

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2170

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2170 would make numerous changes to sentencing, probation, and postrelease supervision statutes. First, for the crime of driving under the influence (DUI), the bill would amend a felony sentencing provision that allows confinement for up to 60 days in a county jail as a condition of probation to expand an existing DUI exception to include commercial DUI and criminal refusal. For second DUI convictions, the bill would strike existing provisions concerning hours of confinement for offenders placed in work release programs and require instead that the offender serve the total number of hours of confinement mandated by the DUI statute. For a subsequent conviction, an offender placed in a work release program also would be required to serve the total number of hours of confinement mandated by the DUI statute.

Further, the bill would amend sentencing provisions concerning the commission of new felonies. When a new felony is committed while the offender is on probation, assignment to a community correctional services program (community corrections), parole, conditional release, or postrelease supervision for a felony, or on release prior to trial for a felony, a new sentence would be imposed either concurrently or consecutively. Additionally, when a new felony is committed while the offender is on or, if granted release, would have been on, probation, assignment to community corrections, parole, conditional release, or postrelease supervision for a felony, the court could sentence the offender to imprisonment for the new conviction, even when the new

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

crime otherwise presumes a nonprison sentence. The bill specifies imposition of a prison sentence in this circumstance would not constitute a departure. If a parolee is convicted of a new felony, the Prisoner Review Board would have the discretion to determine how much time the inmate would serve, up to the remaining balance of the period of postrelease supervision.

The bill also would make amendments concerning participation in drug abuse treatment programs. Specifically, it would provide that for felony possession of controlled substances, time spent participating in a certified drug abuse treatment program would not be credited as service on the underlying prison sentence. The bill also would provide that persons convicted of crimes committed on or after July 1, 2003, but before July 1, 2013, would not be able to credit time spent participating in a drug treatment program as service on the underlying prison sentence. In addition to revocation of probation, which already is allowed, the bill would allow for sanctions 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.

The bill would make numerous amendments to the law concerning postrelease supervision. Specifically, the bill would require offenders convicted of crimes committed on or after July 1, 2013, to serve a period of postrelease supervision upon the completion of the underlying prison term when probation, assignment to community corrections, suspension of sentence, or a nonprison sentence is revoked or the underlying prison term expires while the offender is serving a sanction for a violation of conditions of release or assignment.

Additionally, the bill would allow 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. The court would be required to grant the discharge absent substantial and compelling reasons for denying discharge. The Prisoner Review Board also would have 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, program credits earned and subtracted from an inmate's prison sentence would not be added to the inmate's postrelease supervision term, with the exception of a term for a person sentenced to imprisonment for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations. Similarly, the bill would provide that good time earned and subtracted from the prison sentence or any other consecutive or concurrent sentence of a person sentenced to imprisonment for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations would be added to the inmate's postrelease supervision term.

In the area of violations of the conditions of release, assignment, or nonprison sanction, the bill would allow 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 would allow 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, could 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 could 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, or if the offender commits a new felony or misdemeanor or absconds from supervision, the bill would allow the court to impose the following series of increasing violation sanctions:

- Continue or modify of the conditions of release;
- Impose the intermediate sanction of confinement in jail outlined above;
- Remand the defendant to the custody of the Kansas Department of Corrections (KDOC) for a limited time period, not to exceed the time remaining on the person's underlying prison sentence, after which the offender would be returned to community corrections supervision; or
- 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.

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, the court could revoke the

probation, assignment to community corrections, suspension of sentence, or nonprison sanction without first imposing the preceding violation sanctions.

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 would not be required to serve a period of postrelease supervision upon completion of the prison portion of the underlying sentence. For offenders sentenced prior to July 1, 2013, KDOC would be required to modify the period of postrelease supervision pursuant to the schedule outlined in the bill.

Finally, the bill would give 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. The KSC would be required to periodically review data and make recommended changes. Further, the KSC would be required to determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.

Background

HB 2170 represents the recommendations of the Justice Reinvestment Working Group, a statutorily created body charged with analyzing the Kansas criminal justice system and, based upon that analysis, providing evidence-based policy options that would reduce recidivism and, at the same time, the increasing prison population. The Working Group received research assistance from the Council of State Governments' Justice Center.

In the House Committee on Corrections and Juvenile Justice, representatives of KDOC, KSC, and the Council of State Governments' Justice Center appeared in support of the bill. The Director of the Office of Victim Services, KDOC,

offered neutral testimony, and representatives of the Kansas County and District Attorneys Association offered testimony in opposition to the bill.

The House Committee amended the bill to require the KSC to determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.

The KSC predicts passage of HB 2170, as introduced, would reduce the need for prison beds by 863 in FY 2014 and between 2,633 and 2,863 by FY 2023. The House Committee amendment would require the addition of 1.0 FTE and \$81,256.57 to fund the position. The Division of the Budget's fiscal note indicates passage would help KDOC to avoid costs that would otherwise have been incurred as a result of projected population increases. The Department estimates operating costs of approximately \$1.6 million in FY 2014 and \$9.0 million in FY 2015 could be averted should the bill be enacted. Additionally, the construction of two cell houses at El Dorado Correctional Facility could be delayed until FY 2015 or FY 2016. This project, which will provide 512 beds, is estimated to have a construction cost of \$24.5 million and operating costs of approximately \$8.4 million. To help address the issues presented in this bill, the Governor's budget includes additional funding of \$3.0 million (\$2.0 million in FY 2014 and another \$1.0 million in FY 2015) for community corrections treatment and supervision programs. The Department states there will be resource needs for the sentencing computation unit, the Reception and Diagnostic Unit, short-term and long-term IT programming, victim notification, the Prisoner Review Board, community corrections and parole staff, prisoner transportation, and training. However, the Department indicates that these needs can be met with existing resources combined with the additional funding recommended in the Governor's budget.

The Office of Judicial Administration estimates that the bill would increase the number of motions and appeals relating to probation and post-release supervision, however,

the fiscal effect likely would be accommodated within the existing schedule of court cases and would not require additional resources. Other than the community programs funding specified above, any fiscal effect associated with HB 2170 is not reflected in *The FY 2014 Governor's Budget Report*.