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Testimony on SB 39
to
The Senate Judiciary Committee

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February 8, 2011

The Department of Corrections believes that SB 39 has many unintended negative consequences due to its broad scope and its impediment to meaningful release supervision and therefore opposes SB 39. The department believes the supervision of sex offenders should be conducted in a manner that is based upon focused case management. A Legislative interim committee, the Sex Offender Policy Board, and the Legislature in 2006 concluded that residential restrictions as proposed by SB 39 do not enhance public safety and are detrimental to public safety.

Sex offenses, even those requiring registration, vary significantly relative to the characteristics of the offender and the circumstances of the offense. The misdemeanor crime of adultery requires the offender to register as a sex offender if either party was under the age of 18 even if both parties were of lawful age and consented to the relationship, in contrast, certain sex offenders should never be allowed into the community and should be confined even after the expiration of their criminal sentence due to their mental condition and risk they pose to continue their threatening behavior determined on a case by case basis. While the misdemeanor crime of adultery is not one of the crimes proposed by SB 39 to be defined as an "Aggravated Sex Crime", it must be noted that the scope of the crimes that would be classified as an "aggravated sex crime" is nonetheless extremely broad encompassing any "sexually violent crime" if one of the parties, either the offender or the victim was under the age of 16, and irrespective of whether the offender was prosecuted as a juvenile or adult. This would encompass situations where a person 15 years of age had sexual intercourse with a person under the age of 14 without any force or coercion resulting in a juvenile adjudication. Additionally, the term "sexually violent crime" as defined by K.S.A. 22-4902 and SB 39 includes "any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification". This could include crimes involving the shoplifting of an erotic magazine.

The heart of the department's concern is the impact of SB 39 on the release supervision and treatment of sex offenders. In 2006, Kansas reviewed the issue of imposing residential restrictions on sex offenders by statute or ordinance and concluded that any such restriction should be based upon the individual characteristics of the offender based upon the case management of that offender. The residential restrictions proposed by SB 39 are not only ineffective but are detrimental to public safety.

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The department testified in 2006 that several studies indicate that residential restrictions do not serve public safety. Additionally, these studies and statements of law enforcement officials in states that have such restrictions indicate that the burdens and consequences of residential restrictions are detrimental to public safety.

The department is committed to the protection of public safety through correctional practices that are based upon research. The Kansas Department of Corrections was a national leader in the development of sex offender treatment using polygraph and plethysmograph technology which resulted in litigation before the United States Supreme Court. The department continues to provide sex offender treatment in its correctional facilities as well as to offenders under supervision in the community.

The department also employs the use of specialized case loads whereby high risk offenders are assigned to certain parole officers. The department's management of the supervision and treatment of released sex offenders is based upon their individual risks and deviant cycle behaviors. The case management of those offenders includes their employment and residential plans.

SB 39 provides that despite the existence of a supervision plan for an offender to reside in a home where he or she has support, that plan is prohibited if located within a restricted zone. Due to the size of the restricted zones virtually all of most communities are rendered prohibited. This restriction would also apply to overnight stays in motels, homeless shelters, halfway houses, hospitals, and visits with relatives. The department is unaware of any data that supports the proposition that such restrictions enhance public safety. In contrast, research from 3 states (Florida, Minnesota, and Colorado) indicates that public safety is not related to such blanket restrictions and that wholesale residence restrictions are counterproductive.

- In Minnesota, sex offenders' proximity to schools or parks was not a factor in recidivism, nor did it impact community safety. (Minnesota Department of Corrections, 2003). In fact, the opposite was found to be true, sex offenders were more likely to travel to another neighborhood to seek victims to avoid being recognized.
- Up to 90 percent of sex offenses against children are perpetrated by people already in the home or that have legitimate access to children. Their residency has nothing to do with access to children." (Des Moines Register, January 24, 2006).
- While residence restrictions are based upon a threat by strangers by removing them from neighborhoods, 93% of child abuse victims knew their abuser; 34% were family members, and 58.7% acquaintances. (Bureau of Justice Statistics, 2000 cited by Levenson, Ph.D. Report to Florida Legislature, 2005).
- The listing of day care facilities maintained by the Department of Health and Environment has restrictions regarding its' dissemination to protect the locations of those facilities but which render it impossible for a person who is required to register but not under postrelease supervision from knowing whether his/her residence is within a prohibited zone. K.S.A. 65-525.
- Residency restrictions aggravate the scarcity of housing options for sex offenders, forcing them out of metropolitan areas and farther away from the social support, employment opportunities, and social services that are known to aid offenders in successful community re-entry. (Minnesota Department of Corrections, 2003).

- Having such restrictions in the cities of Minneapolis and St. Paul would likely force level three offenders to move to more rural areas that would not contain nearby schools and parks but would pose other problems, such as a high concentration of offenders without ties to the community; isolation; lack of work, education, and treatment options; and an increase in the distance traveled by agents who supervise offenders. (Minnesota Department of Corrections, 2003).
- Proximity restrictions will have the effect of restricting level three offenders to less populated areas, with fewer supervising agents and fewer services for offenders (i.e., employment, education, and treatment). The result of proximity restrictions would be to limit most level three offenders to rural, suburban, or industrial areas. (Minnesota Department of Corrections, 2003).
- Residency restrictions result in greater difficulty in tracking and monitoring sex offenders since they move more frequently or claim homelessness in order to avoid or circumvent the zoning restrictions. (Des Moines Register January 23, 2006)
- A stable residence environment is critical to successful community re-integration. (Colorado Department of Public Safety, 2004)
- In a study of the Denver metropolitan area, the data indicated that sex offenders who have committed a criminal offense (both sexual and non-sexual) while under judicial supervision appear to be randomly scattered throughout the study area—there does not seem to be a greater number of these offenders living within proximity to schools and childcare centers than other types of offenders. (Colorado Department of Public Safety, 2004).
- While such ordinances are designed to limit options available to sexual offenders, in many cases, it is nearly impossible for these offenders to find appropriate housing away from schools, parks, and/or childcare centers throughout metropolitan areas. Ironically, this situation may increase their risk of re-offending by forcing them to live in communities where safe support systems may not exist or in remote areas providing them with high degrees of anonymity. (Colorado Department of Public Safety, 2004)

SB 39 places a restriction on the residence of offenders irrespective of the specific nature of the crime, without consideration of the risk posed by the offender or the nature of the residence relative to it being supportive and suitable for the offender's reentry into the community. In contrast, individual case management of released offenders in a timely and comprehensive manner, including an ongoing assessment of their deviant cycles and treatment, is the most critical element of the successful management of sex offenders in the community. The experience of other states as shown in the research shows that residential barriers that are not related to the case management of an individual offender do not enhance public safety and increase the probability of re-offending behavior.

The department urges that SB 39 not be passed out of Committee.