/09)

Current operating capacity (male)	8227
Current inmate population (male)	7968
Current operating capacity (female)	747
current inmate population (female)	595
8974 Current Operating Capacity (total)	
8563 Current inmate Population (total)	
411 Capacity > Population (total)	
Capacity > Population (male)	259
Capacity > Population (female)	152

8. Staff Comments

9. Risk Measures

RISK TO REOFFEND/ACTUARIAL MEASURES	
Risk Assessment LSI-R© (see Release Plan – TOADS)	
LSI-R Score = Highest Domain(s):	
Scored based on (select one): <input type="checkbox"/> Community-behaviors <input type="checkbox"/> Confined setting only behaviors:	
Is there a community-based behavior risk assessment? Date _____ / _____ / _____ : Type: _____ : Summary:	

Hearing Date: _____

1-6

<u>Sex-Offending Measures</u>	Completed inside or CBT?
Static 99 Score:	Date completed:
Stable-	
Static/Stable Roll-up	
Acute:	
Roll-up:	
Other Sex-Offending Based Risk Measures: e.g., SORAG, MnSOTR, etc. – describe & detail	

<p><u>Violence:</u> VRAG: _____ % probability of recidiv at 5 years _____ % probability of recidiv at 7 yrs _____ % probability of recidiv at 10 years</p> <p>PCL-R Overall: <ul style="list-style-type: none"> • Factor I: • Factor II: </p> <p><i>Evaluation Recommendations and/or Conclusions or other pertinent commentary:</i></p>	

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10. Proportionality to Guidelines (see proportionality Guide)

Hearing Date: _____



Thomas R. Williams Sheriff

Shannon Moore Undersheriff

Allen County Law Enforcement Center

House Corrections and Juvenile Justice Committee

March 16, 2009

In Support of SB 26

March 16, 2009

Testimony of Sheriff Thomas R. Williams, Allen County Kansas

Dear Chairman and Members of the Committee:

Thank you for the opportunity to give testimony and offer my complete support for the bill that will mimic the federal law and numerous other states' statutes concerning firearms used in drug felonies. I have thirty plus years of law enforcement experience, ranging from a rookie patrol officer, to a supervisor of patrol, to a Senior Special Agent for the KBI, and now a Sheriff, serving in my second term.

There are two major issues I would like to point out to you as reasons for this bill:

This bill places the responsibility for violations exactly where it should rest, on the individual that decides to use a firearm in a drug crime. In today's world, drugs and firearms are inevitably linked together. I can tell you it is imperative that we break that link. This bill would help.

We are asking young men and women to risk their lives to enforce drug laws. In Kansas there presently is not a sufficient 'cost' associated with selling drugs and using firearms to support their criminal acts. Drug addiction may not be deterred by penalties but choosing to also carry a gun can be: This bill would make those individuals pay a heavy cost. The bill would not impact in any way on a citizen's right to bear arms which I fully support; instead it would place responsibility on the citizen who decides to violate the drug laws while armed.

By passage of this statute you will make it clear that using or possessing a firearm in connection with other criminal activity will not be tolerated. For too long, criminals, especially those that deal in illegal narcotics or drugs have used firearms as part of doing business. I have interviewed a number of dealers and criminals who understood that carrying or using a firearm in connection with illegal activity made their job easier and safer. They also understood that in Kansas the possession of a firearm, even concealed, presented to them no real additional penalty. For example a person caught with Methamphetamine for distribution in his pocket and a handgun under his jacket would face the Charge of Possession of Methamphetamine for sale and Criminal Possession of a Firearm. The Methamphetamine charge would be a Felony but the Concealment of a Firearm would be a Class A nonperson misdemeanor, and it would almost always be run concurrent with the more serious drug offense.

And while Methamphetamine is certainly a dangerous drug, its victims are a finite circle and tend to choose their own involvement. The firearm however in the hands of a person who has already chosen to ignore laws is a great danger to even innocent persons who might cross their path or just be in the area. The firearm poses a constant danger to citizens, as well as law enforcement who might deal with this person, who may well be under the influence of a mind altering drug.

This statute makes it clear that in Kansas there will be a cost to “doing business as usual.” I don’t think for a minute that most persons who deal in criminal activity will do a cost benefit analysis of carrying or using a firearm. The goal of this statute will not immediately be for deterrence. Instead it will be to set a boundary that we as Kansans say will not be crossed. That will eventually lead to deterrence as the word gets out.

