

SENATE JUDICIARY COMMITTEE

Senator Jeff King, Chairman

KANSAS SENTENCING COMMISSION

Scott M. Schultz, Executive Director

March 14, 2013

Proponent Testimony

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission (Commission). As set forth in the provisions of K.S.A. 74-9101(b)(15), the Commission is directed to identify and analyze the impact of specific options to reduce prison population, once the prison population projections indicate that the state's prison population will exceed capacity within two years, and upon request of the Corrections Secretary or the Legislature.

Pursuant to provisions of K.S.A. 21-4725, the Kansas Department of Corrections Secretary has informed the Commission that the number of KDOC inmates as of February 28, 2013, represented 99.0% of the overall capacity within the Kansas correctional system. On that date, there were 9,494 inmates with total capacity being 9,594 including 9,463 beds in KDOC facilities and 131 placements available to the Department in facilities operated by other agencies. Considering KDOC facilities only, the 9,379 inmates housed in these facilities on February 28, 2013, represented 99.1% of the capacity. Of the total inmate population, 8,767 were male and 727 were female. Total correctional system capacity for housing males is 8,799; for females, the capacity is 795. The February 28th inmate population represented 99.6% of capacity for males and 91.4% for females.

The Commission publishes annual adult prison population projections each year for KDOC. Unfortunately there appears no end in sight for the increase in prison population. The projections indicate that prison admissions will continue to outpace releases for the next 10-year forecast period, adding **2,114 new inmates** over the current population. This represents a **22.6% increase** in the adult prison population by 2022.

Since April 2012, the Commission has been closely associated with the Council of State Governments Justice Center. Many meetings have been held with Commission staff over

the past year and much of the criminal data produced for CSG analysis was provided by the Commission. As a result, the same Commission priorities set forth in Attachment 1 readily align with the recommendations of CSG to the state that are included in the bill. The Commission has worked closely with the Department of Corrections and other criminal justice stakeholders to craft options based on evidence-based practices that enhance public safety while being good stewards of taxpayer dollars. HB 2169 and HB 2170 are direct products of that working relationship.

The Commission has analyzed policy options that would reduce prison beds currently in the system. Our obligation is clearly to provide you with alternatives to opening or building additional prison beds. We believe these options are data driven and the most rational approaches to public safety to maintain space requirements for the most serious offenders while seeking alternative methods to curb admissions. The attachment is a list of priorities established by the Commission to directly and indirectly accomplish this statutory charge. In describing the priorities, the document also identifies first and tenth year bed savings. These recommendations by the Commission have been incorporated into the bill.

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



2013 Objectives for the Reduction of Prison Admissions

1. Enhance Probation Supervision
2. Adopt Statewide LSI-R Assessment Guidelines
3. Management of Postrelease Supervision
4. Enable Judiciary Sentencing Discretion

Objective 1: Enhance Probation Supervision

1. Authorize probation officers to employ swift and certain responses to technical violations.

Description

- Enable judges to advise offenders at sentencing that the Court shall establish an intermediate sanction period of up to three days in jail for technical violations of felony and misdemeanor probation. This would allow court services and community corrections officers to respond to certain probation violations without a court hearing.
- The jail sanction is designated as a “swift and certain” response to noncompliant offender behavior and would be limited to a total of not more than six days per month in any three separate months during the period of release supervision. The six days per month confinement may only be imposed as two-day or three-day consecutive periods, not to exceed 18 days of total confinement.
- With advance approval from the chief court services officer or director of community corrections, the sanction may be imposed at the request of the assigned court services or community corrections officer.
- A probationer subject to this jail sanction will be required to waive their notice of a probation revocation hearing. A probationer who does not waive their right to a full hearing receives a hearing within a reasonable time.
- Graduated intermediate sanctions: Prior to revocation to prison to serve the original sentence, further sanctions while on community corrections supervision are required. After the community corrections offender has received at least one jail swift and certain sanction, the offender would be notified of a violation response sanction (VRS) court hearing in which the term of community corrections would be suspended while the offender serves 120 days incarceration in prison. The offender would then return to community corrections. A second VRS following the same procedure would be 180 days of incarceration in prison. The offender would then return to community corrections. Any subsequent violations would subject the offender to revocation to prison for the remainder of their sentence.
- After being placed on community corrections, probation condition violators will be eligible to earn sanction reduction credit, resulting in reduction credits up to 60 days for the first VRS and up to 90 days for the second VRS based upon compliance and good behavior while incarcerated. These reduction credits would only shorten their stay for the VRS and would not be credited as good time credit toward their prison sentence.
- Suspension of community corrections supervision with the VRS for 120 or 180 days is to be served in prison, not jail.
- This procedure shall not apply to probationers who have absconded or are convicted of a new felony or misdemeanor crime while on probation.
- If public safety is at issue, the Court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender without having previously imposed an intermediate sanction if the court finds

and sets forth with particularity the reasons for finding that the safety of the public will be jeopardized or that the welfare of the offender will not be served by such sanction.

- In an effort to monitor those probationers revoked to serve their original sentences, postrelease supervision would be reinstated for those offenders.

