



## Kansas County & District Attorneys Association

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### **Testimony In Support of HB 2654 Clarifying jail credit awards**

**Presented to the House Committee on Corrections and Juvenile Justice  
By Natalie Chalmers on behalf on KCDA**

**February 7, 2024**

Chairman Owen and Members of the Committee:

K.S.A. 21-6615 controls whether a defendant is entitled to jail credit for time spent incarcerated prior to the defendant being sentenced. Since 1978, the rule had been that jail credit is awarded if a defendant was “solely” on the charge for which he or she was being sentenced. That rule changed recently when the Kansas Supreme Court overturned it prior caselaw to conclude that “[u]nder the obvious and plain meaning of the words chosen by the Legislature, a defendant shall be awarded jail time credit for *all* time spent in custody pending the disposition of his or her case.” *State v. Hopkins*, \_\_ Kan. \_\_, 537 P.3d 845, 850 (2023). It indicated that its rule followed the “ordinary expression of Legislative intent.” 537 P.3d at 845.

But the court’s belief that it was simplifying the jail credit rule in a way that corresponds with legislative intent appears flawed if *Hopkins* is extended to permit duplicative credit. Duplicative credit essentially amounts to a defendant getting multiple days of credit for each day spent in jail. It seems extremely unlikely that this was the legislature’s intent. And, in fact, permitting duplicative credit undermines or negates numerous consecutive sentences, and thus conflicts with statutes that require consecutive sentences. E.g. K.S.A. 21-6606(e)(1) (requiring consecutive sentences for felonies committed while a defendant is incarcerated).

Since the decision, lower courts have begun awarding jail credit for defendants who were on bond and duplicative credit. And the Court of Appeals now has a number of cases where it will decide if duplicative credit is permissible.

The proposed legislation seeks to clarify legislative intent and to prevent the damage a broad reading of *Hopkins* could inflict on consecutive sentences. Quick action by the legislature will provide much needed clarity to the confusion *Hopkins* has left in its wake.

To clarify when jail credit should be awarded, the legislation lays out when it cannot be awarded: 1) if it has already been awarded in another case; 2) if a defendant is incarcerated in another county or jurisdiction; and 3) if the defendant is incarcerated in another case, but on bond in the case being sentenced.

Notably, the fix ends the “dead time” problem alluded to in *Hopkins*, which involves a defendant not getting jail credit merely because he or she was incarcerated on multiple cases.

It also effectively codifies existing case law, that was not directly overruled by *Hopkins*, which prevents duplicative credit. E.g. *State v. Lofton*, 272 Kan. 216, 32 P.3d 711 (2001); *State v. Davis*, 312 Kan. 259, 287, 474 P.3d 722 (2020).

However, small tweaks to the proposal are likely advisable. Some counties house defendants in other county jails while they await trial, and the extradition process can take time. But defendants should receive jail credit for any time they spend incarcerated solely in one case. The current proposal may prevent that, so subsection (a)(2)(B) should be amended to add the words “in another case” after jurisdiction in line 27. It would also appear that the word “and” would read better as an “or” in line 28.

For the above reasons, the Kansas County and District Attorneys Association supports this Committee adopting this bill. Thank you for your time.