The second issue involves the last time I testified for a similar bill in front of this committee. Someone asked why make a bill for firearms and leave out other weapons like bats, and knives. The best explanation that day for an answer was from a member of the committee. He recalled many years prior

of being assaulted with a firearm. He remembered in great detail the events and particularly the gun. I have had three firearms pulled on me in the course of my career, along with numerous, bats, clubs, knives, a two by four and one weed whacker. I can't tell you much about the bats, knives, etc. but I can tell you everything about the three firearms. I can tell you the people around me, the weather, the conversation, the circumstances, and yes just like your member I can tell you everything about each weapon except for the serial numbers. I can tell you that your member and I knew instinctively that the firearm we were staring at meant instant death. I can back away from a knife, I can put an obstacle between me and a bat or club, I can run away from a two by four, or yes even a crazed person with a weed whacker, but I can't do any of those things with a firearm.

I was actually insulted by the question until I realized that the person who asked the question didn't live in my world. That means that men and women who wear the badge are doing their jobs and making your lives safer. Those same men and women however do live in my world and they deserve to know that the State of Kansas by enacting this legislation are supporting and defending them.

Thank you for your time and allowing me to voice my support.

Thomas R. Williams
Sheriff Allen County Kansas



March 16, 2009

OFFICERS

Todd Ackerman
President
Marysville Police Dept.

Ron Olin
Vice President
Lawrence Police Dept.

Frank Gent
Sergeant at Arms
Beloit Police Dept.

Mike Keller
Treasurer
Andover Police Dept.

Sean Wallace
Recording Secretary
Ark City Police Dept.

James Hill
SACOP Representative
Salina Police Dept.

Bob Sage
Immediate Past President
Rose Hill Police Dept.

Doyle King
Executive Director
KACP

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Region I
KU Public Safety Dept.

Sam Budreau
Region II
Chanute Police Dept.

Ronnie Grice
Region III
KSU Public Safety Dept.

Jim Daily
Region IV
Newton Police Dept.

James Braun
Region V
Hays Police Dept.

Vernon Ralston
Region VI
St. John Police Dept.

**Testimony to the House Corrections and Juvenile Justice Committee
In Support of SB26
Use of Firearms in a Drug Felony**

Madam chair and committee members,

The Kansas Association of Chiefs of Police supports the provisions of SB26. Law enforcement continues to engage dangerous drug felons in our enforcement efforts. Drug dealers and manufacturers go to great lengths to protect their interest, including the use of firearms. SB26 will serve to deter these offenders from carrying a firearm similar to provisions in federal laws. An armed confrontation with drug felons poses an increased risk to law enforcement. Innocent persons unknowingly in the vicinity of a felony drug transaction involving armed participants are also endangered.

The bill proposes three levels of sentence enhancement determined by the level of use of the firearm. 1) merely possessing it during the commission of a drug felony; 2) brandishing the weapon without firing it during a drug felony; and 3) firing the weapon during a drug felony.

The key to the effectiveness of this provision is for the additional sentence time to be significant enough for the offender to be deterred from carrying a firearm. The secondary benefit is commensurate with the additional risk for potential harm the offender creates by committing the drug felony while armed.

We are concerned the reduced sentencing amended into the bill by the Senate Judiciary Committee will reduce the effectiveness of the provision. We encourage you to increase the length of sentence, particularly on lines 41 and 43 of page 4. The firing of a firearm, the provision on line 43, is a strong indicator of the perpetrators willingness to commit deadly violence. It should have a significantly higher sentence. This should not have a big bed impact because these are not frequent cases. The more frequent cases are the possession and brandishing.

The brandishing of the firearm, by definition on page 5, lines 11-15, is done to intimidate another person by displaying the capability to cause harm. As such, we feel the amended sentence is too low for this provision as well.

We appreciate your consideration on these provisions and urge you to report this bill favorably for passage.


Ed Klumpp
Legislative Committee Chair

Corrections and Juvenile Justice
Date: 3-16-09
Attachment # 3-1



CITY OF TOPEKA

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An Accredited
Law Enforcement Agency



House Corrections and Juvenile Justice

March 16, 2009

Testimony in Support of SB 26

Kyle G. Smith

Kansas Peace Officer's Association

Chairman Colloton and Members of the Committee,

I appear today on behalf of the Kansas Peace Officers Association and the City of Topeka Police Department in support of SB 26. Crafted to be similar to effective federal law, the simple concept of the bill is to provide enhanced penalties for drug trafficker who chose to carrying firearms while committing drug transactions.

While I am currently employed as general counsel to the Topeka Police Department I have over 26 years of prosecution experience as an assistant attorney general and with the Lyon county attorney's office. The problem of drugs and guns is not new but it is real, recurring and a danger to all of us.

Congress addressed the problem of too many drug dealers carrying guns with the passage of 18 U.S.C. 924 which provides for an additional mandatory, consecutive, 5 year to life sentence for using a firearm during the commission of a violent felony or drug trafficking offense. Criminals are aware that if a drug transaction is of a quantity that reaches federal guidelines, they face seriously more time in the federal system. While I was at the KBI it was not uncommon for drug traffickers to structure shipments and deals to avoid federal penalties. Penalties do deter actions.

