

Testimony on HB 2085
To
The Senate Justice Committee

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Secretary
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The Department of Corrections supports HB 2085. HB 2085 was passed by the House by a vote of 122-0. HB 2085 addresses the Kansas Supreme Court decision in *State v. Dull*, 302 Kan. 32, 351 P.3d 641; 2015 Kan. LEXIS 359 (2015). The Supreme Court in *Dull* held that imposition of a mandatory lifetime postrelease supervision obligation is unconstitutional when imposed on offenders who were under the age of 18 at the time of the commission of certain sex offenses even though they were certified to stand trial as an adult. A consequence of the *Dull* decision is that since youthful offenders may not be subject to a mandatory lifetime postrelease supervision, they have no postrelease supervision obligation at all. HB 2085 remedies this situation by providing a postrelease supervision obligation of 60 months for these youthful offenders. The imposition of the postrelease supervision obligation on youthful offenders would be effective upon publication in the *Kansas Register*.

The department believes that an appropriate period of postrelease supervision is a critical component in providing public safety. A period of postrelease supervision affords the opportunity to both monitor the offender's transition into the community as well as providing needed stability and support. Under current law, sentencing guidelines provide for postrelease supervision periods of 12, 24 or 36 month dictated by the severity level of the crime. Additionally, sentencing guidelines also permit a court to impose a 60-month postrelease supervision obligation for sex offenders who are not subject to a mandatory lifetime period of supervision. Therefore, the 60-month period of postrelease supervision proposed by HB 2085 for youthful offenders would be similar to the postrelease obligation imposed upon other sex offenders.

Data for both Kansas and nationwide indicate the period immediately following the release from prison is the most critical time for offenders. Recidivism rates drop significantly after the initial period of supervision. Antisocial behavior usually manifests itself early in the supervision period, and the need to provide support also usually decreases with time. However, the department does note the Court in *Dull* reviewed "mandatory" lifetime postrelease supervision for youthful offenders. Thus, that decision did not address whether a discretionary determination by a trial court to impose a lifetime period of postrelease supervision in a particular case would be constitutional. The department does not believe that it can provide a reliable prediction as to what the Court may decide as to whether a discretionary

lifetime postrelease supervision obligation for youthful offenders would be constitutional. In regard to a discretionary lifetime period of supervision, there may also be other issues warranting consideration such as; whether there would be a similar occasion when youthful offenders again would be under no release supervision if a discretionary lifetime supervision was struck down; or whether a determination regarding imposition of a discretionary lifetime period of supervision would trigger a requirement for a factual determination by a jury pursuant to *State v. Gould*, 271 Kan. 394; 23 P.3d 801; 2001 Kan. LEXIS 381.

The department urges favorable consideration of HB 2085.