

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2055**

As Agreed to May 18, 2015

**Brief\***

HB 2055 would amend law related to battery against a law enforcement officer, determination of criminal history, aggravated battery when driving under the influence (DUI), and the items that may be included in a search warrant. The bill also would make technical corrections to statutory references.

***Battery Against a Law Enforcement Officer***

The bill would amend the crime of battery against a law enforcement officer to include battery against a judge engaged in the performance of the judge's duty, an attorney engaged in the performance of the attorney's duty, or a court services or community corrections officer in the performance of such officer's duty. The bill would similarly amend the crime of aggravated battery against a law enforcement officer.

The bill would define "judge" to include appellate justices and judges, district court judges, district magistrate judges, and municipal judges. "Attorney" would be defined to include county, assistant county, and special assistant county attorneys; district, assistant district, and special assistant district attorneys; the attorney general, assistant attorneys general, and special assistant attorneys general; and public defenders, assistant public defenders, State Board of

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Indigents' Defense Services contract counsel, or attorney appointed to represent indigent persons. "Court services officer" would be defined to include an employee of the Judicial Branch or local judicial district who supervises, monitors, writes reports, or performs related duties as assigned by the court. "Community corrections officer" would be defined to include an employee of a community correctional services program who supervises adults or juveniles as assigned by the court or provides enhanced supervision of offenders.

The bill would amend references to "juvenile correctional facility officer or employee" to reflect the reorganization of juvenile justice services within the Kansas Department of Corrections. The bill would strike a reference to the Rainbow Mental Health Facility and clarify that the definition of "mental health employee" includes Kansas Department for Aging and Disability Services (KDADS) contractors.

***Criminal History Determination; Aggravated Battery While DUI***

The bill would amend one of the statutes governing the determination of an offender's criminal history to establish a procedure for classifying out-of-state misdemeanor convictions. The comparable Kansas offense would be used to classify the out-of-state conviction as a class A, B, or C misdemeanor. If the comparable Kansas offense is a felony, the conviction would be classified as a class A misdemeanor. If there is no comparable Kansas offense, the conviction would not be included in the criminal history.

The bill also would amend this statute with provisions known as Mija Stockman's Law, which would create a special rule for determining criminal history for a conviction of aggravated battery when a person is DUI and great bodily harm to another person or disfigurement of another person results from such act. The rule would provide that, for the purposes of determining an offender's criminal history, the

first prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication of DUI, commercial DUI, or DUI test refusal would count as one nonperson felony. Each second or subsequent prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication of these offenses would count as one person felony.

The bill would add commercial DUI and DUI test refusal to prior convictions, diversions, or juvenile adjudications that shall count as person felonies in determining the criminal history for a conviction of involuntary manslaughter while DUI.

### ***Search Warrants***

The bill would amend the statute governing search warrants to add a provision allowing the search or seizure of any thing that can be seized under the Fourth Amendment to the *U.S. Constitution*. The bill also would add a specific provision allowing the search or seizure of biological material, DNA, cellular material, blood, hair, or fingerprints.

### **Conference Committee Action**

The Conference Committee agreed to the Senate version of HB 2055. The Conference Committee further agreed to add the language of SB 12, as passed by the Senate (regarding aggravated battery against a law enforcement officer). Finally, the Conference Committee agreed to add the Senate version of HB 2048 (regarding search warrants), modified to change the term “item” to “thing” and restore the general description of things that may be search or seized.

### **Background**

HB 2055 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas

Sentencing Commission. As introduced, the bill contained the provisions related to out-of-state misdemeanor convictions. In the House Committee, the Executive Director of the Sentencing Commission testified in support of the bill. There was no neutral or opponent testimony.

The House Committee of the Whole amended the bill to replace a provision counting an out-of-state misdemeanor without a comparable Kansas offense as a class C misdemeanor with a provision excluding such offenses from the criminal history calculation.

Before the Senate Committee on Corrections and Juvenile Justice, the Executive Director of the Sentencing Commission testified in support of the bill. There was no neutral or opponent testimony.

The Senate Committee amended the bill by adding provisions modified from Sub. for HB 2115, Mija Stockman's Law. Further background for Sub. for HB 2115 is provided below.

The fiscal note prepared by the Division of the Budget on HB 2055, as introduced, indicates it would have no fiscal effect on the Judicial Branch and no effect on prison bed space.

***Background of Sub. for HB 2115***

HB 2115 was introduced by the House Judiciary Committee at the request of Representative Mason.

In the House Judiciary Committee, Representatives Mason and Johnson, Senator Wilborn, friends and family of Mija Stockman, and the McPherson County Attorney offered testimony in support of the bill. There was no neutral or opponent testimony.

