

SESSION OF 2014

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 256**

As Agreed to April 4, 2014

**Brief\***

SB 256 would amend law related to mistreatment of a dependent adult or elder person, sureties and appearance bonds, the Kansas Racketeer Influenced and Corrupt Organization (RICO) Act, and costs of appellate representation by the Attorney General.

***Mistreatment of a Dependent Adult or Elder Person***

The bill would amend the statute governing the crime of mistreatment of a dependent adult by:

- Rewriting the means of committing the crime that involves taking unfair advantage of a dependent adult's resources so that the means would involve the wrongful taking of personal property or financial resources of a dependent adult for the benefit of the defendant or another person by taking control, title, use, or management of personal property or financial resources through various prohibited techniques or influences or without adequate consideration, through a violation of the Kansas Power of Attorney Act, or through a violation of the Kansas Uniform Trust Code;
- Creating the crime "mistreatment of an elder person," which could be committed by any of the means by which mistreatment of a dependent adult

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may be committed, except for infliction of physical injury, unreasonable confinement, or unreasonable punishment;

- Defining “elder person,” as a person 70 years of age or older;
- Establishing the same tiered penalties for mistreatment of an elder person as exist for mistreatment of a dependent adult, with the following exceptions with regard to taking the personal property or financial resources of an elder person:
  - Taking of property or resources valued at least \$5,000 but less than \$25,000 would be a severity level 7, person felony;
  - Taking of property or resources valued less than \$5,000 would be a class A person misdemeanor, unless the offender has been convicted of the same crime two or more times within the previous five years, in which case it would be a severity level 7, person felony (the comparable penalties for mistreatment of a dependent adult are a severity level 7, person felony for values of at least \$1,000 but less than \$25,000 and a class A misdemeanor for values less than \$1,000, or severity level 7, person felony if the same previous conviction provision is met);
- Establishing an affirmative defense to prosecution for the taking of property or resources from a dependent adult or elder person that the property or resources were given as a gift consistent with a pattern of gift giving before the victim became vulnerable, that the property or resources were conferred as a gift to the benefit of a person or class of persons and was reasonable under the circumstances, or that a court approved the transaction; and

- Defining “adequate consideration.”

### ***Sureties and Appearance Bonds***

The bill would amend the crime of unlawful sexual relations to add a provision prohibiting a surety or an employee of a surety from engaging in sexual relations with a person at least 16 years of age who is the subject of a surety or bail bond agreement with such surety when the offender knows the person is the subject of such surety or bail bond agreement. This provision would be a severity level 5, person felony.

The bill would amend bail provisions for certain drug offenses that require at least \$50,000 cash or surety to allow any person arrested and charged for these offenses to be released upon the person’s own recognizance if the court determines, on the record, that the defendant is not likely to reoffend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program. The bill would amend similar bail provisions in criminal street gang and Racketeer Influenced and Corrupt Organizations (RICO) statutes to allow release upon the person’s own recognizance if the court determines, on the record, that the defendant is not likely to reoffend, an appropriate intensive pretrial supervision program is available, and the defendant agrees to comply with the mandate of such pretrial supervision.

The bill would prohibit a person convicted of any felony in the person’s lifetime from acting as a surety or as an agent of a surety. Under current law, only persons convicted of a person felony within the past ten years fall under this prohibition.

The bill would require an out-of-state surety or agent of a surety to contract with a Kansas surety or agent of a surety before attempting to apprehend a person in Kansas and be

accompanied by the Kansas surety or agent during the apprehension.

The bill also would update agency references to reflect current agency authority and responsibilities.

### ***RICO***

The bill would amend statutes in the Kansas RICO Act to specify the culpability requirement for a violation of the RICO Act is “recklessly.” It would not be unlawful for a person covered by the RICO Act to violate the Act through the collection of an unlawful debt if the person did not participate in the illegal activity creating the debt.

The bill also would amend the RICO Act definitions statute to update the names of certain crimes listed under “racketeering activity” and to add the crime of commercial sexual exploitation of a child to this list.

