

SENATE JUDICIARY COMMITTEE  
**Senator Rick Wilborn, Chairman**

KANSAS SENTENCING COMMISSION  
**Scott M. Schultz, Executive Director**  
**March 14, 2017**

**Proponent Testimony – HB 2085**

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission (KSSC). This bill was introduced by the KSSC to resolve an alleged conflict between K.S.A. 2016 Supp. 22-3717(d)(1)(D) and K.S.A. 2016 Supp. 22-3717(d)(1)(G) as it relates to the postrelease supervision length for those sentenced as “sexually violent” offenders.

The bill would also amend K.S.A. 2016 Supp. 22-3717(d)(1)(G) to provide for a postrelease supervision term of 60 months for persons who are under 18 years of age when they commit a sexually violent offense.

**Statutory Conflict**

The Office of the Attorney General and the KSSC were concerned due to the potential for conflicting language as set forth above that might cause litigation for offenders requesting less than lifetime postrelease supervision. The proposed language would eliminate the sexually violent crime reference from K.S.A. 22-3717(d)(1)(D), leaving only a reference in (d)(1)(G) that contains the lifetime postrelease supervision provision.

Since the Commission’s recommendation of the current bill language, the Court of Appeals in *State v. Herrmann*, 53 Kan. App. 2d \_\_\_, 384 P.3d 1019 (2016), found no conflict with the language, holding that subsection (d)(1)(D) only applies to persons convicted of a sexually violent crime after July 1, 1993, but before July 1, 2006 and that subsection (d)(1)(G) applies to all persons convicted of a sexually violent crime after July 1, 2006. This case is currently being appealed to the Kansas Supreme Court by Mr. Herrmann.

**Juveniles**

In *State v. Dull*, 302 Kan. 32, 351 P.3d 641 (2015) *cert. denied* 136 S.Ct. 1364 (2016), the Kansas Supreme Court found that mandatory lifetime postrelease supervision is

unconstitutional and always cruel and unusual punishment for juveniles, in part because juveniles' diminished culpability, immaturity, recklessness, poor decision-making skills, and lower risks of recidivism all diminish the punishment goals of lifetime supervision. The KDOC joined the KSSC in seeking a resolution to the current status of the law after *Dull* that does not allow any postrelease supervision for a juvenile that is certified as an adult and convicted of a sexually violent offense. The proposed language of 60 months attempts to comply with *Dull* and provides a reasonable time of postrelease supervision to promote public safety.

I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.