Rationale

In FY 2012, 33.7% of all prison admissions were offenders whose probation was revoked not because they were convicted of a new crime, but because they violated the conditions of their supervision. In focus group meetings performed this past year by the Council of State Governments Justice Center, probation officers reported they spend days waiting for the Court to hold a single probation violation hearing. For probation officers to respond swiftly and certainly to people under supervision when they break the rules, these probation officers need the authority and flexibility to take action without seeking a court hearing. Providing probation officers this discretion also enables them to spend less time waiting for court hearings and more time in the community supervising people on their caseloads.

Probation departments in both Georgia and Hawaii have implemented policies that facilitate swift responses, including brief, but immediate incarceration when a probationer violates the terms of his or her supervision. Researchers evaluating these policy changes have found that the Georgia policy, which enabled probation officers to impose these sanctions without seeking a court hearing, reduced by 70 percent the number of days that people on probation spent in jail because of a violation of a condition of supervision or because they were awaiting a court hearing.

Prison Bed Impact

Utilizing the following scenario: If (1) first probation condition violators are required to serve 3 days in jail; (2) second probation condition violators serve 120 days in prison, then return to community corrections; (3) third probation condition violators serve 180 days in prison, then return to community corrections and (4) those who exhaust their jail time and prison term are revoked to prison to serve their remaining underlying prison sentence, by:

- FY 2014, **811 prison admissions** would be reduced and **791 prison beds** would be saved, and
- FY 2023, **970 prison admissions** would be reduced and **2,502 prison beds** would be saved.

2. Focus probation resources on those offenders most likely to commit crime.

Description

- Direct court services and community corrections to allocate supervision and treatment resources according to those offenders who pose the greatest risk of reoffending.
- Use a validated instrument to assess felony probationers for risk of reoffending, and terminate supervision for those offenders who are determined to pose a low risk to public safety *and* who demonstrate compliance with all terms and conditions of supervision.

- A defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court. The court shall grant such discharge unless the court finds substantial and compelling reasons for denial of such discharge.

Rationale

Currently successful, low risk probationers are being supervised as long as moderate to high risk probationers. Probationers on community corrections, for example, average the following months on supervision, low risk, 24; moderate risk, 25; and high risk, 22. But their corresponding revocation rates are 4%, 37%, and 76%. Research shows that reductions in recidivism can be achieved when treatment and supervision resources are concentrated on moderate to high risk and moderate to high need individuals.

Furthermore, applying the same level of supervision resources to high and low risk offenders is counterproductive and has been shown to actually increase recidivism rates for low risk offenders.

Objective 2: Adopt Statewide LSI-R Assessment Guidelines

- 1. Legislation to authorize KSC to make cutoff decisions based upon risk levels and needs of the offender. KSC will periodically review data and make recommended changes.*

Description

- Court services and community corrections field staff have requested a statewide system that would enable judicial districts to be uniform in their assessment of risk and needs as it pertains to DUI, SB 123 drug treatment, and those nondrug felonies levels 8, 9, and 10. The current tool that has been authorized by the Commission is the Level of Service Inventory - Revised. The assessment is 54 items grouped into ten domains that represent key criminogenic risk factors. The LSI-R can be thought of as something like a medical triage decision making tool - it provides insight into which offenders should receive the highest priority for treatment, regardless of their specific problem areas.
- Improvements in data collection would result from all jurisdictions utilizing the same cutoffs and requirements for service.
- K.S.A. 2012 Supp. 74-9101 would be amended to add the following language, “The Kansas Sentencing Commission is authorized to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. The commission shall periodically review data and make recommended changes.”

Rationale

Currently, over 10 different cutoff scores exist in the state, which renders inequities. For example, in determining SB 123 eligibility for drug possession offenses in neighboring judicial districts, one offender may be eligible for state paid substance abuse treatment and probation while the other may be presumptive prison. The resulting sentencing decision is not based upon the criminal conduct but due to the location of the crime.

Prison Bed Impact

With increased emphasis on evidence-based practices in the community, this objective will provide a positive prison bed impact savings in identifying and treating higher risk offenders. However, no data exists at this time to quantify the savings.

Objective 3: Better Management of Postrelease Supervision

- 1. Utilize evidence-based practices in a postrelease supervision setting to allow for early release while not jeopardizing public safety.*

Description

- This proposal would allow the Secretary of Corrections to determine early release of an offender, based upon risk or the Secretary's criteria similar to parole. It would not change postrelease supervision time but simply allow for early termination if the inmate was compliant and availed themselves of the beneficial programs while incarcerated.
- The current practice adds any good time and programming credit earned to postrelease supervision time. The proposal would eliminate this practice.
- Sexually violent offenders defined in K.S.A. 2012 Supp. 22-3717, electronic solicitation as defined in K.S.A. 2012 Supp. 21-5509, and unlawful sexual relations as defined in K.S.A. 2012 Supp. 21-5512, would be excluded and would continue to have good time and programming credits added to their postrelease supervision term.

Rationale

With the exception of sexually violent, sexually motivated, electronic solicitation and unlawful sexual relations convictions, offenders are incentivized by accumulating good time and programming credits while incarcerated in KDOC. As a result, this time awarded is not added to their postrelease supervision. It is important to note that truth-in-sentencing is maintained as the offender will still serve 80-85% of the original sentence. The original postrelease supervision term that was originally ordered at sentencing will remain the same.

