

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2462**

As Agreed to April 27, 2016

Brief*

HB 2462 would amend criminal code provisions governing possession of marijuana, theft, and burglary.

Specifically, the bill would amend penalties for possession of marijuana so that a first offense would be a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense would be a drug severity level 5 felony. Under current law, a first offense is a class A nonperson misdemeanor and any subsequent offense is a drug severity level 5 felony.

The bill also would amend the crime of theft to increase the floor for a severity level 9, nonperson felony theft of property or services from \$1,000 to \$1,500. Accordingly, the ceiling for class A nonperson misdemeanor theft of property and services would be raised from "less than \$1,000" to "less than \$1,500," as well as the ceilings for exceptions raising the severity level for such amounts to a severity level 9, nonperson felony when the property is taken from 3 separate mercantile establishments within a period of 72 hours as part of the same act or common scheme, or when the person committing the theft has been convicted of theft 2 or more times. The bill also would establish a floor of \$50 for the exception raising the severity level to a severity level 9, nonperson felony when the person committing the theft has

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been convicted of theft 2 or more times, and would add a 5-year lookback provision to this exception.

Further, the bill would create a special sentencing rule for burglary of a dwelling to make the sentence presumptive imprisonment if the offender has a criminal history score of C (one previous person felony and one previous nonperson felony), D (one previous person felony), or E (three or more nonperson felonies). The bill would adjust the penalty provisions for burglary of a dwelling with intent to commit the theft of a firearm to make it a person felony, rather than a nonperson felony.

The bill would amend the definition and penalties for aggravated burglary to make aggravated burglary committed by entering into or remaining in a dwelling in which there is a human being, with the required intent, a severity level 4, person felony. The bill would clarify that entering into a non-dwelling building or structure in which there is a human being, with the required intent, would remain a severity level 5, person felony.

The bill would further establish that the crimes of burglary and aggravated burglary would not apply to a person who enters or remains in retail or commercial premises, while such premises are open to the public, after having been told by the owner or manager not to enter the premises pursuant to the criminal trespass statute, except when the person enters or remains in such premises with the intent to commit a person felony or a sexually motivated crime.

The bill also would make technical amendments to statutory references.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to HB 2462, except the Committee agreed to change the overall floor to \$1,500 (crime of theft provision). The Conference Committee also agreed to add the contents

of Senate Sub. for HB 2049 as amended by the Senate Committee of the Whole, concerning penalties for possession of marijuana and amending the crimes of burglary and aggravated burglary.

Background

HB 2462 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. In the hearing before the House Committee, a representative of the Kansas Sentencing Commission testified in support of the bill. A representative of the Kansas Association of Criminal Defense Lawyers (KACDL) also testified in support of the bill and proposed an amendment establishing a \$250 floor for the provision making theft a severity level 9, nonperson felony when committed by a person who has been convicted of theft 2 or more times.

The House Committee adopted the amendment proposed by the KACDL.

In the hearing before the Senate Committee on Corrections and Juvenile Justice, the same proponents testified. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in opposition to the bill. A representative of the Capitol Lobby Group provided neutral testimony.

The Senate Committee adopted an amendment modified from a proposal by the KACDL and the law enforcement organizations lowering the floor for the multiple theft conviction exception to \$50 and adding a five-year lookback provision to this exception. The Senate Committee also reduced the amended overall floor from \$2,000 to \$1,250. [Note: The Conference Committee changed this amount to \$1,500.]

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration (OJA) estimates the bill, as introduced, would increase its State

General Fund expenditures by \$213,360 in FY 2017 for an additional 4.0 court services officers FTE positions. OJA also estimates lost correctional services fee revenues of \$5,500 to the State General Fund and \$7,700 to the Correctional Supervision Fund.

The Kansas Sentencing Commission estimated the bill, as introduced, would have resulted in a decrease of 32 adult prison beds needed in FY 2017 and a decrease of 36 adult prison beds needed in FY 2026, with a possible total cost avoidance of \$2.3 million between FY 2017 and FY 2026. The bill also would have decreased the number of journal entries by 220.

In an updated impact assessment reflecting the amendments by the House Committee, the Sentencing Commission estimated the bill would save 45 prison beds in FY 2017 and 50 prison beds in FY 2026, and would reduce the Commission's journal entry workload by 330 in FY 2017.

In a second updated impact assessment reflecting the amendments by the Senate Committee, the Sentencing Commission estimates the bill would save 33 prison beds in FY 2017 and 37 prison beds in FY 2026, and would reduce the Commission's journal entry workload by 222 in FY 2017.

Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

Background of Senate Sub. for HB 2049

HB 2049 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 regarding penalties for marijuana possession.

At the House Committee hearing, the executive director of the Kansas Sentencing Commission and a representative of the KACDL testified in support of the bill. The Kiowa County Attorney submitted written neutral testimony with a proposed amendment. No other testimony was presented.

The House Committee of the Whole amended the bill to add the provisions of HB 2282, regarding medical hemp preparations, as amended by the House Committee on Health and Human Services. The House Committee of the Whole also added the provisions of HB 2329, regarding industrial hemp, as recommended by the House Committee on Agriculture and Natural Resources.

