Approved: May 22, 2009
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:30 a.m. on March 2, 2009, in Room 545-N of the Capitol.

All members were present except:
Senator David Haley- excused
Senator Jean Schodorf- excused

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Randy Hearrell, Kansas Judicial Council
Marcy Knight, Assistant City Attorney, Lenexa
Clancy Holeman, Riley Co Counselor on behalf of Riley County Board of Commissioners
Kathy Porter, Office of Judicial Administration
Stuart Little, on behalf of Keith Clark, Franklin County Community Corrections
Roger Werholtz, Secretary, Kansas Department of Corrections
Barry Wilkerson, Riley Co. Attorney and on behalf of Kansas County & District Attorneys Assn.

Others attending:
See attached list.

The Chairman opened the hearing on **SB 277 - Funding the recodification commission from judicial council funds; judicial performance commission not required to evaluate retired senior judges.**

Randy Hearrell appeared in support and reviewed the bill which contains two policy changes. The first pertains to funding the last year of the Criminal Code Recodification Commission. Due to reduced State revenues the final year of the recodification program funding was eliminated. The Council's rational to fund the study is that the recodification of the criminal code is consistent with the Council's mission and the study is nearly completed.

The second policy change pertains to the evaluation of senior judges. The Council states there are several reasons the evaluations are unnecessary including:

- the legislature's initial decision to require evaluations was based on a unique situation that no longer exists,
- the Chief Justice feels the Court is fully apprised of senior judges' qualifications,
- due to part-time work often there is insufficient numbers for an adequate survey,
- it is difficult to identify which cases are heard by each judge,
- elimination of the evaluation requirement save the Council approximately $20,000. (Attachment 1)

Senator Vratil spoke in favor stating give the current budget concerns funding the final year of the recodification program makes good sense. The Commission expects to complete their work by December 2009. Likewise, the temporary nature of judicial assignments of senior judges makes it very difficult to conduct an accurate and coherent review of their performance. Eliminating the requirement would enable the Council to realize a significant savings each year. (Attachment 2)

There being no further conferees, the hearing on **SB 277** was closed.

The Chairman opened the hearing on **SB 269 - Conduct and offenses giving rise to forfeiture; adding prostitution and related offenses.** Jason Thompson, staff revisor, reviewed the bill.

Marcy Knight testified in support stating enactment will provide law enforcement another tool to combat prostitution type crimes. (Attachment 3)

Minutes of the Senate Judiciary Committee at 9:30 a.m. on March 2, 2009, in Room 545-N of the Capitol.

There being no further conferees, the hearing on **SB 269** was closed.

The Chairman opened the hearing on **SB 270 - Individual district options to consolidate community corrections and court services.** Jason Thompson, staff revisor, reviewed the bill.

Clancy Holeman appeared in support stating counties should have the option of consolidation its existing community corrections program with the parallel existing state court services program. This will eliminate duplication of services, and clarify that community corrections staff are employees of the State and not the County. (Attachment 4)

Kathy Porter testified in opposition listing several concerns if field services were consolidated under the Judicial Branch including:

- it would violate the doctrine of separation of powers,
- a lack of sufficient administrative staff to support consolidation,
- under the current system there is a great deal of inconsistency in pay and significant salary issues would arise with consolidation, and
- the bill does not address funding for community correction officers should they become employees of the Judicial Branch. (Attachment 5)

Stuart Little presented opposition testimony on behalf of Keith Clark, 4th Judicial District Community Corrections. The bill does not account for juvenile programming which is present in every judicial district or address salary inconsistencies. Judicial districts already have the ability to consolidate at the local level on a voluntary basis without the necessity to transfer state funding and personnel. (Attachment 6)

Nancy Parrish spoke in opposition as currently written due to the issue of funding regarding operating costs and services. (Attachment 7)

Roger Werholtz provided neutral testimony stating in addition to concerns already raised pertaining to salaries and funding sources, if enacted the legislature would need to address policy initiatives such as SB 123 (treatment alternatives to incarceration for substance abuse offenders) and SB 14 (reductions in probation revocations). Similarly, all community corrections programs have been able to move quickly and consistently to a single risk assessment instrument and use a single data base integrated with the Department of Corrections. The bill is not clear as to the duties of community corrections officers under consolidation or the use of community correction funds for the equipment, operations and personnel expenses. (Attachment 8)

Written testimony in opposition was submitted by:

Kevin C. Murray, President, Kansas Association of Court Services Officers (Attachment 9)

There being no further conferees, the hearing on **SB 270** was closed.

The Chairman opened the hearing on **SB 272 - Incompetent to stand trial; commitment, release procedures.**

Barry Wilkerson appeared in support recounting an incident where a man found incompetent to stand trial was later released from a mental health facility and proceeded to commit a murder. This bill will provide court supervision whenever a person charged with a violent criminal and require a district judge to find the defendant competent to stand trial or does not pose a danger to himself or the public. (Attachment 10)

Clancy Holeman spoke in support stating currently the system is a revolving door offenders in this situation, **SB 272** will close the loophole. (Attachment 11)

The Chairman indicated the hearing on **SB 272** would continue at the next Committee meeting.

The next meeting is scheduled for March 3, 2009.

The meeting was adjourned at 10:29 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/2/09

NAME	REPRESENTING
Brend Koops	Hein Law Firm
Chris Mechler	OJA
Kevin Murray	KACDC
Mary Nearreel	Judicial Council
John House	SRS
Barry Wilkerson	KCDAA
Tom Bartee	KACDL
Shel. Sweeney	DCM&CC
Dan Clark	RCCC
Heather Jaax	RCCC
Leslie Huss	SRS
Tom STACY	Kansas Criminal Code Recod. Comm.
Marcy Knight	City of Lenexa
	KDOC
Tim Madden	KDOC
JEFF Conner	JJA
C Nancy Hoheman	Riley County

KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: **Senate Judiciary Committee**
FROM: **Kansas Judicial Council - Randy M. Hearrell**
DATE: **March 2, 2009**
RE: **2009 SB 277**

2009 Senate Bill 277 contains two policy questions which are dealt with individually in this testimony.

FIRST ISSUE - FUNDING RECODIFICATION COMMISSION

Policy Question. Should the Judicial Council's fee fund statutes be amended to authorize expenditures from those funds to pay for the third and final year of the Kansas Criminal Code Recodification Commission (K.S.A. 21-4801) in FY 2010? (Sections 1, 2 and 5 of SB 277).

