

**House Corrections and Juvenile Justice Committee
January 24, 2023**

**House Bill 2068
Testimony of the Board of Indigents' Defense Services
(BIDS) Legislative Committee
Presented by Jennifer Roth
Proponent**

Dear Chairman Owens and Members of the Committee:

We support this bill because it (1) clears up conflicting language between statutes and (2) distinguishes between people who commit a new offense while on bond and those who commit a new offense while on supervision.

For 23 years, K.S.A. 21-6604(f) [formerly K.S.A. 21-4603d(f)] has given a district court discretion to impose concurrent or consecutive sentences when a person commits a new crime while on bond in a felony case. For 23 years, K.S.A. 21-6606(d) [formerly K.S.A. 21-4608(d)] has conflicted with that; it says "shall serve the sentence consecutively." Notably, K.S.A. 21-6604(f)(4) refers to K.S.A. 21-6606, but not the other way around. Here are the statutes (emphasis added):

K.S.A. 21-6604(f)(4)	K.S.A. 21-6606(d)
When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed consecutively pursuant to the provisions of K.S.A. 2022 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.	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 consecutively to the term or terms under which the person was released.

This is commonly referred to as "Special Rule 10." The Kansas Sentencing Commission acknowledges the conflict in its explanation of Special Rule 10: "Because of this conflict, a court imposing a consecutive sentence should clarify that consecutive sentencing was done in the exercise of discretion, not because it was mandated." See Kansas Sentencing Guidelines Desk Reference Manual 2022, p. 75.

Testimony to House Corrections
and Juvenile Justice Committee
January 24, 2023
House Bill 2068
Page 2

The origin of this conflicting language is a statutory change in 1999. That year, the Kansas District Judges' Association and the Office of the Attorney General asked the Legislature to amend what was then K.S.A. 21-4603d [now K.S.A. 21-6604(f)(4)] to allow a district court judge to impose a prison sentence and/or consecutive sentences for someone who committed a felony while on bond in another felony case. In both proponents' testimony, it was clear that the district court would have discretion, rather than it being mandatory for sentences to be consecutive. (See attached testimony from 1999 SB 98.)

Adding "concurrently or" and "as the court directs" to K.S.A. 21-6606(d) as proposed in HB 2068 would clear up this confusion once and for all. It also makes sense from a public policy/constitutional perspective: people on bond have not been convicted of an offense and are presumed innocent unless proven guilty. See K.S.A. 21-5108(b); U.S. Bill of Rights, U.S. Const. amend. VI, XIV. Consequently, a crime they haven't been found guilty of should not enhance their current sentence.

We urge this Committee to pass HB 2068 and work for its passage in the House.

Sincerely,



Jennifer Roth
for the BIDS Legislative Committee
jroth@sbids.org
785.296.5484

**TESTIMONY OF THE
KANSAS DISTRICT JUDGES' ASSOCIATION
IN SUPPORT OF SB 98
BEFORE HOUSE JUDICIARY COMMITTEE
MARCH 16, 1999**

The Kansas District Judges' Association supports the enactment of Senate Bill 98. The bill proposes an amendment to K.S.A. 21-4603d. The amendment would allow a sentencing judge to impose a sentence a defendant to prison to serve a sentence consecutive to another sentence if an offender commits a felony while released on bond before trial or sentencing in another case.

K.S.A. 21-4603d provides for the sentencing options and defines when sentences may or shall be imposed for consecutive or concurrent terms when multiple crimes are involved. When sentencing guidelines were enacted, the K.S.A. 21-4603d included a sentence which allowed the court to sentence an offender to prison for consecutive sentences even if the new crime was presumptive probation if the new crime was committed while the offender was on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony. Some trial courts interpreted "conditional release" to mean while released on bond conditions. In *State v. Arculeo*, 261 Kan. 286 (1997), the Supreme Court held that conditional release did not include release on bond pending sentencing. Focusing on the statutory scheme of K.S.A. 21-4603d, the Court noted each of the other five categories under that statute designated a status in which the offender was under sentence for a felony when the new felony was committed. The Court held that expanding "conditional release" under K.S.A. 21-4603d to include an offender not yet sentenced was inconsistent with the statutory scheme and contrary to the definition of the term in K.S.A. 22-3718.

Kansas district judges have experienced cases where the judge felt that a prison sanction was appropriate when the defendant committed a new crime while on bond awaiting sentencing in another case. A defendant's conduct while on bond is often a good indicator of the defendant's ability to abide by the conditions of probation. However, there are also circumstances where the nonprison sanction remains inappropriate. Thus, the Kansas District Judges urge your support for the language which states that a defendant may be sentenced consecutively for a new crime committed while on bond. The Kansas District Judges also support the amendment which would allow the imposition of a prison sanction even if the crime might otherwise be presumptive probation.

In summary, the Kansas District Judges Association urges your support of S.B. 98.



State of Kansas

Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

March 16, 1999

MAIN PHONE: (785) 296-2215
FAX: 296-6296
TTY: 291-3767

Representative Michael O'Neal, Chair
House Judiciary Committee
State Capitol
Topeka, Kansas 66612-1504

Dear Chairman O'Neal and Members of the House Judiciary Committee:

Senate Bill 98 will allow a judge the discretion to impose imprisonment on a criminal defendant who commits a new felony while on bond for a felony offense. It is important to note that this discretion is already granted to judges in K.S.A. 21-4603d if the criminal defendant commits a new felony while he or she is incarcerated and serving a sentence for a felony or while the criminal defendant is on probation, assignment to a community correctional services program, parole, conditional release, or post release supervision for a felony. This bill simply provides the court with discretion to impose a sentence of imprisonment on a defendant who commits a new felony while on bond for committing a felony, with the result that the sentence is not considered a departure.

Adding individuals on bond to K.S.A. 21-4603d is important because, as it is currently codified, a criminal defendant can commit a string of property crimes, i.e., nonperson felonies, and still be presumptive probation. For instance, in State v. Arculeo, 261 Kan. 286 (1997), the defendant was convicted of an attempted felony auto theft in Lyon County. These crimes were considered presumptive probation because the defendant had less than two person felonies on his criminal record. At the time he committed the attempted felony auto theft, the defendant was on a bond awaiting a sentence for another felony in Lyon County. Moreover, he was also on bond awaiting a sentence for two other felonies in Butler County and one felony in Coffey County when he committed the attempted felony auto theft.

The district court equated conditional release, as it appears in K.S.A. 21-4603d, to being on a bond and sentenced the defendant to prison. This decision was reversed by the Kansas Supreme Court. In its opinion, the Kansas Supreme Court stated that had the legislature intended a different result, it would have added specific language that authorized imposition of a prison

House Judiciary
3-16-99
Attachment 8

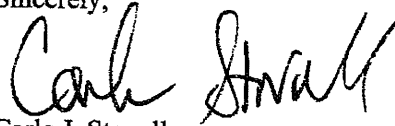
Page 2

sentence if a new crime was committed while on bond. The defendant, therefore, was able to commit a string of property crimes and not be sentenced to prison.

This bill merely grants the court the discretion to impose a prison sentence without it constituting a departure in a clearly essential situation.

Thank you for your consideration and support for Senate Bill 98.

Sincerely,

A handwritten signature in black ink that reads "Carla Stovall". The signature is written in a cursive, flowing style.

Carla J. Stovall
Attorney General

8-2