



Testimony on SB 7  
to  
The Senate Judiciary Committee

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The Department of Corrections appreciates the opportunity to bring to the committee's attention three areas of SB 7 which it believes the committee may wish to consider. While SB 7 would entail a significant increase in the KDOC prison population irrespective of whether the areas identified by the department are modified or not, the department believes the areas identified by the department would enhance the implementation of SB 7 resulting in a more streamline operation and a more cost effective achievement of public safety.

The areas in which the department believes the committee may wish to consider are: supervision for offenders released from jails, information regarding the time offenders spend incarcerated relative to tolling the suspended driver's license and the extension of the postrelease supervision obligation due to prison good time or early release.

### Release Supervision

SB 7 would modify current law by providing for KDOC prison incarceration for 4<sup>th</sup> and subsequent DUI felons, 3<sup>rd</sup> and subsequent refusals to submit to a blood/alcohol test, and a 3<sup>rd</sup> and subsequent conviction for a commercial license DUI. Those offenders upon release from KDOC imprisonment would be obligated to be under KDOC postrelease supervision. Additionally, SB 7 provides for the same KDOC postrelease supervision for those offenders who were imprisoned in a local jail. The category of offenders which the department would like to bring to the committee's attention regarding their release supervision is those offenders who are imprisoned in a jail for their term of imprisonment but who pursuant to SB 7, would be supervised by KDOC for a period of postrelease supervision.

The department believes that for those offenders whose incarceration is in a local jail, a more efficient and effective method of achieving a measured response to public safety would be for those offenders to be supervised upon their release from the jail by court services or community corrections rather than state parole officers. The rationale for having release supervision for locally incarcerated offenders conducted by court services or community corrections entities is:

- Public safety is best achieved by addressing both the imposition of adverse consequences to suppress criminal behavior as well as the retention or reinforcement of the offender's positive social behavior.

SB 7, as well as current law, recognizes the benefit of seeking to impose a penalty for criminal behavior while attempting to retain the positive social attributes of the offender relative to aspects of his or her incarceration. This is achieved by both SB 7 and current law through a mandatory minimum period of local incarceration before the offender is eligible for work release. The length of the mandatory period of consecutive local imprisonment before the offender is eligible for work release is sufficiently long to serve as a penalty but is short enough so that the offender's current housing and employment is not automatically lost. However, the measured response attributable to local incarceration would be lost with the provisions of SB 7 which provide for local imprisonment but state (KDOC) release supervision.

Pursuant to SB 7, while 3<sup>rd</sup> time DUI offenses, either as a misdemeanor (due to the offender not having a prior DUI offense within 10 years) or as a felony (due to the offender having a prior DUI within the proceeding 10 years) will serve their term of imprisonment in the local jail, their release supervision is to be conducted by KDOC. SB 7's use of KDOC postrelease supervision for offenders who were incarcerated locally with work release opportunities would be inconsistent with the goal of retaining any positive social behavior of the offender and not serve the public safety.

Since these offenders would have the meaningful opportunity to remain employed during imprisonment, release supervision by KDOC would not be the most effective or efficient method of release supervision.

- Local courts can hold revocation hearings more quickly than the Kansas Parole Board. Additionally, the Department of Corrections must provide the offender with a preliminary revocation hearing pending a final hearing before the KPBB.
- Incarceration for supervision violations would be locally rather than at a state correctional facility thus allowing the offender to engage in work release with his or her current employer.
- Current law allows for jail incarceration for up to sixty days per probation violation. In contrast, incarceration for postrelease supervision violations is for 180 days with up to 90 days of good time.
- Inappropriate incarceration with state correctional facilities may increase an inmate's risk to reoffend.
- Some of the DUI 3<sup>rd</sup> time offenses under SB 7 are classified as misdemeanors yet would be subject to KDOC postrelease supervision as well as incarceration in KDOC facilities for supervision violations.

SB 7 is recommended to be amended to provide for the release supervision of those offender's who were incarcerated in local jails to be conducted by court services or community corrections as determined by the court based upon the offender's risks and needs. The recommended amendments would be to page 57 of the bill.

