TODD B. BUTLER
GARY L. FANNING, JR.*
*ADMITTED IN KANSAS AND MISSOURI

BUTLER
& ASSOCIATES, PA
ATTORNEYS AT LAW

ZACHARY A. KING*
STEPHANIE B. POYER

5835 SW 29TH ST., SUITE 101 TOPEKA, KANSAS 66614-5501
CALL: (785) 267-6444 OR FAX: (785) 267-7341
WWW.BUTLERLAW.COM

March 13, 2020

RE: Testimony of Mr. Todd Butler, Butler & Associates, PA in support of HB 2738

Good Afternoon Mr. Chairman and Members of the Committee:

My name is Todd Butler. I am the principal owner of Butler & Associates, PA., a law firm with an emphasis in collections work. Butler & Associates, PA is a Contracting Agent pursuant to K.S.A. 20-169. We collect debts owed to courts and restitution for 13 Judicial Districts, which includes 29 counties. Some of our clients include the State's largest counties, including Sedgwick, Shawnee, Johnson and Wyandotte Counties.

On Friday, February 21, 2020, the Kansas Court of Appeals issued an opinion in *State v. Taylor R. Roberts.* In the *Roberts* case, Taylor Roberts pled guilty to 8 counts of burglary and 2 counts of theft after a burglary spree with her boyfriend. Her plea agreement included agreeing to pay restitution to 9 separate hotels, apartments, and restaurants. The court ordered restitution of nearly $50,000 based on the evidence presented and Ms. Roberts then appealed that order, arguing that the sentence imposed was illegal because the court did not set a payment plan at sentencing. She won.

The Court of Appeals found that the Legislature's clear intent in K.S.A. 21-6604 was to require the trial court to set a plan for payment of restitution. Specifically, K.S.A. 21-6604(b)(2) permits the court to send to collections a defendant who is not complying with "the plan established by the court for payment of restitution." The *Roberts* court found that this phrase means that if there is no payment plan within the restitution order, the restitution order does not conform to K.S.A. 21-6604, and the sentence is therefore illegal.

The *Roberts* court wrote that it is the Legislature's responsibility to fix the statute if it did not intend that each judge in each case must calculate and order a total amount of restitution, establish a payment plan for that restitution, tell the defendant of the payment plan, and permit the defendant to show the payment plan the judge came up with is unworkable. Until then, the Court of Appeals interprets K.S.A. 21-6604 as requiring each of these steps so that defendants "understand what the court expects of them."

Our office pulled a sampling of restitution orders from two counties. Our review found that 90% of the restitution orders did not have a payment plan.

The *Roberts* decision will have a catastrophic effect on the crime victims' abilities to collect the restitution owed to them. On February 26th our office was notified that Sedgwick County was recalling all restitution collections. Our office has closed and returned restitution orders on 8,119 Sedgwick County cases. Often times there are multiple victims of crimes with restitution orders in the same case. Consequently, there are now 13,292 crime victims with $56,507,474 in restitution orders that are no longer being collected.

Unfortunately, over the past 20 years, most of our judges have calculated and ordered a total amount of restitution, told the defendant of the amount due, and permitted the defendant to show that restitution is unworkable. In my opinion, the vast majority of restitution orders issued state-wide in the past 2 decades do not comply with the *Roberts* opinion.

While I have not heard of other counties that have pulled restitution orders from collections, the Sedgwick County District Court is the court appealed in the Taylor Roberts decision and may be the first of many courts to recall restitution orders from collections.

This amendment brings the statutory language in line with the current practice of ordering restitution. It makes it clear that while judges can set payments arrangements they do not have to set them for the sentence to be legal.

In addition, this amendment preserves the rights of the victims to receive compensation for injuries they have sustained at the hands of criminals.

We hope you will consider this bill favorably. Thank you.

Respectfully yours,

BUTLER & ASSOCIATES, P.A.

Todd B. Butler