Options for Committee. Authorize the funding by passing the bill or, by not passing the bill, make funding the Criminal Code Recodification Commission from Judicial Council funds not feasible.

Recommended Course of Action. The Judicial Council recommends passage of the bill. In FY 2008 and FY 2009 the Kansas Criminal Code Recodification Commission (KCCRC) worked on recodification of the Kansas Criminal Code. The project was intended to last three years and was expected to be funded by SGF money. The KCCRC received $150,000 in both FY 2008 and FY 2009. The KCCRC has been "housed" in the Judicial Council's budget and the Council has provided administrative services such as accounting, purchasing, and personnel for the KCCRC. The appropriations for the KCCRC have been administered by the Judicial Council, but expenditures are directed by the KCCRC.

Because of reduced State revenues, the Governor's budget recommendation for FY 2010 eliminated SGF funding for the final year of the recodification project. That Commission requested that the Judicial Council fund the Commission's work in FY 2010 by spending from the Council's three fee funds.

Senate Judiciary
3-2-09
Attachment 1

The Judicial Council agreed to undertake the third year funding of $87,000 for the KCCRC. The Council's rationale was that the recodification of the criminal code is consistent with the Council's mission to "improve the administration of justice" and that the project should continue because it is nearly completed and over $300,000 of SGF dollars have been invested in the project.

Fiscal Impact. The latest calculations indicate that funding the final year of the KCCRC at a cost of $87,000 will reduce the total ending balances in the Judicial Council's three fee funds to $95,137 at the end of FY 2010.

SECOND ISSUE - EVALUATION OF SENIOR JUDGES

Policy Question. Whether K.S.A. 20-3202 and K.S.A. 20-3205 should be amended to remove the requirement that the Commission on Judicial Performance (CJP) evaluate the performance of retired senior judges who are employed by the Supreme Court pursuant to K.S.A. 20-2622. (Sections 3 and 4 of SB 277.)

Options for Committee. Passage of SB 277 would relieve the CJP of the requirement that retired senior judges be evaluated. If the bill does not pass, the evaluations will be conducted this spring and in the future.

Recommended Course of Action. The Judicial Council and the Commission on Judicial Performance recommend that SB 277 be passed.

The Kansas Supreme Court has had a senior judges program since 1995. The Supreme Court enters into one-year contracts with retired judges who work 40% of the time for 25% pay. Current senior judges are:

Barry A. Bennington	St. John
J. Patrick Brazil	Topeka
John J. Bukaty, Jr.	Kansas City
Jack Burr	Goodland
Ronald D. Innes	Wichita
Fred S. Jackson	Topeka
David S. Knudson	Loveland, CO
Edward Larson	Topeka
Jack Lively	Coffeyville
William F. Lyle, Jr.	Hutchinson
Janice D. Russell	Olathe
Philip L. Sieve	Kansas City

As amended in 2008, K.S.A. 20-3202 and 20-3205 require the Commission on Judicial Performance to conduct judicial performance evaluations of retired senior judges. It is the opinion of the Council and Commission that these evaluations are unnecessary and difficult to conduct. By eliminating the requirement they be conducted, approximately $20,000 per year can be saved which

will partially offset the costs of funding the final year of the Kansas Criminal Code Recodification Commission and declines in Council fee funds relating to the economy. There are several reasons why the evaluation of senior judges is unnecessary (and difficult).

- The legislature's initial decision to require evaluations of senior judges was based on a unique situation that no longer exists. In 2007, a Shawnee County District Judge had made several controversial sentencing decisions and had expressed interest in serving as a senior judge after his retirement. The legislature wanted to ensure that this judge would be evaluated if he obtained a senior judge contract (which he did not).

- In conversations with the current Chief Justice, he has expressed the opinion that the Court is fully apprised of the senior judges' qualifications and performance and needs no additional information to make decisions regarding the offering or extension of contracts to them.

- Within a few years, any new senior judges will have been through the evaluation process before their retirement, and their evaluations will be based on one or more 4-year periods. Evaluations of current senior judges (who are on one-year contracts) would be based on one year's survey information.

- Because senior judges only work part-time (40%), there are simply not as many people to survey about their performance. There is doubt that these small sample surveys will be adequate to form the basis of a statistically valid report.

- Because the FullCourt case management system used by the judicial branch does not utilize unique judge identification numbers, the case numbers of the cases the senior judges hear are not available. To identify these cases, it will require discussions with clerks, judges and court administrators and a manual review of the court files.

- The slowing economy has had an effect on fee fund revenues to the Judicial Council. Based on the first eight months of FY 2009, fee fund revenue will decline approximately $38,000 this year. I believe that the slowing economy and potential of large docket fee increases to fund the courts will further diminish fee fund revenues in FY 2010. Elimination of the requirement that senior judges be evaluated will help the Council have an ending balance in FY 2010.

Fiscal Impact. It is estimated that the cost of evaluating the retired judges is approximately $20,000 per year.

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
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State of Kansas

Vice President
Kansas Senate

COMMITTEE ASSIGNMENTS
VICE CHAIR: EDUCATION
WAYS AND MEANS
MEMBER: JUDICIARY
ORGANIZATION, CALENDAR AND RULES
INTERSTATE COOPERATION
KANSAS CRIMINAL CODE RECODIFICATION COMMISSION

Testimony Presented to
Senate Judiciary Committee
By Senator John Vratil
March 2, 2009
Concerning Senate Bill 277

Good morning! Thank you for the opportunity to appear before the Senate Judiciary Committee in support of Senate Bill (SB) 277. Senate Bill 277 seeks to enable the Kansas Judicial Council to: 1. access moneys deposited in the Council's judicial performance fee fund to fund the final year of the Kansas Criminal Code Recodification Commission (KCCRC) and 2. discontinue judicial performance reviews of certain retired judges.

The KCCRC was created three years ago to continue work on the Kansas criminal code and make recommendations concerning possible modifications, amendments and additions. The Commission requires another year to complete its charge. Funding for the KCCRC was located in the Judicial Council's budget during fiscal year (FY) 2008 and FY 2009. Given the current budget challenges facing our state, the Governor suggested eliminating FY 2010 funding for the KCCRC. The Judicial Council has funds in its judicial performance fund that were not used during the current FY 2009; therefore, the Council suggests carrying those funds forward to fund the remaining year (FY 2009/2010) of the KCCRC. The mission of the KCCRC is consistent with the Judicial Council's mission to "improve the administration of justice;" therefore, enabling the Judicial Council to fund the KCCRC makes good sense.

