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Testimony on HB 2170
to
The House Corrections & Juvenile Justice Committee

By Ray Roberts
Secretary
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The KDOC supports HB 2170. Through the passage of this bill the State of Kansas has an opportunity to enhance public safety, reduce recidivism, and curb spending in the criminal justice system similar to the results Kansas realized in 2006 with the assistance of the Council of State Governments (CSG). This bill is the culmination of the Justice Reinvestment Initiative facilitated by the CSG Justice Center. The foundation for this bill is the collection and analysis of data, stakeholder interviews throughout the state, and input solicited from the JRI Working Group. HB 2170 has been reviewed by the Governor's Office, Kansas Sentencing Commission, various legislators, and legislative committees.

The public safety provisions of HB 2170 are interrelated and geared toward strengthening community supervision, since 37% of all KDOC admissions are probation revocations. The bill provides for post release supervision for those probation violators who currently leave prison without any supervision. It is our contention that every released offender should have community supervision to detect antisocial behavior, assist with reentry efforts, and reduce crime victims.

This bill also focuses supervision on higher risk probationers and incentivizes compliance. Based on the research, if supervision resources are wasted on lower risk offenders it detracts from supervision of higher risk and violent offenders.

HB 2170 allows for the early termination of supervision for low risk offenders who are compliant with the conditions of release and met restitution requirements. Currently, offenders assigned to community supervision, who pose a low risk to reoffend, spend as long on community supervision than medium or high risk offenders. The revocation rate for low risk offenders is 4% versus 76% for high risk offenders.

In order for the proposed bill to achieve optimal results, it is important that the legislature approve the \$2 million in FY 14 and \$3 million in FY 15 for community-based offender programs recommended in the Governor's budget. These programs will target behavioral health needs, i.e., substance abuse, cognitive rethinking deficits, and mental health interventions. HB 2170 will enhance public safety, reduce recidivism, and delay the need for construction of new prison facilities for 512 inmates by one to two years. It will cost \$24.5 million to construct the beds and \$8.4 annually in operating costs.

HB 2170 does not:

1. Reduce prison sentences.
2. Alter the lifetime post-release supervision requirement for Jessica Law offenders or for sex offenders with a 60 month post-release supervision obligation.
3. Alter the addition of good time and program credits awarded while in prison to extend the post-release supervision obligation for sex offenders.
4. While the bill allows for the potential discharge from probation supervision for low risk offenders after 12 months of compliance with supervision conditions and full payment of restitution, it does not alter the ability of the court to deny that supervision discharge. Under current law, a court may discharge an offender from probation at any time without the restitution and low risk LSIR assessment required by HB 2170.
5. Preclude a court from revoking probation and imposing the full underlying prison sentence when an offender commits a new crime, absconds, or the court finds that public safety requires the immediate revocation of probation and imposition of the underlying sentence.
6. Eliminate the courts ability to send repeat offenders to prison for what would otherwise be a presumptive probation new offense even if the offender had been discharged early from supervision.
7. Alter the ability of the court to impose, as a condition of probation supervision, periodic jail confinement for up to 60 days pursuant to K.S.A. 21-6607.

The Research Shows

- Offenders who complete two or more behavioral health interventions are more likely to be successful on community supervision.
- Offenders who are released from prison need a period of post release supervision to ensure good public safety.
- Low risk offenders assigned to community supervision are much less likely to be revoked than higher risk offenders therefore they should not be over-supervised.
- The length of post-release supervision assigned to offenders on community supervision should vary based on an offender's performance on supervision and their risk for reoffending as assessed by a validated assessment instrument. In Kansas, the length of probation or post-release supervision is divorced from the risk and needs of an offender under the sentencing grids and even the prison sentence imposed. For example, a post-release supervision obligation of 36 months is required for offenders irrespective of their risk/need assessment and is imposed for offenders with prison sentences ranging from 38 to 653 months.

- Implementing swift and certain sanctions for offenders under community supervision for short periods in local jails and using graduated sanctions for probationers revoked to prison for condition violations, increase public safety and curbs spending.

