

**SENATE PUBLIC HEALTH AND WELFARE COMMITTEE**  
**Senator Vicki Schmidt, Chair**

**KANSAS SENTENCING COMMISSION**  
**Scott M. Schultz, Executive Director**  
**January 18, 2018**

**Neutral Testimony – HB 2232**

Thank you for the opportunity to present neutral testimony on behalf of the Kansas Sentencing Commission. This bill seeks to regulate electronic monitoring in adult care homes. While the purpose of the bill is laudable and the aims are reasonable, the Commission wants to caution the committee regarding the severity level that has been placed on the criminal conduct in the bill, specifically a severity level 4, nonperson felony as set forth on subsection (m)(3)(C) of Section 1 of the amended bill.

A fundamental function of the Commission is to be gatekeepers of the Kansas Sentencing Guidelines act that was passed in 1993. We provide legislative bed space impacts for all of the criminal bills that are normally introduced in Senate Judiciary, House Corrections and Juvenile Justice and House Judiciary committees. A section of the impact includes a proportionality section to allow legislators to determine if the proposed crime severity level is appropriate or proportional to that of existing crimes.

It is the responsibility of the Commission to recommend to policy makers ways to support and maintain these guidelines. One of those recommendations is to consider proportionality of crimes when passing legislation. The Commission does not stand in support or opposition of the proposed bill but would like to bring to the attention of the committee that a severity level four felony is the same punishment for convictions of involuntary manslaughter, aggravated burglary and aggravated indecent liberties with a child. Please see the table on the following pages. Severity level four nondrug crimes carry a presumptive prison sentence of 38-172 months (3.2-14.3 years) depending on the offender's criminal history.

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

Statute Number Violated	Statutory Penalty Section	Registration Required "R"	Statute Description	Severity Level / Class	Attempt, Conspiracy & Solicitation			Person Nonperson/ Select
					A	C	S	
21-5404(a)(1)	(b)	R	Voluntary Manslaughter; Knowingly killing upon sudden quarrel or in heat of passion	3	5	5	6	Person
21-5413(d)(1)(A)	(g)(4)(A)		Aggravated Battery; State, county or city law enforcement officer; knowingly causing great bodily harm or disfigurement	3	5	5	6	Person
21-5417(a)(2)	(c)(2)(B)		Mistreatment of Dependent Adult; Knowingly taking the personal property or financial resources of a dependent adult by taking control, title, use or management of such property or resources; amount is at least \$250,000 but less than \$1,000,000	3	5	5	6	Person
21-5417(b)(1)	(d)(1)(B)		Mistreatment of an Elder Person; Knowingly taking the personal property or financial resources of a elder person by taking control, title, use or management of such property or resources; amount of at least \$250,000 but less than \$1,000,000	3	5	5	6	Person
21-5420(b)	(c)(2)		Aggravated Robbery; Armed with a dangerous weapon or inflicts bodily harm upon a person during robbery	3	5	5	6	Person
21-5405(a)(3)	(b)(2)	R	Involuntary Manslaughter; In the commission, attempted commission, or flight from DUI	4	6	6	7	Person
21-5413(b)(1)(A)	(g)(2)(A)		Aggravated Battery; Knowingly causing great bodily harm or disfigurement	4	6	6	7	Person
21-5417(a)(2)	(c)(2)(C)		Mistreatment of Dependent Adult; Knowingly taking the personal property or financial resources of a dependent adult by taking control, title, use or management of such property or resources; amount is at least \$100,000 but less than \$250,000	4	6	6	7	Person
21-5417(b)(1)	(d)(1)(C)		Mistreatment of an Elder Person; Knowingly taking the personal property or financial resources of a elder person by taking control, title, use or management of such property or resources; amount of at least \$100,000 but less than \$250,000	4	6	6	7	Person
21-5506(b)(2)(A)	(c)(2)(B)	R	Aggravated Indecent Liberties with a Child; Nonconsensual lewd fondling/touching; child 14 or more but less than 16	4	6	6	7	Person
21-5807(b)(1)	(c)(2)(A)		Aggravated Burglary; Without authority, enter into or remain within any dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein	4	6	6	7	Person
21-5912(a)(1)	(b)(2)		Aiding an Escape; Assist another to escape from such lawful custody; KDOC employee/volunteer or KDOC contractor employee/volunteer	4	6	6	7	Nonperson
<b>Section 1(m)(1)</b>	<b>(m)(3)(C)</b>		<b>Adult Care Homes; Knowingly hindering, obstructing, tampering with or destroying, without the consent of the resident or individual who authorized electronic monitoring, an electronic monitoring device</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>7</b>	<b>Nonperson</b>

			installed in a resident's room; with the intent to commit or conceal the commission of a felony offense					
<b>Section 1(m)(2)</b>	<b>(m)(3)(C)</b>		<b>Adult Care Homes; Knowingly hindering, obstructing, tampering with or destroying, without the consent of the resident or individual who authorized electronic monitoring, a video or audio recording; with the intent to commit or conceal the commission of a felony offense</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>7</b>	<b>Nonperson</b>
21-5405(a)(1)	(b)(1)	R	Involuntary Manslaughter; Recklessly	5	7	7	8	Person
21-5413(b)(2)(A)	(g)(2)(C)		Aggravated Battery; Recklessly causing great bodily harm or disfigurement	5	7	7	8	Person
21-5415(b)	(c)(2)		Aggravated Criminal Threat; When public, commercial or industrial building, place of assembly or facility of transportation is evacuated, locked down or disrupted as to regular, ongoing activities as result of threat	5	7	7	8	Person
21-5417(a)(1)	(c)(1)		Mistreatment of Dependent Adult; Knowingly inflict physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult	5	7	7	8	Person
21-5417(a)(2)	(c)(2)(D)		Mistreatment of Dependent Adult; Knowingly taking the personal property or financial resources of a dependent adult by taking control, title, use or management of such property or resources; amount is at least \$25,000 but less than \$100,000	5	7	7	8	Person
21-5417(b)(1)	(d)(1)(D)		Mistreatment of an Elder Person; Knowingly taking the personal property or financial resources of a elder person by taking control, title, use or management of such property or resources; amount of at least \$25,000 but less than \$100,000	5	7	7	8	Person
21-5420(a)	(c)(1)		Robbery; Knowingly take property from person or presence of another by force or by threat of bodily harm	5	7	7	8	Person
21-5807(b)(2)	(c)(2)(B)		Aggravated Burglary; Without authority, enter into or remain within any building, or other structure which is not a dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein	5	7	7	8	Person