



**OFFICE OF THE DISTRICT ATTORNEY  
EIGHTEENTH JUDICIAL DISTRICT**

**MARC BENNETT**  
*District Attorney*

**ANN SWEGLE**  
*Deputy District Attorney, Administration*

**JUSTIN EDWARDS**  
*Deputy District Attorney, Trial Division*

**RON PASCHAL**  
*Deputy District Attorney, Juvenile  
Division and Ethics Coordinator*

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**Testimony Regarding HB 2292  
Submitted by Marc Bennett, District Attorney  
Eighteenth Judicial District**

Chairman Patton and Members of House Judiciary Committee, thank you for the opportunity to address HB 2292.

Currently in Kansas, when an adult is charged with a crime, three options exist to resolve the matter: (1) conviction (via trial or plea); (2) diversion (per K.S.A. 22-2907 to 22-2912); or (3) dismissal. HB 2292 is my attempt to expand the availability of the diversion option to prosecutor's offices in Kansas.

When diversion is offered to a defendant in a criminal case, the county/ district attorney is responsible for supervision of the divertee. Few offices have staff allocated for this purpose but the staff members are not probation officers or counselors. As a result, diversion is generally utilized for people accused of relatively low level crimes, with little or no criminal history. In other words, people who made a mistake, deserve an opportunity to avoid a felony or misdemeanor conviction but do not require much in the way of supervision. Payment of restitution, anger management, completing school or a GED—are standard conditions that can be confirmed by staff. People with severe mental health or drug issues require more intense supervision and support than can be attended to by the staff a prosecutor's office.

Conversely, the vast majority of prosecutor's offices are staffed by a single prosecutor (many of whom are part time), with no resources to criminal diversions at all.

HB 2292 proposes to allow prosecution offices to enter into an MOU with the existing probation supervision agencies in the state—court services and community corrections—to supervise diversions. This practice has been undertaken in at least one jurisdiction where court services and the county attorney entered into such an agreement. HB 2292 would give explicit statutory authority to this practice. Importantly, the bill also authorizes the utilization of drug treatment money currently only available to people AFTER a conviction. So, the bill allows expanded

Sedgwick County Courthouse, 535 N. Main, Wichita, Kansas 67203  
Telephone: 316-660-3600; Toll Free: 1-800-432-6878; Fax: 316-660-3674

Juvenile Division – 1900 E. Morris, Wichita, Kansas 67211  
Telephone: 316-660-9700; Fax: 316-660-1860

access to supervision and allows people placed on diversion access to drug treatment money that would otherwise only be available after they entered a plea to crime.

In discussing HB 2292 with corrections and court services they have expressed concern as to the risk of a patchwork approach given the possibility of 105 separate MOUs. A stock MOU can be promulgated by these agencies or worked out with membership from the Kansas County and District Attorney's Association to arrive at a document workable for our respective needs and mitigate the risk of disparate agreements.

The ACLU has indicated they support the idea of expanded access to diversion but want to offer amendments that they have circulated the past several years, namely requiring prosecutors to offer diversion in every case and requiring prosecutors to publicly document the reasons an individual applicant is not accepted. This is not the place for these efforts. If they want to re-imagine diversion, then a bill directed at that effort needs to be introduced. Such an effort would undermine the goal here—to expand access to diversion. The diversion process is already well-established. Don't muddy the waters with amendments designed only to attend to one organization's goals.

According to the Kansas Department of Corrections, in 2018, 39% of KDOC adult inmates had a serious mental illness. If even a small portion of those folks committed diversion-eligible crimes, then by expanding access to supervision of diversion, we create an opportunity at least to offer assistance without a felony conviction that has not previously existed.

Further, according to the Kansas Department of Corrections FY 2018-2019 KDOC Budget (page 15), 21% of inmates in KDOC prisons as of July of 2018 had a term of confinement of 6 months or less. The term for 12% of inmates was 12 months or less and the term of confinement for 15.5% of inmates was than 2 years. Meaning, 48.5 % of inmates were serving terms of confinement of less than 2 years. Add up all those serving less than 5 years and the percentage leapt to 69.8%. Those receiving terms of confinement of over 5 years made up just 29.7%.

If we really want to stop the revolving door at Kansas prisons we need more access to community-based drug and mental health treatment programs to afford more opportunities for folks committing low level crimes to be successful probationers and parolees. These stats, coupled with the well documented issues of overcrowding and understaffing currently afflicting the prison system in Kansas, strongly suggest that it's time for a full assessment of our approach to criminal justice in Kansas and the manner in which we allocate resources for the same. HB 2292 can be a small, first step in this process.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,  
Marc Bennett, District Attorney  
Eighteenth Judicial District

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