

## HB 2737 Juvenile Offenders

Testimony of Judge Jeffrey L. Jack, Eleventh Judicial District, Parsons, Kansas before the House Committee on Corrections and Juvenile Justice

Thank you for allowing me to present my written testimony in support of HB 2737, the proposed amendment to K.S.A. 38-2369 that would clarify that a sentencing judge is authorized to impose a consecutive sentence on a juvenile offender who commits an offense while placed in a juvenile correctional facility. I am sorry that my court schedule does not allow me to appear in person.

It seems logical to me that a juvenile who is serving a period of incarceration in a juvenile correctional facility and who commits a new offense while in that facility should begin serving any new term of incarceration for the new offense after the expiration of the original term. However, current Kansas case law and its interpretation by the Juvenile Justice Authority make this result unclear, and that is the reason for the bill before you.

Briefly, some background is in order. The Kansas Sentencing Guidelines that apply to adults explicitly state that a sentencing judge may order adult sentences to run consecutively or concurrently. The former Kansas Juvenile Justice Code (now the Revised Kansas Juvenile Justice Code) that applies to juvenile offenders does not explicitly address consecutive sentences.

In 2001, the juvenile W.H. pled guilty to five separate crimes. He was classified as a Chronic Offender I based on his criminal history, which would allow a sentence of a minimum term of 6 months and a maximum of 18 months. The sentencing court imposed sentences of 10 months, 10 months, 6 months, 6 months and 8 months for the five crimes, and ordered them to be served consecutively, leading to a total sentence of 40 months. On appeal, the Court of Appeals found that, unlike the adult Sentencing Guidelines which specifically authorize a sentencing court to impose consecutive sentences, the KJJC (now RKJJC) is silent as to the authority of the sentencing court to impose consecutive sentences. The Court of Appeals found that if the legislature had wanted to prevent consecutive sentences, it could have said so, so it upheld the consecutive sentences. However, on further appeal the Supreme Court found the exact opposite, and held that because the statutes are silent, the sentencing courts have no authority to impose consecutive sentences, and remanded W.H.'s case to the trial court for resentencing. See *In re W.H.*, 274 Kan. 813, 57 P.3d 1 (2002).

Of course, the intent of the legislature governs the interpretation of statutes. While it may be that as a general rule the legislature intended that juveniles should only be subject to concurrent and not consecutive sentences when it adopted the RKJJC, application of this general rule to different facts could lead to a situation where a juvenile offender faces no consequences for additional crimes committed while in a juvenile correctional facility.

Relying on *In re W.H.*, the Juvenile Justice Authority has taken the position that the Kansas Supreme Court has held that a sentencing court cannot impose consecutive sentences on a juvenile.

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However, in a case with a different fact situation than *In re W.H.*, this could lead to the result that a juvenile offender cannot be effectively punished for a crime committed while he is in a juvenile correctional facility.

For example, under the JJA interpretation of *In re W.H.*, a juvenile serving a term in the juvenile correctional facility for a felony (for example, say a Chronic I for 18 months) who commits a misdemeanor while incarcerated might be sentenced on the misdemeanor to six months. If that sentence cannot be made consecutive to the original sentence, but is instead ordered to be served concurrently, then as long as the juvenile still had at least six months remaining on his original sentence, he effectively serves no additional time for the new crime. (On the other hand, if he was sentenced on the new misdemeanor when he had only one day remaining on his original sentence, under the JJA application of *In re W.H.* he would serve five months and 29 days on the misdemeanor.) The result would be that an incarcerated juvenile could commit lesser crimes with impunity while incarcerated, if done early enough in his original sentence.

It is my belief that the legislature never intended this result and that the holding of *In re W.H.* does not really apply to this situation. The proposed solution is to include language in K.S.A. 38-2369 clarifying that it is the legislature's intent that a sentencing court may order juvenile sentences to run consecutively if a new crime is committed while a juvenile is in the custody of the juvenile correctional facility.

Thank you for your attention, and for your consideration of HB 2737. Again, I am sorry I could not present my testimony in person, and I would be happy to answer any questions or address any concerns through the Chair.

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