



Kansas County & District Attorneys Association

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TO: Senate Judiciary Committee

FROM: Michael Duma
Assistant District Attorney
Wyandotte County District Attorney's Office

RE: SB 41

DATE: January 30th, 2013

Hon. Chairman King and members of the committee:

Thank you allowing me to submit testimony on the amendment of K.S.A. 21-6805(g). My name is Michael Duma and I am an Assistant District Attorney at the Wyandotte County District Attorney's Office. I am here today on behalf of the Kansas County and District Attorney's Association testifying in support SB 41 which amends K.S.A. 21-6805(g).

K.S.A. 21-6805(g), in its current form, provides enhanced and mandatory prison terms for certain felony drug distribution offenders who are found to have used a firearm "to commit" a drug felony or "in furtherance" of a drug felony. A jury must make these findings beyond a reasonable doubt. The problem with the statute in its current form is the difficulty in establishing that a firearm was used "to commit" a drug felony or "in furtherance" of a drug felony. A vast majority of the time, the only evidence to support this is the presence of the firearm and its proximity to narcotics. As a result, the possession of a firearm by a drug distribution offender often goes uncharged.

The proposed amendment to K.S.A. 21-6805(g) would eliminate the necessity of proving that the firearm was used "to commit" a drug felony or "in furtherance" of a drug felony. Instead, the statute would more closely mirror the federal statute, which prohibits merely "possessing" a firearm while committing a drug felony. The impetus of this change is that it would provide prosecutors an avenue to utilize the enhancements provided in K.S.A. 21-6805(g). A hopeful corollary to this is that it will deter illegal drug distributors from possessing firearms alongside their drugs, thereby reducing gun violence often associated with illegal drug transactions.

While working towards the goal of reducing gun violence, this amendment would also provide prosecutors with a valuable tool for plea-bargaining. By making it easier for prosecutors to utilize the mandatory prison enhancements in K.S.A. 21-6805(g), drug

distribution offenders who would otherwise fall in border boxes would now be subject to mandatory terms, which require substantial and compelling reasons for departure.

For the foregoing reasons, I am proposing that K.S.A. 21-6805(g) be amended and I respectfully request your support of SB 41 in affecting this change. Thank you again for this opportunity to testify. I will stand for any questions.

Sincerely,

Michael Duma
Assistant District Attorney
Wyandotte County