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Testimony by Senator Mary Pilcher Cook
 Senate Judiciary Committee – in support of **HSB 159**
 Tuesday, February 15, 2011

Chairman Owens, and members of the committee:

Thank you for the hearing on the Probation-Parole Supervision bill. The formulation of this proposed statute was in response to the Kansas Supreme Court decision in *State v. Bennett*, which rested on a series of U.S. Supreme Court decisions (see <http://www.kscourts.org/Cases-and-Opinions/opinions/supct/2009/20090130/98038.htm>).

The U.S. Supreme Court has stated that a person's reasonable expectation of privacy depends on the level of freedom that person enjoys in society. Probationers, parolees and prisoners retain more limited privacy than do free citizens.

In addition, the Court stated that incarcerated prisoners have no reasonable expectation of privacy and can be searched at any time for any reason; parolees have some expectation of privacy, but it is greatly diminished. Further, probationers have a greater expectation of privacy than parolees, but it is "not unlimited." This range of privacy rights has been developed by the U.S. Supreme Court over twenty years in three cases: *Griffin v. Wisconsin*, *United States v. Knights*, and *Samson v. California*.

In *Samson*, the U.S. Supreme Court upheld a California law requiring parolees to submit to suspicionless searches as long as these searches are not arbitrary or capricious.

The U.S. Court of Appeals for the Tenth Circuit applied Kansas law on the issue of parolee searches in *United States v. Freeman*, and reached the conclusion that Kansas law did not authorize suspicionless searches because Kansas statutes lacked the provisions authorizing such searches. The Kansas Supreme Court agreed with the federal court's interpretation and concluded that given current Kansas law, "parolees in Kansas have an expectation that they will not be subjected to suspicionless searches."

HB 159 would correct this problem in statute, by specifically authorizing suspicionless searches on parolees by corrections and law enforcement officers.

Senate Judiciary
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 Attachment 2

The U.S. Supreme Court's decisions in *Griffin* and *Knights* held that searches of probationers based on reasonable suspicion satisfied the Fourth Amendment. The Kansas Supreme Court stated that because probationers have a greater expectation of privacy than parolees, "searches of probationers in Kansas must also be based on a reasonable suspicion."

SB 159 allows corrections and law enforcement officers to conduct searches of probationers with reasonable suspicion. It is important to note that a judge would have extra latitude in what type of searches could be carried out for probationers, as the Kansas Supreme Court refers to the Court of Appeals' opinion stating, "the sentencing judge's comments and ultimate order during sentencing provide that either community corrections or law enforcement officers can conduct searches at any time for potentially any reason."

Public safety would be greatly enhanced with SB 159 with little to no fiscal impact, and this legislation would give 1) both corrections and law enforcement officers a tool for keeping Kansas citizens safer, 2) an incentive for the probationer and parolee to conduct themselves with greater caution so as not to break the law and 3) it gives the probationer and parolee a tool for communication and resistance against their peers when faced with temptation. The overall effect of SB 159 would be a reduction in the recidivism rate and an improvement in the rehabilitation rate. I respectfully ask for your support.