

A Pre- and Post-Implementation Assessment of Kansas' HB 2170 Statute



**GEORGE EBO
BROWNE**

Research Analyst,
Kansas Sentencing
Commission

The purpose of this article is to examine the impact of 2013 House Bill 2170 (HB 2170), a relatively new law that changed several criminal justice practices in the state of Kansas. Enacted on July 1, 2013, the creation of this legislation was formulated by a bipartisan, interbranch working group of Kansas lawmakers paired with the assistance from Pew Charitable Trust (PEW), the Council of State Governments (CSG) and the United States Department of Justice.¹ The main objective of this bill was to decrease the state's prison population while also preserving public safety in a cost-efficient manner. Keying in on recidivism among convicted offenders, probationers who return to prison for committing a technical violation were identified as a major contributor to the state's rising prison population. In fact, a 2013 prison projection report produced by the Kansas Sentencing Commission (KSSC) indicated that technical violators constituted 33.7 percent of Kansas Department of Corrections (KDOC) prison admissions.² A later prison projection model showed an expected increase in the overall prison population by 13 percent over the next ten years without the implementation of HB 2170.³

Initial projections estimated that this bill would eliminate the need for 841 prison beds over the next five years, which would save the state nearly \$53 million.⁴ Through a national effort referred to as the Justice Reinvestment Initiative (JRI), the reduction of correctional spending was designed to be reinvested into funding programs that have shown to be effective in decreasing offender recidivism. In fact, \$5 million from the projected prison bed savings was anticipated to be diverted from prison funds to develop better community-based behavioral health programming for offenders.⁵ HB 2170 is anticipated to have an immense impact on the state's criminal justice system with long-lasting positive outcomes. In the words of Governor Sam Brownback, "These reforms will reduce recidivism, cut corrections costs, and increase public safety. They also ensure that even in these tough fiscal times we are making prudent decisions on behalf of Kansas taxpayers."⁶

I. How the Law Works

HB 2170 made numerous changes to sentencing, probation, and post-release supervision practices in Kansas. The main change is the use of a graduated sanctions process for offenders who commit a technical violation while on felony probation. Technical violations occur when rules of

supervision are broken by probationers. These rules include abiding by all local, state, and federal laws, attending meetings with assigned probation officers, passing random urinary analysis exams, seeking/maintaining employment, and the like. Rules of supervision are commonly established at sentencing by the court. Prior to the enactment of HB 2170, sanctions probationers received for committing technical violations ranged from a verbal reprimand to serving a long stay in prison.

New provisions mandated in HB 2170 permit probation officers and judges to administer two- or three-day stays in the county jail for committing a technical violation. Commonly referred to as "quick dips," these sanctions are intended to be given immediately once a technical violation is detected.⁷ If administered by a probation officer, the defendant must sign an affidavit agreeing to serve the JRI jail sanction and waive their right to a probation violation hearing. Offenders who commit an additional technical violation after receiving a quick dip JRI jail sanction are then eligible for a 120-day or 180-day JRI prison sanction inside of a KDOC correctional facility. JRI prison sanctions may only be imposed by a judge at a probation violation hearing. Upon subsequent technical violation, an offender may be given another JRI sanction or be revoked to serve their remaining underlying term in prison, as established by the Kansas Sentencing Guidelines. Additionally, HB 2170 allows probationers who are low-risk and have been compliant with terms of their supervision for twelve consecutive months to become eligible for presumptive early discharge from community supervision. Lastly, HB 2170 mandates that all prison inmates receive a term of post-release supervision (parole) following release from KDOC.

II. Data & Methods

In efforts to examine the impact of HB 2170, this study employed a pre- and post-assessment methodology. The two research questions of primary interest are as follows: (1) What were probation, prison, and post-release supervision statistics like prior to the implementation of HB 2170? (2) What were probation, prison, and post-release supervision statistics like directly following the implementation of HB 2170? Answers to these questions were obtained through comparing community supervision and incarceration statistics for the four state fiscal years prior to the passage of

Federal Sentencing Reporter, Vol. 30, No. 2, pp. 108–113, ISSN 1053-9867, electronic ISSN 1533-8363.
© 2018 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy
or reproduce article content through the University of California Press's Reprints and Permissions web page,
<http://www.ucpress.edu/journals.php?p=reprints>. DOI: <https://doi.org/10.1525/fsr.2017.30.2.108>

Chart A. Data derives from KDOC's Prophet file and represents prison admissions during the pre-HB 2170 implementation phase.

