



Kansas County & District Attorneys Association

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To: Chairman Jennings and Members of the House Corrections and Juvenile Justice Committee

From: Charles Branson
Douglas County District Attorney and on behalf of
Kansas County and District Attorneys Association

Date: February 6th, 2019

Re: Opponent Testimony for House Bill 2052

Good Afternoon Chairman Jennings and Committee Members,

Thank you for the opportunity to provide opponent testimony for HB2052. I am addressing you on behalf of the Kansas County and District Attorney's Association and the many Kansas prosecutors they represent.

HB 2052 appears to be intended to reduce the probation period for defendant's who are in substantial compliance with their probation orders. HB2052 mandates the district court hold a hearing on the date the probationer has satisfied 50% of the probationer's term of probation. Holding a hearing does not appear to be discretionary for the district court. Requiring the district court to hold such hearings will necessarily require the presence of the judge, court reporter, prosecutor, probation officer, and appointed or retained defense attorney. If the case involves a living victim notification of the hearing will have to be provided. The effect of a mandatory hearing under these circumstances would create immense undue burden on an already overburdened system where courtroom time is already at a premium.

HB2052 requires the court grant discharge unless it finds by clear and convincing evidence the denial would serve the community safety interests. This standard is inconsistent with the preponderance of the evidence standard of proof for probation violation cases.

Alarming, HB2052 would require a judge to discharge a probationer before completion of ordered treatment programs upon a finding of "substantial compliance" defined as "significant progress". Under this scenario a person placed on probation for twelve months with conditions to complete a nine month treatment probation could be terminated with no obligation to

complete the last three months of treatment after six months. If one of the goals of probation is to keep probationers in the community accessing the services for their rehabilitation, removing the obligation halfway through their probation terms seems counterintuitive.

Finally, the terms “substantial compliance” and “significant progress” have different meanings that can be interpreted differently from jurisdiction to jurisdiction and from judge to judge. It is not clear from the plain language of the statute if the progress needs to be on all conditions or just some. Not only would this sow confusion and inconsistencies in hearings at the district court level it would create a slew of appellate cases challenging the meaning of the terms.

We urge the rejection of the changes proposed in HB2052

Charles Branson

Douglas County District Attorney

Kansas County and District Attorney’s Association