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**House Committee on Corrections and Juvenile Justice**

Testimony in Support of HB 2081

January 28, 2021

By Amanda G. Voth, Chief Deputy McPherson County Attorney

Chairman Jennings and Members of the Committee on Corrections and Juvenile Justice:

I am writing specifically to express support of the amendment to K.S.A. 21-6805(f)(1), commonly known as Special Rule #26. The proposed amendment would clarify what I believe to be the legislature's original intent, which was to penalize repeat offenders.

I have prosecuted drug crimes for many years. When I was an Assistant District Attorney in Reno County, my caseload consisted primarily of drug crimes and financial crimes. During part of my time at the Kansas Attorney General's Office, I prosecuted drug crimes while on the Southeast Kansas Drug Grant. In my current role as Chief Deputy McPherson County Attorney, a large part of my caseload consists of drug crimes.

Currently, K.S.A. 21-6805(f)(1) has been interpreted to make a third felony drug conviction presumptive prison, no matter whether a defendant has two convictions from prior cases or whether all three convictions occur in the same case. In the last couple of years, I have had more than one case where a defendant is charged with numerous felony drug charges in one complaint, yet had no prior drug convictions. Due to the current language of the statute, even those individuals with no priors were presumptive prison because they were convicted of three drug felonies in the same complaint or at the same time.

Kansas appellate courts have been inconsistent in their interpretation of the application of Special Rule #26 and similar statutes, and at times seem to interpret the statute as already including the word "prior." Compare *State v. Moore*, 39 Kan.App.2d 568 (2008); *State v. Mangold*, 445 P.3d 772, \*5 (Kan.App. Aug. 9, 2019) (unpublished opinion) to *State v. Arnett*, 290 Kan. 41, 49, 223 P.3d 780 (2010).

I believe HB 2081 clarifies the intent of the legislature, which is to penalize repeat offenders with prison, not those offenders who happen to have possessed three different kinds of felony drugs at one time or those who have a single prior conviction and have two drug convictions in a current case.

HB 2081 is in line with criminal justice reform initiatives, and I ask that you support the passage of this bill.

Sincerely,  
Amanda G. Voth