The Judicial Council is charged with reviewing the performance of our state's judges. Under the original charge, the Council was asked to include all retired judges; however, the temporary nature of the assignment of certain retired judges makes it difficult to conduct an accurate and coherent review of such judges' performance. Senate Bill 277 would repeal the requirement that a "retirant serving as a judge under written agreement with the Kansas Supreme Court" be subject to the judicial performance review. These judges are under contract for one year at a time and are assigned as needed. Eliminating this requirement would enable the Council to realize a significant savings each year.

Please support Senate Bill 277. The bill supports funding of the final year of the KCCRC and ensures its work is completed and it enables the Judicial Council to conserve funds by not reviewing certain retired judges.

John Vratil

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Senate Judiciary
3-2-09
Attachment 2

Lenexa
KANSAS

Legal Department

TESTIMONY IN SUPPORT OF SENATE BILL NO. 269

To: The Honorable Tim Owens, Chairperson
Members of the Senate Judiciary Committee

From: Marcy Knight, Assistant City Attorney

Date: March 2, 2009

RE: Senate Bill 269 – Forfeitable Offenses

Thank you for the opportunity to appear before you today and to present testimony in support of Senate Bill No. 269.

This bill would allow cities and the State to pursue civil forfeiture of property recovered during investigations into prostitution and prostitution-related activities. The Kansas Standard Asset Seizure Forfeiture Act provides a means to transfer tools and resources used by offenders from their criminal enterprises to the public good. Consistent with current forfeiture law, any proceeds obtained from forfeiture under this proposal would be credited to either a special law enforcement trust fund or to a special prosecutor's trust fund.

Common tools and resources used in prostitution activities include computers, money, and cars. This bill would enable these types of tools to be immediately seized by law enforcement and held pending judicial forfeiture. Removing tools used to facilitate prostitution activities from the hands of the offenders will further assist law enforcement in combating these types of crimes in our communities.

For the above reasons, the City of Lenexa asks for your support of SB 269. Thank you for your consideration.

City of Lenexa / 12350 West 87th Street Parkway / Lenexa, Kansas 66215-2882
Telephone 913-477-7620 Legal Department / Fax 913-477-7639
http://www.ci.lenexa.ks.us

Senate Judiciary
3-2-09
Attachment 3

RILEY COUNTY

BOARD OF COMMISSIONERS

115 N. 4th Street, 1st Floor
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February 27, 2009

The Honorable Tim Owens, Chairman
Senate Committee on Judiciary
Statehouse, Room 545-N
Topeka, KS 66612

RE: Hearing on S.B. 270 - Optional County Consolidation of Community Corrections and Court Services Programs

Dear Mr. Chairman and Members of the Committee:

On behalf of the Riley County Commissioners, I urge this Committee to act favorably on S.B. 270. Passage of this bill is necessary in order to give every county commission the option of consolidating its existing community corrections program with the parallel existing state court services program. Community Corrections began as a means of helping the state avoid the expense of new prison construction.

The direct cost of community corrections programs (such as staff salaries and direct operating costs) is currently funded entirely by the state of Kansas, either through the Department of Corrections' or the Kansas Juvenile Justice Authority's (KJJA) budget. (Many counties, such as our own, provide their community corrections programs significant "soft cost" support, in the form of free office space, telephone and computer network support, and administrative assistance such as payroll management services. Other counties provide their community corrections programs direct support from the county general fund.)

In addition to serving as the primary funding source for all community corrections programs statewide, the Department of Corrections and KJJA establish the operational standards and statistical reporting requirements for every community corrections program. However, the Attorney General has generated an opinion stating community corrections staff are actually county (not state) employees. This leaves each county with legal responsibility for managing the job performance of employees whose every job duty is established and controlled by standards created by the Department of Corrections and KJJA.

The current statutory scheme leaves counties potentially liable for any negligent act committed by community corrections staff, while depriving those same counties of the ability to re-direct the daily work of that staff. For example, counties currently have no lawful authority to demand their community corrections staff spend less time generating statistical analyses and more time performing "face to face" contact supervising the criminal defendants in their charge. If the lack of such "face to face" supervision allows a "supervised" criminal defendant to commit a criminal act which injures or kills an innocent citizen, it will be the county, not the state of Kansas which faces tort liability. That is unfair to counties.

Originally, in 1988, the Riley County community corrections program provided intensive supervision for only first-time, non-violent offenders. Sex offenders were excluded form the program by statute. Today, Riley County's Community Corrections program is expected to provide supervision for all types of offenders, including those convicted of sex offenses and other violent crimes. County Corrections staff now spend a minimum of three hours a day on paperwork required by the Department of Corrections. We believe there are likely duplicative community corrections supervisory services already provided by the local court servic

program. For example, both programs perform home visits on probationers; both programs perform urinalysis tests on probationers; both programs perform employment verification activities upon probationers. It seems only common sense that significant economies might be realized for both this county and the state if a single, consolidated program provided all of the foregoing services to probationers.

Given the current economic environment, we believe the Department of Corrections and KJJA will be forced, in the coming two years, to reduce funding to community corrections programs. Past funding cuts to community corrections programs by the Department of Corrections and KJJA resulted in our program dramatically reducing weekday after hours contact with probationers, significantly reducing drug testing, the elimination of "life skill" classes, greatly reduced employment verification, and the elimination of electronic monitoring of probationers. Further cuts in state funding of community corrections through a reduction in the budgets of the Department of Corrections and KJJA may cripple our program's ability to carry out its responsibilities.

The net result of the current statutory scheme is every county is forced to accept a state-funded program over which the county has no supervisory control of staff and no ability to direct and control the program's daily operations. Yet the county bears the legal liability as the employer of that program's staff if such staff engages in negligent behavior when carrying out their state-directed job duties. S.B. 270 gives every county the ability, if it wishes, to eliminate its community corrections program by consolidating its functions and staff with the existing state court services program. If exercised, such a consolidation makes the former community corrections staff employees of the state of Kansas, the entity which already funds such staff's salaries and currently provides the standards by which their job duties are performed and measured. That is a fair result, because it places any potential legal liability on the party in charge of the daily work of those charged with carrying it out. That will likely result in a more economic use of existing state resources, because any probationer supervisory services currently duplicated between community corrections and court services can be identified and eliminated.

We believe giving all counties the option, not the mandate, to consolidate their community corrections and court services programs is perfectly in line with the Governor's broad mandate given her "Facilities Closure and Realignment Commission": to "examine all state operations to determine if savings can be realized by suspending, merging or streamlining programs."