Prison Bed Impact

Eliminating the requirement of adding good time to postrelease supervision time will **reduce 113 prison admissions and save 47 to 49 beds each year.**

- 2. Expand the powers of the Prisoner Review Board from misdemeanor to felony violations of postrelease supervision.*

Description

- K.S.A. 75-5217(c) currently requires an offender to serve all of the remaining balance of their postrelease supervision if the violation is a result of a new felony conviction. Subsection (c) would be amended to allow the PRB to determine the period of confinement up to the remaining balance of the offender's postrelease supervision term.

Rationale

The PRB already has this authority with new misdemeanor convictions while on postrelease supervision.

Prison Bed Impact

Allowing the PRB this remedy will **save 22 to 24 beds each year.**

Objective 4: Enable Judiciary Sentencing Discretion

1. *Probation Revocations: Allow Courts more latitude to modify an offender's sentence if the offense is committed while on felony supervised status and felony bond.*

Description

- Commonly known as Special Rule 9, K.S.A. 21-6604(f)(1) currently allows discretionary sentencing to prison for an offender that commits any felony while under supervision. It is mandatory, however, that the new sentence runs consecutive with the probation revocation sentence. K.S.A. 21-6606(c).
- Commonly known as Special Rule 10, K.S.A. 21-6604(f)(3) currently allows discretionary sentencing to prison for an offender that commits any felony while on felony bond. It is mandatory, however, that the new sentence runs consecutive with the probation revocation sentence. K.S.A. 21-6606(d).
- The amendment enables judges to exercise discretion on a case-by-case basis by allowing the Court to sentence a new felony conviction concurrently with the probation revocation sentence.
- Modification of these statutes does not affect the presumption of imprisonment that is required by the special rules and would not affect those who commit a new offense while incarcerated.

Rationale

Each case before a district court is factually different. In some instances, the Court may find facts and circumstances warranting concurrent sentencing. Under the current law, the Court is unable to order this sanction. The modification of Special Sentencing Rules 9 and 10 would impact prison sentence length.

Prison Bed Impact

Special Sentencing Rule 9: This policy proposal will **not** reduce **prison beds** in FY 2014 but will **save 37, 95 and 184 prison beds** in FY 2023, respectively based upon assumption frequencies (10%/25%/50%) in which the Court would sentence an offender to concurrent rather than consecutive sentences.

Prison Bed Impact

Special Sentencing Rule 10: This policy proposal will reduce **no prison beds** in FY 2014 but will **save 22, 65 and 105 prison beds** in FY 2023, respectively based upon assumption frequencies (10%/25%/50%) in which the Court would sentence an offender to concurrent rather than consecutive sentences.

MEMORANDUM

To: Brendan Yorkey, Principal Analyst, Division of Budget
From: Scott M. Schultz, Executive Director
Date: March 13, 2013
Re: Prison Bed Impact Assessment, **HB 2170 as Amended by the House Committee of the Whole** - Concerning Sentencing Dispositions, Probation and Postrelease Supervision

IMPACT ASSESSMENT

- **Impact on Prison Admissions:** The impact of this bill will reduce **924 prison admissions** in FY 2014 and **1,083 admissions** in FY 2023.
- **Impact on Prison Beds:** The impact of this bill will save **863 prison beds** in FY 2014 and **2,611, 2,667 and 2,744 prison beds** in FY 2023 depending on the scenario.
- **Impact on Commission:** The impact of this bill will result in **no** additional journal entries for the Commission. However, the addition of proposed Section 8 and an anticipated amendment to the bill that would add additional duties that would require monitoring of the initiative would require **1.0 FTE and \$81,256.57** to fund a research position for the Commission to do so.

SUMMARY OF SECTION 1

- **Section 1** would amend K.S.A. 2012 Supp. 21-6604 in the following manner:
 - Subsection (a)(11) by requiring the offenders who were convicted of a second or subsequent DUI violation to serve the total number of hours of confinement mandated by K.S.A. 8-1567;
 - Subsection (f)(2)(A) (Special Sentencing Rule 9) crime committed **while incarcerated, on probation, parole etc.**, by making consecutive sentence discretionary rather than mandatory for offenders who are convicted of a new **nonperson felony**;
 - Subsection (f)(2)(B) offenders who are convicted of a **person felony** while incarcerated, on probation, parole etc., still receive a mandatory consecutive sentence;

- Subsection (f)(5)(A) (Special Sentencing Rule 10) crime committed **while on felony bond**, making consecutive sentence **discretionary** rather than mandatory for offenders who are convicted of a new **nonperson felony**;
- Subsection (f)(5)(B) offenders who are convicted of a **person felony** while on felony bond still receive a mandatory consecutive sentence;
- Subsection (n)(2)(B) (Postrelease supervision imposed) by requiring the offenders whose crime of conviction is on or after July 1, 2013, and whose probation is revoked or whose underlying prison term expires while serving a sanction to serve a period of postrelease supervision upon the completion of the underlying prison term.
- Subsections (s) and (t) (Intermediate sanction of jail) by authorizing a court service officer, with the concurrence of the chief court service officer, or a community correction officer, with the concurrence of the community correction director, to impose the violation sanctions as provided in subsection (c)(1)(B) of K.S.A. 22-3716.

