

March 31, 2016

The Honorable Gregory Smith, Chairperson
Senate Committee on Corrections and Juvenile Justice
Statehouse, Room 441-E
Topeka, Kansas 66612

Dear Senator Smith:

SUBJECT: Fiscal Note for SB 434 by Senators Haley and Pettey

In accordance with KSA 75-3715a, the following fiscal note concerning SB 434 is respectfully submitted to your committee.

Under current law, criminal discharge of a firearm is defined as the reckless and unauthorized discharge of any firearm at a dwelling, building, structure, or various means of conveyance when there is a person present within, whether or not the person discharging the firearm knows that there is a person present. An existing reference to a “motor vehicle” is included with other means of conveyance, including aircraft, watercraft, and trains. SB 434 includes a new stand-alone provision to specify that criminal discharge of a firearm at an occupied motor vehicle would be treated differently for sentencing purposes than other means of conveyance.

SB 434 would add new provisions to sentencing guidelines regarding the criminal discharge of a firearm at an occupied dwelling, building, structure, or motor vehicle. Under the new guidelines, if the trier of fact makes a finding that the offender discharged a firearm and that the offender knew or reasonably should have known that a person was present in the dwelling, building, structure, or motor vehicle the sentence would be presumptive imprisonment. In addition to the sentence imposed by the Kansas Sentencing Guidelines Act, the offender would receive an additional 60 months imprisonment. That sentence would not be subject to departure or appeal. If the trier of fact makes a finding that the offender knew or reasonably should have known that person under the age of 14 was present in the dwelling, building, structure, or motor vehicle, the offender would be sentenced to an additional 120 months imprisonment.

The Office of Judicial Administration indicates the provisions of SB 434 requiring presumptive imprisonment and additional imprisonment of 60 or 120 months would not result in any new criminal case filings, but these provisions would result in a more vigorous defense and additional appeals because of the mandated imprisonment and increased sentence. The Office cannot estimate a fiscal effect until the Judicial Branch has been given an opportunity to operate under the bill’s provisions.

The Kansas Sentencing Commission estimates enactment of SB 434 would result in an increase of two adult prison beds needed in FY 2017. By FY 2026, it is estimated 78 additional adult prison beds would be needed. As of January 15, 2016, the available bed capacity is 9,636. Based upon the Commission's most recent ten-year projection contained in its *FY 2016 Adult Inmate Prison Population Projections* report, it is estimated that the year-end population will exceed available male capacity by 326 inmates in FY 2016 and 516 inmates in FY 2017. The Department of Corrections intends to manage the original bed shortfall by housing inmates in contract beds until additional capacity can be constructed. SB 434 would add to those contract bed costs.

Assuming a contract rate of \$40 per day, it may cost the Department of Corrections up to an additional \$13,724 (2 beds x \$40 per day x 365 days x 47.0 percent bed vacancy rate) in FY 2017. Construction costs for adding capacity would depend upon the security level of the beds to be constructed and when construction is actually undertaken. Absent the passage of any other legislation, increases in the female population and the minimum security male population can be absorbed within existing resources. Likewise, any further prison commitments that result in additional parolees could require additional staff and resources so that the parolees could be effectively supervised. Any fiscal effect associated with SB 434 is not reflected in *The FY 2017 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Ashley Michaelis, Judiciary
Scott Schultz, Sentencing Commission
Adam Pfannenstiel, Corrections