



**Senate Judiciary Committee  
February 5, 2024**

**Senate Bill 412  
Testimony of the BIDS Legislative Committee  
Presented by Jennifer Roth & Emily Brandt  
Opponent**

Chairperson Warren and Members of the Committee:

The amendments to K.S.A. 21-6819 proposed in SB 412 are contrary to Kansas' sentencing scheme and guidelines. We oppose the bill and respectfully ask the Committee to vote no on its passage for reasons further explained below.

**SB 412 Violates a Sense of Fundamental Fairness**

Probation, a nonprison sentence, is tied to a conviction for a particular crime. Thus, a district court must impose a specific term of probation for each conviction, just like it must impose a specific underlying term of imprisonment for each conviction. Amending K.S.A. 21-6819 to require district courts to impose a unitary term of probation in multiple conviction cases runs afoul to the basic principle that each conviction requires a specific sentence.

A probationer is entitled to retain her liberty for so long as she complies with the conditions of her probation. And if she successfully completes her term of probation for a conviction, then she has satisfied her sentence. The amendments to K.S.A. 21-6819 create a situation where a probationer could successfully complete a term of probation for one conviction and yet still be subject to the underlying prison term for that conviction simply because she has another conviction for a higher level offense.

Let's take for instance Jane Doe. Jane has a criminal history score of "E" and is convicted of theft, a severity level 7 nondrug felony, and marijuana possession, a severity level 5 drug felony. Based on her criminal history score, she is presumptive probation. Neither conviction is a person felony. Applying the applicable sentencing provisions, the district court imposes a probation term of 24 months for the theft and a probation term of 12 months for the marijuana possession. Her underlying prison sentences, presumptive under the Kansas Sentencing Guidelines Act (KSGA), are 21 months for the theft and 11 months for the marijuana possession. The district court orders the sentences to be served consecutively if her probation is revoked.

For 16 months Jane Doe complies with the terms of her probation. Then, in month 17 she has transportation issues and misses several probation appointments. The State moves to revoke her probation and the district court ultimately does so and orders her to serve her underlying prison sentence. But Jane has already completed her sentence for her marijuana possession conviction. She served 12 full months of probation without any violations, so the district court imposes only the 21 months for the theft conviction.

This is how it currently works. This is how it should work. But under the proposed amendments, the way it would work is the court could order Jane to serve 11 months in prison for the marijuana conviction that she already satisfied via probation. The proposed amendments would essentially require probationers to serve a double sentence: one nonprison and the other prison. If a sentence, prison or nonprison, must be tied to a conviction, then once the sentence for that conviction is satisfied, it cannot be ordered to be served again.

### **SB 412 is Unnecessary**

The proposed amendments are also unnecessary. Under K.S.A. 21-6608(c)(5), district courts already have discretion to impose longer probation terms if they make particularized findings. Affording district courts this power comports with the rule that each conviction has a specific sentence tied to it.

Now let's take John Doe. John also has a criminal history score of "E." He was convicted of aggravated assault, a severity level 7 nondrug felony, and criminal threat, a severity level 9 nondrug felony. Both convictions are person felonies. Based on his criminal history score, he is presumptive probation. Applying the applicable sentencing provisions, the district court imposes a probation term of 24 months for the aggravated assault. John's presumptive underlying prison sentences are 21 months for the aggravated assault and 11 months for the criminal threat. The district court orders the sentences to be served consecutively if his probation is revoked.

But unlike with Jane Doe, the district court judge here is concerned that a 12-month term of probation for the criminal threat conviction is not sufficient punishment. Applying the already available statutory provisions, the district court makes particularized public safety findings based on John Doe's pattern of escalating threats of violence at persons walking on the public sidewalk in front of his house which has now resulted in an aggravated assault. Instead of ordering the standard 12-month term of probation, the court orders John to serve a 24-month term of probation for the criminal threat. His sentence for aggravated assault does not change. So while he is not serving a unitary 24-month term of probation, he is serving two, 24-month terms of probation at the same time. It functionally acts as a unitary term, what the amendments seek, but comports with the rule that each conviction in a multi-conviction case has a specific sentence tied to it.

This power also conforms with the duration of probation provisions in K.S.A. 21-6608(c)(3) and (c)(4) which impose caps for probation terms for severity level 8-10 nondrug offenses and severity level 3-5 drug offenses. The proposed amendments in SB 412 would contradict these caps, automatically requiring a term of probation beyond the cap, without particularized findings.

## **SB 412 Decreases the Personalization of Nonprison Sentences**

This body regularly hears from stakeholders, including probation officers, treatment providers, and the sentencing commission, that probationers cannot all be treated the same. Standard probation terms and conditions do not work for all probationers. Each probationer needs a tailored plan to be able to succeed and rehabilitate without prison time. Successfully completing probation is no small task, especially if the probationer is suffering from any substance abuse disorders or mental health challenges, or even facing a large restitution order. And as highlighted above by Jane and John Doe, it is important that district courts have discretion to meet probationers' individualized needs while protecting the public.

The Legislature has enacted a comprehensive sentencing scheme and guidelines. This bill would thwart the intent of the current sentencing scheme. The KSGA and other applicable sentencing provisions seek to establish equity among like defendants in typical case scenarios, but it is not blind to the unique needs of each defendant. Forcing district courts to impose unitary terms of probation in multiple conviction cases ignores the needs of each probationer, runs afoul to the basic principle that each conviction has a specific sentence, and contradicts other sentencing provisions.

We would respectfully ask you to vote no on SB 412.

Thank you for your time and consideration.

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