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Wednesday, March 19, 2014

RE: HB 2442

To the Senate Judiciary Committee,

This letter is written in support of the proposed amendments to K.S.A. 8-1568 (fleeing/eluding police) as contained in HB 2442. This bill was proposed because there has been a noticeable increase in the number of fleeing/eluding cases.

Fleeing/eluding is a nonperson misdemeanor on the first and second offense, unless something happened during the pursuit that enhances it to a felony (e.g. reckless driving). Thus, someone can flee/elude multiple times and still have the same criminal history score as a common shoplifter. The punishment for fleeing/eluding is among the lowest on the felony grid (between 5 and 17 months). Offenders who are convicted of felony fleeing/eluding can expect to receive probation until their criminal histories become "A" or "B" box (dangerous repeat offenders).

HB 2442 is designed to target and punish offenders who repeatedly flee/elude. The bill accomplishes this goal by creating a special sentencing rule and by closing a loophole. The sentencing rule mandates that an offender who is convicted of a third or subsequent offense of fleeing/eluding must serve the underlying prison time consecutive to any other sentence, regardless of the offender's criminal history score.

Hypothetical #1: John has two prior misdemeanor fleeing/eluding convictions, but no other history. His criminal history score is "H." John commits a third fleeing/eluding offense. Under the current law the third offense is a felony, but at sentencing, John will be given probation. Under HB 2442, John would be required to serve 6 to 8 months in prison consecutive to any other sentence.

Hypothetical #2: Bob is convicted of robbing a bank and then fleeing/eluding (3rd Conviction). Bob is a violent repeat offender with a criminal history score of "B." Under the current law, Bob is presumptive prison for all felony convictions, but the judge could order the sentences for the bank robbery and the fleeing/eluding to run concurrently. This means Bob may serve no additional time for the fleeing/eluding. HB 2442 would guarantee that Bob receives some additional time for the fleeing/eluding, thus punishing him for making a bad situation worse.

Included below are summaries of two real cases from Leavenworth County to illustrate how HB 2442 would be applicable:

Franklin Dougherty fled from police eight times between 2011 and 2012. Dougherty had a criminal history score of "A" and had two prior convictions of fleeing/eluding. During one incident, Dougherty sped through a school zone at more than 100 mph. Police abandoned seven prior pursuits of Dougherty because he drove so dangerously

that officers feared for the public's safety. Dougherty was finally apprehended in Wyandotte County after he lost control of his car and crashed during another pursuit. At sentencing, he should have faced a total of 112 months in prison if all his cases were run consecutively. However, the judge was unwilling to order consecutive sentences. Faced with the possibility of receiving only 16 months total, the State managed to negotiate a plea deal of 48 months. Under HB 2442, a judge's personal or political views would be removed from the equation and offenders like Dougherty would serve the appropriate sentence.

Jacob Young fled from police at least five times during late 2013 and early 2014. His final attempt to evade police resulted in a pursuit ranging from Leavenworth County Kansas, to Platte County Missouri, to Wyandotte County Kansas, and returning to Leavenworth County Kansas. Young's tires were spiked twice during this pursuit and more than a dozen officers from six different agencies became involved. Young's criminal history score is "A." Young had two pending unrelated cases: one was a forgery and the other was the fleeing/eluding. Sentencing is still pending, but Young is facing around 16 months in prison for each offense. Under current law, the judge can order concurrent sentences even though these offenses occurred nearly a year apart from each other. Under HB 2442, the judge would be required to order consecutive sentences, meaning HB 2442 would guarantee that offenders like Young serve time for fleeing/eluding in addition to the time for any other crime they committed.

Finally, HB 2442 amends K.S.A. 8-1568(e)(1) to make the timing and sequence of the convictions irrelevant. Similar language is already used to enforce DUI offenses. This language closes a loophole that offenders exploit to avoid felony enhancements. For example, under current law, if John commits three misdemeanor fleeing/eluding offenses within a month, none of the offenses could be enhanced to a felony because he was not already convicted of the first two offenses when the third offense occurred. HB 2442 discourages this behavior, by making a third offense a felony regardless of the timeline.

These are a few of the many recent cases of fleeing/eluding in Leavenworth County. These repeat offenders are dangerous persons who demonstrated that they would gladly risk the lives of innocent persons in exchange for a chance to escape from justice. Under today's sentencing provisions, the penalty for fleeing/eluding is minimal, because judges often order the fleeing/eluding time to run concurrently to the other offenses. The KCDA supports HB 2442 because it would discourage offenders from repeatedly fleeing/eluding.

Sincerely,

Todd G. Thompson
Leavenworth County Attorney