

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
Rep. Russ Jennings, Chairman

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
January 23, 2017

Proponent Testimony – HB 2089

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This bill is a product of nine proposals the 17-member Commission considered and now recommends to you for your support this session. It is the statutory charge of the Commission to recommend solutions to maintain the sentencing guidelines and further public safety by supporting the incarceration of the most violent offenders in the state's criminal justice system.

To that end, this bill would amend K.S.A. 2016 Supp. 21-6322, unlawfully tampering with electronic monitoring equipment, by adding two tiered penalties based on the classification of the underlying charge (i.e., felony and misdemeanor) which the offender is ordered to be supervised by electronic monitoring. The current offense level for all violations of this law is a severity level 6, nonperson felony.

As proposed, unlawfully tampering with electronic monitoring equipment would be:

1. **severity level 8, nonperson felony** when electronic monitoring equipment is used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any felony; or
2. **class A nonperson misdemeanor** when electronic monitoring equipment is used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any misdemeanor or used pursuant to court-ordered supervision in any civil case.

Comparatively, the two levels recommended are similar to those found in Escape from Custody in K.S.A. 21-5911(a), which is a class A misdemeanor and Aggravated Escape from Custody in K.S.A. 21-5911(b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) and (b)(1)(F), which is a severity level 8, nonperson felony.

Under the current law, it is possible to receive a greater sentence by cutting off an electronic monitoring device than that of the underlying crime for which the offender is being supervised. Even violations while on misdemeanor supervision subjects the offender to a severity level 6 felony. Making the crime tied to the classification of the underlying crime will make violations more proportional with the underlying offenses. The current severity level 6 designation places this crime with offenses such as Aggravated Battery, Aggravated Assault and Indecent Solicitation of a Child that are normally associated with greater harm to the community.

In addition, because these crimes will occur while on some type of supervision, offenders are automatically subject to Special Sentencing Rules #9 and #10 found in K.S.A. 21-6604(f)(1) and (f)(4), which requires the court to impose consecutive sentences with the underlying offense. The court may also order a presumptive prison sanction even if the offender falls in a probation range on the sentencing grid.

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