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House Committee on Corrections and Juvenile Justice
February 7, 2024
House Bill 2654
Testimony of the BIDS Legislative Committee
Presented by Jennifer Roth
Opponent

Chairman Owens and Members of the Committee:

The 1974 Legislature made jail credit mandatory. See *State v. Thorn*, 1 Kan. App. 2d 460 (1977). For 50 years, the jail credit statute has read substantially the same: a district court shall set a prison-sentence-begins date that takes into account "the time which the defendant has spent incarcerated pending the disposition of the defendant's case." See K.S.A. 21-6615(a) (formerly K.S.A. 21-4614).

Precedent: *Campbell* to *Hopkins*

For most of those 50 years, Kansas appellate courts interpreted that statute to mean things it does not, and never did. For example:

- **Kansas Supreme Court** held in 1978 that people were only entitled to credit for days spent in jail "solely on account of the offense for which the defendant is being sentenced." See *Campbell v. State*, 223 Kan. 528, Syl. ¶¶ 1-2 (1978).

- **Kansas Court of Appeals** held that even in the case of a person who had concurrent sentences (meaning they all run at the same time), "if a defendant is entitled to jail time credit in one case, he or she is not entitled to credit for the same jail time in any other case." *State v. Devaney*, No. 110,722, 2015 WL 2131509 (Kan. App. 2015). The Court so ruled after acknowledging that Devaney would get credit in all of his cases as soon as he was sentenced: "starting on the sentencing date, Devaney gets 1 day of credit against each of his sentences for each day served thereafter." *Devaney*, 2015 WL 2131509, at *3.

For most of those 50 years, prosecutors across the state argued against jail credit in these situations, and courts denied people jail credit based on those arguments and the controlling caselaw. The result: **thousands of people** having served some amount of "dead time," *i.e.* time spent in jail that was not applied as jail credit **in any** case.

Finally, in October 2023, the Kansas Supreme Court looked to the plain language of the statute and overruled this precedent in *State v. Hopkins*, 521 P.3d 413 (2023). The Court highlighted that *Campbell* and other cases made it "difficult and confusing" and "unworkable" to calculate people's jail credit, and the outcomes were inconsistent among defendants. *Hopkins*, 537 P.3d 845, 849-51.

HB 2654 is not a tailored *Hopkins* fix

It is our understanding that HB 2654 is a response to *Hopkins*, with the concern being that *Hopkins* would permit or even require that a person be given jail credit in multiple cases with consecutive sentences. But as the Attorney General's Office notes, "[n]othing in *Hopkins* indicated that the court's new rule would undo the court's precedent barring duplicative credit" when a person receives consecutive sentences, so the Supreme Court's cases about consecutive sentences are still good law. *State v. Guebara*, No. 23-126165-A, Supplemental Brief of Appellee, 3.

We understand the proponent's concern, but it can be addressed by simply codifying a regulation the Kansas Department of Corrections (KDOC) uses (and uses to this day, even after *Hopkins*) to calculate a person's sentence length when he/she comes to prison with consecutive sentences. In that situation, K.A.R. 44-6-134 provides that jail credit will be computed so that the credits do not overlap, *i.e.* there will be no duplicative credit when a person is serving consecutive sentences.

HB 2654 is a massive overcorrection that (1) is contrary to other provisions of the Kansas Sentencing Guidelines Act, (2) will continue the fundamental unfairness of people serving dead time, and (3) is unnecessarily costly.

Analysis of each proposed amendment

Proposed amendment (2)(A) would prohibit jail credit being applied in more than one case. If the proponent is concerned that *Hopkins* undermines the Legislature's ability to authorize how sentences can be served, then it should acknowledge that (2)(A) would undermine the effect of concurrent sentences—a sentencing option that existed long before this Legislature authorized discretion to impose concurrent sentences when it created the Sentencing Guidelines almost 31 years ago. See *State v. Quested*, 302 Kan. 262 (2015) (discussing the history, dating back to the 1855, of the court's discretion to impose concurrent or consecutive sentences).

If a person is sentenced in two cases and the court runs the sentences concurrently, then there is no reason, legal or otherwise, to treat pre-sentencing jail credit differently than post-sentencing prison credit. KDOC gives the person credit **in both cases** for each day they serve in prison on those concurrent sentences, so the person should get pre-sentencing jail credit in both cases as well.

Proposed amendment (2)(B) would make it so a person could not get credit for time spent in County A's jail while waiting to get picked up by County B on a detainer or warrant for a case pending in County B (same applies if it is State A's jail because of a detainer or warrant for a case pending in any of the other 104 counties in Kansas). Because it is common for a person to be held elsewhere before they are transferred, this would result in dead time. There is no discernable reason to attach jail credit to jurisdiction. Furthermore, it could create additional problems. Say a person has a case in County A but that county's jail was full so they were farmed out to a jail in County B—they wouldn't get jail credit in the County A case.

Proposed amendment (2)(C) would prohibit jail credit in a situation such as the following. The state charges John Doe in Case 1. While he is on bond in Case 1, the state files charges in Case 2 that have an offense date before Case 1. Mr. Doe can't make bond on Case 2 so he sits in jail. Case 1 has higher severity level charges. No one—not the state, not a bond supervisor, not a bondsman—files a motion to revoke his bond in Case 1. Mr. Doe's cases are resolved together as a package at the same plea hearing. Yet at sentencing, Mr. Doe would be denied jail credit in his longer-sentence case (Case 1) for time he spent in jail because his bond had not been revoked in Case 1. For most of the last 50 years, this has been a technical "gotcha" used to deny a person jail credit—even though the cases were treated as a package. It results in dead time.

A parting thought

HB 2654 will deny people their liberty for longer. In addition to being fundamentally unfair and contrary to Sentencing Guidelines provisions, these amendments would be costly. The average cost of incarcerating someone in prison is $40,137.82 per year, or $109.97 per day. See Kansas Department of Corrections FY 2023 Annual Report, 44. Those denied jail credit days add up. And counties have already paid to jail people for these same days. Taxpayers pay twice.

We look forward to discussing all of this further at the bill hearing. Thank you for your time and consideration.

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