### **Information Regarding Time Spent Incarcerated**

SB 7 provides for the suspension of the offender's driving license. Additionally, SB 7 provides that the time that the offender is incarcerated with the department for a drug or alcohol related crime does not count towards service of the period of suspension. SB 7 provides at page 37 section 16 (g)(2) that the Secretary of Corrections is to report to the division of vehicles the dates of incarceration of all persons incarcerated for an alcohol or drug-related offense. The department believes the tolling of the period of

suspension of the driver's license while the offender is incarcerated in a state prison for certain offenses would not significantly enhance public safety and that tracking of the tolling period would entail a significant record keeping and processing burden to both the department and the Division of Motor Vehicles. In other words, if a person's driver's license is suspended for a year, the period of suspension would continually run irrespective of whether the former driver was in the community utilizing public transportation, or was incarcerated with the department for a drug offense or a property crime. The department therefore recommends that subsection (g) be deleted. At page 39, line 18 after "(g)" to line 30 after "(h)".

**Extension of the Postrelease Supervision Obligation due to Prison Good Time or Early Release.**

SB 7 provides that offenders sentenced to KDOC for imprisonment may be released early by the Kansas Parole Board. However, any reduction in the time of imprisonment resulting from an early release or by the award of good time is to be added to the offender's post release supervision obligation. This has the effect of rewarding good behavior by penalizing the offender with a longer period of release supervision. SB 7 will increase both the prison bed impact to the department and the number of offenders under release supervision. The department wishes to raise the issue of whether the post release supervision obligation for offenders who have evidenced a low risk to reoffend should be targeted for a longer period of release supervision due to an early release or the award of good time as provide by SB 7 or whether the period of postrelease supervision should not be extended due to an early release or the award of prison good time. The amendments that would implement this recommendation would be to pages 89 and 90 of the bill.

Proposed balloon amendments that would implement the department's recommendations are attached. The department appreciates the committee's consideration of these issues.

1 restrictions which is required to be carried by the person at any time the  
2 person is operating a motor vehicle on the highways of this state.

3 ~~(h) Except as provided further, any person whose license is restricted~~  
4 ~~to operating only a motor vehicle with an ignition interlock device~~  
5 ~~installed may operate an employer's vehicle without an ignition interlock~~  
6 ~~device installed during normal business activities, provided that the~~  
7 ~~person does not partly or entirely own or control the employer's vehicle~~  
8 ~~or business. The provisions of this subsection shall not apply to any~~  
9 ~~person whose driving privileges have been restricted for the remainder of~~  
10 ~~the one-year period on the second occurrence of an alcohol or drug-~~  
11 ~~related conviction in this state as provided in subsection (b)(1).~~

12 (f) *The provisions of subsections (a), (b) and (c), as amended by this*  
13 *act, may be applied retroactively only if requested by a person who has*  
14 *had such person's driving privileges suspended or restricted pursuant to*  
15 *subsection (a), (b) or (c) prior to such amendment. Such person may*  
16 *apply to the division to have the penalties applied retroactively, as*  
17 *provided under subsection (h) of K.S.A. 8-1015, and amendments thereto.*

18 ~~(g) (1) If a person's driving privileges are suspended or restricted~~  
19 ~~pursuant to this section and such person is incarcerated with the~~  
20 ~~department of corrections for an alcohol or drug-related conviction, any~~  
21 ~~period of incarceration shall not count toward the person's suspension or~~  
22 ~~restriction period. Any period of time the person's driving privileges are~~  
23 ~~suspended or restricted before incarceration begins shall be counted. For~~  
24 ~~the purpose of this section, the date of release from incarceration shall be~~  
25 ~~deemed the date the suspension or restriction period resumes.~~

26 ~~(2) The secretary of corrections shall notify the division of the date~~  
27 ~~when incarceration began and the date of release from incarceration for~~  
28 ~~any person incarcerated for an alcohol or drug-related conviction. The~~  
29 ~~notification shall be in a format approved by the division.~~

30 ~~(h) As used in this section, "suspension" includes any period of~~  
31 ~~suspension and any period of restriction as provided in subsection (a) of~~  
32 ~~K.S.A. 8-1015, and amendments thereto.~~

