

Testimony on HB 2603  
To  
The House Corrections and Juvenile Justice Committee

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Secretary  
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The Kansas Department of Corrections supports HB 2603. HB 2603 addresses the issue of how time spent in jail should be credited when a person is both a defendant awaiting trial on new criminal charges while at the same time is an alleged Postrelease Supervision Violator who has been arrested pursuant to a warrant issued by the Secretary of Corrections. The department is of the opinion that it must and therefore has credited such time to service of the Postrelease Supervision Period and that jail credit should not be award to the new pending criminal case. Some jurisdictions however, contend that jail credit should be award toward any new sentence imposed and that service of the Postrelease Supervision period should be tolled. This has resulted in conflicting sentencing journal entries and numerous instances of staff of the department's Sentence Computation Unit having to appear at District Court Sentencing hearings.

A simple example illustrates the issue resolved by HB 2603. John Smith has been convicted of crime "A"; sentenced to prison and after serving the prison portion of his sentence is released to Postrelease Supervision for a period of 36 months. Shortly, thereafter John Smith is arrested for allegedly committing a new crime "B" and is placed in the county jail to await trial for crime "B". Simultaneously, the department issues a warrant charging Smith with having violated the conditions of his postrelease supervision and provides a copy of that warrant to the Sheriff holding Smith in the county jail. Smith cannot post bond on the department's warrant and therefore may not be released from jail. HB 2603 would provide that Smith would receive credit towards service of his postrelease supervision obligation but he would not receive credit for "jail credit" toward any potential sentence imposed for crime "B".

There is some contention that Smith should be award jail credit toward service of the potential future sentence and that service of the postrelease supervision obligation should stop while Smith is in jail. The department believes tolling the running of the postrelease supervision period is contrary to K.S.A. 75-5217(f) which allows for the tolling of the service of the postrelease supervision period only when the postreleasee has absconded. Additionally, K.S.A. 22-3722 provides:

"The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice, the total time served

may not exceed the maximum term or sentence. The period served on postrelease supervision shall vest in and be subject to the provisions contained in K.S.A. 75-5217, and amendments thereto, relating to an inmate who is a fugitive from or has fled from justice. The total time served shall not exceed the postrelease supervision period established at sentencing.” (Emphasis added).

Finally, the Court of Appeals in Hook v. State, 51 Kan. App 2d 527, 349 P.3d 476 (2015) held: “..K.S.A. 2014 Supp. 21-6615(a), which requires the sentencing court to provide a credit for any time the defendant spent incarcerated pending disposition of the defendant’s case. With that said, a defendant is entitled to this credit for time spent in custody only when he or she is being held *solely* on the charge for which the defendant is being sentence.” (Emphasis in the original). (Hooks at page 531).

Therefore, Mr. Smith is not entitled to jail credit towards any future sentence imposed for crime “B” since he is getting credit for service of postrelease supervision. In fact, he may not receive credit for both since he must have consecutive sentences imposed for crimes committed while on postrelease supervision.

The running of the Postrelease Supervision period except for when the offender has absconded is critical to the department in that period of time dictates when the offender’s sentence ends irrespective of whether he or she is in the community or in prison due to the revocation of the Postrelease Supervision.

The department urges favorable consideration of HB 2603.