Thank you for giving us the opportunity to speak on behalf of S.B. 270. We encourage you to pass it as presented.

Sincerely,

Alvan D. Johnson, Chairman
Board of Riley County Commissioners

cc: Riley County Commission:
Mike Kearns, Member
Karen McCulloh, Member

State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

Senate Judiciary Committee
Monday, March 2, 2009

Testimony in Opposition to SB 270

Kathy Porter

SB 270 would allow county commissions to pass a resolution creating the consolidated office of community corrections and court services within a judicial district. All counties within a judicial district would have to pass a resolution prior to January 31 and the office would be created on the January 1 following the adoption of the resolutions. If all counties in the judicial district do not pass a resolution to consolidate the offices, the existing separate offices would continue.

If the consolidation resolutions are passed in all counties within a judicial district, all community corrections officers supervising adults and juveniles would be appointed by the district courts. The Supreme Court would prescribe the qualifications required, and the compensation would be paid either in accordance with a compensation plan approved by the Supreme Court or as otherwise specifically provided by law.

Historically, discussions of the consolidation issue have included the suggestion that field services be consolidated under the Judicial Branch. The Kansas Supreme Court cannot support consolidation of field services under the Judicial Branch for several reasons. Among those reasons is a concern that consolidation of all field services under the Judicial Branch could violate the doctrine of separation of powers. Attorney General Opinion No. 91-161 (attached) concludes that "those powers conferred upon the secretary of corrections by the community corrections act are executive or administrative in nature and may not be transferred to or exercised by the judiciary." Absent an actual case or controversy coming before the Supreme Court and a resulting opinion, the Attorney General's opinion provides some authority on the issue. Consolidation of the parole and adult felony functions into the Department of Corrections or some newly created agency should be carefully considered as these functions are closely allied. However, it would be inappropriate to consolidate the community corrections function into the Judicial Branch.

A second concern is the Supreme Court's lack of sufficient administrative staff to support consolidation under the Judicial Branch. While current court services officers provide services to the district courts, current staffing levels provide only the most basic level of

supervision. Consolidation under the Judicial Branch would require the courts to assume responsibility for services that are not currently provided by the courts. Without an in-depth analysis of how the proposed system would operate and sufficient assurance of a corresponding increase in funding and staffing, it is likely that the effectiveness of all involved programs would be adversely impacted. We cannot support change that is not an improvement.

An additional concern about consolidation under the Judicial Branch is that, under the current system, there is a great deal of inconsistency in pay. In some cases, community corrections staff are paid more than court services officers. Moreover, there is an internal inconsistency in that pay for community corrections staff differs from county to county. Significant pay issues would arise if there is any thought to consolidating these workers into the state system.

The bill is silent regarding the funding for community corrections officers who become employees of the Court. K.S.A. 75-5291 currently provides that "[t]he secretary of corrections may make grants to counties for the development, implementation, operation and improvement of community correctional services that address the criminogenic needs of felony offenders including, but not limited to, adult intensive supervision, substance abuse and mental health services, employment and residential services, and facilities for the detention or confinement, care or treatment of offenders as provided in this section. . . ." No provision in SB 270 addresses the issue of funding, provides the Judicial Branch any authority in the grant process, or provides that funding for the districts opting to consolidate would, at a minimum, remain stable. Community corrections grants pay for operating costs and services, in addition to salaries. It is unclear what would be expected of the Judicial Branch in the absence of any provisions relating to fiscal matters in the bill.

Thank you for the opportunity to oppose SB 270.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

December 19, 1991

ATTORNEY GENERAL OPINION NO. 91-161

Ben Coates
Executive Director
Kansas Sentencing Commission
Jayhawk Tower
700 Jackson Street, Suite 501
Topeka, Kansas 66603-3731

Re: Constitution of the State of Kansas--Executive--Executive Power of Governor; Community Correctional Services; Parole; Probation

Constitution of the State of Kansas--Judicial--Judicial Power; Community Correctional Services; Parole; Probation

Synopsis: The distribution of powers by a state constitution among the governmental departments is a question for the state itself. Under the Kansas constitution, the functions of parole and probation may be conferred upon either the executive or judicial branch of government. Those powers conferred upon the secretary of corrections by the community corrections act are executive or administrative in nature and may not be transferred to or exercised by the judiciary. Cited herein: K.S.A. 21-4601; K.S.A. 1990 Supp. 21-4603, as amended by L. 1991, ch. 89, § 4; K.S.A. 21-4611; 22-3707; 75-5290; 75-5291; 75-5292; 75-5294; 75-5296; 75-52,103; 75-52,105; 75-52,110; K.S.A. 1990 Supp. 75-52,111; 75-52,114; Kan. Const., Art. 1, §§ 1, 7; Kan. Const., Art. 3, § 1.

* * *

Dear Mr. Coates:

As executive director of the Kansas sentencing commission, you request our opinion regarding: (1) whether the constitutions of the United States and the state of Kansas would permit placing the function of probation in the executive branch of government for the state of Kansas; and (2) whether the constitutions would permit the placement in one branch of state government -- either executive or judicial -- the functions of probation, community corrections and parole.

Neither the United States constitution nor the Kansas constitution expressly provides for separation of powers. State ex rel. Stephan v. Kansas House of Representatives, 236 Kan. 45, 59 (1984). The governments, both state and federal, are divided into three departments, each of which is given the powers and functions appropriate to it. Id. Because of the establishment of the three branches of government, the courts have assumed the applicability of the doctrine of separation of powers among the three branches of government -- legislative, executive and judicial. Leek v. Theis, 217 Kan. 784, 804 (1975); 16 Am.Jur.2d Constitutional Law § 294 (1979). The very structure of the three-branch system of government gives rise to the doctrine. State ex rel. Stephan, 236 Kan. at 59. The separation of powers doctrine is designed to avoid a dangerous concentration of power and to allow respective powers to be assigned to the department best fitted to exercise them. Leek, 217 Kan. at 805.

How power is to be distributed by a state constitution among its governmental departments is commonly, if not always, a question for the state itself. Van Sickle v. Shanahan, 212 Kan. 426, 450 (1973).

> "'[T]he authority [of the guarantee clause of the United States Constitution] extends no further than a guaranty [sic] of a republican form of government, which supposes a preexisting government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the states, they are guaranteed by the federal constitution. Whenever the states may choose to submit other republican forms, they have a right to do so, and to claim the federal guarantee for the latter. The

> only restriction imposed upon them is, that they shall not exchange republican for anti-republican constitutions; . . .' (Federalist No. 43.)" Van Sickle, 212 Kan. at 450. (Emphasis in original.)

