

OFFICE OF DISTRICT ATTORNEY

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March 9, 2011

Honorable Tim Owens, Chair
Senate Judiciary Committee
Kansas Statehouse, Topeka, Kansas

Re: House Bill 2118

Dear Chairman Owen and Members of the Committee:

The Kansas Court of Appeals recently ruled that, notwithstanding a sentencing judge's broad discretion in ordering conditions of probation, "the exercise of that discretion cannot thwart the clear intent of the Legislature expressed in a specific statute." *State v. Gardner*, 44 Kan.App.2d __, 244 P.3d 1292 (2011). The "thwarted" statute at issue, K.S.A. 2009 Supp. 22-2802, permits a judge to order a person released on bond to "to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision." But the Court of Appeals ruled that "the district court does not have discretion to ignore the [\$15 per week] limit on costs imposed by the Legislature" and may not order the entire payment of costs associated with pre-trial bond supervision as a condition of probation. This, even though K.S.A. 21-4610(c)(7) authorizes a judge to order a probationer to "pay a fine or costs, applicable to the offense."

The Court of Appeals interpreted K.S.A. 22-2802 to mean that Gardner could not be ordered, as a condition of probation, to pay the costs of an alcohol monitor that he was required to wear as a condition of bond. Under the Court of Appeals' interpretation, the government would have to absorb the bond supervision costs exceeding \$15 per week. This will result in more criminal defendants remaining in jail during the pendency of their cases. The holding of *State v. Gardner* is not what the legislature intended to occur. However, the current attitude of the appellate courts, as the Kansas Supreme Court recently stated in *State v. Horn*, 291 Kan. 1, 12, 238 P.3d 238 (2010), is:

We recognize that the result we reach today is unlikely to be what the legislature would have intended to occur. However, " '[n]o matter what the legislature may have really intended to do, if it did not in fact do it, under any reasonable interpretation of the language used, the defect is one which the legislature alone can correct.'"

House Bill 2118 will accomplish this legislative intent by requiring probationers, as a condition of probation, to reimburse the county or State for all of the costs associated with their bond supervision. Thank you for considering its passage.

Respectfully,


Steven J. Obermeier

Senate Judiciary
3-9-11
Attachment 3