At the Senate Committee on Corrections and Juvenile Justice hearing, Representative John Wilson, representatives of the Kansas Sentencing Commission and the American Civil Liberties Union of Kansas, and private citizens testified in support of the bill. Written testimony supporting the bill was received from a KACDL representative and a private citizen. Representatives of the OJA and the Kansas Health Institute provided neutral testimony, and a representative of the Kansas Pharmacists Association provided written neutral testimony.

A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in opposition to the provisions drawn from HB 2282. A representative of the Kansas Family Partnership and various citizens testified in opposition to the bill, with some of the citizens indicating their opposition was because they thought the bill should make greater changes.

A representative of Safe Streets and Prevention Services, Shawnee Regional Prevention and Recovery Services, provided written testimony opposing the bill. The Director of the Kansas Bureau of Investigation and a representative of the Institute on Global Drug Policy and the Kansas Medical Society submitted written testimony opposing the provisions drawn from HB 2282.

The Senate Committee recommended a substitute bill containing the provisions regarding marijuana possession that were contained in the bill as introduced, as well as provisions related to burglary drawn from SB 20 (further background for SB 20 is provided below). [*Note:* the Senate

Committee subsequently recommended the provisions drawn from 2282 be placed in a substitute bill for SB 147 and be passed without recommendation. Further information may be found in the latest supplemental note for SB 147.]

The Senate Committee of the Whole adopted an amendment removing a provision that would have raised the penalty for burglary of a dwelling from a severity level 7 to a severity level 6, person felony and adding the provision that would create a special sentencing rule for burglary of a dwelling. The Senate Committee of the Whole also adopted an amendment adjusting a provision that would have created an exception making burglary and aggravated burglary inapplicable to any premises that are, at the time, open to the public, and would apply the exception instead to persons entering retail and commercial premises after being banned from the premises pursuant to the criminal trespass statute, unless the person enters with intent to commit a person felony or a sexually motivated crime.

According to the fiscal note prepared in 2015, by the Division of the Budget, the Kansas Sentencing Commission estimated HB 2049, as introduced, would reduce adult prison bed needs by 46 beds in FY 2016 and by 75 beds by FY 2017. The Sentencing Commission also estimated the bill could help avoid 2003 SB 123 drug treatment programming costs by \$788,986 in FY 2016, and the Commission's journal entry workload would be reduced by 448 entries in FY 2016. According to the 2015 fiscal note, the bill could create contract bed savings of \$671,600 in FY 2016 and \$1,095,000 in FY 2017. [Note: Please see below for an updated bed impact assessment].

The OJA estimates 367 misdemeanor offenders could be added to court services officer caseloads, requiring an additional 6.0 FTE court services officer positions at an annual cost of \$356,586. The amount needed for these positions in FY 2016 would be \$237,670 due to the time needed to hire and train the officers.

The bill also could have a fiscal effect on Judicial Branch revenues, due to the lower correctional supervision fee paid by misdemeanor offenders. However, the precise fiscal effect on these revenues is difficult to determine.

Any fiscal effect associated with HB 2049 was not reflected in *The FY 2016 Governor's Budget Report*.

In January 2016, the Sentencing Commission released an updated bed impact assessment for Senate Sub. for 2049 (including the burglary provisions added from SB 20 but not including the amendments by the Senate Committee of the Whole). The updated bed impact assessment indicates Senate Sub. for 2049 could reduce adult prison bed needs by 11, 5 or 0 beds in FY 2017 and increase adult prison bed needs by 78, 101, or 127 beds by FY 2026, depending on which scenario plays out. The assessment also indicates the substitute bill could avoid \$763,258.66 in SB 123 programming costs in FY 2017.

Background of SB 20

SB 20 was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of the Kansas County and District Attorneys Association (KCDAA). In the 2015 Senate Committee, representatives of the KCDAA and citizens testified in support of the bill.

The Senate Committee adopted an amendment proposed by a citizen based on a Model Penal Code provision excluding premises that are open to the public from the burglary statute. The citizen stated this amendment would remove repeat shoplifter cases from the definition of burglary.

According to the 2015 fiscal note prepared by the Division of the Budget on the bill, as introduced, the OJA indicated the elevated penalties could increase the number of appeals filed, which could increase the time required of court personnel and result in the collection of added revenue from

docket fees. However, a precise fiscal effect could not be determined.

The Board of Indigents' Defense Services indicated the new severity levels could increase defense costs, but a precise fiscal effect was unknown.

The Kansas Sentencing Commission estimated the bill would require 89, 97, or 105 additional prison beds in FY 2016 and an additional 231, 265, or 299 prison beds by FY 2025 based on three different scenarios. A bed impact assessment released in February 2015, that incorporated the Senate Committee amendment revised these estimates to 79, 82, or 86 additional beds in FY 2016 and an additional 190, 206, or 226 beds by FY 2025.

According to the 2015 fiscal note, SB 20, as introduced, could have cost the Department of Corrections an additional \$1,299,400 to \$1,533,000 in FY 2016 and \$2,686,400 to \$3,153,600 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.

[*Note:* the potential prison bed impact of the provisions of SB 20 included in Senate Sub. for 2049 has been updated in the January 2016 bed impact assessment prepared for Senate Sub. for 2049, as summarized in the previous section. This update did not include the Senate Committee of the Whole amendments to Senate Sub. for 2049, which impacted the burglary provisions from SB 20.]

Any fiscal effect associated with SB 20 was not reflected in *The FY 2016 Governor's Budget Report*.

criminal code; possession of marijuana; theft; burglary

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