It is only where the whole power of one department is exercised by the same hands which possess the whole power of another department that the fundamental principles of a free constitution are subverted. Van Sickle, 212 Kan. at 451. Whether the legislative, executive and judicial powers of a state are to be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another branch of government, is for the determination of the state. Parcell v. State of Kansas, 468 F.Supp. 1274 (D. Kan. 1979).

The several departments of government are not kept wholly separate and unmixed by any of the state constitutions. 16 Am.Jur.2d Constitutional Law § 301. While the Kansas constitution establishes three branches of government, it was never intended that an entire and complete separation be maintained. See In re Sims, 54 Kan. 1 (1894). There may also be situations where a particular power cannot be affirmed to be either executive, legislative, or judicial, and if such power is not by the constitution unequivocally entrusted to either the executive or judicial departments, the mode of its exercise and the agency must necessarily be determined by the legislature. 16 Am.Jur.2d Constitutional Law § 301. All governmental sovereign power is vested in the legislature, except such as is granted to the other departments of the government, or expressly withheld from the legislature by constitutional restrictions. Leek, 217 Kan. at 797.

The constitution is the common source of the power and authority of every court, and all questions concerning jurisdiction of a court must be determined by that instrument, with the exception of certain inherent powers which of right belong to all courts. 16 Am.Jur.2d Constitutional Law § 707. Section 1 of article 3 of the Kansas constitution states:

> "The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and

> all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state."

Judicial power is not capable of a precise definition sufficient for all conceivable cases. 16 Am.Jur.2d Constitutional Law § 307. It has been held to be the power to hear and determine a cause and the rights of the parties to a controversy, and to render a binding judgment or decree based on present or past facts under existing law. State v. Mitchell, 234 Kan. 185, 194 (1983). The constitution, by implication, confers upon the judiciary every particular power necessary for the exercise or performance of the judicial power. Id. Such inherent powers can neither be taken away nor abridged by the legislature. 20 Am.Jur.2d Courts § 78 (1965). The power a court possesses only by virtue of a statutory grant, however, is not an inherent power. Id.

The power to grant probation is dependent upon statutory provisions. State v. Dubish, 236 Kan. 848, 851 (1985). See K.S.A. 21-4601 et seq. Probation is an act of grace and the power to grant that act is provided by the legislature to the court. Dubish, 236 Kan. at 851. See K.S.A. 1990 Supp. 21-4603, as amended by L. 1991, ch. 89, § 4. Probation is separate and distinct from sentence. State v. Moon, 15 Kan.App.2d 4, 9 (1990); Dubish, 236 Kan. at 851. The power to grant probation, therefore, is not an exclusive function of the judiciary, and the exercise of the power is not inherently a judicial function. Within constitutional limits the legislature, as representative of the people, can vest the power in its discretion. Leek, 217 Kan. at 802. Due to statutory provision, the power to grant probation is a judicial function. However, because the power to grant probation is by constitution neither an exclusive function of the judiciary nor inherently a judicial function, the legislature may transfer the authority to grant probation from the judiciary to the executive branch of government.

In determining whether the functions of probation, community corrections and parole may be exercised by one branch of government, it must be determined whether any of the functions are the exclusive function of a particular branch of government.

As noted above, probation is not an exclusive function of the judiciary. The legislature possesses the authority to confer

the power to grant probation upon either the executive or judicial branch of government.

Section 7 of article 1 of the Kansas constitution states "[t]he pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law." The pardoning power vested in the governor includes the power to parole imprisoned convicts, or to commute their sentences. Lynn v. Schneck, 139 Kan. 138, 140 (1934). However, the matter of parole following the imposition of sentence is purely a legislative function. 59 Am.Jur.2d Pardon and Parole § 78 (1987). Any power to grant parole is dependent upon statute. Id. The authority to grant parole presently exists in the Kansas parole board. See K.S.A. 22-3707 et seq. The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail. K.S.A. 21-4611. That authority, though, may be conferred by the legislature on either the executive or the judiciary.

The community corrections act is set forth at K.S.A. 75-5290 et seq. Pursuant to the act, each county in the state must establish a corrections advisory board, enter into an agreement with a group of cooperating counties to establish a regional corrections advisory board, or contract for correctional services with a county or group of cooperating counties. K.S.A. 75-52,110. Each corrections advisory board is obligated to adopt a comprehensive plan for the development, implementation, operation and improvement of correctional services described in K.S.A. 75-5291. Id. (Such services include restitution programs, victims services programs, preventive or diversionary correctional programs, and community corrections centers and facilities. K.S.A. 75-5291.) The comprehensive plans are received by the board of county commissioners and then submitted to the secretary of corrections. K.S.A. 75-5292. The secretary of corrections is authorized to perform a number of duties under the act including: adopt rules and regulations necessary for the implementation and administration of the act (K.S.A. 75-5294); provide consultation and technical assistance to corrections advisory boards (K.S.A. 75-5294); approve comprehensive plans (K.S.A. 75-5296); establish operating standards of the correctional services (K.S.A. 75-5296); examine books, records, facilities and programs for purposes of recommending changes and improvements (K.S.A. 75-5296); suspend all or a portion of grants awarded to a county or group of cooperating counties when it is determined that the recipient is not in substantial compliance with the minimum operating standards

(K.S.A. 75-5296); audit and determine the amount of the expenditures for correctional services of each county (K.S.A. 75-52,103); and determine the amount of grant to be awarded to qualified counties or group of cooperating counties (K.S.A. 75-52,105 and K.S.A. 1990 Supp. 75-52,111). Decisions of the secretary of corrections may be appealed to the state community corrections board. See K.S.A. 75-52,114. The powers conferred upon the secretary of corrections by the community corrections act are those powers generally exercised by an administrative agency. Administrative agencies are part of the executive branch of government. 16 Am.Jur.2d Constitutional Law § 310; 20 Am.Jur.2d Courts § 2.

In determining whether those powers conferred upon the secretary of corrections under the community corrections act may be exercised by the judiciary, it must be remembered that even the primary function of any of the three departments may be exercised by any other governmental department or agency so long as (1) the exercise thereof is incidental or subsidiary to a function or power otherwise properly exercised by such department or agency, and (2) the department to which the function so exercised is primary retains some sort of ultimate control over its exercise. 16 Am.Jur.2d Constitutional Law § 299. The court should consider: (a) the essential nature of the power being exercised; (b) the degree of control by one department over another; (c) the objective sought to be attained by the legislature; and (d) the practical result of the blending of powers as shown by actual experience over a period of time. State ex rel. Stephan, 236 Kan. at 60.