Section 1: Subsection (f)(2)(A) (Special Sentencing Rule 9) crime committed while incarcerated, on probation, parole etc., making consecutive sentences **discretionary** rather than mandatory for offenders who are convicted of a new **nonperson** felony.

Key Assumptions

- The target population of this subsection includes any offenders who commit the crime as defined above.
- The projected prison admission growth rate is assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2012 by the Kansas Sentencing Commission.
- **Scenario 1:** It is assumed that **10% of the Special Sentencing Rule 9 offenders** will receive a concurrent sentence instead of a consecutive sentence.
- **Scenario 2:** It is assumed that **25% of the Special Sentencing Rule 9 offenders** will receive a concurrent sentence instead of a consecutive sentence.
- **Scenario 3:** It is assumed that **50% of the Special Sentencing Rule 9 offenders** will receive a concurrent sentence instead of a consecutive sentence.
- The new policy effective date is assumed to be **on July 1, 2013**.

Findings

- In FY 2012, the Commission received 1,719 sentences with **Special Sentencing Rule 9** applied. Of this number,
 - 924 (53.8%) were sentenced to prison;
 - 713 (41.5%) were sentenced to probation;
 - 81 (4.7%) were sentenced to SB 123 drug treatment and
 - One was sentenced to jail.
 - Of the 1,719 Special Sentencing Rule 9 sentences,
 - 88 (5.1%) received concurrent sentences;

- **1,284 (74.7%) received consecutive sentences** and
 - 349 (20.2%) were unknown.
- In FY 2012, 966 offenders were admitted to prison with **Special Sentencing Rule 9** applied. Of this number,
 - 390 (40.4%) were new court commitments with an average length of sentence of 49.2 months;
 - 203 (21.0%) were probation condition violators with an average length of sentence of 30.5 months;
 - 51 (5.3%) were probation violators with new sentence with an average length of sentence of 53 months;
 - 192 (19.9%) were parole/postrelease condition violators with an average length of sentence of 37.6 months;
 - 112 (11.6%) were parole/postrelease violators with new sentence with an average length of sentence of 44.2 months;
 - 5 (0.5%) were parole to Detainer with new sentence with an average length of sentence of 92.2 months and
 - 13 (1.3%) were non-violator return with new sentences with an average length of sentence of 23.7 months.

Impact Assessment

- If current policy remains unchanged for offenders **who are convicted of a new nonperson felony**,
 - By FY 2014, 370 prison beds will be needed and
 - By FY 2023, 1,217 prison beds will be needed.
- **Scenario 1:** If **10%** of the Special Sentencing Rule 9 offenders **who are convicted of a new nonperson felony** receive a concurrent sentence instead of a consecutive sentence,
 - By FY 2014, 370 prison beds will be needed and
 - By FY 2023, 1,190 prison beds will be needed.
 - **Scenario 1** will result in **no prison bed savings** in FY 2014 and will save **27** prison beds by FY 2023.
- **Scenario 2:** If **25%** of the Special Sentencing Rule 9 offenders **who are convicted of a new nonperson felony** receive a concurrent sentence instead of a consecutive sentence,
 - By FY 2014, 370 prison beds will be needed and
 - By FY 2023, 1,156 prison beds will be needed.
 - **Scenario 2** will result in **no prison bed savings** in FY 2014 and will save **61** prison beds by FY 2023.
- **Scenario 3:** If **50%** of the Special Sentencing Rule 9 offenders **who are convicted of a new nonperson felony** receive a concurrent sentence instead of a consecutive sentence,
 - By FY 2014, 370 prison beds will be needed and
 - By FY 2023, 1,107 prison beds will be needed.
 - **Scenario 3** will result in **no prison bed savings** in FY 2014 and will save **110** prison beds by FY 2023.

Subsection (f)(2)(A) (Special Sentencing Rule 9) will result in a reduction of **no prison beds** in FY 2014 but will save **27, 61 and 110** prison beds in FY 2023, respectively.

Special Sentencing Rule 9 Bed Space Impact Assessment for Nonperson Felony Only

Fiscal Year	Current Policy Remain Unchanged Bed Needed	Scenario 1 10% Change from Consecutive to Concurrent Beds Needed	Scenario 2 25% Change from Consecutive to Concurrent Beds Needed	Scenario 3 50% Change from Consecutive to Concurrent Beds Needed	Scenario 1 Beds Saved	Scenario 2 Beds Saved	Scenario 3 Beds Saved
2014	370	370	370	370	0	0	0
2015	747	741	734	714	6	13	33
2016	995	983	973	945	12	22	50
2017	1074	1053	1029	979	21	45	95
2018	1102	1086	1050	1000	16	52	102
2019	1130	1113	1081	1036	17	49	94
2020	1155	1136	1101	1044	19	54	111
2021	1165	1148	1116	1064	17	49	101
2022	1189	1172	1140	1082	17	49	107
2023	1217	1190	1156	1107	27	61	110

Section 1: Subsection (f)(5)(A) (Special Sentencing Rule 10) crime committed while on felony bond, making consecutive sentence **discretionary** rather than mandatory for offenders who are convicted of a new **nonperson felony**.