Pre-HB 2170 Implementation Phase Statistics						
Admission Type	FY 2010	FY 2011	FY 2012	FY 2013	Total Number of Admissions	Total Percent
New Court Commitment (NCC)	1,908	1,994	1,972	1,893	7,767	38.6%
NCC: Aggravated juvenile delinquency	—	1	3	1	5	0.0%
Probation, technical violator	1,717	1,626	1,682	1,629	6,654	33.1%
Probation violators with new sentence	84	91	180	198	553	2.7%
Compact inmate received	11	8	10	9	38	0.2%
Post-release technical violator	1,081	1,023	952	1,232	4,288	21.3%
Post-release with new sentence	141	161	141	177	620	3.1%
Post-release to detainer with new sentence	21	25	19	33	98	0.5%
Conditional Release, condition violator	3	4	3	2	12	0.1%
Non-violator return, no new sentence	—	2	2	3	7	0.0%
Non-violator return with new sentence	—	23	29	28	80	0.4%
Total	4,966	4,958	4,993	5,205	20,122	100%

HB 2170 (FY 2010–2013) and the four state fiscal years after (FY 2014–2017).

Data examined in this study derive from KDOC's Prophet file. The Prophet file is comprised of information from the field that is placed in a workable SPSS dataset and given to KSSC on a semi-annual basis. This data includes prison admissions, prison discharges, prison population totals, post-release supervision population totals, and the like. The state fiscal year (FY) runs from July 1 to June 30. Prison admissions reflect the number of offenders admitted into KDOC during this time period. Population totals (referred to as end-of-the-FY total) reflect a snapshot of offenders under community supervision (probation or post-release supervision) or incarcerated in prison on June 30 of the specified fiscal year. For purposes of this study, the time period of July 1, 2009, through June 30, 2013, will be referred to as the "pre-HB 2170 implementation phase." The time period of July 1, 2013, through June 30, 2017, will be referred to as the "post-HB 2170 implementation phase." Utilizing this method will offer readers a comprehensive picture of changes in the state's criminal justice system surrounding the enactment of HB 2170.

III. Pre-HB 2170 Implementation Phase Key Findings

From July 1, 2009, to June 30, 2013, there were 20,122 prison admissions to KDOC (Chart A). The largest category of admissions (38.6 percent) was comprised of new court commitments. This refers to offenders entering prison for a new felony conviction who were not on probation or post-release supervision. The second largest category of admissions (33.1 percent) was for probationers admitted to prison for a technical violation, followed by post-release supervision offenders who committed a technical violation (21.3 percent). After these admission types, there was a drastic drop. The fourth highest admissions group was post-release supervision offenders who received a new sentence, which constituted 3.1 percent of all admissions. Probation violators who received a new sentence constituted only 2.7

percent of all prison admissions. In fact, there were 6,101 more prison admissions for probationers who committed a technical violation compared to probationers who received a new sentence.

The end-of-FY prison population totals rose each year during the pre-HB 2170 implementation phase. Again, this statistic represents the actual prison population as of June 30 of the specified fiscal year. In FY 2010, the end-of-FY prison population was 8,864 inmates; in FY 2011, 9,180 inmates; in FY 2012, 9,370 inmates; and in FY 2013, 9,581 inmates (see Chart C). Thus, during the pre-HB 2170 implementation phase, the end-of-FY prison population total increased by 8 percent (717 inmates).

