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Testimony Regarding HB 2170
Submitted by Marc Bennett, District Attorney
Eighteenth Judicial District
On behalf of the Kansas County and District Attorneys Association

Honorable Chairman Rubin and Members of the House Committee on Corrections and Juvenile Justice:

Thank you for the opportunity to address you regarding House Bill 2170. On behalf of myself and the Kansas County and District Attorneys Association, I would like to bring to your attention issues related to the proposed changes to our current statutory sentencing scheme. These changes have both operational and policy implications.

Current law has an exemption to the requirement that all felons who serve a prison term complete a term of postrelease supervision. Those whose presumptive nonprison sanctions are revoked because of a violation of the conditions of their probation (rather than the commission of a new crime) do not serve the postrelease supervision term that was imposed on them at sentencing. This has imperiled public safety. It eliminates the certain availability of supportive services and supervision for offenders who have shown they were incapable of complying with supervision terms while in the community.

HB 2170 would change this, requiring everyone who is released from prison to be supervised for public safety and to be provided with services to help them reintegrate into the community successfully. That makes good sense and is reflective of good public policy, as are many provisions of the bill.

Other provisions of HB 2170, however, are concerning in that they seem to impose unnecessary restrictions on the use of judicial discretion and reward continued criminal conduct by eliminating the existing mandatory consecutive sentencing provisions for those who commit more crimes while on probation, postrelease supervision or on bond for a felony offense.

Specifically, K.S.A. 2012 Supp. 22-3716 would be amended to require the imposition of a 3-tier violation sanctions range before the court could impose the original prison sentence, without making special findings on the record. While it is doubtful that any judge would have difficulty being able to make the required findings for a substantive violation, it is burdensome to do so and the requirement may create another issue for appeal. The first level would be a sanction of up to 6 days in jail per month for up to 3 separate months in the supervision term. The second level would be a term of 120 days

in prison (subject to a 60-day reduction by the secretary). The third level would be a term of 180 days in prison (subject to a 90-day reduction by the secretary). Only after 3 violations of sufficient strength to warrant at least 1 short-term jail term and 2 short-term prison incarcerations could the actual sentence be served, unless the court makes special findings. These procedural hurdles impose burdens on the court's ability to enforce its judgments and add unnecessary complexity to judicial decision-making. They may also lessen the incentives offenders have to comply with their original supervision terms.

HB 2170 also seeks to amend long-standing provisions of Kansas law that reflect the value that those commit new crimes while on correctional supervision for another crime or while on pretrial supervision or bond for a felony should suffer the consequence of a consecutive sentence if found guilty. Allowing a concurrent term for such an offense can be seen as rewarding continued criminal conduct because there is no additional consequence. Mandatory consecutive sentencing in these cases should remain the rule. If there are substantial and compelling reasons why a lessened sentence should be imposed in a given case, a departure sentence could be sought to attain that end.

Additionally, the bill would arguably require judges to assign a probation violator who commits a new crime, but has never been assigned to community corrections supervision, to community corrections supervision rather than to an incarceration sanction. While that may not be the intended result, there is enough ambiguity created by the interplay of certain statutory provisions that such a result could happen. Clarifying language should be added to prevent such an occurrence.

The bill also contains a provision that would require termination of probation after 12 months under certain conditions. One such condition is that the offenders have a low risk assessment. The risk assessment tool contemplated for use is not specified. Further clarity in regard to this issue would be helpful in order to more accurately assess whether the proposed procedure would properly screen candidates suitable for early release.

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

Respectfully submitted,

Marc Bennett
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