

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2396

As Amended by House Committee of the Whole

Brief*

HB 2396, as amended, would amend criminal sentencing law regarding drug abuse treatment programs and probation violation sanctions, as follows.

Drug Abuse Treatment Programs

The bill 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>

Probation Violation Sanctions

The bill would amend the authorized dispositions statute in the Kansas Criminal Code to remove the ability of the sentencing court to specifically withhold authority from supervising court services or community corrections officers to impose certain probation violation sanctions of confinement in a county jail for a two-day or three-day period. The bill also would require the sentencing court to authorize an additional 18 days of confinement in a county jail for the purpose of these and similar sanctions.

The bill would amend the statute governing probation violations to remove violation sanctions allowing the court to remand the defendant to the custody of the Secretary of Corrections for periods of 120 days or 180 days. The bill would remove procedural provisions related to or dependent on these sanctions, remove statutory references to the sanctions (including those in the statute governing postrelease supervision), and move provisions allowing revocation without first imposing remaining sanctions in certain situations. The bill would require a court that continues or modifies the probation, assignment to a community correctional services program, suspension of sentence, or nonprison sanction to authorize an additional 18 days of sanction time in a county jail for use in imposing the two-day and three-day sanctions.

The bill would make technical amendments to ensure consistency in statutory phrasing.

Background

HB 2396, as amended by the House Committee of the Whole, includes provisions of HB 2396, as recommended by the House Committee on Corrections and Juvenile Justice, regarding drug abuse treatment programs, and HB 2050, as amended by the House Committee on Corrections and Juvenile Justice, regarding probation violation sanctions.

HB 2396 (Drug Abuse Treatment Programs)

[*Note:* As introduced, HB 2396 contained 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.

The House Committee of the Whole amended the bill to add the contents of HB 2050, as amended by the House Committee on Corrections and Juvenile Justice, regarding probation violation sanctions.

According to the Kansas Sentencing Commission’s (KSC’s) prison bed impact assessment, enactment of HB 2396, as introduced, would reduce prison beds by 23 to 62 beds by FY 2020 and by 36 to 99 beds in FY 2029. Enactment of 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 KSC 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 enactment of 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 KSC 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 HB 2396, as introduced, is currently reflected in *The FY 2020 Governor's Budget Report*.

HB 2050 (Probation Violation Sanctions)

HB 2170 (2013), representing the recommendations of the Justice Reinvestment Working Group, made numerous changes to sentencing, probation, and postrelease supervision statutes, including the creation of two-day and three-day jail sanctions (known as "quick dips") and 120-day and 180-day prison sanctions for probation violations.

HB 2050 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the KSC. As introduced, the bill also would have added a 60-day county jail sanction in lieu of the 120-day and 180-day prison sanctions.

In the House Committee hearing, a representative of the KSC testified in support of the bill. Opponent testimony was presented by representatives of the Johnson County Sheriff's Department, Kansas County and District Attorneys Association, Kansas Sheriffs' Association, and Sedgwick County Division of Corrections. Written-only opponent testimony was provided by representatives of the Kansas Association of Counties and Kansas District Judges Association.

The House Committee amended the bill to remove the provisions that would have added the new 60-day county jail sanction.

According to the bed impact assessment prepared by the KSC, HB 2050, as introduced, would reduce prison admissions by 1,215 through FY 2020 and 1,389 through FY 2029. The bill would also reduce prison bed needs by 148 through FY 2020 and 158 through FY 2029 without having an impact on the workload of KSC.

According to the fiscal note prepared by the Division of the Budget on HB 2050, as introduced, the Department of Corrections states a 148-bed reduction in FY 2020 would avoid costs of \$268,176 from the State General Fund in FY 2020. Any fiscal effect associated with enactment of HB 2050 is not reflected in *The FY 2020 Governor's Budget Report*.