

SENATE JUDICIARY COMMITTEE
Senator Kellie Warren, Chair

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
January 27, 2021
Proponent Testimony – SB 4

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. 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. The Kansas Criminal Justice Reform Commission also supports and recommends this bill as a proportionality measure in their final report to the 2021 Legislature. A similar bill, 2020 HB 2494, passed out of House Corrections and Juvenile Justice last year.

This bill would amend K.S.A. 2020 Supp. 21-6322, **unlawfully tampering with electronic monitoring equipment**, by adding two-tiered penalties based on the severity level of the charge 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.

The different levels recommended are like those found in K.S.A. 21-5911(b), aggravated escape from custody. As proposed, unlawfully tampering with electronic monitoring equipment would be:

- (1) **severity level 8, nonperson felony** in the cases of electronic monitoring equipment used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any felony; and
- (2) **class A nonperson misdemeanor** in the cases of electronic monitoring equipment 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.

The Commission does not believe one size fits all for this crime. In some instances, it is currently possible to receive a greater sentence by cutting off an electronic monitoring device than that of the underlying crime. Even violations while on misdemeanor supervision subject the offender to a severity level 6 felony. Making the crime tiered to the severity of the underlying crime will make violations more proportional to 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, which are normally associated with greater harm to the community.

Additionally, because these crimes will occur while on some type of supervision, offenders are automatically subject to Special 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. Bed savings is 9-10 beds. 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.