

CORRECTED
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SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2170

As Amended by Senate Committee on Judiciary

Brief*

HB 2170 would make numerous changes to sentencing, probation, and postrelease supervision statutes. Concerning participation in drug abuse treatment programs, the bill would allow for sanctions, in addition to revocation of probation, which already is allowed, when a defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in a drug abuse treatment program.

The bill also would make numerous amendments to the law concerning postrelease supervision. The bill would specify that persons convicted of crimes committed on or after July 1, 2003, but before July 1, 2013, would not be subject to a period of postrelease supervision. Offenders convicted of crimes committed on or after July 1, 2013, however, would be required to serve a period of postrelease supervision upon the completion of the underlying prison term when probation, assignment to community corrections, suspension of sentence, a nonprison sentence is revoked, or the underlying prison term expires while the offender is serving a sanction for a violation of conditions of release or assignment.

Additionally, the bill would allow a low-risk defendant who has paid all restitution and for 12 months has been compliant with the terms of probation, assignment to community corrections, suspension of sentence, or nonprison sanction to be eligible for discharge from such period of

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

supervision by the court. The court would be required to grant the discharge absent substantial and compelling reasons for denying discharge. A person serving a period of incarceration for a supervision violation would not be eligible for modification, however, until the person is released and returned to postrelease supervision. The Prisoner Review Board also would have the discretion to provide for early discharge from postrelease supervision if the defendant has petitioned for early discharge and has paid any restitution ordered.

Further, program credits earned and subtracted from an inmate's prison sentence would not be added to the inmate's postrelease supervision term, with the exception of a term for a person sentenced to imprisonment for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations. Similarly, the bill would provide that good time earned and subtracted from the prison sentence or any other consecutive or concurrent sentence of a person sentenced to imprisonment for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations would be added to the inmate's postrelease supervision term.

In the area of violations of the conditions of release, assignment, or nonprison sanction, the bill would allow a defendant arrested for such a violation to waive the right to a hearing on the violation, after the defendant has been apprised of the right by the supervising court services or community correctional services officer. If the original crime of conviction was a misdemeanor and the violation is established, the bill would allow the court to continue or revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed.

If the defendant waives the right to a hearing and, in the sentencing order, the court has not specifically withheld the authority of court services or community corrections to impose sanctions, the defendant's supervising court services officer, with the concurrence of the chief court services officer or the defendant's community corrections officer, with the concurrence of the community corrections director, could impose an intermediate sanction of confinement in jail for up to six days each month in any three separate months during the period of release of supervision. The 6 days per month could be imposed only as 2-day or 3-day consecutive periods, not to exceed 18 total days of confinement.

If the original crime of conviction was a felony and the violation is established, the bill would allow the court to impose the following series of increasing violation sanctions:

- Continue or modify the conditions of release;
- Impose the intermediate sanction of confinement in jail outlined above;
- If the violator already had at least one intermediate sanction of confinement in jail, remand the defendant to the custody of the Kansas Department of Corrections (KDOC) for a period of 120 days, which the Secretary could reduce by up to 60 days (this penalty could not be imposed more than once during the term of supervision);
- If the violator already had been remanded to KDOC custody for a period of 120 days, remand the defendant to KDOC custody for a period of 180 days, which the Secretary could reduce by up to 80 days (this penalty could not be imposed more than once during the term of supervision); or
- If the violator already had been remanded to KDOC custody for a period of 180 days, revoke probation, assignment to community corrections,

suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed.

The bill would provide, however, that the period of time spent in jail or in the custody of KDOC cannot exceed the time remaining on the person's underlying prison sentence. Upon completion of time spent in the custody of KDOC, the offender would return to community corrections supervision, and the bill would specify sheriffs would not be responsible for the return of the offender to the county where the community correctional services supervision is assigned.

The court could revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction without first imposing the preceding violation sanctions:

- If the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender otherwise will not be served; or
- If the offender commits a new felony or misdemeanor or absconds from supervision.