In terms of community supervision, there was a decrease in the number of probationers on felony probation during the pre-HB 2170 implementation phase. In Kansas, high-risk felony probationers are placed on intensive supervision run by KDOC's Community Corrections Division. Lower-risk offenders are supervised by the Office of Judicial Authority's Court Services Division. Statistics displayed a 1 percent decrease (71 probationers) in the end-of-FY Community Corrections population and a 3 percent increase (101 probationers) for Court Services (Chart C). The end-of-FY population for Community Corrections was 7,963 probationers at the beginning of the pre-HB 2170 implementation phase (FY 2010) and 7,892 probationers at the end (FY 2013). For Court Services, there were 3,586 probationers at the beginning of this phase and 3,687 at the conclusion. As for post-release supervision totals, statistics displayed an 8 percent decrease of offenders (473 offenders) during this time period. The end-of-FY total for offenders on post-release supervision was 6,066 offenders in FY 2010 and 5,593 offenders in FY 2013.

IV. Post-HB 2170 Implementation Phase Key Findings

From July 1, 2013, to June 30, 2017, there were 23,844 admissions to KDOC (Chart B). Similar to the pre-HB 2170 implementation phase, new court commitments

Chart B. Data derives from KDOC's Prophet file and represents prison admissions during the post-HB 2170 implementation phase.

Post-HB 2170 Implementation Phase Statistics						
Admission Type	FY 2014	FY 2015	FY 2016	FY 2017	Total Number of Admissions	Total Percent
New court commitment (NCC)	1,844	1,922	1,985	2,071	7,822	32.8%
NCC: Aggravated juvenile delinquency	—	—	1	—	1	0.0%
HB 2170 prison sanction	323	691	1,003	1,192	3,209	13.5%
Probation, technical violator	1,368	1,321	1,180	1,229	5,098	21.4%
Probation violator with new sentence	257	331	331	340	1,259	5.3%
Probation violator, new conviction	134	168	188	182	672	2.8%
Compact inmate received	16	8	15	6	45	0.2%
Post-release technical violator	1,118	1,214	1,236	1,200	4,768	20.0%
Post-release violator with new sentence	179	144	145	195	663	2.8%
Post-release violator pending new sentence	6	7	1	1	15	0.1%
Post-release to detainer with new sentence	34	27	29	28	118	0.5%
Conditional Release, condition violator	4	5	1	1	11	0.0%
Non-violator return, no new sentence	4	3	—	4	11	0.0%
Non-violator return with new sentence	20	35	49	48	152	0.6%
Total	5,307	5,876	6,164	6,497	23,844	100.0%

represented the largest category (32.8 percent) of admissions. This was then followed by probation violators who committed a technical violation (21.4 percent) and post-release supervision offenders who committed a technical violation (20.0 percent). Probation violators who received a new sentence constituted 5.3 percent of the prison admissions during this time period. There were 3,839 more admissions for probationers who committed a technical violation compared to probationers who received a new sentence. As a response to the enactment of HB 2170, a new prison admissions group called “HB 2170 Prison Sanction” was created in FY 2014. This group reflected probation violators who committed a technical violation and were granted a JRI prison sanction. HB 2170 prison sanction admissions constituted 13.5 percent of all admissions during the post-HB 2170 implementation phase.

Additionally, in FY 2014, KDOC created a new admissions group called “probation violators with a new conviction.” The creation of this admissions type was constructed for clarification purposes. Previously, probationers who were revoked to prison for a new conviction, but did not serve their sentence for this offense in a KDOC facility, were coded as probation technical violators. These probationers were under felony supervision for their original offense that was committed in Kansas, but served time incarcerated for a new conviction in another jurisdiction, such as a county jail or another state. Nonetheless, their admission was still recorded in KDOC data. Thus, the separation of this group was done to more accurately report these offenders’ prison admissions. This group represented 2.8 percent of all admissions in the post-HB 2170 implementation phase.

In terms of the end-of-FY prison population, statistics fluctuated during the post-HB 2170 implementation phase (Chart C). The end-of-FY prison population was 9,612 inmates in FY 2014, 9,822 inmates in FY 2015, 9,663

inmates in FY 2016, and 9,803 inmates in FY 2017. Thus, the end-of-FY prison population total increased by 2 percent (191 inmates) during the post-implementation phase.

