



Kansas County & District Attorneys Association

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To: Chairman Wilborn and Members of the Senate Judiciary Committee
From: Kim Parker Kansas County and District Attorneys Association
Date: March 6th, 2018
Re: Neutral Testimony for House Bill 2603

Good Morning Chairman Wilborn and Committee Members,

Thank you for the opportunity to provide neutral testimony for HB2603.

This bill proposes an amendment to K.S.A. 22-3722 that serves as an **end run around the long standing and consistent rulings of the Kansas Appellate Courts and the clear intent of Kansas law as it relates to post release supervision of incarcerated individuals**. Twenty years ago, in the Kansas case *White v. Bruce* 23 Kan. App.2nd 449 (1997) and more recently in *State of Kansas v. McLemore* 408 P.3d498 (2017), the court held that the Kansas Sentencing Guidelines for incarceration are *mutually exclusive sentencing concepts* which cannot be satisfied at the same time. In other words, an individual on post release supervision released *into the community* cannot receive credit against an unrevoked term of post release supervision for time spent incarcerated on another charge which results in a conviction and sentence. The Kansas court expressly ruled individuals cannot receive credit on post release supervision time when reincarcerated on another offense, as it is "**fundamentally illogical**". In addition, K.S.A. 21-6606 makes clear that if an individual is convicted and sentenced while on post release supervision, the new sentence shall be consecutive to other sentences previously imposed. However, as a matter of frequent practice KDOC allows the time a defendant spends in jail on a new case to be credited to his post release supervision by failing to employ the provisions of K.S.A. 75-5217, which governs the revocation and suspension of post release supervision. This allows defendants to receive time credit for both the new sentence and post release supervision. As an example of the frequently repeated practice:

In a recent Saline County case, the defendant served his sentence with KDOC on two 2014 cases and was released by KDOC to post release supervision into the community. While in the community the defendant committed a new crime and was subsequently convicted and sentenced for the new offense which by law was to run consecutive to the two prior 2014 cases. The Saline County District Court properly awarded the defendant jail credit in the new case. In the meantime, KDOC did not act on the provisions of K.S.A. 75-5217 to revoke or suspend his post release supervision and allowed the time the individual spent on the new charge to be credited to his post release supervision, thereby bypassing the intent of K.S.A. 75-5217 and giving the defendant dual credit.

This proposed amendment to K.S.A. 22-3722 would allow the practice to be sanctioned and reward individuals for repetitive criminal violations by allowing them to receive 'double credit'. We urge you to consider the significant ramifications of this change in public policy before agreeing to pass HB2603.

Thank you for your attention to this important matter.

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