Key Assumptions

- The target population of this subsection includes any offenders who commit the crime as defined above.
- The projected prison admission growth rate is assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2012 by the Kansas Sentencing Commission.
- **Scenario 1:** It is assumed that **10% of the Special Sentencing Rule 10 offenders who are convicted of a new nonperson felony** will receive a concurrent sentence instead of a consecutive sentence.
- **Scenario 2:** It is assumed that **25% of the Special Sentencing Rule 10 offenders who are convicted of a new nonperson felony** will receive a concurrent sentence instead of a consecutive sentence.
- **Scenario 3:** It is assumed that **50% of the Special Sentencing Rule 10 offenders who are convicted of a new nonperson felony** will receive a concurrent sentence instead of a consecutive sentence.
- The new policy effective date is assumed to be on **July 1, 2013**.

Findings

- In FY 2012, the Commission received 501 sentences with **Special Sentencing Rule 10** applied. Of this number,
 - 171 (34.1%) were sentenced to prison;
 - 293 (58.5%) were sentenced to probation and
 - 37 (7.4%) were sentenced to SB 123 drug treatment.
 - Of the 501 Special Sentencing Rule 10 sentences,
 - 63 (12.6%) received concurrent sentences;
 - **291 (58.1%) received consecutive sentences** and
 - 147 (29.3%) were unknown.
- In FY 2012, 261 offenders were admitted to prison with **Special Sentencing Rule 10** applied. Of this number,
 - 133 (51.0%) were new court commitments with an average length of sentence of 53.3 months;
 - 68 (26.1%) were probation condition violators with an average length of sentence of 30.4 months;
 - 16 (6.1%) were probation violators with new sentence with an average length of sentence of 53.4 months;
 - 33 (12.6%) were parole/postrelease condition violators with an average length of sentence of 37.1 months;
 - 5 (1.9%) were parole/postrelease violators with new sentence with an average length of sentence of 31.4 months;
 - 4 (1.5%) were parole to Detainer with new sentence with an average length of sentence of 12.3 months and
 - 2 (0.8%) were non-violator return with new sentences with an average length of sentence of 13 months.

Impact Assessment

- If current policy remains unchanged for offenders **who are convicted of a new nonperson felony**,
 - By FY 2014, 112 prison beds will be needed and
 - By FY 2023, 417 prison beds will be needed.
- **Scenario 1:** If 10% of the Special Sentencing Rule 10 offenders **who are convicted of a new nonperson felony** receive a concurrent sentence instead of a consecutive sentence,
 - By FY 2014, 112 prison beds will be needed and
 - By FY 2023, 407 prison beds will be needed.
 - **Scenario 1** will result in **no prison bed savings** in FY 2014 and will save 10 prison beds by fiscal year 2023.
- **Scenario 2:** If 25% of the Special Sentencing Rule 10 offenders **who are convicted of a new nonperson felony** receive a concurrent sentence instead of a consecutive sentence,
 - By FY 2014, 112 prison beds will be needed and
 - By FY 2023, 385 prison beds will be needed.

- **Scenario 2** will result in **no prison bed savings** in FY 2014 and will save **32** prison beds by FY 2023.
- **Scenario 3: If 50% of the Special Sentencing Rule 10 offenders who are convicted of a new nonperson felony** receive a concurrent sentence instead of a consecutive sentence,
 - By FY 2014, 112 prison beds will be needed and
 - By FY 2023, 357 prison beds will be needed.
 - **Scenario 3** will result in **no prison bed savings** in FY 2014 and will save **60** prison beds by FY 2023.

Subsection (f)(5)(A) (Special Sentencing Rule 10) will result in a reduction of **no prison beds** in FY 2014 but will save **10, 32 and 60** prison beds in FY 2023, respectively.

Special Sentencing Rule 10 Bed Space Impact Assessment for Nonperson Felony Only

Fiscal Year	Current Policy Remain Unchanged Bed Needed	Scenario 1 10% Change from Consecutive to Concurrent Beds Needed	Scenario 2 25% Change from Consecutive to Concurrent Beds Needed	Scenario 3 50% Change from Consecutive to Concurrent Beds Needed	Scenario 1 Beds Saved	Scenario 2 Beds Saved	Scenario 3 Beds Saved
2014	121	121	121	121	0	0	0
2015	244	241	233	225	3	11	19
2016	321	311	301	276	10	20	45
2017	367	351	335	313	16	32	54
2018	378	361	346	318	17	32	60
2019	388	372	350	323	16	38	65
2020	385	366	348	325	19	37	60
2021	398	380	365	344	18	33	54
2022	406	395	374	340	11	32	66
2023	417	407	385	357	10	32	60

Total Impact of Section 1 (Special Sentencing Rules 9 and 10) on Prison Beds

- The total impact of Special Sentencing Rules 9 and 10 would result in **no prison bed savings** in FY 2014 but would save **37, 93 and 170** beds respectively based on the 10%/25%/50% scenarios in FY 2023.

