

TO: Senate Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney

RE: SB 41

DATE: January 30, 2013

Hon. Chairman King 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 KCDAA, and I am currently the Section Leader for the KCDAA Drug Section. This testimony is on behalf of the KCDAA 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:

(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 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~~ **during the commission of, or in furtherance of** a drug felony, ~~or in furtherance of a drug felony, 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 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 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.

I respectfully request that this Committee consider SB41, and recommend this legislation for passage.

Respectfully submitted,

Thomas R. Stanton
Deputy Reno County District Attorney