### ***Attorney General Appellate Costs***

The bill would amend the statute allowing the Attorney General to invoke the assistance of county or district attorneys on criminal appeals to allow the reasonable costs of representation by the Attorney General to be paid by the board of county commissioners from the county general fund, pursuant to an agreement with the Attorney General. Current law allows only the payment of the costs of assistance provided by the county’s county or district attorney. The Attorney General would be allowed to publish a schedule of costs for services provided by the Attorney General, not to exceed the statutory rate of compensation for attorneys appointed to represent indigent persons (currently \$80 per hour). The Attorney General would be allowed to enter into agreements with county or district attorneys for the payment of such costs, which could supersede the schedule of costs. The bill would direct any moneys paid to the Attorney General

under this section to the Criminal Appeals Cost Fund, which would be created by the bill. The Attorney General would be permitted to use this fund to represent the interests of the state in criminal appeals and post-conviction proceedings.

### **Conference Committee Action**

The Conference Committee agreed to the version of SB 256 passed by the House. The Committee further agreed to add the provisions of HB 2493, regarding sureties and appearance bonds, as passed by the House; and provisions from Senate Sub. for HB 2448 relating to the Kansas RICO Act. The Conference Committee modified the RICO provisions to specify the culpability requirement for a violation of the RICO Act would be “recklessly.”

Finally, the Conference Committee agreed to add modified language from SB 354, related to mistreatment of a dependent adult or elder person. Specifically, this language was modified from the original bill by separating out the crime of mistreatment of an elder person from the crime of mistreatment of a dependent adult, adjusting the lower range of penalties for mistreatment of an elder person, adding an affirmative defense for property or resources conferred as a gift that was reasonable under the circumstances, and changing the definition of “elder person” to raise the age from 60 years of age to 70 years of age.

### **Background**

SB 256 was introduced by the Senate Committee on Judiciary at the request of the Attorney General’s Office. In the Senate Committee, Attorney General Schmidt testified in support of the bill. A representative of the Kansas Association of Counties testified as an opponent.

In the House Committee on Judiciary, Attorney General Schmidt and a representative of the Kansas County and

District Attorneys Association testified in support of the bill. A representative of the Kansas Association of Counties testified as an opponent.

The House Committee amended the bill to clarify that costs would be paid to the Attorney General by the county only pursuant to an agreement between those parties.

According to the fiscal note prepared by the Division of the Budget on SB 256, as introduced, the Attorney General's Office anticipates it would need one criminal appeals attorney FTE position at \$80,000 annually to handle county-generated appeals. Fees would be collected from the county and district attorneys under the provisions of the bill, but the amount of revenue generated by the fees cannot be determined at this time. However, the fees generated would be used to offset the cost of the additional attorney's salary. Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.

#### ***Background of SB 354***

SB 354 was introduced by the Senate Committee on Judiciary at the request of Senator O'Donnell. In the Senate Committee, Senator O'Donnell; the Kansas State Long-Term Care Ombudsman; representatives of the Attorney General's Office, the Kansas County and District Attorneys Association (KCDAA), Kansas Alzheimer's Association chapters, AARP Kansas, LeadingAge Kansas, and Kansas Neurological Institute Parent Guardian Group; and a recently retired adult care home director testified in support of the bill. Written testimony supporting the bill was received from Attorney General Schmidt and representatives of assisted living facilities, Kansas Advocates for Better Care, the Kansas Bankers Association, and the Kansas Department for Children and Families. There was no opponent testimony.

In the House Committee on Judiciary, Senator O'Donnell and representatives of the Attorney General's Office, KCDAA,

AARP Kansas, Kansas Advocates for Better Care, Kansas Alzheimer's Association chapters, and LeadingAge Kansas testified in support of the bill. Written testimony supporting the bill was received from Attorney General Schmidt, the Kansas State Long-Term Care Ombudsman, and representatives of assisted living facilities, the Kansas Health Care Association and Kansas Center for Assisted Living, the Kansas Bankers Association, and the Kansas Department for Children and Families. The House Committee took no action on the bill.

According to the fiscal note prepared by the Division of the Budget on SB 354, as introduced, the Office of Judicial Administration indicates the bill has the potential to increase the number of cases and appeals filed, increasing the time required of judicial and non-judicial personnel. The additional cases also could increase revenue from docket fees. However, the number of additional cases or appeals cannot be predicted, and thus a precise fiscal effect cannot be determined.