**Section 1 (Special Sentencing Rules 9 and 10) Bed Space Impact Assessment for
Nonperson Felony Only**

Fiscal Year	Current Policy Unchanged Bed Needed	Scenario 1 10% Change from Consecutive to Concurrent Beds Needed	Scenario 2 25% Change from Consecutive to Concurrent Beds Needed	Scenario 3 50% Change from Consecutive to Concurrent Beds Needed	Scenario 1 Beds Saved	Scenario 2 Beds Saved	Scenario 3 Beds Saved
2014	491	491	491	491	0	0	0
2015	991	982	967	939	9	24	52
2016	1316	1294	1274	1221	22	42	95
2017	1441	1404	1364	1292	37	77	149
2018	1480	1447	1396	1318	33	84	162
2019	1518	1485	1431	1359	33	87	159
2020	1540	1502	1449	1369	38	91	171
2021	1563	1528	1481	1408	35	82	155
2022	1595	1567	1514	1422	28	81	173
2023	1634	1597	1541	1464	37	93	170

SUMMARY OF SECTION 4

- **Section 4** would amend K.S.A. 2012 Supp. 21-6821, by eliminating the requirement of adding good time and programming credit to the postrelease supervision term. Excluded from this amendment would be offenders sentenced for:
 - Sexually violent crimes as defined in K.S.A. 22-3717;
 - Sexually motivated crimes in which the offender has been ordered to register pursuant to subsection (d)(1)(D)(vii) of K.S.A. 22-3717;
 - Electronic solicitation pursuant to K.S.A. 2012 Supp. 21-5509; or
 - Unlawful sexual relations pursuant to K.S.A. 2012 Supp. 21-5512.

Key Assumption

- The target population of this section includes inmates who earned good time or program credit from prison.
- The projected prison admission growth rate is assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2012 by the Kansas Sentencing Commission.
- The new policy effective date is assumed to be on **July 1, 2013**.

Findings

- On June 30, 2012, 4,684 postrelease offenders were supervised by KDOC. Of this number, 927 or 20% were sex offenders.
- During FY 2012, 2,332 non-sex offenders were released from prison on postrelease supervision. The average good time they earned was **5.8 months**, which is currently added to their postrelease supervision term.
- Based upon KDOC's FY 2012 discharge file, the average supervision time of postrelease offenders by discharge type was:
 - 17.8 months for offenders discharged from supervision;
 - 12.0 months for offenders with other discharge;
 - 18.0 months for condition violators and
 - 17.7 months for violators with new sentence.

Impact Assessment

- Eliminating the requirement of adding good time and programming credit to postrelease supervision time will **reduce 113 prison admissions and save 47 to 49 beds each year.**

Section 4: Prison Admission and Bed Space Impact Assessment

Fiscal Year	Admission Reduction	Beds Saved
2014	113	48
2015	113	48
2016	113	47
2017	113	48
2018	113	49
2019	113	47
2020	113	49
2021	113	49
2022	113	47
2023	113	48

SUMMARY OF SECTION 5

- **Section 5** would amend K.S.A. 2012 Supp. 22-3716 by providing intermediate graduated sanctions for probation condition violators. The following violation sanctions may be imposed as defined in subsection (c)(1):
 - (A) continuation or modification of the release conditions of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction;
 - (B) an intermediate sanction of confinement in jail for a total of not more than six days per month in any three separate months during the period of release supervision.

The six days per month confinement may only be imposed as two-day or three-day consecutive period, not exceed 18 days of total confinement;

- (C) if the violator already has at least one intermediate sanction imposed pursuant to subsection (c)(1)(B) related to the felony crime for which the original supervision was imposed, remanding the defendant to the custody of the secretary of corrections for a period of 120 days, subject to a reduction of up to 60 days in the discretion of the secretary;
- (D) if the violator already has at least one intermediate sanction imposed pursuant to subsection (c)(1)(C) related to the felony crime for which the original supervision was imposed, remanding the defendant to the custody of the secretary of corrections for a period of 180 days, subject to a reduction of up to 90 days in the discretion of the secretary; or
- (E) if the violator already has at least one intermediate sanction imposed pursuant to subsection (c)(1)(D) related to the felony crime for which the original supervision was imposed, revocation of the probation, assignment to a community corrections service program, suspension of sentence or nonprison sanction and requiring such violator to serve the sentence imposed, or any lesser sentence and, if imposition of sentence was suspended, imposition of any sentence which might originally have been imposed.
- Subsection (c)(6). Except as provided in subsection (f), upon completion of a violation sanction imposed pursuant to subsection (c)(1)(C) or (c)(1)(D) such offender shall be returned to community correctional services supervision.
- Subsection (c)(7). A violation sanction imposed pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D) shall not be longer than the amount of time remaining on the defendant's underlying prison sentence.
- Subsection (c)(8). If the offender commits a new felony or misdemeanor or absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, the court may impose any of the sanction provided in subsection (c)(1).
- Subsection (c)(9). The court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (c)(1)(E) without having previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D) if the court finds and sets forth with particularity the reason for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction.
- Subsection (f). For crimes committed on or after July 1, 2013, an offender whose nonprison sanction is revoked pursuant to subsection (c) or whose underlying prison sentence term expires while serving a sanction pursuant to subsection (c)(1)(C) or

(c)(1)(D) shall serve a period of postrelease supervision upon the completion of the prison portion of the underlying sentence.