As stated above, the powers conferred upon the secretary of corrections by the community corrections act are those powers generally exercised by an administrative agency. It has consistently been held in this state that the power to adopt rules and regulations is essentially executive or administrative in nature. State ex rel. Stephan, 236 Kan. at 60.

Exercise by the judiciary of those powers conferred upon the secretary of corrections would result in extensive control by the judiciary over community correctional services. Control by the executive would be limited to those functions performed by the state community corrections board. The board is authorized to hear appeals on decisions regarding: grants for expenses of a corrections advisory board which does not have an approved comprehensive plan; the determination of grant amounts for community correctional services programs; and the organization of new community correctional service programs

and their plans for services. K.S.A. 75-52,114. The board also has authority to review minimum operating standards and performance evaluation standards established for community correctional services programs. Id. Three of the five members comprising the state community corrections board are appointed by the governor; the remaining members are appointed by the chief justice of the Kansas supreme court. Id. If the judiciary was authorized to exercise those powers presently conferred upon the secretary of corrections, a reversal of the roles generally understood to be executive and judicial would result. While the degree of control over community correction services programs by the judiciary would not be absolute and total, the degree of control would be such that the executive would effectively be precluded from exercising powers inherently conferred upon the executive by section 3 of article 1 of the Kansas constitution. Because community correctional services are not reasonably incidental to performance of judicial functions, the judiciary would not be entitled to perform the functions presently conferred on the secretary of corrections. See 16 Am.Jur.2d Constitutional Law § 313. The legislature may have a legitimate objective for conferring those powers presently exercised by the secretary of corrections upon the judiciary. However, such objective will not override the usurpation of executive power by the judiciary. The power conferred upon the secretary of corrections by the community corrections act may not be transferred to and exercised by the judiciary.

In review, the distribution of powers by a state constitution among the governmental departments is a question for the state itself. Under the Kansas constitution, the functions of parole and probation may be conferred upon either the executive or judicial branch of government. Those powers conferred upon the secretary of corrections by the community corrections act are executive or administrative in nature and, therefore, may not be transferred to or exercised by the judiciary. As all three functions - probation, community corrections and parole -- may legitimately be performed by the executive branch of government, concentration of those functions in the executive does not result in an unconstitutional usurpation of power.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Richard D. Smith
Assistant Attorney General

5-9

Testimony before the Senate Judiciary Committee
SB 270

March 2, 2009

On behalf of the members of the Kansas Community Corrections Association (KCCA) I appreciate this opportunity to address your committee today concerning Senate Bill 270 and the potential consolidation of Community Corrections and Court Services under the direction of Court Services.

The concept of consolidation has been discussed by the KCCA membership on several occasions. As detailed in our Legislative Platform we support the voluntary decision to consolidate at the local level; however, we do not fully support consolidation as outlined in SB 270. In an effort to summarize our opinions and the potential impact of SB 270 I would respectfully recommend that the committee considers the following discussion points.

While SB 270 provides for the transfer of Adult Intensive Supervision, which is programming supported and funded by the Kansas Department of Corrections (KDOC), it neglects to account for the juvenile programming, which is present in each judicial district throughout the state. These Juvenile Justice Authority (JJA) funded programs include services such as Juvenile Intensive Supervised Probation, Case Management, Juvenile Intake and Assessment, and Prevention / Incentive programming. The services generated by these programs as well as the fiscal support from JJA were not referenced in SB 270.

In an attempt to eliminate any fiscal impact on any judicial district that chooses to consolidate, the current bill outlines a process for transferring a district's KDOC funds to the State to cover salary and benefit requirements, with any unexpended dollars being used to cover the operating costs normally associated with Community Corrections. What the bill doesn't do is take into consideration the discrepancy between the rate of pay for Court Services Officers and Community Corrections employees. The difference in salaries and benefits alone would consume a large majority of monies targeted for operating costs, thus placing an increased burden on the individual counties within the judicial district.

Over the last year and a half Community Corrections, in collaboration with KDOC and JJA, has made significant progress in the development and implementation of evidenced based practices at the local level. Both KDOC and JJA have pursued efforts to assist judicial districts with formalizing comprehensive risk reduction activities that will positively impact the lives of probationers. This has proven to be a long-term, intensive endeavor. A transfer of staff and services as described in SB 270 could actually impede the progress that has been made at the local level and through the assistance of KDOC and JJA.

Judicial districts already have the ability to consolidate at the local level on a voluntary basis without the necessity to transfer state funding and personnel. Districts throughout the state currently share office space, duties, responsibilities, staff, and resources in an effort to enhance the services being provided to the populations they serve.

Thank you for affording me the time to present these comments to you this morning.
Keith Clark, 4th Judicial District Community Corrections

KANSAS DISTRICT COURT

Chambers of
NANCY E. PARRISH
Chief Judge

Shawnee County Courthouse
Division Fourteen
Topeka, Kansas 66603-3922
(785) 233-8200 Ext. 4067
Fax (785) 291-4917

Officers:
NORMA DUNNAWAY
Administrative Assistant
APRIL SHEPARD
Official Court Reporter

Testimony before the Senate Judiciary Committee on S. B. 270
March 2, 2009

Mr. Chairman and Members of the Senate Judiciary:

Thank you for the opportunity to present testimony on Senate Bill 270.

I am appearing on behalf of the Executive Committee of the Kansas District Judges Association in opposition to Senate Bill 270 in its current form. The greatest concern expressed by judges across the state is the issue of funding. S.B. 270 does not appear to specifically address the issue of funding. Under section 3c the bill provides that the compensation of community correctional service officers would be paid by the state but the bill is silent as to the source of funding for the other costs such as operating costs and services.

Respectfully submitted,

Nancy Parrish, Chief Judge
Third Judicial District

Senate Judiciary
3-2-09
Attachment 7

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 270
to
The Senate Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 2, 2009

The Department of Corrections appreciates the opportunity to identify policy issues for the Committee's consideration during its deliberation on SB 270.

The policy questions the department suggests the Committee consider in its deliberation are:

- The goals to be achieved by community supervision.
- The best funding and organizational structure to monitor and achieve the desired goals.

