



Secretary Joe Norwood

Governor Jeff Colyer, M.D.

Testimony on HB 2603
To
The Senate Judiciary Committee

By Joe Norwood
Secretary
Kansas Department of Corrections
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The Kansas Department of Corrections supports HB 2603. The department does have a proposed amendment to HB 2603 which would also amend K.S.A. 21-6606. That amendment is attached.

HB 2603 was passed by the House by a vote of 117-0. 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. Current law mandates that new felony crimes committed while under postrelease supervision must be served consecutively. The department is of the opinion that it must and therefore does 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 has prepared an amendment to HB 2603 which would amend K.S.A. 21-6606 to codify that a defendant/inmate should not receive double credit towards service of both sentences that have been ordered to be served consecutively.

The department urges favorable consideration of HB 2603 as amended.

HOUSE BILL No. 2603

By Committee on Corrections and Juvenile Justice

2-1

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to postrelease supervision; amending K.S.A. 2017 Supp. 22-3722 and
3 repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 22-3722 is hereby amended to read as
7 follows: 22-3722. The period served on parole or conditional release shall
8 be deemed service of the term of confinement, and, subject to the
9 provisions contained in K.S.A. 75-5217, and amendments thereto, relating
10 to an inmate who is a fugitive from or has fled from justice, the total time
11 served may not exceed the maximum term or sentence. The period served
12 on postrelease supervision shall vest in and be subject to the provisions
13 contained in K.S.A. 75-5217, and amendments thereto, relating to an
14 inmate who is a fugitive from or has fled from justice. *The service of the*
15 *postrelease supervision period shall not toll, except as provided by K.S.A.*
16 *75-5217.* The total time served shall not exceed the postrelease supervision
17 period established at sentencing.

18 When an inmate on parole or conditional release has performed the
19 obligations of the release for such time as shall satisfy the prisoner review
20 board that final release is not incompatible with the best interest of society
21 and the welfare of the individual, the board may make a final order of
22 discharge and issue a certificate of discharge to the inmate but no such
23 order of discharge shall be made in any case within a period of less than
24 one year after the date of release except where the sentence expires earlier
25 thereto. When an inmate has reached the end of the postrelease supervision
26 period, the board shall issue a certificate of discharge to the releasee. Such
27 discharge, and the discharge of an inmate who has served the inmate's term
28 of imprisonment, shall have the effect of restoring all civil rights lost by
29 operation of law upon commitment, and the certification of discharge shall
30 so state. Nothing herein contained shall be held to impair the power of the
31 governor to grant a pardon or commutation of sentence in any case. ✓

32 Sec. 2. K.S.A. 2017 Supp. 22-3722 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.

INSERT: "INSERT
'A'"amending K.S.A.
21-6606.

21-6606. Multiple sentences; defendant subject to or under sentence in federal court or court of another state. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as otherwise provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the prisoner review board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post incarceration supervision shall be based on the longest term of post incarceration supervision imposed for all crimes upon which sentence was imposed or until discharged from supervision by the prisoner review board. The term of post incarceration supervision imposed by this paragraph shall apply retroactively to crimes committed prior to July 1, 2008.

(3) As used in this subsection, "post incarceration supervision" includes parole and postrelease supervision.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717, and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:

(1) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of imprisonment to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983. Nothing in this subsection (f)(4) shall affect the authority of the prisoner review board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717, and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates, except that credit shall be given for any amount of time spent in a residential facility while on probation or assignment to a community correctional residential services program.

(g) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term. The provisions of this subsection shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed. ✓

History: L. 2010, ch. 136, § 246; L. 2012, ch. 16, § 4; L. 2013, ch. 76, § 2; July 1.

(i) A defendant sentenced for a crime to be served consecutively to a previously imposed sentence is not entitled to credit for time spent in custody towards service of the sentence imposed for the new criminal charge if the defendant is being credited for the service of the previously imposed prison or post incarceration supervision.