

Testimony on HB 2051
to
The House Corrections and Juvenile Justice Committee

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Secretary
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The Department of Corrections supports HB 2051. HB 2051 amends K.S.A. 21-6821 which is commonly referred to as SB 14. HB 2051 restores eligibility for rehabilitation program credit and the 20% good time rate to drug severity level 3 offenses that was discontinued when the drug grid was expanded to 5 levels. Additionally, HB 2051 would increase the maximum amount of rehabilitation program credit that an inmate could earn from 60 to 90 days. During FY13 and FY14, SB 14 rehabilitation program credit had saved over 250 prison beds each year. This resulted in a cost avoidance of \$7,300,000 (500 x \$ 40 county jail cost x 365 days). Pursuant to HB 2051, the Sentencing Commission projects a bed savings of 119 beds in FY16 and 181 beds in FY17 with the retroactive application of this bill to be completed within existing DOC staffing resources by January 1, 2016.

SB 14 implemented the use of rehabilitation program credits as an incentive to inmates who successfully complete an educational, vocational, substance abuse treatment, or other program which has been shown to reduce recidivism. When originally enacted, SB 14 rehabilitation program credit was available to inmates who were convicted of nondrug severity level 4 through 10 offenses or drug severity levels 3 and 4 offenses. The maximum total program credit that could be earned was capped at 60 days.

Effective July 1, 2012, the Drug Sentencing Grid was expanded to five levels. The five level drug grid accommodated classifying drug distribution offenses based on the volume of the drugs involved. However, SB 14 program eligibility was changed from the old drug levels 3 and 4 offenses to drug levels 4 and 5 with the expansion to the five level grid. The old drug level 3 included distribution offenses irrespective of the amount of drugs sold while the new drug level 3 distribution offenses are limited to small amounts. For example, prior to July 1, 2012 the sale of any amount of marijuana was a drug severity level 3 offense which was eligible for SB 14 rehabilitation program credit. Now, the sale of at least 25 grams (slightly less than an ounce) but less than 450 grams (slightly less than a pound) is a drug severity level 3 offense and is ineligible for SB 14 program credit. The sale of marijuana over one pound but less than 30 kilograms (approximately 60 pounds) is now a drug severity level 2 offenses and the sale of greater than 30 kilograms is a drug severity level 1 offense. Drug severity level 1 and 2 offenses are currently ineligible for SB 14 program credit and would remain ineligible under the proposal to reestablish level 3 eligibility.

The 2012 expansion of the drug grid from 4 to 5 levels likewise altered the good time rate that had been applicable to drug severity level 3 offenses. Prior to July 1, 2012, both drug levels 3 and 4 had a good time rate of up to 20%. After July 1, 2012, the good time rate for drug level 3 offenses was reduced to 15% with only levels 4 and 5 having a 20% good rate. The disparity between the treatment of small amounts of marijuana regarding SB 14 program credit illustrated above also applies to the 15% and 20% good time rate differences of the old and new grids.

The rehabilitation program credit provided by SB 14 has provided an incentive to inmates to complete rehabilitation programs that reduce their risk of reoffending and provides a cost avoidance to the state through not having to purchase additional contract jail housing. Currently, the maximum amount of SB 14 rehabilitation program credit that an offender may earn is 60 days. The department proposes that the maximum credit be increased to 90 days.

HB 2051 provides for the retroactive application of its provisions by the department no later than January 1, 2016. The retroactive application of HB 2051 is necessary in order to achieve any bed savings within the next two years, establish equity between those offenders who committed a drug severity level 3 offense just before and just after July 1, 2012 and obviate the existence of a category of special SB 14 eligibility rules and good time rates for a small number of inmates during a short time period.

The department urges favorable consideration of HB 2051.