Under the current organizational structure, community corrections programs have been able to successfully and quickly implement such policy initiatives as SB 123 (treatment alternatives to incarceration for certain substance abuse offenders) and SB 14 (reductions in probation revocations). Similarly, all community corrections programs have been able to move quickly and consistently to a single risk assessment instrument (LSI-R) and use a single data base integrated with the Department of Corrections. While there are 30 separate programs, they respond to overall policy direction from a single entity which is in turn responsive and accountable to the legislature.

The second issue raised by SB 270 is the source and administration of the funding for a combined community corrections and court services operation for those jurisdictions exercising the option provided by SB 270.

The department does not believe that SB 270 is clear in the funding of consolidated offices. New Section 1 (f) provides that the provisions of the Community Corrections Act concerning community correctional services officers shall be applicable to the consolidated office. The Community Corrections Act sets out the funding for community corrections including the funding for officer salaries. Does this mean that Community Corrections Act funds may be used for salaries of Community Corrections Officers but not for other community corrections

operations in a consolidated county? In contrast, Section 2 amends K.S.A. 20-345 pertaining to the hiring and salary appropriations for court service officers to include community corrections officers. Finally, SB 270 in Section 3 provides that the compensation for community correctional services offices shall be paid by the state either in accordance with a compensation plan adopted by the supreme court or as may be otherwise specifically provided by law. Does the reference to as "otherwise provided by law" refer to the Community Corrections Act? In sum, the department does not believe that SB 270 is clear in the funding source for the community corrections operations in a county electing to consolidate its court service and community corrections programs.

The funding for the salaries and benefits of court services officers is currently administered by the Judicial Branch through the Office of Judicial Administration while the office space, training and equipment for court service officers is paid for by the county. In contrast, the funding for community corrections is administered through the Community Corrections Act by the Department of Corrections. The funds received by Community Corrections programs are for the personnel and operations of community corrections entities (K.S.A. 75-52,111), and enhanced recidivism reduction grants (2007 SB 14, K.S.A. 75-52,112). Community Correction Act funds are to be used only for the supervision of offenders sentenced to community corrections as provided by the Community Corrections Act. This excludes Community Corrections Act funding for juveniles and offenders supervised by court service officers.

Community corrections officers and court services officers perform different functions which is reflected in the different funding sources and the administrative supervision of those funds. Court service officers prepare background information for the court prior to sentencing, supervise persons on release prior to trial, and supervise offenders on probation for misdemeanors and lower level felonies. Community corrections officers supervise felony offenders convicted of higher level felonies or who are at a higher risk of reoffending.

Community corrections serves as a gate keeper and an opportunity for aggressive intervention to divert offenders from incarceration in a state correctional facility. Generally, persons on probation supervised initially by court services officers may not have their probation supervision revoked and be sent to prison without having had their probation supervision transferred to ~~first~~ community corrections supervision. Additionally, the targeted population to be supervised by community corrections has a higher risk for recidivism and therefore requires more aggressive intervention to address reducing the risk posed by those offenders. The targeted population supervised by community corrections officers is reflected by the funding and administration of those funds through the Community Corrections Act and SB 14.

The issue raised by SB 270 is that the department does not believe that SB 270 is clear and is possibly inconsistent in the dedication of community corrections funds to a targeted offender population. SB 270 is not clear as to whether the duties of community corrections officers will remain limited to the offenders designated for community corrections supervision by K.S.A. 75-5291 or whether those persons could also be engaged in the supervision of offenders that do not fall under the Community Corrections Act. SB 270 also raises questions regarding the use of community corrections funds for the equipment, operational and personnel expenses related to

court service operations and the ability of the state to promote community corrections risk reduction through funding incentives.

The department does not believe that SB 270 adequately addresses the funding issues that would arise due to a consolidation of community corrections and court services.

KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE
KEVIN C. MURRAY, PRESIDENT
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS (KACSO)
ON SB 270 – CONSOLIDATION OF COMMUNITY CORRECTIONS AND COURT SERVICES IN CERTAIN JUDICIAL DISTRICTS
MARCH 2, 2009

Chairman Owens and Members of the committee:

Briefly, court services officers (CSOs) work within all 31 judicial districts and provide valuable services to the district courts and to the citizens of the State. CSOs conduct presentence investigation reports; provide supervision to adult and juvenile offenders for felony and misdemeanor convictions, often times including bond and diversion supervision. In addition to those statutory duties, CSOs conduct child custody investigations; provide mediation services, Child in Need of Care (CINC) services, and other duties as directed by the court.

Regarding SB 270, at the present time and in its current form, KACSO is neutral to its passage. One thing that is lacking in the bill is the mechanics in which the funding of community corrections programs would continue. KACSO will defer to the Office of Judicial Administration's testimony regarding their concerns on this issue.

Historically, consolidation has been studied by the Legislature and consolidation has been addressed statutorily. Section 300 of Chapter 239 of the 1992 Session Laws included, in relevant part, the following:

> On or before January 1, 1994, probation, parole and community corrections services shall be consolidated after review of the recommendations of a task force to be appointed by the Kansas sentencing commission."

In 1993, Senator Moran requested an Attorney General Opinion of Section 300 and opinion no. 93-72 opines that absent legislation, the "consolidation" provision cited above is a nullity.

At face value and barring further study, should consolidation be considered in the future, KACSO would be inclined to favor one which mirrors, or is similar to, the model used within the federal system. Therein, all pre-trial and supervision services (to include pre and post incarceration) are consolidated under the Federal Judiciary in the U.S. Probation and Pretrial Services. However, a distinguishing characteristic between services provided by court services officers in Kansas and officers within U.S. Probation and Pretrial Services is that court services officers provide a myriad of services to the courts and the citizens of the State which are outside of the criminal divisions in district courts (i.e. CINC, child custody, mediation, etc.). SB 270 incorporates two of the three entities and given the current structure within Kansas, perhaps could be practical, however as noted above, deference will be given to the Office of Judicial Administration's testimony regarding the mechanics and practicality.

Thank you for allowing me to present this testimony and for your service to the citizens of Kansas.