The House Committee adopted a substitute bill, which would create a special sentencing rule for the crime of aggravated battery when a person is DUI and great bodily harm to another person or disfigurement of another person results from such act. The bill, as introduced, would have amended the definition of aggravated battery to include driving under the influence of alcohol or drugs when permanent disability of another person results from such act, which would have been a severity level 4, person felony.

In the Senate Judiciary Committee, Representative Mason, the McPherson County Attorney, and Mija Stockman's mother testified in support of the bill. Senator Wilborn and Representatives Couture-Lovelady and Johnson submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The fiscal note prepared by the Division of the Budget indicates HB 2115, as introduced, would have an effect on adult prison admissions and prison beds, but the precise effect cannot be determined because victim information to define "permanent disability" is not available from which an estimate can be made. The Office of Judicial Administration indicates the bill, as introduced, could increase the number of cases and appeals filed, which could require additional judicial and non-judicial personnel time and also could increase docket fee revenue. A precise effect cannot be determined, however.

### ***Background of SB 12***

SB 12 was introduced by the Senate Judiciary Committee at the request of Senator King. Before the Senate Committee on Corrections and Juvenile Justice, representatives of the Kansas District Judges Association, Office of Judicial Administration, Kansas Community Corrections Association (KCCA), and KDADS testified in support of the bill. A Kansas attorney submitted written

testimony opposing the bill and requested that criminal defense attorneys be added to the definition of “attorney.”

The Senate Committee adopted an amendment proposed by the KCCA adding community corrections officers; amendments proposed by KDADS adding special assistant county and district attorneys and special assistant attorneys general to the definition of “attorney”, clarifying the definition of “mental health employee,” and removing a reference to the Rainbow Mental Health Facility; and an amendment adding public defenders and related defense counsel to the definition of “attorney.”

According to the fiscal note prepared by the Division of the Budget on SB 12, as introduced, the bill could increase the number of cases in courts, increasing the time required of court personnel but also resulting in the collection of additional docket fee revenue, and a precise fiscal effect cannot be determined.

The Kansas Sentencing Commission states SB 12 would add to the journal entry workload of the Commission, but additional resources would not be needed. The Commission estimates the bill would require an additional 3 to 5 prison beds in FY 2016 and an additional 8 to 11 prison beds by FY 2017.

As of January 12, 2015, available prison bed capacity is 9,636. Based upon the Sentencing Commission’s most recent 10-year projection, the year-end population will exceed available male capacity by 85 inmates in FY 2015, 109 inmates in FY 2016, and 162 inmates in FY 2017. It may cost the Department of Corrections an additional \$43,800 to \$73,000 in FY 2016, and \$73,000 to \$102,200 in FY 2017, to house the additional inmates created by this bill in contract beds until additional capacity could be constructed. Construction costs would depend on severity level and timing of construction. Additional prison commitments could require additional staff and resources to supervise parolees.

Any fiscal effect associated with SB 12 is not reflected in *The FY 2016 Governor's Budget Report*.

### ***Background of HB 2048***

HB 2048 was introduced by the Special Committee on Judiciary, which was charged during the 2014 interim to consider and recommend possible responses to the Kansas Supreme Court's decision in *State v. Powell*, 299 Kan. 690 (2014). (Further background information can be found in the *Report of the Special Committee on Judiciary to the 2015 Legislature*.) As introduced, the bill did not contain the specific provision regarding search or seizure of biological material.

In the House Committee on Corrections and Juvenile Justice, a representative of the Kansas County and District Attorney Association (KCDAA) testified in support of the bill, requesting the Committee amend the bill to restore the general description of things that may be searched or seized and add a specific provision allowing the search or seizure of biological material, DNA, cellular material, blood, hair, or fingerprints. Written testimony supporting the bill was submitted by a representative of the Kansas Sheriffs' Association, Kansas Association of Chiefs of Police, and Kansas Peace Officers Association. No other testimony was provided.

The House Committee adopted the amendment proposed by the KCDAA and further amended the bill by removing the provision allowing the search or seizure of any item that can be seized under the Fourth Amendment to the *U.S. Constitution*.

In the Senate Committee on Judiciary, the same conferees testified and provided written testimony as before the House Committee. The Senate Committee amended the bill to restore the language of the original bill while retaining the specific provision added by the House Committee

allowing the search or seizure of biological material, DNA, cellular material, blood, hair, or fingerprints.

According to the fiscal note prepared by the Division of the Budget on HB 2048, as introduced, the Office of Judicial Administration indicates the bill could create a fiscal effect until its provisions become settled law, but a precise amount cannot be determined.

battery against a law enforcement officer; judges; attorneys; courts services officers; community corrections officers; mental health employee, Kansas Department for Aging and Disability Services; criminal history; out-of-state misdemeanor classification; Mija Stockman's Law; aggravated battery while DUI; involuntary manslaughter while DUI; great bodily harm; sentencing; search warrants—what items may be seized

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