Lastly, the number of offenders under community supervision grew during this time period (Chart C). Probationers supervised by KDOC’s Community Corrections Division increased by 131 probationers (2 percent increase) from June 30, 2013, to June 30, 2017. At the time that this study was conducted, the Office of Judicial Administration did not have the end-of-FY statistics for FY 2017, but from June 30, 2013, to June 30, 2016 (FY 2016), probationers supervised by Court Services grew by 9 percent (361 probationers). The number of offenders on post-release supervision also increased. In FY 2014, the end-of-FY post-release supervision population was 4,725 offenders; in FY 2015, 4,808 offenders; in FY 2016, 5,228 offenders; and in FY 2017, 5,486 offenders. This equates to a 16 percent increase (761 offenders) from the beginning of the post-HB 2170 implementation phase to the end.

IV. Discussion

This study presented readers with an inclusive examination of the time period directly before and after the implementation of Kansas’ JRI legislation, HB 2170. The findings showed that the state experienced an increase in prison admissions between the pre- and post-implementation phases (Chart C). In fact, there were 3,722 more prison admissions during the post-HB 2170 implementation phase compared to the phase before. The increase in admissions was reflected in a rise in the end-of-FY prison population statistics. In the first year of the pre-HB 2170 implementation phase (FY 2010), the end-of-FY total was 8,864 inmates. In the last year of the post-HB 2170 implementation phase (FY 2017), the end-of-FY total was 9,803 inmates. Rather than a reduction in prison beds, these numbers displayed an 11 percent increase in

Chart C. Data derives from KDOC's Prophet file and represents prison admissions during both the pre- and post-HB 2170 implementation phases.

Pre- & Post-HB 2170 Implementation Admissions Statistics		
Type of Admissions	Pre-HB 2170 Implementation	Post-HB 2170 Implementation
New court commitment (NCC)	7,767 (38.6%)	7,822 (32.8%)
NCC: Aggravated juvenile delinquency	5 (0%)	1 (0%)
HB 2170 prison sanction	N/A	3,209 (13.5%)
Probation, technical violator	6,654 (33.1%)	5,098 (21.4%)
Probation violator with new sentence	553 (2.7%)	1,259 (5.3%)
Probation violator, new conviction	N/A	672 (2.8%)
Compact inmate received	38 (0.2%)	45 (0.2%)
Post-release condition violator	4,288 (21.3%)	4,768 (20.0%)
Post-release with new sentence	620 (3.1%)	663 (2.8%)
Post-release violator pending new sentence	N/A	15 (0.1%)
Post-release to detainer with new sentence	98 (0.5%)	118 (0.5%)
Conditional Release, condition violator	12 (0.1%)	11 (0%)
Non-violator return, no new sentence	7 (0%)	11 (0%)
Non-violator return with new sentence	80 (0.4%)	152 (0.6%)
Total	20,122	23,844

Chart D. Data derives from KDOC's Prophet file and the Office of Judicial Authority staff. Statistics represents end-of-FY totals for both the pre- and post-HB 2170 implementation phases.

End-of-FY Statistics								
Entity	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
End-of-FY Community Corrections probation population	7,963	7,958	7,915	7,892	8,250	8,337	8,525	8,381
End-of-FY Court Services probation population	3,586	3,779	3,750	3,687	3,843	3,969	4,204	unknown
End-of-FY Post-release supervision population	6,066	5,938	5,848	5,593	4,725	4,808	5,228	5,486
End-of-FY KDOC prison population	8,864	9,180	9,370	9,581	9,612	9,822	9,663	9,803

the end-of-FY prison population, which equated to 939 more inmates.

A factor that likely contributed to this increase is the high number of felony probationers admitted into prison from various avenues following the passage of HB 2170. A rather surprising statistic is the increase in number of probationers admitted into prison for a new sentence (Chart D). During the pre-HB 2170 implementation phase, there were 553 prison admissions for this group; during the post-HB 2170 implementation phase, there were 1,259. This more than doubled the number of admissions for this group between the two phases. In accordance with statutory requirements, probationers who commit a new crime are not eligible for a graduated sanction. Thus, prison admissions for this group was not anticipated to be affected by JRI.