For crimes committed on and after July 1, 2013, an offender whose nonprison sanction is revoked or whose underlying prison term expires after being remanded to the custody of KDOC would be required to serve a period of postrelease supervision upon completion of the prison portion of the underlying sentence. For offenders sentenced prior to July 1, 2013, KDOC would be required to modify the period of postrelease supervision pursuant to the schedule outlined in the bill.

Finally, the bill would give the Kansas Sentencing Commission (KSC) the authority to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. The KSC would be required to periodically review data and make recommended changes. Further, the KSC would be required to determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.

Background

HB 2170 represents the recommendations of the Justice Reinvestment Working Group, a statutorily created body charged with analyzing the Kansas criminal justice system and, based upon that analysis, providing evidence-based policy options that would reduce recidivism and, at the same time, the increasing prison population. The Working Group received research assistance from the Council of State Governments' (CSG) Justice Center.

In the House Committee on Corrections and Juvenile Justice, representatives of KDOC, KSC, and CSG's Justice Center appeared in support of the bill. The Director of the Office of Victim Services, KDOC, offered neutral testimony, and representatives of the Kansas County and District Attorneys Association offered testimony in opposition to the bill.

The House Committee amended the bill to require the KSC to determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.

The House Committee of the Whole amended the bill to restore the current law concerning the imposition of consecutive sentences for the commission of a new felony when the new felony is a person felony.

In the Senate Committee on Judiciary, representatives of CSG's Justice Center, Johnson County Department of Corrections, Kansas Community Corrections Association, KDOC, and KSC appeared in support of the bill. The Director of the Office of Victim Services, KDOC, offered neutral testimony, and representatives of the Kansas County and District Attorneys Association and the Kansas Sheriffs Association offered testimony in opposition to the bill.

The Senate Committee adopted amendments supported by the bill's proponents that would resolve the concerns of the opponents. The amendments restore the current law concerning the imposition of consecutive sentences for the commission of any new felony; restrict the option of remanding a violator to KDOC custody for 120 days or, subsequently, 180 days, to only once during the term of supervision; clarify the courts options when an offender commits a new felony or misdemeanor or absconds from supervision; and specifies sheriffs would not be responsible for the return of the offender to the county where the community correctional services supervision is assigned.

The KSC predicts passage of HB 2170, as amended by the House Committee of the Whole, would reduce the need for prison beds by 863 in FY 2014 and between 2,611 and 2,744 by FY 2023. The House Committee amendment would require the addition of 1.0 FTE and \$81,256.57 to fund the position. The fiscal note prepared by the Division of the Budget for the bill, as introduced, indicates passage would help KDOC to avoid costs that would otherwise have been incurred as a result of projected population increases. The Department estimates operating costs of approximately \$1.6 million in FY 2014 and \$9.0 million in FY 2015 could be averted should the bill be enacted. Additionally, the construction of two cell houses at El Dorado Correctional Facility could be delayed until FY 2015 or FY 2016. This project, which will provide 512 beds, is estimated to have a construction cost of \$24.5 million and operating costs of approximately \$8.4 million. To help address the issues presented in this bill, the Governor's budget includes

additional funding of \$3.0 million (\$2.0 million in FY 2014 and another \$1.0 million in FY 2015) for community corrections treatment and supervision programs. The Department states there will be resource needs for the sentencing computation unit, the Reception and Diagnostic Unit, short-term and long-term IT programming, victim notification, the Prisoner Review Board, community corrections and parole staff, prisoner transportation, and training. However, the Department indicates these needs can be met with existing resources combined with the additional funding recommended in the Governor's budget.

The Office of Judicial Administration estimates that the bill would increase the number of motions and appeals relating to probation and post-release supervision, however, the fiscal effect likely would be accommodated within the existing schedule of court cases and would not require additional resources. Other than the community programs funding specified above, any fiscal effect associated with HB 2170 is not reflected in *the FY 2014 Governor's Budget Report*.