Key Assumption

- The target population of this section includes probation condition violators as defined above.
- The projected prison admission growth rate is assumed to increase by an annual average of 2%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2012 by the Kansas Sentencing Commission.
- It is assumed that (1) first probation condition violators are required to serve 3 days in jail; (2) second probation condition violators serve 120 days in prison, then back to community corrections. If underlying prison sentence expires during the 120 days, the originally ordered postrelease supervision term shall be imposed based on the offender's severity level; (3) third probation condition violators serve 180 days in prison, then back to community corrections. If underlying prison sentence expires during the 180 days, the originally ordered postrelease supervision term shall be imposed based on the offender's severity level; and (4) those offenders who exhausted their intermediate sanctions of jail time and prison term are revoked to prison to serve their remaining underlying prison sentence and after they are released from prison postrelease supervision term shall be imposed based on offender's severity level.
- The new policy effective date is assumed to be **on July 1, 2013**.

Findings

- In FY 2012, the Commission received 5,168 probation revocations. Of this number, 956 or 18.5% were from court services and 4,207 or 81.5% were from community corrections. Five offenders' supervision entity was unknown. Eighty-five percent of the revocations or 4,404 of them were probation condition revocations. Of the 4,404 condition violations,
 - **2,692 (61.1%)** had **no prior** revocations, **895 or 33.2%** of them were sent to KDOC to serve their original prison or modified prison sentence;
 - **1,184 (26.9%)** had **one prior** revocation, **650 or 54.9%** of them were sent to KDOC to serve their original prison or modified prison sentence;
 - **389 (8.8%)** had **two prior** revocations, **269 or 69.2%** of them were sent to KDOC to serve their original prison or modified prison sentence;
 - **90 (26.9%)** had **three prior** revocations, **52 or 57.4%** of them were sent to KDOC to serve their original prison or modified prison sentence;
 - **49 (1.1%)** had **four or more prior** revocations, **26 or 53%** of them were sent to KDOC to serve their original prison or modified prison sentence.
 - The total of the above probation condition violators sent to prison was **1,892**. Of this number,
 - 895 (47.3%) had no prior revocations;
 - 650 (34.4%) had one prior revocation;
 - 269 (14.2%) had two prior revocations;

- 52 (2.7%) had three prior revocations and
 - 26 (1.4%) had four or more prior revocations.
- In FY 2012, 1,682 probation condition violators were admitted to prison. Of this number,
 - 1,433 (85.2%) violators were supervised by community corrections;
 - 164 (9.8%) violators were supervised by court services and
 - 85 (5.1%) violators' supervision entity was unknown.
 - The average length of sentence of these probation condition violators was **23.3 months**.

Impact Assessment

- If (1) first probation condition violators are required to serve three days in jail; (2) second probation condition violators serve 120 days in prison, then back to community corrections; (3) third probation condition violators serve 180 days in prison, then back to community corrections and (4) those who exhaust their intermediate sanction jail time and prison term are revoked to prison to serve their remaining underlying prison sentence,
 - By FY 2014, **811 prison admissions** would be reduced and **791 prison beds** would be saved, and
 - By FY 2023, **970 prison admissions** would be reduced and **2,502 prison beds** would be saved.

Section 5: Probation Revocation Prison Admission Impact Assessment

Fiscal Year	Current Policy Remains Unchanged Prison Admission	If 1st Violation to Jail, 2nd to Prison for 120 Days, 3rd to Prison for 180 Days & 4th or Sub to Prison Serving the Remaining Underlying Prison Sentence Prison Admission	Prison Admission Reduction
2014	1716	904	811
2015	1750	922	828
2016	1785	941	844
2017	1821	959	861
2018	1857	979	878
2019	1894	998	896
2020	1932	1018	914
2021	1971	1039	932
2022	2010	1059	951
2023	2050	1081	970

Section 5: Probation Revocation Bed Space Impact Assessment

Fiscal Year	Current Policy Remains Unchanged Beds Needed	If 1st Violation to Jail, 2nd to Prison for 120 Days, 3rd to Prison for 180 Days & 4th or Sub to Prison Serving the Remaining Underlying Prison Sentence Beds Needed	Beds Saved
2014	1271	480	791
2015	1972	541	1431
2016	2310	569	1741
2017	2554	566	1988
2018	2712	578	2134
2019	2819	574	2245
2020	2907	632	2275
2021	2940	611	2329
2022	3019	618	2401
2023	3142	640	2502

SUMMARY OF SECTION 6

- **Section 6** would amend K.S.A. 2012 Supp. 22-3717:
 - By modifying the good time and program credit earned and retained pursuant to K.S.A. 21-4722 to the postrelease supervision term. The exception would be for offenders convicted of sexually violent crimes, sexually motivated crimes, electronic solicitation or unlawful sexual relations.
 - By adding the following to subsection (d):
 - (2) Persons serving a period of postrelease supervision pursuant to subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) may petition the Prisoner Review Board for early discharge.
 - (3) Persons serving a period of incarceration for a supervision violation shall not have the period of postrelease supervision modified until such person is released and returned to postrelease supervision.
 - (4) Offenders whose crime of conviction was committed on or after July 1, 2013, and whose probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction is revoked pursuant to subsection (c) of K.S.A. 22-3716, or whose underlying prison sentence term expires while serving a sanction pursuant to subsection (c)(1)(C) or (c)(1)(D) shall serve a period of postrelease supervision upon the completion of the underlying prison term.

