



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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February 6, 2019

Neutral Testimony on HB 2052
with Amendments
House Corrections and Juvenile Justice Committee

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Court Services Specialist

Chairman Jennings:

Thank you for the opportunity to provide neutral testimony on HB 2052. I am Chris Mechler, Court Services Specialist at the Office of Judicial Administration (OJA).

As illustrated in the attached fiscal note, HB 2052 is expected to create significant new costs for the judicial branch. If enacted in its current form, the bill will require additional hearings for all defendants who are placed on probation, assigned to a community correctional services program, have a suspended sentence, or a nonprison sanction. OJA estimates that the provisions of this bill could create the need for about 17,000 new hearings each year, at a total annual cost of approximately \$385,724-\$498,504, depending on the amount of time required for those hearings.

OJA requests that the committee consider the following three amendments to lessen the administrative burden this legislation may impose on the court system:

- 1) Allow the courts to schedule supervision review hearings for the first available and appropriate docket, rather than requiring that each hearing occur at the precise point when a defendant reaches 50% of his or her term. OJA's proposed balloon amendment seeks to establish a more efficient process for reviewing cases, allowing the courts to set multiple hearings for a regular, dedicated docket.
- 2) Establish that the notice given to the offender at the time of sentencing is sufficient notice of hearing. OJA's proposed balloon amendment seeks to clarify that the offender will be informed of the hearing at the time of sentencing; clerks and support staff will not be required to send any further notice of hearing.

- 3) Provide a mechanism for a judge to remove an offender from the hearing docket when an offender has already violated supervision terms. OJA's proposed balloon amendment states that a judge may remove the offender from the docket if the defendant has been sanctioned for a violation of the terms of probation, assignment to a community correctional services program, suspension of sentence, nonprison sanction, or is in custody in another jurisdiction. This amendment gives the judge the discretion to reduce the docket size by removing any offender whose failure to comply with supervision terms has already resulted in a formal sanction. This may also provide an incentive for offenders to avoid behavior that could result in a sanction.

While the amendments above will not eliminate the anticipated new costs for the judicial branch, they would allow for a more and efficient process, thereby reducing the strain on court resources.

Thank you for allowing me to testify today and for your consideration of the above amendments. I'm happy to answer any questions you may have.

HOUSE BILL No. 2052

By Committee on Corrections and Juvenile Justice

1-22

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to probation; hearing; credit toward early discharge; amending K.S.A.
3 2018 Supp. 21-6608 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 21-6608 is hereby amended to read as
7 follows: 21-6608. (a) The period of suspension of sentence, probation or
8 assignment to community corrections fixed by the court shall not exceed
9 two years in misdemeanor cases, subject to renewal and extension for
10 additional fixed periods of two years. Probation, suspension of sentence or
11 assignment to community corrections may be terminated by the court at
12 any time and upon such termination or upon termination by expiration of
13 the term of probation, suspension of sentence or assignment to community
14 corrections, an order to this effect shall be entered by the court.

15 (b) The district court having jurisdiction of the offender may parole
16 any misdemeanant sentenced to confinement in the county jail. The period
17 of such parole shall be fixed by the court and shall not exceed two years
18 and shall be terminated in the manner provided for termination of
19 suspended sentence and probation.

20 (c) For all crimes committed on or after July 1, 1993, the duration of
21 probation in felony cases sentenced for the following severity levels on the
22 sentencing guidelines grid for nondrug crimes and the sentencing
23 guidelines grid for drug crimes is as follows:

24 (1) For nondrug crimes the recommended duration of probation is:

25 (A) 36 months for crimes in crime severity levels 1 through 5; and

26 (B) 24 months for crimes in crime severity levels 6 and 7;

27 (2) for drug crimes the recommended duration of probation is 36
28 months for crimes in crime severity levels 1 and 2 committed prior to July
29 1, 2012, and crimes in crime severity levels 1, 2 and 3 committed on or
30 after July 1, 2012;

31 (3) except as provided further, in felony cases sentenced at severity
32 levels 9 and 10 on the sentencing guidelines grid for nondrug crimes,
33 severity level 4 on the sentencing guidelines grid for drug crimes
34 committed prior to July 1, 2012, and severity level 5 of the sentencing
35 guidelines grid for drug crimes committed on or after July 1, 2012, if a
36 nonprison sanction is imposed, the court shall order the defendant to serve

