

2014 Senate Substitute for House Bill 2448 Summary

On May 12, the Governor signed Senate Substitute for House Bill 2448 (hereafter referred to as HB 2448) into law. HB 2448 contains numerous amendments to last year's House Bill 2170, which created the graduated sanction scheme for the disposition of probation violators.

HB 2448 does not change the fundamental structure of this graduated sanction scheme, but rather seeks to clarify some areas of confusion or conflict with other provisions of law. The most substantial changes are as follows:

1) "Quick dips" provisions clarified

- a. The quick dip language in HB 2170 proved to be a source of confusion, so HB 2448 seeks to clarify several items:
 - i. Quick dips may be imposed in consecutive 2 or 3-day periods only.
 - ii. The total of all quick dips imposed by both the court and all supervising officers may not exceed a total of 18 days during the offender's term of probation.

2) Quick dips may be imposed upon an offender on probation for a misdemeanor or nongrid felony (i.e., DUI, breath test refusal and domestic battery)

- a. The court or supervising officer may impose a 2 or 3-day quick dip sanction upon an offender convicted of a misdemeanor or a nongrid felony. *See K.S.A. 2013 Supp. 22-3716(b)(3)(B)(ii).*

3) Nongrid felony offenders are not subject to 120/180-day prison sanctions

- a. HB 2448 amended K.S.A. 2013 Supp. 22-3716(b)(3)(A) and (b)(3)(B) to clarify that an offender convicted of a nongrid felony is not eligible to serve a prison sanction pursuant to 22-3716(c)(1)(C) or (c)(1)(D).

4) Court may impose up to 60 days in county jail, but not in addition to another graduated sanction

- a. HB 2448 moved the language authorizing the court to impose confinement for up to 60 days in county jail from K.S.A. 2013 Supp. 21-6604(a)(3) to 22-3716(c)(11). The court had and will continue to have the authority to impose confinement in a county jail for up

to 60 days upon finding the offender has violated the conditions of probation. However, the new language in K.S.A. 2013 Supp. 22-3716(c)(11) clarifies that this period of confinement is separate from the other graduated sanctions (i.e., quick dips and 120/180-day prison sanctions) and may not be imposed at the same time as these other sanctions.

5) Prior jail credit may not be applied to decrease length of 120/180-day prison sanctions

- a. HB 2448 amended K.S.A. 2013 Supp. 22-3716(c)(1)(C) and (c)(1)(D) to provide that the 120 or 180-day sanction shall begin upon pronouncement by the court. Prior incarceration time, such as the time an offender spends awaiting a probation violation hearing, shall not be counted towards service on the prison sanction. However, time spent in county jail awaiting transport to a DOC facility after imposition of the sanction may be counted.

6) Presumptive early discharge provision in K.S.A. 2013 Supp. 21-6608(d) has been modified

- a. K.S.A. 2013 Supp. 21-6608 provided that an offender shall be discharged early from probation if they are low risk, have paid all restitution and are found to have been compliant with the terms of their probation for 12 consecutive months. Under HB 2170, the offender would be discharged unless the court found substantial and compelling reasons to deny the discharge of the offender, but HB 2448 changes this standard of review from “substantial and compelling reasons for denial” to “clear and convincing evidence that denial of discharge will serve community safety interests.”

7) Concurrent probation terms require concurrent sanctions

- a. HB 2448 seeks to clarify in K.S.A. 2013 Supp. 22-3716(c)(10) that an offender serving multiple probation periods concurrently is not eligible for multiple consecutive violation sanctions.
- b. For example, an offender serving two separate concurrent probation periods who commits a second or subsequent probation violation may not receive multiple consecutive prison sanctions. Rather, the court may impose a single prison sanction of either 120 or 180 days on each case, to be served concurrently.

8) Graduated sanctions apply to all probationers, regardless of their date of conviction

- a. HB 2448 adds additional language in K.S.A. 2013 Supp. 22-3716(c)(12) to clarify that the graduated sanction provisions shall apply to any probation violator, regardless of the date on which they committed their original crime of conviction.