

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2655**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2655 would amend the crimes of interference with law enforcement and giving a false alarm and establish new law related to the sentencing of veterans.

Interference with Law Enforcement

The bill would amend this crime to include falsely reporting to a law enforcement officer, law enforcement agency, or state investigative agency that a law enforcement officer has committed a crime or misconduct in the performance of the officer's duties, if the perpetrator knows this information is false and intends the officer or agency shall act upon such information.

The bill would remove from the definition of this crime the act of falsely reporting to law enforcement that a crime has been committed or information concerning a crime, knowing that the information is false, and intending that law enforcement shall act in reliance on the information. The bill would clarify that the misdemeanor version of this crime may be committed by interfering with law enforcement in a non-criminal case.

*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>

Giving a False Alarm

The bill would amend this crime to raise the penalty from a class A nonperson misdemeanor to:

- A severity level 10, nonperson felony if the perpetrator uses an electronic device or software to alter, conceal, or disguise the identity of the person making the transmission or call; and
- A severity level 7, nonperson felony if the request for emergency assistance includes false information that violent criminal activity or immediate threat to a person's life or safety is taking place.

Sentencing of Veterans

The bill would enact new law and amend existing statutes to allow a defendant at the time of conviction or prior to sentencing to assert that the offense was committed as a result of mental illness, including post-traumatic stress disorder, stemming from service in a combat zone while in the U.S. Armed Forces. Under the provisions of the bill, the court would hold a hearing to determine the following:

- Whether the defendant served in a combat zone while in the U.S. Armed Forces, as proven by a certification by the executive director of the Kansas Commission on Veterans' Affairs;
- Whether the defendant has separated from the armed forces with an honorable discharge or a general discharge under honorable conditions;
- Whether the defendant suffers from a mental illness; and

- The mental illness was caused or exacerbated by service in a combat zone.

If the court determines the defendant has met the criteria established by the bill and the defendant's current crime and criminal history fall within a presumptive non-prison category under the sentencing guidelines, the court could order the defendant to undergo treatment. The bill would allow the court to order the defendant to undergo either inpatient or outpatient treatment at any treatment facility or program operated by the U.S. Department of Defense, the Federal Veterans' Administration, and the Kansas National Guard.

If the court determines the defendant would be eligible for treatment under the above provisions and that the defendant meets the requirements for treatment under the alternative sentencing provisions of 2003 SB 123, the SB 123 provisions would apply, except the court could order treatment by the providers listed above in lieu of participation in a certified drug abuse treatment program.

Background

HB 2655 was introduced by the House Committee on Veterans, Military and Homeland Security. As introduced, the bill contained the veterans sentencing provisions.

At the House Committee hearing, representatives from the Kansas American Legion, the Sunflower Chapter of the Military Officers Association of America, and the Association of Community Mental Health Centers of Kansas testified in favor of the bill. Additionally, the executive director of the Kansas Commission on Veterans' Affairs and a representative of the Office of Judicial Administration spoke in favor of the bill.

The House Committee amended the bill to clarify the executive director of the Kansas Commission on Veterans'

Affairs would be required to certify if the defendant served in a combat zone and would not be required to make an assessment on mental illness. The Committee also amended the bill to allow those defendants who were separated from the armed forces with a general discharge under honorable conditions to assert a defense of mental illness as a result of serving in a combat zone. Additionally, the Committee expanded treatment of a defendant outlined in the bill to add the Federal Veterans' Administration to the list of agencies from which a defendant could seek treatment.

In the Senate Committee on Judiciary, Representative Goico testified in support of the bill. Representative Meier testified in favor of the bill on behalf of the Kaw Valley Chapter of the Military Officers Association of America. The director of the Kansas Sentencing Commission and a representative of the Kansas American Legion also testified as proponents. A representative of the Office of Judicial Administration testified as a neutral conferee. A representative of the Kansas Coalition Against Sexual and Domestic Violence submitted written testimony opposing the bill.

The Senate Committee recommended a substitute bill adding the 2003 SB 123 treatment provision and incorporating amended language from HB 2298 regarding interference with law enforcement and giving a false alarm.

The fiscal note prepared by the Division of the Budget on HB 2655, as introduced, indicates the Kansas Commission on Veterans' Affairs could determine a veteran's service in a combat zone as well as separation status by examining the veteran's discharge papers and certification required by the bill would not have a fiscal effect on the agency. According to the Office of Judicial Administration, the bill would require additional time to be spent on cases filed in district court and in the number of appeals related to sentencing of veterans convicted of criminal offenses. Any additional hearings would increase the time spent by district and appellate court judicial and non-judicial personnel in

processing, researching, and hearing cases; however, as a result of not being able to determine how many cases may be involved, an accurate estimate of any fiscal impact cannot be determined.

There is no fiscal note available for the substitute bill.

Background of HB 2298

HB 2298 was introduced at the request of Representative Finney. In the 2013 House Committee on Corrections and Juvenile Justice, no proponents or opponents offered testimony.

In the 2014 Senate Committee on Judiciary, a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified in support of the bill. There was no neutral or opponent testimony.

The Senate Committee amended the bill to remove proposed amendments that had already been enacted in other legislation, add provisions related to interference with law enforcement, and adjust the conduct required for application of the penalty enhancements for giving a false alarm. The Senate Committee then placed this amended language into Senate Sub. for HB 2655.

The fiscal note prepared by the Division of the Budget on HB 2298, as introduced, indicates passage would result in an increase of one to three adult prison beds in each fiscal year during the FY 2014-FY 2023 forecast period. The Office of Judicial Administration predicts passage would increase the number of cases filed; however, the impact likely would be accommodated within existing resources.