1 a period of probation of up to 12 months in length;
 2 (4) in felony cases sentenced at severity level 8 on the sentencing
 3 guidelines grid for nondrug crimes, severity level 3 on the sentencing
 4 guidelines grid for drug crimes committed prior to July 1, 2012, and
 5 severity level 4 of the sentencing guidelines grid for drug crimes
 6 committed on or after July 1, 2012, and felony cases sentenced pursuant to
 7 K.S.A. 2018 Supp. 21-6824, and amendments thereto, if a nonprison
 8 sanction is imposed, the court shall order the defendant to serve a period of
 9 probation, or assignment to a community correctional services program, as
 10 provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to
 11 18 months in length;

12 (5) if the court finds and sets forth with particularity the reasons for
 13 finding that the safety of the members of the public will be jeopardized or
 14 that the welfare of the inmate will not be served by the length of the
 15 probation terms provided in subsections (c)(3) and (c)(4), the court may
 16 impose a longer period of probation. Such an increase shall not be
 17 considered a departure and shall not be subject to appeal;

18 (6) except as provided in subsections (c)(7) and (c)(8), the total
 19 period in all cases shall not exceed 60 months, or the maximum period of
 20 the prison sentence that could be imposed whichever is longer. Nonprison
 21 sentences may be terminated by the court at any time;

22 (7) if the defendant is convicted of nonsupport of a child, the period
 23 may be continued as long as the responsibility for support continues. If the
 24 defendant is ordered to pay full or partial restitution, the period may be
 25 continued as long as the amount of restitution ordered has not been paid;
 26 and

27 (8) the court may modify or extend the offender's period of
 28 supervision, pursuant to a modification hearing and a judicial finding of
 29 necessity. Such extensions may be made for a maximum period of five
 30 years or the maximum period of the prison sentence that could be imposed,
 31 whichever is longer, inclusive of the original supervision term.

The notice provided to the defendant at the time of sentencing shall be deemed sufficient notice of hearing.

32 (d) In addition to the provisions of subsection (a), a defendant ~~who~~
 33 ~~has a risk assessment of low risk, has paid all restitution and has been~~
 34 ~~compliant with the terms of~~ *may be discharged early from* probation,
 35 assignment to a community correctional services program, suspension of
 36 sentence or nonprison sanction ~~for a period of 12 months shall be eligible~~
 37 ~~for discharge from such period of supervision by the court if such~~
 38 ~~defendant is found to be in substantial compliance with the conditions of~~
 39 ~~such supervision. The court shall set a hearing at sentencing for the date~~
 40 ~~when the defendant will have served 50% of such defendant's term of~~
 41 ~~supervision to determine if a defendant has been in substantial compliance~~
 42 ~~with the defendant's term of supervision.~~ The court shall grant such
 43 discharge unless the court finds by clear and convincing evidence that

A judge may remove the defendant from the hearing docket if the defendant has been sanctioned for a violation of the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, or is in the custody of another jurisdiction.

the first available and appropriate docket that is closest to

conditions of such

1 denial of such discharge will serve community safety interests.

2 *(e) A defendant shall earn credit to reduce such defendant's term of*
3 *probation, assignment to a community correctional services program,*
4 *suspension of sentence or nonprison sanction when the defendant has*
5 *substantially complied with the conditions of such defendant's supervision.*
6 *A defendant shall be awarded seven days earned discharge credit for each*
7 *full calendar month of substantial compliance with the conditions of such*
8 *defendant's supervision.*

9 *(f) The Kansas sentencing commission shall adopt procedures and*
10 *forms to standardize the process for calculating earned discharge credit*
11 *pursuant to this section.*

12 *(g) For the purposes of this section, "substantial compliance" means:*

13 *(1) The defendant has made significant progress in meeting the*
14 *conditions of probation, assignment to a community correctional services*
15 *program, suspension of sentence or nonprison sanction; and*

16 *(2) the defendant has no violations of conditions of probation,*
17 *assignment to a community correctional services program, suspension of*
18 *sentence or nonprison sanction filed with the court pursuant to K.S.A. 22-*
19 *3716, and amendments thereto.*

20 *(h) The state of Kansas or any agents or employees of the state shall*
21 *not be liable for damages caused by any negligent or wrongful act or*
22 *omission in making the earned discharge calculations authorized by this*
23 *section.*

24 Sec. 2. K.S.A. 2018 Supp. 21-6608 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after its
26 publication in the statute book.