The Kansas Sentencing Commission (KSC) indicates the bill would add to the journal entry workload of the Commission, but additional resources would not be needed. The KSC estimates the bill would result in an increase of 1 to 3 adult prison beds needed in FY 2015 and an increase of 3 to 11 beds needed by FY 2014.

For all crimes, the Kansas Sentencing Commission estimates that the number of inmates will be below available capacity (9,636 as of January 13, 2014) by 103 beds in FY 2014 and by 196 beds in FY 2015. However, starting in FY 2017, it is expected that adult correctional facilities will again be over capacity. Continued population increases will require new construction providing 512 beds at a construction cost of approximately \$24.4 million and operating costs of approximately \$8.4 million (\$45 per inmate per day). If utilized, bond financing for construction would need to be authorized in FY 2016. Because it increases the number of beds needed, this bill could require earlier construction or additional funds for contract beds. Should passage of the bill require capacity beyond the scenario described above,

additional costs for contract beds or facility expansion would be incurred.

Any fiscal effect associated with the bill is not reflected in *The FY 2015 Governor's Budget Report*.

### ***Background of HB 2493***

HB 2493 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Bail Agents Association. In the House Committee, representatives of the Kansas Bail Agents Association and the Capitol Lobby Group testified in support of the bill. The Chief Judge of the Johnson County District Court, another chief district judge representing the Kansas District Judges Association, and representatives of the Kansas Association of Counties and the Sedgwick County Department of Corrections testified as opponents to a provision in the bill, as introduced, that would have prohibited the use of own recognizance bonds for certain offenses.

The House Committee adopted amendments including an own recognizance bond provision agreed to by the proponents and opponents and a few technical changes.

According to the fiscal note prepared by the Division of the Budget on HB 2493, as introduced, the Office of Judicial Administration indicates the bill would have no fiscal effect on the Judicial Branch and the Board of Indigents' Defense Services indicates the bill would not increase its caseload. The Kansas Sentencing Commission states the bill would add to its journal entry workload, but additional resources would not be needed.

The Sentencing Commission estimates the bill, as introduced, would require one to two additional adult prison beds in FY 2015 and two to five additional beds by FY 2024.

For all crimes, the Kansas Sentencing Commission

estimates the number of inmates will be below available capacity (9,636 as of January 13, 2014) by 103 beds in FY 2014 and by 196 beds in FY 2015. However, starting in FY 2017, it is expected that adult correctional facilities will again be over capacity. The bed space requirements of the bill could be handled within existing capacity in the short term, but will add to capacity challenges in the near future. Continued population increases will require new construction providing 512 beds at a construction cost of approximately \$24.4 million and operating costs of approximately \$8.4 million (\$45 per inmate per day). If utilized, bond financing for construction would need to be authorized in FY 2016.

Any fiscal effect associated with HB 2493 is not reflected in *The FY 2015 Governor's Budget Report*.

***Background of Senate Sub. for HB 2448***

The RICO provisions of Senate Sub. for HB 2448 were amended into the bill by the Senate Committee on Judiciary. They were taken from Senate Sub. for HB 2182.

***Background of Senate Sub. for HB 2182***

As passed by the House in 2013, HB 2182 would have amended grand jury provisions. These provisions were passed by the 2013 Legislature as part of the Conference Committee report on HB 2164.

The 2014 Senate Judiciary Committee recommended a substitute bill for HB 2182 containing the provisions of SB 404 with added language to update the definition of "racketeering activity." The Committee also added the crime of commercial sexual exploitation of a child to this definition.

### ***Background of SB 404***

SB 404 was introduced by the Senate Judiciary Committee at the request of Senator Petersen. In the Senate Committee, Senator Petersen testified in support of the bill, explaining it was a follow-up bill to 2013 SB 16, which created the Kansas RICO Act. There was no opponent testimony.

The fiscal note prepared by the Division of the Budget indicates the bill would have no fiscal effect.

mistreatment of a dependent adult; mistreatment of an elder person; elder; sureties; unlawful sexual relations; appearance bonds; Kansas RICO Act; Attorney General; appellate costs; courts

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