HB 2170 Provisions

1. Retains the mandatory consecutive sentence requirement when a felon commits a new felony crime while incarcerated, but allows the court to impose either a concurrent or consecutive sentence when the new felony is committed while on release supervision. [Sec. 1].
2. Retains the provisions that if a new felony is committed while on release supervision, the court may impose a prison sentence even if the new felony would otherwise be presumptive probation and expands that rule to apply even if the supervision was terminated early. [Sec. 1 and 2].
3. Requires all revoked probation violators have a postrelease supervision obligation. [Sec. 1, 5 and 6].
4. Allows the court to authorize a court services or community corrections officer to impose a sanction for a short period of time in a jail for a probation violation without further order from the court. However, the probationer may nonetheless demand a hearing before the court. The court is not required to delegate this authority to a court service or community corrections officer. [Sec. 1 and 5].
5. Probationers who have been compliant with all of the terms of their supervision for 12 months, paid all restriction and are low risk shall be eligible for discharge from probation unless the court finds substantial and compelling reasons for denial of such discharge. [Sec. 3].
6. Requires that any good time or program credit awarded to reduce the prison portion of a sentence under current law be added to extend the post-release supervision obligation of sex offenders. For offenders that are not sex offenders, good time and program credits earned while in prison would not be added to the postrelease supervision, and that provision would be applied retroactively to released offenders. [Sec 6]. Under current law, offenders whose behavior warrants prison good time are required to be on post-release supervision longer than those offenders that do not earn good time.
7. Establishes graduated sanctions for probation violations: [Sec. 5]
 - a. Confinement in jail for a total of not more than six days per month in any three separate months during the supervision period to be imposed in two-day or three-day consecutive periods.
 - b. Incarceration in KDOC prison for 120 days with the possibility of discharge by the secretary after 60 days with return to community corrections supervision.
 - c. Incarceration in KDOC prison for 180 days with the possibility of discharge by the secretary after 90 days with return to community corrections supervision.
 - d. Revocation of the probation with service of the full underlying prison term.

- e. While, the imposition of sanctions will usually be progressive, the court may skip sanctions and impose a full revocation if the probationer commits a new crime, absconds or for any other reason the court finds that public safety warrants revocation.
8. Retains the current law that sex offenders with a 60 month post-release supervision obligation may have their supervision reduced to the corresponding supervision length dictated by the crime severity level with the new additional criteria that they must have paid all restitution. [Sec. 6]
9. Provides authority to the Prisoner Review Board to discharge from post-release supervision those non-lifetime or 60 month supervised sex offenders if restitution has been paid.
10. Amends the current requirement that when the Prisoner Review Board revokes post-release supervision due to a new felony, the entire balance of the remaining post-release supervision must be served in prison. The bill allows the Board to impose any portion of the remaining balance of the post-release supervision obligation up to the entire amount. [Sec. 7]
11. Authorizes the KSC to establish statewide LSI-R Scores based upon the risk levels and needs for offenders. [Sec. 8].

HB 2170 Amendment

The KDOC proposes an accountability amendment to HB 2170 to provide for a review of effectiveness of these public safety policies. Therefore, the KDOC recommends that HB 2170 be amended at page 40, at the end of line 22 by inserting: "determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community based supervision populations." A balloon is attached.

Fiscal Impact

With the successful passage of HB 2170, the KDOC anticipates an approximate cost aversion of \$53 million and a need for 840 fewer prison beds. In order to achieve optimal results, both the programs recommended in the Governor's Budget of \$2 million in FY 14 and \$3 million in FY 15 and the proposed policy changes outlined in HB 2170 will need to be approved. This will delay new bed construction at the El Dorado Correctional Facility by one to two years. This cost avoidance will equal \$24.5 million in construction costs and \$8.4 in operating costs annually. It should be noted that the KSC projects a need for 1139 beds by FY 18 and another 975 beds for the remaining five years, yielding a total need for 2114 beds by the end of the 10 year forecast.

Reinvested funding needed through the Justice Reinvestment process to initiate and sustain HB 2170

➤ Behavioral Health Intervention costs for FY 16 thru 18	(\$3,000,000)
➤ KDOC sentence computation unit	(\$95,921)
➤ KDOC Reception and Diagnostic Unit	(\$300,000)
➤ IT programming	(\$139,074)
➤ Victim notification	(\$56,920)
➤ Prisoner Review Board Member	(\$79,838)
➤ Increased transportation costs for an increasing number of probation violators released from prison	(\$292,500)
➤ Training costs for judges, prosecutors, corrections staff	(\$150,000)
➤ Reduce caseloads for community corrections and parole	(\$3,500,000)
Total Costs	(\$10,614,253)