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**Testimony in Support of House Bill 2085
Modifying Postrelease for Sexually Violent Offenders**

**Presented to the House Committee on Corrections and Juvenile Justice
By Assistant Solicitor General Natalie Chalmers**

January 24, 2017

Chairman Jennings and Members of the Committee:

Thank you for the opportunity to testify on behalf of Attorney General Derek Schmidt in support of House Bill 2085. This bill incorporates a needed fix in response to the Kansas Supreme Court's decision in *State v. Dull*¹ and the Kansas Court of Appeals opinions extending *Dull*'s rationale.

In *Dull*, the Kansas Supreme Court held that a mandatory term of lifetime postrelease was unconstitutional for a juvenile (convicted as an adult) who committed and was later convicted of aggravated indecent liberties with a child.² The court further held that because there was no other statutorily authorized sentence, no postrelease supervision could be imposed.³

Although the Office of the Attorney General requested the United States Supreme Court review the *Dull* decision, the United States Supreme Court declined to hear the case in March of 2016. Since then, the Kansas Court of Appeals has extended *Dull* to categorically apply to all juveniles (convicted as adults) convicted of a sex offense, meaning any juvenile who is convicted as an adult, cannot receive lifetime postrelease supervision.⁴

Because the Kansas Supreme Court and Court of Appeals' holdings jeopardize public safety by eliminating postrelease for violent sex offenders, the Office of the Attorney General would encourage adopting the proposed fix to *Dull* and cases extending *Dull*.

¹ 302 Kan. 32, 351 P.3d 641 (2015), *cert. denied*, 136 S. Ct. 1364, 194 L. Ed. 2d 359 (2016).

² *Id.* at 61.

³ *Id.*

⁴ *State v. Medina*, ___ Kan. App. 2d ___, 384 P.3d 26, 32 (2016) (petition for review pending).

Additionally, the Office of the Attorney General would also seek an amendment to the Bill as it applies to subsection (d)(1)(D). Numerous cases are pending on appeal regarding whether (d)(1)(D) overlaps with (d)(1)(G), since they both refer to sexually violent crimes. The argument is that because the two overlap, the defendant is required to receive the lesser postrelease term.

While the Bill's proposed amendment to subsection (d)(1)(D) would negate the argument that there is an overlap, it does so in a way that could be read as a change to existing law. That would then risk invalidating the lifetime postrelease sentence for sexually violent crimes committed after July 1, 2013, (when the supposedly overlapping language was enacted) until the enactment of the Bill.

Rather than changing existing law, the Office of the Attorney General would strongly encourage the codification of *State v. Herrmann*,⁵ a recent appellate case that addresses the two subsections. In *Herrmann*, the Kansas Court of Appeals held that there was no overlap between subsection (d)(1)(D) and (d)(1)(G) because "subparagraph (D) only applies to persons convicted of a sexually violent crime after July 1, 1993, but before July 1, 2006."⁶ Thus, the recommended amendment would be to modify subsection (d)(1)(D) to read:

(D) Persons sentenced to a term of imprisonment that includes a sentence for a sexually violent crime *committed on or after July 1, 1993, but prior to July 1, 2006*, as defined in K.S.A. 22-3717, and amendments thereto, a sexually motivated crime in which the offender has been ordered to register pursuant to K.S.A. 22-3717(d)(1)(D)(vii), and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 21-5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A. 21-5512, and amendments thereto, shall serve the period of postrelease supervision as provided in subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 21-6821, and amendments thereto, on postrelease supervision.

Thus, due to important public safety concerns, the Office of the Kansas Attorney General supports a fix to *Dull* and the cases extending *Dull*, and supports the idea of ensuring that the appellate courts do not read K.S.A. 21-3717(d)(1)(D) and (d)(1)(G) to overlap. With the proposed amendment, the Attorney General's Office encourages the enactment of House Bill 2085. Thank you for your time.

⁵ ___ Kan. App. 2d ___, 384 P.3d 1019, 1024 (2016).

⁶ 349 P.3d at 1024.