Another method under which probationers were being incarcerated at elevated levels can be observed through the use of JRI prison sanctions. Prior to HB 2170, the court could impose an array of dispositions in lieu of revocation with no bearing on future rulings. However, following the 2013 legislative session, the graduated sanctions process was mandated as a statutory requirement prior to revocation for technical violators in most situations. As a result, judicial districts were encouraged to administer JRI

sanctions (jail or prison) upon each violation in order to correctly go through the process and be in position to revoke an offender if necessary. Data revealed that there was indeed an increase in use of all JRI sanctions each FY during the post-HB 2170 implementation phase (Chart B). Specifically focusing on JRI prison sanctions, there were 323 prison sanctions administered in FY 2014, 691 in FY 2015, 1,003 in FY 2016, and 1,192 in FY 2017. In total, there have been 3,209 admissions granted for JRI prison sanctions since the inception of this bill (Chart D).

Policy makers constructed HB 2170 with the understanding that an increase in use of JRI sanctions would result in reduced numbers of probationers being revoked to prison on technical violations. When assessing the impact of JRI prison sanctions on prison admissions for technical violations, one must remember the change in coding. As indicated previously, KDOC created the admission group "probation violators with a new conviction" in FY 2014. In efforts to examine the same population of technical violators during the pre- and post-phases, the probation violators with a new conviction group and probation technical violators group were combined. Doing this revealed that probation technical violators equated to 24.2 percent of all admissions. This represented

a decrease of 884 admissions from the pre- to the post-implementation phase.

Lastly, end-of-FY totals revealed that the population under community supervision increased from the pre- to post-implementation phases (Chart C). The Community Corrections end-of-FY population was 418 offenders higher in FY 2017 compared to FY 2010. The Court Services end-of-FY population was 618 offenders higher in FY 2016 compared to FY 2010. Thus, the increase in the number of probationers admitted into prison may be correlated to the fact that this population has increased. As for the post-release supervision population, this group's end-of-FY total decreased by 580 offenders from FY 2010 to FY 2017. However, when focusing on the post-implementation phase alone, the end-of-FY totals increased by 761 offenders. This rise was expected as provisions in HB 2170 required that all offenders released from prison must serve a term of post-release supervision. In terms of presumptive early discharge from probation, both Community Corrections and Court Services stated that they do not keep statistics on the number of recipients. Nonetheless, data was collected on this provision for post-release supervision offenders. KDOC reported that only five post-release supervision offenders have been recipients of early discharges. Thus, increased use of this component of HB 2170 may assist in combating the rising number of offenders under community supervision.

V. Policy Implications & Future Research

Results from this study highlight several avenues for policy change pertaining to HB 2170. As identified in the findings, probationer admissions to prison were still a driving force in the growing prison population during the post-HB 2170 implementation phase. One of the contributors to this rise is the increase in admissions for probation violators with a new sentence. Results revealed that there were 706 more admissions for this group between the two phases (Chart D). A possible explanation for this increase may be linked to actions conducted by courtroom actors such as judges and prosecutors. Prior to HB 2170, it was common practice for prosecutors to revoke an offender's probation for a technical violation after being arrested for a new felony crime as part of a plea. The prosecutor may elect to send the probationer to prison for a technical violation if they perceived the underlying sentence's prison time as suitable. However, after the implementations of HB 2170, prosecutors who do not perceive a graduated sanction as fitting for the current offense may pursue new charges rather than denoting the offender as a technical violator. This is simply an assumption; future research should further examine the true cause. Nonetheless, efforts should be applied toward training and education of courtroom actors to reduce unintended consequences such as this.

