

**Testimony on HB 2170
to
The Senate Judiciary Committee**

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The Department of Corrections supports HB 2170. HB 2170 was passed by the House by a vote of 79 to 44.

HB 2170 is the result of the Justice Reinvestment Initiative and the creation of the Justice Reinvestment Initiative Work Group created by 2012 HB 2684. The Kansas Sentencing Commission also supports HB 2170.

The foundation for the Justice Reinvestment Initiative is the collection and analysis of data by the Council of State Government Justice Center along with focus meetings with working group members and persons involved with the criminal justice field throughout the state. HB 2170 addresses the findings of the Justice Reinvestment Initiative

The Council of State Government Justice Center reviewed data concerning Kansas offenders under supervision in the community and the experience of other states employing best practices. The Council of State Government Justice Center has previously assisted Kansas in applying best practices in the management and supervision of offenders on postrelease supervision. Since FY 2007, those practices have resulted in a reduction in the revocation of offenders on post release supervision by 23% and more importantly a reduction in the commission of new crimes by offenders on postrelease supervision by 30%. Those same best practices can likewise be applied to offenders under probation.

Probation violators comprise 37% of the new admissions into Kansas correctional facilities. Using best practices, public safety can be enhanced and revocations substantially reduced. Higher risk probationers require more supervision than low risk probationers. Currently, the length of probation supervision is not related to the risk the probationer poses to the community. Low risk probationers are supervised for as long as high risk probationers. A post release supervision obligation of 36 months is required for offenders irrespective of their risk/need assessment and is imposed for offenders with prison sentences ranging from 38 months to 653 months.

- ✓ Low risk probationers average 24 months on probation but only have a 4% revocation rate.
- ✓ Moderate risk probationers average 25 months on probation but have a 37% revocation rate.
- ✓ High risk probationers average 22 months on probation but have a 76% revocation rate.

HB 2170 Provisions and Best Practices

- This bill does not alter the amount of time an offender must spend in prison for the sentence imposed. The limitations on the amount of good time credits that can reduce the prison portion of a sentence under current law are not changed.
- Empowers court services and community corrections officers with authority to impose a swift and certain sanction of 2 to 3 days in jail without the delay of a court hearing. This authority is subject to the court's delegation of this authority and the offender may nonetheless demand a hearing before the judge.
- Allows a court to remand a probationer to a correctional facility for 120 days, 180 days or to serve the full prison sentence. The length of sanction is determined by the court based on the circumstances of the offender and the violation.
- Allows courts to skip any intermediate sanction and impose the full prison term if the probationer commits a new misdemeanor, felony, absconds or the court finds that public safety requires the imposition of the prison term pursuant to New Section 5, (c)(8) and (c)(9). Courts will have the tools to address the specific circumstances of the offender and the probation violation and may impose any sanction including the imposition of the prison sentence.
- Provides community based substance abuse and cognitive behavior programs though the Governor's budget proposal of providing in FY 2013 \$2 million and in FY 2014 \$3 million in community programming funds. Of the moderate to high risk offenders who successfully complete probation, 57% completed two or more behavioral health programming interventions. However, of the moderate and high risk offenders whose probation was revoked, only 31% completed two or more behavioral health programming interventions.
- Retains the mandatory consecutive sentence requirement when a felon commits a new felony crime while incarcerated or if a new person felony is committed while the offender is under community supervision but allows the court to impose either a concurrent or consecutive sentence when the new felony is a nonperson felony committed while on release supervision. Prosecutors may utilize this option as an additional tool in plea negotiations.
- Requires that all probation violators sent to prison be under postrelease supervision by the Department of Corrections if their underlying prison term expired while in prison. Currently, 56% of revoked probation violators (900 offenders) released from prison have no postrelease supervision. Requiring postrelease supervision for all revoked probation violators increases public safety and negates the offender's incentive to simply do the prison time to avoid release supervision.
- Emphasizes the need for more supervision and resources for higher risk offenders and less for low risk.
 - ✓ Probationers who have been compliant with all of the terms of their supervision for 12 months, paid all restriction and are low risk would be eligible for discharge from probation unless the court finds substantial and compelling reasons for denial of such discharge.

- ✓ Excluding sex offenders, good time and program credits earned while in prison would not be added to the postrelease supervision, and that provision would be applied retroactively to released offenders.
 - ✓ Excluding offenders under lifetime or 60 months postrelease supervision, HB 2170 provides authority to the Prisoner Review Board to discharge from postrelease supervision low risk offenders who have paid all restitution.
 - ✓ Allows the Prisoner Review Board, when revoking postrelease supervision due to a new felony, to require up to the entire balance of the remaining postrelease supervision to be served in prison.
- Authorizes the Sentencing Commission to establish statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender.
 - Requires the Sentencing Commission to determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community based supervision populations

In sum, the public safety provisions of HB 2170 are interrelated. HB 2170 provides release supervision to a category of offenders who are presently not subject to postrelease supervision. At the same time, it allows for the termination of supervision for low risk successful offenders. If offenders of medium to high risk to reoffend are not properly supervised public safety is threatened. If supervision resources are used for low risk offenders, resources are wasted that could have been used for higher risk offenders which is even more detrimental to public safety. The supervision of stable, compliant and low risk offenders detracts from the supervision of higher risk offenders. Therefore, the expansion of supervision for higher risk offenders should be in conjunction with the reduction of low risk offender case loads.

HB 2170 can delay the need for the construction of new correctional facilities for 512 inmates by one to two years. This bill is projected to reduce state expenditures through cost avoidance by \$53 million between FY 14 and 18.

HB 2170 provides a systematic policy for enhancing the public safety relative to probation offenders. The department urges favorable consideration of HB 2170.