



Kansas County & District Attorneys Association

1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

TO: Joint Committee on Corrections and Juvenile Justice Oversight
Hon. John Rubin, Chair

FROM: Kansas County and District Attorneys Association
By Thomas R. Stanton
Deputy Reno County District Attorney

RE: SB 41 as amended by the Senate and the House committee on Corrections and
Juvenile Justice

DATE: November 7, 2013

Honorable Chairman Rubin and Members of the committee:

Thank you for the opportunity to submit testimony regarding SB 41, which amends K.S.A. 21-6805(g) regarding sentencing enhancements for drug felonies involving firearms. My name is Tom Stanton, and I am the Deputy Reno County District Attorney. I am a past president of the KCDA, and I am currently the Section Leader for the KCDA Drug Section. This testimony is on behalf of the KCDA in support of this legislation. I will be present for the hearing, and will be available for any questions the Committee may have on this testimony.

K.S.A. 21-6805(g) currently reflects an enhancement when a defendant has been convicted of carrying a firearm to commit a drug felony, or of possession a firearm in furtherance of a drug felony. The statute excludes crimes committed pursuant to K.S.A. 21-5706 and 5713, so the enhancement does not apply to felonies involving the possession of controlled substances not intended for distribution. The enhancement does apply to felonies in the following classes of crimes: manufacture, distribution, cultivation, paraphernalia and proceeds.

The current statute states as follows:

(g)(1) Except as provided further, if the trier of fact makes a finding that an offender carried a firearm to commit a drug felony, or in furtherance of a drug felony, possessed a firearm, in addition to the sentence imposed pursuant to K.S.A. 21-6801 through 21-6824, and amendments thereto, the offender shall be sentenced to:

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(A) Except as provided in subsection (g)(1)(B), an additional 6 months' imprisonment; and

(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

(2) The sentence imposed pursuant to subsection (g)(1) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to violations of K. S.A. 2011 Supp. 21-5706 or 21-5713, and amendments thereto.

SB 41, as amended by the Senate Judiciary Committee and the House Corrections and Juvenile Justice Committee, amends the statute to read as follows:

~~(g)(1) Except as provided further, if the trier of fact makes a finding that an offender carried~~
~~possessed a firearm to commit a drug felony and such firearm was readily accessible during the~~
~~commission of, or in furtherance of, a drug felony a felony violation of any provision of article~~
~~57 of chapter 21, and amendments thereto, possessed a firearm, or any attempt or conspiracy to~~
~~commit such offense in addition to the sentence imposed pursuant to K.S.A. 21-6801 through 21-~~
~~6824, and amendments thereto, the offender shall be sentenced to:~~

(A) Except as provided in subsection (g)(1)(B), an additional 6 months' imprisonment; and

(B) if the trier of fact makes a finding that the firearm was discharged, an additional 18 months' imprisonment.

(2) The sentence imposed pursuant to subsection (g)(1) shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) The provisions of this subsection shall not apply to violations of K. S.A. 2011 Supp. 21-5706 or 21-5713, and amendments thereto.

The difference may seem subtle, but it is very important. Recent years have seen a steep increase in violence associated with drug crimes. There have been at least four drug-related homicides in the past few years in Hutchinson, a community that does not see a plethora of homicides. The last drug-related homicide took the life of an innocent young mother who was mistaken for another woman who was allegedly dealing drugs.

The possession of firearms does not mix with the distribution, manufacture or cultivation of illegal controlled substances. When drug deals go bad and firearms are present, violence often

erupts, with serious injury or death a common result. Invasions of homes where perpetrators believe there may be drugs are becoming more common. In one such instance in Reno County, a person attempted a home invasion, and was met by a shotgun blast to his face. The shooting occurred in an apartment building, putting the other residents at risk for serious harm. The change in the statute recognizes the threat posed by the possession of the firearm during the commission of a drug felony, without requiring the prosecutor to establish a nebulous standard of showing the firearm was "carried to commit" the drug crime. This change would also be consistent with the current federal regulations regarding the possession of firearms during the commission of drug felonies.

It should be noted that this penalty is applied only to those who have been convicted of the underlying drug felony. Anyone convicted of a drug felony also faces a restriction on the possession of a firearm for a period of ten years under K.S.A. 2012 Supp. 21-6304. The proposed legislation has no Second Amendment implications for law-abiding citizens.

Also of note is the first highlighted language of the proposed amendment. The Senate Judiciary Committee added this language to insure it is clear that the firearm was possessed in a manner that it could be accessed for the purposes of the underlying felony. While I do not believe this language to be necessary, the KCDA has no objection to its inclusion within the amendment. The House Corrections and Juvenile Justice Committee also amended the proposed statute because the term "drug felony" was not otherwise defined in Kansas statute. That amendment is represented by the second highlighted portion of the statute. I believe this is a proper and necessary amendment to the statute, and the KCDA supports that amendment.

I respectfully request that this Committee consider SB41, and recommend that this legislation be retained by the legislature for consideration during the 2014 Legislative Session.

Respectfully submitted,

Thomas R. Stanton
Deputy Reno County District Attorney