

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
Representative Stephen Owens, Chairman

KANSAS SENTENCING COMMISSION
Scott M. Schultz, Executive Director
January 24, 2023

Proponent Testimony – HB 2068

Thank you for the opportunity to present testimony in favor of this legislation on behalf of the Kansas Sentencing Commission. This bill amends special sentencing rules commonly referred to as Special Rules #10, #12, and #26. This same bill, 2022 HB 2081, was passed out of the House last year and died in Senate Judiciary.

K.S.A. 21-6606(d), commonly referred to as **Special Rule #10**, is amended to read that any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, shall serve the sentence *concurrently or* consecutively to the term or terms under which the person was released, *as the court directs*. Special Rule #10 in Section 1 of the bill allows the district court discretion to run sentences concurrently or consecutively in a sentencing where normally an offender is on bond and commits a new offense. The offender is presumed innocent during this time, and the Commission believes that the trial court should have the option, based upon the facts of each case, to order concurrent sentences. Currently, the court is required to run sentences consecutively, without considering unique circumstances in the case. Moreover, a look at the reality of sentencing in this area from data maintained by the Sentencing Commission provides corroboration for clarifying this special rule to allow for judicial discretion:

In FY 2022, 1,216 offenders were convicted of a crime while on felony bond. Of this number:

- **97** (8.0%) received a concurrent sentence;
- **732** (60.2%) received a consecutive sentence;
- **83** (6.8%) received both concurrent and consecutive sentences; and
- **304** (25.0%) received no concurrent or consecutive sentence.

As evidenced above, only six of 10 offenders convicted of a crime while on bond received true consecutive sentences.

Next, K.S.A. 21-6805(e), commonly referred to as **Special Rule #12**, is amended to replace the language of second or subsequent convictions with one or more prior felony convictions for unlawful manufacturing of a controlled substance. If the prior conviction was methamphetamine, the presumptive term of imprisonment is two times the maximum duration of the presumptive term of imprisonment.

K.S.A. 21-6805(f)(1), commonly referred to as **Special Rule #26**, amends the language third or subsequent conviction and is replaced with two or more prior felony convictions for a violation of K.S.A. 65-4610 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2020 Supp. 21-5706, and amendments thereto, for a presumptive term of imprisonment and the defendant shall be sentenced to prison.

Special Rules #12 and #26 are technical amendments to better clarify their respective subsections. They both relate to sentencing when offenders are sentenced for repeat drug crimes. Currently, both are somewhat ambiguous in a multi-count case scenario. The amended version allows for presumptive prison for the manufacture of drugs when the offender has one or more **prior** convictions (#12). Presumptive prison can also be ordered when an offender has two or more **prior** felony possession of drugs (#26).

“Prior conviction” is a term of art in the sentencing guidelines, defined in K.S.A. 21-6810(a) as “any conviction, other than another count in the current case, which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203, and amendments thereto, which occurred prior to sentencing in the current case, regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.”

The Sentencing Commission received data that Special Rule #12 was used **two** times in FY 2022. Regarding Special Rule #26:

In FY 2022, **406** offenders were convicted with Special Rule #26 applied. Of this number:

- **90** (22.2%) were sentenced to prison;
- 315 (77.6%) were sentenced to probation; and
- 1 (0.2%) was sentenced to SB 123 substance abuse treatment.

Other special sentencing rules already have the “prior conviction” language in them, so this would make Special Rules #12 and #26 consistent with that language. Examples would include K.S.A. 2022 Supp. 21-6804(p), which contains Special Rules #27 and #29. Both require prior convictions of theft, burglary, or aggravated burglary to enhance the penalty to require presumptive prison, when the current offense may ordinarily fall in a presumptive probation range.

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.