- By modifying the postrelease supervision period and making it retroactively for the eligible offenders who are on postrelease supervision and sentenced prior July 1, 2013.

Key Assumption

- The target population of this section includes the offenders who are eligible for the modification of postrelease release supervision period. The modification is retroactive.
- The new policy effective date is assumed to be **on July 1, 2013**.

Findings

- On June 30, 2012, 4,684 postrelease offenders were supervised by KDOC. Of this number, 927 or 20% were sex offenders.
- During FY 2012, 837 postrelease offenders who are not sex, offgrid or nongrid offenders and whose supervision period were over the pronounced postrelease supervision term due to the addition of good time credit, were released from supervision. Of this number,
 - 745 (89%) were discharged from supervision;
 - 72 (8.6%) were postrelease condition violators and
 - 20 (2.4%) were postrelease violators with new sentence.

Impact Assessment

- Section 6 would have an immediate impact on postrelease supervision population. It is estimated that **837 postrelease supervision offenders** would be released from supervision due to the modification.
- This section would also have an impact on prison admissions and beds. **Please refer to the impact of Section 4. The prison admission and bed space impact are the same as section 4.**

SUMMARY OF SECTION 7

- **Section 7** would amend K.S.A. 2012 Supp. 75-5217(c) by authorizing the Prisoner Review Board to determine the period of confinement for postrelease violators with a new felony conviction, which shall not exceed the remaining balance of the period of postrelease supervision, even if the new conviction did not result in the imposition of a new term of imprisonment.
- Pursuant to K.S.A. 2012 Supp. 75-5217(d), the Prisoner Review Board already has this authority with regard to new misdemeanors.

Key Assumption

- The target population of this section includes any offenders who commit a new crime during postrelease supervision.

- It is assumed that half of the above offenders will serve the remaining of their postrelease supervision period in KDOC and the other half will serve **60% or an average 6 months** of the remaining postrelease supervision period as determined by the Prisoner Review Board.
- The new policy effective date is assumed to be **on July 1, 2013**.

Findings

- In FY 2012, 141 parole/postrelease violators with new convictions were admitted to KDOC. Of this number,
 - 133 (94.3%) were postrelease supervision violators with new sentence and
 - 8 (5.7%) were parole violators with new sentence.
 - The average length of the postrelease supervision violators with new sentence was **44 months**.
 - The average remaining length of postrelease supervision period was **10 months**.

Impact Assessment

- If half of the above offenders serve the remaining of their postrelease supervision period in KDOC and the other half offenders serve **60% or an average 6 months** of the remaining postrelease supervision period as determined by the Prisoner Review Board, **22 to 24 prison beds will be saved each year**.

Section 7: Prison Bed Space Impact Assessment

Fiscal Year	Current Policy Remain Unchanged Beds Needed	If Half Serve the Remaining LOS and Half Serve 60% of the Remaining LOS Beds Needed	Beds Saved
2014	118	94	24
2015	118	94	24
2016	118	94	24
2017	118	94	24
2018	118	95	23
2019	118	94	24
2020	118	94	24
2021	118	96	22
2022	118	95	23
2023	118	94	24

SUMMARY OF SECTION 8

- **Section 8** would amend K.S.A. 2012 Supp. 74-9101 by authorizing the Kansas Sentencing Commission to make statewide supervision and placement cutoff decisions

based upon the risk levels and needs of the offender. The Commission shall periodically review data and make recommended changes.

- **Impact Assessment:** This section would have an impact on the prison admissions and beds. However, no data exists at this time to quantify the impact.

IMPACT SUMMARY

- **Impact on Prison Admissions:** The impact of this bill will reduce **924 prison admissions** in FY 2014 and **1,083 admissions** in FY 2023.
- **Impact on Prison Beds:** The impact of this bill will save **863 prison beds** in FY 2014 and **2,611, 2,667 and 2,744 prison beds** in FY 2023, respectively.

HB 2170 Overall Impact Assessment

Fiscal Year	Prison Admission Reduction	Prison Beds Saving		
		Scenario 1 Prison Beds Saved	Scenario 2 Prison Beds Saved	Scenario 3 Prison Beds Saved
2014	924	863	863	863
2015	941	1512	1527	1555
2016	957	1834	1854	1907
2017	974	2097	2137	2209
2018	991	2239	2290	2368
2019	1009	2349	2403	2475
2020	1027	2386	2439	2519
2021	1045	2435	2482	2555
2022	1064	2499	2552	2644
2023	1083	2611	2667	2744

- **Impact on the Workload of the Commission:** This bill would result **no additional journal entries** for the Commission. However, the addition of proposed Section 8 would add additional duties that would require monitoring of the initiative. It would require **1.0 FTE and \$81,256.57** to fund a research position for the Commission to do so. An itemized cost assessment is available upon request.

Research Analyst III Position	
Salary & Benefits	\$64,502.57
One Time Costs	\$11,210.00
On-Going Costs	\$5,5440.00
Year One Costs	\$81,256.57
After Year One Costs	\$70,046.57