33 Sec. 17. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as  
34 follows: 8-1015. (a) ~~When subsection (b)(1) of K.S.A. 8-1014, and~~  
35 ~~amendments thereto, requires or authorizes the division to place~~  
36 ~~restrictions on a person's driving privileges, the division shall restrict the~~  
37 ~~person's driving privileges to driving only under the circumstances~~  
38 ~~provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and~~  
39 ~~amendments thereto.~~

40 ~~(b) In lieu of the restrictions set out in subsection (a), the division,~~  
41 ~~upon request of the person whose driving privileges are to be restricted,~~  
42 ~~may restrict the person's driving privileges to driving only a motor~~  
43 ~~vehicle equipped with an ignition interlock device, approved by the~~

Delete

The court shall determine whether the offender upon release from imprisonment shall be supervised by community correctional services or court services based upon the risk and needs of the offender.

1 of the 2010 Session Laws of Kansas, and amendments thereto. The person  
2 shall remain imprisoned at the state facility only while participating in the  
3 substance abuse treatment program designated by the secretary and shall  
4 be returned to the custody of the sheriff for execution of the balance of  
5 the term of imprisonment upon completion of or the person's discharge  
6 from the substance abuse treatment program. Custody of the person shall  
7 be returned to the sheriff for execution of the sentence imposed in the  
8 event the secretary of corrections determines: (A) (i) That substance  
9 abuse treatment resources or the capacity of the facility designated by the  
10 secretary for the incarceration and treatment of the person is not  
11 available; (B) (ii) the person fails to meaningfully participate in the  
12 treatment program of the designated facility; (C) (iii) the person is  
13 disruptive to the security or operation of the designated facility; or (D)  
14 (iv) the medical or mental health condition of the person renders the  
15 person unsuitable for confinement at the designated facility. The  
16 determination by the secretary that the person either is not to be admitted  
17 into the designated facility or is to be transferred from the designated  
18 facility is not subject to review. The sheriff shall be responsible for all  
19 transportation expenses to and from the state correctional facility.

20 At the time of the filing of the judgment form or journal entry as  
21 required by K.S.A. 21-4620 or 22-3426 or section 280 of chapter 136 of  
22 the 2010 Session Laws of Kansas, and amendments thereto, the court  
23 shall cause a certified copy to be sent to the officer having the offender in  
24 charge. The law enforcement agency maintaining custody and control of a  
25 defendant for imprisonment shall cause a certified copy of the judgment  
26 form or journal entry to be sent to the secretary of corrections within  
27 three business days of receipt of the judgment form or journal entry from  
28 the court and notify the secretary of corrections when the term of  
29 imprisonment expires and upon expiration of the term of imprisonment  
30 shall deliver the defendant to a location designated by the secretary. After  
31 the term of imprisonment imposed by the court, the person shall be  
32 placed in the custody of the secretary of corrections for a mandatory one-  
33 year period of ~~postrelease~~ supervision, which such period of ~~postrelease~~  
34 supervision shall not be reduced. During such ~~postrelease~~ supervision, the  
35 person shall be required to participate in an inpatient or outpatient  
36 program for alcohol and drug abuse, including, but not limited to, an  
37 approved aftercare plan or mental health counseling, as determined by the  
38 secretary and satisfy conditions imposed by the Kansas parole board as  
39 provided by K.S.A. 22-3717, and amendments thereto. Any violation of  
40 the conditions of such ~~postrelease~~ supervision may subject such person to  
41 revocation of ~~postrelease~~ supervision pursuant to K.S.A. 75-5217 et seq.,  
42 and amendments thereto and as otherwise provided by law.

43 (g) (1) On the fourth or subsequent conviction of a violation of this

supervision office designated by the court

that officer

community correctional services or court services as determined by the court

release

the supervision office designated by the court

supervision officer or court.

release

and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the release supervision period, or any combination or portion thereof.

1 that court ordered sex offender treatment be carried out.

2 (v) In carrying out the provisions of subparagraph (d)(1)(D), the  
3 court shall refer to K.S.A. 21-4718, *prior to its repeal, or section 298 of*  
4 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
5 thereto.

