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Testimony on HB 2336
To
The Senate Judiciary Committee

By Roger Werholtz
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The Kansas Department of Corrections supports HB 2336. HB 2336 was passed by the House by a vote of 124 to 0. HB 2336 addresses the issue of how time spent in jail should be credited when a person is both a defendant awaiting trial on new criminal charges while at the same time an alleged Post-Release Supervision (PRS) violator who has been arrested pursuant to a warrant issued by the Secretary of Corrections. HB 2336 provides that such time spent in jail pending both PRS violation charges and new criminal charges are to be applied to the PRS obligation first. This would not increase the time the person spends in jail and may even reduce the time in jail since -- if the PRS obligation is satisfied -- the defendant may be able to post bail as constitutionally set by the judge since offenders may not post bond for a KDOC warrant.

The department sought legislation during the 2018 Legislative session to address this issue through HB 2603. That bill was passed by the House by a vote of 117-0. The Kansas County and District Attorneys Association had questions concerning the bill and it stalled in this Committee. The association's concerns involved Court of Appeals decisions, which held the PRS period cannot receive credit while in jail and wanted to ensure that such offenders not receive double credit. The department believes HB 2336 addresses those concerns because it legislatively addresses the service of the PRS while in jail (inconformity with K.S.A. 75-5217) raised by the Court of Appeals and codifies the caselaw that a court need not grant jail credit toward a new sentence when the criminal defendant is being held for other reasons. In fact, HB 2336 specifically prohibits a criminal defendant from receiving jail credit while serving a previously imposed PRS obligation.

The department requested introduction of HB 2336 for three reasons:

- Since new felony crimes, committed while on Post Release Supervision must be served consecutively to the Post Release Supervision (PRS) sentence, offenders should not get "jail credit" for both the original PRS sentence and the new felony sentence. The department's sentence computation unit does not give double credit.
- K.S.A. 75-5217(f) tolls the running of the PRS period for a fugitive arrested in Kansas only for the time period between issuing the KDOC violation warrant and the offender's arrest for any reason.

- Once the prison portion of an offender's sentence has been served and he or she has been released to serve a PRS obligation, the only measure of when that original sentence is served, irrespective of whether the offender is in the community, been sent to prison as a technical condition violator or in conjunction with a new consecutive felony sentence is the running of the PRS period.

Current law mandates that new felony crimes committed while under Post-Release Supervision be served consecutively. The department is of the opinion that it must and therefore does credit such time to service of the Post-Release Supervision Period and that jail credit should not be awarded to the new pending criminal case. Some jurisdictions, however, contend that jail credit should be awarded toward any new sentence imposed and that service of the Post-Release Supervision period should be tolled. This has resulted in conflicting sentencing journal entries and numerous instances of staff of the department's Sentence Computation Unit having to appear at District Court Sentencing hearings for explanation of the sentence computation.

Fortunately, irrespective of whether the time spend in jail is credited toward only the new sentence or only to the PRS obligation, the total amount of the time the offender must spend in prison remains the same. However, crediting that time toward the PRS obligation is consistent with the tolling provisions of K.S.A. 75-5217(f), avoids conflicts in computing jail credit between multiple courts when a defendant is facing new charges in different jurisdictions, addresses situations wherein a defendant is acquitted, and provides a bright line for when the PRS period begins to run again rather than a delayed criteria of when his or her PRS is revoked by the Prisoner Review Board.

The department urges favorable consideration of HB 2336.