

Senate Judiciary Committee
March 13, 2019

House Bill 2336
Testimony of the Kansas Association of Criminal Defense Lawyers
Neutral

Dear Chairman Wilborn and Members of the Committee:

One of our members with experience in the issue HB 2336 seeks to address recently brought to our attention a few concerns about this bill. We present this testimony to bring these concerns, which are based on our reading of the bill and our understanding of the relevant law, to the Committee's attention.

K.S.A. 21-6606(c) and (e) contain special sentencing rules (as we commonly refer to them) that require mandatory consecutive sentences if a person is convicted and sentenced for a crime committed 1) while on felony probation, parole, or postrelease supervision for another sentence, or 2) while a person is incarcerated and serving a felony sentence. The new subsection (i) appears to relate to (c) and (e), and reads:

(i) When a defendant is serving a previously imposed sentence, or is on post incarceration supervision for a previously imposed sentence, and a sentence is imposed on such defendant to be served consecutively to the previously imposed sentence, such defendant is not entitled to credit for time served in custody on such sentence.

As a preliminary matter, putting this new subsection in K.S.A. 21-6606 is an interesting choice. This is a jail credit issue, but the proposed amendment is not to the jail credit statute at K.S.A. 21-6615 (which would also be amended by HB 2336, but not in this way). Furthermore, the proposed (i) appears to address K.S.A. 21-6606(c) and (e) – so even if the proposed language remains in K.S.A. 21-6606, it would make sense to have it reference (c) and (e). This would also solve the problem of having the proposed language limited to applying to only felony sentences because misdemeanor sentences are subject to modification and release on parole and can run concurrently with an older felony sentence pursuant to K.S.A. 21-6606(b).

The main problem is with the ambiguity of “such sentence.” This language makes reference to two sentences – a previously imposed one and a new one – but “such sentence” does not make clear which one a defendant is not entitled to credit for.

Based on our reading, **the new (i) denies credit where credit may otherwise be appropriate** – such as when the postrelease supervision term expires before the defendant receives the new sentence. This is a frequent occurrence because cases can sometimes take six months or more to reach sentencing. As written, (i) is too broad and

will deny defendants jail credit to which they may otherwise be entitled when the previous sentence (including postrelease supervision term) runs out before a new sentence is imposed. For example, say a defendant is in custody on an aggravated assault charge. He goes to trial, and the jury convicts him of the lesser offense of assault, which is a Class C misdemeanor carrying a maximum sentence of 30 days in jail. But the defendant spent six months in jail awaiting trial on the new case. Would the proposed language in (i) deny the defendant from having the other five months he spent in jail credited to his previously imposed sentence? Another example would be a defendant charged with possession of marijuana with intent to sell, and the State decides it cannot make its case so it agrees to a plea to simple possession. That is a Class B misdemeanor for a first offense, which carries a maximum of six months in jail. If the defendant has served nine months in jail, then would (i) deny her jail credit toward her postrelease term for the other three months she spent in jail?

This proposed language could result in defendants serving more time than their legal sentence. The proposed amendment to K.S.A. 21-6606 does not have limiting language like K.S.A. 75-5217(c) does: “If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve a period of confinement, to be determined by the prisoner review board, **which shall not exceed the remaining balance of the period of postrelease supervision**, even if the new conviction did not result in the imposition of a new term of imprisonment.” *See also* K.S.A. 22-3716(c)(7) (RE: graduated sanctions for probation violators: “[a] violation sanction ... shall not be longer than the amount of time remaining on the offender’s underlying prison sentence”). The proposed subsection (i) should include an exception along these lines so defendants receive jail credit for time spent incarcerated on their new case after their previously imposed sentence has run.

Thank you for your consideration,



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