

Sentencing, Postrelease Supervision, and Probation; HB 2170

HB 2170 makes numerous changes to sentencing, postrelease supervision, and probation statutes.

The bill allows a low-risk defendant who has paid all restitution and for 12 months has been compliant with the terms of probation, assignment to community corrections, suspension of sentence, or nonprison sanction to be eligible for discharge from such period of supervision by the court. In that instance, the court is required to grant the discharge absent substantial and compelling reasons for denying discharge. A person serving a period of incarceration for a supervision violation is not eligible for modification until the person is released and returned to postrelease supervision. The Prisoner Review Board also has the discretion to provide for early discharge from postrelease supervision if the defendant has petitioned for early discharge and has paid any restitution ordered.

Further, the bill provides program credits earned and subtracted from an inmate's prison sentence are not added to the inmate's postrelease supervision term, with the exception of a term for a person sentenced to prison for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations. Similarly, the bill provides that good time earned and subtracted from the prison sentence or any other consecutive or concurrent sentence of a person sentenced to prison for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations is added to the inmate's postrelease supervision term.

Concerning participation in drug abuse treatment programs, the bill allows for sanctions, in addition to revocation of probation (which already was allowed), when a defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in a drug abuse treatment program.

In the area of violations of the conditions of release, assignment, or nonprison sanction, the bill allows a defendant arrested for such a violation to waive the right to a hearing on the violation, after the defendant has been apprised of the right by the supervising court services or community correctional services officer. If the original crime of conviction was a misdemeanor and the violation is established, the bill allows the court to continue or revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed.

If the defendant waives the right to a hearing and, in the sentencing order, the court has not specifically withheld the authority of court services or community corrections to impose sanctions, the defendant's supervising court services officer, with the concurrence of the chief court services officer, or the defendant's community corrections officer, with the concurrence of the community corrections director, may impose an intermediate sanction of confinement in jail for up to six days each month in any three separate months during the period of release of supervision. The 6 days per month can be imposed only as 2-day or 3-day consecutive periods, not to exceed 18 total days of confinement.

If the original crime of conviction was a felony and the violation is established, the bill allows the court to impose the following series of increasing violation sanctions:

- Continue or modify the conditions of release;
- Impose the intermediate sanction of confinement in jail outlined above;
- If the violator already had at least one intermediate sanction of confinement in jail, remand the defendant to the custody of the Kansas Department of Corrections (KDOC) for a period of 120 days, which the Secretary could reduce by up to 60 days (this penalty could not be imposed more than once during the term of supervision);
- If the violator already had been remanded to KDOC custody for a period of 120 days, remand the defendant to KDOC custody for a period of 180 days, which the Secretary could reduce by up to 80 days (this penalty could not be imposed more than once during the term of supervision); or
- If the violator already had been remanded to KDOC custody for a period of 180 days, revoke probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed.

The bill provides, however, that the period of time spent in jail or in the custody of KDOC cannot exceed the time remaining on the person's underlying prison sentence. Upon completion of time spent in the custody of KDOC, the offender returns to community corrections supervision, and the bill specifies sheriffs are not responsible for the return of the offender to the county where the community correctional services supervision is assigned.

The court may revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction without first imposing the preceding violation sanctions:

- If the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender otherwise will not be served; or
- If the offender commits a new felony or misdemeanor or absconds from supervision.

For crimes committed on and after July 1, 2013, an offender whose nonprison sanction is revoked or whose underlying prison term expires after being remanded to the custody of KDOC is required to serve a period of postrelease supervision upon completion of the prison portion of the underlying sentence. Persons convicted of crimes committed on or after July 1, 2003, but before July 1, 2013, are not subject to a period of postrelease supervision. For offenders sentenced prior to July 1, 2013, who are eligible for modification of their postrelease supervision obligation, KDOC is required to modify the period of postrelease supervision pursuant to the schedule outlined in the bill.

Finally, the bill gives the Kansas Sentencing Commission (KSC) the authority to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. Additionally, the KSC must periodically review data and make recommended changes and must determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.