While fairly weak when compared to the 60 months provided under 18 U.S.C. 924, SB 26 would provide real, clear penalties for any drug trafficker who chose to utilize guns to further their transactions. This would serve two excellent purposes: First it would deter some drug dealers from carrying guns and thus increase the safety of the public, officers and even drug addicts; second it would provide for longer incarceration and immobilization for those drug traffickers that chose to involve guns into an already dangerous trade. Please pass this legislation.

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

Corrections and Juvenile Justice

Date: 3-16

Attachment # 4-1



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

TO: The Honorable Representatives of the Committee on Corrections and Juvenile Justice

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
President, KCDA

DATE: March 16, 2009

RE: Senate Bill 26

Chairman Colloton and Members of the Committee:

Thank you for giving me the opportunity to testify regarding Senate Bill 26. The Kansas County and District Attorneys Association supports this legislation.

Drug felonies have long been considered dangerous crimes. Felony crimes under the uniform controlled substances act are included in the list of crimes which would support the crime of felony murder. Thus, drug felonies are considered inherently dangerous crimes. The use of firearms during drug transactions poses a particularly dangerous threat to human life. Drug deals can occur anywhere, anytime. Any citizen who happens to be nearby is in danger of being injured if firearms are used.

Senate Bill 26 recognizes the dangerous nature of drug crimes, especially as it relates to firearms. It criminalizes the possession, brandishing and discharge of firearms in concert with the commission of drug crimes. The original bill suggested increased penalties of 60 months, 84 months and 120 months, respectively, for involving firearms in these crimes. Those numbers have been pared to 12 months, 15 months and 24 months.

While I understand the financial issues surrounding this issue, I believe the use of a firearm in a drug transaction should result in consequences greater than those currently suggested. Certainly the discharge of a firearm in connection with a drug crime should receive a penalty greater than 24 months. While any increased penalty would be a positive step, I urge you to consider increasing the length of the penalties as currently amended.


Corrections and Juvenile Justice

Date: 3-16-09

Attachment # 5-1

Thank you for your consideration of my comments. I would be happy to stand for questions.

Respectfully Submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Thomas R. Stanton

House Corrections and Juvenile Justice Committee
March 16, 2009

Testimony of Kansas Association of Criminal Defense Lawyers
Opponent of Senate Bill 26

KACDL opposes **Senate Bill 26** because **it is a violation of the Sixth and Fourteenth Amendments to the United States Constitution, as well as Sections 5 and 10 of the Kansas Bill of Rights**. Furthermore, **it is unnecessary**, especially in light of **unknown potential costs**.

SB 26 provides for sentence enhancements for offenders who carry a firearm to commit a drug felony, or in furtherance of a drug felony, possess a firearm. The enhancement starts at 12 months, but increases for "brandishing" (15 months) and "discharging" (24 months). This period of months is in addition to the applicable guideline sentence.

As proposed, **this enhancement violates the U.S. and Kansas Constitutions and would result in immediate constitutional challenges**. (See, e.g. *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *State v. Gould*, 271 Kan. 394 (2001)). **This enhancement is also contrary to Kansas statutory law**. (See K.S.A. 21-4716(b): ". . . any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.") **This enhancement is unprecedented** in that nowhere else in the Kansas Sentencing Guidelines Act (KSGA, K.S.A. 21-4701 et. seq.) is a specific number of additional months over the guideline sentence proscribed for certain behavior. A provision similar to the one proposed in SB 26 is found in K.S.A. 8-1567(h), which provides that "any person convicted of [DUI] who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment." This enhancement was found to be a violation of *Apprendi*. (See *State v. Whillock*, 38 Kan.App.2d 431 (2007)).

Furthermore, **SB 26 is unnecessary**. The KSGA already includes a procedure for upward durational departures (see K.S.A. 21-4718(b)). In addition, if a firearm is brandished or discharged during a drug felony, that act presumably constitutes a separate count (ex.: attempted or completed aggravated assault, aggravated battery, aggravated robbery or discharge at an occupied dwelling/vehicle, all of which are person felonies) with its own presumptive prison sentence (see K.S.A. 21-4704(h): person felony committed with a firearm is presumptive prison).

Finally, there seems to be no concrete information about the cost of this bill. There is no estimate of how many offenders would be subject to this bill. Obviously **increasing sentences even by 1-2 years will have a price tag**, especially since all offenders would be presumptive prison. Thank you for your consideration.

Respectfully submitted,

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

Corrections and Juvenile Justice
Date: 3-16-09
Attachment # 6-1