6 (vi) Upon petition, the parole board may provide for early discharge  
7 from the postrelease supervision period upon completion of court ordered  
8 programs and completion of the presumptive postrelease supervision  
9 period, as determined by the crime of conviction, pursuant to  
10 subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from  
11 postrelease supervision is at the discretion of the parole board.

12 (vii) Persons convicted of crimes deemed sexually violent or  
13 sexually motivated; shall be registered according to the offender  
14 registration act, K.S.A. 22-4901 through 22-4910, and amendments  
15 thereto.

16 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, *prior to their*  
17 *repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas*,  
18 and amendments thereto, shall be required to participate in a treatment  
19 program for sex offenders during the postrelease supervision period.

20 (E) The period of postrelease supervision provided in subparagraphs  
21 (A) and (B) may be reduced by up to 12 months and the period of  
22 postrelease supervision provided in subparagraph (C) may be reduced by  
23 up to six months based on the offender's compliance with conditions of  
24 supervision and overall performance while on postrelease supervision.  
25 The reduction in the supervision period shall be on an earned basis  
26 pursuant to rules and regulations adopted by the secretary of corrections.

27 (F) In cases where sentences for crimes from more than one severity  
28 level have been imposed, the offender shall serve the longest period of  
29 postrelease supervision as provided by this section available for any  
30 crime upon which sentence was imposed irrespective of the severity level  
31 of the crime. Supervision periods will not aggregate.

32 (G) Except as provided in subsection (u), persons convicted of a  
33 sexually violent crime committed on or after July 1, 2006, and who are  
34 released from prison, shall be released to a mandatory period of  
35 postrelease supervision for the duration of the person's natural life.

36 (H) ~~Notwithstanding any other provision of law, persons convicted~~  
37 ~~of a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments~~  
38 ~~thereto, committed on or after July 1, 2011, shall serve 24 months, plus~~  
39 ~~the amount of good time and program credit earned and retained~~  
40 ~~pursuant to section 302 of chapter 136 of the 2010 Session Laws of~~  
41 ~~Kansas, and amendments thereto, on postrelease supervision. Such~~  
42 ~~persons released by the parole board pursuant to subsection (w) shall~~  
43 ~~serve 24 months, plus the remainder of their sentence, plus the amount of~~

Delete

1 ~~good time and program credit earned and retained pursuant to section~~  
2 ~~302 of chapter 136 of the 2010 Session Laws of Kansas, and amendments~~  
3 ~~thereto, on postrelease supervision.~~

Delete

4 (2) As used in this section, "sexually violent crime" means:

5 (A) Rape, K.S.A. 21-3502, prior to its repeal, or section 67 of  
6 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
7 thereto;

8 (B) indecent liberties with a child, K.S.A. 21-3503, prior to its  
9 repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session  
10 Laws of Kansas, and amendments thereto;

11 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior  
12 to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010  
13 Session Laws of Kansas, and amendments thereto;

14 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-  
15 3505, prior to its repeal, or subsection (a)(3) and (a)(4) of section 68 of  
16 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
17 thereto;

18 (E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal,  
19 or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws  
20 of Kansas, and amendments thereto;

21 (F) indecent solicitation of a child, K.S.A. 21-3510, prior to its  
22 repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session  
23 Laws of Kansas, and amendments thereto;

24 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511,  
25 prior to its repeal, or subsection (b) of section 72 of chapter 136 of the  
26 2010 Session Laws of Kansas, and amendments thereto;

27 (H) sexual exploitation of a child, K.S.A. 21-3516, prior to its  
28 repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas,  
29 and amendments thereto;

30 (I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or  
31 subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of  
32 Kansas, and amendments thereto;

33 (J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or  
34 subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of  
35 Kansas, and amendments thereto; or

36 (K) an attempt, conspiracy or criminal solicitation, as defined in  
37 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or sections  
38 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and  
39 amendments thereto, of a sexually violent crime as defined in this section.

40 "Sexually motivated" means that one of the purposes for which the  
41 defendant committed the crime was for the purpose of the defendant's  
42 sexual gratification.

43 (e) If an inmate is sentenced to imprisonment for a crime committed

