

March 4, 2013

CORRECTED

The Honorable John Rubin, Chairperson  
House Committee on Corrections and Juvenile Justice  
Statehouse, Room 151-S  
Topeka, Kansas 66612

Dear Representative Rubin:

**SUBJECT:** Corrected Fiscal Note for HB 2170 by House Committee on Corrections and Juvenile Justice

In accordance with KSA 75-3715a, the following corrected fiscal note concerning HB 2170 is respectfully submitted to your committee.

HB 2170 would amend several statutes relating to probation and post-release supervision. Currently, courts may include confinement in a county jail for no more than 60 days as a condition of an original probation sentence except for certain driving under the influence violations. The bill would add commercial driving under the influence violations and test refusal violations to the list of exceptions to this probation rule.

When a new felony is committed while the offender is on probation, assignment to a community correctional services program, parole, conditional release or post-release supervision for a felony, a new sentence must be imposed either concurrently or consecutively. Courts may sentence the offender to imprisonment for the new conviction even when the new crime presumes a non-prison sentence. Similarly, when a new felony is committed during a period of time during which the offender would have been on assignment to a community correctional services program, parole, conditional release or post-release supervision for a felony had the offender not been granted release by the court or Prisoner Review Board, courts may sentence the offender to imprisonment for the new conviction even when the new crime presumes a non-prison sentence. In both cases, imposition of a prison sentence would not constitute a departure.

Under current law, courts must require offenders who have been convicted of felony drug crimes to participate in substance abuse treatment programs. HB 2170 would specify that the amount of time spent in the program would not be credited as service on any underlying prison sentence. Offenders who are convicted on or after July 1, 2003 but prior to July 1, 2013, would not be subject to post-release supervision upon completion of the underlying sentence. However, offenders who commit crimes on or after July 1, 2013, and whose probation is revoked or underlying prison term expire while serving a sanction must serve a period of post-release supervision.

The bill would allow, in specified circumstances, court service officers and community corrections officers to impose certain sanctions without additional order from the courts. Provisions relating to consecutive terms of sentences for crimes committed while on probation or release would be removed. Offenders who have low risk assessments, have paid all restitution, and has been compliant with the terms of probation, community correctional services program, or non-prison sanction for 12 months would be eligible for discharge from supervision by the courts. Discharge would be granted unless the court finds substantial and compelling reasons for denial of such discharge.

Any good time that is earned and subtracted from the prison part of an offender's sentence would not be added to the offender's post-release supervision term; however, this provision would not apply to certain sex crimes. Under current law, offenders who commit crimes while on probation or community correctional services program must be brought to the court without unnecessary delay. HB 2170 would permit offenders to waive the hearing after being apprised of the right to a hearing by the supervising court services or community correctional officer. Depending on the original crime, penalties for probation violations may include the following sanctions:

1. Continuation or modification of release conditions of the probation.
2. An intermediate sanction of confinement in jail, which cannot exceed more than six days per month in any three separate months during the period of supervision. Confinement may be imposed only as two-day or three-day periods and must not exceed 18 days total confinement.
3. If the offender already has at least one intermediate sanction, the offender may be remanded to the custody of the Secretary of Corrections for 120 days. The Secretary would have the discretion to reduce the period up to 60 days.
4. Any violation during the 120-day period would result in an increase of the period to 180 days under the custody of the Secretary of Corrections, who would have the discretion to reduce the period up to 90 days.
5. Any violation during the 180-day period would result in revocation of the probation, assignment to a community corrections services program, suspension non-prison sanction, and a requirement to serve the sentenced imposed.

For crimes committed on and after July 1, 2013, an offender whose non-prison sanction is revoked as a result of crimes committed while on probation or whose underlying prison term while serving a sanction for violations occurring during the 120 or 180 day periods must serve a period of post-release supervision upon the completion of the prison portion of the underlying sentence. Prisoners serving periods of post-release supervision resulting from drug or nondrug severity level sentences may petition the Prisoner Review Board for early discharge. Upon payment of restitution, the Board may provide for early discharge.

The bill would amend the list of prescribed crimes and severity levels that would be eligible for post-release supervision period modification by the Department of Corrections. The modifications would apply to offenders sentenced prior to July 1, 2013. The Kansas Sentencing Commission would be authorized to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. The Commission would be required to review the data and make recommended changes.

The Kansas Sentencing Commission estimates that passage of HB 2170 would result in a decrease of 863 adult prison beds needed in FY 2014 and a decrease of 2,633 to 2,863 adult prison beds needed by FY 2023. In the fiscal effect statement originally issued, the bed impact was incorrectly reported as a decrease of 924 beds in FY 2014 and a decrease of 1,083 beds by FY 2023. As of January 14, 2013, the available bed capacity was 9,564. Based upon the original Kansas Sentencing Commission projections made in the *FY 2013 Adult Inmate Prison Population Projections*, it is estimated that by the end of FY 2014 and FY 2015 the number of inmates will exceed available capacity by 325 beds and 590 beds, respectively. The Commission also states that \$81,257 from the State General Fund and 1.00 FTE position would be needed to carry out the monitoring duties required by the bill.

The Department of Corrections indicates that the bill would help avoid costs that would have otherwise been incurred as a result of the projected population increases. The Department estimates that 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 that there will be resource needs for the sentencing computation unit, the Reception and Diagnosis 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.

According to the Board of Indigents Defense, \$190,650 (\$150 per assessment X 1,271 offenders) from the State General Fund would be needed in FY 2014 to provide assessment services to certain domestic violence offenders. The domestic violence assessments cost approximately \$150 each. Using 2011 data from the Kansas Bureau of Investigation, the Board estimates that there would be 1,271 offenders who would require assistance from the Board to pay for those costs.

The Office of Judicial Administration estimates that the bill would increase the number of motions and appeals relating to probation and post-release supervision. This would result in a corresponding increase to the time spent by district court and appellate court judicial and non-judicial personnel in processing, researching, and hearing cases would result. Likewise, the additional cases could also result in the collection of added revenue from docket fees or


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penalties. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined for the additional caseloads. In any case, the fiscal effect would most likely 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*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven J. Anderson, CPA, MBA  
Director of the Budget

cc: Pat Scalia, Indigents Defense  
Scott Schultz, Sentencing Commission  
Melissa Wangemann, Kansas Association of Counties  
Mary Rinehart, Judiciary  
Jeremy Barclay, Corrections