

DISTRICT ATTORNEY

Keith E. Schroeder

DEPUTY DISTRICT ATTORNEY

Thomas R. Stanton

**SENIOR ASSISTANT
DISTRICT ATTORNEYS**

Daniel D. Gilligan
Andrew R. Davidson

ASSISTANT DISTRICT ATTORNEYS

Natasha Esau
Valerie D. Hansen



TELEPHONE: (620) 694-2715

FAX: (620) 694-2711

Victim-Witness Service

(620) 694-2773

Investigator John R. Tracy

(620) 694-2765

TO: The Honorable Senators of the Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney

RE: House Bill 2281

DATE: February 19, 2019

Chairman Owens and Members of the Committee:

Thank you for allowing me to submit testimony regarding House Bill 2281.

Persons convicted of felony criminal offenses in Kansas are sentenced pursuant to the Kansas Sentencing Guidelines Act, K.S.A. 21-6801, *et seq.* Two sentencing grids are used, one for drug offenses, and one for non-drug offenses. (K.S.A. 21-6804 and 6805) The sentence depends on the severity level of the crime as defined by the Kansas Legislature, and the individual defendant's criminal history score. The grids define which crimes will be considered presumptive probation, which crimes are considered presumptive prison, and which crimes fall into a "border box." The court is required to sentence a defendant within the grid box applicable to the individual defendant at the time of sentencing, unless the court finds substantial and compelling reasons to depart. A departure may be durational (a sentence which imposes less time than the grid requires), or dispositional (the court grants probation when the guidelines presume imprisonment).

Once a person is placed on probation or community corrections, K.S.A. 22-3716 controls the court's ability to address violations of the conditions of supervision. The court, after imposing whatever intermediate sanctions may be required by this statute, has the discretion to revoke a defendant's probation or community corrections, and order the sentence executed.

The Kansas legislature has given the district court discretion to modify a defendant's sentence at the time the sentence is executed without any finding of substantial and compelling reasons. (See, K.S.A. 22-3716(b)(3)(B) and (c)(1).) District courts often take advantage of this provision

to reduce the length of a defendant's previously-ordered sentence. In most cases, the court only addressed the reduction in the sentence, and does not address any other aspect of the previously-ordered sentence.

In a recent case from the Kansas Court of Appeals, *State v. Jones*, ___ Kan.App.2d ___, 433 P.3d 193 (No. 118,268, 11/20/2018), the district court reduced the defendant's prison term, but made no ruling as to any other aspect of the original sentence. The Kansas Court of Appeals ruled that the district court's silence on the post-release supervision term constituted a modification of the post-release supervision term, therefore resulting in the defendant serving no post-release. I expect to see a plethora of filings from defendants currently in custody or on post-release whose sentences were modified in term only requesting relief from any post-release requirements.

HB 2281 amends K.S.A. 22-3716 to require any modification made to a defendant's sentence at the time of the revocation of probation and execution of sentence to be made on the record. This does not in any way affect the trial court's discretion to modify the sentence. This amendment only requires any change in the sentence to be stated so all parties know what the court has done upon the completion of the revocation hearing.

It is my concern that without the amendment to K.S.A. 22-3716 as provided in HB 2281, the *Jones* case will be used to attempt to attack other aspects of the original sentence not addressed by the court at a revocation hearing, such as restitution to victims, KBI fees, court costs, fines and/or other aspects of a defendant's sentence. This amendment would make it clear that only the aspects of a sentence specifically modified by the court on the record at the time of the modification of the sentence would be considered modified.

Thank you again for allowing me to present testimony before this Committee. I ask that you support this legislation.

Respectfully submitted,



Thomas R. Stanton
Deputy Reno County District Attorney