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Senate Judiciary Committee
March 19, 2024

House Bill 2741
Testimony of the BIDS Legislative Committee
Presented by James Houston Bales
Neutral

Dear Chairwoman Warren and Members of the Committee:

HB 2741 revisits the standard probation and parole conditions. We recognize there are currently over 50 conditions of probation imposed on probationers, which vary by jurisdiction. We also recognize that HB 2741 comes from the Kansas Criminal Justice Reform Commission's Subcommittee on Standardized Terms and Conditions of Supervision; they worked with people from around the state and national experts to come up with conditions that meet three laudable goals: realistic, relevant, and research-supported. An almost identical bill, HB 2658, was introduced in 2021. We appreciate the Subcommittee's work and their desire to update the conditions to meet these goals. We submit this testimony to point out concerns with some of the new conditions and an ongoing concern with an existing condition.

Section (b)(3) would make truthfulness to the probation supervisor a condition of probation. While being honest is important to success on probation, this condition has two issues. First, what are the limits of "be truthful in all matters"? The probation officer is not a priest in the confessional offering forgiveness and mercy for sins; they are empowered to decide if this behavior is problematic enough to warrant serving an underlying sentence in jail or prison. What may be forgetfulness or faulty memory could be seen as untruthfulness. Second, there is the question of the Fifth Amendment right against self-incrimination. Is invocation of the Fifth Amendment a lie of omission? Truthfulness is a wise policy for the successful probationer, but this condition is overbroad and allows for far too much interpretation to give good guidance both to those being supervised and those required to determine if missed details rise to the level of necessitating a warrant.

Section (b)(5) gives probation supervisors the power to control where their supervisees live, and adds an approval requirement to a probationer's residence or change of residence. Again, no guidance is given to help either party determine what sort of

residence is suitable for a probationer, nor is any consideration given for the barriers that exist in finding housing as a felon. Often, people with felony convictions are forced to take what housing they can get, which under this proposed law could place a probationer in a position where they are forced into prison because of an inability to please a probation officer with the limited housing choices that are available to them. Or worse, for a homeless probationer–who may not even be homeless by choice, owing to things as common as job losses and medical crises–to land in prison because of a lack of resources in their community to support the transition from homelessness to housing.

Section (b)(7) would prevent probationers from entering into any business where alcohol is sold or consumed as the primary source of revenue. This probation condition would foreclose certain avenues of employment from probationers because it is a blanket ban on entering the premises at all. For instance, a probationer employed by an HVAC company could not work on the air conditioner in a bar because that would require entering the premises. Additionally, Kansas has little regulation on the presentation of these establishments, leaving much of this regulation up to the individual community. There is no requirement these establishments display their financials to the public, nor is there a requirement that the establishment have any sort of notifying signage at the door. Many Kansas communities have opened their municipal codes to include licensing to sell alcohol on public right-of-ways subject to certain conditions. This condition can be violated entirely by accident, even if the probationer's intent is to remain within their conditions and purchase food alone, or even by walking down the wrong street or sidewalk. Finally, this condition is not relevant to everyone on probation, if their offense had nothing to do with alcohol and they do not have an addiction issue.

Section (b)(11) includes a condition that was not part of the Subcommittee's work and did not appear in HB 2658: "(11) refrain from contacting victims unless authorized by the court to contact a victim as part of rehabilitative or therapeutic purposes." (page 3, lines 18-19). While no-contact orders are often appropriate in criminal cases, making this condition standard creates problems or may not be necessary. If the victims are institutional, such as a business or company, a no-contact order is not always necessary. Furthermore, an automatic no-contact order as a condition of probation would leave victims who want contact in a place where their concerns are not considered by the court. The limitation to therapeutic or rehabilitative purposes is also difficult, because creative ways to fit a victim's desired outcome or create the best outcome for a defendant may require stretching the definition of therapeutic or rehabilitative outcomes. For example, is being able to have contact with the other parent of your child (who is the victim of your offense of criminal damage to property, a nonperson misdemeanor) to set up visitation, school rides, and medical appointments a "therapeutic or rehabilitative purpose"?

The addition of no-contact orders as a standard condition of parole (page 17, lines 12-14) is also concerning, because some of our clients choose prison over probation to resolve their cases based on the absence of no-contact orders while in prison. Requiring

the presence of no-contact orders once they are released from prison removes this incentive for people to accept responsibility for their actions and go to prison without argument, or even to forgo probation in certain cases, since the presence of a no-contact order is psychologically punishing and often ruinous to their families.

Section (b)(10) is a preexisting condition relocated from elsewhere in the statute, but the problems with this section remain. Allowing searches at any time based on reasonable suspicion effectively abrogates the Fourth Amendment for all probationers. Worse still, allowing these searches destroys the protections of the Fourth Amendment for anyone in proximity to a probationer, since homes, cars, and property are often shared by others who may not otherwise be subject to this provision.

Thank you for your consideration,

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