HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

Hon. Russ Jennings, Chairman
Hon. Leo Delperdang, Vice Chairman
Hon. Dennis "Boog" Highberger, Ranking Minority Member

February 6, 2019
1:30 p.m.

Judge Jared B. Johnson
Twenty Eighth Judicial District
300 West Ash St.
Salina, KS 67402
Jared.johnson@saline.org
785-309-5837

Chief Judge Nicholas St. Peter
Nineteenth Judicial District
311 East 9th Ave.
Winfield, KS 67156
nstpeter@cowleycourt.com
620-221-5473

TESTIMONY IN OPPOSITION OF HB 2052

Thank you for the opportunity to present testimony in opposition of HB 2052. This testimony is being presented by Jared B. Johnson, Judge of the Twenty Eighth Judicial District (Saline and Ottawa Counties) and Nicholas St. Peter, Chief Judge of the Nineteenth Judicial District (Cowley County). We are members of the Executive Committee of the Kansas District Judges Association (KDJA). We also serve as the presiding judge of a therapeutic treatment (drug court) program.

KDJA wishes to take this opportunity to express our opposition to the passage of HB 2052 relating to the earned credit toward early discharge on probation.

The concept of providing positive reward for good behavior is an important tool in an offender's rehabilitation. However, this tool is best utilized by trained community corrections and court services officers as well as judges who are in a position to consider a myriad of factors and exercise discretion in how rewards are earned and credited to offenders. Rewards should be used to encourage and further an offender's rehabilitation but not interrupt their completion of programs that have been deemed to be an integral part of their rehabilitation. Early discharge of an offender before they have completed mandated programs could increase recidivism and result in an increased risk to public safety. Also, it may increase the financial burden of taxpayers that now have to pay for additional incarceration or pay for the offender to complete the programs that they failed to complete as a result of early discharge.

Mandating a hearing when an offender has not completed needed programs and requiring the court to hold a hearing and make findings on the record to support additional time on probation is an inefficient use of the courts resources. Last, the bill as written leaves many unanswered questions that may invite further litigation.

In determining conditions of probation the sentencing judge considers both the circumstances of offense and offender, as well as, the available community resources. In a substantial number of cases these circumstances include an addiction to illicit drugs, especially methamphetamine. The offender's addiction fuels their continued criminal behavior and the continued social and financial cost to the community. The court sees this cost in a variety of cases including child in need of care, collection of debt, landlord tenant, divorce and protection from abuse cases. In response to this cost, many judicial districts in Kansas have established therapeutic treatment courts (drug courts) as a means to try address the impact of addiction in our communities. Presently, drug courts exist in Lyon, Saline, Reno, Shawnee, Johnson, Sedgwick, Ellis, Cowley, Miami, Allen and Wyandotte Counties.

Most drug courts in Kansas operate based upon the ten key components and Best Practices of drug courts as identified by the National Drug Court Institute. As part of this, drug courts work with offenders who have been identified as being both high risk and high need. These are offenders who, through evidence based testing, have both a substantial substance abuse disorder and are at an increased risk to be unsuccessful on probation. In other words offenders who have a greater of risk re-offending without real intervention.

Drug courts and intensive supervision programs through community corrections programs coordinate drug and alcohol, mental health and other forms of treatment. Cognitive therapy programs such as Moral Reconition Therapy and Thinking for a Change are often times part of the rehabilitation process. These programs provide substantial structure for the offender and a chance to make lasting changes in their behavior. Most of these offenders have spent years in their addiction, have poor employment histories and are not first time offenders. As a practical matter it takes a significant amount of time for completion of the programs that are needed to effect not just mere compliance but real change. When they complete the drug court program they receive a diploma in a commencement ceremony. They receive recognition when they complete other programs. For many of these offenders, completion of these programs is a substantial accomplishment in not only their life but for their family as well. SB2052 as written would disrupt this important rehabilitation process by allowing an offender to be released from probation before finishing these treatment programs.

The bill also has other problematic features. Holding a hearing when it is clear that the offender has not completed rehabilitative programs takes valuable court time. If there is no real chance that they will be discharged without completion of the required programs and it is not even possible to finish the required programs before their review hearing, then we are not being fair and honest with the offender. Drug court judges, community corrections officers and other professionals work to maintain credibility and fairness with the offender. This relationship plays a key role in the offender's rehabilitation.

If a hearing is conducted the statute as written fails to establish exactly what due process may be required as part of this review hearing. Is the person entitled to counsel at the hearing; If

an attorney is appointed to represent them, who is responsible for this expense? If the court finds that termination is not consistent with public safety or the welfare of the offender and the offender disagrees, may the offender appeal this decision? Who pays for this appeal? What happens to their supervision while the appeal is pending? If an offender has a graduated sanction, i.e. quick dip during their first week of supervision are they ineligible for early release under the 50% provision? Will that cause the court to have more hearings on these graduated sanctions because of the lasting effect they have on the length of supervision? More hearings will likely cause a delay in the imposition of the sanction. Without quick application of the sanction the value of the sanction as a tool of rehabilitation is diminished.

The bill as written provides for seven days of earned discharge credit for each full month of substantial compliance with conditions of supervision. But as written it again leaves many unanswered questions. Who makes the determination? The supervising officer? The court? What is the standard of proof? Clear and convincing evidence or preponderance of evidence? When is this decision made? Is there an opportunity to revoke the credit if the offender violates conditions after the award? Is there an appeal of any discharge decision? If so, who has jurisdiction of the appeal, the district court or an appellate court? Is the prosecuting attorney entitled to notice of this review and an opportunity to be heard on the issue?

The bill as written would also apply to offenders who have been placed on probation based upon the court finding substantial and compelling reasons to grant a dispositional departure. These are individuals that the legislature has identified to be sent to prison. When a judge grants a dispositional departure they typically have done so by finding that the offender is amenable to rehabilitation and that the appropriate rehabilitation program is available to the offender. In this instance the court is willing to accept some risk to public safety contingent upon the offender's completion of mandated programs. Early termination of their supervision prior to completion of the mandated programs would have to be considered in determining if they should even receive probation. This could result in judges being less willing to grant these departures. In turn, could actually result in an increase in the number of individuals that go to prison. It does not appear that this impact has been considered by the Kansas Sentencing Commission in their review of the potential impact of this bill.

Kansas law allows a judge to extend an offenders length of probation beyond the standard length of time, when the judge makes findings that the standard length of probation is not adequate to protect the safety of the public or the welfare of the offender. See K.S.A. 21-6608. Typically these extensions are made when it is clear at the time of sentencing that the offender will need additional time to complete the needed rehabilitation programs. Sometimes this occurs when an offender has multiple holds related to cases in other counties or states and the judge is not certain how long the person may be unavailable before they can even begin supervision. This bill would require the judge to have a hearing to determine substantial compliance even if the offender is not available or had not even started supervision.

The bottom line is this. Judges, court service and community corrections officers are in the best position to determine issues of early termination. We are on the front lines working with offenders in our respective communities. Allowing discharge of offenders who have not completed a program of rehabilitation is like the Fram oil commercial. You might save money

now in bed days with the Kansas Department of Corrections, but you will lose this savings and more when the person's rehabilitation has been disrupted and they return again and again to the criminal and civil justice system. Not to mention what impact further criminal conduct might have for the offender, their family, and the members of our communities. For these reasons we oppose this bill.

Respectfully submitted,

Jared B. Johnson, District Judge
Nicholas M. St. Peter, Chief Judge