

SENATE JUDICIARY COMMITTEE  
Senator Kellie Warren, Chair

KANSAS SENTENCING COMMISSION  
Jessica G. Domme, Commission Board Member  
March 9, 2023

Proponent Testimony – HB 2069

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission.

The Kansas Sentencing Commission supports HB 2069. HB 2069 is an attempt to clarify how jail credit is awarded when a person is in custody on awaiting disposition on a new criminal charge while at the same time is an alleged postrelease supervision violator, arrested pursuant to a warrant issued by the Secretary of Corrections.

Historically, the Kansas Department of Corrections (KDOC) has credited such jail time to the Postrelease Supervision Period and not to the new pending criminal case. The basis for this allocation is rooted in other sentencing provisions and case law. The tolling 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 postrelease 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).

Further, the Court of Appeals in *Hooks 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 531).

Finally, K.S.A. 21-6604(f)(1), commonly referred to as Special Sentencing Rule #9, requires any new sentence to be imposed consecutive to any case for which an offender was on postrelease supervision at the time the new

offense was committed.

HB 2069 is now before you, however, because recent case law has determined that such jail credit should be awarded toward any new sentence imposed and that service of the Postrelease Supervision period should be tolled. Such was the determination by the Kansas Court of Appeals in *State v. Brown*, No. 119,085, 435 P.3d 597 (2019), *unpublished opinion attached*. This has resulted in conflicting sentencing journal entries and numerous instances of staff of KDOC's Sentence Computation Unit having to appear at district court sentencing hearings.

The Kansas Sentencing Commission believes the passage of HB 2069 will provide direction on the allocation of jail credit that is in line with previous legislative intent. It will also provide necessary clarification for attorneys, Judges, and KDOC staff.

I appreciate your time and attention to the Kansas Sentencing Commission testimony, ask for your support, and would be happy to answer questions. Thank you.