In terms of the graduated sanctions process, the increased use of JRI prison sanctions coinciding with the rising prison population puts into question the

effectiveness of this model. In reviewing the use of the graduated sanctions process on offender recidivism, Cullen, Manchak, and Duriez perceived that the criminal justice system is currently under intense scrutiny, and temptations exist to jump on the "correctional bandwagon" to adopt any program that appears to reduce recidivism, even without empirical backing.⁸ Thus, future research should apply a more rigorous statistical methodology to investigate the effectiveness of Kansas' graduated sanctions process. If future results yield unfavorable findings on HB 2170, policy makers should refine this legislation in a format that promotes better outcomes for probationers who continually commit technical violations.

Lastly, the results of this study showed an increase in community supervision populations for all entities; Court Services, Community Corrections, and KDOC's Post-Release Supervision Division (Parole) reported increases in their end-of-FY population (Chart C). This may be correlated to the underutilization of the presumptive early discharge from supervision provision of HB 2170. Community Corrections and Court Services do not keep statistics on use of this mandate; measures should be taken by these organizations to collect such data. Nonetheless, the KDOC Post-Release Supervision Division does keep data on early discharges, and reported only five recipients since the inception of HB 2170. Thus, increased use of this provision may assist in reducing the offender population under community supervision. Smaller caseloads may permit community supervision staff to allocate more time to offenders who need more assistance.

VI. Conclusion

The current study provided readers with a comprehensive examination of the time period directly before and after the implementation of Kansas' HB 2170 legislation. Findings from the present study suggest that various components of HB 2170 may be related to the increase in the prison population. Specifically, the use of JRI prison sanctions is perceived to have contributed to a higher number of offenders in prison. Nonetheless, JRI cannot accept all the blame for this increase as provisions such as presumptive early discharge from community supervision have been underutilized. Additionally, the increased number of offenders under community supervision and the higher number of prison admissions than originally anticipated may have contributed to this increase. Furthermore, with only being in practice for four years, inconsistencies in utilization of HB 2170 may have impacted the results. As implementation of this bill continues, further examination is needed.

In conclusion, the intention of this study was not to test the effectiveness of HB 2170, but rather to assess the pre-and post-HB 2170 implementation phases. Evaluating components of Kansas' criminal justice practices before and after the passage of HB 2170 is the first step in reforming the state's judicial system. Now it is the responsibility of researchers and policy makers to take this knowledge and

develop measures to address probation recidivism in Kansas to ensure that even in tough economic times, justice and public safety are at the focal point of the state's efforts.

Notes

- ¹ Press Release, CSG Justice Center, Governor Brownback Signs Justice Reinvestment Legislation (May 8, 2013).
- ² Kan. Sent. Comm'n, Fiscal Year 2013 Adult Inmate Prison Population Projections (2012), *available at* <http://www.sentencing.ks.gov/docs/default-source/publications-reports-and-presentations/fy-2013-adult-inmate-prison-population-projection-report.pdf>.
- ³ Kan. Sent. Comm'n, Fiscal Year 2014 Adult Inmate Prison Population Projections (2013), *available at* [\[and-presentations/fy-2014-prison-population-projection-report.pdf\]\(http://www.sentencing.ks.gov/docs/default-source/publications-reports-and-presentations/fy-2014-prison-population-projection-report.pdf\).](http://www.sentencing.ks.gov/docs/default-source/publications-reports-</div><div data-bbox=)

- ⁴ CSG Justice Center, *supra* note 1.
- ⁵ George Ebo Browne, Kan. Sent. Comm'n, Justice Reinvestment Initiative in Kansas (2015), *available at* https://www.sentencing.ks.gov/docs/default-source/publications-reports-and-presentations/ksc_jri_report.pdf?sfvrsn=2.
- ⁶ *Midwestern States Employing CSG's Approach to Justice Reinvestment*, CSG Midwest, <http://www.csgridwest.org/policyresearch/1013csgjusticecenter.aspx> (last visited Sept. 26, 2017).
- ⁷ Browne, *supra* note 5.
- ⁸ Francis T. Cullen, Sarah M. Manchak, & Stephanie A. Duriez, *Before Adopting Project HOPE, Read the Warning Label: A Rejoinder to Kleiman, Kilmer, and Fisher's Comment*, 78 Fed. Probation 75 (2014).