



Kansas County & District Attorneys Association

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March 4, 2011

**Testimony Regarding HB 2038
Submitted by Patrick Vogelsberg
On Behalf of the Kansas County and District Attorneys Association**

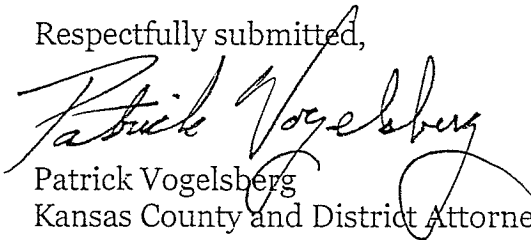
Honorable Chairman Owens and Members of the Senate Judiciary Committee:

This testimony is submitted on behalf of the Kansas County and District Attorney Association (KCDA) and is in support of HB 2038. It is the KCDA's position that this is the statutory fix that is necessary due the recent *State v. Horn* holding which stated that unless a defendant has validly waived his or her right to a jury for an upward durational departure sentence proceeding, a court-conducted departure proceeding is unconstitutional.

The bill accomplishes this by striking the unconstitutional language and thus, allows that only after the jury at the upward durational departure sentence proceeding has been waived may the proceeding be conducted by the court.

The House passed HB 2038 118-0-0-7. The KCDA stands in support of the Sentencing Commission proposal and request that the committee pass HB 2038 favorably. Thank you for your time and consideration of HB 2038.

Respectfully submitted,



Patrick Vogelsberg
Kansas County and District Attorney Association

Senate Judiciary
3-4-11
Attachment 2