



HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
Representative Russ Jennings, Chairman

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
February 4, 2019

Proponent Testimony – HB 2046

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This bill was introduced by the Commission to remedy a conflict with sentencing laws.

Two sentencing statutes appear to be in conflict with one another. One mandates consecutive sentences (K.S.A 21-6606(d)) when a new felony is committed while an offender is on felony bond. The other (K.S.A. 21-6604(f)(4)) (See Attachment 1) appears to give the district court discretion to run sentences consecutive or concurrent. Recently, the Court of Appeals in the unpublished decision of *State v. Carpentier*, 396 P.3d 1263 (2017), discussed this potential for confusion.

The KSSC proposes that K.S.A. 21-6606(d) be amended to reflect the ability of the court to exercise discretion. The timing of the offense, being on bond rather than being already convicted precipitated the decision to propose discretionary rather than mandatory sentencing. The proposed language certainly does not preclude the district court from sentencing the offender to consecutive sentences. Below is a table illustrating the current sentencing for crimes committed while on supervised status. The proposed felony bond item is highlighted in green.

HB 2046 - Discretionary Sentencing While on Felony Bond		
Statute	Supervision Level - New Offense Committed While On:	Consecutive Sentence
21-6606(b)	Probation, community corrections, parole or conditional release for a misdemeanor	Discretionary
21-6606(c)	Probation, community corrections, parole, conditional release or postrelease supervision for a felony	Mandatory
21-6606(d)	Felony bond	Discretionary (proposed)
21-6606(e)	Incarcerated and serving a felony sentence in prison or jail	Mandatory

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

K.S.A. 2018 Supp. 21-6604. Authorized dispositions; crimes committed on or after July 1, 1993.

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(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed consecutively pursuant to the provisions of K.S.A. 2018 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed during a period of time during which the defendant would have been on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony had the defendant not been granted release by the court pursuant to K.S.A. 2018 Supp. 21-6608(d), and amendments thereto, or the prisoner review board pursuant to K.S.A. 22-3717, and amendments thereto, the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(3) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2018 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(4) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed consecutively pursuant to the provisions of K.S.A. 2018 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

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