Kansas County & District Attorneys Association
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TESTIMONY IN SUPPORT OF SB 272

Senate Judiciary Committee
March 2, 2009

Barry Wilkerson
Riley County Attorney & KCDAA Board Member

Chairman Owens and Members of the Committee,

Thank you for the opportunity to present testimony in support of SB 272. As the Riley County Attorney, I am urging the Senate to adopt changes to the Competency Statutes as it relates to persons facing criminal charges. Unfortunately a tragic lesson was learned about current provisions that allow for persons capable of dangerous conduct to be released back upon our streets

History:

Howard Barrett was charged with Attempted First Degree Murder in Geary County, Kansas in 2001. After evaluations and treatments failed to make Howard Barrett competent to stand trial, SRS was ordered under K.S.A. 22-3303 to initiate involuntary commitment proceedings and Howard Barrett was transferred to Osawatomie State Hospital. Following an extended stay it was determined that Howard Barrett remained incompetent to stand trial and that he would not be competent to stand trial in the foreseeable future. Howard Barrett was released from the Osawatomie State Hospital to the Congregate House in Manhattan in the summer of 2003. Under outpatient treatment orders Howard Barrett was moved and living in an apartment building in Leonardville, Kansas. On February 14th, 2008 he stabbed Tom James numerous times killing Tom James. Howard Barrett is currently charged with Second Degree Murder; however he remains incompetent to stand trial and has once again been committed to a State Hospital under the Involuntary Commitment proceedings. Under the current law, Howard Barrett could once again be released back into the community without having ever stood trial for the crimes he has committed and he could kill once again and we could continually repeat the process under the current statutory treatment of persons declared or found incompetent to stand trial. The determination when to turn Howard Barrett loose will be made by psychiatrists at Osawatomie State Hospital.

There are public safety issues and procedural issues with the current statutes, K.S.A 22-3303 and K.S.A. 22-3305. Specifically, K.S.A. 22-3303(1) if a defendant is within 90 days of the initial commitment determined to not have any likelihood of obtaining competency then the district court orders the secretary of social and rehabilitation services to begin involuntary commitment proceedings pursuant to article 29 of chapter 59. Likewise if the defendant is found within that 90 days to have the probability of obtaining competency then he will continue to be held and treated, however if after 6 months he has not obtained competency then pursuant to K.S.A 22-3303(2) the court is required to order the secretary of social and rehabilitation services to begin involuntary commitment proceedings pursuant to article 29 of chapter 59.

The operational aspect of this statute now removes the District Court from significant oversight of the care and treatment and eventual release of a defendant back into the community. The criminal case is suspended and when we look at K.S.A. 22-3305 we understand the operation and the dangerous situations that led to the murder of Tom James.

K.S.A. 22-3305(2) provides in that when the defendant is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to the care and treatment act for the mentally ill person, the defendant shall remain confined until the head of the treatment facility promptly notifies the court and county and district attorney that the defendant is being discharged. The county or district attorney has 10 days to request a hearing to determine competency, if no such hearing is requested then the defendant is discharged and the court orders the county or district attorney to dismiss the case. If a hearing is held and the court finds the defendant is incompetent, the court would have to order dismissal of the charges. This interpretation of the operation of the statute I believe is supported by the concluding language in K.S.A 22-3305 which reads in part: *the court shall order the defendant discharged from commitment and shall dismiss without prejudice the charges against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency.*

It is the position of the Kansas County and District Attorneys Association and I that a person charged with a homicide, attempted homicide, and/or other crimes of violence should not be released from an inpatient mental health treatment facility until the person has achieved competency. When I have spoken to people about this situation involving the murder of Tom James, it is perplexing that a person could be incompetent to stand trial for attempted murder yet turned loose back into the community. Without statutory changes this could happen again.

Under K.S.A. 22-3305, Howard Barrett can once again be released back into the community, the District Court would have very limited jurisdiction, only by finding the defendant competent could the court have jurisdiction over the defendant's placement in a treatment facility.

The KCDAA and I, however, believe the language "mental disease or defect" should be stricken from K.S.A. 22-3305(3), (4) and (5). The critical issue is competence or incompetence as opposed to the underlying cause or disorder.

Whether or not a defendant suffers from the same disease or defect is addressed under K.S.A. 22-3219, K.S.A 22-3220 and K.S.A. 22-3221. Including "mental disease or defect" language under the competency provisions would or could invade the province of the jury in making a determination they may be asked to consider in light of K.S.A 22-3221. Furthermore it is possible for a person to suffer from a mental disease or defect and be competent to stand trial.

The terms competency and mental disease or defect should not be used simultaneously as they are separate legal issues, separate mental health issues and commingling the terms in the statutes governing competency further cloud the issues sought to be resolved by the suggested changes to K.S.A 22-3303 and 22-3305.

One other change we recommend is the provision in K.S.A. 22-3303 which suggests the hearings be held at the state institution. The District Judge in the jurisdiction where the criminal case originated should hear the case in his jurisdiction. We therefore recommend deleting the language "at the institution" in the District Court.

We respectfully urge your support and favorable recommendation of SB 272 with the suggested amendments described in this testimony. I would be happy to stand for questions.

RILEY COUNTY

BOARD OF COMMISSIONERS

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Manhattan, Kansas 66502
Phone: 785-565-6844
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Email: adillon@rileycountyks.gov

February 26, 2009

The Honorable Tim Owens, Chairman
Senate Committee on Judiciary
Statehouse, Room 545-N
Topeka, KS 66612

RE: Hearing on S.B. 272

Dear Mr. Chairman and Members of the Committee:

On behalf of the Board of Riley County Commissioners, I would like to speak in support of S.B. 272. The Riley County Attorney brought the need for this statute to our attention, and we agree with him.

Currently, criminal defendants charged with felonies can be found by the courts to be incompetent to stand trial, but then may be too quickly released from the mental health facility where they were evaluated. This contributes to a "vicious cycle," in some instances. Some individuals who are seriously mentally ill in a manner which makes them dangerous to the public may never be judged competent to stand trial. But upon their release from the hospital setting, some portions of those individuals again run afoul of the criminal justice system and are jailed once again. Naturally, some of those individuals will later be found again incompetent to stand trial and will be released from the mental health facility yet again.

S.B. 272 provides court supervision whenever a person charged with a violent felony has been found incompetent to stand trial. Under its terms, no such defendant will be released from the mental health setting until a district court judge finds the defendant is either competent to stand trial or does not pose a danger to himself or the public.

We believe S.B. 272 is a critical piece of the puzzle in the criminal justice system and closes an existing loophole which can present a grave danger to the public.

Thank you for allowing us to speak in support of this important bill.

Sincerely,

Alvan D. Johnson, Chairman
Board of Riley County Commissioners

cc: Riley County Commission:
Mike Kearns, Member
Karen McCulloh, Member

Senate Judiciary
3-2-09
Attachment 11