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Testimony on SB 368
to
The Senate Judiciary Committee

By Ray Roberts
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The Department of Corrections supports SB 368. SB 368 is proposed by the Sentencing Commission.

SB 368 addresses drug offenders in two related aspects. First, eligibility for community based substance abuse treatment pursuant to "SB 123" (codified at K.S.A. 21-6824) is amended to further conditioned treatment eligibility on both an assessment of the offender's need for substance abuse treatment and an assessment of the offender's risk to reoffend. Secondly, SB 368 provides parity between the non drug grid and the drug grid of Guidelines Sentencing by amending the drug grid to mirror the sentencing deposition provisions of the nondrug grid.

The provision of SB 368 that evaluates "SB 123 community based treatment" eligibility relative to both the drug possessor's need for substance abuse treatment as well as his or her risk to reoffend embodies a best correctional practice for use of resources. Use of state resources in combating crime through a reduction in recidivism should address two fundamental principles, first provide treatment only to those in need of treatment and secondly and perhaps most importantly when dealing with scarce resources; target the use of those resources to offenders who but for the treatment pose the greatest risk of reoffending. The provision of SB 368 that evaluates and targets an offender due to his or her risk of reoffending, is recognition that the use of scarce state resources must reduce crime.

SB 368 also provides parity between the non drug grid and the drug grid of Guidelines Sentencing by amending the drug grid to mirror the sentencing deposition provisions of the nondrug grid. Under current law, the non drug grid provides for presumptive probation for Severity Level 7, 8, 9, and 10 offenses with a criminal history category of "C" or "D". In contrast, none of the severity levels for the drug grid provide for either presumptive probation or border box status for those criminal history categories. SB 368 provides for presumptive probation for drug grid severity level 4 criminal history categories "C" and "D" and border box status for drug grid severity level 3 criminal history categories "C" and "D".

In addition to establishing parity between the nondrug and drug grids, the Sentencing Commission projects that its proposal would result in the following bed savings to the department.

Bed Savings from Drug Grid Presumptive Probation for SL 4 Categories "C" and "D"

FY 2013	36 beds	FY 2018	59 beds
FY 2014	54 beds	FY 2019	62 beds

FY 2015	56 beds	FY 2020	63 beds
FY 2016	58 beds	FY 2021	62 beds
FY 2017	58 beds	FY 2022	68 beds

Bed Savings from Drug Grid Border Boxes for SL 3 Categories "C" and "D"

FY 2013	31 beds	FY 2018	73 beds
FY 2014	62 beds	FY 2019	72 beds
FY 2015	67 beds	FY 2020	76 beds
FY 2016	69 beds	FY 2021	75 beds
FY 2017	70 beds	FY 2011	78 beds

The total bed savings projected from the Commission's proposal is:

FY 2013	67 beds	FY 2018	132 beds
FY 2014	116 beds	FY 2019	132 beds
FY 2015	123 beds	FY 2020	139 beds
FY 2016	127 beds	FY 2021	137 beds
FY 2017	128 beds	FY 2020	146 beds

The Sentencing Commission's proposal would result in a substantial savings in the use of prison resources for those drug offenders.

Finally, addition of presumptive probation and border boxes to categories "C" and "D" of the drug grid renders the eligibility criteria for SB 123 community based substance abuse treatment one step closer to becoming consistent with the sentencing disposition provisions of the drug grid. Under current SB 123 treatment eligibility criteria, of the 332 drug level 4 defendants diverted from prison by a court ordered departure in FY 2011, only 87 received SB 123 community based drug treatment.

The department urges favorable consideration of SB 368.