

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2396

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2396 would expand eligibility for the nonprison sanction of placement in a certified drug abuse treatment program to include offenders convicted of a controlled substance cultivation or distribution offense that falls within existing severity level and criminal history categories eligible for such treatment for controlled substance possession offenses. These categories include drug severity level 5 offenses without certain previous convictions and drug severity level 4 offenses with a criminal history score of E or lower without certain previous convictions. [Note: Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity level) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense. There is no current cultivation or distribution offense with drug severity level 5. An offender is classified as criminal history level E if the offender has at least three nonperson felonies but no person felonies.]

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

[*Note:* HB 2396 contains nearly identical provisions to HB 2045, as recommended by the House Committee on Corrections and Juvenile Justice, except HB 2045 would have been effective upon publication in the *Kansas Register*. HB 2045 was removed from the calendar on February 28, 2019.]

SB 123 (2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the “Senate Bill 123 Program,” this program is administered by the Kansas Sentencing Commission.

HB 2396 was introduced by the House Committee on Appropriations at the request of Representative Jennings. In the House Committee hearing, a representative of the Kansas Sentencing Commission testified in support of the bill, stating it was intended to complete the policy decision made by the 2018 Kansas Legislature through its passage of HB 2458, which, among other provisions, expanded SB 123 treatment eligibility from severity level 5 possession offenders to include some severity level 4 possession offenders. The proponent stated the inclusion of some severity level 4 cultivation or distribution offenders was inadvertently omitted from the 2018 legislation.

No other testimony was provided.

According to the Kansas Sentencing Commission’s prison bed impact assessment, HB 2396 would reduce prison beds by 23 to 62 beds by FY 2020 and by 36 to 99 beds in FY 2029. The bill would increase SB 123 program costs by \$1,055,408 to \$1,356,953 in FY 2020, based on an average offender cost of \$3,713.61 per SB 123 treatment offender in FY 2018.

According to the fiscal note prepared by the Division of the Budget on HB 2396, the increased treatment costs

estimated by the Kansas Sentencing Commission would be expenditures from the State General Fund. The Department of Corrections estimates a reduction of 23 prison beds would save approximately \$41,676 and a reduction of 62 prison beds would save approximately \$112,344 in FY 2020. By FY 2029, prison bed savings would be \$65,232 to \$179,388.

The Office of Judicial Administration indicates the bill would increase expenditures from additional court time needed to make the required determinations and findings to place an offender in the SB 123 program, but a precise fiscal effect cannot be estimated. Because the Kansas Sentencing Commission has clarified this bill makes technical corrections to legislation enacted during the 2018 Legislative Session and does not further expand the SB 123 program, the fiscal effect associated with enactment of the bill is currently reflected in *The FY 2020 Governor's Budget Report*.