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February 4, 2019

HB 2052

Bill Number: HB 2052 Due Date: 1/26/19
Responding Agency: Judicial Branch
Prepared by: Stephanie Bunten *SB* DOB Analyst: John Kirk

Fiscal Impact

State—Would this bill have a fiscal effect on your agency? Yes X No
Local—Would this bill have a fiscal effect on local government? Yes X No
Tax Revenue—Would this bill affect State General Fund revenues? Yes No X
Fee or Other Revenue—Would this bill affect revenues to other state funds? Yes No X

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
Expenditures			
State General Fund			
Fee Fund(s)			
Federal Fund			
Total Expenditures	See Below	See Below	See Below
Revenues			
State General Fund			
Fee Fund(s)			
Federal Fund			
Total Revenues	See Below	See Below	See Below
FTE Positions			

Bill Description

HB 2052 would amend K.S.A. 2018 Supp. 21-6608 which provides that probation, suspension of sentence or assignment to community corrections may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation, suspension of sentence or assignment to community corrections, an order to this effect shall be entered by the court. The amendment would provide that, a defendant may be discharged early from probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant would have served 50% of such defendant's term of supervision to determine if a defendant has been in substantial compliance with the defendant's term of supervision. The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.

Further, a defendant would earn credit to reduce such defendant's term of probation, assignment to a community correctional services program, suspension of sentence, or nonprison sanction when the defendant has substantially complied with the conditions of such defendant's supervision. A defendant would be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant's supervision.

Additionally, the Kansas Sentencing Commission would adopt procedures and forms to standardize the process for calculating earned discharge credit pursuant to the above.

"Substantial compliance" would mean: (1) The defendant has made significant progress in meeting the conditions of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction; and (2) the defendant has no violations of conditions of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction filed with the court pursuant to K.S.A. 22-3716, and amendments thereto.

The state of Kansas or any agents or employees of the state would not be liable for damages caused by any negligent or wrongful act or omission in making the earned discharge calculations authorized by this statute.

Assumptions for Fiscal Effect Estimate

Expenditures: The provisions of HB 2052 would have a very significant fiscal effect on the Judicial Branch. If HB 2052 is enacted, it would require the district courts to hold additional hearings for all defendants who are on probation, assigned to a community correctional services program, have a suspended sentence or nonprison sanction. These hearings will be set for the date when the defendant will have served 50% of their term of supervision. The estimated costs to hold these hearings annually are as follows:

Scenario #1:

Assumptions:

- 1) Approximately 17,000 new hearings (based on FY 2018 data)
- 2) Judges – 10 minutes per hearing
- 3) Trial Court Clerk II – 5 minutes per hearing
- 4) Court Services Officer I – 15 minutes per hearing

District Judge

2,833 hours x \$79.59 hourly rate = \$225,478

Trial Court Clerk II

1,417 hours x \$21.01 hourly rate = \$29,771

Court Services Officer I

4,250 hours x \$30.70 hourly rate = \$130,475

Total Annual Cost: \$385,724

Scenario #2:

Assumptions:

- 1) Approximately 17,000 new hearings (based on FY 2018 data)
- 2) Judges – 15 minutes per hearing
- 3) Trial Court Clerk II – 5 minutes per hearing
- 4) Court Services Officer I – 15 minutes per hearing

District Judge

4,250 hours x \$79.59 hourly rate = \$338,258

Trial Court Clerk II

1,417 hours x \$21.01 hourly rate = \$29,771

Court Services Officer I

4,250 hours x \$30.70 hourly rate = \$130,475

Total Annual Cost: \$498,504

Revenues: The passage of HB 2052 would not have a fiscal effect on revenues to the Judicial Branch.

Long-Term Fiscal Considerations

The passage of HB 2052 would have a significant long-term fiscal effect on the Judicial Branch as noted above.

Local Government Fiscal Effect

Because the provisions of HB 2052 require the district courts to hold more hearings, additional costs may be incurred by the various counties statewide. Prosecutors and defense attorneys may be required to spend more time attending hearings, as well as the cost of postage to send the hearing notices.

References/Sources